

**COMPILATION OF JUDGEMENT
OF
HON'BLE HIGH COURT OF
MADRAS
ON
CASES INVOLVING
PONDICHERRY CO-OPERATIVES
(1977 - 2004)**

**Compiled and Edited by
*R.MURALIDHARAN***

Deputy Registrar (Planning & legal)
Co-operative Department, Pondicherry- 605 009

Published by

**Pondicherry State Co-operative Union
Pondicherry**

CONTENTS

Sl. No.	Particulars	Page No.
1	Index to Report	(i) to (iv)
2	Nominal Index	(v) to (viii)
3	Subject Index	(ix) to (xiii)
4	Cases referred	(xiv) to (xv)
5	Judgments	1 – 225

INDEX TO REPORT

Sl. No.	Case No.	Date of order	Cause Title	Page No.
1.	WP 5398/75	23-12-1977	V. Padmanabha Iyengar vs. The Registrar of Co-operative Societies, Pondicherry and another	1
2.	WP 1055/79	2-4-1979	D.B. Govindan vs. The Registrar of Co-operative Societies, Pondicherry and another	3
3.	WP 329/78	1-2-1980	D. Palani vs. The Lt. Governor, Pondicherry and another	5
4.	AAO 19/81	1-4-1982	Pondicherry State Weavers Co-operative Society vs. Regional Director, ESI Corporation, Madras	8
5.	WP 9737/82	27-1-1983	N. Ramasamy vs. The Lt. Governor, Pondicherry and 3 others	14
6.	WP 8356/83	7-10-1983	Pondicherry State Village Co-operative Societies Employees Union vs. Secretary to Government (Coop.), Pondicherry and another	20
7.	WA 41/83	26-10-1983	N. Ramasamay vs. The Lt. Governor, Pondicherry and three others	33
8.	WA 12/78	26-11-1984	V. Padmanabha Iyengar and 4 others vs. The Registrar of Co-operative Societies, Pondicherry and another	41
9.	WP 9457/89	21-11-1989	V. Ammainathan vs. Secretary to Government (Coop), Pondicherry and others	46
10.	WA 1033/83	8-2-1990	Pondicherry State Village Co-operative Societies Employees Union vs. Secretary to Government (Coop.), Pondicherry and another	53
11.	WP 4375/84	1-11-1990	G. Krishnasamy vs. The Registrar of Co-operative Societies, Pondicherry and another	60
12.	WP 9749/92	1-10-1992	G. Sivam vs. The Registrar of Co-operative Societies, Pondicherry and 4 others	62
13.	SA 1515/88	30-10-1992	The Pondicherry Co-operative Housing Society vs. S.A. Guiry	64
14.	WP 10288/92	30-10-1992	G. Chandrakasan vs. The Deputy Registrar of Co-operative Societies, Pondicherry and 3 others	66
15.	WP 18142/92	27-11-1992	L. Ramalingam vs. The Chief Secretary to Government, Pondicherry and 3 others	68

16.	WP 11395/84	13-7-1994	T. Vedachalam and another vs. The Chief Secretary to Government, Pondicherry and 3 others	70
17.	WP 5292/87	21-7-1994	The Pondicherry State Village Co-operative Agricultural Credit Societies National Employees Union vs. The Registrar of Co-operative Societies, Pondicherry and another	72
18.	WP 11584/86	2-9-1994	Pondicherry Central Co-operative Processing, Supply & Marketing Society Employees Union vs. The Registrar of Co-operative Societies, Pondicherry and another	73
19.	CRP 1640/94 WP 17221/94	23-12-1994	Nettapakkam Milk Producers Co-operative Society vs. The Registrar of Co-operative Societies, Pondicherry etc.	76
20.	WP 599 & 600/95	13-1-1995	Mangalam Milk Producers Co-operative Society and another vs. The Pondicherry Co-operative Milk Producers Union Ltd. and 3 others	82
21.	WP 3952/95	3-8-1995	R. Kothandapani vs. The Registrar of Co-operative Societies, Pondicherry and another	85
22.	WA 1092/95	28-9-1995	R. Kothandapani vs. The Registrar of Co-operative Societies, Pondicherry and another	88
23.	WP 9937/95	25-4-1996	Manakuppam Milk Producers Co-operative Society vs. The Registrar of Co-operative Societies, Pondicherry	90
24.	WP 10872/96	19-9-1996	Indian Coffee House Workers Union and another vs. The Registrar of Co-operative Societies, Pondicherry and another	92
25.	WP 14427/96	7-10-1996	R. Venkatakrisnan vs. The Deputy Registrar of Co-operative Societies, Pondicherry and 2 others	94
26.	WP 16098/96	12-11-1996	A. Muthalu vs. Secretary to Government (Coop), Pondicherry and 2 others	96
27.	WP 9312, 9320 & 9321/98	9-7-1998	A. Jothipragasam and another vs. The Registrar of Co-operative Societies, Pondicherry and 3 others	98
28.	WP 10867 & 12724/98	26-2-1999	Pondicherry Co-operative Milk Producers Union vs. The Registrar of Co-operative Societies, Pondicherry and two others	100

29.	WP 18491/90	13-4-1999	R. Srinivasan and 6 others vs. The Secretary to Government (Coop), Pondicherry and another	106
30.	WP 14200/92	8-12-1999	I. Aravindakshan vs. The Secretary to Government (Coop), Pondicherry and 4 others	113
31.	WP 1167/00	27-1-2000	V. Vijayakumar vs. The Administrator, Karaikal Central Co-operative Processing, Supply and Marketing Society and another	115
32.	WP 15211/97	13-3-2000	Dr. R. Gunasekaran vs. The Registrar of Co-operative Societies, Pondicherry.	117
33.	WP 4785 & 18210/99	5-5-2000	Pondicherry Co-operative Milk Producers' Union & another vs. The Registrar of Co-operative Societies, Pondicherry and 2 others	120
34.	SA 1686/88	28-8-2000	M.E. Hameed Ummal vs. The Registrar of Co-operative Societies, Pondicherry and 2 others	133
35.	WP 7490 & 6691/93	8-9-2000	T. Sarathy and 2 others vs The Registrar of Co-operative Societies, Pondicherry and 11 others	138
36.	WP 21830/00	22-12-2000	S. Srinivasan vs. The Registrar of Co-operative Societies, Pondicherry and 6 others	141
37.	CA 497 & 631/ 2000 etc.,	22-01-2001	Pondicherry Cooperative Milk Producers' Union vs. Registrar of Co-operative Societies, Pondicherry, etc.,	143
38.	WP 15586 & 15587/00	7-3-2001	K. Sobithkumar vs. The Registrar of Co-operative Societies, Pondicherry and 3 others	155
39.	WP 11472/01	21-6-2001	R Saravanan vs. Purunasingupalayam Co-operative Milk Producers Society and two others	158
40.	WP 11037 & 11038/1994	9-7-2001	Purunasingupalayam Co-operative Milk Producers Society vs. The Presiding Officer, Labour Court, Pondicherry and another	160
41.	WP 19996/01	1-11-2001	R. Souparayane vs. The Pondicherry Co-operative Urban Bank Ltd. and another	163
42.	WP 2820/97	14-12-2001	A. Krishnamoorthy vs. The Registrar of Co-operative Societies, Pondicherry and 9 others	165
43	WP 19349/01	12-3-2002	K. Sobithkumar vs. The Registrar of Co-operative Societies, Pondicherry and another	167

44.	WP 8389/02	24-4-2002	B. Sathyaseelan vs. The Registrar of Co-operative Societies, Pondicherry and another	169
45	WP 6901/02	14-6-2002	Pondicherry Co-operative Spinning Mills Staff Union vs. The Chief Secretary to Government, Pondicherry and two others	171
46	WP 25349/02	17-7-2002	V. Selvaraj vs. The Secretary to Government (Coop.), Pondicherry and two others	173
47.	WP 29234/02	22-8-2002	Pondicherry Co-operative Urban Bank Employees Union vs. The Registrar of Co-operative Societies, Pondicherry and another	175
48.	WP 35353/02	8-10-2002	S. Velmurugan and 8 others vs. The Registrar of Co-operative Societies, Pondicherry and another	177
49.	WA 3413/02	13-11-2002	S. Velmurugan and 8 others vs. The Registrar of Co-operative Societies, Pondicherry and another	182
50.	WP 32290/02 etc.	30-12-2002	Durai @ Adiseenu Ponnu & another vs. The Registrar of Co-operative Societies, Pondicherry and 2 others	186
51.	WP 33779/02	21-4-2003	R. Prabhakaran vs. The Registrar of Co-operative Societies, Pondicherry and another	198
52	WP 17786/97 etc.	7-8-2003	P. Mohan & 10 others etc. Vs. The Registrar of Co-operative Societies, Pondicherry and 10 others etc.	200
53.	WP 16124/03	20-8-2003	J. Radhakrishnan vs. The Registrar of Co-operative Societies, Pondicherry and another	207
54.	WP 3214/97	29-8-2003	S. Elumalai vs. The Registrar of Co-operative Societies, Pondicherry and 9 others	210
55.	WA 3948/02	10-9-2003	Pondicherry State Co-operative Consumers' Federation Ltd. Vs. B. Gayathri	212
56.	WP 38211/02	23-9-2003	Dr. S. Rajeshwaran vs. The Secretary to Government (Coop.), Pondicherry and 2 others	215
57.	WP 10555/03	26-9-2003	M. Balasoundarssanane vs. The Registrar of Co-operative Societies and another	220
58.	CRP 848 & 849/00	30-3-2004	Venus Chit Fund and Finance Corporation vs. The Pondicherry Co-operative Housing Society Ltd.	222

NOMINAL INDEX

Sl. No.	Case No.	Date of order	Cause Title	Page No.
1	WP 9457/89	21-11-1989	Ammainathan.V vs. Secretary to Government (Coop), Pondicherry and others	46
2	WP 14200/92	08-12-1999	Aravindakshan.I vs. The Secretary to Government (Coop), Pondicherry and 4 others	113
3	WP 10555/03	26-09-2003	Balasoundarssanane.M vs. The Registrar of Co-operative Societies and another	220
4	WP 10288/92	30-10-1992	Chandrakasan.G vs. The Deputy Registrar of Co-operative Societies, Pondicherry and 3 others	66
5	WP 32290/02 etc.	30-12-2002	Durai @ Adiseenu Ponnu & another vs. The Registrar of Co-operative Societies, Pondicherry and 2 others	186
6	WP 3214/97	29-08-2003	Elumalai.S vs. The Registrar of Co-operative Societies, Pondicherry and 9 others	210
7	WP 1055/79	02-04-1979	Govindan.D.B. vs. The Registrar of Co-operative Societies, Pondicherry and another	3
8	WP 15211/97	13-03-2000	Gunasekaran.Dr.R. vs. The Registrar of Co-operative Societies, Pondicherry.	117
9	SA 1686/88	28-08-2000	Hameed Ummal.M.E. vs. The Registrar of Co-operative Societies, Pondicherry and 2 others	133
10	WP 10872/96	19-09-1996	Indian Coffee House Workers Union and another vs. The Registrar of Co-operative Societies, Pondicherry and another	92
11	WP 9312, 9320 & 9321/98	09-07-1998	Jothipragasam.A and another vs. The Registrar of Co-operative Societies, Pondicherry and 3 others	98
12	WP 3952/95	03-08-1995	Kothandapani.R vs. The Registrar of Co-operative Societies, Pondicherry and another	85
13	WA 1092/95	28-09-1995	Kothandapani.R vs. The Registrar of Co-operative Societies, Pondicherry and another	88
14	WP 2820/97	14-12-2001	Krishnamoorthy.A vs. The Registrar of Co-operative Societies, Pondicherry and 9 others	165
15	WP 4375/84	01-11-1990	Krishnasamy.G vs. The Registrar of Co-operative Societies, Pondicherry and another	60

16	WP 9937/95	25-4-1996	Manakuppam Milk Producers Co-operative Society vs. The Registrar of Co-operative Societies , Pondicherry	90
17	WP 599 & 600/95	13-1-1995	Mangalam Milk Producers Co-operative Society and another vs. The Pondicherry Co-operative Milk Producers Union Ltd. and 3 others	82
18	WP 17786/97 etc.	07-08-2003	Mohan.P & 10 others etc. Vs. The Registrar of Co-operative Societies, Pondicherry and 10 others etc.	200
19	WP 16098/96	12-11-1996	Muthalu.A vs. Secretary to Government (Coop), Pondicherry and 2 others	96
20	CRP 1640/94 WP 17221/94	23-12-1994	Nettapakkam Milk Producers Co-operative Society vs. The Registrar of Co-operative Societies, Pondicherry etc.	76
21	WA 12/78	26-11-1984	Padmanabha Iyengar.V and 4 others vs. The Registrar of Co-operative Societies, Pondicherry and another	41
22	WP 5398/75	23-12-1977	Padmanabha Iyengar.V vs. The Registrar of Co-operative Societies, Pondicherry and another	1
23	WP 329/78	01-02-1980	Palani.D vs. The Lt. Governor, Pondicherry and another	5
24	WP 11584/86	02-09-1994	Pondicherry Central Co-operative Processing, Supply & Marketing Society Employees Union vs. The Registrar of Co-operative Societies, Pondicherry and another	73
25	WP 10867 & 12724/98	26-02-1999	Pondicherry Co-operative Milk Producers Union vs. The Registrar of Co-operative Societies, Pondicherry and two others	100
26	WP 4785 & 18210/99	05-05-2000	Pondicherry Co-operative Milk Producers' Union & another vs. The Registrar of Co-operative Societies, Pondicherry and 2 others	120
27	CA 497 & 631/ 2000 etc.,	22-01-2001	Pondicherry Cooperative Milk Producers' Union vs. Registrar of Co-operative Societies, Pondicherry, etc.,	143
28	WP 6901/02	14-06-2002	Pondicherry Co-operative Spinning Mills Staff Union vs. The Chief Secretary to Government, Pondicherry and two others	171
29	WP 29234/02	22-08-2002	Pondicherry Co-operative Urban Bank Employees Union vs. The Registrar of Co-operative Societies, Pondicherry and another	175
30	WA 3948/02	10-09-2003	Pondicherry State Co-operative Consumers' Federation Ltd. Vs. B. Gayathri	212

31	WP 8356/83	07-10-1983	Pondicherry State Village Co-operative Societies Employees Union vs. Secretary to Government (Coop.), Pondicherry and another	20
32	WA 1033/83	08-02-1990	Pondicherry State Village Co-operative Societies Employees Union vs. Secretary to Government (Coop.), Pondicherry and another	53
33	AAO 19/81	01-04-1982	Pondicherry State Weavers Co-operative Society vs. Regional Director, ESI Corporation, Madras	8
34	WP 33779/02	21-4-2003	Prabhakaran.R vs. The Registrar of Co-operative Societies, Pondicherry and another	198
35	WP 11037 & 11038/1994	09-07-2001	Purunasingupalayam Co-operative Milk Producers Society vs. The Presiding Officer, Labour Court, Pondicherry and another	160
36	WP 16124/03	20-08-2003	Radhakrishnan.J vs. The Registrar of Co-operative Societies, Pondicherry and another	207
37	WP 38211/02	23-09-2003	Rajeshwaran.Dr.S. vs. The Secretary to Government (Coop.), Pondicherry and 2 others	215
38	WP 18142/92	27-11-1992	Ramalingam.L vs. The Chief Secretary to Government, Pondicherry and 3 others	68
39	WA 41/83	26-10-1983	Ramasamay.N vs. The Lt. Governor, Pondicherry and three others	33
40	WP 9737/82	27-01-1983	Ramasamy.N vs. The Lt. Governor, Pondicherry and 3 others	14
41	WP 7490 & 6691/93	08-09-2000	Sarathy.T and 2 others vs The Registrar of Co-operative Societies, Pondicherry and 11 others	138
42	WP 11472/01	21-06-2001	Saravanan.R vs. Purunasingupalayam Co-operative Milk Producers Society and two others	158
43	WP 8389/02	24-04-2002	Sathyaseelan.B vs. The Registrar of Co-operative Societies, Pondicherry and another	169
44	WP 25349/02	17-07-2002	Selvaraj.V vs. The Secretary to Government (Coop.), Pondicherry and two others	173
45	WP 9749/92	01-10-1992	Sivam.G vs. The Registrar of Co-operative Societies, Pondicherry and 4 others	62
46	WP 15586 & 15587/00	07-03-2001	Sobithkumar.K vs. The Registrar of Co-operative Societies, Pondicherry and 3 others	155

47	WP 19349/01	12-3-2002	Sobithkumar.K vs. The Registrar of Co-operative Societies, Pondicherry and another	167
48	WP 19996/01	01-11-2001	Souparayane.R vs. The Pondicherry Co-operative Urban Bank Ltd. and another	163
49	WP 18491/90	13-04-1999	Srinivasan.R and 6 others vs. The Secretary to Govt. (Coop), Pondicherry and another	106
50	WP 21830/00	22-12-2000	Srinivasan.S vs. The Registrar of Co-operative Societies, Pondicherry and 6 others	141
51	SA 1515/88	30-10-1992	The Pondicherry Co-operative Housing Society vs. S.A. Guiry	64
52	WP 5292/87	21-7-1994	The Pondicherry State Village Co-operative Agricultural Credit Societies National Employees Union vs. The Registrar of Co-operative Societies, Pondicherry and another	72
53	WP 11395/84	13-7-1994	Vedachalam.T and another vs. The Chief Secretary to Government, Pondicherry and 3 others	70
54	WP 35353/02	08-10-2002	Velmurugan.S and 8 others vs. The Registrar of Co-operative Societies, Pondicherry and another	177
55	WA 3413/02	13-11-2002	Velmurugan.S and 8 others vs. The Registrar of Co-operative Societies, Pondicherry and another	182
56	WP 14427/96	07-10-1996	Venkatakrishnan.R vs. The Deputy Registrar of Co-operative Societies, Pondicherry and 2 others	94
57	CRP 848 & 849/00	30-03-2004	Venus Chit Fund and Finance Corporation vs. The Pondicherry Co-operative Housing Society Ltd.	222
58	WP 1167/00	27-01-2000	Vijayakumar.V vs. The Administrator, Karaikal Central Co-operative Processing, Supply and Marketing Society and another	115

SUBJECT INDEX

Bye laws

1.	Concession on compassionate ground has to be taken in the matter of interpreting the provisions of the bye laws.	60
2.	When there is no clause in the bye laws which enables the plaintiff to have the sale deed set aside, any clause inserted in the regulations subsequent to the sale deed will not apply to the sale deed in question.	64
3.	Power to direct amendment of the bye laws - Without giving explanation to the show cause notice, the proceedings cannot be questioned in writ petition	90
4.	When the amendment of the bye laws is sought for, it is the duty of the Registrar to consider each and every amendment separately and consider whether it contravenes any provisions of the Act or Rules.	100
5.	To direct amendment to the bye laws, the petitioner is to move the competent authorities. There is no scope for ordering such an amendment in writ petition.	173

Membership

1.	Transfer of share is to be made to a member and any transfer of share to non-member is invalid.	3
2.	A co-operative society on registration becomes a body corporate and is legally independent of its members who constitute the society.	8
3.	Whether the petitioners are qualified to be the members of the society is to be decided at the relevant point of time.	70
4.	Removal from membership – The petitioner is to give his explanation to the Registrar. Writ petition cannot be entertained.	220

Disqualification for membership of the committee

1.	Making purchase from a business concern of which the petitioner was one of the partners. Petitioner producing unregistered document to show that he has severed the connection cannot be relied on.	5
2.	Holding of post of President in two societies – The moment the disqualification is incurred, cessation takes place.	14, 33

Election

1.	No dispute can be entertained till the date of declaration of result of election. When such an order is made, no direction can be given to the Registrar.	68
2.	When the election process has commenced, it is not open to interfere and stay the election process	76
3.	There is a separate machinery to question the validity of an election after the conduct of election. It would be totally improper to stop the election on alleged technical mistakes.	82

4.	The Registrar has stated that he would take earnest steps to conduct polling. Direction is given to complete the election process.	92
5.	When an interim ex-parte order is passed under section 84(6), the petitioner can file an application to set aside the ex-parte order	94, 98
6.	When the election is over and the results have been published, it is open to the petitioner to raise a dispute. When an alternative remedy is available, the person aggrieved should avail such remedy.	96
7.	Petition seeking cancellation of members admitted to the society – Registrar is directed to consider the petition.	113
8.	Writ petition challenging the notice issued by the authority in an election dispute cannot be entertained.	141
9.	When once the election process is started, the writ petition cannot be entertained.	158
10.	Though the election process should not be interfered, it is equally necessary that elections are conducted freely and fairly.	186

/

Inquiry

1.	A preliminary fact finding enquiry is not an inquiry under section 75.	85, 88
2.	In the interest of the proper administration of the society, the Registrar has to undertake the exercise contemplated under section 36 and pass appropriate orders	186
3.	If there is any mismanagement, the cause is found in the statute itself for making an enquiry at all levels, be it subordinate level, Registrar level or by Government and several safeguards are provided in the Act for ensuring proper functioning of the societies.	200

Supersession of committee

1.	When the committee is superseded, individual members cannot seek different relief in different forum.	46
2.	When the committee has quorum, ordering supersession of the committee is not warranted. In such a case, appointment of an administrator is justified.	117
3.	Section 83 (9) provides that it is not necessary to give an opportunity if the Registrar is of the opinion that it is not reasonably practicable to do so.	177
4.	Mere apprehension of tampering of records is not sufficient to invoke the discretionary power under section 83 (9).	182

Power to issue directions

1.	Transfer of share made to non-member – Registrar invoking powers and issuing directions canceling the resolution is valid.	3
2.	Even though the Government has no share capital in the society, the Registrar has been made the chief spokesman and he has got the supervisory control over the same. Taking into consideration the provision of section 81, the order fixing the milk price is within his jurisdiction.	100

3.	There is no illegality in the direction issued by the Registrar to direct the Union to constitute an expert panel to select and appoint a Managing Director.	120
----	--	-----

Appeal

1.	Unless the Court is satisfied that the alternative remedy is not efficacious or too dilatory or difficult to give relief reasonably quickly, the Court shall not exercise its jurisdiction under Art.226	46
2.	Against an order of setting aside an election, an appeal to Government lies. The order cannot be challenged in writ petition.	66
3.	When the statute empowers the appellate authority to dispose of the appeal, naturally it must be presumed that the Government is also aware of the duties of the appellate authority.	100
4..	As against the orders passed by the Registrar the Act provides for appeal under section 140. Section 144 provides a bar of jurisdiction of civil courts in respect of suits.	133
5.	When the Act provides an adequate remedy against supersession of committee, it is not proper to avoid the appellate remedy.	177

Maintenance of writ petition against co-operative societies

1.	Writ petition against a co-operative society is not maintainable.	62
----	---	----

Liquidation

1.	The power of liquidator is independent of the power of the Registrar to order surcharge.	1,41
----	--	------

Labour Law

1.	It is a matter of Government policy and every sovereign Government has a power to create or abolish a post.	20, 53 , 106
2.	The nomenclature of cadre managers is supervisors and they fall out of the definition of workman under section 2(s) of the Industrial Disputes Act. The necessity to follow the procedure under section 25 FF does not arise.	20, 53
3.	When a Government order is issued prescribing the method of recruitment, the recruitment cannot be challenged without challenging the Government Order.	72
4.	The directions issued by the Registrar prescribing conditions of employment of employees would not prevent the employees from raising an industrial dispute seeking better pay scales and service conditions.	73
5.	Termination of service of an employee is to be challenged under the Industrial Disputes Act.	115

6.	Unless the individual possesses the qualification prescribed for the office of the Managing Director and such a Managing Director is selected by an expert panel, he cannot be allowed to continue as Managing Director even as a stop gap arrangement.	120
7.	When there is no power to nominate an expert member in selection committee, the entire selection made by the committee is vitiated.	138
8.	The post of Managing Director should not be kept vacant and a person who had not been appointed regularly shall not be allowed to official for years together.	143
9.	It cannot be said that the order of suspension comes to an end the moment the charges have been framed.	155
10.	Giving benefit of situation to the employee may not be justified when he had been convicted for the alleged misappropriation.	160
11.	The High Court cannot go into the question as to whether the enquiry against an employee was properly conducted, as it involves disputed question of fact.	163
12.	Petition filed on assumption that the respondents are attempting to promote the deputationists cannot be entertained for want of document to substantiate the contention.	165, 210
13.	When a show cause notice is issued consequent on the enquiry officer's report, there should be no indication of the conclusion of the disciplinary authority.	167
14.	It is open to the petitioners to file appropriate representation before the Government on the recommendations of the three member committee.	171
15.	Without producing any material to show that there has been an illegality in the appointment, the petition cannot be accepted.	175
16.	Ad hoc employees, who are already in service, if otherwise qualified, are entitled in preference over the new applicants.	198
17.	The petitioners have no indefeasible right to command continuation of the selection process and select them. Only after the selection process is completed and the same is not done according to the rules, they can complain.	200
18.	The Court should restrain itself from interfering with orders of interim suspension pending disciplinary proceedings.	207
19.	When the charges are not serious, stoppage of one increment without cumulative effect will meet ends of justice.	212
20.	When the required document relating to inquiry was available, there is no scope to hold that the memorandum of suspension lacks legal support either under section 80 of the Act or under the bye laws.	215

Employees State Insurance Act

1.	Merely because the employees are members of the society, they do not cease to be its employees and are entitled to be covered under the Employees State Insurance Act.	8
----	--	---

Civil Procedure Code

1.	A mortgagee of property is not entitled for rateable distribution in any surplus.	222
----	---	-----

Words and Phrases

1.	Special excludes general	1, 41
2.	Audi alteram partem	182

CASES REFERRED

Sl. No.	Particulars	Page No.
1	Administrator, Konch Sahakari Kraya Vikraya Samiti Ltd. Vs. Sarnam Singh and others, (1997) II SCC 144.	109,110
2	Ammainathan.V, President, Board of Directors, Pondicherry State Co-operative Union vs. The Union of India, Union territory of Pondicherry – 1990 (2) MLJ 143.	179
3	Arumugham M.S. vs. Joint Registrar of Co-operative Societies, Salem Region, Salem-7, 1991 WLR 636.	218
4	Baburam Prakash Chandra Maheswari vs. Antarim Zila Parishad, AIR 1969 SC 556.	50
5	Boulting vs. Cinematograph Association, (1969) 1 All. E.R. 716.	12
6	Commissioner of Income Tax, Madras vs R.M. Chidambaram Pillai, AIR 1977 SC 489.	10,11
7	Commissioner of Police vs. Gordhandas, AIR (39) 1952 SC 16.	218
8	Co-operative Central Bank Ltd. and others vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others, 1969-II-LLJ-698 : AIR 1970 SC 245 : 1970 (1) SCR 205.	74
9	Election Commission of India vs. Saka Venkata Rao, (1953) 1 MLJ 702 : 1953 SCJ 293 : 1953 SCR 1144 : 66 LW 378 : AIR 1953 SC 210.	16,18, 38,39
10	Ganesan.K vs. The Special Officer, Salem Co-operative Sugar Mills and 2 others – 1994 (2) LW 102 : ILR (1994) II MAD 629 : 1994 WLR 509.	208
11	Gattaiah.T and 86 others vs. Commissioner of Labour and another, 1981 II LLJ 54.	26,31
12	Gurmail Singh and others vs. State of Punjab and others, (1991) 1 SCC 189.	109,110
13	Joint Registrar of Co-operative Societies, Kerala vs. T.A. Kuttappan, AIR 2000 SC 2378 : (2000) 6 SCC 127 : JT 2000 (6) SC 458.	192
14	Joint Registrar of Co-operative Societies, Madras vs. P.S.Rajagopala Nadiu & Govindaralu Naidu, AIR 1970 SC 992 : 1971 (1) SCR 227.	180
15	Kannan P. Tamilarasan and others vs. The Director of Sugars etc. (FB), (1991) 2 LW 409 : 1989 (1) LLJ 588.	62,208
16	Kumaresan.V.K. vs. Joint Registrar of Co-operative Societies, Coimbatore, AIR 1992 Mad. 232 : 1992 WLR 393 : 1992-1-LW-566.	80,84
17	Kuntesh Gupta. Dr. Smt. v. Management of Hindu Kanya Mahavidyalaya, Sitapur U.P and others (AIR 1987 SC 2186)	51
18	Lee vs. Lee's Air Farming Ltd., 1961 AC 12.	11
19	LIC of India vs. Asha Ramachandra Ambedkar, AIR 1994 SC 2148.	218
20	Mohd. Yunus vs. Mohd. Mustagim and others, AIR 1984 SC 38.	80
21	Mohinder Singh vs. Chief Election Commissioner, AIR 1978 SC 851.	218
22	Muthusamy.S.T. vs. K.Natarajan and others, AIR 1988 SC 616.	80,84
23	Muthuswamy.K.M. vs. The Commissioner, Panchayat Union, Gobi Taluk, (1983) 2 MLJ 271.	51

24	Nanhoo Mal vs. Hira Mal, AIR 1975 SC 2140.	80
25	Natarajan.A vs. The Registrar of Co-operative Societies, (1991) 2 LW 420 : 1991 WLR 840 : 1991 (2) MLJ 63.	63
26	Natarajan.V.K. vs. Triplincane Urban Co-operative Society (by Special Officer), Madras, 1990 (2) LLN 1187.	218
27	Philip Jeyasingh.W vs. The Joint Registrar of Co-operative Societies, Chidambaranar Region, Tuticorin and 2 others, 1994-I-MLJ-398 : 1994-II-LW-105.	208
28	Ponnusami.N.P. vs. Returning Officer, Namakkal Constituency, AIR 1952 SC 64 : 1952 SCR 218.	159
29	Prabhakaran and others vs. General Manager, KSRTC and another, FLR 1981 (42) 222.	26,31
30	Rakhaldas Mukherjee vs. S.P. Ghose, AIR 1952 Cal. 171.	50
31	Ram Prasad vs. Commissioner of Income Tax, AIR 1973 SC 637	12
32	Ramanatha Pillai.N vs. State of Kerala, AIR 1973 SC 2641 : (1974) 1 SCR 515.	28,30, 59,112
33	Reserve Bank of India's case, 1965 II LLJ 175 : (1966) 1 SCR 25.	31
34	Savarimuthu.V vs. Special Director of Enforcement and another, AIR 1987 Mad.11	80
35	Secretary, Palani Co-operative Sale Society, Palani and another vs. The Presiding Officer, Labour Court, Madurai and another, (2) Coop. Cases 420.	218
36	South Arcot Co-operative Motor Transport Society Ltd. Vs. Syed Batcha and others, 1964-I-LLJ-280 : (Coop. Cases) Vol.I 437.	10,11
37	State of Haryana vs. D.B. Sangar, AIR 1976 SC 1199.	26,28, 58,112
38	State of Uttar Pradesh vs. Indian Hume Pipe Company, AIR 1977 SC 1132 : (1977) 2 SCC 124 : (1977) 2 SCR 120 : 1977 Tax LR 1871.	51
39	Thanigachalam.M vs. Madhuranthagam Agricultural Producers Cooperative Marketing Society No.G.864, represented by the Special Officer, (2000) 3 MLJ 722 : 2000 1 LW 38 : 2000 IV CTC 556.	164,208
40	The Assistant Collector of Central Excise vs. Jainson Hosiery Industries, AIR 1979 SC 1889.	51
41	Thirupulli Samy Naidu.V vs. A.P. Manickam Chettiar, 1954 II MLJ 680.	19
42	Union of India vs. Tejram, (1991) III SCC 11.	112
43	Uttar Pradesh State Co-operative Land Development Bank vs. Chandra Bhan Dubery, 1999 (1) CTC 467 : (1999) 1 SCC 741.	111
44	Uttar Pradesh State Road Transport Corporation and another vs. Uttar Pradesh Parivahan Nigam Shishuks Berozgar Sangh and others, (1995) 2 SCC 1.	109,110
45	Workmen vs. Greaves Cotton & Co. Ltd., and others, 1971 II LLJ 479.	27,31

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23rd December, 1977

PRESENT: THE HONOURABLE Mr. JUSTICE S. MOHAN

Writ Petition No. 5398 of 1975

V. Padmanabha Iyengar

.. Petitioner

Versus

1. The Registrar of Co-operative Societies,
Pondicherry.
2. The Liquidator, Karaikal Co-operative Urban
Bank Limited, Karaikal

.. Respondents

(A) Pondicherry Co-operative Societies Act, 1965 – S.71 (Surcharge) and S.87 (Power of the liquidator) – Special excludes general – When?

(B) On a careful reading of both S.71 and 87 I am of the view that there are two courses available. One does not exclude the other. In fact there is not even an implied exclusion of S.87 to cases in which S.71 can be invoked.
(Para 6)

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a writ of certiorari, calling for the records of the proceedings initiated by the second respondent in his Rc. (L) 10.493 dated 16-6-1973 and to quash the same.

For Petitioner : Mr. T.V. Ramanujam, Advocate

For Respondents : Mr. T. Somasundaram for Government Pleader for
Pondicherry.

ORDER

This writ petition coming on for hearing on Friday, the sixteenth day of December, 1977, and on this day upon perusing the petition and the affidavit filed in support thereon the order of the High Court, dated 25-8-1975 and made herein in the records relating to the order in Rc. (L).10.493 dated 16-6-1973 on the file of the second respondent comprised in the return of the respondents to the writ made by the High Court, and upon hearing the arguments of Mr. T.V. Ramanujam, Advocate for the petitioner and of Mr. T. Somasundaram for Government Pleader, Pondicherry on behalf of the respondents the Court made the following order:-

2. The writ petition for certiorari seeks to quash an order dated 16-6-1973 passed by the second respondent, namely the Liquidator, Karaikal Co-operative Urban Bank Ltd., Karaikal.

3. The facts are as under:- The petitioner was the Secretary of the Karaikal Co-operative Urban Bank Ltd., between the years 1956 and 1965. Formerly he was working as Sub-Registrar (Co-operative Societies) and retired on 8-2-1951. He joined as the Secretary of the Karaikal Co-operative Urban Bank on 11-6-1956. He served the same bank in the same capacity till 15-9-1965 when he was relieved. It was alleged that during his period of service he had misappropriated to the tune of Rs.1,82,803-82 and, therefore, he was called upon to pay the said sum under Section 87 (2) (b) of the Pondicherry Co-operative Societies Act, 1965, hereinafter referred to as the Act. It is against this order, the present writ petition has been preferred.

4. The learned counsel for the petitioner urges the following:- The petitioner ought to have proceeded only by way of surcharge under Section 71 of the Act since the so called misappropriation came to light as a result of an audit or an enquiry. This is the specific section. On the contrary, the proceedings under Section 87 of the Act cannot be resorted to, since it is only a general section. It is well settled that the special excludes the general and, therefore, the order is liable to be quashed.

5. The learned Government Pleader submits that there is no reason to hold that Section 71 of the Act is a special Section and it excludes Section 87 of the Act. On the contrary, in as much as the bank has been wound up, the liquidator has to exercise his powers only under Section 87 of the Act. Section 71 would not be applicable in this case.

6. On a careful reading of both Section 71 and Section 87 of the Act, I am of the view that there are two courses available. One does not exclude the other. In fact, there is not even an implied exclusion of Section 87 to cases in which Section 71 can be invoked. This is a case in which admittedly the bank had been wound up. In such a case, therefore, the power of the Registrar is what is contained in Section 87 (2) (b) of the Act. That Section reads:

“Subject to the control of the Registrar such liquidator shall also have power –
(a) xx xx xx

(b) to determine from time to time the contribution (including debts due) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by way of any officers or former officers, to the assets of the society.”

7. Therefore, I hold that the contention of the petitioner is untenable. Hence, this writ petition will stand dismissed. However, there will be no order as to costs.

Note: The order of the learned single Judge is confirmed by the Division Bench in Page No. 41.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 2nd April, 1979

PRESENT: THE HONOURABLE Mr. JUSTICE V.RAMASWAMI

Writ Petition No.1055 of 1979

D.B. Govindan

... Petitioner

Versus

- (1) The Registrar of Co-operative Societies,
Pondicherry.
- (2) The Indian Coffee Workers' Co-operative
Society Ltd., rep. by its President N. Ranganathan,
41, Jawaharlal Nehru Street, Pondicherry. ... Respondents

Pondicherry Co-operative Societies Act, 1972 – S.27(b) – Transfer of share to be made to a member – Transfer made to non-member – Invalid – Registrar invoking powers under Rule 114 and Section 81 – Order of Registrar is held legal – No violation of principles of natural justice – Writ petition dismissed.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a writ of certiorari calling for the records in Ref. No.RCS/F/20639/77/1081 (Exhibit A) dated 16-2-1979 on the file of the 1st respondent in so far as it relates to the cancellation of the resolution dated 14-3-1979 transferring the share to the petitioner and directing the restoration of the share to the original member.

For Petitioner: Mr.A.Ramachandran for M/s. Row and Reddy,
Advocates

ORDER

1. This writ petition coming on for orders as to admission on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.A.Ramachandran for M/s. Row and Reddy, Advocates for the petitioner, the Court made the following order:-

2. Though the learned Counsel for the petitioner travelled wide and covered a large ground which does not really arise in the writ petition itself, the facts shortly stated are as follows: There was a resolution dated 14-3-77 by which a joint application of one Bakthavatsalam (Member No.456) and that of the petitioner for transfer of Bakthavatsalam's share to the petitioner was

approved by the Board of Directors of the second respondent. This resolution was clearly contrary as admitted by the learned Counsel for the petitioner himself, to the provisions contained in Section 27(b) of the Pondicherry Co-operative Societies Act, 1972. The matter came to the notice of the Registrar of Co-operative Societies. He took suo motu proceedings under Section 81 of the Act by a notice dated 28-8-78. The Registrar called upon the society to take immediate steps to rectify the invalid transfer of the share of Bakthavatsalam to the petitioner herein by cancelling the resolution dated 14-3-77. It appears, subsequent to this notice the Board of Directors of the second respondent society met. There were about nine Board of Directors of whom the petitioner was also one. Having got a transfer of a share he seems to have got elected as a Director also. Since he had a personal interest in the matter, he abstained from voting and the remaining eight board of directors were equally divided, four in favour of cancelling the resolution and four supporting the resolution. The Registrar waited for six months though he had given time for complying with his directions till 20-9-78 only. Finding that the resolution dated 14-3-77 had not been cancelled and could not be cancelled by reason of the equality in the division, he invoked his powers under Rule 114, of the Rules framed under the Act read with Section 81 and cancelled the resolution by his proceedings dated 16-2-79. Even today the learned counsel for the petitioner would not contend that the transfer was valid. But what he wanted to contend is that before 16-2-79 order, no notice was caused as to why the resolution should not be cancelled. I do not think any such proceedings is contemplated either under the Act or under the principles of natural justice. As already stated, it was brought to the notice of the Registrar that invalid transfer of shares were made to the non-members and he took proceedings and issued a notice dated 28-8-78 to the society. If the petitioner or any other person of the society wanted to contend that the transfer was valid or that the petitioner had validly become a member, he should have replied to the notice dated 28-8-78. On the other hand rightly the Board considered that the resolution dated 14-3-77 is contrary to Section 27(b) of the Act, but for reasons not known to us, there was equality in the division in spite of the fact that the resolution dated 14-3-77 was clearly contrary to the provisions of the Act, since the petitioner himself was aware of the suo motu proceedings initiated by the Registrar and the notice dated 28-8-78, is also to the petitioner there was no need for a second notice not it is contemplated under the Act. The order of the Registrar of Co-operative Societies dated 16-2-79 is therefore clearly legal and does not call for any interference. No violation of the principles of natural justice or any violation of law arises in this petition and it is dismissed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 1st February, 1980

PRESENT: THE HONOURABLE Mr. JUSTICE S. MOHAN

Writ Petition No. 329 of 1978

D. Palani

... Petitioner

Versus

- (1) The Appellate Authority under Pondicherry
Co-operative Societies Act, 1972 represented
by the Lt. Governor of Pondicherry, Pondicherry.
- (2) The Registrar of Co-operative Societies,
Pondicherry. ... Respondents

(A)The petitioner was disqualified from the membership of the committee as he made purchases from a business concern of which he was one of the partners. The petitioner contended that he has already severed the connection from the firm and produced an unregistered document.

(B)As the appellate authority already pointed out, so long as the agreement of relinquishment dated 3rd May 1977, was purely an unregistered document, I cannot think that any reliance can be placed on the same. This agreement might have been brought into existence at later date to get over the difficulty caused on 23rd and 25th August 1977. There being no error on law apparent on the face of the record, the writ petition will have to fail and it is accordingly dismissed.
(Para 2)

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a writ of certiorari calling for the record of the 2nd respondent in proceedings RCS/C/19436/77/730 dated 26-11-1977 as confirmed by the first respondent in Appeal 5/77/LG/Appeal dated 25-1-1978.

For Petitioner Mr. R. Gandhi, Advocate

For Respondents Mr. S. Govindaswamy, Government
Pleader for Pondicherry.

ORDER

This writ petition coming on for hearing on this day, upon perusing the petition and the affidavit filed in support thereof the order of the High Court, dated 1-2-1978 and made herein, and the counter affidavit filed herein and the records relating to the order in proceedings RCS/C/19436/77/730 dated 26-11-1977 and appeal 5/77/LG/Appeal dated 25-1-1978 on the file of the second and first respondent respectively comprised in the return of respondents to the writ made by the High Court, and upon hearing the arguments of Mr. R. Gandhi, Advocate for the petitioner, and of Mr. S.Govindaswamy, Government Pleader for Pondicherry Advocate for the Respondents, the Court made the following order:

1. The petitioner was the President of Thirubuvana Large Scale Village Co-operative Agricultural Credit Society. He purchased fertilizer bags for an amount of Rs.12,545 for the society from M/s. Central Stores who were dealers in fertilizers on 23rd August, 1977 and 25th August, 1977. Since, it was brought to the notice of the Registrar of Co-operative Societies that the petitioner had made the aforesaid purchase of fertilizer bags for the society from a business concern of which he was one of the partners, by a notice dated 18-10-1977 the petitioner was called upon to show cause why he should not be disqualified from the membership of the committee of the said society under the provisions of the Pondicherry Co-operative Societies Act, and the rules framed there under. The petitioner furnished his reply on 5th of November, 1977 stating that he was severed all his connection with M/s. Central Stores even as early as 3rd May, 1977 itself, that it is also evidenced by an unregistered agreement and that therefore, he had absolutely no interest in the business concern on the dates on which the purchase took place, namely 23rd and 25th August, 1977. On receipt of this reply, the Registrar caused an enquiry to be conducted into the matter and ultimately passed orders on 26th November, 1977 disqualifying the petitioner from the membership of the committee of the said society. Aggrieved by the same, the petitioner preferred an appeal to the Government under Section 140 (2) of the Pondicherry Co-operative Societies Act of 1972. That Appeal Case No.5 of 1977 was dismissed by the Lieutenant Governor, Pondicherry. Hence, the present writ petition for certiorari to quash these orders.

2. The only contention, which is vehemently urged before me, is that when the petitioner has produced valuable evidence to show that even as early as 3rd May, 1977 he had severed all connections with M/s. Central Stores, Fertilizer Dealers, that evidence ought to have been accepted; in fact, before this transaction, the petitioner has informed the Bank about the severance, and therefore, there is enough evidence to establish the contention of the petitioner. I am totally unable to agree. As the Appellate authority clearly points out, so long as the agreement of relinquishment dated 3rd May 1977 was purely an unregistered document, I do not think that any reliance can be placed on the same. In any event, it is entirely a matter for the appreciation of the Registrar as well as the Appellate Authority. As rightly pointed out by the Appellate Authority, this agreement might have been brought into existence at later date to get over the difficulty caused by the

purchase on 23rd and 25th of August, 1977. In my considered view, there being no error of law apparent on the face of the record, this writ petition will have to fail and it is accordingly dismissed. However, there will be no order as to costs.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(A.A.O. No.19 of 1981)**

Date : 1st April, 1982

**Present: Mr. Justice G. RAMANUJAM
Mr. Justice G. MAHESWARAN**

Pondicherry State Weavers Co-operative Society

Versus

Regional Director, Employees' State Insurance Corporation, Madras

(A) Employees State Insurance Act, 1948 – Pondicherry Co-operative Societies Act, 1972 – S.38 – Workers are shareholders of the society engaged in manufacture of clothes – Whether such workers are employees and if the provisions of the ESI Act applicable.

(B) It is well established that a co-operative society, on registration, becomes a body corporate with a perpetual succession and it is legally independent of its members who constitute the society. Once the society is independent of its members and has a separate legal existence, apart from its members, then there is no bar for the society employing its members and there being a contract of an employment between the society and its members, then the members so employed should be taken to have two independent capacities – one as a member of the society and the other as an employee of the society. (Para 11)

(C) Therefore, can it be said that merely because the employees were members of the society they cease to be its employees? It cannot be said that they are not entitled to be covered by the ESI Act. (Para 11)

Appeal dismissed.

Cases referred:

- (i) Commissioner of Income Tax, Madras vs. R.M. Chidambaram Pillai, AIR 1977 SC 489;*
- (ii) South Arcot Co-operative Motor Transport society Ltd. Vs. Syed Batcha and others, 1964 1 LLJ 280 : (Coop. Cases) Vol. I 437;*
- (iii) Lee vs. Lee's Air Farming Ltd., 1961 A.C. 12;*
- (iv) Boulting vs. Cinematograph Association, 1969 1 All. E.R. 716;*
- (v) Ram Prasad vs. Commissioner of Income Tax, AIR 1973 SC 637.*

For Appellant ... Mr. N. Balasubramanian, Advocate
For Respondent ... Mr. S.M. Ali Mohammad, Advocate.

JUDGMENT

The judgment of the Court was delivered by Ramanujam. J

This appeal is directed against the orders of the Employees' State Insurance Court at Pondicherry in E.S.I.O.P. No.2 of 1978.

2. The appellant filed an application under S.75 (1) (g) of the Employees' State Insurance Act of 1948 for a declaration, that the said Act is not applicable to it. Its contention was that it was registered co-operative society of weavers, that though weavers come and work in the factory owned by the society, the payment made to them for the work done cannot be taken to be "wages" and that they cannot be taken as "employees", whatever is paid to them should be taken to be dividend and not wages. Thus, the contention of the appellant-society on the basis of which the relief set out above was claimed was that all the alleged employees are the members of the society and whatever was paid to them towards the work done by them has to be taken as dividend and not as wages.

3. The application was opposed by the Employees' State Insurance Corporation on the ground that the Act is intended to cover all persons who receive wages for the work done by them, that merely because the workers happen to be shareholders of the society they do not cease to be workers and that the wages paid to them cannot be taken to be dividends.

4. The Employees' State Insurance Court, after considering the rival contentions, found that the Act is applicable to all the persons working under the society and that the fact that the workers happen to be the shareholders of the society will not taken them out of the coverage of the Act. The said finding is challenged by the co-operative society in this appeal.

5. It is contended by the learned counsel for the appellant-society that the weaves who undertake the job of weaving for the society cannot be taken to be employees under the society. Nor can the amounts received by them for that work be taken as wages, as defined in the Act, and whatever they do for the society should be taken as having been done in their capacity as shareholders and whatever was received by them as such shareholders can only be taken as dividends and not as wages. According to the learned counsel for the appellant, unless a person is an employee of the society and receives wages for the society, he is not entitled to be covered by the Act. The question is, how far the above submission of the learned counsel could legally be sustained.

6. The Employees' State Insurance Court has adopted three tests to find out whether the Act is applicable to the appellant-society or not. The first test is to see whether the persons sought to be covered by the Act are not employees in receipt of wages, as defined under the Act. It was found, after consideration of the evidence, that the appellant-society maintains a 'register of wages' and an 'attendance register' in which the names of the persons employed are entered. The report of the Inspector of Employees'

State Insurance Corporation, Exhibit R-1, has been referred to. In a letter, Ext.R-2 written by the appellant-society to the respondent, it has been stated that if the society were compelled to pay all of a sudden a huge sum by way of contribution more than 100 persons would be thrown out of employment. This shows that the appellant-society, in fact, employs more than 20 persons. The lower Court also found that it is not a case of the appellant-society working without any employees and that the entire work of the society is done by the shareholders engaging themselves in different occupations under the society.

7. The second test applied by the Court below was as to see whether any manufacturing process is carried on by the society. In this connection it found that the society is actually engaged in process of manufacturing clothes and, therefore, it is clear that the appellant society is engaged in the process of manufacturing. The third test adopted by the Court below was to see whether power was used in the manufacturing process. It was held, relying on Exhibit R-3, the survey report of the Inspector, that three power machines are found in the appellant's concern one of 10-hp for power looms, another of 3-hp for bore-well and the third of 2-hp for winding machine.

8. Thus, the findings of the Court below that the appellant-society is employing more than 20 persons and that it is engaged in the cloth manufacturing process with the aid of power have not been questioned before us.

9. The only substantial question that is urged before us by the learned counsel for the appellant-society is that all the persons who are engaged in the manufacturing of clothes are shareholders of the society and, therefore, they cannot be taken to be employees of the society, as defined in the Act. According to the learned counsel, once the persons who are engaged in the manufacture of clothes are found to be the shareholders of the appellant-society they cannot come within the definition of employees, for a shareholder of a co-operative society cannot be an employee of the society. In support of the contention, the learned counsel refers to the decisions in **Commissioner of Income Tax, Madras vs. R.M. Chidambaram Pillai (AIR 1977 SC 489)** and **South Arcot Co-operative Motor Transport Society Ltd. Vs. Syed Batcha and others [1964-1 LLJ 280] : (Coop. Cases) Vol. I 437**. After going through the above decisions we are not able to see how these decisions will come to the aid of the appellants. In **Commissioner of Income Tax, Madras vs. R.M. Chidambaram Pillai etc. (supra)**, the question was whether a partner of a firm can be its employee. Having regard to the legal concept of a firm, which is normally taken to be a compendious name to denote all the partners, it was held that a partner cannot be said to be an employee of the firm. The said decision cannot obviously be applied to the case of a shareholder in a limited company or a shareholder of a co-operative society. A shareholder in a limited company or in a registered co-operative society has always been treated as being independent of the company or the society as the case may be. Therefore, the mere fact that one happens to be a shareholder of a co-operative society cannot be disable him from entering into a contract of

employment with the co-operative society. Thus, the decision in **Commissioner of Income Tax, Madras vs. R.M. Chidambaram Pillai etc. (supra)**, has no application to the facts of this case.

10. The decision in **South Arcot Co-operative Motor Transport Society Ltd. Vs. Syed Batcha and others (supra)**, was a case where a member of a co-operative society raised an industrial dispute as against the society, of which he was a member, regarding certain amount payable to him for the work done to the society. The question that arose in that case was whether the claimant could raise an industrial dispute without asking for an arbitration under S.51 of Madras Co-operative Societies Act, 1932, which provided that all disputes between a society and its members touching the business of the society should be decided on a reference to arbitration under that Act. The decision was that the claimant being a member of the society all dispute between him and the society should be settled by way of arbitration under that section and he cannot raise an industrial dispute. We do not see how the said decision will help the appellant herein. It is because of the fact that the claimant was a member of the society who was asked to invoke S.51 of the Co-operative Societies Act. But this decision cannot be taken to lay down that a member of a co-operative society cannot be an employee of the society on any account and under any circumstances.

11. It is well established that a co-operative society, on registration, become a body corporate with perpetual succession and it is legally independent of its members who constitute the society. This is made clear by S.38 of the Pondicherry Co-operative Societies Act, 1972. Once a society is independent of its members and has a separate legal existence apart from its members, then there is no bar for the society employing its members and there being a contract of employment between the society and its members. Such a contract of employment is entered into between the society and its members, then the members so employed should be taken to have two independent capacities – one as a member of the society, and the other as an employee of the society. We do not think that there is any merger of the said two positions or capacities. One's position as a shareholder is different from one's position as an employee of the society. In **Lee vs. Lee's Air Farming Ltd., (1961 A.C. 12)**, the Privy Council held that even a person having all the shares except one in the company was also a governing director of the company. He was nonetheless held to be a worker under the company while flying his air craft for wages. In that case also the wages paid to the governing director were debited to in the company's account, as in the present case, where the wages to the employees, who are also shareholders of the society, were debited against the co-operative society. The Privy Council laid down the position of law thus:

“Ex-facie there was a contract of service. Their Lordships conclude, therefore, that the real issue in the case is whether the position of the deceased as sole governing director made it is possible for him to be the servant of the respondent-company in the capacity of chief pilot of that company. In their Lordships' view, for the reasons which have

been indicated, there was no impossibility. The respondent-company and the deceased were separate legal entities. Their Lordships consider, therefore, that the deceased was a worker.”

In ***Boulting vs. Cinematograph Association***, [(1969) 1 All. E.R. 716], the Court of Appeal has gone a step further. In that case the Court of Appeal had to decide the question whether two brothers who bore the name of Boulting and who were the managing director of a firm company called the Charter Firm Production Company Ltd., could be regarded as employees of the company because they also did work for the same company on the technical side of film production. The Court of Appeal by a majority held that the two managing directors were employees within the meaning of Rule 7 of the Articles of Association of the company. Upjohn I.J., who was a member of the majority, observed thus:

‘I cannot myself escape from the conclusion that the position of the Boulting brothers, although anomalous perhaps strictly within the wording of Rule 7, for they are in fact employees of Charter engaged on the technical side of firm production. True it is that, as directors, they are not employees but it cannot, I think, be doubted that the managing director may for many purposes properly be regarded as an employee’.

In ***Ram Prasad vs. Commissioner of Income Tax***, AIR 1973 SC 637, the Supreme Court while considering the question as to whether there could be a contract of employment between a managing director and a company, made the following observation:

“A managing director may have a dual capacity. He may both be a director as well as an employee. In the capacity of a managing director he may be regarded as having not only the capacity or persona of a director but also has the persona of an employee, or an agent depending upon the nature of his work and terms of his employment. Where he is so employed the relationship between him as the managing director and the company, may be similar to a person who is employed as a servant or an agent, for the term (employed) is facile enough to cover any of these relationships. The nature of his employment may be determined by the articles of association of a company and or the agreement, if any, under which a contractual relationship between the director and the company has been brought about whereunder the director is constituted an employee of the company. If such be the case, his remuneration will be assessable as salary under S.7. In other words, whether or not a managing director is a servant of the company after from his being a director, can only be determined by the articles of association and the term of his employment.”

Having regard to the legal position enunciated in the decisions referred to above, it is clear that a shareholder of a co-operative society registered under the Pondicherry Co-operative Societies Act, 1972, can also be its employee if a contract of employment is established. The fact that an

employee happens to be a shareholder of a co-operative society does not make him nonetheless an employee. In this case that there was an employment of persons who were shareholders of the co-operative society is clear from the registers of the society wherein the amounts paid to the employees as wages have been debited against the company and the employees' names also find a place in the attendance register, therefore, can it be said that merely because employees were members holding shares in the co-operative society, they cease to be its employees? Thus it cannot be said that they are not entitled to be covered by the Employees' State Insurance Act. In this view of the matter, we have to uphold the decision of the Employees' State Insurance Court and dismiss the appeal.

12. The appeal is accordingly, dismissed. There will be no order as to costs.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 27th January, 1983

PRESENT: THE HONOURABLE Mr. JUSTICE S. MOHAN

Writ Petition No. 9737 of 1982 (P)

N.Ramasamy, Chairman, Pondicherry Co-operative Milk
Producers Union, Pondicherry ... Petitioner

Versus

- (1) The Lieutenant Governor of Pondicherry
- (2) The Registrar of Co-operative societies,
Pondicherry
- (3) The Deputy Registrar of Co-operative Societies,
Pondicherry.
- (4) Thiru J.Kumar, President, Kariamanickam Milk
Producer's Co-operative Society, Pondicherry. ... Respondents

(A) The petitioner challenged the order of the first respondent confirming the orders of the second and third respondents, setting aside his election to the committee of management of the Pondicherry Co-operative Milk Producers' Union as he held the post of President in two primary societies between 12-3-1982 and 6-5-1982, contrary to the statutory prohibition contained in S.35 (1) of the Pondicherry Co-operative Societies Act, 1972

(B) Pondicherry Co-operative Societies Act, 1972 – Ss.34 (1), 34 (6) and 35 (1) – Art.190 (2) of the Constitution of India - Under these circumstances the short question is what is the effect of holding both the offices, viz. the President of the Press and the Embalam Milk Producers Co-operative Society during these two dates on 12th March 1982 and 6th May 1982. By a reading of S.35 (1) it is clear that there is a statutory bar from holding both the offices of Presidentship. Unlike Art.190 (2) of the Constitution of India, this piece of legislation does not say as what is the consequences of a person holding both the offices, whether he loses both the offices or not.

(Para 6 & 7)

(C) What is urged before me is that once the writ petitioner started holding the post of President of Embalam Milk Producers Co-operative Society on 12.3.1982 he must be deemed to have lost the Presidentship of the Press. I do not think this contention can be accepted.

(Para 8)

(D) Once he becomes subject to the disqualification mentioned in S.34(1), he shall cease to hold the office. Here the 'office' means nothing more than the Presidentship of the Embalam Milk Producers Co-operative Society, which is a primary society. In other words, not only because of the statutory operation of S.34 (1) but also by the rigour of S.35 (1), he ceases to hold the office of the Presidentship. It is well settled in law that the moment the disqualification is incurred, the cessation takes place. The Court merely declared such a disqualification. (Para 10)

Cases referred:

- (i) *Election Commission, India vs. Saka Venkata Rao* (1953) 1 M.L.J. 702 : 1953 S.C.J. 293 : 1953 S.C.R. 1144 : 66 L.W. 378 : A.I.R. 1953 S.C.210.
- (ii) *V.Thiruppuli Swamy Naidu vs. A.P. Manickam Chettiar* (1954 II M.L.J. 680).

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith, the High Court will be pleased to issue a writ of certiorari calling for the records of the 1st respondent in R.P.No.3 of 1982 dated 25-11-1982, confirming the order of the second respondent dated 14-10-1982 in A.R.C.1502/82 and of the 3rd respondent, dated 12-8-1982 in A.R.C.1421/82.

For petitioner : Mr. J. Stanislas for Mr. R. Gopalakrishnan, Advocate
For respondents : Mr. S. Govindasamy, Government Pleader for
Pondicherry (for 1 to 3)
Mr. R. Gandhi, Advocate for R-4

ORDER

1. This writ petition coming on for hearing on Monday, the 24th day of January 1983 and on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court, dated 2-12-1982 and made herein, and the counter affidavit of 4th respondent filed herein and the records relating to the order in R.P.No.3/82 dated 25-11-82 on the file of the first respondent herein and the connected records on the file of the respondents 2 and 3 herein and comprised in the return of the respondents herein to the writ made by the High Court, and upon hearing the arguments of Mr.J.Stanislas for Mr.R.Gopalakrishnan, Advocate for the petitioner, and of Mr.S.Govindasamy, Government Pleader (P) for the respondents 1 to 3 and of Mr.R.Gandhi, Advocate for the 4th respondent, the Court made the following order:

2. The writ petition is for certiorari to quash the order of the Lieutenant Governor of Pondicherry rendered in Revision Petition No. 3 of 1982 on 25th November 1982. The admitted facts are as follows: -

3. The 4th respondent challenged the election of the writ petitioner to the committee of management of the Pondicherry Co-operative Milk Producers Union Limited in the election held on 22-5-1982 on the ground that the writ petitioner was not eligible for being elected as a member of the committee of the Pondicherry Co-operative Milk Producers Union Limited in view of the disqualification suffered by him under sub-section (1) of Section 35 of the Pondicherry Co-operative Societies Act, 1972 (hereinafter referred to as the Act). The petitioner was elected as the President of the Pondicherry Co-operative Industrial Printing Press Limited (hereinafter referred to as the Press) in 1981 and he continued in that office. On 12-3-1982, he was elected as the President of the Embalam Milk Producers Co-operative Society. However, he resigned his Presidentship in the Press on 6-5-1982. The disqualification urged was that in between 12th March 1982 and 6th May, 1982, the writ petitioner having held two posts contrary to the statutory prohibition contained in Section 35 (1) of the Act, he would be ineligible. The Deputy Registrar (Audit), Pondicherry, passed an order on 12-8-1982 in ARC No.1421 of 1982 upholding the objection raised by the 4th respondent as a consequence of which the election of the writ petitioner to the committee of management of the Pondicherry Co-operative Milk Producers Union Limited, was declared null and void. Aggrieved by the order of the Deputy Registrar (Audit) Pondicherry, a revision petition under Section 141 of the Act was preferred before the Registrar of Co-operative Societies, Pondicherry. The Registrar confirmed the order of the original authority by his order dated 14-10-1982 in ARC No. 1502/82. Hereupon, further revision was preferred to the Lieutenant Governor of Pondicherry, who by a detailed order, came to the conclusion that the setting aside of the election of the writ petitioner was in accordance with relevant provisions contained in the Act and therefore legally correct. In this view, he dismissed the revision petition.

4. What is urged before me is that the authorities below have totally misconstrued the relevant statutory provisions of the Act. It is urged that consequent to the acceptance of office of the Presidentship of the Embalam Milk Producers Co-operative Society Limited, the petitioner, by legal fiction, must be deemed to have lost the office of the Presidentship of the Press. No doubt, under Section 35 (1) of the Act there is a bar to hold both the posts but where by the assumption of office of the Presidentship of Embalam Milk Producers Co-operative Society, if the petitioner has lost the Presidentship of the Printing Press, it cannot be contended that he had become ineligible to contest because unlike Article 190 (2) of the Constitution of India it is not stated that such a person would cease to hold both the offices. In support of this contention, reliance is placed on ***Election Commission, India vs. Saka Venkata Rao (1953) 1 M.L.J. 702 : 1953 S.C.J. 293 : 1953 S.C.R. 1144 : 66 L.W. 378 : A.I.R. 1953 S.C.210.*** The second submission in that in deciding the eligibility to election under Section 34(2) of the Act to the Embalam Milk Producers Co-operative Society must be with reference to the date of the election. If on that date, by reason of the statutory fiction if the petitioner had lost the Presidentship of the Press, it is not a case where he becomes ineligible under Section 34 (6) of the Act. Even that Section when it says that a member of the committee shall cease to hold office, it must

have a reference only to the earlier office. These are the only two submissions made before me.

5. In opposition to these, it is urged on behalf of the contesting respondent as well as the Union Territory of Pondicherry that the interpretation placed by the authorities is correct. In Section 35 (1) of the Act, there is a statutory bar to hold both the offices of Presidentship of the two societies. Admittedly, in this case, between 12th March 1982 and 6th May, 1982, the writ petitioner did hold both the offices as a result of which he had suffered the disqualification. That disqualification continues to be operative and when Section 34 (6) of the Act says that if he becomes subject to any of the disqualifications mentioned in sub-section (1) of Section 34, it is a clear case in which the writ petitioner has lost the Presidentship of the Embalam Milk Producers Co-operative Society. Right from 12-3-1982, he held the offices of the Presidentship in both the societies. Therefore, it is prayed that the writ petition may be dismissed.

6. It is common case that the electoral college for election to the committee of the management of the Pondicherry Co-operative Milk Producers Union consists of all the Presidents of the primary milk producers societies in the Union territory of Pondicherry. It has already been noted that though the writ petitioner was elected as the President of the Press as early as 1981, yet, he continued in this office even after the election to the Embalam Milk Producers Co-operative Society Limited on 12-3-1982. It was only on 6-5-1982 he resigned the Presidentship of the Press. Under these circumstances, the short question is what is the effect of the holding both the offices viz. the Presidentship of the Press and the Embalam Milk Producers Co-operative Society Limited during these two dates on 12th March, 1982 and 6th May, 1982. Section 35 (1) of the Act reads as under:

“ Any member of the committee shall not hold any of the offices of President, Chairman, Vice- President, Secretary, Assistant Secretary, Treasurer, or an office of any other designation in more than one registered society”.

7. Therefore, by a reading of this provision, it is clear that there is a statutory bar from holding both the offices of Presidentship. Unlike Article 190(2) of the Constitution of India, this piece of legislation does not say as to what is the consequence of a person holding both the offices, whether he loses both the offices or not. Be that so. While attacking the eligibility of election, Section 34(1)(i) of the Act reads that no person shall be eligible for being elected or appointed as a member of a committee if he ---

*“
(i) has been removed from the office of the member of the committee of the registered society or disqualified under Section 35”.*

8. What is now urged before me is that once the writ petitioner started holding the post of President of the Embalam Milk Producers Co-operative Society Ltd., on 12-3-1982, he must be deemed to have lost the Presidentship of the Press. I do not think this contention can be accepted. In ***Election Commission, India vs. Saka Venkata Rao (1953) 1 M.L.J. 702 : 1953 S.C.J. 293 : 1953 S.C.R. 1144 : 66 L.W. 378 : A.I.R. 1953 S.C.210*** what is urged was that:

"It was said that on the view that Arts.190 (3) and 192(1) deal with disqualifications incurred after election as a member. There would be no way of unseating a member, who became subject to a disqualification AFTER his nomination and BEFORE his election, for, such a disqualification is no ground for challenging the election by an election petition under Article 329 of the Constitution read with S.100 of the Representation of the People Act, 1951. If this is an anomaly, it arises out of a lacuna in the latter enactment, which could easily have provided for such a contingency, and it cannot be pressed as an argument against the respondent's construction of the constitutional provisions. On the other hand, the Attorney-General's contention might, if accepted, lead to conflicting decisions by the Governor dealing with a reference under Art.192 and by the Election Tribunal inquiring into an election petition under Section 100 of the Parliamentary statute referred to above".

9. But this has no relevance because, if on the date of the election to the office of the President of the Embalm Milk Producers Co-operative Society Limited, if there is a bar, because the eligibility to the Presidentship will have to be decided as on the date, certainly he was ineligible in view of Section 34 (1) (i) of the Act. Therefore, the disqualification under Section 34 (1) gets attracted. Consequent to that, Section 34 (6) (a) of the Act comes into play, which reads as follows:

"(6) A member of the committee shall cease to hold his office as such if he

(a) becomes subject to any of the disqualifications mentioned in sub-section (1)....."

10. Once he becomes subject to the disqualification mentioned in sub-section (1), he shall cease to hold the office. Here, the "Office" means, nothing more than the Presidentship of the Embalam Milk Producers Co-operative Society, which is a primary society. In other words, not only because of the statutory operation of Section 34 (1) but also by the rigour of Section 35 (1), he ceases to hold the office of the Presidentship. It is well settled in law that the moment the disqualification is incurred, the cessation takes place. The Court merely declares such a disqualification vide

V.Thiruppuli Swamy Naidu vs. A.P. Manickam Chettiar (1954 II M.L.J. 680). Therefore, any amount of the petitioner saying that he lost only the first of the office signoras the operation of Section 34 (1) (i) by reason of his ineligibility to be elected as the President of the Embalam Milk Producers Co-operative Society Limited. Even assuming that what is thought of is his holding of both the posts by reason of the language employed under Section 35(1) nevertheless, Section 34 (6) (a) will certainly come into play, by reason of which he ceases to hold the office of the Presidentship of the Embalam Producers Co-operative Society Limited. No doubt, there is no provision under this piece of legislation like Article 190 (2) of the Constitution. However, the intention of the legislature is made clear if reference is made to Section 35 (2) which reads as follows: -

“If any member of a committee is at the commencement of this Act, an office-bearer of more than one registered society, then at the expiry of the period of ninety days from such commencement, he shall cease to be an office-bearer of all such registered societies, unless he has previously resigned his office in all but one of the societies”.

11. This is a transitory provision. Nevertheless for culling out the intention of the Legislature it is useful and hence I am referring to this provision. In view of the above I reject both the contentions raised on behalf of the writ petitioner. The writ petition will stand dismissed. There will be no order as to costs.

Note: The order of the learned single Judge was confirmed by the Division Bench vide Page No. 33.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 7th October, 1983

Coram: THE HONOURABLE Mr. JUSTICE S. MOHAN

Writ Petition No. 8356 of 1983

Pondicherry State Village Co-operative
Societies Employees Union, rep. by
Its Hony. President, D.B. Govindan,
206-A, M.G. Road, Pondicherry

.. Petitioner

Versus

1. The Union Territory of Pondicherry rep.
by the Secretary to Government of
Pondicherry (Co-operation)
2. The Pondicherry Village Co-operative
Agricultural Credit Societies Staff
Cadre Authority, rep. by its Member-
Secretary, 73, Lal Bahadur Shastri
Street, Pondicherry.

.. Respondents

(A) *A situation arose in which the continuance of the cadre managers in service could not be carried on by the cadre authority. Hence the question as to whether or not the establishment of cadre managers should be continued any further was, therefore, considered by the Government in detail. It was found in the light of the facts explained in detail that the continuance of the establishment of cadre manager would not be feasible. In these circumstances, the Government was forced to come to the inevitable conclusion to wind up the establishment of cadre managers.* (Para 10)

(B) *Accordingly the Government in the Development Department's G.O. Ms. No.6 dated 26-8-1983 repealed the notification issued in G.O. Ms. No.7 dated 1-2-1977 relating to the constitution of cadre managers in the co-operative agricultural credit societies in the Union territory of Pondicherry as and from 1-9-1983.* (Para 10)

(C) *To say that unless there is a functional abolition, there cannot be an abolition of post so as to deprive the members of the petitioner-Union of their employment is an argument which I am totally unable to appreciate.* (Para 17)

(D) *It is a matter of Governmental policy and every sovereign Government has a power to create or abolish a post. That power is traceable to List II, item 41 State Public Services of seventh schedule of the Constitution of India. Only when the post exists there is scope for invocation of Article 311 of the Constitution of India. Once the post is abolished and here for very valid reasons, there is no possibility of claiming the protection under Article 311 of the Constitution of India. Therefore the petitioner-Union cannot claim any right. The position is worst because all of them were made temporary*

notwithstanding the fact that they were working for a period of more than seven years. (Para 17)

(E) I have carefully perused the nature of the function entrusted to them. They are in charge of financial control. They are required to maintain proper accounts. They are in charge of stocks, for which the members of the petitioner-Union are answerable. They exercise control over the functions of the salesmen, conducting periodical stock verification and supervises of remaining staff clearly point out that the members of the petitioner-Union are exercising managerial and supervisory responsibility. Besides, the very nomenclature is supervisors. Therefore, they clearly fall out of the definition of Section 2(s) of the Industrial Disputes Act. (Para 18)

(F) Therefore, there is no scope of applying the Industrial Disputes Act at all. Hence, the necessity to follow the procedure under Section 25 FF does not arise. For all these reasons I should hold that there are no merits in this writ petition, which is hereby dismissed. (Para 19 & 20)

Writ petition is dismissed.

Cases referred:

- (i) State of Haryana vs. D.R. Sangar (AIR 1976 SC 1199);*
- (ii) M. Natarajan and others vs. The State of Tamilnadu, represented by the Secretary to Government, Home Department, Madras-9 (W.P. No.4090 of 1976 etc.);*
- (iii) Prabhakaran and others vs. General Manager, K.S.R.T.C. and another (F.L.R. 1981 (42) 222);*
- (iv) T. Gattiah and 86 others vs. Commissioner of Labour and another (1981 II LLJ 54 at page 63);*
- (v) The Workmen vs. Greaves Cotton & Co. Ltd. and others (1971 II LLJ 479);*
- (vi) N. Ramanatha Pillai vs. State of Kerala, (1974) 1 SCR 515 : AIR 1973 SC 2641;*
- (vii) Reserve Bank of India's case (1965-II LLJ 175 : (1966) 1 SCR 25).*

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith, the High Court will be pleased to issue a writ of certiorari calling for the connected records from the first respondent relating to its notification issued in G.O. Ms. No.6 dated 23-8-1993 Development (Co-operative) Department and the subsequent termination order dated 30-8-1983 issued by the second respondent to the cadre managers, terminating their services with effect from 30-9-1983.

For Petitioner	..	Mr. N.G.R. Prasad, Advocate
For Respondent No.1	..	Government Pleader for Pondicherry
For Respondent No.2	..	Mr. G. Masilamani, Advocate

ORDER

The facts leading to this writ petition are shortly as follows: The working group on co-operation constituted by the Government of India to formulate proposals for the Five Year Plan had in its report taken note of the slow progress in the formation of cadre of paid managers of primary agricultural co-operative credit societies. After taking note of the same, it emphasized the need for an early implementation of the cadre scheme and the creation of a cadre fund and cadre authority. Thereupon the Government of India, Ministry of Agriculture (Department of Co-operation) in their letter No. K.11011/5/70-Credit, dated 21-2-1974 addressed all the State Governments and Union territories impressing on them the need for an organized approach to personnel management in the agricultural credit co-operatives. It was also impressed upon them as to the said need for implementation of the re-organization programme of the primary agricultural credit societies. This was with a view to create a strong and viable unit at the base level manned by full time qualified and trained secretaries. As per the above letter of the Government of India, the emoluments payable to such trained and qualified managerial personnel should be paid from a cadre fund constituted under a cadre authority with contributions made by the societies, central co-operative banks and apex co-operative banks. The Government of India's letter further stipulated that the societies should contribute to the cadre fund 75% of the interest income earned by them, subject to the maximum of the cost of the post of the Secretary. The apex bank was also to contribute 2% of its net profit for the year to the cadre fund. The deficit in the cadre fund, if any, beyond these contributions were required to be made good by an appropriate subsidy from the Government.

2. On an examination of the above suggestions at various levels, the Government of Pondicherry implemented the cadre scheme for the agricultural credit societies registered with the Registrar of Co-operative Societies of the Union territory of Pondicherry. It provided for the appointment of managers in such societies. By virtue of Section 170 of the Pondicherry Co-operative Societies Act, 1972, rules were framed in this regard. Those rules are called "The Pondicherry Co-operative Agricultural Credit Societies (Appointment of Managers) Rules, 1977."

3. Under rule 2 of the said Rules, a cadre of managers was constituted and the rule was also for the recruitment, appointment and service conditions and control of the managers borne in the cadre. Rule 3 speaks of a cadre authority. Rule 4 empowers the cadre authority to arrange for the recruitment of qualified and suitable candidates for enrolment in the cadre of managers of agricultural credit societies. Under Rule 5 two categories are contemplated (1) Managers in Grade-I were to be appointed for agricultural credit societies which have loan transactions and non-credit business together exceeding Rs.3,00,000 per annum; and (2) Grade-II managers were to be appointed for these agricultural credit societies having loan transaction and non credit business below Rs.3,00,000 per annum. Rule 7 of the Rules provides for the constitution of a cadre fund to be maintained by the cadre authority in a separate account with the Pondicherry State Co-operative Bank. The cadre fund shall be made up of the contributions payable by the credit societies at the rate of 75% of the interest income earned by them subject to the maximum of the cot of the manager. The Pondicherry State Co-operative Bank, which is the apex bank, was to contribute 2% of its annual net profit subject to a maximum of

Rs.10,000 to the cadre fund. The deficit in the fund for meeting the cost of the cadre staff was to be made good by the State/Union territory Government in the form of subsidy.

4. Pursuant to rule 9 of the Pondicherry Co-operative Agricultural Credit Societies (Appointment of Managers) Rules, 1977, cadre authority framed regulations governing the recruitment, appointment and service conditions of the managers of the co-operative agricultural credit societies. It was approved by the Registrar of Co-operative Societies on 6-4-1977. Regulation 7 states that the cadre authority shall appoint the managers from among the panel of selected candidates. There are other regulations which govern the service conditions viz., Regulation 8, 9 and 10 such as the period of probation and confirmation, etc.

5. The cadre authority constituted under the above rule selected 54 cadre managers for appointment to the primary co-operative agricultural credit societies which had done loan business exceeding Rs.50,000 per annum. The cadre authority appointed these 54 managers in different co-operative agricultural credit societies from the month of July 1977. After subsequent addition and deletion, there are 56 cadre managers in position on date.

6. When the scheme of cadre managers were originally implemented in pursuance of the Ministry's letter dated 21-2-1974 it was introduced as a State scheme. During the year 1977-78, 1978-79 and 1979-80 the primary agricultural credit societies, the apex bank and the Government were contributing to the cadre fund. The Government of India gave sanction for making contribution to the cadre fund by the State Government for the year 1979-80, subject to the condition that the pattern of financial assistance under the Central Sector Plan Scheme is introduced from the year 1980-81. On 9-8-1979 the Government of India communicated to the State Government and the Union territories a new scheme of sharing the deficit in the cadre fund for trained Secretaries of recognized primary agricultural credit societies. Under the new scheme, co-operatives should themselves contribute not less than 1.5% of the total advances made by them towards meeting the salaries of the full time paid Secretaries/cadre managers or Managing Directors. The deficit in the cadre fund was to be made good by the States and the Central Government on a matching basis. It was also policy of the new scheme that the deficit in the cadre fund should gradually decreases as the business of the societies goes up and the society will break even at the level of Rs.3,50,000 of short term business. Therefore, it was stipulated that the assistance would be for a period of three years and would taper off at the end of the three years.

7. The cadre managers of the Pondicherry co-operative agricultural credit societies constituted of two grades, Grade I and Grade II. Grade I carries the scale of pay of Rs.270-10-320 and Grade II carries the scale of pay of Rs.240-10-290. All the managers irrespective of their grades are paid a total of wages of more than Rs.500. The cadre managers have been put in charge of day to-day administration of primary agricultural credit societies. They are required under the standing orders to ensure that the administration and other works in the societies are properly done. Subject to the instructions of the board of directors, the manager issues receipts and makes verification of the cash balance every day and attests the entries in the cash register. He exercises control over the functions of the salesman of the society and

conducts periodical stock verification. He is also vested with the over all responsibility of the proper maintenance of the records of the society. He controls and supervises the work of the remaining staff members of the society and he is the hyphen between the board and the office of the society. In effect, therefore, he is entrusted with the supervisory responsibility and having managerial functions.

8. The question of contribution by the State Government and the Central Government on matching basis was under correspondence with the Government of India for some time and Pondicherry being a Union territory it was decided by the Government of India to sanction the entire deficit in the cadre fund under the Central Sector Plan scheme. Accordingly the Government of India by its proceedings dated 29-3-1982 and 30-3-1983 sanctioned a sum of Rs.4,11,900 towards cadre fund of the Pondicherry Co-operative Agricultural Credit Societies Staff Cadre Authority, being 100% of the contribution of the Government of India, for meeting the deficit of the cadre fund for the years 1980-81 and 1981-82. As regards similar sanction for the third year, viz. 1982-83 the matter is still under correspondence with the Government of India.

9. As per the Central Sector scheme the subsidy to meet the deficit in the cost of cadre managers establishment was being claimed on reimbursement basis and, therefore, the societies and the Pondicherry State Co-operative Bank were to meet in the first instance the cost of the establishment of the managers by contributing to the cadre fund from which fund the wages of cadre managers were being paid. Accordingly the societies were regularly remitting the cost of the managers to the cadre fund till 30th June 1982 and thereafter the societies found it not possible to contribute to the fund on the ground of their inability to remit the cost of the establishment of the managers. Nevertheless the Pondicherry State Co-operative Bank was advancing in their suspense account the required money to cadre fund to enable the cadre managers to draw their salaries. This position continued till March 1983. As already stated, the Government of India is yet to reimburse the cost of the cadre establishment for the year 1982-83 and according to their pattern of assistance the scheme was to be implemented as a Central Sector scheme only up to March 1983. In the meanwhile the financial position of the co-operative agricultural credit societies also was on the decline with huge amount of outstanding and the societies were unable to contribute to the cadre fund. The State Co-operative Bank's financial position also did not permit them to make any further advance to the cadre fund. In the meanwhile the Government of India also informed by their letter dated 26-6-1982 categorically that those societies which had already been assisted continuously for three years were not eligible for further assistance beyond 31-3-1983. Thus there was no possibility for availing of subsidy from the Central Government from 1-4-1983. The societies were financially broken totally having incurred loss continuously for the previous years and the bank was not also in a position to advance any money towards the cadre fund. At the same time, village co-operative agricultural credit societies were also not in a position to have such highly paid managerial personnel, since the same is beyond their means.

10. In the above circumstances, a situation arose in which the continuance of the cadre managers in service could not be carried on by the cadre authority. Hence the question as to whether or not the establishment of cadre managers should be continued any further was, therefore, considered by the Government in detail. It was

found in the light of the facts explained in detail in the preceding paragraph that the continuance of the establishment of cadre manager would not be feasible, since the Central Government had made it very clear in their letter dated 26-6-1982 that the societies which had already been assisted continuously for a period for three years shall not be eligible for further assistance beyond 31-3-1983. Further as anticipated the societies were not able to improve their financial liability of the cadre managers. As a matter of fact the financial liability for any year in respect of cadre managers was at Rs.3,00,000 and more. The cadre authority has no source of its own to meet this liability apart from the sources already mentioned. In these circumstances, the Government was forced to come to the inevitable conclusion to wind up the establishment of cadre managers. After having come to this policy decision the Government considered the procedure by which the services of the managers have to be terminated. It was found that the cadre managers were managerial and supervisory personnel and also they were exercising supervisory responsibilities in the societies drawing wages in excess of Rs.500. It was, therefore, felt that they would not come under the definition of workman under Section 2 (s) of the Industrial Disputes Act in view of the exception in clause (iii) and (iv) of the proviso to the said Section. The Government also found that the cadre authority had framed detailed regulations governing the recruitment, appointment and other service conditions of the cadre managers which provide, inter alia, in regulation No.11 for termination of the service of the cadre managers by a month's notice during regular service. It was also considered whether on termination of the cadre managers can be rehabilitated in other societies on fresh terms of appointment. There appeared to be possibility for such rehabilitation. It was, therefore, decided by the Government to repeal the rules framed in G.O. Ms. No.7 dated 1-2-1977 and thereby wind up the cadre establishment of the managers of the agricultural credit societies. It was further decided to continue the cadre establishment for one more month and if the rules were not repealed so that the cadre authority could comply with the formality of giving notice to the managers for termination of their services in accordance with the above said Regulation No.11. Accordingly the Government in the Development Department's G.O. Ms. No.6 dated 26-8-1983 repealed the notification issued in G.O. Ms. No.7 dated 1-2-1977 relating to the constitution of cadre managers in the co-operative agricultural credit societies in the Union territory of Pondicherry as and from 1-9-1983, subject to the proviso that such repeal shall not affect the continuance in office up to and inclusive of 30th September 1983 of every manager of such co-operative agricultural credit societies, at the same remuneration and with the same terms and conditions of service as they would have held the same as if the above notification has not been issued and provided further that such repeal shall not affect anything done or omitted to be done under the said notification before such repeal.

11. Pursuant to the above said repeal notification the cadre authority in its meeting held on 25-8-1983 passed a resolution for terminating the services of the cadre managers appointed under the cadre establishment created in G.O. Ms. No. 7 dated 1-2-1977 with effect from 30th September 1983 and the member secretary of the cadre authority thereupon issued notices of termination to 56 cadre managers who were in service as on 31-8-1983. Simultaneously the cadre authority also required the cadre managers facing termination of services to indicate their willingness to be appointed in other co-operative institutions on fresh terms and conditions as would be offered to them by the institutions concerned. About 18

cadre managers have expressed their willingness to be absorbed in other co-operative institutions. It is only at this juncture the petitioner has filed the above writ petition.

12. Mr. N.G.R. Prasad, the learned counsel for the petitioner urges the following for my consideration:

(1) The petitioner being entitled to the protection of Article 311 of the Constitution of India, unless there is a functional abolition, an abolition of a post cannot be straightway be upheld. In the instant case, there is no such functional abolition. On the contrary, the work of the cadre managers will be carried on by some of the persons on a lesser scale of pay. Therefore, where the abolition of post is with a view to terminate the service of the members of the petitioner-Union, certainly that cannot be supported. For this proposition, reliance is placed on a decision in ***State of Haryana vs. D.R. Sangar (AIR 1976 SC 1199, paragraph 7)*** and also on an unreported judgment of this Court in ***M. Natarajan and others vs. The State of Tamilnadu, represented by the Secretary to Government, Home Department, Madras-9 (W.P. No.4090 of 1976 etc.)***.

(2) The cadre managers are workmen within the meaning of Section 2(s) of the Industrial Disputes Act. An earlier award with reference to the dearness allowance puts the matter beyond dispute. Where, therefore, if they are workmen within the meaning of Section 2(s) of the Industrial Disputes Act, it is necessary on the part of the respondents to follow the procedure under Section 25 FF of the Act. Therefore they are entitled to the concession of statutory notice. This purport of the ruling is reported in ***Prabhakaran and others vs. General Manager, K.S.R.T.C. and another (F.L.R. 1981 (42) 222)*** and ***T. Gattaiah and 86 others vs. Commissioner of Labour and another (1981 II LLJ 54 at page 63)***. For both these reasons it is prayed that the impugned order of termination be set aside.

13. The learned Government Pleader for the Union territory of Pondicherry would submit first and foremost that the members of the petitioner-Union were purely appointed on a temporary basis. Notwithstanding the fact that they have put in 6 or 7 years of service, they have not yet been made permanent. This is a case in which the abolition came to be taken, because as stated fully in the counter affidavit, the deficit in the cadre fund should gradually decrease as the business of the societies goes up and the society will break even at the level of Rs.3,50,000 of short-term business and, therefore, by envisaging a new policy, the work is being re-organized. All the more so, the village co-operative agricultural credit societies cannot afford to bear the burden of heavy salary. Under those circumstances, to say that there is no functional abolition is wrong. A new scheme is sought to be implemented. Under those circumstances, there is no scope of invoking Article 311 of the Constitution of India at all. Even the very ruling citing by the petitioner, viz. ***State of Haryana vs. D.R. Sangar (supra)*** and ***M. Natarajan and others vs. The State of Tamilnadu, represented by the Secretary to Government, Home Department, Madras-9 (supra)***, clearly lays down that the creation or abolition of the post was purely within the discretion of the State. They will not be interfered with by Courts, unless it is mala fide or a mere device to get rid of certain employees. Neither is the case here. It is only by dictates of the policy the abolition had come to take place. Therefore,

the members of the petitioner-Union can have no right whatever to contend that they must be continued for all time.

14. It is true that there was an earlier adjudication under the Industrial Disputes Act concerning the dearness allowance. But at that time a few of the workmen fell within the definition of Section 2(s) of the Act and, therefore, the claim of all the persons in relation to the dearness allowance came to be dealt with. That does not mean that all of them would be workmen as on today within the meaning of Section 2(s) of the Act. The members of the petitioner-Union, viz. the cadre managers were appointed as supervisors and the nature of their duties was also managerial in character. Each one of them is drawing more than Rs.500 per month as wages. Therefore, there is absolutely no scope of applying Section 25 FF of the Act, notwithstanding the earlier award. In support of this submission, the learned Government Pleader for the Union territory of Pondicherry relies upon a ruling of the Supreme Court reported in ***The Workmen vs. Greaves Cotton & Co. Ltd. and others (1971 II LLJ 479)*** and the passage occurring in paragraph 18.

15. Mr. G. Masilamani, the learned counsel for the second respondent in supporting the arguments of the learned Government Pleader for the Union territory of Pondicherry further contends that having regard to the definition of “wages” under Section 2(rr) of the Industrial Disputes Act, it should be clearly held that in view of the fact that each one of the cadre managers today draws more than Rs.500 per month and it is originally remained in 1982, they go clearly out of the purview of Section 2(s) of the Act. Therefore, it is not correct to say that the cadre managers do clerical work. They are professionally managers. Having regard to the duties entrusted to them, it would be clear that they have to discharge managerial functions exercising supervisory control, leaving alone the nomenclature attached to their post.

16. I have already set out the reasons for the abolition of the post of cadre manager. These reasons can be summarized as under:-

(1) As per the Central Sector scheme the subsidy to meet the deficit in the cost of the cadre managers' establishment was claimed on reimbursement basis. Therefore, the societies and the Pondicherry State Co-operative Bank were to meet in the first instance the cost of the establishment of the managers by contributing to the cadre fund. From the fund alone the wages of the cadre managers were paid. Though the societies were regularly remitting the cost of the managers to the cadre fund till 30th of June 1982, thereafter it was found not possible to contribute to the fund on the ground of their inability. Notwithstanding this, the Pondicherry State Co-operative Bank was advancing in their suspense account the required money to the cadre fund to enable the cadre managers to draw their salaries. This was the position till March, 1983;

(2) The Government of India is yet to reimburse the cost of the cadre establishment for the year 1982-83 and the matter is still under correspondence;

(3) The financial position of the co-operative agricultural credit societies also was on the decline with huge amount of outstanding. Therefore, the societies could not contribute to the cadre fund;

(4) The State Co-operative Bank's financial position also did not permit them to make any further advance to the cadre fund;

(5) The Government of India informed the Government of Union territory of Pondicherry by their letter dated 26-6-1982 that those societies which had already been assisted continuously for three years were not eligible for any further assistance beyond 31-3-1983. The result was there was no possibility for availing or subsidy from the Central Government from 1-4-1983;

(6) The societies were financially broken totally having incurred loss continuously for the previous years and the bank was also not in a position to advance any money; and

(7) The village co-operative agricultural credit societies were also not in a position to have such highly paid managerial personnel, since the same is beyond their means.

17. Under those circumstances, to say that unless there is a functional abolition, there cannot be an abolition of post so as to deprive the members of the petitioner-Union of their employment is an argument which I am totally unable to appreciate. The very ruling of the Supreme Court in **State of Haryana vs. D.B. Sangar (supra)** relied on by the petitioner lays down categorically in paragraph 7 as follows:

*“7. Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as the decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post was only a device to terminate the services of an employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside. The termination of a post in good faith and the consequent termination of the services of the incumbent of that post would not attract Art. 311. In **N. Ramanatha Pillai vs. State of Kerala, (1974) 1 SCR 515 : AIR 1973 SC 2641**, Ray C.J. speaking for the Constitution Bench of this Court observed:*

“A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311 (2).”

It was further observed:

“The abolition of post may have the consequence of termination of service of a Government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity

of showing cause against the proposed penalty of dismissal or removal does not, therefore, arise in the case of abolition of post. The abolition of post is not a personal penalty against the Government servant. The abolition of post is an executive policy decision. Whether after abolition of the post, the Government servant who was holding the post would or could be offered any employment under the State would, therefore, be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post.”

According to the impugned order, the post of Panchayati Raj Election Officer was abolished in view of the extreme financial stringency. In support of the above order, Shri G.L. Bailpur, Secretary of the Government of Haryana, filed affidavit. According to that affidavit, the post of Panchayati Raj Election Officer was created simply for the conduct of election of the Panchayati Raj bodies. The other duties which were performed by the respondent were only as a measure of temporary arrangement. In order to streamline the Department the Government felt that the Department should be reorganized and as a result of reorganization those duties which had nothing to do with the job of Panchayati Raj Election Officer were withdrawn and given to separate Deputy Directors of Panchayats. The duties pertaining to legal matters and complaints against Panchas, Sar-Panches and the members of the Panchayat Samitis were of such nature that the same required a legal background and field experience by the officer holding the subject. Those duties were, therefore, given to Deputy Director of Panchayat (Legal) who was a law graduate and had a long field experience as Block Development and Panchayats Officer. After the reorganization of the Department, the only work left with the Panchayati Raj Election Officer was that of conducting elections of Panchayati Raj bodies. As this work was of a periodical nature, the Government thought it fit to abolish it. It was also stated in another affidavit filed on behalf of the appellant-State that the post of Panchayati Raj Election Officer and the seven posts of Field Deputy Directors were abolished as an economy measure to meet financial stringency. We see no cogent ground to question the averments made in the above affidavits. The averments show that the decision to abolish that post of Panchayati Raj Election Officer was taken because of administrative reasons. The question as to whether greater economy could have been brought about by adopting some other course is not for the Court to go into, for the Court cannot sit as a Court of appeal in such matters. It may be that some of the functions which were being performed by the Deputy Directors whose posts have not been abolished, this fact would not show that the decision to abolish the post held by the respondent was not taken in good faith. After the posts of Deputy Directors had been created and had been in existence along with the post of Panchayati Raj Election Officer for a number of months, the Government, it would appear, decided to abolish some of the posts to meet the financial stringency. In taking the decision as to which post to abolish and which not to abolish, the Government, it seems, took into account the relative usefulness of each post and decided to abolish the seven posts of Field Deputy Directors and the one post of Panchayati Raj Election Officer. This was a matter well within the administrative discretion of the Government and as the decision in this respect appears to have been taken in good faith, the same cannot be

quashed by the Court. The fact that the post to be abolished is held by a person who is confirmed in that post and the post which is not abolished is held by a person who is not permanent would not affect the legality of the decision to abolish the former post as long as the decision to abolish the post is taken in good faith. We would, therefore, hold that the High Court was in error in quashing the order of the Government whereby the post of Panchayat Raj Election Officer had been abolished."

My learned brother V. Ramaswami, J., also in ***M. Natarajan and other vs. The State of Tamilnadu (supra)*** referred to the ruling cited in the above case and quoted the following passage:-

*In the decision reported in **N. Ramanatha Pillai vs. The State of Kerala (supra)** the Supreme Court held:*

"The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Government policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public."

At the same time, the Supreme Court pointed out a limitation of such power and observed:

"A post may be abolished in good faith. The order abolishing a post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311 (2)"

In the same decision, the Supreme Court further held that when a post is abolished the persons holding the post losses his constitutional guarantee under Article 311.

Certainly it cannot be contended for a moment that the abolition has been made arbitrarily, mala fide or as a mask of some penal action. The law as can be culled from the above two rulings is, it is a matter of Governmental policy and every sovereign Government has a power to create or abolish a post. That power is traceable to List II, item 41 State Public Services of seventh schedule of the Constitution of India. Only when the post exists there is scope for invocation of Article 311 of the Constitution of India. Once the post is abolished and here for very laid reasons, there is no possibility of claiming the protection under Article 311 of the Constitution of India. This is not a case in which the functional test would apply at all. The case which arose before my learned brother V. Ramaswami, J., related to entirely different facts. Therefore the petitioner-Union cannot claim any right. The position is worst because all of them were made temporary notwithstanding the fact that they were working for a period of more than seven years.

18. Only if the members of the petitioner-Union are workman within the meaning of Section 2(s) of the Act, they will be entitled to statutory notice under

Section 25 FF. This position cannot be gainsaid. It has been so laid down in ***Prabhakaran and others vs. General Manager, K.S.R.T.C. and another (supra)*** and ***T. Gattaiah and 86 others vs. Commissioner of Labour and another (supra)***. But here it is not so. While the earlier adjudication under the Industrial Disputes Act in I.D. No.8 of 1981 took place, some of the workmen fulfilled the qualification laid down under Section 2(s) of the Act and, therefore, their claims came to be dealt with along with other workmen. The situation is identical as was dealt with by the Supreme Court in ***The Workmen vs. Greaves Cotton & Co. Ltd. and others (supra)***. It was observed in paragraph 18 as follows:

*“It would, therefore, appear that the consistent view of this Court is that non-workmen as well as workmen can raise a dispute in respect of matters affecting their employment, conditions of service etc., where they have a community of interests, provided they are direct and are not remote. As stated in the **Reserve Bank of India’s case (1965-II LLJ 175 : (1966) 1 SCR 25)** workmen cannot take up a dispute in respect of class of employees who are workmen and in whose terms of employment, those workmen have no direct interest of their own. At any rate as long as there are persons in the category of workmen in respect of whom a dispute has been referred it cannot be said that the Tribunal has no jurisdiction notwithstanding the fact that some or many of them may become non-workmen during the pendency of the dispute. In these circumstances the Tribunal in our view was wrong in holding that the dispute regarding supervisors was not maintainable merely because a demand was made for a higher wage scale, which would take them out of the category of workmen. The Tribunal has jurisdiction to decide these matters because on the crucial date the supervisors were workmen and merely because of the demand the Tribunal does not lose its jurisdiction to prescribe the pay scales and the dearness allowance either by reason of the fact that the maximum will go beyond Rs.500 or that even the initial pay demand will be more than Rs.500, provided that at the time of adjudication there are some at least in the category who are workmen.”*

Therefore, that cannot stand in the way of the workmen because the members of the petitioner-Union are not workmen within the meaning of Section 2(s) of the Act. I have carefully perused the nature of the function entrusted to them. They are in charge of financial control. They are required to maintain proper accounts. They are in charge of stocks, for which the members of the petitioner-Union are answerable. They exercise control over the functions of the salesmen, conducting periodical stock verification and supervisors of remaining staff clearly point out that the members of the petitioner-Union are exercising managerial and supervisory responsibility. Besides, the very nomenclature is supervisors. Therefore, they clearly fall out of the definition of Section 2(s) of the Industrial Disputes Act, which is as follows:

“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been

dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment had led to that dispute, but does not include any such person –

- (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity;*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”*

19. The learned Government Pleader has furnished a statement of the wages being drawn by each of the cadre managers. That clearly shows that the grand total of wages excluding the times which are excludible under law is easily more than Rs.500. Therefore, there is no scope of applying the Industrial Disputes Act at all. Hence, the necessity to follow the procedure under Section 25 FF does not arise.

20. For all these reasons I should hold that there are no merits in this writ petition, which is hereby dismissed. However, there will be no order as to costs.

Writ petition dismissed.

Note: The order of the learned single Judge is confirmed by the Division Bench in Page No. 53.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26th October, 1983

**PRESENT: THE HONOURABLE Mr. JUSTICE P.R. GOKULAKRISHNAN
and
THE HONOURABLE Mr. JUSTICE S. NAINAR SUNDARAM**

Writ Appeal No. 41 of 1983

N. Ramasamy

.... Appellant

Versus

The Lieutenant Governor of Pondicherry and 3 others Respondents

- (A) *Pondicherry Co-operative Societies Act, 1972 – Ss. 34 (1), 34 (6) and 35. The petitioner was elected in 1981 as President of the Pondicherry Co-operative Industrial Printing Press. While so holding the post he was elected on 12-3-1982 as President of Embalam Milk Producers' Co-operative Society. The petitioner resigned from the former post on 8-5-1982 and in the election to the committee of management of the Pondicherry Co-operative Milk Producers' Union on 22-5-1982 he got elected to the committee of management of the Union. This election was challenged by the fourth respondent under the provisions of the Act on the ground that the petitioner suffered the disqualification under S.35 (1) with regard to the milk society. The challenge was upheld by the authorities and by a single Judge. Construing Ss.34 (1), 34 (6) (b) and 35 of the Act the learned Judge held that the petitioner had lost the membership of the milk society and became ineligible for contesting the election in the Union.*
- (B) *The principal duty of the Court is to give effect to the intention of the legislature, of course, in the language used by it, by a cogent and cohesive reading of all the relevant provisions. Prior to the commencement of the Act, there was a possibility of persons holding offices in more than one society. This was done away with by the Act. After the commencement of the Act, the person could hold office only in one society and the very entry into the second office is barred by S. 34(1) of the Act and if he enters unaware and holds office, in spite of the bar, in the second society, the disqualification could only operate to send him out of the second office, which alone is tainted with disqualification. The Court is bound to put a construction to prevent evasion or abuse.* (Para 5)

- (C) *The first office, in the instant case, the office in the press, is not tainted with any disqualification. The holding of the office in the first society will operate as a disqualification for entry into and holding of office in the second society. The cessation of the office or in other words, going out of the office, could only be with reference to the office in the second society, because that alone suffers the infirmity on account of disqualification. Hence, the only construction that could legitimately be put on Section 34 (6)(a) of the Act is to hold that the disqualification operates only with reference to the second office and the person will lose only the second office and not the first office, which obviously was not tainted with disqualification.* (Para 6)

Appeal dismissed.

Case referred to:

Election Commission Vs. Venkata Rao, AIR 1953 SC 210 : 1953 1 MLJ 702 : 1953 SCJ 293 : 1953 SCR 1144 : 66 LW 378.

Appeal under Clause 15 of the Letter Patent against the order of Mr. Justice Mohan dated 27-1-1983 and made in exercise of the Special Original Jurisdiction of the High Court in writ petition No.9737 of 1982.

For Appellant	..	Mr J. Stanislas, Advocate
For Respondents 1 to 3	..	Mr. S. Govindasamy, Government Pleader for Pondicherry.
For Respondent 4	..	Mr. R. Gandhi, Advocate.

The judgment of the Court was delivered by Nainar Sundaram. J.

The petitioner in W.P.No.9737 of 1982 is the appellant in this writ appeal and he shall be referred to only as the petitioner, in this judgment. The respondents herein are the respondents in the writ petition. The petitioner filed the writ petition for the issue of a writ of certiorari to quash the order of the first respondent in R.P.No.3 of 1982 dated 25-11-1982, confirming the order of the second respondent in A.R.C. No.1502 of 1982 dated 14-10-1982 and of the third respondent in A.R.C.No.1421 of 1982 dated 12-8-1982. The proceedings arose under the following circumstances: The petitioner was elected as the President of the Pondicherry Co-operative Industrial Printing Press Limited, for the sake of convenience hereinafter referred to as the press, in the year 1981. While he was so holding the post, he got himself elected as the President of the Embalam Milk Producers Co-operative Society, for the sake of convenience hereinafter referred to as the milk society, on 12-3-1982. The election to the committee of management of the Pondicherry Co-operative Milk Producers Union Limited, for the sake of convenience hereinafter referred to as the Union, came off on 22-5-1982. Earlier to that, the petitioner resigned his presidentship in the press on 8-5-1982. It is admitted that for the purpose of getting elected to the committee of management of the union, the petitioner must be the President

of a primary milk producers' society, such as the milk society. The petitioner succeeded, in getting himself elected to the committee of management of the Union. This election was challenged by the fourth respondent before the third respondent under the provisions of the Pondicherry Co-operative Societies Act 1972 (No.7 of 1973), hereinafter referred to as the Act, on the ground that the petitioner suffered the disqualification under Section 35 (1) of the Act. With regard to the milk society, the objection of the fourth respondent found countenance by the third respondent by the order dated 12-3-1982, referred to above. The petitioner preferred a revision to the 2nd respondent and that revision did not fructify and it ended in confirmation of the order of the third respondent. The petitioner agitated the matter by way of a further revision to the first respondent and even before the first respondent, the petitioner could not succeed. Thus the petitioner was obliged to come to this Court under Article 226 of the Constitution of India with the above prayer.

2. Before Mohan. J. , who heard the writ petition, it was urged that the view of the first respondent that the petitioner lost the membership of the committees of all the registered societies by virtue of Section 34 (6) (a) of the Act is unsustainable and that provision would work out so as to make the petitioner lose his office only in respect of the Press, which he even otherwise resigned on 8-5-1982 and hence, his induction into and functioning of as the President of the milk society can survive to enable him to contest for and getting elected to the committee of management of the Union. The learned Judge did not uphold this contention and held, construing the provisions of Section 34 (1) (i), 34 (6) (a) and 35 of the Act, that the petitioner lost the membership of the milk society and he was ineligible for contesting the election to the Union. This order of the learned Judge is the subject-matter of challenge in the present writ appeal.

3. To appreciate and assess the contentions put forth by Mr. J. Stanislas, learned counsel for the petitioner, it has become necessary to advert to the relevant provisions of the Act and they are, as stated above, Sections 34 (1), 34 (6) (a) and 35 of Act, and they stand extracted as hereunder:

(1) No person shall be eligible for being elected or appointed as a member of a committee if he ---

(a) is such near relation as may be prescribed of a paid employee of the registered society: or

(b) (i) is in default to the society or to any other registered society or if he is a representative of a society, which is in default to the financing bank or to any other registered society, in respect of any sum of money due by him or by the society, which he represents for a period exceeding three months:

“Provided that a member of the committee who has ceased to hold office as such under this sub-clause shall not be eligible for a period of one year from the date on which he ceased to hold office for re-election as a member of the committee, of the registered society of which he was a member or for election to the committee of any other registered society: or

(ii) is a person against whom any decree, decision, award or order referred to in Section 133 has been obtained or a representative of a society against which such decree, decision, award or order has been obtained; or

(iii) is a person against whom an application has been made for the recovery of debts under Section 134 or for the sale of the mortgaged property or any part thereof under Section 105:

“Provided that a member of the committee who has ceased to hold office, as such under sub- clauses (ii) and (iii) shall not be eligible for a period of three years from the date on which the dues involved in such decree, decision, award, order or as application have been fully discharged for re-election as a member of the committee of the registered society of which he was a member or a representative, or for election to the committee of any other registered society; or

(c) is interested directly or indirectly in any contract made with the society, or in any sale or purchase made by the society privately or in any auction or in any contract or transaction of the society (other than investment and borrowing) involving financial interest; or

(d) is interested as a member of the committee, in any such contract, sale, purchase or transaction and a period of five years has not elapsed from the date of completion of such contract, sale, purchase or transaction:

“Provided that clauses(c) and (d) shall not apply to such class of contracts, sales, purchases or transactions as may be prescribed; or

(e) is employed as legal practitioner on behalf of the registered society or against the registered society or on behalf of or against any other registered society which is a member of the former registered society; or

(f) is an associate member; or

(g) is a minor or of unsound mind; or

- (h) *has been sentenced for any offence under this Act, such sentence not having been reversed and a period of three years has not elapsed from the date of the expiration of the sentence; or*
- (i) *has been removed from the office of the member of the committee of the registered society or of any other registered society or disqualified under Section 35."*

(6) A member of the committee shall cease to hold his office as such if he becomes subject to any of the disqualifications mentioned in sub-Section(1)"

"35. (1) A member of the committee shall not hold any of the offices of President, Chairman, Vice-President, Secretary, Assistant Secretary, Treasurer, or an office of any other designation in more than one registered society.

"(2) If any member of a committee is at the commencement of this Act, an office-bearer of more than one registered society, then at the expiry of the period of ninety days from such commencement, he shall cease to be an office-bearer of all such registered societies, unless he has previously resigned his office in all but one of the societies".

The preliminary portion of Section 34 (1) states "No person shall be eligible for being elected or appointed as a member of a committee" if he comes within any of the mischief's enumerated in clauses (a) to (i). The later part of clause (i) speaks about disqualification under Section 35. Section 35 (1) imposes the disqualification and it inhibits a person from holding more than one office. In other words, a conjoint reading of Section 34 (1) and Section 35 (2) of the Act amply makes out that if a person already holds office in one society, he will be debarred from entering and holding office in a second society. Section 34 (6) (a) speaks about cessation of the office if a member of the committee becomes subject to any of the disqualifications mentioned in sub-section (1) of Section 34 of the Act. The entire argument of the learned counsel for the petitioner was built only on this provision to state that the petitioner lost his office only in the first society, namely, the Press and his election to and holding of office in the second society, namely the milk society can survive so as to enable him to contest for the election in the Union. Section 35 (2) of the Act is a transitory provision. It says that if any member of a committee, at the commencement of the Act, is an office-bearer of more than one registered society, then, at the expiry of the period of ninety days from such commencement, he shall cease to be an office-bearer of all such registered societies unless he has previously resigned his office in all but one of the societies. Obviously, the bar, inhibition and the consequences adumbrated under Sections 34 (1), 35 (1) and 34 (6) (a) of the Act were not there to operate before the commencement of the Act. An option is given to a person who holds offices more than one society at the commencement of the Act to come within the policy of the Act and confine the holding of office only to one society. We have nothing to do with this provision on the facts of this case.

4. Mr. J. Stanislas, learned counsel for the petitioner, would submit that Section 34 (6) (a) of the Act speaks about cessation of office when a member of the committee becomes subject to any of the disqualifications mentioned in sub-section (1) of Section 34 and the disqualification that is mentioned in clause (i) of sub-section (1) of Section 34 is the one under Section 35 and the disqualification could work only to make a member. In the instant case, the petitioner, to lose the office which he held in the first society, namely, the Press. According to the learned counsel, the petitioner can hold on to his entry into and functioning in the office of the milk society and the disqualification will not operate so far as this office is concerned. Learned counsel wants to derive support for this proposition of his from the decision in ***Election Commission vs. Venkata Rao* (AIR 1953 SC 210 : 1953 1 MLJ 702 : 1953 SCJ 293 : 1953 SCR 1144 : 66 LW 378)** wherein the provisions of Articles 190 (3), 192 and 193 of the Constitution of India were the subject-matter of consideration. We will presently come to the question as to how far the learned counsel for the petitioner could derive support from this decision. Obviously, the petitioner wants to sustain his election to and holding of office in the second society, namely, the milk society, which alone would enable him to contest for the election in the Union.

5. One of the rules of construction and interpretation of statutes is that the object must be to discover the intention of the legislature. The principal duty of the Court is to give effect to the intention of the legislature, of course, in the language used by it, by a cogent and cohesive reading of all the relevant provisions. Prior to the enactment of the Act, there was a possibility of a person holding offices in more than one society. This has been done away with by the Act. After the commencement of the Act, a person could hold office only in one society and the very entry into the second office is barred by Section 35 (1) of the Act and if he enters unawares and holds office, in spite of the bar, in the second society, the disqualification could only operate to send him out of the second office, which alone is tainted with disqualification. If the construction which the learned counsel for the petitioner wants to put on Section 34 (6) (a) is to be accepted, it would mean that a person could gain entry into and hold office in a second society, in spite of his holding office in one society earlier, if others are not vary about this deception, or remain indolent over it – which state of affairs, the very provisions of the Act discountenance and deprecate, and the said person could, with all naiveness, say that he will cease to hold office in the first society and he will stick on to the office in the second society and he would hop from one society to another by adopting this tactics and that would be completely negating the very intention and scheme of the legislature. That would be the resultant mischief if the contention of the learned counsel for the petitioner is to be accepted. The court is bound to put a construction to prevent evasion or abuse. The office of the Judge is to make construction as will suppress the mischief, and advance the cause of the legislature and to suppress all evasions by the continuance of the mischief. The court must carry out effectually the object of the statute and the statute must be so construed as to defeat all attempts to do or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined. This rule stands

expressed in Maxwell on the Interpretation of Statutes, Twelfth Edition, at page 137.

6. The first office, in the instant case, the office in the press, is not tainted with any disqualification. The holding of the office in the first society will operate as a disqualification for entry into and holding of office in the second society. The cessation of the office or in other words, going out of the office, could only be with reference to the office in the second society, because that alone suffers the infirmity on account of disqualification. Of course, sub-section (1) of Section 34 of the Act enumerates number of other disqualifications. But, they relate to the holding of office in a particular society. By virtue of any of the disqualifications, the holding of the office in that society alone will suffer. Hence, by virtue of the petitioner holding office in the Press he stood disqualified for entry into and holding of office in the milk society and that disqualification would operate only as to make him to lose the office in the milk society. We are more concerned with the disqualification and the elements of disqualification with reference to the holding of office in the particular society. As stated above, Section 34 (1) speaks about ineligibility when there is a disqualification and one of the disqualifications is the one found in Section 35 and Section 35 (1) inhibits a person from holding a second office. Hence, the only construction that could legitimately be put on Section 34 (6) (a) of the Act is to hold that the disqualification operates only with reference to the second office and the person will lose only the second office and not the first office, which obviously was not tainted with disqualification. The other clauses in sub-section (1) of Section 34, as stated above, could relate only to the particular society and the disqualification which the person suffers with reference to his office in that society. It is true that, an extreme view has been taken by the first respondent when he held that the petitioner lost the offices in both the societies, namely, the Press and the milk society. It is unnecessary to concentrate on this aspect any longer because, we are more concerned with the petitioner's holding office in the milk society and the question of his losing the office in the press is of no consequence at all for the purpose of this case.

7. There is another rule of construction and interpretation of statutes, which cannot be omitted to be taken note of and that is, if the words of the statute are susceptible to two interpretations, they should be construed in a sense which is more in harmony with the intention of the legislature. If there are two possible constructions, the Court is duty bound to adopt the common sense construction. If the construction which the learned counsel for the petitioner wants to be put on Section 34 (6) (a) of the Act is to be adopted, it will lead to absurd and unintended results, as stated above, and the court shall avoid the same and make the statute logical.

8. Coming to the support which the learned counsel for the petitioner wants to derive from ***Election Commission vs. Venkata Rao (AIR 1953***

SC 210 : 1953 1 MLJ 702 : 1953 SCJ 293 : 1953 SCR 1144 : 66 LW 378), we must straightway point out that the said decision dealt with the provisions in the Constitution of India, not analogous to the scheme of the provisions in the Act, with regard to the holding of office with reference to the inhibition for being a member of both houses of the legislature of a state or a member of the legislature of two or more states, Articles 190 (1) and (2) of the Constitution of India stand self contained. The Supreme Court had no occasion to consider the scope of these Articles. Merely because some of the expressions used in Articles 190 (3) and 192 (1) of the Constitution of India are somewhat similar to the expression used in Section 34 (6) (a) of the Act, it will not be in order to adopt the same rule of construction. The scheme of the other sections cannot be omitted to be taken care of. The working of the concerned provisions of the Act, as discussed above, has got a specific purpose to serve and it cannot be abrogated by putting a construction, which would defeat the very intendment of the legislature. We are not prepared to cull out of context the ratio laid down by the Supreme Court in the decision referred to above and apply it to the scheme of the provisions of the Act, which operate differently depending on one another.

9. The cessation of the office could have only relevance with regard to the office in the second society, namely, the milk society because, by virtue of the petitioner holding office in the press, he stood disqualified from entering into and holding office in the milk society. That is how the disqualification was intended to work and must work.

10. For all the foregoing reasons, we are not able to countenance the submissions made by the learned counsel for the petitioner and we have to uphold the dismissal of the writ petition by the learned single Judge. This obliges us to dismiss the writ appeal and accordingly, the same is dismissed. There will be no order as to costs.

Immediately after the pronouncement of the Judgment, Mr.J. Stanislas, learned counsel for the appellant, prays for leave to appeal to the Supreme Court. In the instant case, we have not departed from the well accepted rules of construction of the statutes keeping in mind the scheme of the provisions of the Act. We do not think that the case involves a substantial question of law of general importance that would require a decision from the Supreme Court. Hence, leave refused.

Appeal dismissed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(APPELLATE JURISDICTION)**

Date : 26th November, 1984

**Coram: THE HONOURABLE Mr. JUSTICE G. RAMANUJAM
and
THE HONOURABLE MR. JUSTICE V. RATNAM**

Writ Appeal No. 12 of 1978

IN

W.P. No.5398 of 1975

1. V. Padmanabha Iyengar (died)
2. V. Kanakavalli Ammal
3. V. Krishnaswamy
4. V. Sundaravaradan
5. V. Pushpavalli

.. Appellants (Petitioner in
W.P. No.5398 of 1975)

Appellants 2 to 5 brought on records as
legal representatives of the deceased
first appellant as per order in C.M.P.1275/1981
dated 9-11-1981.

Versus

1. The Registrar of Co-operative Societies,
Pondicherry.
2. The Liquidator, Karaikal Co-operative Urban
Bank Limited, Karaikal

.. Respondents

(A) Pondicherry Co-operative Societies Act, 1965 – Sections 71 and 87 – The power of surcharge under S.71 has to be exercised by the Registrar at the instance of the society or liquidator or any creditor or contributory of the society on the basis of facts found during an audit under S.64 or inquiry under S.65 or an inspection under S.66 or S.67 or at the time of winding up of the society. The power of the liquidator under S.87 (2) (b) is independent of the power given under S.71. If S.71 is the only remedy for the liquidator, the Legislatures would not have enabled the liquidator to have the powers under S.87 (2) (b) to determine as to how much an officer or former officer is to contribute to the assets of the society. When the Legislature contemplates two authorities to exercise the powers in respect of a former officer on a similar set of facts, then the powers have to be read as independent. (Para 3)

(B) In such a case, there is no possibility of applying the principle urged that 'special excludes general'. (Para 3)

(C) Before passing the order under S.87 (2) (b) the liquidator has issued a show cause notice bringing to the notice of the petitioner/first appellant the report of the officer who conducted the inquiry under S.65 and asking for explanation. It is only thereafter that the liquidator has passed the order impugned in the writ petition. It cannot be said that the petitioner/first appellant did not have a reasonable opportunity to defend himself the proceedings under S.87 (2) (b). (Para 4)

Writ appeal is dismissed.

Appeal under clause 15 of the Letters Patent against the order of Honourable Mr. Justice S. Mohan dated 23-12-1977 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.5398 of 1975 presented under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the proceedings initiated by the second respondent in his Rc. (L) 10.493 dated 16-6-1973 and to quash the same.

For Appellants : Mr. N.S. Varadachari for M/s. B.S. Gnanadesikan and T.V. Ramanujam, Advocates

For Respondents : Mr. S. Govindaswamy, Government Pleader for Pondicherry.

ORDER

This writ appeal coming on for hearing on this day, upon perusing the grounds of appeal, the order of Honourable Mr. Justice S. Mohan dated 23-12-1975 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.5398 of 1975 and all other papers material to this case, and upon hearing the arguments of Mr. N.S. Varadachari for M/s. B.S. Gnanadesikan and T.V. Ramanujam, Advocates for the appellants and of Mr. S. Govindaswamy, Government Pleader for Pondicherry on behalf of the respondents, the Court made the following order:

(The judgment of the Court was delivered by G. Ramanujam, J)

This writ appeal is directed against the judgment of Mohan, J in W.P. No.5398 of 1975 dismissing the same. The appellant herein was the Secretary of the Karaikal Co-operative Urban Bank Limited between the years 1956 and 1965. On 15-9-1965 he was relieved from his duties as Secretary and his place was taken up by some other officials. There was an enquiry under Section 38 of the Madras Co-operative Societies Act, 1932 which corresponds to Section 65 of the 1961 Act. That enquiry revealed serious irregularities, fraud, including falsification of accounts and misappropriation of the funds of the bank to the extent of Rs.1,82,803-82 in respect of short term and khandu loan transactions between the years 1961-62 and 1964-65. The officer, who conducted the enquiry under Section 65 of the Act, had held that the said misappropriation was caused by the active connivance, gross negligence and criminal breach of trust on the part of the petitioner/deceased first appellant, who served as Secretary in the bank during the said period. Based on the said report of

the Officer, who conducted the enquiry under Section 65 of the Tamil Nadu Co-operative Societies Act, 1961, the second respondent, the liquidator of the said Karaikal Co-operative Urban Bank Limited, issued a show cause notice on 12-4-1972 to the appellant under Section 87 (2) (b) of the Pondicherry Co-operative Societies Act to show cause why the sum of Rs.1,82,803-82 should not be recovered from him. The first appellant filed his explanation and sought the dropping of the proceedings. Later, summons were issued by the liquidator to the petitioner-first appellant, calling upon him to attend the enquiry in person on 6-10-1982 fixing the date of hearing as 18-10-1982. Though the said summons were served on the petitioner, he has not chosen to appear for the enquiry fixed under Section 87 (2) (b). In those circumstances, liquidator had no other option except to proceed on the basis of the report of the Officer, who conducted the enquiry under Section 65 and the explanation given by the petitioner. The liquidator found that under bye law No.23 (b) of the bank, the Secretary shall be responsible for the executive administration of the society subject to the control of the President, that as the President is not coming in direct contact with day-today executive administration, which was exclusively attended to by the Secretary directly, he is bound to give correct and proper explanation of the transactions which had taken place during day-today administration of the society, that as the misappropriation had occurred in the issue and collection of loans, it is only the petitioner, who was the Secretary of the Bank, was responsible as per bye law No.39, which provides that all applications for loans shall be made to the Secretary and further action in the matter has to be attended to only by the Secretary, and that therefore, the Secretary cannot disown his liability to account for the said sum of Rs.1,82,803-82. The liquidator gave a few examples of the irregularities and the mistakes committed by the Secretary while discharging his duties and as the petitioner had deliberately committed grave irregularities with fraudulent intention to misappropriation of funds of the bank with active co-operation of his subordinates such as cashier and loan clerk and attender, he is under liability to contribute the said sum to the assets of the bank. This order of the liquidator dated 16-6-1973 was taken in appeal by the petitioner to the Registrar of Co-operative Societies, Pondicherry, who passed the order dated 10-5-1974, rejecting the appeal holding that the order passed by the liquidator under Section 87 (2) (b) is valid. The said order of the appellate authority confirming the order of the liquidator has been challenged in the writ petition No.5398 of 1975.

2. The only point that was urged before the learned single Judge in the said writ petition was that the liquidator ought to have proceeded only by way of surcharge under Section 71 of the Act since the so called misappropriation came to light as a result of an audit or an enquiry and that section being a special provision, it is well settled that as per the special provision excludes the general provision, the liquidator cannot pass an order under Section 87 (2) (b) ignoring the special provision in Section 71. The said contention did not find favour with the learned Single Judge, who held that the statute gives a society two remedies (1) to proceed with Section 71 before the Registrar and (2) to invoke Section 87 (2) (b) by the liquidator and there is nothing wrong on the part of the liquidator invoking Section 87 (2) (b) and passing the impugned order. The said order of Mohan, J has been questioned in this writ appeal.

3. After due consideration of the contentions urged by the learned counsel for the appellants and the learned Government Pleader for Pondicherry, we are of the

view that the learned single Judge is right in his view that the power under Section 71 does not exclude the exercise of the power under Section 87 (2) (b). The power of surcharge under Section 71 has to be exercised by the Registrar or any person authorized by him in this behalf at the instance of the society or an application of the committee of the society or the liquidator or any creditor or any contributory. That Section prescribes a period of six years before which the enquiry should be commenced. No doubt the proceedings under Section 71 of the Act can be initiated during the course of an audit under Section 64, or an enquiry under Section 65 or an inspection under Section 66 or 67 or at the time of winding up of the society. It appears that any person who is or was entrusted with the management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any monies or other property belonging to the society or has been guilty of breach of trust in relation to the society or has caused any deficiency to the assets of the society by breach of trust or willful negligence, the Registrar may enquire into the conduct of such person or officer and pass an order directing such person to contribute such sums to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence as the Registrar or the person authorized by him thinks just. Thus the power under Section 71 of the Act can be exercised only by the Registrar at the instance of the society or liquidator or any creditor or contributory of the society on the basis of the facts found during an audit under Section 64 or inquiry under Section 65 or an inspection under Section 66 or Section 67 or at the time of winding up of the society. In this case the society has been wound up and a liquidator has been appointed. It is also not in dispute that an enquiry under Section 65 has been made and the enquiry officer has made a report to the effect that the petitioner/deceased first appellant, with the active connivance of his subordinates has misappropriated the society's funds to the extent of Rs.1,82,803-82. Therefore based on that report the liquidator of the society could have approached the Registrar invoking his powers under Section 71. It is seen that the liquidator has got the power under Section 87 (2) (b) to determine the amounts due by an officer or a former officer as to what is the contribution to be made to the assets of the society. This power of the liquidator is independent of the power given to the Registrar under Section 71 of the Act. If Section 71 is the only remedy for the liquidator then the Legislature would not have enabled the liquidator to have the power under Section 87 (2) (b) to determine as to how much an officer or a former officer is to contribute to the assets of the society. In view of the fact that the power under Section 71 is to be exercised by the Registrar and the power under Section 87 (2) (b) is to be exercised by the liquidator, the exercise of both the powers should be taken as independent. If an order is passed under Section 71 by the Registrar or any person authorized by him, it may be that the liquidator cannot exercise the power under Section 87 (2) (b) of the Act as the liquidator is acting under the control of the Registrar and any decision rendered by the Registrar will bind him. But where the Registrar has not exercised the power under Section 71 of the Act, the liquidator is at liberty to exercise his power under Section 87 (2) (b) and it cannot be said that the only remedy open to the liquidator is to go before the Registrar under Section 71. When the Legislature contemplates two authorities to exercise the powers in respect of a former officer on a similar set of facts, then the powers have to be read as independent. In such a case, there is no possibility of applying the principle urged by the learned counsel for the appellants that 'special excludes general' and, therefore, Section 71 being a special provision, it will exclude general provision in Section 87

(2) (b). As already stated, Section 87 deals with the powers of the liquidator and Section 71 deals with the powers of the Registrar to pass a surcharge order. Those two provisions provide for two separate powers, one to be exercised by the Registrar and the other by the liquidator. In those circumstances, Section 71 and 87 (2) (b) of the Act should be taken to be independent provisions. One cannot be read subject to the other. We are inclined, therefore, to accept the view taken by the learned Single Judge.

4. The learned counsel for the appellant then contends that any order passed by the liquidator under Section 87 (2) (b) can straightaway be executed by a Civil Court as a decree of the Court and that, therefore, the order under Section 87 (2) (b) can be passed only after due enquiry to which the petitioner/first appellant could be a party. But in this case admittedly there has been an enquiry under Section 65 and based on that report, proceedings have been initiated against the petitioner/first appellant by the liquidator under Section 87 (2) (b). Before passing the order under Section 87 (2) (b), the liquidator has issued a show cause notice bringing to the notice of the petitioner/first appellant report of the officer, who conducted the enquiry under Section 65 and asking for his explanation. After getting his explanation, the liquidator has also called upon the petitioner/first appellant to be present for a personal enquiry to which the petitioner/first appellant did not take advantage of. It is only thereafter that the liquidator has passed the order impugned in the writ petition. On the facts of this case, it cannot be said that the petitioner/first appellant did not have a reasonable opportunity to defend himself in the proceedings under Section 87 (2) (b). In this view of the matter, no interference is called for, with the order passed by the learned single Judge. The writ appeal is, therefore, dismissed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 21st November, 1989

PRESENT: THE HONOURABLE Mr. JUSTICE M. SRINIVASAN

Writ Petition No. 9457 of 1989

V. Ammainathan, President Board of Directors,
The Pondicherry State Co-operative Union Ltd, ... Petitioner

Versus

The Union of India, Union Territory of Pondicherry rep.
by the Secretary to the Government, Department of
Co-operative, Pondicherry and others ... Respondents

(A) *Constitution of India, Art. 226 – Pondicherry Co-operative Societies Act, 1972 – S.140 – Committee of management of the Pondicherry State Co-operative Union was superseded by the Registrar – President of the Union seeking relief under Art.226 while another member seeking relief before Tribunal under S.140 of the Act*

(B) *The grievance is that of the committee which is superseded and individual members cannot seek different relief in different forums and still contend that the jurisdiction under Art.226 should be exercised by the Court.* (Para 9)

(C) *It is clear that unless the Court is satisfied that the alternative remedy is not efficacious or too dilatory or difficult to give relief to the petitioner reasonably quickly, this Court shall not exercise its jurisdiction under Art.226* (Para 17)

(D) *No doubt, an alternative remedy is not a bar as such to the maintainability of the writ petition. But, before the extraordinary jurisdiction under Article 226 of the Constitution of India is invoked by a person, it is necessary for him to inform the Court of the existence of such a remedy and the reason for not availing it. The Court has to be satisfied when the matter comes up for admission that the alternative remedy is not efficacious on the facts and circumstances of the case. If a person chooses not to disclose the existence of the alternative remedy, he is guilty of suppression of relevant facts. A general statement in the affidavit that there is no alternative, effective, efficacious and speedy remedy available in law, is as good as non-disclosure of the existence of such a remedy particularly when it is a regular statutory appeal. In such case, when the Court finds that an alternative remedy exists, the*

writ petition shall be dismissed more because the petitioner misled the Court than because of the existence of the remedy.
(Para 18)

Cases referred to:

- (i) *Rekhal Das Mukherjee vs. S.P. Ghose*, AIR 1952 Cal. 171;
- (ii) *Baburam Prakash Chandra Maheswari vs. Antarim Zila Prahad*, AIR 1969 SC 556;
- (iii) *State of Uttar Pradesh vs. Indian Hume Pipe Company*, AIR 1977 SC 1132, (1977) 2 SCC 724 : (1977) 2 SCR 120 : 1977 Tax L.R. 1871;
- (iv) *The Assistant Collector of Central Excise vs. Jainson Hosiery Industries*, AIR 1979 SC 1889;
- (v) *K.M. Muthuswamy vs. The Commissioner Panchayat Union, Gosi Taluk*, (1983) 2MLJ 271;
- (vi) *Smt. Kuntesh Gupta vs. Management of Hindu Kanya Mahavidhyalaya*, AIR 1987 SC 2186.

Petition under Article 226 of the Constitution of India, praying that in the circumstances sated therein and in the affidavit filed therewith the High Court will be pleased to issue a Writ of Certiorari calling for the records relating to the order bearing No.5/11/1/4/RCS/A/88 dated 13-7-89 on the file of the second respondent herein and to quash the same.

Mr. G. Masilamani, T.P.Manoharan & M.Yoganandam, Advocates
for Petitioner
Mr. S. Govindasamy, Government Pleader, Pondicherry,
for Respondents

The Court made the following

ORDER

The writ petition is taken up at the request of the writ petitioner with the consent of the respondents.

2. The order challenged in the writ petition is passed by the second respondent, the Registrar of Co-operative Societies on 13-7-1989 exercising his powers under Section 83 of the Pondicherry Co-operative Societies Act, superseding the management committee of the society of which the petitioner was the President. The society is an apex society within the meaning of the Act and the rules. Under Section 32 (3) of the Pondicherry Co-operative Societies Act, 1972, which is hereinafter referred to as 'the Act', the committee shall consist of not less than nine and not more than twenty one members as the society is classified as an apex society.

3. Under the by laws of the society, the management committee shall consist of 17 members, six of them being delegates appointed by each of the six apex societies, another six being elected from among the delegates from societies other than apex societies in Pondicherry region, two being elected

from among the delegates from societies other than apex societies in Karaikal, Mahe and Yanam region, two being elected from among the individual members and one being the Registrar or his nominee. Admittedly, at the relevant time, the management committee consisted of 13 members only, functioning from 1-1-1989. In the course of an enquiry into certain alleged irregularities in the management of the society, the enquiry officer reported to the Registrar that two irregularities had taken place in the affairs of the society viz., (a) misuse of the property of the society and (b) default in carrying out the obligations and functions of the management committee. When the irregularities were under consideration, it was brought to the notice of the second respondent that eight members of the management committee had submitted their resignations between 6-7-1989 and 13-7-1989, as a result of which, the strength of the committee had fallen to five. Taking the view that the statutory minimum prescribed by Section 32 (3) of the Act for an apex society was not fulfilled, the second respondent passed the impugned order, the relevant portion of which reads as follows:

“In the context of the committee having become defunct, I am further of the opinion that it is not reasonably practicable to give an opportunity to the committee to make its representation as to why it should not be dissolved and it is also not reasonably practicable under this emergent circumstances to inform and consult the financing bank under sub-section (6) of Section 83 of the Pondicherry Co-operative Societies Act, 1972, as alternative arrangement to manage the affairs of the said Union will have to be made urgently without any interruption;

Now, therefore, the undersigned in exercise of his powers conferred under Section 83 (1)(a) read with Section 83(9) of the Pondicherry Co-operative Societies Act, 1972 hereby dissolves the committee of Management of the Pondicherry State Co-operative Union with immediate effect and appoint Thiru D. Arunachalam, Deputy Registrar, (Planning) to hold full additional charge as Special Officer to manage the affairs of the said Co-operative Union for a period of six months from the date of issue of this order”.

4. The said order is challenged by the petitioner mainly on the ground that no opportunity was given to the management committee by the second respondent to explain the position before passing the impugned order and thus principles of natural justice had been violated. It was also the case of the petitioner that the provisions of Section 83 (9) of the Act enabling the second respondent to pass an order without notice as prescribed in sub-section 1 (a) of Section 83, will not apply to the facts of this case. It is alleged that in the place of the members who had resigned, the committee had co-opted one person on 10-7-1989, another on 11-7-1989 and three others on 13-7-1989. According to the petitioner, by the co-option of the said five members, the minimum requirement of Section 32 (3) of the Act was fulfilled. It is also alleged that the management committee is not guilty of the alleged irregularities.

5. The petitioner produced before me the minutes book of the society from which it is seen that circular resolutions have been passed for co-option of members as alleged by the petitioner. The resolutions dated 13-7-1989 have been signed by seven members only. According to the petitioner, under the by-laws of the society, the quorum for meetings for the purpose of co-option is only seven.

6. The contentions of the second respondent are that a statutory appeal has been provided under Section 140 of the Act against the impugned order and this writ petition is not maintainable, that the alleged co-options were not communicated factually to the second respondent and that they were not valid in law as there was no committee validly in existence on 13-7-1989 since the number of members on that date was less than the minimum prescribed under Section 32(3) of the Act.

7. With reference to the question as to the validity of the co-option, it will depend upon disputed questions of fact. The question whether there was a committee validly in existence on 13-7-1989 is also one, which arises for consideration. I do not wish to express any opinion on the above questions in the view I am taking in this matter that the writ petition should be dismissed, as there is an effective statutory alternative remedy available to the petitioner.

8. Under Section 140 of the Act, an appeal lies against an order passed under Section 83 of the Act to the Tribunal. The petitioner did not disclose in the affidavit filed in support of the writ petition the existence of the statutory remedy by way of appeal. In paragraph 15 of the affidavit, it is stated that the petitioner has no other alternative, effective, efficacious and speedy remedy available in law. There is no averment in the petition that the remedy of appeal under Section 140 of the Act is not efficacious or speedy enough to grant relief to the petitioner.

9. Apart from that, the petitioner has filed the writ petition as an individual. No doubt, he was the President of the Board of Directors of the society. But, in paragraph 17 of the affidavit, he has stated as follows:

“I respectfully state that the other 7 directors excluding the Principal-cum-Nominee Director could not make themselves available to join me in this W.P. even though they are also opposed to the impugned order. They would be filing separate W.P. challenging the impugned order shortly. As no adverse order is sought to be obtained against the other directors, they are not impleaded as respondents to this W.P. As I have to obtain urgent orders of stay, I am filing this W.P. in my own name”.

This shows that the petitioner filed the writ petition as an individual and according to him; other writ petitions would be filed by the other directors of the Board. But, in the reply affidavit filed by the petitioner himself, it is

admitted that an appeal has been filed by another member of the Board of Directors by name Prabhakaran and the appeal has been taken on file by the Tribunal as Appeal No.2/89 and stay has also been prayed for in I.A.No.357/89. It is stated that the case stood adjourned to 3-10-1989. Thus, it is clear that while one member of the Board of Directors is invoking the jurisdiction under Article 226 of the Constitution of India, the other member is availing of the statutory remedy under Section 140 of the Act. The grievance is that of the committee which is superseded and individual members cannot seek different reliefs in different forums and still contend that the jurisdiction under Article 226 of the Constitution of India should be exercised by this Court.

10. Learned counsel for the petitioner placed reliance of the decision in ***Rakhal Das Mukherjee v. S.P.Ghose (A.I.R. 1952 Cal.171)***. In that case, Sinha, J. has laid down the following propositions: -

(i) Where an inferior tribunal assumes jurisdiction and the want of jurisdiction is patent on the fact of it; (ii) where the proceedings complained of are against the principles of natural justice; and (iii) where the alternative remedy is too costly or ineffective or entails such delay that the applicant would be irreparably prejudiced or the remedy might prove valueless”.

11. This case does not fall under any of the three categories referred to in proposition (f) by the learned Judge. Far from supporting the petitioner, the decision is really against it. The contention of the petitioner that principles of natural justice have been violated is untenable. In the view taken by the second respondent, the management committee had become defunct with the resignation of eight members thereof and when sub-section (9) provides for a situation in which it is not reasonably practicable to give an opportunity to the committee to make its representation, there is no question of violation of any principle of natural justice. If according to the petitioner, the committee had not become defunct on account of the co-options alleged to have been made, it is a matter to be urged before the appellate Tribunal and as it depends upon proof of certain facts, which are in dispute, the tribunal will be the appropriate forum for canvassing the same.

12. My attention is drawn to the decision in ***M/s. Baburam Prakash Chandra Maheswari v. Antarim Zila Parishad Now Zila Parishad, Muzaffarnagar (A.I.R.1969 SC 556)***. It was held in that case that where an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. Though it was pointed out that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ, it is a matter to be taken into consideration before granting writs and where such a remedy exists, it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. It was held in that case that the rule regarding alternative

remedy is a self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may, therefore, in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted. This case is not an exceptional case contemplated in the said judgment.

13. Learned Counsel cited the judgment of the Supreme Court in ***State of Uttar Pradesh v. Indian Hume Pipe Co. (1977) 2 S.C.C.124: (1977) 2 S.C.R.120: 1977 Tax. L.R.1871 (AIR 1977 SC 1132)***. It was held in that case that it is always a matter of discretion with the Court and there is no rule of law that the High Court should not entertain the writ petition where an alternative remedy is available to a party. I do not find any circumstance in this case warranting the exercise of the discretion in favour of the petitioner. On the other hand, I have already referred to the circumstances, which would justify the rejection of the petition.

14. In ***The Assistant Collector of Central Excise v. Jainson Hosier Industries (AIR 1979 SC 1889)***, cited by learned counsel for the petitioner himself, it was held that unless the High Court is satisfied that the normal statutory remedy is likely to be too dilatory or difficult to give reasonably quick relief, it should be loath to act under article 226 of the Constitution of India. This judgment is clearly against the petitioner as nothing has been made out in this case to the effect that the statutory appeal provided under Section 140 of the Act is likely to be too dilatory or difficult to give reasonably quick relief to the petitioner.

15. Learned counsel cited the decision of a Division Bench in ***K.M. Muthusamy v. The Commissioner, Panchayat Union, Tookanaickenpalayam, Gobi Taluk and another (1983) II MLJ 271***. It was held in that case that where an impugned order is totally without jurisdiction, an alternative remedy is not a bar to the exercise of the power under Article 226 of the Constitution of India. In the present case, the impugned order is not one totally without jurisdiction.

16. Lastly, the judgment of the Supreme Court in ***Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur U.P and others (AIR 1987 SC 2186)*** was cited. In that case it was held that an alternative remedy is not an absolute bar to the maintainability of a writ petition when an authority has acted wholly without jurisdiction and the High Court should not refuse to exercise its writ jurisdiction on the ground of existence of an alternative remedy. For the reason mentioned in the previous paragraph, this judgment does not have any bearing on the present case.

17. Thus, it is clear that unless the Court is satisfied that the alternative remedy is not efficacious or too dilatory or difficult to give relief to the petitioner, reasonably quickly, this Court shall not exercise its jurisdiction under Article 226 of the Constitution. Apart from that, there is a more salient principle, which has to be adhered to in matters of this type while considering the question of maintainability of the writ petition on the basis of an available alternative remedy.

18. No doubt, an alternative remedy is not a bar as such to the maintainability of the writ petition. But, before the extraordinary jurisdiction under Article 226 of the Constitution of India is invoked by a person, it is necessary for him to inform the Court of the existence of such a remedy and the reason for not availing it. The Court has to be satisfied when the matter comes up for admission that the alternative remedy is not efficacious on the facts and circumstances of the case. If a person chooses not to disclose the existence of the alternative remedy, he is guilty of suppression of relevant facts. A general statement in the affidavit that there is no alternative, effective, efficacious and speedy remedy available in law, is as good as non-disclosure of the existence of such a remedy particularly when it is a regular statutory appeal. In such case, when the Court finds that an alternative remedy exists, the writ petition shall be dismissed more because the petitioner misled the Court than because of the existence of the remedy.

19. On the facts and circumstances of the case, I am convinced that the remedy under Section 140 of the Act is efficacious and speedy enough and there is no warrant for exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. The petitioner not having come to Court with clean hands, as he has not chosen to disclose that an alternative remedy exists by way of statutory appeal, the petition deserves to be dismissed. Hence, it is hereby dismissed with cost.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(APPELLATE JURISDICTION)**

Date : 8th February, 1990

Coram: THE HONOURABLE Mr. JUSTICE S. NAINAR SUNDARAM

and

THE HONOURABLE MR. JUSTICE E.J. BELLIE

Writ Appeal No. 1033 of 1983

Pondicherry State Village Co-operative
Societies Employees Union, rep. by
Its Hony. President, D.B. Govindan,
Pondicherry

.. Appellant
(Petitioner in W.P. No.
8356/1983)

Versus

1. The Union Territory of Pondicherry rep.
by the Secretary to Government of
Pondicherry (Co-operation)

2. The Pondicherry Village Co-operative
Agricultural Credit Societies Staff
Cadre Authority, rep. by its Member-
Secretary, 73, Lal Bahadur Shastri
Street, Pondicherry.

.. Respondents

(A) When the manning of the posts from the financial aspect has become a burden on the co-operatives concerned, and assistance therefor from the Government level has become a remote chance, to insist that the posts should be kept alive will be shutting the eyes to practical features. Viewed from this angle, it is not possible to characterize what has been done as tainted with arbitrariness, mala fides or as a mask for some penal action. When the very continuance of the posts has become an impossibility on account of the financial strain, it will not be wisdom of the Court to insist for survival of the posts.
(Para 6)

(B) In spite of his best endeavors, learned counsel for the appellant was not in a position to point out to us any specific allegation of linking up the award is the industrial dispute with the present action and saying that the present action was the result of a scheme or an intention to circumvent or defeat the benefits that have accrued to the incumbents of the posts of cadre manager under the award. The allegation of mala fides, seems to have been conceived in the course of the arguments before us, in desperation without any factual basis for the same.
(Para 7)

(C) The learned single Judge has assessed the functional aspects of the cadre managers and has found, as a finding of fact, that they do not come in any way near the concept of workman, within the meaning of the provisions of the Industrial Disputes Act, 1947. We are in agreement with the said assessment and conclusion.
(Para 8)

Appeal under Clause 15 of the Letters Patent against the order of the Honourable Mr. Justice S. Mohan dated 7-10-1983 and made in the exercise of the Special Original Jurisdiction of the High court in Writ Petition No.8356 of 1983.

Cases referred:

- (j) *State of Haryana vs. D.R. Sangar* (AIR 1976 SC 1199;
- (ii) *N. Ramanatha Pillai vs. State of Kerala*, (1974) 1 SCR 515 : AIR 1973 SC 2641;

Writ of certiorari calling for the connected records from the first respondent relating to its notification issued in G.O. Ms. No.6 dated 23-8-1993 Development (Co-operative Department) and the subsequent termination order dated 30-8-1983 issued by the second respondent to the cadre managers, terminating their services with effect from 30-9-1983.

For Appellants	..	Mr. N.G.R. Prasad, for M/s. Row and Reddy and R. Rajaram, Advocates
For Respondent No.1	..	Mr. R. Sundaravaradhan for Mr. S. Govindaswami, Government Pleader for Pondicherry.
For Respondent No.2	..	Mr. G. Masilamani, for M/s. T.P. Manoharan and M. Yoganathan, Advocoates.

ORDER

This writ appeal coming on for hearing on Wednesday, the 7th day of February, 1990, and on this day upon perusing the grounds of appeal, the order of the Honourable Mr. Justice S. Mohan dated 7-10-1983 made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.8356 of 1983 and all other paper material to this case and upon hearing the arguments of Mr. N.G.R. Prasad for M/s. Row and Reddy and R. Rajaram, Advocates for the appellants and of Mr. R. Sundaravaradhan for Mr. S. Govindaswami, Government Pleader for Pondicherry on behalf of the first respondent and of Mr. G. Masilamani for M/s. T.P. Manoharan and M. Yoganathan, Advocates for the second respondent, the Court made the following order:

(The Judgment of the Court was delivered by Nainar Sundaram, J.)

The appellant is the petitioner in W.P. No.8356 of 1983. The respondents are the respondents in the writ petition. The appellant filed the writ petition projecting the following prayer:

“ For the reasons mentioned in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue appropriate orders, directions or writs as the case may be and in particular issue a writ in the nature of certiorari after calling for the connected records from the first respondent relating to its Notification issued in G.O. Ms. No.6 dated 23-8-1983,

Development (Co-operative) Department, quash the said G.O. dated 23-8-1983 and the subsequent termination orders issued by the second respondent to the cadre managers, terminating their services with effect from 30-9-1983.”

By the Government Order, referred to in the prayer in the writ petition, there has been a repealing of the Notification G.O. Ms. No.7 dated 1-2-1977 of the Development Department, Government of Pondicherry, relating to the constitution of the cadre managers in the co-operative agricultural credit societies in Pondicherry. On 1st February 1977, by G.O. Ms. No.7, there has been a formulation of the Rules, pursuant to powers conferred by sub-Section (1) of Section 170 of the Pondicherry Co-operative Societies Act, 1972. Since the grievance of the petitioner is with reference to the abolition of the posts of cadre manager, which got constituted and which was functioning under the Rules, we feel obliged to extract the entirety of the Government Order containing the rules as follows:

GOVERNMENT OF PONDICHERRY

Abstract

CO-OPERATIVE DEPARTMENT – Pondicherry – Co-operative Agricultural Credit Societies (Appointment of Managers) Rules, 1977 – Published.

DEVELOPMENT DEPARTMENT

G.O. Ms. No.7

Date: 1st February 1977

READ: Registrar of Co-operative Societies Letter No.RCS/C/XIV-1/74-1466 dated 11-11-1976.

ORDER:

The following notification shall be published in the extraordinary Gazette of Union Territory of Pondicherry.

NOTIFICATION

In exercise of the powers conferred by sub-Section (1) of Section 170 of the Pondicherry Co-operative Societies Act, 1972, the Lieutenant Governor, Pondicherry hereby makes the following rules in accordance with the guidelines issued by the Ministry of Agriculture, Government of India in their letter No.K.11011/5/70-Credit dated 21-2-1974, namely:-

1. (i) These rules may be called “The Pondicherry Co-operative Agricultural Credit Societies (Appointment of Managers) Rules, 1977”.

(ii) They shall come in force at once.
2. The rules shall provide for constitution of a cadre of managers for agricultural credit societies and for recruitment/appointment, service conditions and control of the managers borne on the cadre.
3. There shall be a committee to be known as ‘Pondicherry Co-operative Agricultural Credit Societies Staff Cadre Authority’ consisting of the

following persons for contribution and administration of the cadre of managers of agricultural credit societies and for regulating their service conditions:

- | | | | |
|-------|--|----|----------|
| (i) | The President of the Pondicherry State Co-operative Bank | .. | Chairman |
| (ii) | The Secretary of the Bank | .. | Member |
| (iii) | The Deputy Registrar in-charge of Credit in the office of the Registrar of Co-operative Societies, Pondicherry | .. | Member |

The Secretary of the Pondicherry State Co-operative Bank shall act as a Member Secretary of the Committee.

4. The cadre authority shall arrange for the recruitment of qualified and suitable candidates for enrolment in the cadre of manager of agricultural credit societies to be maintained for this purpose.
5. There shall be two grades of managers borne on the cadre as follows and the cadre authority shall maintain separate panels for each grade:
 - (a) Grade I for being appointed as managers in agricultural credit societies which have loan transactions and on-credit business together exceeding Rs.3 lakhs per annum.
 - (b) Grade II for those agricultural credit societies having loan transactions and non-credit business below Rs.3 lakhs per annum.
6. Every agricultural credit society which has reached a loan business of at least Rs.50,000 shall appoint either a manager who shall be either an employee of the Pondicherry State Co-operative Bank or drawn from the panel of names borne on the cadre and approved by the cadre authority.
7. A cadre fund shall be constituted and maintained by the cadre authority in a separate account with the Pondicherry State Co-operative Bank and any operation thereon shall be made by an official authorized for this purpose. The cadre fund shall be built up by contributions by the agricultural credit societies at the rate of 75% of the interest income earned by them subject to the maximum cost of the manager. The contributions so payable shall be a first charge on the revenue account of the society. On its part, the Pondicherry State Co-operative Bank, which is the apex bank would contribute 2% of its annual net profits subject to a maximum of Rs.10,000. The deficit in the fund for meeting the cost of the cadre staff will be made good by the Government in the form of subsidy. The pay and allowances of the managers borne on the cadre shall be met from the cadre fund.
8. The cadre authority shall meet at least once in three months to review all matters connected with the appointment and service conditions of managers.

9. The method of recruitment of managers, fixation of pay and allowances and all other matters governing their service conditions shall be decided by the cadre authority. The cadre authority shall frame suitable regulations for the purpose, with the approval of the Registrar of Co-operative Societies.
10. The managers appointed in agricultural credit societies will work under the control of the President of the society. The Chairman of the cadre authority alone is competent to take disciplinary action against and impose major punishment on the managers borne on the cadre.
11. Managers are liable for transfer to work in any society within the area of the financing bank. Such transfers shall be ordered by the Secretary of the Pondicherry State Co-operative Bank.

/By Order of the Lieutenant Governor/

Sd/- P.C. Mythily
Under Secretary to Government

2. The reasons for repealing of the Rules which resulted in the abolition of the posts of cadre manager, as could be gleaned from the materials and proceedings, disclosed in the case, have been summed up by the learned single Judge, who dealt with the writ petition, as follows:

“(1) As per the Central Sector scheme the subsidy to meet the deficit in the cost of the cadre managers’ establishment was claimed on reimbursement basis. Therefore, the societies and the Pondicherry State Co-operative Bank were to meet in the first instance the cost of the establishment of the managers by contributing to the cadre fund. From the fund alone the wages of the cadre managers were paid. Though the societies were regularly remitting the cost of the managers to the cadre fund till 30th of June 1982, thereafter it was found not possible to contribute to the fund on the ground of their inability. Notwithstanding this, the Pondicherry State Co-operative Bank was advancing in their suspense account the required money to the cadre fund to enable the cadre managers to draw their salaries. This was the position till March, 1983;

(2) The Government of India is yet to reimburse the cost of the cadre establishment for the year 1982-83 and the matter is still under correspondence;

(3) The financial position of the co-operative agricultural credit societies also was on the decline with huge amount of outstanding. Therefore, the societies could not contribute to the cadre fund;

(4) The State Co-operative Bank’s financial position also did not permit them to make any further advance to the cadre fund;

(5) The Government of India informed the Government of Union territory of Pondicherry by their letter dated 26-6-1982 that those societies which had already been assisted continuously for three years were not eligible for any further assistance beyond 31-3-1983. The result was there was no possibility for availing or subsidy from the Central Government from 1-4-1983;

(6) The societies were financially broken totally having incurred loss continuously for the previous years and the bank was also not in a position to advance any money; and

(7) The village co-operative agricultural credit societies were also not in a position to have such highly paid managerial personnel, since the same is beyond their means."

Our assessing the materials and proceedings disclosed before us makes us to concur with the above summing up.

3. However, Mr. N.G.R. Prasad, learned counsel for the appellants, would first contend that though the posts have been abolished, there has been no abolition on the functions annexed to the posts and on the other hand, there was a direction to have the said functions manned through personnel other than cadre managers and hence it is not a case of 'functional abolition' so as to abolish the posts of cadre managers and the action is not bonafide. As against this, Mr. R. Sundaravaradhan, learned counsel appearing for the first-respondent, supported by Mr. G. Masilamani, learned counsel for the second-respondent, would submit that when the financial burden became too much for the societies to bear, and when the scope of assistance from the Government level has dwindled, it is not possible to keep alive the posts and in that context it will not be in order to bring in the functional aspects, so as to stultify the repealing of the Rules, which resulted in the abolition of the posts the question of supporting the posts from the financial angle became a difficult proposition, and these circumstances compelled the abolition of the posts and the allegation of malafide is a puerile one.

4. *"Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post."*

Such was the ratio enunciated by the highest Court in the land in ***State of Haryana vs. D.B. Sangar (AIR 1976 SC 1199)***.

5. *"A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311 (2)".* This is the

ruling found in ***N. Ramanatha Pillai vs. State of Kerala ((1974) 1 SCR 515 :AIR 1973 SC 2641)***.

6. When the manning of the posts from the financial aspect has become a burden on the co-operatives concerned, and assistance therefor from the Government level has become a remote chance, to insist that the posts should be kept alive will be shutting the eyes to practical features. Viewed from this angle, it is not possible to characterize what has been done as tainted with arbitrariness, mala fides or as a mask for some penal action. As rightly contended by the learned counsel for the respondents, the question of the functional aspects may not have relevance at all in that context. When the very continuance of the posts has become an impossibility on account of the financial strain, it will not be wisdom of the Court to insist for survival of the posts.

7. It was also contended before us by the learned counsel for the appellant that an award was obtained in I.D. No.8 of 1981 at the hands of the Industrial Tribunal, Pondicherry, wherein certain benefits have enured to the incumbents of the posts of cadre manager and the present move is only intended to defeat the implications of the said award and hence malafide. In spite of his best endeavors, learned counsel for the appellant was not in a position to point out to us any specific allegation of linking up the award is the industrial dispute with the present action and saying that the present action was the result of a scheme or an intention to circumvent or defeat the benefits that have accrued to the incumbents of the posts of cadre manager under the award. The allegation of malafides, seems to have been conceived in the course of the arguments before us, in desperation without any factual basis for the same.

8. There was also another contention raised before the learned single Judge and that was also repelled by him and that is that there was no satisfaction of the provisions of the Industrial Disputes Act, 1947 with reference to the dispensing with the services of the cadre managers. The learned single Judge has assessed the functional aspects of the cadre managers and has found, as a finding of fact, that they do not come in any way near the concept of workman, within the meaning of the provisions of the Industrial Disputes Act, 1947. We are in agreement with the said assessment and conclusion. Our assessment of the aspects, being what it is, as expressed above, we are not persuaded to interfere in writ appeal and accordingly the same is dismissed. No costs.

Writ appeal is dismissed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 1st November, 1990

PRESENT: THE HONOURABLE Mr. JUSTICE S. RAMALINGAM

Writ Petition No. 4375 of 1984

G. Krishnasamy

....

Petitioner

Versus

(1) The Registrar, Co-operative Societies,
Pondicherry.

(2) The Secretary,
The Pondicherry Co-operative Housing
Society Ltd., No.P.56, Pondicherry.

....

Respondents

(A) Under the bye laws of the society, no house site shall be allotted to a member whose annual income is more than Rs.25,000. The petitioner applied for allotment of a housing plot in 1970. In 1982, the provisional allotment made to the petitioner was cancelled as he was drawing over Rs.25,000.

(B) Held, though the second respondent has acted well within the scope of the bye laws, yet he has acted in a strait jacket manner in interpreting the provisions of the bye laws. The delay in allotment of the plot to the petitioner is not due to his making. Therefore, the concession on compassionate ground has to be taken in this matter and in that prospective there will be an order in this writ petition quashing the impugned order. (Para 2)

Writ petition allowed.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a writ of certiorarified mandamus calling for the records relating to the order dated 24-10-1983 hearing reference No. PHS 641/81 on the file of the 2nd respondent herein and to quash the same and to direct the 2nd respondent to allot a house site to the petitioner as per the provisional allotment dated 14-9-1982.

For petitioner .. Mr. T.P. Manoharan, Advocate;

For respondents .. Mr. K.S. Ahamed, Government Pleader-
cum-Public Prosecutor for Pondicherry.

ORDER:

This writ petition coming on for hearing on this day, upon perusing the petition and the affidavit filed in support thereof, the order of the High Court, dated 24-4-1984 and made herein and the records relating to the order bearing Ref.No.PHS641/81 dated 24-10-1983 on the file of the 2nd respondent herein comprised in the return of the respondents herein to the writ made by the High Court, and upon hearing the arguments of Mr.T.P.Manoharan, Advocate for the petitioner, and of Mr.K.S.Ahamed, Government Pleader cum Public Prosecutor for Pondicherry Government on behalf of the respondents, the Court made the following order:-

1. The petitioner applied in the year 1970 to the second respondent for allotment of a housing plot and paid a sum of Rs.500 for that purpose. After twelve long years, the second respondent informed the petitioner that a housing plot has been provisionally allotted to him, subject to the production of income certificate by the petitioner. In the year 1982, the petitioner was drawing a consolidated salary of Rs.2119-98, which included dearness allowance, house rent allowance etc. Under the bye-laws of the society no house site shall be allotted by the co-operative housing society to a member whose annual income is more than Rs.25,000. On a calculation made by multiplying his monthly income by 12, the second respondent came to the conclusion that the annual income of the petitioner is marginally above Rs.25,000 and, therefore, passed the impugned orders on 24-10-1988 stating that the provisional allotment made in favour of the petitioner is cancelled. It is to quash the above order; the present writ petition has been filed.

2. Though the second respondent has acted well within the scope of the bye-laws of the society, yet he has acted in a strait jacket manner in interpreting the provisions of the bye-laws of the society. One has to take note of the fact that even as early as in 1970 the petitioner had made an application for allotment of a plot and had only that application been entertained and plot allotted sometime in 1970 or thereabouts, the petitioner would certainly have come within the eligibility criteria. The delay in allotment of the plot to the petitioner is not due to his making. Therefore, the concession on compassionate ground has to be taken in this matter and in that perspective there will be an order in this writ petition quashing the impugned order dated 24-10-1988. There will be no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 1st October, 1992

Coram: THE HONOURABLE Mr. JUSTICE M. SRINIVASAN

Writ Petition No. 9749 of 1992

G. Sivam Petitioner

Versus

- (1) The Registrar of Co-operative Societies,
Department of Co-operation,
Government of Pondicherry, Pondicherry
- (2) The Administrator,
The Karaikal Co-operative Wholesale
Stores Ltd., No.154, Karaikal.
- (3) P. Thangarasu
- (4) K.Ramadurai
- (5) R.Yoga Respondents

For petitioner	:	Mr. R. Natarajan, Advocate
For 1 st Respondent	:	Mr. P.Krishnamoorthy, Government Pleader
For 2 nd Respondent	:	Mr.P.Thirugnanam, Advocate

In view of the ruling of the Full Bench in 1991-2-LW-409, this writ petition is not maintainable and it has to be dismissed.

Cases referred:

- (1) *Kannan P.Tamilarasan and others Vs. The Director of Sugars, Office of the Director of Sugars, etc., (FB) (1991) 2 L.W.409 : 1989 (1) LLJ 588*),
- (2) *Supreme Court in Civil Appeal No.6357 of 1991 dated 28-4-1992.*
- (3) *Natarajan. A vs. The Registrar of Co-operative Societies (1991) 2 L.W.420 : 1991 WLR 840 : 1991 2 MLJ 63.*

ORDER:

1. The writ petition is directed against the order of the second respondent which is a co-operative Society. In view of the ruling of the Full Bench of this court in ***Kannan P.Tamilarasan and others Vs. The Director of Sugars, Office of the Director of Sugars, etc., (FB) (1991) 2 L.W.409 : 1989 (1) LLJ 588***), this writ petition is not maintainable. Hence, it has to be dismissed.

2. Learned counsel for the petitioner contends that the view taken by the Full Bench is impliedly over-ruled by the judgment of the **Supreme Court in Civil Appeal No.6357 of 1991 dated 28-4-1992**. According to learned counsel, the Supreme Court has confirmed the view taken by a Division Bench of this Court in **Natarajan. A vs. The Registrar of Co-operative Societies (1991) 2 L.W.420: 1991 WLR 840 : 1991 2 MLJ 63**, that the earlier Full Bench ruling was per incuriam. I do not agree. The Supreme Court has not gone into the question at all. The Supreme Court has merely held that the Court did not find any reason to interfere with the order passed by the Division Bench. Hence, it cannot be contended that the Supreme Court has over-ruled the Full Bench of this Court or that it has held that the judgment of the Full Bench was per incuriam.

3. Hence, the contentions of the petitioner are rejected. As this writ petition is dismissed only on the ground of non-maintainability, it is open to the petitioner to take such proceeding as may be available to him in law under the Co-operative Societies Act and work out his remedies, if any. The writ petition is dismissed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 30th October, 1992

Coram: THE HONOURABLE Mr. JUSTICE E.J. BELLIE

Second Appeal No. 1515 of 1988

The Pondicherry Co-operative Housing
Society Ltd., rep. by its Secretary R. Govindarajalu Appellant /
Plaintiff

Versus

S.A.Guiry Respondent /
Defendant

(A) The society allotted building plots to its members for construction of houses. As per the sale deed, the defendant shall complete construction of the house within two years. As the defendant has not constructed the house within two years, the society has filed the suit for setting aside the sale deed.

(B) The Courts below have held that though the sale deed recites that the construction of house should have been completed within two years of the sale deed, there is no penal clause as to what would be the consequences if the condition is not completed with. Any clause inserted in the regulations subsequent to the sale deed will not apply to the sale deed in question. (Para 3 & 4)

(C) Held, as rightly pointed out by the first appellate Court, there was no clause in the bye laws at the relevant time, i.e., at the time of sale deed which enables the plaintiff to have the sale deed set aside. The second appeal fails and is dismissed. (Para 5)

For Appellant : Mr. A.K.Senthilselvan, Advocate
For Respondent : Mr. A.S.Thambusami, Advocate

JUDGMENT:

This second appeal is by the plaintiff – Pondicherry Co-operative Housing Society Limited, hereinafter called the society. The defendant is a member of that society. The society allotted building plots to its members for construction of houses. One such plot was allotted to the defendant. In respect thereof a sale deed was executed by the plaintiff society in favour of the defendant. As per that sale deed Ex. A1 dated 16-6-1973 the defendant shall finish construction of the house within two years. Now the evidence discloses that the defendant has not so constructed the house within the said two years. Eleven years hence the society has filed the suit for setting aside the sale deed executed in favour of the defendant for the reason that the defendant did not comply with the condition of the sale deed viz., the defendant should have finished construction of the house within two years.

2. The defendant contested the suit contending that he did not purposely delay to complete the construction of the house but the delay was due to latches on the part of the society in obtaining a certificate from the Town Planning authority, and not supplying cement, and that the sale deed is not liable to be set aside. He further contended that the suit is barred by limitation.

3. The trial court on consideration of the evidence held that the suit is not barred by limitation. But on the point whether the plaintiff will have the right to set aside the sale deed, it held that though the sale deed recites that the construction of the house should have been completed within two years of the sale deed there is no penal clause as to what would be the consequence if the condition is not complied with. That being the case that plaintiff cannot seek for setting aside the sale deed. On these findings the trial court dismissed the suit.

4. In the appellate court it appears it was argued that as per the byelaw of the society if the construction of the house is not completed within the time stipulated in the sale deed the allotment is liable to be set aside and hence the plaintiff's prayer for setting aside the sale must be granted. But the appellate court found that at the time of the sale there was no such clause in the bye-law in existence and the clause referred to by the appellant-plaintiff was only subsequent to the sale deed, inserted as subsidiary byelaw on 26-7-1974, and therefore, this clause in the bye-law will not apply to the sale deed in question. The appellate court therefore confirmed the judgment and decree of the trial court. As against this, the plaintiff has filed this second appeal.

5. Here too the same argument was advanced that the defendant has not complied with the condition of the sale deed that the construction should have been completed within two years and therefore the sale is liable to be set aside. The said condition in the byelaw relied on before the appellate court also was relied on here, but I find no reason whatsoever to differ from the finding given by the trial court and also the appellate court in this regard. True, there is a condition in the sale deed that construction of the house must be completed within two years but there is no clause whatsoever therein that on failure of complying with that condition the sale deed is liable to be cancelled or set aside. As rightly pointed out by the first appellate court, there was no clause in the byelaw at the relevant time i.e., at the time of the sale deed which enables the plaintiff to have the sale deed set aside. Therefore I find no merit in the second appeal. Accordingly, it is dismissed with costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 30th October, 1992

PRESENT: THE HONOURABLE Mr. JUSTICE V. KANAKARAJ

WMP Nos.14846 & 22082 of 1992

in

W.P.No.10288 of 1992

G.Chandrakasan ... Petitioner in WMP.No.14846 of 1992
and 1st respondent in WMP
No.22082 of 1992.
(Petitioner in WP No.10288 of
1992 on the file of the High
Court, Madras)

Versus

- (1) The Deputy Registrar of Co-operative Societies, Pondicherry.
- (2) V. Thulasidoss,
Co-operative Officer, Election Officer,
O/o The Registrar of Co-operative Societies, Pondicherry.
- (3) The Pondicherry Central Land Development Bank represented by its Managing Director, Pondicherry.
- (4) G. Dhandapani ... Respondents in WMP. No.14846 of 1992 and Petitioner and respondent No. 2 to 4 in WMP No.22082 of 1992.
(Respondent in -do-)

Pondicherry Co-operative Societies Act, 1972 – S.141 – Order of the Deputy Registrar setting aside the election challenged in writ petition – Against the order an appeal to Government lies – On the basis of alternative remedy interim stay vacated. W.M.P. was allowed.

WMP No.14846 of 1992:

Petition praying that in the circumstances stated therein and in the affidavit filed with W.P. No.10288 of 1992 on the file of the High Court, the High Court will be pleased to stay the operation of the order dated 21-7-92 (Exhibit 'A') of the 1st respondent, the Deputy Registrar of Co-operative Societies, Pondicherry made in A.R.C.No.1 of 1992 pending writ petition No.10288 of 1992 presented to this Court under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the concerned records relating to the impugned order dated 21-7-92 (Exhibit 'A') of the 1st respondent,

Deputy Registrar of Co-operative Societies, Pondicherry made in A.R.C. No.1 of 1992 and quash the same.

WMP No.22082 of 1992 :

Petition presented to this Court to vacate the interim stay granted in and by the order of this Court dated 28-7-92 and made in W.M.P. No.14846 of 1992 in W.P. No.10286 of 1992.

For Petitioner : Ms.R.Vaigai, Advocate

For Respondent : Mr.K.S.Ahmed, Government Pleader (Pondicherry) –R.1
Mr.P.Krishnamoorthy, Advocate – R.3

ORDER:

These petitions coming on for hearing upon perusing the petitions and the affidavit filed in support of W.P. No.10288/92 on the file of the High Court and the order of this Court dated 28-7-92 and made in W.M.P. No.14846 of 1992 and the counter affidavit filed therein and upon hearing the arguments of Ms.R.Vaigai, Advocate for the petitioner in W.M.P. No.14848 of 1992 and for the 1st respondent in W.M.P. No.22082 of 1992 of Mr.K.S.Ahmed, Government Pleader (Pondicherry) on behalf of the 1st respondent in W.M.P. No.14846 of 1992 and on behalf of the petitioner in W.M.P. No.22082 of 1992 and of Mr.P.Krishnamoorthy, Advocate for the 3rd respondent in W.M.P. No.14846 of 1992 and in W.M.P. No.22082 of 1992, and steps not having been taken to serve the respondent Nos. 2 and 4 in W.M.P. No.14846 of 1992 and in W.M.P. No.22082 of 1992, the Court made the following order:-

1. The writ petition challenges the order of the Deputy Registrar of Co-operative Societies holding that the election of the petitioner to the managing committee is liable to be set aside. The ground, on which the election was set aside, seems to be that the petitioner was in arrears and he suffered a disqualification. Before the Deputy Registrar, sufficient evidence was produced to establish the fact that the petitioner had been disqualified. The Deputy Registrar had directed fresh election to take place.
2. Against this order, there is an appeal to the Government, under Section 141 of the Pondicherry Co-operative Societies Act. But no such appeal has been filed. Both on merits and on the basis that there is an alternative remedy, I am not inclined to continue the interim stay ordered on 28-7-1992. Consequently, W.M.P.No.14846 of 1992 is dismissed.
3. The vacating stay petition in W.M.P. No.22082 of 1992 is allowed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27th November, 1992

Coram: THE HONOURABLE Mr. JUSTICE M. SRINIVASAN

Writ Petition No. 18142 of 1992

L. Ramalingam

.. Petitioner

Versus

1. The Union of India, rep. by the Chief Secretary to Government, Pondicherry.
2. The Registrar of Co-operative Societies, Pondicherry.
3. The Managing Director, The Pondicherry Co-operative Central Land Development Bank Ltd. No.P.106, Pondicherry.
4. The Election Officer, The Pondicherry Co-operative Central Land Development Bank Ltd. No.P.106, Pondicherry.

.. Respondents

The second respondent has already passed an order returning the application given by the petitioner on the ground that till the date of declaration of result of election no dispute regarding the election could be entertained. In view of the said order of the second respondent, it is not possible to grant mandamus, as prayed for by the petitioner.

(Para 1 & 2)

Writ petition is dismissed.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith, the High Court will be pleased to issue a writ of mandamus directing the second respondent to give suitable directions to the fourth respondent on the petition dated 12-11-1992 presented by the petitioner to provide for polling station one each for Mahe and Yanam for Pondicherry constituency election for the board of directors of the third respondent bank.

For Petitioner : Mr. T.P. Manoharan, Advocate

For Respondents : Mr. P. Krishnamoorthy, Government Pleader-cum-Public Prosecutor for Pondicherry.

ORDER

The writ petition coming on for hearing on this day in the presence of Mr. T.P. Manoharan, Advocate for the petitioner and of Mr. P. Krishnamoorthy, Government Pleader-cum-Public Prosecutor for

Pondicherry on behalf of the respondents, the Court made the following order:-

The writ petition is for issue of mandamus directing the second respondent to give suitable directions to the fourth respondent on the petition dated 12-11-1992 by the petitioner to provide for polling station one each for Mahe and Yanam for Pondicherry constituency in the election for the board of directors of the third respondent bank. The prayer has become infructuous, since it is brought to my notice by the counter affidavit filed by respondents 2 and 3 as well the file produced by the respondents which show that the second respondent/Registrar has already passed an order on 13-11-1992, returning the application given by the petitioner on the ground that till the date of declaration of result of election, no dispute regarding the election could be entertained. The second respondent has also pointed out that the petitioner could file a petition after the declaration of election, if he so desires.

2. In view of the said order of the second respondent/Registrar, it is not possible to grant mandamus as prayed for by the petitioner. If the petitioner is aggrieved by the said order his remedy is to challenge the same under Section 141 of the Pondicherry Co-operative Societies Act, 1972 by filing a revision petition by the Government. Hence this petition is dismissed as prayer has become infructuous. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13th July, 1994

Coram: THE HONOURABLE Mr. JUSTICE P.S. MISHRA

Writ Petition No.11395 of 1984

(1) T. Vedachalam
(2) M. Pandurangam ... Petitioners

Versus

(1) The Union of India, The Union territory of
Pondicherry, rep. by the Chief Secretary,
Govt. of Pondicherry, Pondicherry.
(2) The Lt. Governor of Pondicherry, Pondicherry.
(3) The Registrar of Co-operative Societies,
Pondicherry.
(4) N. Dhashinamoorthy,
162, Anna Salai, Pondicherry. ... Respondents

*Petitioners were not qualified to be members of the society –
Authorities examined and decided the dispute – Registrar was directed
to decide the issue afresh whether the petitioners are qualified to
continue as members at present – Petitioners to appear before the
Registrar and the Registrar to decide the issue in accordance with law
– Writ petition disposed.*

For Petitioner	:	Mr. G. Masilamani, Advocate
For Respondents 1 to 3	:	Mr. G.R. Swaminathan, Advocate for Mr. P. Krishnamoorthy, Government Pleader, Pondicherry.
For 4 th Respondent	:	Mrs. Ammu Balachandran, Advocate

ORDER:

1. Heard. The dispute in main as to the election/nomination of Directors of a co-operative society, in respect of which an adverse order has been passed, has exhausted its purpose by the lapse of time and during the pendency of the writ petition. It appears, however, that the issue of membership of the petitioners in the co-operative society, which issue the competent authorities examined and decided the dispute accordingly against the petitioners that they were not qualified to be members of the society, must still survive. It is not necessary, however, for this Court to go into any detail of this question and it is agreed that the third respondent herein shall examine

afresh whether the petitioners, who at one point of time were disqualified to be members of the society, are at present qualified and if they are qualified, could they not continue as members and thus enjoy the benefits which members of a co-operative society enjoy. Keeping this in view, it is hereby ordered as follows:

(1) Petitioners herein shall appear before the third respondent, the Registrar of the Co-operative Society either in person or through a representative within two weeks from to-day with all information as to their status, profession and business and represent to him how they claim to be qualified to be a member of the Housing society concerned.

(2) The third respondent is directed to hear the petitioners in accordance with law and decide by a speaking order within two months from the date of receipt of application from the petitioners the issue whether the petitioners are qualified to be members of the society concerned.

(3) In case, the Registrar of Co-operative Society / the third respondent herein decides against the petitioners, they shall be entitled to such remedies by way of appeal, etc. as are available under the Pondicherry Co-operative Societies Act, 1972.

(4) The instant petition is accordingly disposed of. There shall, however, be no order as to costs.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 21st July, 1994

PRESENT: THE HONOURABLE Mr. JUSTICE C. SHIVAPPA

Writ Petition No. 5292 of 1987

The Pondicherry State Village Co-operative
Agricultural Credit Societies' National Employees'
Union, 111, Vysial Street, Pondicherry, rep. by its
General Secretary S. Ramalingam ... Petitioner

Versus

The Registrar of Co-operative Societies, Pondicherry
and another ... Respondent

A Government Order was issued on 4-3-1986 that the method of recruitment to the said posts is by direct recruitment. The said Government Order is not at all challenged by the petitioner in this writ petition. The writ petition is not maintainable and is dismissed

For Petitioner ... Mr. R. Subramanian, Advocate
For Respondents ... Mr. P. Krishnamoorthy, Government
Pleader for Pondicherry.

ORDER

The petitioner is seeking for a writ of mandamus directing the respondents to forbear from making appointment to the post of Junior Supervisors in Pondicherry State Co-operative Bank to the extent of 50% of the existing vacancies now existing otherwise than from the employees of the Pondicherry State Village Co-operative Agricultural Credit Society. A Government Order was issued on 4-3-1986 that the method of recruitment to the said posts is by direct recruitment. The said Government Order is not at all challenged by the petitioner in this writ petition. Even though the writ petition was filed on 18-5-1987, long after the issuance of the Government Order, the petitioner has not challenged the validity of the said Government Order. As such the writ petition is not maintainable and is dismissed. There will be no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 2nd September, 1994

CORAM: THE HONOURABLE MR. JUSTICE GULAB O. GUPTA

Writ Petition No.11584 of 1986

Pondicherry Central Co-operative Processing
Supply & Marketing Society Employees' Union,
rep. by its Secretary, Pondicherry ... Petitioner.

Versus

- (1) Registrar of Co-operative Societies,
Government of Pondicherry,
Co-operative Department, Pondicherry
- (2) The Managing Director,
Pondicherry Central Co-operative Processing Supply
& Marketing Society Ltd., Pondicherry. ... Respondents

(A) *The authority of the Registrar by issuing a direction to prescribe the conditions of employment of employees of various co-operative societies is challenged. The second respondent does not claim that the directions of the first respondent over rides the provisions of the Industrial Disputes Act.*

(B) *Held, there is no necessity of setting aside the directions of the first respondent Registrar which according to this Court are prima facie to the benefit of the employees themselves. These directions however would not prevent the petitioner or the employees from raising an industrial dispute seeking better pay scale and service conditions than prescribed by the Registrar and get the same adjudicated in accordance with the provisions of the Industrial Disputes Act.* (Para 4)

Writ petition disposed of.

Case law referred:

Co-operative Central Bank Ltd., and others Vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others (1969-II L.L.J 698 : AIR 1970 SC 245 : 1970 (1) SCR 205).

For petitioner : Ms. R. Vaigai, Advocate
For respondent 1 : Mr. P. Krishnamurthy,
Government Pleader for Pondicherry.
For respondent 2 : Mr. M. Loganathan, Advocate.

ORDER

The petitioner is a Union of employees of a co-operative society in the State of Pondicherry and has been agitating for better pay scales etc.

2. It appears that the respondent No.1-Registrar by issuing a direction on 4-8-1986 prescribed certain pay scales etc. which did not satisfy the petitioner and its members. The petitioner wanted to raise an industrial dispute claiming better pay scales and benefits, and wanted the said dispute to be referred to adjudication of the Tribunal under the provisions of the Industrial Disputes Act. It appears that during the pendency of this writ petition they were informed by the respondent No.1-Registrar as also the conciliator that because of the order of the respondent Registrar fixing the pay scales etc. no dispute can be raised, referred or adjudicated under the provisions of the Industrial Disputes Act. It was because of this that the present writ petition was filed challenging the authority of the first respondent-Registrar of Co-operative Societies to prescribe the conditions of employment of the employees of various co-operative societies.

3. From the counter filed by respondent No.2, it is clear that this respondent does not claim that the direction of the first respondent – Registrar overrides the provisions of the Industrial Disputes Act. This respondent has on the contrary specifically submitted that,

“----- the directions is not to override the provisions of the Industrial Disputes Act and the employees can always have the recourse to negotiations.”

Negotiations are provided in the said Act, and on failure to reach an agreement through negotiations the employees have been granted right to approach the conciliator and seek a reference of the dispute to the Tribunal in accordance with the provisions thereof.

4. There is also the decision of the Supreme Court in ***Co-operative Central Bank Ltd., and others Vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others (1969-II L.L.J.698 : AIR 1970 SC 245 : 1970 (1) SCR 205)*** to the effect that the order passed by the Registrar of Co-operative Societies under the Act does not take away the jurisdiction of the authorities to deal an industrial dispute under the provisions of the Industrial Disputes Act. Apparently therefore the stand taken by the second respondent is in accordance with this decision of the Supreme Court and should be sufficient to remove the doubt if any in the mind of the petitioner Union. There is therefore no necessity of setting aside the directions of the first respondent – Registrar which according to this Court are prima-facie to the benefit of the employees themselves. These directions however would not prevent the petitioner or the employees from raising an industrial dispute seeking better pay scale and service conditions than prescribed by the Registrar, and get the same adjudicated in accordance with the provisions of the Industrial Disputes Act. In spite of it, it is clarified that if and when an Industrial Dispute is raised by the petitioner in accordance with law the authorities under the Industrial

Disputes Act will process the same in terms of the provisions of the said Act and not give any cause of grievance to the petitioner.

5. In view of the aforesaid the petition stands disposed of finally. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23rd December, 1994

CORAM: THE HONOURABLE Mr. JUSTICE D. RAJU

Civil Revision Petition No. 1640 of 1994

&

Writ Petition No. 17221 of 1994

CRP No. 1640/1994:

Nettapakkam Milk Producers Co-operative Society,
Pondicherry, rep. by its President B. Ramachandran ... Petitioner

Versus

- (1) Kothandapani
- (2) Pondicherry Co-operative Milk Producers Union
Limited rep. by its Managing Director
N. Chandrasekaran
- (3) Special Officer, Pondicherry Co-operative Milk
Producers Union Limited, Pondicherry ... Respondents

WP No. 17221/1994:

Nettapakkam Milk Producers Co-operative Society,
Pondicherry, rep. by its President B. Ramachandran ... Petitioner

Versus

- (1) The Registrar of Co-operative Societies,
V.V.P. Nagar, Pondicherry
- (2) Pondicherry Co-operative Milk Producers
Union Limited, rep, by its Managing Director.
- (3) Administrator, Pondicherry Co-operative
Milk Producers Union limited, Pondicherry. ... Respondents

(A) *The Pondicherry Co-operative Societies Rules, 1973 – Rule 32 – Bye law No.20 of the bye laws of the Pondicherry Co-operative Milk Producers' Union Ltd. – Election to the committee – Interim injunction by the First Additional District Munsif, Pondicherry restraining the respondents from holding election.*

(B) *Pondicherry Co-operative Societies Act, 1972 – S.144 – CRP filed challenging the order of the Court below – In view of S.144 there is bar of jurisdiction to entertain suit of the nature – Writ*

petition was filed to direct the respondents to hold election for the Milk Union, by commencing the election process from the stage where it was stopped.

- (C) *On a careful consideration of the submissions on either side, I am of the view that it is not difficult to come to the conclusion that the trial Court has committed a grave error and misdirected itself in entertaining the suit and granting ex-parte order of injunction and also bringing a stalemate to the election process. When the election process has commenced, it is not open to the civil courts to interfere and stay the election process even assuming that it has got power to do so. It is equally well settled that the powers under Article 227 may be exercised in cases where there has been lack of jurisdiction, erroneous assumption of jurisdiction or excess of jurisdiction as also flagrant violation of law apparent on the face of record.* (Para 8)
- (D) *The action of the first respondent in the revision petition before this Court who is the plaintiff before the trial court in moving the said court is nothing but a sheer abuse of the process of Court and Court below has committed a flagrant violation of the Rule of Law by becoming a party to said abuse in not only entertaining the suit but also in granting an order of injunction.* (Para 9)
- (E) *Held, consequently I am of the view that interests of justice require that this Court shall declare the position of law and dismiss the suit itself. The respondents/authorities shall be at liberty to proceed with the further stages of process of election as expeditiously as possible. Writ petition shall stand ordered in the above terms.*

Cases referred to:

- (i) S.T. Muthusamy Vs. K. Natarajan and others, AIR 1988 SC 616;
- (ii) V.K. Kumaraswamy vs. Joint Registrar of Co-operative Societies, Coimbatore, AIR 1992 Madras 232: 1992 WLR 393 : 1992-1-LW -566;
- (iii) Nanhoo Mal vs. Hira Mal, AIR 1975 SC 2140 at 2143.
- (iv) Mohd. Yunus vs. Mohd. Mustaqim and others, AIR 1984 SC 38
- (v) V. Savarimuthu vs. Special Director of Enforcement and another, AIR 1987 Madras 11.

For Petitioner in both cases	: Mr.G.Rajan, Advocate
For Respondents in both cases	: Mr. P.Krishnamoorthy, Government Pleader, Pondicherry.

COMMON ORDER

The above writ petition and revision petition filed under Article 227 Constitution of India have come up before me, pursuant to the orders of My Lord the Hon'ble the Chief Justice to be dealt with together since they pertain to one and the same subject matter though with reference to different stage of the proceedings.

2. The reference to the array of parties, in this order will be as given in the writ petition.

3. The Pondicherry Co-operative Milk Producers Union is classified as a central society. As per the constitution of the same and the provisions of Pondicherry Co-operative Societies Act, herein after referred to as 'the Act', the primary co-operative milk producers' societies in Pondicherry region are the members of the said Union. As per by-law No.14 of the byelaws of the Milk Union, the general body shall consist of the Presidents/Administrators/Special Officers of the primary co-operative milk producers societies. As per Rule-19 the management of the society shall vest with a board consisting of 12 elected delegates who are the Presidents of the member-societies, Registrar of Co-operative Societies or his nominee, Director of Animal Husbandry or his nominee and the Managing Director of the Milk Union. The Chairman has to be elected from among the elected delegates. In view of a stalemate created in carrying the business management due to friction among the members of the then existing committee of management, the first respondent appears to have superseded the management of committee by an order dated 1-7-1993 and also appointed a Special Officer for an initial period of six months, under Section 83 of the Act. The tenure of the Special Officer was said to have been extended up to 30-6-1994.

4. The first respondent in the said circumstances by his letter dated 24-3-1994, directed the Milk Union to take steps to conduct the election for the constitution of the managing committee, in accordance with bye-law No.20 read with Rule 32 of the Pondicherry Co-operative Societies Rules, 1973, hereinafter referred to as 'the Rules', so that the managing committee constituted can enter into office with effect from 1-6-1994. Accordingly, the proposed election was said to have commenced on 29-3-1994 and the election notification was published in the newspaper 'Thina Thanthi' and the members were informed individually about the election. On 5-4-1994, the preliminary list containing 72 members was said to have been published inviting objections. On 8-4-1994, the final list was also said to have been published.

5. While the election process was on, as noticed supra, one Kothandapani, former president of Pondicherry Co-operative Milk Producers Association filed O.S. No.363 of 1994 on the file of the First Additional District Munsif at Pondicherry and obtained in I.A.1436 of 1994, an order of ad-interim injunction on 8-4-1994, restraining the respondents/authorities from holding elections on the basis of the election notification dated 29-3-1994 and from acting in any manner in furtherance to the said notification, pending disposal of the suit. It is

seen from a copy of the plaint made available in the typed set of papers filed in this Court that the suit itself is for a declaration that the election notification dated 29-3-1994 issued by the second defendant, viz., the Special Officer who is the same as the third respondent in the writ petition herein, to be illegal, void and as such non est and inoperative and for a permanent injunction restraining the defendants from conducting any election on the basis of the notification under challenge in the suit.

6. Aggrieved against the said order granting ex-parte interim stay, the petitioner in the revision which is also a primary milk producers co-operative society and a member entitled to participate in the election through its president, filed C.R.P.1640 of 1994, under Article 227 of Constitution of India. The challenge to the order of the Court below is made on the ground that the court below has absolutely no jurisdiction whatsoever to entertain the suit of the nature in question, in view of Section 144 of the Act and the bar of jurisdiction of civil courts contained therein. That apart, it is also contended that it is a well-accepted principle of law that once the election process has commenced, it shall not be interfered with by courts till the declaration of results. This court while admitting the revision on 15-6-1994, has granted interim stay. Though all the respondents in the civil Revision petition have been served and the other respondents in the revision have entered appearance through their counsel, the plaintiff/first respondent has not chosen to take steps to contest the proceedings and he has allowed the matter to go ex-parte. The first respondent has been called absent in Court today.

7. In the meantime, in view of the stalemate created in the further process of election and the inaction on the part of the respondents/statutory authorities in pursuing further action even after the interim orders of stay granted by this court after the trial court granted ad-interim injunction, the petitioner in the revision was constrained to file W.P. No.17221 of 1994 praying for a writ of mandamus or a direction in the nature of mandamus directing the respondents to conduct the election for the Pondicherry Co-operative Milk Producers Union, pursuant to the notification dated 29-3-1994, by commencing the election process from the stage where it was stopped, pursuant to the orders of the trial court, in accordance with the provisions of the Act and the Rules governing the conduct of the election. The second respondent in the writ petition has filed a detailed counter-affidavit explaining the position. It is stated, apart from explaining the historical background of the case that action was deferred further in proceeding with the election due to the interim orders already granted by the trial court, the second respondent also stated that since this Court, in C.M.P. No. 8067 of 1994 was pleased to grant only stay of all further proceedings in O.S. No.363 of 1994 on the file of the First Additional District Munsif, Pondicherry, a reasonable doubt has been entertained as to whether it would constitute also suspension of the order of injunction granted by the trial court and if this court directs by passing appropriate orders, the respondents are willing and prepared to proceed the election from the stage of receipt of nomination. It is in the above circumstances to give a quietus to the entire

matter, both the revision and the writ petition were posted together for the consideration of this Court jointly.

8. Heard Mr. G. Rajan, learned counsel for the petitioner in the revision and the writ petition. The first respondent in the revision has been called absent and he has not taken any steps to enter appearance through the counsel to defend the proceedings in spite of service effected long before. The other respondents have entered appearance through Mr. P. Krishnamoorthy, learned Government Pleader (Pondicherry) and the second respondent in the writ petition has also filed a detailed counter-affidavit as referred to supra. Learned Counsel appearing on either side reiterated their respective stand. On a careful consideration of the submissions on either side, I am of the view that it is not difficult to come to the conclusion that the trial court has committed a grave error and misdirected itself in entertaining the suit and granting ex-parte order of injunction and also bringing a stalemate to the election process. It is by now well settled by more than one decision of the Supreme Court as also by this Court that when the election process has commenced, it is not open to the civil courts to intervene and stay the election process even assuming that it has got power to do so, **vide S.T. Muthusamy Vs. K. Natarajan and others, AIR 1988 SC 616; V.K. Kumaraswamy vs. Joint Registrar of Co-operative Societies, Coimbatore AIR 1992 Madras 232: 1992 WLR 393 : 1992-1-LW - 566; and Nanhoo Mal vs. Hira Mal, AIR 1975 SC 2140 at 2143**. If that be the position about the principles to be applied and adopted, it would be a fortiori a case against the grant of interim orders in a case like the one wherein the jurisdiction of the civil court is completely ousted. The provisions contained in the Section 144 of the Act oust the jurisdiction of the civil court in an unmistakable term and a suit could not have been entertained at all and the very entertainment of the suit, by the trial court is without jurisdiction. The revision has been filed invoking the provision of Article 227 of the Constitution of India. It is equally well-settled that the powers under Article 227 may be exercised in cases where there has been lack of jurisdiction, erroneous assumption of jurisdiction or excess of jurisdiction or refusal to exercise jurisdiction as also flagrant violation of law apparent on the face of the record (vide **Mohd. Yunus vs. Mohd. Mustaqim and others, AIR 1984 SC 38 and V. Savarimuthu vs. Special Director of Enforcement and another, AIR 1987 Madras 11**).

9. As noticed supra, the learned First Additional District Munsif, Pondicherry has absolutely no jurisdiction vested in it to entertain the suit, O.S. No.363 of 1994. The action of the first respondent in the revision petition before this court who is the plaintiff before the trial court in moving the said court is nothing but a sheer abuse of the process of Court and the Court below has committed a flagrant violation of the Rule of Law by becoming a party to said abuse in not only entertaining the suit, but also in granting an order of injunction. In view of the above, I am of the view that not only the order passed in I.A.1436 of 1994 on 8-4-1994 required to be set aside, but if the frivolous suit which could not have been filed and entertained before the Court below is allowed to be on the file, it is likely to be the root cause for further mischief by

filing any further application also behind the back of the competent authorities to stall the process of election at a crucial stage. Consequently, I am of the view that interests of Justice require that this court shall declare the position of law and dismiss the suit itself. Consequently O.S.363 of 1994 on the file of the First Additional District Munsif, Pondicherry shall stand hereby dismissed and the order passed in I.A.1436 of 1994 shall stand set aside. The first Additional District Munsif, Pondicherry shall by calling the suit on the next hearing date shall also record the factum of dismissal of the suit by this Court and close the proceedings once and for all.

10. In the light of the above, there is no further impediment for the conduct of the election pertaining to the Milk Union. The learned Government Pleader, Pondicherry has also while reiterating the stand taken in the counter-affidavit filed in the writ petition has stated that if this court directs, the respondents/authorities are always ready to pursue the further course of the election, in accordance with law. Since the impediment in the way of further process of the election has been cleared by the dismissal of the suit and the setting aside of the order of injunction granted by the trial court, the respondents/authorities shall be at liberty to proceed with the further stages of the process of election as expeditiously as possible and the writ petition shall stand ordered in the above terms. No costs.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 13th January, 1995

PRESENT: THE HONOURABLE Mr. JUSTICE V. KANAKARAJ

**Writ Petition Nos. 599 and 600 of 1995
and
WMP Nos. 900 & 901 of 1995**

- | | | | |
|-----|---|-----|---|
| (1) | Mangalam Co-operative Milk Producers
Society, rep. by its President
Mr. Alagappan (Via) Villianur | ... | Petitioner in WP
No.599/1995 and
Petitioner in WMP No.
900/1995. |
| (2) | Thirukkanuur Co-operative Milk
Producers Society rep. by its President
Mr. Selvarasu, Pondicherry | ... | Petitioner in WMP
No.900/1995 and Petitioner
in WMP No.901 of 1995. |

Versus

- | | | | |
|-----|--|-----|--------------------------------------|
| (1) | The Pondicherry Co-operative Milk Producers
Union, by its Managing Director, Pondicherry. | | |
| (2) | The Election Officer, (Deputy Registrar, Co-operative
Department, Pondicherry) | | |
| (3) | The Registrar of Co-operative Societies
V.V.P. Nagar, Pondicherry. | | |
| (4) | The Union of India, rep. by its Chief Secretary,
Union Territory of Pondicherry | ... | Respondents in all
the petitions. |

(A) Pondicherry Co-operative Societies Rules, 1973 – Rule 32 – Election notice was challenged on the ground that several requirements of Rule 32 have not been complied with.

(B) Held, there is a separate machinery to question the validity of an election after the conduct of election. It would be totally improper at this stage, when an election is announced, to stop the election on alleged technical mistakes. Writ petition fails and dismissed.

Cases referred:

- (i) *S.T. Muthusamy vs. K. Natarajan and others, (AIR 1988 SC 616);*

- (ii) *V.K. Kumaresan Vs. Joint Registrar of Co-operative Societies, Coimbatore (AIR 1992 Madras 232 : 1992 WLR 393 : 1992 – I – LW 566).*

WP Nos. 599 and 600 of 1995:

Petitions, under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue & writs of Certiorari calling for the records of the 1st respondent in ref. PKPVO/Admn/A/118/94/95 dated 6-1-1995 and quash the same.

WMP Nos. 900 and 901 of 1995:

Petitions praying that in the circumstances stated there in and in the respective affidavits filed with WP Nos.599 and 600 of 1995 on the file of the High Court. The High Court will be pleased to grant and interim injunction restraining the respondents 1 to 3 from holding election on 20-1-1995 in pursuance of the impugned notice of election dated 6-1-1995 in ref. No.PKPVO/Admn/A/118/95/95 dated 6-1-1995.

For Petitioner : Mr. T.R. Rajagopalan, Senior Counsel,
for Mr. T.R. Rajaraman and Ms. Chithra
Sampath, Advocates

For Respondent No.4: Mr. P. Krishnamoorthy, Government
Pleader for Pondicherry.

ORDER

1. These writ petitions coming on for orders as to admission on 12-1-95 and on this day, upon perusing the petition and the respective affidavits filed in support thereof, and upon hearing the arguments of Mr.T.R.Rajagopalan, Senior Counsel for M/s T.R.Rajaraman and Chitra Sampath, Advocates for the petitioner in each of the petitions and of Mr.P.Krishnamoorthy, Government Pleader (P) on behalf of the 4th Respondent in all the petitions and having been posted this day for orders, the Court made the following order: -

2. The Pondicherry Co-operative Milk Producers Union, first respondent, is a society registered under the Pondicherry Co-operative Societies Act, 1972 (hereinafter called "the Act"). All the primary co-operative milk producers society in Pondicherry are the primary members of the first respondent. The general body of the first respondent comprises of the Presidents/Administrators/Special Officers of such primary co-operative milk producers societies. The board of management of the first respondent is to comprise of 12 elected delegates from among the members of the first respondent.

3. The board was earlier superseded and was under the administration of a Special Officer. When the first respondent proposed to conduct an election on 8-4-1994, the same was prevented by the filing of a suit, O.S.No.364 of 1994 and by an interim order in I.A.No.1426 of 1994. A revision petition was filed in this High Court against the interim order. Consequently, a writ petition was filed for a direction to conduct the election. Both the revision petition and the writ petition were taken up together by Raju.J on 23-12-1994 and the learned Judge held Section 144 of the Act was a bar against the institution of a civil suit and consequently directed dismissal of the suit and gave further directions for the conduct of the election. It is in accordance with the above directions that the notice impugned in these writ petitions namely notice dated 6-1-1995 was issued announcing the schedule for the election.

4. Two members of the first respondent Union have filed these writ petitions. The schedule of the election gives all the relevant particulars and directing an election on 20-1-1995 at the specified place between 10-00-a.m. and 5-00 p.m. In the preamble to the notice, it is categorically stated that the voter's list published earlier had to undergo certain changes and in compliance with the Rule the same had been done before 30 days of the date of election. The term of office of the members to be elected is also indicated as up to 31-12-1997, and the total number of members to be elected is shown as 12. The petitioners herein who are the members of the first respondent are challenging this notice on the ground that several requirements of Rule 32 of the Pondicherry Co-operative Societies Rules, 1973, have not been complied with. I do not propose to go into the correctness of the claim of the petitioners. It is sufficient to notice that the all questions relate to lack of 21 days clear notice, vagueness about the number of vacancies to be filled up, the lack of seven days between the date of filling nomination papers and that date of election and so on and so forth. The reason for my not considering these allegations on merits is that there is a separate machinery to question the validity of an election after the conduct of the election. It would be totally improper at this stage, when an election is announced, to stop the election on alleged technical mistakes. Further, unless these allegations really affect the election, then there is no question of setting aside an election. If that is so, afortiori, the Court cannot interfere at the stage of the election notice. This proposition is well settled and does not require any authority. One may, however, refer to **S.T. Muthusamy, vs. K. Natarajan and others (AIR 1988 SC 616)** and **V.K.Kumaresan vs. Joint Registrar of Co-operative Societies, Coimbatore (AIR 1992 Madras 232 : 1992 WLR 393 : 1992 – I – LW 566)** with advantage. In this view of the matter, these two writ petitions fail and they are dismissed. Consequently, WMP Nos. 900 and 901 of 1995 are also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 3rd August 1995

Coram: THE HONOURABLE Mr. JUSTICE S.M. ALI MOHAMED

Writ Petition No. 3952 of 1995

R. Kodandapani .. Petitioner

Versus

1. The Registrar of Co-operative Societies, Pondicherry.
2. The Managing Director,
Pondicherry Co-operative Milk Producers' Union, Pondicherry .. Respondents

(A) The petitioner filed this writ petition to forbear the first respondent from conducting a second enquiry into the allegations of corruption in the sale of milk products in the second respondent union.

(B) The Pondicherry Co-operative Societies Act, 1972 – S.75 – The first enquiry was only a preliminary fact finding enquiry and not an enquiry under S.75. After the enquiry the first respondent will take action under S.75 (4).

(C) It is clearly stated by the first respondent that it is only for the purpose of preliminary finding Dr. Jaccob Chacko was appointed and the present enquiry is an enquiry under S.75.

(D) The petitioner has stated that he is ex-Chairman of the 2nd respondent union. As an ex-Chairman he should have co-operated with the enquiry, in order to bring out the persons really responsible for the irregularities. Instead, the petitioner is eager and keen to stop all further proceedings.
(Para 3)

The writ petition is dismissed with cost.

For Petitioner : Mr. V. Bharathidasan, Advocate
For Respondent : Mr. P. Govindarajan, Government
Pleader, Pondicherry – for R.1
Mr. G. Rajan, Advocate – for R.2

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a writ of mandamus forbearing the first respondent herein from conducting a second enquiry into the allegation of corruption in the sale of milk products in the second respondent Union and

further direct the first respondent to take action under Dr. Jaccob Chacko's report.

ORDER

This writ petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court dated 17-3-1995 and made herein and the counter affidavit filed herein and the records relating to the order in prayer aforesaid comprised in the return of respondents to the writ made by the High Court, and upon hearing the arguments of Mr. V. Bharathidasan, Advocate for petitioner and of Mr. P. Govindarajan, Government Pleader for the first respondent and Mr. G. Rajan, Advocate for the 2nd respondent, the Court made the following order;-

ORDER

By consent of both the parties, the main writ petition itself is taken up for final hearing.

2. The prayer of the petitioner is to issue a writ of mandamus forbearing the first respondent herein from conducting a second enquiry into the allegation of corruption in the sale of milk products in the second respondent Union for further direct the first respondent to take action under Dr. Jaccob Chacko's report.

3. The petitioner in his affidavit filed in support of the writ petition has stated that he is an ex-Chairman of the Pondicherry Co-operative Milk Producers' Union, the second respondent herein. It is further stated that the Pondicherry Co-operative Milk Producers' Union, the second respondent was formed with the primary object of promoting dairy development in the State of Pondicherry. He has further stated that a large quantity of butter and ghee were sold to third parties by the second respondent, without calling any tender and by private negotiations. It is also stated that butter and ghee were sold at a very low price, and the public demanded an enquiry against the irregularities of the second respondent. He has further stated that an enquiry officer, Dr. Jaccob Chacko was appointed to conduct a detailed enquiry of the aforesaid allegations. The grievance of the petitioner is that instead of taking action on the basis of the report submitted by Dr. Jaccob Chacko, the first respondent has not initiated proceedings under Section 75 of the Pondicherry Co-operative Societies Act, 1972, herein referred to as 'the Act'. The prayer of the petitioner is to prevent the first respondent from conducting a second enquiry into the allegations of corruption. A counter affidavit has been filed on behalf of the first respondent wherein it is stated that the said Dr. Jaccob Chacko was appointed only as a preliminary fact-finding enquiry and not an enquiry under Section 75 of the Act. The counter-affidavit specifically denies the appointment of Dr. Jaccob Chacko under Section 75 of the Act. It is further stated in the counter-affidavit that the present enquiry initiated in an enquiry under Section 75 of the Act and after the present enquiry, the first respondent will take action under Section 75 (4) of the Act and no such action has been taken earlier as it was only a fact

finding enquiry. The second respondent has also filed a counter-affidavit reiterating the same stand. Mr. V. Bharathidasan, the learned counsel for the petitioner vehemently contended that Dr. Jaccob Chacko enquiry is the enquiry under Section 75 of the Act and the first respondent ought to have taken action on the basis of the said Dr. Jaccob Chacko enquiry and it is not open to the first respondent to initiate proceedings once again under Section 75 of the Act. On the other hand, the learned counsel for the first respondent submits that the first enquiry of Dr. Jaccob Chacko was not an enquiry under Section 75 of the Act, but only a fact-finding enquiry. He was only appointed to give a fact-finding report. The petitioner has exercised the power in the present proceeding under Section 75 of the Act and in view of the above; the contention of the petitioner is unsustainable. I have considered the contentions of learned counsel for the petitioner and the respondents. Upon the facts and circumstances, I am unable to accept the contention of the learned counsel for the petitioner that Dr. Jaccob Chacko's enquiry is the enquiry initiated under Section 75 of the Act. It is clearly stated by the first respondent that is only for the purpose of preliminary finding Dr. Jaccob Chacko was appointed and the present enquiry is an enquiry under Section 75 of the Act. There is another point that has to be considered is that the petitioner has stated that he is an ex-Chairman of the Pondicherry Co-operative Milk Producers' Union in his affidavit. He has not stated the period during which he was the Chairman of the Pondicherry Co-operative Milk Producers' Union. It is not known whether the petitioner was the Chairman during the period in which the alleged irregularities have taken place which is the subject matter of the present case under Section 75 of the Act. It is strange that the petitioner calling himself as ex-Chairman of the second respondent – Pondicherry Co-operative Milk Producers' Union Limited wants to prevent the present enquiry under Section 75 of the Act by a writ of mandamus. As an ex-Chairman of the Pondicherry Co-operative Milk Producers' Union Limited, the petitioner should have co-operated with the enquiry, in order to bring out the persons really responsible for the irregularities. Instead, the petitioner is eager and keen to stop all proceedings under Section 75 of the Act. In view of the above, there are no merits in the case. The writ petition is dismissed with costs of Rs.1,000, to be paid to the second respondent, within four weeks from the date of receipt of this order.

Note: The Order of the learned single Judge was confirmed vide Page No. 88.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(APPELLATE JURISDICTION)**

Date : 28th September 1995

**Coram: THE HONOURABLE Mr. K.A. SWAMI, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE D. RAJU**

Writ Appeal No. 1092 of 1995

R. Kodandapani .. Appellant/Petitioner

Versus

1. The Registrar of Co-operative
Societies, Pondicherry.
2. The Managing Director,
Pondicherry Co-operative Milk
Producers' Union, Pondicherry .. Respondents

The learned single Judge has held that the report given by Dr. Jaccob Chacko was not the one under S. 75 of the Pondicherry Co-operative Societies Act, 1972. The report itself shows that it was only on the instructions of the Registrar of Co-operative Societies Dr. Jaccob Chacko made the report. We see no reason to interfere with the matter.

The writ appeal is dismissed.

For Appellant : Mr. M.M. Sundaresh for M/s. V.K. Muthusami,
V. Bharathidasan and V. Kathiravan,
Advocates

Appeal under clause 15 of the Letters Patent against the Order of The Honourable Mr. Justice S.M. Ali Mohamed dated 3-8-1995 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.3952 of 1995 presented under Article 226 of the Constitution of India to issue a writ of mandamus forbearing into the allegations of corruption in the sale of milk products in the 2nd respondent Union further direct the 1st respondent to take action under Dr. Jacob Chacko's report and pass orders.

ORDER

This Writ Appeal coming on for orders as to admission on this day upon perusing the grounds of appeal, the order of the Honourable Mr. Justice S.M. Ali Mohamed dated 3-8-1995 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.3952 of 1995 and upon hearing the arguments of Mr. M.M. Sundaresh for M/s. V.K.

Muthusami, V. Bharathidasan and V. Kathiravan, Advocates for the appellant, the Court made the following order:-

(Judgment of the Court was delivered by the Hon'ble the Chief Justice)

The learned single Judge had examined the matter closely and held that the report given by Dr. Jacob Chacko was not the one under Section 75 of the Pondicherry Co-operative Societies Act, as there was no pending action under Section 75 of the said Act. The report itself shows that it was only on the instructions of the Registrar, Dr. Jacob Chacko made the report. Therefore, we see no reason to interfere with the matter. The appeal is dismissed. The appellant is given four (4) weeks' time to pay the costs awarded by the learned Single Judge.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25th April, 1996

Coram: THE HONOURABLE Mr. JUSTICE V. KANAGARAJ

Writ Petition No. 9937 of 1995

Manakuppam Co-operative Milk Producers
Society Ltd. No.P.388, Pondicherry 605 106,
Rep. by its President V. Mannivannan .. Petitioner

Versus

The Registrar of Co-operative Societies,
Pondicherry. .. Respondents

Pondicherry Co-operative Societies Act, 1972, S. 12 – A perusal of notice shows that valid reasons are given why they proposed to delete the village of Sankaranpettai from the purview of the petitioner's society. Without giving explanation to the show cause notice the present writ petition has been filed. It is open to the petitioner to file an explanation to the show cause notice within ten days from today. If an explanation is filed, the Registrar of Co-operative Societies shall consider the same and pass orders after giving adequate reasons for amending the bye laws or refraining from such amendment.
(Para 2)

Writ petition is disposed with directions.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a writ of declaration that the proceedings of the Registrar made in No.5/7/1/31/RCS/D/95/56 dated 17-5-1995 and 5/7/1/31/RCS/D/95/120 dated 6-7-1995 as null and void and illegal.

For Petitioner : Mr. G. Rajan, Advocate
For Respondent : Mr. P. Krishnamoorthy, Government Pleader
for Pondicherry.

ORDER

This writ petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court dated 2-8-1995 and made therein the records relating to the order in the aforesaid prayer comprised in the return of the respondents to the writ made by the High Court, and upon hearing the arguments of Mr. G. Rajan, Advocate for the petitioner and Mr. P. Krishnamoorthy, Government Pleader for Pondicherry on behalf of the respondent the Court made the following order:

By consent of both the parties, the main writ petition itself is taken up for final disposal.

2. The writ petition is directed against a notice dated 6-7-1995 calling upon the petitioner-society to show-cause why the bye laws should not be amended deleting Sankaranpettai village from its jurisdiction. A perusal of notice shows that valid reasons are given why they proposed to delete the village of Sankaranpettai from the purview of the petitioner's society. Without giving explanation to the show-cause notice the present writ petition has been filed. Learned counsel for the petitioner says that there are certain political overtones to the show-cause notice and after the elections, the respondents themselves may not proceed with the notice. This is not a matter to be taken note of by me and it is open to the petitioner to file an explanation to the show-cause notice within ten days from today. If an explanation is filed, the Registrar of Co-operative Societies shall consider the same on merits and pass orders after giving adequate reasons for amending the bye laws or refraining from such an amendment. The writ petition is ordered in the above terms. There will, however, be no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19th September, 1996

Coram: THE HONOURABLE Mr. JUSTICE T. JAYARAMA CHOUTA

**Writ Petition No. 10872 of 1996 &
W.M.P. No.14455 of 1996**

1. Indian Coffee House Workers Union, Reg. No.
342/RTU/80 (CITU), rep. by its Secretary
K. Ramachandran, 238, Kamaraj Salai,
Pondicherry 605 011.
2. P. Arumugam .. Petitioners

Versus

1. The Registrar of Co-operative Societies,
Pondicherry.
2. Indian Coffee Workers Co-operative Society,
rep. by its Administrator, 125, Jawaharlal
Nehru Street, Pondichery 605 001 .. Respondents

The first respondent has stated that he would take earnest steps for the conduct of polling at the earliest. In view of the said stand taken by the first respondent, virtually the relief prayed is considered by him. Hence I direct the first respondent to complete the election process within a period of two weeks. (Para 2 & 3)

Writ petition is disposed of with direction.

For Petitioner ..	Mr. N.G.R. Prasad, for M/s. Row & Reddy, Advocates
For Respondents ..	Mr. P. Krishnamoorthy, Government Pleader for Pondicherry.

ORDER

The prayer in this writ petition is to issue a writ, order or direction in particular a writ in the nature of mandamus directing the first respondent to complete the election process to the board of directors of the second respondent society which began on 22-5-1996 within fifteen days from the date of order of this Court and to hand over charge of the society to the newly elected board of directors. In support of this writ petition, one K. Ramachandran calling himself as the Secretary of the first petitioner union has sworn to an affidavit in which he has mentioned in detail all the facts which lead him to file this writ petition.

2. I do not deem it necessary to narrate the facts in detail, since this writ petition could be disposed of on a short ground. In the counter affidavit filed by the first respondent, in para 9 it is stated as follows:

“I respectfully state that the question of conducting polling is receiving my immediate attention and I shall take earnest steps for the conduct of the polling at the earliest, and the second respondent would be directed to hold the polling in accordance with law.”

3. In view of the said stand taken by the first respondent, virtually the relief prayed for by the petitioner is considered by him. Hence, I direct the first respondent to complete the election process of the board of directors of the second respondent society which had commenced on 22-5-1996 within a period of two weeks from the date of receipt of the copy of this order. Accordingly, this writ petition is disposed of. Consequently WMP No.14455/96 is dismissed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 7th October, 1996

Coram: THE HONOURABLE Mr. JUSTICE T. JAYARAMA CHOUTA

**Writ Petition No. 14427 of 1996 &
W.M.P. Nos. 19739 & 19781 of 1996**

R. Venkatakrishnan .. Petitioner in all the petitions

Versus

1. The Deputy Registrar of Co-operative Societies, Pondicherry.
2. The Joint Registrar of Co-operative Societies, Pondicherry.
3. P.S. Kalivaradhan .. Respondents in all the petitions.

The Pondicherry Co-operative Societies Act, 1972, Section 84 – The order passed by the first respondent under S. 84(6) dated 30-9-1996 is challenged in this writ petition. It is an ex-parte order. The petitioner can file an application to set aside the ex-parte order, since he has not moved the authorities to set aside the ex-parte order, I am not going to entertain this writ petition.

Writ petition is rejected.

W.P. No.14427 of 1996

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith, the High Court will be pleased to issue a writ of certiorari calling for the records of the impugned proceedings of the first respondent made in ARC No.4112/96 dated 30-9-1996 and the proceedings of the second respondent made in 5/7/2/35/RCS/Dairy/96 dated 30-9-1996.

W.M.P. No.19739 & 19781/1996:

Petitions praying that in the circumstances stated therein, and in the affidavits filed therewith, the High Court will be pleased to (1) stay the impugned order of the first respondent made in ARC No.4112/96 dated 30-9-1996 and the proceedings of the second respondent dated 30-9-1996 made vide his proceedings No. 5/7/2/35/RCS/Dairy/96 dated 30-9-1996, (in W.M.P. No.19739 of 1996) and (2) direct the respondents 1 and 2 herein to allow the elected committee to assume the office of directorship of Pillayarkuppam Co-operative Milk Producers Society, Pondicherry (in W.M.P. No.19781/96) respectively pending W.P. No.14427 of 1996 on the file of the High Court.

For Petitioner : Messrs. G. Rajan and L.P. Muralidharan,
Advocates

ORDER

These petitions coming on for orders as to admission on this day, upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Messrs. G. Rajan and L.P. Muralidharan, Advocates for the petitioner in all the petitions, the Court made the following order:-

The unsuccessful candidate has raised a dispute under Section 84 of the Pondicherry Co-operative Societies Act. He has also filed an application under sub-Section (6) of Section 84 to stay the order of the Deputy Registrar, dated 30-9-1996 on which order has been passed. The said order has been challenged in this writ petition. There is no dispute that the said order has been passed under Section 84 (6) of the above Act, and it is an ex-parte order. The petitioner can file an application to set aside the ex-parte order, since he has not moved the authorities to set aside the ex-parte order, I am not going to entertain this writ petition. Accordingly this writ petition is rejected at the admission stage. Consequently W.M.P. Nos. 19739 and 19781 of 1996 are also rejected.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 12th November 1996

Coram: THE HONOURABLE Mr. JUSTICE T. JAYARAMA CHOUTA

**Writ Petition No. 16098 OF 1996 &
W.M.P. No. 22123 of 1995**

A. Muthalu .. Petitioner

Versus

1. Union territory of Pondicherry, rep.
by its Secretary, Co-operative Department,
Chief Secretariat,
Pondicherry.
2. The Registrar of Co-operative Societies,
Pondicherry.
3. Election Officer, Kodathur Co-operative
Milk Producers' Society Ltd. No. P.294 .. Respondents

Pondicherry Co-operative Societies Act, 1972 – S. 84 – I am not inclined to entertain this writ petition. The election is over and the results have been published. It is open to the petitioners to raise a dispute under S.84. When an alternative remedy is available, the person aggrieved by the action should avail the said alternative remedy.
(Para 3)

W.P. No. 16098/96:

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a writ of mandamus directing the respondents to consider and dispose of the representation of the petitioner dated 21-3-1996 and consequently direct the respondents to conduct fresh election as per bye laws of the society.

W.M.P. No.22123 of 1996:

Petition presented to pass an order to interim direction directing the respondents herein not to the board of directors of the third respondent society to elect office bearers, viz. President etc. pending the said W.P. No.16098 of 1996 on the file of the High Court.

For the Petitioner : Mr. R. Kothandaraman, Advocate.

ORDER

The writ petition and W.M.P. coming on for order as to admission on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing

the arguments of Mr. R. Kothandaraman, Advocate for the petitioner in both the petitions the Court made the following order.

Heard. Learned counsel for the petitioner and perused the affidavit filed in support of the writ petition.

2. The grievance of the petitioner is that the election was held on 20-9-1996 to elect the board of directors for the said society. The petitioner submitted her nomination paper. However she was shocked and surprised to find that her name was not in the ballot paper of women candidates. But her name was found in the ballot paper in general category of members, which is contrary to the announcement of the election notification. She gave a representation to the third respondent bringing to his notice the mistake committed by the authority. However, her representation was not considered and election went on as scheduled. In the said election the petitioner lost. On the same, she submitted a representation before the second respondent to declare the election as invalid and requested him not to allow the candidates to assume in the office. The second respondent has not acceded to the said request not to declare the result of the election. Hence the present writ petition.

3. I am not inclined to entertain this writ petition. The election is over and the results have been published. It is open to the petitioner to raise a dispute under Section 84 of the Pondicherry Co-operative Societies Act. When an alternative remedy is available the person aggrieved by the election should avail of the said alternative remedy. This Court cannot entertain this writ petition when an alternative remedy is available to the party. Accordingly this writ petition is rejected at the stage of admission. In view of the disposal of the main writ petition, W.M.P. No.22123 of 1996 does not survive and it is dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 9th July, 1998

Coram: THE HONOURABLE Mr. JUSTICE S.S. SUBRAMANI

Writ Petition Nos. 9312, 9320 & 9321 of 1998

and

WMP Nos. 14266, 14276 to 14279 of 1998

- | | | |
|------|---|---|
| (1) | A. Jothipragasam, President,
Bahoor Farmers Service Co-operative Society
Ltd., Bahoor, Pondicherry | Petitioner in
W.P. No.9312/1998 |
|
 | | |
| (2) | S.Dhanaboobathy, President,
Nettapakkam Commune Co-op. Housing
Society Ltd., (P.510) Santhiathoppu, Madukkarai
Village & Post, Pondicherry State | Petitioner in
WP.Nos.9320
& 9321/1998 |

Versus

- | | | |
|-----|---|---|
| (1) | The Registrar, Co-operative Societies,
Pondicherry | ... 1 st respondent
in all the WPs. |
| (2) | G.Selvaraj | ... 2 nd respondent
in WP No. 9312/98 |
| (3) | K.Arumugam | ... 2 nd respondent
in WP No. 9320/98 |
| (4) | A.Deivanai | ... 2 nd respondent
in WP No. 9321/98 |

For petitioners	:	Mr. G. Rajan, Advocate
For 1 st Respondent	:	Mr. T. Murugesan Govt. Pleader for Pondicherry

(A) The first respondent has passed an interim order restraining the petitioners from entering upon office pursuant of a dispute challenging their election.

(B) It is only an ad-interim order and the petitioners have come to this Court even without filing a counter before the authority. The contention now raised in the writ petition can very well be submitted by them before that authority that has passed only an interim order.
(Para 3 & 4)

(C) At any rate an ex-parte order should not have been passed when they have been elected and till it is set aside, they are entitled to office. At least before passing an order in the interim application, they are entitled to be heard.
(Para 6)

Writ petition disposed of.

ORDER

In all these writ petitions, the petitioners challenge the ad-interim order passed by first respondent.

2. The office bearers have been elected to the board and on the basis of the election petition, the first respondent has stayed the further proceedings and prevented these petitioners from discharging their duties pursuant to the election. It is their further case that when the petitioners have been declared successful, until their election is set aside, the first respondent has no jurisdiction to stay the effect of the result of the election. It is further contended that in any event an ex-parte order should not have been passed in such cases.

3. After having heard the counsel for the petitioners in detail, I do not think that I should retain this writ petition in file. It is only an ad-interim order and the petitioners have come to this Court even without filing a counter before the Authority.

4. The contentions now raised in the writ petition can very well be submitted by them before that Authority, who has passed only an interim order.

5. I direct the petitioners to place all these contentions before him within a period of two weeks from today and that Authority shall take a final decision whether an interim order has to be passed or not.

6. I agree with the counsel for the petitioners that at any rate an ex-parte order should not have been passed when they have been elected and till it is set aside, they are entitled to hold office. At least before passing an order in the interim application, they are entitled to be heard. Since there is substance in the said contention, I suspend the order passed by the first respondent for a period of two weeks.

7. I direct the first respondent to dispose of the application on merits with notice to the petitioners, within a period of two weeks and he is further directed to comply with the direction in all seriousness.

8. With the above directions, the writ petitions are disposed of. Consequently, no orders are necessary in the writ miscellaneous petitions and the same are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 26th February, 1999

CORAM: THE HONOURABLE Mr. JUSTICE S.S. SUBRAMANI

Writ Petition Nos.10867 & 12724 of 1998

Pondicherry Co-operative Milk Producers Union
Ltd., No.P-1, Vazhudavoor Road, Kurumampet,
Pondicherry rep. by its Managing Director.

.... Petitioner in
both the WPs.

Versus

- | | | | |
|-----|--|-----|--|
| (1) | The Registrar of Co-operative Societies.
Government of Pondicherry, Pondicherry | ... | 1 st respondent
in both WPs. |
| (2) | The National Dairy Development Board, rep.
by its regional Director, Southern Region,
Bangalore. | ... | 2 nd respondent in
WP. No.10867/98 |
| (3) | Manaveli Co-operative Milk Producers Society
(No.483), rep. by its President K.Kathavarayan | ... | 2 nd respondent in
WP. No.12724/98 |

(R.2 impleaded as per Order dated 12-2-99 in WMP No. 27230 of 98)

(A) *In W.P. No.10867/1998, the petitioner Union has sought the intervention of the Court to restrain the first respondent from interfering with the pricing policy. The first respondent refixed the procurement and selling price of milk without consulting the committee of the petitioner Union. Under S.31(1)(c) of the Pondicherry Co-operative Societies Act, 1972, it is the general body which has been entrusted with all the powers and regarding the pricing policy and the authorities cannot give any directions under S.81 of the Act*

(B) *Ss.31 & 81, Rule 114 of the Pondicherry Co-operative Societies Rules, 1973 – On going by the Act read with R.114, I find that the Registrar has got the power. It is admitted by the petitioner himself that without the approval of the Registrar the price fixed already cannot be changed. Even though the Government have no share capital in the society, the Registrar has been made the chief spokesman and he has got the supervisory control over the same. Taking into consideration the provisions of S.81, I feel that the impugned order was within the jurisdiction. It is true that under S.31, the day-to-day management is with the board and it can also decide the price of its products. But when there is another authority also to approve the decision, it cannot be said that the board has got unlimited powers. (Para 12 & 13)*

Writ petition dismissed.

(C) *In W.P. No.12724 of 1988, petitioner seeks issuance of writ calling for records and direct the first respondent to register all the bye law amendments. There are 229 entries and the first respondent objected 23 provisions and has no objection to 206 entries. The first respondent has taken a preliminary objection that his order was appealable.*

(D) *It is also a fit case where the petitioner must be directed to avail the alternative remedy. Petitioner has no case that the appeal provided under the statute is not adequate remedy. Held, when the statute empowers the appellate authority to dispose of the appeal, naturally it must be presumed that the Government is also aware of the duties of the appellate authority. Merely because the appellate authority happens to be the Lieutenant Governor, who is also the head of State and who has also got to discharge legislative functions, it cannot be said that the alternative remedy available to the petitioner is neither expeditious and efficacious.* (Para 14 & 15)

(E) *If the petitioner passes a resolution asking the first respondent to approve the unobjectionable amendments alone, it will pass orders on the same without any delay. I find substance in the stand taken by the respondent. Writ petition is dismissed.* (Para 17)

For Petitioner in both WPs	: Mr.G.Rajan, Advocate
For 1 st respondent in both WPs	: Mr.T.Murugesan, Government Pleader for Pondicherry.
For 2 nd respondent in WP No.10867/98	: Mr. V. Natarajan, Advocate
For impleaded party, i.e., R2 in WP No.12724/98	: Mr.R.Subramaniam, Advocate

ORDER

Both these writ petitions are filed by the same petitioner.

2. In WP No.10867 of 1998, Petitioner seeks issuance of writ of certiorarified mandamus, calling for records of 1st respondent made in its proceedings No.5/7/2/67/RCS/Dairy/97/175 dated 11-6-98, quash the same and direct 1st respondent to forbear from interfering with the pricing policy of petitioner–society as empowered by its bylaws and thus render justice.

3. Petitioner is a Co-operative society registered under the Pondicherry Co-operative Societies Act, 1972. It was started in the year 1955 with the object of carrying out the activities conducive to the economic and socio

economic development of the milk producers, by organizing effective production, processing and marketing of the commodities among other things. All the shareholders of the society are only individuals who are primary co-operative milk producers' societies, and there is not even a single share being held by Government. 1st respondent has the right to supervise the proper functioning of the societies and the affairs of the management of the societies has to be carried on in accordance with the bye laws. As per the Co-operative Societies Act and the bye laws, express powers can be conferred on the committee of management of such registered society through its bye laws. Those powers include the fixation of pricing policy for the commodities supplied by its members and to carry out the business of the Union. Under Section 32 (1) of the Act, the management of the society shall vest in its committee constituted in accordance with the Act, Rules and bye laws. Since the price fixed by the society was not economic, taking into consideration the pricing policy in Tamil Nadu and others, a meeting was held on 14-5-1998 to discuss the subject under resolution. In that meeting, besides the Chairman, 12 Board of Directors attended the meeting. After considering the entire consequences, it was finally resolved to fix the procurement price of the milk per litre at Rs.9.17 and simultaneously fixed the selling price per litre at Rs.11. Copy of the resolution passed by the petitioner was served on 1st respondent on 15-5-1998. While so, petitioner came to know that 1st respondent *suo motu* has made a statement in the headlines of 'Malai Malar', that although milk procurement price is Rs.9 per litre, it was pleased to fix the price at Rs.9.17 and the corresponding selling price to the members of public was fixed at Rs.10.50 per litre. According to petitioner, the *suo motu* announcement was unwarranted, unauthorized and without any prior consultation with the petitioner's committee of management. According to petitioner, in fixing the pricing policy, neither the Government nor the respondent can interfere. According to petitioner, 1st respondent has no authority to reduce the price or fix a price of its own without consulting the managing committee. Even if it has got such power, he ought to have followed the principle of fair play and good conscience. It said that the selling price also ought to have been correspondingly increased. But in this case, the 1st respondent increased the procurement price and consequently the financial position of the society will be seriously affected. In the various grounds taken in the writ petition, it is said that under Section 31(1) (a) of the Pondicherry Co-operative Societies Act, it is the general body which has been entrusted with all the powers, and regarding the fixing of pricing policy, the Authorities have no role to play, and they have no power to re-fix the same. Their power is only to supervise the proper functioning of the society, and not to re-fix the price it is said that the Government have not taken any share, and the entire capital is invested only by its members, and it is their product that is being sold, for which they are entitled to fix the price. Unless the price fixed is arbitrary, under the supervisory power, 1st respondent cannot re-fix the same. The order of the 1st respondent is, therefore, invalid, and the powers exercised by him under Section 81 of the Co-operative Societies Act does not empower him to issue such directions. The same is sought to be quashed.

4. In WP No.12724 of 1998, petitioner seeks issuance of writ of certiorarified mandamus, calling for the records of respondent made in his

proceedings No.5/7/2/11/RCS/Dairy/96/189 dated 29-6-1998 and quash the same and direct the respondent to register all the bye-law amendments as required by petitioner in Ref. No.PCMPU/Estt/A/6-90/II dated 12-11-97, and thus render justice.

5. Petitioner wanted to amend bylaws, and there are 229 entries out of which 1st respondent, after considering the individual entries, objected that 23 provisions are objectionable. In regard to 206 entries, 1st respondent did not object to the same. But the entire amendment proposal was rejected which according to the petitioner is arbitrary and illegal. The same is sought to be quashed in this writ proceedings.

6. In both these Writ Petitions, counter-affidavit has been filed. In W.P.10867 of 1998, it is said that the resolution of the petitioner dated 4-5-1998 related to selling of milk at the rate of Rs.11 besides specifying the rate of procurement as Rs.9.17 and sought permission from respondent in that behalf. That apart, the Union passed another resolution on 15-5-98, wherein it has specified the rate of procurement of milk per litre at Rs.9.17 and sale price at the rate of Rs.10-50, giving effect from 16-5-1998. When that decision was taken on the request of the petitioner, the resolution taken by the society is contrary to that decision. By resolution dated 1-6-1998, the procurement price was reduced to Rs.9 instead of Rs.9.17. When the Government has fixed the pricing policy, petitioner cannot reduce the price of procurement, which has seriously affected the members. They filed serious objections before 1st respondent, and, therefore, necessary direction was given not to implement the procurement price at Rs.9 and to implement the procurement price at Rs.9.17. It is the case of 1st respondent that under Section 81 of the Pondicherry Act read along with Rule 114, it has got powers to issue directions, taking into consideration the public interest, the interest of the members and for other purpose. The power of 1st respondent cannot be challenged and, therefore, the writ petition is also not maintainable.

7. In the other writ petition, a preliminary objection was taken, stating that the impugned order is appealable. The reason given for not preferring appeal cannot be sustained. It is further said that the 1st respondent while considering the question of amendment, will have to consider each and every amendment separately. En-bloc amendment of 229 entries was found to be against Act and Rules. 1st respondent cannot approve unobjectionable amendment since the resolution passed by the petitioner was to approve the en-bloc amendment of 229 entries. It is submitted that if petitioner passes a resolution and seeks to amend the unobjectionable part of the amendment, it has no objection to consider the same.

8. Counter affidavit has also been filed by 2nd respondent in WP 10867 of 1998, supporting the claim of petitioner. It is said that the power of fixing the pricing policy is with the management and the Government or authorities cannot interfere with the same.

9. Heard learned Counsel for all the parties.

10. In W.P.10867 of 1998, question to be considered is, whether the impugned order of 1st respondent directing the petitioner to fix the procurement price at Rs.9.17.P. is valid or not.

11. While narrating the facts, I have said that a resolution was passed fixing the procurement price at Rs.9.17. and selling price at Rs.11. That resolution is dated 4-5-1998, and petitioner wanted approval of the Registrar in fixing the price. There was also another resolution by the Union fixing the sale price at Rs.10-50. It is the case of 1st respondent that himself and Government considered the question of fixing price of products and decided to fix the procurement price at Rs.9.17 and selling price at Rs.10.50 per litre. The matter was also announced through television and other media, and also through papers. Within 15 days petitioner has passed a resolution on 1-6-1998, reducing the procurement price at Rs.9.00. This, according to 1st respondent is against the interests of the members of the society, and, taking into consideration its welfare, and in exercise of powers under Section 81 of the Co-operative Societies Act, it passed orders not to reduce the procurement price.

12. On going by Section 81 of the Act read with Rule 114 of the Rules, I find that the Registrar has got the power. It is admitted by Petitioner himself that without the approval of Registrar, the price fixed already, cannot be changed. Even though Government have no share in the society, the Registrar of the Co-operative Societies has been made the chief spokesman and he has got the supervisory control over the same. Taking into consideration the provisions of Sec.81 of the Act, I feel that the impugned order was within jurisdiction.

13. Learned Counsel for Petitioner was at pains in arguing that the Society has got the right to fix its own price. It is true that under Section 31 of the Co-operative Societies Act, the day-to-day management is with the board and it can also decide the price of its products. But when there is another authority also to approve the decision, it cannot be said that the Board has got unlimited powers. So long as Section 81 of the Act and the Rules are not challenged, I do not think that the petitioner has got any merits in this case. Consequently, the writ petition W.P.10867 of 1998 is dismissed.

14. In the other writ petition, viz.W.P.12724 of 1998, I do not find any merits in the case. It is also a fit case where the petitioner must be directed to avail the alternative remedy. The only reason alleged in that writ petition for not availing the alternative remedy is, that the appellate authority is the Lieutenant Governor. In paragraph 6 of the affidavit, it is said that the Lt. Governor of the Union Territory is not only saddled with the discharge of constitutional duties attached to that office in respect of Pondicherry, Karaikal, Mahe and Yanam regions, but in contrast to the duties and authorities of a Governor of a State Government, is additionally required by Act.239-A of the Constitution of India to also take care of the legislative functions of the Union Territory'. The Governor is pre-occupied with constitutional and other duties. It is therefore felt that such alternative remedy is neither expeditious nor efficacious. On that ground, petitioner has filed the writ petition before this Court.

15. Petitioner has no case that the appeal provided under the statute is not adequate remedy. The only contention is that the appellate authority is otherwise engaged, and will not find time to dispose of the appeal, if filed. When the statute empowers the appellate authority to dispose of the appeal, naturally it must be presumed that the Government is also aware of the duties of the appellate authority. Merely because the appellate authority happens to be Lieutenant Governor, who is also the head of the State, and who has also got to discharge legislative functions, it cannot be said that the alternative remedy available to the petitioner is neither expeditious nor efficacious.

16. When the amendment of the byelaws is sought for, it is the duty of the Registrar to consider each and every amendment separately and consider whether it contravenes any provisions of the Act or Rules.

17. The petitioner wanted an en-bloc amendment to the byelaws and that was the request made by it to the respondents. Under the provisions of the Co-operative Societies Act, when the amendment is sought for, it is the duty of the Registrar to consider each and every amendment separately and consider whether it contravenes any provisions of the Act or Rules. In this case, the Registrar found that 34 entries were objectionable and, therefore, issued notice to the petitioner about the same. Petitioner filed their objections, and after hearing them, 11 amendments were found to be unobjectionable. Since there were 23 amendments which were objectionable, 1st respondent refused to register the amendment. I find justification in the order passed by respondent, since the request of petitioner was to approve the en-bloc amendment. There was no request or resolution passed by the society to register those amendments, which have been approved.

18. Learned Counsel for respondents also submitted that if the petitioner passes a resolution asking the respondent to approve the unobjectionable amendments alone, it will pass orders on the same without any delay. I find substance in the stand taken by respondent. Consequently, I hold that this writ petition (WP No.12723 of 1998) is also liable to be dismissed.

19. In the result, both the writ petitions are dismissed. No costs. Connected WMPs. are also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 13th April, 1999

Coram: THE HONOURABLE Mrs. JUSTICE T. MEENAKUMARI

Writ Petition No. 18491 of 1990

- (1) R. Srinivasan
 - (2) S. Chinnappan
 - (3) P. Paramasivam
 - (4) J. Rajamanikkam
 - (5) K. Ramamoorthy
 - (6) P. Subbarayan
 - (7) S. Theenaratchagan
- ... Petitioners

Versus

- (1) Union of India, rep. by the Government of Pondicherry, through the Secretary, Co-operative Department, Pondicherry – 605 001.
 - (2) The Administrator – cum – Managing Director, Pondicherry State Co-operative Bank Limited, Pondicherry – 605 001
- ... Respondents

(A) The main contention is that the petitioners are entitled to be provided employment in pursuance of the rehabilitation scheme and most of the juniors to the petitioners were given employment in the second respondent bank. The grievance of the petitioners is that they were not accommodated in the post of Junior Assistants/Junior Supervisors in view of the abolition of the cadre authority.

(B) It is very pertinent to note here that the contention of the petitioners that they are entitled to be promoted as Junior Assistants from the post of cadre managers may not be sustainable in view of the fact that a Division Bench of this Court has upheld that the abolition of the rehabilitation scheme under which the petitioners have been appointed in the judgment in W.A.No.1033 of 1983 dated 8-2-1990. (Para 6)

(C) Held, the writ petition is maintainable against a co-operative society. Even if a society could not be characterized as “State” within the meaning of Article 12, writ would lie against it to enforce statutory public duty which employee is entitled to against the society. (Para 9)

(D) The minimum qualification for the post of Junior Supervisor now redesignated as Junior Assistant is a degree and the persons have to be sponsored by the employment exchange. The petitioners

are not graduates and are only of lesser qualification. The bank has already accommodated the persons qualified, as per the availability of posts. The respondents have filed a statement showing the details of the employment of the writ petitioners. A reading of the statement shows that except the seventh petitioner, alternative appointments were given to the other petitioners as Managers in different PACB and VCACS. Based on the judgment of the Division Bench wherein the abolition of the scheme has been upheld and it has become final, the petitioners have no right to be absorbed as Junior Assistants. The petitioners having accepted for alternative employment cannot seek Mandamus for appointment as Junior Assistants. (Para 10)

(E) Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. When the scheme has been abolished on financial burden, the Court cannot compel the Government to change the policy decision which involves financial burden on it. (Para 11)

(F) Held, having agitated the same in the Writ Appeal they cannot again re-agitate saying that they must be given appointment. As they have already been accommodated in different PACB and VCACS, I see no ground to issue any direction to the respondents to appoint the petitioners as Junior Assistants. (Para 11)

Writ petition is dismissed.

Cases referred to:

- (1) Gurmail Singh and others vs. State of Punjab and others {(1991) 1 SCC 189}.
- (2) U.P. State Road Transport Corporation and another vs. U.P. Parivahan Nigam Shishuks Berozgar Sangh and others {(1995) 2 SCC 1}
- (3) Administrator Konch Sahakari Kraya Vikraya Samiti Ltd. vs. Sarnam Singh and others {(1997) (II) SCC 144}.
- (4) Judgment in W.A.No.1033 of 1983 dated 8-2-1990.
- (5) U.P. State Co-operative Land Development Bank Ltd. Vs. Chandra Bhan Dubery (1999) 1 CTC 467 : (1999)1 SCC 741.
- (6) State of Haryana vs. D.B. Sanqar (AIR 1976 SC 1199).
- (7) N. Ramanatha Pillai vs. State of Kerala (AIR 1973 SC 2641).
- (8) Union of India vs. Tejram, (1991)III SCC 11).

For petitioners : Ms. R. Vaigai, Advocate
For M/s Row & Reddy
For Respondents : Mr. Saseedharan,
Government Advocate for Pondicherry
Mr. V. Karunakaran, Advocate

ORDER

The writ petition is for the issue of writ of mandamus to direct the respondents to appoint the petitioners as Junior Assistants in the second respondent bank.

2. The brief facts which arise under the writ petition are, the Pondicherry Co-operative Agricultural Credit Societies (Appointment of Managers) Rules 1977 were formulated in exercise of the powers conferred under sub-section (1) of Section 170 of the Pondicherry Co-operative Societies Act 1972; Under rule 3, the cadre Authority called "The Pondicherry Co-operative Agricultural Credit Societies/ Staff Authority" was constituted; according to the petitioners the Cadre Authority consisted of the President of the Pondicherry State Co-operative Bank, the second respondent as its Chairman and the Secretary of the Bank and the Deputy Registrar in charge of credit in the office of the Registrar of Co-operative Societies, Pondicherry as its members; the cadre Authority was to recruit Cadre Managers and determine their service conditions; these Cadre Managers were the employees of the Cadre Authority constituted under the Rules; the funds for paying salaries etc., for the Cadre Managers were to come from contributions from various agricultural credit societies, from the Pondicherry State Co-operative Bank and the deficit from the Pondicherry Government in the form of subsidy; the petitioners contended that there were about 59 Societies and 59 Cadre Managers for these Societies; the Cadre Managers have raised an industrial dispute for revision of basic wages, dearness allowance and promotional opportunities; the said dispute was numbered as I.D.No.8 of 1982 and the award was passed by the Industrial Tribunal, Pondicherry on 28-4-1983; the demand was negatived; against the said award, the employees filed W.P.No.7740 of 1982; the case of the petitioners is that in view of the pendency of the writ petition, the second respondent bank did not take action to fill up the then existing vacancies in the posts of Junior Supervisors meant for promotion quota; in the meanwhile, the designation of the post of Junior Supervisor was changed to that of Junior Assistant; during the pendency of the writ petition, the salaries of the petitioners were stopped from April 1983 on the ground that the Central Government stopped its grant to the Cadre Authority; the first respondent issued a Notification dated 23-8-1983 abolishing the Cadre Authority; based on the said Government Notification, a notice was issued stating that the services of the Cadre Managers would stand terminated with effect from 30-9-1983; it has been further contended that on 18-8-1983 a notice was issued by the Cadre Authority to all the employees stating that since the Cadre Authority was being abolished, the Cadre Managers would be accommodated, if possible, in the various co-operative institutions on fresh terms and conditions to be offered by the Co-operative Societies; the notification abolishing the cadre authority was challenged in W.P.No.8356 of 1983 and the writ petition has been dismissed on 7-10-1983; however, during the pendency of the writ petition the interim order was vacated and the petitioners gave option for fresh employment; against the dismissal of the writ

petition, the petitioners filed W.A. No.1033 of 1983 and the Division Bench dismissed the writ appeal also; in view of the dismissal of the writ petition and the writ appeal, challenging the abolition of the Cadre Authority, W.P. No.7740 of 1982 was also dismissed; it has been contended that, while dismissing the writ petition, this Court has observed that, the dismissal of the writ petition was without prejudice to the rights of the petitioners to seek alternative employment from the respondents; the main contention in the present writ petition is that the petitioners are entitled to be provided with employment in pursuance of the rehabilitation scheme; the other point urged by the learned Counsel for the petitioners is that most of the juniors were appointed by the second respondents; one of such junior was one Radhakrishnan and he was accommodated in a Co-operative institution; the petitioners seem to have made number of representations to the concerned authorities; the last one being dated 5-4-1987; the petitioners were called for an interview by the Pondicherry State Co-operative Housing Federation Limited on 26-5-1987; pursuant to the aforesaid interview, one Alexander was appointed as Office Superintendent in relaxation of the rules; the petitioners were in complete hope of getting appointments; the petitioners except the seventh petitioner were asked to remit cash securities; the second respondent by its memorandum dated 24-11-1990 sought to recruit persons for the post of Junior Assistants without taking into consideration the claims of the petitioners; the second petitioner alone was called for interview.

3. Ms. Vaigai, learned Counsel for the petitioners contended that after the abolitions of the Cadre Authority, the respondents ought to have provided employment to the petitioners under the rehabilitation scheme. Until the abolition of their posts, they were entitled to be promoted as Junior Supervisors which posts are now called as Junior Assistants. Learned Counsel for the petitioners has further argued that had the second respondent filled up the vacancies in the posts of Junior Supervisors that arose prior to the abolition of the Cadre Authority and not kept them unfilled on the ground of pendency of W.P.No.7740 of 1982 demanding higher promotional opportunities, the petitioners would not have faced the difficulties. Learned counsel for the petitioners has argued that the grievance of the petitioners is that they are not accommodated in the post of Junior Assistants/Junior Supervisors in view of the abolition of the Cadre Authority.

4. The first and second respondents have filed their counter.

5. Learned Counsel for the petitioners has relied upon the following decisions to substantiate her contention that the petitioners are entitled to seek alternative employment from the respondents.

(1) Gurmail Singh and others vs. State of Punjab and others
{{(1991) 1 SCC 189}.

(2) U.P. State Road Transport Corporation and another vs. U.P.
Parivahan Nigam Shishuks Berozgar Sangh and others {{(1995)
2 SCC 1}

(3) Administrator Konch Sahakari Kraya Vikraya Samiti Ltd. vs.
Sarnam Singh and others {{(1997) II SCC 144}.

6. It is very pertinent to note here that the contention of the petitioners that they are entitled to be promoted as Junior Assistants from the post of Cadre Managers may not be sustainable in view of the fact that a Division Bench of this Court has upheld the abolition of the rehabilitation scheme under which the petitioners have been appointed, in its judgment in **W.A.No.1033 of 1983 dated 8-2-1990**. They may be right in claiming the post of Junior Assistant if the posts of Cadre Managers were not abolished. But as the posts of Cadre Managers were abolished and upheld by this Court, the contention of the petitioners that they were entitled to be promoted as Junior Assistant has to be negated for the reasons discussed and the judgment of the Division Bench has become final. Learned counsel for the petitioners has relied upon the judgment of the Supreme Court in **Gurmail Singh and others vs. State of Punjab and others (1991) 1 SCC 189** to substantiate her contention that the respondents are under an obligation to protect the terms and conditions of the services of the petitioners on the ground that there was a transfer of undertaking. In the case cited, the Public Works Department of Punjab State took a decision to transfer all the tube well operators in that branch to the Punjab State Tube Well Corporation. It was ordered that all the permanent posts sanctioned for the above circle be abolished with effect from March 1, 1983 and that all temporary posts be discontinued with effect from the same date. The petitioners therein were served with notices in terms of Section 25-F of the Industrial Disputes Act. The notices were set-aside on the ground that they did not conform to the provisions of clause (c) of Section 25 F and fresh notices have been issued under Section 25-F. They were questioned again in the High Court. The petitioners therein contended that they were entitled to be employed with continuity of service. The contentions were rejected against which the petitioners approached the apex court. In the above case, the Supreme Court was dealing with the case of genuine transfer between two parties – a predecessor and a successor.

The Supreme Court has held as follows:

“....It is open to a court, in such a situation, to give appropriate directions to ensure that no injustice results from the changeover. In the present case, the parties to the transfer are a State on the one hand and a fully owned State Corporation on the other. That is why we have examined that terms and conditions of the transfer and given appropriate directions to meet the needs of the situation. We, therefore, direct the State Government and the Corporation – Which is but a wholly owned State instrumentality bound to act at the behest of the State – to carry out our directions above, the Corporation being at liberty to amend its rules and regulations, if necessary, to give effect to the same.

Learned counsel for the petitioners has relied upon the decision of the Supreme Court in **U.P. State Road Transport Corporation and another vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and others (1995) 2 SCC 1** to substantiate her contention that preference to be given to the petitioners over direct recruits in the matter of employment and their names need not be sponsored by employment exchange and age bar should be relaxed for them. She has further contended that there was an assurance from the respondents to accommodate them in the alternative employment. Learned counsel for the petitioners has relied upon the decision of the Supreme Court in **Administrator, Konch Sahakari Kraya**

Vikraya Samiti Ltd. vs Sarnam Singh and others (1997) II SCC 144 to substantiate her contention that the writ petition itself is maintainable against a co-operative society.

7. Summing up from the above case laws it has to be held that there is no transfer of the undertaking in this case and hence the case laws relied on by the learned counsel for the petitioners are not applicable to the particular circumstances of the case.

8. It has been argued by the learned counsel for the first respondent that the respondent bank is a co-operative Society and the writ petition against the co-operative society is not maintainable.

9. The above contention has to be negated basing on the decision of the Supreme Court in ***U.P. State Co-operative Land Development Bank Ltd. Vs. Chandra Bhan Dubery (1999 (I) CTC 467 : (1999) 1 SCC 741*** wherein the Supreme Court has held that the writ petition is maintainable against a co-operative society. It was observed that even if society could not be characterized as 'State' within the meaning of Article 12 writ would lie against it to enforce statutory public duty which employee is entitled to against the society.

10. Learned counsel for the second respondent has contended that the petitioners herein have already filed a writ petition questioning the abolition of the scheme which has been upheld by a Division Bench of this Court in ***W.A.No.1033 of 1983*** dated **8-2-1990**. He has further contended that all efforts have been taken by the Registrar of Co-operative Societies to provide alternative employment to the non-employed Cadre Managers on account of the abolition of the posts of Cadre Managers. He has further contended basing on the counter that most of the Cadre Managers have accepted the alternative employment in various co-operative societies including the writ petitioners except the seventh petitioner who did not accept the alternative employment offered to him. Learned counsel has argued that the petitioners have no right to seek absorption in the respective co-operative societies including the second respondent bank. He has further argued that there was no scheme to absorb the erstwhile cadre managers in any posts in the Pondicherry State Co-operative Bank. The minimum qualification for the post of Junior Supervisor now re-designated as Junior Assistant is a degree and the persons have to be sponsored by the Employment Exchange. He has further argued that the petitioners are not at all graduates and are only of lesser qualification. He has argued that the Bank has already accommodated the persons qualified, as per the availability of posts. The respondents have filed a statement showing the details of the employment of the writ petitioners. A reading of the statement shows that except the seventh petitioner, alternative appointments were given to the other petitioners as Managers in different Primary Agricultural Co-operative Banks and VCACS. Learned counsel has argued basing on the judgment of the Division Bench wherein the abolition of the scheme has been upheld by this Court, and it has become final, the petitioners have no right to be absorbed as Junior Assistants as the posts of Cadre Managers have been abolished. He has further argued that the petitioners having accepted the alternative employment cannot seek mandamus for appointment as Junior Assistants.

11. It is also not in dispute that the Division Bench of this Court in W.A.No.1033 of 1983 dated 8-2-1990 has upheld the abolition of the scheme. The Division Bench while upholding the abolition of the scheme has relied upon the judgment of the Supreme Court in **State of Haryana vs. D.B. Sangar (AIR 1976 SC 1199)**, wherein the Supreme Court has held that whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the court. The Division Bench while abolishing the scheme has also relied upon the decision of the Supreme Court in **N. Ramanatha Pillai vs. State of Kerala (AIR 1973 SC 2641)** wherein the Supreme Court has held that a post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311 (2). The Division Bench has upheld the order of the learned single Judge passed in W.P.No.8356 of 1983. I see no force in the argument of the learned counsel for the petitioners that in view of the transfer of the undertaking, the petitioners should be appointed as Junior Assistants. Before the Division Bench the argument of the learned counsel for the respondents therein was that the abolition of the scheme was due to the financial burden on the Government. He has also brought to the notice of the court the decision of the Supreme Court in **Union of India vs. Tejram (1991) III SCC 11** wherein it was held that when the scheme has been abolished on the financial burden, the court cannot compel the Government to change its policy decision which involves financial burden on it. The case on hand is not a case of transfer of undertaking but it is a case of abolition of the scheme under which the petitioners were appointed as Cadre Managers. I see some force in the arguments of the learned counsel for the respondents that on humanitarian grounds, the petitioners were given alternative employment as Managers in different Primary Agricultural Co-operative Banks and VCACS. The petitioners have already agitated before this court in the earlier writ petition questioning the abolition of the scheme. Having agitated the same in the writ appeal, they cannot again reagitate saying that they must be given appointment. As they have already been accommodated in different Primary Agricultural Co-operative Banks and VCACS, I see no ground to issue any direction to the respondents to appoint the petitioners as Junior Assistants. In view of the above, the writ petition is dismissed. No costs. Consequently W.M.P.No.29142 of 1990 is dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 8th December, 1999

Coram: THE HONOURABLE Mr. JUSTICE M. KARPAGAVINAYAGAM

Writ Petition No. 14200 of 1992

I. Aravindakshan

.. Petitioner

Vs.

1. Union of India, rep. by the Secretary
to Government, Department of
Co-operation, Pondicherry.
2. The Registrar of Co-operative Societies,
Pondicherry.
3. The Mahe Consumers Co-operative Stores,
rep. by its Secretary, Main Road, Mahe.
4. N.K. Rajendran, Advocate, Presiding Officer
of the election of the board of directors, Mahe
Consumers Stores Ltd. No. P.219
5. P.K. Satyanandan

.. Respondents

On perusal of the counter, it is seen that the second respondent has not received the petition dated 3-8-1992, but received only the petition dated 4-9-1992 requesting for cancellation of admission of 174 members inducted in the society. In view of the above position, I think it fit to direct the second respondent to consider the petition dated 4-9-1992 after giving a personal hearing to the petitioner and other persons concerned and pass orders in accordance with law.
(Para 3 & 5)

Writ petition is disposed of with directions.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue writ of mandamus directing the second respondent to dispose of his petition dated 3-8-1992 and 4-9-1992 in accordance with law giving a personal hearing to the petitioner and other concerned persons within such time this Court may deem fit.

For Petitioner : Mr. V. Karunakaran for Mr. T.P. Manoharan, Advocate
For Respondents: Mr. T. Murugesan, Government Pleader for Pondicherry
For Respondents 1 to 3
Mr. S. S. Sundar, for T.R. Rajaraman, Advocate for R-5

ORDER

This petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereon the order of the Court dated 17-9-1992 and made herein and the counter and reply affidavits filed herein to the writ made by the High Court, and upon hearing the arguments of Mr. V. Karunakaran for Mr. T.P. Manoharan, Advocate for the petitioner, and of Mr. T. Murugesan, Government Pleader (Pondicherry) for the respondents 1 to 3 and of Mr. S. S. Sundar for Mr. T.R. Rajaraman, Advocate for the 5th respondent and the 4th respondent not appearing in person or by Advocate, the Court made the following order:

Petitioner has filed this writ petition seeking for the issue of writ of mandamus by directing the second respondent – the Registrar of Co-operative Societies, Pondicherry, to dispose of his petitions dated 3-8-1992 and 4-9-1992 in accordance with law after hearing the petitioner.

2. I heard the counsel for the parties.

3. On a perusal of the counter, it is seen that the second respondent has not received the petition dated 3-8-1992, but received only the petition dated 4-9-1992 requesting for the cancellation of admission of 174 members inducted in the society.

4. It is submitted by the learned counsel for the second respondent that since the writ petition is pending, the second respondent thought it fit not to dispose of the said application dated 4-9-1992.

5. In view of the above position, I think it fit to direct the second respondent to consider the petition dated 4-9-1992 after giving a personal hearing to the petitioner and other persons concerned and pass orders in accordance with law.

6. With the above direction, writ petition is disposed of. No costs.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 27th January, 2000

PRESENT: THE HONOURABLE Mr. JUSTICE E. PADMANABHAN

Writ Petition No. 1167 of 2000

and

WMP No. 1705 of 2000

V. Vijayakumar

Petitioner in both the
petitions

Versus

- (1) The Administrator,
Karaikal Central Co-operative Processing
Supply and Marketing Society Ltd., No.
P.15, Karaikal – 609 602.
- (2) The Registrar of Co-operative Societies,
V.V.P. Nagar, Pondicherry. Respondents in both the
petitions

(A) *Industrial Disputes Act, 1947 – S.25.F – The petitioner's services have been terminated on abolition of post of driver. The order is challenged on the ground that it is an illegal termination as it would amount to retrenchment without following the procedure prescribed under S.25.F of the Industrial Disputes Act.*

(B) *Held, as the disputed question of fact cannot be gone into a writ petition and as the petitioner has got an effective alternative remedy under the Industrial Disputes Act, this is not a fit case where this Court would be justified in entertaining the writ petition.*
(Para 2)

Writ petition is dismissed

For Petitioner

.... Mr. M. Gnanasekar, Advocate

WP No. 1167/2000:

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith, the High Court will be pleased to issue a writ of certiorarified mandamus calling for the records relating to the impugned order No.KCCPSMS/9/99-2000 dated 27-12-1999 issued by the first respondent and to quash the same and consequently direct

the first respondent to allow the petitioner to continue in service with all consequential benefits or to appoint him in any equivalent post in the first respondent society or directing the respondents to appoint him in any equivalent post in any other co-operative institutions in Pondicherry under the control of the 2nd respondent.

WMP No. 1705 / 2000:

Petition presented to this Court to stay the operation of the order No.KCCPSMS/9/99 –2000 dated 27-12-1999 passed by the first respondent pending WP.No.1167 of 2000 on the file of this Court.

ORDER

This writ petition and WMP coming on for orders as to admission on this day, upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr. M. Gnanasekar, Advocate for the petitioner in both the petitions, the Court made the following order: -

1. The petitioner seeks to quash the impugned order dated 27-12-1999. Concedingly, by the impugned order, the petitioner's services have been terminated on the abolition of post of driver. This action of the first respondent is being challenged in this writ petition as violative of Section 25 (f) of the Industrial Disputes Act. According to the learned counsel, the impugned order is an illegal termination or it would amount to retrenchment without following the procedure prescribed under Section 25 F of the said Act.
2. These are all disputed questions of fact, which cannot be gone into in a writ petition. Further the petitioner has got an effective alternate remedy and can work out his remedies under the Industrial Disputes Act. As the disputed questions of fact cannot be gone into in a writ petition and as the petitioner has got an effective alternative remedy under the Industrial Disputes Act, this is not a fit case where this Court would be justified in entertaining the writ petition.

In the circumstances, the writ petition is dismissed. Consequently, the above W.M.P. is also dismissed. It is made clear that it is open to the petitioner to work out his remedies under the Industrial Disputes Act before the appropriate authority.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13th March, 2000

CORAM: THE HONOURABLE Mr. JUSTICE E. PADMANABHAN

Writ Petition No.15211 of 1997

and

WMP No.24204 of 1997

Dr. R.Gunasekaran

... Petitioner

Versus

The Registrar of Co-operative Societies,
Thattanchavadi, Pondicherry.

... Respondent

Pondicherry Co-operative Societies Act, 1972 – Ss.33, 34(7)(a) and 83(1) – No quorum for the committee – Held, invoking section 83 and ordering supersession of the committee not warranted – In such case, appointment of an administrator under section 33 is justified – Disqualification under section 34(7)(a) in pursuance of order under section 83 will not apply – Writ petition dismissed as infructuous.

For Petitioner	:	Mr. V. Ajaykumar, Advocate
For Respondent	:	Mr. T. Murugesan, Government Pleader (Pondicherry)

ORDER

The petitioner herein has prayed for the issue of a writ of certiorarified mandamus to call for the records of the respondent in No.5/6/1/81/RCS/F/92/336 dated 19-09-1997 quash the same and consequently direct the respondents to permit the petitioner to continue in office as per rules till the expiry of the elected period.

2. With the consent of counsel for either side the writ petition itself was taken up for final disposal.

3. Heard Mr .V. Ajay kumar for the petitioner and Mr. T. Murugesan, Government Pleader (Pondicherry) for the respondents.

4 The petitioner who was elected as President of the Pondicherry Teachers Co-operative Housing Society is entitled to hold the office as President and executive committee member for the period 3-7-1995 to 30-6-1998. While so by the impugned proceedings dated 19-9-1997, the respondent had in exercise of powers conferred under sub-section (1) of Section 83 of the Pondicherry Co-operative Societies Act, 1972 dissolved the committee of management of the

Pondicherry Teachers Co-operative Housing Society with immediate effect and appointed a Special Officer. Being aggrieved this writ petition has been filed.

5. The petitioner is entitled to hold the office and so also the committee of the management of the society is entitled to hold the office for the period 3-7-1995 to 30-6-1998. As such after 30-6-1998, it is evident that nothing further survives in this writ petition.

6. This Court pointed out that it is not necessary to go into the merits of the petitioner's contention as the period for which the committee is entitled to hold the office has expired on 30th June 1998 and nothing further survives in the writ petition. However, Mr. V. Ajay kumar, learned counsel for the petitioner pointed out that a member of the executive committee, which has been dissolved by exercise of powers conferred under sub-section (1) of Section 83 of the Pondicherry Co-operative Societies Act, is disqualified in terms of Section 34(7)(a) of the said Act to contest in the election and therefore, the learned Counsel persuaded this Court for an order being passed on merits.

7. Per contra, the learned Government Pleader contended that no case has been made out for interference with the order and that the writ petition itself has become infructuous.

8. The order impugned has been passed under sub-section (1) of the Section 83 of the Pondicherry Co-operative Societies Act, 1972 and the committee of management of the Pondicherry Teachers Co-operative Housing Society had been dissolved. A perusal of the impugned proceedings as well as the show cause notice would show that there is no quorum for the committee and only on that basis the order impugned has been passed. Hence it is contended by Mr. Ajay kumar that merely because there is no quorum, there is no warrant or reason or justification or jurisdiction for the respondent to pass an order under Section 83 (1) of the Act. There is force in the contention put forward by the Counsel for the writ petitioner.

9. On the contrary, it is pointed out that even if the order impugned cannot be sustained as one falling under Section 83 (1) of the Act, in terms of Section 33(1)(a) if no new committee cannot be constituted before the expiry of the term of office of the existing committee, the Registrar could appoint an Administrator to manage the affairs of the society till a new committee enters upon the office. Hence the order impugned cannot be sustained as the order of supersession or dissolution of the committee on the facts of the case under Section 83 (1) of the Act is not warranted. But as there is no quorum and as no new committee could be constituted, if the Registrar is satisfied he could appoint an Administrator. The appointment of Administrator could be sustained in this respect.

10. The supersession of the committee, on the facts of the present case will not arise nor the statutory provision enables the respondent to pass such an order. However, it is admitted that there is no quorum and therefore the committee cannot function nor a new committee could be formed. In the circumstances, the Registrar is well justified in appointing an Administrator. But such an Administrator could be appointed under Section 33(1)(a) of the Act. If the order appointing the

Administrator has to be sustained only in that view of the matter and it cannot be sustained if it is considered as an order passed under Section 83(1) of the Act. No order under Section 83(1) of the Act could be passed validly by the respondent on the facts of the present case and therefore the disqualification, if any under Section 34(7)(a) of the Pondicherry Co-operative Societies Act, will not apply at all. Hence it is made clear that the members of the dissolved committee had not incurred disqualification as provided in Section 34(7)(a) of the Act.

11. The learned Counsel for the petitioner represented that the petitioner will be satisfied, if the said position is clarified.

12. In the circumstances, this Court holds that the writ petition has become infructuous and it is made clear that the petitioner who was a member of the dissolved committee is not disqualified nor had incurred disqualification to contest in the election as provided in Section 34(7)(a). Based upon the impugned order alone, the petitioner cannot be disqualified. If he is otherwise qualified to contest in the election.

13. With the above clarification, the writ petition is dismissed as having become infructuous. The parties shall bear their respective costs. Consequently, the connected W.M.P. is also dismissed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 5th May, 2000

PRESENT: THE HONOURABLE Mr. JUSTICE E. PADMANABHAN

Writ Petition No. 4785 & 18210 of 1999

and

WMP Nos. 6919 of 1999 & 26829 of 1999 and

WMP Nos. 26536 of 1999 & 26537 of 1999 respectively.

- | | | |
|-----|---|--|
| (1) | Pondicherry Co-operative Milk Producer's Union Limited, No.1. rep, by its Chairman, Vazhuthavur Road, Kurumampet, Pondicherry ... | Petitioner in WP 4785/99 and WMPs 6919 & 26829/99. |
| (2) | B. Navaneethakannan ... | Petitioner in WP 18210/99 and WMP 26536 & 26537/99 |

Versus

- | | | |
|-----|---|---|
| (1) | The Registrar of Co-operative Societies Government of Pondicherry, Pondicherry ... | Respondent in WP 4785/99, WMP 6919/99 & 26829/99 and 1 st respondent in WP 1821/99 and WMP Nos. 26536 & 26537/99 |
| (2) | The Chairman, Pondicherry Co-operative Milk Producer's Union Limited, No.1 Vazhuthavur Road, Kurumampet, Pondicherry – 9. | |
| (3) | The National Dairy Development Board by its Regional Director, Southern Region, 8 th Block, 80 feet Road, Koramangala, Bangalore – 95. ... | 2 nd & 3 rd respondents in WP 18210/99 & WMPs. |

W.P. No.4785/1999

(A) Pondicherry Co-operative Societies Act, 1972 – S.81, Pondicherry Co-operative Societies Rules, R.114, Pondicherry Co-operative Milk Producers' Union Bye law No.21(b)(xii) – Selection and recruitment of Managing Director – Constitution of expert panel and filling up of the post of Managing Director – Request by the Registrar to the Chairman of Milk Union – Milk Union proposing certain amendment in the bye laws – Pending consideration by the Registrar – Constitution of expert panel as per the existing bye laws – Validity.

(B) The Chairman of the Milk Union is not an aggrieved party by issue of directions by the first respondent. There is no illegality in the direction issued by the first respondent directing the petitioner Union to constitute an expert panel to select and appoint a Managing Director which post has to be filled up without further delay. (Para 17)

(C) On the consideration of the entire facts, this Court holds that the directions issued by the Registrar is warranted by the facts and it is in the interest of the petitioner Union. The Registrar who exercises control and supervision is well justified in directing the society to initiate necessary action to constitute an expert panel and fill up the post of the Managing Director of the Union as per the existing bye laws. There is no reason at all to keep the post of Managing Director vacant under the guise of amendment of bye laws. The amendment of bye laws will come into force only after the amendment is registered by the Registrar, who is the competent authority. Till the amendment is approved and registered, the existing vacancy has to be filled up as per the existing bye laws. (Para 31 & 32)

(D) The bye law also does not provide for an in-charge Managing Director. Unless the individual who possesses the qualification prescribed for the office of the Managing Director and such a Managing Director is selected by an expert panel, he cannot be allowed to continue as a Managing Director even as a stop gap arrangement. Held, the writ petition has to be dismissed while holding that the directions issued by the Registrar is in conformity with the provisions of the Act, Rules and bye laws of the Union and is not vitiated or it is liable to be interfered. (Para 33 & 34)

W.P. No.18210/1999

(A) Registrar issuing a direction to the second respondent Union not to consider the application of the petitioner in case he has applied for the said post in view of pending CBI case and various other cases against him.

(B) The direction issued by the Registrar, though it may be in the interest of the Union, it is for the expert panel to consider the

application, if any, received as per the qualification prescribed by the existing bye laws. It is not as if the writ petitioner is in feeder category and he is to be considered for promotion. Like any other applicant, the petitioner has to apply and if the expert panel considers the applicant suitable, he has to compete in the selection if he possesses the prescribed qualification.
(Para 35 & 37)

(C) Held, at this stage by a direction the writ petitioner cannot be disqualified, as it is not a promotion. The direction issued by the Registrar cannot be sustained. The writ petition is allowed in part.
(Para 38, 39 & 42)

WP No. 4785/99:

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith, the High Court will be pleased to issue a writ of certiorari calling for the records of the respondent made in its No.5/7/1/9/RCS/Dairy/95/60 dated 4-3-99 and quash the same.

WMP No. 6919/99:

Petition presented to this Court praying that to stay the operation of the impugned order No.5/7/1/9/RCS/Dairy/95/60 dated 4-3-99 pending disposal of the above WP No. 4785/99 on the file of this Court.

WMP No. 26829/99 :

Petitions presented to this court praying that to extend time to fill up the post of Managing Director of this petitioner society pending disposal of the above WP No. 4785/99 on the file of this Court.

WP No. 18210/99:

Writ petition presented to this Court under Art.226 of the Constitution of India praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to issue a writ of certiorarified mandamus calling for the records of the 1st respondent authority comprised in the proceedings No.5/7/1/31/RCS/Dairy/99/415 dated 9-11-99 and quash the same and consequently direct the respondents to select and appoint the petitioner as Managing Director of the 2nd respondent society without reference to the impugned order of the 1st respondent made in his reference No.5/7/1/31/RCS/Dairy/99/415 dated 9-11-99.

WMP No. 26536/99:

Petition presented to this Court to dispense with the production of the original copy of the order issued by the 1st respondent proceedings No.5/7/1/31/RCS/Dairy/99 /415 dated 9-11-99.

WMP No. 26537/99:

Petition presented to this Court to stay the operation of the impugned order made of the 1st respondent authority in his proceedings No.5/7/1/31/RCS/dairy/99/415 dated 9-11-99 pending disposal of the above WP No.18210/99 on the file of this Court.

ORDER

These writ petitions and WMPs coming on for orders as to admission on Tuesday, the twenty ninth day of February 2000 and upon perusing the petitions and the respective affidavits filed in support thereof and the counter affidavits filed herein and the records relating to the order No.5/7/1/9/RCS/Dairy/95/60 dated 4-3-1999 and No.5/7/1/31/RCS/Dairy/99/415 dated 9-11-99 respectively on the file of the respondents comprised in the return of the respondents to the writ made by High Court, and upon hearing the arguments of Mr. M. Sivaraman authorised person on behalf of the petitioner in WP No.4785/99 and connected WMPs and of Mr. D. Manivannan authorised person on behalf of the petitioner in WP No.18210/99 and connected WMPs and the respondents not appearing in person or by Advocates in both WMPs and WPs and having stood over for consideration till this day, the Court made the following order:-

For Petitioner : Mr. M. Sivarman, Authorised person in W.P.4785/99
Mr.D.Manivannan, Authorised person in W.P.18210/99
For respondent : No appearance

ORDER

1. WP No.4785 of 1999 has been filed by Pondicherry Co-operative Milk Producers' Union represented by its Chairman, to issue a writ of certiorarified to call for the records of the respondent made in its No.5/7/1/9/RCS/Dairy/95/60 dated 4-3-1999 and quash the same.

2. WP No.18210 of 1999 has been filed by B. Navaaneethakannan praying for the issue of a writ of certiorarified mandamus to call for the proceedings of the first respondent comprised in the proceedings No.5/7/1/31/RCS/Dairy/99/415 dated 9-11-1999, quash the same and consequently direct the respondents to select and appoint the petitioner as Managing Director of the second respondent society without reference to the impugned order of the first respondent dated 9-11-1999.

3. With the consent of the counsel for either side, the writ petitions were taken up for final disposal.

4. According to the petitioner in WP No.4785/99, he has been holding the office of the Chairman of Board of Directors of the Pondicherry Co-operative Milk Producers' Union with effect from 1-1-1998. The said Co-operative Union is a society registered under the Co-operative Societies Act, 1972.

5. The said Co-operative Union is engaged in production, process and marketing of milk and milk products. All the shareholders are individuals who are the members of the society. The society is controlled by the respondent, the Registrar of Co-operative Societies. The ultimate authority under Section 31(1)(a) vests with the general body subject to the provisions of the Act, Rules and byelaws. The proviso attached to the said sub section carves out an exception whereby special and express powers can be conferred on the committee of management or any officer of a registered society through its by laws. The petitioner as the Chairman of the Co-operative Union is an officer of the society in terms of Section 2(14) of the Act and as such he is vested with certain authority and responsibilities.

6. The petitioner claims that the Board has power to appoint a Managing Director of the union and he has to assist the Board. The powers and duties of the Managing Director are as prescribed by byelaw No.23. The Managing Director of the union shall have general control over the administration and business of the Union who shall be in charge of the day-to-day administration and management of the Union.

7. The petitioner states that in the wake of certain charges the former Managing Director Chandrasekaran was placed under suspension by the Board on 10-2-1995. Proceedings have been initiated against him. When approval was sought for suspension of the said Chandrasekaran, the respondent-Registrar insisted that Mr.S.Lakshmanan, Deputy Registrar of the Co-operative Department who is already on deputation with the petitioner union and its Assistant Manager (Administration) should hold additional charge of the post of Managing Director. The National Dairy Development objected to the said proposal. Thereafter the writ petitioner B. Navaneethakannan, who was the Assistant General Manager, was placed in additional charge of the post of Managing Director. The respondent had objected to the same. The said Navaneethakannan is holding the post of Managing Director of the Union as additional charge since 27-4-1995 in terms of byelaw No.23 (b).

8. As against the former Managing Director, N.Chandrasekaran, the disciplinary proceedings came to be concluded and a penalty of dismissal from service was imposed with effect from 17-9-1996. Hence the post of Managing Director fell vacant and Mr.Navaneethakannan is holding additional charge. At that stage by the impugned direction dated 4-3-1999, the petitioner was directed to initiate necessary action to constitute an expert panel, to fill up the

post of Managing Director as per the existing byelaws within thirty days. The said order is being challenged as arbitrary, unjust, unwarranted and highly irregular besides it lacks bona fides.

9. In terms of byelaw No.21 (b)(xii), the selection and recruitment of Managing Director has to be made by an expert panel comprising (i) The Chairman of the Union (ii) Representative of I.D.C. NDDDB and (iii) Representative of the Government not below the rank of the Secretary. The representative of the NDDDB who is a member of the expert panel will have to be nominated by the National Dairy Development Board by its Head Quarters in Anand, Gujarat.

10. The Pondicherry Government has to be approached for nominating its representative whose rank should not be below the rank of an I.A.S. Officer/Secretary to government. The post of Managing Director has to be filled up as per the existing byelaws. At that stage certain amendments were proposed by the General Body of the petitioner Union to amend the byelaws, which also includes the qualification prescribed for the post of Managing Director.

11. The general body met on 5-11-1997 and having regard to the present size, volume of operation, financial position of the Union and other relevant consideration had resolved to amend the byelaws. The respondent had unduly delayed the registration of the amended byelaws. In the circumstances, the writ petition No.4022 of 1998 was filed praying for the issue of a writ of mandamus directing the respondent-Registrar to consider the application for registration of the amendment. Thereafter the respondent issued a show cause notice under Section 11(4) of the Act as to why the proposal for amendment of byelaws should not be refused by the Registrar.

12. An explanation has been offered justifying the amendment. However, the respondent declined to register the amendment. Aggrieved by the said refusal the petitioner Union preferred the WP No.12724 of 1998 for quashing the order of the respondent dated 29-6-1998 and consequently direct the Registrar to register the amendments. By a common order dated 26-2-1999, this Court dismissed both the writ petitions as there was no request or resolution passed by the society to register those amendments which have been approved. If the Union passes a resolution in this respect, the respondent shall consider the matter afresh and pass orders.

13. As against the orders in WP No.12724 of 1998, the petitioner preferred writ appeal on various grounds. At that stage, the respondent insisted the petitioner-Union to fill up the post of Managing Director in accordance with the byelaws of the Union. The respondent in fact was prepared to clear the amendment relating to Managing Director qualification, as it is unobjectionable without any delay, if a resolution therefore is passed by the

petitioner society in the general body. At that stage, the impugned direction has been issued on 4-3-1999, which is being challenged as highly irrational, mala fide, incapable of execution and is against all canons of fair play and good conscience. Hence the present writ petition.

14. The direction by the respondent which is impugned in the writ petition reads thus:-

“To

Thiru.Damodhara Coundar, Chairman,
Pondicherry Co-operative Milk Producers Union Limited No.P.1,
Kurumampet, Pondicherry.

Sir,

Sub: Pondicherry Co-operative Milk Producers Union
Limited No.P.1 – Appointment of Managing
Director to the Union requested – Regarding.

It is observed that Thiru B.Navaneethakannan, Assistant General Manager of the Pondicherry Co-operative Milk Producers Union only is holding additional charge of the post of Managing Director of the Pondicherry Co-operative Milk Producers Union from 27-4-1995 vide Union's circular No.PCMPU/B/MD/95/1 dated 27-4-1995. It is distressed to note that even after disposal of the disciplinary action and termination of the then Managing Director Thiru N.Chandrasegaran, the post of the Managing Director of the Union is kept vacant for a long time, and the reasons for the same is not known to the undersigned. Therefore, you are requested to initiate necessary action to constitute the expert panel and fill up the post of the Managing Director of the Union as per existing bye-law within 30 days from the date of receipt of this letter.”

15. A counter has been filed by the respondent in WP No.4785 of 1999. The respondent had referred to the earlier proceedings and various earlier orders and directions issued by this Court. According to the respondent as against Mr.B.Navaneethakannan, Assistant, General Manager of the Union on his holding additional charge of the post of Managing Director several allegations have been made and those allegations are being probed and investigated by C.B.I as well as vigilance and Anti-corruption Wing of the Pondicherry Police and those authorities have submitted reports against the said Mr.B.Navaneethakannan.

16. There are grave charges against the said Navaneethakannan who is now performing the functions of Managing Director including charges of

causing wrongful loss to the society, maladministration of the Union adverse to the interest of the members of the Union. In the circumstances in the interest of the affairs of the Union, the impugned communication dated 4-3-1999 has been sent by the respondent to constitute necessary expert panel to appoint a Managing Director of the Union as per the existing byelaws.

17. The Chairman of the Union is not an aggrieved party by issue of the directions by the respondent. By the directions issued, the respondent had directed the petitioner-society to fill up the post of Managing Director on a regular basis and it is not desirable in the interest of the Union to continue Mr. Navaneethakannan to hold additional charge of the office of the Managing Director as against whom very many complaints of grave nature and for serious omissions and commissions investigation is pending. There is no illegality in the direction issued by the respondent directing the petitioner-Union to constitute an expert panel to select and appoint a Managing Director which post has to be filled up without further delay.

18. Writ Petition No.18210 of 1999 has been filed by Navaneethakannan to call for and quash the proceedings of the Registrar of Co-operative Societies issuing a direction to the second respondent-Union not to consider the application of the petitioner-Navaneethakannan, in case he has applied for the said post, in view of the pending C.B.I case and various other cases against him. In this respect, as seen from the impugned proceedings, the first respondent had referred not only to the earlier proceedings but also various acts of commissions and omissions on the part of Navaneethakannan.

19. A counter affidavit has been filed in WP No.18210/99 by the first respondent. According to the first respondent, the writ petitioner Navaneethakannan is presently holding additional charge as Managing Director of the second respondent, Milk Producers' Union. The second respondent has also referred to the earlier proceedings as well as undertaking given by the Union to this Court in the earlier writ petition.

20. The second respondent has suo motu called for applications through dailies from the eligible candidates to fill up the post of Managing Director without reference to the expert panel and without constituting the expert panel. To safeguard the interest of the second respondent-Union in the public interest and the affairs as well as the interest of the members, the first respondent-Registrar has been issuing directions from time to time and such directions are in conformity with the provisions of the Pondicherry Co-operative Societies Act, 1972 and the rules framed there under.

21. The second respondent-Society cannot challenge the order passed by the Registrar on 9-11-1999 and in order to get over the same, the present writ petition has been filed.

22. According to the first respondent-Registrar as against the writ petitioner, the C.B.I is conducting an investigation and also vigilance and Anti corruption Wing of Pondicherry Police. According to Section 81 of the Pondicherry Co-operative Societies Act, the first respondent has got the authority to issue directions in public interest and to safeguard the members of the society. Rule 114 of the Pondicherry Co-operative Societies Rules, 1973 also confers powers on the first respondent-Registrar to issue such directions. It is also to be pointed out that the petitioner is not in the feeder category, nor he could be considered at all in the light of the pending investigation of a criminal offence. Hence, such a direction has been issued. The first respondent-Registrar justifies the direction issued by him, which is impugned in this writ petition.

23. The Pondicherry Co-operative Societies Act, 1972 enables the Registrar to issue directions under Section 81 of the Act. Section 81 reads thus:-

“81(1) Subject to the rules made in that behalf, where the Registrar is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes, approved or undertaken by the Government or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, he may issue directions to them from time to time and all societies or the society concerned, as the case may be, shall be bound to comply with such directions;

Provided that in so far as co-operative banks are concerned, the Registrar shall exercise the powers only with prior consultation with the Reserve Bank of India.

(2) The Registrar may modify or cancel any direction issued under sub-section (1) and in modifying or canceling such directions may impose such conditions as he may deem fit.”

24. Rule 114 of the Pondicherry Co-operative Societies Rules, 1973 also confers power to rescind the resolution passed by a Co-operative Society on one or more grounds enumerated in the said rules. The Pondicherry Co-operative Milk Producers Union, a society registered under the Pondicherry Co-operative Societies Act, 1972 is governed by the approved byelaws of the Union.

25. The expression "Managing Director" had been defined in bye-law No.2 (vii) as the Managing Director appointed as the Chief Executive Officer of the Union as per the provisions of the byelaws. Bye-law 18 prescribes the powers, responsibilities and functions of the Board. Clause (xiv) of byelaw 18 provides that the Board shall appoint the Managing Director and fix his pay and allowances. The same bye-law prescribes the qualification for the post of the Managing Director and the said qualification prescribed there under reads thus; -

"Qualification of Managing Director: A degree in Food Technology/Engineering/Animal Husbandry/Dairy Technology preferably with a Post Graduate qualification in Business Management. Must have at least ten years managerial experience out of which three years as overall in charge of a large dairy/milk production and procurement/Food consumer products processing unit. Should be a man of proven managerial competence. Diploma holders in Dairy Technology, who are already working in the Union will also be eligible for consideration for the post of Managing Director provided to satisfy the experience requirement prescribed for the post."

26. According to the said bye-law 8, the post of Managing Director has to be filled up by a selection by the expert panel constituted for that purpose comprising of the Chairman of the Union, representative of the NDDDB and the representative of the Government not below the rank of Secretary to government. Thus, the qualification for the post of the Managing Director has been prescribed on the body which has to select the Managing Director has been prescribed. Bye-law 20 prescribes the powers of the Managing Director

27. A perusal of the byelaws would show that the petitioner is not in the feeder category, nor he could compel the respondents to appoint him as the Managing Director. There is no provision in bye-law to place someone as additional charge, much less for such a prolonged period. Navaneethakannan was only an Assistant General Manager and unless and until he is selected and appointed as the Managing Director, he cannot be allowed to continue as the Managing Director. Till date, no panel had been formed and without constituting the panel, the respondent society cannot invite applications.

28. The continuation of Navaneethakannan, according to the respondent, is adverse to the interest of the society as well as the members and public interest. Serious allegations were made against Navaneethakannan, the petitioner in one of the writ petitions, and therefore, this court directed the report of the C.B.I. and V & A.C. to be placed in a sealed cover. Accordingly, the report of the C.B.I and V & A.C. were placed in a sealed cover. This Court has to call for the report of the C.B.I. as the allegations made against the said

Navaneethakannan and his continuance as additional charge is stated not in the interest of the Union as there are serious allegations against the said Navaneethakannan.

29. The investigating officer, V & A.C. had submitted a report implicating that Navaneethakannan, who was a Deputy Manager and who is presently working as Assistant General Manager among others was responsible for some of the irregularities. Only on that basis, the direction has been issued by the Registrar of Co-operative Societies.

30. The report discloses exonerating the said Navaneethakannan with respect to some of irregularities and finding him responsible in respect of some of the irregularities besides others. The report of the C.B.I, which has taken up the investigation on the directions of the Central Vigilance Commission, would show that the action has to be initiated for a major penalty against Navaneethakannan and others. The details of the irregularities or imputations need not be elaborated here. Thus, it is clear that the action of Navaneethakannan according to the investigation reports submitted by C.B.I would show negligence on the part of Mr.B. Navaneethakannan and various irregularities, misconduct and the wrongful loss caused to the society for a substantial amount. The investigation reveals that a prima facie case exists for a departmental action and the matter is pending. In the light of the same, the present direction, which is impugned, has been given.

31. In the first writ petition No.4785/99, on a consideration of the entire facts, this Court holds that the direction issued by the Registrar of Co-operative Societies, the first respondent herein, is warranted by the facts and it is in the interest of the petitioner-society. The order impugned is not vitiated by illegalities, nor could it be stated that it is without authority. The Registrar of Co-operative Societies, who exercises control and supervision is well justified in directing the society to initiate necessary action to constitute an expert panel and fill up the post of the Managing Director of the Union as per the existing byelaws. This direction is neither illegal, nor it is violated, nor it runs counter to any of the provisions of the Co-operative Societies Act.

32. Concedingly, the post has not been filled up since 1995. The previous incumbent had been dismissed. Even thereafter, no step has been taken. The petitioner-Society had been delaying the matter for certain obvious reasons and also to help one or more employees to secure the said post. Otherwise, there is no reason at all for the petitioner-Union to delay the constitution of the expert panel as provided in the byelaws. When the office of the Managing Director is vacant and the Managing Director is the Chief Executive who has to look after the day-to day affairs of the society, there is no reason at all to keep it vacant under the guise of amendment of byelaw. The amended byelaw will come into force only after the amendment is registered by the Registrar of Co-operative Societies, who is the competent authority. Till the

amendment is approved and registered, the existing vacancy has to be filled up as per the existing byelaws.

33. It is well settled that a vacancy in the post of the Managing Director has to be filled up and the petitioner-Society had been delaying the filling up of the office of the Managing Director for some reason or other and filed writ petitions after writ petitions. In the absence of regular Managing Director, the society's interest suffers and it is nobody's responsibility and an in-charge arrangement cannot be continued indefinitely. The bye law also does not provide for an in-charge Managing Director. Unless the individual, who possesses the qualification prescribed for the office of the Managing Director and such a Managing Director is selected by an expert panel, he cannot be allowed to continue as a Managing Director even as a stop gap arrangement.

34. In the circumstances, this Court holds that writ petition No.4785/99 do not deserve any further consideration. The writ petition has to be dismissed while holding that the direction issued by the Registrar is in conformity with the provisions of the Act, Rules and the byelaws of the society and it is not vitiated, nor it is liable to be interfered.

35. As regards the second writ petition, the direction issued by the Registrar, though it may be in the interest of the Union, it is for the expert panel to consider the application, if any, received as per the qualifications prescribed by the existing byelaws and if the expert panel considers the individual including the writ petitioner Navaneethakannan on merits. It could consider suitable candidate among the applicants who applied for the post.

36. Excepting the reports, which are available with the Government, and the Union, no charges have been framed so far, nor any departmental action has been taken, nor had been placed under suspension. It is not as if the post of Managing Director is to be filled up by promotion from the cadre or the post which the writ petitioner Navaneethakannan is holding. On the other hand, it has to be filled up by the expert panel by calling for applications from among the eligible applicants who possess qualifications as prescribed by the byelaws.

37. It is not as if the writ petitioner is in feeder category and he is to be considered for promotion. It is not a promotion post. Like any other applicant, the petitioner has to apply and if the expert panel considers the applicant suitable, and he has to compete in the selection, if he possesses the prescribed qualification.

38. At this stage, by a direction the writ petitioner cannot be disqualified, as it is not a promotion. As of today, no charges have been framed. It is also to be noted that an enquiry under Section 75 of the Co-operative Societies Act is also in progress. So long as no charges are pending and merely because

reports of the investigating agencies are against the writ petitioner, the direction issued by the Registrar cannot be sustained. At the risk of repetition, it has to be pointed out that the writ petitioner-Navaneethakannan is not in the feeder category and the post of Managing Director is not a promotion post also.

39. The direction issued by the Registrar cannot be sustained. At the same time, it is needless to add that the expert panel constituted to select the Managing Director has to consider the comparative merits of the applicants including Navaneethakannan. If he is otherwise eligible or if he had incurred any disqualification, the same has to be taken note of.

40. In the circumstances, the writ petition No.4785/99 is dismissed but without costs.

41. In so far as the writ petition No.18210/99, this Court while quashing the impugned communication dated 9-11-1999 directs the Pondicherry Co-operative Milk Producers' Union to fill up the office of the Managing Director by forming an expert panel as provided in the byelaws and fill up the same after holding a selection from among the suitable candidates, who apply for the post and it is for the Registrar of Co-operative Societies to issue suitable directions in this respect. It is needless to add that the expert panel has to consider each applicant on merits and according to their qualifications. Necessary applications called for should be forwarded by proper channel.

42. With the above directions, the writ petition No.18210/99 is allowed in part and it is needless to add that the second respondent-society shall proceed further to fill up the office of the Managing Director without any further delay. If the second respondent-Society persists in delaying the matter, it is needless to add that the Registrar could take suitable action including an action under Chapter-VIII of the Act, as the Co-operative Union had been successfully avoiding to fill up the office of the Managing Director, despite earlier orders under some pretext or other. The first respondent-Registrar may also issue further directions for the constitution of the expert panel to select and to appoint the Managing Director, according to the byelaws read with the provisions of the Act.

43. The petitioner-Society in WP No.4785/99 is also directed to fill up the office of Managing Director within a period of three months from the date of communication of this order, as per the existing byelaws. Consequently, the connected WMPs are closed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28th August, 2000

Coram: THE HONOURABLE Mr. JUSTICE I. DAVID CHRISTIAN

Second Appeal No. 1686 of 1988

M. E. Hameed Ummal

... Appellant

Versus

- (1) The Union of India, rep. by the Registrar
of Co-operative Societies, Pondicherry.
- (2) The Karaikal Co-operative Building Society Ltd.,
Nehru Nagar, Thalatheru P.O. Karaikal
rep. by its President.
- (3) Chidambaranathan ... Respondents

(A) Appellant, aggrieved over the cancellation of allotment of plot by the second respondent, filed a dispute under S.84 of the Pondicherry Co-operative Societies Act, 1972, to the first respondent. The first respondent has dismissed the dispute. The order was challenged unsuccessfully before the Civil Courts, which held that the Civil Court cannot sit appeal over the orders of the Registrar

(B) Pondicherry Co-operative Societies Act, 1972 – Ss. 84, 140 and 144 – As against the orders passed by the Registrar, the Act provides for appeal under S.140 – S.144 provides a bar of jurisdiction of Civil Courts in respect of suits.

(C) S.144 of the Act specifically provides that no order passed by the Registrar under S.84 or any dispute referred to can be called into question by way of civil suit. In view of the clear provision under S.144 providing for a bar of jurisdiction of Civil Court to entertain any suit in respect of decision arrived at under the provisions of the Co-operative Societies Act, both the Courts have correctly held that the suit is not maintainable. (Para 13)

(D) Held, the appellate court was right in dismissing the suit and confirming the order of the lower court, I do not find any reason or justification to interfere with the findings of the court below. The second appeal fails and the same is dismissed. (Para 16)

For Appellants : Mr. T.K.Seshadri, Advocate
For Respondents : Government Pleader, Pondicherry (R1)
Mr. James Terrace Sekar, Advocate (R2)
Mr. K. Mani, Advocate (R3)

JUDGMENT

Appeal against the judgment and decree made in A.S.No.171 of 1987 on the file of the Principal District Judge, Pondicherry, dated 27-7-1988, conforming the decree of dismissal made in O.S. No.990 of 1986 on the file of the Principal District Munsif, Pondicherry, dated 12-08-1987.

2. The twice-defeated plaintiff is the appellant in this second appeal.

3. The plaintiff filed the suit praying for a declaration that the rules framed for allotment of the house site dated 3-7-1974 shall not have retrospective effect and that consequential relief of setting aside the order of the first defendant dated 14-2-1986 and for permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property.

4. The second defendant allotted a house plot bearing No.147 to the plaintiff on 2-7-1965 for a sum of Rs.1060/-. The plaintiff paid the amount and raised the basement investing a sum of Rs.10,000/-. The plaintiff is also paying the Municipal Tax for the plot and patta has also been transferred in her name. Subsequently, the second defendant cancelled the allotment made in favour of the plaintiff and re-allotted the property in favour of the third defendant, for a consideration of Rs.11,087-62. The second respondent executed a sale deed in favour of third defendant on 7-9-82. The re allotment is said to have been made under the rules framed and approved by the first defendant on 3-7-1974. At the time of earlier allotment made to the plaintiff on 2-7-1965, there were no such rules. The plaintiff made a representation to the Registrar raising a dispute under Section 84 of the Pondicherry Co-operative Societies Act. The first defendant dismissed the appeal filed by the plaintiff. The first defendant held that the allotment made to the third defendant is valid. The order of the Registrar of Co-operative Societies giving retrospective effect to Rule 14 of the Rule of Allotment is unjust, illegal, null and void. Therefore, the plaintiff is constrained to file this suit for declaration that Rule No.14 is not valid.

5. The defendants resisted the claim of the plaintiff by contending that the specific Relief Act does not provide for declaration with regard to the statutory rule as invalid, that the rules as framed under the Act cannot be challenged in this forum and hence the Civil Court has no jurisdiction to try the suit, that the first defendant is not a necessary party, that the plaintiff himself has raised a dispute before the Registrar of Co-operative Societies, under Section 84 (1) of the Pondicherry Co-operative Societies Act, that the order has been passed in ARC 1859/83, on 14-7-1986 by the Registrar, that if the plaintiff is aggrieved with the order of the Registrar she can prefer an appeal before the Co-operative Tribunal

which is the Appellate Authority constituted as per the Act, that the suit is barred under Section 144 of the Pondicherry Co-operative Societies Act, that there is no cause of action for the suit and the suit is liable to be dismissed.

6. It is also stated that the property is situated in Karaikal and therefore, the Court in Pondicherry will have no jurisdiction. The defendant also stated that only plaintiff has made an advance and the plaintiff did not pay any sale consideration and that the property was not sold to the plaintiff and that he was only an allottee and not a purchaser or vendor, that the second defendant issued a notice on 5-1-1971 to complete the construction of the house within one month, warning that the allotment will be cancelled, that the plaintiff has not complied with the direction and even after three years the plaintiff refused to construct the house, that therefore, the allotment was cancelled and the second defendant resumed the property on 30-1-1980, that the second defendant allotted the same to the third defendant and that the suit is liable to be dismissed.

7. On the above pleadings, the learned District Munsif framed as many as seven issues and the first issue was whether the suit is barred under Section 144 of Pondicherry Co-operative Societies Act, 1972, and if so, this Court has no jurisdiction to try this suit? Since one of the issues was raised involves question of maintainability and jurisdiction, after hearing both sides, the learned District Munsif held that, the Civil Courts jurisdiction is ousted under Section 144 of Pondicherry Co-operative Societies Act, and therefore, dismissed the suit.

8. Aggrieved at the said decision and decree, the plaintiff preferred an Appeal in A.S. No.171 of 1987 and the learned District Judge also concurred with the finding of the Trial Court and dismissed the suit for want of jurisdiction. Incidentally, the learned District Judge has also held that even assuming for a moment the Civil Court has jurisdiction, the suit is filed before Pondicherry Munsif Court, whereas the property is situated only in Karaikal and on this ground also Pondicherry Courts will have no territorial jurisdiction. The plaintiff has come forward with this second appeal aggrieved at the judgment and decree of the First Appellate Court.

9. At the time of admission of the second appeal, the following substantial questions of law have been formulated as arising for consideration:

- (1) Whether the lower appellate Court erred in deciding that there was no territorial jurisdiction to try the suit?
- (2) Whether the lower appellate Court erred in failing to decide, in the light of Anisminic's case, whether the first respondent had jurisdiction to pass orders?
- (3) Whether the first respondent has jurisdiction to go into the retrospective validity of 1974 amendment to the byelaw?

10. The plaintiff has filed the suit aggrieved at the order passed by the second defendant, Registrar of Co-operative Societies, Pondicherry. The plaintiff himself does not dispute the fact that she was aggrieved by the order of cancellation of the allotment made by the second defendant, Karaikal Co-operative Building Society,

Karaikal and the appeal was preferred under Section 84 of the Pondicherry Co-operative Societies Act. Section 84 provides that “any dispute arising between the Society and the member will have to be referred to the Registrar of Co-operative Societies”. The plaintiff was aggrieved because of the cancellation of the allotment made by the second defendant co-operative society. The plaintiff is a member of the said society, and therefore, she raised a dispute with regard to the cancellation of the order of allotment made by the second defendant before the Registrar of Co-operative Societies under Section 84. The Registrar by his order has negated the contention of the plaintiff and has dismissed the petition.

11. As against the order passed by the Registrar, the Pondicherry Co-operative Societies Act provides for appeal. Section 140 of Pondicherry Co-operative Society Act provides that “any person aggrieved by any decision passed or order made under sub-section (1) of Section 82, Section 83, sub-section (2), sub-section (3) or sub-section (4) of Section 84, Section 126, Section 133 or Section 157 or any award of an Arbitrator or Arbitrators under sub-section (2) or sub-section (3) of Section 84, may appeal to the Tribunal”.

12. Section 144 of Pondicherry Co-operative Societies Act, provides a bar of jurisdiction of Civil Courts in respect of suits. Section 144 reads as follows: “Bar of jurisdiction – No order or award passed decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorized or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court”.

13. Section 144 of the Act specifically provides that no order passed by the Registrar under Section 84 of the Act or any dispute referred to can be called into question by way of civil suit, Section 144 provides for a total bar in respect of entertaining any suit arising under Section 84 or any other provisions of the Act. In view of the clear provision under Section 144 providing for a Bar of jurisdiction of Civil Court to entertain any suits in respect of the decision arrived at under the provisions of the Co-operative Societies Act, both the Courts have correctly held that the suit is not maintainable.

14. The learned Counsel for the plaintiff would further raise a contention that the first appellate Court has given a finding that the courts in Karaikal alone will have jurisdiction and the suit filed before the Pondicherry Munsif Court is not maintainable and dismissed the suit. The learned Counsel seems to contend that once the appellate Judge has found that Pondicherry Civil Courts will have no jurisdiction, he ought to have returned the plaint to be filed before the Karaikal Court and should not have dismissed the suit.

15. The argument is based on a erroneous reading of the judgment of the appellate Court. There is a clear finding in the judgment of the appellate court namely the Principal District Judge, that Civil Court’s jurisdiction is clearly ousted by virtue of Section 144 of the Pondicherry Co-operative Societies Act. Thereafter only by way of supplementary argument, the learned Judge, has held that even assuming that Civil Court will have jurisdiction, the suit having been filed in Pondicherry, the suit is not properly laid. The finding on this point is not called for

and unwarranted, once the learned Principal District Judge has held that there is total bar under Section 144 for entertaining the suit in this nature.

16. In view of Section 144 of the Co-operative Societies Act, there is no question of the Pondicherry Courts having no jurisdiction and Karaikal Courts having jurisdiction. Anyhow, there is a clear finding that suit is barred by Section 144 of the above said Act. Therefore, the appellate Court was right in dismissing the suit and confirming the order of the trial court. I do not find any reason or justification to interfere with the findings of the courts below. The substantial questions of law are answered against the appellant. There are no merits. Hence, the second appeal fails and the same is dismissed with costs.

17. The appellant will be at liberty to move the proper Tribunal, provided it is in time.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 8th September, 2000

PRESENT: THE HONOURABLE Mr. JUSTICE E. PADMANABHAN

Writ Petition Nos. 7490 of 1993 & 6691 of 1993

and

W.M.P No.11812 of 1993

T. Sarathy	..	Petitioner in W.P. No. 6691 of 1993
1. V. Dhakshinamoorthy		
2. I. Thirumurugan	..	Petitioners in W.P. No. 7490 of 1993
Versus		
1. The Union Territory of Pondicherry, rep. by its Registrar of Co-operative Societies, Pondicherry.		
2. The Pondicherry Co-operative Sugar Mills Ltd., rep. by its Managing Director, Pondicherry & 10 others	..	Respondents in both the Petitions

(A) Whether the committee constituted for the impugned selection is a valid committee and whether there is any provision for nominating expert member in the said committee? Learned counsel for respondents 2 and 3 represented that the committee is an invalid committee and there is no power or authority to nominate an expert member which would be in violation of the recruitment rules.
(Para 3)

(B) The impugned proceedings and the entire selection is obviously vitiated and consequently the impugned proceedings are quashed.
(Para 4)

Writ petitions are allowed.

W. P. Nos. 7490 of 1993 & 6691 of 1993

Petitions under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavits filed therewith the High Court will be pleased to issue writs of certiorarified mandamus to call for the entire records relating to the publication of the memorandum in No.P.C.S.M./1-121/85-92/9073 dated 15-9-1992 by the third respondent herein. So far as the selection of the respondents 4 to 12 herein to the post of cane assistant (regular) and quash the

same, and as a consequential relief direct the respondents 1 to 3 herein to promote/appoint the petitioners in each petition herein to the post of cane assistants (Regular)

W.M.P. No.11812 of 1993:

Petition presented to this Court to order interim direction directing the respondents 1 to 3 herein to promote/appoint the petitioners to the post of cane assistant by reverting any two of the respondents 4 to 12 herein pending disposal of the above W.P. No.7490/93.

For Petitioner : Mr. J. Ganesan for R. Mahadevan, Advocate
For Respondents 2 & 3 : Mrs. N. Mala for Mr. K.S. Ahamed, Government Advocate for Pondicherry.
For Respondents
4, 6, 7, 8, 9, 11 & 12 : Mr. R. Subramanian, Advocate

ORDER

These writ petitions and W.M.P. coming on for hearing on Tuesday, the 7th day of March, 2000 and on this day upon perusing the petitions and the affidavits filed in support thereof the order of the High Court, dated 8-4-1993 and 20-4-1993 and made herein and the counter affidavit filed herein and the records relating to the order in the prayer aforesaid comprised in the return of respondent to the writ made by the High Court and upon hearing the arguments of Mr. J. Ganesan, Advocate for Mr. R. Mahadevan, Advocate for the petitioners in all the petitions and Mrs. N. Mala for Mr. K. S. Ahamed, Government Advocate, Pondicherry for respondents 2 and 3 and of Mr. R. Subramanian, Advocate for respondents 4, 6, 7, 8, 9, 11 and 12 and the respondents 1, 5 and 10 not appearing either in person or by advocate and having stood over consideration till this day, the Court made the following order:

In W.P. No.7490 of 1993, the petitioners 1 and 2 had prayed for issue of a writ of certiorarified mandamus calling for the entire records relating to the publication of the Memorandum in PCSM/1-121/85-92/9073, dated 15-9-1992, passed by the third respondent herein in so far as the selection of the respondents 4 to 12 herein to the post of cane assistant (Regular) quash the same and as a consequential relief, direct the respondents 1 to 3 herein to promote/appoint the petitioners herein to the post of the cane assistants (Regular).

2. W.P. No.6691 of 1993 had been filed by the one Sarathy, another petitioner, seeking for an identical relief in respect of the same impugned proceedings.

3. On the earlier occasion the matter was heard in detail. After reserving orders, this Court once again listed the writ petitions for further arguments as certain basic questions were raised and there was no answer for the same. One of the questions, being, whether the committee constituted for the impugned selection is a valid committee and whether there is any provision for nominating expert member in the said committee. Learned counsel for the respondents 2 and 3 took time on the earlier occasion to get instructions in this behalf. Today, learned counsel for the

respondents 2 and 3 on instruction, represents that the committee constituted for the impugned selection is an invalid committee and there is no power or authority to nominate an expert member which would be in violation of the recruitment rules.

4. In the light of the said fair statement, the impugned proceedings and the entire selection is obviously vitiated and consequently, the impugned proceedings are quashed. The respondents 1 to 3 shall constitute a fresh committee, consider all the applicants on merits and according to the recruitment rules, hold the selection, constitute a fresh committee and pass fresh orders of selection. The respondents shall consider all the applicants including the writ petitioners and consider their claim according to the recruitment rules. It is needless to add that the respondents 1 to 3 shall take action immediately, as the matter is pending since 1993.

5. As regards the continuation of the persons who have been selected and appointed as cane assistants, by the impugned orders, the persons selected shall continue as cane assistants for a period of three months from today and in the meanwhile, the respondents 1 to 3 shall constitute a fresh committee and proceed with the selection according to the recruitment rules.

6. The writ petitions are allowed in the above terms. No costs. Consequently, W.M.P No.11812 of 1993 is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

Date: 22nd December, 2000

PRESENT: THE HONOURABLE Mr. JUSTICE K. GOVINDARAJAN

Writ Petition No. 21830 of 2000
and
WMP No. 31653 of 2000

S. Srinivasan

... Petitioner

Versus

- (1) Registrar of Co-operative Societies,
Pondicherry State.
 - (2) Deputy Registrar of Co-operative Societies,
Co-operative Department, V.V.P.Nagar, Pondicherry
 - (3) The Pondicherry Co-operative Milk Producers Union,
by it's Managing Director, Pondicherry
 - (4) B. Dhanaraj, President, Nettapakkam Co-operative
Milk Producers Society, Nettapakkam, Pondicherry.
 - (5) Theni C. Jayakumar, Minister of Co-operatives,
State of Pondicherry, Pondicherry.
 - (6) Devi Mathews,
Registrar of Co-operative Societies, Pondicherry
 - (7) Ramamoorthy, Deputy Registrar of Co-operative
Societies, Co-operative Department,
V.V.P.Nagar, Pondicherry
- ... Respondents

The petitioner has filed the writ petition challenging the notice issued by the Deputy Registrar in E.D. No.5 of 2000. Without even facing the proceedings, the petitioner has filed the writ petition. If any order is passed against the petitioner, he can always challenge the same in accordance with law. Giving such liberty, the writ petition is dismissed.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue writ of prohibition or any other appropriate writ or order or direction in the nature of Writ of Prohibition, prohibiting the second respondent herein from taking any further proceedings in E.D. No.5/2000 filed by the 4th respondent herein on the file of the second respondent.

WMP No. 31653/2000:

Petition presented to grant stay of all further proceedings in E.D.No.5/2000 filed by the 4th respondent herein on the file of the second respondent herein pending disposal of the above writ petition.

For Petitioner : Mr.A.R.L.Sundaresan, Advocate
For Respondents : Mr. T. Murugesan, Government Pleader for
Pondicherry.

ORDER

This writ petition coming on for admission on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. A.R. L. Sundaresan, Advocate for the petitioner, and of Mr.T. Murugasen, Government Pleader, Pondicherry for the Respondents, the Court made the following order:

1. Mr. T. Murugesan learned Government Pleader, Pondicherry, takes notice for the respondents.
2. The Petitioner has filed the above writ petition challenging the notice issued by the Deputy Registrar in E.D.No.5 of 2000. Without even facing the proceedings, the petitioner has filed the above writ petition. If any order is passed against the petitioner he can always challenge the same in accordance with law. Giving such liberty, the writ petition is dismissed. Consequently, W.M.P.No.31653 of 2000 is also dismissed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
22nd January, 2001

PRESENT:

THE HONOURABLE Mr. JUSTICE E. PADMANABHAN

Contempt Application No.497 and 631 of 2000
and
W.M.P.Nos.23143, 23144, 23318 &
18717 of 2000.

Contempt Application No.497/2000:-

The Pondicherry Co-operative Milk Producer's Union Ltd., No.1, No.497/2000 rep. by its Chairman, Pondicherry. Petitioner in Contempt Application and WMP No.23318/2000 and WMP.No.18717/2000. (Petitioner in W.P.4785/99)
---	---

Versus

The Registrar of Co-operative Societies Government of Pondicherry Pondicherry.	Respondent in Contempt Application 497/2000 & WMP. No.23318/2000 &18717/2000. (Respondent in - do-)
--	--

Contempt Application 631/2000:-

The Registrar of Co-operative Societies Government of Pondicherry Pondicherry.	Petitioner in contempt Application 631/2000, & WMP.No.23143, 23144/2000. (Petitioner in WP.No.18210/99)
--	--

Versus

- | | |
|---|---|
| 1. B. Navaneetha Kannan,
Managing Director – Incharge,
Pondicherry Co-operative Milk Producers Union,
Pondicherry. | |
| 2. P. Damodhara Gounder,
Pondicherry Co-operative Milk Producers Union
Ltd. No.P. 1, Pondicherry. | |
| 3. The National Dairy Development Board,
By its Regional Director,
Southern Region,
Bangalore – 95. | Respondent in Contempt Application
No.631/2000 &WMP. No.23143,
23144/2000.
(Respondents in – do ---) |

(A) it is clear that the either parties have contributed for the delay in filling up the post of Managing Director of the Pondicherry Co-operative Milk Producers' Union. The said post is the principal post. The Managing Director is the principal officer of the Pondicherry Co-operative Milk Producers' Union and a full time post. For several years the post had not been filled up and the petitioner as well as the Managing Director in-charge B. Navaneetha Kannan from time to time have been taking extreme stand or initiating some proceedings or other for their convenience and own benefit and have successfully delayed the calling for application, selection and appointment to the post of Managing Director .(Para 16)

(B) It is unfortunate that the in-charge arrangement is going on for the past several years and much could be said against the petitioner Union as well as Mr. B.Navaneetha Kannan, the Managing Director in-charge on one side and the Registrar of Co-operative Societies, Pondicherry as well. The conduct of either parties has contributed for a dead lock and this has also affected not only the day to day functions of the said society but also in its election. (Para 17)

(C) At any rate the present position is not in the interest of the Pondicherry Co-operative Milk Producers Union or its members or shareholders as the case may be. (Para 19)

(D) Normally this Court would not be justified in replacing an elected body. But the conduct of the elected body as well as the Managing director in charge for the post is continuing for several years and that of the Registrar are the compelling reasons which prevails with this Court in issuing the present directions as least a full time Managing Director could be selected and appointed as per the existing byelaws instead of allowing the controversy being continued indefinitely and to the detriment of the Co-operative Milk Producers Union. (Para 22)

(E) It is made clear that this Court will allow the newly elected board or committee or its Chairman to assume office only after the completion of selection and appointment of Managing Director and till then, they shall not in any manner interfere with the Administrator or take part or discharge any of the function in that capacity. (Para 23)

Writ Petitions and Contempt Applications were disposed of with directions.

Contempt Application 497/2000:-

Petition presented to this Court under Sections 11 and 12 of Contempt of Court Act praying this Court to punish the respondent/Contemner herein for having committed the contempt of this Courts order in W.P.No.4785/99 dated 5-5-2000.

W.P.No.4785/99:-

Petition presented to this Court under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the respondent made in its No.5/7/1/9/RCS/Dairy 195/60, dated 4-3-1999 and quash the same.

Contempt Application 631/2000:-

Petition presented to this Court under Contempt of Court Act, r/w. Article 215 of the Constitution of India praying this Court to pass an order punishing the 2nd respondent P. Damodhara Gounder being the Chairman of the Pondicherry Co-operative Milk Producers Union, Pondicherry for having willfully disobeyed the order passed by this Court made in w.P.No.18210/99 dated 5-5-2000 in accordance with law.

W. M.P.No.18717/2000:-

Petition presented to this Court to grant stay of the impugned order of the respondent in his direction under Ref.No.5/7/1/31/RCS/Dairy/99, dated 21-7-2000 pending disposal of W.P.No.12876/2000 presented to this Court under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for the records of the respondent made in its direction No.5/7/1/31/RCS/Dairy/99, dated 21-7-2000 and quash the same.

W. M.P.No.23318 /2000:-

Petition presented to this Court to stay the impugned order of the respondent made in his direction under ref. No. 5/7/1/31/RCS/Dairy/99-99, dated 15-9-2000 pending disposal of W.P.No.16084/2000 presented to this Court under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the respondent made in its direction No.5/7/1/31/RCS/Dairy/99-99, dated 15-9-2000 and quash the same.

W. M.P.No.23143/2000:-

Petition presented to this Court to issue direction to the second respondent society to constitute the expert panel as provided in bye-laws, afresh then call for applications for filling up the post of Managing Director of second respondent society in consultation with all the members of the expert panel, by releasing the advertisement in 6 newspapers as was done in 1984-85 so as to secure a good response and to act according to the statutory directions issued by the petitioner on 14-8-2000 in the matter of filling up the office of the Managing Director after holding selection from among the suitable candidates who apply for the post as ordered at para 41 of the common Judgment dated 5-5-2000 pending W.P.No.18210/99 presented to this Court under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent authority comprised in the proceedings No.5/7/1/31/RCS/Dairy/99/415 dated 9-11-1999 and quash the same and consequently direct the respondents to select and appoint the petitioner as Managing Director of the 2nd respondent society

without reference to the impugned order of the 1st respondent made in his reference No.5/7/1/31/RCS/Dairy/99/415, dated 9-11-1999.

W.M.P.No.23144/2000:-

Petition presented to this Court to direct the 2nd Respondent society to withhold any selection process scheduled by the second respondent on 18-9-2000 pending W.P.No.18210/99 on the file of this Court presented to this Court under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent authority comprised in the proceedings No.5/7/1/31/RCS/Dairy/99/415, dated 9-11-1999 and quash the same and consequently direct the respondents to select and appoint the petitioner as Managing Director of the 2nd respondent society without reference to the impugned order of the 1st Respondent made in his reference No. 5/7/1/31/RCS/Dairy/99/415, dated 9-11-1999.

Mr. G. Rajan, Advocate	: For the Pondicherry Co-operative Milk Producers' Union in all the Petitions / applications.
Mr. T. Murugesan, Senior Counsel & Mr. R. Natarajan, Additional Government Pleader For Pondicherry	: For Registrar of Co-operative Societies, Pondicherry in all the petitions/applications
Mr. Ramajegadeesan, Advocate	: For R-1 in WMP Nos. 23143 & 23144/2000
Mr. G. Rajan, Advocate	: For R-2 in -do-

ORDER

The WMP petitions and Contempt Applications coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof, the Orders of the High Court, dated 5-5-2000 in W.P.No.4785/99 and in W.P.No.18210/99 and upon hearing the arguments of Mr. G. Rajan. Advocate for the petitioners in all the petitions and of Mr. T. Murugesan, Senior Counsel and of Mr. Natarajan, Additional Government Pleader appearing for Pondicherry, the Court made the following Order:

W.M.P.No: 23318/2000 & 18717/2000.

The Pondicherry Co-operative Milk
Producer's Union Ltd., No.1,
rep. by its Chairman,
Pondicherry.

..... Petitioner

Versus

The Registrar of Co-operative Societies
Government of Pondicherry,
Pondicherry.

..... Respondent

ORDER

The above two contempt applications are complaint and counter complaints of contempt and in both the contempt applications, this Court had ordered notice to the respondents on 4-1-2001 returnable by eight weeks.

2. As per orders of My Lord the Hon'ble Chief Justice along with the contempt applications, the above two writ petitions and the connected miscellaneous petitions also were taken up for hearing, besides W.M.P. Nos. 23143 and 23144 of 2000 in W.P. No. 18210 of 1999 filed by the Registrar of Co-operative Societies, Pondicherry, for directions.

3. W.P.No:18210 of 1999 was filed by B. Navaneetha Kannan praying for the issue of a writ of mandamus to call for the proceedings of the first respondent, the Registrar of Co-operative Societies, Pondicherry in the proceedings No.5/7/1/31/RCS/Dairy/99/415 dated 9-11-1999 and quash the same and consequently appoint the respondents to select and appoint the petitioner as Managing Director of the second respondent society without reference to the impugned order of the first respondent made in his reference dated 9-11-1999.

4. The said W.P. No.18210 of 1999 and W.P.No:4785 of 1999 filed by Pondicherry Co-operative Milk Producers Union represented by its Chairman to call for and quash the orders of the Registrar of Co-operative Societies, Pondicherry in No.5/7/1/9/RCS/Dairy/95/96, dated 4-3-1999 were taken up together.

5. After the detailed hearing this Court by a common order dated 5-5-2000, while dismissing W.P.No:4785 of 1999, allowed W.P.No:18210 of 1999 in part, filed by B. Navaneetha Kannan and passed the following orders:-

"41. In so far as the Writ Petition No.18210/99, this Court while quashing the impugned communication dated 9-11-1999 directs the Pondicherry Co-operative Milk Producers Union to fill up the office of Managing Director by forming an expert panel as provided in the bye-laws and fill up the same after holding a selection from among the suitable candidates, who apply for the post and it is for the Registrar of Co-operative Societies to issue suitable

directions in this respect. It is needless to add that the expert panel has to consider each applicant on merits and according to their qualifications. Necessary applications called for should be forwarded by proper channel.

42. With the above directions, the Writ Petition No.18210/99 is allowed in part and it is needless to add that the second respondent-society shall proceed further to fill up the office of the Managing Director without any further delay. If the second respondent-society persists in delaying the matter, it is needless to add that the Registrar could take suitable action including an action under Chapter-VIII of the Act, as the Co-operative Union had been successfully avoiding to fill up the office of the Managing Director, despite earlier orders under some pretext or other. The first respondent-Registrar may also issue further directions for the constitution of the expert panel to select and to appoint the Managing Director according to the bye-laws read with the provisions of the Act.
43. The Petitioner-society in W.P.No.4785/99 is also directed to fill up the office of Managing Director within a period of three months from the date of communication of this order, as per the existing byelaws. Consequently, the connected WMPs. are closed. No costs."

6. This Court had made it clear that the petitioner B. Navaneetha Kannan is not in the feeder category and the post of Managing Director is not a promotional post also and in that view of the matter dismissed the writ petition No.4785 of 1999. Complaining violations of the directions issued by this Court in W.P.No:18210 of 1999, the writ petitioner therein had filed Contempt Application No:497 of 2000 to punish the Registrar of Co-operative Societies, Pondicherry, as according to the petitioner the said Registrar had committed contempt of the order passed by this Court in W.P. No. 4785 of 1999 dated 5-5-2000.

7. The very same Registrar filed Contempt Application No. 631 of 2000 in W.P.No.18210 of 1999 to punish P. Damodara Gounder, Chairman of the Pondicherry Co-operative Milk Producers Union alleging disobedience of the order passed by this Court in W.P. No. 18210 of 1999, dated 5-5-2000. In both the contempt applications this Court had already ordered notice to the respective respondents returnable by eight weeks.

8. W.P. No. 12976 of 2000 has been filed by the said Pondicherry Co-operative Milk Producers Union represented by its Chairman to issue a writ of certiorari calling for the records of the Registrar of the Co-operative Societies, Pondicherry in his office direction under reference No.5/7/1/31/RCS/Dairy/99, dated 21-7-2000 and to quash the same. The very same Pondicherry Co-operative Milk Producers Union had filed W.P. No.16084 of 2000 praying this Court to issue a writ of certiorari to call for the records of the Registrar of Co-operative Societies, Pondicherry made in his office direction No.5/7/1/31/RCS/Dairy/99-99 dated 15-9-2000.

9. Pending the W.P. No.12976 of 2000, the said Pondicherry Co-operative Milk Producers Union filed W.M.P.No.18717 of 2000 to stay the directions issued by the Registrar of Co-operative Societies, Pondicherry dated 21-7-2000 which is being

challenged in W.P.No.12976 of 2000. On 31-10-2000, interim stay of the said direction was granted until further orders. In W.M.P. No.23318 of 2000, the very same Pondicherry Co-operative Milk Producers Union had prayed for stay of the proceedings of the Registrar of Co-operative Societies, Pondicherry dated 15-9-2000, which is being challenged in W.P.No:16984 of 2000. W.P.No.16084 of 2000 had not been admitted so far and today by a separate order this Court admitted the writ petition and ordered issue of rule nisi.

10. In the meanwhile, the Registrar of Co-operative Societies, Pondicherry had taken out W.M.P. Nos. 23143 and 23144 of 2000 in W.P. No. 18210 of 1999 praying this Court to issue direction to the Chairman, Pondicherry Co-operative Milk Producers Union to constitute an expert panel as provided in the bye laws afresh and then call for applications for filling up the post of Managing Director of the second respondent society in consultation with all the Members of Expert panel by releasing the advertisement in six newspapers as was done during 1984-85 so as to secure a good response and to act according to the statutory directions issued by the Registrar on 14-8-2000 in the matter filling up of the office of the Managing Director after holding the selection from among the suitable candidates who apply for the post as ordered in term of para 41 of the order passed by this Court on 5-5-2000 in W.P. No.18210 of 1999.

11. The very same Registrar of Co-operative Societies, Pondicherry, has also filed a WMP No.21344 of 2000 in W.P. No.18210 of 1999, seeking for a direction to the second respondent society, namely the Pondicherry Co-operative Milk Producers' Union to withhold any selection process scheduled by the second respondent on 18-9-2000, pending further orders of this Court.

12. Heard Mr. G. Rajan for the writ petitioner and Mr. T. Murugesan, Senior Counsel and Mr. Natrajan, Additional Government Pleader for the respondents in WMP Nos. 23318 and 18717 of 2000. Heard Mr. T. Murugesan, learned Senior Counsel and Mr. Natarajan for the petitioner and Mr. Ramajegadessan for the first respondent and Mr. G. Rajan for the second respondent in WMP Nos. 23143 and 23144 of 2000.

13. On 4-1-2001 forenoon after hearing the counsels for either side in all the applications and while taking note of the conduct of the Chairman of the society, Mr. B. Navaneetha Kannan, Managing Director in-charge and the Registrar of Co-operative Societies, Pondicherry, this Court with the consent of the counsel for either side after apprising respective counsel appearing for either side passed the following order:

“Mr. B. Naveetha Kannan, Managing Director in-charge and the Chairman of the Pondicherry Co-operative Milk Producers' Union are restrained by an order of injunction/direction from acting in the respective capacity with respect to the management of the Pondicherry Co-operative Milk Producers' Union.

2. However, Mr. G. Rajan, learned counsel appearing for the said two, represented that said B. Navaneetha Kannan, Managing Director in-charge will proceed on leave until further orders and the P. Damodara

Gounder, Chairman of the Pondicherry Co-operative Milk Producers' Union shall disassociate himself until further orders with the affairs of the said Union.

3. This Court further directs that a Class-I Officer of the Pondicherry State Service is appointed as Administrator to take over and manage the affairs of the said co-operative milk society and the board of directors until further orders to give quietus to all the controversy and see that the office of the Managing Director is filled up according to the rules as it stood as on 5-5-2000, on which date W.P. Nos. 4785 of 1999 and 18210 of 1999 were disposed of. This Court also directs that the said Administrator to act in the place of board of directors of the Pondicherry Co-operative Milk Producers' Union and the Administrator shall initiate fresh action to call for applications to fill up the post of Managing Director afresh by giving due publicity and the selection of the Managing Director shall be completed as per the existing bye laws of the Co-operative Milk Producers' Union as on 5-5-2000 and the elected board of directors of the said Co-operative Milk Producers' Union, if any, shall keep themselves away from the affairs of the said society till a Managing Director is selected and appointed in terms of the existing byelaws that was in force as on 5-5-2000 and without reference to the directions issued by the Registrar of Co-operative Societies, Pondicherry or the subsequent directions, if any, ordered by the Registrar of Co-operative Societies, Pondicherry”.

14. This Court passed over the applications to get the name of Class-I Officers in the service of the Union Territory of Pondicherry and directed the matter to be taken up at 2.15 p.m., on 4-1-2001.

15. At 2.15 p.m., when the matter was taken up, Mr. T. Murugesan, learned Senior Counsel and Mr. Natarajan, learned Additional Government pleader appearing for the Registrar of Co-operative Societies, Pondicherry were present. They stood by the representation already made in the forenoon. However, Mr. G. Rajan, learned counsel represented that his clients namely Mr. B. Navaneetha Kannan and the Chairman of the Pondicherry Co-operative Milk Producers' Union have reservations for passing the said order and the same has now been informed to him over phone and therefore the earlier consent given by him may be taken as withdrawn. To avoid the unpleasant situation, which Mr. G. Rajan, the learned counsel may have to face, this Court is passing the following orders on merits and the above are set out only to place on records as to how the earlier hearing proceeded before the Court. Though the above order was dictated, has not been signed.

16. As set out in the order passed in W.P. Nos. 4785 and 18210 of 1999 and as disclosed by the subsequent proceedings of the respondents which are impugned in W.P. Nos. 12976 of 2000 and 16084 of 2000 it is clear that the either parties have contributed for the delay in filling up the post of Managing Director of the Pondicherry Co-operative Milk Producers' Union. The said post is the principal post. The Managing Director is the principal officer of the Pondicherry Co-operative Milk Producers' Union and a full time post. For several years the post had not been filled

up and the petitioner as well as the Managing Director in-charge B. Navaneetha Kannan from time to time have been taking extreme stand or initiating some proceedings or other for their convenience and own benefit and have successfully delayed the calling for application, selection and appointment to the post of Managing Director.

17. It is unfortunate that the in-charge arrangement is going on for the past several years and much could be said against the petitioner Union as well as Mr. B.Navaneetha Kannan, the Managing Director in-charge on one side and the Registrar of Co-operative Societies, Pondicherry as well. The conduct of either parties has contributed for a dead lock and this has also affected not only the day to day functions of the said society but also in its election. It is an attempt to avoid the filling up of the key post and the usurper or in charge arranged plays a key role in the periodical election, which changes the election result and pattern of election of committee members. Either side is blaming the other or all is not well with either parties. The less said is better. The post of Managing Director should not be kept vacant and a person who had not been appointed regularly shall not be allowed to officiate for years together, nor it is proper for the said in-charge person to manage office and avoid selection and appointment.

18. At the risk of repetition, it has to be pointed out that both the parties have contributed for the said position and as a result of which the interest of the Pondicherry Co-operative Milk Producers' Union and its members have been prejudicially affected,. There has been complaints and counter complaints not only by either side but also by others. The Registrar also had contributed his mite in delaying proceedings by issuing directions even after the earlier order passed by this Court directing that the post of Managing Director shall be filled up as indicated therein. Vested interest as seen from the proceedings have so far managed and enabled them to cling themselves to the post of Managing Director or control the affairs of the Pondicherry Co-operative Milk Producers' Union in one capacity or other and this has also reflected in the elections which is impermissible. It is unfortunate that the respondent had also allowed such a course to be adopted and the infight is rather too much to be believed.

19. At any rate the present position is not in the interest of the Pondicherry Co-operative Milk Producers Union or its members or shareholders as the case may be. Despite the earlier directions issued by this Court in the W.P. Nos. 4785 and 18210 of 1999, as seen from the facts set out in the affidavit as well as the counter affidavit filed in the contempt applications, the contribution is more on the part of the petitioner as well as the said Navaneetha Kannan and it is not as if the Registrar of Co-operative Societies also had acted bona fide.

20. In respect of the contempt applications filed by either side, namely the petitioner Union as well as the Registrar which is a case and counter case of contempt, this Court has already ordered notice to either side and it will be decided or merits. If the same position is allowed to continue, the interest of the Pondicherry Co-operative Milk Producers Union, its shareholders, or members and interest of public will be prejudiced and the deadlock will continue. This will result in further indefinite delay in filling up the post of Managing Director, the key post in the Union,

besides this would enable Navaneetha Kannan to continue as the Managing Director In-charge.

21. The counsel for the Respondent-Registrar and Administration of Union Territory have accepted the said course, while Mr. Rajan, the learned counsel merely represented that the order shall not be based on consent of the petitioners. Hence this order is passed on merits taking into consideration of the Milk Producers' Union, its administration and its members.

22. Normally this Court would not be justified in replacing an elected body. But the conduct of the elected body as well as the Managing director in charge for the post is continuing for several years and that of the Registrar are the compelling reasons which prevails with this Court in issuing the present directions as least a full time Managing Director could be selected and appointed as per the existing byelaws instead of allowing the controversy being continued indefinitely and to the detriment of the Co-operative Milk Producers Union.

23. In the circumstances, considering the larger interest of the Pondicherry Co-operative Milk Producers Union, its members and shareholders, its committee and the larger interest of the society, this Court is issuing the following directions:-

- “(i) Mr. Navaneetha Kannan, Managing Director In-charge shall keep himself away from the activities of the Pondicherry Co-operative Milk Producers Union in any capacity by proceeding on leave until further orders and shall not in any manner interfere whatsoever with the affairs of the Union or the management of the Union by the Administrator appointed by this Court. However, full salary alone shall be paid to him in the substantive post until further order without any other benefit or facility.
- (ii) The writ petitioner namely the Chairman of the Pondicherry Co-operative Milk Producers Union and the newly elected Chairman or board of directors if any, shall also not act in their respective capacity until further orders of this Court and the Administrator appointed by this Court shall act in the place of the board or committee or committees as well as the Managing Director to manage the affairs of the society and exercise full control, supervision over the affairs of the Pondicherry Co-operative Milk Producers Union until further orders and the Administrator shall take all such actions as may be required in the interest of the society.
- (iii) The Chief Secretary to the Government of Union Territory of Pondicherry is suo motu impleaded as party to the present writ proceedings so that orders of this Court could be communicated to the Chief Secretary to the Government of Union Territory of Pondicherry and implemented without delay.
- (iv) Mr. Uddipt Ray, I.A.S., Joint Secretary (Revenue) in the services of the Union Territory of Pondicherry is appointed as the Administrator

to manage and administer, control and supervise every affairs of the Pondicherry Co-operative Milk Producers Union and also exercise all the powers of the Chairman, board of directors and Managing Director of the said Union or committee or committees or of the Co-operative Union and shall be the sole repository exercising powers until further orders and every employee of the said Union shall be subject to his control and supervision and carry out his orders without any demur, until further orders. The Administrator shall forthwith assume charge and act in terms of this order.

- (v) Mr. Uddipt Ray, I.A.S., Administrator shall initiate immediate action to fill up the post of Managing Director by inviting fresh applications in terms and as per the bye laws that existed as on 5-5-2000, the date of order passed by this court in W.P. Nos. 4785 and 18210 of 1999 and without reference to subsequent alteration or amendment to byelaws and directions issued by the Registrar of co-operative Societies, Pondicherry.
- (vi) On the communication received from the said Administrator appointed by this Court, the National Dairy Development Board, the Government of Pondicherry shall in the level as prescribed in the byelaws nominate their representatives respectively to be the committee members and select the Managing Director of the Pondicherry Co-operative Milk Producers' Union without delay and take all steps to fill up the said post.
- (vii) On behalf of the society, the Administrator himself shall be one of the selection committee members as representing the said Co-operative Milk Producers Union as its Chairman or committee and the Administrator shall be the coordinator and the representative of the National Dairy Development Corporation shall be the Chairman of the selection committee. The majority decision of the selection committee shall be final and on the majority decision the candidate selected shall be appointed as Managing Director by the Administrator and the said appointment shall be deemed to have been made as per bye laws and as one made by the competent authority as per statutory provisions of the Pondicherry Co-operative Societies Act, 1972, its Rules, bye laws of the society and Rules governing the post of Managing Director and the Administrator shall hand over charge to the new incumbent within outer limit of four months from the date of communication of this order.
- (viii) The Registrar of Co-operative Societies, Union Territory of Pondicherry shall not in any manner interfere with the functions of the Administrator or in the selection process and the Chief Secretary to Government of Pondicherry shall render all assistance to the Administrator."

24. It is made clear that this Court will allow the newly elected board or committee or its Chairman to assume office only after the completion of selection and appointment of Managing Director and till then, they shall not in any manner interfere with the Administrator or take part or discharge any of the function in that capacity.

25. It is made clear that it is open to the Administrator to seek for further directions, if any, from this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 7th March, 2001

CORAM: THE HONOURABLE Mr. JUSTICE E. PADMANABHAN

Writ Petition Nos.15586 & 15587 of 2000

and

WMP Nos. 22642, 22643 & 27042 of 2000

K. Sobithkumar

... Petitioner

Versus

- (1) Union of India, rep. by the Registrar,
Office of the Registrar of Co-operative Societies
Pondicherry.
- (2) The Administrator,
P-113, Arumparathapuram village Co-operative
Agricultural Credit Society Ltd., Villianur (Via)
Pondicherry – 605 110. ... Respondents
in both WPs
- (3) S. Nagarajan
- (4) Ms. S. Sujatha ... Respondents in
WP No.15586/2000

(A) The employer is entitled to place an employee under suspension pending contemplation of the enquiry into the grave charges. It cannot be said that the order of suspension comes to an end the moment the charges have been framed. (Para 8)

(B) The employer shall appoint a new enquiry officer and continue the proceedings. The enquiry shall be completed and final order shall be passed within six months from the date of communication of this order. (Para 9)

Writ Petition No.15587 of 2000 is dismissed.

Writ Petition No.15586 of 2000 is ordered accordingly.

For Petitioner : Mr.G.R. Swaminathan, Advocate
For Respondent No.2 : Mr. Gnanasekar, Advocate

ORDER

WP No.15587 of 2000 has been filed by the petitioner challenging the order of suspension, while W.P.Nop.15586 of 2000 had been filed by the very same petitioner to call for and quash the enquiry proceedings initiated pursuant to the charge memo dated 27-3-1998 on the file of the second respondent society.

2. The writ petitioner, an employee of the second respondent society was placed under suspension pending contemplation of the enquiry into the grave charges. On 27-3-1998, the charges have been framed and the enquiry is yet to be completed. As nearly three years had lapsed since the date of suspension, the petitioner has got a grievance and the learned counsel Mr. G.R. Swaminathan, contends that there is no justification to keep the petitioner under suspension indefinitely.

3. The petitioner had also challenged the proceedings before the Enquiry Officer on the sole ground that the Enquiry Officer appointed by the second respondent employer is biased, in that, the Enquiry Officer is junior in the office of the Legal Advisor to the second respondent society.

4. Though much could be said either way with respect to the said plea of bias, with a view to put an end to such a contention, this court suggested to either side that the second respondent employer may appoint some other Enquiry Officer other than respondents 3 & 4 or any other Junior attached to the office of the Legal Advisor to the second respondent society.

5. Learned counsel for the second respondent readily agreed to that and represents that the second respondent society will appoint an independent person to conduct the enquiry, such as retired personnel from the Co-operative Department or any other member of the Bar, who is not connected with the Legal Advisor to the second respondent society.

6. It is made clear that the new Enquiry Officer appointed in the place of respondents 3 & 4 will continue to proceed with the enquiry from the stage at which the fourth respondent had left. This direction is issued with the consent of counsel on either side.

7. As regards the suspension, the learned counsel for the petitioner contended that unless fresh order of suspension is passed after framing of charges, the earlier suspension passed on 28-2-1998 will not hold good. In other words, the earlier order of suspension passed on 28-2-1998 will cease to have effect on 27-3-1998 as the earlier order of suspension has been passed pending contemplation of the enquiry into grave charges.

8. This contention cannot at all be sustained as the employer is entitled to place an employee under suspension pending contemplation of the enquiry into the grave charges. It cannot be said that, the order of suspension comes to an end the moment the charges have been framed.

9. In such circumstances, WP No.15587 of 2000 is dismissed. In WP No.15586 of 2000, the following directions are issued:

The second respondent employer shall appoint a new Enquiry Officer in the place of third/fourth respondents and see that an independent person is appointed, who shall continue the proceedings at the stage at which the third/fourth respondents had left. The cross examination of the witnesses, if any, shall be continued before the new Enquiry Officer and it is open to the writ petitioner to examine his witnesses before the new Enquiry Officer. The enquiry shall be completed and final orders shall be passed within six months from the date of communication of this order.

10. It is represented that the petitioner is being paid the subsistence allowance as per the bye laws of the society and with respect to that the petitioner has no grievance at all.

11. W.P.No.15586 of 2000 is ordered accordingly. No costs. Consequently, the above W.M.Ps are closed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 21st June , 2001

PRESENT: THE HONOURABLE Mr. JUSTICE K. RAVIRAJA PANDIAN

Writ Petition No. 11472 of 2001

and

WMP No. 16625 of 2001

R.Saravanan

...

Petitioner in
both the petitions

Versus

(1) Puranasingupalayam Co-operative Milk
Producers Society Ltd., 278, rep. by its
President P.Kaliyamurthy,
Puranasingupalayam and post,
Pondicherry State

(2) The Election Officer, Thiru Dhanagaraj
Puranasingupalayam Milk Producers Society Ltd.,
Puranasingupalayam and Post,
Pondicherry State.

(3) The Registrar of Co-operative Societies
Pondicherry State

...

Respondents in
both the petitions.

(A) The petitioner sought to direct the third respondent to dispose the petition dated 14.6.2001 filed under S.84

(B) In view of the settled principle laid down by the Supreme Court in various cases from the year 1952, when once the election process is started, the writ petition cannot be maintained. It is very well open to the petitioner to ventilate his grievance, which formed the basis for filing the above writ petition by means of an election petition.
(Para 3)

Writ petition disposed of with observation.

Case referred to: *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency, AIR 1952 SC 64: 1952 SCR 218.*

For Petitioner

..

... Mr. Ravichandran, Advocate

For Respondents Mr. M. Mahalingam,
Government Advocate

WP No. 11472/2001:

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a writ of mandamus directing the 3rd respondent herein to dispose of the Petitioner's petition dated 14-6-2001 filed under Section 84 (1) (b) & (4) of Pondicherry Co-operative Societies Act 1972 in respect of the election to the P.S.Palayam Co-operative Milk Producers Society Ltd., No.278, P.S.Palayam, Pondicherry State within a period stipulated by this Hon'ble Court.

WMP No. 16625 of 2001:

Petition presented to this Court to grant an order of injunction restraining the respondents 1 & 2 herein their men subordinates from in any way proceeding with the election to be held on 21-6-2001 or on any subsequent date in relation to the election of Directors to P.S.Palayam Co-operative Milk Producers Society Ltd., No.278, P.S.Palayam Pondicherry State pending disposal of W.P.No.11472 of 2001 on the file of this court.

ORDER

This writ petition and W.M.P coming on for orders as to admission on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. Ravichandran Advocate for the petitioner in both the petitions and of Mr. M. Mahalingam Government Advocate on behalf of the respondents in both the petitions, the Court made the following order: -

1. The above writ petition is filed for issuance of a writ of Mandamus to direct the 3rd respondent to dispose of the petitioner's petition dated 14-6-2001 filed under Section 84(1) (b) & (4) of the Pondicherry Co-operative Societies Act, 1972 in respect of the election to the P.S.Palayam Co-operative Society Ltd., No.278, P.S.Palayam, Pondicherry State within a period stipulated by this Court, Pondicherry State.
2. Though the prayer is innocuously worded, virtually, it stalls the election, which is scheduled to today.
3. In view of the settled principle laid down by the Supreme Court in various cases, right from the year 1952, ***N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency, AIR 1952 SC 64 : 1952 SCR 218***, when once the election process is started, the writ petition cannot be maintained. It is very well open to the petitioner to ventilate his grievance, which formed the basis for filing the above writ petition, by means of an election petition.
4. With the above observation, the writ petition is disposed of. No costs. Consequently, the connected W.M.P. is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 9th July, 2001

Coram: THE HONOURABLE Mr. JUSTICE P.D. DINAKARAN

Writ Petition No. 11037 & 11038 of 1994

Puranasingupalayam Co-operative Milk Producers
Society P. 278, rep. by its President S. Parthasarathy
Puranasingupalayam post, Pondicherry

... Petitioner in
both WPs

Versus

- (1) The Presiding officer, Labour Court, Pondicherry
(2) R. Anbumani

... Respondents in
both WPs

(A) *The second respondent was placed under suspension from 11.5.1988 by the petitioner society for alleged misappropriation of funds of the society and ultimately the society terminated him from service on 20.7.1989 with retrospective effect from 11.5.1988. The second respondent filed claim petition before the 1st respondent for subsistence allowance contending that the order of termination from service dated 20.7.1989 was not served on to him at all. The lower Court allowed the claim*

(B) *The petitioner society contended that the acknowledgement of service of order of termination from service dated 20.7.1989 was marked in the criminal proceedings, which ultimately ended in conviction of the second respondent, speaks by itself to defeat the claim of the second respondent.*
(Para 6)

(C) *Giving benefit of the situation to the second respondent may not be proper and justified in view of the fact that he had been convicted for the alleged charge of misappropriation. The award is set aside and the matter is remitted to the first respondent.*
(Para 7)

Writ petition is ordered accordingly.

For petitioners	:	Mr. R. Natarajan, Advocate
For Respondents	:	Mr. D.Vijaya Karthikeyan, Advocate for R2

ORDER

The petitioner-co-operative society proceeded against the second respondent criminally in C.C.No.328 of 1993 before the Chief Judicial Magistrate, Pondicherry, as well as, departmentally, alleging that the second respondent had misappropriated a sum of Rs.49,757.54 and placed the second respondent under suspension from 11-5-1988, and ultimately, terminated the second respondent from service on 20-7-1989 with retrospective effect from 11-5-1988. However, the second respondent had filed a claim petition in C.P.No.13 of 1991 before the first respondent Labour Court, under Section 33-C(2) of the Industrial Disputes Act, claiming a sum of Rs.32,055.20 towards subsistence allowance payable to the second respondent, contending that the order of termination dated 20-7-1989 was not served on to him at all.

2. Since the petitioner-co-operative society would produce the order of termination and the acknowledgement for the service of the said order of termination dated 20-7-1989 on the second respondent, before the first respondent–Labour Court, the first respondent–Labour court disbelieved the case of the petitioner–co-operative society and by an ex-parte order dated 20-7-1993, allowed the claim petition in favour of the second respondent. Hence, the petitioner filed W.P.No.11037 of 1994 for issue of a writ of Certiorari to call for the records pertaining to award dated 20-7-1993 passed in C.P.No.13 of 1991 on the file of the first respondent herein and quash the same.

3. Since the petitioner–co-operative society filed an application in I.A.No.12 of 1993 in C.P.No.13 of 1991 to set aside the ex-parte order dated 20-07-1993, and the said application, I.A.No.12 of 1993 was also dismissed by the first respondent–Labour court by an order dated 7-1-1994, the petitioner–co-operative society filed W.P.No.11038 of 1994 for issue of a writ of certiorari to call for the records in I.A.No.12 of 1993 in C.P.No.13 of 1991, dated 7-1-1994 on the file of the first respondent herein and quash the same.

4. According to Mr. R. Natarajan, learned counsel for the petitioner – co-operative society, the order of suspension 11-5-1988 got merged with the order of termination dated 20-7-1989, with retrospective effect from the date of suspension, namely, 11-5-1988, and therefore, the second respondent is not entitled for the subsistence allowance, particularly when the second respondent was convicted by the criminal court in C.C.No.328 of 1993 by order dated 27-1-1999 and had also repaid the sum of Rs.49,757.54 to the petitioner–co-operative society.

5. Per contra, Mr.B.Vijaya Karthikeyan, learned counsel for the second respondent contends that the second respondent was never served with the order of termination dated 20-7-1989, at any point of time.

6. In reply, Mr.R.Natarajan, learned counsel for the petitioner–co-operative society contends that the acknowledgement of the service of the order of termination dated 20-7-1989 was marked in the criminal proceedings, which ultimately ended in conviction of the second respondent, speaks by itself to defeat the claim of the second respondent.

7. Since the facts that the second respondent was charged for misappropriation of funds of Rs.49,757.54 in C.C. No.328 of 1993 and was also convicted by the Chief Judicial Magistrate, Pondicherry by an order dated 27-1-1999, and that the second respondent had repaid the sum of Rs.49,757.54 to the petitioner-co-operative society are not disputed, I am of the considered opinion that, giving benefit of the situation to the second respondent may not be proper and justified, in view of the fact that the second respondent had been convicted for the alleged charge of misappropriation of funds by the learned Chief Judicial Magistrate, Pondicherry in C.C.No.328 of 1993, wherein the entire records were entrusted by the petitioner co-operative society. Hence, I am obliged to set aside the award dated 20-7-1993 in C.P.No.13 of 1991 and subsequent order dated 7-1-1994 in I.A.No.12 of 1993 in C.P.No.13 of 1991 and remit the matter to the first respondent-Labour Court, with a liberty to the petitioner-society to satisfy the first respondent-Labour Court that the order of termination dated 20-7-1989 terminating the second respondent from service was pursuant to the resolution of the general body of the petitioner-society and the same was also served on the second respondent, and the first respondent-Labour Court is directed to pass appropriate orders on merits, after giving a fair and reasonable opportunity to the second respondent to justify his claim.

8. This writ petition is ordered accordingly. No costs. Consequently, W.M.P.Nos.16641 & 16642 of 1994 are closed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date: 1st November, 2001

PRESENT: THE HONOURABLE Mr. JUSTICE D. MURUGESAN

Writ Petition No.19996 of 2001

and

WMP No. 29476 of 2001

R. Souprayane

...Petitioner in
both the petitions

Versus

(1) The Pondicherry Co-operative Urban Bank Ltd., P.14
rep. by its Secretary V.Veeramunirdjou
No.197, Jawaharlal Nehru Street,
Pondicherry – 605 001

(2) S. Veeramany

... Respondents in
both the petitions

This Court cannot go into the question as to whether the enquiry was properly conducted as it involves disputed question of fact. In view of the same, the writ petition is dismissed. (Para 3)

Case referred: *M. Thanikachalam and others vs. Maduranthagam Agricultural Producers' Co-operative Marketing Society and others* 2000 (3) MLJ 722 : 2000 – 1- LW – 38 :2000 (IV) CTC 556 (FB).

Advocate for the Petitioner ... Mr. R. Subramanian.

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue writ of certiorarified mandamus calling for the records in relation to the proceedings No.PCUB/Estt./106/2001-02 dated 29-5-2001 on the file of the first respondent and quash the same thereby consequently directing the first respondent to restore the status of the writ petitioner as senior clerk.

WMP No. 29476/2001:

Petition presented to stay the proceedings No.PCUB/Estt./06/2001-02 dated 29-5-2001 on the file of the first respondent pending disposal W.P.No.19996/2001 on the file of this court.

ORDER

This writ petition & WMPs coming on for orders as to admission on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. R. Subramanian, Advocate for the petitioner in both the petitions the Court made the following order.

1. The Petitioner has filed this writ petition challenging the order of the 1st respondent dated 29-5-2001 reverting the petitioner from the post of Senior clerk to the post of Junior clerk until he is found fit after a period of 3 years from the date of the order and reducing the scale of pay.

2. The grievance of the petitioner is that in the enquiry the principles of natural justice have not been followed and the enquiry conducted was only farce as the presenting officer himself was the witness in the case and whatever the documents sought to be relied upon in the enquiry were not furnished to the petitioner. Therefore, the learned counsel submitted that in the absence of compliance of the principles of natural justice, the writ petition is maintainable as against the 1st respondent co-operative society and only therefore the petitioner has filed this writ petition.

3. I have perused the impugned order. In the impugned order, it is stated that the petitioner was issued with charge memo and explanation was called for. The petitioner had in fact submitted his explanation. Not satisfied with the explanation, an enquiry was conducted and the petitioner also participated in the enquiry. The enquiry report also was furnished to the petitioner and thereafter only after receiving the explanation; the present order has been passed. The grievance of the petitioner is that the enquiry was not properly conducted in the manner known to law by complying with the principles of natural justice cannot be considered as one of the parameters laid down by the Full Bench in the judgment reported in ***M. Thanikachalam and others vs. Maduranthagam Agricultural Producers' Co-operative Marketing Society and others* 2000 (3) MLJ 722 : 2000 – 1- LW – 38 : 2000 (IV) CTC 556** to entertain the writ petition against the 1st respondent society, since the petitioner has got an alternative effective remedy of revision before the Registrar under Section 153 of the Tamil Nadu Co-operative Societies Act. This Court cannot go into the question as to whether the enquiry was properly conducted as it involves disputed question of fact. In view of the same, the writ petition is dismissed as not maintainable. However, the petitioner is at liberty to approach the revisional authority under Section 153 of the Tamil Nadu Co-operative Societies Act within ten days from the date of receipt of a copy of this order. Consequently, connected W.M.P. is also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14th December 2001

PRESENT: THE HONOURABLE Mr. JUSTICE K. GOVINDARAJAN

Writ Petition No. 2820 of 1997

and

WMP No.4736 of 1977

A. Krishnamoorthy

..

Petitioner

Versus

The Registrar of Co-operative
Societies, Pondicherry,
& 9 others

..

..

Respondents

Petitioner has filed this writ petition only on assumption that the 1st and 2nd respondents are attempting to promote the deputationists by preparing the seniority list. Petitioner has not produced any document to substantiate his contention. In the absence of any documentary evidence, this Court cannot grant the writ of mandamus as prayed for by the petitioner.
(Para 3)

Writ petition is dismissed.

For Petitioner ...

Mr. A. Ajaya Kumar, Advocate

For Respondents ...

Mr. E. Vijay Anand, Government
Pleader for Pondicherry for R 1 & R 2.
Mrs. Sudha Ramalingam, Advocate
for R 3 to R 10.

ORDER

Writ petition under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 and 2 to implement the order of the first respondent with 5/4/2/191/RCS/E/86/31 dated 3-5-1991 and No.PCCF/ESTT/A/939/89/Vol.II dated 24-7-1993 absorbing the deputationists with effect from 1-4-1990 and to promote the petitioner to the post of Senior Assistant on the basis of the seniority list produced before the Labour Court with No.PCCF/ESTT/A/1038/91 dated 23-6-1992.

2. Though the learned counsel for the petitioner submitted that the deputationists have been absorbed with effect from 1-4-1990 and the respondents are taking steps to promote them, the learned counsel for the contesting respondents pointed out that even before regularization of the service of the deputationists, the petitioner has come before this Court. Counsel for the 1st and 2nd

respondents fairly submits that no regularization was made in so far as the deputationists are concerned and that even when such regularization is not made, the deputationists cannot be promoted on the basis of the alleged absorption.

3. Petitioner has filed this writ petition only on assumption that the 1st and 2nd respondents are attempting to promote the deputationists by preparing the seniority list. Petitioner has not produced any document to substantiate his contention. In the absence of any documentary evidence, this Court cannot grant the writ of mandamus as prayed for by the petitioner. This writ petition is dismissed. Consequently, connected W.M.P. is closed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12th March, 2002

CORAM: THE HON'BLE Mr. JUSTICE K.P. SIVASUBRAMANIAM

Writ Petition No.19349 of 2001
and
WMP Nos. 28467 & 32278 of 2001

K. Sobithkumar
aged 40 years, S/o Kesavaperumal,
No.2 Nehru Nagar, Pondicherry. ... Petitioner

Versus

- (1) Union of India, rep. by the Registrar,
Office of the Registrar of Co-operative Societies
Pondicherry.
- (2) The Administrator,
P-113, Arumparthapuram Village Co-operative
Agricultural Credit Society Ltd., Villianur (via),
Pondicherry – 605 110 ... Respondents

It has been repeatedly held by this Court as well as by the Supreme Court that whenever a show cause notice is issued, even though the show cause notice may be a second show cause notice consequent on the enquiry officer's report and the disciplinary authority not being the enquiry officer, it is incumbent that in the show cause notice there should be no indication of the conclusions of the disciplinary authority. When once the disciplinary authority taken a final decision and has come to the conclusion about the guilt of the accused, then the very purpose of issuing a show cause notice is lost. (Para 3)

The writ petition is allowed with liberty to the second respondent to proceed from the stage in which the defect had crept in.

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari as stated within.

For petitioner : Mr.G.R. Swaminathan,
Advocate
For 1st Respondent : No appearance
For 2nd Respondent : Mr. Gunasekar, Advocate

ORDER

The petitioner filed this present writ petition to issue a writ of certiorari calling for the records relating to the show-cause notice dated 6-10-2001 issued by the second respondent against the petitioner and quash the same.

2. The impugned order of show-cause notice is issued by the disciplinary authority, on conclusion of the enquiry proceedings against the petitioner.

3. Considering manner of disposal of the writ petition, I do not propose to go into the merits of the various contentions raised by the petitioner. A perusal of the impugned show-cause notice shows that the disciplinary authority had taken a conclusive decision on the guilt of the accused. After referring to the enquiry officer's report the disciplinary authority has come to the conclusion that the guilt of the delinquent is established and that the management had decided to terminate the services of the petitioner which discloses a predetermined approach. It has been repeatedly held by this Court as well as by the Supreme Court that whenever a show-cause notice is issued, even though the show-cause notice may be a second show-cause notice consequent on the enquiry officer's report and the disciplinary authority not being the enquiry officer, it is incumbent that in the show cause notice, there should be no indication of the conclusions of the disciplinary authority. When once the disciplinary authority takes a final decision and has come to the conclusion about the guilt of the accused, then the very purpose of issuing a show-cause notice is lost. As stated earlier, a perusal of the impugned show-cause notice shows that the disciplinary authority had come to a definite conclusion that the petitioner is guilty. Therefore, on this ground alone, the impugned order is liable to be set aside.

4. With the result, the writ petition is allowed with liberty to the respondent to proceed from the stage in which the defect had crept in. Subject to the above directions, this writ petition is allowed. No costs. Consequently, connected WMPs are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24th April, 2002

Coram: THE HONOURABLE Mr. JUSTICE N.V. BALASUBRAMANIAN

**Writ Petition No. 8389 of 2002
and
WPMP Nos. 11452 & 11453 of 2002**

B. Sathyaseelan ... Petitioner

Versus

- (1) The Registrar of Co-operative Societies,
Co-operative Department, Pondicherry
- (2) The Administrator, Anglo French Textiles Employees
Co-operative Credit Society, Pondicherry ... Respondents

Since in more than one place, the Registrar of Co-operative Societies has given undertaking that the rescheduled election in respect of second respondent society would be held before the end of May, 2002, the undertaking given by the Registrar is recorded and the Registrar is directed to ensure that the election in respect of the second respondent society is held on or before 20th May 2002.

(Para 3)

Writ petition disposed with a direction.

The writ petition is filed for the issue of a writ of Certiorarified Mandamus and as stated therein.

For petitioners : Mr. V. Ajay kumar, Advocate
For Respondents : Mr. T. Murugesan,
Government Pleader, Pondicherry.

ORDER

The writ petition is filed to quash the circular of the first respondent in No.12/2/32/RCS/PLG/M/2001/30, dated 4-3-2002 wherein it is stated that all the elections scheduled during March 2002 are to be postponed to the second fortnight of May, 2002.

2. Learned counsel for the petitioner referred to the impugned circular wherein the Registrar of Co-operative Societies has stated that the societies which have scheduled to hold election during March, 2002 may reschedule the election in such a way that the polling will take place on or before 20-5-2002. The Registrar of Co-operative Societies, Pondicherry has filed a counter affidavit stating that in

pursuance of the circular dated 4-3-2002 which is challenged in the writ petition, the second respondent society would hold election in May, 2002 on the basis of the voters' list published on 4-3-2002. Learned counsel for the first respondent also produced before this Court a copy of the directions issued under Section 81 of the Pondicherry Co-operative Societies Act, 1972 dated 20-3-2002 wherein the Registrar of Co-operative Societies has directed that the polling of already notified elections should be completed before the end of May, 2002.

3. Since in more than one place, the Registrar has given undertaking that the rescheduled election in respect of the second respondent society would be held before the end of May, 2002, the undertaking given by the Registrar of Co-operative Societies, Pondicherry is recorded and the Registrar of Co-operative Societies, Pondicherry is directed to ensure that the election in respect of the second respondent society is held on or before 20th May, 2002, as it is stated by the learned counsel for the petitioner that no election has been held after 1978.

4. Recording the above undertaking of the Registrar of Co-operative Societies, Pondicherry, the writ petition is disposed of with a direction to the Registrar of Co-operative Societies, Pondicherry to ensure that the election for the second respondent society is held on or before 20-5-2002. No costs. Consequently, W.P.M.P.Nos.11452 and 11453 of 2002 are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14th June, 2002

Coram: THE HONOURABLE Mr. JUSTICE P.K. MISRA

**Writ Petition No. 6901 of 2002 &
W.M.P. No.9544 of 2002**

The Pondicherry Co-operative Spinning
Mills Staff Union, rep. by its President
D. Ramkumar, Thirubuvani,
Pondicherry 605 102. .. Petitioner

Versus

1. Union of India, rep. by Government of
Pondicherry, through its Chief Secretary,
Pondicherry.
2. The Registrar of Co-operative Societies,
Pondicherry.
3. The Managing Director, The Pondicherry
Co-operative Spinning Mills , Pondicherry .. Respondents

So far as the grievance of the petitioner relating to the recommendations of three member committee, it would be open to the petitioner to file appropriate representation before the Government within a period of one month and such representation should be considered by the Government within a period of four months from the date of receipt of such representation.
(Para 4)

Writ petition disposed of.

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari as stated therein.

For Petitioner : Mr. G.R. Swaminathan & Ms. N. Nagalakshmi, Advocates

For Respondents : Mr. T. Murugesan, Government Pleader for Pondicherry.

ORDER

Heard the learned counsels appearing for the parties. Though the matter is listed for considering the interim application, on consent of the counsels appearing for both sides, entire writ petition is taken up for disposal.

2. The Pondicherry Co-operative Spinning Mills Staff Union has filed this writ petition seeking for direction to quash the communication relating to revision of wages allowances to the employees of the Pondicherry Co-operative Spinning Mills Ltd. It is stated by the counsel appearing for the respondents that as per the

recommendations of the three member committee the Mills has decided to implement the recommendations.

3. Learned counsel for the petitioner Union has submitted that under Section 166 of the Pondicherry Societies Act, a Co-operative Advisory Council has to be constituted and this having not been done, the report of three member committee cannot be accepted. Learned counsel for the respondents submitted that no Advisory Council has been constituted. From Section 166 (1) of the Pondicherry Co-operative Societies Act it is apparent that there should be a Council called Co-operative Advisory Council consisting of members indicated in the said provision. If such a Council has not been constituted, steps should be taken for constituting such a Council within a reasonable time.

4. So far as the grievance of the petitioner relating to recommendations of three member committee is concerned, it would be open to the petitioner to file appropriate representation before the Government within a period of one month and such representation should be considered by the Government within a period of four months from the date of receipt of such representation. If necessary, the Government may send such representation to the Advisory Council for the opinion and thereafter it would be open to the Government to act according to the provisions of the Act and Rules. However, it is made clear that the matter is to be considered by the Government with open mind notwithstanding that the fact the earlier report has been accepted. It goes without saying that if the petitioner would feel aggrieved by the subsequent order of the Government, it would be open to the petitioner to seek appropriate relief in the appropriate forum. It is further observed that without prejudice to the contentions raised or to be raised in the representation, the present impugned order may be implemented.

With the above observation, the writ petition is disposed of. No costs. Consequently, W.M.P. No. 9544 of 2002 is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17th July, 2002

CORAM: THE HONOURABLE Mr. JUSTICE F.M. IBRAHIM KALIFULLA

Writ Petition No. 25349 of 2002

and

WPMP No. 34816 of 2002

V. Selvaraj

... Petitioner

Versus

(1) Union of India rep. by Secretary to
Government (Co-opn), Govt. of Pondicherry,
Pondicherry.

(2) The Registrar of Co-operative Societies.
V.V.P. Nagar, Thattanchavadi, Pondicherry.

(3) Administrator, The Pondicherry Co-operative
Urban Bank Ltd., No.197, J.N. Street,
Pondicherry.

... Respondents

(A) The petitioner sought to declare the clause 26(1) of the bye laws of the Pondicherry Co-operative Urban Bank as ultra virus and violative of the Pondicherry Co-operative Societies Act and direct the respondents to provide for reservation for weaker section on the board.

(B) Held, the remedy for the petitioner is only to seek for appropriate amendment by moving the competent authorities. There is no scope for ordering such an amendment in this writ petition. Writ petition dismissed. (Para 2)

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration for the reasons state therein.

For petitioner: Mr. G.R. Swaminathan, Advocate.

ORDER

This writ petition has been filed by the petitioner for the issuance of a writ of declaration to declare that clause 26 (1) of the bye laws of the Pondicherry Co-operative Urban Bank Limited, on the ground that the same is ultra virus and violative of the Pondicherry Co-operative Societies Act. The petitioner also seeks for a consequential direction to the respondents to provide reservation for weaker sections on the Board of Management of the third respondent society.

2. As regards the bye-laws framed under the provisions of the Co-operative Societies Act, there are provisions, which enable any member of the society to seek for necessary amendment in tune with the provisions of the main Act. In such circumstances, even assuming that clause 26 (1) of the existing bye-laws for the third respondent society is not in consonance with the provisions of the Pondicherry Co-operative Societies Act, the remedy for the petitioner is only to seek for appropriate amendment by moving the competent authorities. Certainly, on that score, there is no scope for ordering such an amendment in this writ petition, in as much as in the event of the petitioner seeking for such an amendment in the proper manner that would involve a detailed procedure to be followed by the competent authorities and then only it would be possible to find out as to whether such an amendment is really called for and or whether the provision is in consonance with the provisions of the main Act.

3. Therefore, I do not find any scope for entertaining this writ petition, since the petitioner can work out his remedy before the appropriate alternative forum, which is already in existence. It is, therefore, open to the petitioner to seek for necessary amendment by following the procedure prescribed under the Act and in the event of the petitioner seeking for such an amendment in regard to clause 26 (1) of the bye laws of the third respondent society, the authority concerned shall deal with the same in accordance with law after giving due opportunity to all concerned.

4. The writ petition, however, fails and the same is dismissed. No costs. Consequently connected WPMP is dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)

Date : 22nd August 2002

PRESENT: THE HONOURABLE Mrs. JUSTICE PRABHA SRIDEVAN

Writ Petition No. 29234 OF 2002

Pondicherry Co-operative Urban Bank Employees
Union, rep. By its General Secretary Joseph Suresh
Kumar .. Petitioner

Vs.

The Registrar of Co-operative Societies, Pondicherry
and another .. Respondents

The petitioner seeks a mandamus, without producing any material to show that there has been in fact any illegality in the appointment. It is difficult to accept the petitioner's case merely on the basis of the affidavit that the parties are violating all the rules and regulations, while making appointment.

Writ petition dismissed.

Petition under Article 226 of the Constitution of India praying for issue of a writ of mandamus as stated therein.

For Petitioner ... Mr. V. Ajaykumar, Advocate
For Respondents ... Mr. Shaseedharan, Government Pleader
for Pondicherry.

ORDER

Writ petitioner prays for a mandamus to direct the respondents to make appointment to the second respondent Bank on the basis of actual vacancy and in accordance with the procedures and rules providing under Rule 8 of the subsidiary rules of the bank.

2. According to the petitioner, the appointments are made indiscriminately violating all the rules and regulations and therefor, this writ petition came to be filed.

3. When the matter was taken up, the learned Government Advocate (Pondicherry) appearing for the first respondent would submit that earlier the same writ petitioner had filed a writ petition for quashing the appointments of four persons and the same was disposed of by this Court directing the petitioner to produce the appointment order to set aside whether there has been any irregularity or illegality in the appointments. It is apparent that these appointment orders have not been

produced today and the petitioner seeks a mandamus without producing any material to show that there has been in fact any illegality in the appointment. It is difficult to accept the petitioner's case merely on the basis of the affidavit that the parties are violating all the rules and regulations, while making appointment.

4. In these circumstances, this writ petition is dismissed. It is of course open to the petitioner to bring to the knowledge of the Court, if there is any irregularity or illegality made in the appointment violating all the rules and regulations applicable for appointment in the second respondent Bank. No costs. Consequently, the connected W.M.P. No.47560 of 2002 is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 8th October, 2002

Coram: THE HONOURABLE Mrs. JUSTICE PRABHA SRIDEVAN

W.P.No.35353 of 2002

and

WPMP No. 52711 of 2002

- (1) S. Velmurugan,
Chairman, Committee of Management,
Pondicherry Co-operative Milk Producers
Union Ltd., Kurumapet, Pondicherry
 - (2) G.Ilango
 - (3) S.Dharmasivam
 - (4) A.K.Rathinavel
 - (5) R.Rajendran
 - (6) B.Brinda
 - (7) R.Rajeswari
 - (8) R.Jothi
 - (9) S.Angammal
- ... Petitioners

(Petitioners 2 to 9 are members of committee of management, Pondicherry Co-operative Milk Producers Union Ltd., Kurumapet, Pondicherry)

Versus

- (1) The Registrar of Co-operative Societies,
Co-operative department, Government of Pondicherry,
V.V.P.Nagar, Thattanchavady, Pondicherry-9.
 - (2) Mr. G. Rajamohan,
Deputy Registrar of Societies, Managing Director,
Pondicherry State Co-operative Bank Limited,
Pondicherry
- ... Respondents

(A) The committee of management of the Pondicherry Co-operative Milk Producers' Union was superseded and the second respondent was appointed as special officer.

(B) Pondicherry Co-operative Societies Act, 1972 – S.83 – Supersession of the committee – Under sub-section (1) the committee is entitled to an opportunity of making its representations. Sub-section (9) provides that it is not necessary to give an opportunity if the Registrar is of the opinion that it is not reasonably practicable to do so. The files prima facie show that the Registrar has recorded his satisfaction that there was a

necessity to dispense with the service of notice and to proceed with the matter.
(Para 6 & 11)

(C) *S.140 – Appeal to Tribunal – The Act provides for a very adequate remedy and it is as if the petitioner cannot seek interlocutory orders or such orders as the petitioners may require in the interest of justice.*
(Para 12)

(D) *Held, in these circumstances I do not think it is proper to permit the petitioners to avoid the appellate remedy and seek interference by invoking Art.226 of the Constitution of India.*
(Para 13)

(E) *The special officer is directed to take assistance of the ex-officio members of the board, who shall advise him. Writ petition is dismissed. The petitioners have the liberty to go before the appellate authority and raise all the objections including the fact that the necessity to invoke S.83 (9) does not exist in the instant case.*
(Para 15 & 16)

Cases referred to:

- (i) *V. Ammainathan, President Board of Directors, The Pondicherry State Co-operative Union Ltd. Vs. The Union of India, Union territory of Pondicherry (1990 (2) MLJ 143)*
(Para 8)
- (ii) *The Joint Registrar of Co-operative Societies, Madras vs. P.S. Rajagopala Naidu, Govindarajulu and others (AIR 1970 SC 992 : 1971 (1) SCR 227)*
(Para 9)

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a writ of Certiorari, as prayed for therein.

For petitioners : Mr. AR .L. Sundaresan, Advocate
For Respondents : Mr .T. Murugesan,
Government Pleader, Pondicherry.

ORDER

The petitioners are members of the Board of Directors of the Pondicherry Co-operative Milk Producers Union Ltd., (PCMPU). They were superseded by the impugned order dated 6-9-2002. According to them, they are the duly elected members of the Pondicherry Co-operative Milk Producers Union Ltd., and the term of office is a period of three years from 1-1-2001 to 31-12-2003.

2. On 6-9-2002, they were served with the impugned order, superseding the elected Board of the Union and appointing of second respondent herein as a Special

Officer for a period of three months with a direction to conduct a fresh election for the committee.

3. In Para 7 to 16 of the impugned order, the first respondent has enumerated the grounds, which, according to him, are the grounds for issuing the impugned order.

4. The learned Counsel for the petitioners would submit that the impugned order is mala fide and there was no justification for passing this order superseding the committee without giving notice. Section 83(1)(a) of the Pondicherry Co-operative Societies Act, 1972 (Act in short) was referred to, which gives the Registrar, the power to dissolve the committee "after giving the committee an opportunity of making its representations". This opportunity was not given. The impugned order subverts the democratic nature of the committee. The allegations in the impugned order referred to incidents that had occurred in the past and therefore there is no warrant or justification for superseding the committee emergently.

5. The learned counsel for the petitioners would also submit that though the appellate remedy is there, the petitioners are entitled to invoke the writ jurisdiction, since the impugned order has been issued in violation of the principles of natural justice. When an illegal order, which is arbitrary, has been passed prejudicial to the interest of the members of the co-operative committee, the same should be set aside.

6. The learned Government Pleader for Pondicherry submitted that while there is no gainsaying the fact that under section 83(1) of the Act the committee is entitled to an opportunity of making its representations. Section 83(9) clearly states that it is not necessary to give an opportunity to the committee where the Registrar is of the opinion that it is not reasonably practicable to do so. It was submitted that it was not as if the democratic process has been scuttled, since the impugned order itself provides for election within a period of three months from the date of the Special Officer assuming charge.

7. According to the learned Government Pleader, there were very serious allegations regarding the working of the Union, the supply of milk, wasteful expenditure etc., and therefore there was justification for the Registrar to invoke the powers under Section 83(9). Section 140 of the Act, which deals with appeals, was pointed out. It was submitted that the powers of the Tribunal, which is the appellate authority, viz., the District Court, is so wide. It takes within its ambit the powers to grant such interlocutory orders, as may be necessary and the power to award costs and also all the powers of a civil court vide Section 145 of the Act. Therefore, the petitioners have a very adequate remedy and if their grievance is justified, they can get redressal before the tribunal.

8. In support of the above contention, the learned Government Pleader cited two authorities. ***V.Ammainathan, President Board of Directors, The Pondicherry State Co-operative Union Ltd., vs The Union of India, Union territory of Pondicherry (1990 (2) M.L.J.143)*** was a matter that arose under the Pondicherry Co-operative Societies Act. It was held therein that unless the Court is satisfied that an alternative remedy is not efficacious or dilatory or ineffective to give the relief, this

Court shall not exercise its jurisdiction under Article 226 of the Constitution. In that case the respondent also took the stand that the committee had become defunct. This reason and the fact that one member of the Board invoked the writ jurisdiction and the other filed an appeal, persuaded the Court not to exercise its power under Article 226 of the Constitution of India.

9. The other decision cited was ***Joint Registrar of Co-operative Societies, Madras and other vs. P.S.Rajagopal Naidu, Govindarajulu and others (AIR 1970 SC 992 : 1971 (1) SCR 227)***, which arose after the Madras Co-operative Societies Act No. 53/61. In that case, the Supreme Court held that:

“The High Court cannot act as an Appellate Court and re-appraise and re-examine the relevant facts and circumstances which led to the making of the order of supersession under Section 72, Madras Co-operative Societies Act as if the matter before it had been brought by way of appeal”.

10. In view of the submissions made by the learned counsel for the petitioners that there was absolutely no basis for invoking the power under Section 83(9), the records were called for. The records show that the Dairy Development Officer had placed before the authorities some irregularities. Notice had been issued under Section 83 of the Act. After perusing these notings and the documentary evidence the Registrar was pleased to note down as follows:

“The following irregularities were noticed against the functioning of the said committee:

10. In view of the above, I am of the opinion that the said committee is not functioning properly in accordance with the provisions of the Pondicherry Co-operative Societies Act, 1972 and Rules there under and the bye-laws of the said Union, and willfully disobeyed the instructions / directions issued by this department.

11. I am satisfied that there is no other go except to dissolve the said committee, under Section 83 of the Pondicherry Co-operative Societies Act, 1972.

12. Due to urgency to set right the unfair means of management, besides apprehension of tampering of records of the said Union, I am satisfied to dispense with the service of notice under Section 83(9) of the said Act,”

11. The files prima facie show that the Registrar has recorded his satisfaction that there was a necessity to dispense with the service of notice and to proceed with the matter. Though, the decision cited in AIR 1970 Supreme Court arose out of the Madras Co-operative Societies Act, the Supreme Court had clearly stated that the High Court cannot re-appraise and re-examine the relevant facts and circumstance which led to the making of the order of supersession under Section 72, Madras Co-operative Societies Act, as if, the matter before it had been brought by way of

appeal. So it will not be proper to sit in appeal over 'the satisfaction'. In this case, if any observation is made regarding the merits of the order, it would affect the proceedings before the Appellate Authority.

12. The Act provides for a very adequate appellate remedy and it is not as if the petitioners cannot seek interlocutory orders or such orders as the petitioners may require in the interest of justice.

13. In these circumstances, I do not think it is proper to permit the petitioners to avoid the appellate remedy and seek interference by invoking Article 226 of the Constitution of India.

14. The learned Counsel for the petitioners would submit that even while the writ petition was pending, the Special Officer had taken certain decisions, which would show the unbridled power vested in the Special Officer.

15. To provide safeguard against such apprehension, the Special Officer is directed to take assistance of the ex-officio members of the Board, who shall advise him. This will be in accordance with Section 83(2), which gives the Registrar, the power to appoint an Advisory Board, consisting of not more than 5 members to advise the Special Officer in such matters as may be specified by him. The directions regarding the appointment of the Advisory Board shall take effect from Friday 11-10-2002.

16. In these circumstances, the writ petition is dismissed. The petitioners have the liberty to go before the Appellate Authority and raise all the objections including the fact that the necessity to invoke Section 83(9) does not exist in the instant case. The petitioners are given four weeks time to move the appellate authority. Any observations of this Court shall not in any way hamper the appellate authority in arriving at an independent decision, in accordance with law. No costs. Consequently, connected W.M.P. is closed.

Note: The order passed by the learned single Judge is modified by the Division Bench, vide page No. 182.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13th November, 2002

**Coram: THE HONOURABLE Mr. B.SUBASHAN REDDY, CHIEF JUSTICE
and**

THE HONOURABLE Mr. JUSTICE C.NAGAPPAN

Writ Appeal No. 3413 of 2002

- (1) S. Velmurugan
Chairman, committee of management
Pondicherry Co-operative Milk Producers
Union Limited, Pondicherry
- (2) G. Ilango
- (3) S. Dharmasivam
- (4) A.K.Rathinavel
- (5) R. Rajendran
- (6) B. Brinda
- (7) R. Rajeswari
- (8) R. Jothi
- (9) S. Angammal ... Appellants

Versus

- (1) The Registrar of Co-operative Societies,
Co-operative Department, Government of
Pondicherry, Pondicherry
- (2) G. Rajamohan,
Deputy Registrar of Societies, Managing Director,
Pondicherry State Co-operative Bank Limited,
Pondicherry ... Respondents

(A) Pondicherry Co-operative Societies Act, 1972 – S.83(1) & (9) – S.140 – Art.226 of the Constitution of India – Managing committee was dissolved – Single Judge dismissed the writ petition and directed the petitioners to invoke the statutory remedy under S.140 – Writ appeal under clause 15 of the Letters Patent.

(B) Principles of Natural Justice – Audi alteram partem – Order of supersession can be passed under S.83 only after giving an opportunity under clause (a) of sub-section (1) – Sub-section (9) confers a discretionary power in exceptional cases to by pass the rule of audi alteram partem – Held, mere apprehension of tampering of records not sufficient to invoke the discretionary power under sub-section (9). (Para 5)

(C) Registrar was directed to issue a show cause notice calling for objections, consider objections and then pass final orders – Status quo on administration and management shall continue until final orders were passed – Writ appeal allowed to the extent.

(Para 6)

Appeal under Cl.15 of the Letters Patent against the order of the learned single Judge dated 8-10-2002 in WP No. 35353 of 2002

For Appellants	:	Mr. AR. L. Sundaresan, Advocate
For Respondents	:	Mr. T. Murugesan Government Pleader

JUDGMENT

(Delivered by the Hon'ble The Chief Justice)

Mr. T. Murugesan, learned Government Pleader for Union Territory of Pondicherry takes notice on behalf of the respondents. Heard the learned counsel appearing on either side.

The appeal is directed against the order of the learned single judge by which, the learned single Judge has dismissed the writ petition filed by the appellants herein challenging the order passed by the respondents superseding the elected Board of the Pondicherry Co-operative Milk Producers' Union Limited (in short 'the Union') and appointing the second respondent herein as the special officer for a period of three months.

2. Briefly stated, the matter arises under the Pondicherry Co-operative Societies Act, 1972 (in short the Act). By the impugned order, the first respondent, in exercise of his powers under clause (a) of sub-section (1) read with sub-section (9) of Section 83 of the Act, dissolved the elected committee of the Union on the ground of mismanagement of the affairs of the Union and also appointed the second respondent as the Special Officer. This order was challenged by the appellants before the learned single Judge, which was dismissed by the learned single Judge on the ground of availability of statutory remedy of appeal under Section 140 of the Act. Hence the present appeal.

3. Mr. AR. L. Sunderesan, learned counsel for the appellants assailed the impugned order on the ground that no opportunity of being heard was afforded to the appellants to state their objections to the proposal of supersession of the committee and, therefore, the order is in violation of the principle of audi alteram partem. Learned counsel further submits that once it is shown that the order passed by the first respondent was in utter disregard of the audi alteram partem rule, the same

could be straight away challenged before this Court under Art. 226 instead of resorting to the statutory remedy of appeal and, therefore, the learned single Judge was not right in dismissing the writ petition on the ground of availability of alternative remedy of statutory appeal.

4. Mr.T. Murugesan, learned Government Pleader for the respondent justified the impugned order by stating that the first respondent was very well within his powers under sub-section (9) of Section 83 of the Act to supersede the committee without giving an opportunity to state their objections. Learned Government Pleader submits that in this case dispensing with audi alteram partem rule is justifiable in as much as the first respondent was of the opinion that the appellants may tamper the records of the Union.

5. Considering the facts and circumstances of the case, one fact which stands out conspicuously is the breach of audi alteram partem rule, which is a sine qua non in cases like this and especially so when the relevant statute itself provides for the same. Clause (a) of sub-section (1) of Section 83 in explicit terms states that an order of supersession could be passed only after giving the committee an opportunity of stating its objections. Thus Section 83(1)(a) embodies the rule of audi alteram partem. Of course, sub-section (9) of Section 83 confers a discretionary power on the Registrar, in exceptional cases, to bypass the rule of audi alteram partem and dissolve the committee without giving an opportunity to the committee to state its objections. Sub-section (9) opens with a nonobstante clause and thus it could be viewed as an exception to the rule contained in clause (a) of sub-section (1) of Section 83. However, prior opportunity to state the objections being the rule and dispensing with the same under certain circumstances being an exception, proper grounds should be shown before the Court for the invocation of the discretionary power of dispensation of prior opportunity. The only ground stated is that the first respondent was apprehensive that the appellants may tamper the records in the event of a show cause notice being issued to them. We are of the view that, that ground alone is not sufficient to invoke the discretionary power under sub-section (9) of Section 83. It is pertinent to mention here that the appellant committee is an elected committee for a period of three years from 1-1-2001, and by the impugned order, it is dissolved before its full term. When an order results in civil consequences, even if there is no statutory provision for providing opportunity of being heard before an action is taken, this Court, in its equitable Jurisdiction under Art.226, can direct the authorities concerned to observe the principles of natural justice before taking any action which may have an adverse effect on the parties concerned. But, in this case, we need not go to such extent for the simple reason that the statute itself safeguards the rights of the elected committee of being issued with prior notice in case the Registrar is of the opinion to supersede the elected committee. Of course, subsection (9) of Section 83 provides for an exception to this rule. We have already pointed out that the ground of apprehension of tampering of the records by the appellants is not a sufficient and convincing ground for passing the order of supersession straight away as the records are in safe custody of the second respondent herein, who is under the direct control and supervision of the first respondent herein. Thus, in this case, exception under sub-section (9) cannot prevail over the rule under clause (a) of sub-section (1) of Section 83. As a

necessary corollary, an opportunity of being heard has now to be given to the committee, which has been superseded by the impugned order.

6. We, therefore, direct the first respondent to issue a show cause notice, detailing the grounds as also the materials relied on, to the appellant committee so as to afford an effective opportunity of being heard to the appellant to state its objections against the order of supersession of the committee. Should the appellant committee wish for an enquiry in this matter, an enquiry shall also be conducted before passing any order. A period of one week time may be given to the appellant committee to state its objections and the enquiry, if any asked for by the appellants, may be conducted, and then the final orders shall be passed in the matter. All this exercise shall be done and completed not later than 25-12-2002. However, it is made clear that the status quo as on today regarding the administration and management of the affairs of the Union shall continue until the final orders are passed by the first respondent as directed by us above and the further administration and management of the affairs of the Union shall depend upon the orders to be passed pursuant to this order.

7. The writ appeal is allowed to the extent indicated above. WAMP No.5679 of 2002 is closed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 30th December, 2002

CORAM: THE HONOURABLE MR. JUSTICE K .P.SIVASUBRAMANIAM

**Writ Petition Nos. 32290, 35930, 41219 & 41225 of 2002
and**

WPMP Nos. 46943, 46944, 53819, 61015, 61016, 65343 & 65344 of 2002

Durai alias Adiseenu Ponnu ... Petitioners in WP Nos.
32290, 35930 &
41219 of 2002

Thiyagi S.Lakshminarayana Iyer alias Manilyer ... Petitioners in WP No.
41225/2002

Versus

- (1) The Registrar of Co-operative Societies
Pondicherry.
- (2) The President, Pondicherry Co-operative
Housing Society Ltd. No.P.56, Ilango Nagar,
Pondicherry ... Respondents in WP Nos.
32290, 35930 of 2002
&R1 & R2 in WP Nos.
41219/02 & 41225/02
- (3) N. Umapathy, President, Committee of
Management, Pondicherry Housing Society
Limited, P.56, Elango Nagar, Pondicherry ...R3 in WP
No.41219/2002
and WP
No.41225/2002

(R3 impleaded as per order dated 29-11-2002 in WPMP No.62572 of 2002)

(A) *Pondicherry Co-operative Societies Act, 1972 – Ss.33, 76 and 83 –Allegation were leveled on the working of the Pondicherry Co-operative Housing Society Ltd. and on the functioning of the committee headed by the third respondent – Action under S.83 was urged by the petitioners to supersede the committee and the committee has to be restrained from conducting election.*

(B) *Registrar has ordered inspection under S.76 and the report of the inspecting officer has revealed, prima facie, several irregularities and mismanagement. In the meantime the second respondent has withheld the proposed election notification.*

- (C) *In fact, as pointed out by the Registrar, the committee itself had resolved to postpone the election. In fact on that basis the Registrar would state the election notification had become infructuous. Therefore, at this stage there is no question of interference with the election process which has come to an end by the very conduct of the committee.* (Para 18)
- (D) *Considering the period of the committee admittedly comes to an end by 31-12-2002, there is no necessity to initiate the process of supersession of the committee. S.33 formulates the manner in which the society could be administered when the term of office of the committee expires and a new committee has not been constituted.* (Para 19)
- (E) *It is not proper to say that the election process should be conducted hurriedly and in unfair manner. Though the election process should not be interfered, it is equally necessary that the elections are conducted freely and fairly without there being any manipulation of the electoral roll.* (Para 25)
- (F) *I am inclined to hold that in the interest of the proper administration of the society the Registrar has to undertake the exercise contemplated under S.36 and pass appropriate orders after hearing the representations of the members/directors against whom specific allegations are held to be made out. The provision is mandatory and not something to be invoked at the will and pleasure of the Registrar. It will not be in the interest of the public or the society to allow any individual who is under a shadow as a result of valid inspection having been conducted, and a report having been submitted holding some of them guilty, to contest in the election and hold the reins of the administration.*
- (G) *Held, when serious allegations are brought to the notice of this Court, for which prima facie basis is also found, it is not possible to ignore the same and to direct the respondents to push through the election process. It will not be in the interest of the public or the society.*
- (H) *Courts are forced to step in when the authorities fail to exercise the power conferred on them.* (Para 30)

Writ petitions are allowed, directions were given to commence and complete the process under S.36 and also to hold elections.

Case referred to:

- (i) *Order of F.K.Ibrahim Kallifulla.J. in WP No.19316 of 2002 dated 6-6-2002;*
- (ii) *Joint Registrar of Co-operative Societies, Kerala vs. T.A. Kuttappan,AIR 2000 SC 2378 : (2000) 6 SCC 127 : JT 2000 (6) SC 458.*

Petitions filed under Article 226 of the Constitution of India, for the issue of writs of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. V.Ajaykumar, Advocate in WP Nos. 32290, 35930, & 41219/2002
Mr. V. Raghavachari, Advocate in WP No. 41225/2002

For Respondents : Mr. A.P. Suryaprakasam,
Government Pleader, Pondicherry ... For R 1
Mr. P.Natarajan, Advocate ... For R 2
Mr. G.Masilamani, Senior Counsel ... For R 3

ORDER

1. WP Nos.32290, 35930 and 41219 of 2002 have been filed by one Durai alias Adiseenu Ponnu, who is one of the members of the second respondent – Pondicherry Housing Society Limited.

In WP No.32290 of 2002, the petitioner has prayed for the writ of Certiorari, to call for the records relating to the publication in Dhina Thanthi dated 15-6-2002 regarding the scheme undertaken by the respondents society, to quash the same and not to implement such schemes in view of the allegations and mis-management of the society.

In WP No.35930/2002, the petitioner has prayed for a direction to the first respondent to take action against the office bearers of the co-operative society under Section 83 of the Pondicherry Co-operative Societies Act, and to appoint an Administrator superseding the committee of the society.

In WP No.41219 of 2002 he has prayed for a writ of certiorari to call for the records relating to the notification published in Dhina Thanthi on 7-11-2002 to quash the same and to direct the first respondent to appoint an Administrator under Section 83 of the Co-operative Societies Act.

2. According to the petitioner, the society was started in the year 1954, the main objects of the second respondent being, to grant loans to its members for construction of new houses for the purpose of residence, for the purchase of readily built new houses/flats, for additions, improvements etc. The second respondent society is governed by a Board, which is responsible for the proper and efficient administration of the society and for development of the society. For ensuring fair and proper functioning of the society, the society has issued rules for allotment of flats. Even though, there are specific provisions governing the grant of loans, the society was deliberately and willfully violating those rules and was granting loans

etc., after receiving illegal gratification, as a result of which genuine and fully eligible members are not getting the deserved benefits from the society and the society was running in huge loss and also slipping from loss to heavy loss which was highly detrimental to the entire members. In the affidavit, the petitioner has also given the details relating to alleged violations of rules and granting of loans to undeserving persons. The said allegations include granting of loans outside the purpose for which the loans were intended. Many of the loans, which were granted, were not bona fide. According to the petitioner, the Directors and the second respondent were guilty of several irregularities and financial indiscipline. The petitioner has also alleged that in the case of Mrs.Suganthi Paulraj, she has issued five cheques to the tune of Rs.4,87,000/- towards illegal transaction for purchasing land and the petitioner have also given details of the cheque numbers. Even though the Co-operative Staff are brought under the purview of vigilance, the second respondent has not taken any steps to look into the matter.

3. The petitioner further states that under Section 83 of the Co-operative Societies Act, the first respondent has ample powers to supersede the committee when the committee was not functioning properly. Though the petitioners had submitted sufficient materials to show that the society was not functioning properly, the first respondent was not taking any action. He filed W.P.No.19316 of 2002 and this Court after hearing both sides, directed the Registrar to conduct enquiry and take action as provided under Section 83 of the Co-operative Societies Act. The said writ petition was filed specifically for enforcing the provisions of Section 83 of the Pondicherry Co-operative Societies Act. Instead of implementing orders of this Court in the said writ petition, the Registrar has issued a letter dated 13-5-2002 with reference to the inspection conducted under Section 76 of the Co-operative Societies Act, which was not relevant. The inspection was only a dilatory method in order to protect the President and other Directors of the Board who were involved in illegal activities and corruption.

4. The petitioner submits that the second respondent has not convened the general body meeting, which was mandatory before the declaration of the election. To his knowledge, the general body meeting was not convened for the last two years. The only reason for not convening the said meeting was to avoid allegations and accusations against the President as well as other Directors of the Board. The petitioners further contends that if the election is conducted, the President himself assuming powers of election officer, it would cause grave injustice to the other members of the society. The President was trying to act in haste with a view to avoid any action under Section 83 of the Act. Hence, it was necessary to appoint an Administrator under Section 33 of the Co-operative Societies Act to conduct election. Therefore, the impugned notification in "Dhina Thanthi" dated 7-11-2002 calling for the conduct of the election, requires to be set aside.

5. In WP No.41225 of 2002, one Thiyagi Lakshminarayana Iyer, who claims to be a freedom fighter, has sought for a issue of a writ of certiorarified mandamus, to call for the proceedings of the second respondent dated 7-11-2002 as published in the newspapers, to quash the same as illegal and direct the Registrar to appoint his officers or conduct the elections by himself in accordance with the provisions of the Pondicherry Co-operative Societies Act. According to him, the affairs of the society wa not properly conducted and the rules relating to the society were only remaining

idle in statute book. He is also a member of the society. Due to the mismanagement by the present Board, the society had suffered heavy loss. He would also allege that loans had been disbursed to ineligible members in contravention of the rules and loans had been sanctioned for commercial purposes to the close relatives of the Secretary and one of the Directors of the Board. The loans were granted on the basis of Power of Attorney without even verifying the title deeds. The loans were also disbursed without the building plan and approval of the Town Planning Society. There were also large scale of irregularities in the enrollment of new members, which was done only with a view to manipulate the elections. It was the duty of the Secretary to verify that the democratic process was being implemented in a proper manner. Several bogus members have been enrolled and it was the duty of the respondent to verify and ascertain as to whether the enrollment was proper. The petitioners had pointed out the names of several persons claiming to reside in a small tenement.

6. In the counter filed by the first respondent, it is stated that in W.P.No.19316 of 2002, this Court had directed the respondent to conduct an enquiry, and if need be, to initiate the proceedings under Section 83 of the Act. On 3-5-2002, he had ordered a statutory inspection under Section 76 of the Act and on 19-11-2002, the Inspection Officer had submitted his inspection report to him. He was examining the said report for deciding further course of action. He has also informed the writ petitioners that necessary action would be followed after the report is studied. The first respondent would further state that the term of the office of the present committee of the management expires on 31-12-2002 and it was the duty of the committee to conduct election before the expiry of its term of office and to elect new committee of management. It was only in pursuance of the same, election notification to conduct election has been issued. As per the election schedule, the nomination was due on 20-11-2002. However, on 20-11-2002, the committee had withheld the proposed election stating administrative reasons. Therefore, the election schedule by the respondent society has been stopped by the committee itself and hence the election notification had become infructuous. He would further submit that though the allegation of irregularities in admitting the members of the society has been made, no specific representation has been made before this respondent, the members are at liberty either to raise their objection, if any, in the matter of administration.

7. In the counter filed by the President of the respondent society, he has stated that writ petitions filed as above, are not maintainable in law. In terms of the directions of this Court, in WP No.19316 of 2002, enquiry was conducted by one A. Mohamed Naina Maraicair. The petitioner has raised the same grounds as seen in WP No.19316 of 2002. Having regard to the directions of this Court in W.P.No.19316 of 2002 and the subsequent actions taken by the Registrar and other authorities, the petitioners cannot maintain the above writ petitions. The Pondicherry Co-operative Societies Act, 1972 provides alternative remedies by way of representation under Section 141 of the Act. Both the Registrar and the Government have revisional powers over the action of the second respondent. In view of the effective and efficacious remedies, the above writ petition is not maintainable. In terms of the direction of the Court in W.P.No.19316 of 2002, an enquiry had already been commenced and was being conducted. Therefore, there was no justification for the attempt on the part of the petitioners to seek for directions

which are filed with a motive to stall the election. The claims of the petitioners are not bona fide.

8. Mr. Ajaykumar, learned Counsel appearing for the petitioners, after referring to the various factual averments relating to the alleged mis-management by the co-operative society, would contend that the affairs of the society was not being conducted in a proper manner by a few members of the committee, thereby resulting in causing heavy loss to the society and damage to the well being of the members. In spite of several complaints against the management, who had indulged in various irregularities, they are continued in power and elections are sought to be held in haste, so that they could continue to have control over the management. Learned Counsel also took me through the provisions of the Act and rules and contended that the provisions contemplate sufficient powers on the Registrar as well as the Government to take over control of the societies which do not function in a proper manner. The respondent society was involved in scandals and the learned counsel in support of the said contention also took me through some of the factual allegations which related to the grant of loans. He would contend that loans were granted to undeserving persons and also disregarding purpose for which the society itself was formed. He also referred to issue of certain cheques, which according to him, would reveal that the said amounts were paid to the Directors as bribe for the illegal sanction of loans. In short, according to him, to permit the society to proceed with the elections with the present management in control of the affairs of the society, would be detrimental to the interest of the society.

9. Mr.V. Raghavachari, learned Counsel appearing for the petitioner in WP No. 41225 of 2002 while supplementing the allegations made against the society by Mr.V.Ajaykumar, would also contend that there were glaring and high-handed irregularities in the matter of enrollment of new members. The new members have been enrolled in a hasty manner only with a view to capture the power of the society. He also took me through the list of persons which, according to him, contain the names of several bogus members and in particular, he would point out that the address of several members have been given as the same premises in which one U.C. Arumugham was living. He has also filed a third party affidavit by U.C. Arumugham, who was living in No.1, Muthupillai Nagar, Pondicherry – 605 004 and would refer to the address of several persons given as No.1, Muthupillai Nagar. Such persons did not at all exist and the enrollment had been made at the instance of the present President and Directors only with a view to capture power by enrolling the bogus members.

10. Mr. Masilamani, learned Senior Counsel appearing for the second respondent would contend that in WP No.19316 of 2002 itself, F.K.Ibrahim Kallifulla.J. by his order dated 6-6-2002, after considering mutual allegations, had ordered that the representation of the petitioners in context of the allegations shall be filed before the Registrar and the Registrar shall hold proper inquiry within one month and thereafter, if need be, initiate necessary proceedings under Section 83 of the Act. Action has been initiated pursuant to the said directions and the inquiry report has also been submitted by the inquiry officer. The allegations and the inquiry thereon and the action to be taken as a result of the inquiry will be proceeded with, without any default. But there was absolutely no justification for stalling democratic process considering that the period of the committee was coming to an end by 31-

12-2002. In all societies, there are number of complaints, allegations and counter allegations. Such allegations will be duly enquired into by the authorities and the fact that there are complaints cannot be a justification for avoiding elections. The Supreme Court has repeatedly pointed out that when once the process of election commences, there shall be no intervention. If there was any irregularity, the Act and rules provided for adequate remedy to raise election dispute which should be gone into by the authority constituted under the Act. Therefore, there was no justification for interfering with the election process.

11. Mr. Natarajan, learned Counsel appearing for the President of the Society would contend that the petitioners have come forward with the same prayer as in the earlier writ petitioners which was disposed of by F.M.Ibrahim Kallifulla.J. with specific directions. The said directions are being complied with and in fact the enquiry report has also been filed before the authorities and it is for the appropriate authorities to take action on the report. There was no justification to interfere with the election process when once it has commenced.

12. Learned Counsel relies on the judgment of the Supreme Court in ***Joint Registrar of Co-operative Societies Kerala Vs. T.A. Kuttappan***, reported in ***AIR 2000 S.C.2378 : (2000) 6 SCC 127 : JT 2000 (6) SC 458*** in support of his contention, wherein an administrator appointed during supersession it was held that he will have no power to enroll new members. Therefore, he would contend that if the committee is superseded and an administrator is appointed, it will not be possible for enrollment of deserving members, and with the result, the object of the society would be affected in appointing an administrator.

13. Learned Counsel further contends that under Rule 32 (25) of the said Pondicherry Co-operative Societies Rules, it was left to the Registrar to conduct the election by himself or by the election officer to conduct election, if in his opinion, such course was necessary for the proper conduct of an election. Therefore, it was open to the Registrar himself or the Registrar by appointing Election Officer, could conduct election and there was no need for the appointment of any administrator or for the supersession of the committee. He would also contend that when once election process has commenced, the remedy under Article 226 of the Constitution of Act cannot be resorted to.

14. Learned Counsel also refers to Section 32(5) of the Pondicherry Co-operative Societies Act, and contends that the period of committee was for three years from the date of election. The election shall be completed one week before the date of expiry of the term and the period was coming to an end on 31-12-2002 and, therefore, it was not proper to interfere with the process of election. He would further contend that under Section 32(5) (b) of the Act, if for any unavoidable reason, the election to a committee cannot be held before the expiry of the term, the Registrar may direct that the term of the members of the committee shall be extended to a further period not exceeding six months. Therefore, the Registrar can be directed to invoke the said provisions in the event of elections not being conducted and completed on or before 31-12-2002. The attempt on the part of the petitioners to have an administrator thrust on the society without complying with the democratic process was not called for.

15. I have considered the submissions of both sides.

16. The above extract of the pleadings and the submissions would disclose that the endeavor on the part of the petitioners herein is that the society was deeply involved in mismanagement, which was running in loss and serious allegations are made against the present management. Therefore, according to them, if elections are to be conducted under the present administration, there will not be any fair conduct of election and, therefore, it was imperative to appoint an administrator and the conduct election at the control of the administrator. Serious allegations of enrollment of bogus members are also made.

17. Per contra, the respondents contend that it is not proper to interfere with the election process and that the Registrar can be asked to conduct the election, if this Court should find that the present committee should not be involved in the conduct of the election. They would also submit that action against the complaints were being taken in terms of the directions of this Court and also by following the procedure prescribed under the Act and the fact that certain proceedings were pending, was no justification for disqualifying any one or not to conduct the election.

18. I have considered the submissions of both sides and the only fact that the process of election had commenced by issuing a notification and advertisement in the newspaper, cannot stand in the way of examining the issues on the merits of the contentions raised by the petitioners. In fact, as pointed out by Registrar himself, the committee itself had resolved to postpone the election. In fact on that basis the Registrar would state that the election notification had become infructuous. Therefore, at this stage, there is no question of interference with the election process which has come to an end by the very conduct of committee itself.

19. The next question which arises is as to whether the petitioners have made out any prima facie case to postpone the election and to direct the supersession of the committee. Considering the period of the committee, admittedly comes to an end by 31-12-2002, there is no necessity to initiate the process of supersession of the committee. Section 33 of the Pondicherry Co-operative Societies Act formulates the manner in which the society could be administered, when the term of the office of the committee expires and a new committee has not been constituted. The following extract of Section 33 would be relevant:

“33(1): where the term of office of a committee has expired and a new committee has not been constituted, or where the Registrar is satisfied -

- (a) that a new committee cannot be constituted, before the expiry of the term of office of the existing committee, or
- (b) that a new committee fails to enter upon office, on the date on which the term of office of the existing committee expires, the Registrar may, either of his own motion or on the application of any members of the society, after consulting the financing bank, by order appoint-
 - i) a new committee consisting of not more than three members of the society; or

- ii) one or more administrator or administrators who need not be a member or members of the society; to manage the affairs of the society till a new committee enters upon office:

Provided that before making such order, the Registrar shall publish a notice on the notice-board of the head office of the society inviting objections to the making of the order within a period specified in the notice and consider such objections:

Provided further that it shall not be necessary to publish such notice in cases where the Registrar is satisfied that it is not reasonably practicable to do so.

(2) The committee or administrator or administrators appointed under sub-section (1) shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or any officer of the society and take all such action as may be required in the interest of the society.

(3) The committee or administrator or administrators shall arrange for the constitution of a new committee or for the entering upon office of the new committee, as the case may be .”

20. Now coming to the allegations made by the petitioners against the present President as well as the Directors, it is true that the allegations are very serious in nature which has lead this Court to issue a direction earlier in W.P.No.19316 of 2002, directing the Registrar to conduct a proper inquiry. The inspection report of the Inspection Officer, conducted under Section 76 of the Act, has been placed before me and a perusal of the inspection report shows that many of the allegations made against the committee are prima facie made out. At the end of the detailed report, the Inspection Officer has named the President as well as 11 other Directors as involved in the alleged irregularities.

21. The file relating to the report by the Registrar of Co-operative Society has also been furnished to this Court and the perusal of the same also discloses that some of the allegations are prima-facie made out as regards sanctioning of several loans which were found to be irregular. At this stage, it may not be in the interest of the parties to disclose or to deal with the said findings in detail, considering the rights of the parties and the process of action to be taken pursuant to the said report. Suffice to say that all is not well with the present Board of Directors and it may not be proper to allow the present Board of Directors to continue in the helm of affairs, considering that their period itself is coming to an end. It is for the authorities to follow up further action pursuant to the said report and take appropriate action in terms of the provisions of the Act.

22. The immediate question to be decided is as regards the administration of the society and the conduct of the election. The conduct of the election shall not be unnecessarily delayed. But, at the same time, it is also necessary to ensure that the election is conducted in a fair and proper manner. In this context, it is pertinent to

note that the petitioner in WP No.41225 of 2002 has come forward with several details of alleged bogus enrollment of members. It will be sufficient to point out atleast one particular fact regarding the same.

23. One U.C.Arumugham has filed supporting affidavit and he resides in No.1 Muthupillai Nagar, Pondicherry – 605 004. He has also pointed out that the new list of members discloses the names of 7 persons whose address has been given as No.1 Muthupillai Nagar. He would state that in the said address, except himself, his wife and his children who are residing, no one is residing with them. In the affidavit filed in support of WP No.41225 of 2002 also, the petitioner has alleged the similar enrolment of several bogus members.

24. The respondent would state that the Registrar has already considered the objections relating to the enrollment of the members and it is for him to scrutinize the list of members and to take further action therein. It is open to the election officer to go into the said issue and it was not necessary to stall the election for the said purpose.

25. I am not inclined to sustain the contention of the learned counsel for the respondents that the election should be conducted in a hasty manner without properly scrutinizing the electoral roll in view of the serious allegations regarding the enrollment of members which appears to have some basis. It is not proper to say that the election process should be conducted hurriedly and in unfair manner. Though the election process should not be interfered, it is equally necessary that the elections are conducted freely and fairly without there being any manipulation of the electoral roll.

26. As regards the right of the members of the present committee to contest the election, the contention on the part of the learned counsel for the petitioners is that none of the persons of the present committee who has been found guilty should be allowed to contest in the election in view of the serious allegations against them and it will not be in the interest of the society to permit them to contest.

27. On the other hand learned Counsel for the third respondent contends that any member of the society who has not been disqualified in a manner known to law would be entitled to contest in the election of the committee and therefore, the attempts on the part of the petitioners to punish the members of the society for the unsubstantiated allegations was not fair.

28. Under Section 36, 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, it appears that the person who is or was a members of a committee has misappropriated or fraudulently retained any money or other property, the Registrar may, without prejudice to any other action that may be taken against such member, by order in writing, remove such person from the office or disqualify him from holding the office in future, the office of a member of the committee. But under Section 36(2), no person shall be removed or disqualified under sub-section (1) without being given an opportunity of making his representations. Therefore, in the above background, the question which arises for consideration is as to whether elections could be conducted even before the action could be taken under Section 36 of the Act.

29. As stated earlier, the Inspection report of the inquiry officer under Section 76 of the said Act as well as the report of the Registrar discloses that certain allegations against some members of the present committee have considerable basis. In fact, in the report of the officer, under Section 76 of the said Act, the President as well as names of 11 other members have been mentioned as being involved/responsible for the alleged irregularities.

30. Section 36 envisaged that even at the stage of finding of the inspection under Section 76 of the said Act, if a member of the committee was found to be guilty of any misappropriation; the Registrar is vested with powers to take appropriate action either to remove him or to disqualify him. In the present case, the question of removal does not arise, since the period of the committee is coming to an end on 31-12-2002. The issue is as to whether before the elections are conducted, the Registrar should consider as to whether the findings of the inquiry should result in disqualifying any of them from contesting in the future elections. I am inclined to hold that in the interest of the proper administration of the society, the Registrar has to undertake the exercise contemplated under Section 36 of the Act and pass appropriate orders after hearing the representations of the members/directors against whom specific allegations are held to be made out. The provision is mandatory and not something to be invoked at the will and pleasure of the Registrar. It will not be in the interest of the public or the society to allow any individual who is under a shadow as a result of a valid inspection having been conducted, and a report having been submitted holding some of them as guilty, to contest in the election and hold the reins of the administration. The conduct of the election has been stopped and stalled by the committee itself and has to be inevitably postponed. Therefore, it is but proper that the exercise under Section 36 of the Act has to be undertaken and the Registrar should also scrutinize the list of voters in the context of the allegation of bogus enrollment which have sufficient basis. It is not proper to push through the election without complying with the above two requirements, which would result in improper administration of the society. When serious allegations are brought to the notice of this Court, for which prima-facie basis is also found, it is not possible to ignore the same and to direct the respondents to push through the election process. It will not be in the interest of the public or the society. There are many societies under the Administrator or Special Officer and no harm will be done for this society also to be under the control of an Administrator for a short period for ensuring fair elections and for eliminating undeserving individuals. Courts are forced to step in when the authorities fail to exercise the power conferred on them. In the present case, as could be seen from the records, there have been long pending and very serious complaints. But the authorities have been dragging their feet.

31. Therefore, in the result, without reference to the specific prayers in each of the writ petitions, I am inclined to allow the writ petitions subject to the following directions:

- (a) The Registrar, on the completion of the period of the committee, shall comply with the provisions of Section 33 of the Act, by appointing an Administrator.
- (b) The Registrar shall appoint an Administrator who shall not be a member of the society and will be a full time official of the Co-

operative Department and he will be in charge of the affairs of the society till a new committee enters the office.

- (c) The Registrar shall scrutinize the list of new members in the context of allegations of bogus enrollment and after proper scrutiny, by hearing all parties concerned, eliminate bogus members and shall approve a proper list of new members.
- (d) The Registrar shall immediately commence the process under Section 36, by giving notice to all persons against whom prima facie case has been made out consequent on the inspection conducted under Section 76, as well as the report of the Registrar while dealing with the allegations forwarded by one U.C. Arumugham and others and the findings of the Registrar thereon. After holding a proper inquiry, as contemplated under Section 36 (2) of the Act, shall pass appropriate orders, disqualifying such of those individuals who are found unfit to hold the office and who are found prima facie guilty of the allegations.
- (e) After completing the aforesaid process, the Registrar may commence the process for conducting the elections to the committee.
- (f) The entire exercise as pointed out above shall be completed within a period of six months from the date of receipt of a copy of this order and the election process shall commence by the end of the period of six months.

32. Subject to the above observations, the writ petitions are ordered. Connected WPMPs are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)

Date : 21st April 2003

PRESENT: THE HONOURABLE Mr. JUSTICE K.P. SIVASUBRAMANIAM

Writ Petition No. 33779 of 2002

R. Prabhakaran .. Petitioner

Versus

Union of India, rep. by Registrar of
Co-operative Societies, Pondicherry,
and another .. Respondents

It cannot be disputed that the ad hoc employees who are already in service, if otherwise they are qualified are entitled in preference over and above the new applicants.

Writ petition disposed with a direction.

Petition under Article 226 of the Constitution of India praying for issuance of a writ of mandamus for the reasons stated therein.

For Petitioner	...	Mr. G.R. Swaminathan, Advocate
For Respondents	...	Mr. Vijay Anand for Government Pleader, Pondicherry.

ORDER

The petitioner prays for the issue of a writ of mandamus to direct the second respondent to fill up the vacancy in the post of Turner Grade II only from the personnel in the second respondent Sugar Mill and consequentially consider the petitioner's case.

2. The following facts are sufficient for the disposal of the writ petition. The petitioner claims to have been already working with the respondent in ad hoc capacity as a turner. While so, without regularizing the petitioner's services, the present impugned advertisement has been issued calling for recruitment of turners by direct recruitment. Hence the above writ petition.

3. Learned counsel for the petitioner contends that in spite of the fact that the petitioner is already working in ad hoc capacity and that he is also having all other requisite qualifications, without regularizing him in service, the respondents are trying to appoint somebody else by calling for advertisement.

4. Learned counsel for the petitioner submits that the minimum required qualification is eighth standard with a certificate in ITI. When the petitioner joined

the service earlier on ad hoc basis, he had produced only certificate relating to eighth standard and did not produce ITI certificate.

5. I have considered the submissions of both sides.

6. It cannot be disputed that the ad hoc employees who are already in service, if otherwise they are qualified are entitled to preference over and above the new applicants. It is also not disputed that the petitioner has also applied for the post in terms of the impugned advertisement.

7. The contention of the learned counsel for the respondents is that the petitioner is not in possession of a proper ITI though the learned counsel for the petitioner contends that the ITI certificate has been furnished by the petitioner. It is up to the respondent to be satisfied with the genuineness or otherwise of the certificate. In the event of the petitioner satisfying the required qualifications, being an ad hoc employee, he is naturally entitled to be given due weightage. Therefore in the event of the petitioner satisfying that required qualifications, the respondent is directed to consider the other requirements and qualifications of the petitioner and pass appropriate orders by giving proper reasons for not appointing the petitioner/ The writ petition is disposed of accordingly. The second respondent is directed to keep one post vacant till final orders are passed. No costs. Consequently, connected WPMP No.49964 of 2002 is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 7th August, 2003

Coram: THE HONOURABLE Mr. B. SUBHASHAN REDDY,
CHIEF JUSTICE

and

THE HONOURABLE Mr. JUSTICE K. GOVINDARAJAN

Writ Petition Nos. 17786 of 1997, 14302 of 1999, 11856 of 2000,
29734 of 2002, 46467 of 2002, 1981 of 2003 and 4311 of 2003

and

W.P.M.P. Nos. 28140/97, 20671, 19356 & 19357/99, 16969/00, 67577/02,
2466/02 and 5402/03

W.P. No.17786 of 1977

P. Mohan & 10 others	..	Petitioners
	Versus	
The Registrar of Co-operative Societies, Pondicherry & 10 others	..	Respondents

W.P. No.14302 of 1999

S. Balamurugan & 9 others	..	Petitioners
	Versus	
Government of Pondicherry, rep. by its Secretary to Government, Labour Department, Pondicherry & 17 others	..	Respondents

W.P. No. 11856 of 2000

N. Ramamoorthy & 10 others	..	Petitioners
	Versus	
The Registrar of Co-operative Societies, Pondicherry and 11 others	..	Respondents

W.P. No. 29734 of 2002

R. Palanisamy	..	Petitioner
	Versus	
Government of Pondicherry, rep. by its Secretary to Government, Labour Department, Pondicherry & 7 others	..	Respondents

W.P. No.46467 of 2002

Dhanajaya. A	..	Petitioner
Versus		
Union Territory of Pondicherry, rep. by Its Secretary (Co-operation) & 8 others	..	Respondent

W.P. No.1981 of 2003

B. Sathiyaseelan	..	Petitioner
Versus		
The Registrar of Co-operative Societies, Pondicherry and another	..	Respondents

W.P. No.4311 of 2003

The Pondicherry Co-operative Housing Society Staff Union (CITU), rep. by its General Secretary	..	Petitioner
Versus		
The Union of India, rep. by its Union Territory of Pondicherry, through the Under Secretary to Government (Co-operation) and 2 others	..	Respondents

W.P. Nos. 29734 of 2002, 46467 of 2002, 1981 of 2003 and 4311 of 2003

If there is any mismanagement, the cause is found in the statute itself for making an enquiry at all levels, be it subordinate level. Registrar level or by the Government, and several safeguards are provided in the Act for ensuring proper functioning of the societies. Even if any policy decision taken by the societies is not conducive to the economical situation, such kinds of policies are to be tested by the respective societies or their apex bodies and above all by the Government, as both the societies and the Government are the shareholders. (Para 2)

Writ petition Nos.17786 of 1997 and 11856 of 2000

The fact that the petitioners did not secure the qualified marks in the written test is not disputed. If that be the case, the petitioners cannot complain of any illegality on the part of the bank in not continuing with the selection process. Further, the petitioners have got no indefeasible right to command continuation of the selection process and select them. Only after the selection process is completed, and the same is not done according to the rules and regulations they can complain. But such a situation did not arise here, as the petitioners, who are already employed in some other co-operative societies and who did not qualify themselves in the written test, cannot claim as of right for employment in the bank. In so far as the employment of the other staff, who are made

respondents, and whose services are being availed of by the bank is concerned, it is for the bank to evolve a policy to administer its institution, and they know better who can deliver the goods. (Para 4)

W.P. No.14302 of 1999

So long as the banks are functioning efficiently, no interference can be called setting the grounds of employment and issue notification for selection when the bank and the societies know better how to manage their affairs. (Para 5)

Writ petitions are dismissed.

PRAYERS

W.P No.17786 of 1997 is filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus to forbear respondents 1 and 2 from granting approval for the appointment of respondents 3 to 11 by regularizing or in any other manner in the second respondent bank without first appointing the petitioners and pass such other orders, as stated therein.

W.P. No.14302 of 1999 is filed under Article 226 of the Constitution of India for the issuance of a writ of declaration to declare that the action of the second respondent in sanctioning the appointments of respondents 7 to 18 as daily wage employees/trainees in respondents 3 to 5 respectively, is illegal and unconstitutional and consequently, direct the second respondent not to regularize the services of respondents 7 to 18 and appoint only persons who are qualified in Diploma in Co-operation in the services of respondents 3 to 5 and pass such other order or directions, as stated therein.

W.P. No.11856 of 2000 is filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus to forbear the respondents from approving the appointment of respondents 3 to 12 either on a regular or ad-hoc basis, as referred to in the second respondent's letter No.PSCB.17.C.2000-2001/B dated 24-4-2000 without first appointing the petitioners as such and pass such other orders, as stated therein.

W.P. No.29734 of 2002 is filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus directing the respondents 1 and 2 to initiate action against the officers, who appointed and continued the respondents 4, 5 and 6 as clerical staff in Pondicherry Public Servants Co-operative Society Ltd., and take consequent action including recovery of money spent as salary and other benefits to the illegal appointees from the officials responsible for the illegal appointments and pass such other orders, as stated therein.

W.P. No.46467 of 2002 is filed under Article 226 of the Constitution of India for the issuance of a writ of declaration to declare the selection made for the post of Junior Assistant by the third respondent as null and void and thereby direct the third respondent to make a fresh selection as contemplated under the regulations, and in accordance with law, as stated therein.

W.P. No.1981 of 2003 is filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus directing the second respondent not to make any appointment to the Muthirapalayam Primary Agricultural Co-operative Bank Limited, Muthirapalayam and also not to take any policy decision before the elected body is taking charges and to pass such other order, as stated therein.

W.P. No.4311 of 2003 is filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus to forbear respondents from making any new appointments to the Pondicherry Co-operative Housing Society except after obtaining necessary prior permission from the Lt. Governor of Pondicherry as per his order contained in the Office Memorandum No.A.12030/2002/F.3, Government of Pondicherry, Finance Department, dated 25-10-2002 and also following Rules 3 & 8(1) of the Subsidiary Regulations governing the service conditions of the employees of the Pondicherry Co-operative Housing Society and pass such other order, as stated therein.

Advocates appeared:

Ms. R. Vaigai	..	For Petitioners in W.Ps. 17786/97 & 11856/2000
Mr. T. Murugesan, Senior Counsel- Government Pleader, Pondicherry	..	For R1 in W.P. 17786/97 For R1 in W.P. 11856/00 For RR1 to 3 in W.P. 4311/03 For RR1 & 2 in W.P. 46467/02 For RR1 & 2 in W.P. 29734/02 For RR1 to 6 in W.P. 14302/99 For R1 in W.P.1981/02
M/s. G.M. Mani Associates	..	For R2 in W.P. 17786/97 For R2 in W.P. 11856/00
M/s. S. Bharathi Chakravarthy	..	For R3 to R11 in W.P. 17786/97
Mr. A. Sendhil Narayanan	..	For Petitioners in W.P. 4311/03
Mr. S. Balaji	..	For Petitioner in W.P.46467/02
Mr. R. Subramanian	..	For R3 in W.P. 46467/02
Mr. P.K. Rajagopal	..	For Petitioner in W.P. 29734/02
Mr. K. Sassedharan	..	For R7 in W.P.29734/02
Mr. K.M. Ramesh	..	For Petitioners in W.P. 14302/99
Mr. V. Ajay kumar	..	For Petitioners in W.P. 1981/02

No appearance

: For respondents 3 to 12 in W.P.
11856 of 2000; For RR3 4, 5, 6 & 8
in W.P. 29734/02;
For RR7 to 18 in W.P. 14302/99

ORDER

(The Judgment of the Court was delivered by the Hon'ble Chief Justice)

This batch of writ petitions relate to the co-operative societies, be it a co-operative bank or a credit society, etc. There are two categories of writ petitions. The first category is seeking employment, alleging that the other persons employed are ineligible and that they are entitled for the said appointment, and the other category is complaining of mismanagement in the societies. W.P. Nos. 17786 of 1997, 14302 of 1999, 11856 of 2000 belong to the first category. The second category of writ petitions in W.P. Nos. 29734 of 2002, 46467 of 2002, 1981 of 2003 and 4311 of 2003 relate to mismanagement in the respective societies.

2. We shall first deal with the second category, as we do not find any point in dealing with the allegations made therein. If there is any mismanagement, the cause is found in the statute itself for making an enquiry at all levels, be it subordinate level, Registrar level or by the Government, and several safeguards are provided in the Act for ensuring proper functioning of the societies. Even if any policy decision taken by the societies is not conducive to the economical situation, such kinds of policies are to be tested by the respective societies or their apex bodies and above all by the Government, as both the societies and the Government are the shareholders. In fact, the writ petitioners contend that the Government is a major shareholder and if that be the case, the Government is best suited to go into the aspects, if any such occasion arises. We make it clear that we are not here adjudicating the respective allegations as to whether the Government is the major shareholder or not. Suffice it to say that the second category of writ petitions are not maintainable, as they are framed and are accordingly dismissed.

3. Coming to the first category of writ petitions, we shall first deal with writ petition Nos. 17786 of 1997 and 11856 of 2000. They relate to Pondicherry State Co-operative Bank, which hereinafter will be called as 'the bank'.

4. The petitioners in the above writ petitions challenge the action of the said bank in not appointing them, but appointing the private respondents. The bank has issued a notification on 30-5-1995 for recruitment to the post of Junior Assistant-cum-Cashier Grade III. The eligibility criteria fixed was graduation or diploma in co-operation and basic training in co-operation with three years experience on regular basis in any primary co-operative societies. Among the applications received, 28 were found to be in order, and written examination was held on 19-8-1995, out of which 15 were called for the oral interview which was scheduled on 26-11-1996. Meanwhile, there was spate of civil litigations and there were some interim orders. In O.S. No. 878 of 1995 on the file of I Additional District Munsif, Pondicherry, the contention was that no written examination needs to be conducted for the post advertised, and the bank should select the candidates from the co-operative societies, basing upon the qualification and experience alone. In O.S. No. 1973 of

1996 on the file of the same Court, the contention raised was somewhat similar. But, the above suits themselves are not the sole cause for the bank not to proceed with the selection pursuant to the notification. The interview, which was scheduled on 26-11-1996, was not proceeded with, and the contention of the petitioners is that the oral interview ought to continue and bearing upon which selection and appointment ought to be made. The contention of the bank is that the eligibility criteria for being called for the oral interview was to secure 35% of marks in the written test and none of the petitioners have secured the said percentage of marks. The bank then had taken a decision to reduce the percentage of marks to 10% and above, and then wanted to call for the interview and pursuant to that, interview cards were sent. But, in order to avoid litigations, public criticism and also keeping the bank's interest in view in getting good staff, the selection process was cancelled. The fact that the petitioners did not secure the qualified marks in the written test is not disputed. If that be the case, the petitioners cannot complain of any illegality on the part of the bank in not continuing with the selection process. Further, the petitioners have got no indefeasible right to command continuation of the selection process and select them. Only after the selection process is completed, and the same is not done according to the rules and regulations they can complain. But such a situation did not arise here, as the petitioners, who are already employed in some other co-operative societies and who did not qualify themselves in the written test, cannot claim as of right for employment in the bank. In so far as the employment of the other staff, who are made respondents, and whose services are being availed of by the bank is concerned, it is for the bank to evolve a policy to administer its institution, and they know better who can deliver the goods. It is the stand of the bank that the private respondents are all graduates and in fact one of them is a post graduate and that some of them have got diploma in co-operative training and that they have not been posted in the regular vacancy yet, and for daily wages they had been working very efficiently by assisting the existing staff, and that the bank is functioning smoothly, what is needed is the very efficient functioning of the bank, which is in public interest and nothing is made out, so as to hold that the bank is not performing efficiently. In any event, the petitioners are not having any indefeasible right, and more so when they are not even qualified in the written test, so as to entitle them even to be called for the oral interview. In view of what is stated supra, there are no merits in W.P. Nos. 17786 of 1997 and 11856 of 2000, and they are accordingly dismissed.

5. Coming to the other writ petition namely, W.P. No.14302 of 1999, the petitioners are members of an Association. The said Association has already filed W.P. No.16973 of 1997, and the same was withdrawn and dismissed as such. But, the petitioners, who are members and bound by the action of the Association, have filed the writ petition challenging the action of the societies like Pondicherry Public Servants Co-operative Society, Pondicherry Electricity Employees' Co-operative Credit Society, as also the bank, that appointments should be made to the posts, while the stand of the said societies and the bank is that they are not bound to make appointments as demanded by the petitioners, and that they have already engaged some temporary staff on daily wages, and getting the work done efficiently, which also proved economical, and there cannot be any mandamus directing them to appoint the petitioners per force. So long as the banks are functioning efficiently, no interference can be called setting the grounds of employment and issue notification for selection when the bank and the societies know better how to manage their

affairs. Hence, this writ petition also fails not only on the ground of dismissal of early writ petition namely W.P. No.16973 of 1997, but also on merits.

6. For all the above reasons, all the writ petitions are dismissed. No costs. Consequently, the connected pending miscellaneous petitions are also dismissed.

All writ petitions are dismissed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 20th August, 2003

PRESENT: THE HONOURABLE Mr. JUSTICE P.D. DINKARAAN

Writ Petition No. 16124 of 2003

and W.P.M.P No.20196 of 2003

J. Radhakrishnan .. Petitioner

Versus

The Registrar of Co-operative
Societies, Pondicherry and another .. Respondents

It is well settled in law that the Court should refrain itself from interfering with orders of interim suspension pending disciplinary proceedings, unless the same suffers from want of jurisdiction as the interim suspension pending enquiry is not a punishment by itself, it is only intended to facilitate the smooth and speedy enquiry.

Writ petition disposed of with a direction.

Petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling the records on the file of the second respondent relating to the impugned order dated 19-5-2003 bearing No.PCSM/Estt5-455/2003/1701 and quash the same and consequently treat the service of the petitioner as continuous and pay all the arrears of salary, back-wages and all or other service and monetary benefits.

Cases referred to:

- (i) *Kannan P. Tamilarasan and others vs. The Director of Sugars etc. (FB) – (1991) 2 LW 109 : 1989 (1) LLJ 588;*
- (ii) *W. Philip Jeyasingh vs. The Joint Registrar of Co-operative Societies, Chidambaranar Region, Tuticorin and 2 others – (1994) 2 LW 105 : 1994 – 1 – MLJ – 398;*
- (iii) *K. Ganesan vs. The Special Officer, Salem Co-operative Sugar Mills and 2 others – 1994 (2) LW 102 : ILR (1994) II MAD 629 : 1994 WLR 509;*
- (iv) *M. Thanigachalam vs. Maduranthagam Agricultural Produces Marketing Society No.P.864, rep. by its Special Officer – (2000) 3 MLJ 722 : 2000 – 1 – LW – 38 : 2000 (IV) CTC 556.*
- (v) *G. I Mohabood Bhasha vs. Government of Tamil Nadu and another – W.P. No.31895 of 2002 dated 2-8-2002.*

For Petitioner ... Mr. Sai Krishnan, Advocate
For Respondents ... Mr. M.S. Palanisamy, Additional
 Government Pleader

ORDER

Mr. M.S. Palanisamy, learned Additional Government Pleader takes notice for respondents 1 and 2.

2. The petitioner, who is working as a Senior Clerk under the 2nd respondent co-operative mill, was by proceedings dated 19-5-2003 placed under suspension, pending an enquiry into the charges contemplating with respect to certain alleged negligence of his duty. Aggrieved by the said proceedings dated 19-5-2003, the petitioner seeks writ of certiorarified mandamus, calling the records on the file of the second respondent relating to the impugned order dated 19-5-2003, bearing Ref. No.PCSM/Estt/5-455/2003/1701 and quash the same and consequently treat the services of the petitioner as continuous and pay all the arrears of salary, back-wages and all other service and monetary benefits.

3. Admittedly, the impugned proceedings dated 19-3-2003 was passed by the 2nd respondent-co-operative mill.

4. Approving the decisions of the Full Benches of this Court in

(i) Kannan P. Tamilarasan and others vs. The Director of Sugars etc. (FB) – (1991) 2 LW 109 : 1989 (1) LLJ 588;

(ii) W. Philip Jeyasingh vs. The Joint Registrar of Co-operative Societies, Chidambaranar Region, Tuticorin and 2 others – (1994) 2 LW 105 : 1994 – 1 – MLJ – 398;

(iii) K. Ganesan vs. The Special Officer, Salem Co-operative Sugar Mills and 2 others – 1994 (2) LW 102 : ILR (1994) II MAD 629 : 1994 WLR 509;

a larger Bench of this Court consisting five Judges, by order dated 11-10-2000 made in W.P. Sr. Nos. 58714, 58948 & 61024 of 1999 and 13572, 41191, 49291, 55825 & 56015 of 2000 (**M. Thanigachalam vs. Maduranthagam Agricultural Producers Marketing Society No.P.864, rep. by its Special Officer – (2000) 3 MLJ 722 : 2000 – 1 – LW – 38 : 2000 (IV) CTC 556**) held that writ petition against the co-operative societies is not maintainable in law, unless the petitioner shows some special circumstances. Therefore, the above petition is not maintainable in law.

5. It is well settled in law that the Court should refrain itself from interfering with orders of interim suspension pending disciplinary proceedings, unless the same suffers from want of jurisdiction as the interim suspension pending enquiry is not a punishment by itself, it is only intended to facilitate the smooth and speedy enquiry, as observed by a Division Bench of this Court by order dated 2-8-2002 made in W.P. No.31895 of 2002 (**G. I Mohabood Bhasha vs. Government of Tamil Nadu and another**).

6. That apart, since the interest of justice requires that any undue delay in holding an enquiry should be avoided, I am obliged to direct the second respondent to appoint an enquiry officer, hold an enquiry and pass appropriate order on merits in the disciplinary action initiated against the petitioner, expeditiously, in any event, within six months from the date of receipt of a copy of this order, after giving a fair and reasonable opportunity to the petitioner and the second respondent shall pay the subsistence allowance to the petitioner pending the disciplinary action, if the petitioner is entitled to the same, as per law.

7. The writ petition is disposed of accordingly. No costs. WMP No.20196 of 2003 is closed.

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

Date : 29th August , 2003

PRESENT: THE HONOURABLE Mr. JUSTICE P.K. MISRA

Writ Petition No. 3214 of 1997

and

WMP No.5374 of 1977

S. Elumalai

..

Petitioner

Versus

The Registrar of Co-operative
Societies, Pondicherry & 9 others

..

Respondents

Petitioner has filed this writ petition only on assumption that the 1st and 2nd respondents are attempting to promote the deputationists by preparing the seniority list. Petitioner has not produced any document to substantiate his contention. In the absence of any documentary evidence, this Court cannot grant the writ of mandamus as prayed for by the petitioner.

Writ petition under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 and 2 to implement the order of the first respondent with 5/4/2/191/RCS/E/86/31 dated 3-5-1991 and No.PCCF/ESTT/A/939/89/Vol.II dated 24-7-1993 absorbing the deputationists with effect from 1-4-1990 and to promote the petitioner to the post of Senior Assistant on the basis of the seniority list produced before the Labour Court with No.PCCF/ESTT/A/1038/91 dated 23-6-1992.

For Petitioner ...

Mr. V. Ajay Kumar, Advocate

For Respondents ...

Mr. R. Natarajan, Advocate, for

Mr.T. Murugesan,

Government Pleader for Pondicherry.

Mr. R. Venkatesah, Advocate for

Respondents 3 to 10

ORDER

Heard the learned counsel appearing for the parties.

2. It appears that a similar matter had already been disposed of by this Court in W.P. No.2820 of 1997 (A. Krishnamoorthy vs. Registrar of Co-operative Societies, Thattanchavady, Pondicherry and others) on 14-12-2001. The relevant portion in the said decision is to the following effect:-

“2. Though the learned counsel for the petitioner submitted that the deputationists have been absorbed with effect from 1-4-1990 and the respondents are taking steps to promote them, the learned counsel for the contesting respondents pointed out that even before regularization of the service of the deputationists, the petitioner has come before this Court. Counsel for the 1st and 2nd respondents fairly submits that no regularization was made in so far as the deputationists are concerned and that even when such regularization is not made, the deputationists cannot be promoted on the basis of the alleged absorption.

3. Petitioner has filed this writ petition only on assumption that the 1st and 2nd respondents are attempting to promote the deputationists by preparing the seniority list. Petitioner has not produced any document to substantiate his contention. In the absence of any documentary evidence, this Court cannot grant the writ of mandamus as prayed for by the petitioner.”

3 Following the aforesaid decision, the present writ petition is dismissed. No costs. Connected W.M.P.No.5374 of 1999 is also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10th September, 2003

**PRESENT: THE HONOURABLE Mr.. B. SUBHASHAN REDDY,
CHIEF JUSTICE**

and

THE HONOURABLE Mr. JUSTICE A. KULASEKARAN

WAMP No.3396 of 2003

in

Writ Appeal No. 3948 of 2002

Pondicherry State Co-operative Consumers'
Federation Ltd., rep. by its Managing Director
Pondicherry – 605 009

.... Petitioner
(Respondent in W.A.No.3948/2002,
High Court Madras)

Versus

B. Gayathri

.... Respondents
(Appellant in –do-)

*It is expressly clear that the charges are not so serious or grave
warranting inflicting of any major penalty and stoppage of one increment
without cumulative effect will meet the ends of justice. (Para 6)*

Petition praying that in the circumstances state therein and in the affidavit filed therewith the High Court will be pleased to grant two months time to the petitioner to conclude the enquiry against the Respondent as per the order dated 18-2-2003 of this Hon'ble Court in W.A.No.3948 of 2002. (Writ Appeal preferred against the order dated 10-10-2002 passed in W.P.No.38356 of 2002 presented under Article 226 of Constitution of India praying this court to issue a writ of certiorari calling for the records of the respondent in No.PPCF/Estt./A/722/87 dated 18-10-1994 and quash the same).

For Petitioner : Mr. N.G.R.Prasad, Advocate
For Respondent : Mr. V.Ajay Kumar, Advocate

ORDER

This petition coming on for hearing upon perusing the petition and the affidavit filed in support thereof and the order of this Court dated 18-2-2003 and made in W.A. No.3948 of 2002 and upon hearing the arguments of Mr.N.G.R.Prasad, Advocate for the Petitioner-Management and of Mr.V.Ajay Kumar for the respondent, the Court made the following Order:

(Order of the Court was made by the Hon'ble the Chief Justice)

1. This writ appeal was directed against the order of the learned single Judge which relates to the administrative proceedings. The enquiry was to be concluded and the learned single Judge has directed the enquiry to be expeditiously concluded by stipulating the time of six months.
2. In the writ appeal, we modify the order of the learned single Judge by imposing a default clause, in default of not adhering to the time stipulation for conclusion of the enquiry. Because of several reasons, the enquiry could not be concluded within the stipulated time and, this petition is filed to extend the time for conclusion of the enquiry.
3. When the matter came up on 28-8-2003, we have perused the charges and the charged are very trivial in nature, and it is not worth continuing the proceedings for a long and, we have suggested to both the counsel as to why cannot be the matter be given a quietus by imposing a lighter punishment like one increment without cumulative effect.
4. Mr. N.G.R. Prasad, learned counsel appearing for the Management has sought for time to seek instructions from his client. Mr. V. Ajaykumar, learned counsel for the delinquent had accepted the suggestion of the Court. Today, a letter addressed by the Management to Mr. N.G.R. Prasad dated 5-9-2003 is placed before us, from which, it is obvious that the management will abide by such decision as suggested by this Court.
5. The charges framed against the delinquent are as follows:
 - “(i) That you have violated Rule 12 of the Pondicherry State Co-operative Consumers’ Federation Employees Service Regulations by failing to discharge the duties entrusted to you on 30-9-1994 by office order No.PCCF/H/1018/91;
 - (ii) That you have willfully committed misconduct by (a) insubordination and disobedience of the lawful and reasonable order of the superior (b) absenting from the appointed place of work during working hours on 30-9-94; and, (c) refusing to work as per the office order dated 29-9-94 in Ref. No.PCCF/H/1018/91 within the meaning of clauses 4, 18 and 22 of Regulation 13 of the above mentioned service Regulations”.
6. It is expressly clear that the charges are not so serious or grave warranting inflicting of any major penalty and stoppage of one increment without cumulative effect will meet the ends of justice.

7. In the circumstances, we modify the order of this court in W.A.No.3948 of 2002 dated 18-2-2003 to the effect that the appellant be inflicted with a punishment of stoppage of one increment without cumulative effect. The order is modified accordingly.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23rd September, 2003

CORAM: THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

Writ Petition No.38211 of 2002

and

WPMP No. 37205/02

Dr. S. Rajeshwaran

... Petitioner.

Versus

- (1) Union of India, Union Territory of Pondicherry,
rep. by its Secretary, Co-operative Department,
Govt. of Pondicherry, Pondicherry.
- (2) The Registrar of Co-operative Societies,
Co-operative Department, Government of Pondicherry
Pondicherry.
- (3) The Special officer,
Pondicherry Co-operative Milk Producers Union Ltd.,
Kurumapet, Pondicherry. ... Respondents

(A) *Pondicherry Co-operative Societies Act, 1972 – S.80 – Bye law No.44 of the Pondicherry Co-operative Milk Producers' Union Ltd. – The impugned memorandum of suspension of the petitioner is challenged on the ground that the order was necessary in the interest of the society and also it does not state the period of suspension – No inquiry was held as contemplated under the Act.*

(B) *The second respondent before directing the third respondent to place the petitioner under suspension ordered for an inquiry under S. 75. An interim inquiry report was also submitted by the enquiry officer. It could be seen that the impugned memorandum came to be issued by the third respondent pursuant to the specific direction issued by the second respondent in exercise of his powers under S.80. When such required documents are available on record, there is no scope to hold that the impugned memorandum of suspension lacks legal support either under S.80 of the Act or under the bye laws of the Union.* (Para 7)

(C) *Held, I am satisfied that the ingredients required to be complied with under S.80 of the Act as well as bye law No.44 of the Union have been fully taken care of while issuing the memorandum impugned in the writ petition. I do not find any infirmity in the order to interfere with the order impugned in this writ petition.* (Para 8)

Cases referred to:

- (i) [(2) Co-op. cases 420] The Secretary, Palani Co-operative Sales Society, Palani and another Vs. The Presiding Officer, Labour Court, Madurai and another.*
- (ii) 1990(2) LLN 1187 (V.K. Natarajan vs. Triplicane Urban Co-operative Society Ltd., (by Special Officer), Madras.*
- (iii) 1991 WLR 636 (Arumugham, M.S. Vs. Joint Registrar, Salem Region, Salem– 7).*
- (iv) AIR 1978 SC 851 (Mohinder Singh vs. Chief Election Commissioner).*
- (v) AIR 1994 SC 2148 (L.I.C. of India vs. Asha Ramchandra Ambedkar)*
- (vi) AIR (39) 1952 SC 16 (Commissioner of Police Vs. Gordhandas)*
- (vii) Unreported judgment in his Lordship. Mr. Justice K.P. Sivasubramanian dated 28-2-2002 made in W.P.No.23196 of 2001.*

Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.G.Masilamani, Senior Counsel,
For M/s.G.M. Mani Associates.
For respondents : Mr. K.K.Sasidharan for Government Pleader
for Pondicherry

ORDER

The challenge in this writ petition is the order of suspension pending disciplinary action vide memorandum dated 12-09-2002 issued by the third respondent to the petitioner. The petitioner seeks for the quashing of the said memorandum with a further direction to the second and third respondents to permit him to resume and function as the Managing Director of Pondicherry Co-operative Milk Producers Union Limited.

2. The brief facts, which lead to the filing of the above writ petition, can be traced as under:

The petitioner claims himself to be a specialist in milk development, that he was appointed as Managing Director of the Pondicherry Co-operative Milk Producers Union Limited (herein after referred to as PCMPU) on 10-7-2001, that by virtue of his efforts he was able to reduce the accumulated loss, that for the financial year during July 2002 there was a profit of Rs.12.05 lakhs, that on 6-9-2002 the erstwhile Board of Management was superseded and the third respondent came to be

appointed as the Special Officer, that six days thereafter by the impugned memorandum dated 12-9-2002 he was placed under suspension and since the said memorandum is against the provisions of the Pondicherry Co-operative Societies Act as well as the bye-laws of PCMPU, the said memorandum is liable to be set aside.

3. Learned Senior Counsel, Mr. G. Masilamani appearing for the petitioner contended that the impugned memorandum of suspension issued to the petitioner is in violation of Section 80 of the Pondicherry Co-operative Societies Act as well as bye-law 44 of the PCMPU. According to the learned Senior Counsel, the impugned memorandum of suspension is invalid since the said memorandum does not specifically state that the suspension was necessary in the interest of the PCMPU and also it does not state as to the period of suspension, which are mandatory as per Section 80 of the Pondicherry Co-operative Societies Act. The learned Senior Counsel contended that, under Section 80 of the Pondicherry Co-operative Societies Act, placing of an officer under suspension should proceed by an enquiry as contemplated under certain other provisions of the said Act and in the absence of any indication to that effect in the impugned memorandum the order is liable to be set aside.

4. Per contra Mr. K.K. Sasidharan, the learned Counsel representing the Government Pleader for Pondicherry contended that the enquiry under Section 75 of the Act was ordered to be held by the second respondent in his proceedings dated 7-9-2002, that pursuant to the said direction, an enquiry under Section 75 of the Act had already been commenced, that an interim report was submitted by the enquiry officer on 12-9-2002, that the report revealed certain serious irregularities which necessitated the second respondent to issue a direction on the very same date viz., 12-9-2002 to the third respondent in exercise of his powers under Section 80 of the Act to place the petitioner under suspension forthwith, that pursuant to the said direction of the second respondent dated 12-9-2002, the third respondent issued the impugned memorandum of suspension dated 12-9-2002 placing the petitioner under suspension with immediate effect. The learned Counsel for the respondents, therefore, submitted that there was no infraction of any of the provisions as contended on behalf of the petitioner in order to interfere with impugned memorandum in the writ petition.

5. The learned counsel further stated that during the pendency of the writ petition, by proceedings dated 12-8-2003, an enquiry officer was appointed, that the enquiry officer commenced the enquiry on 19-8-2003, in which the petitioner participated and made a request for defence assistance, which was considered by the enquiry officer and has posted the enquiry on 16-9-2003 for continuation. The learned counsel, therefore, submitted that if the petitioner co-operates in the enquiry, the enquiry itself can be concluded within a stipulated time limit. The learned counsel also pointed out that under Section 141 of the Pondicherry Co-operative Societies Act, the petitioner has got an efficacious alternate remedy before the first respondent, and that he also invoked the said provision by making a representation on 17-4-2003, in which, the first respondent has also ordered for an enquiry in his proceedings dated 11-9-2003. According to the learned counsel, in the light of the alternate remedy available to the petitioner and the said remedy having been invoked by the petitioner, the writ petition itself is liable to be rejected.

6. The learned Senior Counsel, Mr. G. Masilamani, however, contended that the writ petition having been entertained, the availability of alternate remedy should not stand in the way of this Court considering the claim of the petitioner in the writ petition. The learned Senior Counsel also relied upon the following decisions in support of his submission reported in-

- (a) [(2) Co-op. cases 420] *The Secretary, Palani Co-operative Sales Society, Palani and another Vs. The Presiding Officer, Labour Court, Madurai and another*;**
- (b) 1990(2) LLN 1187 (*V.K. Natarajan vs. Triplicane Urban Co-operative Society Ltd., (by Special Officer), Madras*;**
- (c) 1991 WLR 636 (*Arumugham, M.S. Vs. Joint Registrar, Salem Region, Salem- 7*);**
- (d) AIR 1978 SC 851 (*Mohinder Singh vs. Chief Election Commissioner*);**
- (e) AIR 1994 SC 2148 (*L.I.C. of India vs. Asha Ramchandra Ambedkar*);**
- (f) AIR (39) 1952 SC 16 (*Commissioner of Police Vs. Gordhandas*);**
- (g) Unreported judgement in his Lordship. Mr. Justice K.P. Sivasubramanian dated 28-2-2002 made in W.P.No.23196 of 2001.**

7. Having heard the learned counsel for the parties and on perusal of Section 80 of the Pondicherry Co-operative Societies Act, as well as, byelaw 44 of the PCMPU, I am of the view that none of the grounds urged on behalf of the petitioner are available to him in order to interfere with the memorandum impugned in the writ petition. As pointed out by the learned counsel for the respondents, the second respondent before directing the third respondent to place the petitioner under suspension, ordered for an enquiry to be held under Section 75 of the Act and that the said direction came to be issued by the second respondent on 7-9-2002, based on which an interim enquiry report was also submitted by the enquiry officer. A perusal of the interim report disclosed that a serious pathetic incident happened on 5-9-2002 involving school children who consumed the product of PCMPU under the Rajiv Gandhi Breakfast Scheme conducted for the poor school children which resulted in the school children suffering from serious health hazards and that when the product consumed by the school children was tested, it came to light that the quality of the product was not up to the mark and it was due to lack of proper care shown in the manufacture of the product by PCMPU. The report also brought out certain lavish expenditures incurred at the instance of the petitioner involving unnecessary monetary expenditure in the PCMPU. In such circumstances, when the second respondent issued his directions on 12-9-2002 after considering the interim report, he made it specific in the said direction that there are sufficient evidence available against the improper functioning of the petitioner as Managing Director of PCMPU and therefore, in the interest of the PCMPU, it was desirable to place the petitioner under suspension forthwith. He has also specifically directed that the petitioner should not be reinstated without his prior sanction. It could be seen that the impugned memorandum dated 12-9-2002 came to be issued by the third respondent pursuant to the said specific direction issued by the second respondent in exercise of his powers under Section 80 of the Act. When such required documents are available on record, there is no scope to hold that the

impugned memorandum of suspension lacks legal support either under Section 80 of the Act or under the bye-laws of the PCMPU.

8. It is not disputed that the petitioner was being paid the subsistence allowance as required to be paid under the byelaws of the PCMPU. Therefore, there is absolutely no scope to interfere with the impugned memorandum of suspension in this writ petition. I am satisfied that the ingredients required to be complied with under Section 80 of the Act as well as bye law 44 of PCMPU have been fully taken care of while issuing the memorandum impugned in the writ petition. As far as the various decisions cited on behalf of the petitioner, it could only be discerned from those decisions that the order of suspension must disclose that the authority who issued the order of suspension issued the same in conformity with the provisions which empowers the authority to place an employee under suspension. By applying the above said ratio when I find that the requirement of Section 80 of the Act as well as bye law 44 of the PCMPU had been duly taken care of as referred to by me in detail in the earlier part of my judgment, I do not find any infirmity in the order in order to interfere with the order impugned in this writ petition. That apart, as rightly contended on behalf of the respondent, the enquiry having now commenced on 19-8-2003 and the petitioner having showed his inclination to participate in the enquiry on the very first day, I feel it would be sufficient if the respondents are directed to proceed with the enquiry and complete the same within three months viz., before 31-12-2003 which would bring out a lasting solution to the disciplinary action initiated against the petitioner. It goes without saying that the petitioner should be furnished with all the documents which are relied upon by the third respondent in the enquiry and that the petitioner should also extend his full co-operation to the enquiry officer in order to enable him to proceed with the enquiry without any unnecessary hurdles.

9. The writ petition is, therefore, dismissed with the above observations as regards the conclusion of the enquiry, which has already commenced on 19-8-2003. No costs. Consequently, WPMP No.57205 of 2002 is closed.

THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 26th September, 2003

CORAM: THE HONOURABLE Mr. JUSTICE F.M. IBRAHIM KALIFULLA

Writ Petition No.10555 of 2003

and

WPMP No.13340 of 2003

M. Balasoundarassanane
President, JIPMER Staff Co-operative Housing
Society Ltd., P.No.541. ... Petitioner

Versus

- (1) The Registrar of Co-operative Societies,
Pondicherry
(2) JIPMER Staff Co-operative Housing Society
Ltd., P. No. 541, rep. by its Secretary, ... Respondents

It is highly premature to go into the correctness or otherwise of the impugned show cause notice. The petitioner can submit his explanation to the first respondent and make his stand clear. There is no scope for entertaining the writ petition and for granting any relief.

Prayer: Petition under Article 226 of the Constitution of India praying for the issue of a writ of certiorari as stated therein.

For petitioner :Mr. T. Dhanyakumar, Advocate.
For Respondent :Mr. Vijay Anand, Government Pleader
for Pondicherry.

ORDER

By consent of the parties, the writ petition itself is taken up for disposal. The challenge in this writ petition is to the show cause notice dated 18-3-2003 in and by which, the first respondent has called upon the petitioner to show cause as to how he is holding the office of the President of the second respondent society, when he has been transferred and relieved on 21-1-2003 from JIPMER to a different institution at New Delhi.

2. The petitioner would contend that the petitioner's transfer from the institution at JIPMER to a different institution is not a disqualification and therefore, the show cause notice is not valid.

3. That is a matter to be explained by the petitioner to the first respondent by submitting his explanation. Therefore, it is highly premature at this stage to go into the correctness or otherwise of the impugned show cause notice dated 18-3-2003. The petitioner can submit his explanation to the first respondent and make his stand clear. There is no scope for entertaining this writ petition and for granting any relief. The writ petition fails and the same is dismissed. Consequently, connected W.P.M.P. is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30th March 2004

Coram: THE HONOURABLE Mr. JUSTICE F.M. IBRAHIM KALIFULLA

C.R.P. Nos. 848 and 849 of 2000

Venus Chit Fund and Finance Corporation,
Represented by its Managing Partner,
A. Ilango

.. Petitioner

Versus

The Pondicherry Co-operative Housing
Society Ltd., represented by its Secretary
and others

.. Respondents

(A) Civil Procedure Code (V of 1908), S.73, First Proviso (a) – Court auction – Proceeds of execution sale – Rateable distribution of surplus – Mortgagee is not entitled for rateable distribution of surplus.

(B) A mortgagee of property is not entitled for rateable distribution in any surplus arising from the sale of such property in pursuance of a decree obtained by another decree holder. (Para 4)

For Petitioner .. Mr. R. Subramanian, Advocate
For Respondent No.1 .. Mr. V. Karunakaran, Advocate.

ORDER

This is the second round of litigation over the very same application moved by the first respondent herein in the pending execution petition. The first respondent filed E.A. No.313 of 1991 by way of a claim under Sec.47 of the Code of Civil Procedure (for short CPC) to declare that it is entitled to receive a sum of Rs.67,203.39 with subsequent interest thereon as the first charge-holder over the money lying in E.P. No.537 of 1989 pursuant to an attachment dated 8-2-1991 in E.A. No.34 of 1991 at the instance of the petitioner.

2. The brief facts which are required to be stated are that there was a decree in favour of one Shanthi Finance Corporation, who filed E.P. No.537 of 1985 and brought the house and plot, which was under mortgage with the first respondent herein at the instance of the second respondent herein, the Court auction sale. The sale proceeds were deposited in the Munsif Court at Pondicherry and the said Finance Corporation withdrew the amount to the extent of its dues while, the remaining amount was lying in E.P. No.537 of 1985. The petitioner herein obtained a decree in O.S. No.236 of 1983 as against the second respondent herein for a sum

of Rs.45,760. Pursuant to the said decree in the said suit, the petitioner filed E.P. 34 of 1991 and in E.A. No.106 of 1991 obtained an order of attachment of sum remaining in the deposit in E.P. No.537 of 1985. It was at that juncture, the first respondent herein came forward with E.A. No.313 of 1991 in the said E.P. No.34 of 1991 in O.S. No.236 of 1983, making the claim as mentioned above. The said execution application was dismissed earlier by the Execution Court. As against which, a revision in C.R.P. No.2856 of 1995 was preferred by the first respondent. The said revision came to be disposed of on 1-4-1997 in which a remand came to be made. While remitting the matter back, it was held therein as under:

“Though the petitioner can proceed against the immovable property, since they are secured creditors, but still the auction purchasers have to be put on notice. Where there is any other debt, or not is, not clear from the records. Whether the parties are entitled for rateable distribution or not is a question to be considered. Since the lower Court has not taken into consideration these aspects, I am of the opinion that it is better to send back the matter to the lower Court, giving an opportunity to all the parties to let in evidence and assert their claim. The lower Court is directed to consider the matter afresh, including the question as to whether the petitioner is entitled for rateable distribution or not.”

In the said order, it was further held in paragraph 4 as follows:

“When it is admitted that the execution proceedings taken only by the petitioner herein before the concerned authorities to execute the award is pending, it is open to the petitioner also to seek appropriate relief in the said execution petition either to attach or seek for appropriate relief.”

3. In the above stated background, when the matter came to be dealt with again by the Execution Court, the Court auction-purchaser was impleaded as a party to the application and he was also served notice. However, it is noted by the Execution Court that he remained *ex parte* in the proceedings. The Execution Court came to the conclusion that the first respondent herein, being a secured creditor, was having priority over the petitioner herein irrespective of the attachment ordered in E.A. No.106 of 1991. So holding, it went on the state that the attachment had to be withdrawn, leaving the first respondent society to approach the Second Additional District Munsif in E.P. No.537 of 1989 for appropriate reliefs. The Execution Court has also held that S.73, CPC is not applicable to the petitioner as well as the first respondent herein.

4. Mr. R. Subramanian, learned counsel appearing for the petitioner, at the outset, contended that the claim of the first respondent is hit by the first proviso to S.73, CPC and, therefore, its remedy for appropriation of whatever money due to it pursuant to the mortgage of the property in question was elsewhere. S.73 along with its first proviso reads as under:

“S.73: Proceeds of the execution sale to be rateably distributed among decree-holders:

- (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the cost of realization, shall be rateably distributed among all such persons:

Provided as follows:

- (a) Where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share any surplus arising from such sale;
- (b) xx xx xx”

Considering the first proviso, in the first instance it will have to be held that the property which was sold in E.P. No.537 of 1989 should always be held to be the one subject to the mortgage of which the first respondent herein. It will have to be further held that, irrespective of the fact whether it was specifically stated in the said manner either in the decree or in the sale proclamation, impliedly, that would be the legal consequence by virtue of the factum of the mortgage of the said property with the first respondent herein. If that be so, the first respondent as the mortgagee is not entitled for any rateable distribution in any surplus arising from the sale of the property, which had taken place in E.P. No.537 of 1989. If once that position is clear while applying proviso (a) to S.73 CPC, as a sequel to it, there was no right in the first respondent herein to claim for any share or seek for a rateable distribution along with the petitioner or any other decree holder, as the case may be. It, however, does not mean that the first respondent herein is not entitled to proceed against the property once over again by virtue of the present sale, which had taken place in E.P.537 of 1989. The first respondent, as a mortgagee always retains its right to proceed against the property mortgaged with it in realization of whatever dues that may be payable by virtue of the said mortgage which had culminated into an award and which is also stated to be pending by way of execution before the concerned execution officer of the co-operative department. However, such proceedings by virtue of the said mortgage will have no bearing when it comes to the question of the execution of the decree as sought for by the petitioner in the civil court, which is pending as on this date in E.P. No.34 of 1991, in which the order of attachment came to be made in E.A. No.106 of 1991. Certainly, the attachment made in the said E.A. No.106 of 1991 can never be disturbed at the instance of the first respondent merely because it is in the status of the mortgagee of the property in question which came to be sold in the court auction in E.P. No.537 of 1989. The first respondent, as rightly contended by the learned counsel for the petitioner, will have to work out its remedy in the manner known to law in the independent proceedings for the realization of whatever sums due to it pursuant to the said mortgage. Having regard to the said position, I am to sustain the conclusion of the Execution Court in allowing the claim petition and also ordering the raising of the attachment in E.A. No.106 of 1991 on 8-2-1991. The said order, being contrary to proviso (a) to S.73,

CPC is liable to be set aside. Accordingly C.R.P. No.848 of 2000 stands allowed and the impugned order is hereby set aside.

5. In the light of the order passed in C.R.P. No.848 of 2000, the dismissal of E.P. No.34 of 1991 by the Execution Court is also liable to set aside and C.R.P. No.849 of 2000 also stands allowed. E.P. No.34 of 1991 shall be restored to the file of the Execution Court and the same shall be disposed of on merits. No costs.

Petition allowed.