

(2018) 10 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1735 of 2018

Jagdish Chand Sapehia @APPELLANT@Hash State of Himachal Pradesh & Others

Date of Decision : 25-10-2018

Acts Referred:

Himachal Pradesh Co-operative Societies Act, 1968 — Section 37, 37(1), 37(1A), 37(5), 67
Constitution Of India, 1950 — Article 14

Citation : (2019) 1 ShimLC 11

Hon'ble Judges : Sanjay Karol, J;Sandeep Sharma, J

Bench : Division Bench

Advocate : Ashok Sharma, Ajay Vaidya, J.K. Verma, Adarsh Sharma, Rita Goswami, AajaySharma

Final Decision : Dismissed

Judgement

Sanjay Karol, J.

1. In the present petition, following important issues arise for consideration:-

(a) As to whether issuance of notice under Sub-Section (1) of Section 37 of the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter

referred to as the Act), requires consultation in terms of Sub-Section (5) of the very same Section?

(b) As to whether provisions of Sub-Section (1-A) of Section 37 is independent of and not subject to Sub-Section (1) of the very same Section?

(c) As to whether after formation of opinion and issuance of notice calling upon the noticee to show cause as to why no adverse action be taken, is it

open for the Registrar to take action for suspension of the noticee and make arrangements for proper management of the affairs of the Society?

(d) As to whether action of the respondents is contrary to the mandate of law laid down by the Apex Court in State of Madhya Pradesh vs. Sanjay

Nagayach & others, (2013) 7 SCC 25?

(e) As to whether nature of inquiry to be conducted and the power to be exercised by the Registrar under Sections 37 and 67 of the Act are different, distinct and independent of each other?

(f) As to whether action of the respondents in passing the order of suspension is based on no material and without application of mind?

(g) As to whether action of the respondents is malafide and ultra vires the Statute or not?

Brief facts

2. Petitioner Sh.Jagdish Chand Sapehia, who had been officiating as the Chairman of the Kangra Central Cooperative Bank Limited, Dharamshala

(respondent No.3) lays challenge to the show cause notice dated 19.07.2018 (Annexure P-5), issued under Section 37 (1) (a) of the Act by the

Registrar Co-operative Societies, Himachal Pradesh, calling upon him to show cause as to why he should not be removed for having committed

various acts of omissions and commissions. Also in terms of the very same notice, the Board of the respondent-Bank is placed under suspension and

the Deputy Commissioner, Kangra, appointed as an Administrator to manage its affairs till such time such proceedings are completed. As per

averments made in the petition, with the change of the political executive, with malafide intent and object, prompted by the political executive, on

06.04.2018 the Registrar Cooperative Societies had issued similar notice to show cause dated 06.04.2018 (Annexure P-1), which was subject matter

of CWP No.862 of 2018, titled as Jagdish Chand Sapehia vs. State of Himachal Pradesh & others. Since such action was unsustainable in law, the

said notice stood withdrawn vide order dated 19.07.2018, though on a pretentious plea of "technical grounds" and as such the petition disposed of.

However, same day, vide fresh show cause notice (impugned herein as Annexure P-5) respondents initiated similar action under Sections 37 and 37

(1-A).

3. From the pleadings made out by the petitioner, such act, on the "askance of the political bosses" is executed by Dr.Ajay Sharma, Registrar

Cooperative Societies, Himachal Pradesh, Shimla (respondent No.2) and The Kangra Central Co-operative Bank Limited, Dharamshala, District

Kangra, H.P. (respondent No.3), who did so "malafidely" and "without

application of mindâ?. With such mis-utilization of power, respondent

No.2 has placed a democratically elected Board under suspension. Impugned notice stands issued without prior consultation as required under Sub-

Section

(5) of Section 37 of the Act. In any event, action, motivated in nature, is with the object of stifling democratically elected institutions and stop their

functioning. The action is ex facie contrary to the principles of law laid down in Sanjay Nagayach (supra). In any event, malafides stand demonstrated

by the selective nature of action, for Government officers nominated on the Board of the Bank are allowed to function.

4. It is with these pleadings, petitioner lays challenge to the show cause notice dated 19.07.2018 (Annexure P-5) with a further direction that the fresh

election programme for constitution of a Board so notified vide order dated 26.09.2018 (Annexure P-6) be quashed and set aside and that petitioner be

allowed to complete his full tenure, including the period for which the Board was kept under suspension, continuously with effect from 06.04.2018.

5. In response, respondents have filed their affidavit explaining the background in which the Registrar initiated action by issuing notice dated

06.04.2018 (Annexure P-1) and 19.07.2018 (Annexure P-5). Allegations of abuse of power; malafides; political pressure; non application of mind etc.

are categorically denied. Also it stands explained that on account of technical defects, notice dated 06.04.2018 was withdrawn, whereafter only fresh

notice was issued. The Registrar has explained the basis leading to the formation of his opinion, for issuing show cause notice and suspending the

Board and that being the statutory inspection reports of NABARD, audit reports and statutory inquiry reports, all revealing persistent irregularities of

serious nature committed in the management of the affairs of the bank, coupled with the violation of law and actions detrimental to the interest of the

bank and its depositors at large. Allegation of malice in law or fact are clearly denied and disputed.

6. Assailing the action, Mr. Ajay Sharma, learned counsel for the petitioner, argues that the action is politically motivated; malafide; ultra vires the

provisions of the Statute, inasmuch as no prior consultation or consent was obtained from the funding bank as envisaged under Sub-Section (5) of

Section 37 of the Act; no action stands taken against all the Members of the

Governing Body; and the inquiry contemplated under Section 37

necessarily has to be the one contemplated and in terms of the procedure contained under Section 67 of the Act.

7. Further nothing was wrong till 24.12.2017, whereafter only on account of differences, trivial in nature, having arisen between the Members of the

Board, respondent No.2 with a malafide intent, took the impugned action. Action of suspension of a duly elected body under Sub-Section (1-A) of

Section 37 of the Act, draconian in nature, can be taken only after formation of opinion as envisaged under Sub-Section (1) of Section 37, which in any

event cannot be prior to the consultation under Sub-Section (5) of the very same Section. In support, he has referred to and relied upon decisions

rendered in Sanjay Nagayach (supra) and Ragho Singh vs. Mohan Singh and others, (2001) 9 SCC 717.

8. Defending the action, Mr.Ashok Sharma, learned Advocate General, invites attention to the factual matrix set out in the show cause of notice,

indicating conduct of the petitioner to be ex-facie illegal, also explaining the object, intent and scope of Section 37 of the Act. In support he referred to

and relied upon the following decisions: Mukesh Kumar Agrawal v. State of Uttar Pradesh & others (Two Judges), (2009) 13 SCC 693;

Smt. S.R. Venkataraman v. Union of India & another (Two Judges), (1979) 2 SCC 491; Ravi Yashwant Bhoir v. District Collector, Raigad & others

(Two Judges), (2012) 4 SCC 407; State of Uttar Pradesh v. Brahm Datt Sharma & another (Two Judges), (1987) 2 SCC 179; Union of India &

another v. Vicco Laboratories (Two Judges), (2007) 13 SCC 270; Special Director & another v. Mohd. Ghulam Ghouse & another (Two Judges),

(2004) 3 SCC 440; Union of India & another v. Kunisetty Satyanarayana (Two Judges), (2006) 12 SCC 28; M/s Girdhari Lal & sons v. Balbir Nath

Mathur & others (Two Judges), (1986) 2 SCC 237; T.M.A Pai Foundation & others v. State of Karnataka & others (Eleven Judges), (2002) 8 SCC

481; Shadi Singh v. Rakha (Two Judges), (1992) 3 SCC 55; Bhatia International v. Bulk Trading S.A. & another (Three Judges), (2002) 4 SCC 105;

Sanjay Nagayach (Two Judges) (supra); Sam Built Well Private Limited v. Deepak Builders & others (Two Judges) , (2018) 2 SCC 176; Reliance

Airport Developers (P) Ltd. v. Airports Authority of India & others (Two Judges), (2006) 10 SCC 1; Commercial Tax Officer & another v. Canara

Bank (Three Judges), (2001) 10 SCC 638; B.C. Chaturvedi v. Union of India & others (Three Judges), (1995) 6 SCC 749; G. Jayalal vs. Union of India & others (Two Judges), (2013) 7 SCC 150 & Boddula Krishnaiah & another v. State Election Commissioner, A.P. & others (Three Judges), (1996) 3 SCC 416.

9. Having considered the respective submissions and carefully gone through the relevant provisions of the Statute, we are of the considered view that

action of the respondents in issuing the impugned show cause notice (Annexure P-5) cannot be said to be bad in law.

10. The distinction between "malice in law" and "malice in fact" stands well established. Whereas former, if established, may lead to

inference that the statutory authorities had acted without jurisdiction, while exercising such jurisdiction, the latter must be pleaded and proved.

{Mukesh Kumar Agrawal (supra)}.

11. The distinction stands appropriately discussed by the Supreme Court of India in Smt. S.R. Venkataraman (Supra), in the following terms:

"5. Malice in law is, however, quite different. Viscount. Haldane described it as follows in Shearer v. Shields, (1914) AC 808 at P.

813:-

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken

to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he

acts ignorantly, and in that sense innocently.

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse,

or for want of reasonable or probable cause.

6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised

for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard

C. J., in Pilling v. Abergel Urban District Council, (1950) 1 KB 636 where a duty to determine a question is conferred on an authority which state

their reasons for the decision, and the reasons which they state show that they have taken into account matters which they ought not to have taken

into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.

7. The principle which is applicable in such cases has thus been stated by Lord Esher M. R. in *The Queen on the Prosecution of Richard Westbrook*

v. *The Vestry of St. Pancras*, (1890) 24 QBD 371 at p. 375:-

If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the

guidance of their discretion, then in the eye of the law they have not exercised their discretion. This view has been followed in *Sedler v. Sheffield*

Corporation, (1924) 1 Ch 483.

8. We are in agreement with this view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the

existence of a non-existing act or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to

have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

9. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a

gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful

provision for the premature retirement of Government servants only in the 'public interest', to a purpose wholly unwarranted by it, and to arrive at quite

a contradictory result. An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an

abuse of power.â??

12. The Apex Court in *G. Jayalal (supra)*, has held as under:-

17.. â?| â?|

12â?|. â?| .. Legal malice"" or ""malice in law"" means ""something done without lawful excuse"". In other words, ""it is an act done wrongfully and wilfully

without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of

others"". (See *Words and Phrases Legally Defined*, 3rd Edn., London Butterworths, 1989.)

13. Where malice is attributed to the State, it can never be a case of personal ill - will or spite on the part of the State. If at all it is malice in legal

sense, it can be described as an act which is taken with an oblique or indirect object.

13. It further stands elaborated in Ravi Yashwant Bhoir (Supra), as follows:

47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice- in fact or in law. Where malice is

attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. Legal malice or malice in law means something done

without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act

done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for purposes foreign to those for which it is

in law intended. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the

rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: Addl. Distt.

Magistrate, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521; Union of India thr. Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors., 2005 8

SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., (2010) 9 SCC 437).

14. Having noticed the aforesaid principles we observe that to begin with there is no foundation of malice of fact laid down in the petition. Change of

the guard of the political executive took place not in April, 2018, but in December, 2017. That apart, there is nothing on record to even remotely

demonstrate/suggest that the authority issuing the notice was directly or indirectly under the influence of the political executive. Such person is not

impleaded as a party. Also there is nothing on record indicating that respondent No.2 had any personal malice against the petitioner. As such, we are

not in agreement with the submissions made on behalf of the petitioner that the action is either politically motivated or is based on extraneous factors/

considerations or out of malice.

15. We may notice that the impugned action stands taken against 16 persons all

of whom were functioning as Members of the Board of respondent

No.3-Bank and only one of them has assailed the same. Well, it is a mere statement of fact and nothing more, for nothing would turn out thereupon,

for even if one of them demonstrates the action to be bad, it would be held so. But what we would like to point out is that only the petitioner, who

himself is politically affiliated and has such background, as is so evident from the petition, lays challenge to the impugned order.

16. Perusal of the impugned show cause notice reveals respondent No.2 to have (a) issued show cause notice calling upon the petitioner to respond to

the same as to why no action for removal be taken and (b) in the interregnum suspended the Board.

17. We notice that the detailed show cause notice itself is self explanatory indicating various acts of irregularities and illegalities committed by the

Board, continuously over a period of time. Also prior to the issuance of the said show cause notice, the authority examined the statutory inspection

reports of NABARD, statutory audit reports for different years and statutory inquiry report and other record pertaining to the Bank, whereafter, it

formed a view that the noticees, 16 in number, committed various acts of illegalities and irregularities and violations.

18. Further an inquiry under Section 67 of the Act was ordered to be conducted and preliminary report dated 04.04.2018 stands submitted. In its latest

statutory inspection report, NABARD itself noticed that 90 individual loans beyond risk limit were sanctioned by the Board. This was up to

31.12.2017. Also it was found that 119 individual loans in violation of the norms were sanctioned. The Chartered Accountants of the Bank, in their

audit reports of 2014-15, 2015-16, 2016-17, also pointed out various irregularities resulting into increase of NPA from 11.43% to 16.25%. According to

the auditors, the Board had been rephrasing big loans/advances frequently to camouflage the NPA with a motive that such advances do not become

sub-standard as per NPA classification. On 08.02.2018, the Managing Director of the Bank had instituted a fact finding inquiry, report whereof was

submitted on 04.04.2018, whereafter only action against the Board was initiated on 6.04.2018. Paragraph 14 of the show cause notice indicates at

least 9 such instances where loans were granted in a manner so as to jeopardize the creditworthiness of the bank, making it a dying asset. The major

violations noticed by NABARD indicated in the notice itself read as under:-

â??(a) Violating exposure norms prescribed for financing to individuals and units vide circular No.NB.DOS.CMA/768/A-75/2008-09 dated 12th May,

2008 (Inspection Reports of 2015, 2016 and 2017);

(b) sanctioning of big loans to individuals in violation of the CMA norms, fixed by the Reserve Bank of India (Inspection Reports of 2015, 2016 and 2017);

(c) exceeding the prescribed ceiling for financing under Housing Loan sector and bringing the House Loans within the specified ceiling fixed by the

RBI vide circular No.RPCD.CO.RCBD.BC. No.48 / 03.03.01/2010-11 dated 20.01.2011 (Inspection Reports of 2015, 2016 and 2017);

(d) failing to take action and adequate steps for the recoveries of money involved in fraud and review of such cases (Inspection Reports of 2015, 2016 and 2017);

(e) granting commercial loans for real estate in violation of RBI guidelines contained in circular No. RPCD/109/07.38.01/2008-09 dated 25-05-2009

(Inspection Report of 2015, 2016 and 2017); and

(f) formulating wrong policies for NPA management resulting into increase in NPA during the last three years.â??

19. That the action is not motivated, much less on account of political reasons, we notice, is evident from the facts narrated in paragraphs 16 to 22 of

the notice, for the events which took place in the month of September, October and December, 2017, prima facie reveals that loans were disbursed

contrary to the settled principle of law for which ex post facto approval of NABARD was sought, which, as it appears, never came. In the month of

September and October, 2017 itself, dissent amongst the Members of the Board stood recorded amplifying the illegalities continuously perpetuated in

exposing the risk factor of the Bank, with the disbursement of loans in violation of settled principles and procedures.

20. We clarify that we have not gone into the correctness of contents of the show cause notice, but prima facie, are of the considered view that there

was material before the authority to have formed an opinion of initiating action under Section 37 of the Act.

21. Now this takes us to larger issues, which we have formulated as questions.

22. For understanding and answering the questions, we deem it appropriate to reproduce the relevant provisions of the Statute:-

37. Supersession of Committee :

(1) If, in the opinion of the Registrar, a committee of any co-operative society or any member of thereof persistently makes default or is negligent in

the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of

the society or its members, the Registrar may, after giving such committee or member, as the case may be, an opportunity to state its objections, if

any, by order in writing

(a) remove the committee; and

(i) order fresh election to the committee; or

(ii) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one

year specified, in the order which period may, at the discretion of the Registrar, be extended from time to time, so however, that the aggregate period

does not exceed five years; or

(b) remove the member and get the vacancy filled up for the remaining period of the out going member, according to the provisions of this Act, the

rules and the bye-laws.

(1-A) Where the Registrar, while proceeding to take action under sub-section (1) is of the opinion that suspension of the committee or any member

during the period of proceedings is necessary in the interest of the Co-operative society, he may suspend such committee or member, as the case may

be, and where the committee is suspended, make such arrangements as he think proper for the management of the affairs of the society till the

proceedings are completed:

Provided that if the committee or member so suspended is not removed, it or he shall be re-instated and the period of suspension shall count towards its

or his term;

(2)

(3)

(4)

(5) Before taking any action under sub-section(1) in respect of a Co-operative society, the Registrar shall consult the financing institution to which it is indebted.

(6) A member who is removed under sub-section (1) may be disqualified for being elected to any committee for such period not exceeding three years

as the Registrar may fix and the said period shall commence after the expiry of the term of the committees from which he is removed. 67.

67. Inquiry by the Registrar:-

(1) The Registrar may, of his own motion, by himself or by a person authorized by him, by order in writing, hold an enquiry into the constitution, working and financial condition of a society.

(2) An inquiry of the nature referred to in sub-section (1) shall be held on the application of

(a) a society to which the society concerned is affiliated; or

(b) a majority of the members of the managing committee of the society; or

(c) not less than one-third of the total number of members of the society.

(3) 68.

(4) 69.

23. Sub-Section (1) of Section 37 states that (a) if in the opinion of the Registrar (b) a Committee or any Member of any Cooperative Society (c)

persistently makes default or is negligent in the performance of duties imposed under the Act, Rules etc. or (d) commits any act (e) which is

prejudicial to the interest of the Society and its Members (f) he may, (g) after giving such Committee or Member an opportunity to state its objections

(h) by order in writing remove the Committee (i) and take resultant consequential action for proper management of the affairs of the Society.

24. For the purpose of instant case, we notice that all the essential ingredients stand fulfilled inasmuch as (a) Registrar has formed his opinion; and (b)

an opportunity to object stands afforded. The opinion based on cogent material, prima facie finds the act of the Members to be of persistent default

and prejudicial to the interest of the Society.

25. What is consultation and whether it is mandatory or directory stands explained by the Apex Court in Indian Administrative Service

(S.C.S.) Association, U.P. and others vs. Union of India and others, 1993 Supp

(1) SCC 730 in the following terms:-

26. The result of the above discussion leads to the following conclusions:

(1 Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and

points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be

consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the

consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2 When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-

consultation renders the action ultra vires or invalid or void.

(3 When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4 When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor

becomes void.

(5 When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or

person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general

scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections,

take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision

thereon. In such circumstances it amounts to an action "after consultation".

(6 No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down

the manner in which consultation must take place. It is for the court to determine in each case in the light of its facts and circumstances whether the

action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".

(7 Where any action is legislative in character, the consultation envisages like one under Section 3 (1 of the Act, that the central Government is to

intimate to the State governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the central government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State governments through the people's representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation.â??

26. The issue which arises for consideration is as to whether prior to the issuance of notice, provisions of Sub-Section (5) of Section 37 of the Act would come into play or not.

27. Answer to the same in our considered view is in the negative for the following reasons: Sub-Section (5) does not refer to Sub-Section (1-A). It

only refers to Sub-Section (1) and expression â??any actionâ? stipulated therein necessarily has to be in relation to the consequential action of

removal of the Committee, which is after the issuance of show cause notice calling upon the noticee to show cause and state its objection, for after all,

the Registrar may after affording opportunity, himself come to the conclusion that no action for removal is required to be taken in view of justification,

plausible in nature, if any, furnished by the noticee. For formation of opinion in the issuance of notice no prior consultation is required. Otherwise for

everything and anything he would have to rush to the bank seeking its opinion, which would not only stifle the power to be exercised by the Registrar

but make his authority otiose. Removal of the Committee and the resultant consequential actions are definitely of serious nature. It is in this backdrop,

safe guard of Sub-Section (5) is prescribed in the Statute. The safe guard is also stipulated considering the disqualification which a Member entails by

virtue of Sub - Section (6) of the very same Section, in the event of his removal.

28. The view we take is fortified by law. The principles of interpretation of a statute are now well settled. A statute is an edit of the Legislature

{Vishnu Pratap Sugar Works (Private) Ltd. v. Chief Inspector of Stamp, U.P., AIR

1968 SC 102 (Three Judges)}, and the conventional way of

interpreting or construing a statute is to seek the ‘‘intention’’ of its maker {RMD Chamarbaugwala v. Union of India, AIR 1957 SC 628 (Five Judges)}.

29. The Court has to look essentially to the words of the statute to discern the ‘‘referent’’ aiding their effort as much as possible to the context.

30. The legal maxim mens or sententia legis {Abhiram Singh v. C.D. Commachen (Dead) by Legal Representatives & others, (2017) 2 SCC 629

(Seven Judges)}, and Generalia specialia non derogant {General Things do not derogate from special things, OSBORNS Law Dictionary}, are well settled.

31. It is also settled principle of law that the statute must be read as a whole and one provision of the Act should be construed with respect to the

other provisions in the same Act, so as to make a consistent enactment of the whole statute. This, in fact, is the elementary rule of interpretation. {AG

v. HRH Prince Ernest Augustus, (1957) 1 All ER 49; Philips India Ltd. v. Labour Court, (1985) 3 SCC 103 (Two Judges)}.

32. Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a

consistent enactment of the whole statute or series of statutes relating to the subject-matter. {M. Pantiah and others v. Muddala Veeramallappa and

others, AIR 1961 SC 1107 (Five Judges)}. The principle for such construction is ex visceribus actus {Newspapers Ltd. v. State Industrial Tribunal,

U.P. & others, AIR 1957 SC 532 (Three Judges)}.

33. It is also a settled principle of law that the same word may mean one thing in one context and another in a different context. For this reason the

same word used in different sections of a statute or even when used at different places in the same clause or section, may bear separate meanings.

{D.N. Banerji v. P.R. Mukherjee, AIR 1953 SC 58 (Five Judges); Ramnarayan Mor v. State of Maharashtra, AIR 1964 SC 949 (Five Judges); and

Anand Nivas (P) Ltd. v. Anandji Kalyanji, AIR 1965 SC 414 (Three Judges)}.

34. In Macquarie Bank Limited Vs. Shilpi Cable Technologies Limited, (2018) 2 Supreme Court Cases 674, Hon’ble Supreme Court has held that

the task of a Judge, when he looks at the literal language of the statute as well as the object and purpose of the statute, is not to interpret the provision

as he likes but to interpret the provision keeping in mind the Parliament's language and the object that Parliament had in mind.

35. In *K.P. Sudhakaran and another Vs. State of Kerala and others*, (2006) 5 Supreme Court Cases 386, Hon'ble Supreme Court has held that

once a statutory rule is made without providing any exceptions, it is not possible to carve out exceptions to such rule by judicial interpretation.

36. For ascertaining the legislative intent, it is the basic rule of statutory construction that the construction preferred should be the one which advances

the purpose and object of legislation and the one which leads to anomalies, injustice or absurdities should be overruled. {*M/s Girdhari Lal (supra)*}.

Also, the provisions have to be read harmoniously to provide meaning and purpose. {*T.M.A Pai Foundation (supra)*}.

37. The Apex Court in *Bhatia International (supra)*, has observed as under:

15. The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is

open to more than one interpretation then the Court has to choose that interpretation which represents the true intention of the legislature. This task

often is not an easy one and several difficulties arise on account of variety of reasons, but at the same, it must be borne in mind that it is impossible

even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its

application may be called for. It is in such a situation the Courts' duty to expound arises with a caution that the Court should not try to legislate. While

examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that

ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at

the same when such a conclusion is the only conclusion.

Notwithstanding the conventional principle that the duty of judges is to expound and not to legislate. The Courts have taken the view that the judicial

art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the

Court would adopt particularly in areas such as constitutional adjudication dealing with social and (sic) rights. Courts are therefore, held as "finishers,

refiners, and polishers of legislatures which gives them in a state requiring

varying degrees of further processing". (See *Corocraft Ltd. v. Pan American Airways*, (1968) 3 WLR 714 at page 732; *State of Haryana v. Sampuran Singh*, (1975) 2 SCC 810 at page 1957. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (See *Johnson v. Moreton* (1978) 3 All ER 37 and *Stock v. Frank Jones (Tipton) Ltd.* (1978) 1 All ER 948). In selecting out of different interpretations the Court will adopt that which is just reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In *Shanon Realites Ltd. v. Sant Machael* (924) AC 185 at page 192-93 Lord Shaw stated, "where words of a statute are clear, they must, of course, be followed, but in their Lordships opinion where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system".

This principle was accepted by Subba Rao, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an officer of custom. {*Collector of Customs v. Digvijaysinhji Spg. & Wvg. Mills Ltd.*, (AIR 1961 SC 1549}.â??

38. Repetitive though it may appear, but as already noticed, we reiterate that Sub-Section (1) of Section 37 provides for (a) formation of an opinion in the issuance of show cause notice; and (b) passing a written order in removing the Committee. It is only when the Registrar deems it appropriate to remove the Committee, in our considered view, he has to necessarily consult the Financial Institution to which a Cooperative Society is indebted. In any event, no prior consultation stipulated under Sub-Section (5) is required for initiating action under Sub -Section (1-A) of such Section. Question No.(a) is answered accordingly.

39. The next issue, which arises for consideration, is as to whether Sub-Section (1-A) is subject to completion of all the actions stipulated under Sub-Section (1) or not?

40. The language of Sub-Section (1-A) is plain, simple and unambiguously clear. It uses the expression "while proceeding to take action under Sub-

Section (1)" the Registrar is of the opinion that suspension of the Committee or any Member is necessary and in the interest of Society, he may take

action of suspending the Committee or such Member and thereafter make proper arrangements for the management and affairs of the Society "till

the proceedings are completed". So what is important is contemplation of action under Sub-Section (1) and the Registrar deciding to proceed in that

direction, a Committee/ any Member can be suspended where it is deemed necessary in the interest of the Society to do so, till such time proceedings

under Sub-Section (1) are completed.

41. It may well occur, is not the power exercised by the Registrar, draconian in nature, inasmuch as a duly elected Member or a Committee is

obstructed from discharging and performing constitutional obligations and statutory duties? Well the answer to the same lies in the proviso to the said

Sub-Section, wherein it is categorically provided that in the event of non removal of the Committee or Member so suspended, the same, "shall be

reinstated".

42. The word "suspension" cannot be construed to mean "supersession" which in fact is replacement. Suspension is a stop gap temporary

measure. We see no reason as to why pending such inquiry, petitioner places the entire material before the authority; argues his case; persuades and

convinces the said authority in dropping the proceedings so initiated. This in fact, would only help the petitioner, for all facts can best be understood,

appreciated and applied for taking decision on the action so initiated. We clarify that we have not gone into the factual aspect. We are of the

considered view that in the interpretation of the Statute all factual pleas on merits can be best taken note of by the said authority.

43. In fact, this issue in our considered view, is no longer res integra. While dealing under similar circumstances, the Constitution Bench of the Apex

Court (Five Judges) in *Veerpal Singh vs. Registrar, Co-Operative Societies U.P. and others*, (1973) 1 SCC 456, observed as under:-

13. These provisions indicate the circumstances under which the Registrar has power to supersede or suspend the committee of management and to appoint an administrator. Section 35 (2) of the Act confers power on the Registrar to suspend the committee of management during the period of proceedings for supersession. The Registrar has also power under Section 35 (2) of the Act to make arrangement as he thinks proper for the management of the society till the proceedings are completed. The power to suspend the committee of management during the period of proceedings is exercisable when proceedings for supersession have commenced. Section 35 (1) of the Act shows that when the Registrar is of opinion that the committee of a co-operative society makes default or is negligent in the performance of duties or is otherwise not functioning properly the Registrar may supersede the committee of management and has to give an opportunity to the society to be heard in that behalf. The Registrar has also to obtain the opinion of the general body of the society. Therefore, the opinion of the Registrar is to be followed by some definite act which will commence the proceedings for supersession. The provisions in the Act indicate that some definite step like the issue of a notice must be taken under the provisions of Section 35 (1) of the Act with a view to show that proceedings for supersession of the committee are set in motion.

14. It is therefore manifest that power exercisable under S. 35 (2) of the Act is confined to the time during the period of supersession proceedings.

Unless the proceedings have started as indicated earlier the Registrar cannot call in aid the power exercisable under Section 35 (2) of the Act.

15. The second question which has to be decided is whether the Registrar could appoint an administrator in the present case. The Registrar could not appoint an administrator. The reasons are these. The proceedings for supersession of the committee of management have not commenced. The proceeding can commence only when the necessary step to commence it is taken. The interim suspension of the committee of management under Section 35 (2) of the Act is made when in the opinion of the Registrar the suspension of the committee of management during the period of proceedings is necessary in the interest of the society. As no proceedings have been set in motion in accordance with the provisions of the statute, the interim suspension of the committee of management is bad. An appointment of administrator is specifically dealt with in sub-sections (3), (4), (5) and

(6) of S. 35 of the Act. The appointment of administrator is normally after the supersession of the committee of management. It is true that there is no specific provision for an appointment of administrator during the interim period. But Section 35 (2) of the Act states that the Registrar may make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed. An appointment of administrator during the interim period is therefore not ruled out of the provisions of Section 35 (2) of the Act, but the prerequisite condition to the appointment of the interim administrator has not been fulfilled in the present case, because no proceedings for the supersession of the committee of management of the society have commenced.â??

44. Questions No.(b) and (c) are answered accordingly.

45. Much emphasis is laid on Sanjay Nagayach (supra). Having carefully gone through the said report, we are not in agreement with the submissions made by the learned counsel for the petitioner, for the ratio of law laid down therein is not only distinguishable but totally inapplicable to the instant facts. There the Court was dealing with a case where the alleged acts of malfeasance and misfeasance were not that of the persons in control of the affairs, but their predecessor-in-interest. Also for a period of 2 Â½ years, no action on the show cause notice was taken and suddenly, one fine day, without consultation of the concerned financial institution, the appropriate authority superseded the Board by appointing an Administrator. It is in this backdrop that the order of the authority was found to be ultra vires the provisions of the Statute, for there was no consultation prior to supersession which is not so done in the instant case. Hence the said decision has no bearing to the instant facts and the impugned action cannot be found to be contrary to the ratio of law laid down therein. Question No.(d) is answered accordingly.

46. This takes us to another issue and that being as to whether the provisions of Section 37 are subject to Section 67 or not? In our considered view inquiry contemplated under Section 37 is totally different and distinct than the one contemplated under Section 67, both with regard to its object, scope and purpose. Inquiry under the latter is with regard to the constitution, working and financial condition of the Society to be initiated as per procedure prescribed therein, suo motu by the Registrar himself or through an authorized

person on the asking of the Society and/or its Members. This is unlike the inquiry contemplated under the former section, where the Registrar himself, after forming an opinion after issuing show cause notice has to pass an order with regard to the acts of negligence, inactions, defaults, which are prejudicial to the interest of the Society or its Members. Also the Section itself provides for resultant consequence which would follow thereafter.

47. Further Section 37 and Section 67 of the Act are not in conflict with each other. Section 37 which provides for supersession of committee, is part of Chapter-IV of the Act, which deals with Management of Cooperative Societies. On the other hand, Section 67 which casts duty on the Registrar to hold an inquiry, finds mention in Chapter-VIII of the Act, which Chapter deals with Audit, Inquiry, Inspection and Surcharge etc. Thus, it is apparent that both these Sections operate in totally different and distinct spheres. Section 67 of the Act confers upon the Registrar the duty, either on his own motion or on an application, as envisaged in Sub-section (2) thereof to hold an inquiry. Now incidentally, language of the said Section is unambiguous that if an application, as envisaged in Sub-section (2) thereof is received by the Registrar, then it is mandatory for him to hold an inquiry. This is unlike the provisions of Sub-section (1) thereof, wherein, the Registrar "may" of his own motion hold an inquiry. Sub-section (4) thereof further envisages that where an inquiry is made under Section 67, then the Registrar shall communicate the result of the same to the society or the cooperative society, if any, to which the said society is affiliated and to the persons or authority, if any, at whose instance the enquiry is made. Thus, it is apparent from the perusal of this Sub-section that Registrar, Cooperative Societies has no role more than holding of an inquiry and thereafter submitting the result of the same in the mode and manner prescribed under Sub-section (4).

Neither this Section nor Chapter-VIII of the Act envisages any action on the said inquiry report by the Registrar. However, when one peruses the provisions of Section 37 of the Act, therein the authority stands conferred upon the Registrar for the supersession of the committee in the mode and manner envisaged in the said Section. What is required while exercising powers conferred under Section 37 of the Act is the satisfaction of the Registrar, which has to be so formed by following the procedure as provided

under this Section. The authority conferred upon the Registrar under Section 37 is quasi judicial in nature, whereas the same cannot be said with regard to the provisions contemplated in Section 67 of the Act. Whereas Section 37 confers upon the Registrar an affirmative power of superseding the committee, Section 67 only confers upon the Registrar the duty to hold an inquiry and thereafter submit the report in the mode and manner, as envisaged in Sub-section (4) thereof. The purpose of incorporating Section 37 in the Act is totally different from the intent behind Section 67. There is neither any conflict in the Scheme of the Statute nor it can be said that the powers and duties conferred upon the Registrar under Sections 37 and 67, respectively either overlap each other or outreach the intent of each other.

Question No. (e) is answered accordingly.

48. The action cannot be said to be violative of the Statute, equity or fair play only for the reason that no action, similar in nature stands taken against

the Government Officers/nominees placed on the Board. Such representation by nomination can always be recalled /changed by the Government.

Similarly, it cannot be argued that in the absence of any action taken against the entire Committee, the impugned action is unsustainable in law. To

contend that out of seven allegations six are pursuant to various directions issued by the Court, at this stage, does not weigh with us, in the petitioners

support. For one, there is no such material before us and second it is always open for the petitioner to take all such factual pleas in response to the

show cause notice. And Article-14 would not apply in the negative.

49. It is also not that the Registrar is Judge in his own cause. He has statutory duty to perform which in the instant case, is so being performed by another incumbent.

50. Whether the complaint is anonymous or not also would not matter, for what is important is the contents thereof and not the source.

51. The order of suspension cannot be said to have been passed without any material or application of mind. Significantly the action cannot be said to be malafide; ultra vires the Statute; and the principles of natural justice. Questions No.(f) and (g) are answered accordingly.

52. Decisions in B.C. Chaturvedi (supra); Boddula Krishnaiah (supra); Commercial Tax Officer (supra);

Reliance Airport Developers (P) Ltd. (supra); Sam Built Well Private Limited

(supra); Brahm Datt Sharma (supra); Vicco Laboratories (supra);

Special Director (supra); Kunisetty Satyanarayana (supra); and Shadi Singh (supra) referred to and relied upon by the learned Advocate General as

also decision rendered in Ragho Singh (supra) referred to and relied upon by the learned counsel for the petitioner, are not relevant, for they are based

on the scope of judicial review by the Courts, more so in a case where prayer is made to interfere with the process of election. In view of the

aforesaid discussion, present petition, being devoid of any merit, is dismissed. Pending application(s), if any, also stand disposed of.