
(2017) 06 SHI CK 0066
In the High Court Of Himachal Pradesh
Case No : 1907 of 2007

Kamal Kumar and others

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 30-06-2017

Acts Referred:

[Himachal Pradesh Co-operative Societies Rules, 1971](#), Rule 57 -
Himachal Pradesh Co-operative Societies Act, 1968, Section 69

Citation : (2017) 06 SHI CK 0066

Hon'ble Judges : Tarlok Singh Chauhan

Bench : Single Bench

Advocate : Ashwani K. Sharma, Jeevan Kumar, Meenakshi Sharma, Raman Sethi

Judgement

1. This writ petition has been filed seeking judicial review of the order passed by the Registrar, Co-operative Societies, H.P., on 02.06.2007 in surcharge proceedings initiated against the petitioners under Section 69 of the H.P. Co-operative Societies Act, 1968 (for short the "Act"). 2. The case has a chequered history. The "Daulatpur Agriculture Co-operative Society" was incorporated during pre-independence and registered on 09.08.1946. The father of petitioner No.1 was one of the founder members of the society and worked as its Secretary with effect from 1946 uptill his death in 1981. Thereafter, the petitioner was appointed as a Secretary on 09.01.1981. 3. During the course of the audit of the society for the years 1994-95, 1995-96 and 1996-97, there were allegations that petitioner No.1 by abusing his position as Secretary had committed irregularities as he had purchased the land of the society in an illegal manner and had also caused losses by misutilization of the funds of the society and surcharge proceedings were initiated against the petitioners. It would be noticed that petitioner No.1 as a Secretary of respondent No.4 had purchased 18 marlas of land belonging to the society which according to the society was done in an illegal and clandestine manner and had thereby violated the provisions of Rule 57 of the Himachal Pradesh Co-operative Societies Rules, 1971 (for short the "Rules") which read thus:- "57. Prohibition against being interested in contracts

etc.- (1) Without prejudice to the provisions of the bye-laws, no officer of a co-operative Society shall have an interest directly, or indirectly, otherwise than as such officer- (a) in any contract made with the society; or (b) in any property sold or purchased or leased by, or to the society; or (c) in any other transaction of the society except as an investment made or as a loan taken from the society or the provision of residential accommodation by the society to any paid employee of the society. 2. No officer of a society shall purchase, directly or indirectly, any property of a member of the society sold for the recovery of his dues to the society. 3. The prohibition contained in the rule shall continue to apply for a period of two years after a person ceases to be an officer of the society. The rule debars the officers of the society to have interest in any contract made with the society or any property sold, purchased or leased by the society. Moreover, no officer of the society can purchase the property of a loanee member, which is put to sale in default of non-payment." 4. The Assistant Registrar, Co-operative Societies, Dharamshala (respondent No.3) initiated inquiry under Section 69 (1) of the Act vide order dated 27.01.1997 wherein the District Audit Officer (Co-operative Societies), Dharamshala was appointed as an Inquiry Officer. In the inquiry, petitioner No.1 (Secretary), petitioner No.2 (Ex-President) along with Salig Ram (Ex-Committee Member) (since deceased) were found guilty of the charge and were, therefore, held liable for the recovery of an amount of Rs. 1,23,073/-. The petitioner No.1 was also held liable for an additional sum of Rs. 24,426/-. 5. After conclusion of the inquiry under Section 69(1) of the Act, respondent No.3 carried out the surcharge proceedings under Section 69(2) of the Act against the petitioners and deceased Salig Ram and finally passed the order dated 17.05.1999 whereby he not only upheld the findings of the Inquiry Officer, but ordered the recovery of the amount from the petitioners as arrears of land revenue. 6. The petitioner assailed the order by filing an appeal before the Additional Secretary (Co-operative), who vide order dated 29.07.2000 remanded the case to respondent No.3 for fresh inquiry with a further direction to afford an opportunity of hearing to all the parties whose interests are likely to be affected. 7. The order passed by the Additional Secretary was assailed before this Court by respondent No.4 (Society) by filing CWP No.201 of 2001 and vide judgment dated 16.04.2007 the learned single Judge of this Court held the order passed by the Additional Secretary (Co-operative) to be a non-speaking order and consequently the same was quashed and set aside and Registrar, Co-operative Societies (respondent No.2) was directed to hear the appeal afresh after taking into consideration all the contentions raised by the parties and after affording an opportunity of hearing to them. Respondent No.2 was also directed to pass a speaking order after taking into consideration the entire material placed on record. 8. Respondent No.2 vide order dated 02.06.2007 not only dismissed the appeal filed by the petitioners, but even modified the order dated 17.05.1999 passed by the Assistant Registrar, Co-operative Societies, Dharamshala (respondent No.3) and directed petitioner No.1 to pay compensation in the sum of Rs. 5,00,000/- in addition to the amount already paid towards costs of land and building to the society within a period of

four months, failing it was ordered that the society would be entitled to claim interest @ 12% on the amount of compensation with effect from 02.10.2007 till the realization of the entire amount. 9. In addition, it was also held that petitioner No.1 would also be liable to pay interest amount of Rs. 24,426/- as worked out upto 05.10.1996 till realization of the same. Whereas, petitioners No.2 and 3 were held liable to pay a sum of Rs. 25,000/- each as compensation to the society to be paid within a period of four months, failing which the society was held entitled to claim interest @ 12% from 02.10.2007. 10. Respondent No.2 further observed that in case the petitioners failed to pay the aforesaid amount of compensation, the same would be recoverable from their movable and immovable properties as arrears of land revenue as prescribed under Section 87 of the Act and it was also made clear that the findings would not in any way preclude the society to initiate any other proceedings to restore the possession as existing prior to January, 1994 in respect of the land belonging to the society. 11. The order passed by respondent No.2 was unsuccessfully assailed by the petitioners before the Secretary (Co-operation), who vide his order dated 17.08.2007 held the petition to be not maintainable constraining the petitioners to file the instant petition. 12. The orders passed by various authorities from time to time have been assailed in this writ petition on various grounds as taken in the memo of petition. 13. The official-respondents No.1 to 3 have filed their reply wherein they have supported their action in various inquiries conducted by them. As regards the society, it has filed a separate reply wherein various irregularities as alleged to have been committed by the petitioners have been highlighted. I have heard the learned counsel for the parties and gone through the records of the case. 14. The word "surcharge" has not been defined in the Act. However, one of the meanings given to the word in the Black's Law Dictionary is "the amount that a Court may charge a fiduciary that has breached its duty". 15. Section 69 of the H.P. Co-operative Societies Act, 1968 (for short the "Act"), reads thus:- "69. Surcharge:- 1. If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person who is or was entrusted with the organization or management of such society, or who is or has at any been an officer or an employee of the society, has made any payment contrary to the provisions of this Act, the rules or the bye-law or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to the society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person; [Provided that no such inquiry shall be held after the expiry of six years from the date on which any act of commission or omission referred to in this sub-section comes to knowledge.] (2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate, or to pay contribution and cost or compensation to such extent, as the Registrar

may consider just and equitable. (3)....." 16. The basis for a claim under surcharge proceedings is the misappropriation, fraudulent retention of any money or other property or commission of breach of trust in relation to the society or causing deficiency over the assets of the society by committing breach of trust or wilful negligence of the person concerned. These are only some of the examples and not caste-iron imperatives. 17. The surcharge proceedings are of quasi-criminal nature. However, such claim would relate to the dispute between the society and its servant, employees etc. It is in the nature of a civil claim where a Co-operative Society has to prove the same against whom such a claim is made and is liable for the same. 18. Adverting to the order passed by respondent No.2 which has been impugned herein, it would be noticed that the said authority after setting out the respective pleadings of the parties framed three issues for determination which read thus:- "(a) Regarding purchase of land of the society measuring 0-04-81 Hect in Khasra No.23 situated at Daulatpur, Tehsil and Distt. Kangra by the appellant No.1, who was working as Secretary of the society at the relevant time. (b) Decision of the then managing Committee resolving to donate 5 marlas of land of the society to Sh.Kamal Kumar by way of Gift deed to install statue of late Sh. Ishwar Dass a freedom fighter/Ex-Secretary of the Society and to establish a library in his memory. (c) Regarding embezzlement/misappropriation of amount of Rs. 67000/- advancement by the society to the appellant No.1 for purchase of land. The above amount remained with the appellant No.1 w.e.f. 31.3.1994 to 5.10.1996 and accordingly the appellant was held liable for payment of interest amounting to Rs. 24,426/- @ 12½ % interest per annum." Issue No.(a). 19. While answering issue No.(a), it was found that though a meeting of the General House of the society was held on 01.02.1995, however, there were conflicting statements of the committee members regarding actual numbers of the members, who were present in the meeting. While answering issue (a), respondent No.2 came to the conclusion that as per resolution passed in the meeting of the General House held on 01.02.1995 of the society, it was mentioned that the society has 0-18 marlas of land over which the society had constructed three rooms and a store comprising of a verandah over an area of 5 marlas. The store was constructed approximately in the year 1971. As per second para of the resolution, it had been mentioned that old store was in a dilapidated condition and whenever it rains, all water enters inside the building and as a result thereof PDS items and open sales goods are destroyed. Hence, the members had resolved to sell the land/building for a minimum price of Rs. 1,00,000/-. Any purchaser who offers more than this price upto 01.03.1995, the society would sell the land and building to that person. The Managing Committee of the society extended the date upto 10.04.1995 vide resolution dated 15.03.1995. It is here where the dispute arises. 20. Respondent No.2 while examining the minutes of the meeting found that there were over-writings made regarding the area and as per the original resolution recorded in the minutes book of the society, there was an over-writing "18 marlas of land" and, therefore a photocopy of the resolution was procured from respondent No.3 wherein the area so recorded in the resolution was 00-08 and not 0-18 marlas. It

was on the basis of this resolution that respondent No.3 from whom the approval for sale of land and building was obtained had accorded his approval vide letter dated 29.03.1995. It was further observed that the members of the society were divided over the area of land which was to be sold by the society. Petitioner No.2, who presided over the General House meeting in his statement has stated that the resolution was passed for sale of 18 marlas of land by 30-35 members of the society and he had no knowledge about the signatures of other members which were obtained later on by the former Secretary because as per resolution the presence of 88 members had been recorded. S/Sh. Hamir Chand Dogra and Guru Lal, both ex-committee members, had stated that their signatures were obtained by petitioner No.1 subsequent to the resolution passed and they had no knowledge about the resolution for the sale of the building of the society. Shri Hem Raj, Ex Vice President of the society, stated that he was out of station on 01.02.1995 and his signatures were subsequently obtained on the resolution. 21. On the basis of conflicting evidence coming on record, respondent No.2 came to a categorical conclusion that petitioner No.1 had obtained the signatures of the members after conclusion of the proceedings of the meeting in the minutes book of the society and thereafter illegally managed to transfer 18 marlas of land and building thereupon in his own name for a sum of Rs. 1,00,500/-. When petitioner No.1 was confronted with the resolution he himself admitted that there was a clerical mistake that had occurred on 10.04.1995. It was on the basis of overwhelming evidence that respondent No.2 concluded that petitioner No.1 had procured false and forged documents to grab the property of the society in connivance with petitioners No.2 and 3 because the General House of society had resolved to sell 8 marlas of land along with structure constructed thereupon, but the same was interpolated and made 18 marlas of land. That apart, respondent No.2 held the entire action of petitioner No.1 in selling the land in his own name to be in violation of Rule 57 of the Rules (supra) and thereafter directed the petitioner to compensate the society for having illegally grabbing its land. Issue No.(b). 22. Petitioner No.1 had acquired 5 marlas of land of the society by way of gift deed as per the resolution alleged to have been passed by the Managing Committee on 27.12.1993 out of land measuring 0-04-81 hectare. However, respondent No.2 found that as a matter of fact there was no resolution available on the record that had been passed by the Managing Committee on the aforesaid date, but there was one resolution dated 27.01.1994 in which members of the Managing Committee had resolved that the society has its own land measuring 1 Kanal and 5 marlas over which four rooms and a store had been constructed and whatever vacant land is left with the society, no construction will be done over that land. The Managing Committee had decided to establish a library and to install a statue in memory of late Shri Ishwar Dass, Freedom Fighter, who had served the society for 42 years as a Secretary. It was also found that after passing of this resolution four lines were subsequently added after closing of the proceedings on 27.01.1994 which appeared to be in a congested manner, whereas, the resolution had been written "in a normal way". As regards these lines, which according to respondent No.2, were added subsequently, it was

recorded that on the gifted land, petitioner No.1, the then Secretary, will have a right to construct a library for which gift deed was to be prepared in his name. Petitioner No.2 and one Salig Ram, member, were authorised to sign transfer documents in favour of petitioner No.1. 23. Thus, in this manner, a conspiracy was hatched by these three persons with a view to depriving the society of the property in an illegal manner. It was further observed that since the property belonged to all the members of the society, the same could not have been disposed of without their approval. Respondent No.2 further concluded that though the resolution dated 27.01.1994 had been shown to be passed in presence of all the members of the Committee, yet three members of the Committee namely S/Shri Hem Raj, Hamir Chand and Guru Lal had categorically denied having passed the said resolution and it was on the basis of their statements that respondent No.2 inferred that four lines empowering Shri B.D.Shukla, petitioner No.2 and one Salig Ram to sign the transfer documents had been subsequently added. Not only this, respondent No.2 held that the Managing Committee was not entitled to donate any property of the members of the society without prior approval of the General Body. Therefore, the action of petitioners No.1 and 2 along with Salig Ram, as aforesaid, was illegal and against the provisions of Rule 57 of the Act. Issue No.(c). 24. It was the case of petitioner No.1 that he had been advanced a sum of Rs. 67,000/- for purchase of 9 marlas of land, however, respondent No.2 on the basis of the record came to the conclusion that there was no necessity to advance the said amount to petitioner No.1 as the amount could have been directly paid to the owner of the land once a deal had been finalized. Notably, it has come on record that this amount of Rs. 67,000/- had been illegally retained by petitioner No.1 for more than two years and six months and utilized by him for his personal use and, therefore, he was liable to pay interest on the advanced amount. Not only this, it has specifically come on record that during the pendency of the case, petitioner No.1 had admitted his negligence and the factum of temporary misappropriation of the aforesaid amount. Petitioner No.1 also submitted that he was ready to deposit the interest amount as worked out by respondent No.3 on the said amount. 25. It was on the basis of the findings recorded on three issues (supra) that respondent No.2 came to a categorical conclusion that the petitioners were not only negligent and disloyal to the society, but by their actions, they had inflicted huge losses on the society and its shareholders, who had been cheated. Here, it shall be apt to reproduce the final conclusion drawn by respondent No.2 which reads thus:- "The detailed narrations in the foregoing paras have clearly brought out the misdeeds of the appellants while occupying the responsible positions in managing the affairs of respondent society. The appellants have not only been negligent and disloyal to the society but by their actions they have inflicted huge losses to the society and its share holders who have been cheated. Though ultimate authority of society vests in shareholders but the appellants have made mockery of the entire process of system of check and balances in the society. The appellant No.1 who had to safeguard the interests of the society indulged in self-service at the cost of society. The entire chain of events proves

his disloyalty to the employer. Though he has been removed from service but he has by his actions inflicted irreparable losses/damages on the society. His actions have been such that any amount of compensation awarded to the society will be inadequate. And keeping in view the obvious legal and practical difficulties such as determining the true market value of land at different points of times, assessing the cost of building raised on the land over the period of time, undoing the sale transactions etc., it seems proper that he is required to compensate the respondent society properly and adequately. This is a clear case of forgery and cheating whereby Ex-Secretary has deprived the society from its land and building. Therefore, appropriate compensation needs to be imposed upon the 1st appellant for this wrongful act. I, therefore, modify the order of Assistant Registrar Co-operative Societies Dharamshala passed on 17.5.1999 and direct the 1st appellant to pay a compensation of Rs. 5.00 lac in addition to the amount already paid towards the cost of land/building to the society within a period of four months from today failing which the society shall be entitled to claim interest @ 12% on the amount of compensation w.e.f. 2nd October, 2007 till the realization of entire amount. In addition, he (appellant No.1) shall also be liable to pay interest amount of Rs. 24,426/- as worked out upto 5.10.1996 (as awarded vide impugned order) plus interest on this amount @ 12½ % till the realization of the entire amount in respect of matter referred at point No.(c) above. The other two members of the managing committee have assisted the 1st appellant in disposing of property of the Society in a wrongful manner, hence they are also held liable to pay a sum of Rs. 25,000/- each as compensation to the society within a period of four months failing which the society shall claim interest @ 12% w.e.f. 2nd October, 2007. Since Sh. Salig Ram Ex-committee member has expired, the above amount of Rs. 25,000/- shall be paid to the Society by Sh. Dharam Chand s/o the deceased. The above compensation awarded shall be in lieu of the amount awarded against the appellants vide the impugned order dated 17.5.1999. In case the appellants fail to pay the above amount of compensation, the same shall be recovered from moveable/immovable properties of the appellants as an arrear of land Revenue in the manner prescribed under Section 87 of the H.P. Cooperative Societies Act, 1968. It is further made clear that this order and the findings therein shall not in anyway preclude the right of respondent society to initiate any other legal proceedings to restore the position as obtained prior to January, 1994 in respect of land belonging to the society." 26. Even though, the learned counsel for the petitioners would vehemently argue that aforesaid findings are perverse, however, the said plea cannot be accepted as I have no hesitation to conclude that the findings rendered by respondent No.2 are detailed one and quite akin to the findings recorded by the Civil Court wherein not only the pleadings, but even evidence led by the parties along with legal proposition has been correctly appreciated. 27. What would be the scope of interference in a writ of certiorari is a question that stands decided by a learned Division Bench of this Court in CWP No.749 of 2017, titled Partap Singh v. State of Himachal Pradesh and others, decided on 22.05.2017, wherein it was held as under:- "5. The scope of

interference is in a writ jurisdiction under Article 226 of the Constitution of India, is now well settled. 6. The principles on which the writ of certiorari is issued are well-settled. The Constitution Bench in *The Custodian of Evacuee Property Bangalore v. Khan Saheb Abdul Shukoor etc.* (1961) 3 SCR 855 stated :- " The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in a 7-Judge Bench decision of this Court in *Hari Vishnu Kamath v. Ahmad Ishaque* 1955 IS 1104 : ((s) AIR 1955 SC 233) and the following four propositions were laid down :- "(1) Certiorari will be issued for correcting errors of jurisdiction; (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice; (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. (4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."" 7. That an error apparent on face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in *Satyanarayan Laxminarayan Hegde and Ors. v. Mallikarjun Bhavanappa Tirumale*, (1960) 1 SCR 890. It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of one given in the proceedings forming the subject-matter of certiorari." 28. Lord Hailsham in *Chief Constable of North Wales Police v. Evans* (1982) 3 All ER 141 held as under:- "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of law." 29. While dealing with the ambit of judicial review, the Hon'ble Supreme Court in *Apparel Export Promotion Council v. A.K. Chopra* AIR 1999 SC 625 observed as under:- "18. Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority. 19. It is useful to note the following observations of this Court in *Union of India v.*

Sardar Bahadur, (1972) 4 SCC 618 : (1972 Lab IC 627 at Pp. 630-31) : "Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court." 20. After a detailed review of the law on the subject, this Court while dealing with the jurisdiction of the High Court or Tribunal to interfere with the disciplinary matters and punishment in *Union of India v. Parma Nanda*, (1989) 2 SCC 177 : (AIR 1989 SC 1185) opined : (at P. 1192 of AIR): "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. 21. In *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749: (1995 AIR SCW 4374, this Court opined (at P.4379 of AIR SCW): "The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate them evidence or the nature of punishment. In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal." Further it was held : (at P.4380 of AIR SCW): "A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof." (Emphasis supplied)" 30. In *State of U.P. and another v. Johri Mal* (2004) 4 SCC 714, a Bench of three Hon"ble Judges of the Hon"ble Supreme Court held that power of judicial review of the Court was not intended to assume a supervisory role or done the robes of

omnipresent and the following principles of judicial review were laid down:-

"Judicial Review: 22. The power of judicial review is now well-defined in a series of decisions of this Court. It is trite that the court will have no jurisdiction to entertain a writ application in a matter governed by contract qua contract (assuming such professional engagement to be one), as therein public law element would not be involved. (See *Life Insurance Corporation v. Escorts Ltd. and Ors.* [AIR 1986 SC 1370], *F.C.I. and Ors. v. Jagannath Dutta and Ors.*, [AIR 1993 SC 1494], *State of Gujarat and Ors. v. Meghji Pethraj Shah Charitable Trust and Ors.*, [(1994) 3 SCC 552], *Assistant Excise Commissioner and Ors. v. Issac Peter and Ors.*, (1994) 4 SCC 104], *National Highway Authority of India v. M/s. Ganga Enterprises and Anr.* 2003 (7) SCALE 171). 23. In any event, the modern trend also points to judicial restraint in administration action as has been held in *Tata Cellular v. Union of India* [(1994) 6 SCC 651]. (See also *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation and Others* [(2000) 5 SCC 287] and *W.B. State Electricity Board v. Patel Engineering Co. Ltd. and Others* [(2001) 2 SCC 451]) and *L.I.C. and Anr. v. Consumer Education and Research Centre and Ors.*, [AIR 1995 SC 1811]. 24. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the realm of public law -be it a legislative act or the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question is required to be determined in each case having regard to the nature of and extent of authority vested in the State. However, it may not be possible to generalize the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. 25. In *Council of Civil Services Unions v. Minister for the Civil Service* [(1985) AC 374] while extending the scope of judicial review the House of Lords decided that judicial review should not be available if the particular decision under challenge was not justiciable. However, in granting relief the Court shall take into consideration the factors like national security issue. In *Constitution Reform in the UK* by Dawn Oliver, it is stated at page 210: "In the *CCSU* case the House of Lords decided that judicial review should not be available if the particular decision under challenge was not justiciable. In effect they respected the political Constitution and deferred to government in some sensitive areas. In this case the Government was alleging that for them to have consulted the unions before the decision was taken would have provoked industrial action at GCHQ, which would in turn have been damaging to national security. In the view of the House of Lords this made an otherwise reviewable decision not suitable for judicial review - not justiciable. Other decisions taken under the royal prerogative, which the court indicated would be non-justiciable, included treaty making and foreign affairs. Despite the outcome of the *CCSU* that the prerogative is in principle reviewable and that were it not for the national security issue the government should have consulted the unions before imposing these changes was a major step forward in the judicialization of government

action, including the actual conduct of government, and a step away from the political Constitution." 26. However, we may notice that judicial review was held to be available when justiciability of foreign relations came to be considered in *R. (Abbasi) v. Secretary of State for the Foreign and Commonwealth Office and Secretary of State for the Home Department* (2002) EWCA Civ., 6 November 2002 stating: "Although the statutory context in which Adan was decided was highly material, the passage from Lord Cross' speech in *Cattermole* supports the view that, albeit that caution must be exercised by this Court when faced with an allegation that a foreign state is in breach of its international obligations, this Court does not need the statutory context in order to be free to express a view in relation to what it conceives to be a clear breach of its international obligations, this Court does not need the statutory context in order to be free to express a view in relation to what it conceives to be a clear breach of international law, particularly in the context of human rights." 27. In *Council of Civil Services Unions v. Minister of Civil Service* the power of judicial review was restricted ordinarily to illegality, irrationality and impropriety stating: "If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated." 28. The Scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put is : (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies; (ii) A petition for a judicial review would lie only on certain well defined grounds. (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal. (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice. (v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies. (See *Ira Munn v. State of Illinois*, 1876 (94) US (Supreme Reports) 113) 29. In *Wade's Administrative Law*, 8th edition at pages 33-34, it is

stated: "Review, Legality and discretion The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is "right or wrong?" On review the question is "lawful or unlawful?" Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the court's inherent power to determine whether action is lawful or not and to award suitable relief. For this no statutory authority is necessary: the court is simply performing its ordinary functions in order to enforce the law. The basis of judicial review, therefore, is common law. This is none the less true because nearly all cases in administrative law arise under some Act of Parliament. Where the Court quashes an order made by a minister under some Act, it typically uses its common law power to declare that the Act did not entitle the minister to do what he did and that he was in some way exceeding or abusing his powers. Judicial review thus is a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. Instead of substituting its own decision for that of some other body, as happens when on appeal, the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. If the Home Secretary revokes a television licence unlawfully, the court may simply declare that the revocation is null and void. Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the court requiring the issue of the licence. If administrative action is in excess of power (*ultra vires*), the court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it. The minister or tribunal or other authority has in law done nothing, and must make a fresh decision." 30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can re-appreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by

the Court with special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker. 31. In *Chief Constable of the North Wales Police v. Evans* [1982 (3) All ER 141], the law is stated in the following terms: (All ER p.144a) "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court." 32. Prof. Bernard Schwartz in his celebrated book (*Administrative Law*, III Edn. Little Brown Company 1991) dealing with the present status of judicial review in American context, summarized as under: "If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the Courts. That would destroy the values of agencies, created to secure the benefit of special knowledge acquired through continuous administration in the complicated fields. At the same time, Court should not rubber-stamp agencies; the scope of judicial enquiry must not be so restricted that it prevents full enquiry into the action of legality. If that question cannot be properly explored by the Judge, the right to review becomes meaningless...in the final analysis, the scope of review depends on the individual judges estimate of the justice of the case." 33. Prof. Clive Lewis in his book (*Judicial Remedies in Public Law* 1992 Edn., at pp. 294-295) stated: "The Courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction"...Earlier cases took a robust line that the law has to be observed and the decision invalidated, what ever the administrative inconvenience caused. The Courts now-a-days recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the Court's remedial discretion may prove decisive...They may also be influenced to the extent to which the illegality arises from the conduct of the administrative body itself, and their view of that conduct." 34. Grahame Aldous and John Alder in "*Applications for Judicial Review, Law and Practise*" stated thus: "There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the royal prerogative are inherently un-reviewable but since the speeches of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* this is doubtful. Lords Diplock, Scaman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-

justiciable areas, for example, foreign affairs, but some are reviewable in principle, including where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest." 35. In Wade's Administrative Law, 8th Edition at p.551, the author states: "Rights and Remedies: Rights depend upon remedies. Legal history is rich in examples of rules of law which have been distilled from the system of remedies, as the remedies have been extended and adapted from one class of case to another. There is no better example than habeas corpus. This remedy, since the sixteenth century the chief cornerstone of personal liberty, grew out of a medieval writ which at first played an inconspicuous part in the law of procedure: it was used to secure the appearance of a party, in particular where he was in detention by some inferior court. It was later invoked to challenge detention by the king and by the Council; and finally it became the standard procedure by which the legality of any imprisonment could be tested. The right to personal freedom was almost a by-product of the procedural rules. This tendency has both good and bad effects. It is good in that the emphasis falls on the practical methods of enforcing any right. Efficient remedies are of the utmost importance, and the remedies provided by English administrative law are notably efficient. But sometimes the remedy comes to be looked upon as a thing in itself, divorced from the legal policy to which it ought to give expression. In the past this has led to gaps and anomalies, and to a confusion of doctrine to which the courts have sometimes seemed strangely indifferent." 31. In *Jayrajibhai Jayantibhai Patel v. Anilbhai Nathubhai Patel and others* (2006) 8 SCC 200, the law on the subject of judicial review was succinctly laid down in the following terms:- "18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision." 32. In *Bank of India and others v. T. Jogram* (2007) 7 SCC 236, the Hon'ble Supreme Court held as under:- "15. By now it is well-settled principle of law that judicial review is not against the decision. It is against the decision making process....." 33. In *S.R. Tewari v. Union of India and another* (2013) 6 SCC 602, the Hon'ble Supreme

Court reiterated the law on the subject in the following terms:- "19. In Commissioner of Income-tax, Bombay and Ors. v. Mahindra and Mahindra Ltd. and Ors., AIR 1984 SC 1182, this Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held: (SCC p.402, para 11) "11....It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same." 20. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: Tata Cellular v. Union of India, AIR 1996 SC 11; People's Union for Civil Liberties and Anr. v. Union of India and Ors., AIR 2004 SC 456; and State of N.C.T. of Delhi and Anr. v. Sanjeev alias Bittoo, AIR 2005 SC 2080). 21. In Air India Ltd. v. Cochin International Airport Ltd. and Ors., AIR 2000 SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not. 22. There may be a case where the holders of public offices have forgotten that the offices entrusted to them are a sacred trust and such offices are meant for use and not abuse. Where such trustees turn to dishonest means to gain an undue advantage, the scope of judicial review attains paramount importance. (Vide: Krishan Yadav and Anr. v. State of Haryana and Ors., AIR 1994 SC 2166). 23. The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. (Vide: High Court of Judicature at Bombay through its Registrar v. Udaysingh s/o Ganpatrao Naik Nimbalkar and Ors., AIR 1997 SC 2286; Government of Andhra Pradesh and Ors.

v. Mohd. Nasrullah Khan, AIR 2006 SC 1214; and Union of India and Ors. v. Manab Kumar Guha, (2011) 11 SCC 535). 24. The question of interference on the quantum of punishment, has been considered by this Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. In Ranjit Thakur v. Union of India and Ors., AIR 1987 SC 2386, this Court observed as under: (SCC pp.620-21, paras 25 and 27) "25. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. * * * 27. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review." (Emphasis supplied) (See also: Union of India and Anr. v. G. Ganayutham (dead by Lrs.), AIR 1997 SC 3387; State of Uttar Pradesh and Ors. v. J.P. Saraswat, (2011) 4 SCC 545; Chandra Kumar Chopra v. Union of India and Ors., (2012) 6 SCC 369; and Registrar General, Patna High Court v. Pandey Gajendra Prasad and Ors., AIR 2012 SC 2319). 25. In B.C. Chaturvedi v. Union of India and Ors., AIR 1996 SC 484, this Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority. 26. In V. Ramana v. A.P.S.R.T.C. and Ors., AIR 2005 SC 3417, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, in

exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof. 27. In *State of Meghalaya and Ors. v. Mecken Singh N. Marak*, AIR 2008 SC 2862, this Court observed that: (SCC p.584, paras 13- 14) "13....A Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. 14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review. (See also: *Depot Manager, A.P.S.R.T.C. v. P. Jayaram Reddy*, (2009) 2 SCC 681). 28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide: *Union of India and Ors. v. Bodupalli Gopalaswami*, (2011) 13 SCC 553; and *Sanjay Kumar Singh v. Union of India and Ors.*, AIR 2012 SC 1783). 29. In *Union of India and Ors. v. R.K. Sharma*, AIR 2001 SC 3053, this Court explained the observations made in *Ranjit Thakur* (supra) observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in *Ranjit Thakur* (supra) are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds." 34. What would be the scope of interference by the Court has also been succinctly laid down in the aforesaid decision in *S.R. Tewari's* case (supra) in the following terms:- "30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: *Rajinder Kumar Kindra v. Delhi Administration*, AIR 1984 SC 1805; *Kuldeep Singh v. Commissioner of Police and Ors.*, AIR 1999 SC 677; *Gamini Bala Koteswara Rao and Ors. v. State of Andhra Pradesh thr. Secretary*,

AIR 2010 SC 589; and Babu v. State of Kerala, (2010) 9 SCC 189). 31. Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible." 35. It may be observed that the very philosophy and the concept of the cooperative movement is impregnable with public interest. A cooperative society is a substitute for self-interest of an individual or a group of individuals for the benefit of the whole community. Therefore, even the general body of the members cannot take any steps which may be derogatory to the promotion of the interests of any one of its member(s) or its employee(s) and the same is necessarily be in accordance with the cooperative principles. Conversely, the general body of the members cannot act in a manner so as to confer undue benefit or advantage in favour of anyone of its member(s) or employee(s). Above all, the society unlike a private individual cannot act as it pleases and the decision taken by the general body has to be in accordance with the H.P. Cooperative Societies Act, 1968 (for short "Act"), H.P. Cooperative Societies Rules, 1971 (for short "Rules") and the bye-laws of the society. 36. A Co-operative Society is registered on cooperative principles of democracy, equity, equality and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity and agreement amongst its members are some of the cardinal dimensions of the cooperative principles. Therefore, the decision taken by the executive body of the society should enjoy the confidence and must have the backing of majority of its members. 37. Moreover, the cooperative societies are corporations within the meaning of Article 31-A (1) (c) as held by the Hon'ble Supreme Court in Daman Singh and Ors. v. State of Punjab and Ors. 1985 (2) SCC 670. The very philosophy and concept of the cooperative movement is impregnable with public interest. Once a person becomes the member of the cooperative society, he loses his individuality qua the society and he has no independent right except those given to him by the statute and bye-laws. What is a corporation has been considered in the Daman Singh's case in the following manners:- "5. What is a corporation? In Halsbury's Laws of England, fourth Edition, Volume 9, Paragraph 1201, it is said, A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question." 38. A corporation is a substitute for self-interest of an individual or a group of individuals for the benefit of the whole community, therefore, the cooperative movement cannot be permitted to be polluted by certain vested interest at the helm of affairs. 39. In this context, it shall be advantageous to refer to the judgment rendered by the Bombay High Court in Hindurao Balwant Patil and Anr., v. Krishnarao Parshuram Patil and Ors., AIR 1982 Bombay 216, wherein it was observed:- "Co-operative movement cannot be permitted to be polluted or choked by internal or individual strike nor it can be permitted to be polluted by party politics. Co-operative capitalism despotism is not co-operation. On the other hand co-operation is a substitute for self interest of an individual or a group of individuals for the benefit of whole community. Therefore, if the

society itself while framing and adopting its own code of conduct in the form of byelaws, which are to be duly approved by the Registrar, has not made any provision for removal of the Chairman and vice Chairman by passing a vote of no confidence, it cannot be said that the step taken by the Society or Registrar in that behalf is not a regulatory one nor is in the interest of the society or the general public. The so-called mandate theory cannot be pushed to ridiculous extremes to convert co-operative movement into an arena or akhada of power politics. Whenever the legislature thought that a person is not fit to continue as a member of the board, specific provisions are made for his removal. A person is elected as Chairman or Vice Chairman for a particular term. His office is controlled by the provisions of the Act....." 40. At this stage, I may also refer to the decision made by the Punjab and Haryana High Court in *The Bapauli Co-operative Agricultural Service Society v. The State of Haryana and Ors.*, AIR 1976 P&H 283, wherein it was observed as under:- "The final authority in a co-operative society does of course vest in the general body of its members or its managing body elected in accordance with its bye-laws as laid down in Section 23 of the Act, but this authority is not absolute and free from restraints. Even the general body of the members cannot take any steps which may be derogatory to the promotion of the economic interests of the members of a society in accordance with cooperative principles; nor can the general body take any decision which may be contrary to the Act or the Rules framed thereunder. When considered in this light, Section 23 of the Act has to be interpreted in such a manner so that its operation does not set at naught some of the other provisions of the Act. It is settled law that two provisions of a statute have to be read in such a manner that one of them does not necessarily repeal the other. The question of repeal of one provision of a statute by another arises only when two of them are wholly incompatible with one another or if they are read together they would lead to wholly absurd consequences. If on a fair and proper interpretation these two provisions can be reconciled with each other, the Courts of law are under a duty to adopt such an interpretation and to give full effect to the two provisions of the Act instead of holding that one of them is repealed by the other....." 41. The principle of accountability and transparency in the functioning of any institutions, be it a society, cooperative society etc. are essential for its proper governance. The conduct of the Chairman/President, office bearers and the members of the society in discharge of their duties, has to be above board and beyond censure till and so long as the Act, Rules, and Bye-laws are occupying the field, the authorities cannot be left to run the affairs in their subjective and whimsical approach and hotch-potch manner. Certain objective criterias have to be evolved to administer the affairs of the society otherwise there is bound to have an element of favouritism, nepotism and other sort of manipulations as are clearly evident in this case. 42. It has to be remembered that registered cooperative societies like anybody corporate has a power to hold property and is capable of entering into contract. However, it cannot be assumed that property which it holds is the property of its members or they are owners. This property in law is the property of the society. Likewise, the

employees engaged by the society are employees of the society and not the employees of any one member or members of the society. The society has to act in accordance with its constitution and apply the property for the purposes which it is held and likewise deal with its employees as per the mandate of the Act, rules and bye-laws of the society in a fair and transparent manner, without indulging in any favouritism or nepotism. 43. Although a cooperative society cannot strictly be compared with a State, nonetheless, it is bound by and has to adhere to the provisions of the Act, Rules and Bye-laws framed by it, which do oblige the society to conduct itself with high probity and candour with its employees. The managing committee of the society cannot act as despots or monarchs and are obliged to act in accordance with the principles of democracy, equity, equality and solidarity. 44. Reverting back to the facts, it would be noticed that petitioner No.1 by purchasing the land of the society has violated the provisions of Rule 57 of the Rules and all the issues raised herein already stand discussed threadbare by respondent No.2 in the decision impugned before this Court. It is more than settled that this Court would not act as an Appellate Authority. It is equally settled that a mere wrong decision without anything more is not enough to attract the powers of judicial review and the supervisory jurisdiction conferred on this Court is limited to see that the adjudicatory authority functions within the limits of its authority and its decision does not occasion miscarriage of justice. The findings of fact recorded by respondent No.2 can only be interfered with in case the same are perverse which, however, is not the fact situation obtaining in the instant case. 45. As observed above, there is no illegality or perversity in the impugned orders. Hence, for all the reasons stated above, I do not find any merit in this petition and the same is accordingly dismissed, so also the pending application, if any.