
(1975) 07 BOM CK 0011
In the Bombay High Court
Case No : Spl. C.A. No. 1735 of 1974

Karbhari Govindrao Patil and another	APPELLANT
Vs	
B.D. Pawar and others	RESPONDENT

Date of Decision : 25-07-1975

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 233, 320
Maharashtra Co-operative Societies Act, 1960 — Section 152, 154, 2, 64, 65

Citation : (1976) MhLj 841

Hon'ble Judges : V.S. Deshpande, J; P.M. Mukhi, J

Bench : Division Bench

Advocate : B.R. Naik, for the Appellant; D.R. Dhanuka, Addl. Govt. Pleader with A.G. Sabnis, Asstt. Govt. Pleader for opponents Nos. 2, 4 and 5, Y.R. Naik for opponent No. 3, R.M. Agarwal for opponent No. 2 and V.Z. Kankaria for opponent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Deshpande, J.—The petitioner was elected to the Managing Committee of respondent No. 3 Society as representative of petitioner No 2 Society. On 14th June, 1974, respondent No. 1, the District Deputy Registrar, Co-operative Societies, Nasik, called upon the Committee Members of respondent No. 3 Society to show cause why the said Committee should not be removed in exercise of his powers u/s 78 of the Maharashtra Co-operative Societies Act (hereinafter referred to as "the Act"). These members, including the petitioners, did show cause. However, by an order dated 17th July, 1974, the said Managing Committee was removed and management was entrusted to the Administrator, respondent No 2. Appeals filed by some of these members were dismissed. This Special Civil Application filed by another number is directed against the order dated 17th July, 1974.

2. Mr. R. M. Agarwal and Mr. Dhanuka, the learned Advocates appearing for respondents Nos. 2, 4 and 5 raised preliminary objections. According to Mr.

Agarwal, failure to avail of remedy of appeal and revision under sections 152 and 154 of the Act is fatal. Now, even if certain allegations about mala fides and Government interference are ignored for want of evidence, the dismissal of appeals of others, in this case, makes these remedies as no more than empty formalities. This apart, the petitioner wanted to urge that provision as to consultation u/s 78 is mandatory. The contrary decision of Division Bench of this Court dated 28th July, 1965, in Special Civil Application No. 763 of 1965, would preclude him from raising this point in appeal, etc. Existence of alternate remedy is only a factor, and cannot, and does not operate as an absolute bar. According to Mr. Dnanuka the period for which the petitioner was elected, having already expired the petitioner had no subsisting interest on the date of application, it is, however, not in dispute that the said period was extended by an Ordinance and the petitioner continued to be the member of the said Managing Committee till the date of the impugned order, notwithstanding the expiry of the original period of the membership. These objections cannot be upheld.

3. The only point urged by Dr. Naik is that notwithstanding the consultation with the Federal Society being made obligatory u/s 78 of the Act, Respondent No. 1 in this case did not as much even attempt to so consult before the impugned removal. Now, it is true that respondent No. 1 has not done anything in this case, beyond sending a copy of the show cause notice to the Chairman of the Federal Society, soliciting opinion on the proposed removal and asking it further if it would act as an Administrator. The said copy on the face of it does not even purport to address the Federal Society itself. The contents also give an impression as though, not the opinion of the Society, but of its Chairman personally is intended to be sought. Respondent No. 1 also does not appear to have sent any reminder or otherwise made any attempt to get the reply from the said Federal Society. Even so, these defects appear to me to be more of the form than of any substance. The copy of the notice does indicate in sufficient details the charges on the prima facie evidence of which the removal of the Committee was required to be considered. The notice was addressed to the Chairman as the Principal Officer of the said Federal Society. Any one could easily gather, on reading it, as to why and what was being proposed and why the copy was sent. No Chairman could pretend in the face of these contents that, he could not gather what all this was about or that it was meant for him alone, and not for the Society of which he happened to be the Chairman. If indeed the Society was interested, it could have easily asked for more information, if really the information conveyed was inadequate in any manner. In fact, there is nothing to indicate that the Federal Society has any grievance whatsoever on this count. It is not disputed that all such correspondence with the Society is ordinarily addressed to the Chairman as its Principal Officer. It is difficult to find any fault with this mode of consultation, as far as it goes, and also difficult to invalidate the order on these grounds alone.

4. But, contends Dr. Naik, the Federal Society was never made aware as to the say or defence of the Managing Committee to the allegations made against them

in the charges either by sending the copies of their replies or otherwise appraising it thereabout. The material with the Registrar also was never placed at the disposal of the Federal Society for their comments, to make the consultation effective, so argues Dr. Naik. Nor any attempt was made to discuss the matter in person. That all this was not done is not in dispute. It is obvious that defects of such nature cannot be lightly ignored as being of no substance, if indeed supplying of such material and such discussion is found to be part of such consultation. This at once raises a question as to what is the nature, and extent, and contents, of "the consultation conceived u/s 78 is?"

5. Now, the word "consultation" is not defined under the Act. It is also not a word of any fixed connotation. From conveying the sense of information, the word includes in its sweep, even the person to person discussion, at the table, by cover to cover reference to the material. Its precise connotation shall have to be ascertained by reference to the object as also the context and the setting. The cases, cited before us by the learned advocates appearing for the parties, i.e. Dr. Naik, Mr. Savant and Mr. Dhanuka, themselves indicate how contents and nature of consultation differ from situation to situation and how inadvisable, inexpedient and confusing it would be to import the concept of the one into the other. Thus consultation by the Government with the Public Service Commission under Article 320 of the Constitution is found to be different in nature from the one with the High Court under Article 233 of the Constitution as indicated in *State of U.P. Vs. Manbodhan Lal Srivastava*, and *Chandra Mohan v. State of U. P.* A I R 1966 S C 1987. Consultation by the Registrar with the Reserve Bank of India with regard to the super session of any Banking Co-operative Society stands on quite a different footing from the one required by the Government with the Electricity Board in the matter of revocation of electricity licence, as indicated in *Radheshyam Sharma v. Govt. of M. P.* 1973 Co-op. Tribunal Decisions, (M. P.) 190 and in the case of *Narayanan Sankaran Mooss Vs. The State of Kerala and Another*, , respectively. Consultation by the Government with the local authorities in the matter of alterations of the boundaries or setting up of a new township stands on a yet different footing, as discussed in the case of *R. Pushpam and Another Vs. The State of Madras and Another*, and the English cases relied on therein. Broadly stated in all such cases the Statute provides for consultation (a) either for the benefit of the authority empowered to act and the public sought to be protected (b) or for the benefit of the persons charged or (c) for the benefit of the consulted body itself. The object of the provision would predominantly go to determine the nature, extent and content of such consultation. But the constitution and the qualification of the consulted body, as also extent of its obligation, arising either from the statute or from its concern for its own interest also goes to shed some light on the object, in the present case, our attention is not drawn to any provision in the Act or in the Rules to indicate the object with which this consultation is made necessary. The true import of this consultation provision, therefore, shall have to be ascertained from the scheme of section 78 itself. The section empowers the Registrar to remove the Committee of any

Society or its any member on the existence of any one of the acts of commission or omission enumerated in the section. Shorn of the clauses specifying such acts and omissions, the section reads as follows:

78 (1) If, in the opinion of the Registrar the Committee of any society or any member of such committee.. (specifics the acts and omissions), the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections (if any) within fifteen days from the date of issue of notice, and after consulting the Federal Society to which the society is affiliated, by order

(a) remove the committee, and.....

(b) remove the member and appoint any person as a member of such committee.

6. This section deals thus essentially with the powers of removal. The decision to remove is to be preceded (1) by his finding on the collected material as to the existence of any one or more of the grounds, and (2) consultation with the Federal Society. This then has to be followed by consequential appointment of an Administrator, etc., in the event of removal being decided. The Federal Society is defined u/s 2(13); to mean a Society of which at least five members happen to be other Societies and in which four-fifths of the votes at general meeting are held by such Societies. The word "affiliation" is not defined anywhere. Its dictionary meaning conveys an association of one Society with the other as if one is a branch of the other. We are informed at the bar that Federal Societies and its affiliated Society or Societies are mainly formed to carry on identical business in terms of the categories specified in Rule 10 in an organised manner. The Federal Society to the top of the affiliated Societies gets some controlling voice in the affairs of the said affiliated Society. It was not disputed that there are in all 12 such Apex Federal Societies in the whole of Maharashtra, in addition to as many District Central Co-operative Banks as the Districts, which also are admitted to be Federal Societies. Mr. Dhanuka, appearing for the Registrar, also stated that there were in all 150 Federal Societies in the whole of the State in addition, which figure was not admitted by Dr. Naik and Mr. Savant.

7. It is, however, clear that none of the Federal Societies is a statutory body. None is entrusted with any statutory duty. In the absence of any law regulating the functioning of such Federal Societies, contemplated process of consultation shall have to be carried on by the Registrar with the entire Managing Committee and even with the two or more of such Committees where such Society happens to be affiliated with more than one Federal Society. There is nothing in the Act to prohibit one Society from being affiliated to more than one Federal Society. There is nothing to indicate that members of the Managing Committee of each such Federal Society are required to possess any particular qualifications, expertise knowledge of any subject or any standing in the Co-operative field for being elected to the said Committee. The Act or the Rules do not cast any duty on such Federal Society to advise the Registrar, even when consulted by him. The section

also does not contemplate consulting such Federal Society in the event of any proposal to remove the Managing Committee of any society which does not happen to be affiliated to any Federal Society or when the committee of the Federal Society itself is intended to be removed. All this militates against the intended consultation being; for the benefit of the Registrar or for the benefit of the section of the public in whose interest the Registrar is required to take action u/s 73. It is true that consultation with the front rank leaders of the Co-operative movement could have enabled the Registrar to take over-all view of the irregularities found by him and consider the effect of his decision on the Co-operative activities as a whole. However, the constitution of the Managing Committee, as discussed above, eliminates the possibility of such being the legislative intent.

8. These very factors also militate against the consultation being conceived for the benefit of the members charged. Once possibility of such committee members necessarily being experts in the any sense of the term or qualified otherwise or being the leaders of the co-operative movements eliminated, the possibility of the Registrar's consultation with them being of any benefit to the persons charged also becomes still fainter. It is indeed difficult to see how the consultation with these unconcerned persons without any qualification whatsoever can be of any help to the persons charged. The section also enables the persons charged to have their say in the matter and thus defend themselves. It is not known why the Legislature could have thought of such committee members as being more fitted to defend such persons charged or be of any practical use to them. The contention, that such consultation can be of some use for correcting the Registrar's errors in the matter of finding the guilt or otherwise of the members of the committee, is devoid of any substance. Proceedings u/s 78 are, on the face of it, of quasi-judicial nature no other persons, much less consulted body, can have any part in moulding the opinion of any quasi-judicial authority like the Registrar on the material collected by him. Nothing could have been further from the intention of Legislature than this. Any such approach cuts at the very root of functioning of any quasi-judicial authority. Whenever any quasi-judicial authority is required to consult any other person of authority, the consultation is bound to be de hors of the material collected and required to be assessed by it. Correction of the errors of the Registrar in the matter of finding can be left only to the appellate or revisional authority and not to any parallel authority. This apart, the consultation with several members of one or more committees of the Federal Society is in the very nature of things unsuitable for assessing the material and coming to any conclusions on the strength thereof. The words "effective consultation" by reference to an obligation to supply "entire material" to the consultee body are indeed out of tune with the true scheme of the section or indeed with any scheme where the quasi-judicial authority is required to record its finding. Consultation can only mean on some other material independently of the material collected by him. To expand the scope of such consultation, would, rather than eliminate the arbitrariness and facilitate

proper decision, prove to be obstructive, and also destructive of the very object of such consultation.

9. On the other hand, there is every reason to hold that the intended consultation is meant for the benefit of the consultee Federal Society itself. As indicated earlier, affiliated society happens to be a part of organisational set up of such Federal Society, and removal of the managing committee of any such affiliated society is likely to have adverse effect on the financial commitments or organisational set up of such Federal Society and may even go to affect its business. Such effects by themselves can not be determining factors, if otherwise removal of the society is necessitated by the material detected and collected by the Registrar. But the Legislature seems to have thought it necessary to require the Registrar to bear in mind such adverse effects, if any, on the Federal Society concerned, before he makes up his mind finally. In other words, the consultation is a substitute for giving a hearing to the Federal Society likely to be affected indirectly. Show cause notice does not seem to have been found necessary. After all, indirect and incidental effects thereof obviously happen to be of a secondary importance.

10. Section 7 (1) (iii) of the Act and Rule 70 of the Rules thereunder empowers such Federal Societies also to send requisition for the special meeting of the society and also for enquiry. This also is indicative of the interest such Federal Societies can claim to have in the affiliated society. Section 46A of the repealed Act No. VIII of 1925 required the Registrar to bring to the notice of the Federal Society such defects as are detected by him in the course of the inquiry or audit when the same are intended to be brought to the notice of the society itself. Section 468 (2) also required the Registrar to consult the financing Bank, if any, of the society where removal of the managing committee was under consideration. The object of these provisions and section 78 seems to be the same, viz. to afford an opportunity to such Federal Societies, whose business set-up is likely to be affected indirectly by the proposed removal of the affiliated society.

11. Once the object of the consultation is ascertained in the light of the context and the setting and the constitution and the qualification of the consulted body, finding of the nature extent and contents of such consultation does not admit of any difficulty. If the consultation is for the benefit of the consulted body, a mere information to it, of the proposed action, and the grounds therefore, should be enough to alert them to find out how such removal is likely to affect them. Society may not respond, if the action is not likely to affect it in any manner. In that case no further obligation rests on the Registrar either to remind such Federal Society or move otherwise any further in the matter. If the Federal Society feels that the proposed move is likely to affect it, then it is for it to initiate the next step by putting the case or its view before the Registrar, and indicate if it wants discussion in the matter in person with the Registrar or otherwise. It is open for it to ask for some more material, if it is found necessary

for protection of its interests. The Registrar is bound to afford it every facility and supply such information which is necessary to protect its interest. The question of there being no effective consultation or the full material having not been supplied cannot arise, unless the society indicates its interest and concern in the proposed action and unless the society itself initiates any move in getting further material from the Registrar. Federal society in the present case, not having communicated any interest or concern and not having initiated any move in the matter, the question of there being no effective consultation or the Registrar having failed in giving required full material to it does not arise. Liability to furnish copies of defences or any further material to the society by the Registrar of his own cannot be split out of the mere obligation to consult. Grievance of there being no effective consultation in the present case cannot but be rejected as being purely imaginary, particularly when the same is not made by the Federal Society.

12. This would also further go to show that any such Federal Society can have no voice in the matter of the set-up to follow after the removal of its committee or any member. The Registrar, as the head of the co-operative department, and the person seized of the defects in the working of the society, on alone Judge as to what remedy is called for. On the other hand, there is no indication in the scheme of the Act as to how the Federal Society can claim to be-qualified to advise the Registrar on this point.

13. Reliance was placed by Dr. Naik on the judgment of a Single Judge of the Punjab High Court reported in *Ajit Singh v. The State of Punjab* 66 Co-op. Law Journal 353, *Radheshyam Sharma (supra)*, *B. Pushpam (supra)* and *Narayana Shankatan Mooss (supra)*. The first two cases, no doubt, deal with somewhat identical provisions as to consultation in the local enactments. There are no means of knowing how these enactments answer several points discussed above. It is also not knowing what exactly is intended to convey by requiring the Registrar to supply "full material" or "entire material", to the consultee body. In the Madras High Court case of *B. Pushpam* and the English cases referred to therein, the Courts were dealing with the provisions requiring the Government to consult the local authorities where some changes in the existing limits of such local authorities were proposed. Consultation provided in the corresponding enactments appears to be a substitute for the hearing required to be given to them, as the only directly affected bodies by the proposed alterations, before the final decision is reached. The requirements of consultation in such a case are bound to be different from the one like the present case where the Federal Society is not directly affected and consultation is intended merely to enable it to appraise its apprehended adverse effects. Observations either in the Madras case or in the English cases referred to therein thus can have no relevance. Even so, observations of the Privy Council in the case of *Port Louis Corporation v. Attorney General of Mauritius* 1965 AC 1111, dealing with identical situations, are pertinent:

The requirement of consultation with the local authority concerned." Observed their Lordships:

Must be subject to a condition or assumption that the local authority will be ready and willing to avail itself of a reasonable opportunity to state its view.

These observations indicate that the question of any further consultation will not arise where the consulting body like Federal Society does not evince any interest in the proposed action of the Registrar in spite of being appraised of it under the copy of the show cause notice.

14. It is true that in the case of Narayan Shankaran Mooss the revocation of a licence to distribute electricity was invalidated by the Supreme Court on the self ground that copy of the reply given by the licensee to the show cause notice was not placed before the State Electricity Board. However, the scheme under which the consultation by the Government with the Board, before the revocation of licence, is made obligatory, does not furnish any parallel whatsoever to the scheme u/s 71b of the Act. In the first instance, the Electricity Board is a statutory body brought into existence with the sole object of supervising the production and distribution of electrical energy. Secondly, the body consisted of the experts having statutory duties to perform. Thirdly, these provisions were introduced in the enactment by Amendment Act, after the Supreme Court held that any restrictions under any statute on the fundamental rights of citizens to carry on business under Article 19 of the Constitution would not be reasonable unless the statute ensures effective opportunities of being heard to the citizens affected. We are not dealing in the present case with any statutory body, having statutory obligations, and duties, nor the right of any person merely to be a member of the managing committee can be equated with the fundamental right to carry on business nor the temporary restrictions imposed on the members of the society in their interests, can amount to infringing their fundamental rights.

15. Dr. Naik, however, contends that the provision as to consultation u/s 78 is mandatory and even minor lapses in the compliance therewith would render the order invalid. Strong reliance was placed on the Division Bench judgment of this Court in *Little Gibbs Coop v. State* 1971 Mh. LJ 969 = 73 Bom. LR 773 and the Supreme Court judgment in the case of *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, in addition to the ratio of the case of *Narayan Mooss* (supra) and *Radhey Sham* (supra). Mr. Savant, the learned Advocate appearing for the petitioners in Special Civil Application No. 709 of 1975, adopted the arguments of Dr. Naik and drew our attention to the judgments of the Supreme Court in the cases of *Chandramouleshwar Prasad Vs. The Patna High Court and Others*, The test to find out whether the provision is mandatory or directory is laid down by the Privy Council in the leading case of *Montreal St. Ry. Co. V. Normandin*. A I R 1917 P C 142 The foregoing discussion about the object of the consultation clause in section 78 and the nature, contents and the extent thereof is almost decisive, if not, conclusive of this point urged by Dr. Naik. Several features of this provision militates against its being mandatory.

16. As discussed earlier, the consultation is indeed for the benefit of the consultee Federal Society itself and not for the benefit of the society whose management is intended to be removed. Such consultation is necessary only in the event of its being affiliated to such Federal Society, no consultation being provided where management of any other society, including that of the Federal Society itself is intended to be removed. Consultation with all such members of the committee of any one or more Federal Societies can be hardly of any practical use, excepting for ascertaining the adverse effects on them of the proposed action. The membership of the managing committee of the Federal Society is not made dependable on any particular qualifications or standing beneficial for such consultation. The obligation to consult the Registrar is unilateral. The Federal Society is not under any legal obligation to advise. In the absence of any statutory obligation to advise and any provision dealing with such omission of the Federal Society, persons affected by such failure or indifference, i.e. the managing committee members and shareholders of the society in question as also the affected section of the public, has no control over it to enforce such consultation. It will be inappropriate to implant the conception and requirements of consultations conceived under other enactments, into the consultation u/s 78 of the Act. The words "effective consultation" and "obligation to supply full material" have indeed no meaning under this Act where Federal Society itself does not evince any interest and cannot be compelled to do the same. I have indicated how judgment in Narayan Shankaran Mooss's case is distinguishable. In Radheshyam's case the M. P. High Court was dealing with the provision requiring the Registrar to consult the Reserve Bank while proceeding to remove the committee of a Co-operative Bank. The case is distinguishable as such consultation with the Reserve Bank of India, having a statutory obligation to supervise the Banking concern stands on a quite different footing. It is an error to assume that in Rajagopal Naidu's case (supra) the Supreme Court has held the corresponding provision in Madras Act as mandatory. The only question that arose for consideration was whether the Registrar could proceed to remove the committee on information received otherwise than under sections 64, 65 and 66 of the said Act. The High Court invalidated the "removal" order holding that he cannot. The Supreme Court held that the Registrar could have so acted. While so holding, incidentally it is observed that not the condition of relying on the information under sections 64 and 66 but of holding inquiry and consultation with the Federal Society were the condition precedents. Words "condition precedents" like "shall" even in a statute by themselves cannot be decisive on this point. No such inference can be drawn from mere such words by any judgments. The same is true of the judgment of Little Gibbs Co-op, delivered by myself. The case mainly proceeded on the effect of variance in the charges framed and the facts found. There was no occasion to find out the nature and scope of "consultation." The observations therein that consultation is the condition precedent and operates as check on the possible abuse of power and that it is not an empty formality are unexceptionable. In fact no Legislature requirement can ever be said to be empty formality. It is, however, difficult to conclude merely therefrom that

the provisions are mandatory. It is in error to assume that the condition precedent in every enactment happens to be mandatory. Whether it is or it is not must necessarily depend on several factors and not on the fact of its being a condition precedent. With respect, I find myself in agreement with the view expressed by Patel and Bal JJ. in Special Civil Application No. 763 of 1965 decided on 28th July, 1965, though the judgment does not set out any reasons. There is no merit in this petition and it is liable to be dismissed.

17. The rule is thus liable to be discharged.

P.M. Mukhi, J.

18. I agree with my brother Deshpande J. that the petition be dismissed and the rule discharged.

19. I wish, however, to make my own observations and give my own reasons on some of the points which arise in this petition. In my view the petition raises a somewhat important question of law as to what is meant by "consultation

20. Although the facts of the case have already been set out, it is appropriate to state that in the petition before us the Managing Committee of respondent No. 3 the Lasalgaon Vibhag Sahakari Kharedi Vikri Sangh Ltd. was, by an order dated the 17th of July 1974, removed, or as the popular expression goes, superseded.

21. The action was taken u/s 78 of the Maharashtra Co-operative Societies Act, 1960, (hereinafter referred to as "the Act") which provides that the Registrar may exercise the power of removal of the Committee or a member of the Committee of a society after consulting the Federal Society to which such society is affiliated.

22. Now, the only action in that behalf, i.e. "consultation", which the Registrar appears to have taken was that a copy of the show cause notice issued by him on the 14th of June 1974 was endorsed to the Chairman of the Federal Society concerned, viz. the Maharashtra State Co-operative Marketing Federation Ltd.

23. The short question which has arisen in this petition is whether it is permissible to the Registrar under the powers conferred on him by section 78 of the Act to remove the Committee of a Society or a member thereof without effectively consulting the Federal Society to which such Society is affiliated.

24. Apart from the question whether such consultation is mandatory or merely directory, the question that arises is as to (a) what is the stage at which the Federal Society is to be consulted; (b) what is the material that is required to be placed before the Federal Society in order to enable the Federal Society to give its opinion or advice; and (c) what is the manner or mode of such consultation.

25. In other words, in so far as this petition is concerned, the question would be whether sending a copy of the show-cause notice to the Federal Society on the 14th of June 1974, without anything more, would amount to a "consultation" within the meaning of the relevant provision of the Act.

26. It has been urged by Dr. Naik the learned Advocate for the petitioners that consultation must be, effective consultation, and that on the facts of this case there has been no consultation at all, much less an effective one.

27. The 1st respondent-District Deputy Registrar, Co-operative Societies, Nasik, Shri B. D. Pawar, whose order is impugned has filed an affidavit in an effort to show that he had complied with the provisions of section 78 of the Act in so far as it provides for consultation with the Federal Society to which respondent No. 3--Society was affiliated.

28. Now, there is no dispute that the only manner in which the so-called consultation was said to have been done was by sending a copy of the show-cause notice dated the 14th of June 1974, with an endorsement at the foot thereof, requesting the Chairman of the Federal Society to offer his opinion in respect of removing the Committee of the Society.

29. The affidavit of the 1st respondent then proceeds to make a somewhat curious statement in the following words:

I further state that I had taken all the steps for an active consultation of the Federal Society as is evident from the endorsement made by me on the copy of the said show-cause notice which was transmitted to the Federal Society. The transmission of the said copy was with a view to have active consultation- of the Federal Society.

I must confess that I have been unable to understand what the 1st respondent means by the use of the words "active consultation", if the only thing that he did was to send a copy of the show-cause notice to the Federal Society. There is nothing to suggest that any further effort was made or any other communication sent to the Federal Society. There is no suggestion that there was any correspondence or a meeting between the 1st respondent and the Federal Society. There is also nothing to suggest that after the 1st respondent had considered the reply received from the members of the Committee concerned and tentatively decided to remove the Committee, he informed the Federal Society that that stage had been reached and the opinion was awaited.

30. It is significant that all that can be said is that the Federal Society was informed that a show-cause notice had been sent. Can doing so be said (o be consultation ?

31. It is necessary to understand what the word "consultation" connotes,

32. As is stated in Corpus Juris Secundum, Volume 16-A, page 1243: -

The word "consultation" is defined generally as meaning "the act of consulting"; deliberation with a view to decision; and judicially as meaning the deliberation of two or more persons on some matter.

33. Now, "consultation" may, of course, have a somewhat different or larger connotation in a particular connection, for instance, as a conference between

Counsel and client, or a consultation with a medical person for the purpose of treatment.

34 And the word "consultation" has, of course, to be contrasted with the word "concurrence", because it would appear that in the matter of consultation the opinion or advice received from the person or body consulted may not be binding, whereas the requirement of "concurrence" would mean that both parties must agree before any particular action can be taken.

35. It is also important to note that the word ""consultation" must be understood in relation to the context of the enactment in which it appears and the legislative intent as to the purpose for which such consultation is provided.

36. The manner in which consultation is to be effected will also depend upon the object of such a consultation and for whose benefit such consultation has been predicated. A question may be asked whether the provision for consultation is for the benefit of the party to be consulted or whether it is intended as a protection or safeguard for the party proceeded against.

37. But there is no doubt that consultation must be meaningful and effective consultation if it has to have in law any value or consequences.

38. It can never be said with any show of reason or propriety that when a particular statute provides for consultation it may be looked at as a mere formality. As stated by this Court in *Little Gibbs Co-operative Housing Society Ltd. v. The State of Maharashtra* 1971 Mh LJ 969 = 73 Bom. L R 773, to which my brother Deshpande, J. was a party, consultation with a Federal Society, as provided in sub-section (1) of section 78 of the Act was not an empty formality. While so stating, the Court also held that the conditions which are required to be satisfied prior to the exercise of the authority and power under that section were (1) an opportunity to the Committee or its member, as the case may be, of stating its or his objections, and (2) consultation with the Federal Society. It was then observed that the safeguards, viz. the opportunity to be heard and consultation with the Federal Society, appear to have been provided for as a safeguard against misuse of powers by the Officers of the Co-operative Department.

39. Now, if consultation provided in the Act is not to be an empty formality, then it logically follows that consultation must be on the basis of relevant material furnished to the party, who is to be consulted and that consultation must be at the appropriate stage.

40. Now, there can be little doubt that unless the person to be consulted has been provided with all the relevant materials on which the opinion or advice to be given by that person is to be based, there can be no effective or meaningful consultation, and any "consultation" that may take place without the relevant material would degenerate into an empty formality.

41. In *Rollo v. Minister of Town and Country Planning* (1948) I All E R 13, the

Court of Appeal was considering the relevant provision under the New Towns Act, 1046, which provided for consultation with any local authority by the Minister concerned. Bucknill, L.J. said :

Consultation.. means that, on the one hand, the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender that advice.

42. This aspect of the matter was considered by the Madhya Pradesh High Court in *Radheshyam v. Government of Madhya Pradesh* 1973 Co-operative Tribunal Decisions page 190 at 197. The Court observed :

The very object of consultation is to obtain the view of the person or body to be consulted in order to arrive at same conclusion in respect of the matter on which the advice is sought. No doubt the best way to consult would be to discuss the entire matter at a conference table so that there may be full and fair exchange of views but that is neither possible nor feasible in many cases. In our view the requirement as to consultation would be duly fulfilled if the person to be consulted is supplied with all material available on the basis of which a particular conclusion has to be reached and in opinion is sought on the points in issue after indicating how the authority which seeks to consult views the matter."

43. I find myself in respectful agreement with this interpretation as to the meaning and object of consultation and with the further observations of the Madhya Pradesh High Court that:

Sufficient information or in other words all relevant material must be supplied to the person to be consulted to enable him to tender advice, inviting his attention to the points on which the advice is sought, indicating how the authority seeking advice views the matter.

It is implicit, of course, that the person consulted must have sufficient opportunity to tender the opinion or advice sought from him even though the authority concerned may not be bound to accept such opinion or advice. For instance, even with sufficient material if adequate time is not given to the party to be consulted, it cannot be said that the provision as to consultation has been complied with.

44. The Supreme Court in a recent case in *Narayanan Sankaran Mooss Vs. The State of Kerala and Another*, , had occasion to consider a similar provision appearing in the Electricity Act of 1910, which provided that the licence to generate and distribute electricity may be revoked if the State Government was of the opinion that it was in the public interest to do so and after consulting the State Electricity Board. Apart from the fact that the Supreme Court having regard to the object and context of the relevant statute came to the conclusion that consultation with the State Electricity Board was a condition precedent and was mandatory, the Court held that there had been no proper consultation

because in that case the consultation with the State Electricity Board was made prior to the receipt of licensee's explanation to the show-cause notice for revocation of licence and, therefore, the Board could not be said to have been consulted after the explanation was received from the licensee.

45. In my view, this shows that the party to be consulted could never be said to have adequate material on which to arrive at an opinion or to tender advice if all that it has in its possession is information that a show-cause notice had been issued and that certain charges had been levied.

46. The next aspect of the matter is the stage at which the consultation is required to be made in order to be a meaningful and effective consultation.

47. In the petition before us section 78 of the statute provides that the Registrar may issue a show-cause notice on the grounds stated and after giving the Committee or the member, as the case may be, an opportunity of stating its or his objections, decide whether he should remove the Committee or remove the member and make a consequential provision as to how the affairs of the Society are to be conducted, either by an Administrator or by a freshly nominated Committee. In other words, the Registrar after complying with the rule of Audi Alteram Partem and giving a reasonable opportunity to the person or persons charged, has to arrive at a tentative conclusion. It is only then that the statute requires him to consult the Federal Society to which the Society is affiliated. If the Registrar were to accept the explanation offered and decide not to remove the Committee or a member thereof the occasion for consultation would simply not arise.

48. It is substantially clear from section 78 of the Act that the Registrar has to proceed in stages. First, he must form a tentative opinion that there is certain material on the basis of which a charge can be levied. That is how he issues a show-cause notice and calls for an explanation, or, in the words of the statute, "gives an opportunity to the Committee or the member to state its or his objections.

49. When the explanation or the objections are received, he must consider them. If he accepts the explanation, then that is the end of the matter. But if he is not satisfied with the explanation or the objections, then he may decide to take punitive action and remove the Committee or the member thereof. This completes the second stage.

50. In my view, it is substantially clear that it is only at this stage that the statute requires him to consult the Federal Society and it follows that he must furnish to the Federal Society both the show-cause notice and the explanation or the objections received by him from the Committee or the member concerned. In his communication to the Federal Society for the purpose of such consultation he must obviously indicate that subject to what the Federal Society says, he had made up his mind to remove the Committee or a member concerned, as the case may be. It is only then that the Federal Society can be said to be in a position to

give its opinion and advice as to (a) whether the Committee or a member thereof should be removed at all; (b) if the Committee or member is to be removed, then what would be in the opinion of the Federal Society the appropriate consequential arrangements for the proper administration of the Society.

51. It has been suggested that if the Federal Society can also give an opinion that the Committee or the member, as the case may be, should not be removed, then that would amount to interference with the deliberation and decision of a quasi judicial authority. It is difficult to appreciate how any advice given by the Federal Society that on the facts of the case the extreme and drastic action of removal should not be reported to would be interference in the deliberation of a quasi-judicial authority. Even if conditions exist for the exercise of the power by the Registrar there may be factors present which may require or make it expedient that the power should not be exercised.

52. It is, of course, clear that the Registrar will not be bound to follow the opinion or advice of the Federal Society, but it is expected that good advice will never be unreasonably discarded.

53. I do not wish to lay down any rule as to what is the relevant material which must be furnished to the party to be consulted, it will all depend upon the facts of each case, but all that is required is that there must be sufficient information of material on the basis of which a reasonable man can be expected to give his opinion or advice.

54. As stated in *Port Louis Corporation v. Attorney General of Mauritius* 1965 AC 1111, to which reference has been made by my brother Deshpande, J., their Lordships of the Privy Council observed:

The requirement of consultation is never to be treated perfunctorily or as a mere formality. The local authority must know what is proposed. They must be given a reasonably ample and sufficient opportunity to express their views or to point to problems or difficulties; they must be free to say what they think.

55. It requires to be noticed that in that case there was some correspondence between the parties, but the local authority felt that it must have further information on 54 points before the authority would be in a position even to study the proposals. On the facts of the case, their Lordships came to the conclusion that a reasonable opportunity had been given to the local authority who had both time and opportunity, but did not chose to give its opinion.

56. In this state of the law and on the facts of this case, can it be said, with any show of reason, that the first respondent, Deputy Registrar, had consulted the Federal Society in terms of the statute? In my view, there was no consultation at all. Merely sending to the Chairman of the Federal Society a copy of the show-cause notice could not indicate anything more than that certain charges had been preferred. At that stage nobody could envisage that after receiving the explanation the 1st respondent would necessarily decide to remove the

Committee of the third respondent-Society. If he had accepted the explanation of the Committee or the member concerned, then there was no occasion for consultation.

57. It is appropriate at this stage to refer to the observations of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, which go to show that the provision as to consultation even if it was, in relation to a particular statute, its object and scope, not to be held to be mandatory, the authority is duty bound to obey the statute and consult the party as so provided. In other words, the Supreme Court has held that it is not open to the authority concerned to ignore the provisions as to consultation. Such a provision is meant to be followed both in letter and in spirit.

58. Now, as regards the question whether the provision as to consultation in section 78 of the Act is mandatory or directory, I agree with my brother, Deshpande, J but only to the extent, that on a proper interpretation of the relevant provision, in the light of the object and context of section 78 of the Act it cannot be said that consultation by the Registrar with the Federal Society concerned is an imperative condition to the extent that non-compliance with that condition would invalidate the order.

59. As a matter of fact, in my view, the question may be looked at from a somewhat different angle. It requires to be noticed that this petition has been filed by one Karbhari Govindrao Patil and Lasalgaon Vividh Karyakari Seva Sahakari Society Ltd. and the factual situation is that the 1st petitioner representing the 2nd petitioner served as a member of the Managing Committee of the 3rd respondent. As a result of the removal of the Committee by the order of the 1st respondent, the 1st petitioner has ceased to be a member of the Committee of the 3rd respondent-Society. In other words, the petitioners, who have filed this petition, are persons who feel aggrieved by reason of the Managing Committee of the 3rd respondent having been removed or superseded. It is, therefore, appropriate to find out whether the petitioners can claim that the consultation provision in section 78 of the Act has conferred any right on them as such. It is only, if they were to show that the consultation provision conferred a right on them that they can further go on to claim that the absence of consultation or any irregularity in consultation afford to them a cause of action in a Court of law and it is such that it would entitle them to relief under the powers of this High Court under Article 226 of the Constitution.

60. It is sufficient for me to state that having regard to the object and context of section 78 of the Act as well as the legislative intent which clearly appears therefrom, the purpose of consultation by the Registrar with the Federal Society seems really to be for the benefit of the Federal Society concerned, who, having some nexus with the 3rd respondent-Society, may require to be heard before the supersession order is passed. It does not appear to mean that the consultation provision on the facts and circumstances of the case and having regard to the statute is an additional safeguard to the petitioners. It is not necessary to

consider the rights of the Federal Society, if any, in this petition, but it is sufficient to state that the consultation provision in section 78 of the Act does not furnish a right to the petitioners, which could be recognised and enforced by a writ.

61. Looked at from this point of view, it is substantially clear that the consultation provision can at best be said to be directory, although that is not to say that the authority concerned is absolved from complying with the statutory requirement.

By Court :

62. In the result the petition is dismissed and the rule is discharged with costs.