

(1987) 09 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No's. 4470, 3430 and 3785 of 1986 and W.P. No's. 459, 2731, 2686, 2649, 2581 to 2583, 3148 to 3151, 2646, 3485, 3216, 2683, 2966 and 3275 of 1987

Murlidhar Bhaulal Malu

APPELLANT

Vs

Sudhakar Honaji Patil and another

RESPONDENT

Date of Decision : 18-09-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(c), 19(1)(g), 43A

Maharashtra Co-operative Societies Act, 1960 — Section 11, 144E(1)(a), 2, 22(1A), 4

Citation : (1987) MhLj 944

Hon'ble Judges : C.S. Dharmadhikari, Acting C.J.; T.D. Sugla, J

Bench : Division Bench

Advocate : B.R. Naik, Y.R. Naik, Prashant Naik, Ajit P. Shah, M.D. Lonkar, P.M. Pradhan, Bhimrao N. Naik, C.J. Sawant, A.Y. Sakhare, A.V. Sawant, V.D. Hon, R.N. Dhorde and R.B. Raghuwanshi, for the Appellant; A.S. Bobde, Advocate-General with H.L. Gokhale, A.G.P. For State, R.N. Dhorde, Bhimrao N. Naik, S.G. Page, T.K. Patil and Y.R. Naik, for the Respondent

Judgement

C.S. Dharmadhikari, Actg. C.J.

1. Since all these writ petitions involve common questions of law and fact they were heard together and are being disposed of by this common judgment.

2. In these writ petitions the provisions of Section 73FF of the Mah. Co-operative Societies Act, 1960 as a whole are challenged on various grounds. However, we are mainly concerned with the provisions of Section 73FF(1)(i)(c) and 73FF(1)(vi) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the said Act). Section 73FF came to be inserted in the said Act by Maharashtra Act XX of 1986, which came into force with effect from 12th of May 1986. By the said Act Section 78 also came to be amended. Section 73FF deals with the disqualification of membership of the Committee. Since section as a whole is challenged before us it will be worthwhile to reproduce the said section verbatim :

"73FF(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he -- (i) is a defaulter of any society;

Explanation -- For the purpose of this clause, the term "defaulter" includes?

(a) in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date;

(b) in the case of term lending society a member who defaults the payment of any installment of the loan granted to him;

(c) in the case of any society, --

(i) a member who has taken anamat or advance; or

(u) a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable; and fails to repay the full amount of such anamat or advance or pay the price of such goods or commodities or charges for such service, after receipt of notice of demand by him from the concerned society or within thirty days from the date of withdrawal of anamat or advance by him or from the date of delivery of goods to him or availing of services by him, whichever is earlier;

(d) in the case of non-agricultural credit societies, a member who defaults the payment of any installment of the loan granted;

(e) in the case of housing societies, a member who defaults the payment of dues to the society within three months from the date of service of notice in writing served by post under certificate of posting demanding the payment of dues;

(ii) has, in the opinion of the Registrar, deliberately committed breach of cooperative discipline with reference to linking up of credit with cooperative marketing or cooperative processing; or

(iii) has been held responsible u/s 79 or 88 or has been held responsible for payment of costs of inquiry u/s 85; or

(iv) has incurred any disqualification under this Act or the rules made thereunder; or

(v) carries on business of the kind carried on by the society either in his name or in the name of any member of his family or he or any member of his family is a partner in a firm or a director in a company which carries on business of the kind carried on by the society;

Explanation: For the purposes of this clause, the expression "family" means a wife, husband, father, mother, brother, sister, son, daughter, son-in-law, or daughter-in-law; or

(vi) is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be or is selected or elected to any reserved seat on the committee of a society u/s 73BB.

(2) A member who has incurred any disqualification under sub-section (1), shall cease to be a member of the committee, and his seat shall thereupon be deemed to be vacant".

3. Section 73FFF deals with the eligibility for re-appointment, or re-election as a member of the Committee. Under sub-section (3) of Section 73FFF it is provided that a member of a committee who has ceased to be a member thereof on account of having incurred any disqualification other than disqualifications referred to in sub-sections (1) and (2), shall unless otherwise specifically provided in the Act, be eligible to be re-nominated, re-co-opted, re-appointed or re-elected as a member of the committee as soon as such disqualification ceases to exist. Then comes Section 78 which deals with the power of removal of the Committee or member thereof. It has been held by the Division Bench of this Court in Writ Petition No. 2245 of 1986 Keshavrao Narayanrao Patil alias Babasaheb Dhabekar vs. District Deputy Registrar of Cooperative Societies, Akola and others decided by V. A. Mohta and A. A. Desai JJ. on 16th and 21st of April 1987, 1987 Mah. L.J. 709, that the provisions of Section 73FF cannot be read in isolation and the same will have to be read with the provisions of Section 78 of the said Act. The Division Bench further held that passing of an order of removal as required under the provisions of Section 78 in the matter of incurring disqualification u/s 73FFQ) is mandatory and the cessation of membership u/s 73FF(2) is not automatic. Another Division Bench of this Court to which one of us (Dharmadhikari J.) was a party, in Suresh Dnyandeo Khumkar and ors. vs. State of Maharashtra and ors. 1987 Mah. L. J. 474, had an occasion to deal with the question of consultation with the Federal Society within the contemplation of Section 78(1) of the said Act. Therefore the challenge raised before us to Section 73FF of the said Act will have to be tested and understood in the context of these decisions. Though practically each and every subsection of Section 73FF of the said Act was challenged, ultimately at the time of hearing having regard to the facts and circumstances of the cases with which we are concerned, arguments were restricted to the provisions of Section 73FF(1)(i)(c) and 73FF(1)(vi) of the said Act. Therefore, we will prefer to keep open the challenge to other subsections of Section 73FF.

4. Dr. B. R. Naik, Shri Bhimrao N. Naik, Shri Ajit P. Shah and Shri C. J. Sawant, learned Counsel appearing for the Petitioners have contended before us that the word "defaulter" appearing in clause (i) of sub-section (1) of Section 73FF has not been defined. The explanation to the said clause, however, gives an inclusive meaning of the word "defaulter", which, creates further confusion. There is no

indication as to what precisely is meant by the term "defaulter". Does the default contemplated relate only to default in payment of money or is it a default in something else as well ? In the case of primary agricultural credit societies, the date of default is the due date. In the case of a term-lending society, the date of default is again the due date of the installment. In the case of non-agricultural credit societies, again the date of default is the date on which the installment is due. In these three categories, the due dates ordinarily would be fixed at the time when the advances are made. While in these three cases the date of default is the due date, in the categories contemplated by sub-clauses (c) and (e), the due dates are entirely different. There is no justification as to why the due dates under sub-clauses (a), (b) and (d) should have been the due dates of installments, and the date of default under sub-clauses (c) and (e) should have been different. All Co-operative Societies fall within the same class under sub-clause (27) of Section 2 of the said Act. Within the same class of credit societies there is discrimination which is violative of Article 14. There is no classification at all. Assuming that such classification exists, the same is not based upon any intelligible differentia distinguishing those who are put together from the others left out of the group. Furthermore, such differentia does not have any rational relation or nexus with the objects sought to be achieved by the said Act. Sub-clause (c) of clause (i) is wholly arbitrary. The word "anamat" appearing in the said sub-clause means an amount paid on account. Any amount which is paid on account may either be explained by adjustment as having been spent in full or partly and upon accounts being rendered in respect thereof. In the case of the societies falling under sub-clause (c), the words "whichever is earlier" produce absurd results. If a notice of demand is given within the 30-day period, the outer limit of 30 days is not available and the default must operate immediately, depending upon an earlier notice. Quite apart from it, situations may arise where a notice is not given and also a bill is not submitted, and, therefore, in the absence of a bill or notice, a person may not pay the amount due for goods purchased or services availed of, and in the meanwhile a period of 30 days could elapse. In such cases, the person nevertheless is disqualified even though he has no intimation of the amount due for the goods purchased or for the services availed of. In the case of a co-operative society covered by sub-clause (c), the Anamat or advance may be payable under a contract after 30 days. It is also possible that under a contract the price of goods delivered or the amount payable for services rendered may also be payable beyond 30 days by virtue of contract with the society. In other words, a Co-operative Society legitimately could enter into a contract with the member that the amounts contemplated by sub-clause (c) are to be paid, not within 30 days, but say after three months or six months or a year. Such a contract would be permissible under the law, since there are no inhibitions under the said Act, the Rules made thereunder or the bye-laws, or otherwise. In spite of it, under sub-clause (c), notwithstanding such contract, the right which has accrued to the members of paying the dues at a later date is taken away and he is obliged to pay as soon as demand is made or within 30 days, whichever is earlier. This, it is submitted by the Counsel is wholly arbitrary.

The Legislation thus restricts the rights of members of cooperative societies to carry on their trade or occupation guaranteed under Article 19(1)(g) of the Constitution of India.

5. It was then contended that clause (vi) of sub-section (1) of Section 73FF of the said Act is a copy of Section 144-E(1)(a). It is submitted that the provisions contained therein are wholly arbitrary. The Constitution of India has guaranteed that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. It is precisely because of Article 43A of the Constitution of India that Section 73-BB was enacted. Having given effect to the Directive Principles of State Policy under Article 43-A, the Legislature is trying to reverse the same under clause (vi) of sub-section (1) of Section 73FF. Clause (vi) in its wide sweep covers all cooperative societies, regardless of whether any conflict of interest arises or not. If a conflict of interest is not involved, the question of a person being disqualified does not arise. Within the same class of salaried employees, some are permitted to participate in the managing committee, viz. a managing director or other officer declared by the State Government or any person selected, or nominated u/s 73BB of the said Act. There is absolutely no justification as to why some are brought within the mischief of the said provisions and the others are excluded. Further the said clause tries to reach every type of employee in every cooperative society. This is wholly arbitrary. There is no classification at all. Assuming that any classification exists, the same is not based upon any intelligible differentia distinguishing those that are grouped together from the others left out of the group. Furthermore, such differentia does not have any rational relation or nexus with the objects sought to be achieved by the said Act. Thus these provisions are violative of Arts. 14, 19(1)(c) and 19(1)(g) of the Constitution.

6. On the other hand it is contended by Shri A. S. Bobade learned Advocate General and Shri H. L. Gokhale, A.G.P, that the said provisions are neither arbitrary nor are violative of petitioners' fundamental rights guaranteed under Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India. They further contended that the arguments advanced by the petitioners are based on misreading and misinterpretation of Section 73FF of the said Act. According to the learned Advocate General, if all the sub-sections of Section 73FF are read together and harmoniously, it provides a complete Code so far as disqualifications are concerned. Disqualification should be specific as its consequences are penal. Cooperative movement being a socio-economic and moral movement, Legislature thought it fit to enact the provisions of Section 73FF to ensure cooperative discipline and remove conflict between the interest and duty so as to ensure purity in administration and working of the cooperative societies.

7. Section 73FF provides for disqualification for being a member of a Committee.

According to the said sub-section (i) to the said section, no person shall be eligible for being appointed, nominated, elected, co-opted or for being a member of a committee if he is a defaulter of any society. Then comes explanation which explains the meaning of the term defaulter. Definition in that behalf is inclusive. Sub-section (1)(i)(c) of Section 73FF explains as to who could be termed as a defaulter in the case of any society. Obviously a society other than the one covered by sub-clauses (a), (b), (d) and (e) of the said Section, are covered by clause (c). It is no doubt true that the sub-section (c)(ii) is not happily drafted. It appears that in the initial Bill the structure of section was different. However, the Selection Committee in its report suggested certain changes. Para 34 of the Joint Committee's report, which is relevant for this purpose, reads as under :

"This clause seeks inter alia to insert a new Section 73FF in the principal Act. The new Section 73FF provides that no person shall be eligible for being appointed, nominated, elected or co-opted as a member of the committee of a society, if he is a defaulter of any society. The term defaulter has been defined to mean inter alia a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable and who fails to repay the price of such goods or charges for services within three months from the date of service of notice in writing by post under certificate of posting demanding such payment of price or charges. The Committee felt that instead of this period of three months, the disqualification should start after the receipt of notice of demand by him from the society, or within thirty days from the date of withdrawal of anamat or advance by him, or from the date of delivery of goods to him or availing of services by him, whichever is earlier. Clause 34 has been amended accordingly".

As a result of this recommendation of the Joint Committee present provision came to be redrafted. If the said provision is read literally, torn from its context and without ascertaining the intention behind it, it does create certain difficulties in its implementation. However, in our view the scope of this clause is clear. If it is read harmoniously and together with other sub-clauses, it is neither ambiguous nor unreasonable or unworkable as contended by the learned counsel for the petitioners. This clause is applicable to all the cooperative societies registered in the State of Maharashtra other than those referred to in clauses (a), (b), (d) and (e) of the explanation. The use of the words and expressions such as "on credit", "charges are payable", "fails to repay the full amount" "or pay the price of goods" etc., clearly indicate that the clause applies only to such cases where the price of goods or charges for services or the amount of anamat or advance are payable or refundable in cash. In other words if the payment of charges are to be adjusted in a manner other than payment in cash, this clause will have no application. This position has been fairly conceded by the learned Advocate General.

8. It is well settled rule that in interpreting the provision of a statute the court will presume that legislation was intended to be intra vires and also reasonable.

The rule followed is that the section ought to be interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the extent permissible. The reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It should be read as a whole and a provision of the Act, should be construed with reference to other provisions in the same Act, so as to make a consistent enactment of the whole statute. Further sub-sections must be read as parts of an integral whole, as being inter-dependent. Many times one sub-section throws light on another. It should be read harmoniously, together with other provisions of the Act, to make it consistent and reasonable. The purpose and object of prescribing the several disqualifications is to ensure purity of administration of the Cooperative Societies. From the scheme of the Act, it appears that two types of disqualifications are prescribed. One involving stigma and another conflict between interest and duty. Where stigma is involved disqualification appears to be absolute. As rightly contended by the learned Advocate General the provisions relating to the disqualifications should be specific as its consequences are penal in nature. It is a recognised principle of construction of penal statutes that its language should be so construed that no case shall be allowed to fall within its import, which does not fall within it, on reasonable construction of the enactment. Therefore, the section calls for a reasonable construction to avoid absurd results, or undue and unforeseen hardship. The provisions of sub-sections 73FF(1)(c) and (vi) will have to be read in the light of these well settled principles.

9. On proper reading of Section 73FF(1)(c), it is clear that a member who avails himself of any services from the society for which charges are payable in cash and fails to pay the charges for services within the period specified in that behalf, under the bye-laws of the concerned society or the contract or within a period of 30 days from the receipt of the notice of demand by him from the concerned society whichever is earlier, will become a defaulter. Similarly, a member who has taken anamat or advance and fails to repay the full amount of such anamat or advance, within such period as specified in that behalf, under the bye-laws, of the society or the contract or within 30 days from the receipt of notice of demand by him from the concerned society, whichever is earlier, will become a defaulter. Further a member who has purchased any goods or commodity on credit and fails to pay the price of such goods or commodity within the period specified in that behalf in the bye-laws of the society or the contract or within 30 days from the receipt of the notice of demand by him from the concerned society, whichever is earlier, then he will also be treated as a defaulter. If any other construction is given the purpose of the statute will be frustrated. If the section is so read then it is neither absurd nor unworkable. This position is further clear from other clauses of sub-section (i) of Section 73FF(1) of the said Act. However, the question as to whether a person is a defaulter or not must depend on the facts and circumstances of each case and no general rule can be laid down.

10. Sub-sections (v) and (vi) of Section 73FF(1) deal with different types of disqualifications. The activities referred to therein involve conflict between interest and duty. Even the likelihood of conflict is taken in its import. If a person carries on business of the kind carried on by the society either in his name or in the name of any member of his family or he or any member of his family is a partner in a firm or director in a company which carries on business of the kind carried on by the society, he is declared as ineligible for being appointed, nominated, elected, co-opted or for being a member of a Committee. Sub-section (vi) of Section 73FF(1)(i) deals with the salaried employee of any society. Sub-section (vi) of Section 73FF(1)(i) also cannot be read torn from its context. The disqualification contemplated by the said provision applies to salaried employee of any society other than a society of employees themselves or to a person who holds office of profit under any society except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special Order not to disqualify its holder or is entitled to be appointed or selected or elected to any reserved seat of the Committee of the society u/s 73BB, of the said Act. The word "any" cannot also be read torn from its context. It is by now well settled that the word "any" could be used as meaning "one" as contrasted with more than one. It is also used as covering several i.e. meaning all. A reference to Stroud's Judicial Dictionary shows that the word "any" according to the context can bear either meaning. (See also Narayan Tambaji and anr. vs. Rameshwar Guru Mahesh Puri and anr. 1957 N.L.J. 274 and Pfizer Employees Union Bombay vs. Mazdoor Congress, Bombay and ors. 1979 Mah. L. J. 571). In sub-section (vi) of Section 73FF(1) of the said Act, there is inherent evidence to indicate that the word "any" has been used in the said sub-section in a restrictive sense. The bracketed portion in the section i.e. (other than a society of employees themselves) is clear indicative of Legislative intent. This position is further clear from the later part of the section when it excepts a salaried employee who is entitled to be selected or elected to any reserved seat on the Committee of the society u/s 73BB of the said Act. Section 73BB provides for reservation of seats for the employees on the Committees of certain societies. The elections in the case of the societies where seats are reserved u/s 73BB of the said Act, are to be filled in by selection made from amongst such employees. Such a representative of employees, is also entitled to be elected as an officer of such society or to vote at any election of the officers. The provisions under clause (vi) of Section 73FF(1) of the said Act are founded on the imperative need for neutrality and impartiality. It is also enacted for avoiding the likelihood of conflict between interest and duty. The object of the provision is to secure independence of the members of the committee and to ensure that the committee does not include persons who are salaried employees of the society concerned, and in that position have received or can receive favours or benefits from the executive and, therefore, being under its obligation or being subordinate to it might be amenable to executive influence. Such a conflict between interest and duty can arise only qua the same society, or qua a federal society if the said society itself is a member of the

concerned federal society. If the said provision is so construed, in our view it does not run counter to the objects as enshrined in Article 43A of the Constitution of India or Section 73BB of the said Act.

11. Cooperative societies should be treated as a class by themselves, the ideal of which being selfless service to its members and through members and office bearers to the society at large. Further sub-classification is contemplated having regard to the nature of activities and area of operation. It is based on intelligible differentia, which is obvious. The right to form an Association is not denied by any of these provisions. Once an Association is registered in accordance with the provisions of the Act, the said Association or society has to function within the scheme and framework of the Act, Rules and Bye-laws. It is by now well settled that right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. Further even registration of a society is not an absolute right nor it is a matter of course. Section 4 of the said Act provides for registration of societies. Chapter III deals with the members and their rights and liabilities. Section 22(1A) reads as under :

"(1A) Notwithstanding anything contained in sub-section (1), the State Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any society or class of societies, by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment (as the case may be; and the question whether a person is or is not so engaged in or carrying on any profession, business or employment or whether a person belongs or does not belong to such class of persons as declared under this subsection and has or has not incurred a disqualification under this sub-section shall be decided by the Registrar u/s 11.)".

The qualifications and disqualifications, for becoming a member of society are laid down, obviously in the interest of cooperative movement. If this is so then in our view laying down further disqualifications for membership of the committee are obviously in the interest of cooperative movement as well as general public. The purpose behind it is to maintain purity of cooperative movement, and to avoid conflict between duty and interest. It is intended to ensure that there is no occasion for conflict between public duty and private interest. Therefore, it cannot be termed as arbitrary or violative of petitioners fundamental rights guaranteed under Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India.

12. Some debate was raised before us as to what will be the date relevant for deciding the question of disqualification so far as elections are concerned. The expression used is "no person shall be eligible for being elected.....as a member

of a society, if he is disqualified". The words "for being elected" will include whole series of steps in the process of election, starting with the nomination and ending with the announcement of election. Therefore the date of nomination will also be a relevant date. Such a disqualification should exist on the last date fixed for filing of nomination, as till that date nomination papers could be filed. This position was not disputed by the learned counsel appearing before us. Further from Section 73FFF(3) it is clear that a person is eligible to be re-nominated, re-co-opted, re-appointed or re-elected as a member on the committee as soon as his disqualification ceases to exist. The disqualification in that behalf will cease to exist if the person ceases to be a salaried employee of the concerned society, or ceases to be a defaulter on payment of the amount due. Therefore the said provisions cannot be termed as unreasonable, or arbitrary. As already observed ultimately as to whether a person is disqualified or not, must depend upon the facts and circumstances of each case and, therefore, individual cases will have to be examined in the light of the law laid down by us hereinabove.

13. In writ petitions Nos. 2581 of 1987, 2582 of 1987, 2583 of 1987, 2649 of 1987, 3116 of 1987, 2966 of 1987, 459 of 1987, 3275 of 1987, 2686 of 1987 and 3785 of 1986, the actions proposed are still at the initial stage. It is the case of the petitioners that having regard to the facts and circumstances of their cases they are not disqualified. Since the matter will have to be decided by the competent authority in accordance with the law laid down by us, after giving petitioners a reasonable opportunity of being heard and to put forward their respective cases, no interference is called for in these writ petitions at this stage. Hence Rule stands discharged in all these writ petitions.

14. In writ petition No. 2731 of 1987 also it is contended by the Petitioners that in fact they are not disqualified u/s 73FF(I)(c) of the Act and the order passed in that behalf by the Joint Director of Sugar and Administration and Joint Registrar of Cooperative Societies is wholly illegal. A further contention is also raised that since there was no meaningful consultation with the federal society before issuing the order, the said order is illegal. Obviously in view of the law laid down by us in this judgment, the matter requires re-consideration by the competent authority. Therefore, the order passed by the Respondent No. 7 dated 22-5-1987 is set aside and the matter is remitted back to him for fresh decision in accordance with law. Rule is made partly absolute.

15. In writ petitions Nos. 3148 of 1987, 3149 of 1987, 3150 of 1987 and 3151 of 1987, also the controversy involved therein will require reconsideration in view of the law laid down by us in this judgment. Therefore, the impugned orders dated 22nd June 1987 are quashed and set aside and the matters are remitted back to the competent authority for fresh decision in accordance with law. Rule is made partly absolute in all these writ petitions.

16. For the reasons given in this judgment the order passed by the Divisional Joint Registrar, Cooperative Societies dated 4th May 1987 is also set aside in writ petition No. 2646 of 1987 and the matter is remitted back to the said competent

authority for fresh decision in accordance with law. Rule is made partly absolute.

17. Similarly since the matter will have to be reconsidered in the light of our decision, the order passed by the Joint Director of Sugar and Administration and the Joint Registrar of Cooperative Societies dated 22nd of May 1987 in writ petition No. 2683 of 1987 is also set aside and the said authority is directed to decide the matter afresh in accordance with law. Rule is made partly absolute.

18. In writ petition No. 3430 of 1986 also no order has been passed u/s 78, of the said Act and the dispute is pending u/s 91 of the said Act. Only interim orders were passed by the trial court which came to be confirmed in appeal. The said matter, therefore, requires re-consideration in the light of this judgment. Hence the orders passed therein are set aside and the matter is remitted back to the said competent authority for fresh decision in accordance with law. Rule is made partly absolute.

19. Writ Petition No. 3485 of 1987 is based on a letter dated 26-8-1987 issued by the Assistant Registrar of Cooperative Societies to the Chairman of the Society. Unless final order is passed u/s 78 of the said Act, the letter has no efficacy. Thus the matter is yet to be finally decided. Hence no orders are necessary in the said petition at this stage. Hence Rule is discharged.

20. The petitioner in Writ Petition No. 4470 of 1986 was elected on managing committees of the two Cooperative Societies i.e. Anjani Group Cooperative Fruit Sale Society Ltd. and Shetkari Sahakari Sangh Ltd. Respondent No. 1 the Assistant Registrar of Cooperative Societies issued an order dated 16th of September 1986 informing the petitioner that he has ceased to be a member of the managing committees of the said two cooperative societies u/s 73FF(1)(v) of the said Act as his brother is carrying on business at Pimpri Khurd in the sale of Chemical Fertilizer. Therefore, the petitioner was called upon to resign. It is the case of the petitioner that he has six brothers and all of them are separate in every respect and they are not members of the same family nor he is concerned directly or even indirectly with the business of his brother. It is also the case of the petitioner that the said order has been issued by the respondent No. 1 without giving him any opportunity of being heard to show cause. He has also challenged the validity of Section 73FF(1)(v) of the said Act. In support of this contention, the petitioner has placed reliance upon the decision of the Supreme Court in Gulam Yasin Khan Vs. Sahebrao Yeshwantrao Walaskar and Others, . In the affidavit filed in reply it is not disputed that the order is passed by the respondent No. 1 without giving any opportunity of being heard to the petitioner. It is also his case that unless an action u/s 78 of the said Act is taken, the impugned order, could not have been passed by the 1st Respondent. However, since the order has been passed by the 1st Respondent without giving any opportunity of being heard to the petitioner, obviously the same is vitiated by the principles of natural justice. Hence the order passed by the 1st Respondent dated 16th of September 1986 is quashed and set aside. In the view which we have taken, it is not necessary to decide the challenge to Section 73FF(1)(v) of the

said Act, at this stage. The respondent No. 1 is at liberty to take action against the petitioner in accordance with law. Hence Rule is made partly absolute.

21. It is needless to say that the Petitioners in all these writ petitions will be at liberty to raise all permissible contentions before the concerned authorities. In all these writ petitions but for the validity of concerned two sub-sections, nothing else was argued. However, there will be no order as to costs in all these writ petitions.