

(2009) 09 BOM CK 0146

In the Bombay High Court

Case No : Writ Petition No. 1744 of 2009

Narayan Bhoyar

APPELLANT

Vs

Yeotmal Zilla Parishad Karmachari and Rajudas Jadhav

 Rajendra Babarao Raut

RESPONDENT

Date of Decision : 25-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Co-operative Societies Act, 1960 — Section 114E, 14, 14(1), 144E, 16(2)

Citation : (2009) 6 BomCR 277 : (2009) 111 BOMLR 4211 : (2009) 6 MhLj 500

Hon'ble Judges : Swatanter Kumar, C.J;P.B. Varale, J;D.D. Sinha, J

Bench : Full Bench

Advocate : S.D. Paliwal and M.I. Dhattrak, S.K. Tambde, for the Appellant; S.V. Parkhi, for the Respondent

Judgement

Swatanter Kumar, C.J.—In the year 2006, Narayan Gujabrao Bhoyar [hereinafter referred to as "the petitioner"] was elected as a Member of the Managing Committee of Yavatmal Zilla Parishad Karmachari Sahakari Sanstha [hereinafter referred to as "the Society"] and also as a Secretary of the Respondent No. 1 Society.

2. The President of the Society resigned from his post allegedly on the ground that there were allegations of fraud while discharging his duties as President of the Respondent Society.

3. According to the petitioner, the respondent No. 2 called an illegal meeting and in that meeting, a decision is stated to have been taken that resignation of the President was rejected. A meeting of the Directors of the Society was also held and while passing Resolution No. 5, it was resolved that the petitioner had not paid the amount of advance within thirty days and, thus, incurred the disqualification as per the provisions of the Maharashtra Cooperative Societies Act, 1960 [hereinafter referred to as "the Act", for short].

4. In pursuance of this resolution, a letter was issued to the petitioner on 15th October, 2008, aggrieved by which, the petitioner raised a Dispute, being Dispute No. 611 of 2008, before the Cooperative Court, Amravati, and also filed an application for temporary injunction. The Dispute is still pending final adjudication before the Court of competent jurisdiction, but application for interim injunction was rejected by the said Court vide its order dated 17th November, 2008. The petitioner challenged the order dated 17th November, 2008 by filing an appeal u/s 97 of the Act before the Cooperative Appellate Court, Nagpur, being Appeal No. 2 of 2009, which also came to be dismissed vide order dated 26th February, 2009. The view taken by these two Forums was that the disqualification stated u/s 73FF of the Act operates automatically. A member of a Committee, who has failed to repay his advances within the specified period, would incur the disqualification and hence not entitled to continue as a member of the Committee.

5. The correctness and legality of the order of the Cooperative Appellate Court had been questioned by the petitioner by filing the present Writ Petition under Article 226 of the Constitution of India, by primarily contending that the provisions of Section 73FF of the Act do not operate automatically and order for removal in terms of Section 78 of the Act has to be passed by the Competent Authority, which is mandatory. In other words, the cessation of membership u/s 73FF(2) is not automatic. This was inter alia, but principally contended on behalf of the petitioner.

6. When the Writ Petition came up for hearing before learned Single Judge, the learned Counsel appearing for the parties brought to the notice of Single Judge divergent views taken by different Division Benches of this Court. Seeing the legal differentiation between the Statement of Law and the decision of facts of these cases, the Single Judge felt the need for making a reference. Thus, the learned Judge, vide order dated 30th June, 2009 chose to make a reference to a Larger Bench, as the learned Single Judge found it difficult to follow the view expressed by the Courts. The order passed by learned Single Judge on 30th June, 2009 reads as follows:

Heard.

During the course of hearing, Shri Paliwal, the learned Counsel for the petitioner relied on the decision rendered by this Court in the case of Kesharao Narayana Patil v. District Deputy Registrar and Ors. reported in 1987 Mh.L.J. 709, as also the decision in the case of Kerbaji Marotirao Shinde v. State of Mah. and Ors. reported in 1988 Mh.L.J. 157, to canvass that Section 73FF(2) of the Maharashtra Cooperative Societies Act, 1960, does not operate automatically so as to result in incurring disqualification u/s 73FF(1)(i)[C] (i) and the person does not cease to be a member of the Managing Committee unless an action is taken u/s 78 of the Act of 1960. The learned Counsel for the petitioner submitted that the view expressed by the Division Bench of this Court in Kesharao's case was followed by the learned Single Judge of this Court in the case of Keshav

Venkatrao Sathwane v. Minister of State for Cooperation, State of Mah. and Ors. reported in 1993 Mh.L.J. 903.

The learned Counsel for the parties then brought to the notice of this Court, a subsequent decision rendered by the Division Bench of this Court in the case of Narayan Kisanrao Samundre, Shankarrao Kisanrao Akhade and Baburao Nivrutti Tawale Vs. The State of Maharashtra, The Divisional Deputy Registrar, Cooperative Societies (Dairy), The Joint Registrar, Cooperative Societies (Dairy) and Chandrakant Baliram Gawali, , expressing a contrary view. The Division Bench did not agree with the view expressed by the Division Bench in the case of Keshao Rao Patil 1987 Mh.L.J. 209 while considering the case of Narayan Kisanrao Samundre, Shankarrao Kisanrao Akhade and Baburao Nivrutti Tawale Vs. The State of Maharashtra, The Divisional Deputy Registrar, Cooperative Societies (Dairy), The Joint Registrar, Cooperative Societies (Dairy) and Chandrakant Baliram Gawali, and held that the provisions of Section 73FF of the Act of 1960 were independent of the provisions of Section 78(1) of the Act. The Court observed that the disqualification sustained by a member of a committee u/s 73FF (1) is discontinuation of the membership and under the provisions of Section 78 (1) (b) there is a removal coupled with the appointment of a person as a member of such committee, in his place. The division bench went on to add that the consequences of disqualification u/s 73FF (1) are distinct from the consequences contemplated u/s 78(1)(b) of the Act and the provisions of Section 73FF(2) set out the further consequences of disqualification sustained u/s 73FF(1) and they are required to be read in conjunction with the provisions of Section 78(1) of the Act.

Thus, there is an apparent conflict in the view expressed by the division bench of this Court in the case of Keshao Rao Patil (1987 Mh.L.J. 709) and the view expressed by the Division Bench of this Court in the case of Narayan Samundre (2003 (3) ALL M R 554). In view of the divergent views expressed by the coordinate benches of this Court, it is necessary, in the interest of justice, to refer the matter to a larger bench to determine the following issue.

(1) Whether the cessation of membership u/s 73FF(2) is automatic or whether it is necessary to take action and pass an order of removal u/s 78 of the Maharashtra Cooperative Societies Act, 1960?

In other words, it would be necessary to consider whether the consequences of disqualification u/s 73FF(1) are distinct from the consequences contemplated u/s 78(1) of the Maharashtra Cooperative Societies Act, 1960.

For the aforesaid reason, it is necessary for the Registry to place the matter before the Hon'ble, The Chief Justice for an appropriate order for reference to a larger bench.

7. At the very threshold, we may notice that the view taken by the Division Bench of this Court Keshao Rao Narayan Patil v. Distt. Dy. Registrar and Ors. 1987 Mh.L.J. 709 was followed in Kerbaji Marotirao Shinde v. State of Mah. and Ors.

1988 Mh.L.J. 157, and even by Single Bench of this Court in Keshav Venkatrao Sathawane v. Minister of State for Cooperation, State of Mah. and Ors. 1993 Mh.L.J. 903. The case of Narayan Kisanrao Samundre and Ors. v. State of Mah. and Ors. came up for hearing in the year 2003 and the Bench dealing with the matter enunciated two principles of law, namely, firstly that the provisions of Sections 73FF and 78 of the Act must be read independently and consequences of disqualification u/s 73FF(2) were distinct from the consequences flowing from the contemplated action u/s 78(1)(b) of the Act, and secondly that consultation with the federal Society was mandatory, and as the consultation with the federal Body had not been done, the order passed u/s 78 of the Act was quashed, while the order passed u/s 73FF was upheld.

8. While dealing with the question of interpretation of statutory provisions, it is always better to discuss the provisions of the Act in the light of the legislative scheme and the underlining object, which persuaded the Legislature to enact the relevant law. The purpose, which is sought to be achieved, has to be kept in mind by the Court. Cooperation is a form of organization wherein persons voluntarily associate together as human beings on the basis of equality and work together for a common end. The cooperative movement is an economic movement essentially, but with a moral background, and high ideals. The movement represents really a new spirit, the spirit of association, self-reliance and harmony animating the impulse towards economic betterment, upward striving and better living. This itself is not a separate activity, but a collective effort. Its essential feature is, and as the preamble of the Act states, that the development of cooperative movement has got to be in an orderly manner and in accordance with the relevant directive principles of State policy enunciated in the Constitution.

9. Of course, the preamble cannot influence the decision of the Court, as it can neither explain nor control the scope of application of the enacting clauses, particularly when they are clear and explicit. Orderly development means development of cooperative movement in all its aspects and in an all round comprehensive manner and in accordance with the plans. As the legislative history shows, the Bombay Cooperative Societies Act, 1925 was in force until the Maharashtra Cooperative Societies Act, 1960 was enacted, applying this uniformly to the entire State. The object of the Act was for providing orderly development of the cooperative movement and the Act intended and the Legislature considered it expedient to consolidate and amend the law relating to the Cooperative Societies in the State. Thus, orderly development and consolidation of existing law and its uniform application was the object and purpose of this Act.

10. Referring to the basic canons of interpretation of statute, reference can be made to the Judgments of the Supreme Court in cases of [1] S. Gopal Reddy Vs. State of Andhra Pradesh, , and [2] Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , where the Apex Court stated that

interpretation of a statute depends on text and its context. Text of the statute is its texture and context its colour, textual interpretation has to match the context. No part of the statute has to be interpretation in isolation. In a statute every word has a place and is in its place and purpose of the Act is to be borne in mind in interpretation.

11. While keeping in mind the object of the Act, the legislative intent and legislative history, it would have to be seen that the rule of fair and rational interpretation is applied. According to Blackstone, the most fair and rational method for interpreting a statute is by exploring the intention of the Legislature through the most natural and probable signs which are "either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law". This principle was also referred by the Supreme Court in the case of *Atmaram Mittal v. Iswar Singh Punia* AIR 1988 SC 203. Lord Watson dealing with the expression "intention of the Legislature" said that it was a "slippery phrase" and said:

In a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.

12. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the statute. This formulation therefore does not in effect reject the concept of "purpose" but contains the same within the import of the phrase "necessary implication."

13. It is always useful to interpret one Section with reference to the other provisions of the Act as it helps in exploring the Legislative intent and every provision must be looked at while relating to the subject matter that it intends to control. Lord Greene, M.R. said that:

The method of construing statutes that I prefer is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject matter, what is the true meaning of that word' ?

(Ref.: Principles of Statutory Interpretation by Justice G.P. Singh, 11th Edition 2008).

14. Thus, the Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law. Justice G.P. Singh in his Principles of Statutory Interpretation, 11th Edition, has also elaborately discussed the principles of interpretation requiring the statute to be construed to make a provision effective and workable. The provision has to be given free field of its operation insofar as it is stipulated under the provision itself.

15. Reference can usefully be made to a Division Bench Judgment of this Court in the case of *Shrikrishna S/o Sitaramji Fande and Ors. v. State of Maharashtra and Anr.* AIR 2008 Bom. 64 where the Court held as under:

8. ...The interpretation will be guided by the spirit of the enactment. The spirit of law and its judicial application would have nothing in contradiction. For every enacted law process of judicial interpretation or construction is necessary and by this process the courts seek to ascertain the meaning of the legislation through the medium of authoritative forum, in which it is expressed. Interpretation can be literal or functional. Literal interpretation would not look beyond *litera legis* while functional interpretation may make some deviation to the letter of the law. Unless, the law is logically defective and suffers from conceptual and inherent ambiguity, it should be given its literal meaning. Even where the law suffers from ambiguity, whether conceptual or syntactic and the letter of statute provides for no solution, even then the courts would go beyond the letter of the law to ascertain from other sources as best as they can. (Refer Salmond on Jurisprudence, Twelfth Edition, Universal Law Publishing Co. Pvt. Ltd.).

9. In the words of Chinappa Reddy J.: "Interpretation must depend upon the text and context. They are the bases of the interpretation. One may well say that if the text is the texture, context is what given colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted". (Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others,). The principle of construction of law is stated by Justice Holmes as under:

You construe a particular clause or expression by construing the whole instrument and may dominant purpose that it may express. In fact, intention is a residuary clause intended to gather up whatever other aids there may be to interpretation besides the particular words and the dictionary.

(Refer to Principles of Statutory Interpretation by Justice G.P. Singh Seventh Edition, Wadhwa & Co Nagpur.)

10. A statute which confers rights, mandatory conditions or even implied conditions thereto, would have to be satisfied and they would be a relevant consideration for interpretation of the statute. A power conferred by a statute often contains an express condition for its exercise and in absence of or in addition to the express condition, there are implied conditions also for exercise of power. Exercise of statutory power in breach of express or implied conditions will be illegal, if the condition breached is mandatory. This principle to a large extent is applicable to exercise of rights arising from a statute. If a right acquired is coupled with compliance of conditions, such conditions normally would be mandatory, apparently when the legislative intent in this regard is apparent from the bare reading of the provisions.

11. Any right would have to be conjunctively read with the obligation and satisfaction of condition precedent, for invocation of such right. Such conditions would be construed as mandatory. Such provision would not be given an enlarged meaning on the plea of liberal construction, more so, where such

interpretation would frustrate the very object of the statute. Rule of natural meaning and literal interpretation could be departed only where the reading of the statute as a whole in its context need to do so. To expand the natural and ordinary meaning of the words is in line with the purposive interpretation. The golden rule of construction, that is to read the statutory language grammatically, technically and in the ordinary and primary sense which it bears in its context without omission or addition is the best rule of interpretation.

16. It is necessary to take into consideration the statutory scheme and the purpose and object it seeks to achieve. Construction of statute must sub serve the tests of justice and reasons. It is a well settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into, some words can be substracted. Provisions of a statute can be read down although sparingly and rarely. The Supreme Court in N. Kannadasan v. Ajoy Khose and Ors. (2009) 7 SCC 1 held as under:

54. A case of this nature is a matter of moment. It concerns public interest. Public information about independence and impartiality of the judiciary would be in question. The duty of all organs of the State is that the public trust and confidence in the judiciary may not go in vain. Construction of a statute would not necessarily depend upon application of any known formalism. It must be done having regard to the text and context thereof. For the aforementioned purpose, it is necessary to take into consideration the statutory scheme and the purpose and object it seeks to achieve.

55. Construction of a statute, as is well known, must sub serve the tests of justice and reason. It is a well settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down (although sparingly and rarely).

56. In Carew and Company Ltd. Vs. Union of India (UOI), , Krishna Iyer, J. opined : (SCC p.802, para 21)

21. The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interetative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is the golden rule, Justice Frankfurter used words of practical wisdom when he observed Ed.: As observed in Massachusetts B and Insurance Co. v. US, 352 US 128 : (US p. 138)

There is no surer way to misread a document than to read it literally."

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61. In New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, , this Court held : (SC p. 297, para 52)

52. Barak in his exhaustive work on 'Purposive Construction' explains various meanings attributed to the term 'purpose'. It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

Hart and Sachs also appear to treat "purpose" as a subjective concept. I say "appear" because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the nonrebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably.

[Aharon Barak, Purposive Interpretation in Law, (2007) at p. 87.]

17. In light of these principles, we have to examine not only the scope of effect of provisions of Section 73FF or 78 alone. These provisions must be construed in light of the object of the Act, statutory scheme and intent of the Legislature. Reference to other provisions also has a bearing on the matter. Considering other provisions would not only be relevant but necessary. The context of the provisions of Section 73FF in absence of reference to Section 73FFF, Rule 58 and in contradiction to Sections 78, 144E, 25A and Rule 64 would be incomplete and would not sub serve the purpose of the Act. These provisions are intended to operate in different situations with different contexts. Their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. By the word "context", it means "in its widest sense" as including not only other enacting provisions of the same statute but its preamble, the existing State of the law, other statute in pari materia, etc. (Ref. : In the matter of Special Reference No. 1 of 2002 17 Raj Lakshmi Mills v. Shakti Bhakoo, (2002) 8 SCC 236).

18. The purpose of the provisions relating to cessation and removal are somewhat different. Cessation contemplated u/s 73FF is a consequence of earning disqualification by virtue of default in payment of dues etc. while removal u/s 78 is relatable to different administrative grounds. However, earning disqualification can be one of the grounds for removal of the member from the Committee. Removal and cessation of membership of a committee are intended to attain different and distinct purposes by following the required procedure. Thus, they must receive such construction which would be in conformity with the basic rule of law.

19. Thus, we have to apply these principles and grant liberal construction to these provisions while ensuring that such an interpretation is not opposed to the basic rule of law or the constitutional mandate of fair play in such actions.

20. Before we proceed to refer to the relevant statutory provisions, we have to

keep in mind that every Section, every sentence and every word used by the Legislature has its meaning, field of operation and a purpose to achieve. Any interpretation, which will render the provisions redundant, ineffective, or defeat the object of the Act should be avoided by the Court. Development of Cooperative movement is the prime object of the Act, but this development has to be in a manner and by a procedure which is in consonance with the need of orderly manner and being in consonance with the directive principles and the constitutional mandate. Development of cooperative movement, therefore, has to be in a manner which is in line with the basic rule of law and does not create circumstances and situations which are opposed to the very basic structure of a Cooperative Sector. It has intended to protect its member, elected bodies and at the same time, ensured proper administration of the Cooperative movement without infringing the law controlling the field. There is primarily a threetier system prevalent under the Cooperative Act. The first and the foremost section of this movement is the member of the Cooperative Society, the Committees consisting of elected members and the Cooperative Society itself as a Body in the shape of a General Body or the federal constituent. All this is the internal management of a Cooperative Society, while, then, it has a complete mechanism under the Act for remedying the wrongs done to any of the sections of the Society. The Committees can take action against the members, the appropriate body, and the statutory bodies can take action against the Committees or the members of the Committees, and General Body exercises general control and assures legal protection to all concerned. An aggrieved member can raise a dispute, and under the provisions of the Act can invoke the jurisdiction of the Cooperative Court, Cooperative Appellate Court and even certain kinds of complaints are expected to be entertained and the Registrar, Cooperative Societies, is required to take action in accordance with the provisions of the Act, including against the Society itself. Each of the functionaries under the Act has been given distinct powers, methodology to be adopted and consequences of passing of an order for different misconducts or defaults under the Act. These powers of authorities, their functions and duties may somewhere appear to be somewhat overlapping, but they cannot be intermingled to the extent of interchangeability.

21. While keeping the above settled principles in mind, let us now proceed to examine the Section 2(19)(a). Section 2(19) defines the different kinds of persons who can be members of a Society. In the present case, we are neither concerned with Associate Member, nor Nominal Member or Sympathizer Member. Thus, it will be useful to refer to the definition of member simpliciter. Section 2(19) (a) reads as follows:

2. Definitions

In this Act, unless the context otherwise requires.

(1) to (18)...

(19) (a) "member" means a person joining in an application for the registration of a cooperative society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a nominal, associate or sympathizer member;

22. In other words, a member can be a person joining at the time of making an application for registration of the Society itself, and may be a person admitted to membership of the Society after registration. "The member of a Society" has to be clearly understood, and cannot be interchanged, or treated synonymous to a member of a Managing Committee or other Committee constituted for running the affairs of the Cooperative Society. A person has to be a member of the Society to become a member of the Managing Committee or any other Committee duly constituted, but obviously does not imply that every member of the Society would be a member of the Managing Committee. Managing Committee or a Committee constituted under the provisions of the Act is a kind akin to an entity in itself, and has been defined u/s 2(7) of the Act, which reads as under:²¹

2. Definitions

In this Act, unless the context otherwise requires.

(1) to (6) ...

(7) "committee" means the committee of management or board of directors or other directing body, by whatever name called, in which the management of the affairs of a society is vested u/s 73;

23. In other words, it can be Committee of Management, Board of Directors or other directing body, by whatever name it may be called, but its basic purpose has to be to manage the affairs of the Society in terms of Section 73 of the Act. If a member of a Cooperative Society ceases to be a member of the Committee for one reason or the other, it necessarily does not mean that he ceases to be a basic member of the Society itself, of course, unless his primary membership of the Society is affected by recourse to provisions under the Act, which may result in expulsion, or removal from the primary membership of the Society.

24. If one examines the scheme of the Act, different expressions have been used in relation to the membership of a Society and rights and obligations of members. As already noticed, the primary membership of a member of the Society could come to an end by resignation, transfer of share or interest, death, removal or expulsion. In cases of companies or firms or societies, it may come to an end by dissolution or when it loses its legal entity. Removal is distinct from expulsion, while expulsion is distinct from cessation. It can be said that cessation is species of all these terminologies u/s 25A, name of a member can be removed from membership register consequent upon his disqualification or cessation. Section 35 read with Rules 28 and 29 provide for methodology for expulsion of a member of the society. Section 22(1B) read with Rule 64 deals with the subject

of power to remove committee or its member. Section 73FF relates to disqualification of membership of a Committee, and its effect of cessation of membership is contemplated u/s 73FF(2) while procedure thereof is indicated in Rule 58. Section 144E states the disqualification for being elected and for being a member of a Committee of any specified Society. Section 73FF deals with the disqualification for membership of a Committee and Sub-section (2) of Section 73FF is in furtherance to Sub-section (1) that in the event of disqualification incurred as per Sub-section (1) by a member then he shall cease to be a member of the Committee and his seat shall thereupon be vacant. In other words, Section 73FF(2) provides that the consequences which shall flow as a result of incurring disqualification in terms of Sub-section (1). This cessation necessarily need not be permanent, as under 23 Section 73FFF, a person is eligible for reappointment or reelection as a member of the Committee. Sub-sections (1) to (3) of this Section provide for different periods varying from two years to five years during which such cessation will remain in force as a result of earning of disqualification. As it is said that all contracts are not agreements but converse that all agreements are contracts may not be true. Similarly, all removals may result in cessation but all cessations may not necessarily result from removals. A person may face cessation but necessarily may not be removed or expelled from the membership of a Society.

25. The scheme of the Act clearly draws a distinction between these expressions and even in common parlance they are given different meanings. Section 78 applies to restricted class and operates in cases of removal. The power is vested in the Registrar that whenever he is of the opinion that the Committee of a Society or member of such Society makes default or is negligent in performance of duty imposed on it and this being prejudicial to the interest of the Society or where a member of a Committee stands disqualified by or under this Act for being a member, then by giving him a notice in consultation with the federal society to which society in question is affiliated, pass an order removing the Committee or a Member. In other words, Section 78 relates to a power of removal of Committee or member of Committee vested in the Registrar to be exercised as per the procedure prescribed. This is essentially not an action temporary in its nature and effect.

26. The cessation indicates by its very nature a temporary or a short term effect. The Law Lexicon explains the word "cessation" to mean:

temporary cessation of work do not mean the closing down of the business, but mean the cessation of the job of the employee who was dismissed.

It explains the word "disqualification" to mean:

that which disqualifies or incapacitates.

It explains the word "removal" to mean:

the act of taking away entirely. The act of conveying or shifting from one place to

another, the fact of being so transferred. The term "removal" means a discharge, the act of removing from office, or putting an end to an employment.

27. The Black's Law Dictionary, Eighth Edition, explains the word "cease" to mean:

to stop, forfeit, suspend, or bring to an end. To become extinct; to pass away.

It explains the word "disqualification" to mean:

something that makes one ineligible, a bias or conflict of interest that prevents a judge or juror from impartially hearing a case, or that prevents a lawyer from representing a party. The word "removal" explains to mean the transfer or moving of a person or thing from one location, position, or residence to another.

It explains the word "expulsion" to mean:

an ejection or banishment, either through depriving a person of a benefit or by forcibly evicting a person.

28. Upon analysis of the definitions or meaning of the respective words aforementioned, it is clear that they are not synonymous terms and are not even dependent on each other. They operate in their respective fields and have different facets and consequences. In the present case, we are primarily concerned with the provisions of Section 73FF and 78 of the Act. Section 73FF comes into play without prejudice to other provisions of the Act and the Rules in relation to disqualification of a member of the committee. It states that no person shall be eligible for being appointed, nominated, elected or even co-opted for being a Member of the Committee if he is a defaulter of any society. The term "defaulter" is explained so as to include different categories. The relevant category for the present case is 73FF(1)(i)(c) (i) and (ii) which reads as under:

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

(ii) 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;

29. This means that it will be appropriate to read these provisions collectively. It will be clear that the person who had taken anamat or advance does not ipso facto becomes a defaulter but it is only when he 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, he becomes defaulter. It is also required of the Member that he would within 30 days from receipt of notice or from the date of withdrawal or taking the benefits, whichever is earlier, repay the full amount. Once he becomes a defaulter in terms of these provisions,

he earns the disqualification and so will not be eligible for being appointed, nominated, co-opted as a Member of the Committee. Needless to notice that for being Member of any Committee, he must hold primary membership of the society. The primary membership of the society is not dealt with and cannot be the subject matter of disqualification and consequences stated in Section 73FF. Sub-section (2) of Section 73FF states as to what will be the consequences of a Member of the Committee earning any of the disqualification under Sub-section (1). It states that such Member shall cease to be Member of the Committee and his seat shall thereupon be deemed to be vacant. In other words, cessation is the result of disqualification earned on committing default as contemplated under Sub-section (1) in relation to Member of the Committee. What the Member will lose is his status as Member of the Committee and nothing more. The limitation and life of such consequence is controlled by Section 73FFF which makes a person who has earned disqualification under Clause (ii) of Sub-section (1) eligible for reappointment or reelection as a Member of that very Committee after a specified period while Sub-sections (1) and (2) of Section 73FFF deal with disqualification under Clauses (ii) and (iii) of Sub-section (1) of Section 73FF respectively. Sub-section (3) of said section deals with disqualifications earned by the Member other than the one mentioned in Sub-section (1) of that section. Unless there is a specific provision making him ineligible, a Member shall be eligible to be reappointed, reappointed, reelected or renominated as a Member of the Committee as soon as such disqualification ceases to exist. In other words, both Sections 73FF and 73FFF provide for a complete methodology right from earning of disqualification or cessation of the Member of the "Committee" and eligibility for reappointment, reelection etc. of that very Committee. Rule 58 in terms of Sub-rule (1) practically repeats the provision of Section 73FF and refers a person ineligible for being appointed as a Member of the Committee if he is in default to any society as referred to in Section 73FF. Sub-rule (2) of Rule 58 states that when any Member incurs disqualification in terms of Sub-rule (1), it is obligatory to the Chief Executive Officer to communicate to the Member that he has ceased to be a Member of the Committee and report the matter to the Registrar and affix a copy thereof on the notice board of the society whereafter a seat of such Member in the Committee shall be deemed to have fallen vacant and the Member of the Committee will not be in a position to exercise any of his power or privileges as Member of that Committee. In the event the Chief Executive Officer fails to take action as contemplated under the rule, the Registrar shall after giving an opportunity to the person disqualified issue such communication of cessation of Member. Rule 58 reads as under:

58. Disqualification for membership of committee.

(1) No person shall be eligible for appointment, or election or nomination or cooption or being continued as member of the committee or District Loan Committee of State Land Development Bank, if he is in default to any society, in respect of any dues from him either as borrower or is a defaulter within the meaning of Section 73FF or has incurred disqualification under Clauses (ii), (iii),

(iv), (v), and (vi) of Sub-section (1) of Section 73FF.

(2) When any member incurs disqualification as mentioned in Sub-rule (1) the Chief Executive Officer or whatsoever name called, shall communicate, the members, that he has ceased to be a member of the committee, under certificate of posting. The Chief Executive Officer shall also report alongwith a copy of communication to the Registrar and also affix a copy thereof on the notice board of the society. The publication of such copy of the notice of the receipt of such copy of the notice in the office of the Registrar, shall be the conclusive proof of the fact that the person has duly received the communication. When any member ceased to be a member of the committee, the seat of such member shall be deemed to have fallen vacant from the date of such communication. The society shall not allow such persons to exercise any powers, enjoy any rights and privileges and perform functions as member of the committee, under the Act and the rules and byelaws made there under. If the Chief Executive Officer fails to take action as contemplated above, the Registrar shall after giving an opportunity to the person disqualified, issue communication of cessation of membership of such person from the committee of the society under certificate of posting and also by publishing a copy on the notice board of his office.]

30. Thus, it is obvious from the provisions aforereferred that earning of disqualification as a defaulter, consequential cessation and eligibility of reappointment, reelection and cooption and the prescribed procedure under Rule 58 is a complete Code in itself dealing with these aspects. We have already noticed that cessation is a temporary feature in contra distinction to removal or expulsion which ordinarily would have the element of permanency.

31. The provisions of Rule 78 entirely operate in a different field and for a distinct purpose. The intent of this provision is to empower the Registrar to remove the Committee or its Member for the reasons and grounds stated in that provision. The bare reading of the provision shows that it is primarily for the grounds more relatable to the administration and management of the society itself that such powers are given. Default or negligence in performance of duties imposed upon the committee under the Act or willful disobedience of the directions issued by the State Government or the Registrar for implementing the cooperative policy and development programme undertaken by the State and not discharging its functions properly and diligently would invite exercise of power u/s 78. The section also provides that a Member being disqualified by or under this Act for being a Member will result in his removal from the Committee. The removal from Membership operates as a bar for reelection, reappointment, renomination or recooption as a Member of the Committee till expiry of the period of next one full term of the Committee from the date on which he has been removed or till such lessor period as may be laid down under the provisions of Section 73FFF or Section 114E as the case may be.

32. The concept of cessation under the Act is primarily based upon the

Committing a default of the nature specified u/s 73FF while removal u/s 78 is contemplated on matters relating to management and discharge of duties and functions by the Committee or its Members. A Member of the Committee could earn disqualification u/s 73FF, Section 75(5) and Section 114E as well as Section 22(1A) of the Act. The disqualification is a matter which is provided and dealt with under different provisions of the Act and, thus, it is difficult to take a view that Sections 73FF and 78 are indispensably interconnected and action shall be completed only when steps under both sections are taken. Every cessation may not lead to removal in all cases but removal in all cases is likely to result in cessation. Both these provisions operate in different fields. Apparently, there is neither conflict in the statutory scheme of these provisions nor they are indispensably interdependent to the extent that action under one would be impermissible without action under the other.

33. Action u/s 73FF has to be taken by the Society itself except where the Chief Executive Officer or officers empowered to act fails to perform his duty or obligation in terms of Rule 58 that the Registrar shall act and perform his function after notice to the concerned member of the committee. Unlike this provision, u/s 78 the power to act is vested in the Registrar as he is the competent authority to form an opinion. The power to remove a committee or its member thus has to be exercised for the reasons stated in that Section by the Registrar who has been vested with the power even to appoint a temporary committee. As per the provisions of Section 78, before the order can take effect, notice in accordance with the provisions of Section 78(1) has to be issued providing an opportunity to the member of the Committee for stating his objection giving him 15 days time and then appropriate order is to be passed in consultation with the federal society. The Registrar in this provision even is vested with the power of appointing a committee or an administrator. Rule 64 is a provision which provides general procedure to be adopted for appointment, suspension and removal of a member of the committee and other officers. This rule operates notwithstanding anything contained in bylaws of a society but subject to the provisions of Section 78. The Registrar would pass an order stating the reasons for removal or suspension of a committee or member by providing an opportunity to show cause as contemplated in terms of Rule 64(2) to the affected member. The obligation to provide a notice and the right of hearing is recognized in terms of Rule 58 as well as Rule 64 when the Registrar exercises power u/s 73 FF and/or u/s 78. What is required is the proper procedure to be adopted while the Society itself exercises the power u/s 73FF.

34. One can notice somewhat similar provision in the Bombay Village Panchayats Act, 1958 where Section 14 provides for disqualifications which if earned by a member of a Panchayat he cannot be permitted to continue as member. u/s 14(1) (h), if such a member of Panchayat fails to pay any tax or fee due to the Panchayat or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him, then in terms of Section 16(2) he is disabled from continuing to be a

member. The question of any vacancy being occurred shall be determined by the Collector suo motu or on an application made to him by any person affected in that behalf which shall be decided only after the Collector has provided reasonable opportunity of hearing to the persons as contemplated under the proviso to Section 16(2). Sub-section (2) also contemplates that till decision of such a question is taken by the Collector, the member shall not be disabled under Sub-section (1) from continuing to be a member. This provision to that extent is quite different than the provision under the Maharashtra Cooperative Societies Act, 1960. There is no like provision under the Maharashtra Cooperative Societies Act allowing the member to continue till question of disqualification is decided. What we intend to emphasize by reference to these provisions is that the compliance to the principles of natural justice is essential. The application of maxim audi alteram partem is intended by the legislature and its compliance is necessary in terms of basic rule of law as well. Though the provisions of Section 73FF does not in specific terms provide for grant of reasonable opportunity of hearing, but keeping in view the scheme of the Act, above provisions and the language of Rule 58, principles of natural justice should essentially be read into the provisions of Section 73FF. The person who is elected or nominated as a member to a committee is likely to lose that status, though temporarily, by means of cessation as the member might have earned the disqualification stated u/s 73FF and therefore minimum compliance to the principles of natural justice would be essential as it has the effect of vesting member concerned with civil consequences. Unlike the provisions of the Panchayats Act where the person does not immediately lose the status of being a member of the Panchayat and continues to be a member till the decision by the Collector, the provisions of Section 73FF(2) makes it mandatory for a member who has incurred disqualification under Sub-section (1) that he shall cease to be a member of the Committee and his seat shall thereupon be deemed to be vacant. Thus, by virtue of deeming fiction of law, the seat gets vacant and the membership of the committee member ceases by operation of law. The period of cessation is controlled u/s 73FFF which renders the person eligible for renomination or reelection, etc. Rule 58 requires the Chief Executive Office to act in a particular manner in relation to the person who has earned disqualification stated in these provisions and in default authorises the Registrar to act but while after giving an opportunity to the person disqualified. A substantive right of an elected or nominated member to a committee is taken away and the member is not permitted to exercise his right and take advantage or benefit of privileges being a member of a committee. The member may earn disqualification being a defaulter but before the consequence of Sub-section (2) of Section 73FF operates, it is necessary to construe that the decision of disqualification needs to be declared. Take an example that a member who had taken Anamat or an advance or is liable to pay charges for the goods purchased on credit might have paid the amount due within the stipulated period of 30 days from the date of withdrawal of benefit but the same might not have been taken into account by an error in the accounts of the Society. In such a case it will be not only difficult to

hold but would ex facie offend the basic rule of law and the principles of natural justice if the entire provisions of Section 73FF Sub-section (1) as well as (2) are permitted to operate on their own, in other words, automatically without even verification of the fact. Thus, it will be in the fitness of the provision to read into Sub-section (1), the principles of natural justice, expecting its minimum compliance by issuance of a notice declaring disqualification which, according to the Society, a member of the Committee has earned by giving him time to respond. It would be sufficient compliance of provisions of Section 73FF, whereafter the provisions of Section 73FF(2) can come into play.

35. The deeming fiction contemplated under the provisions of Section 73FF(2) has to be construed so as to be in conformity with the basic principle of law and the constitutional mandate of fairness. In the case of Jagdish Singh Vs. Lt. Governor Delhi and others, , the Supreme Court while dealing with the concept of deemed cessation in terms of Rule 25(2) of Delhi Cooperative Societies Act, held as under:"

7. A conjoint reading of the aforesaid provisions would make it clear that Rule 24 provides the conditions to be complied with by a person for being admitted as a member of a cooperative society. Rule 25 enumerates the disqualifications of a person for becoming a member of a cooperative society. Sub-clause (c) of Rule 25(1) deals with the disqualifications of a person in case of a housing society, Clause (iii) of Rule 25(1)(c) provides that the said person or his spouse or any of his dependent children if is a member of any other housing society then he can't become a member of another housing society unless permitted by the Registrar. Sub-rule (2) of Rule 25 provides for a deemed cessation of a member in the event that member incurs any of the disqualifications mentioned in Sub-rule (1) of Rule 25 with effect from the date of such disqualification. Sub-rule (4) of Rule 25 confers power to decide a dispute as to whether a member has incurred any of the disqualifications referred to in Sub-rule (1). Rule 28 of the Rules confers power on the Registrar directing removal of an individual from membership either or both of the cooperative societies when such individual has become a member of two cooperative societies of the same class. The short question that arises for consideration is : whether a person who is a member of a housing cooperative society having incurred the disqualification under Rule 25(1)(c)(iii) on being a member of a subsequent housing society would cease to be a member of both the societies with effect from the date of the disqualification incurred by him. It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made there under should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation

between them. The wellknown principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction. Bearing in mind the aforesaid rules of construction if Sub-rule (2) of Rule 25 and Rule 28 are examined the obvious answer would be that under Sub-rule (2) the deemed cessation from membership of the person concerned is in relation to the society pertaining to which disqualifications are incurred. A plain reading of Rule 28 makes it crystal clear that the Registrar when becomes aware of the fact that an individual has become a member of two cooperative societies of the same class which obviously is a disqualification under Rule 25 then he has the discretion to direct removal of the said individual from the membership of either or both the cooperative societies. If Sub-rule (2) of Rule 25 is interpreted to mean that deemed cessation of the person concerned from membership of both the societies then the question of discretion of the Registrar under Rule 28 will not arise. If the interpretation given by the Registrar to Sub-rule (2) of Rule 25 as well as the contention raised by the learned Counsel for the respondents is sustained then the said Sub-rule will be at loggerhead with Rule 28. On the other hand, if Sub-rule (2) is interpreted to mean that the deemed cessation is in relation to the society in respect of which the person concerned incurs the disqualification then both Sub-rule (2) as well as Rule 28 would have its play. Rule 28 in our considered opinion cannot be held to be otiose and must be allowed to have its full play. In this view of the matter the only way by which Sub-rule (2) of Rule 25 and Rule 28 can be harmoniously construed is to construe Sub-rule (2) to Rule 25 to mean that the deemed cessation of the person concerned from the membership of the society is the society in respect of which the disqualification was incurred. In the case in hand the disqualification which the appellant incurred was in respect of his membership of the Tribal Cooperative Housing Society Ltd. as he could not have become a member of the said society as he was already a member of Dronacharaya Cooperative Group Housing Society, and therefore, by operation of Sub-rule (2) he would deem to have ceased to be a member from the Tribal Cooperative Housing Society right from the inception in November, 1983 and not from the Dronacharaya Cooperative Group Housing Society.

36. Applying the above principles to the provisions of the Act in hand, if the CEO fails to act, the Registrar is to act in his place but only after granting reasonable opportunity as contemplated under Rule 58. Had the legislative intent been that the cessation will come into play automatically in face of deeming provision in its absolute terms in that event there was no reason for the legislature to provide for grant of hearing before making a declaration which the Registrar is expected to make. Some element of judicious discretion has to be read into and provided to the Registrar as well as the CEO while they are exercising the powers in terms of Section 73FF in its entirety read with Rule 58. If the deeming fiction of law is

to be applied in its absolute terms without minimum adherence to the principles of natural justice, it will give rise to an anomalous situation that for exercising same powers one authority (Registrar) would apply the principle of natural justice by grant of reasonable opportunity while CEO can exercise such powers without compliance to such provisions. Such an interpretation would hardly be permissible in accordance with law.

37. In the case of Uma Nath Pandey and Others Vs. State of U.P. and Another, , the Supreme Court while referring to principles of natural justice interpreted by court referred to the maxims "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" and held that the observance of the principles of natural justice is mandatory and non adherence thereto would essentially lead to miscarriage of justice. The Supreme Court held as under:

6. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

7. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasijudicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this

principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works* (1863) 143 ER 414, the principle was thus stated:

Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat."

9. Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

10. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasijudicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

11. What is meant by the term "principles of natural justice" is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *Ray v. Local Government Board* (1914) 1 KB 160 at p.199 : 83 LJBK 86) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Sanckman* 1943 AC 627 : (1948) 2 All ER 337, Lord Wright observed that it was not desirable to attempt "to force it into any procustean bed" and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give "a full and fair opportunity" to every party of being heard.

12. Lord Wright referred to the leading cases on the subject. The most important of them is the *Board of Education v. Rice* 1911 AC 179 : 80 LJBK 796, where Lord Loreburn, L.C. observed as follows: Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial.... The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

13. Lord Wright also emphasized from the same decision the observation of the

Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, LO in *Spackman v. Plumstead District Board of Works* 1985 (10) AC 229 : 54 LJMC 81, where the learned and noble Lord Chancellor observed as follows:

No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.

14. Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the of quoted phrase 'justice should not only be done, but should be seen to be done'.

15. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and no pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

16. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew v. Drew and Lebura* 1855(2) Macg. 1.8, Lord Cranworth defined it as 'universal justice'. In *James Dunbar Smith v. Her Majesty the Queen* 1877-78 (3) App.Case 614, 623 JC) Sir Robert P. Collier, speaking for the judicial committee of Privy council, used the phrase 'the requirements of substantial justice', while in *Arthur John Specman v. Plumstead District Board of Works* 188485(10) App.Case 229, 240, Earl of Selbourne, S.C. preferred the phrase 'the substantial requirement of justice'. In *Vionet v. Barrett*

1885(55) LJRD 39, 41, Lord Esher, MR defined natural justice as 'the natural sense of what is right and wrong'. While, however, deciding *Hookings v. Smethwick Local Board of Health* 1890(24) QBD 712, Lord Fasher, M.R. instead of using the definition given earlier by him in *Vionet's case* (supra) chose to define natural justice as 'fundamental justice'. In *Ridge v. Baldwin* 1963(1) WB 569, 578, Harman LJ, in the Court of Appeal countered natural justice with 'fairplay in action' a phrase favoured by Bhagawati, J. in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . In *re R.N. (An Infant)* 1967(2) B617, 530, Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'. In *Fairmount Investments Ltd. v. Secretary to State for Environment* 1976 WLR 1255 Lord Russell of Willowan somewhat picturesquely described natural justice as 'a fair crack of the whip' while Geoffrey Lane, LJ. In *Regina v. Secretary of State for Home Affairs Ex Parte Hosenball* 1977 (1) WLR 766 preferred the homely phrase 'common fairness'.

17. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasijudicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fairplay and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co.Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See *Bosewell's case* (1605) 6 Co.Rep. 48b, 52a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

38. Hear both the sides or affected persons is the principle of far-reaching effect. This is the more far-reaching of the principles of natural justice, since it can embrace almost every question of fair procedure and due process, and its

implications can be worked out in great detail. The right to a fair hearing has been used by the Court as a base on which to build a kind of code of fair administrative procedure, comparable to "due process of law" under the Constitution of the United States. The courts took their stand several centuries ago on the broad principle that bodies entrusted with legal power could not validly exercise it without first hearing the person who was going to suffer. This principle was applied very widely to administrative as well as to judicial acts, and to the acts of individual ministers and officials as well as to the acts of collective bodies such as justices and committees, etc. The principle was extended beyond the sphere of administrative law, to such bodies as societies and clubs. It was held to be an implied term of each member's contract of membership that he could not be expelled without a fair hearing. In a case where a member of a mutual insurance society was purportedly expelled for suspicious conduct, but without a hearing, it was held that the expulsion was absolutely void, so that he was still a member in law, and this rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals. Subsequently this doctrine found a fruitful field of application in protecting members and officers of trade unions from unfair expulsion or other penalties. It is also said that for a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation. (Ref : Administrative Law, Eighth Edition, by H.W.R. Wade & C.F. Forsyth - *Dawkins v. Antrobus* (1881) 17 Ch.D. 615 - *Wood v. Woad* (1874) LR 9Ex. 190 (Kelly CB) - *Byrne v. Kinematograph Renters Society Ltd.* [1958] 1 WLR 762.)

39. A Division Bench of this Court in the case of Partha Ghosh (Chartered Accountant of Mumbai Inhabitant) and D.V.P. Rao (Chartered Accountant of Mumbai) Vs. The Institute of Chartered Accountants of India and Others, was concerned with the conduct of proceedings before the Disciplinary Committee nominated by the Council of Institute of Chartered Accountants. The relevant Rules required the Disciplinary Committee to submit a report but provided limited right of defence. Against this background while dealing with the concept of fair hearing, the Court held as under:

21. Just and expedient are expressions of fair play. The legislative purpose of requiring the authority to act in conformity with rule of fairness is demonstrated by specific language as well as necessary implication wherever the words are silent. The provisions with regard to disciplinary action which could even result in removing the name of the member from the Register temporarily or permanently are proceedings which essentially must be conducted in conformity with the rule of fairness. Fairness should not only appear to have been done but should actually be done in such proceedings. In simple language `expedient' means

tending to promote some proposed or desired object or suitable for the purpose and which is proper under the circumstances. In the case of *Hotel Sea Gull Vs. State of West Bengal and Others*, , the Supreme Court while referring to the word 'expedient' held that the expression occurring in the statute authorizing modification, revocation under the circumstances would comprehend whatever is suitable and appropriate for any reason for the accomplishment of the specified object. The specific object under the provision with which we are concerned is grant of hearing, right of defence, fairness in procedure and prosecution of a procedure which is just and expedient. Similarly, the expression 'just' connotes equality, fairness and reasonableness which would obviously result in exclusion of arbitrariness as what is arbitrary cannot be just. (Reference : *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*,). (Refer : *Supreme Court on Words and Phrases (1950-2008)*, Second Edition, by Justice R.P. Sethi, Former Judge, Supreme Court of India, page 739).

22. In Administrative law and more so in case of the Tribunals exercising quasijudicial powers, the principle of fair hearing has been applied universally. In *Ridge v. Baldwin* 1964 AC 40 : (1963) 2 All ER 66, the Court restated the principle of the right to a fair hearing as a rule of universal application in the case of administrative acts or decisions affecting rights and even referred it as a duty to afford such hearing upon every one who decides such matters. [Refer : H. W. R. Wade and C.F. Forsyth on Administrative Law (Ninth Edition)].

23. Of course, fair hearing does not stipulate that the proceedings be as formal as in a Court. What natural justice, whether specifically spelled out or by necessary implication, requires is simple or elementary justice as distinct from complex or technical justice, otherwise much of the justification of having adjudicatory bodies outside the court system will evaporate in thin air. But adherence to that basic principle cannot be ruled out unless for valid and proper reasons the statute specifically exclude such right. (Refer : *Principles of Administrative Law* by M.P. Jain & S.N. Jain, Fourth Edition).

40. The above stated principles not only show the significance of adherence to the principle of Audi Alteram Partem but even sufficiently indicate that the principles of natural justice had to be adhered to even if the provisions of a relevant statutes are silent in that regard unless the statute specifically excludes the right of hearing or grant of opportunity and such interpretation is in conformity with the law. In other words, wherever the provision of a statute is silent or does not use positive words relating to the grant of an opportunity of hearing still the Court would read the provisions of natural justice into such provision rather than declaring such provision ultra vires.

41. The Supreme Court in the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, held as under:

42. In short, the general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms,

exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the predecisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a predecisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features as the predecisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fairplay "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

42. The Supreme Court in the case of Mangilal Vs. State of Madhya Pradesh, , held as under:

10. Even if a statute is silent and there are no positive words in the Act or the Rules made there under, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasijudicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See *Swadeshi Cotton Mills Vs. Union of India (UOI)*,). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are : notice of the case to be met, and

opportunity to explain.

43. In addition to the above dicta of the Supreme Court, the principle that the statute should not be construed so as to exclude natural justices unless it clearly excludes the same was stated by the Supreme Court in the case of *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, where it held as under:

15. ...Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be predecisional; it may necessarily have to be post decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show cause notices for requisitioning vehicles to evacuate population. If there is an outbreak of an epidemic, we presume one does not have to issue show cause notices to requisition beds in hospitals, public or private. In such situations, it may be enough to issue post decisional notices providing for an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that predecisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation of enquiry. Ad interim orders may always be made ex parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of a principle of natural justice if an ex parte ad interim order is made unless of course, the statute itself provides for a hearing before the order is made as in Clause 8A. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex parte ad interim orders.

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20. ...Therefore, we say that there must be observed some modicum of residual, core natural justice, sufficient to enable the affected person to make an adequate representation. (These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right : See *Chingleput Bottlers Vs. Majestic Bottling Company*,). That may be and in some cases, it can only be after an initial ex parte interim order is made.

44. This principle was reiterated with approval by the Supreme Court in the case

of State of Haryana Vs. Ram Kishan and Others, , where the Court held that in absence of exclusion of natural justice rules the provision must be interpreted as implying to preserve right of hearing to the affected persons before taking a decision.

45. Reference can usefully be made to a more recent judgment of the Supreme Court in the case of Rabindra Singh Vs. Financial Commissioner, Cooperation, Punjab and Others, , where it was held that even in the absence of any express provision, having regard to principles of natural justice, courts have ample jurisdiction to set aside an ex parte decree, subject to the statutory interdict.

46. We have already noticed that the legislative intent of compliance to the provision of natural justice is sufficiently indicated in Rule 58 of the Rules and there is nothing in the language of the provisions of Section 73 FF which by specifically excludes recourse to adherence of principles of natural justice. Rather it would be more in conformity with the scheme of the Act and the rules framed there under and the concept of basic rule of law that the principles of natural justice would have to be read into the provisions of Section 73FF(1) "though to a limited extent". The deeming fiction contemplated u/s 73FF(2) is not in any way derogatory to such an approach. We have indicated in no uncertain terms that Sub-section (2) of Section 73 FF vests party concerned with the serious civil consequences and thus right of notifying and giving opportunity would be indispensable. We are quite conscious of the object of the Act as well as legislative intent behind Section 73FF and Section 73FFF read with Rule 58 and it will not be appropriate to introduce a concept of a regular hearing or conducting of an inquiry. It will be substantial compliance to the provisions of the Act and the principles of natural justice if the intimation/ notice is sent to the member who, according to the Society, has earned disqualification u/s 73FF(1) providing an opportunity to react and upon receiving his reply, if any, within the stipulated time, which would be a very reasonable time, the operation of Section 73FF(2) would come into play by way of such declaration. Such declaration is certainly contemplated in terms of Rule 58.

47. We may also notice here that Section 78(1) had replaced the earlier provision by the same amending Act 20 of 1986 vide which Section 73FF as well as Section 73FFF were inserted. The Legislature did not use any language in Section 78 which is capable of being construed that the provisions relating to removal as contemplated u/s 78 are entirely dependent or are invocable where the cessation has been caused as a result disqualification in terms of Section 73FF. It is also not indicated that wherever a person has earned disqualification and the provisions of Section 73FF(2) have come into play, it is mandatory to invoke the provisions of Section 78 inasmuch as the provisions of Rule 58 control the exercise of power of the competent authority u/s 73FF. There is nothing in the language of these provisions to suggest that an order u/s 73FF read with Rule 58 cannot exist without invocation of Section 78 of the Act. In the case of Kesharao Narayanrao Patil v. District Deputy Registrar, Cooperative Societies, Akola and

Ors. 1987 Mh.L.J. 709, the Division Bench of this Court had noticed that "From the legislative history, it appears that Section 78 as it originally stood did not bring within its fold the power of removal of a member of Committee on the ground of disqualification. This power was introduced by the amendment Act." This obviously mean that except adding a ground for removal of a Member of the Committee on disqualification, the Amending Act has done nothing more. The mere fact that disqualification and cessation are the two modes necessarily would not mean that provision of Section 78(1) be invoked inasmuch as there may be cases where as a result of being a defaulter earning disqualification, the authority concerned feels that period of cessation indicated in Section 73FFF to be sufficient and consider it appropriate not to invoke the action for removal of the Member in terms of Section 78 of the Act. This discretion is obviously vested in the authorities. The mere connection of availability of the ground of disqualification could not render both the sections to be absolutely interdependent or that there should be a presumption of legislative mandate that both sections have to be invoked together otherwise the action would remain incomplete. Such an approach would certainly be destructive of the legislative spirit and intent. Such interpretation is likely to defeat the very purpose and object of the amending provisions as action in such matters need to be completed expeditiously. It is a cooperative movement which is intended to be advanced while keeping in mind the fact that the members of the society do not commit defaults or earn disqualifications under the provisions of the Act and if they do so, the same should be dealt with expeditiously without involving a complex procedure for cessation, disqualification, expulsion and removal. Section 73FF is just one of the provisions which operates in its own field where default stated in the section occurs and takes the consequences of earning of disqualification. This disqualification earned brings into operation by fiction of law cessation of membership of the Committee and takes away the rights and privileges of the Member of the Committee during that period. It appears that there is no statutory commonality or absolute interdependence in these two sections to the extent that they should be invoked simultaneously as action under one is not complete without recourse to the other.

48. In the light of this discussion now we will proceed to examine the conflict in views noticed by the learned Single Judge in the order of reference.

49. In Keshavrao Narayanrao Patil (supra), the Division Bench took the view that the judgment of the court in Roha Ashtami Cooperative Urban Bank Ltd. v. The Judge Cooperative Court, Alibagh (1977) Mh.L.J. 712 was per incuriam as it did not notice the provisions of Section 78. Further it took the view that Section 73FF(2) does not operate automatically so as to result in incurring disqualification and it was mandatory to give reasonable opportunity to the affected person. It further took the view that a person does not cease to be the Member unless order of removal is passed u/s 78. It will be useful to notice the decision of the Bench in this respect. The court held as under:

8. It is significant to notice that notices u/s 78(1) have in fact been issued by the Assistant Registrar in other cases of disqualification incurred by members of the other committees. Copies of such notices have been annexed as document Nos. 3 and 4 by the petitioner. We may also notice that in the case of Babasaheb Sambaji Vasade v. Director of Agricultural Marketing, Pune (Writ Petition No. 5152 of 1986) vide order dated 4.12.1986 and in the case of Shabir Ahmed Haji Gulam Rasul v. A.A. Hate and Ors. (Writ Petition No. 5633 of 1986) vide order dated 8th December 1986, a Bench of this Court at Bombay has held that order u/s 73FF(2) cannot be passed unless a showcause notice is issued to the member and he is heard.

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11. We, therefore, hold that the passing of order of removal as required under the provisions of Section 78 in the matter of incurring disqualification u/s 73FF(1) is mandatory and the cessation of membership u/s 73FF(2) is not automatic. As the said provision has not been complied with, the assumption on the part of the Collector/Assistant Registrar that the petitioner has ceased to hold the office of the Member of the Committee and was, therefore, not entitled to a notice of the meeting dated 12.1.1986, was erroneous. The petitioner continues to be a member on 12.11.1986 and also till order of removal as required u/s 78 is passed. As we are disposing of the petition only on this ground, it will not only be unnecessary but improper to adjudicate upon the various other points on merits, which can be raised before the District Deputy Registrar.

50. To concisely state the ratio and finding recorded by the Bench, it can be said that compliance to the provisions of natural justice by issuance of show cause notice was held to be mandatory before the provision of Section 73FF(2) could be given effect to and that the provision did not operate automatically. We may also notice that in the case of Roha Ashtami Cooperative Urban Bank Ltd. (supra) another Division Bench of this Court had taken the view that the provisions of Sub-rule (2) of Rule 58 are prima facie self operating and do not require that some authority, officer, committee of the society itself has to decide the fact of having incurred disqualification. Similar view was taken in the case of Murlidhar Tukaram Bhandekar v. Nagpur District Central Coop. Bank 1986 Mh.L.J. 599.

51. Still another Division Bench of this Court in the case of Kerbaji Maroti Rao Shinde v. State of Maharashtra and Ors. 1988 Mh.L.J. 157, while dealing with old unamended Rule 58 took the view that action u/s 78 was necessary before a person ceases to be Member of the Committee of the society under Rule 58(2). The Bench even went to the extent of holding that enquiry contemplated under the rule was quasi judicial in nature. The Bench held as under:

6. ...When disqualification has been incurred by a member, is in itself, in doubt or

disputed, then an adjudication is obviously necessary. An enquiry in that behalf is not administrative but is judicial or quasijudicial in nature. This seems to be the reason why a provision is made u/s 78 of the Act, for removal of member if he stands disqualified by or under the Act for being a member, after giving the member an opportunity of being heard. In substance, after the person is elected as a member of the committee if he is to cease as a member, an order of removal u/s 78 of the Act is necessary. That seems to be the view taken by this Court in Keshavrao's case, though in the context of Section 73FF of the Act. In this context it is pertinent to note that Rule 48(1) and (2) also applies to the specified societies. The provisions of Section 73FF, Rule 58 and Section 78 will have to be read and construed harmoniously so as to make them consistent and reasonable. So construed, in our view, unless an action u/s 78 of the Act is taken a person cannot cease to be the member of the committee even under Rule 58 of the Rules. The learned Advocate General Shri Bobde fairly conceded this position.

52. Now we will discuss the judgment of the Division Bench in the case of Narayan Kisanrao Samundre, Shankarrao Kisanrao Akhade and Baburao Nivrutti Tawale Vs. The State of Maharashtra, The Divisional Deputy Registrar, Cooperative Societies (Dairy), The Joint Registrar, Cooperative Societies (Dairy) and Chandrakant Baliram Gawali, which is stated to have taken another view. In this case, the court was concerned with two aspects. One, that the consequences of disqualification u/s 73FF(1) are distinct from those contemplated u/s 78(1)(b) and secondly whether the provisions of Section 73FF(2) and Section 78(1) are to be construed in conjunction or they operate in independent fields. Another question on which the court examined the matter related to consultation with the Federal Society before order is passed under the provisions of Section 78(1)(b). While taking a different view, the Bench held that the provisions of Section 73FF(1) and 78(1) are to be construed independently as consequences of disqualification u/s 73FF(1) are distinct from the consequences contemplated u/s 78(1)(b) of the Act. The Bench held as under:

6. However, so far as the order u/s 73FF(1)(i)(c) of the Act is concerned, Shri Dhorde submitted that the said action cannot be independent of the provisions of Section 78(1) in view of the ratio laid down by a Division Bench of this Court in the case of Kesharao Narayanrao Patil v. District Deputy Registrar, Cooperative Societies, Akola and Ors. 1987 Mh.L.J. 709. These submissions do not impress us. Sub-section (1)(i) of Section 73FF reads thus:

Without prejudice to the other provisions of this Act or the rules made there under 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 purposes of this clause, the term "defaulter" includes,

(a) In the case of 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

(ii) 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 of 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 nonagricultural 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.

The provisions of Sub-section (1) open with the words, "Without prejudice to the other provisions of this Act" and, therefore, they must be read independent of Section 78(1) of the Act. The effect of default, as contemplated within Sub-section (1) of Section 73FF is the eligibility for being appointed, nominated, elected, co-opted or for being a member of a committee whereas, u/s 78(1)(b), the disqualification contemplated is removal of the member and appointment of any person as a member of such committee in his place or direct the society to elect or appoint a member in his place for the remainder of the term of the office so removed. Thus, in case of a member of a committee the disqualification sustained u/s 73FF(1) is discontinuation of the membership and under the provisions of Section 78(1) (b) of the Act and the provisions of Section 73FF(2) set out the further consequences of disqualification sustained u/s 73FF(1) and they are required to be read in conjunction with the provisions of Section 78(1) of the Act.

7. In the instant case, admittedly, the appellants were the managing committee members on the relevant date and the impugned order was passed by invoking the powers u/s 73FF(1)(i)(c) as well as Section 78(1)(b) and thus it was a composite order. We have already held that the order passed u/s 78(1)(b) is unsustainable and this defect would not automatically render the action u/s 73FF(1) (i)(c) as ineffective or redundant. If it is noticed that there has been compliance of Section 73FF(1), the disqualification order under the said Section must be upheld.

Under Section 73FF(1), five contingencies, namely, are contemplated,

- (a) Failure to repay the full amount of Anamat or advance after receipt of notice of demand by the member from the concerned society, or
- (b) Within 30 days from the date of withdrawal of anamat or advance by him, or
- (c) From the date of delivery of goods from him or availing of services by him whichever is earlier;
- (d) In the case of nonagricultural 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.

These five contingencies are independent of each other and anyone of them which is satisfied at the earliest could be operated against the concerned member.

53. While taking the above view, the Bench felt that provisions of Section 73FF(1) (i) must be read independent of Section 78(1). Drawing a distinction between a result of removal and cessation, the Bench held on facts of the case while quashing the order passed u/s 78(1)(b) that the appellants were the managing committee members on the relevant date and the order was passed by invoking power u/s 73FF(1)(i)(c) as well as Section 78(1)(b) and was a composite order. It was further held that the order passed u/s 78(1)(b) was unsustainable and the defect would not automatically render action u/s 73FF(1)(i)(c) as ineffective or redundant.

54. The learned Single Judge of this Court in the case of Navnath s/o Motiram Shirale v. The Returning Officer (Assistant Registrar Coop. Societies Patoda, Dist. Beed) and Ors. 2005(4) All MR 318 took the similar view relying upon judgment of this Court in the case of Narayan Samudre (supra) and held that these provisions were different, distinct and independent of each other.

55. If one analyses the relevant provisions of the Act in the light of the principles aforesaid, it would be obvious that they are independent provisions and are not indispensably dependent on each other. The provisions of Section 73FF would be enforceable only when a person has become defaulter as explained in Section 73FF(1). With reference to the facts of the present case, Section 73FF(1)(i)(c) (i) and (ii) are the relevant provisions in which the member is stated to have defaulted. Once the member of a committee becomes a defaulter he earns a disqualification and is not thus eligible for being appointed, nominated, elected or co-opted as a member of the Committee. This ineligibility refers a person as disqualified for such appointment/election. But where a person is a member of a committee and earns disqualification by becoming a defaulter u/s 73FF(1) then Sub-section (2) thereof brings a cessation to his membership of the Committee and by fiction of law requires the seat to be declared vacant. What will be the span of cessation which would lift disqualification/condition of ineligibility is controlled by the provisions of Section 73FFF and the procedure has to be that

stated under Rule 58. The provisions of these two Sections do not make it mandatory on their plain reading or by necessary implication that invocation of provisions of Section 78 is essential consequence or in any way sine qua non to cessation of membership contemplated u/s 73FF(2). Removal of a member cannot be treated as synonymous or equivalent to earning of a disqualification resulting in cessation of a membership which prima facie may be a temporary phase. In the case of Raja Ram Pal Vs. The Hon''ble Speaker, Lok Sabha and Others, , the Supreme Court clearly stated the principle that the terms "vacancy", "disqualification" and "expulsion" have different meanings and they do not overlap. Disqualification strikes at the very root of the candidate's qualification and renders him or her unable to occupy a Member's seat. Expulsion, on the other hand, deals with a person who is otherwise qualified, but in the opinion of the House of the legislature, is unworthy of membership, While disqualification operates to prevent a candidate from reelection, expulsion occurs after the election of the Member and there is no bar for reelection. As far as the term "vacancy" is concerned, it is a consequence of the fact that a Member cannot continue to hold membership. Thus, all these terms have a different connotation and meaning which must be understood in the context in which they have been used. We are unable to see any statutory command in the provisions of Section 73FF which renders it mandatory for the Competent Authority and for that matter to the Registrar to essentially invoke the provisions of Section 78 to make declaration. An order, complete in all respect, is contemplated under Rule 58. The order or declaration to be made u/s 73FF is distinct and different than the order of removal which may be passed by the Competent Forum u/s 78. There would be cases where the first order can validly exist without invoking even proceeding of removal in terms of Section 78. This is further substantiated from the fact that the order of removal u/s 78 is appealable u/s 152. While no appeal lies under that Section against an order passed under the provisions of Section 73FF of the said Act read with Rule 58 of the said Rules.

56. In the case of Pundalik v. District Deputy Registrar, Cooperative Societies, Chandrapur and Ors. 1991 C.T.J. 577, the Supreme Court was dealing with the case where a person was stated to have defaulted in payment of money which fact was disputed as the alleged defaulter stated that he had not committed any default but the Assistant Registrar of the Cooperative Societies vide his order dated 7th December, 1987 removed the Appellant from the Committee of the Director of the Bank holding that the Appellant was a defaulter. Dealing with the facts and referring to the scope of both the provisions i.e. Sections 73FF and 78(1), the Supreme Court noticed that Section 78(1) empowers the Registrar to remove a member of a Committee who makes default. Section 73FF deals with the disqualification of membership of a Committee. While rejecting the contention that the expression "makes default" or "stands disqualified" being in presenti the default must have been committed after coming into force the Section 73FF as in that case the member defaulted even prior to the date of coming into force of the said Act, the Court held that once it is found that the

person has committed a default then he shall cease to be a member of the Committee and his seat shall fall vacant. The view expressed by this Court in Keshaorao's case (supra) that Section 73FF(2) did not operate automatically and order of removal was necessary was noticed but was left to be interpreted in the context of the provisions of that Section. Obviously what has been specifically held by the Supreme Court in paragraph 13 of the judgment clearly shows that the view of a Division Bench of the High Court in Keshaorao's case (supra) was not in conformity with the findings of the Supreme Court. In other words, the view by the Division Bench of the Court in Keshaorao's case (surpa) to the extent that the opportunity of hearing needs to be given is a correct view but as already indicated, the view that the cessation of a membership of the Committee of a member would only be possible upon invocation of the provisions of Section 78 i.e. the order of removal, is not the correct view in law. As far as the judgment of a Division Bench in the case of Narayan Kisanrao Samundre and Ors. v. State of Maharashtra and Ors. 2003(3) All MR 554, the law is correctly enunciated to the extent that Section 73FF and 78 are independent provisions and they are not indispensably interconnected. The provisions of Section 73FF(2) would come into play automatically by deemed fiction of law once the declaration of a member being defaulter as contemplated u/s 73FF(1) is made in accordance with law and with due compliance to the basic principles of natural justice in terms of Rule 58 of the Rules. Thus, in view of our detailed discussion, now we proceed to record our answers to the questions raised in the Order of Reference.

(A) Provisions of Sections 73FF and 78 are independent provisions and operate in their respective fields on the stated grounds and their consequences are distinct and different. They are not even indispensably interdependent.

(B) The declaration of a defaulter resulting in disqualification as contemplated u/s 73FF(1) has to be made by minimum compliance to the principles of natural justice which will have to be read into the provisions of Section 73. The Competent Forum would be expected to issue a notice / intimation calling upon the member of the committee to show cause as to why he be not declared as a defaulter. Considering his reply, if any submitted, a declaration shall be made.

(C) Once such a declaration is made in compliance with the provisions of Rule 58, the provisions of Section 73FF(2) will come into play automatically and there shall be cessation of membership of the Committee of that member and his seat shall be deemed to have fallen vacant, obviously not affecting his primary membership of the Society adversely unless otherwise removed / expelled from such membership in accordance with law.

(D) We make it clear that passing of an order of removal as postulated u/s 78(1) is not a sine qua non to invocation of the provisions for cessation of membership of the Committee in terms of Section 73FF (2) of the Act.

(E) Consequences of disqualification incurred by a member of a Committee stated u/s 73FF(1) are certainly distinct and different than the consequences

flowing from an order made for removal u/s 78(1) of the said Act. In a case u/s 73FF, upon earning disqualification, there is cessation of membership of the Committee and automatic vacation of seat for the period as regulated under the provisions of Section 73FFF. While the order of removal passed u/s 78(1) would remain in force unless disturbed/set aside by the Competent Authority under the provisions of the Act.

57. We answer the Reference as above and direct the matter to be listed before the Appropriate Bench for disposal in accordance with law.