(1998) 08 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 497 of 1998

Natha Singh APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Advocates Act, 1961 — Section 15
Constitution of India, 1950 — Article 12, 14, 19(1), 226
General Clauses Act, 1897 — Section 14, 15, 16

Citation : (1999) 1 ShimLC 11

Hon'ble Judges : D. Raju, C.J;Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; Sanjay Karol, General Respondents 1 and 2 and Suresh Bhardwaj, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—The above writ petition has been filed seeking for the issue of a writ to quash the proceedings dated 14.7.1998 (a requisition for holding special meeting of the Board of Directors of the Bank) filed as Annexure PC and dated 18.7.1998 (the notice convening the meeting of the Board of Directors of the H.P. State Co-operative Agricultural and Rural Development Bank Ltd.) issued by the Managing Director of the Bank and filed as Annexure PE and consequently permit the Petitioner to work as the President of the 3rd Respondent-Bank for a complete tenure of four years and also for restraining Respondents 1 and 2 herein from interfering in the day-to-day functioning of the 3rd Respondent-Bank.

2. The relevant factual details for appreciating the grievance of the Petitioner are that the election process for the post of Director, Mandi District of H.P. State Co-operative Agricultural & Rural Development Bank Ltd. Shimla, hereinafter referred to as ''the 3rd Respondent -Bank'' was conducted pursuant to the orders of the Registrar of Co-operative Societies dated 26.11.1997, in accordance with the prescribed procedure and the Petitioner was declared elected as the Director

and a notification for the purpose was also issued on 15.1.1998. Thereupon the meeting of the Board of Directors of the 3rd Respondent -Bank was held on 23.3.1998 and the Director of the said Bank (both elected and nominated) participated in the same and the Petitioner was unanimously elected as the President of the 3rd Respondent-Bank for a term of 4 years in terms of Bye-law No. 37(a) of the Bank. The Petitioner claims that he was elected earlier as a member of the Legislative Assembly of Himachal Pradesh in 1984, that he was also a minister and elected Chairman of the 3rd Respondent-Bank twice before. It is stated that the Petitioner is the General Secretary of Indian National Congress and also a member of the All-India Congress Committee and during his earlier tenure the 3rd Respondent -Bank had been given special Trophy for making 100% growth of the Bank and the Bank was given a Trophy for making maximum recoveries. The further stand of the Petitioner is that by invoking the powers of nomination of the Directors of the Bank Respondents No. 1 and 2 replaced some of the existing Directors by nominating four now Directors and thereafter contrary to the expectations of an assured term of four years, with the change in the ruling party of the State Government, the Respondents started interfering with the day-to-day administration of the 3rd Respondent-Bank, vindictively and with a mala fide and ulterior motives to achieve political ends they have initiated the impugned proceedings to dislodge the Petitioner by adopting unlawful means in order to bring into and instal their own person in the helm of affairs in gross violation of the provisions of the Act, rules and the Bye-laws

3. The Petitioner had also made reference in the petition to the relevant provisions of the Himachal Pradesh Co-operative Societies Act, 1968, some of the relevant rules and bye-laws to substantiate his claim that the Management of the affairs of the Bank vests with the general Body of Members of the Bank, that the Board of Directors of the Management Committee carries on the day-to-day functions and that there is no power conferred upon the Board of Directors or upon any one else for that matter to remove or dislodge a Chairman in office, duly elected, by passing any resolution expressing lack or want of confidence in him by the Directors of the Board and that therefore the entire proceedings are illegal, invalid and void and brought about on account of political bias and malice utilising the statutory functionaries for such nefarious purposes in gross abuse and misuse of power for selfish and political ends and objects. The stand taken for the Petitioner in the writ petition is also that the 3rd Respondent-Bank being ''State'' within the meaning of Article 12 of the Constitution of India, having regard to its pervasive control over the functioning of the Bank, the funding of the Bank by the Government and the public functions discharged by it in furtherance of the Directive Principles of State Policy and therefore, a writ could be maintained in this Court. The Petitioner also challenges the competency of the Managing Director to convene the meeting in question by issuing a notice dated 18.7.98 and that Rule 43 relied upon for the purpose is inappropriate and irrelevant and that the Petitioner had also strongly objected to the procedure

adopted by the Managing Director in his representation dated 22.7.1998 and there is absolutely no scope for removing the Petitioner by the present mode adopted and the entire proceedings are without jurisdiction, opposed to the statute, rules and bye-laws governing the Bank in question. When the writ petition came up before Court for orders regarding admission, notice was ordered and having regard to the fact that the meeting convened was to be held on that very day when the writ petition was brought before the Court we allowed the meeting to go on but directed that the resolution, if any, passed therein, shall be kept in abeyance and will not be implemented till further orders are passed in the petition, with a further direction to post the petitions, main and miscellaneous, for final hearing with the consent of the parties on either side on 3.8.1998, with liberties to them to file their replies and rejoinders, if they choose to do so, in the meantime:

(a) The Respondents 1 & 2 filed their common reply raising preliminary objections to the maintainability of the writ petition both on the ground that the 3rd Respondent being a Co-operative Society, no writ lies against it and that at any rate the Petitioner had an effective alternative remedy u/s 72 of the H.P. Co-operative Societies Act, 1968 and being a matter touching the business of the society, the grievance, if any, has got to be vindicated by having recourse to the said provisions only. On merits while contending that the meeting convened by the Managing Director, in the peculiar facts of the case is in accordance with law, it was also claimed that a body which has the power to elect the Chairman has the inherent power to remove the person by similar process and that in the meeting held on 27.7.1998 twelve out of Eighteen members-Board of Directors present and voted have passed a resolution expressing no confidence in the Petitioner and elected in his place a new Chairman with two-thirds majority, as evidenced by the proceedings dated 27.7.1998 filed as Annexure R-1 and if the Petitioner is to continue or allowed to function as the Chairman, inspite of the same, it will lead to chaos in Administration of the Board of Management and the affairs of the 3rd Respondent-Bank and that the decision taken as also the procedure followed is quite in accordance with Rule 45 read with Bye-law No. 39 (iii) of the Bank and, therefore, the writ petition has no merits and is liable to be dismissed.

(b) It has been further stated for the Respondents that the authorised share capital of the Respondent-Bank is 6 crores out of which the State has provided Rs. 1,08,98,950 as on 31.3.1997 and Rs. 1,50,00,000 as share charges under long term operations up to 31.3.98, that inasmuch as the Petitioner as also one Mr. O.P. Nadda were elected as President and Vice-President (Chairman and Vice-Chairman) only by the Board of Directors of the 3rd Respondent in a Board meeting held on 23.3.1998, the same Board of Directors of the Bank is entitled to dislodge them and elect a new Head for the Board if they have lost the confidence of the Board and their continuance is prejudicial to the interests of the Bank and the tenure of four years will be subject to such eventualities as also the coming to an end of the term by other method of removal and resignation, too and that not only the Government is entitled to replace its nominee by fresh nomination u/s 35 of the Act but it is incorrect to claim that Respondents 1 and 2 have taken steps to remove the Petitioner. The right of the members of the Board to convene a special requisition meeting under Rule 48 of the Rules is reiterated, and it is also contended that the subsequent withdrawal of his name by one of the requisitionists is immaterial since he not only cannot do so but that even otherwise three Directors are competent also to serve the requisition in terms of Rule 48. The further plea on behalf of the Respondents is that Rule 44 read with Bye-law 39(i) has relevance in case of convening of ordinary and regular meeting but not to a requisition meeting and in such circumstances as the one concerning the President himself it is not necessary to obtain permission of the President and the Managing Director was well within his powers in convening the meeting pursuant to the requisition made by the prescribed number of Directors of the Board for the specific purpose of transacting the only business for which the requisition was made, while adverting to the fact that the 3rd Respondent society consist mostly of individual members with only few societies also as members, it is also reiterated that the entire expenditure of the Bank is borne out of its own resources and its functions are not like governmental functions and that there is no merit in the claim to seek coverage under Rule 43(3). In denying the allegations of mala fides and alleged abuse and misuse of power, it is stated that after the new Government came to power only one Government nominee was replaced in exercise of powers u/s 35(2) of the Act and contentions to the contrary are devoid of substance and merit. The plea that the Petitioner is sought to be removed on political grounds has been denied as incorrect and that the Managing Director was only obliged to as also bound to convene the meeting in question when the requisition demands for the same. The Respondents have also filed a copy of the resolution passed in the meeting held on 27.7.1998 as Annexure R-1 and it disclose that out of 18 members of the Board present and voting 12 members expressed their loss of confidence in the Petitioner to be the President and after electing a President for the days meeting the business was transacted and Shri Sher Singh Chauhan was elected as President in the place of the Petitioner by a overwhelming majority, as it is called, of 12 members.

4. The third Respondent also filed a separate reply and reiterated the preliminary objections as raised by the other Respondents regarding maintainability as also availability of alternative remedy. It is also contended therein that in the teeth of the representation of the Petitioner, the Managing Director was obliged to seek for the instructions of the Registrar and he was also otherwise obliged as clarified by the Registrar to convene the requisition meeting, as demanded by the requisition and that no objection or exception could be taken to the action taken by him. This Respondent also denies the alleged deep and pervasive control by the Government in the administration of the Bank and that in furtherance of the principles of Democracy and Co-operative movement every decision is and has to be taken by the majority only in every Co-operative society. It is also stated that since the Petitioner was not elected as Chairman by the General Body of the 3rd

Respondent Bank it is incorrect to contend that he can be removed only by the General Body and at any rate inasmuch the General Body elects the Board of Directors Zonewise, the collective will of the general body only is reflected by the Board in taking any decision and there is no right in law or otherwise for the Petitioner to claim to continue in office as Chairman despite loosing the confidence of the Board which elected him. The claim about the alleged violation of Principles of natural justice is also denied and it is stated that the claim for continuance in office by the Petitioner inspite of loosing the confidence of the Board which elected him will be contrary to the basic spirit of Co-operative movement, itself. Rule 43(1) is said to be not applicable to the case of the Petitioner since he has not been elected under Rule 38(1) (a) of the Rules.

5. Mr. Rajiv Sharma, learned Counsel appeared for the Petitioner, whereas Mr. Sanjay Karol learned Advocate-General appeared for Respondents 1 and 2 and Mr. Suresh Bhardwaj appeared for Respondent No. 3. The learned Counsel appearing for the contesting parties reiterated the stand taken in their respective pleadings. Shri Rajiv Sharma, learned Counsel for the Petitioner elaborately invited our attention to the various provisions of the Act, the rules and bye-laws governing the society and vehemently contended that

(a) there is no power in the Board of Directors to dislodge or remove the Petitioner from office by expressing lack or want of confidence in the Petitioner

(b) that the meeting of the Board could be convened only by the President and not by the Managing Director of the Society, (c) that if at all it is the general body of the Board which could remove the Petitioner from office under Rule 43(1) read with Bye-law 54 and not otherwise, (d) that even if there is power in the Board in the absence of proper procedure for the exercise of the same, there is no scope for exercising it, (e) that the statutory power vested in the authorities of the State has been exercised for improper purpose coupled with ulterior motives to remove some how the Petitioner because of his allegiance to Indian National Congress, (f) that the whole exercise undertaken smacks of bad faith and both factual and legal mala fides vitiates the exercise of power which according to the learned Counsel was not bona fide in this case and there has been violation of principles of natural justice and no opportunity was given to explain his stand. The learned Counsel while refuting the objection raised regarding maintainability of the writ petition urged that the Bank in question answers the description of ''State'' within the meaning of Article 12 of the Constitution and not only in this case the alternative remedy may not be effective but will not be fruitful also and consequently the Petitioner was rightly invoking the writ jurisdiction of this Court.

6. Per contra, the learned Advocate-General with equal force and vehemence contended that the power to remove is available under Rule 43(3) and even in the absence of specific conferment of power, having regard to the nature of his office, the manner in which he got elected and the powers and duties he was obliged to discharge, it is inherent that he should vacate the office once the very

Board which elected him expresses no confidence in him and resolves to elect some body else in his place failing which there cannot be any smooth running of the Administration of the business of the Society and chaos and stalemate detrimental to the institution and the general body of its members would otherwise result, that Rule 43(1) has no relevance and Rules 43(3) and 48 provides for the convening of the requisition meeting for a special purpose like the one in question and, therefore, there is no merit in the challenge made by the Petitioner. It was specifically contended for the Respondents the word ''Appointment'' in Rule 43(3) would take within it the appointment of the Chairman or President which is by means of a selection by election and therefore Rule 43(3) applied to the case. The learned Advocate-General also strongly refuted the plea of abuse or misuse of power as alleged for any improper purpose or with mala fides legal or factual and that the risk inherent in every elected office by sheer vote of confidence to likewise express want of or lack of confidence cannot be dubbed as mala fide exercise of power and that except changing one nominee alone of the State, the authorities did not do anything in the matter and the accusation is baseless and untenable. The preliminary objections regarding the maintainability of the writ petition against a Co-operative Society and also about the existence of an effective alternative remedy and failure to exhaust the same disentitling the Petitioner from invoking jurisdiction under Article 226 of the Constitution was also reiterated. The learned Counsel for the 3rd Respondent while adopting the submissions of the learned Advocate-General, supplemented the same by also urging additional reasons and contending that in the facts of the case the Managing Director had no other go but to convene the meeting of the Board in terms of the advise tendered by the Registrar of Co-operative Societies clarifying the legal position and no exception could be taken for the course of action adopted.

7. The learned Counsel on either side invited our attention to some of the judicial pronouncements as also to the relevant provisions of the Act, Rules and Bye-laws and we shall refer to them at the appropriate places when the issues pertaining to them are considered by us. We shall first take up for consideration the preliminary objections regarding the maintainability of the writ petition against a Co-operative Society in respect of what is claimed to be matter touching the business and internal management of the Society and also the existence and failure to exhaust effective alternative remedy disentitling the Petitioner to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The reliance placed upon the decision reported in 1993 (2) S.L.C. 243 Chandresh Kumar Malhotra v. H.R State Co-op. Bank and Ors., is inappropriate. The decision in that case turned on the peculiar nature of grievance raised therein pertaining to a power exercised which was conferred under the Bye-laws of the Society and not of any statutory power. The mere contribution of some share capital by the Government and the exercise of control though supervisory but general in nature in the same manner like any other Society under the provisions of the HP. Co-operative Societies Act, 1968, referred

to in this order as "the Act" and the Rules made thereunder cannot, in our view, constitute such effective and pervasive control as to make the 3rd Respondent-Bank answer the definition of ''State'' within the meaning of Article 12 of the Constitution of India. But, that by itself is not sufficient to come to the conclusion that a writ cannot be maintained against a Co-operative Society at all times and for any purpose. Their Lordships of the apex Court, had occasion often to declare, state and restate the principles of law in ever so many decisions rendered by them and it is, in our view, by now well settled that the exercise of powers under Article 226 of the Constitution of India would depend always upon the peculiar nature of the case and issues before Court also, and there cannot be any hard and fast rule of universal application and that if violation of any fundamental rights or contravention of any statutory provisions or mandate is made out, it matters very little as to the character or status of the violator, be it or he answers or not the definition of ''State'' within the meaning of Article 12 of the Constitution. In this case, the main grievance is that the action of the Respondents are opposed to the provisions of the Act and the statutory rules made thereunder and therefore, it is futile to contend that no writ can be maintained even in such cases. So far as the failure to exhaust the effective alternative remedies available constituting an impediment in the Petitioner approaching this Court is concerned, there is no such limitation on the exercise of powers by this Court under Article 226 of the Constitution either in the Constitution itself or otherwise and it has always been held to be a self-imposed rule of restriction guided by dictates of reason, expediency, desirability and feasibility and there can be no bar as such for this Court to intervene at any rate when resort to such alternative remedies may not be an effective one or that when it may be an exercise in futility in this case having regard to the role, participation and the actions taken by the Registrar of Co-operative Societies himself and the nature of allegations made and the substantial and important questions of law raised and involved for determination, the alternative remedies provided u/s 72 of the Act cannot be held to preclude the Petitioner from approaching this Court without exhausting them nor would it be desirable to reject this writ petition on that ground. Consequently, the preliminary objections raised by the Respondents, are overruled.

8. So far as the several issues raised by the Petitioner is concerned, it is unnecessary to deal with all of them and suffice it to take up for consideration the main and substantial ground of lack or want of power in the Board of Directors to dislodge the Petitioner from the office of Chairman or President of the 3rd Respondent-Bank on the ground of his having lost the confidence of the Board which earlier elected him and the competency and authority of the Managing Director of the 3rd Respondent to convene the meeting of the Board of Directors pursuant to the requisition given by the prescribed number of the Board Directors to consider any special agenda or subject in the requisitioned meeting. Before adverting to the relevant provisions of the Act, the Rules and Bye-laws governing the present case, it is more . appropriate to advert to the

varying views expressed by different High Courts in this regard, in certain almost similar though not identical instances. The sheet-anchor of the plea of the Petitioner is the decisions reported in ILR 1975 A.R 242 Veeramachaneni Venkata Narayana v. The Deputy Registrar of Co-operative Societies, Eluru, West Godavari District and Ors. ; Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others, and Jagdev Singh Vs. The Registrar, Co-operative Societies, Haryana and others, The learned Advocate-General for the Respondents while attempting to distinguish them with reference to the scheme of the provisions of the enactments in respect to which those decisions were rendered placed strong reliance upon the decisions of the Delhi High Court reported in Bar Council of Delhi Vs. Bar Council of India, New Delhi-1 and Anr. and Mohan Chandra and Others Vs. The Institute of Chartered Accountants of India and Others,

9. Apart from the above, the learned Counsel appearing on either side invited our attention to several other decisions dealing with the principles relating to the interpretation of the provisions by falling back on the concepts of ''casus omissus'' and ''implied powers'' and also the applicability of the General Clauses Act as well as the need for adopting a ''functional approach'' to make the statute work. In ILR 1975 AR 242, which arose under the Andhra Pradesh Co-operative Societies Act, 1964, a Division Bench of the Andhra Pradesh High Court held that when there is no such specific provision enabling the members of the Managing Committee to express want of confidence in the President, it is not for the Court to lightly infer it to be an omissions in the statute though no doubt, it is the duty of the Court to try and harmonies the various provisions of an Act passed by the Legislature and to even stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act. It was further observed therein that a member of a committee, when once elected could only be removed by the General Body since there is no provision in the Bye-laws too indicating the manner in which the office, bearers of a committee could be removed by the committee, and that the term of office of the members of the Board is co-terminus with the term of the President of the Board. In coming to such a conclusion, the learned Judges made a contrast with the provisions of the Gram Panchayats Act in force in that State at the relevant point of time, which specifically provided for the passing of a no confidence motion against the President or Vice-President of a Panchayat Samiti.

10. In Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others, which arose under the Maharashtra Cooperative Societies Act, 1960, a Division Bench of the said High Court held that in the absence of a rule or bye-law, the Managing Committee has no such inherent or implied power to remove the Chairman or Vice-Chairman by passing a vote of no confidence and such power cannot also be claimed by relying upon Section 16 of the General Clauses Act. The learned Judges of the Division Bench also observed that by importing the doctrine of implied and inherent power or right to recall the members of the Board, it cannot be permitted to do indirectly what they are not permitted to do

directly under any of the provisions of the Act, rules or bye-laws, the power to recall being not inherent in the electorate. It may be pointed out at this stage that the ordinary principles of the right or otherwise of the electorate recalling their representatives under the provisions of the Representation of the People Act cannot be imported into consideration of a situation like the one before us. In Jagdev Singh Vs. The Registrar, Co-operative Societies, Haryana and others, a Full Bench of the said High Court while overruling an earlier Division Bench decision of that Court reported in AIR 1980 P&H 306, held that in the absence of any provision in the Punjab Co-operative Societies Act, 1961, rules and the Bye-laws made thereunder for moving a no-confidence motion in the President of Managing Committee/Chairman of a Board of Directors of a Co-operative Bank, it is not permissible to move such a motion since such a power cannot be either inferred or that such a power can be said to be inherent in the members of the Managing Committee or the Directors of the Bank. It was held that the office-bearers can only be removed in accordance with Section 27 of the Act read with the relevant rules. We find from the provisions of Section 27 as extracted in the reported judgment that the said Section relates to the power of the Registrar to remove or suspend the Committee or member thereof, who apparently were elected by the General Body of the members in certain given circumstances and the learned Judges in arriving at such a conclusion purported to follow the decision of the Bombay High Court reported in AIR 1982 Bom 216, which in turn has placed reliance upon the decision of the Andhra Pradesh High Court reported in ILR 1975 A.P. 242 (supra). The Full Bench of the Punjab and Haryana High Court quoted with approval a passage from the decision of the Bombay High Court in the following manner:

The Division Bench of the Bombay High Court in Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others, which was also a case under the Co-operative Societies Act, while dealing with the above proposition, held as under:

A right to contest the election and the right to move for setting aside an election or right to recall the person already elected are not common law rights. These rights must be conferred by the statute and therefore, can be enforced only in accordance with and subject to the conditions laid down therein by the statute concerned. The . right guaranteed by Article 19(1)(c) is a fundamental right common to all citizens. It is a right which can be enjoyed by all and everybody. This has no reference to the right conferred or created by a particular statute.

The Co-operative Societies Act has been enacted having regard to the Directive Principles of the State Policy as enshrined in the Constitution of India. Co-operative movement is a socio-economic and moral movement. To say the least it is a part of the scheme of decentralisation and deconcentration of power. Collective power intoxication cannot be equated with Co-operation. In the very nature of the said movement it must not be only self-regulated but the constraints and restraints are inherent in the movement itself. The rights conferred or created by the statute are coupled with duty. Fixity of tenure helps proper administration and management of the society. Co-operative movement cannot be permitted to be polluted or chocked by internal or individual strike nor it can be permitted to be polluted by party politics. Whenever the legislature thought that a person is not fit to continue as a member of the board, specific provisions are made for his removal. A person is elected as Chairman or Vice-Chairman for a particular term. His office is controlled by the provisions of the Act. It is not an office at will and therefore, to such an office Section 16 of the General Clauses Act cannot apply.

The Bombay High Court also relied upon the decision of the Andhra Pradesh High Court in Veeramachaneni Venkata Narayana''s case ILR (1975) A.P. 242 (supra). We are in respectful agreement with the proposition of law laid down by the Bombay High Court in the above noted case.

11. In Mohan Chandra and Others Vs. The Institute of Chartered Accountants of India and Others, a Division Bench of the Delhi High Court had an occasion to deal with an issue arising under the Chartered Accountants Act, 1949. The Division Bench held as follows:

40. Whatever may be the duties of the Institute or its Council or its President they cannot be characterised as public duties. Those duties may be important in themselves but they have no reference to the administration of the country whether municipal or national. In our opinion, the office of the President of the Institute is in no way different from that of a manager of a company or at any rate, from that of a managing agent (which office has since been abolished). We find it difficult to accede to the submission made by the Petitioner that the President is not removable by the Council once he is elected or that the Council has no power to consider or pass a motion of no-confidence against the President. The office of the President is an honorary office and there is no provision which makes it incumbent that a person chosen as president has necessarily to bear the burden for a full period of one year. The provision of Section 12(3) that the President and the Vice-President shall hold office for one year merely indicates that the office should not be held for more than the specified period. It cannot be construed to mean that the incumbent has per force to continue in that office even if he is unwilling to continue in that position.

41. One of the arguments that was strongly pressed by the Council for the Petitioners was that while there is no provision in the Act or Regulations for resignation of office by the President there is a provision in Section 13 of the Act which enables any member of the Council to resign his membership. The argument was that the absence of such a provision shows that a member of the Council can submit his resignation but the President cannot do so. The only manner in which the office of the President can fall vacant before the expiry of the period is that the member holding that office should also resign his membership of the Council. He may also lose that office if he has been found guilty of professional misconduct, but so long as he remains a member of the

Council he cannot throw his office before the expiry of the period.

42. We do not think the absence of any provision regarding resignation will render the President irremovable from his office. A person may like to retain his seat in the Council and yet he may not want to bear the burden of the office of the President. There are detailed provisions in the Regulations for election to the Council but there is no provision relating to election to the office of the President except u/s 12(1) where the Council is required at its first meeting to elect two of its members to be respectively the President and the Vice-President thereof. When the office of a member of the Council falls vacant as a result of his resignation such resignation is notified in the official Gazette. But there is no provision for publication in the official Gazette when the office of the President falls vacant. When a member of the Council is elected-President he is so elected because the Council wants him to hold that office. The Council is thus the appointing authority in the case of the President and it is well recognised that the power to appoint includes the power to suspend or dismiss (see Section 16 of the General Clauses Act, 1897). If the Council as the appointing authority could therefore suspend or remove the President from his office the holder of that office could also tender his resignation and the fact that there is no provision in Section 12 which provides for any such resignation will in no way preclude the Council from accepting such resignation.

43. In this connection our attention was drawn to the letter received by the President from the Department of Company Affairs wherein it was stated that there was no statutory provision to support the motion of no confidence to remove the President. The opinion of the Company Law Board is in no way binding on this Court. In our opinion, the absence of any such statutory provision either in the Act or in the Regulations does not at all preclude the members of the Council to bring forth and support any motion of no confidence to remove the President. The Council being the authority to appoint the President also had the power to suspend or dismiss him and the act of bringing forth a motion of no confidence and supporting it, is merely one of the ways in which the power of dismissal or removal could be effectuated by the Council.

12. In Bar Council of Delhi Vs. Bar Council of India, which arose under the Advocates Act, 1961, the Division Bench had an occasion to deal with the legality and propriety of a similar issue. That was a dispute between the Bar Council of Delhi and Bar Council of India wherein when the Bar Council of Delhi made a draft amendment of Rule 33 to ensure that a Chairman of the Delhi Bar Council may be removed by the passing of such a vote of no confidence against him in a meeting of the Bar Council summoned for the purpose, the Bar Council of India was of the view that no such rule can be made under the Act at all and in that context a relief was sought before the Court for a declaration against the Bar Council of India that such a rule can be made under the Act. In such circumstances, the learned Judges of the Division Bench have expensively considered the question at length and observed as follows:

9. The State Bar Council is a statutory corporation and its Chairmanship is a statutory office. The Chairman for the time being is thus the holder of an office. He is not an employee of anyone. This position recalls the observation of Lord Reid in Ridge v. Baldwin (1964) AC 40 at p. 65, that the case of dismissal relate to three kinds of persons, namely, (1) a servant appointed by the master, (2) holder of an office at pleasure, and (3) holder of an office otherwise than at pleasure. An office is often distinct from employment. As observed by Lord Normand in Dale v. Inland Revenue Commissioners (1954) AC 11 at p. 26," ''office'' is an apt word to describe a trustee''s position, or any position in which services are due by the holder and in which the holder has no employer." Another earmark of office is indicated in the following description by Rowlatt, J. in Great Western Rly. Co. v. Bator (1920) 3 KB 266, as follows:

An office or employment which was a subsisting, permanent, substantive position which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders. There can be no doubt that the director of a company, holds such an office as is described.

Further, an office may be one of profit or it may be honorary. The payment of remuneration is not a necessary condition of an office Deorao Laxman Anande Vs. Keshav Laxman Borkar, per Chainani and Shelat JJ).

10. What is the common law relating to the removal from office of the holder thereof who is not a servant of anyone? In answering this question a distinction between two different meanings of the word ''officer'' may be borne in mind. A person may come to occupy an office either by appointment or by election. In either case, he may be an employee of a corporation or he may be only the holder of an office of the corporation and not its employee. The essence of the employment is the disciplinary power of the employer over the employee. This is expressed in the principle embodied in Section 15 of the General Clauses Act that the power to appoint includes the power to suspend or dismiss.

The power of suspension is mainly connected with the power to inquire into the conduct of the employee signifying the disciplinary power of the employer over the employee. This disciplinary aspect is not attached to the holder of an office which is not an employment. When the employer is not a single person but is a body of persons, the decision to employ is taken by such a body in a meeting by majority. Such a resolution may be analogous to an election. In this sense, an employee may be appointed by an election. In such circumstances, the process of appointment and election may be analogous Heyman v. Governors of Rugby School (1874) 18 Eq. 28 . But the occupation of an office by the holder thereof even by appointment and much more so by election is an entirely different process. The distinction between the two is not found to have been made by a Division Bench of this Court in Mohan Chandra and Others Vs. The Institute of Chartered Accountants of India and Others, when it was observed obiter that the principle of Section 16 was relevant to the consideration of the removal of the elected President of the Institute of Chartered Accountants. Nor can it be said that every appointment results in an employment. An appointed arbitrator is not, for instance, an employee of anyone. In East India Film Studios Vs. P.K. Mukherjee and Others, Section 16 of the General Clauses Act was held inapplicable to the removal of an arbitrator firstly because he was not an employee and secondly because specific provisions for his removal inconsistent with Section 16 of the General Clauses Act have been made in the Arbitration Act.

11. Quite irrespective of the question whether the office of Chairman of a State Bar Council is held at pleasure or for the same period for which the Bar Council is elected, the common law relating to the removal of the holder of an office is that the body which has the authority to elect its Chairman has the inherent and implied power to remove the Chairman. If the Chairman holds his office at pleasure, then he can be removed at will. But if he holds his office otherwise than at pleasure, he can be removed only for cause after notice and hearing. It would suffice to quote the following from 19 Corpus Juris Secundum, pages 71-72:

The power of a motion is inherent in every private corporation as an incident of its being and may be expressly conferred by statute of charter in recognition, it has been said of at least one statute, of the inherent nature of the power. While ministerial officers and agents who are elected or appointed by the Board of Directors are removable at will, without a cause being assigned and without notice or a hearing, directors, trustee, and officers elected by the corporation at large may, by virtue of this inherent power, and irrespective of the existence of a provision for removal in the articles or bye-laws, be removed for cause, but not otherwise, and only after notice and a hearing or an opportunity of being heard.

To the same effect is the statement of law in 19 American Jurisprudence 2d pages 545 and 547 and in Bouvier''s Law Dictionary, 3rd Edition, Volume 1, page 190. The English common law relating to the removal or ''amotion'' of the holder of an office is stated as follows in Jowitt''s Dictionary of English Laws at page 115:

In municipal boroughs, a removal from his office of a councillor by his fellow-councillors, frequently exercised before the Municipal Corporation Act, 1835, and not expressly abolished either by that Act or by the Municipal Corporations Act, 1882. The power of amotion is implied or may be conferred by charter.

Similar statements of law occur in Wharton''s Law Lexicon, 14th Edition, pages 59-60 and in 9 Halsbury''s Laws of England, 3rd Edition, paragraph 67, with regard to an office held at pleasure.

12. The view expressed by the majority of the Bar Council of India that a rule cannot be made u/s 15 of the Advocates Act for the removal of the Chairman of the State Bar Council leads to the result that once elected such Chairman is irremovable. He would go out of office only when the State Bar Council does at the expiry of its statutory tenure. Such a result can be justified only if the common law stated above has been changed by the statute. The view of the Bar Council of India is, on the other hand, based on the very silence of the statute on

this point. We are of the opinion that such silence indicates that the common law regarding the removal of the holder of an office remains unchanged. The statute does not, therefore, have to say that the Chairman of the State Bar Council would be removable by a resolution of no-confidence. The reason is that such power of removal is inherent in the Bar Council which elects its Chairman the power given to the State Bar Council to elect its Chairman is the codification of only a part of the common law. Such codification does not change the other part of the common law which implies in the State Bar Council the power to remove the Chairman so elected. Just as rules can be made u/s 15 to carry out the expressed power of the Bar Council to elect the Chairman, it would appear that rules may also be made to carry out the implied power of the State Bar Council to remove the Chairman. The two powers are inseparable in common law. They can be separated only by a statutory intervention. So long as this is not done, they would remain connected with each other even though only one of the powers, namely, the power of election has been made statutory while the other power, namely, the power of removal has been left to be implied. If such a power is not implied, the mere codification of the power to elect would result in a change in the common law. There is no warrant for implying such a change. On the contrary, the construction of the statute in the light of the common law implies such a power in the State Bar Council.

13. Shri Hingorani for the Bar Council of India relied on the decision in Lakshi Narain Misra v. Municipal Board 1962 ALJ 113 , to support his contention that the Chairman of the State Bar Council who is once elected cannot be removed from office by the resolution of the State Bar Council. The term of office of the Vice-President of the Municipal Board in that case was one year. It was held that the said term could not be cut down and the Municipal Board could not cancel the resolution electing the Appellant as the Vice-President. No such tenure has been fixed for the Chairman of the State Bar Council under the Advocates Act. On the contrary, the common law rule that the holder of an office can be removed for a cause even if he has a fixed tenure of office was followed by the Supreme Court in Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, The Vice-Chancellor had been appointed for a period of three years. Nevertheless, his appointment was held to'' be terminable before the expiry of three years for cause and after he was given a hearing following Ridge v. Baldwin.

13. In Heckett Engineering Co. Vs. Their Workmen, the apex Court while dealing with the powers of a plant Manager under the relevant standing orders, while applying the principles engrafted in Section 16 of the General Clauses Act, 1897 observed that it is firmly established that the power to terminate service is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power.

14. In Ram Beti Vs. District Panchayat Raj Adhikari and Others, which arose under the U.P. Panchayat Raj Act, 1947, the Apex Court was dealing with the constitutional validity of Section 14 of the said Act insofar as it empowered the

members of the Gram Panchayat to remove the Pradhan of a Gram Sabha by moving a motion of no confidence. While observing that it is not unconstitutional and void as being violative of the concept of democracy or not arbitrary and unreasonable so as to be hit by Article 14 of the Constitution it was also held that despite the fact that the power of removal of a Pradhan is conferred on the members of the Gram Panchayat, which is a smaller body than the Gram Sabha, since the members of the Gram Panchayat have been elected by the members of the Gram Sabha, they represented the same electorate which elected the Pradhan. It was further observed therein that the removal of a Pradhan by 2/3 members of the Gram Panchayat, who are also elected representatives of the members of the Gram Sabha is, in fact, removal by the members of the Gram Sabha through their representatives, and that an arbitrary functioning of a Pradhan in disregard of the statute or his acting contrary to the interests of the electorate could be known to the members of the Gram Panchayat only and, therefore, it is but proper that the members of the Gram Panchayat are empowered to take action of removal of the Pradhan, if necessary. Though that was a case relating to a challenge made to a specific provision in the Act, the principle recognised by their Lordships that a representative body elected by larger members of electorates really represent such a larger body when they act together and basically such principle is not apathetic or opposed to reason or common-sense.

15. In Manujusna Kadam (Smt.) and Others Vs. Govt. of A.P. and Others, as also in Samala Jayaramaiah Vs. Government of Andhra Pradesh and Others, while considering a challenge to the no confidence motion against the Chairman of Zila Parishad under the A.P. Panchayat Raj Act, 1994, it was held that the procedure for voting in the Chair-person by election and voting-out by no confidence motion are the facets of democracy and incidents attached to it and inasmuch as no confidence motion is not in the nature of the removal from the post on specific allegations, no reasons need be expressed except the Resolution of no confidence being carried out by mere majority.

16. Viewed in the context of the principles laid down in the various decisions, noticed supra, the issue raised before us may now be considered in the context of the provisions of the Act, Rules and Bye-laws concerned governing the 3rd Respondent-Bank. The Himachal Pradesh Co-operative Societies Act, 1968 and the Rules made thereunder governs, the functioning of all Societies registered under the Act being an Act to consolidate and amend the law relating to Co-operative Societies in Himachal Pradesh. The Himachal Pradesh Co-operative (Agriculture and Rural) Development Banks Act, 1979 and the rules made thereunder also govern the 3rd Respondent-Bank, the same being an Act to supplement the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. The provisions of the Rural Development Banks Act deals with only grant and regulation of loans and the recovery of the same by various methods indicated therefore and, therefore, it is the 1968 Act that really concerns and govern the issues raised in this petition. The final authority so far as a society is

concerned vests in the general body of the members in a general meeting and the day-to-day management of every society stand vested in a Managing Committee constituted in accordance with the rules and the bye-laws, which exercise such powers and perform such duties, as may be conferred or imposed respectively by the Act, Rules and the Bye-laws. Section 37 of the Act provides for supersession of Committee/management or any member thereof for stated reasons, as provided therein. The Rules made under the Act provides for holding of an annual general meeting, the quorum of General meeting, the person to preside over such general meetings and the manner in which the minutes have to be recorded. Rule 37 provides for election of the committee and stipulate that the members of the Managing Committee of a Co-operative Society shall be elected in accordance with the rules given in Appendix A. That the provision contained in the said Appendix defines Chairman to mean and include a person appointed by the Registrar to preside over a general meeting held for the purpose of election and if no such person is appointed then the President/ Chairman and in his absence Vice-President/Vice-Chairman and in the absence of both, the person elected by the members present to preside over that meeting. The General body of members eligible to vote as found in the voters list prepared for the purpose shall elect members of the Board or Committee or Management, zonewise. Rule 38 of the Rules which provides for constitution of Managing Committee also postulates that the Managing Committee of a Co-operative Society shall be constituted by election from amongst the members of the Society at the annual/special general meeting and the term of the Managing Committee so constituted so far as the apex Society like the 3rd Respondent is four years. Sub-rule (4) of Rule 38 provides that the Committee shall, as soon as, may be possible, elect from amongst its members a President, Vice-President and such other officers as are specified in the Bye-laws "unless they provide for such election by general meeting". It is pertinent and necessary to point out and lay emphasis about the stipulation contained as above indicating that unless the bye-laws otherwise provide for electing the President, Vice-President and other officers by the members of the society in a general meeting, the Committee or the Board of Directors alone has to elect the President/Chairman, Vice-President/ Vice-Chairman as has happened in this case. Rule 43 of the Rules provides that the elected Chairman of the Society or any other officer elected under Clause (a) of Sub-rule (1) of Rule 38 may be removed from the office by a resolution of a general meeting specially convened for the purpose. Sub-rule (3) of Rule 43 provides that unless otherwise provided in the bye-laws, or in the terms of his appointment, and subject to the provisions of Section 72 of the Act, any officer of the Society appointed by the Managing Committee may be removed from his office by the Managing Committee, subject to the approval of the Registrar, whereas, the Petitioner would in support of his claim rely upon Sub-rule (1) of Rule 43, as applicable to the case of removal of a Chairman, the Respondents, placed strong reliance on Sub-rule (3) to justify power in the Managing Committee, as also the action of the Board of Directors, which is under challenge in this proceeding. Rule 48 of the Rules providing for requisition for special committee meeting reads as follows:

Requisition for special committee meeting.-

(1) Any three committee-members, or such larger number as may be laid down in the bye-laws, may requisition a special meeting of the managing committee by giving seven clear days notice, provided that no such notice shall be necessary in the case of a special meeting requisitioned by the Registrar, or by an officer duly authorised by him in this behalf.

(2) The requisition shall specify the object of the meeting, and shall be signed by the requisitionists, and should be delivered at the office of the society.

(3) At such special meeting, no business other than that specified in the notice shall be transacted.

17. We have carefully considered the submissions of the learned Counsel on either side. The rival submissions principally turn on the applicability or otherwise of Rule 43(3) of the Rules to the case on hand and which done has been purported to be followed in this case, as per the call made for the convening of the meeting by the requisitionists and the notice issued also convening the meeting. Rule 43(1) on which strong reliance has been placed for the Petitioner in our view has no relevance or application for the purpose, on the language used and by operation of its own terms. It specifically states that the elected Chairman of a Society or any other officer elected under clause (a) of Sub-rule (1) of Rule 38 may be removed from office by a resolution of a general meeting specially convened for the purpose. Rule 38(1) (a) envisages that the Managing Committee of a Co-operative Society shall be constituted by election from amongst the members of the Society at the annual/special general meeting and therefore, it should mean that Rule 43(1) will have to be resorted if the Managing Committee or for that matter the Chairman also has been elected from amongst and by the members of the Society at the annual/special general meeting and this situation will arise only in terms of Rule 38(4) when the bye-lays of the Society concerned provide for such election by general meeting meaning thereby general meeting of the General Body of members, but in this case the bye-laws also provide for such election by the Board only. Otherwise, the normal rule, even as per Rule 38(4) is for the Committee or Board of Directors alone to elect the President or Chairman, as has been admittedly made in this case initially when the Petitioner was elected as Chairman by the Board of Directors only. Consequently, no support can be drawn for the case of the Petitioner by relying upon Rule 43(1). Even otherwise, the said rule, must be considered to enable as also recognise, without detriment to the other avenues, the undoubted power of the general body as the ultimate repository of all powers relating to the Management of the Society, of course subject to the provisions of the Act and the Rules, to even remove the Chairman as also the members or the Directors, in the General or special meeting of the general body.

18. So far as the relevancy and applicability of Rule 43(3) is concerned, it

stipulates that unless otherwise provided in the Bye-laws or in the terms of the appointment any officer of the Society appointed by the Managing Committee may be removed from his office by the Managing Committee, subject to the approval of the Registrar. Section 2(11) of the Act defines the word ''officer to mean the President, Vice-President, Chairman, Vice-Chairman, etc., and is inclusive of any other person empowered under the rules or bye-laws to give directions in regard to the business of a Co-operative Society. This will show that the word ''officer'' for the purpose of the Act and the rules will take within its fold even functionaries who owe their position in office even to election and that it is not confined to mean and refer to only the ministerial staff in employment who has been appointed by the executive authorities or even by the Board. The main and only objection of the learned Counsel for the Petitioner to contest the applicability of Rule 43(3) to the case on hand is that the said rule pertains to officers of the Society ''appointed'' by the Managing Committee and not those ''elected'' by the Managing Committee because according to the learned Counsel ''appointment'' and ''election'' are different concepts and those words convey different meaning altogether and therefore cannot be mixed together or treated as postulating one and the same thing. Though, viewed in the etymological sense and considered inlinguistic parlance, the term ''appointment'' is to be ordinarily distinguished from ''election'', there is no inherent or in built in consistencies in the words themselves to interdict the same being treated to mean an analogous thing, when found to have been so used deliberately or when the context of the user compels also one to view in that manner. Ordinarily, the word ''appoint'' is said to mean to designate some person to occupy an office, or perform some functions and instances are not found to be wanting in, where the words ''appointed'' and ''elected'' are used interchangeably, too. It is found stated in the Book, Words and Pharases, Permanent Edition published by St. Paul, Minn. West Publishing Co., as follows:

The words ''appointed'' and ''elected'' are used interchangeably. Van Cleve v. Wallace 13 N.W.2d 467, 469, 216 Minn. 500.

The word ''elected'' as used in Laws 1895, c. 247 (4), relating to the election of the president of the village or Saratoga Springs, is used in the same sense in which the word ''appointed'' is used in the constitution, prescribing the mode of election of the officer People v. Sturges 47 N.Y.S. 999, 1001, 21 Misc. 605; People v. Sturges 50 N.Y.S. 5, 6, 27 App. Div. 387.

The word ''appoint'' as used in U.S.C.A. Const. Art. 2, 1, declaring that each state shall appoint, in such manner as the Legislature may direct, a number of electors, etc., while not the most appropriate word to describe the result of a popular election, is sufficiently comprehensive to cover that mode, and was manifestly used as conveying the broadest powers of determination. McPherson v. Blacker 13 S.Ct. 3, 7, 146 U.S. 1, 36 L. Ed. 869.

The word ''election'', in the strict sense, undoubtedly means the choice of an officer in the exercise of which all the qualified electors have an opportunity to participate; while the word ''appointment'' is understood to mean the selection, by one or more persons who have been commissioned for that purpose, of another, who by virtue of the choice represents or may exercise some authority over the persons delegating the power to make the appointment In People v. Langdon 8 Cat. 1, it was insisted that the words ''elected'' and ''appointed'', as used in a section of the California Constitution. were not equivalent expressions of the meaning intended to be imported by the framers of that instrument, but the Court said much stress is laid upon the word ''appoint'' as used in this Section. This is mere hypercriticism. The word ''appoint'' was probably used as a more comprehensive term, to convey the idea of a mode of constituting or designating an officer with public election or otherwise. In fact, the words ''elect'' and ''appoint'' seem to be regarded as synonymous by the convention. The word ''elect'' simply means to pic out, to select from among a number, or to make choice of, and is synonymous with the words ''choose'', ''prefer'', ''select'', and was evidently used in this sense in the Constitution; and the word ''elect'' as used in Const. Art. 15, 1, declaring that all officers shall hold their office until their successors are elected and qualified is not limited to offices which are filled by an election of the people as contra-distinguished to those to which appointment is made by the Legislature. State v. Compson 54 P. 349, 351, 34 or. 25.

The words ''elected'' and ''appointed'' ordinarily are not synonymous In its limited sense the word ''elected'' is usually employed to denote the selection of a public officer by the qualified voters of a community. On the other hand, ''appointed'' is generally understood to mean the selection of a public officer by one person who is empowered by law to make the appointment. In its broadest sense, however, the word ''elected'' means merely ''selected''. When used in that sense, the word ''elected'' is synonymous with the word ''appointed'' Odell v. Rihn 127 P. 802, 805, 19 Cal. App. 713.

19. Of course, such persons said to be appointed by the process of election has always been held to be not in employment or service. Their appointment qua employment in regular service alone seem to be considered to be distinct and separate and when it is a question of appointment by adopting the process of election, depending upon the context, purpose and the scheme underlying the provisions of an Act or the law concerned, appointment and election appear to have been treated and considered to be analogous to each other, as also used or capable of being used as synonymous too. That is how, at any rate, the Division Bench judgments of the Delhi High Court noticed above also has chosen to view the matter. So far as the provisions of Rule 43 (3) is concerned, construed in the context of the definition in Section 2(11) of the Act as also Bye-law No. 4(f) which stipulated that the words and expressions not defined in the bye-laws but defined in the Act or the rules shall have the meaning assigned to them in the Act or Rules, and also viewed in the background of the purpose as also the scheme underlying the provisions relating to the election of the President/ Chairman and Vice-President Vice-Chairman and also the manner in which the

day to day business of the Society has to be carried out, we find no difficulty in construing the word ''appointed'' to have been used in Rule 43 (3) of as rules in a broad sense only, so as to be analogous to and synonymous with the word ''elected'', for the purposes of the Act and the rules under our consideration. The decisions reported in ILR 1975 A.P. 242 ; Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others, and Jagdev Singh Vs. The Registrar, Co-operative Societies, Haryana and others, , will be of no direct or real assistance in construing the rule in question, since, those decisions mainly proceeded on the applicability or otherwise of the principles contained in the General Clauses Act as also the provisions and the rules of construction to be adopted therein. Consequently, in our view, the power under Rule 43(3) of the H.P. Co-operative Societies Rules, 1971 could be legitimately invoked for the purpose in question and has been properly invoked in the present case. Even otherwise also, we are persuaded after deep deliberations and considerations that the approach adopted by the Delhi High Court in the decisions reported in Mohan Chandra and Others Vs. The Institute of Chartered Accountants of India and Others, and Bar Council of Delhi Vs. Bar Council of India, commends move for our acceptance than the other line of decisions reported in ILR 1975 A.P. 242 ; Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others, and Jagdev Singh Vs. The Registrar, Co-operative Societies, Haryana and others, which proceeded on several assumptions which may not be legitimately assumed in the case before us particularly in the background of the statutory provisions-the Act and the rules adverted to by us, supra. The provisions of the Act and the rules under our consideration do not, in our view, guarantee any immutable period of 4 years term either in absolute terms or even in any qualified manner that the tenure of four years can be put an end to only by any particularly specified manner and not otherwise.

20. So far as the general question raised that there is no scope or possibility, in the absence of any specific provision therefor, to express no confidence in the Chairman/President elected and thereby dislodge him from office and elect a new Chairman/President in his place, we are inclined also to agree with the line of reasoning, approach adopted and the principles laid down in Mohan Chandra and Others Vs. The Institute of Chartered Accountants of India and Others, and Bar Council of Delhi Vs. Bar Council of India, in preference to those laid down in ILR 1975 AP 242 ; Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others, and Jagdev Singh Vs. The Registrar, Co-operative Societies, Haryana and others, and with great respect to the learned Judges, we are unable to persuade ourselves to subscribe to or agree with them. Firstly, the Chairman/ President elected by the Committee/Board of Directors in this case owed his position only to the confidence reposed subjectively in him by the Board of Directors and it is not as though the election was for objective reasons guided by qt/as/''-judicial approval and it is only they who can decide as to whether such person has outlived his utility and lost their confidence and thereby rendered himself to be not in a position to carry on the Administration and affairs of the

Society smoothly carrying with him the Board of Directors in every matter to be decided by the Board and a change has become either necessary or desirable Under the provisions of the Act, rules and bye-laws and the scheme underlying those provisions, the Chairman/President, in the absence of the support of the majority of the Board of Directors cannot do by himself anything and every single matter pertaining to the business activities as also the day-to-day administration has to be carried on either on the basic of decisions taken by the Board or at least by virtue of the post-ratification by the Board of Directors only of anything done to meet the exigencies of an extra-ordinary situation. If as in this case, the Chairman/President not only cease to command the confidence of the majority of members of the Board but the Board of Directors in a specially-convened requisition meeting declared that 2/3rds of the Directors of the Board has no confidence in him, that he shall not continue any longer at the helm of affairs and there shall be a new Chairman, denying the Board of their choice of the Chairman or questioning them, by the Chairman, would ultimately result not only in chaos but total stalemate in the administration of the affairs of the Bank in question and thereby defeat the very purpose and object of having such Banks. Co-operation would mean, living, thinking and working together and in the absence of the same there will be no sociability, mutual aid, progress and improvement in life of the members of the Society. Professor Paul Lambert in his book on "The Social Philosophy of Co-operation", stated, that:

a co-operative society is an enterprise formed and directed by an association of users, applying within itself the rules of democracy and directly intended to serve both its own members and the community as a whole.

Thus, there is no scope for forcing or compelling persons concerned, against their wish, to co-operate with others, unless the statute or some statutory rules compels such forced co-operation to be imposed or extracted and in the absence of any such specific mandate of the law itself for such a purpose, dictates of reason as also the guiding principles of democracy which is and should also be the hall-mark of co-operative movement and observed in the functioning co-operative institutions and its proper functioning for the common good of those for which such institutions are created would inevitably necessitate the adoption of such purposeful construction or interpretation which will best suit, serve and help to achieve effectively, substantially and in all respects the objects for which those institutions are created. A person who owed his office and position only to the will, confidence and pleasure of the Board of Directors, when it turns out that he has fallen from their grace and lost their confidence and therefore it would be next to impossibility for him to carry them with him smoothly and cannot carry on the administration of the affairs of the Society with harmony and in squntary hiatus cannot be allowed to hang around and forcefully thirsted upon the others and if allowed such person would be only acting in sufferance and constitute a peril to the peaceful administration of the affairs of the Society. By adopting the common law principle, well settled in ever so many decisions in this country and outside as noticed supra, Courts would be only averting chaos and pell-mell conditions, as also impracticable and adverse consequences, otherwise detrimental to the Institution itself. The normal principles applied to or adopted in the case of representative elected under the Representation of the People Act, to constitutional bodies cannot be of any assistance of guidance to us in these matters since, those laws sufficiently not only provide for the fixity of tenure but also stipulate the only mode by which such tenure could be cut short or put an end to. Hence, we are of the view that the well-recognised common law principle of dislodging somebody from an office to which he was chosen to and installed by the will and wish expressed by a specified body by a resolution can be made to loose his position, likewise by a subsequent wish and will expressed in like manner against his continuance, of course following the procedure prescribed for expression of such will would not only apply to the case on hand but has necessarily to be applied and consequently, we hold that de hors even the power under Rule 43(3), the Board of Directors of the 3rd Respondent Bank are well within their powers in passing a no-confidence motion to vacate the Petitioner from the position of the Chairman of the Bank and elect in his place a new Chairman of their choice, by following the due procedure therefor. The challenge in this regard also fails and shall stand rejected.

21. The next point that requires our consideration is as to the challenge made to the manner in which the meeting in question or be held and actually held on 27.7.1998 has been convened. The Petitioner contends that the Managing Director is not the person competent to convene the meetings of the Board but that it is only the power and privilege of the Chairman/President to do so, by relying upon Rule 44 and the relevant bye-law 39(1). But, in our view, those provisions of law has no relevance to the present case, in the peculiar fact situation presented before us, Thus, since a requisition meeting is envisaged under Rule 48 and in respect of such meeting the very requisition is the basic authority for convening the meeting and it does not require any further permission. In such cases if the Chairman/President also co-operates, he can instruct the ministerial officer concerned to send notices and in case he is not willing to do so or is not able to do, nothing precludes the Managing Director the highest officer in the Administrative hierarchy from issuing notices for the meeting. Convening of the meetings and issuing notices therefor, are two different aspects and cannot be mixed together and the real and basic distinction lost sight off. In normal or ordinary circumstances, the decision to convene is taken by the President/Chairman and in cases of a requisition meeting, provided the required number of persons who are Board of Directors of the Registrar or his nominee demand and requisitioned for the meeting of the Board, constitutes sufficient decision and authority for convening and, the Chairman has no voice to deny or refuse and prevent such meeting being held. Consequently, what the Managing Director did or does in such cases is to merely do the ministerial job of issuing notices and making arrangements to facilitate the conduct of the requisitioned meeting of the Board and it is not to be taken that he himself convened the meeting. Consequently, we see no merit or substance in the

objection taken in this regard.

22. The further ground urged on behalf of the Petitioner by the learned Counsel, equally does not merit countenance; the plea of mala fides either against the authorities of the State including the Registrar of the Co-operative Societies or against the members who are Board of Directors, which has not been really the case herein since no such specific allegation has been also made by impleading them as party-Respondent the said claim has no merit. In a case where a no-confidence motion is proposed to be passed or actually passed, apart from the question of power which we have upheld in this case to do so, the allegation of mala fides has no role or place. It is the will and pleasure of the Directors only that counts and not for what reasons and why and how they are acting as such and, as long as it is found that the Board of Directors has the power to pass the no-confidence motion against the Petitioner and dislodge him from the office of the Chairman/President no such further questions could arise at all. Equally untenable is the plea or grievance based on the alleged violation of the principles of natural justice and deniable of opportunity to defend himself. It is only in cases where a person proposed to be dismissed from service or removed from a post or position for any acts of misfeasance or malfeasance or for acts of proved misconduct that there need be such opportunities or compliance with the principles of a natural justice. In a case of the nature which involves a mere expression of no confidence, there is hardly any scope or need or necessity for giving any such opportunity other than the opportunity normally given in such cases either to write to the members who proposed to bring about such a no confidence motion, write to them on his own, to plead with them or gain confidence and prevail with them to dissuade them from doing so and the opportunity and scope available to him to mobilise support and face such a resolution. It is the only opportunity that could be thought of and could be expected and made available to him. This he had in abundance but with an overwhelming majority of 2/3rds of Board of Directors he had to loose ground in this case. For the same reasons, we are of the view that no specific or special reasons need be given or urged in support of the resolution for the no confidence motion or prove and substantiate any and it charges is always a well settled principle that normally for expressing want of no confidence and to move a resolution of no confidence there need be no further detailed or supporting reasons, for the move than expressing by a resolution the lack or want of confidence in the person concerned and getting such resolution duly passed. Consequently, we see no merit whatsoever in any one of the grounds of challenge urged on behalf of the Petitioner in support of the challenge made to the impugned proceedings.

23. For all the reasons stated above, the writ petition, therefore, fails and shall stand dismissed. Interim order granted on 27.7.1998 in CMP No. 971/98 therefore, automatically comes to an end and has no force from this day. C.M.P. is also dismissed. No costs.

