(2013) 07 MAD CK 0104

In the Madras High Court

Case No : Writ Petition No''s. 23530 and 33127 of 2003

P. Elias APPELLANT

Vs

The Special Officer RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Tamil Nadu Co-operative Societies Act, 1983 — Section 1(3), 137, 51, 80, 81

Citation : (2013) 4 CTC 841 : (2013) 3 LW 851 : (2013) 8 MLJ 400

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : U.M. Ravichandran, for the Appellant; A.S. Vijayaraghavan, Amicus Curiae and Mr. M.S. Krishnan, for the Respondent

Final Decision : Disposed Off

Judgement

S. Nagamuthu, J.—Certain important legal issues, such as, whether Section 87 and Section 90 of the Tamil Nadu Co-operative Societies

Act are mutually exclusive and whether the loss caused to the society by an officer by the act of misappropriation will be a dispute touching the

business of the society in terms of Section 90 of the Tamil Nadu Co-operative Societies Act etc., have come up for consideration in these writ

petitions. The Petitioner in both the writ petitions was the Special Officer of the Kumari District Tailoring Women Development Cottage Co-

operative Society Limited, Nagercoil, (hereinafter referred to as Society) during the period between November 1988 and August 1994. The said

Society is governed by the Tamil Nadu Co-operative Societies Act, 1983. The Special Officer, who succeeded him, representing the Society,

raised a dispute in A.R.C. No. 1/94-95 dated 11.12.1995, u/s 90 of the Tamil Nadu Co-operative Societies Act, 1983 before the Industrial Co-operative Officer/Arbitrator, Valliyur, making the following claims under seven heads:-

(1) On 03.05.1993, the petitioner had received a cheque from TADCO Bank for a sum of Rs. 7,000/- and again on 21.08.1993, he received a

cheque for Rs. 3,000/- from the very same bank. But the petitioner had not accounted the said amount and thus misappropriated the said sum of

Rs. 10,000/-.

(1a) In the daily ledger, on two different dates, the petitioner had omitted to account for Rs. 100/- and Rs. 1000/- respectively for which he was

responsible.

(2) He had entered into the account of the Society as though a sum of Rs. 900/- was paid to the members on three different occasions. But in fact,

he did not pay the same.

(3) For stitching uniforms for the Adi Dravida Children, he had not made payment; but he had entered in the account books as though such

payment of Rs. 1,60,576.20 was made.

(4) He had purchased materials for a total cost of Rs. 1,60,560.20/- in injurious manner thereby causing loss to the Society.

(5) He has entered in the account books as though he had spent Rs. 1,32,306.25/- towards various expenses but there were no vouchers available

for the same.

(6) He had failed to pay Rs. 7,765/- as stitching charges to the Unemployed Women Society though he had entered in the accounts as though the

same was paid.

(7) There was difference in the savings bank account until 31.03.1993 to the tune of Rs. 12,842/- for which he did not account for.

2. During enquiry, on the side of the Society, as many as three witnesses were examined and eight documents were exhibited. On the side of the

petitioner, he was examined as R.W. 1 and as many as four documents were exhibited. Having considered all the above, the Arbitrator passed an

award on 03.10.1996, wherein, he has held as follows:

(i) For claim under Head No. (1), the petitioner was held liable to pay a sum of Rs. 6,930/- and Rs. 3,000/-.

(ii) For claim under Head No. (1a), he was held liable to pay a sum of Rs. 100/-

and Rs. 1000/-.

(iii) For claim under Head No. (2) he was held liable to pay a sum of Rs. 900/-.

(iv) For claim under Head Nos. (3) and (4) the claim was rejected as the claim was not proved by the Society, however with liberty to hold

enquiry u/s 81 of the Act and then to initiate proceeding afresh.

(v) For claim under Head No. (5), he was held liable to pay a sum of Rs. 1,21,524.60/-.

(vi) For the claim under Head No. (6), the claim was rejected as the claim was not proved by the Society, however with liberty to hold enquiry u/s

81 of the Act and to initiate proceedings afresh.

(vii) The claim under Head No. (7), was dismissed.

3. Thus, the amounts mentioned under the heads (1), (1a), (2) and (5) were directed to be recovered from the petitioner with interest. Challenging

the same, the petitioner filed an appeal before the Co-operative Tribunal, Kanyakumari at Nagercoil in C.M.A. (C.S.) No. 19 of 1999.

4. In the meanwhile, the Director of Social Welfare ordered an enquiry u/s 81 of the Tamil Nadu Cooperative Societies Act into the lapses and

irregularities in the very same Society for the same period during which the petitioner was the Special Officer. On completing the said enquiry, the

Enquiry Officer submitted a report in which he had reported that the petitioner was liable to pay a total sum of Rs. 3,14,839.95/-.

5. Based on the said report, a proceeding u/s 87 of the Act was initiated before the Industrial Cooperative Officer (Supervision), Office of the

Director of Social Welfare Officer, Nagercoil, in RC No. 66362/SP-3/94. He framed as many as seven charges which are as follows:

(i) Charge No. 1 (Misappropriation of cash balance of Rs. 1,000/-):-The petitioner did not account for a sum of Rs. 7,000/- and Rs. 3,000/-

respectively received by way of cheques from TADCO Bank on 03.05.1993 and 21.08.1993 and thus misappropriated the said sum of Rs.

10,000/-.

(ii) Charge No. 2 (Irregular purchase for a sum of Rs. 1,83,145.35/-):-Various purchases made by the petitioner had not been brought to the

stock register of the Society. Thus he had misappropriated Rs. 1,83,145.35.

(iii) Charge No. 3 (Expenses incurred without vouchers):-The petitioner had recorded that a sum of Rs. 1,32,306.25/- was spent on various dates

towards various expenses but appropriate vouchers were not found for the same and thus the petitioner had misappropriated the said sum of Rs.

1,32,306.25/-.

(iv) Charge No. 4:- Omitted (Since there was no Award passed under the said charge)

(v) Charge No. 5:-Omitted (Since there was no Award passed under the said charge)

(vi) Charge No. 6:-Omitted (Since there was no Award passed under the said charge)

(vii) Charge No. 7:-Credit sales to the tune of Rs. 28,781.90/- was not brought in the cash book by the petitioner and thus he had caused loss to

the society.

6. For all the above charges, the petitioner submitted his explanation denying his liability. But, no evidence, either oral or documentary, was let in.

Finally, in Proceedings No. 66362/SP3/94, dated 11.11.1998, an award was passed. Under Charge Nos. 1, 2, 3 and 7 he directed the petitioner

to pay a total sum of Rs. 3,14,839.95/- with interest. He dismissed charges under Charge Nos. 4, 5 and 6.

7. Challenging the said Award, the petitioner filed an appeal in C.M.A. (C.S.) No. 19/99 before the Co-operative Tribunal, Kanyakumari at

Nagercoil. As I have already narrated, as against the Arbitration Award in A.R.C. No. 1/94-95 dated 03.10.1996, the petitioner had already filed

an appeal before the same Tribunal in C.M.A. (C.S.) No. 22/97. The Co-operative Tribunal, heard C.M.A. (C.S.) No. 22/97 and C.M.A. (C.S.)

No. 19/99 together and delivered a common judgment on 04.06.2003, thereby dismissing both the appeals. Challenging the Award in A.R.C. No.

1/94-95 dated 03.10.1996 and the judgment in C.M.A. (C.S.) No. 22/97, the petitioner has come up with the writ petition in W.P. No. 23530 of

2003. Similarly challenging the Award in proceedings No. 66362/SP-3/94 dated 11.11.1998 and the order of the Tribunal in C.M.A. (C.S.) No.

19/99 dated 04.06.2003, the petitioner has come up with the writ petition in W.P. No. 33127 of 2003.

8. Earlier, by a common judgment dated 08.07.2011, a learned single Judge of this Court allowed both the writ petitions and set aside the awards

holding that the claims were barred by time limit as prescribed in Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. Challenging the

same, the respondent/Co-operative Society filed appeals in W.A. Nos. 10 and 11 of 2013. By a common order dated 07.03.2013, a Division

Bench of this Court set aside the order of the learned single Judge, held that the claims are not barred by time limit and accordingly remitted the

matter back for fresh disposal. Thereafter, by the order of the Hon''ble The Acting Chief Justice, these two writ petitions have been placed before

me as specially ordered cases for disposal in accordance with law.

9. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and I have also perused the

records carefully. Considering the importance of the question involved in this case and its complex nature, this Court invited Mr. M.S. Krishnan

learned senior counsel to assist the Court as Amicus Curiae. Accordingly, he has made a thorough study of the issue by making reference

exhaustively to the Tamil Nadu Co-operative Societies Act and similar Co-operative Societies Acts of other States, which are in pari materia, and

he has also brought to my notice a number of judgments of various Courts on this aspect. (In this order for the sake of convenience, the

proceeding u/s 87 of the Act shall be hereinafter referred to as Surcharge proceedings and the proceedings u/s 90 of the Act as Dispute).

10. At the outset, I have to state that in respect of certain claims, in the dispute u/s 90 of the Act award was passed. Strangely and shockingly, for

some of such claims for which award had already been passed u/s 90 of the Act, again surcharge proceeding was initiated u/s 87 of the Act. The

petitioner raised an objection that the same was not maintainable since for the very same amount already an Award had been made under

Section90 of the Act. But the officer who conducted the surcharge proceedings simply rejected the said objection by passing a one-line

observation that the said explanation of the petitioner was not convincing. Thus, he passed award u/s 87 of the Act including the claims covered

under the award u/s 90 of the Act. Thus, for some of the claims by the society, there were two awards passed, one u/s 90 and the other u/s 87 of

the Act. According to the learned counsel, it is unethical and also illegal to direct the petitioner to satisfy two executable Awards for one and the same claim (liability).

11. I find substance in the said contention of the learned counsel. In respect of certain claims, since two different awards by two different

authorities have been passed, the respondent Society has been put in an advantageous position to unjustly enrich itself. Now, the question is which

award could be sustained?

12. To decide the above question, it needs to be explored under what circumstances a dispute u/s 90 can be initiated and Award passed and

under what circumstances a surcharge proceeding u/s 87 can be initiated and Award passed. The further question is whether Section 87 and

Section 90 overlap or they are mutually exclusive.

13. This legal issue has been already debated before various Courts for several decades. Despite the same, the Officials of the Co-operative

Department, I apprehend, are not clear in their understanding of these two provisions contained in Sections 87 and 90 of the Act. Therefore, it is

necessary for me to make an in depth study in respect of the scope and ambit of these two provisions.

14. At this juncture, we need to trace the history of this legislation in brief. During the pre-independence era, the then Government, with a view to

regulate the organisation, management and supervision of Co-operative Societies, had brought into force the Madras Co-operative Societies Act,

1932 (Act 6 of 1932). For the purpose of our debate, it is enough if we look into Sections 49 and 51 which are analogous to Sections 87 and 90

respectively of the Tamil Nadu Co-operative Societies Act, 1983. Sections 49 and 51 of the said Act read as follows:-

Section 49(1) Where in the course of an audit u/s 37 or an inquiry u/s 38 or an inspection u/s 39 or the winding up of a society, it appears that any

person who has taken part in the organisation or management of the society or any past or present officer of the society has misappropriated or

fraudulently retained any money or other property or been guilty of breach of trust in relation to the society, the Registrar may, of his own motion

or on the application of the committee or liquidator or of any creditor or contributory, examine into the conduct of such person or officer and make

an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, fraudulent retainer or breach of trust as

the Registrar thinks just.

(2) The order of the Registrar under Sub-section (1) shall be final unless it is set aside by the District Court having jurisdiction over the area in

which the headquarters of the society are situated or if the headquarters of the society are situated in the City of Madras, by the City Civil Court,

on application made by the party aggrieved within three months of the date of receipt of the order by him.

(3) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition

being made in this behalf to the Collector by the Registrar in the same manner as arrears of land revenue.

(4) This section shall apply notwithstanding that such person or officer may have incurred criminal liability by his act.

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Section 51(1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or

its committee against a paid servant of the society) arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or

any officer, agent or servant, of the society, or

(c) between the society or its committee and any past committee, any officer, agent or servant, or any past officer, past agent or past servant, or

the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation:-A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal

representative of a deceased member, whether such debt or demand be admitted or not, is a dispute touching the business of the society within the

meaning of this sub-section.

(2) The Registrar may, on receipt of such reference,-

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the State Government with the powers in that behalf, or

(c) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any reference transferred under clause (b) of sub-section (2) or

referred under clause (c) of that sub-section and deal with it in the manner provided in the said sub-section.

(4) Where the Registrar is satisfied that a party to any reference made to him under sub-section (1), with intent to defeat or delay the execution of

any decision that may be passed thereon-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar, the Registrar may, unless

adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary; and such

attachment shall have the same effect as if it had been made by a competent civil court.

(5) The Registrar, may, of his own motion or on the application of a party to a reference, revise any decision thereon by the person to whom such

reference was transferred or by the arbitrator or arbitrators to whom it was referred.

(6) (a) Any decision passed by the Registrar under clause (a) of sub-section (2) or under sub-section (5) shall be final and shall not be called in

question in any civil or revenue Court.

(b) Any decision that may be passed by the person to whom a reference is transferred or by the arbitrator or arbitrators to whom it is referred

shall, save as otherwise provided in sub-section (5), be final and shall not be called in question in any civil or revenue court.

15. Post Independence, the Madras Co-operative Societies Act, (Act 6 of 1932) was repealed by the Tamil Nadu Co-operative Societies Act,

1961 (T.N. Act 53 of 1961). In the said Act, Section 71, which is in pari materia to Section 49 of the 1932 Act, reads as follows:

Section 71. (1) Where in the course of an audit u/s 64 or an inquiry u/s 65 or an inspection u/s 66 or Section 67 or the winding-up of a society, it

appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the

society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has

caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to this Act, the rules or

the by-laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the

committee, liquidator or any creditor or contributory may inquire into the conduct of such person or officer or servant and make an order requiring

him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid

thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of

funds, fraudulent retainer, breach of trust or wilful negligence as the Registrar or the person authorised as aforesaid thinks just:

Provided that no such inquiry shall be commenced after the expiry of six years from the date of any act or omission referred to in this sub-section:

Provided further that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an

opportunity of making his representations.

(2) Any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered on a

requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

Likewise Section 73 of the Tamil Nadu Co-operative Societies Act, 1961 which is in pari materia to Section 51 of the Madras Co-operative

Societies Act, 1932, reads as follows:

Section 73. (1) If any dispute touching the constitution of the committee or the management or the business of a registered society (other than a

dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or

any officer, agent or servant of the society, or

(c) between the society or its committee and any past committee, any officer, agent or servant, or any past officer, past agent or past servant, or

the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation:-For the purpose of this section, a dispute shall include:-

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a

deceased member whether such debt or demand be admitted or not, and

(ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the

delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of

such land or other immovable property.

Provided that no dispute relating to, or in connection with, any election to a committee shall be referred under this sub-section till the date of the

declaration of the result of such election.

(2) The Registrar may, on receipt of such reference,-

(a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

(b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate

to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and-

(a) decide the dispute himself; or

(b) transfer it for disposal of any person subordinate to and empowered by him; or

(c) refer it for disposal to an arbitrator or arbitrators; or

(d) re-transfer the same for disposal to the person from whom it was withdrawn; or

(e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

(4) If a question arises, whether for the purpose of this section, any person is or was a member of a registered society, or whether any dispute

referred for decision is a dispute touching the constitution of the committee, or the management or the business of the society, such question shall

be decided by the Registrar.

(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property,

the Registrar or the person or the arbitrator or arbitrators to whom it is transferred, referred or re-transferred under sub-section (2) or sub-section

(3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or

not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or

arbitrators aforesaid, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such

property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

16. Then came the Tamil Nadu Co-operative Societies Act, 1983 (T.N. Act 30 of 1983) which repealed the Tamil Nadu Co-operative Societies

Act, 1961. The Tamil Nadu Co-operative Societies Act, 1983 was enacted by the Tamil Nadu State Legislature in the year 1983. Section 1(3) of

the Act states that the said Act shall come into force on such date as the Government may, by notification, appoint. Though, this Act received the

accent of the President of India on 15.07.1983, the Government thought it fit to issue notification vide G.O.Ms. No. 115 dated 24.03.1988,

thereby bringing the Act into force only from 13.04.1988.

17. Section 71 of the Tamil Nadu Co-operative Societies Act, 1961 was replaced

by Section 87 of the Tamil Nadu Co-operative Societies Act,

1983 which reads as follows:

Section 87 Surcharge:-(1) Where in the course of an audit u/s 80 or an inquiry u/s 81 or an inspection or investigation u/s 82 or inspection of

books u/s 83 or the winding-up of a society, it appears that any person who is or was entrusted with the organisation or management of the society

or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of

breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made

any payment which is not in accordance with this Act, the Rules or the by-laws, the Registrar himself or any person specially authorised by him in

this behalf, of his own motion or on the application of the board, liquidator or any creditor or contributory may frame charges against such person

or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative

who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with

interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way

of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments

which are not in accordance with this Act, the Rules or the bye-laws as the Registrar or the person authorised as aforesaid thinks just:

Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of any act or omission referred to

in this sub-section:

Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such

commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six

months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in

force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it

were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu

Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply not withstanding that such person or officer or servant may have incurred criminal liability by his act.

(4) The Registrar or the persons authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit

under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any Court or office;

(e) issuing Commission for examining of witnesses.

Similarly, Section 73 of the Tamil Nadu Co-operative Societies Act, 1961 was replaced by Section 90 of the Tamil Nadu Co-operative Societies

Act, 1983 which reads as follows:

Section 90 Disputes:-(1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than

a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of Section 75 or the Registrar or the

society or its board against a paid servant of the society) arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any

officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the

nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation:-For the purpose of this section, a dispute shall include:-

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a

deceased member whether such debt or demand be admitted or not.

(ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the

delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of

such land or other immovable property; and

(iii) a decision by the board under sub-section (3) of section 34:

Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-section till the date of the declaration of the

result of such election.

(2) The Registrar may, on receipt of such reference,-

(a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

(b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate

to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and-

(a) decide the dispute himself; or

(b) transfer it for disposal of any person subordinate to and empowered by him; or

(c) refer it for disposal to an arbitrator or arbitrators; or

(d) re-transfer the same for disposal to the person from whom it was withdrawn; or

(e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

(4) If a question arises, whether for the purpose of this section any person is or was a member of a registered society, or whether the dispute

referred for decision is a dispute touching the constitution of the Board, or the management or the business of the society, such question shall be

decided by the Registrar.

(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property,

the Registrar or the person or the arbitrator or arbitrators to whom it is transferred, referred or retransferred under sub-section (2) or sub-section

(3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or

not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or

arbitrators aforesaid, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such

property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.

(8) Nothing contained in section 34 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall apply to any decision passed or award

made under this section.

(9) (a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central

Act 36 of 1963) as if the dispute were a suit and the Registrar, a civil court, subject to the following modifications, namely:-

(i) when the dispute relates to a society in respect of which a Special Officer has been appointed u/s 88 or to a society which has been ordered to

be wound up u/s 137, the period of limitation shall be six years from the date of the order issued u/s 88 or section 137, as the case may be;

(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause

(b) or clause (c) of sub-section (1), the period of limitation shall be six years from the date on which the act or omission with reference to which the

dispute arose, took place;

(iii) when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.

(b) Notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant

satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and dispute so admitted shall be a dispute which

shall not be barred on the ground that the period of limitation has expired.

18. A cursory comparison of Section 49 of the Madras Co-operative Societies Act, 1932, Section 71 of the Tamil Nadu Co-operative Societies

Act, 1961 and Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 would make it crystal clear that Section 49 of the Madras Co-

operative Societies Act, 1932 was verbatim repeated in Section 71 of the Tamil Nadu Co-operative Societies Act, 1961 and again verbatim

repeated in Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 with no significant changes. Similarly, Section 51 of the Madras Co-

operative Societies Act, 1932 was verbatim repeated in Section 73 of the Tamil Nadu Co-operative Societies Act, 1961 and again it is verbatim

repeated in Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 with no significant changes.

19. With this background, let us now analyse the judgments cited at the bar. The earliest judgment, making a comparative study and explaining the

distinction between a surcharge proceeding and a dispute, is by a Division Bench of this Court in V. Sundaram Iyer Vs. Deputy Registrar of Co-

operative Societies, Ramanathapuram and Others, . Before the said Division Bench, there were a number of writ petitions challenging the Awards

made u/s 51 of the Madras Co-operative Societies Act, 1932. The claim in all those proceedings was against the Directors of the Society on the

allegations of loss caused to the Society by fraud, excess payment and misappropriation, etc., As a matter of fact, the illegal activities of the Board

of Directors came to light from out of a complaint upon which an enquiry was ordered by the Registrar of Co-operative Societies u/s 38 of the

Madras Co-operative Societies Act, 1932 (in pari materia provision in the Tamil Nadu Co-operative Societies Act, 1983 is Section 81). On

holding enquiry, the Enquiry Officer submitted a report that the Directors were responsible for loss caused to Society due to wilful negligence,

fraud, excess payment, misappropriation, etc., Based on the said report u/s 38 of the Act, the Board was suppressed and a special officer was

appointed. Subsequently the said special officer raised a dispute u/s 51 of the Madras Co-operative Societies Act, 1932 against the said directors

for recovery of the above amount.

20. After holding necessary enquiry, the arbitrator, finally held the directors responsible for various claims and accordingly passed an Award

against them directing them to pay the said amount with interest. Challenging the Award made u/s 51 of the Act, writ petitions came to be filed

before a Division Bench in V. Sundaram Iyers case. The main arguments before the Division Bench were as follows:

(i) The Deputy Registrar, before whom these claims had been preferred, had no jurisdiction to proceed with them, since the subject-matter of the

claims did not come within the definition of ""dispute touching the business of the society"" is within the opening words of Section 51(1).

(Emphasis supplied)

(ii) Assuming that, the claim is a dispute within this Section, still the claim is also within Section 49 of the Act, and if a matter is both within Sections

49 and 51, it can be proceeded with only u/s 49 and not u/s 51. This argument was based on the general principles of statutory interpretation.

On considering the facts involved in the claims, in paragraphs 16 of the judgment, the Court held as follows:

16. It was the special officer appointed who was invested with the power u/s 51 of the Act. The jurisdiction of the Registrar was therefore invoked

by a person competent to move him u/s 49 and the relief prayed for was an order requiring the defendants to repay or restore or to contribute the

sums named to the assets of the society by way of compensation. We are therefore of the opinion that all the conditions of Section 49 are satisfied

and from what we have stated above it would be seen that the claims in these several plaints fall both u/s 51 as also u/s 49.

21. In paragraph 18 of the judgment, the Division Bench has held as follows:

18. In a case where the provisions of Section 49 are inapplicable, it is clear that recourse could be had to Section 51 and the procedure there

contained would alone be applicable. But in cases falling within Section 49 where (1) Section 51 has no application and (2) cases where a matter

falls both within Sections 49 and 51, the normal rule of construction would be that the two provisions are not intended to operate on parallel lines,

leaving it open to the Registrar or the departmental authorities to choose to act under either provision in his or their unfettered discretion. But that

Section 51 which excludes the jurisdiction of the Civil Court will be strictly construed and that in cases where Section 49 is applicable, Section 51

would for that reason be excluded. In paragraph 19, the Division Bench has held as follows:

19. The rule of construction, therefore, that where there are two sets of provisions, the one general and the other special, the latter alone would

apply to cases falling within it, notwithstanding the generality of the other provision, applies to the construction of these two provisions, and it has to

be held that where there is overlapping of the terms of Sections 51(1) and 49(1), the later alone would be applicable to cases covered by it. The

reasonableness of such a construction is indicated by the fact that, in these cases of serious misconduct resort is permitted to the Civil Court, a

protection not available in the less serious ones dealt with by Section 51.

22. So far as the first question as to whether misappropriation committed by the officer will fall within the ambit of Section 51 of the Act, in

paragraph 10 of the judgment, the Division Bench has held as follows:-

10. we are unable to agree with the submission of learned Counsel for the petitioner that the subject-matter of the claim in these writ petitions is not

a dispute touching the business of a society within Section 51. In the case of the society concerned in W.P. Nos. 853, 920, etc., its business is that

of banking. The dealings out of which the claims which form the subject-matter of A.R.C. Nos. 6239, 6244, 6245 of 1953-54 arise, touch and

concern that business. They also arise between the parties mentioned in Section 51(1)(b) and (c). We are, therefore, unable to accept the

contention that it is not a claim which would fall within Section 51 of the Act. Nor are we able to agree with the learned Counsel that Section 51

contravenes Article 14, though not having heard full arguments upon the point, we do not wish to state it finally.

23. The very same issue came up before the Hon''ble Supreme Court in Pentakota Srirakulu Vs. The Co-Operative Marketing Society Ltd.,

wherein, Hon''ble Mr. Justice N. Rajagopala Ayyangar who was a party to the Division Bench in V. Sundaram Iyer case and who authored the said judgment, was by then elevated to the Hon''ble Supreme Court. He was a member of the three-Judge Bench which heard Pentakota

Sriramulu case. That judgment of the Full Bench of the Hon''ble Supreme Court was also authored by Hon''ble Mr. Justice N. Rajagopala

Ayyangar. In that case, the judgment of the Division Bench of this Court in V. Sundaram Iyer case was extensively quoted by the learned counsel.

In the case before the Supreme Court, the main item of the claim was the commission stated to have been actually earned by the society on the

sales effected by it was not credited to the society. The claim was made by the Special Officer of the Society by raising a dispute u/s 51 of the Act.

Accordingly, an award was passed. Before the Hon''ble Supreme Court, it was contended that fraudulent retention of money or other property of

the Society, since squarely fall within the ambit of Section 49 of the Act, the Registrar had no jurisdiction to direct an enquiry by the Deputy

Registrar u/s 51 of the Act. This argument was based on the views expressed in V. Sundaram Iyer case that when a particular claim falls within the

ambit of Sections 49 and 51 of the Act and thus there is overlapping, proceeding should be initiated only u/s 49 of the Act and not u/s 51 of the

Act. The Hon''ble Supreme Court concurred with the said legal position. But it held, on facts, that, since, there was no audit report u/s 37 or an

enquiry u/s 38 or an inspection u/s 39 or on the winding up of the Society, section 49 of the Act was not applicable to the facts of that case and

therefore the reference of dispute u/s 51 of the Act was held to be maintainable.

24. The next contention before the Hon''ble Supreme Court was that the dispute about the retention of money belonging to the Society by the

appellant was not a dispute touching the business of the Society. The argument was that the expression business of the Society would include only

what was legally permissible. It was further contended that fraudulent retention of money belonging to the Society is not only illegal but also it has

got nothing to do with the business of the Society and therefore Section 51 of the Act is not applicable. However, this argument was not

acceptable to the Hon''ble Supreme Court. In paragraph 6 of the judgment, the Hon''ble Supreme Court has held as follows:

6. It could not be disputed that the sale of the produce belonging to the members of the Society was part of the business of the Society, and then

the charging of commission for those sales and the crediting of the Society''s accounts with that commission would equally be the business of the

Society. Apart, therefore, from the question of illegality raised by reason of the sale being it prices in excess of the controlled price. It is not

capable of Argument that the failure on the part of the appellant to credit to the Society the full amount of commission due on the sales effected by

him on behalf of the Society and the resistance by him of that demand, would not be a dispute touching the business of the Society. This objection

is clearly without substance and must be rejected.

(Emphasis supplied)

25. From the above judgment, it could be seen that the Hon''ble Supreme Court has laid down that if an officer of the Society fraudulently has

retained or misappropriated the funds belonging to the Society, the said act of the officer gives rise to a dispute touching the business of the Society

within the ambit of Section 51 of the Act depending upon the nature of the business of the society and thus the claim arising out of the same can be

made u/s 51 of the Act by raising an appropriate dispute.

26. Subsequently, the above judgment in Pentakota Sriramulu case came to be considered in a similar situation in Prem Jeet Kumar Vs. Surender

Gandotra and others, That was a case where there was a complaint to the Registrar of Co-operative Societies alleging irregularities committed by

the former President and the members of the Board of the Co-operative Society governed by the Delhi Cooperative Societies Act, 1972. Section

59 and Section 60 of the Delhi Cooperative Societies Act are in pari materia to Section 49 and Section 51 respectively of the Madras

Cooperative Societies Act, 1932. In the said judgment, while approving the law laid down in Pentakota Sriramulu case, the Hon''ble Supreme

Court in paragraph 7 has held as follows:

7. In the Madras Act, section 49 was the provision corresponding to section 59 of the Delhi Act. It was, therefore, on the basis of similar

corresponding provisions that the question arose for decision of this Court in Sriramulu. In Sriramulu also the facts disclosed in the inquiry that

certain loss was caused to the society by the acts of past Managing Committee and, therefore, a special officer appointed to look into the affairs of

the society made a claim u/s 51 of the Madras Act before the Registrar against the past President of the Society: It was held that the Registrar''s

order u/s 51 of the Madras Act could not be challenged. We do not find any significant difference between the provisions of the Madras Act which

form the basis of this Court''s decision in Srirakulu and sections 59 and 60 of the Delhi Act with which we are concerned to justify taking a

different view as suggested by learned counsel for the appellant. Following the view taken in Sriramulu, this appeal must fail. Consequently, the

appeal is dismissed with costs quantified at Rs. 5,000.

(Emphasis supplied)

27. Later on, in Yogendra Prasad Vs. Addl. Registrar, Co-op. Societies, Bihar and others, a similar question regarding surcharge proceedings and

dispute came up for consideration under the Bihar and Orissa Cooperative Societies Act, 1935 (6 of 1935). Sections 40 and 48 of the said Act

are in pari materia to Sections 87 and 90 respectively of the Tamil Nadu Cooperative Societies Act, 1983. In paragraph 6 of the judgment, while

distinguishing Section 40 and 48 of the Bihar and Orissa Cooperative Societies Act, the Hon''ble Supreme Court has held as follows:

6. The proceedings under s. 40 are not in substitution of s. 48, but are independent of and in addition to the normal civil remedy under s. 18. The

culpable negligence, misconduct, misappropriation, fraudulent conduct etc. are relevant facts to be established in the proceedings under s. 40. But

that is not so under s. 48. Therefore, mere initiation or an order passed under s. 40 does not divest the jurisdiction or power of the Registrar under

s. 48 when it was referred to for a decision of the dispute. Exercise of the jurisdiction to pass an award under s., 18(3) or revision under s.- 56

does not amount to double jeopardy.

28. Yet another case, with similar issue, came up before the Hon''ble Supreme Court in The Bihar State Co-operative Marketing Union Ltd. Vs.

Uma Shankar Sharan and another, That was also a case under the Bihar and Orissa Co-operative Societies Act, 1935. In that case, the Depot

Manager was proceeded against in respect of the shortage of stock thereby resulting in loss to the Society. In this case, the judgment of the

Hon''ble Supreme Court in Pentakota Sriramulu case (cited supra) was simply followed. In paragraphs 6 and 7 of the judgment the Hon''ble

Supreme Court has held as follows:-

6. Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that

the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two

remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action

accordingly. In the present case there is no such problem as no steps u/s 40 were ever taken by the appellant. The provisions of Section 48 must,

therefore, be held to be available to the appellant for recovery of the loss.

7. Our view that a matter which may attract Section 40 of the Act will continue to be governed by Section 48 also if the necessary conditions are

fulfilled, is consistent with the decision of this Court in Prem Jeet Kumar Vs. Surender Gandotra and others, , arising under the Delhi Co-operative

Societies Act, 1972. The two Acts are similar and Sections 40 and 48 of the Bihar Act and Sections 59 and 60 of the Delhi Act are in pari

materia. The reported judgment followed an earlier decision of this Court in Pentakota Srirakulu Vs. The Co-Operative Marketing Society Ltd., .

We accordingly hold that the High Court was in error in assuming that the application of provisions of Section 48 of the Bihar Act could not be

applied to the present case for the reason that Section 40 was attracted.

29. In this regard, I may also refer to yet another judgment of the Hon''ble Supreme Court in Deccan Merchants Co-operative Bank Ltd. Vs.

Dalichand Jugraj Jain and Others, The facts of the case are that a building was originally leased out by his original owner to the respondent and

subsequently the society purchased the said building from its original owner. After such purchase, the society wanted the respondent to vacate the

building and hand over possession. Incidentally, the respondent happened to be a member of the society. Since the respondent did not vacate, the

Society took it as a dispute within the ambit of Sections 91 to 96 of the Maharashtra Co-operative Societies Act, 1960. Section 91 of the said Act

deals with dispute. The said provision is analogous to Section 90 of the Tamil Nadu Cooperative Societies Act, 1983. It was contended before the

Hon''ble Supreme Court that the above dispute is only a dispute between a landlord and a tenant, which cannot be stated to have any relationship

with the business of the Society. It was mainly contended before the Hon''ble

Supreme Court that the words ""touching the business of the society

in Section 91were very wide and would include any matter which relates to or concerns or affects the business of the society. In other words, the

contention was that the dispute need not directly arise out of the business of the society but it is enough if it had reference or relation to or concern

with its business. While dealing with these contentions, in paragraphs 17 and 18, the Hon''ble Supreme Court has held as follows:-

17.... Five kinds of disputes are mentioned in Sub-section (1); first, disputes touching the constitution of a society; secondly, disputes touching

election of the office-bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the

management of a society; and, fifthly, disputes touching the business of a society. It is clear that the word "" business "" in this context does not mean

affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a

society. In this sub-section the word "" business "" has been used in a narrower sense and it means the actual trading or commercial or other similar

business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws.

18. The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would

depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings

which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be

that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its

business. But, in this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it

lets out properties owned by it. There fore, it seems to us that the present dispute between a tenant of a member of the bank in a building, which

has subsequently been acquired by the bank, cannot be said to be a dispute touching the business of the bank, and the appeal should fail on this

short ground.

(Emphasis supplied)

30. A close reading of all the above judgments of the Hon''ble Supreme Court, dealing with the same issue in the Co-operative Societies Acts of

various States, would go to show that the Hon''ble Supreme Court has been consistently holding that the term touching the business of the Society

as employed in Section 91 of the Tamil Nadu Cooperative Societies Act, 1983 and the Co-operative Societies Act of the other States referred to

above requires to be broadly interpreted so as to include any transaction which has got some link or nexus with the regular business of the Society.

In the course of such business of the Society, if, any loss is caused to the Society by an Officer of the Society by not bringing the amount to the

account of the Society by misappropriation etc., the said claim will be a dispute touching the business of the Society. In this case, the contention of

the petitioner that the allegations of misappropriation, causing loss due to negligence etc., would not fall within the ambit of a dispute touching the

business of the Society is only to be rejected. It all depends upon the nature of the business that a Society is involved. For example, if the Society

is involved in banking business, but an old car belonging to the society is sold to a member of the society and there arises a dispute in respect of the

same between the society and the member, such dispute between the bank and the member, will not fall within the ambit of Section 91 of the Act

because the main business of the society is not sale of the car and the sale of the car has no nexus with the business of the society. [see the

judgment of the Hon''ble Supreme Court in Deecan Merchants Cooperative Societies Limited case].

31. Having analysed the law on the subject in the light of the judgments of the Hon''ble Supreme Court, now, it is the time for me to summarise the

emerging principles as follows:-

(i) Section 87 of the Tamil Nadu Co-operative Societies Act is a special provision whereas Section 90 is a general provision and they are

overlapping.

(ii) To initiate a proceeding u/s 87 of the Tamil Nadu Co-operative Societies Act, it is necessary that it should be preceded by an audit u/s 80; or

an enquiry u/s 81; or inspection or investigation u/s 82; or inspection of books u/s 83 of the Tamil Nadu Co-operative Societies Act; or winding-

up of the society.

(iii) To initiate a proceeding u/s 90 of the Tamil Nadu Co-operative Societies Act, no such audit report u/s 80; or enquiry report u/s 81; or an

inspection or investigation u/s 82; or inspection of books u/s 83; or winding-up of the society is a condition precedent.

(iv) A claim arising out of a transaction may fall both within the ambit of Section 87 and Section 90 of the Tamil Nadu Co-operative Societies Act.

(v) If the claim is based on an audit report u/s 80; or enquiry report u/s 81; or inspection or investigation u/s 82; or inspection of books u/s 83 of

the Tamil Nadu Co-operative Societies Act; or winding-up of the society, the claim shall be made only u/s 87 of the Tamil Nadu Co-operative

Societies Act and the same shall not be made u/s 90 of the Tamil Nadu Co-operative Societies Act. To this extent, Section 90 shall stand

excluded by Section 87 of the Tamil Nadu Co-operative Societies Act since Section 87 is a special provision whereas Section 90 is a general

provision.

(vi) Depending upon the nature of the business of the society, the misappropriation or fraudulent retention of money or other property, or breach of

trust, or loss caused to the society, may also constitute a dispute touching the business of the society in terms of Section 90 of the Act provided

there is nexus between the business of the society and the act of the individual which resulted in loss.

32. In the case on hand, the main business of the Society in question is purchase of cloth, to stitch the same and to supply the same to the third

parties. There is clear nexus between the business of the society and the act of the petitioner which resulted in loss and, therefore, the dispute in this

case squarely falls within the ambit of Section 90 of the Act. Further, in this case, since there was no enquiry, audit, etc. under Sections 80, 81, 82

and 83 of the Tamil Nadu Co-operative Societies Act prior to the initiation of proceedings u/s 90 of the Tamil Nadu Co-operative Societies Act,

the dispute raised u/s 90 of the Act in ARC No. 1/94-95 is maintainable in law. As I have already pointed out, in paragraph 3 of this judgment, out

of the claims made under seven heads, award was passed u/s 90 of the Act in respect of claims under Head Nos. 1, 1(a), 2 and 5 alone.

33. Subsequently, an enquiry u/s 81 was ordered and based on the said report, the surcharge proceeding u/s 87 was initiated in RC. No.

66362/SP-3/94. In that surcharge proceeding, claim was made under seven charges. The Deputy Registrar had passed an award under charge

Nos. 1, 2, 3 and 7 alone. So far as Charge No. 1 is concerned, already, it is covered by the award u/s 90 and, therefore, the award made under

Charge No. 1 is liable to be set aside.

34. As far as Charge No. 2 is concerned, the claim is not covered in the award u/ s 90 of the Act. However, in this regard, I find that there was no

evidence let in support of this charge that the society had sustained loss to the tune of Rs. 1,83,145.35 on account of the alleged irregular purchase

made by the petitioner. It is not stated as to what were the materials purchased, when, from where and how they were irregular and whether it was

due to any negligence much less willful negligence. Therefore, the surcharge award u/s 87 of the Tamil Nadu Co-operative Society Act under this

charge needs to be set aside.

35. The charge No. 3 is that the petitioner did not produce vouchers for the expenses incurred by the society to the tune of Rs. 1,21,524.60. This

claim is also covered in the award u/s 90. Therefore, the award under this charge is also liable to be set aside.

36. No award was passed under Charge Nos. 4, 5 & 6.

37. Under charge No. 7 claim was made for a sum of Rs. 28,781.90. According to these charges, the petitioner had failed to bring the cash credit

sales to the tune of Rs. 28,781.90. But, award was passed only for a sum of Rs. 170/-. The learned counsel for the petitioner does not dispute the

award under this charge. Therefore, the award under this charge also needs to be confirmed.

38. So far as the award u/s 90 of the Act in ARC No. 1/94-95 is concerned, the petitioner has filed a memo before this court agreeing to pay Rs.

1,33,454.60. In the said memo, the petitioner has stated in paras 3 and 4 as follows:-

3. The petitioner humbly submits that now he is aged 72 years and have been fighting the legal battle for the past two decades without any

peacefulness in his life even though he was allowed to retire from service by the department.

4. The petitioner humbly states that though he is not liable to pay any amount as per the arbitration and surcharge awards he wish to put a rest to

the legal battle and hence hereby express his willingness to pay a sum of Rs. 1,33,454.60 [Rupees one lakhs thirty three thousand four hundred

and fifty four and paise sixty only] to the society for an amicable settlement without prejudice to his legal rights in order to lead a peaceful retired

life. He has also stated in the memo that in pursuance of the interim order passed by the this court, he has already deposited a sum of Rs. 63,000/-

and he is prepared to pay the balance. On verification, if it is found that the petitioner has deposited Rs. 63,000/-, the same shall be adjusted

accordingly.

39. In view of the foregoing discussions and the memo of the petitioner, so far as the award in the dispute in ARC No. 1/94-95 is concerned, the

award under the following heads are confirmed:-

Considering his age and also the fact that this writ petition has been pending from 2003, I am inclined to direct the petitioner to pay the said

amount, less a sum of Rs. 63,000/- deposited already, with interest at the rate of 3% per annum from the date of award. If the amount is not paid

within a period of six months from the date of receipt of a copy of this order, the petitioner shall pay interest at the rate of 6% p.a. from the date of

award instead of 3%.

40. So far as the Surcharge Award in R.C. No. 66362/SP-3/94 dated 11/11/1998 is concerned, the award under the following claim alone is

confirmed:-

Sl. No. Under the Charge NumberAmount Awarded [in

Rupees]

1 7 170.00

Considering his age and also the fact that this writ petition has been pending from 2003, I am inclined to direct the petitioner to pay the said amount

with interest at the rate of 3% per annum from the date of award. If the amount is not paid within a period of six months from the date of receipt of

a copy of this order, the petitioner shall pay interest at the rate of 6% p.a. from the date of award instead of 3%.

41. In the result,

(i) W.P. No. 23530 of 2003 is disposed of directing the petitioner to pay a sum of Rs. 1,33,454.60 less Rs. 63,000/- already deposited by the petitioner, with interest at the rate of 3% per annum in ARC No. 1/94-95 from the date of award. If the amount is not paid within a period of six

months from the date of receipt of a copy of this order, the petitioner shall pay interest at the rate of 6% p.a. from the date of award instead of 3%.

No costs.

(ii) W.P. No. 33127 of 2003 is partly allowed and the petitioner is directed to pay a sum of Rs. 170/- with interest at the rate of 3% per annum

under charge No. 7 alone. If the amount is not paid within a period of six months from the date of receipt of a copy of this order, the petitioner

shall pay interest at the rate of 6% p.a. from the date of award instead of 3%. The award in respect of other charges is set aside. No costs.

Before parting with these cases, I place on record my sincere appreciation for the excellent services rendered by Mr. M.S. Krishnan, the learned

Senior Counsel who assisted this court as Amicus Curiae by making argument with erudition and by placing all relevant materials.