

(1981) 08 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 1795 of 1981

Patesingh Rao Anandrao Naik

APPELLANT

Vs

R.V. Deshmukh

RESPONDENT

Date of Decision : 06-08-1981

Acts Referred:

Constitution of India, 1950 — Article 134A, 226, 227

Citation : (1981) 83 BOMLR 539 : (1981) MhLj 936

Hon'ble Judges : Dharmadhikari, J; Bhonsale, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—This writ petition is filed by the elected members of the board of directors of the Vishwas Sahakari Sakhar Karkhana Ltd. Yeshwant Nagar, Chikmali Taluka Shirala, District Sanigli, challenging the orders passed by the Joint Director (Sugar) and Joint Registrar of the Co-operative Societies, Maharashtra State, u/s 78 of the Maharashtra Co-operative Societies Act (hereinafter referred to as the Act), removing the board of directors and consequential appointment of one Shri Desai as an administrator.

2. The petitioners were elected as members of the board of directors in December 1978 and their tenure of office is for 5 years. According to the petitioners they belong to a group that owed its allegiance to congress (U). Their group has been in control of the karkhana since 1973. In the year 1978 when they were re-elected P.D.F. Government was in power in the State of Maharashtra. In January 1980 fresh elections were held to the State Legislature and congress (I) party came into power. It is the case of the petitioners that since then malicious efforts were made by the local congress (I) M.L.As and workers to bring hurdles in the smooth working and administration of the karkhana. As a result of this political manoeuvring in September 1, 1980 a show cause notice was issued by the respondent No. 1 the Joint Director (Sugar) and Joint Registrar, Co-operative Societies u/s 78 of the Act. The said notice initially contained following 10 allegations:

(1) In the year 1979-80, the karkhana worked only for 102 days and crushed only 79,327 metric tonnes of sugarcane against the capacity of 1.75 lacs of metric tonnes. Further the board did not initiate any action against the producer-members who did not supply sugarcane to the karkhana.

(2) The board of directors failed to collect subscriptions in respect of shares from the karkhana's members.

(3) The board of directors did not attempt to increase the number of producer-members.

(4) The board of directors did not take adequate action to submit a rectification report to the registrar, clarifying the steps taken to rectify the defects of the audit reports of the years 1976-77 and 1977-78. They thereby committed an offence u/s 82 of the Act read with bye-law 43 (S) of the karkhana.

(5) From December 1978, when the board assumed control of the karkhana till December, 1979, the board of directors met only twice to approve the expenditure incurred by the karkhana. On these occasions all expenses were not approved. Certain expenditures were only approved by the executive committee of the board and expenses since January] 980 had not been approved by the board.

(6) The board of directors sanctioned advances to the truck and crop harvesting contractors in excess of the amounts payable under the rules.

(7) That illegal advances were advanced to three karkhana employees,

(a) Shri S.A. Patil,

(b) Shri B.D. Patil,

(c) Shri D.H. Patanekar, for work conducted by them for the karkhana,

(8) The board of directors did not utilise the correct method and system in the appointment and confirmation of their employees.

(9) The board of directors sanctioned excess expenditure for the construction of a mud and stone bridge over Varna river.

(10) That the karkhana purchased materials at rates exceeding the corresponding purchase of the Varana and Panchaganga karkhana.

3. On September 29, 1980 a reply was submitted by the board denying all the allegations made in the show cause notice. Thereafter on October 21, 1980, October 25, 1980, October 27, 1980, October 29, 1980 and November 24, 1980 the executive director of the society submitted further information, documents and other material in support of the submissions already made in their reply. Thereafter by an order dated December 12, 1980, the Joint Director (Sugar), respondent No. 1 passed an order of supersession u/s 78 of the Act, removing the board of directors and appointing the administrator. The ultimate order is

based on 8 grounds only. Being aggrieved by this order petitioners filed an appeal before the State Government u/s 152 of the Act. On December 24, 1980 the Honourable Minister for State for Co-operation, was pleased to grant interim stay of the order passed by the respondent No. 1. However the said interim stay was subsequently vacated on March 5, 1981. Against the said order of vacating the stay the petitioners filed writ petition No. 762 of 1981. However, before the said petition came up for effective hearing it became infructuous since the appeal itself was disposed of by the Government by order dated April 20, 1981. It is the case of the petitioners that no effective hearing was given to them by the respondent No. 2 and without giving any reasonable opportunity of being heard the appellate order was passed by the appellate authority. As already observed it is these orders i. e. first passed by the respondent No. 1 and the second by the appellate authority which are challenged in this writ petition on various grounds.

4. Shri Rane, the learned Counsel, appearing for the petitioners contended before us that the order passed u/s 78 of the Act is vitiated because of the mala-fide exercise of power. He also contended that the said order is bad in law because before issuing the said order, the federal society was not consulted as required by Section 78 of the Act. Shri Rane further contended that orders passed by the 1st and 2nd respondents are passed without any application of mind and are based on flimsy grounds. The respondents Nos. 1 and 2 never applied their judicial mind to the explanation given by the petitioners and the power has been exercised for the purpose which is beyond the scope and contemplation of Section 78 of the Act. He also contended that no reasonable man exercising his power bonafide could have passed such an order of removal of the committee. In substance it is contended by Shri Rane that the action taken constitutes fraud on the power granted by the statute. He has also contended that apart from the fact that the order is issued in malafide exercise of the power and the grounds incorporated in the show cause notice were not only vague but were not also germane for exercising the power u/s 78 of the Act, some of the grounds which find place in the order issued u/s 78, were not even the subject-matter of the show cause notice. Further some of the grounds relate to the period prior to 1978 when the present board of directors was not in office. Therefore, according to Shri Rane the order passed by the respondent No. 1, and confirmed by respondent No. 2 removing the committee i.e. the board of directors is void ab-initio. So far as the appellate order is concerned it is contended by Shri Rane that the appellate authority has confirmed the order passed by the respondent No. 1 without any application of mind and mechanically. The order passed in appeal is not a speaking order nor the appellate authority has dealt with the submissions made by the petitioners either in the memorandum of appeal or argued at the time of hearing of the appeal, Shri Rane also contended that action has been taken on the grounds totally non-existing and irrelevant to the purpose and intention of the statute and the grounds stated are also such that no one can reasonably arrive at the opinion or satisfaction requisite under the provision.

5. On the other hand it is contended by Shri Sawant that before passing the order u/s 78 the federal society was duly consulted. The order passed by the respondent No. 1 is passed on the grounds which are germane for deciding the matter u/s 78 of the Act and it cannot be said that the findings recorded by him in his detailed order are in any way perverse or are not based on legal evidence. None of the grounds on which the order is based can be termed as extraneous and, therefore, while exercising its extra ordinary jurisdiction) under Articles 226 and 227 of the Constitution of India, this Court cannot sit in appeal over the finding recorded by the authorities below. So far as the appellate order is concerned, it is contended by Shri Sawant that since the respondent No. 2 Minister for State for co-operation agreed with the appreciation of the evidence as well as findings recorded by the respondent No. 1, it was not necessary for the appellate authority to restate the reasons for the findings or reproduce the evidence over again. The order passed by the appellate authority is a speaking one and as the appellate authority has fully agreed with the findings recorded by the trial Court, it cannot be said that the order passed in appeal is in any way perverse or illegal. In support of this contention Shri Sawant has placed reliance upon the decision of the Supreme Court in Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others,

6. As to what is the ambit and scope of Section 78 of the Act, came for consideration of this Court in Little Gibbs Co-op, Housing Society Ltd., Bombay and Another Vs. The State of Maharashtra and Others, The observations of this Court in the paras. 10 and 11 of the said decision are not only eloquent but are also pertinent. The said observations read as under (at p. III):

10. It is only when the Registrar forms an opinion as to the existence of the such situation that he can proceed to take action for the removal of the committee. The conditions which are required to be satisfied prior to the exercise of the authority and power are: (1) there is an opportunity to the committee or its members, as the case may be "of stating its on his objections" sind (2) consultation with the federal society. These, in our opinion, are not empty formalities. The safeguards appear to have been provided against the misuse of the powers by the officers of the co-operative department.

11. Apparently the co-operative societies under the Act are autonomous bodies. Final authority of each such society vests in the general body of members. The management however, of such society vests in a committee which is otherwise known as managing committee. The provisions of the Act, Rules and the Bye-laws regulate proceeding at the general body meeting as also the manner of election of managing committee and the exercise of control over it by members of the society. These also provide for the removal thereof in case of loss of their confidence. Members and shareholders are prima facie the masters of their own society and the property or the business owned by it, and it is really for them to decide as to how they should function, subject to their obligation to comply with the provisions of the Act as also other laws of the land. Powers are also vested in

the Registrar u/s 79 to enforce the performance of such obligations which a society or its committee owe under the law. It is only when such normal checks are found to be unenforceable and lawful functioning of the society becomes impossible that recourse to the extreme step contemplated u/s 78 is intended to be taken. In the event of any action u/s 78, the shareholders are deprived, at any rate, temporarily of their rights to manage their own affairs through the committee of their choice. Such action also, on the other hand, constitutes a slur on the persons who happen to occupy seats in the managing committee. The management then consequently stands vested in the hands of one who is not of their own choice, but is the choice of the Registrar. This apart, the remuneration of the administrator is also required to be borne by the shareholders or is otherwise defrayed from the assets of the society. This drastic action, therefore, cannot be resorted to lightly and without regard to the legal rights of the shareholders as also the members of the managing committee. Such action has to be taken only to protect the interest of the society, or the community at large. That is why the Registrar cannot have recourse to such an extreme step unless the members of the managing committee are given an opportunity to explain their conduct. The scheme of the section is that action taken thereunder without affording due opportunity to show cause would be illegal and accordingly of no effect.

7. From these observations it is quite clear that Section 78 contemplates an extreme and drastic step. Apart from this section there are other provisions in the Act which enables the authorities concerned to exercise power and control over the society. It cannot be forgotten that the action contemplated by Section 78 is not only drastic but is extreme and abnormal in nature. In a democratic society it is of the essence that democratic institutions which are part and parcel of the scheme of the decentralisation of power and deconcentration of wealth, are allowed to function and not superseded on charges inadequately brought home or unreasonably accepted. Supersession not only affects the members of board of directors but also the electorate who were responsible in electing them. It affects the very democratic set up of the society. In this context it cannot be forgotten that the Act itself was enacted by the Legislature with a view to provide for orderly development of co-operative movement in the state in accordance with the relevant directive principles of the state policy incorporated in the Constitution of India. The co-operative movement is a socio-economic and moral movement. As a part of the socialisation of economy for achieving the object of the welfare state, this enactment has been enacted.

8. In this context a reference could usefully be made to a decision of this Court in *The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another*, wherein this Court had an occasion to consider similar question in the context of the provisions of Maharashtra Municipalities Act. A reference could also be usefully made to a decision of the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, wherein the Supreme Court had an occasion to consider the provisions of the Punjab Municipalities Act dealing with supersession of

Municipal Committee. Having held that before passing any order of supersession an opportunity should be given to the committee to put forward its case in para. 25 of the judgement this is what the Supreme Court has observed (at page 147):

Every wrong action of the Municipal Committee need not necessarily lead to the inference of incompetence on the part of the committee or amount to an abuse of the powers of the committee. That is a matter to be decided by the State Government on the facts of each case. A committee may admit that what it has done is wrong and yet may plead that its action does not reveal incompetence or an abuse of its powers. It may plead an honest error of judgment; it may plead some misapprehension about the state of facts or state of the law; it may plead that in any event the drastic action contemplated by Section 288(1) is not called for. Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed. In fact in the present case one of the complaints of the appellant is that relevant facts were not considered by the Lt. Governor. Neither the impugned order nor the note of Shri Shaiza shows that in regard to the first allegation two vital circumstances were considered.

(a) The contractor had agreed to pay interest at the rate of 9% on the mobilisation advance;

(b) the contractor had agreed to offer bank guarantee to cover the mobilisation advance as well as the interest. It was argued that had these facts been brought to the notice of the Lt. Governor he might not have made the impugned order. If notice had been given to the committee, the committee would have certainly brought these facts to the notice of the Lt. Governor.

Therefore the controversy raised before us will have to be decided in the context of these well established principles.

9. In this case we are dealing with a co-operative society which is known as specified society. As per the bye-laws the board of directors of the present society consists of following members:

(a) 12 members elected by the producer-members;

(b) 2 members elected by the ordinary members;

(c) Managing Director ex-officio member;

(d) The following nominees;

(1) A nominee of the Co-operative financing agency,

(2) Not more than 2 nominees of the financial corporation of India, Life Insurance Corpn. of India, Maharashtra State Co-op Bank, or other financing agencies providing long term loans which are not repaid;

(3) Director of Sugar and Joint Registrar of Co-operative Societies, Maharashtra State, or his nominee as a representative of the State of Maharashtra.

(4) One nominee of the Co-operative financial agency who is providing finance to the producer members for the crop etc.

(e) An expert to be nominated by the board of directors.

It is not disputed before us that the board of directors was duly constituted.

10. The working of the newly elected board of directors continued for sometime and thereafter the present show cause notice was issued by the respondent No. 1. It appears that before the show cause notice was issued on September 1, 1980, reports dated April 8, 1980 and June 1, 1980 were received from the Regional Deputy Director (Sugar), Kolhapur. Copies of these reports are not placed before us but it appears that the allegations in the show cause notice were based on these reports. We have already made a reference to the allegations made in the show cause notice. In a detailed reply given to this show cause notice the petitioners have explained each and every charge. After considering the explanation given by the board of directors respondent No. 1 came to the conclusion that the board of directors failed to take action against the defaulting Contractors or members. It has also not made any attempts to enroll new producer members, and did not take proper action for rectification of the audit reports for the years 1976-77 and 1977-78 etc., That the Board of Directors has not taken prompt action for sanctioning expenditure and have sanctioned advances to the harvesting contractors in excess of the prescribed limit during the year 1979-80 and no action for recovery of the same was taken. Unjustified advances were given to the employees and unnecessary extra staff was appointed and that too without following the proper procedure. The society has further unauthorisedly made extra expenditure in constructing an earthen dam or bridge.

11. As already observed against this order the appeal was filed by the petitioner before the State Government u/s 152 of the Act. In the memo of appeal the petitioners have raised several grounds of challenge and had also demonstrated as to how the order passed by the respondent No. 1 is illegal and improper. A copy of the said memorandum of appeal is also produced before us. With the assistance of the learned Counsel appearing for both sides, we have gone through the entire material placed before us i.e. show cause notice, reply given by the petitioners to the show cause notice, complaints made by the petitioners complaining about certain activities of the persons belonging to the other group and the statements made by them from time to time in public meetings or otherwise. It is pertinent to note that specific allegations of malafides giving details are made by the petitioners in the petition and particularly in paras. III and XII of the petition which read as under:

III. The petitioners submit that they belonged to a group that owed its allegiance to the congress (U) and they were led by petitioner No. 1 who was also the chairman of the karkhana. Their group had been in control of the karkhana since 1078. In the said year, the previous board of directors had been elected. The

congress (U) group had obtained a majority in the said board and petitioner Nos. 1 and 2 had been elected as the chairman and vice-chairman respectively. The control of the congress (U) groups was retained in the elections held in December 1978, when the present group of petitioners were elected to the board of the karkhana. At the time of the petitioner's election the PDF Government led by Mr. Sharad Pawar was in power in Maharashtra. However, in January 1980 fresh elections were held in the State Legislature and the congress (I) swept into power in the State. Since then continuous and malicious efforts were made by local congress (I) ML As and workers to denigrate the petitioners and to transfer the smooth working of the karkhana, the details of which are enumerated hereafter in para. XII of this petition. They further made continuous demands on their Government to supersede the board of the karkhana.

XII, The petitioners submit that the impugned order passed by respondent No. 1 and confirmed by respondent No. 2 were politically motivated and the entire legal process was instigated and initiated at the behest of the local congress (I) MLAs, MLCs and party workers led by Shri Shivajirao Deshmukh, the congress (I) MLA from Shirala Taluka Udaysinghrao Gaikwad, present MP and Ex-MLA from Taluka and one Babasaheb Patil MLA. The petitioners say that these congress (I) group is politically opposed to them in the karkhana as well as in the area. The aforesaid persons were the members of the first board of directors and are presently members of the karkhana. In December 1978 when elections were held to the karkhana, this congress (I) group had opposed the election of the petitioners to the board of the karkhana. They had however failed in their "efforts, and the petitioners were elected to the board. At that time the PDF Government led by Shri Sharad Pawar was in power in the State. The petitioners owed their allegiance to the congress (U) which was then a major participant in the Government.

Immediately after loosing the elections to the karkhana in December 1978, the congress (I) faction started concentrating its energy on disrupting the smooth functioning of the karkhana by adopting a policy of non-co-operation and by instigating the local farmers to stop supplying sugarcane to the karkhana. This activity of the congress (I) group was intensified after January 1980 when the congress (I) swept into power in the State. Thereafter the congress (I) group made continuous attempts to pressuring the Government into dismissing the board of the karkhana and for appointment of an arbitrator.

On November 2, 1980 and November 11, 1980 this group arranged two rallies at villages Surud and Kakrud. These meetings were addressed by Shri Udaysinghrao Gaikwad, Shivajirao Deshmukh and others who informed the farmers that the Government had agreed to appoint an administrator to the karkhana. They further instigated the farmers to agitate against the present board and to adopt an attitude of non-co-operation by refusing to submit their sugarcane to the karkhana. The petitioners crave leave to refer to and rely upon a copy of press reports appearing in the local paper Pudhari on November

12,1980 which is hereto annexed and marked annexure "F".

On November 24, 1980 the petitioners submitted a written representation to the director of Sugar informing him about the malafides and injurious activities of the congress (I) group. However the Director of Sugar did not take any action in the matter. The petitioners crave leave to refer to and rely upon the representation dated November 24, 1980 submitted to the Director of Sugar which is hereto annexed and marked annexure "G". The petitioners say that respondent No. 2 who belongs to congress (I) had been pressurised by his party members into dismissing the petitioners' appeal and therefore his order dated April 20, 1980 is vitiated by malafides.

12. No reply or counter affidavit is filed by any of the respondents. Thus in substance the allegations made herein are not denied by the respondents. However, it is contended by Shri Sawant that these allegations regarding malafides were not made in reply to the show cause notice and, therefore, could safely be termed as a result of after-thought. It is also contended by him that the allegations made are vague and are not made against the authorities who actually passed the orders. It is not possible for us to accept these contentions of Sri Sawant. We have on record a news item published in one of the newspaper on November 13, 1980 as well as the complaints made by the petitioners dated November 12, 1980 and November 24, 1980. The allegations made are specific and serious and are not denied by the respondents.

13. The first charge made in the show cause notice is in parts i.e. less crushing of the sugarcane) not taking action against the non-supplying members as well as contractors. However the ultimate finding is restricted only to the failure on the part of the board of directors to take action against the defaulting members in 1979-80. It was contended by the petitioners! in their reply to the show cause notice that it is not correct to say that no action was taken against the erring members of the society. As a matter of fact on April 10, 1980 notices were issued to the members and the matter was under scrutiny. Similar notices were also issued immediately after the present board entered into the office in 1978 qua the erring members for the period 1975-76 and 1978-79. Proceedings are instituted against 24 erring members in that behalf, and the karkhana has obtained decrees for recovery of fine in .16 cases and some cases are still pending. It was also contended by the petitioners that no sugar factory in Maharashtra instituted legal actions against its members who failed to surrender sugarcane crop. This is more so because the cost of the litigation etc. is much more than the fine which could be recovered. Further taking action on a mass scale is not in the interest of the society. It was: also contended by the petitioners that it is open for them to take action against the erring members within a period of 6 years and the said period of limitation is not yet over. From the finding recorded by the respondent No. 1 in this behalf, it is quite clear that it is not disputed by him that all over the State the crushing season was slack because of the paucity of sugarcane. However he has not accepted the

explanation given by the petitioners that it was not proper in such circumstances to take action on a large scale. According to the respondent No. 1 action on large scale should have been taken. The finding is restricted only to the taking of action against the members. There appears to be a genuine and bonafide difference of opinion in that behalf between the authorities concerned and the board of directors. The initial charge No. 2 which relates to the recovery of the amount does not find place in the final order. Thus the said charge was given up.

14. So far charge No. 3 is concerned i.e. no efforts were made for increasing the number of producers members, it was contended by the petitioners that it is not correct to say that no efforts were made by them in that behalf. Moreover persons were not willing to become members because non-members get prompt payment for the sale of their sugarcane, and there were also other difficulties in the way. Even if more members were enrolled there was no possibility of getting more sugarcane. In support of this contention they had given certain examples. However according to the respondent No. 1 the enrolment of more members would have been in the interest of society. In our opinion enrolment of the membership should be left to the co-operative society itself. (See President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd. Vs. Ramchandra Damodar Umalkar and Others, It is not the case of respondent No. 1 that the board refused to admit anybody as member inspire of application in that behalf. Membership of the society cannot be thrust upon anybody. The relationship amongst the members, is more important than membership. Unless it is shown that the act or omission on the part of the society was malafide or was a result of culpable negligence, the same is not germane for an enquiry u/s 78 of the Act. From the findings recorded by the respondent No. 1 it appears that there was genuine and bonafide difference of opinion in that behalf also. An order cannot be based on an honest and bonafide difference of opinion., because in democracy you cannot have one and the same head in all shoulders. Even Shri Sawant learned Counsel appearing for the respondents found it difficult to support the finding recorded by the respondent No. 1 on this count.

15. The charge No. 4 relates to the default of the board of directors in taking steps for rectification of audit objections. In this context if the allegations made in the show cause notice are read between the lines, it is quite clear that in the show cause notice it was alleged that proper action was not taken by the board of directors for rectifying the audit objections raised in the audit report for the year 1976-77 and 1977-78. Therefore it was alleged that there was contravention of the provisions of Section 82 as well as bye-law 42(b) of the bye-laws. Apart from the fact that no particulars or details were given in support of this charge, in the ultimate finding recorded by the respondent No. 1 he has made reference to as many as 17 defaults. To say the least none of these defaults were referred to in the original charge. It appears that finding recorded by the respondent No. 1 was based on the audit report received on November 17, 1980 that is much after the show cause notice was issued. Thus the petitioners had no opportunity to meet these allegations. The report of the

auditor dated November 17, 1980 was not made subject matter of the show cause notice. In these circumstances in our opinion the finding recorded on charge No. 4 will have to be totally excluded from consideration as the petitioners had no opportunity to meet it. A finding recorded on the basis of the material which was not the subject matter of the charge or regarding which no opportunity was given to the petitioners to explain, cannot form part and parcel of the final order u/s 78 of the Act, it being contrary to the well established principles of natural justice. Therefore the said charge as well as finding recorded in that behalf will have to be excluded from consideration. In all fairness Shri Sawant has not disputed this position.

16. So far as the charge No. 5 is concerned, it is no doubt true that though the meeting of the board of directors was held every month, expenditure incurred was not sanctioned in each and every meeting. But it is nowhere alleged nor it is found that the expenditure incurred was either without authority or sanction. Under bye-law No. 49(5) on which reliance is placed by Shri Sawant it is the duty of the managing director, to place before the board of directors monthly statement of receipt, expenditure. Thus if the managing director has not done his duty, the board of directors as a whole cannot be blamed. In a given case u/s 78 of the Act an action could be taken even against a member of the committee, and it will not be fair to hold for the lapse on the part of an individual member, the board as a whole responsible, when it is not the collective action of the board. From the finding recorded by the respondent No. 1 it is quite clear that the whole expenditure was sanctioned by the board and that too even before the show cause notice was issued. The sanction required by the bye-law is post-facto sanction. Therefore atleast on the date of issuance of the show cause notice nothing remained to be done by the board of directors qua this charge also.

17. The charge No. 6 deals with the sanction of the advances to the harvesting and transport contractors in excess of the prescribed limit. As to what is the prescribed limit is not known. There is neither a bye-law nor any directions issued by the competent authority in this behalf. According to the petitioners they had sanctioned this advance to the contractors to enable them to effect speedy repairs to their vehicles. It was realised that unless some money was advanced the contractors were not in a position to repair their vehicles. These vehicles were absolutely necessary for transporting sugarcane. If the advance was not given there was no possibility of getting vehicles for the transport of sugarcane in crushing season. Not only this the society also noticed that even recovery of the old amount would have been impossible if the contractor's services were not utilised for transporting sugarcane in the ensuing crushing season. It is interesting to note that though vague and wide allegations were made in that behalf in the show cause notice, ultimately while recording the finding it is held by the respondent No. 1 that the amount could not be recovered only from 2 contractors and that too to the tune of Rs. 15,000 or so. In this context it is pertinent to note that total dues recoverable from the contractors stood at Rs. 1,49,000. Total amount sent on transport expenditure was Rs.

3,6,09,000 and odd and the amount remained to be recovered was less than 4 per cent of the total amount spent. Further most of these dues were incurred during the tenure of the last board. The previous board had also filed suits against the erring contractors for recovery of dues accruing in the years 1976-1977, 1977-78 and 1978-1979. Therefore in our opinion if in its wisdom and in the interest of the society, the board of directors took a decision bonafide and in, good faith which was also ultimately found to be for the benefit of the society, then the society cannot be punished only because left to himself, respondent No. 1 would have acted differently. This is more so when there are no bye-laws in the field nor any directions, were issued by the competent authorities.

18. So far as the charge No. 7 is concerned, it is no doubt true that the advances given to the employees were not wholly regular. However it cannot be forgotten that the whole amount was repaid by the employees and therefore, ultimately the society was not put to any financial loss. The expenditure incurred by the employees was also sanctioned by the board, because the money was spent for the benefit of the karkhana.

19. So far as the ground No. 8 is concerned, from the explanation given by the society as well as finding recorded by the respondent No. 1, it is clear that no new employees were employed by the society. Only the employees who were continued on temporary basis were made permanent and in our opinion rightly. No excessive staff was appointed. Further orders- of confirmation of the employees were issued as per the demand made by the trade union of employees. We have not been shown any norms of employment or staffing pattern and in these circumstances the board of directors were within their powers to take decision in that behalf, more so when it is not shown that the action taken by the board has adversely affected the management or financial position of the society. Since no new employees were appointed the question of following the procedure did not arise. Having regard to all these circumstances even Shri Sawant the learned Additional Government Pleader found it difficult to support the finding recorded by the respondent No. 1 in this behalf.

20. So far as charge No. 9 is concerned, i.e. about the construction of earthen bridge, from the very finding recorded by the respondent No. 1 it is quite clear that the construction of such a bridge or dam was absolutely necessary. The respondent No. 1 himself has found that on account of the construction of this bridge or dam there was considerable saving in expenditure incurred for transport of sugarcane etc. It is also found that the expenditure incurred is duly certified by the competent architect. Further no outside labour or contractors were employed for the construction work. The entire work was done by the workers of the karkhana. The only outside agency utilised was a bulldozer, for which tenders were invited. By construction of this bridge distance between the karkhana and surrounding villages was considerably reduced. The karkhana has saved more than Rs. 90,000 in transportation costs. Nothing has been shown to us as to why the previous permission of the Joint Registrar was necessary. To say

the least the finding recorded by the respondent No. 1 in this behalf could safely be termed as perverse. Shri Sawant also found it difficult to support the finding recorded by the respondent No. 1 on this count also. Thus taking a cumulative view of the whole matter, in our opinion none of the charges levelled against the society were serious enough to call for an action u/s 78 of the Act. We are satisfied that nobody could have reasonably arrived at the opinion or satisfaction on the basis on such grounds; for taking drastic and extreme steps of supersession. The action seems to have been taken for totally irrelevant and extraneous purpose.

21. Further the director of sugar who is incidentally joint director of the co-operative society and the nominees of the financial agencies are members of the board of directors. The director of sugar and the Joint Registrar of the co-operative societies has been given representation on the board of directors for obvious reasons. He is expected to guide the society in its working, management and also protect the interest of the State, members of the society as well as consumers. He cannot sit on the fence and be an onlooker. He is expected to act as a participant. We are informed at the bar that neither the Director of Sugar and Joint Registrar or his nominee ever attended any meeting of the board of directors. This appears to be the admitted position. The right of representation given to him is not ornamental nor it is a mere empty formality. The said right is coupled with a duty. This duty cannot be performed in absentia. This is one of those cases where it could rightly be said that responsible officer of the cooperative department has not done his duty and has chosen to remain as mere onlooker so far as the management of the society is concerned. To say the least this is most regrettable. If the Director of Sugar, who is incidentally Joint Director of the co-operative societies had no time to attend the meeting he could have sent his nominee. The constitution of the board of directors clearly indicates that the representation is given to the various interests including financial agencies. Advisably this has been done so that the co-operative movement is not polluted or choked by the internal and individual strife or party-politics. Cooperative capitalism or despotism is not co-operation. Co-operation is a substitute for self interest of an individual, or group of individuals. If the interest of the community is to be protected then what is minimum expected is that these nominees on the board of directors should actively participate in the decision making and the management of the society. It is no doubt true that they have no right to vote nor they could be held responsible for the losses etc., but that does not mean that they have no right to participate in the discussion. Prevention is better than cure or such postmortem.

22. Since we have held that none of the grounds or charges levelled were serious enough to call for any action u/s 78 we need not consider what will be the effect on the order if only some charges were held to be proved. However it could safely be said in the present case that the order was passed by the respondent No. 1 as a cumulative effect of the findings recorded by him qua each and every charge. Even the appellate order is based on the cumulative effect of the findings

recorded on all charges. From the tenor of the order it is not possible to separate one charge from another nor it is possible to speculate that respondent No. 1 was satisfied that any one of the charges, was severally enough to pass the order u/s 78. We are satisfied that in the present case the authority concerned would not have passed an order on the basis of some of the charges only. It is different to speculate that the exclusion of additional or non-existing grounds! would not have affected the ultimate opinion or decision, more so when none of the grounds were so serious. Therefore to the present case the observations of the Supreme Court in *Binny Ltd. Vs. Their Workmen*, , would aptly apply. To such a case the decision of the Supreme Court: in *Sawarn Singh and Another Vs. State of Punjab and Others*, , is not applicable.

23. So far as the appellate order is concerned in our opinion there is much substance in the grievance made by Shri Rane. An appeal is provided u/s 152 against an order u/s 78 of the Act. While dealing with such a contention the Supreme Court in *Rangnath Vs. Daulatrao and Others*, , has observed as under:

As has been repeatedly pointed out by this Court the State Government ought to have disposed of the statutory appeal of the appellant filed u/s 2A(2) of the Abolition of Inams Act by a speaking order. It may not be possible in all cases to say that a non-speaking order is bad or invalid on that account alone but when an order is liable to be challenged under Article 226 or 227 of the Constitution of India, courts do insist that an appeal of the kind filed by the appellant should be and ought to have been disposed of by a speaking order, giving some reasons in its support.

24. This Court had also an occasion to consider a similar question in *Janba Daulatrao Bokar v. Rajeshkumar Ramjwan Agarwal* [1975] M. L.J. 746, *Bhimshankar v. State of Maharashtra* [1976] M. L. J. 719, and *Pandit Bhullan Ramshankar Tiwari v. Sarvodaya Vita Kavelu Kumbhar Kam Sahakari Audhogik Utpadak Sanstha Bina* [1978] M. L. J. 276 : 80 Bom. L.R. 634.

25. As observed in *Pandit Bhullan's* case (supra) an appeal is a creature of statute. Further there is a vast difference between the revisional powers and the appellate powers. An appeal as stated by Lord Davery in *Pannamma v. Ammogam* (1905) A.C. 383 is a proceeding in which a question is whether the order of the court from which the appeal is brought was right on the materials which the court had before it. In legal parlance appeal means judicial examination of the decision by the higher court of an inferior court. It amounts to, in essence and pith a complaint to higher forum that the decision of the subordinate tribunal is erroneous and therefore liable to be rectified or set aside. From this it would follow that an appellate court has power to go not only into the question of law, but also into questions of fact. Such a power would further enable the appellate court to review or reassess the entire evidence and come to its own conclusion. Litigant is entitled to a full, fair and independent consideration of evidence and the material at the appellate stage.. u/s 152 of the Act, right of appeal is provided in very wide and general terms. The appellate

authority has to decide the appeal as a quasi-judicial authority. To say the least the appellate authority cannot act mechanically as a mere rubber stamp. In the present case in memorandum of appeal various substantial questions of fact were raised by the appellants. All these contentions are disposed of by the appellate authority by observing:

I have gone through the appeal memo, the records produced before me. The Joint Director has given sufficient reasons in para. 5 of his order why the action of supersession is necessary. It is not necessary for me again to reproduce all these facts. I totally agree with him. I therefore, pass the following order.

In view of this cryptic order it is difficult to say that there is no substance in the contention raised by Shri Rane. In *State of Rajasthan Vs. Pabudan Singh and Lachhman Singh*, the Supreme Court has reiterated as to why the order should be speaking one and the authority making such an order in exercise of the quasi-judicial function should record its findings with reasons. It appears to be a settled law that where the authority makes an order in exercise of quasi-judicial functions, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. This is what the Supreme Court has observed in *Engineering's case* (at page 1789):

If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application it adopted the same reason which prevailed with the Collector. The reasons given by the Collector, was, as already pointed out, hardly satisfactory and it would, therefore have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned order, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable

that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.

26. In the present case the appeal being statutory one and as the appellants had raised substantial questions of fact for challenging the order passed by the trial court it was, obligatory on the part of the appellate authority to pass the reasoned order. This was absolutely necessary in view of the fact that even the Additional Government Pleader and the officers assisting him in Court, inspite of their best efforts, were unable to support some of the findings recorded by respondent No. 1. The order of respondent No. 1 shows predetermination and, therefore, in the present case a duty was cast on the appellate authority to pass a reasoned order, in the background of the allegations made regarding the malafides. In this view of the matter in our opinion the order passed in appeal also cannot be sustained.

27. So far as the contention raised by Shri Rane about non-consultation with the federal society is concerned, Shri Sawant has placed reliance upon the two decisions of this Court reported in *Karbhari Govindrao Patil v. B.D. Pawar* [1976] M. L.J. 841, and *P.K. Patil's case* [1978] R U C 139 . On the other hand Shri Rane has placed reliance upon subsequent decision of the Supreme Court in *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, , and has contended that the law laid down in the earlier decisions of this Court is no more good law. According to Shri Rane consultation contemplated by Section 78 is a condition precedent for passing an order and is not mere empty formality. Therefore according to the learned Counsel this consultation should be full and effective in all cases and mere sending copy of show cause notice to Federal Society cannot amount to consultation. In support of this contention Shri Rane has placed reliance on the following observations of Madhya Pradesh High Court in *Radheshyam Sharma Vs. Govt. of M.P. through C.K. Jaiswal and Others*, paras. 21, 22, 23 and 24 which read as under (at page 165):

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

22. Thus the following two conditions must be fulfilled in order to make the

consultation effective and meaningful and not merely superficial:

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

(2) Sufficient opportunity must be given to such person to tender that advice. In our view neither of these conditions has been fulfilled in the present case.

28. In this case all that was done by the Registrar was to forward a copy of the show cause notice containing charges against the Committee (Vide Annexure "A") to the Reserve Bank inviting their opinion in the matter within 15 days. It appears that the business of the Reserve Bank is transacted in English and so the proper course would have been to send alongwith the copy a D.O. letter in English requesting them to give their opinion in the matter. That has not been done. Apart from this there is nothing to show that the copy was actually despatched and was received by the Bank or that it attracted the notice of the Bank authorities. For this we are required to rely on the presumption of regularity of the official acts. But even assuming that copy was received by the Bank authorities they could hardly express any opinion in the matter unless the reply of the committee to the said charges was forwarded to the Bank with such comments as the Registrar proposed to make therein. It is no doubt true that the committee of its own accord forwarded a copy of its reply Annexure "B" to the Reserve Bank but again it is extremely doubtful if the Bank authorities could connect the two documents and realise the importance and urgency of the matter to convey their opinion in the matter. The proper course for the Registrar was to send a copy himself inviting attention of the Bank to the earlier communication and requesting them to favour him with their opinion. This has not been done.

24. The Registrar did not even care to pursue the matter and to send any reminder or to press for an opinion at an early date before taking a decision in the matter, thus it appears that a mere formality of sending a copy of show cause notice was performed and a decision was taken without taking any steps to obtain the opinion of the Reserve Bank in the matter.

However, in the view which we have taken it is not necessary to deal with this contention any further.

28. In the result, therefore, rule is made absolute with cost. Orders passed by the respondent No. 1 dated December 12, 1980 and confirmed in appeal by respondent No. 2 on April 20, 1981, u/s 78 of the Maharashtra Co-operative Societies Act, are quashed and set aside and the administrator is directed to restore the control and management of the karkhana to the board of directors forthwith.

29. At this stage Shri Sawant orally prays for leave to appeal to Supreme Court

under Article 134-A of the Constitution of India. However, since we have only applied the well established principles of law as laid down by the Supreme Court to the facts and circumstances of the present case, this is not a fit case for grant of such leave. Hence leave refused. Shri Sawant also prays for stay of operation of this order for 6 weeks. In view of the findings recorded by us, we do not think it fit to grant such time. Hence prayer for time is also refused.