

(2012) 11 KL CK 0083

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 13874 of 2012

Urukunnu Service Co-operative Bank Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 32, 32(1), 32(1)(e), 65, 65(5)

Citation : (2012) 4 KLT 941

Hon'ble Judges : Harun-UI-Rashid, J

Bench : Single Bench

Advocate : S. Subash Chand and Shindo Varghese, for the Appellant; K. Ramakumar (Sr. Advocate), Noushad Thottathil, Government Pleader, V. Ajitha S.M. Prasanth, Smitha George, P.S. Sreedharan Pillai, T.K. Sandeep, Arjun Sreedhar, Arun Krishna Dhan and Joseph George (Mullakkariyil), for the Respondent

Judgement

Harun-UI-Rashid, J.—Ext. P7 order passed by the 3rd respondent superseding the Managing Committee of the Urukunnu Service Co-operative Bank Ltd., (for short "the bank") is under challenge in this Writ Petition. The 1st petitioner is the Board of Directors of the Bank and 2nd petitioner is the President. The Writ Petition was originally filed seeking to quash Ext. P4 show cause notice issued under S. 32(1) of the Kerala Co-operative Societies Act (for short "the Act") directing the 1st petitioner to show cause within 7 days of receipt of the same as to why the Board/Committee in office should not be removed or superseded and for a direction directing the third respondent Joint Registrar to refrain from proceeding against the petitioners under S. 32 of the Act pursuant to Ext. P4 notice. During the pendency of the writ petition, petitioners have appeared for personal hearing before one Ravindran Nair, who was the then Joint Registrar, who issued Ext. P4 dated 15.6.2012. Petitioners have submitted Ext. P5 reply to Ext. P4 show cause notice. Ext. P3 is the copy of the detailed reply dated 16.3.2012 submitted by the Board of Directors. It is pointed out in Exts. P3 and P5 that all the charges levelled against the petitioners are without any factual

basis, that the same were unsupported by any materials and that the Joint Registrar has not passed any final order either accepting the report or recorded any finding that there was a major defect in the constitution, working or financial condition of the society. It is submitted that without entering into any such finding, the Joint Registrar initiated proceedings under S. 32 of the Act by issuing Ext. P4 show cause notice and that the Joint Registrar has not entered any satisfaction relating to the factual circumstances under any of the provisions contained in S. 32(1) of the Act either under (a), (b), (c) or (d). In Ext. P5 reply, the petitioners have pointed out that none of the ingredients of S. 32(1) were satisfied, that the entire allegations pertain to the period during which the former Board of Directors of the Bank was in office, there were no alleged major defects either in the report or in the show cause notice and that the present Board have acted promptly and legally. The petitioners were heard on 15.6.2012. It is averred in the writ petition that Sri. Ravindran Nair himself got convinced about the illegality in the matter and dropped the proceedings against the Board of Directors in the matter. It is also stated that with an vindictive attitude, the ruling political forces in the locality have interfered in the most mala fide and arbitrary manner and transferred Sri. Ravindran Nair from the post of Joint Registrar (General), Kollam, to the post of Joint Registrar (Audit), Kollam in the very same premises and thereafter, Sri. Madhusudanan Pillai who was serving as Deputy Registrar in the office of the Joint Registrar, Kollam, has been posted as Joint Registrar, Kollam. It is also alleged that in order to please his political masters, Sri. Madhusudanan Pillai has issued another show cause notice under S. 32(1) of the Act. Ext. P6 is the copy of the said notice. The petitioners filed I.A. No. 9671/2012 for amendment of the writ petition. After amendment of the writ petition seeking to quash Ext. P6 show cause notice, the aforesaid Madhusudanan Pillai passed an order dated 23.7.2012 superseding the Board of Directors and appointing part time Administrator for a period of six months. Copy of the order is marked as Ext. P7. In such situation, petitioners filed I.A. No. 10940/2012 for amendment seeking to quash Ext. P7 order.

2. Urukunnu Service Co-operative Bank is a Primary Co-operative Agricultural Credit Bank registered under the provisions of the Act and the Rules made thereunder. The 1st petitioner Board of Directors were elected in the election conducted on 31.1.2010 and took charge of office on 2.2.2010. The facts of the case in brief are as follows:

The Joint Registrar of Co-operative Societies (General), on the basis of a complaint submitted by one Pushpangadan, issued an order directing the Assistant Registrar to conduct an inspection under S. 66 of the Act and to submit a report. As directed, the Assistant Registrar submitted Ext. P1 report on inspection dated 31.1.2012 to the Joint Registrar. The Joint Registrar issued Ext. P2 notice dated 14.2.2012 to the petitioners to submit their explanation on Ext. P1 report and to appear for a personal hearing. S. 66 of the Act confer power on the Registrar for supervision of the affairs of the society and inspection of the books of the society. Under sub-s.(5) of S. 66, the Registrar or the person

authorised by him under sub-s.(1) or sub-s.(2) may, by order in writing, direct the society or its officers to take such action as may be specified in such order within the time that may be mentioned in such order. Petitioners submit that after hearing the matter, the Joint Registrar did not issue any order under S. 66(5) of the Act. Instead he has issued Ext. P4 show cause notice directing the 1st petitioner to show cause as to why the Board in office should not be removed or superseded.

3. Ext. P4 show cause notice was issued on the basis of the 11 findings recorded in Ext. P1 report submitted by the Unit Inspector. During the personal hearing, petitioners pointed out to the Joint Registrar that all the findings pertain to the period during which the previous Board of Directors was in office from 3.2.2005 to 1.2.2010. It was also pointed out that there were no major defects either in the constitution or working or financial condition of the bank. Findings Nos. (i) to (xi) in Ext. P1 report are extracted as findings Nos. 1 to 11 in Ext. P4 show cause notice.

Finding No. (i) relates to the regularisation of service of three employees without following the procedure prescribed under the Act and Rules.

In Exts. P3 & P5 reply statements, it is specifically pointed out that the said employees were regularised in service by the Board of Directors which was in office in the year 1999. It is pointed out that regularisation was not done by the present Board. Petitioners also produced Exts. P5(a) and (b) resolutions dated 26.5.1999 and 23.3.2000 adopted by the then Board of Directors for regularising those employees. In Ext. P7 order, the Joint Registrar rejected the explanation offered and held that the present Board of Directors are guilty and the finding No. 1 is recorded against the petitioners.

The present Board of Directors took office charge on 2.2.2010. The service of the employees mentioned in finding No. (i) were regularised by the previous Board. There is absolutely no reason for not accepting the explanation offered by the present Board of Directors. The finding that the present Board of Directors are responsible for the illegal regularisation is without any basis. There is total non-application of mind. Exts. P5(a) and (b) were ignored and overlooked. It seems that the explanation submitted by the petitioner was not considered while recording the conclusions on finding No. (i). I find that finding No. (i) is nothing but a repetition and extraction of finding No. (i) of Ext. P1 report.

Finding No. (ii) recorded against the Board of Directors is that the textile shop of the bank was closed down and stock worth Rs. 11,77,294.15/- was kept as dead stock that resulted in heavy loss to the bank.

It is stated that the salesman failed to remit the sale proceeds regularly. The committee failed to supervise the conduct of the salesman as to whether he was remitting the amount in time and inaction of the committee in not supervising the activities of the salesman had benefited him to keep the sale amounts with him. As a result of the inaction it is recorded that the decrease in the stock

running to lakhs was caused and interest at rates below the stipulated interest in the bye-law was levied causing financial loss to the bank and the board was responsible for the same.

In the explanation submitted by the Board of Directors, it is stated that the textile depot of the bank was facing sales shortage for the last several years and dead stock was increasing everyday. So much so, the working of the depot was found to be unsatisfactory in the audit report. The said facts were considered by the then Board of Directors and they have decided to close down the depot. The General Body of the Bank in its meeting held on 23.8.2009 had considered this issue and it was decided to stop the functioning of the depot and the balance stock available was decided to be auctioned publicly with the approval of the Joint Registrar. Thereafter, on 6.10.2009, as per resolution No. 2177 the bank decided to stop the depot and auction the remaining items in the depot. Thereafter, an application for permission to do so was submitted before the Joint Registrar.

The explanation submitted by the Board was not considered while entering a finding on finding No. (ii). It is pointed out by the Board of Directors that the General Body of the bank in its meeting held on 23.8.2009 has considered the issue and decided to stop the functioning of the depot and further decided to auction publicly the balance textile goods available with the approval of the Joint Registrar. It is also pointed out that on 6.10.2009, the then Board of Directors took resolution No. 2117 to stop the depot and to auction all the remaining items in the depot. The working of the textile depot was found to be grossly unsatisfactory in the audit report and on that basis, the previous General Body and the Board of Directors took steps to close down the business and to auction the remaining goods. This was pointed out by the present Board of Directors in Exts. P3 & P5 reply. The contentions were not considered. It was specifically pointed out that the decision was taken on 23.8.2009 by the General Body and the resolution dated 6.10.2009 was passed by the then Board of Directors. The explanation would go to show-that the closing down of the textile depot and auction the available stock are all happened during the period when the previous managing committee was in administration and that the present managing committee has nothing to do with the causing of financial loss to the bank. But the Joint Registrar, fastened the responsibility on the present Board of Directors and entered finding No. (ii) against the present Board of Directors. There is non-application of mind. I find that finding No. (ii) is nothing but a repetition and extraction of finding No. (ii) of Ext. P1 report.

Finding No. (iii) is that accounts were closed by realising the interest rates below the prescribed rate under the bye-law and the stock reduction in the fertilizer, Neethi consumer depot, ration depot, rubber collection and sales centres have resulted in loss to the bank. Amounts due from commission agents and rubber marketing federation were not realised. Unsaleable commodities such as consumer items and fertilizer items were kept and the same has resulted in loss.

In Exts. P3 and P5 reply, petitioners pointed out that the fertilizer depots, Neethi stores and ration shops have not caused any loss to the bank. It was also pointed out that no business loss was caused to the bank till date as per the audit report and that during 2009-10, business profit was Rs. 77,529.64/-. It is also pointed out the amount corresponding to the stock reduction was realised except in the case of rubber procurement and that there is no provision in the bye-law fixing the rate of interest that has to be realised when reduction in stock was found. It is also explained that so far as the reduction in rubber procurement was concerned, an arbitration case was initiated against the salesman and his property was attached. The unsaleable stock was decided to be written off and General Body of the bank on 23.8.2009 granted permission for writing off such debts. In the explanation it is also stated that the matter was submitted before the Joint Registrar on 7.10.2009 for approval and no action whatsoever was taken by the department.

From Exts. P3 & P5 it is clear that the allegations contained in finding No. (iii) was properly explained as above. It is further noted that the above irregularity was occasioned during the tenure of the previous managing committee. The General Body decision taken on 23.8.2009 and request submitted before the Joint Registrar on 7.10.2009 also show that the alleged irregularities were happened during the tenure of the office of the previous managing committee. It is noticed that the said explanation was neither considered in Ext. P7 order nor the fact that the irregularities noticed was occasioned during the period of the previous managing committee, was taken note of. The finding of the Joint Registrar on finding No. (iii) in Ext. P7 also shows that there is total non-application of mind and it is nothing but a repetition and extraction of Ext. P1 report on finding No. (iii).

4. A further reading of the findings on record as findings Nos. (iv) to (xi) also would show that the Joint Registrar did not consider the explanation offered by the present Board of Directors and simply repeated and extracted Ext. P1 report. Almost all the findings recorded by the Joint Registrar were relating to the functioning of the society during the time when the previous managing committee was administering the affairs of the society. Finding No. (xi) relates to the non-convening of the General Body meeting and non-presentation of the accounts in the General Body meeting for approval. It was held that the non-convening of the General Body meeting yearly is a severe irregularity on the part of the Director Board. The last General Body meeting was convened on 23.8.2009. There was no proper explanation for not convening the General Body meeting every year and for not presenting the accounts. It is submitted by the petitioners that notifications were issued for convening General Body meeting on 30.6.2012 & 12.8.2012. True copies of the notifications are produced and marked as Exts. P10 and P11 respectively. As stated above, Ext. P1 report on inspection prepared under S. 66(2) is not intended for initiating steps for supersession, but for passing an order under S. 66(5) to direct the society to take such action the Registrar consider it necessary. Power is conferred under S.

66(5) of the Act to the Registrar to issue appropriate directions as he consider it necessary to correct the functioning of the society. In this context it is to be stated that if the society did not convene the General Body meeting yearly, the said irregularity could have been rectified by convening the meeting immediately. The non-convening of the General Body meeting yearly is an irregularity which could have been remedied by issuing appropriate directions to the managing committee. S. 66(1)(a) gives the power enabling the Registrar to supervise the working of the society, he cannot act in an arbitrary and capricious manner. He should not forget the importance of the fact that the society has its own autonomy and the supreme power is vested with the General Body. The power to supersede a committee should be exercised with due caution and circumspection and only in cases where it is really called for. Mere default or failure to comply with the provisions of the Act if found to be true, cannot be a ground for supersession unless it is shown that there is persistent willful negligence and willful disobedience.

5. The Joint Registrar superseded the committee solely on the basis of Ext. P1 report. Ext. P1 report was not analysed or evaluated nor the findings recorded on the basis of the explanation offered by the present managing committee. The Joint Registrar is legally bound to deal with the explanations and objections and to record the reasons for rejecting such explanations and objections. Since the Joint Registrar failed to do so, there was no fair or proper consideration of the objections and explanations. Under S. 66 of the Act, the power is conferred on the Registrar to supervise the affairs of the society which includes inspection of the books of the society. The report on inspection under S. 66 is intended for issuing necessary directions to the society or its officers to take such action as may be specified in the order within the time that may be mentioned in such order. After inspection under S. 66(2) of the Act a separate order has to be passed by the Registrar as provided in sub-s.(5) of the S. 66 and R.66(5) of the Rules. No such order has been passed by the Registrar. Instead, the Registrar proceeded to initiate proceedings to supersede the committee by issuing show cause notices. The report on inspection under S. 66(2) is not intended for initiating steps for supersession but for passing order to direct the society to take such action the Registrar consider it necessary. In this case, Ext. P1 report on inspection was made use of by the Registrar for superseding the committee. The action of the Registrar contravene S. 66 and R.66(5) of the Rules. I am not saying that initiation of proceedings under S. 32 is prohibited on the basis of a report on inspection obtained under S. 66(2) of the Act, but, only in cases where on the basis of the report on inspection if the Registrar is satisfied that the continuance of the committee would be extremely prejudicial to the interest of the society which leads to any of the grounds mentioned in sub-s.(1)(a) to (d) of S. 32, he can initiate proceedings for supersession and can pass orders under the Section. After obtained Ext. P1 report, the Registrar has not passed any order of satisfaction as stated above. Thus the proceedings initiated by the Registrar is invalid from the very beginning of the proceedings. S. 65 contemplates enquiry

by the Registrar into the constitution, working and financial condition of the society. Only in cases where in the enquiry under S. 65, if the Registrar is satisfied that there are major defects in the constitution, working or financial condition of the society, he may initiate action in accordance with S. 32, which is specifically provided in S. 65(6) of the Act. S. 66 is intended for a different purpose. In this case, the Registrar made use of the report on inspection under S. 66 of the Act for passing an order of supersession. If the Registrar is satisfied that there is major defects in the constitution, working or financial condition of the society, he could have ordered an enquiry under S. 65 and on the basis of the enquiry he could have invoked sub-s.(6) of S. 65 and proceeded to initiate action in accordance with the provisions of S. 32. On a perusal of the materials on record, this Court is convinced that there is much force in the contentions of the petitioners that the charges/findings alleged on the present managing committee are baseless and the drastic action of the Joint Registrar superseding the elected committee, which has got its term up to 2.2.2015, is made due to extraneous considerations.

6. The present Board of Directors was superseded mainly for the alleged lapses of the previous Board. It is settled law that proceedings under S. 32 cannot be invoked for actions of the previous committee. This Court in *Ameer v. Deputy Director* (2010 (4) KLT SN 59 (C. No. 69)) held that no managing committee could be proceeded against for misdeeds of a previous Managing Committee and that S. 32 of the Act can be invoked only against a committee which has committed the irregularities or defaults. In the decision reported in *The Managing Committee of Vallapuzha Service Co-op. Bank Ltd. Vs. The Joint Registrar of Co-op. Societies*, this Court laid down the very same principle holding that proceedings under S. 32 of the Act can be invoked only for the actions of the present committee and further held that the mere finding that the committee has done acts alleged alone is not sufficient; the same should be supported by a further finding that they did the same with a culpable mind, failing which the action of the Registrar would be improper.

7. The initiation of proceedings under S. 32 on the basis of a report under S. 66, would be justified only if there is a major defect in the constitution, working or financial condition of the society and that has to be specifically entered by recording the same. If the Registrar recorded findings that there are major defects, he may initiate proceedings in accordance with the provisions of S. 32. The finding that there are major defects in the constitution, working or financial condition is a pre-condition for initiating action under S. 32 of the Act. Such a finding have to be objectively arrived and specifically entered. In the present case, the report on inspection prepared under S. 66 of the Act was not considered nor the Joint Registrar had entered a finding that there are sufficient grounds (major defects) to initiate action under S. 32 of the Act. This Court in the decisions reported in *Mariyamma George and Others Vs. The Joint Registrar of Co-op. Societies*, and *Managing Committee of Kandalloor Farmers Service Co-op. Bank Ltd. Vs. The Jt. Registrar of Co-op. Socys*, laid down the legal principles

in this regard. This Court in Kandalloor Farmers Service Co-operative Bank Ltd's case (*supra*) held that to initiate action for supersession on the basis of findings in an enquiry under S. 65(5), the Registrar has to definitely reach at a finding at there are major defects in the constitution or working or financial condition of the society. On a reading of Ext. P7 order, it is seen that the Joint Registrar has initiated proceedings under S. 32 of the Act based on Ext. P1 report on inspection and he had straight away issued notices directing the present Board of Directors to show cause as to why proceedings shall not be initiated under S. 32 of the Act. Exts. P2, P4 and P6 notices issued by the Joint Registrar and the materials on record indicate that the Joint Registrar did not examine Ext. P1 report objectively and satisfaction entered to initiate proceedings under S. 32 of the Act.

8. This Court in the decision reported in *M. Purushothaman Nair and others Vs. State of Kerala and Others*, examined the scope and ambit of S. 32 and held as follows:

The exercise of this power is subject to two mandatory conditions. One is that he should give an opportunity to the Committee to state its objections to the proposed action. The other is that he should consult the financing bank and Circle Co-operative Union or the State Co-operative Union, These are the conditions required to satisfy the requirements of natural justice. Sub-s.(3) confers an extraordinary power on the Registrar to act under sub-s.(i) without complying with any of the above two conditions, if he is of the opinion that it is not practicable to do so. The Act contains no guidance for the exercise of the said power. R. 44(1)(k) of the Co-operative Societies Rules, 1969 provides that a member of a superseded committee shall be ineligible for being elected or appointed as member of a committee or any society for a period of one year. The right to be elected or appointed to a committee is a valuable civil right; and the consequence of the exercise of the power under sub-s.(3) of S. 32 would be to take away such a right of a citizen without hearing him.

I am satisfied on the facts of the case that the order of the Joint Registrar is unsustainable under S. 32 for the reason that mandatory consultation under sub-s.(2) & (3) of S. 32 have not been complied with. Secondly, the power under S. 32 can be exercised only if the Registrar is satisfied that any one of the conditions prescribed in the sub-sections exists. No circumstances have been placed before this Court justifying the dispensing with the consultation as required under sub-s.(2) of S. 32 except the bald statement in Ext. P7 order that it was not reasonable or practicable to do so. In the counter affidavit filed by the Joint Registrar, there is no explanation stated for not consulting with the financing bank and the Circle Co-operative Union. The satisfaction of the Registrar has to be based on relevant materials and cogent circumstances, and not on mere whims and fancies. S. 32(1)(e) provides that every member of the committee superseded under this Section shall from the date of order of such supersession stand disqualified to contest in the election to or to be nominated to

the committee of any society or to be appointed as an administrator in any society for two consecutive terms. The order of supersession without following the procedure embodied under sub-s.(2) & (3) of S. 32 have far reaching consequences on the rights of the members of the superseded managing committee and would take away their civil right to contest in the elections for two consecutive terms. In the decision reported in Selvi Vs. District Industries Centre, this Court held as follows:

A reading of S. 32 itself shows that legislature has prescribed very strict formalities before supersession of the elected body. Provisions for relaxing such procedural formalities can be done only in emergent situations. It is well established that when a statute has conferred on anybody the power to make any decisions affecting individuals, court will ensure that the procedural safeguard as mentioned in the Rules are followed.

Consultation contemplated under sub-s.(2) of S. 32 of the Act can be effective and meaningful only if the show cause notice is issued under S. 32(1). Explanations and objections from the committee to such show cause notice shall be called for. An effective decision can be arrived at after considering the objections and the opinions of the financing bank and the Circle Co-operative Union. Such consideration of objection and consultation have not taken place in this case. Sub-ss.(2) & (3) of S. 32 have been violated. Hence Ext. P7 order is liable to be set aside.

9. As per the latest audit report dated 30.4.2012, the bank is running at a profit of Rs. 44,65,911.19/- (2009-10) and Rs. 60.5 lakhs (2010-11). The petitioners also produced Ext. P12 copy of the relevant portion of the audit report to prove that charge No. 2 pertained to the period of former Board of Directors. The petitioners produced Ext. P13 copy of the relevant portion of supplementary budget for the year 2003-04 approved by the general body in its meeting held on 4.9.2005 to prove that charge No. 5 pertains to donations and advertisements granted without budgetary approval and the financial condition of the bank during the period from 2002-2005, occurred during the period when the previous Board of Directors were in office. Ext. P14, the copy of the relevant portion of the report of the bank for the year 2004-05 is produced to show that the bank was governed by the administrator and administrative committee during the period i.e., 29.1.2003 to 3.2.2005. It is pointed out that charge No. 6 & 7 pertains to the issuance of loan and default committed by two among the Board of Directors. It is said that those charges were vague and unspecific. Ext. P8 certificate was produced to show that amounts legally due to the Government have been remitted up to 4.8.2012 and Ext. P15 is the chalan dated 23.1.2012 evidencing the said payment. The petitioner also produced materials which would show that the purchase of furniture, interior items, generator, Photostat machine etc. are done with requisite permission from the Joint Registrar. Exts. P16 & P16(a) are the proceedings of the Joint Registrar dated 28.11.2008. The purchase complained of pertains to the period 2008-09 and was happened when the

previous Board of Directors were in office. Charge No. 10 also is explained stating that strict action was taken as evidenced by Ext. P8(c) against the collection agent and entire amount legally due to the bank has been recovered. Arrears were said to be caused during the period 2008-09 and the same has been recovered by the Board on 3.4.2012. Ext. P17 is the copy of the balance sheet of the bank as on 30.9.2011. Ext. P18 is the copy of the Profit and Loss Account for the year 2009-10 and Ext. P19 is the copy of the audit certificate and audit memorandum dated 30.4.2012 issued by the Co-operation Department. Ext. P20 is the copy of the resolution No. 1 dated 22.11.2007. Ext. P21 is the copy of the resolution No. 1644 dated 26.5.1999. Ext. P22 is the copy of the resolution No. 6989 dated 23.3.2000 and Ext. P23 is the copy of the order dated 23.5.2011 issued by the Joint Registrar.

10. Ext. P3 is the explanation submitted by the petitioners in reply to Ext. P2 notice. Ext. P5 is the explanation submitted pursuant to Ext. P4 notice. None of the explanations offered by the petitioners were considered by the Joint Registrar. Ext. P7 impugned order evidently shows that the explanation offered are ignored and overlooked. Ext. P7 order passed without considering the contentions of the petitioners cannot stand in the eyes of law. Materials on record shows that the Joint Registrar has not applied his mind and therefore he could not have been satisfied that there exists the conditions mentioned in S. 32. In this case, power is exercised by the Joint Registrar for extraneous consideration with an intention beyond the scope and contemplation of the provisions and therefore the same is liable to be interfered with. The power to supersede a committee is really an extra ordinary power which could be resorted to only when there is an extra ordinary situation. In this case, Ext. P1 report is dated 31.1.2012. The Joint Registrar issued Ext. P2 notice dated 14.2.2012. Subsequently, Ext. P4 notice was issued on 28.5.2012. Ext. P6 notice was on 6.7.2012. The impugned order was passed on 23.7.2012. The above said materials would show that the proceedings are pending for the last several months. The consultation under S. 32(1) is not necessary only in case the Registrar is of the opinion that it is not practicable to do so. Materials on record would show that there was no practical difficulty in doing the consultation as contemplated under S. 32(1) of the Act. There was enough and sufficient time for doing the consultation, but, the same was avoided. It would appear that the dispensation of consultation was done with ulterior motives. The act of consultation is not a mere formality. It is a condition pre-requisite before passing an order of supersession. The Registrar should have consulted the financing bank and Circle Co-operative Union before passing the order of supersession. No valid grounds are made out for invoking the dispensation of consultation. A Division Bench of this Court in Sahadevan Vs. Padmanabhan, held that a mere forwarding of show cause notice to the financing bank and circle co-operative union is not sufficient. Explanation given on behalf of the committee and tentative findings arrived at by the Joint Registrar has also to be forwarded to them. Therefore, Ext. P7 order is passed without jurisdiction or it is without any basis. A mere

statement in the order that it is not practicable to do so, is not enough in giving away with the procedural requirement while taking a drastic step of superseding an elected body. The audit report of the bank reveals that the bank is running at a profit of Rs. 44,65,911.19/- during 2009-10 and Rs. 60.5 lakhs during 2010-11. This show that the present managing committee during its term was managing the affairs of the society smoothly and without any room for any complaints. In such circumstances, supersession proceedings initiated by the Joint Registrar cannot be justified under any circumstance. The only sustainable allegation as regards the members of the Director Board is that they have failed to convene the General Body meeting yearly. All other charges relates to the acts of the executive committee of the previous Board of Directors. I have already concluded that the charge as regards the non-convening of the meeting is a matter which could have been remedied by issuing necessary instructions to the Board. I also find that the present Board has taken urgent steps to convene the General Body on 30.6.2012 and 12.8.2012.

In the result, I quash Ext. P7. The Administrator shall hand overcharge to the Board of Directors with immediate effect, at any rate, on or before 26.11.2012.