

(1991) 01 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : Civil W.P. No. 142 of 1991

Virender Gautam and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Banking Regulation Act, 1949 — Section 21, 35A, 56
Constitution of India, 1950 — Article 226
Drugs and Cosmetics Act, 1940 — Section 27
National Bank for Agriculture and Rural Development Act, 1981 — Section 21(3), 33
Prevention of Food Adulteration Act, 1954 — Section 2(1)

Citation : (1992) 2 ShimLC 193

Hon'ble Judges : Devinder Gupta, J; D.P. Sood, J

Bench : Division Bench

Advocate : Inder Singh, for the Appellant; Chhabil Dass, General and S.P. Jain, for Respondents Nos. 1 to 3, K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—Petitioners have filed this writ petition under Article 226 of the Constitution of India praying for quashing the order, Annexure P-5, passed by Respondent No. 2 on March 2, 199". superseding and suspending the Board of Directors (hereinafter called the Board) of the Kangra Central Co-operative Bank, Dharamshala (hereinafter called as the bank) and directing the appointment of an Administrator till elections of the new Board take place.

2. The bank is a co-operative society duly registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (Act No. 3 of 1969) (hereinafter to be referred as the Act). Petitioners were the members of Board of the bank, duly elected in the year 1988, representing various co-operative societies. The area of operation of the bank is within the districts of Kangra, Hamirpur, Una, Kullu and Lahaul-spiti with 78 branches spread over in all these districts. The Board consists of 16 directly elected representatives from various co-operative societies and 3 nominated Directors by the State Government. It is

the case of the Petitioners that after they had been duly elected as Directors, representing various co-operative societies, the State Government nominated Sarvshri Jagdish Thakur, Mrs. Viplop Thakur and Manjit Singh as its nominees, who were expected to continue for a full term of three years but due to the change in the political set up, the State Government headed by Bhartiya Janta Party removed the 3 already nominated Directors and in place and stead nominated its own party workers namely, Mrs. Beena Devi, Sarvshri Subash Vaid Rattan Arya and Virvirata Sharma vide Annexure P-1 order dated April 4, 1991.

3. On January 29, 1991, in exercise of her powers u/s 37(1-A) of the Act, Respondent No. 2 passed order Annexure P-2 through which the Board was suspended and on the same day, a show-cause notice, Annexure P-3, was issued calling upon the Petitioners to show cause as to why they be not removed. According to the Petitioners, this action was a device coined to supersede the Board and to achieve the objective of Respondent No. 1 in inducting persons of B.J.P. as Chairman and Vice-Chairman. On receipt of the show cause notice, reply Annexure P-4 was Submitted but ultimately, Respondent No. 3, on March 2, 1991, passed the impugned order Annexure P5 superseding the Board of Directors and appointing an Administrator in its place.

4. The contention of the Petitioners is that the bank is one of the best co-operative banks functioning not only in the State but in the whole of the country and had made steady progress. There was no fault with its working and reasons for superseding the Board are extraneous, arbitrary and prejudicial to the institution. It is the further case of the Petitioners that Respondent No. 2 purported to have exercised the powers u/s 37 of the Act by forming an opinion that the Board had committed persistent default/irregularities and neglected in the performance of its duties imposed on it by the Act, rules framed under the Act (hereinafter to be referred as the rules) and bye-laws of the bank and also committed various acts, which were considered to be prejudicial to the interest of the bank as well as its constituent members, but as a matter of fact the supersessions is not based upon the grounds as are envisaged in Section 37 of the Act. The requirements of the Section are persistent default or neglect in the performance of duties imposed on the Board by the Act, rules and bye-laws of the bank and such persistent acts should also be found to be prejudicial to the interest of the bank or its members. Since these requirements were lacking in the order of Respondent No. 2, the supersession is mala fide at the behest and instance of Respondent No. 3, the Managing Director, in order to cover up his own wrong actions and omissions and that the decision taken by Respondent No. 2 is without the application of mind and due to the failure to take into consideration the facts and circumstances of the case.

5. In order to appreciate the submissions made on behalf of the Petitioners, it would be profitable to make reference in detail to the grounds stated in the show-cause notice and which were made the basis for superseding the Board, as well as the provisions of the Act, rules and bye-laws.

6. Annexure P-3 is a show-cause notice dated January 29, 1990, providing an opportunity to the Petitioners in accordance with Sub-section (1) of Section 37 of the Act to state their objections, if any, within a period of thirty days, as to why the Board be not removed and fresh election held or an Administrator appointed to manage the affairs of the bank. The notice was issued by Respondent No. 2 after forming an opinion that the Board had been persistently making default and was found negligent in the performance of its duties imposed upon it by the Act and the rules/bye-laws of the bank. It was also found to have committed acts prejudicial to the interest of the bank and its constituent members. The so-called defaults and acts of commission and omission enumerated in the notice are as under:

1. That the Board of Directors of the bank resolved to refund the share capital amounting to Rs. 17.00 lakhs contributed by State Government to strengthen the share capital base of the bank, and in pursuance of this resolution the amount was deposited in the State Bank of India vide challan No. 28 dated 19-11-1990. This unilateral decision of the Board is illegal, wrong, arbitrary, mala fide and contrary to provisions of Rule 67(4) of the H.P. Co-operative Societies Rules, as it has violated the terms and conditions of the sanction of Government share to the Kangra Central Cooperative Bank. Express provision has been made in the sanction letters saying that "the bank will retire Government share capital on terms and conditions as stipulated by the State Government", which has been accepted by the Bank. As no such terms and conditions have been prescribed, the haste and manner in which this resolution has been implemented when there has been no sudden or drastic change in the financial condition of the Bank can in view of Bank's letter No. PA) 471-74, dated 24-11-1990 only be construed as "mala fide" to get rid of the Managing Director, which in any case is not legally warranted as the Bank, while returning the share capital and in an effort to bring it below 5.00 lakhs so that the provisions of Section 35(B) are not attracted, has failed, to take into account the 12.00 lakhs sanctioned by the State Government vide letter No. Co-op. F (5)-3/90, dated 29-3-1990 as share capital which has been received by the Bank.

7. In addition to the above illegality this unilateral action has also been prejudicial to the interest of the Bank and its members for the following reasons:

(i) Inadequate provision in the share transfer fund has resulted in an overall shrinkage of the share capital base of the institution.

(ii) The return of share capital at a time when the Bank is the project implementing Agency for the Integrated Co-operative Development Project, Hamirpur, which project the Bank itself was keen to implement, and under which there is a considerable provision of share capital for the Bank with a long term view to increase business in the Co-operative Sector in Hamirpur, smacks of a short term perspective, and would tantamount to limiting the development of the Co-operative movement as a whole. This at a time when another project for Kangra District is also in the pipeline and for which the implementing agency has

been designated to be Kangra Central Co-operative Bank. The successful implementation of the projects would increase the Kangra Central Co-operative Bank's involvement with the Cooperative Sector as a whole, when in any case the overall loaning within the Co-operative Sector by the Bank is limited, and which in fact is one of the chief objectives of the bank. The mere fact of sound financial position of the bank largely on account of a high level of deposits (which are also attracted on account of higher rate of interest offered by Co-operative Bank) cannot detract from the fact that any action which could inhibit its involvement with the Co-operative Sector can only be termed prejudicial for the bank and its members;

(iii) A decision of this importance should carry the approval of the general house. Although proceedings of the general house meeting of 18-8-1990 were required to be drawn up and signed by Chairman at the close of meeting and confirmed. This has not been done to date and occurrences on that date have been reported in diametrically opposite ways. As such, the reasons for the haste with which this action has been taken becomes more questionable.

2. That the Board of Directors by insisting on charging interest rate 11-1/2% from its members for Weavers Co-operative Societies despite instructions to the contrary are behaving prejudicially to the interests of its members.

3. That the Board of Directors has despite directives/instructions issued from time to time regarding ban on direct recruitment and on appointment of daily wagers and the need to employ people through the Employment Exchanges failed to comply with the same. For instance after the Managing Director legally retrenched S/Sh. Jiwan Lal and Kuldeep Singh daily rated peons, the Board of Directors in violation of instructions and without adopting any procedure for direct recruitment under the service Rules arbitrarily re-appointed them on daily wages in its Board of Directors meeting held on 17-11-1990.

4. That the Board of Directors has acted in a way prejudicial to the financial interest of the Bank and caused a deficiency to its assets by giving gifts to Delegates of General House at Rs. 350 each for which no provision exists and for which no prior approval from the Registrar Co-operative Societies has been sought.

5. That the Board of Directors has been interfering in the day to day administration of the Bank with mala fide intention. An instance in this context is the rejection of the Zonal Managers report regarding non-feasibility of a Branch at Sunehat in view of its lack of potential being only 3 kilometers away from Dehra where a branch already exists.

6. That the Board of Directors has not acted in accordance with the best interest of the institution by giving preferential treatment to the General Manager Sh. J.S. Katoch for a car loan over and above the limit allowed in the vehicle loan scheme of the bank.

7. That the Board of Directors vide resolution No. 1, dated 18-7-1990 resolved that no construction activity will be undertaken by the Bank. This decision of the Board contravenes the resolution passed by the General body in its meeting held on 25-2-1989, wherein it was resolved that bank should construct its own building. The failure of the Board not to implement the decision of the Board of Directors contravenes the provisions of Rule 50(m) of the H.P. Co-operative Societies Rules, 1971.

8. To the show-cause notice, Petitioners Submitted their separate replies, more or less on similar terms as are contained in Annexure P-4, refuting and controverting the allegations and giving justification for each of their action. The following, in nut-shell, was the reply of the Petitioners to the show-cause notice:

(a) Share capital as contributed by the State Government was paid back by the Board in pursuance to an unanimous decision taken by the General House. Since no terms and conditions had been prescribed by the State Government while contributing the share capital in the sum of Rs. 17,00,000, there was no question of violation and the return of the amount was not contrary to the provisions of Sub-rule (4) of Rule 67. Another sum of Rs. 12, 00,000, contributed on 29-3-1990 had not yet become the share capital of the Board and the financial position of the bank was more than sound and it had ample funds to invest. The action of the Board to return Rs. 17, 00,000 was not prejudicial to the interest of the bank. Although the bank was the implementing agency in respect of the Integrated Co-operative Development Project but the State Government had already sanctioned a sum of Rs. 12,00,000 as share capital for the said purpose and the bank does not find it difficult to implement the scheme;

(b) The bank was insisting upon charging interest at the rate of 11-1/2% from its members of Weavers Co operative Society due to failure on the part of Government to pay to the bank, the amount of Rs. 7,00,000 by way of interest subsidy. According to the scheme, differential amount of subsidy was to be paid by the Government as it had not framed any rules for subsidising the interest and had created a situation for which bank was not at fault.

(c) The bank had faithfully implemented the directions and instructions of Respondent No. 2 in the matter of recruitment and appointment of daily wagers. The two daily-rated peons? Kuldeep Singh and Jiwan Lal?had illegally been retrenched by the Managing Director. The bank in its best interest to avoid any future litigation and in good faith engaged them for 89 days only.

(d) The Board of Directors had given gifts to the delegates of the General House, in the shape of brief-cases costing Rs. 350 each, since the delegates are the supreme authority of the bank, the brief-cases were given to carry the agenda and papers etc. and also to publicise the institution in pursuance to their persistent demands and to ensure their largest participation in the general body meeting and to honour and encourage them for the commendable achievements of the bank in the form of huge profits etc. was not prejudicial to the financial

interest of the bank. It was not necessary to have obtained sanction of the Registrar, Co-operative Societies in such like petty matters.

(e) No doubt Dehra branch of the bank is located at a distance of 3 kms. from Sunehat but the order of Directors merely asked for re-survey of the place on popular demand as it was found that people around Sunehat wanted to be heard personally by the surveying officer and it was not at all wrong in accepting such a legitimate demand.

(f) The loan for purchase of car, over and above the limit was sanctioned in favour of the General Manager, as a special case, who was the highest official of the bank and had served the institution diligently and honestly for a period of three decades with a commendable record and illustrious and devoted service and under whose inspiration the bank progress by leaps and bounds.

(g) The Board of Directors after considering the facts and circumstances dropped the item of undertaking the construction work of building at Palampur considering the same to be unproductive and being not in the interest of the institution.

9. After refuting the aforesaid seven charges, the Petitioners' contention was that they had acted in good faith and in the best interests of the institution by faithfully implementing the provisions of the Act, rules and bye-laws of the bank.

10. Respondent No. 2 on receipt of the replies submitted by the Petitioners and after having considered the same as well as the record of the bank proceeded to pass a very detailed order, Annexure P-26 on May 2, 1990. As a result of this decision, order Annexure P-5 was passed. According to the findings recorded by Respondent No. 2 on the seven grounds, upon which objections of the Petitioners were called, the same stood fully proved and the cumulative effect thereof was that the Petitioners, as members of the Board of Directors were found to have committed such acts which were held prejudicial to the interest of the bank and its constituent members. The reasons for such finding are recorded as under :

(a) Inadequate provisions in the share transfer funds has resulted in an overall shrinkage of the share capital base of the institution.

The return of the share capital at a time when the bank is the Project Implementing Agency for the Integrated Co-operative Development Project Hamirpur, which project the bank itself was keen to implement and under which there is considerable provision of share capital for the bank with a long term view to increase business in the Co-operative Sector in Hamirpur reflects a short term prospective and would tantamount to limiting the development of the Co-operative movement as a whole.

A decision of this importance should have carried the approval of the General House. So far as the reply of Directors to allegation No. 1 is concerned, the Board of Directors has admitted this fact that they have retired share capital amounting to Rs. 17.00 lacs, but they have denied that this was violative of

provision of Rule 67(4) and was wrong, arbitrary and unfortunate. They maintained that no conditions had been prescribed in this behalf. Secondly, they have contended that this action is in keeping with the decision of the General House dated 18-8-1990 and with the full consent and participation of the Managing Director, Sh. Sanjeev Gupta. They have denied that the bank has failed to put in proper account the amount of Rs. 12.00 lacs sanctioned by the State Government vide letter No. F-(5)-3/90, dated 29-3-1990, but they have held the Government responsible for this amount not having been deposited in the share capital account. The Board of Director has again emphasised the point that this action on their part is not prejudicial to the interest of the bank because the financial condition of the bank is sound and the bank has ample funds to invest. They have accepted that the bank is the Project Implementing Agency for the Integrated Co-operative Development Project and in the end they have contended that after a duration of 3 months, this unanimous decision of the General House was implemented. They said that the proceedings of the General House were drawn and confirmed by the Chairman there and then. The members of the Board of Directors have accepted this fact that they returned share capital amounting to Rs. 17.00 lacs. Rule 67(4) of the H.P. Co-operative Societies Rules, 1971, clearly states that the State Government may set out other terms and conditions on which it shall provide State aid to a Society. Sanction letters clearly state that the money will be returned under the prescribed conditions in various sanction letters issued by the Government. This unilateral decision of the bank is contradicted by the fact that the bank in its resolution dated 6-2-1986 and 22-9-1986 has repeatedly mentioned that the return of the share capital shall be made from the share redemption fund or net profit and as and when demanded by the Government but no condition has been fulfilled in the return of this Rs. 17.00 lacs. If these conditions were not clear, clarification should have been sought from the Government. This fact is that this action was performed arbitrary, unilaterally and in haste which is evident from the fact that no prior reference was made to the Government in respect of this action. The return of share capital is against the interest of the Government. In fact the amount of this share capital could be returned under Rule 17 (5).

As the Board of Director under suspension has contended that this was passed in the General House dated 18-8-1990, there appear to be no necessity in this behalf for the Board of Directors to pass a separate resolution when the General House had decided to return the share capital. It appears from the time of passing of this resolution and date of factual return of the share capital that action was taken in acute hurry which as has already been said was taken only to get rid of the Managing Director, which will be deemed to be mala fide, which is evident from the fact that this in the endorsement of letter No PA/471/474, dated 24-11-1990 as endorsed to the Secretary (Co-operation). It has been clearly written that the Additional Registrar Co-operative Societies, Dharamshala should be relieved of his assignment in the bank because the Government share capital in the bank on 19-11-1990 has been reduced to Rs. 1,06,500 and it has

been stated that his continuation as such would be illegal. The reply of the Board of Directors that the financial condition of the bank is sound does not justify the reduction in the share capital of the institution when there is no special change in the financial conditions of the bank. If at all the share capital had to be returned there should have been a provision for the share redemption fund and the return should have been according to the provisions of Rule 17 ((sic)) on the H.P. Co-operative Societies Rules, 1971 and the total share capital should not have been reduced and provision for this should have been made out of the next profit or permission/clarification should have been sought from the Government.

In addition to this, the Board of Directors had prayed for additional share capital amounting to Rs. 12.00 lacs in December, 1989 in connection with the integrated Co-operative Development Project which renders aforesaid proceedings to be self contradictory. So far as the question of giving share capital to the bank amounting to Rs. 1200 lacs is concerned, this money was received by the Bank on 17-5-1990 and was given in the form of share capital vide letter No F-(5)-3/90, dated 29-3-1990. Therefore, it is difficult to understand this view point of the suspended Board of Directors that this money had not assumed the form of share capital for want of action on the part of the Government.

Secondly, the bank had not mentioned this money in its books which shows that the bank had perhaps deliberately concealed the factual position.

The Board of Directors of the Bank had stated in the reply that this decision to return the share capital was taken in the General House dated 18-8-1990 unanimously and with full consent and presence of the Managing Director of the Bank and the proceedings of the meeting were completed there and then.

But both the aforesaid decisions are not correct and were demonstrated with this object that these proceedings were sent to the Managing Director for his approval by the General Manager through his letters dated 29-12-1990 and 1-1-1991 addressed to the Managing Director by the General Manager showing that so many changes were effected in the proceedings which shows that many changes have been made in these proceedings afterwards. Therefore, the plea that the proceedings were completed in the General House is wrong. This letter clearly hints that the proceedings were shown to the Chairman who approved the same after minor changes in the resolution regarding return of share capital.

Again the fact that the Managing Director was not in agreement with the decision and in fact an opposite stand was taken by him in this respect, this fact has been mentioned in writing repeatedly in this correspondence.

It is clear from the above that the reply of the Board of Directors was in fact wrong and was not justified in any case and was violative of the Act, Rules and the bye-laws apart from being mala fide.

(b) The NAWARD and Reserve Bank of India had given Instructions to the Bank that interest should have been charged @ 7-1/2% and the decision taken to

increase the rate of interest to 11-1/2% shows violation of instructions of the NAWARD and the Reserve Bank of India. This decision has been opposed by the then Managing Director which is clear from the noting on that file where in it has been stated that the maximum limit for charging interest rate has been fixed at 7-1/2% by NAWARD and we are bound, therefore, to charge the Interest at that rate whether any subsidy is available In this behalf or not. Therefore, conclusion can be drawn that this decision of the Board of Director was in violation of the Instructions of the NAWARD and the Reserve Bank of India and which will adversely affect the weavers societies. This order of NAWARD is meant for improving the financial condition of the Weavers. It is evident that this action of the Board of Directors was prejudicial to the interest of the members.

Apart from this over-looking the directions of NAWARD is not in the larger interest of the bank.

(c) The Registrar Co-operative Societies has been writing to the Kangra Central Co operative Bank Ltd. Dharamshala that no illegal appointments will be made. The initial appointments of Sh. Kuldeep Singh and Sh Jiwan Lal in the bank were made without requisition from the Employment Exchange and thereafter the name of Sh. Jiwan Lal was got sponsored from the Employment Exchange Letters written to the General Manager are available in the records to show the arbitrary way in which the appointments and postings of these people were made. The contention of the Board of Directors that this action of the Managing Directors is not within the area of his jurisdiction is absolutely wrong u/s 35-B(4). It is provided that the Managing Director of a Co-operative Society shall be its Chief Executive and all the employees of the society will work under his superintendence and control. So far as validity of the order is concerned, it is stated that proper and valid procedure was adopted for retrenchment and if the people so choose nobody can stop them from taking the help of the Court. The Board of Directors in their meeting on 17-11-1990 deliberately and not adopting proper procedure has usurped rights of some persons knowing that the Registrar Co-operative Societies has banned the appointments of daily wagers and had issued directive after some enquiry into some matter of the Kangra Central Co-operative Bank Ltd., Dharamshala that no temporary or regular recruitment shall be made.

(d) The Board of Directors had acted against the financial interest of the bank and had acted improperly by giving gifts to the delegates of the General House out of its assets which has not been provided for anywhere and for which no approval of the Registrar Co-operative Societies was taken.

The proceedings of the meeting of 27-7-1990 show that inspite of the suggestion of Managing Director and General Manager the Chairman and the Board took a different decision. It will therefore be wrong to say that they did not show their dissent in this regard. Efforts are made to discourage the spirit to work with simplicity and voluntarily in the co-operative sector so as to avoid such spirit with greed and other society also will get an encouragement to give such gifts.

(e) Board of Directors was Interfering in day to day administration with mala fide intention and rejection of the report of the Zonal Manager not to open a bank branch at Sunehat being not viable in this context. There are no chances of the success of this branch being not viable and being only 3 Kms. from Dehra where a bank branch is already functioning. The Board of Directors in their reply have said that no decision was taken by them in the matter as yet, because of popular demand of the people. The Board of Directors contended that it wanted to give to the people of this area an opportunity to be heard and the matter will be finally decided on merits only. This has also been contended that they have only ordered re-survey and this was done in the presence and with the consent of the Managing Director. The fact that the Managing Director did not take part in the decision is evident from the resolution of the Board of Directors dated 18-7-1990. In reality it so appears from a letter of the Zonal Manager to the Managing Director that a local director was interested in getting the branch opened. It will be proper to point out that the criteria for opening the branch should be its viability and not only the demand of the people. If branches continue to be opened on public demand, than no bank branch will be viable. Before opening the branch, its future viability should be ensured In fact interference in day to day administration can be shown from the day to day interference in the matters of transfers, which made the Board of Directors unhappy. The Board of Directors had earlier adopted a resolution whereby it had expressed to desire to exercise powers in connection with the transfer of the employees. The Registrar, Co-operative Societies had given her clarification on this issue. The Board of Director of any institution is meant to lay down policy and not to do administrative acts for which the Chief Executive is appointed under the Act about which clear mention is available u/s 35-B(4) of the Act.

(f) The sanction of car loan to Sh. J.S. Katoch, General Manager of the Bank in excess of the permissible limit of loan as fixed in the bank, the Board had justified this point treating it a special case of the highest official of the bank with a commendable record of service and dedication to the institution. They have also based it on his excellent performance in the bank. They had said that he has lacs of rupees in the bank and the loan is not exposed to risk. They have also said that the Managing Director have consented in the resolution and the Board of Directors has acted in the best interests of the institution. So far as personal financial position of Sh. J.S. Katoch is concerned, no comments can be offered. However, the point is worth emphasising that resolution No. 17 dated 4-12-1989 shows that unanimity of the Board of Director on this issue is doubtful It is also against Rule No. 1(B) of the bank regarding advance of loan.

In addition to the above the administrator after his appointment received a letter No. 555/PA, dated 21-12-1990 containing the report that the monthly installments by this General Manager are hardly sufficient to recover the loan in the remaining part of his service and the same are entirely insufficient. The contention of the Board of Director that this vehicle will be helpful in his extensive touring is not weighty because he has already been given a vehicle by

the institution. Again his integrity is also doubtful because this official is suspended and charge-sheeted on various counts. This shows that the Board-of Directors has deliberately tried to help him on so many occasions which shows that there was a nexus (understanding) between him and the Board of Directors.

(g) After the General House had resolved to construct its building at Palampur and Manali, the Board of Directors had become of the view that it is an economic for the bank to construct its building. There is no doubt that this cannot be the main activity of the bank. In fact the bank had asked for the creation of post of J.E. for the construction of its building which was approved by the Registrar Co-operative Societies. In fact the Board of Directors had connected the issue of construction of office building with the issue of construction of office of Additional Registrar Co-operative Societies and his residential quarters which was separate Resolution No. 14, dated 28-7-1990 of the Board of Directors shows that the intention was to give the benefit to the bank in the form of Land. In fact, the Board of Director has not denied this issue in their reply but included it in the proceedings and it was recommended to approach the Government to make land to cheaper rate available to the bank. In fact the suspended Board of Directors has mis-represented the situation in their reply.

So far as Banking Regulation Act, 1949 is concerned, the restriction u/s 6(2) and (9) has been imposed on the construction of building for other institutions, but this provision does not stop the bank from constructing building for their use. The position of the Board of Directors goes on changing every time on this issue.

11. The challenge against the impugned order is based upon the true construction of the provisions of Sub-section (1) of Section 37 of the Act. Section 37 deals with the supersession and reads as under:

37. Supersession of committee.?(1) If, in the opinion of the Registrar a committee of any co-operative society or any member thereof persistently makes default or is negligent in the performance of the duties imposed on it or by him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interests of the society or its members, the Registrar may, after giving such committee or member, as the case may be, an opportunity to state its or his objections, if any, by order in writing ?

(a) remove the committee; and

(i) order fresh election to the committee;or

(ii) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified in the order which period may at the discretion of the Registrar, be extended from time to time, so, however, that the aggregate period does not exceed five years; or

(b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to the provisions of this Act, the rules and the

bye-laws.

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12. The main stress of the submissions made on behalf of the Petitioners was that the power under Sub-section (1) of Section 37 can only be exercised after there Registrar forms an opinion that the committee or any member thereof had persistently made default or had been persistently negligent in the performance of the duties imposed upon it or him by the Act or rules or the bye-laws or is found to have persistently committed any act, which is prejudicial to the interest of the society or its members. Unless, there is persistent commission of act or persistent negligence in the performance of duties imposed by the Act. Rules or bye-laws or persistent commission of an act which is prejudicial to the interest of the bank or its members, the power cannot be exercised. According to the submissions the word "persistent" requires to be read even in the case when act of commission is found prejudicial to the interest of the society or its members. As contended by the learned Counsel for the Petitioners, each of the grounds which had been pressed into service by Respondent No. 2, while forming opinion, when taken separately cannot amount to the Petitioners making persistent default or being negligent in the performance of their duties and being persistent in acts prejudicial to the interest of the society. The act of return of share capital was only a single act and cannot be said to be a persistent act. Similarly, the other alleged acts of omission and commission were such, which cannot be said to be persistent one Even when there is an allegation of commission of any act which is found to be prejudicial to the interest of the society or its members the requirement of Sub-section (1) of Section 37 is that the same should be commission of an act, performance of which is the requirement of the Act, rules or bye-laws. The act of return of share capital, insistence upon in charging 11-1/2% interest instead of 17-1/2% from the members of the Weavers Co-operative Society, appointment of two daily wagers as peons, giving of gifts to the delegates, advancing car loan to the General Manager and failure to undertake the construction work of bank building at Palampur cannot by any stretch of imagination be considered as acts of persistent default or negligence in the performance of duties imposed on the Board by the Act, rules or bye-laws. Since none of the acts amount to the persistent commission of act, therefore, Respondent No. 2 acted beyond her jurisdiction in invoking the provisions of Section 37 of the Act. These submissions when considered in the light of the bare reading of the provisions of Section 37 require outright rejection.

13. Sub-section (1) of Section 37 consists of two parts. Firstly, committee of any co-operative society or any of its member making persistent default or found to be negligent in the performance of duties imposed upon it or him by the Act, rules or bye-laws Secondly, such committee or any of its members committing

any act which is found to be prejudicial to the interest of the society or its members. In the first part there is a word "or" in between the words "makes default" and "is negligent" and in the second part commences with the word "or" before which there is a comma after the words "bye-laws". In the earlier portion there is no comma put before the word "or". It has now authoritatively been held that when a statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to punctuation. In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, B.K. Mukherjee, J. expressed himself as follows at p. 383 of the report:

Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English Courts. It seems, however, that in the vellum copies printed since 1850, there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporanea expositio. When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to punctuation. I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of text.

14. An illustration of the aid derived from punctuation may be furnished from the case of *Mohd Shabbir v. State of Maharashtra* AIR 1979 SC 504, where construing the provisions of Section 27 of the Drugs and Cosmetics Act 1940. it was held that only stocking for sale could amount to offence and not mere stocking. While holding so the Supreme Court pointed out the presence of comma after the word "stock". According to the submissions made by the learned Counsel for the Petitioners word "or" in between the word "bye-laws" and "commits" should be read as "and" so as to properly construe the intention of the legislature since what was intended was that not only the act of the persistent default or negligence in performance of duties imposed by the Act, rules or bye-laws but in addition there to such an act should also be prejudicial to the interest of the society or its members.

15. The word "or" normally disjunctive "and" is normally conjunctive. At times they are read vice-versa to give effect to the manifest intention of the legislature but generally "or" always mean "or" and "and" as "and". If the literal reading of the words produces an unintelligible or absurd result and* may be read as "or" and "or" as "and".

16. If the phrase "or commits any act which is prejudicial" in the second part of Sub-section (1) of Section 37 of the Act is read conjunctively, it is likely to produce such a result which could not have been the intention of the legislature. The word "or" in between words "makes default" and "is negligent", however, can be read conjunctively as well as disjunctively but to produce intelligible result if "or" therein is read as conjunctively will clarify the manifest intention of the legislature. Legislature can be said to have intended that when it is the performance of the duties imposed by the Act, rules or bye-laws, it is the

persistent default or persistent negligence which can be the ground for taking action. But when it is the positive action of commission of an act which is prejudicial to the interest of the society or its member, such an act need not be such, the performance of which may be said to be a duty imposed by the act, rule or bye-law or that it should have been committed persistently.

17. The second part of the provision "or commits any act which is prejudicial" is a distinct and separate class altogether than the first part. The Supreme Court in State (Delhi Administration) Vs. Puran Mal, while interpreting Section 2(f) of the Prevention of Food Adulteration Act, 1954 and the words "or is otherwise unfit for human consumption whether to be read as distinctively or conjunctively with the words "filthy, putrid, rotten....", held as under:

We are of the opinion that the High Court was clearly wrong in its interpretation of Section 2(f). On the plain language of the definition section, it is, quite apparent that the words "or is otherwise unfit for human consumption" are disjunctive of the rest of the words preceding them. It relates to a distinct and separate class altogether. It seems to us that the last clause "or is otherwise unfit for human consumption" is residuary provision which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively the mere proof of the article of food being "filthy, putrid, rotten, decomposed? or insect infested" would be per se sufficient to bring the case within the purview of the word "adulterated" as defined in Sub-clause (f) and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption

18. The word "persistently" is to be read only in considering the act of default or negligence in the performance of duties imposed by the Act, rules or bye laws, whereas no such requirement can be found in the second part when the committee or its members are found to have committed "any act", which is prejudicial to the interest of the society or its members.

19. The first and primary rule of construction of a provision of statute is that the intention of legislature must be found in the words used by the legislature itself. As a consequence of this rule a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. This proposition of law is fortified by the following observations of the Supreme Court in P.K. Unni Vs. Nirmala Industries and others [OVERRULED],

The court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said: See Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others, Assuming there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. No case can be found to authorise any court to alter a word so

as to produce a casus omissus: Per Lord Halsbury *Mersey Docks and Harbour Board v. Henderson Brothers* XIII (1888)AC 595, 602. "We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there?: *Crawford v. Spooner* XIII (1846) AC 595, 602

20. The word "persistent" cannot be imported and included in the second part so as to read it as "commit any persistent act". The second part envisages "any act" whereas in the first part such word is missing. When the action is founded upon an act of omission or commission in the performance of duties imposed by the Act, rules or bye-laws, such an act has to be persistent one, meaning thereby that there should be such a default or negligence on the part of committee or its members in which they can be said to persisting But when it comes to commission of any act, which is found to be prejudicial to the interest of the society or its member it need not be a persistent act Such an act may or may not be having any relation or commission with the performance of duties imposed upon by the Act. Rules or bye-laws The only requirement is that the same be found to have been prejudicial to the interest of the society or its members.

21. The interest of a society or its members are supreme which can be found out from reading of the provisions of the Act and the rules. Even the objects for which the bank was registered as co-operative society would suggest that the same was registered to promote the economic interest of the members of the bank in accordance with the co-operative principles and to facilitate the operations of the co-operative societies registered under the Act One of the other objects of the bank is to serve as balancing centre and clearing house for co-operative societies in its area of operation and to organise the provision of credit for agriculturists, artisans and labourers and others in its area of operation One of its aim is also to make loans and advances with or without security to the member societies and individual members. When the interest of its members are supreme any act performed which is ultimately found to be prejudicial to the interests either of the society or the member has been made an independent ground for superseding the committee. The act of making default or being negligent in the performance of duties imposed on the committee by the Act, rules and bye-laws singularly has not been made a ground for superseding the committee-Such default or negligence when persistently made is the ground for supersession. Section 34 of the Act says that the management of every society shall vest in a managing committee and shall exercise such powers and perform such duties as may be conferred or imposed by the Act or rules/bye-laws. The framers of the Act were aware that any default or negligence in the performance of duties imposed by the Act, rules or bye-laws may or may not be prejudicial to the interest of the society or its members and accordingly made it a separate ground and while doing so stated that such a negligence or default is to be persistent but a single positive act committed by the committee when found prejudicial to the interest of society was made a separate ground independent of the first for superseding the committee.

22. The Petitioners have not only challenged the impugned order, Annexure P-5, on the ground of lack of jurisdiction but also on its merits. An objection was raised by the Respondents that the writ petition was barred since there was an alternate remedy available to the Petitioners to challenge the impugned order by filing an appeal u/s 93 of the Act or by way of revision u/s 94 of the Act. No doubt this Court in exercise of its extraordinary jurisdiction will decline to interfere with the decision of inferior tribunal when alternate remedy is available, but this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law. Keeping in view the facts and circumstances of this case, we are not inclined to relegate the Petitioners to the alternate remedy. In the matters of issuing writ of certiorari, the court does not sit as a court of appeal over the order of the quasi judicial authority. The court is only concerned with the question whether the authority has or has not acted without jurisdiction or in contravention of the principles of natural justice in exercise of its jurisdiction. Correctness of the decision or merits or what is the proper view which should have been taken cannot be the matter of exercise of writ jurisdiction.

23. We find from the record that after Respondent No. 2 had proposed to take action against the Board, show cause notice Annexure P-3 was issued affording an opportunity to them to object to the action proposed to be taken. Each of the replies was considered and an elaborate decision was taken. Even in order to test the decision arrived at by Respondent No. 2 alongwith the reasons thereof contained in Annexure P-26, we will consider the first ground, which was made the subject-matter of forming the opinion to supersede the Board of Directors. The State Government is one of the persons who can be admitted to membership of a co-operative society by virtue of Section 17 of the Act. Section 6 provides for the restrictions on holding of shares in a co-operative society by any member but such restriction is not applicable in the case of State Government. Each person nominated u/s 35 or appointed as Managing Director u/s 35-B by the State Government on the committee of a co-operative society has been given right of one vote by virtue of Sub-section (3) of Section 20 of the Act. Section 48 of the Act says that notwithstanding anything contained in any law for the time being in force, the State Government may subscribe to share capital of a co-operative society. Sub-rule (4) of Rule 67 further says that the State Government may set out terms and conditions on which it shall provide State aid to the society. Subscribing to the share capital of a co-operative society as one of the forms of State aid. Rule 17 of the rules deals with the withdrawal of membership from the society and says that subject to the provisions of Act, rules and bye-laws a member may withdraw from the society after making three months notice in writing to the Secretary expressing his intention to resign. There is no provision in the Act, rules or bye-laws empowering and enabling the society to unilaterally take a decision to expel a member or to return his share capital. There is also no provision in the Act, rules or bye-laws which might enable a society to unilaterally take a decision to return the share capital of a member who would

like to continue as such Sub-rule (5) of Rule 17 says that share capital subscribed by the State Government will be retired only in such a manner and within such period as may be determined by the Registrar.

24. The manner in which State aid was provided by the Government by subscribing to the share capital of the bank, as per provisions of Section 48 and Rule 67 can be ascertained by making reference to the copies of four resolutions Annexures R-1/A to R-1/D passed by the Board In pursuance to these resolutions decision to subscribe to the share capital of the bank was taken by Respondent No. 1 and conveyed to the bank by Respondent No. 2 through letters Annexures R2-A to R2-D The resolutions, Annexures R-1/A to R-1/D and letters Annexures R-2/A to R-2/D, specifically provided that bank will retire the share capital on the terms and conditions as may be prescribed by the Government. It was resolved in each of the resolutions by the bank to request the Registrar, Co-operative Societies for the contribution of the Government share capital to strengthen the share capital base of the bank and the resolutions further say that the bank will retire its contribution at the time when desired by the Government. It is not the case of the Petitioners that Government had at any point of time desired to retire its share capital. It is also not the case of the Petitioners that by virtue of Sub-rule (5) of Rule 17, Registrar had determined the manner of retiring the share capital. As can be found from the record that it was an unilateral decision taken by the Board which according to the Petitioners had been taken by the General House. We do not find from any of the provisions of the Act, rules or bye-laws nor any such provision has been brought to our notice which might empower, authorise or enable a co-operative society to take such an unilateral decision of retiring the share capital subscribed by the State Government. The ground in the show-cause notice as well as the ultimate order passed by Respondent No. 2 makes mention that this unilateral decision of retiring the share capital was with a mala fide object to nullify the provisions of Section 35-B of the Act, which empowers the State Government, where it has subscribed to the share capital of a society to the extent of Rs. 5,00,000 or more, to nominate another member in addition to the persons already nominated u/s 35 and to appoint him as Managing Director. In the show-cause notice as well as in the impugned order it has further been mentioned that in addition to the share capital there was another contribution made by the State Government in the sum of Rs. 12,00,000 by way of share capital in order to implement the centrally sponsored scheme- Integrated Co-operative Development Project?and this amount also was subscription towards share capital of the bank and the same was to be governed by the other terms and conditions laid down by the National Co-operative Development Corporation.

25. It was contended by the learned Counsel for the Petitioner that as no terms and conditions had been prescribed by the State Government, therefore, the bank was within its rights to take a decision of returning the amount since the same was not required by it. No doubt, there were no conditions laid down by the State Government, as observed above, there is no provision in the Act

empowering the Petitioners to take an unilateral decision, which would have the effect of depriving the person who has contributed towards the share capital to nominate a person on the Board by virtue of Sections 35 and 35-B of the Act Respondent No. 2, after considering the replies submitted by the Petitioners came to the conclusion that irrespective of financial position of the bank decision to return a sum of Rs. 17,00,000 has resulted in an overall shrinkage of the share capital base of the institution, especially at a time when the bank is the project implementing agency for the Integrated Co-operation Development Project, Hamirpur. After considering the pleas raised by the Petitioners, Respondent No. 2 formed an opinion that this act on the part of the Petitioners was definitely prejudicial to the interest of the bank Whether such an act was prejudicial to the interest of the bank or not, opinion thereupon had to be formulated by Respondent No. 2 to her satisfaction On examination of the pleas raised by the Petitioners, coupled with the documents placed on record and the provisions of the Act and rules, we do not find any infirmity in the ultimate decision arrived at by Respondent No. 2 such an act may not be an act of persistent default or negligence in the performance of duties imposed under the Act, rules or bye-laws but was definitely an act committed by the Petitioners which was found by Respondent No. 2 to be prejudicial to the interest of the bank.

26. The second ground was that the Board insisted upon in charging interest rate of 11-1/2% from its members of Weavers Co operative Society despite the instructions to the contrary which act was found also to be prejudicial to the interest of its constituent members. Annexure 5/A is the copy of circular dated January 18, 1984 issued by the National Bank for Agriculture and Rural Development (in short NABARD) addressed to the Registrars Cooperative Societies in all the States and Union Territories notifying the policy governing the financial activities u/s 21(1)(v) read with Section 21(3)(a) of the National Bank for Agriculture and Rural Development Act, 1981, for financing, production and marketing activities of weavers societies. Clause (vi) whereof specifically lays down that rate of interest on borrowing by the weavers shall be 2-1/2% below the bank rate subject to the provisions that such rate of interest charged to the weavers society does not exceed 7-1/2% per annum or such other rate of interest as may be fixed by the Government from time to time. Letter Annexure R5/C issued by the NABARD on October 29, 1990 emphasises upon the Directors of the State Co-operative Banks to follow its policies strictly in the matter of financial assistance and reads as under:

...one of the conditions governing the sanction of credit limits to State Co-operative Banks u/s 21(1)(v) read with Section 21(3)(a) of National Bank Act 1981, for financing production, procurement and marketing activities of primary/ apex/ Regional Weavers" Co-operative Societies is that the rate of interest charged to the societies should not exceed 7.5% per annum or such other rate of interest as may be fixed by the Government of India from time to time. This rate has been stipulated on the basis of the bank rate at present (10% per annum)

and interest subsidy of 3% is provided by the Government of India. It has been brought to our notice that in some cases for various reasons, the financial institutions have preferred to provide finance to the societies at a rate of interest higher than the stipulated rate of 7.5% per annum and the societies are required to claim the subsidy directly from the State Government. Since this contravenes the terms and conditions of sanction of refinance by the National Bank, you are requested to strictly adhere to the instructions regarding charging of rate of interest and also advise the DCCBs affiliated to your bank to follow our instructions in this regard scrupulously.

27. The bank which is engaged in banking activities is governed by the provisions of the Banking Regulation Act and is bound to follow the instructions issued by the Reserve Bank of India and when financial assistance is provided by the NABARD also by the provisions of the National Bank for Agriculture and Rural Development Act. Referring to the provisions of Sections 21, 35-A and 56 of the Banking Regulations Act read with Section 21(1)(a) and 33 of the NABARD Act it will be seen that the bank had no option except to follow strictly the instructions and policies of NABARD and could not have insisted upon charging higher rate of interest on any ground whatsoever. Even if the State Government had not yet taken any decision to formulate any scheme to provide subsidy, the same could not have absolved the bank from insisting upon the payment of higher rate of interest to the members of Weavers Co-operative Society, one of the members of the bank. On the basis of the grounds mentioned in the show-cause notice and considering the reply filed by the Petitioners, Respondent No. 2 came to the conclusion that this act on the part of the bank in insisting upon to charge interest was also an act prejudicial to the interest of its members.

28. Having scrutinised this ground also, we find that the decision taken by Respondent was based upon material on record and Respondent No. 2 had rightly come to the conclusion that it was an act prejudicial to the members of the bank.

29. We need not go into the merits of the other grounds since in exercise of its writ jurisdiction this Court will not substitute its own decision on merits unless it is shown by the Petitioners that the same is perverse. It has not been shown that the decision on other grounds is not based upon any material. We find that the decision so arrived at is after considering the reply, by a detailed speaking order when there is sufficient material available on record to substantiate the same.

30. Learned Counsel for the Petitioners wanted to urge an additional ground that it was incumbent for Respondent No. 2, before passing the impugned order, to have, consulted the financing institutions to which the bank is indebted as provided in Sub-section (5) of Section 37 of the Act. We are not inclined to allow this point to be urged since no grievance in this regard is made in the writ petition nor it has been made as one of the grounds challenging the impugned order. Whether or not Respondent No. 2 consulted the financing institution to which the bank was indebted is not a pure question of law but a question of fact

which it will not be permissible to allow at this stage to be taken as at the earliest opportunity, the same was not made the subject-matter of challenging the impugned order.

31. It was further contended by the learned Counsel for the Petitioners that the third Respondent who had been appointed as Managing Director by Respondent No. 1 had started functioning in an arbitrary and a politically motivated manner and the acts of commission and omission were of such a nature which could be said to be detrimental to the interest of the bank and its members. By making reference to various instances in sub-paras (a) to (n) of para 13, it was submitted that the Petitioners had repeatedly complained to Respondent No. 2 for taking action against Respondent No. 3 but no enquiry was held as envisaged u/s 67 of the Act. As regards the acts of commission and omission of Respondent No. 3 and the action taken against the Petitioners was mala fide one at the behest of Respondent No. 3, we need not go into all these aspects of the matter since these allegations of the Petitioners have been refuted by Respondent No. 3 in his affidavit-in-reply and more over there is no material on record to show that how in what manner Respondent No. 3 could have influenced the mind of Respondent No. 2 in passing the impugned order. Respondent No. 2 is a statutory authority entitled to form its own opinion on the basis of material on record. What we find from the detailed reasons contained in Annexure P-26, Respondent No. 2 has acted in a just and rational manner and has given cogent reasons for arriving at her conclusion. We do not find any infirmity in the reasoning recorded by her in forming the opinion.

32. As a result, we do not find any merit in the writ petition and the same is accordingly dismissed. We leave the parties to bear their own costs.