

**SELECTED DECISIONS
OF
CO-OPERATIVE APPELLATE
TRIBUNAL
AND
GOVERNMENT**

Edited and Compiled by:

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PART - A

DECISION OF
CO-OPERATIVE
APPELLATE TRIBUNAL

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FROM ME..... WITH LOVE

The Pondicherry Co-operative Societies Act, 1972 and the Rules framed thereunder do cover various facets relating to co-operative societies of different hues and dimensions right from their registration to their winding up. Despite the all protective and insidious nature of the legislation, difficulties still arise in their implementation and freewill working, leading at times to protracted and recriminative litigation. The law expands its entity when it is interpreted explicitly by judiciary. So the knowledge based upon case law is an essential ingredient for deciding on an issue at hand.

The “**Selected Decisions of Co-operative Appellate Tribunal and Government**” is my endeavour to compile various decisions of the Co-operative Appellate Tribunal and the Government right from 1979. This, I am sure, would serve as a handy reference to the officers of the Department as also for those in charge of the administration of societies. In my quest to compile these decisions, I am fortunate to have the blessing of chosen few and assistance of my trusted friends.

I am grateful to **Thiru A. Anbarsu, I.A.S.**, Secretary to Government (Co-operation) for his illuminative foreword. The fabulous encouragement I receive from my Registrar **Dr. S. Sundaravadivelu** prompts me to go further and his awesome interest in academic activates is worth emulating.

I have derived inspiration from my former Registrar **Thiru G. Ranganathan** and my former Joint Registrar **Thiru S. Ramakirushnan** while doing this work.

I express my thanks to my illustrious colleague **Thiru G. Maroudavanane**, Managing Director of the Pondicherry State Co-operative Union for publishing this compilation.

I place on record my warmth and thanks to my esteemed teammates **Ms. D. Niraimathi, Ms. D. Vanaja** and **Thiru P. Ranganathan** (PICM) for the invaluable assistance rendered by

them. I thank the **Puduvai Computers Co-operative Society** and **Thiru G. Chidambaram**, Co-operative Officer for their help.

For printing this compilation, **Thiru K. Srinivasan**, Managing Director, PIC Press, deserves appreciation and thanks.

For errors and defects which notwithstanding every anxiety to prevent them, may inadvertently occur, I crave indulgence of the readers.

This compilation is dedicated to my mother **Smt. Kamala Ramaswamy**, who means so much to me.

May God be with you and me.

R. MURALIDHARAN

BEFORE THE CO-OPERATIVE APPELLATE TRIBUNAL,
PONDICHERRY

PRESENT: THIRU J. GNANY,
PRESIDENT

Co-operative Appeal Suit No. 2 of 1979

Friday, the 17th day of August 1979.

1. Subbarayan
 2. Sokkalingam
 3. Shanmugam
 4. Loordu Swamy
 5. Victoria
- ... Appellants

Vs

The Registrar of Co-operative Societies,
Pondicherry

... Respondent.

Important points

The enquiry officer instead of conducting a proper enquiry examining afresh the necessary witnesses to prove the charges levelled against the appellants so as to give them the opportunity to cross examine them, limited his enquiry to examination of the appellants themselves, recorded their denials and made a report on the basis of the preliminary enquiry.

Neither the Deputy Registrar, nor the Sub Registrar has taken care to peruse the cash bill which would have been issued by Asoka Cut Pieces if really such goods have been sold by them, to verify the account books of the society in this regard and examine M/s. Asoka Cut Pieces, the only real independent witness, able to bring all the clarifications in this matter. The 1st charge against the appellants should therefore, be held to have not been proved.

If the board of directors have passed a resolution in violation of the bye-laws, it is the duty of the Secretary to get it rescinded by the Registrar. There is not an iota of evidence to the effect that the appellants have ordered the Secretary to consent credit sales above the maximum limit and without settlement of previous dues.

The board of directors has the right to create particular post and recommend promotion of employees. Such resolutions are not illegal. They may be approved or rejected by the Registrar.

The employees who are alleged to have given complaints have not been examined in both enquires and it has not been ascertained whether their complaints are genuine or baseless.

In a board the decision of the majority has to prevail. This does not mean that the majority has behaved in a dictatorial manner.

The appeal is allowed.

This appeal coming on before me for final hearing on 1.8.1979 in the presence of Thiru V. Narayanasamy, Advocate for the appellants and Thiru K. Appadurai, Government Pleader represented by Thiru John Bosco, Advocate for the respondent and upon hearing both sides and having stood over till this day for consideration, the Court delivered the following

J U D G M E N T

This is an appeal under Section 140(1) of the Pondicherry Co-operative Societies Act, 1972, against the order passed by the Registrar of Co-operative Societies on 6.4.1979.

2. The case of the appellants is that they have been issued with a notice of supersession of the board which was existing in Swadeshi Panchalai Uzhiyargal Cooturavu Pandagasalai on February 1979. The appellants have duly replied to the notice as required by the Registrar of Co-operative Societies. Thereafter the respondent sent a notice of enquiry stating that he was not satisfied with the explanation submitted by the board. An enquiry was conducted. After that the Registrar of Co-

operative Societies has ordered for the supersession of the board and appointed the Secretary as special officer of the said co-operative society.

3. Aggrieved by the said order, the members of the board have preferred the present appeal on the following grounds:-

- a) The lower authority failed to conduct an enquiry as prescribed under the Co-operative Societies Rules and also the general provisions applying to enquiries.
- b) The lower authority did not bring any servant or officer who raised the allegation to prove that fact and believed simply the version of the enquiry officer and held that the board has got to be superseded in the interest of the better administration of the society.
- c) The lower authority has not seen the fact that the appellants have been interested in the prosecution of the co-operative movement in the Swadeshi Cotton Mills.

4. *The point for consideration in the present appeal is whether the impugned order is based on valid grounds or unsustainable?*

5. The show cause notice dated 3.3.1979 issued by the Registrar of Co-operative Societies, Pondicherry levelled the following charges against the appellant:

- a) On 9.1.1977 the appellants purchased textiles from "Ashoka Cut-pieces" to the value of Rs.2,000 without the knowledge of the Secretary and directly took the goods to the cloth section and urged the employees concerned to fix the selling price. When the employees hesitated and pointed out that the purchase was irregular having been made without the knowledge of the Secretary, the appellants acted in an high handed manner.
- b) On the basis of the order placed by the Secretary of the stores on 8.1.1979 textile goods worth Rs.3,000 were sent to the

stores by M/s. Subbiah Weaving Mills, Pondicherry, who were regular suppliers for years, but the appellants ordered for return of the goods to the supplier, and accordingly the goods were sent back to the suppliers on the same day. While the board of directors were within their rights to lay down the purchase policy to be followed by the chief executive they were not entitled to interfere with day-to-day business administration of the stores, to the detriment of the institution.

- c) The appellants indulged in mud slinging against the stores, its Secretary and other co-directors by publishing a hand-bill wherein they have misrepresented facts, causing unnecessary agitation in the mind of the members of the stores.
- d) Credit sales have been allowed to the members when there were dues pending settlement of more than three months contrary to the provisions of bye law No.42 (3). The board of directors have issued credit sales to the members over and above the maximum limit and that too when they had outstanding dues exceeding 75% of their monthly salary. Because of the issue of credit sales to the members over and above the maximum limit, the recovery position was not satisfactory, with the result that the stores was not in a position to pay to the creditors in time; not to speak of the interest commitment on the cash credit loan availed of from its financing bank.
- e) A board meeting was held on 4-11-1978. All the appellants attended the meeting and obtained sitting fees also. But when the Secretary approached them for signing the minutes / resolutions passed at the above meeting on the same day, the appellants refused to sign in the minutes book. Instead they compelled the Secretary to add some more resolutions, the subjects of which were neither included in the agenda nor brought for deliberation in the meeting with the permission of the chair.

The post of local purchase assistant was abolished by the previous board with the approval of the Registrar But the

appellants have persistently been passing resolutions insisting on creation of the post again with a view to favouring a particular employee. The appellants also indulged in such unhealthy practice by recommending promotion to undeserving employee through resolution No.13 dated 4.11.1978. The antecedents of two of the employees recommended for promotion are far from satisfactory. This partisan attitude has caused unrest and disaffection among the rest of the employees and disturbed the peaceful working of the stores.

- f) Many of the employees have made complaints to the enquiry officer that the appellants are influencing them to favour some of the members and if any employee refuses to yield to their demand, they threaten the employee saying that they will throw them out.
- g) The conduct of the appellants have gone to such intolerable extent that two of the directors viz. Thiru P. Thirugnanam and Thirumathi Thandayee have opted to quit the board, rather than to continue tolerating the high handedness of the appellants, on the plea of 'majority' based on which claim they went on doing things, violative of the standing instructions, provisions of bye laws etc.

6. The appellants in their reply dated 10.3.1979 have submitted with regard to the 1st charge that they have been elected as board of directors only on 31.5.1977 and as such they could not have purchased the goods from Ashoka Cut-pieces on 9.1.1977. With respect to the 2nd charge they explained that actually taking advantage of the blind policy of the Swadeshi Cotton Mills Co-operative Society, M/s. Subbiah Weaving Mills, Pondicherry have been dumping goods which are not of good quality as per the complaint of the consumers. Therefore they requested the Secretary to return the item to avoid loss to the society. The 3rd charge was met by them stating that Thirugnanam and Thandayee in collusion with the Secretary have been taking commission from the parties from whom they purchased items. The appellants reported to the Secretary about this; it was not cared for. The members also have complained through the Union

President of the Mills. But the Secretary has not chosen to change his attitude and he was very adamant. To get out the truth of the matter and also to inform the members of the society about the position as to who are the persons tarnishing the image of the society. The board of directors had no other go except to explain their position through hand-bills. For the fourth charge they replied that they neither influenced nor directed the Secretary to issue groceries above the credit limits. This happened only because of the mismanagement and lack of efficiency by the Secretary. On Sunday 5.11.1978 Vice-President Rajamani and Thirugnanam, Secretary and one Rajangam from the Co-operative Department have joined together and opened the office and wrote the resolution according to their whims and fancy without considering the resolution earlier passed on 4.11.1978. Because of these irregularities, the board of directors have not signed the minutes book. The board of directors before which the entire matter was put found that the local purchase assistant Sivalingam was victimized and fought for his rights. Directors Thirugnanam and Tmt. Thandayee have not allowed the smooth administration of the society by their attitude and behaviour.

7. On 15.3.1979 another show cause notice rectifying the earlier regarding the date of purchase of goods from Ashoka Cut Pieces was issued. The appellants in their reply dated 20.3.1979 maintained their previous contention that they have not purchased textiles from Ashoka Cut Pieces for Rs. 2,000.

8. On the ground that the appellants have desired to have an enquiry into the matters involved so as to give a further opportunity to enable them to put up their defence before further action is taken under Section 83 of the Pondicherry Co-operative Societies Act, the Registrar issued a memorandum dated 20.3.1979 and appointed S. Viswanathan, Co-operative Sub Registrar (Consumers) to conduct the enquiry with reference to the charges made against the appellant and submit his report.

9. The enquiry officer instead of conducting a proper enquiry examining afresh the necessary witnesses to prove the charges levelled against the appellants so as to give them the opportunity to cross examine them, limited his enquiry to examination of the

appellants themselves, recorded their denials and made a report on the basis of the preliminary enquiry conducted by S. Sivaprakasam, Deputy Registrar (Consumers) on 28.2.1979 in the absence of the appellants and which formed the basis of the show cause notice issued to the appellants on 3.3.1979.

10. The Deputy Registrar has simply taken the statement of three employees who had complained to the President of the society against the appellants to come to the conclusion that the appellants have purchased textiles from one M/s. Asoka Cut Pieces, Pondicherry to the value of Rs. 2,000 without the knowledge of the Secretary and directly taken the goods to the cloth section and ordered the employees concerned to fix the selling price. The above said employees have admitted in their statement that they are directly subordinates to the Secretary; they could be therefore influenced by him to make false allegations against the appellants as there is misunderstanding between the latter and the Secretary. Neither the Deputy Registrar, nor the Sub Registrar has taken care to peruse the cash bill which would have been issued by Asoka Cut Pieces if really such goods have been sold by them, to verify the account books of the society in this regard and examine M/s. Asoka Cut Pieces, the only real independent witness, able to bring all the clarifications in this matter. The 1st charge against the appellants should therefore, be held to have not been proved.

11. Similarly there was no proper enquiry with respect to the 2nd charge. It was not ascertained whether the goods supplied by M/s. Subbiah Weaving Mills, Pondicherry were of good quality or not and their price, the normal market price. As the cause of return of the goods, as alleged by the appellants, has not been proved to be false, this charge also fails.

12. The appellants admitted that they have published the hand bills but retorted that they have been compelled to do so as no action has been taken by the Registrar when he was informed by letter Ex. C.1 dated 25.7.1978 that the Secretary is selling items which are not of quality and was taking commission from the parties. This fact alone would not warrant the drastic measure taken by the Registrar.

13. If the board of directors have passed a resolution in violation of the bye-laws, it is the duty of the Secretary to get it rescinded by the Registrar as he has done previously when he was directly affected by a resolution which decided that the Secretary should not purchase any goods without the permission of the board. Annexure D and D1 which are supposed as per the report of the Deputy Registrar to be such resolution do not refer at all to the matter of credit sales to the members. There is not an iota of evidence to the effect that the appellants have ordered the Secretary to consent credit sales above the maximum limit and without settlement of previous dues.

14. There was no proper enquiry to find out whether the reasons given by the appellants to refuse to sign the minutes book were well grounded or not. The guilt of the appellants is presumed on the fact that the President, Vice President and one Director have signed the minutes book. No explanation is given why on this particular meeting the minutes have not been written immediately and signatures obtained forthwith as it should be done in usual practice.

15. The board of directors has the right to create particular post and recommend promotion of employees. Such resolutions are not illegal. They may be approved or rejected by the Registrar.

16. The employees who are alleged to have given complaints have not been examined in both enquires and it has not been ascertained whether their complaints are genuine or baseless.

17. In a board the decision of the majority has to prevail. This does not mean that the majority has behaved in a dictatorial manner.

18. *In fact none of the charges levelled against the appellants has been proved and the order passed by the Registrar on 6.4.1979 is baseless and is set aside. No order as to costs.*

Typed to my dictation, corrected and pronounced by me in open Court on this 17th day of August 1979.

List of exhibits marked by Court.

Ex.C.1 Letter addressed by the directors dated 25.7.1978 to the Registrar of Co-operative Societies.

Ex.C.2: Postal acknowledgement.

by the Arbitrator/Respondent on the appellant regarding ARC No.530/79. The appellant along with other defendants was wrongly set ex-parte in the decree dated 27.2.1979 passed by the Arbitrator. The said decree has to be set aside.

Appeal is allowed.

This appeal coming for final hearing before me on 25.1.1982 in the presence of Thiru M. Sukanandham, Advocate for the appellant and Thiru K. Appadurai, Government Pleader for the respondent upon perusing the records and hearing both sides, the court delivered the following:

J U D G M E N T

This is an appeal filed by the petitioner M. Pandurangam under Section 140 of the Pondicherry Co-operative Societies Act, 1972 against the ex-parte decree passed by the Senior Inspector/Arbitrator V. Veeramuniraju (Respondent) of the Office of the Registrar of Co-operative Societies, Pondicherry on 27.2.1979 in A.R.C. No.530/79 referred to as basis of the order in proceedings in RCS/A/9695/79 before the Registrar of Co-operative Societies, Pondicherry.

2. The facts leading to the present appeal are as follows:

The President of the Ariankuppam Village Co-operative Agricultural Credit Society has preferred a claim for the recovery of Rs.549.70, balance of loan advanced to one T. Ramachandiran for which the appellant Pandurangam and one Ranganathan stood sureties. The Arbitrator Thiru V. Veeramuniraju set ex-parte the defendants 1 to 3 in A.R.C.No.530/79 and passed an ex-parte decree against them for Rs.459.70 with interest on Rs.500 at 15% p.a. from 1.1.1978 till realization. The decree was fully discharged on 14.5.1979. The appellant M. Pandurangam who was a member of the committee of management for Pondicherry Co-operative Housing Society was elected on 6.3.1979 as delegate of the said society, to be a member of committee of management of Pondicherry State Co-operative Union. By proceedings in RCS/A/9695/79 dated 12.7.1979, the Registrar of Co-operative Societies, Pondicherry, directed Thiru M. Pandurangam

to show cause as to why he should not be considered that he has subjected himself to the disqualification set in Section 34 of the Pondicherry Co-operative Societies Act, 1972 on the basis of the decree in A.R.C.No.530/79 dated 27.2.1979.

3. The point for consideration in the present appeal is whether the ex-parte decree dated 27.2.1979 in A.R.C.No.530/79 of the Senior Inspector/Arbitrator has to be set aside?

4. **POINT:** From the Ariankuppam Village Co-operative Agricultural Credit Society, the 1st defendant Ramachandiran has obtained on 10.3.1975 a loan of Rs.1,500 repayable with interest at 12% p.a. or in default at 17.25% p.a. by executing a pronote in favour of the said society. The 2nd defendant M. Pandurangam (Appellant) and the 3rd defendant Ranganathan have stood as sureties and signed the said pronote. On 20.10.1978 the President of the said society preferred a claim for the recovery of the balance of Rs.500 towards the principal as on 30.10.1978 with Rs.49.70 towards interest. The same was taken as A.R.C.No.530/79. The Arbitrator issued summons dated 15.2.1979 against the three defendants under Rule 64 of the Rules framed by the Government of Pondicherry and Section 84 (2) (a) of the Pondicherry Co-operative Societies Act, 7 of 1972 for appearance on 27.2.1979. On 27.2.1979 the Arbitrator set ex-parte the defendants 1 to 3 and decreed the claim of Rs.549.70. The entire record relating to A.R.C.No.530/79 and also the proceedings in RCS/A/9695/79 were produced.

5. The appellant Pandurangam claimed that he was not aware of the proceedings before the Arbitrator, that no summons has been served on him and that the said ex-parte decree wrongly passed by the Arbitrator has to be set aside.

6. The mode of service of summons issued under the Pondicherry Co-operative Societies Act is dealt with in Rule 65 of the Pondicherry Co-operative Societies Rules, 1973. The provision relating to the service of summons is as follows:

“

- (4) *The service of summons under the Act on any person may be effected in any of the following ways, namely---*
 - (a) *by giving or tendering it to such person; or*
 - (b) *if such person is not found, by leaving it at his last known place of abode or business or by giving or tendering it to some adult member of his family; or*
 - (c) *if the address of such person is known to the Registrar or other authorized person, by sending it to him, by post registered; or*
 - (d) *if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business.*

- (5) *Where the serving officer delivers or tenders a copy of the summons to such person personally or to an agent or other person on his behalf, he shall require the signature of the person whom the copy is delivered or tendered to an acknowledgement service endorsed on the original summons.*

- (6) *The serving officer shall in all cases in which the summons has been served under sub-rule (5) endorse or annex, or, cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.”*

7. There is nothing on record in the file produced by the respondent to show that the summons was served on the appellant in any of the following ways provided above. The learned Government Pleader for the respondent conceded that no proper service of the summons was effected by the Arbitrator/Respondent on the appellant regarding ARC No.530/79. The appellant Pandurangam as defendant No.2 along with other defendants was wrongly set ex-parte in the decree dated 27.2.1979 passed by the Arbitrator. The said decree has to be set aside. It is admitted on the respondent side that the said

decree was fully discharged on 14.5.1979. There is no need for further proceedings in ARC No. 530/79. Point is answered accordingly.

8. ***In the result the appeal is allowed.*** The ex-parte decree dated 27.2.1979 in ARC No.530/79 passed by the respondent Senior Inspector/Arbitrator basis for proceedings in RCS/A/9695/79 of the Registrar of Co-operative Societies is set aside.

Government Pleader fees is fixed at Rs.100.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 27th day of January, 1982.

**BEFORE THE CO-OPERATIVE APPELLATE TRIBUNAL AT
PONDICHERRY**

**PRESENT: THIRU S. RAMALINGAM, Licencie en Droit,
PRESIDENT
CO-OPERATIVE APPELLATE TRIBUNAL.**

Thursday, the 30th day of July, 1987

Co-operative Appeal No. 3 of 1984

1. A. Ramalingam, S/o Annamalai Mudaliar,
No.1/14, Gangaianman Koil Street,
Kadirkamam, Pondicherry.
2. A.L. Shanmugam, S/o Lakshmanan,
residing at Kadirkamam, Pondicherry.
3. E. Subramanian, S/o. Ekambaram,
residing at Gandhi Nagar, Pondicherry.
4. N. Kandasamy, S/o. Natesa Mudaliar,
residing at Kadirkamam, Pondicherry.
5. S. Adiatham, S/o. Singara Mudaliar,
residing at Kadirkamam, Pondicherry. ... Appellants

Appellants 1 to 5 erstwhile members of committee of management of Rajaji Weavers Co-operative Society.

Vs.

1. The Registrar of Co-operative Societies, Pondicherry.
2. The Special Officer,
Rajaji Weavers Co-operative Society,
Kadirkamam, Pondicherry. ... Respondents

Important point

The Pondicherry Co-operative Societies Act, 1972 – Ss. 75 and 83(9) - When prima facie there is material available on the grave charges it is in the interest of society that the board is

superseded so as to keep the matter in status quo pending any action on the basis of such finding. Therefore, there is nothing wrong in the resort made by the Registrar to sub-section (9) of Section 83.

Appeal is dismissed.

This appeal is coming on today for orders before me in the presence of Thiruvargal C.S. Narasimhan, A. Loganathan and R. Thulasi, Advocates for the appellants and Thiru A. Gandhiraj, Government Pleader for the respondents. Upon hearing them, upon perusing the records, the Tribunal delivered the following:

J U D G M E N T

This appeal is against the order of the Registrar of Co-operative Societies, Pondicherry dated 2.3.1984 in proceedings No.5/5/1/6/RCS/Handloom/B2/84/275. The appellants are describing themselves to be the erstwhile members of the committee of management of Rajaji Weavers Co-operative Society. By this appeal they questioned the order impugned in this appeal as one against the principle of natural justice and one not in compliance with the Section 75 of the Pondicherry Co-operative Societies Act, 1972. One-third members of the society should have moved the Registrar on the question of irregularities and there was no opportunity for the appellants to explain their stand at all.

2. The appellants also raised ground that the Government which holds share to the tune of Rs.35,000/- did not complain about any irregularity and that as a committee elected in a democratic manner they should be allowed to function till the expiry of the term for which they were elected. The counsel for the appellants stressed on the question of non-compliance of Section 75 of the Act and urged that the impugned order has to be set aside. The learned Government Pleader appearing for the respondent submitted that there was due compliance of Section 75 and that in view of the provisions contained in the Act the order of supersession passed is well justified.

3. The point for consideration is whether the impugned order is sustainable in law?

POINT:

The reading of Section 75(1) clearly discloses several ways by which a statutory inquiry can be ordered under the said provision viz., where the Registrar feels that such inquiry has to be done and an inquiry conducted as to the working of the society then he may of his own motion hold an inquiry or direct some person authorized by him by order in writing to hold an inquiry into the constitution, working and financial condition of the society, or on the application of majority of the committee or of not less than 1/3rd of the members or on the request of the Collector. Now in this case upon complaint of irregularities of some members, the Registrar on his own motion directed an inquiry, following the receipt of the materials of the complaint to the Lt. Governor. Therefore, as I find from the files submitted by the Government Pleader which the learned counsel for appellants also perused this aspect is made out to the effect there were representation to the Lt. Governor in respect of the malfunctioning of the society and obviously the Government had to initiate action on that basis to ascertain the truth. I hold that the inquiry was rightly ordered by the first respondent and as such the holding of the inquiry under Section 75 in this case is perfectly in order. As regards the question of opportunity to answer, where upon the receipt of the report the Registrar is of the opinion that it is not reasonably practicable to give an opportunity to the committee to answer by way of their objection and consult the financing bank, the Registrar is well justified under sub-section (9) of Section 83 to supersede the committee forthwith. The impugned order contains a clear express on that giving an opportunity to the committee to make any representation and to consult the financing bank in this regard is not practicable and therefore, the committee had to be superseded. The order also refers to the salient aspects of irregularity recorded by the inquiry including falsification of accounts and dishonest misappropriation. As such when prima facie there is material available on these grave charges it is in the interest of society that the board is superseded so as to keep the matter in status quo pending any action on the basis of such finding. Therefore, there is nothing wrong in the resort made by the Registrar to sub-section (9) of Section

83. Obviously law certainly offers opportunity if a man is to be indicted individually on any charge where any action is intended against him. ***Therefore I find the order of the first respondent to be quite in accordance with the statute and as such I confirm the impugned order and dismiss the appeal.***

Typed to my dictation, corrected and pronounced by me in the open Court on this 30th day of July, 1987.

**BEFORE THE CO-OPERATIVE APPELLATE TRIBUNAL AT
PONDICHERRY**

**PRESENT: THIRU P. GOMATHINAYAGAM, B.A., B.L.,
PRINCIPAL DISTRICT JUDGE**

Monday, the 16th day of January, 1989.

CO-OP. A.S. No. 3 of 1988.

1. S. Munusamy,
S/o Sundaram,
President,
8, Puthu Street,
Pethuchettipet,
Pondicherry – 8
2. P. Desingu,
S/o Perumal,
Vice- President,
Ranga Vilas Garden,
M.G. Road,
Pondicherry – 3
3. D. Ramachandran,
S/o Devarasu,
Director,
6/41, Kappakara St.,
Kanuvapet, Villianur.
4. J. Selvi W/o Jayabal,
51, Mariamman Koil Street,
Solai Nagar,
Pondicherry – 3
5. K. Susila W/o Kamaraj,
Saint Rosorio Street,
Muthialpet,
Pondicherry.

Consultation with the financing bank is a statutory requirement. This statutory requirement has been complied with in the instant case. Therefore, it cannot be said that such consultation amounts to bias or prejudice.

Appeal is dismissed.

Case referred

Gopinatha Menon vs. Regional Transport Authority and another, AIR 1967 Kerala 26.

Appeal coming on 13.1.1989 for final hearing in the presence of Thiru C.P. Thirunavukarasu and Tmt. D. Geetha Nagaraj, Advocates for appellants, and Thiru T. Murugesan, Government Pleader for respondent, and having stood over to this day for consideration, the Court delivered the following:

J U D G M E N T

The appellants are the President, Vice-President and directors of the Pondicherry Co-operative Handloom Export Development Project, a society registered under the Pondicherry Co-operative Societies Act, 1972. Under Section 75 of the Act there was an inquiry into the affairs of the society. The inquiry report revealed certain irregularities leading to improper functioning and mismanagement of the society. Therefore, a show-cause notice was issued to the members of the committee with particular reference to the irregularities, affording an opportunity to make their representations as to why the committee should not be superseded. The seven directors of the society submitted their representations in writing. They were found to be unsatisfactory and unacceptable. Therefore, the Registrar of Co-operative Societies having informed the financing bank to which the society was indebted and after consultation, passed the order in writing superseding the committee. The propriety of this order is being canvassed in the appeal.

2. For the appellants it is urged that reasonable opportunity of making representation was not given to the members of the committee,

that the impugned order is not a speaking one and that consultation with the financing bank has resulted in bias.

3. So, the point that arises for determination is: *Whether the impugned order is liable to be set aside for all or any of the reasons mentioned by the appellants?*

4. POINT:

As is seen from the file made available to this Tribunal, as many as sixteen allegations were levelled against the society and its functioning. So, under Section 75 of the Act an inquiry was ordered and the Deputy Registrar after making an elaborate inquiry into several allegations made has submitted a comprehensive report. In the course of the inquiry he examined all the persons concerned and recorded statements. He also examined several documents pertaining to the allegations levelled against the society. After all this, he submitted the report. The appellants have no quarrel with the findings recorded in the report.

5. On the basis of the above mentioned report show-cause notice was issued to the members of the committee in which the charges against them have been specifically mentioned. For instance, it is stated that Susila, a member of the committee of management, was interested directly or indirectly in the society's transaction involving financial interest by receiving Project's yarn for dyeing at the Rainbow Dye House owned by her husband, thereby attracting disqualification to hold office as a member of the committee under section 34 (6) (a) read with Section 34 (1) (c) of the Pondicherry Co-operative Societies Act. Then again Desingu, Vice President of the Project has committed default by retaining the yarn received by him from the society and so on and so forth. All the affected persons were duly in receipt of the show-cause notice and they submitted their representations in writing in which they have answered each and every one of the allegations made against them. After rejecting those explanations as not acceptable, the impugned order was made. The complaint of the appellants is that they were not allowed to make oral representations. But Section 83 does not contemplate any such representation. It only states, "after giving the committee an opportunity of making its

representations". In the instant case there has been sufficient compliance with this mandate. So, on this ground the appellants cannot have any grievance or complaint.

6. Secondary it is urged that the order of supersession does not give the reasons as to why the representations were rejected. According to the counsel for the appellants, the order should mention the reasons for rejection. In support he draws my attention to "**Gopinath Menon vs. Regional Transport Authority and another**" (AIR 1967 Kerala 26) where it is pointed out that a speaking order is an elementary requirement of a quasi-judicial process. It is no doubt thus that in the order reasons have not been given. But nowhere is it contemplated that the reason should find a place in the order made under Section 83 of the Act. As is seen, Section 83 (1) (a) speaks of an order in writing only. That order has been rightly made. It cannot be said that such an order is arbitrary in any sense of the term. In the decision cited the impugned order was that of the Regional Transport Authority. That may not have any application here. So, the second objection too is without merit. As already noticed, the show-cause notice gives out all the charges against the committee members for which they have already made their representations which were not acceptable to the Registrar concerned, so, he is not expected to say anything more than this in the order.

7. Consultation with the financing bank is a statutory requirement. Under Section 83 (6) it is stated before taking any action under sub-section (1) in respect of any registered society the Registrar shall inform the financing bank to which the society is indebted and before passing any order he shall consult the aforesaid bank. This statutory requirement has been complied with in the instant case. Therefore, it cannot be said that such consultation amounts to bias or prejudice. **So, the order of the Registrar is not liable to be set aside for any of the reasons urged by the appellants.**

The appeal is, therefore, dismissed with cost.

Dictated to the stenographer, transcribed by him, corrected and pronounced in open Court, on this the 16th day of January, 1989.

**BEFORE THE COOPERATIVE APPELLATE TRIBUNAL AT
PONDICHERRY**

**PRESENT : THIRU SHAHQUL ABDOUL HAMID,
PRINCIPAL DISTRICT JUDGE.**

Wednesday, the 28th day of August, 1991.

Coop. Appeal No. 2 of 1989.

D.Prabakaran,
Board of Director,
Pondicherry State Coop. Union Limited ... Appellant

Versus

The Registrar of Cooperative Societies,
Pondicherry. ... Respondent

Important point

The Pondicherry Co-operative Societies Act, 1972 – S.70 – Properties not to be misused – S.83 – Supersession - If irregularities are allowed to be tolerated, no co-operative society can rise up to the occasion and it will only encourage nefarious activities and corruption. The Registrar of Co-operative Societies has come to a correct conclusion which does not require any interference.

Appeal is dismissed.

This appeal coming on before me on 20.8.1991 for final hearing in the presence of M/s. C.P. Thirunavukkarasu and Geetha Nagaraj, Advocates for appellant and Thiru R. Balaraman, Government Pleader for the respondent, upon perusing the records and hearing both sides and having stood over till this day for consideration, the court delivered the following:

J U D G M E N T

1. This is an appeal under Section 140 (1) (a) of the Pondicherry Co-operative Societies Act against the order of the respondent in No.5/11/1/4/RCS/A/88, dated 13.7.1989 in superseding the board of directors of the Pondicherry State Co-operative Union Limited, without notice and nominating one Deputy Registrar as Special Officer.

2. The respondent has passed an order on 13.7.1989, after conducting an enquiry on a petition forwarded by the Government and found that the appellant was guilty of misuse of the property of the society, default in carrying out the obligations and functions and therefore in exercise of the powers conferred under Section 83 (1) (a) read with section 83(9) of the Pondicherry Co-operative societies Act, 1972, ordered dissolution of the committee of management of the Pondicherry State Co-operative Union with immediate effect, appointed Thiru D. Arunachalam, Deputy Registrar (Planning) to hold full additional charge as Special Officer to manage the affairs of the said Co-operative Union for a period of six months from the date of the order.

3. It is against this order the present appeal is now directed.

4. It is now urged in the grounds of appeal that the board of directors cannot be superseded for the simple reason of excessive telephone bill. It is common knowledge that quite often telephone meters function abnormally, registering incorrect reading and sometimes S.T.D. does not get disconnected even after the receiver is placed on the instrument. As regards the second ground for supersession, namely, improper selection of seven candidates for the training in the Institute, the appellant submitted that the selection of candidates was made by the committee of five persons and the selection was the responsibility of the committee and not that of the board of directors and if there had been any lapse, all the above said five persons should share the responsibility and not the board of directors, and if any society gives any incorrect certificate, it would not be possible for the Union to Investigate and decide on that same, that too, before selecting the candidates, especially when no complaint has been received by the Union regarding the genuineness or otherwise of

the certificate. The testimonials and the applications were scrutinized and verified by the Principal and the Deputy Registrar (Planning) assisted by the Office Manger and not by the non-official members of the selection committee and therefore, action if any, has to be taken for dereliction of duty and it should be directed against the said two officials alone and the respondent was unjust in superseding the lawfully constituted board of members.

5. As regards the third ground of supersession, out of the total strength of 13 board members, 9 board members are holding office and therefore, the board is still functioning with visible strength. The board of directors have not become defunct as viewed in the impugned order and the order of the respondent is illegal and contrary to law.

6. The point for determination in this appeal is:

Whether the order of the Registrar of Co-operative Societies is illegal and has to be set aside?

7. POINT:-

The learned counsel for the appellant submitted that he adheres to the grounds of appeal and prays that the judgment be passed accordingly.

8. The learned Government Pleader on the other hand vociferously argued that it is a fit case where the appeal should be dismissed and the Registrar of Co-operative Societies has given justification for coming to such a conclusion.

9. I perused the impugned order of the Registrar of Co-operative Societies. S.T.D. facilities are given to high officials, but it does not mean that it should be misused. A register has to be maintained to show whether the calls are official or private and if they are private, the officer using the telephone should bear the charges. In this case the appellant has failed to maintain any register as contemplated. Further, the charges for private calls are not also collected and this led the Union to incur heavy expenses there on and it is astonishing to note that for the period from 26.5.1988 to 25.7.1988, the telephone bill has shot up to Rs.10,255 which cannot be justified on any account. If for a

period of two months the S.T.D. calls come to Rs.10,255, then the average monthly expenses on the telephone would work out to more than Rs.5,000. It does not mean to say that incurring such a huge expenditure of Rs.5,000 per month would be a ground for superseding the Union, but there must be some justification for incurring such a huge expenditure and when there is no such justification, the committee of management is, therefore, to be held most negligent on this score in as much as they have failed to safeguard the interests of the Union and thereby violated Section 70 of the Pondicherry Co-operative Societies Act, 1972.

10. The Government Pleader would point out that the committee has acted perfunctorily and prejudicially in the selection of candidates for the diploma course in co-operation conducted by the Pondicherry Co-operative Training Institute which is run by the Pondicherry State Cooperative Union. It is really astonishing to see that the management has not taken care to verify the genuineness or other wise of the certificates produced by the candidates. On the other hand, this selection has caused prejudice to the deserving candidates who are working in the Institution and to whom seats have been reserved. This manner of selection of those candidates is nothing but an irregularity and misuse of power and this score also the committee of management is to be held responsible.

11. A detailed enquiry has been conducted and the report of the Enquiry Officer would clearly show the irregularities committed by the Pondicherry State Co-operative Union. If any such irregularities are allowed to be tolerated, no co-operative society can rise up to the occasion and it will only encourage nefarious activities and corruption. The Registrar of Co-operative Societies has come to a correct conclusion which does not require any interference.

12. *In the result, the impugned order is upheld and the appeal stands dismissed.* Government Pleader fees as per rules.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in the open court, on this the 28th day of August, 1991.

**BEFORE THE CO-OPERATIVE APPELLATE TRIBUNAL,
PONDICHERRY**

**PRESENT: THIRU. E.V. KUMAR, M.A., B.L.,
PRINCIPAL DISTRICT JUDGE**

Tuesday, the 6th day of October, 1998

Co-operative Appeal No. 1/1993

R. Gopalsamy S/o Rangasamy
Ex-Agent,
Pontex Show Room,
5-A/156, Cuddalore Road,
Neyveli.

...

Appellant

Vs.

1. The Pondicherry State Weavers
Co-operative Society Ltd.,
Thattanchavadi,
Pondicherry.

2. The Registrar of Co-operative
Societies, Pondicherry.

3. Mohammed Naina Maricar,
Arbitrator,
Office of Registrar of Co-operative
Societies, Pondicherry.

4. N. Pugazhendi,
Sale Officer,
Co-operative Department,
Pondicherry.

...

Respondents

Important point

Pondicherry Co-operative Societies Act, 1972 S.84 & Pondicherry Co-operative Societies Rules, 1973 R.64 – Period of limitation for referring dispute - Under the Pondicherry Co-operative Societies Act no limitation has been prescribed and when a principal Act does not either prescribe the limitation or empower the Government to prescribe limitation, any limitation prescribed in the Rules would be ultra vires of the Act.

Pondicherry Co-operative Societies Act, 1972 – Ss.133 & 140 - When once the notice under Section 133 of the Act was issued on the basis of valid award passed, the appellant cannot question the same. More over there is nothing on record to show on what basis the appellant questioned the issuance of the final notice issued under Section 133 of the said Act. The appeal though is on the said final notice of attachment is indirectly against the passing of the award which is barred under Section 140(3) of the Pondicherry Co-operative Societies Act. Hence the appellant is not entitled to set aside the final notice issued by the fourth respondent on 24.3.1993 in execution of the award decree passed in ARC 735/91 by the third respondent or consequently the award of the third respondent in ARC 735/91.

Appeal is dismissed.

Case referred

M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Vs. The Employees State Insurance Corporation, AIR 1972 SC 1935.

This Appeal coming on 17.9.1998 for final hearing before me in the presence of Thiru. C.P. Thirunavukarasu, Advocate for the appellant and Thiru A. Kanniappan, Advocate for Respondent 1 and Thiru R. Balaraman, Government Pleader for Respondents 2 to 4, on hearing both sides and upon perusing the records and having stood over till this day for consideration this Court delivered the following:

J U D G M E N T

This is an appeal filed under Section 140(1) of the Pondicherry Co-operative Societies Act against the final notice issued to the appellant by the fourth respondent on 10.3.1993 asking him to pay Rs.2,32,267.26 in pursuance of the order passed in ARC No. 735/91 in the court of the Registrar of Co-operative Societies, Pondicherry.

2. The following are the averments made in the memorandum of appeal:

The appellant was appointed as a Dealer-cum-Agent on 24.10.1982 in Pontex, Pondicherry at 5-A/156, Cuddalore Road, Neyveli to deal with the clothes manufactured by the Pontex. A show cause notice was issued to him on 28.11.1988 and 19.12.1988 by the society stating that different amount was due from the appellant to the society. As per the notice dated 28.11.1988 it was alleged a sum of Rs.1,36,547.78 was due. As per notice dated 19.12.1988 a sum of Rs.1,46,589.17 was due and as per the notice dated 18.2.1989 a sum of Rs.1,73,656.24 was due as on 31.1.1989. He has replied for all the show cause notices and ultimately it was informed that he has to pay a sum of Rs. 2,20,528.48 as per the show cause notice issued on the basis of ARC No. 735/91 decided by the third respondent as Arbitrator. The said decision of Arbitrator third respondent is against the law and he has not followed the procedure. The order was not communicated. Only notice of attachment under Section 133 of the Act was served on the appellant. On 14.10.1992 the appellant received a notice from the Arbitrator directing him to appear before with necessary documents. On 28.10.1992 at 10.30 A.M. he filed his objections. No enquiry was conducted and matter was adjourned without intimating the date of posting to the appellant and subsequently only the final order issued by the fourth respondent he came to know about the decision. A mandatory duty is cast upon the third respondent as per Rule 64(6) of the Pondicherry Co-operative Societies Rules to examine witnesses. But no witness was examined and no reasonable opportunity was given to the appellant. The claim itself was filed on 21.3.1991 for a sum of Rs.2,20,528.48 for the period from 24.2.1982. But as per Rule 64 (2) of the Pondicherry Co-operative Societies Rules, the Registrar should refer any dispute within three years from the date on which the

act of omission with reference to which the dispute arose took place. According to the copy of the letter No.PSWC/C3/4146/82 dated 28.1.1989 of the Pondicherry State Weavers Co-operative Society submitted to the Registrar, the act or omission took place in the year 1982 and the claim filed on 21.3.1991 is thus barred by limitation. While so the third respondent has no authority to pass any award. The dispute decided by the Registrar under Section 84(2) and (3) of the Act is not in accordance with law and is liable to be set aside. The appellant seeks to set aside the final attachment notice dated 10.3.1993 of the fourth respondent issued under Section 133 of the Pondicherry Co-operative Societies Act and consequently set aside the order passed in ARC 735/91 by the third respondent Arbitrator against the appellant.

3. The first respondent, in the counter, averred the following:-

The appellant was given agency in the Neyveli Branch of the first respondent society with effect from 24.10.1982 and he executed an agreement according to which he had to make regular payment of the collections made in the branch to the society together with statement of sales and accounts. It was found in the year 1988, the appellant did not remit the sales amount regularly and a notice No. PSWCS/C3/4146/82 dated 28.11.1988 along with interest at 18% within seven days was issued to the appellant. After exchange of correspondence the amount due was worked out to Rs. 1,73,656.24 and a final show cause notice was issued on 18.2.1989 asking the appellant to pay the amount within seven days with interest at 18% p.a. The appellant gave a reply on 4.3.1989 disputing the claim. Since he has not paid the amount the society terminated his agency on 23.1.1991 vide registered notice No. PSWCS/C3/4146/82 dated 23.1.1991. The society passed a resolution to refer the dispute to the Registrar and Form B-1 was filed. The second respondent by proceedings No.7/1/28/RCS/A/91 dated 29.9.1991 passed in ARC 735/91 referred the dispute between the society and the appellant to arbitration by Arbitrator Thiru A. Thangasamy, Co-operative Officer. On his transfer Co-operative Officer Thiru K. Damodharan was appointed by a proceedings dated 22.2.1992. Subsequently on the transfer of Damodharan, Co-operative Officer Thiru Sivakumar was appointed by a proceedings dated 25.5.1992. Again on transfer of

Sivakumar on 24.1.1992 the third respondent took up the arbitration. The appellant was seeking adjournments from all the arbitrators and finally the hearing was fixed on 20.2.1992 and 16.3.1992 by the then Arbitrator Damodharan and it was also adjourned at the request of the appellant. The third respondent gave few adjournments and finally on 28.10.1992 the appellant denied his liability and pleaded bar by limitation. The third respondent disposed of ARC 735/91 and passed an award on 24.12.1992 decreeing that the appellant shall pay Rs. 1,35,581.11 with interest thereon for Rs. 82,422.13 from 1.8.1992 till date of realization. In pursuance of the execution of the award, notice was issued by the fourth respondent. The appellant at that stage has filed this appeal to set aside the final notice. According to Section 140 (3) of Pondicherry Co-operative Societies Act appeal to the Tribunal under Section 140 (1) of the said Act shall be preferred within two months from the date of the order complained of. The appeal is filed on 23.3.1993 whereas the award is passed on 24.12.1992 and hence the appeal is barred by limitation. In order to overcome this appellant seeks to set aside the award passed in ARC 735/91 which is legally not maintainable. Since no appeal has been preferred against the award it has become final and the appellant is liable to pay the amount mentioned therein. It is incorrect to state that no reasonable opportunity was given to the respondent by the arbitrator. All the provisions pertaining to arbitration have been complied with by the arbitrator appointed. A reference under Section 84 (2) (b) is made by the second respondent subject to rules and there is no provisions for the Act requiring the Registrar to inform the appellant about the arbitration. The limitation applicable is French Code Civil as a local law saved under Indian Limitation Act. Hence, the limitation prescribed under Rule 64 (2) of the Pondicherry Co-operative Societies Rules is not applicable. The arrears due by the appellant to the society was found only in 1982 and the demand was made to the appellant on 18.2.1989 while he was continuing the agency of the society and the claim was disputed on 4.3.1989 and his agency was terminated on 23.1.1991. Therefore it shall be deemed that the omissions took place on these days and the reference is within the limitations prescribed under Section 64(2) of the Act. The appeal is maintainable under law.

4. The third respondent filed a counter averring the following :

On the basis of the claim made by the Society against the appellant an arbitration reference was made by the Registrar to Thangasamy, Co-operative Officer for a sum of Rs.2,20,528.48 under Section 84 of the Pondicherry Co-operative Societies Act vide proceedings No.7/1/28/RCS/A/91/175 dated 20.9.1991. Thiru Thangasamy, Co-operative Officer took the claim and heard the case on 18.12.1991 and 22.2.1992. Subsequently Arbitrator Sivakumar was appointed on 25.5.1992. The third respondent was appointed as Arbitrator on 24.6.1992. He heard the case on 16.7.1992, 3.8.1992, 2.9.1992, 1.10.1992, 28.10.1992 and 24.12.1992 and decreed the claim for Rs. 1,35,581.11 together with interest of Rs. 82,420.12 at the rate of 18% from 1.8.1992 till realization. The award is passed on the basis of the reference and after hearing both parties and conduct of the enquiry was as per the provisions of the Pondicherry Co-operative Societies Act. The appellant admitted in his letter dated 20.2.1992 that he would pay the entire amount due within a period of one month. He has not disputed the claim but raised only plea of limitation. The plea of limitation has been considered and negatived. No appeal has been preferred against the award ARC 735/91. The provisions of Rule 64(6) of the Pondicherry Co-operative Societies Rules, 1973 are complied with and every opportunity was given to the appellant to adduce evidence and he has not adduced any evidence. The claim is not barred by limitation as prescribed under Rule 64 (2) of the Pondicherry Co-operative Societies Rules. Since the last act was done on 18.5.1989 and the claim was filed on 21.3.1991. The deficiency of cash balance was noticed and reported by the Internal auditor of the first respondent society to the appellant and he paid the cash deficit by remitting Rs. 8,918 vide receipt No.41558 dated 18.5.1989. Hence it shall be considered as the last date of the act of omission from which the limitation has to be calculated. The award passed by him against the appellant is valid in law.

5. The fourth respondent averred the following in the counter.

On 5.1.1993 the first respondent society filed an execution petition for execution of the decree in ARC 735/91 dated 24.12.1992 passed against the appellant. The execution petition was filed under Section 133 of the Pondicherry Co-operative Societies Act and was numbered as CEP 1/93. As per the proceedings No.7/2/2/RCS/A/93/66 dated

29.1.1993, the execution petition was transferred to the fourth respondent and issued final notice on 24.12.1993. The final notice was issued to Arulselvi D/o. Neelamegam and Gurumoorthy who stood as sureties and mortgaged for the appellant. Since the award passed by the third respondent has not been set aside, it is to be noted that the appellant has not given any valid reason for stay of the execution. The final notice passed by the fourth respondent is valid in law.

6. On the above pleadings, the point for determination is:
Whether the final notice issued by the fourth respondent on 24.2.1993 to the appellant in execution of the award decree passed in ARC 735/91 of the third respondent is liable to be set aside and consequently the award of third respondent in ARC 735/91 is liable to be set aside?

7. ON THIS POINT:

Heard the counsel for the appellant and the Government Pleader for the respondents. The appellant was given the agency of the Neyveli Branch of the first respondent s with effect from 24.10.1982 and an agreement was executed to the effect that the appellant has to make regular payment of the sale collections made in the branch of the said society together with statement of sales. In the year 1988 it was found that the appellant has not properly and regularly remitted the sale amount nor gave the sale statement. Hence a notice was issued to him by the first respondent on 28.11.1988 calling upon him to pay a sum of Rs. 1,36,547.78 together with interest at 18% p.a. After verification of further accounts, it was found that he was due to the society a sum of Rs. 1,73,656.24 and a notice was issued to him demanding the payment. Since the appellant disputed the claim by his reply dated 4.3.1989, a resolution was passed by the first respondent to refer the dispute to the Registrar and a claim Form B-1 was sent to the Registrar of the Co-operative Societies. Simultaneously the agency of the appellant was also terminated. The second respondent the Registrar of Co-operative Societies by proceedings dated 29.9.1991 passed In ARC 735/91 referred the dispute between the appellant and the first respondent for arbitration. Several arbitrators were handling the dispute and before all the arbitrators the appellant was seeking adjournments. The third respondent was appointed as the

arbitrator and took up the case on 28.10.1992. The appellant denied his liability only on plea of limitation. After enquiry giving full opportunity to the appellant, an award was passed against him, asking him to pay totally a sum of Rs.1,35,381.11 with interest thereon for Rs.82,422.13 at 18% from 1.8.1992 till realization. Finally a notice for recovery was issued under Section 133 of the Pondicherry Co-operative Societies Act. The appellant challenges the issuance of the said notice and raises before this Tribunal the following points:

(1) The Arbitration award is not valid as it is violative of principles of natural justice and he was not given sufficient opportunity to defend his case;

(2) The reference of dispute to arbitration by the Registrar itself is barred by limitation and violative of provisions Rule 64(6) of the Pondicherry Co-operative Societies Rules.

8. On the other hand the respondents contend that the appellant was given sufficient opportunity of hearing by all the arbitrators who were handling the dispute and he was represented fully in all the hearings and hence the award passed is not violative of principles of natural justice. It is also contended by them that the reference of the dispute by the Registrar by arbitration is not beyond the period of limitation prescribed under Rule 64(2) of the Pondicherry Co-operative Societies Rules. They would also contend that the appellant has not challenged the award within three years and hence he cannot question it now. The prayer of the appellant to set aside the final notice of attachment issued under Section 133 of the Act is not sustainable as it is based upon a valid award.

9. Now considering the respective contentions of the parties it is to be noted that the appellant has taken active part in the arbitration proceedings and a perusal of the record shows that he has been taking several adjournments before all the arbitrators who were appointed from time to time and dragged on the matter from 29.9.1991 till a final award was passed on 24.12.1992. The third respondent who was finally handling the arbitration had granted adjournments to the appellant on 16.7.1992, 3.8.1992, 2.9.1992, 1.10.1992, 28.10.1992 and 24.12.1992. It is also seen from the records that, on several

occasions when the case posted, the appellant was seeking adjournments of one month for purpose of verification of accounts and in several petitions he has represented that if he fails to compare the account within a month, he would agree for further proceedings by his representation dated 20.2.1992 he has clearly stated that he would set right the account within a month on verification of his accounts and if he fails to do so he would accept for the amount claimed. On that basis the matter was further posted to 10.4.1992. Finally by his letter dated 16.3.1992 he has categorically stated that within a month he would settle the amount due to the first respondent's society on verification of his accounts. Therefore it is incorrect to state that he was not given ample opportunity to defend the case. Moreover he has pleaded before the Arbitrator, the third respondent herein, who passed the award that the claim is barred by limitation. Hence it is incorrect to state that the proceedings of the arbitrator were in violation of the principle of natural justice. The appellant was granted sufficient opportunity to defend his case and the award is hence valid.

10. It is mainly contended by the counsel Thiru C.P. Thirunavukkarasu that the claim itself is barred by limitation as the Registrar ought to have referred the dispute for arbitration within a period of three years as per Rule 64(2) of Pondicherry Co-operative Societies Rules and the dispute arose in 1988 regarding accounts prior to 1982 and hence the reference to the Registrar itself is beyond the limitation period prescribed under Rule 64(2) of the Pondicherry Co-operative Societies Rules. It is seen from the records that on verification of accounts the deficiency of the cash balance was noticed and reported by the internal auditor of the first respondent's society, the appellant has remitted by cash Rs.8,918 to the first respondent's society vide receipt No.41558 dated 18.5.1989. Hence that day would be considered as the last date of the act or omission for the purpose of running of limitation prescribed under Rule 64(2) of the said Rules. The reference itself was made to the Registrar on 21.3.1991 and hence the reference is not in the violation of Rule 64(2) of the said Rules and is not barred by limitation. Moreover under the Pondicherry Co-operative Societies Act no limitation has been prescribed and when a principal Act does not either prescribe the limitation or empower the Government to prescribe limitation any limitation prescribed in the Rules would be ultra vires of the Act. The Hon'ble Supreme Court in

M/s. Bharat Barrel & Drum Manufacturing Co. Private Ltd., Vs. The Employees State Insurance Corporation (AIR 1972 SC 1935) has clearly held that when there is omission to provide a period of limitation under the Act (Sections 68 and 75 of the Employees State Insurance Corporation), the period of limitation prescribed under the Rules framed under Act would be ultra vires of the Act. Hence the contention of the appellant that the reference of the dispute by the first respondent's society to the Registrar is violative of Rule 64(2) of the Pondicherry Co-operative Societies Rules itself cannot be sustained.

11. It is significant to note that the appellant has not challenged the award passed by the third respondent on 24.12.1992. According to Section 140 (3) of the Pondicherry Co-operative Societies Act an appeal under sub-section (1) or sub-section (2) shall be preferred within two months from the date of decision, order, award, refusal, registration or approval complained of. Since he has not preferred an appeal against the award passed on 24.12.1992 till this day, he cannot question that any such appeal is barred under Section 140(3) of the Pondicherry Co-operative Societies Act. The appellant questioning the validity of the final notice and consequently seeking invalidation of the award is to circumvent the mandatory provisions of the Act. When once the notice under Section 133 of the Act was issued on the basis of valid award passed, the appellant cannot question the same. More over there is nothing on record to show on what basis the appellant questioned the issuance of the final notice issued under Section 133 of the said Act. The appeal though is on the said final notice of attachment is indirectly against the passing of the award which as pointed out earlier is barred under Section 140(3) of the Pondicherry Co-operative Societies Act. Hence the appellant is not entitled to set aside the final notice issued by the fourth respondent on 24.3.1993 in execution of the award decree passed in ARC 735/91 by the third respondent or consequently the award of the third respondent in ARC 735/91.

12. In the result, the appeal is dismissed with costs.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 6th day of October 1998.

BEFORE THE CO-OPERATIVE TRIBUNAL AT PONDICHERRY

**PRESENT: THIRU E. V. KUMAR, M.A., B.L.,
PRINCIPAL DISTRICT JUDGE**

Friday, the 6th day of November, 1998

Co-operative Appeal No. 1/1997

S. Isvararadjou --- Appellant

Vs.

The Managing Director,
Pondicherry Co-op. Sugar
Mills Ltd., L.R. Palayam,
Pondicherry.

Respondent

(On appeal against the order dated 10.8.1996 passed in ARC No. 2244/95 on the file of the Deputy Registrar (Development Officer) Pondicherry State Co-operative Bank, Pondicherry.)

S. Isvararadjou --- Petitioner

Vs.

The Managing Director,
Pondicherry Co-op. Sugar
Mills Ltd., L.R. Palayam,
Pondicherry.

Respondent

Important point

As per the Section 84(1) of the Act only a disciplinary action taken against the paid servants does not come within the purview of Section 84(1) of the Act. The question of recruitment, promotion would fall within the ambit of "personnel management" and therefore will come within the meaning of

management contemplated under Section 84(1) of the Pondicherry Co-operative Societies Act. The management does not mean production management or marketing management alone but also includes personnel management.

Rules pertaining to the condition of service of staff employed in the respondent's mill would come within the meaning of administration and control and hence would come within the purview of 'management'. Therefore the dispute between the appellant regarding change of service condition by amendment of recruitment rules would fall within the purview of Section 84(1) of the Pondicherry Co-operative Societies Act.

Finding of the lower authority is set aside and matter is remitted back.

This appeal coming on 22.10.1998 for final hearing before me in the presence of Thiru S. Sridhar and Tmt. N. Danalatchomy, Advocates for the appellant and Thiru K. Palaniappan, Advocate for the respondent, on hearing both sides and upon perusing the records and having stood over till this day for consideration, this Court delivered the following:

J U D G M E N T

This is a appeal under Section 140(1) (b) of the Pondicherry Co-operative Societies Act, 1972 filed by the appellant herein against the order passed by the Deputy Registrar (Development Officer), Pondicherry State Co-operative Bank, Pondicherry in ARC No.2244/95 in a dispute referred to him.

2. The case of the appellant is as follows:

He has put in services for more than seven years from 16.5.1990 as Lab Chemist in the respondent's mill. According to him the mill has amended the recruitment rules for the post or manufacturing chemist and relaxed the normal educational qualifications from B.Sc., degree with A.N.S.I./A.V.S.I. to a mere B.Sc., degree and experience of four years as Lab Chemist for oblique reasons. He has undertook training in AVSI from 16.7.1990 at Pune and obtained a Post Graduate

Diploma in Sugar Technology. The salary for training was being paid by the respondent. The appellant was sponsored by the mill and the salary for training was being paid by the respondent. The appellant entered into an agreement with the respondent that he shall serve in the respondent's mill for a period of five years. A.V.S.I. trainees are given priority for promotion not only in the respondent's mill but also throughout Tamil Nadu and India. The recruitment rules concerning the post of Manufacturing Chemist and Lab in-charge originally provided for the qualification of B.Sc., degree with AVSI or ANSI trainee and thereby the appellant would have got the chance of promotion on his completion of the training. But it was amended and he was denied promotion to the post of Manufacturing Chemist. He presented an objection under Section 84(2) (a) of the Pondicherry Co-operative Societies Act, 1972. But the same was dismissed. Hence, this appeal.

3. In the said order the Deputy Registrar came to the conclusion that there is no jurisdiction to entertain the petition under Section 84(1) of the Act and dismissed the same *in limine* without going into the merits of the case.

4. In the appeal, the following points are raised:

The order of the lower authority is erroneous and Section 84(1) of the Act provides for settlement of disputes between the management and the appellant. Recruitment Rules prescribed for the post of Manufacturing Chemist an education qualification for B.Sc. degree with ANSI/AVSI. But the amendment to the same providing the qualification of B.Sc., degree with four years of as Lab Chemist affected the rights of the appellant for promotion since he was competent person entitled for selection for the post by way of promotion. The amendment of the Recruitment Rules touches upon the constitution or management or business of society and hence it come within the purview of Section 84 (1) of the Pondicherry Co-operative Societies Act.

5. The point for determination is:-

Whether the order in A.R.C. 2244/95 dated 10.8.1996 passed by the Deputy Registrar (Development Officer) Pondicherry State Co-operatives Bank, Pondicherry holding that the dispute will not come within the purview of Section 84(1) of the Pondicherry Co-operative Societies Act is liable to be set aside?

6. ON THIS POINT:

Heard both sides.

Precisely the case of the appellant is that he possesses B.Sc., degree and ANSI/AVSI training. He was employed in the respondent's mill on 16.5.1990 as Lab Chemist (Seasonal). He was sent for post graduate training in Sugar Technology at Pune and he obtained a diploma from 16.7.1990. He was also sponsored by the respondent's mill for the said training. He was asked to execute an agreement that he would serve in the respondent's mill for five years. Originally as per the Recruitment Rules the qualification for promotion as Manufacturing Chemist or Lab in charge would be a training in AVSI or ANSI and this is the qualification prescribed in all sugar mills. As per the original recruitment rules he would have got the right of promotion. But the Recruitment Rules were amended with oblique motive to deny him the promotion and the qualification for post of the manufacturing chemist is prescribed as B.Sc., degree with four years experience. Such amendment to Recruitment Rules was questioned by him in a objection under Section 84(2) (a) of the Pondicherry Co-operative Societies Act which the lower authority refused to entertain as it does not come within the purview of Section 84(1) of the Act.

7. As per section 84(1) of the Pondicherry Co-operative Societies Act if any dispute touching the constitution of the committee or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arise between the parties enumerated therein, such disputes shall be referred to the Registrar for decision. This sub-section presuppose only three kinds of disputes namely (1) disputes touching the constitution of the committee

or (2) management or (3) the business of the society. According to the lower authority the amendment of Recruitment Rules does not come within any of these three clauses and therefore the objection cannot be entertained by him. It is to be noted that as per Section 84(1) of the Act only a disciplinary action taken against the paid servants does not come within the purview of Section 84(1) of the Act. The question of recruitment, promotion would fall within the ambit of "personnel management" and therefore will come within the meaning of management contemplated under Section 84(1) of the Pondicherry Co-operative Societies Act. The management does not mean production management or marketing management alone but also includes personnel management. Management is defined as "Browne's Judicial Interpretation of Common Words and Phrases". As per that "management means administration, control etc." Therefore the rules pertaining to the condition of service of staff employed in the respondent's mill would come within the meaning of administration and control and hence would come within the purview of 'management'. Therefore the dispute between the appellant regarding change of service condition by amendment of Recruitment Rules would fall within the purview of Section 84(1) of the Pondicherry Co-operative Societies Act.

8. In the result, the finding of the lower authority that the dispute does not come within the ambit of section 84(1) of the Pondicherry Co-operative Societies Act and there is no jurisdiction to entertain the same and dismissing the same is erroneous and is hereby set aside. The matter is remitted back to the lower authority, namely, Deputy Registrar (Development Officer) with the direction that he shall hear the appellant and decide the matter of merits. There is a considerable force in the arguments of the counsel for the appellant that the amendment of the rules was made in colourable exercise of power only to deny the rights of the appellant to seek a promotion as he himself was sponsored for ANSI/AVSI training by the respondent which was a prescribed qualification under the previous Recruitment Rules for promotion. This aspect has to be gone into by the lower authority.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 6th day of November, 1998.

**BEFORE THE CO-OPERATIVE TRIBUNAL (PDJ) AT
PONDICHERRY**

**PRESENT: THIRU G.M. AKBAR ALI, B.Sc., B.L.,
PRESIDING OFFICER
CO-OPERATIVE APPELLATE TRIBUNAL**

Monday, the 22nd day of April, 2002

CO-OPERATIVE APPEAL No. 1/2001

S. Gopalakrishnan	...	Appellant
	Vs.	
The Pondicherry State Co-op. Bank, Bahour Branch, represented by Branch Manager	...	Respondent

(On appeal against the decree passed by
the Arbitrator, Co-operative Department,
Pondicherry dated 18.1.2000.

The Pondicherry State Co-op. Bank Bahour Branch rep. by Branch Manager	...	Petitioner
	Vs.	
S. Gopalakrishnan	...	Respondent

Important point

Pondicherry Co-operative Societies Rules, 1973 – R. 64 - It is found that the appellant has made an endorsement of having received the summons. But the fact remains that the appellant did not make his appearance before the Arbitrator. Hence, the Arbitrator has set him ex-parte and has decreed the case. But it has to be seen that the Arbitrator ought to have given sufficient opportunity to the appellant/ respondent herein of being heard in person before passing the decree. Having failed to do so, he has simply set the appellant ex-parte and has decreed the case

on the same day, which is against the principles of natural justice.

The decree dated 18.1.2000 passed in A.R.C. No. 623/99 by the Arbitrator is set aside and the matter is remanded back to the Arbitrator for fresh disposal according to law.

Appeal is allowed, the matter is remanded back.

This appeal coming on 11.4.2002 for final hearing before me in the presence of Thiru L. Annadurai, counsel for the appellant and Tmt. Kamalakumar, counsel for the respondent, on hearing both sides after perusing the case records and having stood over for consideration till this day this court delivered the following:

J U D G M E N T

The unsuccessful respondent before the Arbitrator, Co-operative Department, Pondicherry, is the appellant herein.

2. The appellant availed a loan for Rs.8,28,000 from the respondent herein for construction of a Modern Rice Mill at Kanniyakoil, Pondicherry. As the appellant was irregular in repayment of the amount, the respondent preferred a claim before the Arbitrator, Co-operative Department, Pondicherry who was duly appointed under Rule 64 of the Pondicherry Co-operative Societies Rules, 1973, framed under the Pondicherry Co-operative Societies Act, 1972. The said claim was numbered as A.R.C. No. 623/99 which was for recovery of a sum of Rs.10,15,735 from the appellant due on the loan amount of Rs.8,28,000 with interest at 20% per annum from 26.12.1998. As the appellant did not appear before the Arbitrator, the appellant was set ex-parte and the Arbitrator decreed the claim, directing the appellant to pay Rs.10,15,735 with subsequent interest at 20% per annum on Rs.8,28,000. The appellant herein prayed for setting aside the ex-parte decree before the Arbitrator, but he was directed to approach the Registrar of Co-operative Societies, Pondicherry. The appellant approached the Registrar of Co-operative Societies, but by a letter No.7/1/34/RCS/Arb/2000/182, dated 7.8.2000, the appellant was

directed to approach the civil court for further remedy and hence, this appeal.

3. The appellant has preferred this appeal mainly on the ground that the Arbitrator has not ordered for issue and service of summons, copy of the plaint and other documents on this appellant and the passing of the ex-parte decree is against the principles of natural justice.

4. The point for determination is:-

“Whether the impugned decree passed by the Arbitrator in A.R.C. No. 623/99 dated 18.1.2000 is liable to be set aside?”

5. ON POINT:

The learned counsel for the appellant would argue that the Arbitrator did not issue summons to the appellant to make his appearance before him and the appellant was also not served with copies of documents like true extract of the statement of accounts, copy of plaint, etc., before passing the decree.

6. On the other hand, the learned counsel for the respondent would submit that the appellant was duly served with summons and the receipt of the same was also duly acknowledged by the appellant himself in the copy of the summons and since the appellant failed to make his appearance before the Arbitrator on the appointed date, the appellant was set ex-parte and a decree was passed based upon the documents executed by the appellant himself as well as based upon the accounts maintained by the respondent.

7. Upon hearing both sides, and upon perusing the records, it is found that the appellant has made an endorsement of having received the summons. But the fact remains that the appellant did not make his appearance before the Arbitrator on 18.1.2000, the date on which the A.R.C. was posted for the appellant's appearance. Hence, the Arbitrator has set him ex-parte and has decreed the case. But it has to be seen that the Arbitrator ought to have given sufficient opportunity to the appellant/ respondent herein of being heard in person before

passing the decree. Having failed to do so, he has simply set the appellant ex-parte and has decreed the case on the same day, which is against the principles of natural justice. Hence, I find that the decree dated 18.1.2000 is liable to be set aside. This point is answered accordingly.

8. In the result, the appeal is allowed, but without costs. The decree, dated 18.1.2000 passed in A.R.C. No. 623/99 by the Arbitrator is set aside and the matter is remanded back to the Arbitrator for fresh disposal according to law, after giving due opportunity to both sides to establish their case.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 22nd day of April, 2002.

**BEFORE THE CO-OPERATIVE APPELLATE TRIBUNAL AT
PONDICHERRY**

**PRESENT: THIRU G.M. AKBAR ALI, B.Sc., B.L.,
PRESIDING OFFICER,
CO-OPERATIVE APPELLATE TRIBUNAL**

Friday, the 10th day of January, 2003

CO-OPERATIVE APPEAL No. 1/2002

K. Radhakrishnan
(Member No.1305)

...
Vs.

Appellant

The Managing Director,
The Pondicherry Co-operative Handloom
Export Development Project Limited. No.P.413
Muthiamudhaliar Street, Muthialpet,
Pondicherry - 605 003.

....

Respondent

Important point

The benefits extended by the co-operative society are only for the welfare and benefits of weavers in Pondicherry and not to weavers of other States. The appellant has been basically disqualified from seeking employment or from seeking any sort of benefit from the respondent and the respondent was, therefore, right in denying all the benefits that have hitherto been enjoyed by the appellant..

Appeal is dismissed.

This appeal coming on 3.1.2003 for final hearing before me in the presence of Thiru K. Radhakrishnan, appeared in person and Thiru R. Parthasarathy. Counsel for Respondent and upon perusing the case records and having stood over for consideration till this day this Court delivered the following:

J U D G M E N T

The unsuccessful petitioner before the court of the Deputy Registrar (Planning), Office of the Registrar of Co-operative Societies, Pondicherry, is the appellatant herein.

2. The appellatant herein raised a dispute under section 84(1) of the Pondicherry Co-operative Societies Act, 1972, before the Registrar of Co-operative Societies, Pondicherry against the Managing Director, Pondicherry Co-operative Handloom Export Development Project Ltd., (PONFAB), seeking redressal of his grievances and to provide raw materials and other benefits to him. The Registrar of Co-operative Societies having admitted the dispute had referred the dispute for adjudication before the Deputy Registrar (Planning), by his order dated 6.9.2001. The Deputy Registrar (Planning) having taken the dispute for adjudication to his file, has numbered the same as R.C. No.7/2001.

3. The facts of the case leading to the dispute is as follows:

The appellatant who was a resident of Kappakara Street, Kanuvapet, Villianur, Pondicherry – 10, became a member of the Pondicherry Co-operative Handloom Export Development Project Ltd., (hereinafter called PONFAB, for short), under member No. 1305. He was enjoying all the benefits extended to the members of the society till 4.4.2001. Subsequently, it was found by PONFAB that the appellatant has changed his residence to No.59, West Street, Karanapatti Village, Chellencherry P.O., Nettapakkam S.O., Cuddalore District, Tamil Nadu, and further the appellatant had not scribed the loom number allotted to him by the society on the loom run by him. Hence, PONFAB found that the appellatant has been disqualified to enjoy the benefits extended to the members of the society under the said scheme and it denied supply of raw materials and employment to the appellatant. Aggrieved by the same, the appellatant presented several petitions before the Registrar of Co-operative Society seeking a direction to PONFAB for restoring him all benefits as that are being extended to other members of the society and also to register his name with the Life Insurance Corporation of India. The Registrar of Co-operative

Societies had in turn referred the dispute to the Deputy Registrar (Planning) to adjudicate the dispute.

4. The Deputy Registrar (Planning), who has been empowered to adjudicate such dispute as a quasi-judicial authority, took the case to file and numbered the same as R.C. No.7/2001. He directed the respondent herein to file the counter statement. The respondent filed the counter stating that a surprise inspection was conducted by PONTEX and PONFAB jointly with the Officers of the Co-operative Department to find out whether any weaver has become members in more than one society or whether any person residing outside the limits of Pondicherry have enrolled themselves as members of the co-operative societies in Pondicherry thereby enjoying the benefits and whether any persons who do not own any loom are being supplied spindles, when there is a dearth of supply of spindles to genuine weavers who own looms. In such a survey, it was found that the appellant was residing in Karanapatti Village of Cuddalore District in Tamil Nadu and further, his loom did not exhibit the number allotted by the authorities of the society and hence, it was decided to curtail all the benefits that were being extended to the appellant. It is further contended that the appellant himself by his letter dated 12.2.2001, has admitted that he is residing in Tamil Nadu and further, in his representation, dated 23.7.2001, he has prayed for pension from 5.4.2001, but he has not submitted proper application for such pension.

5. Considering the pleadings of both sides, the Deputy Registrar (Planning) framed the following issues:

- (1) Whether the petitioner, being the member of the society, has been deprived of employment/raw materials by the society? If it is so, management is responsible or not?
- (2) Whether the petitioner is disqualified to continue as a member? If so, what reason prompted the management to consider the member disqualified to get the benefit/employment from the society?

The Deputy Registrar (Planning) after examining the facts available on records has passed an order dated 8.2.2002 finding that the petitioner is not entitled to get raw materials or employment from the society but considering his length of service rendered to the society, the benefits, which already accrued in the past may be provided to the petitioner subject to prevailing condition of the society as per law.

6. Aggrieved by the said order, the appellant has preferred the present appeal on the grounds that when the Managing Director of PONFAB had supplied spindles and had extended all other benefits till 4.4.2001, that is even long after the appellant had changed his residence to Tamil Nadu and moreover when the respondent themselves have not allotted any number for his loom, the respondent is bound to pay him monthly salary.

7. Now the point that arises for consideration in this appeal is as follows:

“Whether the order dated 8.2.2002, passed in R.C.No.7/2001 by the Deputy Registrar (Planning), Office of the Registrar of Co-operative Societies, Pondicherry is erroneous and is liable to be set aside?”

8 ON POINT:

It is the case of the Petitioner that he was a member of PONFAB with member number 1305, enjoying all the benefits from the society till 4.4.2001. Subsequently, the benefits extended to him have been denied by the Managing Director of PONFAB, namely, the respondent, since the appellant was found to be residing in Tamil Nadu and the loom number allotted to him by the society has not been scribed on the loom. Hence, the appellant has raised a dispute before the Registrar of Co-operative Societies, Pondicherry, which was referred to the Deputy Registrar (Planning) for adjudication in R.C.No.7/2001, who found that the respondent was right in denying the benefits to the appellant and against which the present appeal is preferred.

9. It has been magnanimously admitted by the appellant himself that he had changed his residence from Kappakara Street, Kanuvapet, Villianur, Pondicherry State, to Karanapatti Village, Cuddalore District, Tamil Nadu. The same is evident from the letter dated 21.3.2002 written by the appellant himself to the respondent, wherein, he has stated that due to family circumstances he is residing in his uncle's land for the past four years. Admission is the best evidence. Therefore, it goes without saying that the appellant who had initially availed all the benefits from the society by showing his residence in Pondicherry has been carrying on his work in his actual residence at Karanapattu village in Tamil Nadu and this has come to light only during a surprise inspection by the respondent after a long slumber. The benefits extended by the co-operative society in Pondicherry is only for the welfare and benefit of weavers in Pondicherry and not to weavers of other States. Hence, the appellant has been basically disqualified from seeking employment or from seeking any sort of benefit from the respondent and the respondent was, therefore, right in denying all the benefits that have hitherto been enjoyed by the appellant and consequently, the Deputy Registrar (Planning), who has rightly dismissed the claim of the appellant and has upheld the action taken by the respondent.

This point is answered accordingly.

10. ***In the result, the appeal is dismissed, but without costs.*** The order dated 8.2.2002 passed in R.C.7/2001 by the Deputy Registrar (Planning) be and the same is hereby confirmed.

Typed to my dictation, corrected and pronounced by me in the Open Court on this the 10th day of January, 2003.

Important point

The Pondicherry Co-operative Societies Act, 1972 – Ss. 84 and 140 - Proviso to S.140 (1) takes out the jurisdiction of the Tribunal on a decision in connection with the constitution of the committee, including any election. A plain reading of these provisions will show that a dispute related to election is covered under Section 84 (1) and should be proceeded under Section 84 (4) of the Act. However, the proviso to Section 140(1) restricts the jurisdiction of the Tribunal, if the decision relates to election. Therefore, the Tribunal has no jurisdiction to entertain this appeal.

Appeal is returned.

This appeal coming on 24.4.2003 for final hearing before me in the presence of Mr. N.K. Perumal, Advocate for the appellant, Tvl. L. Swaminathan and I. Ilankumar, Advocates for the first respondent, Thiru M.V.Vaithilingam, Advocate for the third respondent, Thiru S. Mouthuvel, Advocate for the fourth respondent, upon hearing both sides, after perusing case records and having stood over for consideration till this day, this court passed the following:

J U D G M E N T

This appeal is preferred against the award dated 7.10.2002, passed by the nominee of the Registrar of Co-operative Societies, Pondicherry, viz., the Deputy Registrar, Managing Director, PONTEX, Co-operative Department, Pondicherry, in Election Dispute ARC No.4/2002.

2. Mr. P. Vivegaanandan, the Deputy Registrar, (Managing Director, PONTEX), Co-operative Department, Pondicherry, as the nominee of the Registrar of Co-operative Societies, Pondicherry, (hereinafter referred to as “the nominee” for short) passed an award under Section 84(2) of the Pondicherry Co-operative Societies Act, 1972, on a petition filed by the first respondent herein, questioning the

constitution of the elected committee of the second respondent, viz., the Koonichampet Co-operative Milk Producers Society. The nominee of the Registrar of Co-operative Societies passed an order as follows:-

“The petition is partly allowed. In view of the above award, it is hereby ordered that results of the election of respondents 4 and 5 and in the 7th Constituency in respect of respondent No.3 as declared by the Election Officer on 15.5.2002 and 23.5.2002 respectively are set aside.

(2) The respondent No.2 shall fix up a date and place within 7 days from the date of issue of this order, giving notice to the parties namely the petitioner and the respondent No.3 and recount the votes bagged in the 7th Constituency in the presence of the candidates/agents after culling out those 5 ballot papers mentioned in the award without revealing the secrecy as far as possible and declare the results afresh in accordance with the Rules of counting contemplated under the Pondicherry Co-operative Societies Act, 1972 and Rules, 1973.

(3) In the circumstance of the case, there is no order as to cost.”

3. Aggrieved by the said order of the nominee, the respondents 4 and 5 have preferred the present appeal on the grounds that the nominee has passed an order without hearing these appellants, which is against the principles of natural justice. The appellants have been elected as directors without election and there was no objection or grievance against these appellants from any corner. These appellants are literates and the finding of the nominee that the appellants are illiterate is only to prevent them from being the President.

4. The appeal preferred before this Tribunal was numbered and interim injunction was granted. While so, the respondents raised a preliminary objection regarding the jurisdiction of this Tribunal in entertaining an appeal touching on the question of election or constitution of the committee. Therefore, the preliminary issue regarding jurisdiction is taken up for consideration by this Tribunal at this stage.

5. The first respondent filed a petition before the Registrar of Co-operative Societies, Pondicherry, challenging the election of three members to the committee of management of Koonichempet Co-operative Milk Producers Society, which was held on 23.5.2002. The defeated candidate namely Vijayarangam challenged under Section 84(2) of the Pondicherry Co-operative Societies Act, 1972, the election of Srinivasamoorthy, Sinnathambi and Ranjitham, who are the respondents 3 to 5 respectively on the following grounds:-

(i) The respondents No.4 and 5 were not able to read and write and thus, they were disqualified under Section 34(4) of the Act, to be elected as members of the committee of management of the respondent society.

(ii) Polling for 7th constituency was not held in the place as it was notified in the election notice and it facilitated the respondent No.2 to win the election.

(iii) 6 votes were polled by impersonation and thus, the respondent No.3 won the election.

6. The nominee of the Registrar of Co-operative Societies enquired and found that the respondents 3 and 4 are illiterates and therefore, set aside the election. Re-counting was ordered regarding the 7th constituency with which we are not concerned. The respondents 4 and 5 against whom the election was set aside has filed this appeal under Section 140(1) of the Pondicherry Co-operative Societies Act. The facts are admitted and therefore, they are not elaborated.

7. The point for consideration at this stage is:

“Whether an appeal can lie before this Tribunal under Section 140(1) of the Act, with regard to the decision on constitution of committee, including any election thereto?”

8. **ON POINT:** The learned counsel for the first respondent pointed out to Section 140(1) of the Act, which reads as follows:

“Any person aggrieved by—

(a) any decision passed or order made under sub-section (1) of Section 82, Section 83, sub-section (2), sub-section (3) or sub-section (4) of Section 84, Section 126, Section 133 or Section 157; or

(b) any award of an arbitrator or arbitrators under sub-section (2) or sub-section (3) of Section 84 may appeal to the Tribunal:

Provided that nothing contained in clause (a) or clause (b) of this sub-section shall apply to

(i) any decision, order or award under sub-section (2), sub-section (3) or sub-section (4) of Section 84 in respect of any matter relating to or in connection with the constitution of a committee, including any election thereto; or

(ii) any order of transfer, reference, withdrawal or re-transfer of a dispute under sub-section (2) or sub-section (3) of Section 84.”

The learned counsel also pointed out to Section 84 (4) of the Act, which reads as follows:-

“If a question arises, whether for the purposes of this section, any person is or was a member of a registered society, or whether any dispute referred for decision is a dispute touching the constitution of the committee, or the management or the business of the society, such question shall be decided by the Registrar.”

9. The learned counsel for the appellant submitted that the power of the Tribunal is not restricted and there is no provision to challenge the order of the Deputy Registrar and any decision passed under Section 84(2) or 84(3) of the Act is appealable before the Tribunal.

10. Section 84 of the Act deals with disputes. The term dispute includes an election dispute. Section 84 (2) of the Act deals with power of the Registrar to transfer any reference to any person subordinate to him to decide the dispute. But Section 84 (4) contemplates that if a question arises touching the constitution of the committee, then such

question shall be decided by the Registrar. Proviso to Section 140(1) of the Act reads as follows:-

“Provided that nothing contained in clause (a) or clause (b) of this sub-section shall apply to –

(i) any decision, order or award under sub-section (2), sub-section (3) or sub-section (4) of Section 84 in respect of any matter relating to or in connection with the constitution of a committee, including any election thereto; or

(ii) any order of transfer, reference, withdrawal or re-transfer of a dispute under sub-section (2) or sub-section (3) of Section 84.”

This proviso takes out the jurisdiction of the Tribunal on a decision in connection with the constitution of the committee, including any election. A plain reading of these provisions will show that a dispute related to election is covered under Section 84 (1) and should be proceeded under Section 84 (4) of the Act. However, the proviso to Section 140(1) restricts the jurisdiction of the Tribunal, if the decision relates to election. Therefore, this Tribunal has no jurisdiction to entertain this appeal.

This point is answered accordingly.

11. In the result, the appeal is returned back to the appellants with a direction to re-present the same before the Registrar of Co-operative Societies, Government of Pondicherry by way of revision under Section 140(1) of the Pondicherry Co-operative Societies Act for proper adjudication. Three months time is granted for re-presentation.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in the open Court on this the 30th day of April, 2003.

Case referred:

V. Rajammal vs. Co-operative Sugar Mills, Chittur, 1989 I MLJ 360.

This appeal coming on 4.8.2004 for final hearing before me in the presence of Tvl. C.S. Narasimhan, R. Soupramanien, and V. Rajasekaran, Advocates for the Appellant, Thiru M.V. Vaithilingam, Government Pleader for the 1st respondent and Mrs. Kamalakumar, Advocate for the 2nd respondent, upon hearing both sides and having stood over till this day for consideration, this Tribunal passed the following:

J U D G M E N T

This is an appeal filed by the appellant under Section 140(1)(a) of the Pondicherry Co-operative Societies Act, 1972 against the order dated 18.2.2003 and reiterated in letter dated 3.3.2003 indicated by Sale Officer in letter dated 18.2.2003 and that directions has been issued to execute the decree in O.S. 770/91, dated 23.3.1992 of the Principal District Munsif Court, Pondicherry.

2. The facts of the case in brief, are as follows:

The appellant who is working as a clerk in the Thiruvandarkoil PACCS, Pondicherry is also a member of Pondicherry State Co-operative Bank. The appellant has availed an agricultural loan in the year 1987-88. Since the appellant was eligible for remission of loan to the tune of Rs.10,000 under Debt Relief Scheme, 1990, he did not repay the loan. The 2nd respondent filed a suit in O.S.770/91 before the Principal District Munsif, Pondicherry against the appellant and his surety Rajendiran. The said suit was decreed as the defendants therein submitted to decree. The 2nd respondent filed an Execution Petition in E.P.32/2000 wherein, the appellant herein raised a plea that the decree in O.S.770/91 passed by the civil court was without jurisdiction under Section 84 of Pondicherry Co-operative Societies Act, 1972. The learned Principal District Munsif, Pondicherry has dismissed the said Execution Petition on 29.11.2002 on the grounds of unenforceability in view of the decision rendered by the Hon'ble

Madras High Court in **V. Rajammal vs. Co-operative Sugar Mills, Chittur, 1989 I MLJ 360**. The 2nd respondent did not file any appeal or revision against the said order, but did choose to levy execution proceedings under No.37/2003 against the appellant. The appellant sent an objection dated 25.2.2002 to the Sale Officer about the impropriety of filing execution proceedings under the Pondicherry Co-operative Societies Act, 1972. The first respondent through the Sale Officer sent a reply dated 3.3.2003 stating that he filed execution proceedings at the instance of 2nd respondent. Hence, this appeal.

3. Aggrieved by the order of the Sale Officer, the appellant preferred the appeal on the following grounds amongst other:

The order of the Registrar of Co-operative Societies directing the initiation of execution proceedings in E.P.37/03 on the strength of the decree in O.S.770/91 dated 23.3.1992 is not maintainable and liable to be dismissed. The civil court has absolutely no jurisdiction to entertain any suit for recovery of money in view of Section 84 of Pondicherry Co-operative Societies Act, 1972. The first respondent failed to see that in view of the decision of Hon'ble High Court, Madras reported in **1989 I MLJ 360** any decree passed by a civil court in respect of any suit for recovery of money by the Co-operative Bank and its member is nullity and the 2nd respondent could proceed only against the relevant provisions of Co-operative Societies Act. The 2nd respondent failed to see that in view of dismissal of E.P.32/2000, no execution proceedings pursuant to the decree in O.S.770/91 could be levied. The first respondent failed to see that even it could not file a fresh suit through its Arbitrator under the Act as it is barred both by *res judicata* as well as by limitation. The appellant, therefore, prayed to allow the appeal and to dismiss the execution proceedings in 37/2003 taken by the 2nd respondent.

4. Per contra, the Government Pleader filed the counter with the averments as follows:

Since the execution proceeding was conducted by the Sale Officer of the 2nd respondent, he is the necessary party on the appeal and therefore, the appeal is liable to be dismissed for non-joinder of necessary party. This Tribunal has no jurisdiction to try the appeal at

this stage and the provisions quoted in the appeal are not correct. The sale officer has only issued a notice on 18.2.2003 to the appellant calling for his explanation and hence the question of set aside the order dated 18.2.2003 does not arise at all. Under Section 140 of the Pondicherry Co-operative Societies Act, 1972, the appellant is not entitled to challenge the notice issued by the sale officer. In 1999, the second respondent bank has filed a dispute under Section 84 of the Act against the appellant in ARC 712/99 and the said dispute was dismissed by the Arbitrator on 10.7.2000 on the ground that since there was a decree against the appellant passed by the civil court. The decree passed by the civil court in O.S.770/91 was not challenged and consequently, it has reached the finality. Accordingly, the respondents prayed for the dismissal of the appeal.

5. The point for consideration is:

“Whether the decree passed by the civil court is executable by the Sale Officer appointed by the Registrar of Co-operative Societies?”

6. **ON THE POINT**

The appellant is the borrower, who had taken the crop loan from the 2nd respondent society. The appellant is also a member of the 2nd respondent society. The appellant did not pay the amount due to the society. Therefore, the 2nd respondent society, as plaintiff, filed the suit in O.S.770/91 before the Principal District Munsif Court, Pondicherry. The borrower remained ex-parte and the civil court passed the ex-parte money decree. Thereafter, the 2nd respondent filed Execution Petition in E.P.32/2000 before the Court of Principal District Munsif, Pondicherry to realize the decree amount. The appellant/borrower filed an application under Section 47 of the Act questioning the maintainability of the execution petition. The executing court has felt that any dispute touching the business of the society arises between its member and the society and the dispute shall be referred to the Registrar for decision and the appellant /borrower fall under the scope of Section 84 of the Pondicherry Co-operative Societies Act and that the execution petition is not maintainable. Though the executing court has passed an order dismissing the execution petition as not

maintainable, it is observed that it will not be a bar for the creditor to refer the dispute to the Registrar for decision. The order passed by the executing court (civil court) has become final and no revision or appeal has been filed against the order passed on the petition under Section 47 of the Act. Therefore, the 2nd respondent referred the dispute to the Registrar under A.R.C.No.712/99, but the Registrar has taken a decision that there cannot be two decrees from different courts and the Registrar is a civil court, as mentioned in Rule 64(1)(4) of the Pondicherry Co-operative Societies Rules, 1973. The Arbitrator is of the view that the civil court decree can be executed by the Registrar of Co-operative Societies under Section 133 of the Act and therefore, no need to pass a decree again since already a decree from the civil court for the amount due from the appellant. Therefore, the 2nd respondent approached the 1st respondent to appoint a sale officer. The 1st respondent appointed the sale officer to execute the decree of the civil court and issued an order of attachment in Form No.2, dated 3.2.2003 to show cause why the property should not be attached. The appellant, on receipt of the said notice dated 3.2.2003, filed this appeal challenging the execution proceedings taken by the sale officer appointed by the Registrar of Co-operative Societies.

7. The learned counsel for the appellant submits that the dispute is touching the business of the society arises between a society and the member and such a dispute shall be referred to the Registrar for decision and that Section 84 of the Act specifically bars the jurisdiction of the civil court to entertain a dispute and make a decision on it. Therefore, the decree passed by the civil court is without jurisdiction and it is not maintainable and therefore, the execution proceedings taken by the sale officer is to be declared as null and void. It is true that the appellant/borrower is the member of the society and as a member of the society, he has taken crop loan from the society. The society without approaching the Registrar to recover the dues from the appellant approached the civil court and filed the suit O.S.770/91 and obtained ex-parte decree. The learned counsel for the appellant submits that as the decree has been passed by a civil court without jurisdiction, it cannot be executed and cited the decision reported in **1989 I MLJ 360** as follows:

“A reading of Section 73 of the Tamil Nadu Co-operative Societies Act, 1961, would clearly show that if any dispute touching the business of the society arises between a member and the society, the dispute shall be referred to the Registrar for decision. Though there are no express words in the Act, that with regard to such dispute, the civil court has no jurisdiction, from the words used in Section 73, it can be implied that the civil court’s jurisdiction is ousted.”

It has been held in the above decision that in a dispute between a member and the society, the civil court has no jurisdiction and therefore, the suit filed before the civil court for recovery of amount due is liable to be dismissed. Further, it has been held that though there are no express words in that Act with regard to such dispute, the civil court’s jurisdiction is impliedly excluded. But the learned counsel for the respondents submits that under Section 133 of Pondicherry Co-operative Societies Act, the Registrar or any person subordinate to him and empowered by the Registrar shall recover any sum due to under a decree or order of a civil court. Therefore, the Registrar is competent to execute a decree of a civil court and in the decision cited by the Appellant’s counsel no discussion has been made with regard to Section 133 of the Act. Therefore, the decision is not applicable to this case and he further argues that the Registrar or any person subordinate to him, empowered by the Registrar, is competent to execute the decree or order of a civil court. As such, the contention of the appellant that the execution proceedings taken by the sale officer appointed by the Registrar of Co-operative Societies is not maintainable cannot be accepted.

8. Section 133 of the Act runs as follows:

“The Registrar or any person subordinate to him empowered by the Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under this Act, recover-

a. any sum due under a decree or an order of a civil court, a decision or an award of the Registrar or any person

- subordinate to and empowered by the Registrar, or Arbitrator or Arbitrators or an order of the Registrar; or*
- b. any sum due from a registered society or from an officer, former officer, member or past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceedings under this Act; or*
 - c. any sum ordered to be paid towards the expenses of a general meeting of a registered society called under sub-section (4) of Section 31 of sub-clause (ii) of clause (d) of sub-section (2) of Section 75; or*
 - d. any sum awarded by way of costs under Section 78 to a registered society including a financing bank; or*
 - e. any sum ordered under Section 128 to be recovered as contribution to the assets of a registered society or as costs of liquidation; or*
 - f. any sum ordered under Section 82 to be repaid to a registered society or recovered as a contribution to its assets;*

together with the interest, if any, due on such sum and the costs of process by the attachment and sale or by the sale without attachment of the property of the person against whom such decree, decision, award or order, has been obtained or passed.”

9. On perusal of Section 133 of the Act, it is seen that the Registrar or any person subordinate to him empowered by the Registrar, is competent to execute the decree of a civil court. The above decision cited by the appellant's counsel relates to Tamil Nadu Co-operative Societies Act. Though Section 73 of the Tamil Nadu Co-operative Societies Act is equivalent to Section 84 of Pondicherry Co-operative Societies Act, there is no occasion for the Hon'ble High Court to discuss Section 133 of the Pondicherry Co-operative Societies Act. This Tribunal accepts that the civil court's jurisdiction is ousted under Section 84 of the Act, but Section 133 of the Act empowers the Registrar to execute a decree or order of a civil court. Therefore, the decision cited by the appellant is not applicable to the case on hand. In view of the above discussion, it is decided that the sale officer appointed by the Registrar of Co-operative Societies, is competent to

execute the decree of a civil court and the point is answered accordingly.

10. ***In the result, the appeal is dismissed.*** The parties are directed to bear their respective costs.

Typed to my dictation, corrected and pronounced by me in open Court, on this the 4th day of August, 2004.

**IN THE COURT OF THE PRINCIPAL DISTRICT COURT AT
PONDICHERRY**

**PRESENT: THIRU M.CHINNAPANDI, B.A., B.L.,
PRINCIPAL DISTRICT JUDGE**

Friday, the 8th day of October, 2004.

CO-OPERATIVE APPEAL No. 3/2002

1. A. Periathamby
2. A. Natarajan ... Appellants

Vs.

1. The Pondicherry Public Works
Department Staff Co-operative
Society Ltd., No. P.252, rep. by its
President.

2. Thiru. G. Marudavanan,
Co-operative Officer,
Co-operative Department,
Pondicherry. ... Respondents

(On appeal against the Surcharge Order passed by the
2nd respondent on 13.3.2002 under Section 82 (1) of the
Pondicherry Co-operative Societies Act, 1972.)

Important point

*Pondicherry Co-operative Societies Act, 1972- S.82 –
Surcharge – S. 82 (1) of the Act requires willful negligence for
passing a surcharge order. Willfulness or wantonness requires
consciousness and knowledge that an injury or loss is likely to
result from the act done due to the commission or omission of
an act. The act done or omitted to be done must be intended or
must involve such negligent discount of safety measures and
right as to involve bad faith. Therefore, it has to be seen*

whether there is negligence and if so whether it willful negligence and whether such willful negligence is the immediate cause of the loss sustained by the society.

The appellants have acted in breach of legal obligations or in conscious disregard of duties or with an intentional failure to perform the manifest duty, in the performance of which the public have an interest and that such commission or omission by the appellants was the proximate cause of loss to tune of Rs.3,45,969, and such an act amounts to willful negligence warranting the passing of the surcharge order under Section 82 (1) of the Act. The second respondent has rightly passed the impugned surcharge order dated 13.3.2002 and I find no reason to interfere with the same.

Appeal is dismissed.

Case referred:

A.K. Francis vs. Joint Registrar of Co-operative Societies (1991 Co-op. C 523): 1990 (2) KLT 470 : 1990 (2) KLJ 428.

This appeal coming on 22.9.2004 for final hearing before me in the presence of M/s. R. Thirouma Valavan, K.R. Harin, Advocates for the appellants, Mr. V. Govindarajou, Advocate for the 1st respondent, Mr. M.V. Vaithilingam, Advocate for the 2nd respondent, upon hearing both sides, after perusing the case records and having stood over for consideration, till this day, this court delivered the following:

J U D G M E N T

This appeal arises out the surcharge order, dated 13.3.2002, passed against the appellants herein by the 2nd respondent, under Section 82 (1) of the Pondicherry Co-operative Societies Act, 1972.

2. The facts of the case according to the appellants, in brief, are as follows:

The first appellant is working as Junior Engineer and the second appellant is working as Overseer in the Public Works Department, Pondicherry. The first respondent is a co-operative society registered for the purposes of encouraging self-help and co-operation among its members, who are employees of Public Works Department, Pondicherry. The management of the society is vested with the board of directors of the society consisting of seven members, which includes the President, Vice President and Secretary. The term of office of the members is three years, commencing from 1st July and ending with 30th June.

The first appellant was elected as President and the second appellant was elected as Secretary for the period from 1.7.1992 to 30.6.1995. The first appellant was re-elected as President from 1.7.1996 and continued to be as such for one more year. The appellants held the above offices in the said society not on full time basis, but along with their principal duties in the Public Works Department. The day-to-day affairs of the society were managed by one Sivasubramanian, Senior Clerk, who was in the services of the society for over a decade.

During the tenure of the appellants, periodical audits were conducted by the auditors of the Co-operative Department, Pondicherry, for the years 1992-93, 1993-94, 1994-95, but, no instances of misappropriation was brought to the notice of the managing committee, except in audit report of 1994-95, where it was pointed out that the said Sivasubramanian, Senior Clerk, had misappropriated an amount of Rs.71,967 by manipulating and tampering the records. This was also accepted by the said Sivasubramanian and he paid Rs.20,000 as first installment of repayment to the society on 27.4.1996. Thereafter, the Registrar of Co-operative Societies, Pondicherry, ordered an enquiry under Section 75 of the Pondicherry Co-operative Societies Act, 1972, covering the period from 1.4.1992 to 30.9.1995. It was then that the audit party found that the said Sivasubramanian had misappropriated totally a sum of Rs.3,45,699 by falsification of accounts, suppression of cash, etc.

Therefore, the Registrar of Co-operative Societies, Pondicherry, by proceedings No.5/4/1/73/RCS/PLG/H1/95/205, dated 23.10.1997, authorized the second respondent to hold an enquiry under Section 82 of the Act, with regard to the misconduct of the erstwhile board of directors of the society and the said S. Sivasubramanian, the then clerk of the society, and to pass appropriate orders as provided under law. The second respondent conducted enquiry and found that there was total failure on the part of the appellants, as they were responsible for the day-to-day administration of the society and overall control on the assets of the society as per the bye-laws of the society. It was further held that the negligence on the part of the appellants to exercise proper control over the affairs of the society was main cause for the said S. Sivasubramanian, senior clerk, to commit such huge misappropriation, which in turn has caused deficiency in the assets of the society. The second respondent, therefore, passed orders in the same report for recovery of sum of Rs.88,200 from each of these appellants, in exercise of the powers conferred upon him under Section 82 (1) of the Pondicherry Co-operative Societies Act, 1972.

3. Aggrieved by the said order, the appellants have preferred the present appeal mainly on the grounds that the impugned order of the second respondent is violative of the express provisions of Section 82 (1) of the Act, and is also violative of the principles of natural justice. Further, to incur surcharge under Section 82 of the Act, negligence alone is not sufficient, but it should be proved that there was willful negligence, which involves intentional and purposeful omission. As such, even if there is negligence on the part of the appellants to check the accounts and detect the misappropriation committed by S. Sivasubramanian, it cannot be said to be a willful negligence. Further, when the audits conducted during 1992-93, 1993-94 and 1994-95, had eluded the attention of expert auditors, who themselves could not bring forth the huge misappropriation, the appellants cannot be indicted with willful negligence resulting in the misappropriation by the Clerk. The second respondent failed to note that the general control over the affairs of the society, though vested in the President, he cannot be construed to check the day-to-day accounts of the society and so also, the Secretary looked after the day-to-day affairs of the society only by reposing confidence in the senior clerk, who had committed misappropriation in a very deceptive and ingenious manner

and as such the appellants should not be found guilty of any willful negligence.

4. The first respondent filed reply statement denying the allegations raised in the grounds of appeal and maintaining that the surcharge order passed by the second respondent is correct.

5. Now the point for consideration is:

“Whether the surcharge order passed by the 2nd respondent on 13.3.2002 under Section 82 (1) of the Pondicherry Co-operative Societies Act, 1972 is liable to be set aside?”

6. **ON POINT**: The first appellant was the President and the second appellant was the Secretary of the first respondent co-operative society from 1.7.1992 to 30.6.1995. During the audit for 1994-95, in the first respondent society, it was found that an amount of Rs. 71,967 had been misappropriated by manipulating and tampering the records. The Registrar of Co-operative Societies, ordered for an enquiry under Section 75 of the Pondicherry Co-operative Societies Act, 1972, covering the period from 1.4.1992 to 30.9.1995. It was found that totally an amount of Rs. 3,45,969 had been misappropriated. The Registrar of Co-operative Societies by Proceedings No.5/4/1/73/RCS/PLG/H1/95/205, dated 23.10.1997, authorized the second respondent to hold an enquiry under Section 82 of the Act. Thereupon, the second respondent issued notice under Section 82(1) of the Act to the appellants and the said S. Sivasubramanian, senior clerk, calling upon them to show cause as to why surcharge proceedings should not be initiated against them for the recovery of an amount of Rs.3,45,969, which was allegedly misappropriated. After the appellants submitted their reply to the show cause notice, the second respondent by his final order dated 13.3.2002, ordered that an amount of Rs. 88,200 be recovered from the first appellant, Rs.88,200 be recovered from the second appellant and an amount of Rs.1,69,569 be recovered from S. Sivasubramanian, the then senior clerk of the society. It was further ordered by the second respondent that as S. Sivasubramanian, the then clerk of the society, expired on 4.1.2000, any direction making him liable to pay for the misdeeds cannot be executed and it would

only be a nullity and it was therefore for the first respondent-society to take action to recover the amount from the estate of S. Sivasubramanian. As against the said order, the President and Secretary of the society have preferred this appeal praying this court to set aside the impugned order, dated 13.3.2002, passed by the second respondent.

7. The second respondent in his order has found that the modes of misappropriation were by falsifying the counterfoils of cash bills and relevant loan ledgers, and by non-issuance of cash receipts. Thus during the year 1992-93 to 1994-95, an amount of Rs.3,06,669 have been misappropriated. That apart, during 1995-96, an amount of Rs.15,700 have been misappropriated on 2.6.1995, by falsifying the sub-day book and loan register in respect of the recovery of loan from A. Natarajan, the then Secretary. A further sum of Rs.23,600 has been misappropriated on 23.2.1995 by forging the signature of one A. Selvaraasu, member No. 269. Thus, totally a sum of Rs.3,45,969 has been misappropriated.

8. According to bye-law No. 23 (1) (a) of old bye-laws and bye-law No.37 (ii) of the new bye-laws of the Pondicherry P.W.D Staff Co-operative Society Ltd., No.P.252, "the President shall have a general control over all the affairs of the society and the Secretary shall be the Treasurer and shall have the custody of all the properties of the society". Similarly, as per bye-law No.23 (iv) of the old bye-laws and 37(iv) of the new bye-laws of the society, "the Secretary shall be responsible for the executive administration of the society subject to the control of the President".

9. It is an admitted fact that misappropriations have mainly taken place only at the time of issue of next loan fully to the members, without adjusting the previous dues. It is revealed that the modus operandi adopted during such course was that even if a member had an outstanding balance towards the first loan, he was granted a second loan and the appellants used to sign the cheque for the full loan amount without adjusting the outstanding balance due under the first loan. As soon as the cheque for the second loan is handed over to the member, the then senior clerk S. Sivasubramanian used to accompany the member to the bank, and collect the amount due by

him under the previous loan from him at bank and thereafter he misappropriated the amount either by falsifying the accounts or without issuing cash bills towards receipt of the amount so collected from the members.

10. The appellants in the grounds of appeal have stated that when huge misappropriation of amount had eluded the attention of expert auditors during the audit for the years 1992-93 and 1993-94, the appellants cannot be indicated with willful negligence resulting in misappropriation by the clerk. It is to be seen that the first appellant, during the course of enquiry, has stated that during the years 1992-93 and 1993-94, cheques were issued to the members only after adjusting the previous loan dues payable by them and it was only during the year 1994, such a practice of issuing cheque for full loan amount came into vogue after considering the urgency of the members. The first appellant has further stated that he issued loans only by relying upon the second appellant and the said S. Sivasubramanian. During the course of enquiry, it was asked to the first appellant that he failed to scrutinize the loan applications and the respective member loan ledgers, before issue of cheque for full amount, which in turn, paved way to S. Sivasubramanian to commit such a huge misappropriation for which he has admitted that till 1993-94, second loans were issued after deducting the previous dues and that subsequently, he came to know that the clerk had committed misappropriation in forty six cases. As such, when it is admitted that the previous loan dues were deducted till 1993-94, probably the audit party would not have noticed anything, which would only mean that manipulation should have been done subsequent to the audit.

11. With regard to the misappropriation in respect of the recovery of loan amount of Rs.15,700 on 2.6.1995 from A. Natarajan, the then Secretary of the society, the first appellant would state the due to urgency of A. Natarajan, a cheque for the full amount of Rs.24,000 was issued to him as next loan on 1.6.1995 and he instructed the clerk to make recovery of the balance amount of his previous loan account on the very same day itself, but he came to know of the fact that S. Sivasubramanian had misappropriated the amount by falsifying the account on 2.6.1995 only during enquiry under Section 75 of the Act. When the first appellant was enquired about the misappropriation of

Rs.23,600 committed by S. Sivasubramanian, the then clerk of the society, by forging the signature of A. Selvaraasu, M. No.269, and the reason for his attesting the forged signature in the cheque leaf, he has stated that due to urgency of the members, it was not possible to get the signature of the respective members in his presence at the time of issue of cheques, and as such he made necessary attestation in the cheque leafs after obtaining the signature from the members concerned.

12. Thus, it is found that the first appellant was very much interested in considering the urgency of the members, rather than discharging his duties with utmost care and caution. In other words, it is only a gross neglect or dereliction of duties by the appellants towards the first respondent society and the wrong procedure adopted by them in dealing with the accounts and signing of the cheques, has paved way for the huge misappropriation. In the present case, it cannot be said that the misappropriation or misconduct of the clerk was due to lack of supervision by the appellants. In fact, the evidences of the appellants clearly go to show that they had wide and sufficient knowledge of all the dealings and acts done by the clerk, but, the reason given by the appellants either for the adoption of wrong procedures by themselves or for not questioning the wrong procedures adopted by the clerk was that they gave much importance to the urgency of the members or reposed much confidence in the clerk, rather than discharging their duties judiciously. Thus, the demeanor of the appellants goes to show that they have clearly approved the illegal and wrongful acts of the clerk and they themselves have sailed along with the clerk and had adopted wrong procedures of signing cheques without simultaneously verifying the loan applications and the entries in the loan ledger and by attesting the entries of the loan ledger without referring to cash receipts, vouchers, etc. and as such they cannot escape from their liability by simply stating that they reposed confidence in the clerk. This court finds that there was not only lack of supervision, but also wrongful intension among the appellants and the clerk, which in turn paved way for misappropriation and as such, the act of the appellants has to be considered only as gross or willful negligence committed deliberately with a view to cause loss to the assets of the first respondent society.

13. If there are one or two cases, it can be said that it was only the clerk who had intended to misappropriate, despite the care and caution exercised by the appellants and that there was no intention of misappropriation by the appellants. But when there are admittedly forty six cases of misappropriations, only the contrary would prevail. The reported misappropriations have spread over a period of three years. It is improbable that the first appellant as the President of the society could not have lost sight of the misappropriation at any point of time. An identical reply given by the first appellant that due to urgency of the second appellant, he had issued a cheque for full amount of Rs.24,000 and later instructed the clerk to make recovery of the balance amount of his previous loan account on the very same day itself and that he came to know that the clerk had not carried out his orders, but had misappropriated the said amount only during enquiry under Section 75 of the Act, would clearly indicate that the first appellant as President, has either grossly neglected to discharge his duties, thereby causing heavy monetary loss to the society or he should have colluded with the clerk S. Sivasubramanian and had intended to misappropriate the amount. It is to be mentioned that the clerk S. Sivasubramanian, in his deposition has admitted the fact of misappropriation by him and he has added that he has done so only with the instructions given by the appellants, who were the then President and Secretary of the society.

14. When the second appellant was told that the clerk was able to commit acts of misappropriation mainly due to the non verification of loan applications, loan ledgers, etc. by the second appellant, he has shirked his responsibility by saying that he used to sign the cheques brought to him by the clerk at the site where he would be working and that whenever the loans were sanctioned, the cheques would be issued only after the scrutiny of the loan applications made by the then clerk and on the recommendations of the board and the then President and he being a lay-man, does not know the accounting procedure and could not find the misappropriation. He has further stated that the fact of sending the clerk to the bank along with the members concerned for the purpose of collecting the previous loan dues at the time of encashment of cheque issued fully as next loan is also known to him, the President and some of the directors.

15. Coming to his own case, where Rs.15,700 due by him towards the previous loan account, has been misappropriated by the clerk S. Sivasubramanian on 2.6.1995, it is found that cash entries have been made in the sub-day book and day-book, but the cash receipt meant for the said amount was cancelled. However, the second appellant has signed in all the three registers, and when he was asked about this, he has replied that as he had to concentrate in his work at the site, he was unable to pay attention at the time of checking the accounts. With regard to the forging of the signature of A. Selvaraasu in the cheque for Rs.23,600 the second appellant has stated that the cheque was brought to him at the work site by the clerk, and after ascertaining the approval of loan and after verifying the signature of the President, he signed the cheque and that he did not receive any complaint from the member concerned during his tenure. It may be seen that the explanation given by the second appellant is not at all reasonable and acceptable. When once the second appellant has been elected as Secretary of the society; it is his bounden duty to look after the day-to-day affairs of the society, apart from his normal duties. The second appellant cannot be expected to shirk his responsibilities towards the first respondent either by showing his work load as overseer or by throwing the blame on the President or the clerk or other directors of the society. The second appellant is expected to discharge his duties in tune with the bye-laws of the society.

16. No doubt, there are number of rulings to the effect that for attracting surcharge proceedings under Section 82 (1) of the Act, there should be "willful negligence" and not "ordinary negligence" on the part of the person against whom proceedings have been initiated. It is to be noted that for legal purpose there can be no negligence, but there can be an actionable wrong. As held by the Kerala High Court in **A.K. Francis vs. Joint Registrar of Co-operative Societies and other (1991 Co-op. C 523) : 1990 (2) KLT 470 : 1990 (2) KLJ 428**, grant of conveyance allowance to the President of the society as approved by the general meeting in violation of the Rules cannot be held willful negligence of the petitioner, since the whole society is responsible for the negligence.

17. Thus Section 82 (1) of the Act requires willful negligence for passing a surcharge order. Willfulness or wantonness requires

consciousness and knowledge that an injury or loss is likely to result from the act done due to the commission or omission of an act. The act done or omitted to be done must be intended or must involve such negligent discount of safety measures and right as to involve bad faith. Therefore, it has to be seen whether there is negligence and if so, whether it is willful negligence and whether such willful negligence is the immediate cause of the loss sustained by the society. In the instant case, the appellants have been entrusted with the management of the first respondent co-operative society as its President and Secretary, while the said S. Sivasubramanian, senior clerk was entrusted with the work of maintaining the accounts and ledgers of the society. It is not disputed that there have been misappropriation of amounts and manipulations in the maintenance of accounts and interestingly, the account of the second appellant herein; even during his tenure as Secretary, has been manipulated and the outstanding balance amount of Rs.15,700 due by him towards the first loan has been misappropriated and above all, the second respondent has attested those manipulated or forged entries. Admittedly, the entries in the ledgers have been manipulated, but it is the evidence of the second appellant that due to pressure of his official works, he was unable to verify the correctness of the entries and therefore, he cannot be held liable. Generally, a clerk would not dare to manipulate the account of the Secretary himself and misappropriate the amount paid by him, as he would be afraid that he would be caught while getting attestation of the wrong entries in the ledger account. It is also not the case of the second appellant that the entries have been manipulated subsequent to his attestation. At the same time, a prudent man and that too in the position of the Secretary of the society would not fail to see whether the huge amount of Rs.15,700 paid by him has been properly deposited and proper credit has been given in the ledger and whether correct ledger postings have been made and properly accounted for. On the other hand, the act of the clerk in committing misappropriation of the amount paid by the Secretary himself (second appellant) and giving wrong ledger postings and manipulating the ledger entries and the second appellant approving such wrong entries as if he is ignorant of accounting procedures, but swindling a huge sum of Rs.15,700 due under the first loan, would only lead to conclude that the appellants and the said S. Sivasubramanian have colluded together and have done such malpractices with an intent to cause wrongful loss to the

society and such acts of the appellants would only amount to willful negligence and no doubt, such willful negligence is the proximate cause of loss sustained by the first respondent society.

18. In view of the above discussions, it is decided that the appellants have acted in breach of legal obligations or in conscious disregard of duties or with an intentional failure to perform the manifest duty, in the performance of which the public have an interest and that such commission or omission by the appellants was the proximate cause of loss to tune of Rs.3,45,969, and such an act amounts to willful negligence warranting the passing of the surcharge order under Section 82 (1) of the Act. The second respondent has rightly passed the impugned surcharge order dated 13.3.2002 and I find no reason to interfere with the same.

This point is answered accordingly.

19. ***In the result, the appeal is dismissed.*** The surcharge order dated 13.3.2002, passed by the second respondent under Section 82 (1) of the Pondicherry Co-operative Societies Act, 1972, directing each of the appellants to pay a sum of Rs.88,200 is hereby confirmed. However, there is no order as to costs.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in the open Court on this the 8th day October 2004.

Note: *The order of the Tribunal was affirmed by the High Court of Madras in W.P. No.11466 of 2006 dated 24th April 2006.*

**IN THE COURT OF THE PRINCIPAL DISTRICT COURT AT
PONDICHERRY**

**PRESENT: THIRU M.CHINNAPANDI, B.A., B.L.,
PRINCIPAL DISTRICT JUDGE**

Friday, the 11th day of February, 2005.

CO-OPERATIVE APPEAL No. 5/2003

J. Selvakumar ... Appellant

Vs.

1. The Administrator,
Mannadipet Commune Co-operative
Housing Society Ltd. No.P.512.
2. The Sale Officer,
Co-operative Department, Pondicherry.
3. The Arbitrator
Co-operative Department, Pondicherry. ... Respondents

(On appeal against the order of the Sale Officer,
Co-operative Department, dated 23.6.2003 and
served on 15.9.2003 in C.E.P. 3/2003 and the
Award of the Co-operative Officer (Arbitration),
Co-operative Department, Pondicherry, dated
27.9.2002, passed In A.R.C. No.519/2002).

Important point

The Pondicherry Co-operative Societies Act, 1972 – Section 140 (3) - The appellant seeks the relief to set aside the order of the second respondent, dated 23.6.2003, passed in CEP 3/2003 and award, dated 27.9.2002, passed in ARC 519/2002. It is to be mentioned that as per Section 140 (3) of the Pondicherry Co-

operative Societies Act, 1972, appeal against any decision passed or order shall be preferred within two months from the date of the decision, order, award etc. In as-much-as the appellant has not chosen to challenge the award dated 27.9.2002 passed in ARC 519/2002 by way of appeal within the specified time limit, he has no locus standi either to challenge the order passed in CEP proceedings which has arose out of the award passed in ARC 519/2002 or the said award itself at this stage of execution. Further, this Tribunal finds that there is absolutely no irregularity or illegality either in the proceedings in ARC 519/2002 or in CEP 3/2003 warranting any interference of this Tribunal.

The appeal is dismissed.

This appeal coming on 3.2.2005, for final hearing before me in the presence of Tvl. M. Nakeeran, C. Balamourougane and L. Sai Radjachandran, Advocates for the appellants, Tvl. L. Swaminathan and I. Ilankumar, Advocates for the respondents 1 and 2 and Thiru M.V. Vaithilingam, Government Pleader for 3rd respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, the Court delivered the following:

J U D G M E N T

The defendant/judgment debtor before the Co-operative Officer in ARC No.519/2002 is the appellant herein.

2. The first respondent filed a case in ARC No.519/2002 against the appellant herein for recovery of a sum of Rs.3,34,985 with interest and costs.

3. The facts of the case, in brief, are as follows:

The appellant approached the first respondent for a loan for the purpose of constructing a HIG type house. The first respondent sanctioned a loan of Rs.4,38,000 and the appellant agreed to repay the same with interest at 13.5% per annum in equated monthly installments of Rs.5,344 each within a period of 19 years. But as

against the sanctioned amount of Rs.4,38,000, the appellant availed only a sum of Rs.3,06,600 and instead of adhering the installment payment, the appellant has paid Rs.5,000 on 8.3.2002, Rs.5,000 on 31.3.2002, Rs.20,000 on 28.8.2002, Rs.15,000 on 15.10.2003, totaling to Rs.45,000 and thereafter committed default in payment of any amount, either towards principal or interest. Therefore, the first respondent initiated proceedings before the third respondent in ARC 519/2002 for recovery of the outstanding amount. The third respondent on 27.9.2002, passed a decree against the appellant in ARC 519/2002, directing the appellant to pay to the first respondent a sum of Rs.3,50,104 with subsequent interest at 16.5% p.a. on Rs.3,06,600 from 26.9.2002 till payment. Since, the appellant failed to pay the decretal amount, the first respondent initiated execution proceedings in CEP 3/2003, pursuant to which, the second respondent has issued notice of attachment of the immovable properties that has been mortgaged with the first respondent with a view to sell the same in public auction and thereby, realize the decretal amount. Aggrieved by the said action of the second respondent, the appellant has preferred the present appeal mainly on the following grounds:

- (i) The order of attachment of the schedule mentioned property is illegal, as it does not comply with the requirements under Rule 75 of the Pondicherry Co-operative Societies Rules.
- (ii) The appellant has been denied the opportunity of being heard in person during arbitration proceedings and the respondents without applying their minds have passed a non-speaking order, which is against the principles of natural justice.
- (iii) The respondents have failed to see that the actual installment amount payable by the appellant has not been fixed and that the rates of interest claimed is against law and that the mortgage deed, dated 13.8.2001 is not enforceable in law.

4. Now the point for consideration is: *Whether the appeal against the order, passed in the execution of the award is maintainable?*

5. **ON POINT:** The appellant is the member of Mannadipet Commune Co-operative Housing Society Limited No.P.512. The third respondent is the arbitrator before whom the dispute was raised by the first respondent for recovery of the amount due under the mortgage deed dated 13.8.2001. The appellant has approached the first respondent for availing housing loan for the purpose of constructing HIG type of house. The first respondent agreed to grant loan of Rs.4,38,000 by way of three installments and appellant agreed to repay the same with interest @ 13.2% per annum and in case of committing default in payment of any installment, the appellant agreed to pay overdue interest at the rate of 3% over and above the agreed rate of interest. But as against the agreed sanction of Rs.4,38,000, the appellant availed only a sum of Rs.3,06,600 in two installments. The equated monthly installment is at the rate of Rs.5,344. The appellant has given a letter dated 8.3.2002 stating that he does not want the third installment. Though the mortgage deed had been executed by the appellant for Rs.4,38,000, the appellant has taken a loan for Rs.3,06,600 only. After taking loan, the appellant has paid only Rs.5,000 on 8.3.2002, Rs.5,000 on 31.3.2002, Rs.20,000 on 28.8.2002, Rs.15,000 on 15.10.2003 and thus totally Rs.45,000. Though it was agreed between the parties that the loan amount is payable in equated monthly installment of Rs.5,344 the appellant did not follow it and instead he paid the amount as above. As the appellant did not pay the installments regularly, but committed default, the first respondent raised dispute before the third respondent in ARC 519/2002. The third respondent/arbitrator issued summons to the appellant and the appellant participated in the arbitration proceedings through his power agent. After giving reasonable opportunity, the third respondent passed an award on 27.9.2002, directing the appellant to pay Rs.3,50,104 with further interest on Rs.3,06,600 at the rate of 16.5% p.a. from 26.9.2002 till realization. The award dated 27.9.2002 passed in ARC 519/2002 has not been challenged. As the amount due under the award was not paid by the appellant, the first respondent authorized the second respondent to initiate execution proceedings to recover the amount as decreed in the award in ARC

519/2002. The second respondent issued demand notice to the appellant, stating that the appellant did not pay any amount. Therefore, the second respondent attached the property and the same was served by affixture in the last known address of the appellant. During pendency of the E.P. proceedings, this appeal has been filed to set aside the order of the second respondent dated 23.6.2003, passed in CEP 3/2003 and the award dated 27.9.2002, passed in ARC 519/2002.

6. The learned counsel for the first respondent submits that the co-operative E.P. proceedings cannot be questioned without challenging the award passed in ARC 519/2002. The learned counsel for the appellant submits that though the first respondent agreed to grant loan of Rs.4,38,000, only an amount of Rs.3,06,600 was paid to the appellant in two instalments and therefore, the award passed against him is not maintainable. The appellant in his letter dated 8.3.2002 has stated that he did not want the third installment. While so, the appellant cannot say that he was not given the entire loan amount as agreed by the first respondent. Another contention of the appellant is that as the third installment of the loan amount was not disbursed to him, he was unable to know the equated monthly installment arising out of the loan of Rs.3,06,600 granted to him and therefore, he did not the installments regularly. The learned counsel for the first respondent submits that even if the appellant had taken a loan of Rs.3,06,600 instead of Rs.4,38,000 there is no change in the equated monthly installments and the appellant should have continued to pay the installments at the rate of Rs.5,344 as agreed by him. Therefore, the contention of the appellant that he was not able pay the installments in time as he was not given the third installment of loan cannot be accepted. The fact remain that the appellant himself has written letter the respondent that he waives the amount payable under the third installment. Now the first respondent has made a claim against the appellant only for the amount availed by the appellant.

7. The learned counsel for the appellant during his argument submits that when execution proceedings has been taken to realize the award amount, the decree holder shall first proceed against the movable and then only against the immovable and as such, the E.P proceedings at the first instance against the immovable property is not

maintainable and in support of his argument, he has relied upon Rule 68 of the Pondicherry Co-operative Societies Rules, 1973. From a reading of Rule 68 of the said Rules, it is seen that the decree holder shall make an application in the prescribed form before the Registrar wherein, he has to indicate whether he intends to proceed in the first instance against the immovable property mortgaged in favour of the decree holder or other immovable property or to secure the attachment of movable property. Therefore, the appellant's contention that the decree holder should have proceeded against the movable property at the first instance and then only he should proceed against the mortgaged immovable property in order to realize the award amount, cannot be accepted.

8. The appellant seeks the relief to set aside the order of the second respondent, dated 23.6.2003, passed in CEP 3/2003 and award, dated 27.9.2002, passed in ARC 519/2002. It is to be mentioned that as per Section 140 (3) of the Pondicherry Co-operative Societies Act, 1972, appeal against any decision passed or order made under sub-section (1) of Section 82, Section 83, sub-section (2), sub-section (3) or sub-section (4) of Section 84, Section 126, Section 133 or Section 157 or any award of an arbitrator under sub-section (2) or sub-section (3) of Section 84 shall be preferred within two months from the date of the decision, order, award, refusal, registration or approval complained of. In as-much-as the appellant has not chosen to challenge the award dated 27.9.2002 passed in ARC 519/2002 by way of appeal, review or revision, within the specified time limit, he has no locus standi either to challenge the order passed in CEP proceedings which has arisen out of the award passed in ARC 519/2002 or the said award itself at this stage of execution. Further, this Tribunal finds that there is absolutely no irregularity or illegality either in the proceedings in ARC 519/2002 or in CEP 3/2003 warranting any interference of this Tribunal.

9. In view the above discussion, it is decided that the present appeal preferred against the order, dated 23.6.2003, passed in CEP 3/2003 and award dated 27.9.2002 passed in ARC 519/2002 is not maintainable. This point is answered accordingly.

10. **In the result the appeal is dismissed.** The order dated 23.6.2003 passed in CEP 3/2003 and award dated 27.9.2002, passed in ARC 519/2002 are hereby confirmed. However, there is no order as to costs.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in the open Court on this the eleventh day of February 2005.

should be first given credit to the principal and only then to the interest cannot be sustained.

The subsequent interest shall be paid by the appellant at the rate of 6% p.a. from the date of award till realization.

Appeal is dismissed.

Case referred:

M.M. Veerappa Vs. Canara Bank, 1998 (1) Supreme 363 : (1998) 2 SCC 317.

This appeal coming on 8.2.2005 for final hearing before me in the presence of Mr. P. Krishnamoorthy, Advocate for the Appellant. Mr. S.P. Vassudevan, Advocate for the first respondent. Mr. M.V. Vaithilingam, Advocate for the second respondent, upon hearing both sides, after perusing the case records and having stood over for consideration, till this day, this court delivered the following:

J U D G M E N T

This is an appeal filed under Section 140(1)(b) of the Pondicherry Co-operative Societies Act, 1972 against the ex-parte award dated 5.9.2002, passed by the second respondent in A.R.C. No.140/2002 against the appellant herein.

2. The respondent before the Arbitrator, Co-operative Department Pondicherry, in A.R.C. No.140/2002 is the appellant and the petitioner before the Arbitrator is the first respondent and the Arbitrator, who passed the decree dated 5.9.2002 in A.R.C.140/2002 is the second respondent herein.

3. The case of the first respondent before the second respondent/Arbitrator in brief is as follows:

The appellant, as a member (Member No.11952), availed a loan of Rs.60,000/- on 5.1.1993, under loan account No. 54/CCL from the

first respondent bank, agreeing to repay the same in 12 equal monthly installments with interest at 19.5% per annum. The appellant was due to pay a sum of Rs.1,26,655 which included interest up to 31.3.2002. As the appellant did not pay any amount, the first respondent filed a suit for recovery of the outstanding loan amount in A.R.C.140/2002 before the second respondent/Arbitrator. The appellant herein, did not appear before the second respondent/Arbitrator and hence the Arbitrator having set the appellant ex-parte, decreed the suit, directing the appellant to pay a sum of Rs.1,26,667.90 with interest at 19.50% p.a. from 4.9.2002 till realization. Aggrieved by the said decree, the appellant has preferred the present appeal on the grounds that the second respondent/Arbitrator having conveniently suppressed the objections filed by this appellant on 26.8.2002 has passed an ex-parte award without giving an opportunity to the appellant of being heard in person and conducting an enquiry in the matter and the second respondent in collusion with the first respondent has conveniently omitted to account for the payments made by this applicant to a tune of Rs.37,500 on 3.1.1994, 6.4.1994, 4.8.1994, 26.12.1994 and 27.3.1995. Further, the second respondent failed to appreciate that there was an earlier arbitration in Arbitration No.3797/96 in respect of the same transaction, wherein, the appellant gave a letter stating that he is not liable to pay the amount claimed by the first respondent bank. The passbook shows that the bank is entitled to recover only a sum of Rs.59,113.90 and if the amount of Rs.37,500 paid by the appellant is given credit, the appellant would be liable to pay only an amount of Rs.19,113.90. The loan given to the appellant by the first respondent bank on 4.8.1998 is a secured loan on mortgage and charging of 16% interest with quarterly rests is illegal and opposed to principle laid down under the Usurious Loans Act, 1918 and the interest @ 6% instead of 16%. There is no need for attachment of property mortgaged and therefore, the notice for attachment, dated 25.5.2002 is groundless. The real reason for the first arbitrator in not proceeding with the arbitration was due to the tampering of accounts with overwriting in the cash book. Hence, the appellant has prayed to allow the appeal and set aside the impugned award dated 5.9.2002 with costs.

4. In the objection filed by the first respondent it is contended that the respondent has already presented the account ledgers and other records before this court for more than four occasions and the same was also perused by the appellant's counsel. While so, the present demand of the appellant for production of the loan transaction particulars from 4.8.1988 to till date and other books cannot be accepted. As the requirements of the appellant have already been fulfilled, the first respondent has prayed to dismiss the appeal.

5. Now the points for consideration are:

- i. Whether the first respondent-bank has not given credit to the five payments made on 3.1.1994, 6.4.1994, 4.8.1994, 26.12.1994 and 27.3.1995 to a tune of Rs.37,500 to the appellant's loan account and if so whether the appellant is liable to pay only Rs.19,113.90 as alleged in appeal memorandum?*
- ii. Whether the first respondent is entitled to get subsequent interest on the decree amount above 6% p.a from the date of award till realization?*

6. POINTS 1 & 2

The appellant is a member of the Pondicherry Co-operative Urban Bank Ltd. The appellant availed Cash Credit loan facility to a tune of Rs.50,000 from the first respondent-bank and by way of securing the said loan, the appellant executed a mortgage deed, dated 22.7.1988 in favour of the first respondent-bank. According to the mortgage deed, the appellant has to pay the amount with interest at the rate of 16% p.a. with quarterly rests. The mortgage deed executed by the appellant is available in the records produced before this court. Since the appellant failed to repay the loan amount due under the said cash credit facility, the first respondent initiated arbitration proceedings in A.R.C.No.140/2002, before the second respondent, for recovery of the amount due under the said loan. The second respondent, as Arbitrator passed a decree, dated 5.9.2002, in A.R.C 140/2002, directing the appellant to pay to the first respondent-bank, a sum of Rs.1,37,490.90, with subsequent interest @ 19.5 % p.a on Rs.1,26,667.90 from the

date of decree till realization. This appeal has been filed challenging the award passed by the second respondent.

7. The first objection of the appellant is that the first respondent has not given credit of certain payments referred in the Appeal Memorandum. The second objection is that prior to this arbitration proceedings in A.R.C. 140/2002, the first respondent filed A.R.C. 3797/96, wherein, another arbitrator was appointed to conduct the proceedings, but without disclosing the outcome or fate of the proceedings in A.R.C. 3797/96, the first respondent has filed the present A.R.C. 140/2002, appointing the second Arbitrator and as such, A.R.C. 140/2002 is illegal and *void ab initio*. The third objection of the appellant is that the first respondent is not entitled to claim interest at a rate exceeding 6 % p.a. and the claim of interest at 16% or 19.5% p.a. would clearly fall within the ambit and scope of Usurious Loans Act, 1918.

8. The appellant in the Memorandum of Appeal has stated that the first respondent has not given credit to the payments of Rs.2,500 on 3.1.1994 Rs.5,000 on 6.4.1994, Rs.10,000 on 4.8.1994, Rs.5,000 on 26.12.1994 and Rs.15,000 on 27.3.1995, totaling to Rs.37,500 made by the appellant. He would further state that the bank passbook reveals that the appellant has to pay only a sum of Rs.59,113.90 as on 19.11.1993 and if the above payments totaling to Rs.37,500 is deducted, the appellant would be liable to pay only the balance amount of Rs.19,113.90. But without taking into consideration the above fact, the second respondent/Arbitrator has passed an Award for Rs.1,37,490.90 with further interest on Rs.1,26,667.90 at the rate of 19.50% p.a. from 4.9.2002 until realization .

9. To prove the payments made by the appellant and the outstanding balance, the appellant has filed five pass books, some receipts for payment, etc. The first respondent has produced the statement of accounts, which indicates the loan availed by the appellant on various dates, the repayments made by the appellant and the balance outstanding. The entries in the passbook have been compared with the entries in the statement of accounts maintained by the first respondent and they tally with each other. The appellant has produced some receipts to show the payments and the amounts paid

under those receipts have also been given credit by the first respondent in the account of the appellant. On the other hand, the first respondent filed I.A. 4/2004, praying this court to receive some documents in support of their case. The documents are the letter dated 27.8.2002 sent by the second respondent to the appellant, the statement of transaction in the appellant's account from 19.11.1993 to 31.3.2002 and a notice dated 10.10.2002 sent by the first respondent to the appellant. The above said documents have also been relied upon and considered by the Arbitrator and they are received by this court in evidence as additional documents. Therefore, the first objection of the appellant that certain payments made by him were not given credit to by the first respondent cannot be accepted. On the other hand, all payments made by the appellant, including the five disputed payments, have been properly given credit in the loan account of the appellant. The entries made in the passbook of the appellant tally with the entries made in the statement of accounts maintained by the first respondent. As the entries in both the documents tally with each other, the appellant cannot contend that the payments made by him were not given credit.

10. The second objection of the appellant is that at the request of the first respondent, the first Arbitrator was appointed in the year 1996 and arbitration proceedings in A.R.C. No.3797/96 was conducted, wherein, the appellant filed objections and the then Arbitrator being satisfied with the objection, asked the Secretary of the Society to set right the accounts. But a second Arbitrator was appointed and he initiated proceedings in A.R.C. No.140/2002, without knowing the fate or outcome of the earlier arbitration proceedings. Hence, the appointment of second arbitrator is illegal and void and the decree passed by him is unsustainable in law. It is not the case of the appellant that he has paid the entire balance to the first respondent-bank. When the second Arbitrator was appointed, summons was issued to the appellant to participate in the proceedings, but he failed to appear. Therefore, the award was passed ex-parte.

11. The appellant has not shown any authority prohibiting the appointment of the second arbitrator. It appears that in the first arbitration proceedings, no finality was reached. Therefore, the second arbitrator was appointed and she initiated proceedings in

A.R.C.No.140/2002. Therefore, the contention of the appellant that the appointment of a second arbitrator is illegal and void is unsustainable in law.

12. The another objection of the appellant is that the payments have been made for giving credit towards the principal, but the payments made by the appellant have been adjusted towards interest and such appropriation is not in accordance with Sections 59 to 61 of the Indian Contract Act. The appellant had a running account with the first respondent-bank and he availed cash credit facility to a tune of Rs.50,000. The entries in the accounts ledger show the payments made by the appellant. The settled proposition of law is that if any payment is made towards a loan account, such payment is to be first appropriated towards interest and the balance, if any, has to be appropriated then towards principal. When the principal and interest are due from a debtor the payment by the debtor should be first applied to the interest and the balance if any to the principal. Therefore, the contention of the appellant that the payments made by him should be first given credit to the principal and only then to the interest cannot be sustained.

13. The last contention of the appellant is that though there is a clause in the mortgage deed with regard to payment of interest, it cannot be construed as payment of compound interest. The agreed rate of interest is 16% p.a. The second respondent while passing the award has directed the appellant to pay the interest at the rate of 19.5% p.a. The appellant has availed loan by executing a mortgage deed. The Hon'ble Supreme Court in ***M.M. Veerappa Vs. Canara Bank, 1998 (1) Supreme 363 : (1998) 2 SCC 317*** has held that order 34, Rule 11 would apply to a suit on mortgage in respect of interest for the period after filing of suit and is not overridden by bank and that it has been held in the judgment that the court can direct the payment of interest at 6% p.a. from the date of suit till date of payment. Therefore, the first respondent is entitled for interest at 6% p.a. from the date of award till realization. As per the accounts of the first respondent– bank the appellant was due to pay a sum of Rs. 1,37,490.90 and the same has to be paid with further interest at the rate of 6% p.a. on Rs.1,26,667.90 from 4.9.2002 to till realization.

14. In view of the above discussions, it is decided that the appellant is liable to pay a sum of Rs.1,37,490.90 to the first respondent bank, thereby, confirming the decree passed by the second respondent/Arbitrator. However, this court orders that the subsequent interest shall be paid by the appellant at the rate of 6% p.a. on Rs.1,26,667.90 from the date of award i.e. 4.9.2002 till realization.

These points are answered accordingly.

15. ***In the result the appeal is dismissed***, thereby, confirming the decree passed by the second respondent/Arbitrator directing the appellant to pay to the first respondent-bank a sum of Rs.1,37,490.90 but with a modification that the appellant shall pay subsequent interest at the rate of 6% p.a., instead of 19.5% p.a. as ordered by the second respondent/Arbitrator on Rs.1,26,667.90 from 4.9.2002 till realization. However, there is no order as to costs.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this 4th day of March, 2005.

Note: *The order of the Tribunal was affirmed by the High Court of Madras in CRP (NPD) No.1424/2005 dated 4th July 2006.*

**IN THE COURT OF THE PRINCIPAL DISTRICT COURT AT
PONDICHERRY**

**PRESENT: THIRU M. CHINNAPANDI, B.A., B.L.,
PRINCIPAL DISTRICT JUDGE**

Thursday, the 31st day of March 2005

CO-OPERATIVE APPEAL No. 9/2002

P. Vijayan	...	
	Vs.	Appellant
The Manager, Mannadipet Commune Co-op. Housing Society Ltd., No. P. 512, Madagadipet & Post		
	...	Respondent

(On appeal against the Order of attachment, dated 25.6.2002 passed in C.E.P. No. 125/91, by Sale Officer, Co-operative Department, Pondicherry.)

CO-OPERATIVE APPEAL No. 1/2003

1. D. Narasiman 2. N. Vijaya	...	
	Vs.	Appellants
The Manager, Mannadipet Commune Co-op. Housing Society Ltd., No. P.512, Madagadipet & Post		
	...	Respondent

(On appeal against the Order of attachment, dated 25.6.2002, passed in C.E.P. No. 110/98, by Sale Officer, Co-operative Department, Pondicherry.)

CO-OPERATIVE APPEAL NO.2/2003

A.L. Parguna Pandi

...
Vs.

Appellant

The Manager,
Mannadipet Commune Co-op. Housing
Society Ltd., No. P.512, Madagadipet & Post ...
Respondent

(On appeal against the Order of attachment,
dated 31.12.2002, passed in C.E.P. No. 480/2002,
by Sale Officer, Co-operative Department, Pondicherry.)

Important points

The respondent is at liberty to proceed with the mortgaged property in any manner and there is no bar for the Sale Officer of the respondent-society to pass an order of attachment in respect of the mortgaged properties.

The Sale Officer is entitled to file execution petition before the Arbitrator, who passed the award, for realization of the decretal amount.

The appellants having declared that they have clear, valid, marketable and conveyable title over the mortgaged properties, they cannot now try to set a new claim of joint family status over the mortgaged properties and thereby, try to escape from their liability towards the respondent-society

All the appeals are dismissed..

These appeals coming on 30.3.2005 for final hearing before me in the presence of Thiru. K. Venkitesan, Advocate for the appellants, Thiru L. Swaminathan, Advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration, till this day, this Court delivered the following:

COMMON JUDGMENT

The defendant/judgment debtors before the Arbitrator in the respective A.R.Cs. are the appellants herein.

2. The respondent filed cases in A.R.C.Nos. 4945/90, 4479/96 and 681/2001 against the appellants herein for recovery of the amounts due by them under the housing loan.

3. The facts of the case, in brief, are as follows:

The appellants approached the respondent for a loan for the purpose of constructing a house. The respondent sanctioned the loan to the appellants, but they failed to repay the same as agreed and thereby committed default in payment of any amount, either towards principal or interest. Therefore, the respondent initiated proceedings before the Arbitrator, who passed a decree in the A.R.Cs., directing the appellants to pay the decretal amounts as mentioned therein. Since the appellants failed to pay the decretal amount, the respondent initiated execution proceedings in C.E.Ps. 125/91, 110/98 and 480/2002 respectively, pursuant to which, the Sale Officer of the respondent has issued notice of attachment of the immovable properties that have been mortgaged with the respondent with a view to sell the same in public auction and thereby, realize the decretal amount. Aggrieved by the said action of the respondent, the appellants have preferred the present appeals.

4. Now the point for consideration is:

Whether the appeal against the attachment orders, passed in the execution of the award is maintainable?

5. **ON POINT**: Co-operative Appeal No.9/2002 has been filed to set aside the order of attachment, dated 25.6.2002, passed in C.E.P. No.125/91 by the Arbitrator-cum-Deputy Registrar/Sale Officer of the Co-operative Department, Pondicherry.

Co-operative Appeal No.1/2003 has been filed to set aside the order of attachment, dated 25.6.2002, passed in C.E.P. No.110/98 by

the Arbitrator – cum–Deputy Registrar/Sale Officer of the Co-operative Department, Pondicherry.

Co-operative Appeal No.2/2003 has been filed to set aside the order of attachment, dated 31.12.2002, passed in C.E.P. No.480/2002 by the Arbitrator-cum-Deputy Registrar/Sale Officer of the Co-operative Department, Pondicherry.

6. Since the question of law and facts involved in all the above three appeals are one and the same and moreover as the respondent is the same, though the appellants are different, a common Judgment is passed.

7. The appellants have approached the respondent co-operative housing society for a housing Loan. The respondent sanctioned the loan to the appellants, who after having availed the said loan, constructed houses in their respective plots and by way of securing the loan they have mortgaged the plot along with the building constructed thereon in favour of the said society. The appellants have also executed necessary documents in favour of the respondent-society, agreeing to repay the loan in monthly installments. The appellants have paid only a paltry sum towards repayment of the loans and thereafter they did not pay any amount either towards principal or interest despite the respondent's repeated demands. Since the appellants committed default in payment of the monthly installments, as agreed, a huge sum of money became outstanding in the loan account of the appellants. The respondent being a co-operative society initiated arbitration proceedings before the Deputy Registrar of Co-operative Societies in A.R.C. Nos.4945/90, 4479/96 and 681/2001 respectively. The appellants appeared before the Arbitrator in the said proceedings and after due enquiry, the Arbitrator passed awards in the above A.R.Cs. As the appellants did not come forward to pay the decretal amounts, the Sale Officer of the respondent-society initiated execution proceedings for realization of the award amount by filing the C.E.P. Nos.125/91, 110/98 and 480/2002 before the Arbitrator, wherein orders were passed for attachment of the properties mortgaged with the respondent-society.

8. The appellants have raised three issues. The first issue is that the Sale Officer has no power to attach the properties of the mortgagees. The second issue is that the mortgaged properties cannot be attached. The third issue is that since the attached properties belong to the undivided Hindu joint family, the attachment is liable to be raised.

9. Now it has to be seen that as contemplated under Section 133 of the Pondicherry Co-operative Societies Act, the Registrar of Co-operative Societies is empowered to delegate his powers to the Deputy Registrar of Co-operative Societies or the Sale Officer to take steps for collecting the outstanding loan amount. Accordingly, the Deputy Registrar of Co-operative Societies has been appointed as Presiding Officer in the A.R.C. proceedings. Further, after passing of the award, the Sale Officer is entitled to file execution petition to realize the amount decreed as per the award, for which, he can bring the mortgaged properties for sale. Since the loan has been secured by the appellants themselves by creating a registered mortgage over the plot and house constructed thereon, the same would not have any adverse effect if at all an order of attachment is passed by the Sale Officer of the respondent, more particularly, when the respondent-society has every right to proceed against the immovable property mortgaged in their favour in order to realize the decretal amount. Therefore, the respondent is at liberty to proceed with the mortgaged property in any manner and there is no bar for the Sale Officer of the respondent-society to pass an order of attachment in respect of the mortgaged properties. Therefore, the first contention of the appellant that the mortgage property cannot be attached is unsustainable in law.

10. The second contention of the appellant is that the Sale Officer is not competent to execute the award passed by the Arbitrator. According to the provisions of the Co-operative Societies Act, the Sale Officer is entitled to file execution petition before the Arbitrator, who passed the award, for realization of the decretal amount. Therefore, the contention of the appellant that the Sale Officer is incompetent to execute the award is also unsustainable in law.

11. The appellant themselves have executed the registered mortgage deeds in respect of their respective plot with building thereon, in their capacity as absolute owners of their respective properties. Even in the mortgage deeds executed by the appellants, they have declared that they are the absolute owners of the property. The appellants having declared that they have clear, valid, marketable and conveyable title over the mortgaged properties, they cannot now try to set a new claim of joint family status over the mortgaged properties and thereby, try to escape from their liability towards the respondent-society. Hence, the third contention of the appellant that the mortgaged properties cannot be attached, since they are joint family properties, cannot be sustained.

12. In view of the above discussions, it is decided that the three orders of attachment, passed by the Arbitrator-cum-Deputy Registrar/Sale Officer of the Co-operative Department, Pondicherry, viz. (1) dated 25.6.2002, passed in C.E.P. No.125/91, (2) dated 25.6.2002, passed in C.E.P. No.110/98 and (3) dated 31.12.2002, passed in C.E.P. No.480/2002 are maintainable in law and on facts and I find no reason to set aside the said Orders.

This point is answered accordingly.

13. In the result:

Co-op. A. No.9/02 is dismissed, but without costs. The order, dated 25.6.2002, passed in C.E.P. No.125/91, by the Sale Officer, Co-operative Department, Pondicherry, is hereby confirmed.

Co-op. A. No.1/03 is dismissed, but without costs. The order, dated 25.6.2002, passed in C.E.P. No.110/98 by the Sale Officer, Co-operative Department, Pondicherry, is hereby confirmed.

Co-op. A. No.2/03 is dismissed, but without costs. The order, dated 31.12.2002, passed in C.E.P. No.480/2002 by the Sale Officer, Co-operative Department, Pondicherry, is hereby confirmed.

Directed to the stenographer, transcribed by him, corrected and pronounced by me in the open Court on this the 31st day of March 2005.

Note: *The order of the Tribunal in Co-operative Appeal 2/2003 dated 31st March 2005 was affirmed by the High Court of Madras in C.R.P. (PD) No.1207 of 2005 dated 12th October 2006.*

Indian Contract Act, 1872 - S. 60 – In case of indefinite payment by the debtor, where both principal and interest become due, the creditor is entitled to appropriate the amount paid by the debtor first towards interest and then towards the principal.

Civil Procedure Code, 1908 – O.34, R.11 - It would apply to a suit on mortgage in respect of interest for the period after filing of suit and is not overridden by Banking Regulation Act and that it has been held in the judgment that the court can direct the payment of interest at 6% per annum from the date of suit till date of payment. Therefore, the appellant is entitled to pay further interest only at 6% per annum on the principal amount from the date of award passed by the arbitrator till realization.

Appeal is allowed.

Cases referred

1. *Central Bank of India vs. Ravindra and others, AIR 2001 SC 3095 : 2001 (9) JT 102;*
2. *Syndicate Bank vs. Mahalaxmi Ginning Factory, AIR 2005 Kar 5;*
3. *A.S. Ramakrishnan vs. Bank of Baroda, Madurai, 2001 (1) CTC 662;*
4. *M.M. Veerappa vs. Canara Bank, (1998) 1 Supreme 363 : (1988) 2 SCC 317.*

This appeal coming on 15.6.2006 for final hearing before me in the presence of the appellant appearing in person, M/s. L. Swaminathan and I. Iankumar, Advocates for the respondents, upon hearing both sides, after perusing the case records and having stood over for consideration, till this day, this court delivered the following:

J U D G M E N T

This is an appeal filed under Section 140(1)(c) of the Pondicherry Co-operative Societies Act, 1972, praying this Court to set aside the order of the first respondent, to order for the recalculation

of the rate of penal interest in the light of the directions of the Supreme Court and to order that the interest awarded by the Arbitrator in A.R.C. No.32/M/98-99, dated 7.1.1999 on the award amount of Rs.2,16,556 at 18.2% per annum with effect from 3.6.1998 be reduced to 6% per annum as per Section 34 of CPC.

2. The facts of the case, in brief, are as follows.

The appellant on 15.9.1992, availed a house mortgage loan of Rs.1,11,200 from the second respondent, agreeing to repay the same along with interest accrued thereon, in monthly installments spread over a period of 11 years. The appellant failed to remit the loan installments to the second respondent according to the scheduled dates. Since the appellant committed willful default in the repayment of amounts, the second respondent filed a claim before the Deputy Registrar of Co-operative Societies, Mahe, in A.R.C. No.32/M/98-99 and the Co-operative Officer after perusing the documents passed a decree on 7.1.1999, directing the appellant herein to pay to the second respondent, a sum of Rs.2,16,556 with subsequent interest on the principal amount of Rs.1,11,200 at 18.2% per annum from 3.6.1998 till date of realization. Though the fact of passing of the decree against the appellant was officially intimated to the appellant, the appellant did not choose to pay the decretal amount to the second respondent. Therefore, the second respondent filed an execution petition before the Registrar of Co-operative Societies, Pondicherry and obtained an attachment order against the appellant in C.E.P. No.5/2003 as contemplated under Section 133 of the Pondicherry Co-operative Societies Act, 1972, whereby the first respondent was authorized to execute the attachment order. Pursuant thereto, the first respondent issued the final notice as contemplated under Section 133 of the Pondicherry Co-operative Societies Act, 1972, directing the appellant to remit on or before 10.3.2004, a sum of Rs.1,11,200 towards principal, Rs.1,27,452 towards interest, Rs.1,40,888 towards penal interest and Rs.41 towards notice charges, etc., thereby, totaling to Rs.3,79,581 and further informing that in case of failure to pay the said amount, the movable and immovable properties belonging to the appellant would be attached and brought for sale, besides attachment of salary. Aggrieved by the said final order of the first respondent, the appellant has preferred the present appeal on the grounds that the first

respondent has erred in calculating the penal interest by violating the directions of the Hon'ble Supreme Court in **Central Bank of India vs. Ravindra and others** reported in **AIR 2001 SC 3095 (para 55 at page 3118) : 2001 (9) JT 102** and he ought to have calculated the penal interest at the rate of 3% on each defaulted monthly installment of Rs.1,746 and even as per the mortgage deed, the monthly installment is to be paid on the expiry of one month from the date on which the building is handed over to the mortgager by the mortgagee and further the interest charged is against public policy and is gross violation of the Indian Contract Act.

3. The first respondent filed a counter statement, which was adopted by the second respondent. In the counter statement, it is contended that totally a sum of Rs.1,11,200 was sanctioned as loan to the appellant for construction of house, out of which, Rs.11,200 was to be treated as the appellant's share capital. As per the terms and conditions of the loan as agreed to by the appellant, the appellant is liable to pay penal interest at 3% per annum and he is estopped from raising any contra plea at the stage of execution. It is further contended that the appellant had agreed to pay the monthly installment at the rate of Rs.1,746 commencing from June 1993, but the appellant had chosen to pay the first installment only on 28.5.1997, i.e., after a lapse of four years. Since the appellant has made belated payments, the amounts will be first adjusted towards postage and miscellaneous charges, secondly towards penal interest thirdly towards interest and finally towards the outstanding principal. Thus, out of Rs.56,000 paid by the appellant on various dates from 28.5.1997 to 10.12.2003, a sum of Rs.54,581.60 was adjusted towards penal interest after deduction of postage and miscellaneous charges. It is further contended that the allegation of the appellant that he has paid Rs.82,000 is incorrect. That apart, the appellant has paid Rs.1,50,000 on 23.7.2004 in pursuance of the order passed by this Court. The appellant having slept over his rights cannot make hue and cry at this stage of execution proceedings. He has prayed for the dismissal of the appeal.

4. Now the point for consideration is:
Whether the appeal against the order, passed in the execution of the award is maintainable?

5. **ON POINT:** The appellant is a member of the Mahe Co-operative Housing Society Limited No. P.152, with member No.513. The appellant has approached the second respondent for availing housing loan for the purpose of constructing a house. The second respondent agreed to grant loan of Rs. 1,11,200 by way of three installments. The first installment of Rs.33,330 was granted on 15.9.1992, the second installment of Rs.44,440 was granted on 18.12.1992 and the third installment of Rs.33,430 was granted on 13.5.1993. Thus, the second respondent has totally granted a loan of Rs.1,11,200 to the appellant. Having availed the said loan, the appellant executed a deed of mortgage in favour of the second respondent agreeing to repay the same with interest at the rate of 15.2% per annum in 132 monthly installments at the rate of Rs.1,746 each, the first installment to commence from June 1993. The appellant has further agreed to pay the monthly installments on or before the 15th of each month and in case of committing default in payment of any installment, the appellant has agreed to pay overdue interest at 3% per annum over the original lending rate.

6. It is an admitted fact that the appellant did not repay the loan by way of installments as agreed by him. In fact, though the appellant ought to have commenced payment of first installment in June 1993 itself, the appellant has repaid some amount towards the loan for the first time only on 28.5.1997, i.e. after a lapse of four years. According to the first respondent, the appellant has paid a sum of Rs.92,000 on various dates between 28.5.1997 and 10.12.2003, out of which, a sum of Rs.90,110 has been appropriated towards penal interest. A further sum of Rs.1,50,000 paid by the appellant to the second respondent on 23.7.2004, in pursuance of the order dated 22.4.2004, passed in I.A. No.5/2004 has also been appropriated towards penal interest. It is the contention of the second respondent that as on 31.3.2005, the appellant is due to pay a sum of Rs.1,11,200/- towards principal, a sum of Rs.1,27,633/- towards interest and a sum of Rs.38,850 towards penal interest, thereby, totaling to Rs.2,77,683.

7. On the other hand, the appellant would contend that even according to the deed of mortgage entered into between him and the second respondent, 132 monthly installments at the rate of Rs.1,746 would work out to Rs.2,30,472 and inasmuch as the appellant has

admittedly paid Rs.2,42,000 (Rs.92,000 + Rs.1,50,000), the appellant has in fact paid amount in excess than what he is actually due to pay to the second respondent under the deed of mortgage. The appellant would further contend that the second respondent is not entitled to collect any interest on the penal interest, because penal interest is charged by way of penalty for non-payment of installment amounts and as such, the same cannot be capitalized, as it is opposed to public policy. In support of his contention, he has relied upon the ruling reported in ***Syndicate Bank vs. Mahalaxmi Ginning Factory, AIR 2005 Karnataka 5***. He would further submit that interest on interest, whether simple, compound or penal cannot be claimed on the amount of penal interest and if this strategy is applied, overdue interest of each installment of Rs.1,746 would works out to Rs.50 and thus for 132 installments, the overdue interest works out to Rs.6,600 and as such, the appellant is not at all liable to pay any amount to the second respondent. He would also contend that the first respondent in para 9 of their counter statement has fairly conceded that some percentage of reduction in the penal interest is universally given in all cases and such concession can also be shown to the appellant. The appellant has also contended that once decree has been passed, the arbitrator cannot order for the subsequent interest at the contractual rate. Under the above circumstances, the appellant will not be liable to pay any amount to the second respondent.

8. Upon hearing the arguments of both sides, it is seen that the appellant and the respondents differ only on the point of levy of penal interest and levy of subsequent interest at the contractual rate. Both sides have admitted that the appellant has repaid Rs.2,42,000 as of 23.7.2004. No doubt, if the appellant had adhered to the installment payments as agreed by him, he would have paid only a sum of (Rs.1,746 x 132) Rs.2,30,472 commencing from June 1993 and ending with May 2004. But as the appellant had grossly deviated from the agreed terms of repayment, he cannot have recourse to installment payments.

9. The admitted facts are that the appellant was granted a loan of Rs.1,11,200 in three installments and the last installment was given on 13.5.1993. Hence, as on 13.5.1993 the appellant had availed the entire loan of Rs.1,11,200. Further, at the time of availing loan, the

appellant has agreed to repay the loan with interest at 15.2% per annum in 132 monthly installments of Rs.1,746 each. The first installment was to commence from June 1993 and in case of default of any installment, the appellant has agreed to pay overdue interest at 3% per annum over and above the agreed rate of 15.2% per annum. Though the repayment of installments ought to have commenced in June 1993 itself, the appellant had remained quiet for nearly four years and thereafter, he has chosen to make some payments only on and from 28.5.1997, thereby, violating the original terms of repayment as agreed by him with the second respondent. It is, therefore, clear that from 13.5.1993 till 28.5.1997, the appellant had held the entire loan amount of Rs.1,11,200 without making any payment either towards interest or principal. At the same time, it is to be seen that though the second respondent was very well aware of the fact that the appellant has been committing default, they too have not chosen to initiate recovery proceedings against the appellant within a reasonable time. The second respondent has chosen to initiate proceedings after a long lapse of time. It is further found that the second respondent has also decreased the rate of interest from 15.2% to 11%, as seen from the circular. Therefore, it is clear that the second respondent has deviated from the agreement of mortgage and therefore, the second respondent as a matter of right cannot seek the appellant to pay penal interest. Hence, this Court finds that it would be justified to waive the penal interest and therefore, the second respondent shall not levy any penal interest on the appellant and any amount paid by the appellant and so far appropriated by the second respondent towards penal interest shall be adjusted only towards interest on the principal sum and the second respondent shall not charge any amount towards penal interest. This Court further finds that the second respondent has reduced the rate of interest from 15.2% per annum to various rates and lastly in October 2005, the second respondent has reduced the rate of interest to 11%. Therefore, the second respondent shall re-calculate the interest from the date of borrowal at the varied rate of interest and shall give due credit to the payments made by the appellant first towards interest and then to the outstanding principal sum.

10. Admittedly, the appellant has paid various amounts to the second respondent on various dates and lastly, he has made a payment of Rs.1,50,000 on 23.7.2004 in pursuance of the order, dated

22.4.2004, passed in I.A. No.5/2004. According to the second respondent, as on 31.3.2005, the appellant was liable to pay a sum of Rs.2,77,653 totally. But he has paid only Rs.2,42,000. According to Section 60 of the Indian Contract Act, in case of indefinite payment by the debtor, where both principal and interest become due, the creditor is entitled to appropriate the amount paid by the debtor first towards interest and then towards the principal.

11. Another contention of the appellant is that while passing the decree, the Court can direct payment of interest at 6% per annum from the date of suit and not at contractual rate and the decree of the Arbitrator directing payment of interest at 18.2% per annum is incorrect and it has to be set aside, since Order 34, Rule 11 of C.P.C. would apply to suit on mortgages in respect of interest for period after filing of suit and is not overridden by Section 21-A of the Banking Regulation Act and in support of the same, he has relied upon the ruling of the Hon'ble High Court of Madras in **A.S. Ramakrishnan vs Bank of Baroda, Madurai (2001}{1}CTC 662)**. Though there is a clause in the mortgage deed with regard to payment of interest, it cannot be construed as payment of compound interest. The agreed rate of interest is 15.2% per annum. The second respondent while passing the award, has directed the appellant to pay the interest at the rate of 18.2% per annum. The appellant has availed loan by executing a mortgage deed. The Hon'ble Supreme Court in **M.M. Veerappa vs. Canara Bank, (1998) 1 Supreme 363 : (1998) 2 SCC 317** has held that Order 34, Rule 11 would apply to a suit on mortgage in respect of interest for the period after filing of suit and is not overridden by Banking Regulation Act and that it has been held in the judgment that the court can direct the payment of interest at 6% per annum from the date of suit till date of payment. Therefore, the appellant is entitled to pay further interest only at 6% per annum on the principal amount of Rs.1,11,200 from the date of award passed by the arbitrator till realization.

12. **In the result, the appeal is allowed.** The impugned final notice under Section 133 of the Pondicherry Co-operative Societies Act, dated 2.3.2004, issued by the first respondent / Sale Officer is hereby set aside. The second respondent is hereby directed to recalculate the interest on Rs.1,11,200 at various rates, as reduced by

them from time to time and all payments so far made by the appellant shall be first appropriated towards interest on the principal sum and then towards the outstanding principal and no amount shall be appropriated towards any penal interest. The subsequent interest on the outstanding principal amount shall be at 6% per annum from the date of award passed by the Arbitrator till realization. The appellant shall pay the outstanding balance together with interest to the second respondent-society in full quits within three months from the date of this judgment, failing which, the first respondent shall proceed against the appellant as contemplated under Section 133 of the Pondicherry Co-operative Societies Act. However, there is no order as to costs.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in the open Court on the 19th day of June 2006.

BEFORE THE LIEUTENANT GOVERNOR, PONDICHERRY

Dated, the Twenty fifth day of November, One thousand nine hundred
and eighty two.

**PRESENT : THIRU K.M. CHANDY
LIEUTENANT GOVERNOR,
PONDICHERRY.**

R.P. No. 3/1982

Thiru N. Ramasamy,
Chairman,
Pondicherry Co-operative Milk Producers Union ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
Pondicherry.
2. Thiru J. Kumar,
President,
Kariamianickam Milk Producers
Co-operative Society ... Respondents

Important point

The Pondicherry Co-operative Societies Act, 1972 – Ss. 34(1)(i), 34(6), 35 – S.34(1)(i) mentions about the disqualification described under Section 35, it has to be admitted that clause (a) of sub-section (6) of Section 34 of the Act will apply also to a member of the committee who has become subject to the disqualification described in sub-section (1) of Section 35. In view of this conclusion, it has to be admitted that a member of the committee of a registered society shall be deemed to have ceased to hold his office as a member of the said committee, right from the moment he has suffered the disqualification explained under sub-section (1) of Section 35 of the Act. In other words, right from the date on which a

member of the committee of a registered society has commenced holding the office of President in more than one registered society, he shall be deemed to have ceased to hold his office as the member of the said committee. This disqualification will apply equally to the membership of the committees of all the registered societies, with which the concerned person is associated.

Revision petition is dismissed.

This revision petition coming on for final hearing on 8.11.1982 in the presence of Thiru R. Subbaraya Gounder, counsel for the revision petitioner and Thiru S. Janardhana Reddiar, counsel for the second respondent and having stood over till this day for consideration, the Lieutenant Governor, Pondicherry passed the following:

ORDER

This is a revision petition filed under Section 141 of the Pondicherry Co-operative Societies Act praying the Government to set aside the order of the Registrar of Co-operative Societies dated 14.10.1982 passed under Section 141 of the Pondicherry Co-operative Societies Act in ARC No.1502/82.

2. This revision petition relates to an election dispute raised under Section 84 of the Pondicherry Co-operative Societies Act, 1972 before the Registrar of Co-operative Societies by the second respondent herein. By raising this dispute the second respondent herein had challenged the election of the revision petitioner to the committee of management of the Pondicherry Co-operative Milk Producers Union Limited in the election held on 22.5.1982, on the ground that the revision petitioner was not eligible for being elected as a member of the committee of the Pondicherry Co-operative Milk Producers Union Limited, in view of the disqualifications suffered by him under sub-section (1) of Section 35. The main contention of the second respondent in the election dispute was that during the period between 12.3.1982 and 6.5.1982 the revision petitioner had held the office of the President in Embalam Milk Producers Co-operative Society and also in the Pondicherry Co-operative Industrial Printing

Press Limited simultaneously and as such he is disqualified from being elected to the committee of the Co-operative Milk Producers Union.

3. This election dispute was transferred by the Registrar to the Deputy Registrar (Audit) for disposal under sub-section (2) of Section 84 of the Act. After hearing both the parties and after perusing all the relevant records, the Deputy Registrar (Audit), Pondicherry passed an order on 12.8.1982 in ARC No.1421/82 declaring that the election of the revision petitioner to the committee of management of Pondicherry Co-operative Milk Producers Union Limited was null and void in as much as he had no locus standi to be even the President of the Embalam Milk Producers Co-operative Society Limited on the date of the election.

4. Aggrieved by the aforesaid order of the Deputy Registrar (Audit), Pondicherry, the revision petitioner initially preferred a revision petition under Section 141 of the Act before the Registrar of Co-operative Societies, Pondicherry. After hearing both the parties, the Registrar of Co-operative Societies also came to the conclusion that the election of the revision petitioner to the Pondicherry Co-operative Milk Producers Union is null and void consequent on the disqualification incurred by him under Section 35 of the Act by virtue of his holding the post of President in more than one registered society during the period from 12.3.1982 and 6.5.1982. This order was passed by the Registrar on 14.10.1982 in ARC No.1502/82.

5. Aggrieved by the aforesaid order of the Registrar of Co-operative Societies, the present revision petition has been filed to the Government under Section 141 of the Act. The revision petitioner has now challenged the legality, regularity and propriety of the decision of the Registrar of Co-operative Societies declaring his election to the committee of management of the Pondicherry Co-operative Milk Producers Union as null and void. The main point for consideration now is whether the revision petitioner's election to the committee of management of the Pondicherry Co-operative Milk Producers Union is null and void in view of the disqualification incurred by him under Section 35 of the Act.

6. The election to the committee of management of the Pondicherry Co-operative Milk Producers Union was held on 22.5.1982. The electoral college for such election consists of the Presidents of all the Primary Milk Producers Societies in the Union territory of Pondicherry. The revision petitioner contested the election as a delegate of the Embalam Co-operative Milk Producers Society Limited, in his capacity as the President said society. Even at the time of election, the second respondent herein J. Kumar, President of Kariamanickam Milk Producers Co-operative Society had raised an objection before the election officer contending that the revision petitioner was not eligible for being elected to the committee of management of the Pondicherry Co-operative Milk Producers Union, in view of the fact that he had held the office of the President in more than one co-operative society during the period from 12.3.1982 and 6.5.1982. The election officer has brushed aside the objection and permitted the revision petitioner to contest the election, since the second respondent herein could not substantiate his allegations by producing documentary evidence.

7. Later on, when the election dispute was heard by the Deputy Registrar (Audit), Pondicherry, he had summoned the relevant records of both the Embalam Co-operative Milk Producers Society Limited and the Pondicherry Co-operative Industrial Printing Press Limited and satisfied himself that the revision petitioner herein had actually held the office of President in both these societies simultaneously right from 12.3.1982 the date on which he was elected as President of Embalam Co-operative Milk Producers Society Limited, till 6.5.1982 the date on which he resigned from the presidentship of the Pondicherry Co-operative Industrial Printing Press Limited. This is now an admitted fact and the revision petitioner has not disputed the truth of this allegation.

8. It is thus clear that the revision petitioner herein had contested in the election held on 22.5.1982 to the committee of management of the Pondicherry Co-operative Milk Producers Union Limited, only in his capacity as the President of the primary society namely Embalam Co-operative Milk Producers Society Limited. It is now an admitted fact that on 12.3.1982 the date on which the revision petitioner was elected as President of the Embalam Co-operative Milk Producers Society Limited, he was already holding the office of

President of Pondicherry Co-operative Industrial Printing Press Limited. He had not chosen to resign the office of President of the Pondicherry Co-operative Industrial Printing Press Limited. Then he chose to assume office of the President in the Embalam Co-operative Milk Producers Society Limited. Instead he had continued to hold the office of President in the two registered co-operative societies for nearly 55 days till he ultimately resigned the office of President of the Pondicherry Co-operative Industrial Printing Press Limited on 6.5.1982. The short point for consideration, therefore, is whether by doing so, he gets disqualified under Section 35 of the Act and thereby ceases to hold offices of President in both the societies by virtue of Section 34(6) of the Act.

9. Section 35 enumerates the disqualification which could be incurred by an office bearer of a registered society. In fact, the heading given for Section 35 also is “disqualification for office bearers”. Sub-section (1) clearly specifies that a member of the committee shall not hold any office of President, Chairman, Vice-President, Secretary, Assistant Secretary, Treasurer, or an office of any other designation in more than one registered society. As per clause (i) of sub-section (1) of Section 34 of the Act, no person shall be eligible for being elected or appointed as a member of a committee, if he has been disqualified under Section 35. If these two provisions in the Act, namely sub-section (1) of Section 35 and clause (i) of sub-section (1) of Section 34 are read together, it could be inferred that it is disqualification to a member of the committee of a registered society to hold the office of President in more than one registered society and as such if any member of the committee of a registered society suffers such disqualification, he shall become ineligible for being elected or appointed as a member of a committee.

10. It is also worthwhile to consider at this juncture the provisions contained in clause (a) of sub-section (6) of Section 34 of the Act which specifies categorically that a member of the committee shall cease to hold his office as such, if he becomes subject to any of the disqualifications mentioned in sub-section (1).

11. In view of the fact that clause (i) of sub-section (1) of Section 34 mentions about the disqualification described under Section 35, it

has to be admitted that clause (a) of sub-section (6) of Section 34 of the Act will apply also to a member of the committee who has become subject to the disqualification described in sub-section (1) of Section 35. In view of this conclusion, it has to be admitted that a member of the committee of a registered society shall be deemed to have ceased to hold his office as a member of the said committee, right from the moment he has suffered the disqualification explained under sub-section (1) of Section 35 of the Act. In other words, right from the date on which a member of the committee of a registered society has commenced holding the office of President in more than one registered society, he shall be deemed to have ceased to hold his office as the member of the said committee. This disqualification will apply equally to the membership of the committees of all the registered societies, with which the concerned person is associated.

12. Applying the aforesaid principles to the present case, we may have to necessarily conclude that the present revision petitioner must be deemed to have ceased to hold the office of the member of the committee in the Pondicherry Co-operative Industrial Printing Press Limited as well as the Embalam Co-operative Milk Producers Society Limited right from the 12.3.1982, the date from which he continued to hold the office of President in both the aforesaid societies. As this conclusion is based on the correct interpretation of the necessary provisions under the statute, the revision petitioner herein has no locus standi at all to contest the election of the committee of management of the Pondicherry Co-operative Milk Producers Union Limited which was held on 22.5.1982 as a delegate of the Embalam Co-operative Milk Producers Society Limited by virtue of being the President of the said society on that date and, therefore, his election to the Pondicherry Co-operative Milk Producers Union Limited has to be necessarily declared as null and void.

13. The intention of the legislature is very clear from a reading of sub-sections (1) and (2) of Section 35 of the Act. Sub-section (1) specifically debar an office bearer of a registered society from holding the office of President, Chairman, Vice-President, Secretary, Assistant Secretary, Treasurer or an office of any other designation in more than one registered society. Sub-section (2) of Section 35 is an enabling

provision which provided, some time limit to exercise the option, to a member of the committee of management who was office bearer of more than one registered society at the commencement of Pondicherry Co-operative Societies Act, 1972, in view of the fact that this specific embargo was not in existence under the statute which had existed prior to the commencement of the present Act. Even then, this provision has only given an option to such member of a committee to resign his office in all but one of the societies, before the expiry of the period of 90 days from the commencement of the Pondicherry Co-operative Societies Act, 1972. This provision further specifies that if any member of a committee does not choose to resign his office from in all but one of the societies within the period specified, he shall cease to be an office bearer of all such registered societies. Thus the intention of the legislature appears to be that right from the commencement of the present Pondicherry Co-operative Societies Act, no member of a committee of a registered society shall hold the office of President etc. in more than one registered society and that if any person manages to hold the office of President etc. in more than one registered society simultaneously, he shall cease to be the office bearer of all such registered societies.

14. Thus, we see that while sub-section (2) of Section 35 gives an option to a member of the committee of management who is an office bearer of more than one registered society, to choose one among them within 90 days from the commencement of the Act, sub-section (1) of the said section makes it clear that a member of the committee who is already an office bearer in one society and gets elected to the office of the President etc. in another society has to opt and decide as to which office he should retain, before actually he assumes the office of the President etc. in the second society.

15. Before parting with the case, I wish to mention that both the Deputy Registrar (Audit), Pondicherry and the Registrar of Co-operative Societies, Pondicherry, have erred in not answering the specific questions raised by the revision petitioner with regard to the effect of contravention of the provisions under Section 35 (1) etc. Instead of stating that they have no jurisdiction to probe into these aspects, they ought to have answered the specific questions before coming to the conclusion that the election of the revision petitioner was

null and void. The revision petitioner has chosen to raise the very same questions in the present revision petition also.

The first question raised by the revision petitioner:

“(a) What will happen, if any committee member contravenes the provisions of section 35(1)?”

We find the answer to this question in clause (i) of sub-section (6) of Section 34 which specifies that a member of the committee shall cease to hold his office as such if he becomes subject to any of the disqualifications mentioned in sub-section (1). Incidentally it has to be borne in mind that clause (i) of sub-section (1) of Section 34 makes a specific mention about the disqualification provided under Section 35 also.

The second question raised by the revision petitioner:

”(b) What is the course of action to be taken against such person, since it is not of automatic cessation of office bearership?”

This question does not arise because, the answer given to the first question would indicate that any disqualification suffered under Section 35(1) would lead to the cessation of the membership of the committee itself and this would automatically follow the cessation of the office bearership also.

The third question raised by the revision petitioner:

”(c) Whether the Section in question 35(1) specifies any competent authority to decide and determine the issue like Section 34(9) of the Act?”

Sub-section (9) of Section 34 covers all the disqualifications mentioned in the various sub-sections of Section 34. Therefore, it is obvious that any question as to whether a member of the committee was subject to any of the disqualifications specified under clause (i) of sub-section (1) of Section 34 (which include also the disqualification specified under Section 35), has also to be decided only by the

Registrar and no other competent authority need be specified separately for this purpose.

16. In view of the above, I am constrained to hold that the order of the Registrar setting aside the election of revision petitioner to the committee of management of the Pondicherry Co-operative Milk Producers Union as null and void is in accordance with the relevant provisions contained in the Act and is, therefore, legally correct. Accordingly, **I dismiss this revision petition.** The interim order of stay passed by me also stands vacated.

Note: *This order is confirmed by the High Court of Madras in W.P. No.9737/1982 dated 27th January 1983 and in W.A. No. 41/1983 dated 26th October 1983.*

BEFORE THE LIEUTENANT GOVERNOR, PONDICHERRY
UNDER SUB-SECTION (3) OF SECTION 141 OF THE
PONDICHERRY
CO-OPERATIVE SOCIETIES ACT, 1972.

Dated the Eighteenth day of October, One thousand nine hundred and eighty three.

REVISION PETITION No. 1/83

**PRESENT : THIRU KONA PABHAKARA RAO,
LIEUTENANT GOVERNOR,
PONDICHERRY.**

Thiru G. Balaraman,
Member No.142,
Thengaithittu Village Cooperative
Agricultural Credit Society.

... Petitioner

Vs.

1. The Registrar of Co-operative Societies, Pondicherry.
2. Thiru G. Viswanathan, C.S.R.,
Election Officer, Thengaithittu
Village Cooperative Agricultural
Credit Society.
3. Thiru P. Ranganathan
4. Thiru G. Ramakrishnan
5. Thiru K. Seenuvasan
6. Thiru K. Munisamy
7. Thiru S. Kaliappan
8. Thiru K.P. Ramchandren
9. Thiru A. Dakshinamurthy.

... Respondents

Important points

*The Pondicherry Co-operative Societies Rules, 1973 – R.33 –
“In a meeting convened” means for a meeting to start*

functioning there shall be a quorum. So as soon as the quorum was formed, the Election Officer started taking the nominations.

The member of the society who is in receipt of the notice of the meeting if he wants to attend and file nominations or otherwise take part in the proceedings shall be present at or before 10.30 A.M. if he does not choose to attend the meeting during that period, he cannot any that the proceedings, that took place on 31.5.1982 have caused prejudice to him. Those who were present at the meeting at 10.30 A.M. were given an opportunity to file their nominations, from the election that had taken place subsequently it is not as though the proceedings were stage-managed. The election petition filed by the third respondent herein has no valid grounds for setting aside the elections.

It appears that the learned Registrar of Co-operative Societies has not properly appreciated that all these proceedings should be conducted in a valid meeting which pre-supposes a quorum and all those who were present in the meeting will be eligible for the filing of nominations and the over act of the Election Officer in extending the time for nominations is superfluous. To think that some persons who had received the notice and were aware of the meeting and who do not care to attend the meeting before 10.30 A.M. would have attended had they known that the time for receipt of nominations had been extended is not a correct conjecture.

Revision petition is allowed.

ORDER

This is a revision petition filed before me under sub-section (3) of section 141 of the Pondicherry Co-operative Societies Act, 1972 challenging the order passed by the Registrar of Co-operative Societies dated 13.6.1983 in ARC No.1460/82 by Thiru G. Balaraman who is a member of Thengaithitu Village Co-operative Agricultural Credit Society. The facts of the case are that the administrator who is in charge of the Thengaithittu Village Cooperative Agricultural Credit Society has convened a meeting on 31.5.1982 to elect the committee

of management for the said society. One Thiru G. Viswanathan, Cooperative Sub Registrar was appointed as Election Officer. In the said election, petitioner and the respondents Nos. 4 to 9 before me were got elected. The third respondent in this revision petition filed a petition under Section 84(1) of the Pondicherry Co-operative Societies Act, 1972 in A.R.C No.1405/82 which was enquired into by the Deputy Registrar of Co-operative Societies and that petition was dismissed by the Deputy Registrar. Being aggrieved by the decision of the Deputy Registrar the third respondent herein filed a revision petition under Section 141 of the Pondicherry Co-operative Societies Act, 1972 in A.R.C. No.1460/82. The Registrar of Co-operative Societies who is the first respondent in this revision petition allowed the revision partition and set aside the election that has taken place on 31.5.1982 for the board of directors of Thengaithittu Village Cooperative Agricultural Credit Society. Aggrieved by this order, the present revisions petition was filed by Thiru G. Balaraman who is one of the successful candidates in the impugned election. The only ground that was sought to be pressed by Thiru P. Ranganathan the third respondent herein on which the election was sought to be set aside was that he attended the meeting on 31.5.1982 to take part in elections. But at 10.20 A.M the Election Officer told him that as there was no quorum, the election would not take place and that he was going to adjourn the meeting. Therefore, the third respondent had left the meeting. But, to his surprise, the election was held on 1.6.1982 and he and his friends were denied an opportunity to contest in the election.

2. The questions for consideration before me are:

(a) Whether, in fact, the third respondent herein had attended the meeting on 31.5.1982, whether he had, in fact, asked the Election Officer for the nomination papers and that the Election Officer told him as there was no quorum, he was going to adjourn the meeting and, therefore, the third respondent left the meeting. Hence because of the misrepresentation of the Election Officer, he and his friends were denied an opportunity to contest the elections.

(b) Whether the action of the Election Officer in granting extension of time for receipt of nominations from 10.30 to 10.45 A.M. is

valid. If not, what is the legal effect on the election that took place on 1.6.1982 which was conducted on the basis of nominations received during the extended time.

3. Considering the first point, the third respondent who was the election petitioner before the Deputy Registrar, has not brought any evidence in support of his case. Admittedly, he had not even signed the minutes book. Admittedly, he had not waited till at least 10.30 A.M. if not till the meeting was actually adjourned. These set of facts would lead to an irresistible conclusion that the third respondent did not or could not have attended the meeting on 31.5.1982. That the Election Officer misguided him must be only a pigment of imagination now sought to be pressed in support of his election petition.

4. The second point for consideration is whether the act of the Election Officer in extending the time for receipt of nominations till 10.30 to 10.45 A.M. is proper and what is its legal effect?

5. Rule 32 of the Rules framed under the Co-operative Societies Act lays down the procedure to be followed for the election of managing committee for apex societies, central societies or any other society or class of societies which the Registrar may from time to time specify in this behalf.

6. Rule 33 prescribes procedure for election of managing committees of a society not falling under Rule 32. Under Rule 33, it is envisaged that elections shall be held at a general meeting of the society specifically convened for the purpose of which not less than seven clear days' notice shall be given to the members.

Rule 33 sub-rule (3) (i): "The notice of the general meeting shall be sent to the members by one or more of the modes specified in clause (i) of sub-rule (3) of rule 32".

*Rule 33 (3) (ii): "The notice shall contain information regarding –
(a) the number of vacancies to be filled up by election;
(b) the area of the constituency, if any, from which the members are to be elected; and*

(c) the date on which, the place at which and the hours between which the polling will take place.

Rule 33 sub-rule (6) – The nomination of candidates for election shall be made at the meeting. Again Rule 33 sub-rule (8) says if the number of candidates from any area or constituency exceeds the number of candidates to be elected, the presiding officer shall arrange for taking poll on the same day or on the succeeding day as specified in the meeting notice. The presiding officer may appoint one or more polling officer as may be necessary”.

7. The reading of the relevant rules extracted above clearly shows:

(1) That there should be seven clear days notice for the meeting about which there is no dispute now.

(2) The members shall be informed of the place, the time and the date on which the meeting is being convened. It does not envisage any other details like fixing up of time for various stages as has been done by the Administrator in this case while serving notice of the meeting for electing the members of the managing committee.

8. Further, “in a meeting convened” means for a meeting to start functioning, there shall be a quorum. When the quorum fixed in the by-laws of the society as 25, admittedly by the quorum was formed only at 10.30 A.M. or a little before. So, as soon as the quorum was formed, the Election Officer started taking the nominations. Whether he should give fifteen minutes grace period for filing of nominations or not is the question. The only point is that members have got a right to attend the meeting before the expiry of the period for quorum. So, if a member enters the meeting place at the stroke of 10.30 A.M., he is entitled to be admitted in the meeting and allowed to file his nomination. In this case, the quorum as has been stated by the Election Officer was formed at 10.29 he is perfectly within his rights to commence the proceedings immediately thereafter. Under law, he is not entitled to issue nomination papers or received them till then. The second point is even though not so urged by anybody in this petition but can be

considered because it is a legal point, that by accepting the nominations after 10.30 A.M. any prejudice had been caused to any member of the society.

9. The member of the society who is in receipt of the notice of the meeting if he wants to attend and file nominations or otherwise take part in the proceedings shall be present at or before 10.30 A.M. If he does not choose to attend the meeting during that period, he cannot say that the proceedings, that took place on 31.5.1982 have caused prejudice to him. Those who were present at the meeting at 10.30 A.M. were given an opportunity to file their nominations, from the election that had taken place subsequently it is not as though the proceedings were stage-managed. There seems to be a hot contest. So, I find that the election petition filed by the third respondent herein has no valid grounds for setting aside the elections.

10. The argument of the Registrar of Co-operative Societies that the Election Officer has not acted according to Rules is not correct. He does not appear to appreciate that the person who convened the meeting and published the notice has not been given powers to fix up exact timings for the receipt of nominations, for the scrutiny and for publication of final valid nominations. In fact, the Election Officer had conducted the meeting according to the law. When all these stages are supposed to have taken place in a meeting, the entire thing should be taken as a continuous one. If the argument of the Registrar is correct, it means that from 10 to 10.30 A.M., the Election Officer should have received the nominations whether there is a quorum or not. If that be so, that all these things should happen in a meeting which pre-supposed to have quorum has no meaning. Therefore, this interpretation does not seem to be correct. For the sake of argument, exactly at 10.30 A.M., thirty members stepped into the meeting and asked for nomination papers which they are perfectly entitled to. That does not mean that all the thirty nomination papers could be handed over and filled up and handed back at the same moment. Therefore, the argument of the learned Registrar of Co-operative Societies does not appear to be correct. The argument of the learned Registrar of Co-operative Societies that had it been made known to all the eligible members the time limit for filing of nominations had been extended those who have chosen to abstain from the meeting as the time limit

10.30 A.M. prescribed for filing of nominations in the notice issued was over and, therefore, did not turn up after 10.30 A.M. would have turned up to attend the proceedings of filing the nominations is not sound. To me, it appears that the learned Registrar of Co-operative Societies has not properly appreciated that all these proceedings should be conducted in a valid meeting which pre-supposes a quorum and all those who were present in the meeting will be eligible for the filing of nominations and the over act of the Election Officer in extending the time for nominations is superfluous. To think that some persons who had received the notice and were aware of the meeting and who do not care to attend the meeting before 10.30 A.M. would have attended had they known that the time for receipt of nominations had been extended is not a correct conjecture.

11. Therefore, I hold that the election conducted on 1.6.1982 is valid. Consequently, **this revision petition is allowed** setting aside the order and judgment of the Registrar of Co-operative Societies in ARC No. 1560/81 dated 13.6.1983. The third respondent shall bear the costs of the revision petitioner.

The Advocate's fee is fixed at Rs.100/-

**BEFORE HIS EXCELLENCY THE LIEUTENANT GOVERNOR OF
PONDICHERRY**

(Revision petition under Section 141 of the Pondicherry Co-operative Societies Act, 1972)

Dated the Twelfth day of November One thousand nine hundred and eighty four.

**PRESENT : H.E. THIRU THIRUBHUVAN PRASAD TEWARY,
LIEUTENANT GOVERNOR,
PONDICHERRY.**

Revision Petition No. 2/83

1. Thiru T. Vedhachalam,
Director,
Pondicherry Co-operative Housing Society Ltd.,
Pondicherry.

2. Thiru. M. Pandurangan,
Director,
Pondicherry Co-operative Housing Society Ltd.,
Pondicherry

Appellants

Versus

1. Thiru N. Dhakshinamoorthy,
No.162, Anna Salai,
Pondicherry

2. The Registrar of Co-operative Societies,
Pondicherry.

Respondents

Important point

Pondicherry Co-operative Societies Act, 1972 – Ss. 22(1)(e), 22(2)(e) and 34(6)(b) – The disqualifications enumerated in Sections 22(1)(e) and 22(2)(e) cannot be made ineffective by any acquiescence or an estoppel. The petitioners, according to the facts of the case did incur a disqualification under the said Sections and the Registrar came to the correct conclusion by holding them disqualified under Section 34(6)(b) to be members of the managing committee of the Pondicherry Co-operative Housing Society Ltd.

Revision petition is dismissed.

ORDER

It is a revision petition filed by Tvl. T. Vedachalam and M. Pandurangam under Section 141 of the Pondicherry Co-operative Societies Act, 1972, against the order of the Registrar of Co-operative Societies, Pondicherry dated 27th June, 1983 in A.R.C.No. 1810 of 1982 disqualifying the revision petitioners to be the members of the Pondicherry Co-operative Housing Society Ltd. The memorandum of grounds of revision was filed by Thiru M. Sugantham and Thiru A. Ramachandra Babu, Advocates on behalf of the revision petitioners. Today was fixed for the final disposal of revision petition. The revision petitioners were represented by the aforesaid two advocates viz., Thiru M. Sugantham and Thiru A. Ramachandra Babu. The learned Advocates filed written arguments also. The Registrar of Co-operative Societies, was represented Thiru S. R. Subramanian, Deputy Registrar of Co-operative Societies. Thiru N. Dhakshinamoorthy, first respondent was also present. He adopted the same arguments as submitted by the Deputy Registrar of Coop. Societies.

2. The fact of this revision are that a petition dated 27th December, 1982 was filed under Section 84 (1) of the Pondicherry Co-operative Societies Act, 1972 by Thiru N. Dhakshinamoorthy, a member of the Pondicherry Co-operative Housing Society Ltd., objecting to the election of Thiru T. Vedachalam and Thiru M. Pandurangam, the present revision petitioners to the board of directors (committee of

management of the Pondicherry Coop. Housing Society Ltd.). According to Thiru N. Dhakshinamoorthy, the aforesaid two revision petitioners were members of the Pondicherry Co-op. Housing Society Ltd., and they contested the election to the board of directors of the said society and were elected. It was alleged that the two revision petitioners were selling plots and house sites which was one of the business of the Pondicherry Co-op. Housing Society Ltd. also. Under Section 22(1) of the Pondicherry Co-operative Societies Act, 1972, no person shall be eligible for admission as a member of the society if he is engaged directly or indirectly in a business or industry or activity similar to that of the society or inconsistent with or prejudicial to the work of the society. The original petitioner before the Registrar of Co-operative Societies gave details to show that the present revision petitioners who were respondents 1 and 2 in the original proceedings, together had sold plots and house sites of Saram Village (Thattavedukalpet) at Ozhugarai commune. The survey number of the plots that they were selling was re-survey No.133/1 and 138/4, cadastre No.1411 and 1413 at Saram Village (Thattavedukalpet) at Ozhugarai commune, Pondicherry. In reply to the counter statement filed by the then respondents 1 and 2, present revision petitioner Thiru Dhakshinamoorthy further submitted that the aforesaid two respondents had submitted an application before the Pondicherry Municipality for surrendering of lands for being used as roads in the laid out area. By their letter dated 6th July, 1981, they had agreed to settle the land forming roads at Thirumal Nagar by settlement deed to the Municipality, which would disclose that lands bearing re-survey No.17, had been divided into plots and sold by the first and the second respondents.

3. The present revision petitioners who were 1st and 2nd respondents before the Registrar of Co-operative Societies in their counter statements had stated before the Registrar that according to the bye-laws of the Pondicherry Co-operative Housing Society Ltd., it dealt with lands for construction of houses by its members and they had not indulged in purchasing or selling of plots for construction purposes. They had sold lands to the purchasers for agricultural purposes only after fulfilling the necessary formalities. If the purchaser put the land to some other use, they should not be held responsible for the acts of the purchasers. They had further stated that they had been

members of the Pondicherry Co-operative Housing Society Ltd., since 1972 and had also served as one of the Directors in the said society for three years and their present Directorship was for the second term. They further said that the petition which was filed by Thiru N. Dhakshinamoorthy was due to his defeat in the election and that he had never raised any objection at the time of their nomination.

4. The Registrar of Co-operative Societies after a very detailed examination of all the facts of the case came to the conclusion that sale of land to one Swaminathan, son of Mahalingam for Rs.3,000 does not indicate that the land was sold for a housing plot or for construction of a house. The Registrar of Co-operative Societies has referred to file No.16182/81/LAD/B-4 of the Director of Local Administration Department. In this file there is the letter dated 27th July, 1981 from the Assistant Commissioner, Pondicherry Municipality which stated that the first and second respondents (present revision petitioners) had submitted the donation deed for handing over the road portions in cadastre No.321 and R.S. No. 17, Kosapalayam, Pondicherry (Thirumal Nagar) and the donors had applied for the exemption from stamp duty and registration fees. As the road portions were needed for public use, the Municipality had no objection to take over the said roads, and therefore, the donors might be exempted from payment of stamp duty and registration fees. Enclosed with this letter of the Assistant Commissioner is a true copy of the letter dated 6th July, 1981, attested by the Assistant Engineer and addressed by the first and second respondents (present revision petitioners) to the Commissioner of the Pondicherry Municipality which reads as follows:

“ We agree to give by settlement deed the roads at “Thirumal Nagar”, Kosapalayam Village, Mudaliarpeta Commune contained in the land bearing R.S. No.17 and cadastre No.321 divided into plots and sold already at low rates. The purchasers are living now in the same plots, roads are allotted in the same land.

As the above said roads are needed for the public use, we agree to give by settlement deed to the Pondicherry Municipality. The donation deed and site plan are enclosed. Kindly accept the same and arrange for the

exemption of stamp duty and registration fees for the deed for donation to be executed in favour of Pondicherry Municipality.”

5. The proposal of the Pondicherry Municipality for taking over the road portions at Thirumal Nagar in Kosapalayam Village from the donors Tvl. T. Vedachalam and M. Pandurangan was approved by the Government. The Registrar of Co-operative Societies relied on this evidence which clearly indicated that the land bearing re-survey No.17, and cadastre No.321 was divided into plots and sold at low rates and that the portions had been donated by the respondents 1 and 2 (the present revision petitioners) to the Pondicherry Municipality. According to the Registrar of Co-operative Societies, these records clearly established that the first and the second respondents (the present revision petitioners) had undertaken the business of selling housing plots at Thirumal Nagar, Kosapalayam, Pondicherry, which was similar to the activity of the Pondicherry Co-operative Housing Society Ltd. They were, therefore, disqualified under Section 22 (1)(e) and Section 22(2)(e) of the Pondicherry Co-operative Societies Act, 1972. In view of this, they ceased to be the members of the said society, they also stood disqualified under Section 34 (6)(b) of the Pondicherry Co-operative Societies Act, 1972 to be the members of the board of directors (management committee) of the Pondicherry Co-operative Housing Society Ltd.

6. In the written arguments, the learned counsels for the revision petitioners had said that the conduct of the first respondent would prove that he had acquiesced and should be estopped from raising the said objection before the second respondent under Section 115 of the Evidence Act. They repeated the argument that the sale of the land was for agricultural purposes and if the purchasers put it to some other use, the revision petitioners should not be held responsible for any breach of the Urban Land (Ceiling and Regulations) Act, 1976. They further argued that no reliance should be placed on the documentary evidence contained in file No.16182/81/LAD/B-4 of the Director of Local Administration Department and only the registered deeds should be considered.

7. I am afraid the logic of this argument is not clear. It is established that the letter dated 6th July, 1981 was addressed by the present revision petitioners to the Commissioner of the Pondicherry Municipality. It clearly indicated the intention of the revision petitioners in selling their lands. Thus, the purpose of the sale of land was shown for agricultural purpose, as otherwise, the land could not be sold due to the restrictions imposed by the Urban Land (Ceiling and Regulations) Act, 1976. Once necessary formalities under the Urban Land (Ceiling and Regulations) Act, 1976 were completed, they sought the help of the Municipality for the development of the road, etc. The Registrar of Co-operative Societies in his order dated 27th June, 1983, had examined all the facts of the case in a very objective and detailed manner and had come to certain conclusion on the basis of irrefutable documentary evidence. The disqualifications enumerated in sections 22(1)(e) and 22(2)(e) cannot be made ineffective by any acquiescence or an estoppel. Therefore, the question of Thiru N. Dhakshinamoorthy's the acquiescence or an estoppel is entirely immaterial in so far as the ultimate finding of the Registrar of Co-operative Societies is concerned. The petitioners, according to the facts of the case did incur disqualification under Section 22(1)(e) and 22(2)(e) of the Pondicherry Co-operative Societies Act, 1972 and the Registrar of Co-operative Societies came to the correct conclusion by holding them disqualified under Section 34(6)(b) of the Pondicherry Co-operative Societies Act, 1972 to be members of the managing committee of the Pondicherry Co-operative Housing Society Ltd.

8. **The revision petition is, therefore, dismissed.** Stay order dated 13th June, 1983 becomes inoperative now.

Given under the hand and seal by me on this Twelfth day of November, One thousand nine hundred and eighty four.

Note: *On appeal, the High Court by order dated 13th July 1994, has directed the Registrar to hear the petitioners to decide whether the petitioners were qualified to be the members of the society.*

**BEFORE HIS EXCELLENCY THE LIEUTENANT GOVERNOR OF
PONDICHERRY**

*Under Section 140(2) of the Pondicherry Co-operative Societies Act,
1972*

*Dated the Twelfth day of December One Thousand Nine Hundred and
Eighty Four.*

**PRESENT: H. E THIRU THIRUBUVAN PRASAD TEWARY,
LIEUTENANT GOVERNOR,
PONDICHERRY**

Appeal No. 3/1984

Thiru M. Dhandapani Mudaliar
Member of the Committee of the
Sri Muthukumarasamy Handloom Weavers ... Appellant
Co-operative Society, Nettapakkam,
Pondicherry.

Versus

The Deputy Registrar (Handlooms)
Pondicherry. ... Respondent

Important point

Pondicherry Co-operative Societies Act, 1972 – Ss. 2(18), 3(1) & (2) and 140 (2) - Under Section 3(1) there is only one person who is appointed to be the Registrar of Co-operative Societies for Pondicherry. Under sub-section (2) of this Section, the Government may also appoint one or more persons to assist such Registrar and may by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act and such person or persons shall work under the general guidance, superintendence and control of the Registrar – Therefore, against the order of the Deputy Registrar, appeal lies only before the Registrar of Co-operative Societies.

Appeal is returned.

ORDER

An appeal was filed by Thiru M. Dhandapani Mudaliar against the orders of the Deputy Registrar (Handlooms) dated 23rd November, 1984, removing the appellant as a member of the committee of management under Section 34(9) read with 34(2) of the Pondicherry Co-operative Societies Act, 1972. An application was also moved for the stay of operation of the aforesaid order of the Deputy Registrar (Handlooms). The appeal petition and the interlocutory petition both dated 26th November, 1984, were returned to Thiru P. Krishnamoorthy, Advocate for the appellant as according to Section 140 (2) (ii) of the Act, the appeal against the order of any person other than the Registrar of Co-operative Societies lies to the Registrar and not to the Government. The learned Advocate for the appellant moved another application dated 30th November, 1984, stating that the officer who exercises the power of a Registrar under the Act is deemed to be the Registrar and appeal can be filed only before the Government under Section 140(2) of the Act. He also requested an opportunity for making submissions. Accordingly 12th December, 1984, was fixed for hearing on the point of jurisdiction.

2. Thiru P. Krishnamoorthy, Advocate for the Appellant and Thiru S. Sivapragasam, Deputy Registrar (Handlooms) appeared before me today. Thiru P. Krishnamoorthy argued that according to the definition of Registrar" given in sub-section (18) of Section 2 of the Pondicherry Co-operative Societies Act, 1972, it means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act, and includes a person on whom all or any of the powers of a Registrar under this Act have been conferred under Section 3. The learned Advocate then referred to G.O. No. Ms.125 dated 20th November, 1974 which confers the powers of the Registrar in respect of certain Sections to Assistant Registrars and certain other Officers. He, therefore, pleaded that any person who exercises the power of the Registrar an appeal against his order will lie to the Government under Section 140(2) of the Act.

3. In this connection, a very careful study of Section 3 and Section 140(2) is necessary. Under Section 3(1) there is only one person who is appointed to be the Registrar of Co-operative Societies

for Pondicherry. Under sub-section (2) of this Section, the Government may also appoint one or more persons to assist such Registrar and may by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act and such person or persons shall work under the general guidance, superintendence and control of the Registrar. It is thus clear that the Act envisages:

- i. the Registrar of Co-operative Societies, and
- ii. Certain other persons who exercise the powers of the Registrar.

For purposes of enabling them to exercise the powers of the Registrar, they are covered by the all inclusive definition as given in Section 2(18). But Section 140(2) has another arrangement whose objective seems to be to control the flow of appeals to the Government. Under Section 140(2), if the order is that of the Registrar Co-operative Societies for Pondicherry, the appeal will lie to the Government. There can be only one Registrar Co-operative Societies for Pondicherry. If the intention here would have been the all inclusive definition of Registrar, the legislature would not have used the words "Registrar of Co-operative Societies for Pondicherry" in Section 140(2)(i) and would have merely used the single word "Registrar" as is defined in Section 2(18) of the Act. Section 140(2)(ii) specifically provides that appeal against the orders of any other person shall lie to the Registrar. There would be utter confusion in the Department if the primacy of the Registrar is not recognized and enforced in the Department. That is why Section 3(2) provides that such person or persons on whom the powers of the Registrar have been conferred shall work under the general guidance, superintendence and control of the Registrar. In Sections like 7,9,11, etc., only the term "Registrar" is used as distinguished from the use of the words "the Registrar of Co-operative Societies for Pondicherry" as in Section 140(2).

4. In view of the foregoing interpretations, I am of the view that the petitioner should seek remedy, if he so likes, under Section 140(2)(ii) of he Act. **Let the appeal petition and the interlocutory petition**

dated 26th November, 1984, filed in my office be returned to the petitioner or his Advocate.

Given under the hand and seal by me in this Twelfth day of December One thousand nine hundred and eighty four.

BEFORE HIS EXCELLENCY THE LIEUTENANT GOVERNOR
PONDICHERRY

Dated the 25th day of March, One Thousand Nine Hundred and Eighty Seven.

PRESENT : H.E. THIRU TRIBHUVAN PRASAD TEWARY,
LIEUTENANT GOVERNOR,
PONDICHERRY

REVISION PETITION No. 4/1986

Thiru V.M.C. Sivashanmuganathan,
(Member, Arignar Anna T.R. Pattinam Commune
Co-op. Agrl. Credit Society Ltd., No. P. 116,
Thirumalayrayanpattinam, Gandhi Road,
Thirumalayrayanpattinam, Karaikal. ... Petitioner

Vs

Thvl.

- 1.K. Muralimanoharan, S/o. Krishnasamy,
President, Arignar Anna T.R. Pattinam Commune
Co-op. Agrl. Credit Society Ltd., No. P. 116,
Thirumalayrayanpattinam, Gandhi Road,
Thirumalayrayanpattinam, Karaikal.
2. K. Kesavan, S/o. Kuttiyandi, ... do ...
Director.
3. S. Devarasu, S/o. Sundara Thevar ... do ...
Director.
4. K. Selvamani, S/o. Krishnasamy, ... do ...
Director.
5. R. K. Sekhar, S/o. Kothandapany, ... do ...
Director.

6. R. Amirthalingam, S/o. Ramachandra Pillai ... do ...
Director.
7. S. Kaliaperumal, S/o. Shanmugam Pillai ... do ...
Director.
8. M. Natarajan, S/o. Murugaiya Vanniar. ... do...
Election Officer ... Respondents

Important point

Pondicherry Co-operative Societies Act, 1972 – Ss.2(18), 3(2) and 141(1) - Taking into consideration the scheme of things in the Pondicherry Co-operative Societies Act, 1972 as highlighted in Section 2(18), Section 3(2) and Section 141(1), it would be only proper that before the petitioner approaches the Government, he should utilize the forum the Registrar which is available to him under Section 141(1). In view of this, the petitioner should, if he so chooses moves the Registrar under Section 141(1) for seeking relief to which he may be entitled under the law.

Petition is returned.

Cases referred:

1. R.P. No. 3/1984, *M. Dhandapani Mudaliar vs. Deputy Registrar (Handlooms), Pondicherry.*
2. *Krishna Rao Bakaramji Hadge vs. The State of Maharashtra, CLJ 1967, 114.*

ORDER

This is a revision petition filed by Thiru V.M.C. Sivashanmuganathan in his capacity as a member of the Arignar Anna T.R. Pattinam Commune Co-operative Agricultural Society Ltd., under Section 141(1) of the Pondicherry Co-operative Societies Act, 1972 against the order of the Deputy Registrar of Co-operative Societies of Karaikal made in ARC No. 254/RCS/85 dated 12th October

1986. Thiru S. Thananjayan, Advocate, appeared for the petitioner. Eight respondents were represented by Thiru K.U. Pathy, Advocate.

2. In his revision petition, the petitioner has contended that he had challenged the election to the aforesaid co-operative society on grounds of violation of the rules and procedure for conducting the elections. Elaborating this, it had been pointed out that the election was held on a Sunday, i.e., 23rd June, 1985 which was in violation of Rule 32 and that there was not enough quorum in the general body meeting when the election was held on 23rd June, 1985. The main contention of the petitioner, as was clear from the arguments of the Advocate, was that Rule 33(3) (i) read with clause (i) of sub-rule (3) of Rule 32 was not fully complied with particularly in regard to the mode of communication. In this connection, he said that even if it is presumed that the communication was through circulation among members, the signatures of only 60 members were obtained as against a membership of 528 and it has nowhere been satisfactorily explained as to why the signatures of others were not obtained. There would be no presumption of communication merely by saying that some refused to sign and others were not available. The learned Advocate for the petitioner conceded that the objection relating to the election being held on Sunday would not be tenable as Rule 32 was not applicable to the present case. The learned Advocate for the petitioner only reiterated the points mentioned above in the petition.

3. Thiru K.U. Pathy, Advocate who appeared before the respondents only made a general reply that the broad requirements of Rule 33 (1) were complied with and that the modes of communication mentioned in clause (i) of sub-rule (3) of Rule 32 were not mandatory as otherwise they would have been incorporated in Rule 33 itself.

4. As the question of proper forum for the present revision petition is also involved, I would not like to go into the merits of this case before deciding the point of jurisdiction. It may be recalled that Thiru V.M.C Sivashanmuganathan originally presented his petition under Section 84 of the Pondicherry Co-operative Societies Act before the Registrar of Co-operative Societies for setting aside the election which was conducted on 23rd June, 1985 for the board of directors of the Arignar Anna Co-operative Society Ltd., The Registrar of Co-operative

Societies, Pondicherry, after due consideration, ordered the transfer of the aforesaid reference to the Deputy Registrar, Karaikal for disposal by virtue of power vested in him under Section 84 (2). According to the definition of Registrar given in sub-section (18) of Section 2 Registrar means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes a person on whom all or any of the powers of a Registrar under this Act have been conferred under Section 3. G.O.Ms.No.125 dated 20th November, 1974, confers the powers of the Registrar in respect of certain sections to Assistant Registrars and certain other officers. Section 3 (2) of the Act provides that the persons on whom powers of the Registrar under this Act are conferred shall work under the general guidance, superintendence and control of the Registrar. Section 141(1) provides that the Registrar may on his own motion or on application call for and examine the record of any officer subordinate to him and the Government may of its own motion or on application call for and examine the record of the Registrar, in respect of any proceeding not being a proceeding in respect of which an appeal to the Tribunal is provided by sub-section (1) of Section 140, to satisfy himself or itself as to the legality, regularity or propriety of any decision passed or order made therein; and if, in any case, it appears to the Registrar or the Government, as the case may be, that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or it may pass orders accordingly.

5. It will thus be clear from Section 141(1) that both the Registrar and the Government have been given powers to call for and examine the record and to pass appropriate orders. The question of jurisdiction came up for consideration in appeal No.3/84 in which Thiru M. Dhandapani Mudaliar was the appellant and the Deputy Registrar (Handlooms), Pondicherry was the respondent. I had discussed the implications of various connected sections in my order in the aforesaid appeal. I think it would be appropriate to reproduce below the relevant portions of my order dated 12th December, 1984. Although that appeal was under Section 140(2), yet, the choice of the two forums of appeal, namely, the Registrar and the Government was involved there also.

“..... 3. In this connection, a very careful study of Section 3 and Section 140(2) is necessary. Under Section 3(1) there is only

one person who is appointed to be the Registrar of Co-operative Societies for Pondicherry. Under sub-section (2) of this section, the Government may also appoint one or more persons to assist such Registrar and may, by general or special order, confer on any such person or persons or all any of the powers of the Registrar under this Act and such person or persons shall work under the general guidance, superintendence and control of the Registrar. It is thus clear that the Act envisages:

- i. the Registrar of co-operative societies, and
- ii. certain other persons who exercise the powers of the Registrar.

For purposes of enabling them to exercise the powers of the Registrar they are covered by the all inclusive definition as given in Section 2 (18). But Section 140(2) has another arrangement whose objective seems to be to control the flow of appeals to the Government. Under Section 140(2), if the order is that of the Registrar of Co-operative societies for Pondicherry, the appeal will lie to the Government. There can be only one Registrar of Co-operative Societies for Pondicherry. If the intention here would have been the all inclusive definition of Registrar, the legislature would not have used the words “Registrar of Co-operative Societies for Pondicherry” in Section 140(2) (i) and would have merely used the single word “Registrar” as is defined in Section 2(18) of the Act. Section 140(2)(ii) specifically provides that appeal against the orders of any other person shall lie to the Registrar. There would be utter confusion in the Department if the primacy of the Registrar is not recognized and enforced in the Department. That is why Section 3 (2) provides that such person or persons on whom the powers of the Registrar have been conferred shall work under the general guidance, superintendence and control of the Registrar. In Sections like 7,9,11, etc., only the term “Registrar” is used as distinguished from the use of the words the “Registrar of Co-operative Societies for Pondicherry” as in Section 140(2).

4. In view of the foregoing interpretations, I am of the view that the petitioner should seek remedy, if he so likes, under Section 140(2)(ii) of the Act. Let the appeal petition and the interlocutory petition dated 26th November, 1984, filed in my office be returned to the petitioner or his Advocate.”

6. A case has also been brought to my notice although I have not been able to go through the full judgment. The extract of the relevant point in **C.L.J. 1967, 114**, where the point involved was whether the Registrar can revise the orders passed by the officers conferred with his powers indicates that the Bombay High Court in **Krishna Rao Bakaramji Hadge Vs. The State of Maharashtra** held: where delegated powers are exercised, they are exercised by virtue of Section 3, and in many cases the powers exercised are powers of the Registrar. Even so, all these officers are subordinate to the Registrar as shown by Section 155 which provides the forum of appeal against the orders made by respective officers.” It was held that the Registrar can revise the orders passed by any officer subordinate to him.

7. In so far as the application of the rulings of other High Courts are concerned, a comparison of the relevant provisions of the respective Acts is also essential which has not been possible. However, taking into consideration the scheme of things in the Pondicherry Co-operative Societies Act, 1972 as highlighted in Section 2(18), Section 3(2) and Section 141(1), it would be only proper that before the petitioner approaches the Government, he should utilize the forum, the Registrar, which is available to him under Section 141(1). In view of this, I hold that the petitioner should, if he so chooses, move the Registrar under Section 141(1) for seeking relief to which he may be entitled under the law. **Accordingly, the revision petition should be returned to the petitioner.**

Given under the hand and seal by me on this the Twenty fifth day of March One thousand nine hundred and eighty seven.

BEFORE HIS EXCELLENCY THE LIEUTENANT GOVERNOR,
PONDICHERRY

(Under Section 140 of the Pondicherry Co-operative Societies Act, 1972)

Dated the Eleventh day of March One thousand nine hundred and ninety one.

PRESENT: DR. HAR SWARUP SINGH
LIEUTENANT GOVERNOR
PONDICHERRY

Revision Petition No. 2 of 1990

1. Balan Puthiyaparambath,
Member No. 609 of
Mahe Employees Co-op. Stores Ltd.,
Residing at Palloor.

2. K. Damodaran
Member No.386 of Mahe
Employees Co-op. Stores Ltd.,
Residing at Erattapilakool,
P.O. Naluthara.

3. T.T. Santha
Member No.627 of
Mahe Employees Co-op. Stores Ltd.,
Residing at Koyyottu Theru,
P.O. Naluthara, Mahe.

...

Petitioners

Vs.

1. C. H. Prabhakaran
Member No.1474 of
Mahe Employees Co-op. Stores Ltd.,
S.G.T., G.L.P.S.,
Poozhithala, Mahe.

2. The Election Officer,
Mahe Employees Co-op. Stores,
Mahe.
3. Padmanabha Kurup (M.No.609)
Deputy Director of Accounts and Treasuries,
Mahe.
4. Thiru Ramachandran P. (M.No.448)
H.M. GGHS, Mahe.
5. Dr. Sankaran Nair, B.L. (M.No.1171)
Govt. Ayurvedic Dispensary,
Chalakkara, Mahe.
6. Premarajan Parambath Thamburankandy,
(M.No. 1479) LDC
Government Hospital, Mahe.
7. Saraswathi P.T. (M.No. 770)
School Assistant Grade II
GGHS, Palloor.
8. P.A. Karunakaran (M.No. 550)
SGT(SG)
Govt. Boys High School,
Palloor.
9. K.P. Mohanan (M.No.746)
Lecturer in Malayalam
MGGA College, Mahe.
10. T.R. Chekkan (M.No. 1141)
SGT Government L.P. School
Choodikotta, Mahe.
11. C.H. Vijayan (M. No. 1015)
School Assistant Gr. II
Govt. HS, Pandakkal.

12. Padmanabhan Malol (M.No. 1513)
UDC, Govt. Hospital, Mahe.
13. Jayaprakash K. (M.No. 1483)
Pharmacist, Govt. Hospital, Mahe.
14. Hemachandran (M.No. 803)
Peon, MGGA College Mahe.
15. Nanu K. (M.No. 512)
Senior Assistant, PASIC, Mahe.
16. Valsalan P.V. (M.No.1183)
Junior Assistant,
Municipality, Mahe.
17. Padmanabhan M. (M.No. 1418)
Helper, Electricity Department, Mahe
18. Haridasan K. (M.No. 1445)
Pharmacist, Govt. Hospital, Mahe.
19. Ramadas P.P. (M.No. 1064)
UDC, PWD, Mahe.
20. Raveendranathan K. (M.No. 895)
Ward Attendant
Govt. Hospital, Mahe.
21. Sunil Kumar V. (M.No. 1494)
LDC, Co-op. Dept., Mahe.
22. Swamy Kutty V.K. (M.No. 1169)
Driver, Municipality, Mahe.
23. Sulochana K. (M.No. 1351)
Conductress,
Pre-School, Chalakara, Mahe.

24. Shyamala K.M. (M.No. 1211)

Maternity Assistant,
Govt. Hospital, Mahe.

... Respondents

Important points:

The Pondicherry Co-operative Societies Act, 1972 – Ss. 2(18), 3(1), 3(2), 140 and 141 – The revision petition before the Registrar of Co-operative Societies cannot be treated as not maintainable as the Act clearly distinguishes between Registrar and the Registrar of Co-operative Societies and as the Deputy Registrar shall work under the general guidance, superintendence and control of the Registrar, under Section 141(1) of the Pondicherry Co-operative Societies Act, the Registrar of Co-operative Societies can review an order passed by the Deputy Registrar by virtue of the delegated powers conferred on him.

The Pondicherry Co-operative Societies Act, 1972 – S.171 – The Pondicherry Co-operative Societies Rules, 1973 – R.31 - Non-compliance of Rule 31(1) is a clear violation of a statutory requirement which has precedence over the bye-laws. Simply because a wrong practice has gone on for a long time and the mistake was not corrected, does not make it legal.

Revision petition is dismissed.

Cases referred

1. R.P. No.4/1986, V.M.C. Sivashanmuganathan vs. K. Muralimanoharan and seven others;
2. R.P. No.3/1984, M. Dhandapani Mudaliar vs. Deputy Registrar (Handlooms);
3. Rupchand vs. State of Punjab, AIR 1963 SC 1503;
4. Co-operative Central Bank Ltd., and others vs. Additional Industrial Tribunal, Andhra Pradesh and others, 1969 II LLJ 698 : AIR 1970 AC 245 : 1970 (I) SCR 205.

ORDER

This is a revision petition filed by Thiru Balan Puthiyaparambath, Thiru K. Damodaran and Tmt. T.T. Santha in their capacity as members of the Mahe Employees Co-operative Stores Ltd., under Section 141(1) of the Pondicherry Co-operative Societies Act, 1972 against the order of the Registrar of Co-operative Societies made in ARC No.3418/89 dated 30th March, 1990. Thiru T. Murugesan, Advocate appeared for the petitioners. The Election Officer, Mahe Employees Co-operative Stores Ltd., Mahe was represented by the Registrar of Co-operative Societies, Pondicherry. The respondents Thiru Premarajan Parambath Thamburakandy and Thiru K. Nanu appeared in person on 5.3.1991 and presented their respective arguments.

2. The election to the Mahe Employees Co-operative Stores Ltd., conducted on 18.6.89 was challenged on grounds of irregularities by Thiru C.H Prabhakaran and Thiru C.H Purushothaman in ARC No.2093/89 and 2230/89 before the Registrar of Co-operative Societies. The Registrar referred the above cases to the Deputy Registrar (Audit) for disposal invoking the powers conferred on him vide G.O. Ms. No.125 dated 20.11.1974. After hearing the cases, the Deputy Registrar (Audit) dismissed the petitions and the aggrieved petitioners went on revision before the Registrar under Section 141(1) of the Pondicherry Co-operative Societies Act, 1972 for setting aside the orders of the Deputy Registrar (Audit). The Registrar of the Co-operative Societies after hearing the parties and perusing the records, revised the orders of the Deputy Registrar (Audit) and set aside the election. Three of the respondents in the above petition have filed the present revision petition in this Court.

3. In the revision petition, the petitioners have raised two issues:

- (i) The Registrar of the Co-operative Societies ought to have dismissed the first revision petition ARC No.3418/89 filed before him as not maintainable on the grounds that the issue had already been heard and disposed of by the Deputy Registrar (Audit) who acted on behalf of the Registrar by virtue of the delegated powers under Section 84 (2) of the Act.

(ii) The Registrar ought not to have treated the non compliance of Rule 31(1) of the Pondicherry Co-operative Societies Rules as a ground for setting aside the election. Rule 31(1) deals with formation of constituencies and reservation for election of members of committee whenever the membership of the primary society exceeded 500.

4 According to the petitioners, Section 171(4) of the Act says that *“notwithstanding the repeal of the enactments referred to in subsection (1), any society existing in the Union territory of Pondicherry on the date of commencement of this Act which has been registered or deemed to be registered under the repealed enactments shall be deemed to be registered under this Act and the bye-laws of such society shall so far as they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded.”*

5. It would therefore imply that old bye-laws can continue to be treated as valid unless they are contrary to the provisions of the new Act and if they are contrary then the Registrar should invoke the powers under Section 12 (2) of the new Act to amend the bye-laws. The non-exercise of the said power by the Registrar in the instant case relating to the bye-laws of the Mahe Employees Co-operative Stores for the last 15 years would mean that the bye-laws are not contrary to the Act and rules made thereunder and, therefore, the election conducted on the basis of the existing bye-laws should be held as valid.

6. The learned Advocate for the petitioners reiterated the above points mentioned in the petition and also added that elections to the Mahe Employees Co-operative Stores were being held from 1973 onwards without delimitation of constituencies, as required under the new Act and only in 1989 this requirement was raised as an objection in the election petition and upheld by the Registrar of Co-operative Societies in the revision petition No.3418/89. He also added that under the Representation of People Act, delimitation cannot be a ground for an election petition.

7. On behalf of the Election Officer, Mahe Employees Co-operative Stores, the Registrar of Co-operative Societies argued in the following manner:

8. As regards point 1, regarding the maintainability of the revision petition No.3418/89 before the Registrar of Co-operative Societies, the issue has already been decided in various forums including the Court of the Lieutenant Governor, Pondicherry. According to him the “Registrar” and “Deputy Registrar” are different authorities as envisaged under Sections 2(18) and 3(1) and 3(2) of the Pondicherry Co-operative Societies Act respectively. A careful study of these provisions of the Act would reveal that there can be only one person appointed to be the Registrar of Co-operative Societies for Pondicherry. But under Section 2(18), the Government may appoint one or more persons to assist such Registrar and confer on such person or persons, all or any of the powers of the Registrar under this Act and such person or persons shall work under the general guidance, superintendence and control of Registrar. Moreover, the objective of Section 140 (2) seems to be to control the flow of appeals to Government, where, it is only an appeal, on the order of the Registrar of Co-operative Societies for Pondicherry, will lie to the Government and not an appeal on the order of the “Registrar”. This distinction will be clear from the fact that in Sections like 7,9,11,etc., only the term “Registrar” is used as distinguished from the use of the words “the Registrar of Co-operative Societies for Pondicherry” as in Section 140(2).

9. These arguments have been clearly upheld by this court of Lieutenant Governor of Pondicherry in ***Revision Petition No.4/86, Thiru. V.M.C Sivashanmuganathan vs. Thiru K Muralimanoharan and 7 others*** and in ***Revision Petition No.3/84, Thiru M. Dhandapani Mudaliar vs. Deputy Registrar (Handlooms)***. The Registrar of Co-operative Societies also quoted a decision of the Supreme Court in ***Rupchand vs. State of Punjab, AIR 1963 SC 1503*** to strengthen the above contention.

10. As regards point 2, the Registrar of Co-operative Societies pointed out that non-compliance of Rule 31(1) of the Pondicherry Co-operative Societies Rules would render the bye-laws of Mahe

Co-operative Employees Stores clearly inconsistent with requirements of the Rules and therefore, the saving clause of Section 171(4) of Pondicherry Co-operative Societies Act cannot be applicable to the instant case. Moreover, the mere fact that inconsistent bye-laws have not been amended and elections were being held from 1973 onwards without delimitation would not make bye-laws consistent with the requirements of the new Act. It can always be quoted as a ground for election petition. He also refuted the argument of the learned advocate for petitioners that the so-called provisions in the Representation of People Act that delimitation cannot be ground for election petition will not be relevant in this case as no such express provisions have been made in Pondicherry Co-operative Societies Act and an analogy cannot be drawn between a Central Act and a State Act. The other respondents did not have anything to add by way of arguments.

11. After hearing the arguments of both the sides and after perusing the petition, I hold that the first revision petition before the Registrar of Co-operative Societies cannot be treated as not maintainable as the Act clearly distinguishes between “Registrar” and the “Registrar of Co-operative Societies” and as the Deputy Registrar (Audit) shall work under the general guidance, superintendence and control of the Registrar, under Section 141(1) of the Pondicherry Co-operative Societies Act, the Registrar of Co-operative Societies can review an order passed by the Deputy Registrar (Audit) by virtue of the delegated powers conferred on him. This has also been established by this very Court in some of the previous cases.

12. As regards the other point regarding non-compliance of Rule 31(1), I hold that it is a clear violation of a statutory requirement which has precedence over the bye-laws as stated by the Registrar of Co-operative Societies in his arguments. This point has also been elaborately dealt with in the order of the original revision petition No.3418/89 by quoting the Supreme Court case ***Co-operative Central Bank Ltd., and others vs. Additional Industrial Tribunal, Andhra Pradesh and others, 1969 II LLJ 698 : AIR 1970 AC 245 : 1970 (I) SCR 205***. Rectification of a mistake can be made at any time and ignorance of law cannot be an excuse. Simply because a wrong practice has gone on for a long time and the mistake was not corrected, does not make it legal. Therefore, on both the grounds the

revision petition is not substantiated. Accordingly, the revision petition is not substantiated. **Accordingly, the revision petition is rejected/dismissed.**

Given under my hand and seal on this day the Twelfth day of March One thousand nine hundred and ninety one.

**BEFORE HIS EXCELENCY THE LIEUTENANT GOVERNOR,
PONDICHERRY**

*(In the matter of revision under Section 141 of the Pondicherry
Co-operative Societies Act, 1972)*

Dated the Fifteenth day of April One thousand nine hundred and
ninety one.

**PRESENT: H.E. DR. HAR SWARUP SINGH
LIEUTENANT GOVERNOR
PONDICHERRY**

Revision Petition No. 4 of 1990

N. Tamizhvanan,
Secretary,
Pondicherry Health Employees
Co-Operative Credit Society,
No.37, Montorsier Street,
Pondicherry.

..... Petitioner

Vs.

The Registrar of
Cooperative Societies,
Pondicherry.

.... Respondent

Important point

The Pondicherry Co-operative Societies Act, 1972 – Ss. 31, 32 and 33 - On going through the provisions of Sections 31, 32 and 33 the committee of a society, once it is elected shall continue to hold office for a period of three years and any casual vacancy in the society can be filled up by co-option or fresh selection. I do not find any provision in the Act that the committee will cease to exist if it becomes lean with a strength below the statutory minimum or it becomes non-functioning on account of the rivalry among its members. There is no warrant equating a non-functioning committee with a non existing committee. A non-functioning committee exists but does not function, while in the

case of a non-exists but does not function, while in the case of a non-existing committee the question of its functioning well or ill cannot arise.

The Pondicherry Co-operative Societies Act, 1972 – S.83 – Supersession of committee - Where the committee of management or the co-operative society is not functioning properly remedy is provided for in Section 83 of the Act and if the Registrar was satisfied that the committee of management the society was not functioning properly he ought to have set in motion the proceedings under Section 83 of the Act.

The inescapable conclusion is that the jurisdictional aspects required under Section 33 of the Act are not satisfied in this case and while is so, the impugned proceedings passed under Section 33 (1)(b)(ii) of the Act is not sustainable.

Revision petition is allowed.

Case referred

Pamarthy Veerasamy Vs. The Collector (Co-operation), Krishna District, Chilakalpudi and others, AIR 1986 AP 134 : 1987 CLJ 220.

ORDER

This revision petition coming on the this day for final disposal in the presence of the revision petitioner and the respondent and upon perusing the records and hearing both the parties, it is ordered as follows:-

1. This revision petition has been filed under Section 141 of the Pondicherry Co-operative Societies Act, 1972 [No.7 of 1973] (hereinafter referred to as the Act) against the order of the respondent in the proceedings No. 5/10/2/20/RCS/K/90/847 dated 10.10.1990 (for short the impugned order). The undisputed facts of the case are that the management committee of the Pondicherry Health Employees Co-operative Credit Society, of which the revision petitioner is a member and the Secretary entered office from 1.7.1990 for a period of 3 years

there from. While it was so, three members of the management committee, namely, the President, Vice-President and Assistant Secretary submitted their resignation on 21.1.1990 in separate letters addressed to the Registrar of Co-operative Societies. It was thereafter that the Registrar passed an order in the impugned proceedings appointing an administrator in exercise of the powers conferred on him under Section 33 (1) (b) (ii) of the Act. The premises on which the impugned proceedings have been passed, as seen from the face of the proceedings, are that after the tendering of the resignation by three members from the committee of management on 21.1.1990 the strength of the committee has fallen below the statutory minimum of seven for a primary society required under Section 32(3) of the Act; that the committee of management has thus become defunct which has created a stalemate in the regular functioning of the society; that it was not considered feasible to conduct election immediately to constitute a new committee by election to manage the affairs of the committee and hence it was considered expedient to appoint an administrator under Section 33 (1) (b) (ii) of the Act to manage the affairs of the society till a new committee is constituted. It is also stated in the impugned proceedings that the Pondicherry State Co-operative Bank which was the financing bank of the society had been consulted and the bank had also concurred with the proposal of appointing an administrator to manage the affairs of the society. It is these proceedings the revision petitioner has sought to challenge in this revision petition.

2. The revision petitioner has traversed about nine grounds of objection in his revision petition. The revision petitioner contends that the resignation of the three members of the managing committee had not been served on the Secretary of the society and, the resignation would take effect only from the date of acceptance by the committee in terms of bye law No. 19 (b) of the society. It is also his case that the quorum required for the meeting of the managing committee according to bye law No.20 of the society is only five and for these reasons it is fallacious to say that the committee had become defunct and a stalemate has been created in the regular functioning of the society. According to the revision petitioner, the committee was very much alive and was attending to its duties and exercising its rights up to the date of appointment of the administrator in the impugned proceedings. The

revision petitioner has also challenged the impugned proceedings on the ground that the appointment of an administrator, when a committee of society has lost its minimum statutory strength, is not contemplated by Section 33 of the Act. He has also complained of denial of hearing before passing of the impugned proceedings and consequent violation of the principles of natural justice. Hence, he contends that the impugned proceedings is illegal and improper and lacks jurisdiction and is also unconstitutional.

3. In reply to the averments in the revision petition, the respondent would say that even through the bye law No. 19 (b) of the bye laws of the society requires the acceptance of the resignations, since the President herself had submitted her resignation, there was nobody who could convene the board meeting for the purposes of accepting the resignations, in view of the provisions of Section 32 (7) (a) of the Act which stipulates that only the President shall convene the meetings of the board. The respondent has therefore submitted that in the absence of an alternative provision in the bye laws for convening the meeting of the society and when the President and two other office bearers tendered their resignation en bloc the strength of the committee consisting of nine directors had fallen to six which was below the statutory minimum of seven for a primary society under Section 32 (3) of the Act. According to the respondent the committee, therefore, legally ceases to exist and has become defunct and this created a stalemate in the normal functioning of the society. The respondent has contended that under the circumstances the Registrar of Co-operative Societies had no other course of action open except to appoint someone to look after the affairs of the society by invoking the provisions of Section 33 of the Pondicherry Co-operative Societies Act. The respondent has further submitted that the quorum provided for in the bye laws is only meant for conducting a meeting of the committee but the committee on the whole should have the statutory minimum of seven to exist, without which the committee cannot function at all or becomes defunct. According to the respondent, in these circumstances the committee should be deemed to have quit office prematurely before expiry of its term of office and, when it was not possible to constitute a new committee, the Registrar has jurisdiction to appoint an administrator by invoking the provisions of Section 33 (1) of the Act. The respondent also submitted that it was not practicable for

him to publish necessary notice as contemplated under Section 33 (1) (b) of the Act and he appointed the administrator to fill up the gap in the administration of the society for a temporary period until a new committee is duly constituted.

4. The revision petitioner filed a rejoinder to the comments furnished by the respondent on the revision petition. According to him the Secretary of the society is responsible under bye law No. 22 (1) (b) of the bye laws of the society for the executive administration of the society, subject to the control of the President. According to him, the Secretary can, therefore, arrange for a meeting of the committee and can even get decisions by circulation of papers. Hence, according to him the reliance made by the respondent on Section 32 (7) (a) of the Act is incorrect and irrelevant. The revision petitioner has also vehemently refuted the allegation of the respondent that merely by sending of the resignation the members have ceased to be members of the board and asserted that the committee had never become defunct or truncated. The petitioner also stated that on 21.9.1990 when the President of the society tendered her resignation she was not actually the President of the Society as she was removed by no confidence by the majority of the members in the board meeting called by her on 19.9.1990 on the directions of Deputy Registrar (Consumers) and in her place one Dr. Vasudevan had been elected as the President. It is alleged by the respondent that a copy of the entire minutes of the meeting held on 19.9.1990 had been duly communicated to the respondent. Even in the oral hearing the petitioner and respondent reiterated the same arguments and in his written argument made on 2.4.1991 the respondent has questioned the validity of the no confidence motion and consequent removal of the President from the office of President of the committee and the election of Dr. M. Vasudevan in her place as there is no provision therefor in the Act.

5. I have given my anxious consideration to the rival contentions of the parties. The allegation and the counter allegations made by the parties do not controvert the fact that there were resignations by three members of the society. The point disputed is whether merely by such resignation the members concerned cease to hold office on the committee of management and even if it is conceded to be so, whether

the respondent is enabled under the Act to appoint an administrator to manage the affairs of the committee. One should bear in mind that this authority is exercising his revision jurisdiction which is limited to look into the legality, regularity and the propriety of any decision or order passed by the respondent. I would, therefore, take up first the jurisdictional aspects for invoking Section 33 of the Act and appointing an administrator there under to manage the affairs of the society in the circumstances of the present case.

6. Chapter IV of the Co-operative Societies Act provides for the management of registered society. Section 31 (1) (a) provides that subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a registered society shall vest in the general body of its members. The immediate management of the Society is vested as per Section 32 of the Act in a committee constituted in accordance with the provisions of the Act, the rules and the bye-laws. Section 32 (3) of the Act provides inter-alia that the committee shall consist of not less than seven and not more than fifteen members in a registered society classified as a primary society. According to sub-section (5) of Section 32 of the Act, the tenure of office of the elected members of a committee is three years. Section 33 provides for appointment of an administrator under certain circumstances. For facility, the Section is extracted below:

“33. *Appointment of new committee or administrator on failure to constitute committee, etc.*

(1) Where the term of office of a committee has expired and a new committee has not been constituted, or where the Registrar is satisfied:-

(a) that a new committee cannot be constituted before the expiry of the term of office of the existing committee, or

(b) that a new committee fails to enter upon office on the date on which the term of office of the existing committee expires, the Registrar may, either of his own motion or on the application of any member of the society, after consulting the financing bank, by order appoint-

- (i) *a new committee consisting of not more than three members of the society; or*
- (ii) *one or more administrator or administrators who need not be a member or members of the society, to manage the affairs of the society till a new committee enters upon offices:*

Provided that, before making such order, the Registrar shall publish a notice on the notice board of the head office of the society inviting objections to the making of the order within a period specified in the notice and consider such objections:

Provided further that, it shall not be necessary to publish such notice in cases where the Registrar is satisfied that it is not reasonably practicable to do so.

(2) The committee or administrator or administrators appointed under sub-section (1) shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or any officer of the society and take all such action as may be required in the interest of the society.

(3) The committee or administrator or administrators shall arrange for the constitution of a new committee or for the entering upon office of the new committee, as the case may be.”

7. On going through the provisions of Sections 31, 32 and 33 the committee of a society, once it is elected shall continue to hold office for a period of three years and any casual vacancy in the society can be filled up by co-option or fresh selection. I do not find any provision in the Act that the committee will cease to exist if it becomes lean with a strength below the statutory minimum or it becomes non-functioning on account of the rivalry among its members. As observed by a Division Bench of the High Court of Andhra Pradesh in **Pamarthy Veerasamy Vs. The Collector (Co-operation), Krishna District, Chilakalpudi and others, AIR 1986 AP 134 : 1987 CLJ 220**, there is

no warrant equating a non-functioning committee with a non existing committee. A non-functioning committee exists but does not function, while in the case of a non-existing committee the question of its functioning well or ill cannot arise. In that case the Registrar appointed an Administrator in circumstances under which seven directors of a managing committee of eleven members resigned with a view to create a stalemate in the administration of the affairs of the society and as the resignation crippled the functioning of the managing committee the Registrar invoked Section 32 (2) of the Andhra Pradesh Co-operative Societies Act (similar to Section 33 of the Pondicherry Co-operative Societies Act) and appointed a person to manage the affairs of the society. When the validity of this order was considered by the Division Bench in the above case, the High Court held that the Registrar could not appoint a person to manage the affairs of the society on the ground that a validly constituted committee in existence is not capable of functioning properly. The High Court further held that such a situation when a committee is in existence but not functioning properly can only be dealt with in Section 34 (1) of the Andhra Pradesh Co-operative Societies Act enabling the Registrar to supersede the committee. Such a power of supersession where the committee of management or the co-operative society is not functioning properly is provided for in Section 83 of the Act and if the Registrar was satisfied that the committee of management of the Pondicherry Health Employees Co-operative Society was not functioning properly he ought to have set in motion the proceedings under Section 83 of the Act.

8. In view of the above reasons the inescapable conclusion is that the jurisdictional aspects required under Section 33 of the Act are not satisfied in this case and while if is so, the impugned proceedings passed under Section 33 (1)(b)(ii) of the Act is not sustainable. It is, therefore, not necessary for me to go into the other aspects of the case and the merits of the other contentions raised by both the parties.

9. **The revisions petition is, therefore, allowed** and the proceedings of the respondent in No.5/10/2/20/RCS/K/90/847 dated 10.10.1990 is hereby set aside. This will not, however, preclude the respondent from invoking the jurisdiction conferred on him by law to ensure the proper functioning of the managing committee of the Pondicherry Health Employees Co-operative Credit Society.

Given under my hand and seal on this the Fifteenth day of April,
One thousand nine hundred and ninety one.

Note: *The proposition laid down in the above revision petition is modified after the judgment of the High Court of Madras, in **Dr. R. Gunasekaran vs. The Registrar of Co-operative Societies, Pondicherry in W.P. No.15211/1997 dated 13th March 2000.***

BEFORE HER EXCELLENCY THE LIEUTENANT GOVERNOR,
PONDICHERRY.

PRESENT : DR. RAJANI RAI
LIEUTENANT GOVERNOR
PONDICHERRY

Appeal Petition No. 41/1998
I.A. No. 7/1998

P. Palanisamy,
S/o (Late) Periasamy Counder,
No.53-1, East Street,
Bahour,
Pondicherry – 607 402. ... Appeal Petitioner

vs.

1. The Administrator,
Bahour Commune Co-operative Housing Society Ltd.,
Bahour,
Pondicherry – 607 402.
2. The Sale Officer,
Bahour Commune Co-operative Housing Society Ltd.,
Bahour,
Pondicherry – 607 402. ... Respondents

Important point

The Pondicherry Co-operative Societies Act, 1972 – S.142 – Review- The petitioner has not come up with the theory of discovery of any new and important facts which were not then within his knowledge and could not be produced by him when the order was made or any mistake or error apparent on the face of the record or for any other sufficient reasons. Even the phrase “for any other sufficient reason” used in a general sense in the above referred sub-section, could only be interpreted or construed to mean any circumstances, having a close relation

or nexus to the specific type of instances referred to therein like discovery of new material facts or existence of any mistake or error apparent on the face of the record. I am of the view that the review petition is not maintainable.

Review petition is dismissed.

ORDER

This is a review petition filed under Section 142 of the Pondicherry Co-operative Societies Act, 1972 (No.7 of 1973). The said petition is filed against the order dated 26.6.1998 passed by the Registrar of Co-operative Societies in ARC No.5322/1997.

2. The subject matter of the review petition is that the above petitioner, after availing a loan of Rs.90,000 from the respondent society towards construction of a house, was not in a position to repay the amount in regular instalments. Necessary arbitration proceeding was therefore initiated and ended with an award dated 3.3.1993 in ARC No.2677/92 directing the petitioner to pay the dues. The respondent society also filed an execution petition and took action for auctioning the house on 24.2.1994. After paying a paltry sum of Rs.5,000 the petitioner had prayed for postponement of the auction. Disputing the amount demanded by the respondent society, the petitioner also took up the matter before the Registrar of Co-operative Societies by filing a petition under Section 84 of the Pondicherry Co-operative Societies Act, 1972, which was dismissed by the Deputy Registrar of Co-operative Societies (Audit) in ARC No.5322/1997, with an observation that the petitioner is at liberty to file an appeal against the order of the Arbitrator. Aggrieved by the said order the petitioner filed a revision petition under Section 141 of the Pondicherry Co-operative Societies Act, 1972. Holding that a provision exists for a regular appeal under Section 140 of the Act, against the order of the Arbitrator, the Registrar of Co-operative Societies by his order dated 26.6.1998 in ARC No.5322/97 has dismissed the revision petition as not maintainable. It is against the said order of the Registrar of Co-operative Societies, the present review petition is filed.

3. The said case was posted for hearing on 29.3.2000, on which date both the parties appeared in person and argued their cases. While the petitioner prayed for review of the order passed by the Registrar of Co-operative Societies in ARC No.5322/97, the respondent society, drawing attention to the statutory provisions, vehemently objected to the maintainability of the very review petition. As requested, the parties have also filed their written arguments subsequently.

4. Taking into consideration the oral as well as the written arguments put forth by both the parties and all the relevant documents produced and also the statutory provisions as contained in the Pondicherry Co-operative Societies Act, 1972 and the Rules framed there under, I place my findings as hereunder:

To start with, it would be worthwhile to refer to the provisions of 'Revision' as contained in Section 142 of the Pondicherry Co-operative Societies Act, 1972, which is extracted as below:

"Section 142(1) – The appellant or the applicant for revision or the respondent may apply for the review of any order passed under Section 140 or Section 141 on the basis of the discovery of new and important fact, which after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reason."

5. On perusal of the pleadings put forth by the petitioner in his review petition No.41/1998, it is amply made clear that the petitioner has not come up with the theory of discovery of any new and important facts which were not then within his knowledge and could not be produced by him when the order was made or any mistake or error apparent on the face of the record or for any other sufficient reasons. Even the phrase "for any other sufficient reason" used in a general sense in the above referred sub-section, could only be interpreted or construed to mean any circumstances, having a close relation or nexus to the specific type of instances referred to therein like discovery of new material facts or existence of any mistake or error apparent on the

face of the record. In view of my reasoning/findings in terms of the statutory provisions, I am of the view that the review petition before the Authority is not maintainable. In fact, the petitioner himself in his written arguments has prayed that in case the review petition is not maintainable, the case may be transferred to the appropriate authority for deciding the matter on merits.

6. In the light of my above conclusive findings, **I dismiss the Co-operative Review Petition No.41/1998 and the I.A** preferred by Thiru P. Palanisamy as not maintainable in accordance with the provisions of the Pondicherry Co-operative Societies Act, 1972.

7. Given under my hand and seal this 29th day of December, 2000.

Before making the order of appointment of the Administrator, the Registrar should have published the notice of such proposal on the notice board of the society.

Revision petition is allowed.

Cases referred

1. *Order in Dr. R. Gunasekaran vs. Registrar of Co-operative Societies, Pondicherry, in W.P. No.15211 of 1997 dated 13th March, 2000 of the High Court of Judicature, Madras.*

2. *Order in P. Sankaran vs. The Government of Pondicherry and 8 others in W.P. No.23595/2001 dated 30th November 2001 of the High Court of Judicature, Madras.*

ORDER

This relates to the revision petition No.3/2001 filed before this revisional authority by Bahour Co-operative Milk Producers Society rep. by its President S. Srinivasan and four other directors, namely, G. Anbazhagan, V. Ramadass, R. Chinnasamy and Tmt. N. Gomathi praying to set aside the order of the Registrar of Co-operative Societies, the respondent, dated 5.9.2001. They have also filed an I.A. No.2/2001 in the above said Revision Petition and prayed therein to pass an order suspending the execution of the order dated 5.9.2001 of the Registrar of Co-operative Societies.

2. The gist of the case is that the Registrar of Co-operative Societies, Pondicherry had passed an order under sub-section (1) of Section 33 of the Pondicherry Co-operative Societies Act, 1972 appointing an Administrator to manage the affairs of the said society consequent on the resignation of the five directors from the committee of management of the said society and thus the strength had fallen below the quorum of five and meeting could not be convened to accept the resignation letters. The revision petitioners have filed the revision petition praying this authority to call for the records of the Registrar passed on 5.9.2001 vide proceedings No.5/7/1/48/RCS/Dairy/ 2001/ 257 and to set aside the order of the respondent and render justice.

3. The revision petitioners submit that the respondent herein had passed an order by a proceeding, whereby the committee had been declared defunct based on the resignation of five directors and in its place an Administrator has been appointed. The revision petitioners further submit that the respondent had not followed the procedures as contained in Section 33 of the Act and has wrongly passed the order. The revision petitioners also submit that an Administrator can be appointed under the said Section only if a new committee cannot, inter-alia, be constituted before the expiry of the term of office of the existing committee and that the Registrar has not given the reasons why a new committee cannot be constituted before the expiry of the term of the existing committee, which expires on March, 2002. They have further contended that only four directors have resigned and not five as stated by the Respondent. Thiru. Anbazhagan, one of the directors had not resigned and not given any resignation letter at any stage and hence the statement of the respondent in this respect is not correct.

4. The respondent submits in their counter that on 5.9.2001 five directors Tvl. G. Anbalagan, G. Malayalathan, G. Pandiayn, R. Veerakumar and R. Poongothai have come in person to the respondent's office and tendered their resignation in person and that a joint letter dated 4.9.2001 signed by the said five directors was also given to the respondent wherein they have stated that consequent on the resignation of five directors, an administrator may be appointed for the said society. The respondent further submits that she has directed the five directors to handover the letters to the Dairy Development Officer in the office of the respondent. The respondent also submits that as per bye-law 23(1)(c) of the said society, the quorum for conducting a meeting is five. In view of the resignation of the five directors as aforesaid from the said society, the strength has fallen to four and valid meeting could not be held to accept the resignations and hence Section 33 of the Act was invoked to appoint an administrator in accordance with the order dated **13th March, 2000** of the High Court of Judicature in ***W.P. No.15211 of 1997 (Dr. R. Gunasekaran vs. The Registrar of Co-operative Societies, Pondicherry)***. The respondent further states that Thiru. G. Anbalagan was one of the directors who came in person to the respondent and has signed not only in the individual letter but also in the joint letter dated 4.9.2001.

5. The I.A. was heard on 12.9.2001. Tvl. Srinivasan, G. Anbazhagan, V. Ramadass, R. Chinnasamy and Tmt. N. Gomathi were present along with their counsels Tvl. K. Lakshminarayanan and M. Swaminathan, Advocates. The Registrar of Co-operative Societies was present. After hearing both the parties, the revisional authority has passed an interim order staying the proceedings No.5/7/1/48/RCS/Dairy/2001/257 dated 5.9.2001 of the Registrar of Co-operative Societies, Pondicherry.

6. In the meantime two directors Tvl. R. Poongothai and G. Malayalathan had filed an I.A. to implead them as parties. One Thiru. P. Sankaran, Advocate had filed a W.P bearing **No.23595 of 2001 (P. Sankaran vs. The Government of Pondicherry and 8 others)** in the High Court praying to pass an ad interim stay of the order passed by the revisional authority in I.A.No.2/2001. After hearing the arguments of the said Thiru. P. Sankaran, the High Court of Judicature has given a direction vide **order dated 30th November 2001** to the revisional authority to dispose the revision petition on or before 28th December, 2001 after giving notice to the writ petitioner as well as other parties in the revision petition and after hearing all of them. Hence necessary notices were issued to all concerned including Tvl. R. Poongothai, G. Malayalathan and P. Sankaran, Advocate.

7. The case was posted for hearing on 14.12.2001. All the petitioners along with their counsel Thiru A. Bakthavachalam, Advocate, the respondent and Thiru Sankaran, Advocate and the Advocate Thiru C. Jagadeesan, Counsel for R. Poongothai and Malayalathan were present. Thiru Sankaran filed a memo and Thiru. C. Jagadeesan filed counter statement on behalf of Respondents 2 & 3.

8. Thiru P. Sankaran stated that the revision petition is not maintainable either in law or on facts and the proceedings dated 5.9.2001 of the Registrar of Co-operative Societies is justifiable and prayed therefore to dismiss the petition in toto.

9. The counsel for the petitioners stated that only four of the directors have resigned and not five. The order passed by the Registrar invoking Section 33 of the Act is totally wrong. Bye law

23(1)(c) states that the quorum for convening a meeting to conduct the affairs of the society is five. The Registrar of Co-operative Societies has invoked the second proviso of Section 33 instead of first proviso without even convening meeting of the board of directors. He further added that as per clause 23(3) of the bye-laws, any elected member of the board may at any time resign from his office by sending a letter of resignation to the President of the society but such resignation shall take effect only from the date on which it is accepted by the board of directors. There is contradiction in para 2 and 3 of the counter of the Registrar of Co-operative Societies. The wife of Anbalagan has given a complaint regarding the abduction of Anbalagan. The counsel for the petitioners has further raised doubts as to how the Registrar of Co-operative Societies knows each and every individual directors of all societies. Anbalagan has not resigned but his signature has been forged. Even if members resign they can be co-opted as per clause 17(1) of bye-laws.

10. The counsel for Poongothai and Malayalathan has stated that only five have resigned and not four as stated. Hence the order issued by the Registrar of Co-operative Societies appointing an Administrator is correct. When five directors submitted their resignation to the President and no action was taken, with no other alternative they submitted their resignations to the Registrar of Co-operative Societies. Since the board could not meet because of want of quorum the Registrar of Co-operative Societies has appointed the Administrator. Thiru Anbalagan would have approached the Registrar of Co-operative Societies if his signature is forged. Hence his signature is valid in all respects. It is not correct to say that Section 33(1) (b) (ii) is invoked instead of Section 33(1)(b)(i). Any one of the proviso can be invoked since between the two provisos the term "or" is there. It is not necessary to invoke the first proviso and then come to the second. Hence appointment of the Administrator is correct and to safeguard the interest of the society and to render justice the revision petition may be dismissed.

11. The Registrar of Co-operative Societies stated that all the five directors came with their resignations and were sent to the Dairy Development Officer in the office of the Registrar of Co-operative Societies who identified them and were advised to give the

resignations to the President. As the President took no action the above said five directors submitted their resignations to Registrar of Co-operative Societies and the Registrar of Co-operative Societies took action based on the resignation letters.

12. All the parties were heard and reasonable opportunity was also given to them. Taking into consideration the oral as well as the written arguments put forth by the parties and all the relevant documents produced and the statutory provisions as contained in the Pondicherry Co-operative Societies Act. 1972, the Pondicherry Co-operative Societies Rules, 1973 and the Bye-laws of Bahour Co-operative Milk Producers Society Ltd., I arrive at the following findings:

(i) Bye – law 23 (3) contemplates that any elected member of the board may at any time resign from his office by sending a letter of resignation to the President of the Society but such resignation shall take effect only from the date on which it is accepted by the board of directors. As per bye-laws 23(1)(c), the quorum for a meeting of the committee shall be five. Before invoking the provisions of Section 33 of the Pondicherry Co-operative Societies Act. 1972, the Registrar of Co-operative Societies should have sent the notice of resignations of the five directors to the President of the board and other directors to find out whether the quorum really exists or not. This has not been done. The Registrar should have asked the President of the society to take necessary action on the resignations instead of straight away accepting the resignations.

(ii) Thiru G. Anbazhagan, who is alleged to be one of the five directors who have tendered their resignation, has stated in the hearing conducted by the revisional authority on 12.9.2001 that he has not resigned and that his signature has been forged. If a fair opportunity had been given by giving notice of resignation of certain directors to the other directors, this situation would not have arisen. The statement made by Thiru G. Anbalagan is in consonance with the averments of the petitioners in the above revision petition.

(iii) The opinion formed by the Registrar of Co-operative Societies, Pondicherry that it is not reasonably practicable to publish a

notice on the notice board of the society is not convincing in the light of the provisions of Section 33(1)(b)(ii) and in the facts and circumstances of the case; because even assuming that Thiru G. Anbazhagan had resigned, still there are four remaining directors. Before making the order of appointment of the Administrator, the Registrar should have published the notice of such proposal on the notice board of the society; instead she has chosen to rely only on those who have given resignations.

13. In the light of the above findings, I allow the revision petition No.3/2001 preferred by the President, Bahour Co-operative Milk Producers Society Ltd., No. P.286 and others and set-aside the proceedings No.5/7/1/48/RCS/Dairy/2001/257 dated 5.9.2001 of the Registrar of Co-operative Societies, Pondicherry.

Given under my hand and seal this the 28th day of December 2001.

**BEFORE HER EXCELLENCY THE LIEUTENANT GOVERNOR,
PONDICHERRY**

**PRESENT: THIRU K.R. MALKANI
LIEUTENANT GOVERNOR
PONDICHERRY**

I A No.1/2002

in

Revision Petition No.1/2002

1. Nettapakkam Commune Co-op. Housing
Society Ltd., No.510, Rep. by President
N. Periasamy
2. G. Gowri
3. B. Meera
4. M. Palanisamy
5. S. Balaraman
6. S. Selvi
7. D. Usharani
8. A. Ulaganathan
9. K. Kannan
10. J. Anbuselvi
11. G. Sivaperumal ... Revision Petitioners

Vs.

1. The Registrar of Co-operative Societies,
Pondicherry
2. D. Santhanalatchoumi
3. J. Govinda Naidu, Senior Inspector of
Co-operatives, Election Officer ... Respondents

Important point

Pondicherry Co-operative Societies Act, 1972 – S.84 – Before passing the order of condonation of delay the Registrar ought to give notice to the revision petitioners.

Matter is remitted.

ORDER

This stay petition No.1/2002 in Revision Petition No.1/2002 was filed by Nettapakkam Commune Co-operative Housing Society Ltd., represented by its President and ten others against the Registrar of Co-operative Societies and two others under Section 141(1) of the Pondicherry Co-operative Societies Act, 1972.

2. The gist of the revision petitioners' case is that the revision petitioners have been duly elected members of the management committee of the above said society and it was challenged by the second respondent to set aside the elections and also filed a delay condonation petition. The first respondent ought to have given notice of hearing to the revision petitioners before passing the impugned order of condonation of delay and would have passed order, instead without giving notice of hearing to the revision petitioners and in violation of the principle of natural justice the order was passed and hence the revision petitioners request to set aside the same.

3. The second respondent has filed a condonation petition praying to condone the delay of 26 days in filing the dispute under Section 84 and the Registrar of Co-operative Societies had condoned the delay without giving notice to the other party. The Registrar could have decided the delay condonation petition after giving notice of the petition regarding the delay condonation petition to the respondents concerned. This has not been done.

4. In view of the above, I as, the Revisional Authority under the Pondicherry Co-operative Societies Act, 1972, **hereby remit the matter to the first respondent**, namely, the Registrar of Co-operative Societies and hereby direct the Registrar of Co-operative Societies, Pondicherry to give a fresh opportunity to the revision petitioners herein on the condonation petition filed by the second respondent and to dispose of the same along with the main dispute petition.

Given under my hand and seal this the 1st day of October, 2002.

IN THE COURT OF THE SECRETARY TO GOVERNMENT
(CO-OPERATION)

Chief Secretariat, Pondicherry – 605 001.

PRESENT : THIRU. A. ANBARASU, I.A.S.,
SECRETARY TO GOVERNMENT
(CO-OPERATION)
GOVERNMENT OF PONDICHERRY.

Review Petition No.1/2000

In

Revision Petition No. RC 13/1998 in Dispute No.ARC No.987/1998

P. Palanisamy,
S/o. Periyasamy Gounder (Late),
57-A, East Street Bahour,
Pondicherry – 607 402

.....

Review Petitioner

Vs.

The Arbitrator,
Co-operative Department,
V.V.P. Nagar, Thattanchavady,
Pondicherry – 605 009.

The Sale Officer
Pondicherry State Co-op. Housing Federation Ltd.,
7th Cross, Thanthai Periyar Nagar,
Pondicherry – 605 005.

The Administrator,
Bahour Commune Co-op. Housing Society Ltd.,
Bahour, Pondicherry – 607 402.

Respondents

Important point

Pondicherry Co-operative Societies Act, 1972 – S. 142 – Review - A review petition is maintainable only if it is filed before the same authority who had passed the order and not otherwise. In the instant case the review petitioner, if aggrieved by the said dismissal order of the Registrar, should have filed a review petition only before the Registrar.

Petition is dismissed.

ORDER

(Issued under Section 142 of the Pondicherry Co-operative Societies Act, 1972 read with Rule 105 of the Pondicherry Co-operative Societies Rules, 1973)

The above named review petitioner is also the revision petitioner in No.RC 13/1998 and judgment debtor in decree passed in Dispute No. ARC No. 987/1998. This review petition, dated 4.2.2000, has been filed before me under Section 142 of the Pondicherry Co-operative Societies Act, 1972, with a prayer to set aside the dismissal order, dated 2.12.1998 passed by the Registrar of Co-operative Societies, Pondicherry (for brevity the “Registrar”) in RC 13/1998.

2. Appeal, revision and review powers of the Government, under the said Act, have been re-delegated to Secretary (Co-operation), vide G.O. Ms.No.5/Coop. dated 29.12.2004 of Chief Secretariat (Coop.), Pondicherry, and accordingly, this review petition has been transferred to me by His Excellency the Lieutenant Governor, Pondicherry, for disposal.

3. On perusal, the review petition and the respondents’ counter affidavits reveal the following facts:

- a) The review petitioner, a member of the Bahour Commune Co-operative Housing Society Ltd., (Member No.484), obtained a housing loan of Rs.90,000 from the said society for construction of a house on execution of a mortgage deed, dated 25.1.1990,

in favour of the said society and agreed to repay the said loan in equal monthly installments.

- b) As the review petitioner could not repay loan installments in time, the said society foreclosed the said loan account and filed a dispute (Dispute No. ARC 987/1998) before the Arbitrator, Co-operative Department, Pondicherry, under Section 84 of the said Act, against the review petitioner for the recovery of the loan dues. The Arbitrator, Co-operative Department, Pondicherry passed a decree on 6.8.1998 for Rs.2,32,390 in favour of the said society, payable by the review petitioner along with subsequent interest on the principle amount of Rs.90,000 at the rate of 17.1% p.a. with effect from 1.8.1998.
- c) Aggrieved by the said decree, the review petitioner has filed a revision petition (No. RC 13/1998) before the Registrar under Section 141 of the said Act. The Registrar dismissed the said revision petition, vide order dated 2.12.1998, after concluding that the petition was not maintainable.
- d) Aggrieved by the said dismissal of the Registrar, the review petitioner has filed this review petition (No.1/2000) before His Excellency the Lieutenant Governor, Pondicherry, with a prayer to set aside the said dismissal order.

4. The review petitioner, if felt aggrieved by the said decree, should have preferred an appeal only before the Co-operative Appellate Tribunal, as per the provisions of Section 140 of the said Act. Similarly, the review petitioner, if felt aggrieved by the said dismissal order, should have filed a review petition only before the Registrar, as per the provisions of Section 142 of the said Act. Contrary to the provisions of Section 142 of the said Act, the review petitioner has filed this review petition before this Court, which is not the competent authority to entertain this review petition in as much as the said dismissal order was passed by the Registrar. Though sufficient opportunities were given, the review petitioner has not given any convincing reason on the maintainability of the review petition before me.

5. Section 142 of the said Act, under which this review petition has been filed, is reproduced hereunder:

“Section 142(1) – The appellant or the applicant for revision or the respondent may apply for the review of any order passed under Section 140 or Section 141 on the basis of the discovery of new and important fact, which after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reason.”

6. In view of the provisions of Section 142 of the said Act, it is crystal clear that, a review petition is maintainable only if it is filed before the same authority who had passed the order and not otherwise. In the instant case, as stated earlier, the review petitioner, if aggrieved by the said dismissal order of the Registrar, should have filed a review petition only before the Registrar.

7. On the above premises, **I have no other option but to dismiss this review petition as not maintainable.** I make no orders as to costs.

Dated at Pondicherry, on the 22nd day of May, 2006.

IN THE COURT OF THE
SECRETARY TO GOVERNMENT (CO-OPERATION),
PONDICHERRY

PRESENT : THIRU A. ANBARASU, I.A.S.
SECRETARY TO GOVERNMENT
(CO-OPERATION)
GOVERNMENT OF PONDICHERRY

Revision Petition No. 3/2004

R. Ilango,
No.7, Ramalingapuram Street,
Mudaliarpet, Pondicherry 605 004. ... Revision petitioner

Vs.

1. The Registrar of Co-operative Societies
Pondicherry.
2. Anglo French Textiles Employees Co-op.
Stores Ltd. No.P.90, rep. by its President ... Respondents

Important point

The Pondicherry Co-operative Societies Rules, 1973 – Rule 45 - In the light of the provisions of the relevant Act and Rules, the stores is an affiliated primary member of the SPINCO and the petitioner was only a nominee of the stores to represent it on the committee of SPINCO. Hence the petitioner's contention that an opportunity should have been given to him in untenable. Further the petitioner has no locus standi to file this revision petition in as much as the stores was only disqualified to hold membership in the committee of SPINCO, vide the impugned proceedings dated 3.6.2004.

Revision petition is dismissed.

ORDER

(Issued under Section 141 of the Pondicherry Co-operative Societies Act, 1972 read with Rule 104 of the Pondicherry Co-operative Societies Rules, 1973)

The petitioner above named has filed this revision petition under Section 141 (3) of the Pondicherry Co-operative Societies Act, 1972 (for brevity "Act") before His Excellency the Lieutenant Governor, Pondicherry.

2. Appeal, revision and review powers of the Government under the Act have been re-delegated to the Secretary to Government, vide G.O. Ms. No.5/Coop. dated 29.12.2004 of the Chief Secretariat (Co-operation), Pondicherry, and thus, this revision petition has been transferred to me for disposal.

3. On perusal the revision petition reveals the following undisputed facts:

(a) The AFT Employees Co-operative Stores Ltd., (for brevity "stores") is a member society of the Pondicherry Co-operative Spinning Mills Ltd. (for brevity "SPINCO"). The petitioner was delegated by the Stores to represent it on the general body of SPINCO.

(b) Subsequently the petitioner was elected as a member of the committee of management of SPINCO to hold office from 10.11.2003 to 31.3.2006.

(c) The stores had committed default in the matter of repayment of its dues to the Pondicherry State Co-op. Consumers Federation Ltd. (for brevity "CONFED"). In exercise of the powers by Rule 45 of the Pondicherry Co-operative Societies Rules, 1973, the Registrar of Co-operative Societies (for brevity "Registrar") issued a notice dated 22.1.2004 to the stores to show cause as to why it should not be disqualified to continue to be a member of the committee of SPINCO. In pursuance of the said notice, the stores had submitted its

representation, dated 12.2.2004, whereby it requested the Registrar to consider the issue of disqualification as exceptional and prayed to drop the proposal of disqualification which was not agreed to as there is no provision in the Act for such consideration. Hence, in exercise of the powers under Section 34 (9) of the Act, the Registrar had disqualified the stores represented by the petitioner to hold membership in the committee of SPINCO, vide proceedings No.5/5/1/106/RCS/Hdlms/B2/89/96 dated 3.6.2004.

(d) Aggrieved by the said disqualification order dated 3.6.2004, the petitioner has filed this revision petition.

4. This revision petition was taken up for hearing on 21.2.2006, wherein the petitioner was asked to clarify certain issues. The petitioner has submitted his representation dated 21.2.2006, wherein it has been stated that:

(a) He was unaware about the default committed by the stores in the matter of repayment of its due to the CONFED.

(b) Even though the stores was disqualified by the impugned order, he alone was affected by the impugned order and not the stores.

(c) Before passing the impugned order, no opportunity was given to him to express his views, since such right is guaranteed under Rule 45 of the Pondicherry Co-operative Societies Rules, 1973 (for brevity "Rules").

(d) Even though, as per Rule 45 of the Rules, the term "member" means the stores, he was the representative of the stores to represent it on the committee of the SPINCO and hence he should have been called for before passing the impugned order.

5. In the light of the provisions of the relevant Act and Rules, I am of the view that the stores is an affiliated primary member of the SPINCO and the petitioner was only a nominee of the stores to represent it on

the committee of the SPINCO. Hence the petitioner's contention that an opportunity should have been given to him is untenable. Further I am also of the view that the petitioner has no locus standi to file this revision petition in as much as the stores was only disqualified to hold membership in the committee of the SPINCO, vide the impugned proceedings dated 3.6.2004.

6. Further it is reported that the Registrar of Co-operative Societies has appointed Thiru G. Ragesh Chandra, PCS Officer as the Administrator of SPINCO, under Section 33 of the Act vide proceedings No.5/5/1/106/RCS/Hldms/B2/89/210 dated 29.10.2004, since the number of members of the committee of the SPINCO has been deduced to six, as against the quorum of seven required for convening the meeting of the committee. When the term of the elected committee itself had come to an end with effect from 29.10.2004, as of now, nothing survives in this revision petition.

7. Hence, in view of the above, **I hold that this revision petition is not maintainable and accordingly dismissed.**

Dated at Pondicherry, on the 30th day of August, 2006.

**REVISION PROCEEDINGS OF THE SECRETARY TO
GOVERNMENT
(CO-OPERATION), PUDUCHERRY.**

**R.P.No.1/2006
in
Dispute No. 8 &12/2005**

**PRESENT: THIRU A.ANBARASU, I.A.S.
SECRETARY (CO-OPERATION),
CHIEF SECRETARIAT, PUDUCHERRY.**

1. The President, Ariyankuppam Public Servants
Co-operative Stores Ltd. No. P. 455
 2. B.Diagaradjane
 3. V.Jayabalan
 4. V.Arunachalam
 5. R.Tamilarasan
 6. G.Arikesavan
 7. S.S.Jayalakshmi
 8. S.Vanitha
 9. S.Muthuvelan
 10. A.Devaraj
- ... Revision Petitioners

Vs.

1. N.Ilango Dhamodharan
 2. N.Elumalai & S.Chandrasekaran
 3. Election Officer
- ... Respondents

Important point

*The Pondicherry Co-operative Societies Act, 1972 – S.141 -
The revision petition was filed mistakenly to the Secretary (Co-
operation) instead of Registrar of Co-operative Societies as the
order challenged was passed by the Deputy Registrar, who is
subordinate to the Registrar of Co-operative Societies. The*

revision petition is transferred to the Registrar of Co-operative Societies being the appropriate authority for disposal as this revision petition was filed to the improper forum of revisional jurisdiction.

Revision petition is transferred.

ORDER

(Issued under Section 141 of the Pondicherry Cooperative Societies Act, 1972)

1. This revision petition is filed under Section 141 of the Pondicherry Cooperative Societies Act, 1972 by the President, Ariankuppam Public Servants Cooperative Stores Ltd. P.455 and other members of the erstwhile committee challenging the order dated 3.3.2006 made in Disputes No.8 & 12/2005, on the file of the Deputy Registrar of Cooperative Societies (Planning & Legal), Puducherry.

2. A dispute under Section 84 of the said Act was filed by Tvl. N. Ilango Dhamodaran, N.Elumalai and S.Chandrasekaran questioning the validity of the election held to the committee of management of the said stores. The disputes were admitted for adjudication and were assigned to the Deputy Registrar (Planning & Legal) for disposal. The Deputy Registrar (Planning & Legal) took the case of dispute on file, heard the parties and by order dated 3.3.2006 allowed the case of disputes and set aside the election held to the committee of management of the said stores. This order is challenged in the revision petition filed under Section 141(1) of the Act.

3. On scrutiny and careful examination of the revision petition, it is revealed that the revision petition was filed mistakenly to the Secretary (Co-operation) instead of Registrar of Cooperative Societies as the order challenged was passed by the Deputy Registrar, who is subordinate to the Registrar of Co-operative Societies.

4. Hence, **this revision petition is transferred to the Registrar of Co-operative Societies** being the appropriate authority

for disposal as this revision petition was filed to the improper forum of revisional jurisdiction. The revision petitioners are hereby directed to represent their case before the Registrar of Co-operative Societies for further remedy, if any.

Pronounced and typed to my dictation on this the 14th day of March, 2007.