

**AFR**  
**Reserved on 17.04.2019**  
**Delivered on 30.5.2019**

**Court No. 34**

**Case :-** WRIT - C No. - 51014 of 2014

**Petitioner :-** Smt. Vandana Varma And 2 Others

**Respondent :-** State Of U.P. And 6 Others

**Counsel for Petitioner :-** Shashi Nandan

**Counsel for Respondent :-** C.S.C.,Dhirendra Singh,Karan Prakash  
Tiwari,Kunwar Bahadur Srivastava,Nikhil Kumar

**Hon'ble Sudhir Agarwal,J.**

**Hon'ble Ashwani Kumar Mishra,J.**

**Hon'ble Rajendra Kumar-IV,J.**

*(Delivered by Hon'ble Sudhir Agarwal, J.)*

1. A Division Bench, finding itself unable to agree with the law laid down by an earlier Division Bench in **Kamil Kidwai vs. State of U.P. and others, 1992 (10) LCD 263**, on the interpretation of Section 38(1) of U.P. Co-operative Societies Act, 1965 (hereinafter referred to as 'U.P. Act, 1965'), in respect of power of Registrar, with regard to sanction of resolution of Committee of Management of a Co-operative Society, passed in exercise of power under Rule 454 of U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as 'Rules, 1968') and a follow up decision in **Writ Petition No.45314 of 2014 (Smt. Vandana Varma and 2 others vs. State of U.P. and 6 others)** decided on 29.8.2014, made reference to Larger Bench for answering the following question:-

*“Whether, the division benches in Kamil Kidwai Vs. State of U.P., 1992 (10) Lucknow Civil Decisions, 263, followed in Writ Petition No. 45314 of 2014, in so far as the exercise of power by a committee of management of a cooperative society, under rule 454, is subject to grant of sanction by Registrar under section 38(1) of the Act lays down the correct law? ”*

2. Before advertng to the aforesaid question we find it appropriate to have a bird eye view of a few relevant facts, giving rise to this

controversy.

3. District Co-operative Bank Limited, Muzaffarnagar (hereinafter referred to as 'D.C.B.') is a Central Level Co-operative Society registered under U.P. Act, 1965. It is engaged in the business of banking and has received a licence for this purpose from Reserve Bank of India under Banking Regulations Act, 1949 (hereinafter referred to as 'B.R. Act, 1949'). D.C.B. has individual members as also many Primary Agricultural Credit Societies as members.

4. Petitioner-1, Smt. Vandana Varma, was initially a member of Sadhan Sahkari Samiti Limited, Meerapur (Dakshini). Later on, she was shifted to village Kutubpur, Tehsil Jansath, District Muzaffarnagar. She made a request to Assistant Registrar, Co-operative, Jansath, Muzaffarnagar (hereinafter referred to as 'A.R. (C.O.)') to permit her to become a member of Kisan Sewa Sahkari Samiti Limited, Kutubpur, Muzaffarnagar (hereinafter referred to as 'KSSSL, Kutubpur') which was allowed by A.R. (C.O.) vide order dated 3.4.2012 and that is how she became member of a Primary Agricultural Credit Co-operative Society at Kutubpur i.e. KSSSL, Kutubpur. She was elected as delegate from KSSSL, Kutubpur to represent in general body of D.C.B. where she was elected as a member of Committee of Management in the elections held on 29.1.2013. Then she was elected as Chairman of Committee of Management of D.C.B. on 30.1.2013.

5. Petitioner-2, Ashok Kumar, was elected as Vice Chairman on 30.1.2013 and Petitioner-3, Mudit Varma, is an elected Director of Committee of Management of D.C.B. from Professional Constituency of D.C.B.

6. Bank had 14 elected Directors in Committee of Management. Three Directors of Committee of Management of D.C.B. made a complaint

dated 25.7.2014 alleging that petitioners have incurred some disqualification under Rule 115 and 453(1) of Rules, 1968. By letter dated 13.8.2014 a meeting was convened on 21.8.2014. A notice was issued by Secretary/Chief Executive Officer of D.C.B. Pursuant to aforesaid meeting, a resolution was passed on 21.8.2014 against petitioners and a consequential letter was communicated on 22.8.2014.

7. This letter was challenged by petitioners in Writ Petition No.45314 of 2014. This Court held, when charges relate to Rule 115, an office bearer can be removed only in accordance with Section 38 and for this purpose relied on the decisions in **Madan Pal Singh and another vs. The Additional District Magistrate, Meerut and others, 1980 ALJ 1098** and **Kamil Kidwai vs. State of U.P. and others, 1992 (10) LCD 263**. It held that whenever it occurs to Committee of Management that an officer of Society has become subject to any disqualification and ineligible to hold post, Committee will approach Registrar, obtain his sanction under Section 38(1), and then proceed to take action for removal of officer in accordance with Rule 454. Since there was no such sanction of Registrar, Court allowed writ petition vide judgment dated 29.8.2014, quashed resolution dated 21.8.2014 and consequential communication dated 22.8.2014, whereby petitioners were disqualified. This Court, however, left it open to the authorities concerned to take action in accordance with law and procedure, as observed in the said judgment.

8. Three Directors of D.C.B. namely Arun Tomar, Ashok and Smt. Machhala Devi moved an application under Section 38 of U.P. Act, 1965 for removal of petitioners before Deputy Commissioner and Deputy Registrar, Co-operative, Saharanpur Division, Saharanpur (hereinafter referred to as 'D.R. (C.O.) on 2.9.2014, whereupon he permitted Secretary of Bank as also Committee of Management, by order dated 5.9.2014, to issue notices to petitioners under Section 38 of U.P. Act, 1965.

Respondent-6 issued notice on 11.9.2014 under Section 38(1) read with Rule 454 making same allegations as were levelled in earlier notice dated 13.8.2014. On the same date a notice was issued with agenda for considering disqualification of petitioners and to convene meeting on 20.9.2014.

9. Challenging notice dated 11.9.2014, petitioners filed Writ Petition No.15014 of 2014, seeking following reliefs:-

*“(i) To issue a writ, order or direction in the nature of certiorari quashing the notice dated 11.9.2014, received on 15.9.2014 issued under Section 38(1) of the U.P. Cooperative Societies Act, 1965 read with U.P. Cooperative Societies Rules, 1968 (Annexure-6).*

*(ii) To issue a writ, order or direction in the nature of certiorari quashing the Agenda and Work List (Karya Suchi) issued by respondent no.5 and 6 dated 11.9.2014 (Annexure no.6).*

*(iii) To issue a writ, order or direction in the nature of mandamus commanding the respondent nos.5 to 7 not to hold meeting on 20.9.2014 pursuant to notice dated 11.9.2014 issued under Section 38(1) of the U.P. Cooperative Societies Act, 1965 read with Rule 454 of the U.P. Cooperative Societies Rules, 1968.”*

10. While hearing writ petition a Division Bench found itself unable to agree with the view taken by earlier Division Bench in **Kamil Kidwai (supra)** with regard to requirement of sanction of Registrar for removal of an officer of the Bank, having suffered disqualification under Section 38(1) read with Rule 454 of Rules, 1968, hence the Reference, as noticed above, has been made for adjudication by a Larger Bench, which has come up before us.

11. Now, we proceed to examine the question referred to us.

12. Basically, the issue relates to extent of autonomy of a Co-operative Society, and the manner and extent to which Executive authorities of State

must regulate or intervene or should be allowed to intervene in the autonomy of functioning of a Co-operative Society.

13. In order to understand central idea and spirit of laws relating to Co-operative Societies, we need to understand what a “Co-operative” means. The term “Co-operative” has been defined in various dictionaries relating to English Language as also law dictionaries and it would be appropriate to have referred some of above references hereinunder:-

“A. In **Black's Law Dictionary, Ninth Edition**, page 384 the term “Co-operative” has been defined as under:-

**Co-operative:**

1. An organization or enterprise (as a store) owned by those who use its services.
2. A dwelling (as an apartment building) owned by its residents, to whom the apartments are leased.

B. **P. Ramanatha Aiyar's 'The Law Lexicon' 3rd Edition 2012** defines 'Co-operative’ on page 350 as under:

**Co-operative:**

Promoting the same end; helping; acting together to accomplish the same end; working on the basis of co-operation.

C. **The New Lexicon Webster's Dictionary of the English Language, Deluxe Encyclopedic Edition**, defines “Co-operative” on page 215 as under:

**Co-operative:**

1. An association for producing goods, marketing etc. in which members share profits, and middlemen are eliminated.
2. A cooperative business or association. Cooperative societies are retail organizations in which the consumers are members who provide the capital and share the trading profits in the form of a dividend on purchase made by each member. In producers' cooperative societies the producers join together to market their products, and share the trading profits.

D. **Collins Cobulid Advanced Learner's English Dictionary, New Edition** defines the word “Co-operative” on page 310 as under:

**Co-operative:**

1. A co-operative is a business organization run by the people who work for it, or owned by the people who use it. These people share its benefits and profits.

2. A co-operative activity is done by people working together.

E. **Corpus Juris Secundum, Volume 18**, defines word “Co-operative” as under:

**Co-operative:**

Acting together to accomplish the same end, helping, promoting the same end.

Co-operative association or Co-operative society.

A union of individuals, commonly laborers or small capitalists, formed for the prosecution in common of a productive enterprise, the profits being shared in accordance with the amount of capital or labor contributed by each member.

F. **Concise Oxford English Dictionary, 11th Edition, Revised** defines word “Co-operative” as under:

**Co-operative:**

1. An organization or enterprise (as a store) owned by those who use its services.

2. A dwelling (as an apartment building) owned by its residents, to whom the apartments are leased.

G. In **Britannica Micropaedia Ready Reference, Volume 3 (15th Edition)**, page 605 word “Co-operative” defines as under:-

**Co-operative:**

Organization owned by and operated for the benefit of those using its services. Cooperatives have been successful in a number of fields, including the processing and marketing of farm products, the purchasing of other kinds of equipment and raw materials, and in the wholesaling, retailing, electric power, credit and banking, and housing industries. The income from a retail cooperative is usually returned to the consumers in the form of dividends based on the amounts purchased over a given period of time.

H. In **Jowitt's Dictionary of English Law, 2nd Edition, Volume 1, page 461** instead of word “Co-operative” word

“Co-operative Societies” defines as under:-

**Co-operative Societies:**

Voluntary associations of persons (usually small producers or consumers) who have come together to achieve some common object, such as the purchase of raw materials or the sale of goods, through a collective economic enterprise.”

14. The meaning of word “Co-operative” relates with word “co-operation”. “Co-operative” is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled Enterprise. In other words “Co-operative” means living, thinking and working together to accomplish a common goal through co-operative principles. Any organization formed by people to work together, to achieve the objects for which it is formed through co-operative principles, that is mutual co-operation, is called a Co-operative Society. The concept of co-operation envisages a group of persons having one or more common economic needs, who voluntarily agree to pool their resources, both human and material, and to use them for mutual benefit through an Enterprise managed by them, in democratic pattern guided by principle of “each for all and all for each”.

15. Truly speaking “Co-operation” dates back as far as human beings have been organizing for mutual benefits but somewhat organized Co-operative movements can be traced back to 18<sup>th</sup> Century when in England, post-feudal forms of co-operation between workers and owners with profit sharing and surplus sharing arrangements were found. In India we can trace back to Co-operative movement when British Government established Credit Co-operative Societies in villages and first legislation relating to “Co-operative” was enacted i.e. Co-operative Credit Societies Act, 1904. This Act was replaced by a new Co-operative Societies Act in 1912. Thereafter British Government appointed Maclagan Committee in

1914 to find out whether Co-operative Societies are proceeding on desired lines or not. The above Committee suggested certain improvements in the functioning, such as better procedure of audit, emphasis on teaching to members and to have steady progress of the movement. Co-operative Societies Act of 1912 also recognized Non-Credit Societies. During war periods Co-operative movement progressed rapidly.

16. Going further we find that term “Co-operation” in the context of “Co-operative” has been given definition by various persons in their own way but central idea and theme is common. Dr. C. R. Fay defined a “Co-operative Society” as:-

“an association for the purpose of joint trading, originating among the weak, and conducted always in an unselfish spirit, on such terms that all who are prepared to assume the duties of membership may share its rewards in proportion to the degree in which they make use of their association.”

17. Mr. V. L. Mehta, the Veteran Co-operator of India, looked upon co-operation in a wider context of voluntary improvement of economic condition of people by the people themselves. He defined “Co-operative” as under:-

“co-operation is the only one aspect of a vast movement which promotes voluntary association of individuals having common needs who combine towards achievement of common economic ends.”

18. Mr. H. Calvert defined “Co-operation” as under:-

“a form of organization wherein persons voluntarily associate together as human beings, on a basis of equality, for the promotion of the economic interest of themselves.”

19. From the above, we may cull out essentials of “Co-operative” as under:-

“(i) Co-operative is a voluntary form of organization;

(ii) it is an association of human beings organized on the basis of equality; and

(iii) its objective is economic interest all of its members.”

20. Thus fundamentally “Co-operative Societies” are democratic organizations and their affairs should be administered by persons elected or appointed in a manner agreed to by members and accountable to them. Members of societies should enjoy equal rights of voting, “one member one vote”, and participation in decisions effecting their societies. With introduction of Reforms Act, 1919 “Co-operation” became a provincial subject. With the establishment of Reserve Bank of India Act, 1935 (hereinafter referred to as 'R.B.I. Act, 1935'), its Agricultural Credit Department suggested organization of multipurpose Co-operative Societies which would embrace the whole life of agriculturists.

21. In order to regulate Co-operative Societies in the State of Uttar Pradesh, Legislature then enacted U.P. Act, 1965. This legislative exercise has its source of power under Item 32 List II of Seventh Schedule of Constitution of India. Co-operative Societies Act, 1912 as amended in its application from time to time to State of Uttar Pradesh was repealed vide Section 134 of U.P. Act, 1965 subject to savings.

22. This U.P. Act, 1965 contemplates three kinds of Co-operative Societies as under:-

*(a) “primary society” which is defined in Section 2(q-1) as a co-operative society ordinary membership whereof is not open to any other co-operative society;*

*(b) “central society” defined in Section 2(d-1) as a co-operative society which has any other co-operative society as its ordinary members and is not a primary co-operative society;*

*(c) “apex society” or “apex level society” or “State level co-operative society” and they are defined under Section 2(a-4) and are reproduced as under:-*

- (1) *U.P. State Co-operative Land Development Bank Ltd., Lucknow;*
- 2) *U.P. Co-operative Bank Ltd., Lucknow;*
- (3) *U.P. Co-operative Federation Ltd., Lucknow;*
- (4) *Pradeshik Co-operative Dairy Federation Ltd., Lucknow;*
- (5) *U.P. Co-operative Union Ltd., Lucknow;*
- (6) *U.P. Upbhokta Sahkari Sangh Ltd., Lucknow;*
- (7) *U.P. Co-operative Sugar Factories Federation Ltd.;*
- (8) *U.P. Cane Unions Federation Ltd., Lucknow;*
- (9) *U.P. Industrial Co-operative Association Ltd., Kanpur; or*
- (10) *any other central co-operative society fulfilling the following conditions:-*
  - (i) *it includes in its membership at least one other central co-operative society in the same line of business or trade; and*
  - (ii) *its area of operation covers the whole of Uttar Pradesh; and*
  - (iii) *its primary object is to facilitate the operation of the co-operative societies affiliated to it as ordinary members;”*

23. The democratic character and autonomy of “Co-operative Society” has also been recognized by Constitution of India inasmuch as Part IXB was inserted by Constitution (Ninety Seventh Amendment) Act, 2011. The Statement of Objects and Reasons in the aforesaid constitutional amendment states that co-operative sector has made significant contribution to various sectors of national economy and has achieved voluminous growth. However, it has shown weaknesses in safeguarding the interests of members and fulfillment of objects for which these institutions were organized. There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators remaining in-charge of these institutions for a long time. This reduces the accountability of the management of co-operative societies to their members. Inadequate professionalism in many of the co-operative institutions has led to poor services and low productivity. Co-operative Societies need to run on well established democratic principles

and elections held on time and in a free and fair manner. Therefore, there is a need to initiate fundamental reforms to revitalize these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management. It is further said that a strong need was felt for amending the Constitution so as to keep Co-operatives free from unnecessary outside interferences and also to ensure their autonomous organizational set up and their democratic functioning. Para 3 of the Statement of Objects and Reasons shows that the fundamental reason for constitutional amendment was to make provisions covering the vital aspects of working of Co-operative Societies as democratic, autonomous and professional bodies. Thus the constitutional amendment also shows that the legislature intended to make it known to everybody that the very purposes of Co-operative Societies is to maintain democratic, autonomous and professional character while simultaneously in order to prevent any mismanagement, control of the State be also allowed but it should not intrude in any manner to the autonomous and democratic functioning of Co-operative Societies but only ensure accountability of management to members and other stakeholders. Article 243ZI thereof reads as under:-

*“243ZI. Incorporation of co-operative societies. - Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies **based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.**”*

(Emphasis added)

24. Article 43B also provides for the basic concept of “Co-operative Society” and reads as under:-

*“43B. Promotion of co-operative societies. - The State shall endeavour to promote **voluntary formation, autonomous functioning, democratic control and professional management***

*of co-operative societies.”* (Emphasis added)

25. We have referred to the above history of Co-operative societies to stress upon the fact that provisions of U.P. Act, 1965 are to be read in a manner so as to give more autonomy and independence to a Co-operative Society and its management, instead of intruding administrative control of administrative officer i.e. Registrar, even if not specifically provided, as it will impinge upon the concept of independent democratic autonomy of Co-operative Society. Only to the extent law specifically provides, attempt, while making interpretation, should be towards autonomy and independence of Society and its management, than, bringing in, the element of control by Executive/Administrative Officers.

26. Now, we come to some relevant provisions necessary for answering the question referred to us.

27. Section 3 of U.P. Act, 1965 contemplates appointment of a Registrar of Co-operative Societies for the State which is to be appointed by State Government. The first and foremost function and duty of Registrar is with regard to registration of a Co-operative Society. Section 17 provides the persons who may be members of a Co-operative Society. It permits every person to become member of Co-operative Society if he is of the age of majority, according to the law to which he is subject; is of sound mind; and is not disqualified from contracting by any law to which he is subject. There are some corporate bodies also which may become member of Society, detailed in Section 17, with which we are not concerned. There is an exception that a student may become member of Co-operative Society formed in an educational institution to which he belongs even if he has not attained the age of majority. There is also an exception that a Joint-Stock Company or an individual shall not be admitted as an ordinary member in such Co-operative Society or Societies or class of Co-operative Societies as may be prescribed.

28. Section 18 talks of classes of members and says that in addition to ordinary members, a Society may have sympathiser members, nominal members and associate members. Section 27 talks of removal of a member of a Society and confers power upon Society concerned to remove or expel a member, in accordance with the procedure and for reasons as prescribed.

29. In certain cases Registrar has also been given power to remove or expel a member of Society but pre-condition is that Society itself has failed to do so and has also failed despite directions given by Registrar, to it, to do so.

30. Chapter IV talks of management of Co-operative Society. It provides that subject to provisions of Act and Rules, final authority of Co-operative Society shall vest in the general body of its members in general meetings.

31. Section 29 talks of Committee of Management which is to be constituted in accordance with the Act, Rules and bye-laws. The term “Member” of Society has also been defined in Section 2(n) and reads as under:-

*“2(n). "Member" means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or the exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty.”*

32. An Office Bearer of Committee of Management, and others, have been referred to as “Officer of a Co-operative Society” in U.P. Act, 1965

and this term has been defined in Section 2(o) as under:-

*“2(o). "Officer of a co-operative society" means the president, vice-president, chairman, vice-chairman, secretary, member of committee of management, treasurer, liquidator, administrator or **any other persons employed by a co-operative society whether with or without remuneration to carry on the business of the society or to supervise its affairs.**” (Emphasis added)*

33. In certain circumstances, if occasion may arise, power has been conferred upon Registrar to supersede a Committee of Management under Section 35 of U.P. Act, 1965.

34. Then comes Section 38 which talks of removal of an “Officer” of a Co-operative Society and reads as under:-

***“38. Removal of an officer of a co-operative society. - (1) If in the opinion of the Registrar, any officer of a co-operative society has contravened or omitted to comply with, any provisions of this Act, the rules or the bye-laws of the society, or has forfeited his right to hold office, the Registrar may, without prejudice to any other action that may or can be taken against him, call upon the society to remove, within a specified period, such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, after affording opportunity of being heard to the officer concerned, pass such orders as it may deem fit.***

*Provided that on the request of the Reserve Bank of India the competent authority shall remove a director or the secretary/chief executive officer of a Central Co-operative Bank or the Uttar Pradesh Co-operative Bank, who do not fulfill the criteria stipulated by the Reserve Bank of India after giving him an opportunity of being heard.*

***(2) On the failure of the society to take action under sub-section (1), the Registrar may, after affording opportunity of being heard to the officer and for reasons to be recorded and communicated to the person and the society concerned,***

***remove, or remove and disqualify for a period not exceeding three years, the officer from holding any office under that society.***

***(3) An officer removed under sub-section (1) or sub-section (2), shall with effect from the date of communication of the order, cease to hold that office and, if disqualified, shall not be eligible to hold any office under that society for the period specified in the order.” (Emphasis added)***

35. Section 130 of U.P. Act, 1965 gives power to State Government to frame Rules. Sub-section (1) provides general power to carry out the purposes of the Act, by making Rules. Under sub-section (2), without prejudice to the power given under sub-section (1), subjects have been specified from clause (i) to (xliv).

36. Rules, 1968 have been framed in exercise of power under Section 130 of U.P. Act, 1965. Part VI of Rules, 1968 contains Rule 453 to 454 and deals with the subject of disqualification for membership of Committee of Management. With respect to member of Committee of Management, Rule 115 in Chapter IX provides the manner in which he should function and reads as under:-

***“115. In the conduct of the affairs of a co-operative society every member of the Committee of Management shall exercise prudence and diligence of an ordinary man of business, shall not perform any act contrary to the provisions of the Act, rules or the bye-laws of the society and shall not default in the performance of the duties entrusted under the Act, the rules or the bye-laws of the society.” (Emphasis added)***

37. Rule 454 of Rules, 1968 empowers Committee of Management to remove a member of Committee of Management if he has incurred any disqualification and reads as under:-

***“454. It shall be the duty of the Committee of Management of a co-operative society to ensure that no person incurring***

***any of the disqualifications continues to hold office of a member of the Committee of Management. As soon as the fact that a member is subject to any disqualification whether it was incurred prior or subsequent to his being such member, comes to the knowledge of the Committee of Management, the committee shall consider the matter in a meeting to be called for the purpose. A copy of the agenda of such meeting shall be served on the member (against whom action is proposed) either personally or by registered (acknowledgment due) post. Where resolution for removal of the person concerned from the membership of the committee has been passed for reasons of such disqualifications a copy of such resolution shall also be sent to the person concerned by registered (acknowledgment due) post and thereupon such member shall not be allowed to attend any meeting of the Committee of Management or to function as the member of the Committee of Management in any other way. The office held by such member shall be declared vacant. If that person feels aggrieved by such action, he may, within thirty days from the date of the receipt of the notice, seek arbitration under the provisions of the Act and the Rules.” (Emphasis added)***

38. A bare perusal of section 38 of U.P. Act, 1965 shows that Registrar, if forms an opinion, that an “Officer” of a Co-operative Society has contravened or omitted to comply with any provision of U.P. Act, 1965 or Rules framed thereunder or Bye-laws of the Society or has forfeited his right to hold office, he may call upon the Society to remove such officer within a specified period from the office. If necessary, Registrar shall also call upon the Society to disqualify such “Officer” from holding any office under that Society for a period not exceeding three years. When such direction is issued by Registrar, the Society is under an obligation to pass such order as is necessary but before passing such order principles of natural justice shall be complied with and the “Officer” concerned shall be given an opportunity of hearing by the Society.

39. Section 38(1) nowhere talks of any sanction to be given by Registrar for removal of an “Officer” of Society, instead, it contemplates a

direction from Registrar to Society concerned to do the needful when the conditions, as noticed above, are satisfied that the “Officer” concerned has not acted in accordance with Statutes or otherwise has forfeited his right to hold office and it would then be an obligation of the Society to comply the said direction.

40. Sub-section (2) of Section 38 talks of the situation where despite direction given by Registrar, Society failed to comply with such direction and did not take any action against the “Officer” concerned, who has rendered disqualified to hold the office. In such eventuality, when Society has failed, sub-section (2) of Section 38 confers power upon Registrar to take action himself and to disqualify, remove or both, such “Officer” from the office. The period of removal and disqualification whether an action is taken by Society under sub-section (1) or Registrar under sub-section (2) shall not exceed three years. Under sub-section (2) of Section 38, when Registrar takes action on its own, he has to observe the principles of natural justice i.e. affording an opportunity of hearing to “Officer” concerned and thereafter Registrar shall pass order which must be a reasoned one and such order shall be communicated to the “Officer” concerned as also the Society.

41. We do not find any requirement of “sanction”, whether prior or subsequent, of a Registrar, contemplated under Section 38, to be taken by Society, for removal of an “Officer” or to disqualify him from holding office before actually passing the order. The reason being that when Society acts under sub-section (1) of Section 38, it gets jurisdiction from an order/direction issued by Registrar himself to take such action hence question of “prior sanction” does not arise. This is a supervisory/administrative control of Registrar over the Management of Co-operative Society so that an “Officer” of Society, if not functioning within the four corners of the Statute or otherwise, has forfeited his right

to hold office, such person shall not be allowed to continue to hold office, and, at the first instance, Society itself should remove him and if Society fails, then it shall be done by Registrar himself.

42. We may also notice at this stage that under sub-section (1) of Section 38, when a direction is issued by Registrar, it is an obligation of Society to take appropriate action as per the direction since obligation of Society is mandated by using the word “shall” but when Society fails to do so, sub-section (2) uses the word “may” and, therefore, it is the discretion of Registrar to take action in the manner as provided under sub-section (2) or not. The reason being that he may find, after Society has failed to comply with its direction, that such extreme step may not be necessary or there may be any other circumstance, valid and in the interest of Society. The legislative intention by using the word “shall” in sub-section (1) of Section 38 in the context of Society shows that Society is bound to act when direction is issued by Registrar under sub-section (1) but when Society fails to do so, Registrar is not under an obligation under sub-section (2) but has liberty to proceed to remove and/or disqualify such officer or not, as it may deem appropriate in the circumstances of the case.

43. Then we come to Rule 454. In our view, it is an independent provision. There is no need to read this provision in conjunction with Section 38 or to hold that Rule 454 is controlled by Section 38. In fact, both the provisions are independent in their intent. Where a person holding office of member of Committee of Management, has incurred any disqualification and continued to hold office and no direction has been received from Registrar under Section 38(1), still there is an obligation upon Committee of Management of Co-operative Society to ensure that such erring and disqualified person is not permitted to hold office of member of Committee of Management, any longer. Rule 454 provides that as soon as this information of disqualification comes to the

knowledge of Committee of Management, it shall consider the matter in a meeting to be called for this purpose. Rule 454 makes this action of removal as a mandatory duty upon Committee of Management and reckoning point to proceed for such removal is the knowledge gathered by Committee of Management. A meeting has to be called specifically for this purpose after serving notice upon the member concerned also and after passing a resolution for removal, communication of such resolution shall be made not only to the person concerned, but he shall also not be allowed thereafter to participate in any meeting of Committee of Management or to function as member of Committee of Management in any other way. In fact, consequence of resolution passed under Rule 454 would be that the office of such member shall become vacant.

44. Therefore, one more distinction between Section 38 and Rule 454 is that under Section 38, removal; or, removal and disqualification, as the case may be, shall be for a limited period, i.e. not exceeding three years but under Rule 454 the office itself shall get vacant.

45. During the course of argument, a distinction was attempted to be drawn that under Section 38, action contemplated is against an “Officer” of a Co-operative Society while Rule 454 talks of “Member” of Committee of Management but we find that the definition of “Officer” of a Co-operative Society under Section 2(o) brings within its ambit every Office Bearer of Management as also “Member” of Committee of Management.

46. The definition of “Officer” of Co-operative Society is very wide and it means President, Vice President, Chairman, Vice Chairman, Secretary, **Member of Committee of Management**, Treasurer, Liquidator, Administrator or any other person employed by Co-operative Society whether with or without remuneration to carry on business of

Society or to supervise its affairs.

47. Therefore, Rule 454 when talks of “Member of Committee of Management”, every member of Committee of Management, whether holding any particular office or not, is included therein but Section 38 when talks of “Officer”, it includes even those persons who are not even Member of Society but employed, whether with or without remuneration, to carry out business of the Society or to supervise its affairs. Therefore, Section 38, in fact, is wider than Rule 454.

48. However, that is not of much importance so far as controversy before us is concerned for the reason that Committee of Management, when is required to discharge its duties/obligations under Rule 454, it is not supposed to wait for a direction from Registrar and in fact it is the statutory obligation of Committee of Management itself to remove such member from Committee of Management who has incurred any disqualification to hold such office and on the resolution of removal when passed, it shall result in causing a vacancy in the office of such member of the Committee of Management. Rule 454 nowhere talks of any interference in any manner by Registrar.

49. Section 38 talks of a situation where Committee of Management of a Society, may be for the reasons of lack of knowledge, or otherwise, has not acted against a person, incurring disqualification to hold office of member of Committee of Management, then Registrar may issue direction under Section 38(1) and when such a direction is issued, then Co-operative Society shall be under an obligation to proceed accordingly. Section 38 can be resorted by Registrar even to such contingencies as are not within the ambit of Rule 454 for causing removal; and/or, removal and disqualification, of a member of Co-operative Society if the circumstances specified under Section 38(1), namely, contravention of provisions of U.P.

Act, 1965 or Rules framed thereunder or Bye-laws of the Society or omission to comply with certain statutory obligations provided in such Act, Rules or Bye-laws is found.

50. Section 38 when we read in its entirety, we do not find anything like “approval of Registrar” or “prior approval” or “prior sanction” of Registrar for the reason that under sub-section (1) the action is to be initiated by Registrar by giving direction to Society whereupon Society shall be under an obligation to follow such direction but if Society fails, then Registrar himself may exercise such power of removal; and/or, removal and disqualification, of erring officer of Co-operative Society.

51. Thus both the provisions i.e. Section 38 and Rule 454 are independent, though contemplate an action against Member of Committee of Management, by the Society but in different manner and apparently it appears to be overlapping but on deeper scrutiny, we do not find any such overlapping. On the contrary, there are apparent distinctions inasmuch as under Rule 454 action against Member of Committee of Management is contemplated when he suffers a disqualification and on removal, office shall be rendered vacant while section 38 talks of a limited duration only.

52. For the purpose of what shall be disqualification, we may refer to Rule 453 of Rules, 1968 as revised from time to time. Rule 453 was initially brought in force vide U.P. Government Gazette (Extraordinary) on 31.12.1968 but subsequently it was substituted vide notification dated 15.06.1972 (published in U.P. Gazette (Extraordinary) on 20.06.1972), on 15.7.1994, on 2.9.1994, on 28.5.2003 and again major amendments came to be made vide notification dated 02.05.2006 and then on 24.03.2011. Rule 453 as it stood, when initially framed in 1968, and as it stood from time to time, whenever amended, in the form of comparative chart, is being given hereunder:-

| Rule 453 as enacted initially vide U.P. Co-operative Societies Rules, 1968 w.e.f. 31.12.1968                                                                                                                                                       | Rule 453 as amended vide U.P. Co-operative Societies (First Amendment) Rules, 1972 vide notification dated 15.6.1972 published in U.P. Gazette (Extraordinary) on 20.6.1972                                                                       | Rule 453 as amended vide U.P. Co-operative Societies (Twenty-fifth Amendment) Rules, 1994 w.e.f. 15.7.1994                                                                                                                                           | Rule 453 as amended vide U.P. Co-operative Societies (Twenty-sixth Amendment) Rules, 1994 w.e.f. 2.9.1994                                                                                                                                     | Rule 453 as amended vide U.P. Co-operative Societies (Forty-third Amendment) Rules, 2003 w.e.f. 28.5.2003                                                                                                                                     | Rule 453 as amended vide U.P. Co-operative Societies (Forty-fifth Amendment) Rules, 2006 w.e.f. 2.5.2006                                                                                                                                      | Rule 453 as amended vide U.P. Co-operative Societies (Forty-seventh Amendment) Rules, 2011 w.e.f. 24.3.2011                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) No person shall be eligible to be, or to continue as a member of the Committee of Management of any co-operative society, if-                                                                                                                  | (1) No person shall be eligible to be, or to continue as a member of the Committee of Management of any co-operative society, if-                                                                                                                 | (1) No person shall be eligible to be, or to continue as a member of the Committee of Management of any co-operative society, if-                                                                                                                    | (1) No person shall be eligible to be, or to continue as a member of the Committee of Management of any co-operative society, if-                                                                                                             | (1) No person shall be eligible to be, or to continue as a member of the Committee of Management of any co-operative society, if-                                                                                                             | (1) No person shall be eligible to be, or to continue as a member of the Committee of Management of any co-operative society, if-                                                                                                             | (1) No person shall be eligible to be, or to continue as a member of the Committee of Management of any co-operative society, if-                                                                                                             |
| (a) he is under 21 years of age;                                                                                                                                                                                                                   | (a) he is under 21 years of age;                                                                                                                                                                                                                  | (a) he is under 21 years of age;                                                                                                                                                                                                                     | (a) he is under 21 years of age;                                                                                                                                                                                                              | (a) he is under 21 years of age;                                                                                                                                                                                                              | (a) he is under 21 years of age;                                                                                                                                                                                                              | (a) he is under 21 years of age;                                                                                                                                                                                                              |
| (b) he is declared insolvent;                                                                                                                                                                                                                      | (b) he is declared insolvent;                                                                                                                                                                                                                     | (b) he is declared insolvent;                                                                                                                                                                                                                        | (b) he is declared insolvent;                                                                                                                                                                                                                 | (b) he is declared insolvent;                                                                                                                                                                                                                 | (b) he is declared insolvent;                                                                                                                                                                                                                 | (b) he is declared insolvent;                                                                                                                                                                                                                 |
| (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;                                                                                                                                                                  | (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;                                                                                                                                                                 | (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;                                                                                                                                                                    | (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;                                                                                                                                                             | (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;                                                                                                                                                             | (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;                                                                                                                                                             | (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;                                                                                                                                                             |
| (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;                                                                                        | (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;                                                                                       | (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;                                                                                          | (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;                                                                                   | (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;                                                                                   | (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;                                                                                   | (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;                                                                                   |
| (e) he, or in the opinion of the Registrar, any members of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the society, the same kind of business as is done by the society itself; | (e) he, or in the opinion of the Registrar, any member of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the society, the same kind of business as is done by the society itself; | (e) he, or in the opinion of the Registrar, <b>member</b> of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the society, the same kind of business as is done by the society itself; | (e) he, or in the opinion of the Registrar, member of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the society, the same kind of business as is done by the society itself; | (e) he, or in the opinion of the Registrar, member of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the society, the same kind of business as is done by the society itself; | (e) he, or in the opinion of the Registrar, member of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the society, the same kind of business as is done by the society itself; | (e) he, or in the opinion of the Registrar, member of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the society, the same kind of business as is done by the society itself; |
| (f) he enters into any transaction or contract with the society against the provisions of the Act or the rules or of the bye-laws of the society;                                                                                                  | (f) he enters into any transaction or contract with the society against the provisions of the <b>Act or the bye-laws</b> of the society;                                                                                                          | (f) he enters into any transaction or contract with the society against the provisions of the Act or the bye-laws of the society;                                                                                                                    | (f) he enters into any transaction or contract with the society against the provisions of the Act or the bye-laws of the society;                                                                                                             | (f) he enters into any transaction or contract with the society against the provisions of the Act or the bye-laws of the society;                                                                                                             | (f) he enters into any transaction or contract with the society against the provisions of the Act or the bye-laws of the society;                                                                                                             | (f) he enters into any transaction or contract with the society against the provisions of the Act or the bye-laws of the society;                                                                                                             |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p>(g) he accepts or holds any office of profit under the society or under any society affiliated to such society;</p> <p>Provided that this restriction shall not apply in case of such producers or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;</p> <p>(h) he is not a member of the general body of the society;</p> | <p>(g) he accepts or holds any office of profit under the society or under any society affiliated to such society;</p> <p>Provided that this restriction shall not apply in case of such producers or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;</p> <p>(h) he is not a member of the general body of the society;</p> | <p>(g) he accepts or holds any office of profit under the society or under any society affiliated to such society;</p> <p>Provided that this restriction shall not apply in case of such producers or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;</p> <p>(h) he is not a member of the general body of the society;</p> | <p>(g) he accepts or holds any office of profit under the society or under any society affiliated to such society;</p> <p>Provided that this restriction shall not apply in case of such producers or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;</p> <p>(h) he is not a member of the general body of the society;</p> | <p>(g) he accepts or holds any office of profit under the society or under any society affiliated to such society;</p> <p>Provided that this restriction shall not apply in case of such producers or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;</p> <p>(h) he is not a member of the general body of the society;</p> | <p>(g) he accepts or holds any office of profit under the society or under any society affiliated to such society;</p> <p>Provided that this restriction shall not apply in case of such producers or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;</p> <p>(h) he is not a member of the general body of the society;</p> | <p>(g) he accepts or holds any office of profit under the society or under any society affiliated to such society;</p> <p>Provided that this restriction shall not apply in case of such producer's or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;</p> <p>(h) he is not a member of general body of the society:</p> <p><b>Provided that the provision of this clause shall not apply in respect of the co-option of professional person under sub-section (8) of Section 29.</b></p> |
| <p>(i) he has been convicted of any offence under the Act or the rules, unless a period of three years has elapsed from the date of the conviction;</p>                                                                                                                                                                                                                                                                                        | <p>(i) he has been convicted of any offence under the Act or the rules, unless a period of three years has elapsed from the date of the conviction;</p>                                                                                                                                                                                                                                                                                        | <p>(i) he has been convicted of any offence under the Act or the rules, unless a period of three years has elapsed from the date of the conviction;</p>                                                                                                                                                                                                                                                                                        | <p>(i) he has been convicted of any offence under the Act or the rules, unless a period of three years has elapsed from the date of the conviction;</p>                                                                                                                                                                                                                                                                                        | <p>(i) he has been convicted of any offence under the Act or the rules, unless a period of three years has elapsed from the date of the conviction;</p>                                                                                                                                                                                                                                                                                        | <p>(i) he has been convicted of any offence under the Act or the rules, unless a period of three years has elapsed from the date of the conviction;</p>                                                                                                                                                                                                                                                                                        | <p>(i) he has been convicted of any offence under the Act or the rules, unless a period of three years has elapsed from the date of the conviction;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>(j) he is a person against whom an order under Section 91 has been obtained by a co-operative society and is pending satisfaction;</p>                                                                                                                                                                                                                                                                                                      | <p>(j) he is a person against whom an order under Section 91 has been obtained by a co-operative society and is pending satisfaction;</p>                                                                                                                                                                                                                                                                                                      | <p>(j) he is a person against whom an order under Section 91 has been obtained by a co-operative society and is pending satisfaction;</p>                                                                                                                                                                                                                                                                                                      | <p>(j) he is a person against whom an order under Section 91 has been obtained by a co-operative society and is pending satisfaction;</p>                                                                                                                                                                                                                                                                                                      | <p>(j) he is a person against whom an order under Section 91 has been obtained by a co-operative society and is pending satisfaction;</p>                                                                                                                                                                                                                                                                                                      | <p>(j) he is a person against whom an order under Section 91 has been obtained by a co-operative society and is pending satisfaction;</p>                                                                                                                                                                                                                                                                                                      | <p>(j) he is a person against whom an order under Section 91 has been obtained by a co-operative society and is pending satisfaction;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>(k) he is in default (at least for a period of six months), to the society in respect of any loan or loans taken by him,</p>                                                                                                                                                                                                                                                                                                                | <p>(k) he is in default (at least for a period of six months), to the society in respect of loan or loans taken by him, <b>or he is a judgment-debtor of the society;</b></p>                                                                                                                                                                                                                                                                  | <p>(k) he is in default (at least for a period of six months), to the society in respect of <b>any loans</b> taken by him, or he is a judgment-debtor of the society;</p>                                                                                                                                                                                                                                                                      | <p>(k) he is in default (at least for a period of six months), to the society in respect of any <b>loan</b> taken by him, or he is a judgment-debtor of the society;</p>                                                                                                                                                                                                                                                                       | <p>(k) he is in default (at least for a period of six months), to the society in respect of any loan taken by him, or he is a judgment-debtor of the society;</p>                                                                                                                                                                                                                                                                              | <p>(k) he is in default (at least for a period of six months), to the society in respect of any loans taken by him, or he is a judgment-debtor of the society;</p>                                                                                                                                                                                                                                                                             | <p>(k) he is in default (at least for a period of six months), to the society in respect of any loan taken by him, or he is a judgment-debtor of the society;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>(l) he is already a member of the Committee of</p>                                                                                                                                                                                                                                                                                                                                                                                          | <p>(l) he is already a member of the Committee of</p>                                                                                                                                                                                                                                                                                                                                                                                          | <p>(l) he is already a member of the Committee of</p>                                                                                                                                                                                                                                                                                                                                                                                          | <p>(l) <b>if he</b> is already a member of the Committee of</p>                                                                                                                                                                                                                                                                                                                                                                                | <p>(l) if he is already a member of the Committee of</p>                                                                                                                                                                                                                                                                                                                                                                                       | <p>(l) if he is already a member of the Committee of</p>                                                                                                                                                                                                                                                                                                                                                                                       | <p>(l) if he is already a member of the Committee of</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



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| <p>Management of a co-operative society which was subsequently wound up by Registrar under clause (a) of sub-section (2) of section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal,</p> | <p>Management of a co-operative society which was subsequently wound up by Registrar under clause (a) of sub-section (2) of section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal,</p> | <p>Management of a co-operative society which was subsequently wound up by Registrar under clause (a) of sub-section (2) of section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal,</p> | <p>Management of a co-operative society which was subsequently wound up by Registrar under clause (a) of sub-section (2) of section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal,</p> | <p>Management of a co-operative society which was subsequently wound up by Registrar under clause (a) of sub-section (2) of section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal,</p> | <p>Management of a co-operative society which was subsequently wound up by Registrar under clause (a) of sub-section (2) of section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal,</p> | <p>Management of a co-operative society which was subsequently wound up by Registrar under clause (a) of sub-section (2) of section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal,</p>                                                                                                                                     |
|                                                                                                                                                                                                                                                                                      | <p><b>(nn) he is a near relation of a paid employee of the society;</b></p>                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                      | <p><b>(nn) he is near relation of a paid employee of the society;</b></p>                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>(o) he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye-laws of the society.</p>                                                                                                                                                       | <p>(o) he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye-laws of the society.</p>                                                                                                                                                       | <p>(o) he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye-laws of the society.</p>                                                                                                                                                       | <p>(o) he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye-laws of the society</p>                                                                                                                                                        | <p>(o) he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye-laws of the society.</p>                                                                                                                                                       | <p>(o) he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye-laws of the society.</p>                                                                                                                                                       | <p>(o) he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye-laws of the society.</p>                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                      | <p><b>(p) if he is a delegate of a non-credit society which is a member of a Central Co-operative Bank or Uttar Pradesh Co-operative Bank and the society has committed a default for a period exceeding ninety days.</b></p> <p><b>(q) if he has become a member of a primary agricultural credit society for the purpose of deposit only and his deposit in the society becomes less than Rupees One thousand.</b></p> |
| <p>(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management shall</p>                                                                                                                | <p>(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management <b>without</b></p>                                                                                                       | <p>(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management without reasonable</p>                                                                                                   | <p>(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management</p>                                                                                                                      | <p>(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management without reasonable</p>                                                                                                   | <p>(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management without reasonable</p>                                                                                                   | <p>(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management without reasonable</p>                                                                                                                                                                                                                                       |



[illegible]

(The changes made are shown in bold letters)

53. Rule 454 lays down an obligation upon Committee of Management when a person, incurred any disqualification, continued to hold office of a member of Committee of Management and for the purposes of disqualification, as we have already said, Rule 453 comes into picture. Rule 454 as it was initially framed in 1968 (w.e.f. 31.12.1968) read as under:-

*“It shall be the duty of the Committee of Management of a co-operative society to ensure that no person incurring any of the disqualifications continues to hold office of a member of the Committee of Management. As soon as the fact that a member is subject to any disqualification, whether it was incurred prior or subsequent to his being such member, comes to the knowledge of the Committee of Management, the committee shall consider the matter in a meeting to be called for the purpose. A copy of the agenda of such meeting shall be served on the member (against whom action is proposed) either personally or by registered (acknowledgment due) post. Where resolution for removal of the person concerned from the membership of the committee has been passed for reasons of such disqualifications a copy of such resolution shall also be sent to the person concerned by registered (acknowledgment due) post and thereupon such member shall not be allowed to attend any meeting of the Committee of Management or to function as the member of the Committee of Management in any other way. The office held by such member shall be declared vacant. If that person feels aggrieved by such action, he may, within thirty days from the date of the receipt of the notice, seek arbitration under the provisions of the Act and the Rules.*

*Explanation.- In case of disqualification provisionally incurred under sub-rule (2) of Rule 453, the resolution may be passed and the notice may be served on the member concerned but he shall not be debarred from acting as the member when his absence has under the proviso to sub-rule (2) of Rule 453, being held to be sufficient cause. Question of seeking arbitration in such a case would arise only when any*

*of the parties is aggrieved by the order passed by the Registrar or the authorized officer, as the case may be, under the proviso to sub-rule (2) of Rule 453.”*

54. Rule 454 was amended by U.P. Co-operative Societies (First Amendment) Rules, 1972 vide notification dated 15.6.1972 published in U.P. Gazette (Extraordinary) on 20.6.1972 and only amendment made therein was deletion of explanation.

55. The power under Rule 454, therefore, is exerciseable when any of the disqualifications under Rule 453 is suffered by a Member of Committee of Management of Society but under Section 38 power can be exercised on the direction of Registrar, if any “Officer” of Co-operative Society has contravened or omitted to comply with any provision of U.P. Act, 1965, Rules framed thereunder or bye-laws of the Society or has forfeited his right to hold the office. Therefore, power under Section 38 is much wider and travels beyond Rule 454.

56. These distinctions leave no manner of doubt in our mind that neither Section 38 controls Rule 454, nor the two provisions are overlapping, nor there is any reason to read Rule 454 as supplementing Section 38, nor to read Rule 454 as subordinate to Section 38 inasmuch power of Committee of Management under Rule 454 cannot be exercised unless Registrar issued direction. Hence with great respect to the Division Bench in **Kamil Kidwai (supra)**, we find that para 10 of the judgment where Court held that whenever it occurs to Committee of Management that an officer of Society has become subject to any disqualification and is ineligible to hold office, Committee may approach Registrar, obtain his sanction under Section 38(1) and proceed to take action for the removal of officer in accordance with Rule 454, is not correct law, and this exposition of law laid down is clearly neither in conformity with the aforesaid two provisions, nor otherwise correct, nor there is any reason to read Rule 454, where Committee of Management had independent power of

removal, in conjunction with Section 38(1) so as to seek permission/sanction of Registrar. In fact, no such sanction or approval of Registrar is contemplated if Management has to exercise power under Rule 454 and in that eventuality, Registrar does not come into picture at all.

57. It cannot be doubted that Rule is always subordinate to the provisions of principal statute and has to be read in consonance with the principal legislation but such a situation may arise only when there is any inconsistency or repugnancy but when the two provisions are independent of each other, there is no need to treat a rule, as subordinate to the principal legislation, so as to cut down the independent application and effect of the Rule, which in no way affects the principal legislation.

58. Above discussion and interpretation, we have given to rule 454 of Rules, 1968 and Section 38 of U.P. Act, 1965, advances the objective and purpose of the constitutional provision relating to Co-operative Societies as also embedded in U.P. Act, 1965, and that, unless it is provided specifically or becomes necessary from clear interpretation of the Statute, the interference of administrative authorities should not be brought. Instead, Co-operative Societies should be allowed to function independently and without interference by executive/administrative authorities. Rule 454 since nowhere even suggests that role of Registrar must be read therein while Section 38 deals with a different situation, therefore, there was/is no necessity to read Rule 454 as subordinate to Section 38 since both are independent and both can be read and operate independently, which will keep away intervention of Registrar whenever Rule 454 is attracted and Section 38 would be attracted with the intervention of Registrar in a different manner and context. This interpretation being consistent with the objective and spirit of U.P. Act, 1965 and the Constitution (Ninety-Seventh Amendment) Act, 2011 as we

discussed above, we are clear in our mind that such interpretation must prevail and otherwise law laid down in the judgment referred above must be overruled.

59. We are also of the view that for tracing source of power of enactment of Rules 454, the Division Bench in **Kamil Kidwai (supra)** has brought in Section 38 of U.P. Act, 1965 but, in our view, Rule 454 would find its source of genesis under Section 29(1) of U.P. Act, 1965 which reads as under:

*“29. Committee of Management. - (1) The management of every co-operative society shall vest in a Committee of Management constituted in accordance with this Act, the rules and the bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed by this Act, the rules and the bye-laws.”*

60. The above provision clearly empowers Committee of Management to exercise such powers and duties as may be conferred or imposed upon it by U.P. Act, 1965 or the Rules framed thereunder or the bye-laws of concerned Society. Rule 454, therefore, confers obligation upon Committee of Management to act in a particular manner in certain contingencies and Committee of Management is supposed to exercise such power in view of Section 29(1) of U.P. Act, 1965.

61. Even otherwise, such power, in view of Section 29 Sub-section (5) empowers a Cooperative Society to admit as many Members in Committee of Management as provided in the bye-laws. The bye-laws are to be read consistent with the provisions of Act and the Rules. Rule 453 of Rules, 1968 imposes a prohibition on a person, either, to be eligible to become Member of Committee of Management or to continue as Member of Committee of Management of a Cooperative Society, if he renders disqualifications prescribed in Rule 453 of Rules, 1968. If these provisions are read together, we find that in order to give effect to the

above provisions, Rule 454 lays an obligation upon Committee of Management to ensure that a person who has incurred any disqualification is not allowed to continue to hold office of Member of Committee of Management. Therefore, Rule 454, in fact, has a source of power in Section 29 and, in our view, has been framed to carry out the purposes of U.P. Act, 1965 and for this purpose, it is not necessary to read Section 38 along with Rule 454.

62. We may also notice at this stage that vires of Rule 454 was challenged and upheld in **Uma Nath Mishra vs. State of U.P. and others, 1979 ALJ 61 & 1978 4 ALR 949.**

63. We have also gone to the judgment in **Madan Pal Singh (supra)** and find that Court has not held therein that power under Rule 454 is subject to sanction of Registrar under Section 38(1). In fact in order to remove Chairman of Committee of Management, resolution was passed in exercise of power under Rule 454 of Rules, 1968 for removing him from Membership of the Committee of Management. This resolution was challenged before Registrar under Section 70 of U.P. Act, 1965. District Magistrate exercising power of Registrar, Co-operative, referred the matter for arbitration by Additional District Magistrate (Finance). Arbitrator held that the resolution was illegal, since procedure was not followed, but further directed Committee of Management to pass a fresh resolution by convening meeting in accordance with procedure laid down in the Rules. Thereafter Committee of Management called fresh meeting and passed similar resolution of removal of Madan Pal Singh from Membership of Society, under Rule 454. The interesting thing is that disqualifications enumerated under Rule 453 were not found to be suffered by Madan Pal Singh but what Committee of Management said, that, Madan Pal Singh has acted not with due prudence and diligence of an ordinary man of business and his action is in violation of Rule 115,

therefore, he has suffered disqualification under Rule 453. Court held that this resolution of Committee of Management was beyond the scope of Rule 454. This is evident from the following finding recorded by Court:-

*“In the instant case the resolution of the Committee of Management to remove the petitioner from its membership is in excess of the power available to it by statutory Rule 454.”* (Emphasis added)

64. This decision in our view has not been correctly appreciated by the Division Bench in **Kamil Kidwai (supra)** and the view taken in **Kamil Kidwai (supra)** that before exercising power under Rule 454, Committee of Management is obliged to approach Registrar, obtain his sanction under Section 38(1) and only then proceed for removal of the member of Committee of Management is not a correct view. We accordingly overrule Division Bench judgment in **Kamil Kidwai (supra)** and also any other subsequent decision given by this Court following the aforesaid decision.

65. In view of above discussion, the question, referred to this Bench, is answered as under:-

(i) The Division Bench judgment in **Kamil Kidwai (supra)** followed in Writ Petition No.45314 of 2014 (Smt. Vandana Varma and 2 others vs. State of U.P. and 6 others), decided on 29.8.2014, both do not lay down correct law that for exercising power by Committee of Management of a Co-operative Society under Rule 454 any sanction is to be obtained from Registrar under Section 38(1) of U.P. Act, 1965.

(ii) There is no requirement of any “sanction” or “prior sanction” or “prior approval” of Registrar for exercising power under Rule 454 where Committee of Management has to act on its own when conditions mentioned therein are

satisfied and under Section 38(1) Committee of Management has to act after receiving a direction from Registrar. Section 38(1) and Rule 454 are independent provisions and Rule 454 is not to be read as subject to Section 38(1).

66. Let records of this petition be placed before Division Bench to decide pending writ petition, on merits, accordance with law.

**Order Date:-** 30.5.2019

PS/Ashok Kr.

(Sudhir Agarwal, J.)

(Ashwani Kumar Mishra, J.)

(Rajendra Kumar-IV, J.)