

**THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESH AT JABALPUR**

(Full Bench)

Writ Petition No.4021/2019

Bhopal Cooperative Central Bank Maryadit Bhopal and others
Vs.
State of Madhya Pradesh and others

Writ Petition No.4057/2019

Board of Director (Superseded) Bhopal Cooperative Central Bank,
Bhopal
Vs.
State of Madhya Pradesh and others

Writ Petition No.4339/2019

Board of Director Distt. Cooperative Central Bank, Raisen
Vs.
State of Madhya Pradesh and others

Writ Petition No.4915/2019

Ramchandra Lowanshi
Vs.
State of Madhya Pradesh and others

Writ Petition No.4919/2019

Malak Singh Patel
Vs.
State of Madhya Pradesh and others

Writ Petition No.5124/2019

Kunwar Singh & another
Vs.
State of Madhya Pradesh and others

Writ Petition No.5535/2019

Virendra Fouzdar
Vs.
State of Madhya Pradesh and others

Writ Petition No.6038/2019

Hariram Yadav & others
Vs.
State of Madhya Pradesh and others

Writ Petition No.6607/2019

Shivaji Patel & others
Vs.
State of Madhya Pradesh and others

Writ Petition No.7065/2019

Bharat Singh
Vs.
State of Madhya Pradesh and others

Writ Petition No.7518/2019

Rajendra Kumar Jaroliya
Vs.
State of Madhya Pradesh and others

Present:

**Hon'ble Shri Justice Mohammad Rafiq, Chief Justice
Hon'ble Shri Justice Rajeev Kumar Dubey, Judge
Hon'ble Shri Justice Vijay Kumar Shukla, Judge**

Appearance

Smt. Shobha Menon, Senior Advocate with Shri Rahul Choubey,
Advocate for the petitioners in W.P.No.4021/2019.

Shri Sanjay Ram Tamrakar, Advocate for the petitioners in WP
Nos.4915/2019 and 4919/2019.

Shri Rahul Deshmukh, Advocate for the petitioners in
W.P.Nos.4057/2019, 4339/2019, 5124/2019 and 6607/2019.

Shri Anil Lala, Advocate for the petitioners in W.P.Nos. 6038/2019 and
7518/2019

Shri Naveen Dubey, Advocate for the petitioner in W.P.No.7065/2019.

Shri Rajendra Kumar Shrivastava, Advocate for the petitioner in
W.P.No.5535/2019.

Shri R.K.Verma, Additional Advocate General for the respondents/State.

Shri Ankit Saxena, Advocate for the respondent No.6-Kewal Singh

Whether approved for reporting- Yes.

Law laid down:

Before Full Bench, the questions of law referred by the Single Bench on the assumption of conflict, are:-

(1) Whether the order passed by the Division Bench in Writ Petition No.6913/2917-*Brij Kumar Chanpuriya Vs. State of M.P. & others* decided on 15.5.2017 lays down the correct law in regard to Section 48-AA and Section 50-A of the Madhya Pradesh Cooperative Societies Act, 1960 or in Writ Appeal No.551/2019-*Anter Singh & others Vs. State of M.P. & others* decided on 17.5.2019) affirming the order passed by the Single Bench of this Court in WP No.5033/2019 ?;

(2) Whether the provisions of Section 48-AA and Section 50-A of the Act of 1960 operate in a different sphere i.e. pre and post election of the Director? and

(3) Whether Section 50-A of the Act of 1960 is a deeming provision for holding a Director of a society as disqualified or an opportunity of hearing is still required to be given as held by this Court in WP No.6913 of 2017?

As regard to question No.1-Held: Analysis of the two Division Bench judgments [i.e., one in *Brij Kumar Chanpuriya* (supra) and another in *Anter Singh and other* (supra)] which formed the basis of reference thus clearly shows that there was actually no conflict of opinion between these judgments.

As regard to question No.2-Held: The aim of principles of natural justice is not only to secure justice but also to prevent miscarriage of justice. The observance of such principles of natural justice checks arbitrary exercise of power by the State and its functionaries. Unless a statutory provision, either specifically or by necessary implication, excludes the application of principles of natural justice, the requirement of providing reasonable opportunity of hearing before an order having civil consequence is passed against someone, has to be read into the provisions of a statute, be it an administrative or quasi-judicial order. Law is well settled that if a statute is silent and statutory provision does not specifically provide giving opportunity of hearing, there could be nothing wrong in spelling out therein the need to hear the parties whose interest is likely to be affected by the order that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. Even if, therefore, unlike Section 48-AA, Section 50-A of the Act of 1960 does not specifically envisage for giving reasonable opportunity of being heard to the person, who is sought to be disqualified, to continue as member of the Board of Directors, adherence to principles of natural justice must be read into the statute as there is no clear mandate to the contrary. Analytical examination of both Section 48-AA and Section 50-A of the Act of 1960 would thus show that these two provisions operate in different spheres and stage of their applicability would depend upon fact situation of a given case. It is trite

that silence of the statutory provision with regard to the principles of natural justice is also taken in support of its compliance, if the person is likely to be adversely affected by an order passed under such provision.

Provisions of Section 48-AA of the Act of 1960 is to be treated in both situations i.e. at the time of election (i.e. pre-election stage) or if any person is disqualified after election (i.e. post-election stage). The proviso contained in sub-section (2) of Section 50-A would apply to post-election stage wherein a person holding office of the Director of the Cooperative Bank on account of the default of his parent Society for a period exceeding 12 months, is sought to be unseated. Proviso to sub-section (2) of Section 50-A stipulates that an elected person shall cease to hold the office, if such Society commits default for any loan or advance, for a period exceeding twelve months. The proviso to sub-section (2) of Section 50-A would thus apply to post-election stage. Sub-section (3) of Section 50-A which envisages a situation where representative/delegate of the Society is debarred from voting, if he is in default for a period exceeding 12 months to the Society or any other Society for any loan or advance taken by him, is however applicable to pre-election stage.

As regard to question No.3-Held; there cannot be an automatic removal/disqualification of a Director or member of Board of Directors. Since, Section 50-A of the Act of 1960 cannot be held to be a deemed provision, there cannot be deemed vacation of his seat in the office of the Board of Directors. The competent authority after due application of mind would in any case be required to give opportunity of hearing to the member of the Board of Directors, apply its mind and then pass a specific order for removing/unseating him from such office.

Referred to:

Sections 48-AA, 48-B and 50-A of the Madhya Pradesh Cooperative Societies Act, 1960 and Rule 45 of the Madhya Pradesh Cooperative Societies Act, 1962,

Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax and anr. (2008) 14 SCC 151

Rajesh Kumar and others Vs. Dy. CIT and others (2007) 2 SCC 181

Canara Bank Vs. V.K.Awasthy (2005) 6 SCC 321

C.B.Gautam Vs. Union of India (1993) 1 SCC 78

Olga Tellis Vs. Bombay Municipal Corporation (1985) 3 SCC 545

Swadeshi Cotton Mills Vs. Union of India (1981) 1 SCC 664

Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & others (1978) 1 SCC 405

A.K.Kraipak and others Vs. Union of India and others (1969) 2 SCC 262

State of Orissa Vs. Dr. (Miss Binapani Dei and others AIR 1967 SC 1269

Significant paragraph Nos. 10 to 32

Heard on: 18/03/2021

J U D G M E N T**(Pronounced on 22/04/2021)****Per: Mohammad Rafiq, C.J.**

All these matters have been laid before the Full Bench upon a reference from a learned Single Bench of this Court vide order dated 25.4.2019, assuming conflict between the ratio of two judgments rendered by Division Benches of this Court, one in Writ Petition No.6913/2917-*Brij Kumar Chanpuriya Vs. State of M.P. & others* decided on 15.5.2017 and another in Writ Appeal No.551/2019-*Anter Singh & others Vs. State of M.P. & others* decided on 17.5.2019, for answering the following three questions of law:-

- “1. Whether the order passed by the Division Bench of this Court in WP No.6913/2017 on 15.05.2017 lays down the correct law in regard to Section 48-AA and Section 50-A of the Act of 1960 or the order passed in Writ Appeal No.551/2019 affirming the order passed by the Single Bench of this Court in WP No.5033/2019?
2. Whether the provisions of Section 48-AA and Section 50-A of the Act of 1960 operates in a different sphere i.e. pre and post election of the Director?
3. Whether Section 50-A of the Act of 1960 is a deeming provision for holding a Director of a society as disqualified or an opportunity of hearing is still required to be given as held by this Court in WP No.6913 of 2017?”

2. The petitioners in all these writ petitions were the Directors of the various Cooperative Central Banks, who assailed their removal as such Directors, on the ground of breach of principles of natural justice as well as non-service of notice prior to their removal in terms of Section 48-AA of the Madhya Pradesh Cooperative Societies Act, 1960 (for short ‘the Act of 1960’). All the petitioners in their capacity as representatives of the parent

Cooperative Societies were elected as Directors of the District Cooperative Central Banks and were removed/disqualified to continue as such Directors, because the Societies, of which they were representatives, were in default for exceeding 12 months.

3. We have heard learned counsel appearing for the petitioners and learned Additional Advocate General for the respondent/State. The arguments on behalf of the petitioners have been led by Smt. Shobha Menon, learned Senior Advocate and other advocates appearing for the petitioners in respective petitions have also made the submissions, who have substantially adopted her arguments.

4. Learned counsel appearing on behalf of the petitioners argued that the petitioners were elected representatives from different Cooperative Societies and in that capacity, they were further elected as Directors of the another Cooperative Society, which is in each case is a separate Central Cooperative Bank in terms of Rule 49-C of the Madhya Pradesh Cooperative Societies Rules, 1962 (for short "the Rules of 1962), as per the procedure contained in Rule 49-E of the Rules of 1962. The Registrar/Joint Registrar illegally removed them from the office of the Directors without following the provisions of Section 48-AA of the Act of 1960 which mandates for providing an opportunity of hearing to any such Directors/representatives before their removal/disqualification. Section 50-A of the Act of 1960, especially proviso to sub-section (2) thereof, would not be applicable to the case of removal of any Director/representative as it operates in entirely different sphere and applies to only pre-election stage of a candidate or voter, for election to Board

of Directors, as representative or delegate of the Society. Once the petitioners were elected as Directors/Members of the Board of Directors in terms of Section 48-B of the Act of 1960, they were entitled to continue in that capacity till next election of the members of the Board of Directors in terms of Section 48-B of the Act of 1960. Besides this, Section 49(7-A)(d) of the Act of 1960 also ordains that the term of the representatives elected by the Board of Directors to other societies shall be co-terminus with the term of Board of Directors of the Society. It is argued that Rule 45(3) of the Rules of 1962 applies to eligibility for election as a member of the Board of Directors of Cooperative Bank/Financial Bank/Federal Society or any Apex Society, which were defaulter to the Co-operative Bank for period exceeding twelve months. Therefore, it can be invoked only at any pre-election stage. Once a delegate of the Society has been elected as a member of the Board of Directors, this rule ceases to have any application.

5. It is contended that proviso to sub-section (2) of Section 50-A excludes the applicability of Section 50-A of the Act of 1960 to the Societies in question as it specifically mentions that it applies to “other than co-operative credit structure” which has been defined in Section 2(d)(ii) to mean “Madhya Pradesh State Co-operative Bank or Central Co-operative Bank or Primary Agriculture Credit Co-operative Society” and includes the Primary Service Cooperative Society. The Societies of which the petitioners are representatives, are thus excluded from the purview of Section 50-A of the Act of 1960. Learned counsel for the petitioners further argued that even if such Societies were defaulter for a period exceeding 12 months, Section 48-

AA of the Act of 1960 would still be applicable in their case and in that event, the Board of Directors of the Society would be required to initiate action and not the Registrar/the Joint Registrar of the Cooperative Society. It is also argued that only if the Society fails to take action within two months, the Registrar/the Joint Registrar may take action.

6. Smt. Shobha Menon, learned Senior Advocate in support of her arguments has relied upon the judgments of the Supreme Court in *(2008) 14 SCC 151-Sahara India (Firm, Lucknow Vs. Commissioner of Income Tax and other, (2013) 7 SCC 25-State of Madhya Pradesh and others Vs. Sanjay Nagayach and others*. Relying on the judgment of the Supreme Court rendered in *S.Sundaram Pillai vs. V.R.Pattabiraman AIR 1985 SC 582*, Smt. Shobha Menon, learned Senior Advocate argued that the Explanation to the second proviso to Section 48-AA of the Act of 1960 is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision but this cannot be taken as a substantive provision. It can be invoked only to explain the meaning and intendment of the main provision when there is obscurity or vagueness in the main provision. But the Explanation cannot in any way interfere with or change, the enactment or any part thereof. Other learned counsels appearing for the petitioners in support of their contentions have placed reliance on the judgment passed by the Single Bench of this Court in **Registered District Co-operative Agricultural and Rural Development Bank Maryadit and others Vs. State of M.P. and others 2015 (2) MPLJ 300, Bhawani Vipanan Sahkari Sanstha Vs. Megh Singh & others-W.P.NO.4584/2016 decided by a Division Bench on 7.4.2017, S.L.Kapoor**

vs. Jagmohan and others AIR 1981 SC 136, the Board of High School and Intermediate Education U.P. and others Vs. Kumari Chittra Srivastava and others AIR 1970 SC 1039 and a judgment of Single Bench of this Court in Arjun Lal Patel Vs. State of M.P. and others 2000 (3) MPLJ 551.

7. Per contra, Shri R.K.Verma, learned Additional Advocate General appearing for the State has argued that the fact about the Society, of which the petitioners were delegates or representatives, and in that capacity were elected as members of the Board of Directors, being in default for consecutive 12 months, not being disputed, removal of the petitioners from that position would be consequence of such persistent default by the parent Society, resulting into their cessation as such Directors by virtue of proviso to sub-section (2) of Section 50-A of the Act of 1960 read with Rule 45(3) of the Rules of 1962. The learned Additional Advocate General argued that this position of law has been correctly analysed by the Division Bench of this Court at Indore Bench in *Anter Singh & others* (supra) by relying on the judgment of the Supreme Court in *Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati (2015) 8 SCC 519*. The Supreme Court in that case categorically held that the principles of natural justice are very flexible principles and they cannot be applied in a straitjacket formula and there may be situation wherein for some reasons it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision maker, then no legal duty to serve a notice arises. Once when the factum of the parent Society being defaulter is not disputed, providing opportunity of hearing to the

petitioners for being discontinued/removed as members of the Board of Directors, would be a useless formality as it is unlikely to change the consequences. The issue will have to be therefore approached on the touchstone of prejudice to the petitioners. If the petitioners are not in position to dispute that the Society of which they are delegates, was in default for consecutive twelve months, no purpose would be served in providing them the opportunity of hearing inasmuch as such exercise would be totally futile having regard to the ratio of judgment of the Supreme Court in *Dharampal Satyapal Limited* (supra) as in that event, no prejudice would be caused to the petitioners.

8. Shri R.K.Verma, learned Additional Advocate General in support of his arguments has also relied upon of a Division Bench judgment of this Court in *Basant Kumar Mishra Vs. Assistant Registrar, Co-operative Societies, Jabalpur and others* 1969 MPLJ 683. He has relied on a judgment of the Supreme Court in *State of Punjab Vs. Tehal Singh and others* (2002) 2 SCC 7 to argue that the principles of natural justice need not be observed by State Government in the absence of clear provisions stipulating such observance. He has also relied upon a judgment of the Supreme Court in *National Engineering Industries Ltd., Jaipur Vs. Hanuman AIR* 1968 SC 33 to contend that the Court should not interfere with the finding of fact recorded by quasi-judicial tribunal unless it is shown the finding so recorded is ex facie perverse. In conclusion, learned Addition Advocate General argued that the adherence to principles of natural justice in the facts of the present case is not

required as it would be a case of deemed removal by virtue of proviso to Section 50-A(2) of the Act of 1960.

9. In order to appreciate the rival submissions, it would be apposite to reproduce relevant provisions contained in Section 48-AA, 48-B, 50-A of the Act of 1960 and Rule 45 of the Rules of 1962, which are as under:-

“48-AA. Disqualification for membership of Board of Directors and for representation. - No person shall be eligible for election as a member of the Board of Directors of a society, and shall cease to hold his office as such, if he suffers from any disqualification specified in this Act or the rules made thereunder and no society shall elect any member as its representative to the Board of Directors of any other society or to represent the society in other society, if he suffers from any disqualification specified in this Act or the rules made thereunder:

Provided that if a member suffers from any of the disqualifications specified in this Act or the rules made thereunder,-

(i) it shall be lawful for the Board of Directors of the society to disqualify such member where he is elected as a Director, being a member of that society, after giving him a reasonable opportunity of being heard, within two months from the date of coming to the notice of the society from holding the post and if the society fails to take action within two months, the Registrar shall disqualify such member from holding such post, by an order in writing after giving him reasonable opportunity of being heard.

(ii) if the member incurs a disqualification in the higher level society, for his actions as a representative, such higher level society shall take action to disqualify him for holding the post in the higher level society and if the society fails to take action within two months, the Registrar shall disqualify such member from holding such post by an order in writing after giving him reasonable opportunity of being heard.

Explanation.-For the purpose of this section, the expression “disqualification” shall not include the disqualification specified in Section 50-A for election as a member of the Board of Directors or a representative of a society”

“48-B. Representatives and delegates.-(1) Every Board of Directors of society shall at the time of election of Chairman or Vice-Chairman, also elect representative who shall represent it in other society and the representative so elected shall not be withdrawn by the Board of Directors till the next election of the Board of Directors.

(2) xxx

(3) If the byelaws of a society provide for the constitution of its general body by the elections of the delegates, the society shall reserve seats in the general body for the members belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes in such a manner that the number of

seats so reserved for each category shall as far as possible, be in the same proportion in which members of each category, shall bear to the total membership of the society.

Provided that number of total reserved seats of the delegates shall not exceed fifty percent.”

“50-A. Disqualification for being candidate or voter for election to Board of Director of representative or delegate of society.-(1) No person shall be qualified to be a candidate for election as member of the Board of Directors, representative or delegate of the society, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him.

(2) A person elected to an office of a society shall cease to hold such office, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him, and the Registrar shall declare his seat vacant:

Provided that a person elected to an office of a co-operative bank from a society other than co-operative credit structure, shall cease to hold such office, if such society commits default for any loan or advance or for a period exceeding three months, and the Registrar shall declare his seat vacant.

(3) No person shall be entitled to vote any election of the Board of Directors, representative or delegate of the society, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him.

(4) No person shall be qualified to be a candidate for election as member of the board of director, representative or delegate of the society if he has any dues payable to Madhya Pradesh State Electricity Board or its successor companies, standing against his name for a period exceeding six months at the time of submission of nomination paper.”

Rule 45 of the Rules of 1962:

“Rule 45. Disqualification for representation.-(1) No society shall elect any member as its representative, who suffers from any of the disqualifications mentioned in Rule 44.

(2) A representative of a society representing it in the general body or committee of another society shall cease to hold his office as such-

(a) if he suffers from any of the disqualifications mentioned in Rule 44; or

(b) if he ceases to be a member of the society which he represents; or

(c) if elections fall due and the society, which he represents elects another representative; or

(d) if the registration of the society which he represents is cancelled under Section [18 or 18-A]; or

(e) if-

(i) xxx

(ii) the committee of the society which he represents is removed by the State Government under sub-section (1) of Section 52; or

(iii) the committee of the society which he represents has been removed under sub-section (1) of Section 53; or

(f) if the society is ordered to be wound up under Section 69.

(2A) If a representative ceases to hold office in the circumstances referred to in clause (e) of sub-rule (2), administrator appointed under the relevant provisions of the Act to manage the affairs of the society shall have the power to fill the vacancy so caused.

(3) No representative of the society shall be eligible for election as a member of the Board of Directors of a Cooperative Bank, Financial Bank,

Federal Society or Apex Society and shall not hold his office as such if the society is or gets into default for a period exceeding twelve months in respect of loan or loans taken by it from such Co-operative Bank, Financial Bank, Federal Society or Apex Society or payment due for contribution and subscription of Rajya Sahakari Sangh and Zila Sahakari Sangh and of dispensing with government liabilities.”

10. The order of reference made by the learned Single Judge proceeds on the assumption of conflict between two Division Bench judgments of this Court in **Brij Kumar Chanpuriya** (supra) and **Anter Singh & others** (supra). That is the basis on which the first question is formed. Therefore, first of all, what is to be seen is whether these two judgments have actually rendered conflicting opinion with regard to necessity of the adherence to the principles of natural justice before discontinuing or removing an elected Director or declaring his/her seat as vacant. The Division Bench in **Brij Kumar Chanpuriya** (supra), decided earlier in point of time, vide order dated 15.5.2017, categorically held that “an elected Director cannot be declared to vacate his office by virtue of deemed provisions without giving any opportunity of hearing. It is the basic principle of natural justice that nobody should be condemned without granting opportunity of hearing.” The Division Bench in this judgment on analyzing Sections 48-AA and 50-A of the Act of 1960 also noted that in **Rajiv Kumar Jain Vs. Elected Representative, Veerendra Narain Mishra and others 2012(2) MPHT 352**, the challenge was made to the judgment of the Cooperative Tribunal and its order rejecting the application of the petitioner for his impleadment to contest the appeal. The issue in that case was with regard to election of the member of the Board of Directors of the Cooperative Bank as representative from Primary Agriculture Credit Society, Ramnagar, Tehsil Chanderi, District Ashoknagar. The

petitioner and other members of the Board of Directors resigned from their post alleging some illegalities. The petitioner submitted a complaint against the respondent No.1 (in that case) to the Cooperative Bank and alleged that the respondent No.1 was not eligible to continue as a member of the Board of Directors as his parent Society had become defaulter of the Bank and a show cause notice was issued to the respondent No.1. Thus, admittedly, in that case, a show cause notice dated 12.1.2011 was issued to the respondent No.1 as to why he should not be disqualified to continue as Director of the respondent No.3 Bank on account of the fact that the Society of which he has been elected as a representative, had become defaulter of the Bank. The respondent No.1 did not file reply to the show cause notice before the Joint Registrar. The Joint Registrar in exercise of powers conferred by Section 50-A(2) of the Act of 1960 read with Rule 45 of the Rules of 1962 disqualified the respondent No.1 to continue as Director of the Bank and declared his seat vacant. It was against that order that an appeal was preferred before the Cooperative Tribunal. The petitioner in the aforementioned writ petition had filed an application before the Tribunal for his impleadment in the appeal. However, his application was rejected and thereafter, the Tribunal vide order dated 1.11.2011 set aside the order passed by the Joint Registrar. In those facts, this Court in *Rajiv Kumar's case* (supra), relying on the earlier judgment in *Basant Kumar* (supra), in Paras 13 and 14 of the report held as under:-

“13. Section 50-A of the Act of 1960 prescribes disqualification for being candidate or voter for election to Board of Director or representative or delegate of society. Proviso to section 50-A(2) prescribes that a person elected to an office of a co-operative bank from a society shall cease to hold such office, if such society commits default for any loan or advance for a period exceeding three months, and the Registrar shall declare his seat vacant. The relevant provisions are as under:

“(2) A person elected to an office of a society shall cease to hold such office, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him, and the Registrar shall declare his seat vacant:

Provided that a person elected to an office of co-operative bank from a society other than co-operative credit structure, shall cease to hold such office, if such society commits default for any loan or advance or for a period exceeding three months, and the Registrar shall declare his seat vacant.”

14. From the aforesaid proviso to section 50-A(2) of the Act of 1960, it is clear that a person elected to an office of a Co-operative bank from a society shall cease to hold such office, if such society commits default. Admittedly, in the present case, the society, from which the respondent No.1 had been elected as representative of the co-operative bank and thereafter he was elected as Board of Director of the Bank, became defaulter. In such circumstances, the Joint Registrar has rightly declared his seat vacant. The Division Bench in the case of Basant Kumar Vs. Assistant Registrar, Co-operative Societies, Jabalpur and other, 1969 MPLJ 683= 1969 JLJ 1016 has held as under in regard to disqualification to hold a post in a society when a society disqualified to represent the other society:

‘It was then contended that disqualification for a delegate of representative are all provided in Rule 45 and unless it can be said that the delegate or representative of the member society in the Committee of another society has himself incurred the disqualification under Rule 45, the delegate or the representative does not lose his seat in the Committee. There is no substance in this contention. A society to be a member in the Committee of management of another society must not suffer from the disqualifications mentioned in Rule 44. As a society can only function in the committee of management through some individual, the society must elect one of its members as its delegate. But Rule 45 provides that the delegate or representative so elected should also not suffer from any of the disqualifications mentioned in Rule 44. Thus, the requirements of the Rules are two fold. The member society must not suffer from any disqualifications mentioned in Rule 44 and the delegate elected by it to represent it should also not suffer from any of the disqualifications. The delegate however, has no independent existence. He only represent the society which is the real member in the committee and if the society ceases to be a member of the committee because of a disqualification incurred by it, the delegate will automatically ceased to be delegate although he may not have himself incurred any disqualification under Rule 45.’”

But the argument that the principles of natural justice was not followed as no notice was issued by the Joint Registrar to the Cooperative Society and the respondent No.3, was categorically negated by this Court in para 18 of the judgment observing that not only notice was issued by the Joint Registrar to the respondent No.3 himself but the matter was listed by the Joint Registrar

on four consecutive dates and no one had appeared on behalf of the Bank/the Society. The Court therefore concluded that sufficient opportunity was given to them and on that basis reversed the order of the Tribunal.

11. Another Division Bench judgment in question is that of *Anter Singh and others* (supra). In that case, a writ petition was filed by Anter Singh and others, being aggrieved by the order dated 21.2.2019 passed by the Joint Registrar, Cooperative Societies under Section 50-A(2) of the Act of 1960, whereby they were declared ineligible to hold the post of Director of Indore Premiere Cooperative Bank Limited, Indore, on the ground that primary society of which they (appellants in that case) were elected as representative/delegate, had committed default for more than 12 months and in their place appointed an administrator under Section 53(12) of the Act of 1960. In appeal, the Division Bench merely affirmed the judgment of the Single Bench. What is significant to notice in regard to applicability of principles of natural justice, with which we are concerned in the present case, is that the learned Single Bench relying on the earlier Single Bench judgment in *District Co-operative Agricultural and Rural Development Bank Vs. State of M.P. & others 2015 RN 135*, the Court in para 11 of the report held as under:-

“So far as the applicability of principle of natural justice is concerned, the petitioners themselves have admitted in para 5.7 of the writ petition that the Societies have committed the default....”

It was further observed by the Single Bench in *Anter Singh* (supra) that “in the case of *District Co-operative Agricultural and Rural Development Bank*, this Court entertained the writ petition filed by the District Co-

operative Bank itself, not by individual Directors challenging the order of supersession. The writ Court distinguished the order passed by the Division Bench in case of *Rajiv Kumar* (supra) only on the ground that the petitioners have disputed that they are not defaulters and did not suffer any disqualification.” Moreover, in *Anter Singh* (supra), the writ petition was dismissed by the learned Single Bench of this Court on recording satisfaction that there are no disputed questions of fact. The petitioners have suffered removal from the post of Directors as a consequential action because their society has been declared defaulter. The Single Bench in that regard recorded the following finding:-

“In this case, there is no disputed question of facts. The petitioners have suffered removal from the post of directors as a consequential action because their society has been declared defaulter, which is a requirement of law, therefore, in view of the law laid down in the case of *Dharampal Satyapal Limited* (supra) whether opportunity of hearing will serve the purpose or not, this has to be considered by the Court whether any prejudice is going to be caused against him if any action is taken. In view of above discussion, it is for the society to challenge the order of Joint Registrar and if the society succeeds and a tag of defaulter is removed, then only the petitioners are entitled for any relief.”

12. The above Single Bench judgment dated 26.3.2019 passed in Writ Petition No.5033/2019- *Anter Singh and others Vs. State of M.P. and others* was upheld by the Division Bench in Writ Appeal No.551/2019 vide judgment dated 17.5.2019 which also took note of the fact that the writ petitioners in *Anter Singh and others* (supra) themselves admitted in para 5.7 of the writ petition that the Societies have committed default, which was also the position in *Rajiv Kumar Jain's case* (supra) wherein there was no dispute that the petitioners suffered removal from the post of members of the Board of Directors as a consequence of their Society being declared as defaulter. In those facts, it was held by the Division Bench as under:-

“15. Even otherwise in the present case it is not in dispute that society had committed default therefore by virtue of proviso to Section 50-A(2) the member elected from the society had 'ceases to hold such office' on committing default by the society hence they cannot find fault in the effect of operation of provision on the ground of non compliance of principles of natural justice, as in such a case giving an opportunity of hearing is nothing more then a mere formality.”

13. Having referred to the Supreme Court judgment in *Dharampal Satyapal Limited* (supra), the Division Bench in *Anter Singh and others* (supra) observed that the principles of natural justice are very flexible and they cannot be applied in a straitjacket formula and there may be situation wherein for some reason it is felt that a fair hearing ‘would make no difference’- meaning that a hearing would not change the ultimate conclusion reached by the decision maker, then no legal duty to supply a hearing arises. The Division Bench then relying on the judgment of the Supreme Court in *Maharaja Jiwajirao Education Society Vs. State of M.P. and others 2006 (4) MPLJ 403*, further held that “question of violation of natural justice” has to be judged on the principle of prejudice caused. But then in para 15 of the judgment, the Division Bench also held that it is not in dispute that society had committed default, therefore, by virtue of proviso to Section 50-A(2), the member elected from the Society 'ceases to hold such office' on committing default by the Society. Obviously, the observations made in *Anter Singh and others* (supra) in para 13 and 14 were obiter and not the ratio of the judgment because it was clearly noted both by the Single Bench and the Division Bench in *Anter Singh and others* (supra) that the petitioners in para 5.7 of the writ petition themselves admitted that their Society had committed default.

14. Analysis of the two Division Bench judgments which formed the basis of reference thus clearly shows that insofar as the first question referred for

answer by the learned Single Judge is concerned, there is no apparent conflict between the Division Bench judgment in *Brij Kumar Chanpuriya* (supra) and another Division Bench judgment in *Anter Singh and others* (supra). Infact, none of these judgments has questioned correctness of *Rajiv Kumar Jain* (supra).

15. Question No.1 is answered accordingly. Even then, we shall for the purpose of giving quietus to the matter proceed to examine and answer the other two questions.

16. Adverting now to the second question referred to us whether the provisions of Section 48-AA and Section 50-A of the Act of 1960 operates in a different sphere i.e. pre and post election of the Director, we must begin observing that mere fact that the legislature in Section 48-AA of the Act of 1960 having specifically provided for giving reasonable opportunity of hearing to the members, who are sought to be disqualified from the office, has not done so in the proviso to section 50-A(2), would not mean that the legislature expressly intended to exclude the applicability of principles of natural justice.

17. Section 48-AA of the Act of 1960 provides that no person shall be eligible for election as a member of the Board of Directors of a Society, and shall cease to hold his office as such, if he suffers from such disqualification specified in this Act or the rules made thereunder and no Society shall elect any member as its representative to the Board of Directors of any other Society or to represent the Society in other Society, if he suffers from such disqualification as may be specified in this Act or the rules made thereunder.

This provision shall apply in both situations i.e. at the time of election (i.e. pre-election stage) or if any person is disqualified after election (i.e. post-election stage). Sub-section (1) of section 50-A which provides that no person shall be qualified to be a candidate for election as member of the Board of Directors, representative or delegate of the Society if he is in default for a period exceeding 12 months to the Society or any other Society for any loan or advance taken by him, shall apply at the stage of election. However, the proviso to sub-section (2) of Section 50-A would apply to post-election stage wherein a person holding office of the Director of the Cooperative Bank on account of the default of his parent Society for a period exceeding 12 months, is sought to be unseated. This is because the proviso to sub-section (2) of section 50-A stipulates that an elected person shall cease to hold the office, if such Society commits default for any loan or advance, for a period exceeding twelve months. But sub-section (3) of Section 50-A, which envisages a situation where representative/delegate of the Society is debarred from voting, if he is in default for a period exceeding 12 months to the Society or any other Society for any loan or advance taken by him, is however applicable to pre-election stage.

18. In view of above discussion, it must be held that the aim of principles of natural justice is not only to secure justice but also to prevent miscarriage of justice. The observance of such principles of natural justice checks arbitrary exercise of power by the State and its functionaries. Unless a statutory provision, either specifically or by necessary implication, excludes the application of principles of natural justice, the requirement of providing reasonable opportunity of hearing before an order having civil consequence is

passed against someone, has to be read into the provisions of a statute, be it an administrative or quasi-judicial order. Law is well settled that if a statute is silent and statutory provision does not specifically provide giving opportunity of hearing, there could be nothing wrong in spelling out therein the need to hear the parties whose interest is likely to be affected by the order that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. It is trite that silence of the statutory provision with regard to the principles of natural justice is also taken in support of its compliance, if the person is likely to be adversely affected by an order passed under such provision. Even if, therefore, unlike Section 48-AA, Section 50-A of the Act of 1960 does not specifically envisage for giving reasonable opportunity of being heard to the person, who is sought to be disqualified, to continue as member of the Board of Directors, adherence to principles of natural justice must be read into the statute as there is no clear mandate to the contrary. Analytical examination of both Section 48-AA and Section 50-A of the Act of 1960 would thus show that these two provisions operate in different spheres and stage of their applicability would depend upon fact situation of a given case. The second question is answered accordingly.

19. Coming now to the third question that whether Section 50-A of the Act of 1960 is a deeming provision for holding a Director of a Society as disqualified, an opportunity of hearing is still required to be given, we should at the outset deal with the argument that if it is not disputed that the parent society, of which the petitioners are representatives and in that capacity, elected as members of the Board of Director, is in default, providing opportunity of hearing to them would be an useless formality, cannot be

countenanced for the reasons to be stated presently. It needs no emphasis to state that question that the Society is in default for consecutive period of 12 months in term of Rule 45(3) of the Rules of 1962 is essentially a question of fact. Therefore, the scope of the opportunity of hearing to be given to such representative/delegate of the Society, who is sought to be unseated from the office of member of the Board of Director, would be to call upon him to prove to the contrary that the Society in question is not actually in default. There may be variety of situations like the Society having paid its dues but relevant entries are not made in the account books of the concerned Cooperative Bank or there may be mismatch in the record maintained by them or there can be a possibility of negligent or even deliberate omission in the record by the officials/accountants of a given Society. In such a scenario, a limited opportunity would be required to be given to the affected persons, which need not be elaborate. The notice to the petitioners/representatives/delegates of the parent Society may only briefly contain the factum that the society is in default for consecutive 12 months, giving opportunity to them to prove otherwise and show that the Society is not actually in default and has already cleared its dues. Howsoever limited may be the scope of opportunity of hearing but it cannot be held that the principles of natural justice at this stage should be given a complete go by because discontinuation/removal of representative/delegate of the parent Society or declaring his/her seat of the office of the Member of the Board of Directors vacant, would certainly have civil consequences for him. What would be “civil consequence” has been deliberated in *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & others (1978) 1 SCC 405*, by his Lordship

Krishna Iyer J. in his inimitable style, observed while speaking for the majority thus:-

"66.'.....Civil Consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. *In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.*"

(emphasis supplied)

20. The Supreme Court in ***Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax and another*** (2008) 14 SCC 151 relying on its earlier judgment in ***State of Orissa Vs. Dr.(Miss) Binapani Dei & others*** AIR 1967 SC 1269, held that the distinction between quasi-judicial and administrative orders was perceptively mitigated and even an administrative order or decision in matters involving civil consequences, has to be made in consonance with the principles of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language. The Supreme Court in ***Canara Bank Vs. V.K.Awasthy*** (2005) 6 SCC 321 extensively discussed the concept, scope, history of development and significance of principles of natural justice and observed that the principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi- judicial and administrative authority while making an order affecting those rights. In para 14, the Supreme Court has held as under:-

"14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular

rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame- work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations⁰ and non- pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

21. The Constitution Bench of the Supreme Court *in Olga Tellis Vs. Bombay Municipal Corporation* (1985) 3 SCC 545 while interpreting Section 314 of the Bombay Municipal Corporation Act, 1888, which confers discretion on the Municipal Commissioner to get any encroachment removed, with or without notice, observed as follows:

"45. It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exemption and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence."

22. Subsequently, the Supreme Court in *C.B.Gautam Vs. Union of India* (1993) 1 SCC 78 while dealing with the question as to whether in the absence of a provision for giving the concerned parties an opportunity of being heard before an order is passed invoking section 269-UD of the Income Tax Act, for peremptory purchase of immovable property by the Central Government, an opportunity of hearing is required to be given or not, held as under:-

. "30.Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269-UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to make a fortress out of the dictionary." Again, there is no express provision in Chapter XX-C barring the giving of a show cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269-UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269- UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269- UD-reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made."

23. The Supreme Court in *Rajesh Kumar and others Vs. Dy. CIT and others (2007) 2 SCC 181* was dealing with the question that if the Assessing Officer directing special audit as under Section 142(2A) of the Income Tax Act by formulating the opinion, even if with the previous approval of the Chief Commissioner to audit of the account, was required to afford an opportunity of hearing to the assessee, relying on many previous judgments including one of *Dr.(Miss) Binapani Dei* (supra), in paras 60 and 61 of the report held as under:-

“60. Whereas the order of assessment can be the subject-matter of an appeal, a direction issued under Section 142(2-A) of the Act is not. No internal remedy is prescribed. Judicial review cannot be said to be an appropriate remedy in this behalf. The appellate power under the Act does not contain any provision like Section 105 of the Code of Civil Procedure. The power of judicial review is limited. It is discretionary. The Court may not interfere with a statutory power. (See for example *Jhunjhunwala Vanaspati Ltd. V. CIT (2004) 266 ITR 657 (All)*, see, however, *U.P. State Handloom Corpn. Ltd. V. CIT (1988) 171 ITR 640 (All)*).

61. The hearing given, however, need not be elaborate. The notice issued may only contain briefly the issues which the assessing officer thinks to be necessary. The reasons assigned therefor need not be detailed ones. But, that would not mean that the principles of justice are not required to be complied with. Only because certain consequences would ensue if the principles of natural justice are required to be complied with, the same by itself would not mean that the court would not insist on complying with the fundamental principles of law. If the principles of natural justice are to be excluded, Parliament could have said so expressly. The hearing given is only in terms of Section 142(3) which is limited only to the findings of the special auditor. The order of assessment would be based upon the findings of the special auditor subject of course to its acceptance by the assessing officer. Even at that stage the assessee cannot put forward a case that power under Section 142(2-A) of the Act had wrongly been exercised and he has unnecessarily been saddled with a heavy expenditure. An appeal against the order of assessment, as noticed hereinbefore, would not serve any real purpose as the Appellate Authority would not go into such a question since the direction issued under Section 142(2-A) of the Act is not an appellate order.”

24. In Supreme Court judgment of *Swadeshi Cotton Mills Vs. Union of India* (1981) 1 SCC 664, His Lordship Chinnappa Reddy, J. in his dissenting judgment, summarized the legal position in the following terms:-

“106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Binapani (supra), Kraipak (A.K.Kraipak V Union of India [(1969) 2 SCC 262], Mohinder Singh Gill [(1978) 1 SCC 405], Maneka Gandhi [Maneka Gandhi v. Union of India (1978) 1 SCC 248]. They are now considered so fundamental as to be ‘implicit in the concept of ordered liberty’ and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced.”

25. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and others* (supra), the Supreme Court while holding that even administrative order which involves civil consequence has to be passed in consonance with the principles of natural justice, observed as under:-

“12. It is true that some preliminary enquiry was made by Dr. S.Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was in our judgment, right in setting aside the order of the State.”

26. Reiterating the law laid down in *Dr.(Miss) Binapani's* case (supra), the Constitution Bench of the Supreme Court in *A.K.Kraipak and others Vs. Union of India and others* (1969) 2 SCC 262 held as under:-

“13. The dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if no ensure a just and fair decision.....”

27. Judgment cited by the learned Additional Advocate General in *State of Punjab Vs. Tehal Singh & others* (supra) has no application to the facts of the present case because in that case, the question was whether the State Government was required to provide opportunity of hearing to the affected persons while issuing notice regarding establishment of Gram Sabha areas and constitution of Gram Sabhas. It was held that power of the State Government

under Section 3 and 4 of the Punjab Panchayati Raj Act, 1994, is legislative in character and the principles of natural justice need not be observed by the State Government in the absence of clear provisions stipulating such observance. The impugned order in the present case cannot be described legislative in character and therefore, aforesaid judgment does not in any manner help the case of the respondent/State.

28. On the question of applicability of principles of natural justice for declaring the office of the elected Director in the capacity of delegate of the different societies, we agree with the view expressed by this Court in *Registered District Co-operative Agricultural* (supra) in para 14, which reads as under:-

“14. If in the light of aforesaid principle, Sections 48-AA and 50-A are examined, it will be clear that Section 50-A only provides that if a person elected to an office of a society is in default of payment of loan or advance for more than twelve months to the society, he shall cease to hold such office. The Registrar is empowered under sub-section (2) of section 50-A to declare his post vacant. However, no methodology is prescribed in section 50-A. In other words, section 50-A is silent regarding the applicability of principle of natural justice. This point need not detain this Court for a longer time. This is settled in law that “Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words to statute or necessary intendment. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it.” [See, *Swadeshi Cotton Mills vs. Union of India* (1981) 1 SCC 664]. This view is consistently followed by the Courts. In (1994) 4 SCC 328 (*Dr. Umrao Singh Chaudhary vs. State of MP*), the Apex Court took the same view. In the light of this legal position, in my opinion, the principles of natural justice are implicit and are required to be read into Section 50-A of the Act. Section 48-AA also deals with the same subject matter, which relates with disqualification of membership of Board of Directors and representatives of the candidates. Undoubtedly, Section 48-AA was inserted later on.

Section 48-AA (1) makes it clear that the Legislature intended to provide reasonable opportunity of hearing to the person concerned. This section makes it clear that if a member suffers from any of disqualifications specified in the Act or Rules, it is the duty of the Board of Directors of the society to disqualify such member. However, proviso makes it clear that this can be done after giving him a reasonable opportunity of being heard. If the society fails to take action within two months, the power is vested with the Registrar to disqualify such member by passing an order in writing after giving him reasonable opportunity of being heard. Thus, the principles of natural justice are embodied in Section 48-AA.”

29. In *Bhawani Vipanan Sahkari Sanstha* (supra), the Division Bench of Gwalior Bench approvingly quoting the aforesaid observations from *Registered District Co-operative Agricultural* (supra) categorically held as under:-

“5. In view of above, it is evident that before taking any action in Sec.50-A, the principles of natural justice (audi alteram partem) are required to be followed.”

30. Here we note with approval the views expressed by this Court in *Registered District Co-operative Agricultural* (supra) while repelling the argument that since Section 48-AA of the Act of 1960 was inserted in the Act later in point of time on 4.1.2010 whereas Section 50-A was inserted by way of the amendment in the Act with effect from 13.12.2007, therefore, Section 48-AA being a later provision, dealing with the same aspect as contained in Section 50-A, should be treated to have been impliedly repealed. This would be evident from the following excerpts of the judgment:-

“13. It is argued by the petitioners that section 48-AA is a later provision dealing with the same aspect and, therefore, earlier provision (Section 50-A) must be treated as impliedly repealed. This is settled in law that there is a presumption against a repeal by implication and the reason of this rule is based on the theory that the Legislature while enacting a provision has complete knowledge of existing provision on the same subject matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. [See, *AIR 1963 SC 1561 (Municipal Council, Palai vs. P.J. Joseph)* and (2003) 7 SCC 389 (*State of MP vs. Kedia Leather and Liquor Ltd.*)]. This presumption can be rebutted and repeal can be inferred by necessary implication when the later provision is so inconsistent with or repugnant to the earlier provision that “two cannot stand together”. [See, *AIR 1963 SC 1561 (Municipal Council, Palai vs. P.J. Joseph)* and (1997) 1 SCC 450 (*Cantonment Board, Mhow*]

vs. *M.P.State Road Transport Corporation*). Justice G.P.Singh in Principles of Statutory Interpretation (12th Edition), page 681, opined as under :-

'The general principle that there is a strong presumption against implied repeal recently came up for consideration before the High Court of Australia in Shergold Vs. Tanner reported in (2002) 76 ALJR 808. In a joint judgment the court GLEESON, C.J. McHUGH, GUMMOW, KIRBY and Hayane JJ.) quoted with approval the following observations of GAUDRON J. in Saraswati Vs. the Queen reported in (1991) 172 CLR1 "it is a basic rule of construction that in the absence of express words, an earlier statutory provision is not repealed, altered or derogated from by a later provision unless an intention to that effect is necessarily to be implied. There must be very strong grounds to support that implication, for there is a general presumption that the legislature intended that both provisions should operate and that, to the extent that they would otherwise overlap, one should be read as subject to the other.'"
(Emphasis Supplied)

31. The Division Bench in *Brij Kumar Chanpuriya* (supra) has relied on the earlier Division Bench judgment of this Court in *Rajiv Kumar Jain* (supra) to hold that the office of the elected Director cannot be declared vacant by virtue of deemed provision in proviso to sub-section (2) of Section 50-A of the Act of 1960 without giving opportunity of hearing. This would be evident from following excerpt of *Brij Kumar Chanpuriya* (supra):

“That apart, an elected Director cannot be declared to vacate his office by virtue of deemed provisions without giving any opportunity of hearing. It is against the basic principles of natural justice that nobody should be condemned without granting opportunity of hearing”

32. Question No.3 as to whether Section 50-A of the Act of 1960 is a deeming provision for holding Director of the Society as disqualified or an opportunity of hearing is still required to be given as held by this Court in *Brij Kumar Chanpuriya* (supra) is thus answered in the terms that there cannot be an automatic removal/disqualification of a Director or member of Board of Directors. Since, Section 50-A of the Act of 1960 cannot be held to be a deemed provision, there cannot be deemed vacation of his seat in the office of

the Board of Directors. The competent authority after due application of mind would in any case be required to give opportunity of hearing to the member of the Board of Directors, apply its mind and then pass a specific order for removing/unseating him from such office. The question No.3 is accordingly answered.

In view of our answers to all the questions referred, let the matters be now placed before the regular Bench in accordance with the Roster for final disposal

(Mohammad Rafiq)
Chief Justice

(Rajeev Kumar Dubey)
Judge

(Vijay Kumar Shukla)
Judge

C.