



GAHC010026582022



2022:GAU-AS:18798

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : W.P.(C) NO. 925/2022**

1) THE BIKRAMPUR COOP SOCIETIES LTD, REGN. NO. S/7 OF 1973-74, P.O.-BIHARA BAZAR, DIST-CACHAR, ASSAM (REPRESENTED BY BILLAL UDDIN BORBHUIYA, THE PRESENT CHAIRMAN OF THE ABOVE SOCIETY)

2) BILLAL UDDIN BORBHUIYA, S/O ABDUR RUP BORBHUIYA OF VILL-SENTI PART-I, P.S.-KATIGORAH, DIST-CACHAR, ASSAM

**.....Petitioners**

**Vs.**

1) THE STATE OF ASSAM, REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, COOPERATION DEPTT., DISPUR, GUWAHATI-6

2) THE REGISTRAR OF COOP. SOCIETIES, ASSAM, KHANAPARA, GUWAHATI-22

3) THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES, CACHAR, SILCHAR, ASSAM

4) ABHIJIT CHAKRABORTY, S/O ANATH BANDHU CHAKRABORTY, VILL AND P.O.-BIHARA BAZAR, P.S.-KATIGORAH, DIST- CACHAR, ASSAM

**.....Respondents**

**Advocates :**

Petitioners : Mr. B. Sinha, Advocate  
Respondent nos. 1, 2 & 3 : Mr. S.K. Talukdar, Standing Counsel, Cooperation Department  
Respondent no. 4 : Mr. R. Goswami, Advocate  
Date of Hearing : 05.11.2024  
Date Judgment & Order : 13.03.2025

**BEFORE**  
**HON'BLE MR. JUSTICE MANISH CHOUDHURY**

**JUDGMENT & ORDER**

The present writ petition under Article 226 of the Constitution of India is preferred by the petitioner to assail an Order bearing no. GPSS.35/2001/334 dated 10.01.2022 passed by the Registrar of Cooperative Societies, Assam purportedly in exercise of the powers conferred under Section 49[2][I] of the Assam Cooperative Societies Act, 2007 in an appeal purportedly preferred under Section 111 of the said Act by the respondent no. 4. By the impugned Order, the Registrar of Cooperative Societies, Assam [the respondent no. 2] has set aside an Advertisement, also published in the newspaper, inviting applications for appointing a new Secretary in a cooperative society, M/s Bikrampur Samaby Samity Ltd. and has allowed the respondent no. 4 to continue as the Secretary of M/s Bikrampur Samaby Samity Ltd. until further order.

2. The petitioner no. 1 herein is M/s Bikrampur Samaby Samity Ltd. [hereinafter referred to as 'M/s Bikrampur Society', for easy reference],



represented by the Chairman of the Board of Directors of the Society, and the petitioner no. 2 is the Chairman of the Board of Directors of M/s Bikrampur Society.

3. Before proceeding further, it appears appropriate to reproduce the Order bearing no. GPSS.35/2001/334, in its entirety, for the purpose of understanding the nature of challenges made herein :-

**GOVERNMENT OF ASSAM  
OFFICE OF THE REGISTRAR OF COOPERATIVE SOCIETIES :: ASSAM  
KHANAPARA :::: GUWAHATI-22.**

No. GPSS.35/2001/334

Dated Guwahati the 10<sup>th</sup> January 2022

**ORDER**

Whereas an appeal petition dated 14.12.2021 has been filed by Sri Abhijit Chakraborty under Section 49 [2][1] of the Assam Cooperative Societies Act, 2007 against the cancellation of his appointment and the advertisement of the new Secretary of Bikrampur S.S. Ltd.

And whereas the appeal has been admitted under Section 111 of Assam Cooperative Societies Act, 2007, and date of hearing has been fixed on 10.01.2022 and accordingly called the persons concerned for hearing.

On the date of hearing Sri XXXX, Zonal Joint Registrar of Cooperative Societies, Silchar, Sri XXXX, Assistant Registrar of Cooperative Societies, Silchar, XXXX, Chairman of Bikrampur S.S. Ltd. on behalf of the Board of Director of Bikrampur S.S. Ltd. and Sri Abhijit Chakraborty, petitioner were present.

Heard them and perused the connected record.

And whereas on perusal of the record and hearing the parties it is observed that

[1] The petitioner who has been removed from the post of the Secretary was not given prior notice for his removal nor he was given any chance for his defense.



[2] Only 6 members have signed in the resolution of the Board of Director meeting held on 07.10.2021 which is short of the requisite quorum 8 members of the Board of Director as required under Section 43 [5] of Assam Cooperative Societies Act, 2007.

And whereas the Board of Director of the Bikrampur S.S. Ltd. has contravened the provision of Section 35 [2] of Assam Cooperative Societies Act, 2007.

And whereas no natural justice was given to the petitioner prior to his removal, the advertisement published for appointment of Secretary is liable to be set aside.

Now, therefore, I Sri XXXX, IAS, Registrar of Cooperative Societies, Assam in exercise of power conferred under Section 49 [2][1] of Assam Cooperative Societies Act, 2007 do hereby set aside the advertisement published in the newspapers and allow Sri Abhijit Chakraborty to continue as the Secretary of Bikrampur S.S. Ltd. until further order.

This order comes into force with immediate effect.

4. The necessary and relevant events leading to the passing of the Order, extracted above, can be narrated, in brief, at first.

4.1. The petitioner no. 1, M/s Bikrampur Samabay Samity Ltd. is a cooperative society registered under the provisions of the Assam Cooperative Societies Act, 1949/2007 [‘the Act, 2007’ or ‘the 2007 Act’, for short] vide Registration no. S/7 of 1973-74 and the area of operation of M/s Bikrampur Society is within the district of Cachar, Assam. In the Annual General Meeting [AGM]/Election held for the Directors to the Board of Directors of M/s Bikrampur Society, on 10.06.2018, a total of thirteen Directors were elected. The proceedings of the AGM/Election were thereafter, approved on 25.06.2018. It has been stated that during the subsequent period, four Directors remained absent consecutively in three meetings of the Board of Directors of M/s Bikrampur Society and due to their such repeated absence,



they were removed from the Directorship of M/s Bikrampur Society in a meeting of the Board of Directors of M/s Bikrampur Society, held on 11.02.2019. At one point of time, one Senior Inspector of Cooperative Societies, O/o the Assistant Registrar of Cooperative Societies, Silchar was entrusted with the task of carrying out the duties of the Secretary of M/s Bikrampur Society as there was no permanent full-time Secretary in M/s Bikrampur Society then. But, by an Office Letter bearing no. JRC/E[P]97/Pt.-II/266 dated 14.09.2021 issued by the Zonal Joint Registrar of Cooperative Societies, Silchar, the service of the said Senior Inspector of Cooperative Societies, O/o the Assistant of Cooperative Societies, Silchar was withdrawn without any replacement.

4.2. Subsequent to the withdrawal of service of the Senior Inspector of Cooperative Societies on 14.09.2021, the Board of Directors of M/s Bikrampur Society in a meeting, held on 07.10.2021, adopted a resolution to appoint the respondent no. 4 as the Secretary of M/s Bikrampur Society. On adoption of the said resolution, an order of appointment was issued on 07.10.2021 in favour of the respondent no. 4 under the hand of the Chairman of M/s Bikrampur Society.

4.3. On 27.10.2021, a complaint was submitted before the Zonal Joint Registrar of Cooperative Societies, Silchar by the Secretary of one Bihara Seba Sakti Club and four others including two Presidents of Gaon Panchayats, claiming themselves to be shareholders in M/s Bikrampur Society and the complaint was against the appointment of the respondent no. 4 as the Secretary of M/s Bikrampur Society. The said complaint was forwarded by the



Zonal Joint Registrar of Cooperative Societies, Silchar to the Chairman of M/s Bikrampur Society vide an Office Letter no. JRCS.E[P]3/97Pt.II/278 for information and necessary action.

4.4. Subsequent thereto, a meeting of the Board of Directors [‘the Board’, for short] of M/s Bikrampur Society was held on 01.12.2021. In the said meeting, the matters relating to the appointment of the respondent no. 4 as the Secretary of M/s Bikrampur Society and the complaint received with regard to the appointment of the respondent no. 4 were discussed. After discussion, the Board vide Resolution no. 1 resolved to cancel the appointment of the respondent no. 4 as the Secretary of M/s Bikrampur Society under Section 38 [2] of the Act, 2007 and to initiate necessary steps to fill up the post of Secretary within fifteen days, by publication of an advertisement to invite applications from candidates having qualification of Higher Secondary Examination pass and within the age group of 18 – 45 years. The decision to terminate the appointment of the respondent no. 4 vide Resolution no. 1 adopted in the meeting of the Board of M/s Bikrampur Society, held on 01.12.2021, was informed to the respondent no. 4 by a Letter dated 01.12.2021 issued under the hand of the Chairman of the Board of M/s Bikrampur Society stating that his appointment had been cancelled in the interests of M/s Bikrampur Society.

4.5. Along with the cancellation of the order of appointment of the respondent no. 4, an Advertisement was simultaneously published on 01.12.2021 inviting applications from candidates for filling up the vacant post of Secretary in M/s Bikrampur Society, as per Resolution no. 1 adopted in the meeting of the



Board of M/s Bikrampur Society on 01.12.2021. In the Advertisement, it was mentioned that the candidates should have the qualification of Higher Secondary Examination pass and they should be in the age group of 18 – 45 years. The Advertisement was also published in the daily newspaper, *Juga Sangha*, in its issue dated 09.12.2021.

4.6. A First Information Report [FIR] was also lodged before the Officer In-Charge, Katigorah Police Station on 13.01.2022 alleging *inter alia* that the respondent no. 4 resorted to forgery of the signatures and seal of the Chairman of the Board of M/s Bikrampur Society in the proceedings book of M/s Bikrampur Society relating to the period from 25.09.2021 to 30.03.2022. On receipt of the FIR, the same was registered as Katigorah Police Station Case no. 28/2022 for the offences under Section 468 and Section 409 of the Indian Penal Code [IPC].

4.7. On 14.12.2021, the respondent no. 4 preferred an appeal purportedly under Section 49[2][I] of the 2007 Act against termination of his appointment as the Secretary of M/s Bikrampur Society and publication of the Advertisement in the daily newspaper, *Juga Sangha*, in its issue dated 09.12.2021, inviting applications from eligible candidates for filling up the post of Secretary of M/s Bikrampur Society. On receipt of the said appeal, the Joint Registrar of Cooperative Societies [G], Assam, Guwahati issued a notice dated 22.12.2021 to the stakeholders including the Chairman & the Directors in the Board of M/s Bikrampur Society; and the respondent no. 4; fixing the date on 10.01.2022 in the office chamber of the respondent no. 2 for hearing the appeal filed by the respondent no. 4 on 14.12.2021 in the matter of



termination of his appointment as the Secretary of M/s Bikrampur Society.

4.8. On receipt of the notice, a written statement, signed by the Chairman and five other Directors in the Board of M/s Bikrampur Society, was submitted before the respondent no. 2 on 10.01.2022, that is, on the date of hearing presenting its views in the matter. As reflected in the impugned Order, the Zonal Joint Registrar of Cooperative Societies, Silchar Zone, Cachar; the Assistant Registrar of Cooperative Societies, Silchar; the Chairman of M/s Bikrampur Society on behalf of the Board of M/s Bikrampur Society; and the respondent no. 4; were heard on the date of hearing on 10.01.2022. It was pursuant to the hearing, the impugned Order, extracted above, came to be passed by the respondent no. 2. Aggrieved thereby, the petitioners have preferred the present writ petition questioning the legality and validity of the impugned Order dated 10.01.2022.

5. I have heard Mr. B. Sinha, learned counsel for the petitioners; Mr. S.K. Talukdar, learned Standing Counsel, Cooperation Department for the respondent nos. 1, 2 & 3; and Mr. R. Goswami, learned counsel for the respondent no. 4.

6. Mr. Sinha, learned counsel appearing for the petitioners has submitted that the Registrar of Cooperative Societies, Assam did/does not have any power, authority and jurisdiction to pass the impugned Order to nullify the decision of the Board of M/s Bikrampur Society to terminate the appointment of the Secretary of M/s Bikrampur Society, a cooperative society registered under the provisions of the 2007 Act. The Registrar did/does not have the



power to entertain any dispute relating to appointment or termination/removal of a Secretary, also interchangeably known as Chief Executive, in a registered cooperative society either under Section 111 or under Section 49[2][I] of the Act, 2007. Mr. Sinha has submitted that the dispute was with regard to employer – employee relationship and the Board of a registered cooperative society like M/s Bikrampur Society had/has the power to appoint and remove the Secretary/Chief Executive of the Society in view of the facts that, *firstly*, the State Government is not a shareholder in the Society; *secondly*, the respondent no. 4 was not a Government employee/public servant/workman; *thirdly*, the employer – employee relationship which exists between the Board of a registered cooperative society and the employees of such a society falls in the realm of private law. In a matter falling within the realm of private law, there cannot be an order of reinstatement even if no prior notice was issued or no opportunity of hearing was afforded. Even otherwise, the grounds on which the Registrar has interfered with the decision of the Board of M/s Bikrampur Society to remove the respondent no. 4 from the post of the Secretary of M/s Bikrampur Society are not tenable. It is his contention that when the impugned Order is examined in the context of the provisions of Section 35 and Section 43 of the 2007 Act also, it cannot be said that the removal of the Secretary of M/s Bikrampur Society was in violation of those provisions. Contending so, the learned counsel for the petitioners has submitted that the impugned Order is not sustainable in law and the same is liable to be set aside. Further, the order of removal of the respondent no. 4 passed by the Board of M/s Bikrampur Society is to be restored and the post of the Secretary of M/s Bikrampur Society shall be permitted to be filled up as per the process of recruitment sought to be undertaken with publication of the



Advertisement dated 01.12.2021, which was also published in a prominent daily newspaper on 09.12.2021.

7. Mr. Talukdar, learned Standing Counsel, Cooperation Department appearing for the official respondent nos. 1 to 3 has submitted that the Registrar had validly exercised statutory power in passing the impugned Order. He has submitted that even if it is assumed that the Registrar might not have the power to entertain and decide the appeal preferred by the respondent no. 4 before him under Section 111 of the Act, 2007, he still had/has the power, authority and jurisdiction to decide such kind of dispute under Section 92 of the Act, 2007. He has, thus, submitted that quoting a wrong provision, namely, Section 111, instead of Section 92, would not take away the power, authority and jurisdiction of the Registrar to pass the impugned Order. Mr. Talukdar has contended that a matter of termination/removal of a Secretary of a cooperative society touches upon the business of the society and, therefore, the power of the Registrar to interfere with an order of termination/removal is clearly traceable to Section 92 of the Act, 2007. He has submitted that the dispute between the Board of M/s Bikrampur Society, a registered cooperative society, and the respondent no. 4 would also come within the purview of Section 49 [2][I] of the Act, 2007. He has further contended that the removal in the instant case was not an action due to any indiscipline on the part of the employee so as to come within the purview of the term, 'disciplinary action'. It has been contended that the Registrar had correctly held that there was no quorum on that day, 01.12.2021 when the Board had decided to cancel the appointment of the respondent no. 4. Mr. Talukdar has canvassed that for the afore-mentioned reasons, the writ petition is to be dismissed as it is devoid of



any merits and has supported the grounds mentioned in the impugned Order dated 10.01.2022.

8. Mr. Goswami, learned counsel for the respondent no. 4 while adopting the submissions of the learned Standing Counsel, Cooperation Department, has also contended that the writ petition is based on falsehood, misrepresentation of facts and suppression of material facts. He has contended that while adopting Resolution no. 1 by the Board in its meeting dated 01.12.2021, it was mentioned that pursuant to the order of appointment dated 07.10.2021, the respondent no. 4 did not submit any joining report and did not take over charge. It had deliberately suppressed the proceedings of a meeting of the Board of M/s Bikrampur Society, held on 09.10.2021, wherein the respondent no. 4 after joining, had participated. The proceedings of the Board meeting dated 09.10.2021 would establish the presence of the respondent no. 4 in the said meeting and the proceedings of 09.10.2021 had contradicted the allegation against the respondent no. 4, recorded in the proceedings of the Board meeting dated 01.12.2021, to the effect that the respondent no. 4 did not join M/s Bikrampur Society as the Secretary after 07.10.2021. Mr. Goswami has contended that the respondent no. 4 had joined in the post of the Secretary of M/s Bikrampur Society by submitting a joining report on 08.10.2021. It is also his contention that the Registrar was/is empowered under Section 49 [2][I] of the Act, 2007 to adjudicate on the dispute between the Secretary/Chief Executive of the Society and the Board of a registered cooperative society like M/s Bikrampur Society and as such, there is no infirmity in the impugned Order passed by the Registrar. By placing reliance on Bye-Law no. 28 [1] of the Society's Bye-Laws, Mr. Goswami has contended



that the removal of the Chief Executive/Secretary of the Society requires prior approval of the Registrar and since in the case in hand, there was no prior approval of the Registrar for removal of the respondent no. 4, the order of removal is *ex-facie* bad and illegal. With such contentions, Mr. Goswami has submitted that there is no reason to interfere with the impugned Order, passed validly by the Registrar in exercise of powers vested in him under the Act, 2007.

9. In reply, Mr. Sinha has submitted that the Registrar had/has no authority and jurisdiction to decide a dispute of present nature even under Section 92 of the Act, 2007 as the dispute is not a dispute which had/has touched upon the business of a registered cooperative society like M/s Bikrampur Society. He has further contended that the Registrar could not have exercised any power under Section 49 [2][1] of the Act, 2007. The fact that at the relevant point of time the Board of M/s Bikrampur Society had only nine Directors is neither traversed nor contradicted by any of the respondents. In a matter of contract of personal service, question of prior notice does not arise. A cooperative society runs with democratic principles and all the decisions are to be taken by majority and as such, the finding recorded in the impugned Order regarding contravention of Section 35 [2] of the Act, 2007 is baseless and the point raised by the learned Departmental Counsel regarding contravention of statutory provisions in holding the Board meeting on 01.12.2021 is not sustainable. He has further urged that the bye-laws of a cooperative society do not have any statutory colour make them enforceable.

10. I have given due consideration to the submissions of the learned



counsel for the parties and have also perused the materials brought on record by the petitioners and the respondent no. 4 through their pleadings. It is noticed that no counter has been filed by the official respondents.

11. From the impugned Order dated 10.09.2022 of the Registrar, it emerges, *firstly*, that the respondent no. 4 preferred an appeal on 14.12.2021 under Section 49 [2][I] of the Act, 2007 challenging [i] his removal from the post of Secretary in M/s Bikrampur Society; and [ii] the issuance of the Advertisement by the Board of M/s Bikrampur Society for filling up the vacancy in the post of Secretary, which had occurred due to the removal of the respondent no. 4; *secondly*, that the Registrar had admitted the appeal of the respondent no. 4 treating it as an appeal under Section 111 of the Act, 2007; *thirdly*, that the Registrar interfered with the order of removal of the respondent no. 4 as the Secretary of M/s Bikrampur Society on the ground that the respondent no. 4 was neither given any prior notice for his removal nor he was given any chance for his defence, resulting in violation of the principles of natural justice; *fourthly*, that the Registrar recorded a finding that resolution taken by the Board of M/s Bikrampur Society on 07.10.2021 was in violation of the provisions contained in Section 43 [5] of the Act, 2007; and *fifthly*, that the Registrar recorded a finding that the Board of M/s Bikrampur Society had contravened the provisions of Section 35 [2] of the Act, 2007. It has further emerged that the Registrar in exercise of powers conferred purportedly on him under Section 49 [2][I] of the 2007 Act has [i] set aside the Advertisement published in the daily newspaper, *Juga Sangha* by the Board of M/s Bikrampur Society for filling up the vacant post of the Secretary in M/s Bikrampur Society; and [ii] allowed the respondent no. 4 to continue as



the Secretary of M/s Bikrampur Society until further order.

12. The foremost issue which has, therefore, arisen for consideration is whether the Registrar in exercise of powers purportedly conferred on him either by Section 49 [2][1] or by Section 92 or by Section 111 of the 2007 Act can interfere with an order of termination/removal of a full-time employee like the Secretary of a registered cooperative society, passed by the Board of a registered cooperative society like M/s Bikrampur Society here. The other issues which have fallen for consideration simultaneously are whether the Registrar can interfere with a process of recruitment and selection initiated by the Board of a registered cooperative society to appoint its Secretary, who would be a full-time employee of the society; and whether the Registrar has the power, authority and jurisdiction to pass an order to hold that the Secretary of a registered cooperative society, a full-time employee of the society, would be deemed to be in service despite passing of an order of termination/removal by the Board of the registered cooperative society.

13. In order to decide the issues, it would be necessary to make a survey of the relevant provisions contained in the Assam Cooperative Societies Act, 2007, as amended.

14. To consolidate and amend the law relating to cooperative societies in the State of Assam and to facilitate voluntary formation and democratic functioning of the cooperative societies as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and for matters connected therewith or incidental thereto, the



Assam Cooperative Societies Act, 2007 [‘the Act, 2007’, or ‘the 2007 Act’, for short] had been enacted. As per Section 2[j], ‘Cooperative Society’ or ‘Society’ means *inter-alia* a cooperative society registered under the Act, 2007. The definition of ‘Registered Society’ is provided in Section 2[bb] and it *inter-alia* means a cooperative society registered under the 2007 Act. Thus, the terms – ‘Cooperative Societies’, ‘Society’ and ‘Registered Society’ – are, in essence, synonymous in the Act, 2007.

15. The definitions of the terms, ‘Board’, ‘Chief Executive’, ‘Employee’, ‘Member’ and ‘Office Bearer’ are provided in Section 2[g], Section 2[l], Section 2[s], Section 2[w] and Section 2[x] respectively. ‘Board’ means the Board of Directors or the Governing Body of a co-operative society to which the direction and control of the management of the affairs of a society is entrusted. ‘Chief Executive’ means the individual, in paid or honorary capacity, nominated or elected or appointed by the Board from among members, Directors or others, in accordance with the Bye-Laws of the society who shall perform such functions, and responsibilities and exercise such powers as specified in the Act, Bye-Laws and assigned by the Board. ‘Employee’ means a person, not being an office bearer, employed by a registered society on a salary or similar form of remuneration other than advance patronage dividend or payment for goods sold to or through such society. ‘Member’ means a person who is admitted as a member of the cooperative society in accordance with the provisions of the Act and the Bye-Laws of the society and shall include a co-operative self-help group and an institution. ‘Office Bearer’ means a President, Vice-President, Chairperson, Vice-Chairperson, Secretary or Treasurer of a co-operative society and includes any other person to be elected



by the Board of any co-operative society.

16. The case in hand is concerned with the Chief Executive, appointed in paid capacity by the Board of M/s Bikrampur Society.

17. As per Section 2 [cc], 'Registrar' means the officer appointed by the State Government under Section 3 to perform the duties of the Registrar of Cooperative Societies under the 2007 Act. As per Section 3 [1], the State Government may appoint an officer to be the Registrar of Cooperative Societies for the State or any portion of it for the registration, supervision, assistance, counsel and for the all-round development in the State with such other powers and responsibilities as may be provided under the Act, 2007 or Rules or Bye-Laws framed thereunder. Section 4 of the 2007 Act has laid down the procedure for registration of the societies. The conditions of registration of a society under the Act, 2007 have been set forth in Section 6 and it requires at least ten members competent to contract and belonging to ten different families to form and register a cooperative society. The provision of Section 9 has provided for Bye-Laws of the co-operative societies.

18. Every registered cooperative society shall be deemed to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it was constituted [Section 117].

19. The constitution and composition of the Board of a cooperative society



have been provided in Section 35 of the 2007 Act. The Board is for the management of a registered co-operative society. Prior to the amendment carried out by the Assam Cooperative Societies [Amendment] Act, 2019, the Board used to consist of minimum fifteen nos. of Directors. After amendment carried out by the Assam Cooperative Societies [Amendment] Act, 2019, the Board, as per Section 35 [2], shall consist of maximum twenty-one nos. of Directors. The management of every co-operative society constituted in accordance with the provisions of the 2007 Act and the Bye-Laws vests in the Board. As per Section 31, the term of the Board shall be five Cooperative Years from the date of election of Directors. Section 36 of the Act, 2007 has provided for President and Vice-President of a cooperative society, also known interchangeably as Chairman/Chairperson and Vice-Chairman/Vice-Chairperson, to be elected by the Board from amongst its Directors. The eligibility for being chosen as a Director in a cooperative society is provided in Section 40 of the Act. Section 43 has provided for Board Meetings, which can be called by the President/Chairman of the Board at any time. As per sub-section [5] of Section 43, the quorum for a meeting of the Board shall be such as may be specified in the Bye-Laws but shall not be less than fifty percent of the total number of Directors of the Board. As per sub-section [7] of Section 43 : 'Board Meeting', if a Director fails to attend three consecutive meetings of the Board without the permission of the President or Chairman he shall cease to be a Director, from the date of the fourth meeting.

20. The powers and functions of the Board are set forth in Section 38 of the Act. For ready reference, the provisions of Section 38 are quoted hereinbelow :-



### **38. Powers and functions of the Board –**

The Board shall discharge such functions, perform such duties and exercise such powers as may be specified in the bye-laws and in accordance with the terms, conditions and procedure laid down therein and in particular, the Board shall have the following powers, functions and duties, namely :-

- [1] to interpret the organizational objectives, to set up specific goals towards achieving such objectives and to make periodic appraisal of operations;
- [2] to nominate, elect or appoint and remove the Chief Executive provided he is not a Government appointee;
- [3] to make provisions for the matters mentioned in Section 49 in respect of the staff of cooperative society;
- [4] to finalise long term perspective plan, annual plan and budget and to direct the affairs of the cooperative society in accordance with the plan and budget approved by the general body;
- [5] to arrange for funds;
- [6] to authorise acquisition and disposal of immovable property;
- [7] to frame, approve and amend regulations relating to services, funds, accounts and accountability and information and reporting systems;
- [8] to elect President and Vice-President in accordance with the provisions of the bye-laws;
- [9] to prepare the annual financial statement of accounts;
- [10] to hold Annual General Meeting in stipulated time;
- [11] to remove President or Vice-President in accordance with sub-section [4] of Section 36; and
- [12] to make policies and to lay down qualification and term and conditions of service for appointment of Chief Executive and other staff of the Society.

21. Section 49 of the Act has provided for the Chief Executive of a cooperative society and his powers and functions and also about the staff. As the provisions of Section 49 are also relevance and import, the same are also



quoted hereinbelow :-

**49. Chief Executive, his powers and functions and staff –**

[1] [a] There shall be a Chief Executive, by whatever designation called of every co-operative society to be appointed by the Board or by the State Government. In the event of appointment of the Chief Executive by the Board, he shall be a full time employee of the society.

[b] The Chief Executive shall be the ex-officio member of the Board;

[c] Where the State Government stands guarantee for repayment of any loan secured from any financial institution the Chief Executive may be appointed by the State Government and salary and allowances payable to other terms and conditions of service including pension, gratuity and other benefits of the Chief Executive shall be prescribed by the Government;

[d] Notwithstanding anything contained in any law in force or bye-laws of the society, the Chief Executive appointed by the Government shall have full administrative control over the employees of the society in all matters including transfer, posting and disciplinary action. However, in case of dismissal of employees approval of the Board shall be necessary.

[2] The Chief Executive shall be under the general superintendence, direction and control of the Board and exercise the following powers and the functions, namely :-

[a] day-to-day management of the business of the co-operative society;

[b] operating the accounts of the co-operative society and be responsible for making arrangements for safe custody of cash;

[c] signing on the documents for and on behalf of the co-operative society;

[d] making arrangements for the proper maintenance of various books and records of the co-operative society and for the correct preparation, timely submission of periodical statements and returns, in accordance with the provisions of this Act, the rules and the bye-laws;

[e] convening meetings of the general body of the co-operative society, the Board and the Executive Committee and other committees or sub-committees constituted under provision of the Act and bye-laws and maintaining proper records for such meetings;

[f] making appointments to the posts in the co-operative society in accordance with the



bye-laws;

[g] assisting the Board in the formulation of policies, objectives and planning;

[h] furnishing to the Board periodical information necessary for appraising the operations and functions of the co-operative society;

[i] to sue or be sued on behalf of the cooperative society;

[j] present the draft annual report and financial statements for the approval of the Board within thirty days of closure of the cooperative year;

[k] performing such other duties, and exercising such other powers, as may be specified in the bye-laws of the co-operative society;

[l] in case of dispute between the Chief Executive and the Board in any matter, the decision of the Registrar shall be binding on the both.

[3] Subject to other laws regulating employer – employee relations all employees of a cooperative society shall be appointed, regulated and removed by and be accountable to authorities *within* the cooperative society in accordance with the service conditions approved by the Board :

Provided that in case of cooperative societies where State Government holds more than fifty percent of Share Capital or guarantees repayment of loan secured from any financial institution, any upward revision of pay and allowances of staff, shall require prior approval of the State Government. The controlling authority of all staff shall be the Chief Executive of the society.

22. A cooperative society after its formation in compliance of the provisions of the Act, 2007 and on being granted a Certificate of Registration by the Registrar of Cooperative Societies under Section 11 of the Act, 2007, is governed and regulated by the provisions of the Act, 2007. Therefore, the Society in question here, M/s Bikrampur Samabay Samity Ltd. is not a statutory body, but is only a body which is governed and regulated by the provisions of the Act, 2007. It is a body corporate, by virtue of the provision of



Section 117, having perpetual succession and common seal. It has the power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it has been constituted. It is true that a cooperative society registered under the 2007 Act is subject to the control of the statutory authorities like the Registrar, etc. and the Government but neither the State nor any statutory authority under the 2007 Act exercises any deep and all pervasive control, directly or indirectly, over the affairs of such a registered cooperative society. A registered cooperative society in which the State Government does not have any shareholding, cannot be brought within the meaning of the State or an instrumentality/agency of the State, under Article 12 of the Constitution of India, unless such a registered cooperative society is found to be performing public duty.

23. One needs to keep in mind that there is a clear distinction between an institution which is created by or under a statute and an institution which is governed by certain statutory provisions for its proper maintenance and administration. A registered cooperative society like M/s Bikrampur Society falls in the second category and the reason why it falls in the second category would be adverted to in the later part of this order.

24. From Section 38 [2] of the Act, 2007, it is clear that the Board of a registered cooperative society has the power to nominate, elect or appoint the Chief Executive, provided he is not a Government employee. The Board of a registered cooperative society has also been vested with the power to remove the Chief Executive, provided he is not a Government employee. There is no



rider that such power of appointment and removal is subject to any approval of the Registrar or any other authority. Clause [a] of sub-section [1] of Section 49 of the Act, 2007 has provided for appointment of a Chief Executive, by whatever designation called, in every cooperative society. The post of Chief Executive is also named interchangeably as Secretary. The Chief Executive/Secretary in a cooperative society can either be appointed by the Board or also by the State Government in certain situations. Clause [c] of sub-section [1] of Section 49 has prescribed that where the State Government stands guarantee for repayment of any loan secured from any financial institution the Chief Executive/Secretary may be appointed by the State Government and the salary and allowances payable to and other terms and conditions of service including pension, gratuity and other benefits of such Chief Executive/Secretary shall be prescribed by the Government. In case the Chief Executive/Secretary is appointed by the Board, the State Government would have no role to prescribe anything on those aspects. It would be the Board, which is vested with the power under Section 38[3] read with Section 38[12] of the 2007 Act to make provisions for matters under Section 49 and also to lay down qualification, terms and conditions of service for appointment of the Chief Executive/Secretary. Clause [a] of sub-section [1] of Section 49 has laid down to the effect that in the event of appointment of the Chief Executive/Secretary by the Board, he shall be a full-time employee of the Society. There is no dispute to the fact that the matter of appointment of the Chief Executive/Secretary in the Society, M/s Bikrampur Samabay Samity Ltd. is not one which comes under Clause [c] of sub-section [1] of Section 49 of the 2007 Act. Therefore, the matter of appointment of the Chief Executive/Secretary in the registered cooperative society, M/s Bikrampur



Society is one which is exclusively within the domain of the Board of the Society only and on being appointed, the appointee is to be a full-time employee of M/s Bikrampur Society. Therefore, the Board of M/s Bikrampur Society wields both the power to appoint and to remove its Chief Executive/Secretary, that is, the respondent no. 4.

25. A person who is appointed as the Chief Executive/Secretary in a registered cooperative society like M/s Bikrampur Society here, where the State Government has no share or which is not required under law to discharge any duty of public nature, is not a Government/public servant. Similarly, he is not an employee under a statutory body. The Chief Executive/Secretary of a registered cooperative society, whose powers and functions are delineated in Section 49 [2] of the 2007 Act cannot also be termed as a workman. Keeping the discussion on the nature of employment of a Chief Executive/Secretary of a registered cooperative society at rest at this point, for the time being, it is now turn to find out about the powers, authority and jurisdiction vested in the Registrar of cooperative societies under Section 111 and Section 92 of the Act, 2007.

26. As Section 111 of the Act, 2007 has been referred to in the impugned Order and by the learned counsel for the parties during the course of their submissions, the provisions of Section 111 are quoted hereinbelow, for ready reference :-

**111. Appeal or Review –**

[1] Except where otherwise expressly provided to the contrary an appeal lie to the



Registrar from the decisions made under this Act or Rules framed thereunder by any Government Officer, liquidator appointed under Section 95.

[2] The Registrar may review any order passed by him at any time within sixty days from the communication of such order.

[3] Save as otherwise provided in this Act or Rules, no appeal shall lie to the State Government against any order of the Registrar, except on a question of law, and provided such appeal is preferred within sixty days of the communication of such order.

[4] Any appellate authority and the Registrar in case of review may pass any stay order pending any appeal or review before such an authority, and may award costs against any party appealing or petitioning for review if such appeal or review petition is considered false, vexatious or frivolous by the authority concerned.

[5] Notwithstanding anything contained in this Act where with the previous sanction in writing or on requisition by the Reserve Bank of India, a Cooperative Bank –

[a] is being wound up; or

[b] in respect of which a scheme of amalgamation or reorganization is given effect, no appeal thereof shall lie or be permissible without the sanction or requisition of the Reserve Bank and that shall not be liable to be called in question.

27. The right to appeal is not an inherent right. The right to appeal is a statutory right. Thus, a right to appeal not being an inherent right, is to be conferred by the statute. It remains within the discretion of the Legislature to decide whether the right to appeal should be provided for and if provided for, whether such right to appeal is to be unconditionally given to an aggrieved party or is to be given with certain riders/conditions. In other words, a right to appeal can be conditional or qualified. While conferring such right to appeal, the governing statute may impose restrictions or conditions, like it may limit the area of appeal to questions of law or an appeal will lie only against a limited or defined category of orders or the right to appeal can only be exercised by persons permitted by the statute. Without a statutory provision



creating a right to appeal a person, even if aggrieved, is not entitled to file an appeal. In other words, if the statute does not create any right to appeal, no appeal can be filed.

28. When in the afore-stated context the provisions of Section 111 of the 2007 Act is examined, it is noticed that an appeal lies to the Registrar only from a decision made under the 2007 Act or Rules framed thereunder and such decision has to be passed either by any Government officer or a liquidator appointed under Section 95 of the 2007 Act, except where otherwise expressly provided to the contrary. By Section 131 of the 2007 Act, the power to make rules is vested in the State Government. It has not been brought to the notice of this Court that the State Government has made any rules in exercise of powers conferred by Section 131 till date in matters relating to the employer - employee relationship which exists between a Board of a registered cooperative society and its employees. The significance of the expression, 'Except where otherwise expressly provided to the contrary' can be examined in the context of the other provisions of the 2007 Act, which will be examined at a later part of this order. With the right to appeal under Section 111 of the 2007 Act being limited to a decision passed by a Government officer in exercise of any powers under the 2007 Act or any Rules framed thereunder, the Registrar is not vested with any power, authority and jurisdiction under Section 111 of the 2007 Act to entertain an appeal to decide about legality and validity of any order passed by a Board of a registered cooperative society regarding appointment or removal/cancellation of appointment of its Chief Executive/Secretary as a full-time employee or a Chairman of the Board of a registered cooperative society communicating the collective decision of the



Board in a matter concerning a full-time employee of such registered cooperative society on a matter relating either to appointment or removal/cancellation. It is, therefore, evidently clear that the decision of the Board of M/s Bikrampur Society to cancel the appointment of the Secretary, that is, the respondent no. 4, a full-time employee of M/s Bikrampur Society could not have been interfered with by the Registrar by exercise of power conferred on him under Section 111 of the Act, 2007 as such a decision falls outside the purview of Section 111 of the Act, 2007.

29. Arguments have been advanced on behalf of the respondents to the effect that even if an appeal under Section 111 is not maintainable against an order of termination/removal of a Chief Executive/Secretary of a registered cooperative society passed by the Board of such society a power is vested on the Registrar under Section 92 of the 2007 Act to decide a dispute arising between a registered cooperative society and an employee of such society. It has been contended that though in the impugned Order no mention of Section 92 of the 2007 Act was made, the impugned Order passed by the Registrar has to be construed as one passed under Section 92 of the 2007 Act since such a power is available to the Registrar under the said statutory provision.

30. It is settled that if an authority has a power under the law then just because while exercising the power the source of power has not been specifically referred to or a reference has been made to a wrong provision of law, then that by itself would not vitiate the exercise of power so long as the power exists and can be traced to a source available in law. Therefore, it appears necessary to refer to the provisions of Section 92 of the 2007 Act.



Section 92 of the 2007 Act reads as under :-

**92. Reference of dispute –**

Any dispute touching the business of a registered society, other than a dispute regarding disciplinary action taken by a society against an employee of the society, or of the liquidator of a society shall be referred to the Registrar for decision if the parties thereto are among the following :-

- [a] the society, its past or present controlling or managing body any past or present officer, agent or employee or the liquidator of the society, or
- [b] member, past member or persons claiming through a member, past member or deceased member of the society, or
- [c] a surety of a member, a past member or deceased member of a society, or
- [d] any other registered society or the liquidator of the society, or
- [e] a registered society and a financing bank.

31. Mr. Talukdar, learned Departmental Counsel has strenuously contended that an order of termination/removal of an employee of a registered cooperative society would not come within the purview of the expression, '*disciplinary action*' and an order of termination/removal would fall within the scope and ambit of the expression, '*touching the business of a registered society*' appearing in Section 92 of the 2007 Act.

32. On a close look at Section 92, it is clearly discernible that any dispute '*touching the business of a registered society*' can be referred to the Registrar for decision if the parties to the dispute are among those which are mentioned in Clause [a] to Clause [e] thereto. Section 92 has, however, carved out an exception in that a dispute regarding '*disciplinary action*' taken by a society against an employee of the society cannot be referred to the Registrar under



Section 92 for his decision.

33. To examine the issue whether the expression, '*touching the business of a registered society*' would take a matter of termination/removal of an employee of a registered cooperative society, within its embrace, it appears apposite to refer to the decision of the Hon'ble Supreme Court of India in ***The Co-operative Central Bank Ltd. and others vs. The Additional Industrial Tribunal, Andhra Pradesh and others***, reported in **[1969] 2 SCC 43**. In that case, an industrial dispute arose between a nos. of Cooperative Central Banks in the State of Andhra Pradesh and their workmen before the Industrial Tribunal, Hyderabad and the subject-matter of the dispute, divided into three issues, was service conditions of the workmen. Before the Industrial Tribunal, one of the grounds raised on behalf of the Banks was that the reference of the dispute to the Tribunal was invalid, because such disputes were required to be referred for decision to the Registrar of Cooperative Societies under Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 [the Andhra Pradesh Act', for short]. The Tribunal dealt with the point as a preliminary issue and rejected the contention of the Banks. When writ petitions under Article 226 of the Constitution of India were preferred before the High Court, the High Court also rejected the plea of the Banks. Appeals were brought before the Hon'ble Supreme Court by certificate against the orders of the High Court dismissing the writ petitions. The Hon'ble Supreme Court considered the question whether the jurisdiction of the Industrial Tribunal to adjudicate on the industrial dispute referred to it under Section 10 [1][d] of the Industrial Disputes Act was barred by the provisions of Section 61 [1] of the Andhra Pradesh Act.



33.1. It is, therefore, necessary to refer reproduce the contents of Section 61 of the Andhra Pradesh Act for a better understanding. Section 61[1] of the Andhra Pradesh Act reads as under :-

**61. Disputes which may be referred to the Registrar.—**

[1] Notwithstanding anything in any law for the time being in force, *if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises —*

[a] among members, past members and persons claiming through members, past members and deceased members; or

[b] between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

[c] between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or

[d] between the society and any other society,

Such dispute shall be referred to the Registrar for decision.

\* \* \* \* \*

[2] If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a society, such question shall be decided by the Registrar.

\* \* \* \* \*



33.2. Before the Hon'ble Supreme Court, it was argued on behalf of the appellant Banks that the language of Section 61 was wide enough to cover the disputes referred to the Tribunal, because the disputes were between cooperative societies and their employees and they touched upon the business of the cooperative societies. The Hon'ble Supreme Court after considering an earlier decision in ***The Deccan Merchants Co-operative Bank Ltd. vs. Messrs Dalichand Jugraj Jain and others, AIR 1969 SC 1320***, and Section 91 of the Maharashtra Co-operative Societies Act, 1960, which was involved therein, had proceeded on the basis that Section 61 of the Andhra Pradesh Act required reference of a dispute to the Registrar only if dispute was capable of being resolved by the Registrar and the dispute between the co-operative society and the employee would touch the business of the society in the sense explained in ***The Deccan Merchants Co-operative Bank Ltd.*** [supra]. Interpreting the expression, '*touching the business of the society*', the Hon'ble Supreme Court had observed as under :-

7... It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression '*touching the business of the society*', in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word 'business' is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the



workmen employed by the society cannot be held to be a *dispute touching the business of the society*.....

34. The interpretation given to the expression, '*touching the business of the society*' in the decisions in ***The Deccan Merchants Co-operative Bank Ltd.*** [supra] and ***The Co-operative Central Bank Ltd.*** [supra] was also followed in ***Allahabad District Cooperative Limited vs. Hanuman Dutt Tewari, [1981] 4 SCC 431.***

35. In ***Maharashtra State Cooperative Housing Finance Corporation Limited vs. Prabhakar Sitaram Bhadange***, reported in ***[2017] 6 SCC 623***, the appellant was a cooperative society registered under the Maharashtra Cooperative Societies Act, 1960 [the Maharashtra Act', for short]. The respondent was an employee of the appellant cooperative society and for alleged misconduct, he was dismissed from service. After dismissal of his departmental appeal, the respondent approached the jurisdictional Cooperative Court set up under the Maharashtra Act challenging the order of his dismissal. Before the Cooperative Court, the appellant cooperative society filed an application raising a point that the Cooperative Court did not have the jurisdiction to entertain and decide the service dispute between the employer and the employee, inasmuch as the dispute did not *touch upon the business of the appellant cooperative society* and was, therefore, not covered by the provisions of Section 91 of the Maharashtra Act. The Cooperative Court dismissed the application holding that it had the requisite jurisdiction to decide the dispute. Thereafter, the appeal preferred before the Cooperative Appellate Court and the writ petition preferred before the High Court by the appellant cooperative society were also dismissed. The issue which arose before the



Hon'ble Supreme Court was whether the Cooperative Court established under the Maharashtra Act had the requisite jurisdiction to decide a 'service dispute' between a cooperative society and its employees by exercising power under Section 91 [1] of the Maharashtra Cooperative Societies Act, 1960.

35.1. Section 91 [1] of the Maharashtra Cooperative Societies Act, 1960 which came for consideration in ***Prabhakar Sitaram Bhadange*** [supra], reads as under :-

**91. Disputes.—**

[1] Notwithstanding anything contained in any other law for the time being in force, *any dispute touching* the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or *business of society shall be referred by any of the parties to the dispute*, or by a federal society to which the society is affiliated or by a creditor of the society, *to the Cooperative Court if both the parties thereto are one or the other of the following —*

[a] *a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the liquidator of the society or the official assignee of a deregistered society;*

[b] *a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;*

[c] *a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under Section 43, 44 or 45, and any person claiming through*



such person;

[d] a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under Section 45, whether such surety or person is or is not a member of the society;

[e] any other society, or the liquidator of such a society or deregistered society or the official assignee of such a deregistered society.

35.2. Examining the scope of Section 91[1] of the Maharashtra Cooperative Societies Act, 1960, the Hon'ble Supreme Court has proceeded to observe as under :-

5. As the plain language of Section 91 suggests, primarily those disputes which pertain to the constitution of the society or the elections, management or business of society, etc., are to be decided by the Cooperative Court. Such disputes are normally between the members of the society or between the society and its members. However, this section also uses the expression '*its officers*' and on that basis, it is argued by the respondent that disputes of employees / officers with the management and the society can also be covered, more particularly, *the dispute regarding termination of the officer*, which is the subject-matter of the petition filed by the respondent. It is further argued that in any case disputes pertaining to '*management or business of a society*' are wide enough to cover the dispute between the society as an employer and its employees.

\* \* \* \* \*

7. The learned counsel for the respondent, on the other hand, adopted the aforementioned reasons as given by the High Court. His submission was that the word



'officer' occurring in Section 91 would include disputes between the management and its officers i.e. employees. He also submitted that the disputes relating to 'management' of a society should be read widely to include service disputes as well.

\* \* \* \* \*

12. A reading of the provisions of Section 91 would show that there are two essential requirements for conferment of exclusive jurisdiction on the Cooperative Court which need to be satisfied :

[i] The first requirement is that disputes should be '*disputes touching*' the constitution of the society or elections of committee or its officers or conduct of general meetings or management of the society, or business of the society; and

[ii] The second requirement is that such a dispute is to be referred to the Cooperative Court by '*enumerated persons*' as specified under sub-section [1] of Section 91.

13. When we read the provision in the aforesaid manner, we arrive at a firm conclusion that service dispute between the employees of such cooperative society and the management of the society are not covered by the aforesaid provision. The context in which the word '*officers*' is used is altogether different, namely, election of the committee or its officers. Thus, the word '*officers*' has reference to elections. It is in the same hue expression '*officer*' occurs second time as well.

14. It was, however, argued by the learned counsel for the respondent that disputes touching the '*management or business of a society*' would include the dispute between the management of the society and its employees.



15. There are a plethora of judgments of this Court holding that the expression '*business of the society*' would not cover the service matters of employer and employee. In ***Deccan Merchants Coop. Bank Ltd. v. Dalichand Jugraj Jain***, AIR 1969 SC 1320, this Court interpreted somewhat similar clause and held that it covered five kinds of disputes. It becomes clear from the following discussion : [AIR p. 1326, para 17]

“17. ... Five kinds of disputes are mentioned in sub-section [1] : first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the management of a society; and fifthly, disputes touching the business of a society. It is clear that the word 'business' in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section, the word 'business' has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws.”

Likewise, in ***Coop. Central Bank Ltd. vs. Industrial***, [1969] 2 SCC 43, the Court held that the expression "*touching the business of the society*" would not cover the disputes pertaining to alteration of conditions of service of workman.

\* \* \* \* \*

17. The reading of the aforesaid judgments make it crystal clear that dispute of this nature does not come within the scope of 'business of the society'.



35.3. The Hon'ble Supreme Court had allowed the appeal, set aside the order passed by the High Court and held that the petition filed by the respondent before the Cooperative Court was not maintainable. The Hon'ble Supreme Court had further observed that it would, however, be open to the respondent to file a civil suit.

36. From the afore-mentioned decisions which have been rendered by interpreting a statutory provision in the concerned statute governing cooperative societies, a provision substantially similar to Section 92 of the 2007 Act, it is clearly evident that the expression, '*business*' is to be considered in a restricted sense and the expression, '*business*' is to be construed as and means the actual trading or commercial or other similar business activity the cooperative society is authorized to enter into under the relevant statute, the rules and its bye-laws. It has been held that the expression '*touching the business of the society*' would not cover the service disputes pertaining to the employees of cooperative societies. It has been authoritatively held that service disputes between the employees of cooperative societies and the management of the cooperative societies do not come within the purview of disputes '*touching the business of the society*'.

37. Reverting back to the provision of Section 92 of the Act, 2007, it is found that to come within the scope and ambit of Section 92, the two foremost requirements are :- *firstly*, the dispute shall touch the business of the concerned registered cooperative society; and, *secondly*, it shall not be a dispute regarding disciplinary action taken by the registered cooperative society against an employee of the society.



38. In view of the above exposition, it is clear that a service dispute between an employee like the Chief Executive/Secretary of a cooperative society who is a full-time employee of the cooperative society, and the Board of the cooperative society would not come under the purview of a dispute '*touching the business of the society*' appearing in Section 92 of the 2007 Act.

39. By Section 92 of the 2007 Act, a dispute regarding disciplinary action taken by a cooperative society against an employee of the society has been taken out of the disputes, which can be referred to the Registrar for decision. Another contention which is made by the learned counsel for the respondents during the course of their submissions is that an act of removal of an employee does not come under the expression, '*disciplinary action*'. Learned Departmental Counsel has argued that in the case in hand, the manner in which the employment of the respondent no. 4 came to be determined was not pursuant to any disciplinary action contemplated in Section 92 of the 2007 Act. He has submitted that the employment of the respondent no. 4 was not terminated due to any misconduct or delinquency, etc. on his part and it was removal simpliciter.

40. The meaning of '*disciplinary action*' has not been provided in the Act, 2007. By an act of termination of employment, complete severance of an employer-employee relationship takes place and it results in removal of the employee from the job. An order of removal also results in severance of the employer-employee relationship. The term, '*disciplinary action*' means a measure or action taken by the management of the employer against an



employee who did not comply certain policies of the employer or committed misconduct or whose performance was unsatisfactory or who failed to meet the behavioral requirement of the employer, etc. A disciplinary action can take various forms like verbal warning, suspension, written reprimand, demotion, termination, etc. By sub-section [2] of Section 38 of the 2007 Act, the power to appoint and remove the Chief Executive/Secretary has been vested in the Board, provided such Chief Executive/Secretary is not a Government employee. As per *the Oxford Dictionary of English, Third Edition*, 'removal' means an action of removing someone or something, in particular; the dismissal of someone from a job. In Section 49[1][a], a prescription is contained to the effect that in the event of appointment of the Chief Executive/Secretary by the Board, such Chief Executive/Secretary shall be a full-time employee of the society.

41. In the case in hand, the Board took the decision to remove/cancel the appointment of the respondent no. 4 from the post of Secretary after receipt of a complaint about him. Furthermore, the Board of M/s Bikrampur Society also lodged an FIR against the respondent no. 4 alleging forgery and criminal breach of trust which resulted into registration of a crime case, Katigorah Police Station Case no. 28/2022. Thus, it is not acceptable that the order of removal of the Secretary of M/s Bikrampur Society falls outside the expression, '*disciplinary action*', appearing in Section 92 of the Act, 2007. Therefore, the Registrar cannot assume any power, authority and jurisdiction suo moto to decide a service dispute like the one in hand even if the same is referred to him by virtue of Section 92 of the 2007 Act on the basis of any application of any party. In view of the position of law discussed above and the background



facts following which the order of removal has been passed by the Board of M/s Bikrampur Society, the contention advanced by the learned Departmental Counsel that the removal of the respondent no. 4, that is, the Secretary of the Society by the Board would fall within the category of disputes, referable under Section 92 to the Registrar for decision, cannot, at all, be countenanced.

42. The learned counsel for the respondents including the learned Departmental Counsel, have also contended that a service dispute of the kind involved here can be decided by the Registrar exercising the power conferred on him by Section 49 [2][I] of the Act, 2007. It, thus, calls for an examination of the issue whether by taking resort to the provision contained in Section 49 [2][I] of the Act, 2007, the Registrar can assume the power, authority and jurisdiction to pass the impugned Order dated 10.01.2022.

43. Section 49 of the 2007 Act has the nominal heading, '*Chief Executive, his powers and functions and staff*'. Sub-section [2] of Section 49 has contained a clear prescription that the Chief Executive shall be under the general superintendence, direction and control of the Board. It has further provided that the Chief Executive while under the general superintendence, direction and control of the Board, exercises the powers and functions outlined in Clause [a] to Clause [l]. On reading of Clause [a] to Clause [k] of Sub-section [2] of Section 49, it is discernible that the Chief Executive is to discharge the powers and functions outlined therein for and on behalf of the Board. As per Clause [l], in the case of any dispute between the Chief Executive and the Board in any matter, the decision of the Registrar shall be binding on both. On a combined reading of the clauses, Clause [a] to Clause



[1], it is evidently clear that the dispute, referred to in Clause [l], must be in respect of any of the matters mentioned in Clause [a] to Clause [k]. When Section 49 [2] and Section 92 of the 2007 Act are read together, the only meaning that emerges is that in case of any dispute between the Chief Executive and the Board in any of the matters mentioned in Clause [a] to Clause [k], the dispute can be referred to the Registrar for decision under Section 92 of the Act, 2007. If any such dispute is referred to the Registrar, the Registrar in exercise of the powers conferred on him under Section 92, can give his decision in the matter and then, such decision rendered by the Registrar on the dispute would be binding on both the parties under Section 49 [2][l] of the Act, 2007.

44. It is apparent from Section 35[12] that qualification and service conditions of the Chief Executive and other staff of a registered cooperative society can be made by the Board of such society. In view of such specific empowered, it cannot be envisaged that the Registrar is empowered to decide on the recruitment and conditions of service of employees of a registered cooperative society. As per the prescriptions contained in Section 49[3], all employees of a registered cooperative society shall be appointed, regulated and removed by and accountable to authorities within the cooperative society, meaning thereby, no authority outside the concerned cooperative society can appoint and remove any employee including the Chief Executive/Secretary, of the society. By no stretch, the Registrar or any other person, appointed under Section 3 of the 2007 Act, can be termed as an authority within a registered cooperative society.



45. Any decision of the Board of a registered cooperative society, as an employer, to remove its Chief Executive/Secretary takes effect as soon as such a decision is taken. Any such dispute regarding such removal cannot be brought within the ambit and purview of Section 49 [2][1] of the Act, 2007. Section 49 [2][1] mentions about a dispute between the Chief Executive/Secretary and the Board of a registered cooperative society in any matter. As soon as the Chief Executive/Secretary has been removed by the Board, any dispute raised by a removed Chief Executive/Secretary subsequently regarding his removal cannot be a dispute which can be decided by the Registrar exercising the power conferred on him by the provisions of Section 49[2][1] of the Act, 2007. The provisions of Section 92 and Section 111 of the 2007 Act have already been referred to and discussed above and it has been found out that a dispute regarding removal of a Chief Executive/Secretary cannot be decided by the Registrar under those provisions. What cannot be done directly, cannot also be done indirectly.

46. It is settled that a jurisdictional fact is a fact which must exist before a court, a tribunal or an authority to assume jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court or a tribunal or an authority. If the jurisdictional fact does not exist, a court or a tribunal or an authority cannot act. By erroneously assuming existence of such jurisdictional fact, neither a court nor a tribunal nor an authority can confer upon itself jurisdiction which it otherwise does not possess. The existence of jurisdictional fact is a condition precedent for exercising power, authority and jurisdiction by a court or a tribunal or an authority. If the jurisdictional fact exists a court or a tribunal or an authority



can proceed with a matter and take an appropriate decision in accordance with law. Once a court or a tribunal or an authority has jurisdiction in the matter on existence of jurisdictional fact, it can decide the fact in issue or adjudicatory fact. Conferment of power, authority and jurisdiction upon a court or a tribunal or an authority is ordinarily, a legislative function and the same cannot be assumed either by a court or a tribunal or an authority or conferred by the consent of the parties [Ref : ***Shrisht Dhawan vs. M/s Shaw Brothers, [1992] 1 SCC 534; Arun Kumar and others vs. Union of India and others, [2007] 1 SCC 732; and Kalabharati Advertising vs. Hemant Vimalnath Narichania and others, [2010] 9 SCC 437***].

47. There is another pertinent aspect which requires a discussion to find out the reasons which are germane, for not incorporating any provision in the Act, 2007 to vest any power, authority and jurisdiction on the Registrar, an authority not within a registered cooperative society, in the matters of appointment and removal of the Chief Executive/Secretary of a registered cooperative society when such Chief Executive/Secretary is a full-time employee of the registered cooperative society. To examine this aspect, it would be appropriate to find out about the nature of status of a registered cooperative society in law and the nature of relationship that exists between the Board of a registered cooperative society as an employer and a Chief Executive/Secretary of a registered cooperative society as a full-time employee under the Act, 2007.

48. A cooperative society is, in essence, an association or an association of persons coming together for a common purpose of economic benefits to all or



for mutual help. Once a cooperative society is registered under the concerned statute of the State governing the registered cooperative societies, it is subject to control in terms of the provisions of such statute but, the State or the statutory authorities under the statute would not have any say in the management of day-to-day affairs of the cooperative society.

49. In ***Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others***, reported in **[1976] 2 SCC 58**, the Hon'ble Supreme Court has brought out the distinction between a statutory body and a non-statutory body clearly in the following manner :-

9. We would first deal with the important question, ..... before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In ***Sukhdev Singh vs. Bhagatram Sardar Singh Raghuvanshi, AIR 1975 SC 1331*** at p. 1339 this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A. N. Ray, C. J., observed as follows :

'A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.'



It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.....

50. When an occasion has arisen in ***Thalappalam Ser. Coop. Bank Ltd. and others vs. State of Kerala and others, [2013] 16 SCC 82***, to examine the nature of a cooperative society registered under the Kerala Co-operative Societies Act, 1969 ('the Kerala Act', for short], the Hon'ble Supreme Court following ***Vaish Degree College***, has observed as under : -

**Co-operative Societies and Article 12 of the Constitution :**

14. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression 'State' within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution.

\* \* \* \* \*

18. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in



accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

20. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the 'State' or instrumentality of the State. ....

51. There exists a distinction between public employment governed by statutory rules and private employment regulated purely by contract. The relationship of the employer and the employee in the sphere of private employment is purely contractual. In some cases, there can be a written contract containing terms and conditions governing the relationship between the parties. In other cases, there may not be a written contract. A contract of service relates, commonly, to an arrangement where a person is hired for rendering his/her services. A contract of service is an agreement between an



employer and an employee for a working relationship where the employer retains control over the performance of the employee. On the other hand, in a contract for service, the employer hires an independent contractor to acquire a particular service and the independent contractor is not directly bound by the authority of the employer, as opposed to a contract of service. The crucial distinction between a contract of service, which is also known as contract of personal service, and a contract for service is that a contract of service or a contract of personal service implies an obligation to obey orders, while a contract for service allows for discretion.

52. It is a settled proposition that a contract of personal service is not specifically enforceable ordinarily and a court would not give a declaration that the contract subsists after the employer terminates the employee, and the employee, even after having been removed from service, is deemed to be in service against the will and consent of the employer.

53. Specific performance constitutes an equitable remedy granted by court to uphold the contractual commitments among the parties. Specific performance operates as a remedy that enforces the terms and conditions agreed between the parties. The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. A number of amendments have been carried out in the Specific Relief Act, 1963 by the Specific Relief [Amendment] Act, 2018 [Act 18 of 2018]. Prior to the amendments in 2018, Section 14[1][b] of the Specific Relief Act had inter-alia provided that a contract which is dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the court



cannot enforce specific performance of its material terms. Section 14[1][c] has set out that a contract which is in its nature determinable, cannot also be specifically enforced. After the amendments, Clause [c] and Clause [d] of Section 14 have provided that the kinds of contract enumerated therein cannot be specifically enforced, namely, [c] a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and [d] a contract which in its nature determinable.

54. A contract of personal service is not specifically enforceable because of the restrictions contained in Section 14 of the Specific Relief Act, 1963. There are, however, three exceptions to this principle and the three exceptions are – [i] where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India or any law made under Article 309 or proviso to Article 309 of the Constitution of India; [ii] where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and [iii] where an employee of a statutory body or a statutory corporation is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules. If the relationship of the employer and the employee is purely contractual and in the realm of private law then even if the termination/removal of the contract of employment is found to be illegal or in breach, then also a court would neither declare such termination/removal to be a nullity nor would declare that the contract of employment subsists nor would grant the consequential relief of reinstatement. Private law is that part of the legal system which is part of common law that involves relationships between individuals, such as law of



contract. If the employer - employee relationship is governed by a contract of personal service, the remedy open to an employee in case of his dismissal or termination from service is to seek damages only.

55. As per Black's Law Dictionary Ninth Edition, 'determinable' means something that is 'liable to end upon happening of a contingency', or 'terminable'. The meaning of the word, 'determinable' [Law] ascribed by the Oxford Dictionary of English, Third Edition, is one which is capable of being brought to an end under given conditions. From the above meanings of the word, 'determinable', it logically follows that a determinable contract would, in essence, mean a contract that can be terminated by either of the parties to the contract either at will or upon occurrence or non-occurrence of a particular situation. A determinable contract can be terminated due to various reasons such as [i] mutual settlement or agreement of the parties; [ii] elapse of a time period, agreed upon by the parties earlier; [iii] due to a specific cause; [iv] occurrence of an event; and/or [v] at will, with notice or without notice, etc.

56. It is also pertinent to refer to the provisions contained in Section 16 of the General Clauses Act, 1897 and Section 18 of the Assam General Clauses Act, 1915. Section 16 of the General Clauses Act, 1897 has provided that where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. Section 18 of the Assam General Clauses Act, 1915 has prescribed that where, by any act, a power to make any



appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power. The provision contained in Section 16 of the General Clauses Act, 1897 is pari materia to Section 18 of the Assam General Clauses Act, 1915. The principle which is embodied in the afore-mentioned provisions is that the power to terminate flows out of the power of appointment even if it is not specifically mentioned in the statutory provision. An authority vested with the power to appoint can also exercise the power to terminate as a consequence of that power. It is a well settled rule of interpretation that a power to appoint implies a power to determine the employment.

57. At the cost of repetition, a reference of Section 38 of the 2007 Act, at this juncture, is necessary. In Section 38 [2] of the 2007 Act, the Board of a registered cooperative society has been specifically vested with the power to appoint and the power to remove the Chief Executive/Secretary, provided he is not a Government appointee. Section 49[1][a] of the Act, 2007 has clearly provided that in the event of appointment of the Chief Executive/Secretary by the Board, he shall be a full-time employee of the society. Thus, there is no doubt on the position that the Board of M/s Bikrampur Society which had appointed the respondent no. 4 as its Secretary on 07.10.2021, had the power to determine the appointment of the respondent no. 4. As found from the discussion above, the Board of M/s Bikrampur Society had adopted a resolution in its meeting, held on 01.12.2021, to determine the employment of the respondent no. 4 and thereafter, vide a Communication of even date, informed the respondent no. 4 that his appointment had been terminated in



the interest of the Society. Under the Act, 2007, the Registrar has not been vested with the power to appoint and the power to remove the Chief Executive/Secretary of a registered cooperative society, when such Chief Executive/Secretary is appointed by the Board of the registered cooperative society and is a full-time employee of the registered cooperative society.

58. From the provisions contained in Section 38 [2] read with Section 49 of the Act, 2007, it is evident that power is statutorily vested in the Board of a registered cooperative society to determine the contractual employment of the Chief Executive/Secretary. In such view of the matter, once a validly constituted Board of a registered cooperative society exercises its power to remove its Chief Executive/Secretary who was earlier appointed by the Board itself, the contract of employment, for all intents and purposes, comes to an end and thereafter, it cannot be specifically enforced by a court of law as such a contract is in its nature determinable.

59. The provision contained in unamended Section 14[1][b], which was similar to the provision presently contained in Section 14[c] of the Specific Relief Act, had fallen for interpretation in a number of times. In ***Nandganj Sihori Sugar Co. Ltd., Rae Breli and another vs. Badri Nath Dixit and others***, reported in ***[1991] 3 SCC 54***, it has been held, following the decision in ***Executive Committee of Vaish Degree College*** [supra] and Section 14 of the Specific Relief Act, that a contract of employment cannot ordinarily be enforced by or against an employer. It has been held that the grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice and such relief can be granted only



on sound legal principles. In the absence of any statutory requirement, courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer.

60. The Hon'ble Supreme Court of India in the case of ***State Bank of India and others vs. S.N. Goyal***, [2008] 8 SCC 92, has summarized the principles regarding enforcement of a contract of personal service in the following manner :-

**Re : Question [i] — Enforcement of a contract of personal service :**

17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment [by dismissal or otherwise] is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well-recognised exceptions to this rule are :

[i] where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India [or any law made under Article 309];

[ii] where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and

[iii] where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the



nature of relief - damages or reinstatement with consequential reliefs - is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. [Vide : *S.B. Dutt [Dr.] vs. University of Delhi* [AIR 1958 SC 1050]; *U.P. Warehousing Corpn. vs. Chandra Kiran Tyagi*, [1969] 2 SCC 838; *Sirsi Municipality vs. Cecelia Kom Francis Tellis*, [1973] 1 SCC 409; *Vaish Degree College vs. Lakshmi Narain* [1976] 2 SCC 58; *J. Tiwari vs. Jwala Devi Vidya Mandir* [1979] 4 SCC 160; and *Dipak Kumar Biswas vs. Director of Public Instruction* [1987] 2 SCC 252.]

61. The following observations made in the decision in ***Kailash Singh vs. Mayo College, [2018] 18 SCC 216***, are also of utmost relevance for the purpose of the case in hand :-

22. We may refer to *Vidya Ram Misra vs. Shri Jai Narain College*, [1972] 1 SCC 623 , where in para 4, it was observed as under :

4. It is well settled that, when there is a purported termination of a contract of service, a declaration that the contract of service still subsisted would not be made in the absence of special circumstances, because of the principle that courts do not ordinarily enforce specific performance of contracts of service [see : *U.P. Warehousing Corporation vs. Chandra Kiran Tyagi* [*U.P. Warehousing Corporation vs. Chandra Kiran Tyagi*, [1969] 2 SCC 838] and *Indian Airlines Corpn. v. Sukhdeo Rai* [*Indian Airlines Corporation vs. Sukhdeo Rai*, [1971] 2 SCC 192] ]. If the master



rightfully ends the contract, there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated. In *Ridge vs. Baldwin* [*Ridge vs. Baldwin*, 1964 AC 40 : [1963] 2 WLR 935 [HL]] Lord Reid said in his speech.

The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence : it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them.

23. The aforesaid view is also adopted by the Constitution Bench in *Sirsi Municipality vs. Cecelia Kom Francis Tellis*, [1973] 1 SCC 409. We may usefully extract the observations in the following paras :

15. The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a



case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the law of Specific Relief Act.

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

18. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. It [sic.] [ To be read as "In".] the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of



termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

19. The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant.

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24. The facts of the present case are covered by the master-servant relationship i.e. the first category. There is no adjudication by invocation of a reference to the Industrial Disputes Act, 1947. Thus, the remedy would only be in damages.

62. Reverting back to the facts of the case in hand, it is clear that the employment in the post of Secretary of the Society, M/s Bikrampur Society does not fall within any of the three excepted categories, mentioned hereinabove, since M/s Bikrampur Society is not an instrumentality/agency of the State falling within the ambit of Article 12 of the Constitution of India and the Secretary is a full-time employee of M/s Bikrampur Society.

63. Elucidating further, it is not a case of public employment where Article 311 of the Constitution of India can be made applicable. It is also not a case



which falls under the Industrial Disputes Act as the respondent no. 4 is not a workman. M/s Bikrampur Society is not a statutory body. There is no statute or statutory rules regulating the conditions of service of the respondent no. 4. The appointment of the respondent no. 4 is purely a private employment which would ordinarily be governed by the terms and conditions of the contract between the parties. No written contract executed between the parties herein has been brought to the notice of the Court and as such, the dispute cannot be resolved with reference to any of the terms and conditions governing the employer-employee relationship between the parties. In any view of the matter, in the absence of any written contract, the case would be a case of oral contract.

64. The Board of M/s Bikrampur Society has been statutorily vested with power to remove the Chief Executive/Secretary like the respondent no. 4, a full-time employee appointed by it earlier, at any time. Thus, the contract of employment, which is a contract of service, is determinable in nature and once the Board of M/s Bikrampur Society had exercised its power of removal to determine the employment of the respondent no. 4 from the post of Chief Executive/Secretary of the Society, the reinstatement of the respondent no. 4 in the post of Chief Executive/Secretary again is not permissible in law. Once the Board had removed the respondent no. 4 from the post of Chief Executive/Secretary in exercise of statutory power by passing a resolution to that effect, the decision had taken effect as soon as the resolution was adopted by the Board and the decision was communicated to the respondent no. 4 on 01.12.2021.



65. With the power to appoint and the power to remove, the Board of M/s Bikrampur Society is vested with the power to terminate the contract of employment of its Chief Executive/Secretary [the respondent no. 4] at any time and for any reason or for none or at will, with notice or without notice. It is immaterial whether the Board of M/s Bikrampur Society had heard or had afforded any opportunity of hearing to the respondent no. 4 prior to his termination of appointment. In a matter of such kind of private employment, even if the employee is able to get a declaration from a court of law that the employer has wrongfully ended the contract of employment, the employee can only claim damages and cannot get the relief of reinstatement. Even if the employer wrongfully terminates the contract in breach of terms and conditions of the contract, the employment gets effectively terminated. No other authority and not even a court of law can hold that since the termination of the contract of employment was wrongful or in breach of the terms and conditions of contract of employment or in violation of principles of natural justice for not affording any opportunity of hearing to the employee, the employee would continue to be in the employment of the employer against the will or consent of the employer. In the impugned Order dated 10.01.2022, the Registrar has interfered with the termination of employment of the respondent no. 4 on the ground that the respondent no. 4 was neither given a prior notice nor he was given any chance for his defence. In view of the clear prescription of law, as discussed above, the Registrar is not empowered to interfere with the order of removal passed by the Board of M/s Bikrampur Society on the ground that the order of removal was in violation of the principles of natural justice. The Registrar by the impugned Order dated 10.02.2022 has further allowed the respondent no. 4 to continue as the Secretary of M/s Bikrampur



Society until further order. By such direction, the Registrar has ordered the employment of the respondent no. 4, who was removed by the Board of M/s Bikrampur Society by adopting a resolution on 01.12.2021, to continue against the will and consent of the employer, that is, the Board of M/s Bikrampur Society. Such kind of direction by the Registrar, not being the employer himself and having no say in either the appointment or the removal, amounts to imposing the respondent no. 4 on the real employer against its will and consent. Such kind of direction made in the impugned Order dated 10.02.2022 is clearly impermissible in law.

66. Section 35 of the Act, 2007 has provided for composition of the Board of a registered cooperative society. An amendment to Section 35 has been carried out by the Assam Act no. IV of 2013, published in the Assam Gazette dated 05.02.2013. By the Assam Act no. IV of 2013, a new sub-section '[2]' had been inserted and existing sub-sections had been renumbered as [3], [4] and [5] respectively. As per sub-section [2], the Board shall consist of fifteen numbers of Directors. Thereafter in the year 2019, another amendment in sub-section [2] has been carried out by insertion by the Assam Act no. IV of 2019, published in the Assam Gazette dated 28.05.2019. As per sub-section [2] of Section 35, as it presently stands, the Board shall consist of maximum twenty-one number of Directors. After the amendment carried out by the Assam Act no. IV of 2019 in sub-section [2] of Section 35, the only prescription is with regard to maximum number of Directors in the Board, which has been made limited to twenty-one. There is no prescription as regards the minimum number of Directors in the Board of a cooperative society.



67. The resolution to appoint the respondent no. 4 in the post of Chief Executive/Secretary and the resolution to remove the respondent no. 4 from the post of Chief Executive/Secretary were taken by the Board on 07.10.2021 and 01.12.2021 respectively. Section 43 of the Act, 2007 has provided for Board meetings. As per sub-section [5] of Section 43, the quorum for a meeting of the Board shall not be less than fifty percent of the total number of Directors of the Board. After the amendment carried out by the Assam Act no. IV of 2019, no corresponding change has been made in the bye-laws of M/s Bikrampur Society to make its bye-laws to conform to the amended sub-section [2] of Section 35. It has been categorically averred that on the dates – 07.10.2021 & 01.12.2021 – when those resolutions were passed regarding appointment and removal of the respondent no. 4 as the Chief Executive/Secretary of the Society, the Board of M/s Bikrampur Society was functioning with nine number of Directors, a fact which has not been traversed in any manner by the respondents. The constitution of the Board of M/s Bikrampur Society in the AGM/Election, held on 10.06.2018, with a total thirteen number of Directors has also not been questioned either by the official respondents or by the private respondent. Out of the initially elected thirteen number of Directors in the Board of M/s Bikrampur Society, four of those Directors were removed from the directorship on 11.02.2019 because of their absence in three consecutive meetings of the Board. By operation of law contained in sub-section [7] of Section 43, the directorship of those four Directors had ceased from the date of the fourth meeting, which were before 07.10.2021. As in the Board meetings, held on 07.10.2021 and 01.12.2021, the resolutions were adopted by six number of Directors out of nine number of



Directors, the quorum, as required under Section 43[5] of the 2007 Act, were present to adopt such kind of resolutions. Thus, the resolutions adopted by the Board of M/s Bikrampur Society on 07.10.2021 and 01.12.2021 are to be held as resolutions adopted by a validly constituted Board. In such obtaining fact situation, the observation of the Registrar in the impugned Order dated 10.01.2022 that there was lack of quorum in the Board meeting dated 07.01.2021 due to presence of six Directors, thereby, falling short of requisite quorum of eight Directors cannot be countenanced.

68. Section 9 of the Act, 2007 requires a cooperative society to frame its own bye-laws and the affairs of the cooperative society are to be managed in accordance with the terms, conditions and procedure specified in the bye-laws. Submission of the proposed bye-laws is a condition for making an application for registration under Section 10 of the Act, 2007. The Registrar on receipt of an application for registration and after consideration, registers the bye-laws with such modification as he thinks necessary. As per sub-section [2] of Section 9, the functioning of every cooperative society shall be regulated by its bye-laws and subject to the provisions of the 2007 Act. It has been stipulated in Section 9[3] that the bye-laws of a cooperative society shall in no case supersede the provisions of the 2007 Act.

69. It was argued in the case of ***The Co-operative Central Bank Ltd. and others*** [supra] that the bye-laws, which contained the conditions of service, were themselves law and any direction made by an Industrial Tribunal altering a condition of service contained in a bye-law would be an order contrary to law and, hence, illegal. It has been held that the bye-laws of a



cooperative society framed in pursuance of the provisions of the Andhra Pradesh Act cannot be held to be law or to have the force of law. It has been observed that if the statute gives power to the Government or any other authority to make rules, the rules so framed will have the force of statute and are to be deemed to be incorporated as a part of the statute. The same principle does not, however, apply to bye-laws that a cooperative society is empowered to make. The bye-laws contemplated by the governing act can be merely those which govern the internal management, business or administration of a cooperative society. It has been observed that the bye-laws may be binding between the persons affected by them, but they do not have the force of a statute. It has been further held that the bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law.

70. The bye-laws of a registered cooperative society like M/s Bikrampur Society have to be in conformity with the provisions of the Act, 2007. It is an obligation on the part of the particular registered cooperative society to bring the necessary amendments/modifications in the bye-laws, if any bye-laws are found not in conformity with any statutory provisions in the Act, 2007. In any view of the matter, the bye-laws of any registered cooperative society under the 2007 Act do not prevail over any statutory provision of the Act, 2007.

71. Section 45 of the Act, 2007 has inter-alia prescribed that every cooperative society shall record in the minute books proceedings of every general meeting, delegate general body meeting and board meeting. The



provision of Section 45 further requires that the proceedings of all General Meetings and Special General Meetings of every cooperative society shall be sent to the Registrar within fifteen days from the date of completion of such meetings. The Registrar shall give his approval on the resolutions within fifteen days of receipt of the proceedings. If no approval is received within the aforesaid period, the proceeding shall be deemed to have been approved. Section 45 is, however, silent on the aspect of sending the proceedings of any board meeting of a cooperative society to the Registrar for approval. If as per the statutory prescription approval is required, the order which is required to be approved by a statutory authority like the Registrar does not become effective unless the approval is accorded. It is not specifically laid down in the 2007 Act that the board of a registered cooperative society after passing an order of removal of its Chief Executive/Secretary, would need the approval of the Registrar, to make the order of removal effective. In the case in hand, had the order of removal of the respondent no. 4 dated 01.12.2021 passed by the Board of M/s Bikrampur Society required prior approval of the Registrar to make the order of removal effective, the order of removal would have been vulnerable in the absence of approval of the Registrar and the validity and legality of the impugned Order dated 10.01.2022 would have been different. But, such is not the case here. With power to remove the Chief Executive/Secretary of a cooperative society vested by the 2007 Act only in the Board of such society without any other rider, it is not open for any other authority like the Registrar, outside the society to enforce any bye-law on the ground of its non-compliance with the power to appoint and also to remove its Chief Executive/Secretary statutorily vested only in the Board of M/s Bikrampur Society and the Board having taken a decision to remove the respondent no. 4



from the post of Chief Executive/Secretary, any bye-law not in conformity of the provisions of the 2007 Act cannot stand in the way in terminating the contractual employment of the respondent no. 4 and non-compliance of any bye-law would not invalidate the power of removal exercised by a validly constituted Board of M/s Bikrampur Society in a meeting having the requisite quorum. No other authority including the Registrar under the Act, 2007 is empowered to nullify such decision of the Board regarding termination of its employees including the Chief Executive/Secretary.

72. Summing up, this Court has found that the Registrar appointed under Section 3 of the 2007 Act - either by Section 49[2][I] or by Section 92 or by Section 111 of the 2007 Act - has not been vested with any power, authority and jurisdiction to decide on any decision taken by a validly constituted Board of a registered cooperative society either in the matter of appointment or in the matter of removal of the Chief Executive/Secretary of the Society, a full-time employee appointed by it. As such, the impugned Order dated 01.02.2022 passed by the Registrar is unsustainable in law.

73. A writ of certiorari or in the nature of certiorari is exercisable under Article 226 of the Constitution of India for correcting errors of jurisdiction committed by a court or a tribunal or an authority. In view of the reasons recorded and the findings reached at hereinabove, the impugned Order dated 10.01.2022 passed by the respondent no. 2 is set aside and quashed.

74. As a corollary, there shall be no interference to the resolution adopted by the Board of M/s Bikrampur Society on 01.12.2021 and the Advertisement



published by the Board of M/s Bikrampur Society in the daily newspaper, *Juga Sangha*, in its issue dated 09.12.2021. The Board of M/s Bikrampur Society is, therefore, at liberty to proceed with the process of selection and appointment of a new Chief Executive/Secretary of the Society. As a sufficient time period has elapsed since the publication of the Advertisement on 09.12.2021, it would be open for the Board of M/s Bikrampur Society to publish a fresh advertisement, in case of necessity, for selection and appointment of a new Chief Executive/Secretary.

75. The writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

**JUDGE**

**Comparing Assistant**