
Before J.S. Narang, J

HEM RAJ & OTHERS,— *Petitioners*

versus

THE SECRETARY, HOME DEPARTMENT, U.T.,
CHANDIGARH & OTHERS,— *Respondents*

C.W.P. No. 4947 of 2001

28th March, 2003

Punjab Cooperative Societies Act, 1961—Ss. 27, 50, 51 & 57—Service & Conduct Rules (Super Bazar), 1988—Setting up of Super Bazar to hold and withhold price fixation policy of consumer articles—Constitution of a Managing Committee for controlling affairs of the Society—No election to the Managing Committee since 1969—S. 27 empowers the Registrar to appoint an Administrator in case Managing Committee is suspended or superseded—No Administrator can be appointed beyond a maximum period of five years—Concept of appointing supervisory Officers/General Managers by the U.T., Administration totally alien to the Act and the Bye-laws—Deterioration of affairs of Super Bazar due to mismanagement—Direction of Secretary Cooperation for holding election to the office of Managing Committee in pursuant to orders of High Court not complied with—Registrar passing an order under section 57 for winding up of Super Bazar & appointing a Liquidator—Neither an inquiry nor any inspection as envisaged under Sections 50 & 51 carried out by the Registrar before passing the order—To make Super Bazar workable and profitable a Committee appointed by the Registrar recommending appropriate solution—No recommendation by the Committee that the Society deserves to be wound up—Report of the Committee cannot be termed as the Investigations as required under section 50 of the Act—Non-compliance of the provisions of the Act before passing of winding up order—Impugned order liable to be quashed being not sustainable under law—Whether Super Bazar is an instrumentality of the State within the meaning of Art. 12—Question left undecided.

Held that, the respondents have not conducted themselves in the right and correct perspective. Admittedly, the Super Bazar had been incorporated in the year 1967 and that a Managing Committee was also constituted which was to be elected after a tenure of one and

half years but no such elections were held. Thus, no order could be passed by the Registrar Cooperative Societies in superseding the Managing Committee but the orders in appointing the Administrators have been passed from time to time. It is crystal clear that the Administrators had been appointed without defining the period of one year as envisaged under the Act. No Administrator could be appointed beyond the period of five years yet the Administrators had been appointed after the expiry of the said period. The first appointment of the Administrator was made in the year 1973 and that from the year 1973 to 1987, different Administrators had been appointed. Subsequently from 1987 to 1990 the officers by the designation of Supervisory Officers had been appointed which designation is alien to the provisions of the Act and the rules promulgated for administering the working and functioning of the Super Bazar. Thereafter, the designation went under a change and a General Manager is stated to have been appointed probably coming back to the nomenclature provided under the Act. This act on the part of the Administration does not make their order legal as all such orders have been passed after the expiry of the period of five years as envisaged under section 26 of the Act. The perusal of some of the orders, the irresistible conclusion is that all along the orders were being passed by the Administration though some of them have been routed through the Registrar Cooperative Societies. Thus, the Administration and the Registrar Cooperative Societies were not clear themselves as to who is controlling the Super Bazar. Perhaps, they did not want the Super Bazar should be governed democratically.

(Para 24)

Further held, that the respondents have not acted in accordance with the provisions of the Act, the winding up order suffers from the rigour of non-compliance of the provisions of the Act. Passing of winding up order clearly reflects the rubbing of the democratic principles, the order dated 22nd May, 2000 passed by the Secretary, Cooperation is an indicator and a step towards democratic set up but the winding up order passed in post haste manner without compliance of the provisions of the Act is a blind effort for drawing curtain. Thus, the impugned orders are not sustainable under law.

(Para 26)

Ms. Jagdeep Bains, Advocate for the petitioners.

K.K. Gupta, Advocate for the respondents.

JUDGMENT

J.S. Narang, J.

(1) This judgment would dispose of two civil writ petitions No. 4947 and 5375 of 2001, as common question of law and facts are involved in both these cases. Principally, the facts are being taken from CWP No. 4947 of 2001, however wherever required, the reference would be made to CWP No. 5375 of 2001, to the documents or the averments which are not contained in the aforesaid petition.

(2) The facts which need to be noticed are that the Central Cooperative Consumers Store Limited (hereinafter referred to as the "Super Bazar") was incorporated in the year 1967 and was registered under the provisions of the Punjab Cooperative Societies Act, 1961, (hereinafter referred to as "the Act") and that the Rules and the Bye-laws promulgated by Super Bazar are also applicable accordingly. The Super Bazar had about 50 outlets in Chandigarh and its neighbouring areas, approximately 209 employees were taken in its employment for serving in the aforesaid respective outlets. The Head Office is housed at S.C.F. No. 5-6, Sector 22-D, Chandigarh. As per Bye-law No. 9 of the Bye-laws promulgated by Super Bazar, the General Body meeting is scheduled to be held at least once in a year and that if the meeting is not convened by the office holders, the Registrar Cooperative Societies may *suo motu* summon the same. As per Bye-law No. 11, the constitution of the Managing Committee has been spelt out i.e. one representative for every 100 shareholders under Class-A, subject to a minimum of four, one representative each of B and C Class shareholders, one representative of the Central Cooperative Bank, the State Government would be entitled to nominate its representatives up to 1/3rd of the total members of the Managing Committee, subject to a maximum of three and the Registrar Cooperative Societies would be the *Ex-officio* member. It is further contemplated that 1/3rd of the members shall retire every year. The first Managing Committee was constituted in the year 1967 and was to continue for one and a half year. It is alleged

that thereafter neither the 1/3rd members have retired nor any meeting of the Managing Committee nor the General Body meeting has ever been held, as none has been convened. There are other requirements as envisaged under the Bye-laws, which require the intermittent acts to be performed on the part of the Managing Committee, but as per the record none have been carried out.

(3) The primary purpose of setting up of Super Bazar has been to hold and withhold the price fixation policy in respect of consumer articles so that consumers may be able to have the added advantage when the consumable articles are sold by the Super Bazar at a fixed price and in competition with the price of retailers. The effort was to create check and balance *vis-a-vis* the price fixed by the manufacturer and subsequently by the authorised stockist and the distributors. It is alleged that since 1973 the Home Secretary, Union Territory, Chandigarh, has been appointing the Administrator for the functioning and controlling of the Super Bazar. It is further alleged that for controlling the internal affairs of the Super Bazar, if no meeting of the Managing Committee or the General Body meeting is held, the Registrar, Cooperative Societies, has been empowered under section 27 of the Act for controlling the affairs of the Cooperative Society. It shall be apposite to notice the aforesaid provision which reads as under :—

“S.27. Removal or suspension of committee or member thereof :—(1) If, in the opinion of the Registrar, a committee or any member of a committee persistently makes default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or bye-laws made, thereunder or commits any act which is prejudicial to the interests of the society or its members, or makes default in the implementation of the production or development programme undertaken by the cooperative society, the Registrar may, after giving the committee or the member, as the case may be, a reasonable opportunity to state its or his objections if any, by order in writing :—

- (a) remove the committee, and appoint a Government servant as an Administrator, to manage the affair of

the Society for a period not exceeding one year as may be specified in the order :—

- (b) remove the member and get the vacancy filled up for a remaining period of the outgoing member according to the provisions of this Act and rules and bye-laws made thereunder”.

(4) The aforesaid power can be exercised by the Registrar, only if he finds that the Committee or any member of the committee, has persistently made a default by it or by him, as envisaged under the provisions of the Act or the Rules or the Bye-laws made thereunder. Further, if any act has been committed, which is prejudicial to the interest of the society or its members or any default has been made in implementation of the project or development programme undertaken by the society, the Registrar may after giving the Committee or the member, as the case may be, reasonable opportunity to state its or his objections, if any, may remove the committee and appoint a Government servant as an Administrator to manage the affairs of the societies for a period not exceeding one year, which may be specified in the order, or may remove the member and get the vacancy filled up for the remaining period of the member, according to the Bye-laws and the rules made thereunder. By virtue of the aforesaid power, the Registrar, Co-operative Societies is entitled to supersede the Managing Committee and appoint an Administrator. Since 1973 up to 1987, the list of the Administrators appointed has been disclosed in the petition, which reads as under :—

“*Sarvshri* :—

1.	Damodar Dass, I.A.S.	31-3-1973 to 8-1-1976
2.	S.K. Tuteja, I.A.S.	22-1-1976 to 9-3-1978
3.	A.K. Dubey, I,A,S,	10-3-1978 to 11-3-1980
4.	S.P. Sharma, I,A,S,	16-3-1980 to 3-8-1980
5.	K.K. Dhir, I,A,S,	4-8-1980 to 20-11-1980
6.	S.P. Sharma, I.A.S.	21-11-1980 to 5-1-1981
7.	R.L. Sharma, P.C.S.	6-1-1981 to 3-2-1981

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| 8. | Mrs. Tejender Kaur, I.A.S. | 4-2-1981 to 16-2-1981 |
| 9. | Shri D.S. Kalha, I.A.S. | 17-2-1984 to 31-7-1987 |
| 10. | Mrs. Anjula Chib Duggal, I.A.S. | 31-7-1987 to 24-9-1987.” |

(5) It is alleged that these orders have been passed by the Home Secretary, Chandigarh Administration. However, from 1987 to 1990, the designation went underchange and instead of appointing an Administrator. A Supervisory Officer i.e. Supervisor has been appointed from time to time, the detail of which reads as under :—

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| “1. | Shri D.V. Bhatia, H.C.S. | 25-9-1987 to 28-11-1988 |
| 2. | Shri Ashok Kumar, P.C.S. | 29-11-1988 to 19-1-1990 |
| 3. | Shri H.S. Sandhu, P.C.S. | 20-2-1990 to 4-5-1990 |
| 4. | Shri Jagjit Singh Puri, P.C.S. | 30-5-1990” |

(6) It is alleged that the concept of appointing a Supervisory Officer is totally alien to the Act and the Bye-laws. Thus, such appointments are illegal and not sustainable under law. It is further alleged that the stores run by Super Bazar came under absolute control of the Registrar, Co-operative Societies after 1990 and it looks that while exercising the powers, which are not decipherable under the provisions of the Act, the Registrar appointed the Supervisory Officers as aforesaid. It is from 1987 up to 1990, the Registrar appointed the Supervisory Officers. Thereafter, from 1993 onwards a General Manager is shown to have been appointed, who was given the additional charge of Additional Registrar, Co-operative Societies and, therefore, had a free hand in running the affairs of the Super Bazar.

(7) It is further alleged that the said Administrators/General Managers, though not having been appointed in accordance with law by a competent authority, made purchases of the items which were sub-standard, cheap quality but higher in rates. Resultantly, the sales were affected and the stocks worth lacs of rupees purchased were dumped at the outlets of the Super Bazar. With the passage of time, these stocks did not remain consumable to be sold even at a lower rate as the shelf life had expired long back. The Auditors also did not raise any kind of objections, probably the respective General Managers “looked after” them accordingly.

(8) On 20th January, 2000, a Committee consisting of the members nominated by the Registrar was constituted to examine the strength of the staff required in each outlet, keeping in view the workload and also the promotions which had been made earlier. The Committee comprised of Assistant Registrar, Co-operative Societies, Union Territory, Chandigarh, Assistant General Manager and one Shri Mehar Singh retired Tehsildar-cum-Assistant Registrar, Cooperative Societies, Union Territory, Chandigarh. The Committee submitted its report on 25th April, 2000, and made certain recommendations. The recommendations read as under :—

“RECOMMENDATIONS”

1. The working staff as mentioned at para No. 6 above should not exceed until or unless there is an increase in the profit of Super Bazar and more so till its accumulated loss of Rs. 1,53,05,235.38 is wiped out.
 2. The surplus staff as a result of recommendation of the committee may be got absorbed in other co-operative Institutions or any other such Department office like the CITCO, Chandigarh Housing Board. Market Committee/Marketing Board, Social Welfare Advisory Board etc.
 3. The Super Bazar being a commercial institution should synchronise its working hours particularly those of its branches/outlets so as to tally with the similarly based Pvt. Shops/Commercial establishments. In some branches and outlets where the business activity runs into late hours, the staff should remain present to meet the requirement of the General Public, which in turn will fetch increased sale and profit.
- 3(A). Confidential verification may be got conducted from the appropriate authority about the indulgence of employees/salesmen etc. of Super Bazar, who carry out identical business privately either in their names or in the names of their family members and relatives, to that of the one being done by them in the course of their duties in the branches of Super Bazar.

The staff becoming surplus to the requirement may be considered for retrenchment as per provision of law. Keeping in view the seniority of an employee in his cadre.

- 3(B) However, the employees having adverse record of service and bad reputation may also be considered for premature retirement.
4. The employees of Super Bazar, should be much more dutiful and disciplined and every effort should be made to maintain discipline as per the service and conduct Rules 1988 applicable to them.
5. Efforts may be made to readjust the surplus Staff, if any, in view of these qualifications for each category of post, while recruiting the staff in future, prescribed qualification and mode of recruitment may be got approved from the Registrar, Co-operative Societies, U.T., Chandigarh as laid down in Recruitment and Retrenchment Rule 4.3 of the Service and Conduct Rules for the employees of Central Co-operative Consumer Store Limited (Super Bazar), Chandigarh.

Copy of the same has been appended as Annexure P5.

(9) Since the election to the Managing Committee had not been held since 1969, the share holder Surinder Kumar son of Amar Nath filed CWP No. 7811 of 2000, before this Court, which was disposed of,—*vide* order dated 24th January, 2000, with a direction to Secretary Co-operation, Chandigarh, for deciding the representation of the share holders accordingly. Upon the representation of the member(s) an order was passed by the Secretary Co-operation on 22nd May, 2000, directing the Registrar, Co-operative Societies to conduct the election to the office of Managing Committee within a period of three months. Copy of the order has been appended as Annexure P6. Despite this order, no election to the office of Managing Committee seems to have been held. Instead an order dated 21st July, 2000, is shown to have been passed by Secretary, Co-operation, Union Territory.

Chandigarh while considering the case relating to financial assistance to Super Bazar. The suggestions made were as under :—

- (1) All employees who have caused financial loss to the Super Bazar in any way and have either completed 25 years of service or have attained the age of 50 years be considered first for compulsory retirement.
 - (2) The employees of a specific age group any 53 to 58 may be retired compulsorily.
 - (3) Some of the ministerial staff be considered for absorption in Municipal Corporation and Chandigarh Housing Board. These both organisations have been taking persons on deputation from other government departments since their inception.
 - (4) The pay pattern of the employees will have to be reviewed. The salary of the employees of Super Bazar may either be fixed afresh on consolidated emoluments basis or the employees be made to switch over to the pre-revised scales of pay without any enhancement in salary by the grant of annual increment or D.A. etc. till the financial position of the Super Bazar improves.
 - (5) Funding of Super Bazar be done either by sanctioning Government Grant in Aid or by selling immovable property worth Rs. 1 Crore.
 - (6) Unprofitable outlets be closed down and the surplus staff be deployed for strict and effective checking of the outlets”.
- (10) It looks that endeavour has been made time and again to edge out the employees of the Super Bazar and that those who had been removed from service of Super Bazar before the age of superannuation, they should be absorbed in Municipal Corporation and Chandigarh Housing Board. The unprofitable outlets were recommended to be closed down and that the surplus staff should be deployed for strict and effective checking of the outlets. It is not discernible as to whether such guide-lines had been implemented or adhered to because on 10th October, 2000, the Registrar, Co-operative

Societies appointed a liquidator. The said order perhaps has been passed because despite the orders of this Court and the order passed by the Secretary, Co-operation dated 22nd May, 2000, for holding the election to the office of Managing Committee, within a period of three months, no process had been initiated. Thus, the appointment of liquidator has been made as a cover up for the lapses committed by the Registrar, Co-operative Societies. Copy of the order has been appended as Annexure P9. The power has been exercised under Section 57 of the Act. The reasons spelt out are that the capital of the Super Bazar has totally eroded as the assets are less than the liabilities. The society has failed to make payment of the goods purchased. The salaries of the employees have been paid out of the sale proceeds of the goods, meaning thereby no money is left with the society for replenishing the stock. The Super Bazar is incurring loss of Rs. 10 lacs approximately per month. It has also been held that the society has outlived its credibility as server of public cause. Resultantly, the order of winding up the Super Bazar society has been passed while exercising powers under Section 57 of the Act. It may be noticed that before exercising such powers it is mandatorily provided that the Registrar must conduct an inquiry under section 58 of the Act an inspection should be carried out as envisaged under section 51 or an application has been received from the members not less than 3/4th of the members of the society. It is, thereafter, the Registrar has to make up his mind to pass the order of winding up. In the case at hand, no inquiry is said to have been held nor any inspection is stated to have been carried out by the Registrar himself or through a committee. However, a reference has been made that the Committee constituted by the Registrar on 26th June, 2000, carried out inspection with a view to assess its overall financial position, staff strength, workload and whether the promotions of the staff have been made in accordance with service and conduct rules as applicable to the Super Bazar. The recommendation of the Committee has not spelt out anywhere to the effect that the society deserves to be wound up. In fact, some recommendations have been made for carrying out some confidential verifications and at the same time the surplus staff be absorbed in other co-operative institutions of such other departments like CITCO, Chandigarh Housing Board, Marketing Board and Social Welfare Advisory Board. It is not understandable as to from where the Registrar has drawn an inference that the Committee has made such

recommendations that the society deserves to be wound up. The Registrar, instead of providing appropriate solutions to the shortcomings, which are alleged to have been found by the Committee, and making the Super Bazar workable and profitable, has passed the order of winding up while exercising powers under section 58, and appointed the liquidator. The liquidator so appointed issued a public notice dated 2nd November, 2000, notifying termination of services of all the employees of the Super Bazar with effect from the date of publication of the notice. The public notice does not spell out anything as to whether the society shall continue to man the outlets of the society or all of them have been closed and that the stocks lying therein shall perish or the same are to be handed over to any other organisation etc. It has been observed that the concerned employees may hand over the charge to the liquidator or to the authorised nominee and that they may lodge their claims in respect of arrears of pay etc. including the period of three months in lieu of notice period and that such claim should be filed within 30 days of the publication of the notice and that the amount so quantified shall be paid out of the funds whenever available with the liquidator. Copy of the order has been appended as Annexure P10. It shall be apposite to notice the order, which reads as under :

PUBLIC NOTICE

It is brought to the notice of all Creditors and the Employees of the Central Co-operative Consumer's Store Limited (Super Bazar) Sector-22, Chandigarh that the Central Co-operative Consumer's Store Limited (Super Bazar) S.C.F. No. 5 and 6, Sector 22-D, Chandigarh has been brought under the winding up (liquidation) process,— *vide* orders of the Registrar, Co-operative Societies, Union Territory, Chandigarh dated 10th October, 2000.

Now, therefore, in exercising of the powers vested in me under section 59 of the Punjab Co-operative Societies Act, 1961 (as applicable in U.T., Chandigarh) read with the powers defined in the orders passed by the Registrar, Co-operative Societies, Union Territory, Chandigarh, dated 10th October, 2000. I hereby terminate the services of all the employees of the Central

Co-operative Consumer's Store Ltd. (SUPER BAZAR),
Sector 22-D, Chandigarh from the date of publication
of this notice.

The concerned employees may hand over the charge, if any, to the undersigned or the authorised nominee of the undersigned and may lodge their claim in respect of arrears of pay etc. including the pay of three months in lieu of notice period to the undersigned within thirty days of the date of publication of this notice, which will be paid out of the funds whenever available with the undersigned according to Section 59 of the Punjab Co-operative Societies Act, 1961 (as applicable in U.T., Chandigarh). A copy of this public notice is also being sent to each and every employee on the rolls of the Super Bazar by registered post as well.

The creditors are also hereby notified to lodge their claims within a period of thirty days from the date of publication of this notice."

(11) Aggrieved of the publication/alleged order of the liquidator, i.e. the order of the Registrar copy Annexure P9 and the public notice copy Annexure P10 issued by the liquidator, had been made subject matter of challenge in the appeals filed before the Secretary Co-operation Department, Chandigarh. The appellate authority rejected the appeals,—*vide* order dated 15th March, 2001 by holding that the Registrar, Co-operative Societies, has correctly exercised his powers under section 57 of the Act and that an inquiry had been conducted by the Committee constituted by him,—*vide* order dated 20th January, 2000. Thus, taking into consideration the report of the Committee, the Super Bazar has been ordered to be wound up. It has been found as a matter of fact that the assets are far too less than the liabilities payable by the Super Bazar. Further, the society is incurring loss to the tune of Rs. 10 lacs approximately per month which would increase in the near future and would add on to its liabilities. It is further observed that it had been paying the salary of the employees out of the sale proceeds of the goods, meaning thereby that it had no money to replenish the stocks. It is further observed that the Registrar was fully satisfied, so far as its financial

status is concerned. There being no chance for its revival, it has been considered appropriate to wind up such society. Since it did not have any funds to pay the salaries of the employees and did not have any funds to replenish stocks, the liquidator terminated the services of all the employees and in this regard obtained prior approval of the Registrar, who is the competent authority for passing such orders. The liquidator has given appropriate opportunity to the employees for filling their respective claims within 30 days from the date of the publication of order, but, none have come forward to file their claims. The appellate authority has also made an observation in respect of the order passed by it on 22nd May, 2000, for holding elections to the office of the Managing Committee but the same has been dewatered by observing that the Registrar had already constituted a Committee to look into the financial affairs of the society. Thus, the process of inquiry had already been initiated, no useful purpose would be served in holding elections to the office of Managing Committee. Thus, passing of an order of winding up of such a society was not a hasty decision. So far as the appointment of Supervisory Officers and the General Managers for looking after the affairs of the society are concerned, the same having been passed by Chandigarh Administration being the major share holders, no infirmity can be found. Resultantly, the appeals have been dismissed,—*vide* order dated 15th March, 2001, copy Annexure P12.

(12) The employees have made the order of Registrar dated 10th October, 2000 copy Annexure P9,—*vide* which the society has been ordered to be wound up and the order of the liquidator dated 2nd November, 2000,—*vide* which the services of the employees have been terminated, copy Annexure P10 and the order dated 15th March, 2001 passed by the Secretary, Cooperation, Union Territory, Chandigarh,—*vide* which the appeals have been dismissed, the subject matter of challenge in the present petition upon various grounds which are noticed as under :

- (i) . The impugned order dated 10th October, 2000,—*vide* which the society has been ordered to be wound up under section 57 of the Act is not sustainable under law as no enquiry as envisaged under Section 50 has been ordered nor any inspection as provided under Section 51 of the Act has been carried out by the

Registrar nor the members of the society had ever made any recommendation for winding up of the society, though an order had been passed by the Secretary, Cooperation Department Chandigarh which is dated 22nd May, 2000 that the election to the office of Managing Committee should be held within three months. Admittedly compliance of the order aforesaid has not been made and that the democratic system has been scuttled by the respondents in passing the impugned order. Cooperative Society is an institution which projects the democratic character and is to be governed in pursuant to the principles inculcated under the Act which are nothing but protection of such rights enshrined under the constitution.

- (ii) The action of the respondents in passing the order of winding up and appointment of liquidator and thereafter rejecting the appeal summarily, violates the rights of the petitioners as protected under Articles 14, 19, and 21 of the Constitution of India. It is the settled law that any order passed in violation of the constitutional safeguards deserves to be set aside. The perusal of the public notice dated 2nd November, 2000 reflects the manner and the method in which power has been exercised by the respondents. It looks that the order of winding up is a pre-conceived order because the order of termination of the service of the employees followed immediately without compliance of the rules and regulations to be followed before an order of termination can be passed against an employee. The principles of natural justice have been completely thrown to the winds. On one day, the employees without any fault having been committed on their part, have been asked to sit back at home and hand over the charge forthwith and that they shall be paid the salary of three months in lieu of the notice and that the said amount shall be paid only when the amount is available with the liquidator. Strange method has been adopted in exercising the administrative powers by the respondents. The order of termination does not only

reflect the exercise of the bureaucratic power but autocratic power, which is not contained in any rule of law or rule of business. The sovereign gave into itself the democratic principles by way of adopting Constitution of India so that the autocracy is done away with and the people govern themselves logistically, legally and as per the rule of law. It is this principle which made the society creating small institutions with democratic character such as the societies, the boards and other institutions. The power has been provided in the hands of the officers named under the statutes but this is to be exercised as a watch-dog and not as a wolf. It is strange, by an order, a committee was constituted to find out the short comings in the functions of the Super Bazar and the recommendations had been asked for from the Committee. The perusal of the recommendations shows that the facts have been pointed out and the solutions have also been given. Instead of applying mind to the recommendations made by the Committee, the Registrar has misused the report of the Committee projecting it to be a report as envisaged under section 50 and exercised the power under section 57 in passing the order of winding up. Such camouflaged acts on the part of the caretakers, are not sustainable under law.

- (iii) The service conditions of the employees are governed by the Service and Conduct Rules (Super Bazar), 1988, and that the service conditions cannot be changed, the authority competent to pass an order could pass the impugned order under the rules, only the Registrar or the General Manager appointed by him would be the competent authority. Thus, the order of termination of the services of the petitioners passed by the liquidator *vide* order dated 2nd November, 2000, is illegal, null and void being violative of the rules and the service conditions of the petitioners. In support of this contention reliance has been placed upon a medical pronouncement in **Re. 1994(1)PLR&S, 74 (Bry Kishore Arora versus The Administrator)**.

- (iv) The petitioners have not been afforded an opportunity of being heard before the passing of the impugned orders of termination. The impugned order is thus violative of principles of natural justice and suffers from the rigour of equality and good conscious, as has been enunciated by this Court and by the apex Court on a number of occasions. Reference has been made to a full Bench decision of this Court rendered in **re : Ram Niwas Bansal versus State Bank of Patiala and another, 1998(4) SLR 711**. The aforesaid judgment has been further upheld by the apex Court. Reference has also been made to the dicta of the apex Court rendered in **re : State of Orissa versus Dr. (Miss) Binapani Dei and others, AIR 1967 S.C. 1269**. The apex Court has observed that even administrative orders which involve civil consequences have to be passed in consonance with principles of natural justice.

(13) The primary reason has been spelt out by the respondents that on account of deterioration of the affairs of the Super Bazar, the services of the employees have been terminated by the liquidator. Deterioration of the affairs of the Super Bazar is not attributable to the employees but perhaps it is due to mismanagement of the affairs by the officials of the U.T., Administration and Cooperation Department. It is a matter of fact that the election to the office of Managing Committee was required to be held within the statutory period as envisaged under the provisions of the Act and rules but no such election has ever been ordered to be held. In absence thereof, the affairs of the Super Bazar were always directed to be managed by an officer of U.T., Administration. The Government usurped the powers to run the affairs of the Cooperative Society (Super Bazar) in utter violation of the provisions of the Act and the rules. An Administrator can only be appointed under section 27 of the Act and that too only in the eventuality when the managing committee is suspended or superseded, no such order had been passed yet the Administrator was appointed and later on a General Manager had been appointed by the government. It is categorically pointed out that in pursuant to the aforesaid provision, an Administrator cannot be appointed beyond a maximum period of five years. In the case at hand the Administrator has been appointed since 1973. It is not understandable under what

provisions the Administrator was continuing beyond the period of five years and that why no election was held. The concept of Supervisory officer appointed by the Government is alien to the domain of the Act. It looks that the government passed the order taking it and considering the cooperative society (Super Bazar) as a department of the government.

- (v) The appointment of a liquidator suffers from the violation of the provisions of the Act and that the appointment has been made only to circumvent the order of this Court,— *vide* which a direction had been issued that the election to the office of Managing Committee should be held within three months. Despite the orders of this Court, no election has been held, in fact, the Secretary, Co-operation passed an order for holding the elections but despite that order, no election has been held. It looks that the Government has done the lip service by way of passing such order so that no one can be held liable for committing Contempt of Court indirectly in view of the order passed by this Court. After passing of the order dated 22nd May, 2000, by the Secretary Co-operation, Chandigarh Administration, in the next breath the impugned order dated 10th October, 2000, has been passed,—*vide* which the society has been ordered to be wound up and the liquidator has been appointed, who in turn in a post-haste manner passed the impugned order dated 2nd November, 2000,—*vide* which the services of the petitioners have been terminated. None of these contentions of the petitioners have been considered by the Secretary while deciding the appeal,—*vide* impugned order dated 15th March, 2001. Thus, all the orders suffer from the rigour of bias and an act of circumventing the order of this Court for holding the election to the office of the Managing Committee of the society, consequently, deserve to be set aside.
- (vi) The manner and the method in which the affairs of the society have been dealt with by the Government and the orders have been passed appointing the

administrator from time to time, who remained virtually under the control of the U.T., Administration, and of course, under the control of the Registrar, further appointing Supervisory Officer for conducting the affairs of the Super Bazar goes to show a long way that it has been treated as another department of the Government, the Government always projected deep pervasive control in the Super Bazar. The functioning and working of the same through the Government fulfils the tests laid down by the apex Court in re : **Remana Dayaram Shetty versus The International Airport Authority of India and others, AIR 1979 S.C. 1628**. The basic object which has been spelt out by the respondents in setting up Super Bazar, has been to control the price of the essential commodities and the projection is that the consumable goods were directed to be sold at somewhat reduced rates so that the retailer is pegged down from over-charging. The logic propounded by the Registrar while passing the impugned order by observing the "Super Bazar" no longer serves the public interest and has outlived its credibility is not at all tenable. No logical reason has been spelt out for arriving at such conclusion. If this object, as propounded by the respondents, is examined from all angles, it would lead to one conclusion that the role of the Government is being projected to be achieved through the society i.e. Super Bazar. If that be so, the institution through which such projection is made would definitely be taken to be under the control of the Government and would have to be termed as instrumentality of the State within the meaning of Article 12 of the Constitution. Under these circumstances, the impugned order passed by the Registrar would be directly hit by the doctrine of 'Colourable exercise of Powers'.

(14) Respondents Nos. 1 to 5 have contested the petition and have filed written statement. The preliminary objections have been taken i.e. :-

- (i) Chandigarh Administration has not been impleaded as a party before the Appellate Authority i.e. the Secretary,

Co-operation, Union Territory, Chandigarh, nor has been impleaded in the present petition. Since the relief is being claimed to the effect that the society is an instrumentality of the State and, therefore, writ is maintainable and the relief is claimable against the State. It is incumbent upon the petitioner to implead the State as a party to the petition. Thus, the petition deserves to be dismissed on the ground of non-joinder as well as mis-joinder of necessary parties to the petition.

- (ii) The society having been ordered to be wound up and the services of the employees having been terminated as a consequence thereof, the petition would not be maintainable by the petitioners and that it suffers from the rigour of *locus standi* of the petitioners. Thus, on this premises as well, the petition deserves to be dismissed.

(15) The pleas of the petitioners have been controverted by raising the following pleas :—

- (i) The action of the competent authority is fully justified as the affairs of the society were not being conducted in a profitable and smooth manner. The management alone cannot make an institution function in the correct perspective. The major role is always played by the employees. The investigation/inquiry conducted by the committee has returned a finding that the capital of the Super Bazar has completely eroded and that the salaries of the employees could only be paid from the receipts received from the sale of the goods at various outlets, meaning thereby, the society was not left with any money to re-cycle the purchase of the goods and sell the same at the outlets accordingly for the purposes of earning minimal profit from which the salaries of the employees could be paid. In such a situation, it could not be considered appropriate to continue to run the business at the outlets of the society. No doubt the price of the consumable goods would depend upon the expenditure which is to be incurred for running the institution/outlets and that the said expenditure has to

be added on while fixing the sale price of the consumable goods. This mathematics was never supplied and applied by the employees of the society. Resultantly, the consumable goods were not sold at the appropriate price which resulted into erosion of the capital of the society. From the report submitted by the Committee, the competent authority came to irresistible conclusion that the burden of payment of salaries to the employees was far more than the reasonable profitability, which could be made by the sale of the consumable goods. Apart from interest factor required to be added upon the capital investment made. There was no other alternative but to wind up the Super Bazar.

It has also been pleaded that majority of the employees of the society are facing disciplinary actions upon the prove charges of embezzlement, misappropriation etc. and by functioning as employees, they are eating the roots of the society. And employee cannot be allowed to claim a right when the employee itself has become a liability upon the employer. An employee have never ever worked in the best interest of the society but they have always been functioning to attain their own objective. They have never ever contributed services commensurate to the salary being paid to them. Upon such report having been made by the committee appointed by the competent authority, there was nothing more which required further verification or investigation. Thus, the competent authority after applying its mind passed the order of winding up.

- (ii) The order of winding up of the society has been passed after due compliance of the provisions of the Act i.e. by way of investigating into the affairs of the society, the Committee had been constituted by the Registrar, Co-operative Society, U.T., Chandigarh,—*vide* order dated 20th January, 2000 and that the Committee carried out the inspection of the outlets with an objective to assess the overall financial position and consequently submitted the report accordingly. There were sufficient

circumstances spelt out, which enabled the competent authority to take appropriate decision. Thus, the decision of passing of winding up order does not suffer from any of the lapses on account of non compliance of any provisions of the Act.

Once the winding up order has been passed and that too on the premises that it is not financially viable to continue to run the Super Bazar, the Liquidation took the decision for terminating the services of the petitioners. The petitioners were well aware of the financial sickness of the society as they have admitted themselves that the society was unable to pay their salary since August, 2000. In such a situation the liquidator took the correct and appropriate decision in terminating the services of the petitioners. The cardinal principle "before terminating the services of an employee, an opportunity of being heard must be granted in all situations", however, this right would be claimable only if the services of the employees are being terminated by way of punishment. The order of termination has been passed on account of financial constraints of the employer and especially a decision had been taken to stop the business by way of closing down the outlets as the consumable goods could not be sold at the rates which had been fixed earlier. It is the settled law that if an institution cannot exist, the services of the employees would automatically be done away with. Reference has been made to a judgment of this Court rendered in re : *Ram Chander and others* versus *State of Haryana and others (1)*. In the aforesaid case also, the services of the employees had been terminated in somewhat similar circumstances. It has been observed that the employees who are discharged on the closure of the activity, would be entitled to certain benefits by way of compensation payable in accordance with law. Such similar relief has been made available to the employee with the observations that whenever the funds are available, the compensation as

admissible under law shall be paid to the petitioners and in this regard they had been directed to file their claim within one month from the date of the order. Unfortunately, none of the employees have filed any such claim. Thus, the order of termination passed by the liquidator does not suffer from any infirmity or the rigour of any of the provisions of the Act.

- (iii) It is further the case of the respondents that the society is not an instrumentality of the State within the meaning of Article 12 of the Constitution of India. The society is governed under the provisions of the Act and that the remedies as provided under the Act have been availed of by the petitioners, such as filing an appeal against the order of Registrar, Co-operative Societies,—*vide* which the appointment of liquidator has been challenged. The said order has been upheld by the Appellate Authority and that a detailed and a reasoned order has been passed by meeting out all the arguments of the petitioners. However, the same pleas have been racked up before this Court. The order of the appellate authority does not suffer from any infirmity as the order of winding up is based upon the report submitted by the committee. It is not necessary that the Registrar, Co-operative Societies was obligated to accept the recommendations made by the committee. The purpose and object of appointment of committee was to elicit information vis-a-vis the working and functioning of the Super Bazar and the outlets thereof. The report is self explanatory that none of the employees have been functioning in the best interest of the society. The acts and conduct of the employees have ultimately led to the erosion of the capital of the society. In fact the employees themselves ate up their institution i.e. the hen which could lay golden eggs and that the result is far too obvious which has led to the passing of the winding up order by the competent authority.

- (iv) It is further contended that it is correct that the Secretary, Co-operation, Chandigarh Administration

passed an order dated May 22, 2000, in pursuant to the order of this Court passed in CWP No. 781 of 2000, decided on January 24, 2000. A direction had been issued for holding election of the managing committee of the society within a period of three months but before this process could be undertaken the report of the committee had also been laid before the Registrar and the Registrar after considering the report passed the order of winding up on October 10, 2000. Since the order of winding up had been passed, the question of holding elections to the office of the Managing Committee became redundant, as such, no action was taken or could be taken for holding the election of the Managing Committee.

- (v) The Society cannot be termed as instrumentality of the State as the society had been functioning under the provisions of the Act, which fact stands established from the conduct of the petitioners themselves and so also the members of the society as they had filed the aforesaid petition for seeking direction from this Court for holding of the elections of the Managing Committee and that by order dated May 22, 2000, the Secretary Co-operation did pass this order. It cannot be accepted that the Government had deep pervasve control in the functioning and working of the society. The petitioners have themselves admitted that their services are governed by the Service and conduct rules (Super Bazar), 1988, and that the said rules have been promulgated under the Act. The rules for working and functioning of a State employee are not applicable to them. In this view of the matter, the society cannot be held or termed as a State. The dicta of the apex Court in National Airport Authority of India's case is not applicable to the facts of this case. Thus, the petition is not sustainable accordingly and the same deserves to be dismissed.

(16) It is further the case of the respondents that the Chandigarh Administration was not having any control over the

Super Bazar except to the extent that a sum of Rs. 1.55 Crores was contributed towards share capital in the shape of loan from time to time, which was to be returned within the specified period mentioned and agreed between the parties every time whenever the amount was advanced. It has been admitted that the administration provided the services of an officer of the administration to be appointed as General Manager of Super Bazar, after having been sent on deputation but upon the requisition of the Registrar Co-operative Societies Union Territory, Chandigarh. Thus, no case has been made out that Chandigarh Administration ever exercised deep pervasive control over the activities of Super Bazar.

(17) It has been further argued that the petitioners themselves have availed of remedy against the impugned order by way of filing an appeal. Thus, by their own act and conduct they have conceded that the society is not a State within the meaning of Article 12 of the Constitution. Once having conceded to the jurisdiction of the appellate authority provided under the Act, it does not lie in the mouth of the petitioners to claim that society has been treated like any other department of the State and, therefore, the petitioners are entitled to claim the rights accordingly. As such, the plea that the society is a State is not justifiable and justiciable. It is the settled law that once the right of appeal has been availed of as provided under the statute, which is available to the persons connected with the affairs of the society or the members of the society, no one can be permitted to blow hot and cold in the same breath. Thus, the petition deserves to be dismissed on this count as well.

(18) After hearing learned counsel for the parties, I am of the view that *prima facie* two pivotal questions need to be adjudicated upon i.e. :

- (1) Whether in passing the impugned orders Annexures P 9, P. 10 and P. 12, the competent authorities have adhered to the provisions of the Act, if not, its effect ?
- (2) Whether the society is an instrumentality of the State, if so, its effect ?

(19) The first question which needs to be examined is whether in passing the impugned orders Annexures P. 9, P. 10 and P. 12, the

competent authorities have adhered to the provisions of the Act, if not what is its effect ?

(20) Learned counsel for the petitioners has argued that the impugned orders dated 15th March, 2001 Annexure P12, the order dated 10th October, 2000 Annexure P9 and order dated 2nd November, 2000 Annexure P10, are not sustainable under law. It is contended that the Registrar Co-operative Societies acted in a post-haste manner in passing the order of winding up of Super Bazar. The order of winding up is a serious order by virtue of which the entity of a society is demolished completely. A society is created, nourished and brought into being by the efforts of the propounders and by expending money invested in it, for the purpose of achievement of the objects for which such a society is incorporated. The statute provides the self contained restraints upon the powers of the officers in passing an order of winding up. In this regard, a categorical reference may be made to the provisions contained in Sections 50, 51 and 57 of the Act. It is categorically provided that an inquiry must be conducted by the Registrar before formulating an opinion in ringing the death knell of the society. The investigations have to be made in the right and correct perspective and that the report in pursuance to such inquiry is also to be analysed in a manner that the basic rigours provided under the statutory laws and also the judge made law are adhered to and that a conscious and cautious decision is arrived at. The perusal of the documents brought on record would show that the order of winding up suffers from such deficiencies. A Committee is stated to have been appointed by the Registrar Co-operative Societies,—*vide* order dated 20th January, 2000, but the scope of appointment of the Committee has not been described, perhaps, only a fact finding inquiry was entrusted to the committee. Thus, an investigating inquiry was never entrusted to the Committee and, therefore, no report in this behalf has been submitted by the Committee, which is evident from the perusal of the report submitted by the Committee. Instead, the Committee has made certain recommendations for the purpose of bringing out Super Bazar from its sickness. The recommendations of the committee are medicinal in nature and not ringing the death knell of the society. No doubt, the Registrar Co-operative Societies has made the recommendations of the Committee as the basis for arriving at a conclusion in passing the order of winding up, but the facts which were necessarily required to be elicited by the Registrar Co-operative

Societies, were not even asked to be opined by the committee and that in the absence of the same, no decision for winding up the society could be taken.

(21) It has been further contended that by lifting the veil of the winding up order the approach in this regard becomes crystal clear. The member of Super Bazar filed CWP No. 7811 of 2000, which was decided,—*vide* order dated 24th January, 2000, and the Secretary Co-operation, U.T., Chandigarh had been directed to decide the representation of the member(s) in respect of holding the elections to the office of Managing Committee. The representation was filed which has been decided by the Secretary Co-operation,—*vide* order dated 22nd May, 2000. The direction for holding the election to the office of Managing Committee could not be hoodwinked or could not be denied as the facts were far too obvious i.e. no election to the office of Managing Committee had been held since 1973 and all along the Administrator had been appointed by the Administration though shown to have been appointed by Registrar Co-operative Societies. If the power had been exercised by the Registrar Co-operative Societies truthfully for appointing the Administrator, the same could not have been exercised beyond a period of five years as envisaged under Section 26 and 27 of the Act and that too in the first instance the Managing Committee was required to be superseded by an order to be passed by the Registrar Co-operative Societies but no such order is shown to have been passed. The affairs of Super Bazar were continuously run by the Registrar through the Administrator for a period of 17 to 18 years. The nomenclature was changed and the person was defined as Supervisory Officer for a limited period, which designation is alien to the Act. Subsequently, the designation again went under change and came to be defined as General Manager. Such acts committed by the Administration were totally against and in violation of the provisions of the Act. It shall not be out of place to mention here that the acts of omission and commission whatever may have been committed, there was nobody to scrutinise the same as the appointment of the administrators were being made every time by the Administration. If the elections to the office of Managing Committee had been held in proper time, the matters would have been different and the democratic status of Super Bazar would not have been converted into autocratic status. The facts show that statutorily the Managing Committee is responsible for the affairs of a society but if the Managing

Committee is used and abused as a rubber stamp through Administrator appointed by the Administration, who shall be liable and responsible for such acts. It is under these circumstances, one of the members filed a petition before this Court and in pursuant thereto the Secretary Co-operation passed an order dated 22nd May, 2000 directing that the elections to the office of Managing Committee should be held within three months. But, no such elections were held and instead an order of winding up dated 10th October, 2000 Annexure P9, has been passed. "Is it an honest order ?" If the election had been held, the Managing Committee would have investigated into the affairs of Super Bazar without any strings being pulled from any quarters. Since the elections were not held the strings to be pulled remained in the hands of the administration and the pulling of the strings is too obvious that winding up order has been passed, a liquidator is appointed, the employees are terminated and all the acts of omission and commission which may have been committed by the Administrators/ Supervisory Officers, General Managers would be dumped and pushed under the carpet. The order of winding up reflects a clear violation of the democratic principles inculcated in the Act and of course, the present rule of transparency has been brought before the opaque plaque so that no one would see as to why the Super Bazar suffered losses all along. It has not been disclosed as to when and how the balance sheets were filed and as to whether the same had been audited, if so, by whom. The purpose and object is to get the seals put on the acts of omission and commission by using and misusing the provisions of law.

(22) It is the settled law that when an order is passed detrimental to an institution, like winding up order, it is only to cover up the lapses committed by the persons at the helms of affairs and also those who were required to act as watch-dogs. Such orders would not be sustainable. The present order of winding up is one such order which has been obviously passed to seal the fate of the order passed by the Secretary Co-operation,—*vide* which a direction had been issued that election to the office of Managing Committee should be held within three months. None of the functionaries have been able to give plausible reasons as to why this order has not been or could not be complied with.

(23) On the other hand, learned counsel for the respondents has argued that the Registrar Co-operative Societies had appointed the committee to investigate into the affairs of the Super Bazar much prior to the filing of the petition and obviously much prior to the passing of the order by Secretary Co-operation. Thus, the functioning of the committee could not be curtailed in between by way of holding elections to the office of Managing Committee. These are two independent procedures provided under the provisions of the Act. The Registrar initiated the investigation as envisaged under Section 50 of the Act by acting well within his rights and upon the report of the committee and examining the recommendations made, an appropriate decision has been taken in winding up the Super Bazar. It is a matter of fact that the capital had eroded, no profitability was seen or was in the offing, the salaries of the employees could not be paid as no profits were being earned through the outlets opened by the Super Bazar, the sales had gone down, the staff was found surplus and that the entire mathematics for running the business was against continuing the Super Bazar for carrying on the business. Keeping all these facts in view, no reasonable businessman could have continued to run the business and would have arrived at an irresistible conclusion ; closure of business. This is exactly what has been done by the Registrar Co-operative Societies. So far as right of the members for seeking the elections to the office of the Managing Committee is concerned, there is no denial that this Court has passed the appropriate orders in directing the members to agitate their rights before the Secretary Co-operation, which has been agitated and the correct order in view of the facts stated in the representation has been passed. It has been directed that the elections to the office of Managing Committee should be held within three months. There is no over lap so far as these two independent procedures are concerned i.e., one is to act and conduct in accordance with the democratic principles inculcated and provided in the provisions of the Act and the other is to exercise the investigative powers to elicit the true and correct facts vis-a-vis the working and functioning of the institution. Upon exercise of such powers, if the reports have been received which are damaging and which are perfect indicators to the closure of the business, the appropriate order was to wind up the society. This is exactly what has been done by the Registrar Co-operative Societies acting according to his good conscious and the order has been passed cautiously by taking into consideration

the facts and figures brought forth by the Committee. It is absolutely incorrect that the procedure has not been adopted. In fact, an investigative committee had been appointed and the results are far too obvious. The appellate authority has also opined fairly and correctly to the effect that the Registrar Co-operative Societies was left with no alternative but to wind up the Super Bazar.

(24) After hearing learned counsel for the parties and considering the facts brought on record I find that the respondents have not conducted themselves in the right and correct perspective. Admittedly, the Super Bazar had been incorporated in the year 1967 and that a Managing Committee was also constituted which was to be elected after a tenure of one and half years but no such elections were held. Thus, no order could be passed by the Registrar Co-operative Societies in superseding the Managing Committee but the orders in appointing the Administrators have been passed from time to time. It is crystal clear that the Administrators had been appointed without defining the period of one year as envisaged under the Act. No Administrator could be appointed beyond the period of five years yet the Administrators had been appointed after the expiry of the said period. The first appointment of the Administrator was made in the year 1973 and that from the year 1973 to 1987, different Administrators had been appointed. Subsequently from 1987 to 1990 the officers by the designation of Supervisory officers had been appointed, which designation is alien to the provisions of the Act and the rules promulgated for administering the working and functioning of the Super Bazar. Thereafter, the designation went under a change and a General Manager is stated to have been appointed probably coming back to the nomenclature provided under the Act. This act on the part of the administration does not make their order legal as all such orders have been passed after the expiry of the period of five years as envisaged under section 26 of the Act. The perusal of some of the orders, which have been placed on record, the irresistible conclusion is that all along the orders were being passed by the Administration though some of them have been routed through the Registrar Co-operative Societies. Thus, the Administration and the Registrar Co-operative Societies were not clear themselves as to who is controlling the Super Bazar. Perhaps, they did not want the Super Bazar should be governed democratically.

(25) It is further the admitted case that one of the members did file CWP No. 7811 of 2000 before this Court and in pursuant to the direction given by this Court,—*vide* order dated 24th January, 2000, the representation was entertained by the Secretary Co-operation and a decision has been rendered by him in directing that the election to the office of Managing Committee should be held within three months. Despite the order dated 22nd May, 2000, no election to the office of Managing Committee is stated to have been held. What to say of the elections, the procedure initiated in this regard has also not been brought on record. It is obvious that no such proceedings were ever initiated. It looks that the orders have been passed on record but nobody was bothered to make compliance of the said order and probably the authority which passed the order was also not interested in compliance of the said orders. The Registrar Co-operative Societies has also not made categorical statement by way of written statement in this regard. The only reply which has been submitted is that no useful purpose would have been met with in holding the elections as a committee had already been formulated and the affairs of the Super Bazar were being investigated and that a report had been submitted and in pursuant there to, the winding up order has been passed by the Registrar Co-operative Societies. I am afraid this plea is not at all tenable. The investigation powers are not curtailed if the democratic procedure directed to be followed is undertaken. In the case at hand, if the order dated 22nd May, 2000, passed by the Secretary Co-operation had been complied with, the Managing Committee could have looked into the report submitted by a committee so formulated by the Registrar Co-operative Societies. However, no such effort is shown to have been made by the respondents. It leaves no manner of doubt that the respondents have tried to push the order dated 22nd May, 2000, passed by the Secretary Co-operation, under the carpet themselves. I further find that without defining the scope of the committee formulated by the Registrar Co-operative Societies, the report submitted by the committee cannot be termed as the investigation as envisaged under Section 50 of the Act, which is required to be made by the Registrar Co-operative Societies, for arriving at a requisite conclusion. Thus, the report of the committee could not have been relied upon by the Registrar Co-operative Societies in passing the impugned winding up order dated 10th October, 2000 Annexure P9 and consequently the appointment of the Liquidator. This aspect has

not been succinctly examined by the Secretary Co-operation, while dismissing the appeal filed by the petitioners,—*vide* order dated 15th March, 2001.

(26) I am of the view that the respondents have not acted in accordance with the provisions of the Act, the winding up order suffers from the rigour of non-compliance of the provisions of the Act. Passing of winding up order clearly reflects the rubbing of the democratic principles, the order dated 22nd May, 2000 passed by the Secretary, Co-operation is an indicator and a step towards democratic set up but the winding up order passed in post haste manner without compliance of the provisions of the Act is a blind effort for drawing curtain. Thus, the impugned orders are not sustainable under law.

(27) The second question whether the society is an instrumentality of the State, if so, its effect, is of accademic character.

(28) Learned counsel for the petitioner has drawn my attention to various orders which have been passed by Chandigarh Administration, which have been ordered to be taken on record,—*vide* a separate order of even date passed in C.M. No. 35964 of 2000, which have been appended as Annexures P31 to P46. The perusal of these orders shows that the Administration has been passing the orders pertaining to the affairs of the society in a manner as if it is another department of the government. One such communication addressed by the Registrar, Co-operative Societies, Union Territory, Chandigarh to the Finance Secretary, Chandigarh Administration copy of which has been appended as Annexure P27, has been pointedly referred to. The Registrar, Co-operative Societies has specifically observed that the Super Bazar being directly administered and controlled by the Administration, the wage structure and the service conditions of its employees which are being followed accordingly, are at par with the employees of the Chandigarh Administration. A request by the General Manager has also been referred to wherein it has been stated that the Super Bazar being an agency controlled by the Government cannot afford to go in for some other business tactics, sale of general medicines or negotiations of rates at the time of sale, as is being done by the private shopkeepers, keeping in view the fluctuation of the daily market rates. It is on these premises the exemption of sale tax on the sale and purchase of goods by Super Bazar had been asked

for from Chandigarh Administration. The extracts of the relevant paras are reproduced as under :—

“xx xx xxxxx xx xx xx The Super Bazar being directly administered and controlled by the Administration is following the wage structure and other service conditions for its staff at par with the employees of the Chandigarh Administration. Due to revision of pay scales of the staff of Super Bazar and increase on other sub-heads like water, electricity and other expenses on the upkeep and maintenance of office, the Super Bazar has constantly been running into losses during the past 3-4 years for the reasons beyond its control in spite of the strict administrative and financial control through internal savings....”

“xxx xxx xxx xx xx xxxx Although shops opened in the various colonies under the 20—point programme of the area are also not giving the encouraging business for better income to the Super Bazar yet the liability of wages to staff and other expenses for the establishment of these shops is borne by the Super Bazar as a policy matter of the Administration.”

“xx xxx xx xxx As stated by the General Manager in his request dated 23rd July, 1999, the Super Bazar being an agency controlled by the Government cannot afford to go in for other business tactics, sale of generic medicines or negotiation of rates at the time of its sale as is being done by the private shop-keepers keeping in view the fluctuation of the daily market rates.”

(29) Yet another executive order passed by Chandigarh Administration, copy Annexure P17 dated 3rd August, 2000, has been referred to,—*vide* which the salary of Shri Gyanesh Bharti, IAS, having been appointed as Sub-Divisional Magistrate, (South), U.T. Chandigarh, has been ordered to be charged against the post of General Manager with effect from 1st August, 2000. The order has been passed by the Home Secretary, Chandigarh Administration. The orders have also been passed by the Chandigarh Administration by way of transferring an official from one department to Super Bazar

as General Manager-cum-Deputy Director, Food and Supplies and Joint Registrar, Co-operative Societies, U.T., Chandigarh. The order referred to has been annexed as Annexure P16. Another order dated 15th May, 1992, copy Annexure P13, has been referred to,—*vide* which while making general transfers, one Shri Chandresh Kumar, working in Chandigarh Housing Board, has been transferred to Super Bazar and that nothing is being mentioned that he is being sent on deputation to Super Bazar or is a fresh appointee. Reference also has been made to an order dated 22nd May, 2000, passed by Secretary, Co-operation, Chandigarh Administration, wherein it has been categorically mentioned that the society was brought under the control of Administration on March 31, 1973 and it remained under the control of the Administration upto August 24, 1987, and thereafter, the Registrar, Co-operative Societies appointed Supervisory Officer to look after the affairs of the Super Bazar,—*vide* order dated 25th September, 1987 and the Super Bazar remained under the control of the Supervisory Officer upto May, 1990. Thereafter, it has been directly under the control of the Registrar, Co-operative Societies being assisted by the Advisory Committee in the matters of Super Bazar. The Advisory Committee was constituted by Chandigarh Administration. The perusal of the orders shows that the affairs of the society were being looked after by an Advisory Committee, constituted by the Chandigarh Administration and that right from the beginning the Administrator had been appointed who was allowed to continue beyond the maximum period prescribed under the Act. However, to overcome the rigour of the provisions, after about 14 years the Supervisory Officer is stated to have been appointed. Giving different names to the office holders would not change the nomenclature, functioning and reflection of deep pervasive control of the Government. Of course, a fair admission on the part of the Secretary, Co-operation, that an Advisory Committee was constituted by the Chandigarh Administration to look after the Super Bazar goes a long way to establish the said fact. It shall be apposite to notice the order, copy Annexure P6, which reads as under :

“CHANDIGARH ADMINISTRATION

DEPARTMENT OF CO-OPERATION

Order

Whereas the Central Co-operative Consumer Store Limited,
Chandigarh (Super Bazar) was brought under the

control of Administrator on 31st March, 1973 and it remained under the control of Administrator upto 24th August, 1987. Thereafter the Registrar Co-operative Societies, appointed Supervisory Officer to look after the affairs of the Super Bazar on 25th September, 1987 and the Super Bazar remained under his control upto 5th May, 1990. And, thereafter the Super Bazar is directly under the control of Registrar, Co-operative Societies, is being assisted in the matter of the Super Bazar by the Advisory Committee constituted by the Chandigarh Administration.

Now, whereas, the Hon'ble High Court of Punjab and Haryana have issued direction to the undersigned on 24th January, 2000, in C.W.P. No. 7811/2000 filed by Shri Surinder Kumar, son of Shri Amar Nath, resident of House No. 1788, Sector 7-C, Chandigarh, to decide the representation dated 20th October, 1999, within one month from the date of which a copy of the order is brought to the notice of undersigned. The said representation of Shri Surinder Kumar was not received in the office of undersigned earlier. However, a copy of order of the Hon'ble Court was received on 17th February, 2000.

Now after considering the above mentioned representation of Shri Surinder Kumar, I Rakesh Singh, Secretary Co-operation, Chandigarh Administration, do hereby order the Registrar Co-operative Societies, Union Territory, Chandigarh to take necessary action to hold the election of the Managing Committee of the Central Co-operative Consumers Store Limited (Super Bazar), Chandigarh, within a period of three months.

Chandigarh :
The 22nd of May, 2000.

(Sd.) ,
(RAKESH SINGH, IAS),
Secretary Co-operation,
Chandigarh Administration.

(30) Reference has also been made to the discussion note made on July 21, 2000 with the Secretary Co-operation, U.T., Chandigarh, when the matter pertaining to the financial position of Super Bazar is stated to have been discussed. Pointed reference has been made to an observation that for putting Super Bazar on track again some hard administrative policy had to be promulgated by the Chandigarh Administration to curtail the size of the establishment and to raise the funds. The suggestive measures have also been noted. It shall be apposite to notice the relevant excerpt of the discussion note, which reads as under :—

“xx xx xxx xx xx

To put the Super Bazar on track again, some hard administrative policy decisions will have to be taken by the Chandigarh Administration to curtail the size of establishment and to raise the funds. The following steps are suggested for consideration :—

1. All employees who have caused financial loss to the Super Bazar in any way and have either completed 25 years of service or have attained the age of 50 years, be considered first for compulsory retirement.
2. The employees of a specific age group any 53 to 58 may be retired compulsorily.
3. Some of the ministerial staff be considered for absorption in Municipal Corporation and Chandigarh Housing Board. These both organisations have been taking persons on deputation from other Government Departments since their inception.
4. The pay pattern of the employees will have to be reviewed. The salary of the employees of Super Bazar may either be fixed afresh on consolidated emoluments basis or the employees be made to switch over to the pre-revised scales of pay without any enhancement in salary by the grant of annual increment or DA etc. till the financial position of the Super Bazar improves.
5. Finding of Super Bazar be done either by sanctioning Government. In Aid or by selling imovable property worth Rs. 1 crore.

6. Unprofitable outlets be closed down and the surplus staff be deployed for strict and effective checking of the outlets.

xx xxx xxx xxx xxx”.

It is also not out of place to mention here that it will not be possible to make the payment of salary for the month of August, 2000 without financial assistance. Immediate decision as to either funding of Super Bazar or to appoint the liquidator may be taken.

Submitted please.”

(31) Copy of the discussion has been appended as Annexure P7. Reference has been made to the same in para 10 of the petition, however, while submitting reply to the said para the respondents have not categorically owned up the except on the premises that no disclosure in this regard has been made as to by whom it has been written and to whom it has been addressed and what is the date but the candid reply has also been made that the same being internal discussion, as such, does not carry any weight till a final decision based thereon is taken. On the contrary, it has also been pleaded that possession of such documents by the petitioner reflects their habit of committing theft, embezzlement, misappropriation in the Super Bazar, to which majority of its employees have been charged.

(32) So far as holding of elections to the office of Managing Committee is concerned the plea taken is that the Registrar Co-operative Societies U.T., Chandigarh, had already constituted a Committee on 20th January, 2000 for carrying out the inspection of the Super Bazar with a view to assess its overall financial position as envisaged under Sections 50 and 51 of the Act. However, no reasons have been submitted as to why the election to the office of Managing Committee was not held in compliance to the order passed by the Secretary Co-operation in pursuant to the order passed by this Court, directing that the representation of the petitioner in CWP No. 7811 of 2000, be decided by the Secretary Co-operation. The perusal of the order dated 22nd May, 2000 passed by the Secretary, Co-operation, does not disclose any fact relating to constitution of the Committee as no restraint or constraint has been provided by the

Secretary Co-operation for not holding the election. It is, obvious, only to overcome the rigour of facing any contempt proceedings the order has been passed by the Secretary Co-operation but no compliance of the order is stated to have been made. If the compliance had been made it would have fallen within the domain of Managing Committee to assess as to whether the society needs to be closed down voluntarily or any other appropriate act is required to be committed. No justifiable reason has been spelt out by the respondents while submitting reply to the averments contained in para 12 of the petition. It does give the feeling that the Registrar Co-operative Societies did act in a post-haste manner in passing the winding up order, to avoid compliance of the order passed by the Secretary Co-operation, in view of the observations made by this Court.

(33) During the course of arguments the petitioners have filed C.M. No. 35964 of 2002 in CWP No. 4947 of 2001, for placing on record copies of some of the documents to establish the factum of deep pervasive control being exercised by Chandigarh Administration vis-a-vis the affairs of the society. Notice of this application was given, reply had been filed and in support thereof some annexures have been appended. The aforesaid CM has been allowed,—*vide* order of even date. The perusal of some of the annexures shows that for making the appointment of Accounts Officer in the Head Office of the Super Bazar, the panel of a few names was asked for by the Chandigarh Administration for selecting a suitable officer for the post. The communication, dated May 8, 1980, in this regard is stated to have been addressed by the Deputy Secretary (Finance), Chandigarh Administration to the Commissioner and Secretary to Government of Punjab, Finance Department (copy has been appended as Annexure P33). The perusal of so many orders and communications contained in Annexures P34 to P36, shows that the society was being treated as another Department of the Administration. Yet another order passed by the Home Secretary, Chandigarh Administration, dated August 10, 1990, Annexure P39, shows that some officials of Super Bazar had been recommended by the Administration for grant of recommendation certification on the Independence Day. Another order dated 29th May, 1991, copy Annexure P40, passed by the Home Secretary confirms the control of the Administration. The order shows that the work relating to the society (Super Bazar) had been assigned

to Home-III Branch, which was dealing with the Food and Supplies Department at that time. Copy of this order has been communicated to the Registrar Co-operative Societies U.T., Chandigarh and so also to the Administrator and General Manager of Super Bazar. The excerpt of the order, dated 31st May, 1991, Annexure P40, reads as under :—

In continuation of this Administration order dated 31st January, 1991, issued,—*vide* Endorsement No. 1152-IH(5)-91/2712—14, dated 1st February, 1991, the work relating to the Central Co-operative Consumers Store Limited (Super Bazar) has been assigned to Home-III Branch, which deals with Food and Supplies Department.

R.N. PRASHAR,

The 29th May, 1991.

Home Secretary,
Chandigarh Administration.

No. 1152-IH(5)-91/12804, dated 31st May, 1991.”

xxx xxx xxx xxx”.

(34) Another order of the Home Secretary Chandigarh Administration cannot be missed, copy of which has been appended as Annexure P 41 dated 17th May, 1993, which has been addressed to various officers for communicating the general policy of the Administration i.e. transferring of officials/officers from the sensitive seats after two years by 31st May, 1993. The communication has been addressed to the General Manager Super Bazar by name. This categorically shows that Super Bazar had always been treated by the Administration like any other department. One could take it that such kind of communication may have been addressed to the General Manager Super Bazar due to oversight but that is not so. The Home Secretary addressed a communication to the General Manager dated 19th June, 1993, in response to the communication dated 28th May, 1993 by the General Manager to the Home Secretary. It has been categorically reiterated that it should be ensured that the officials/officers who have completed two years stay, may not be left out for

transfer, copy has been appended as Annexure P42. The appointments of General Managers have always been made by the Administration. In this regard, reference may be made to Annexures P35, P36, P38, P43, P44, P45, P46,—*vide* which the General Managers have been taken on deputation, and have been appointed and have been relieved accordingly.

(35) The application has been contested on the premises that the petitioners are making an endeavour to set up a new case and allowing them to place on record the copies of the Annexures would not be justifiable. On the other hand, the Administration has also chosen to place on record some of the documents with an effort to establish that the affairs of the society were being controlled by the persons nominated on the Advisory Committee for the Super Bazar with an effort to assist the Administrator and the General Manager in the affairs of Super Bazar. The wife of the Chief Commissioner, shall be *ex officio* Chairman of the Committee and there would be two official members i.e. General Manager and Food and Supplies Officer, Chandigarh, five non official members had been nominated on the aforesaid Committee.—*vide* communication dated 15th June, 1978. In August, 1978, two more non official members were nominated upon the said Committee. It is strange that nomination of these members had been made in the year 1978 but a communication dated 22nd December, 1971, has been appended contending that a meeting of the Managing Committee had been held on 18th December, 1971,—*vide* which Shri M. M. Awasthy, Director had been appointed as General Manager of Super Bazar. By and large the correspondence pertains to the years 1971, 1976 and 1978 and the one which relates to the year 1977 referred to the meetings of the Advisory Committee. It is not understandable that as per the bye-laws of the Society, the affairs are to be controlled and governed by the Managing Committee of the Society but no reference to the meetings of the Managing Committee has been made barring one or two references. However, nothing has been placed on record to establish the fact that meeting of the Managing Committee had ever been held. On the other hand, the communication dated 19th September, 1998, shows that the Secretary Co-operation addressed a communication to the Registrar Cooperative Societies for reconstitution of the Advisory Committee as well as Managing Committee of the Super Bazar and that the Secretary called for the

recommendations to be placed before the Administration, meaning thereby the Administration reflects the complete control upon the society. However, subsequently, a communication has been addressed to the Liquidator, which is dated 17th September, 2001, seeking repayment of financial assistance given from time to time to the society in the shape of share capital. It cannot be elicited that in what manner the investment in the share capital could be asked to be repaid to the administration. That too when the Liquidator has been appointed, when prior thereto no such effort or communication has been addressed to the society.

(36) On the other hand, learned counsel for the respondents has argued that the petitioners are estopped from raising this issue by their own act and conduct as they have availed of their remedy by way of filing an appeal under the provisions of the Act. Thus, accepting the Super Bazar as a Co-operative Society which is amenable to the provisions of the Act. This in itself establishes that the society is not a State within the meaning of Article 12 of the Constitution of India. Apart from this, it is the case of the petitioners that they are governed by the Service and Conduct Rules (Super Bazar), 1988. The said rules have been promulgated by Super Bazar and that the services of the petitioners are governed under the said rule, therefore, the petitioners are not comparable with the employees of the State. The aforesaid rules have not been promulgated by the State but by the Super Bazar. It cannot be said that the government exercised deep pervasive control *vis-a-vis* the affairs of the Super Bazar. So far as appointment of the Administrator/ Supervisory Officers/General Managers is concerned, the power has been exercised by the competent authority i.e. Registrar Co-operative Societies, U.T., Chandigarh. If any order has been passed by virtue of which the services of government officials have been borrowed or sent on deputation to Super Bazar, this could not amount to any exercise of powers by the Government *vis-a-vis* the affairs of the society. Even if, any order has been passed for keeping a track on the affairs of Super Bazar by the government, the said orders are not wrong because the government has made substantial investment in the share capital though the same had been advanced as loan to Super Bazar which was to be refunded as per the conditions stipulated in respect thereof.

(37) It has been further argued that the petitioners have placed very heavy reliance upon an order passed by this Court in CWP No. 7811 of 2000 on 24th January, 2000,—*vide* which the Secretary, Co-operation Department had been directed to entertain the representation of the member (s) and take appropriate decision in respect of holding election to the office of the Managing Committee of the Super Bazar. This act in itself would go a long way to show that the members of the society have never ever claimed the Super Bazar to be an instrumentality of the State, if at any stage it had been treated as a State by the employees, it would not liquidate or dilute the rigour of the provisions of the Act in conducting the affairs of the society. It is an admitted fact that a representation had been filed before the Secretary, Co-operation and that an appropriate decision has been rendered by way of directing the holding of elections to the office of Managing Committee. Thus, by no stretch of imagination it can be inferred that Super Bazar is a State or an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

(38) Learned counsel for the parties have addressed exhaustive arguments and have also referred to respective documents brought on record. However, in view of the decision rendered on the first point, I refrain myself from opining to the effect as to whether Super Bazar is an instrumentality of State within the meaning of Article 12 of the Constitution of India. I leave this question open to be decided at the relevant time, if raised, accordingly.

(39) In view of the above, the impugned order dated 10th October, 2000 Annexure P9, and order dated 2nd November, 2000, Annexure P10, and the order dated 15th March, 2001 Annexure P12 are not sustainable under law and the same deserve to be quashed. Resultantly, the petition is allowed and the aforesaid orders are quashed. No order as to costs.

R.N.R.