

**BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES
PUDUCHERRY**

**Present : Tmt. P. PRIYTARSHNY
Registrar of Co-operative Societies
Puducherry.**

R.P. No.5 of 2013

K. Sadasivam Petitioner

Vs.

The Kothapurinatham Primary
Agricultural Co-operative
Credit Society Ltd., No. P.130,
Kothapurinatham, Puducherry,
Rep. by the Administrator Respondent

ORDER

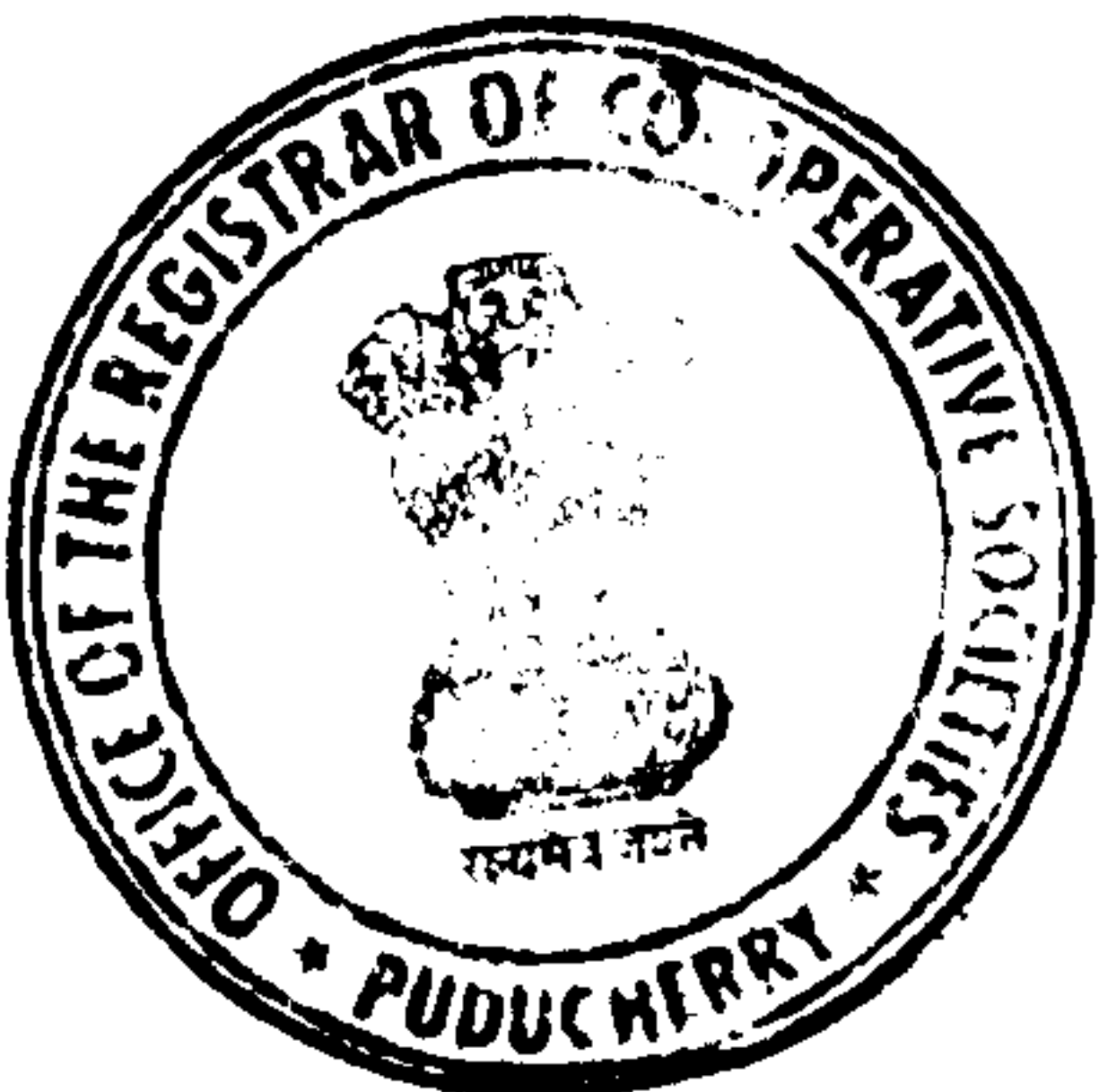
*(Issued under Section 141 of the Pondicherry Co-operative Societies Act,
1972 read with Rule 104 of the Puducherry Co-operative Societies
Rules, 1973)*

This revision petition, filed under Section 141 of the Puducherry Co-operative Societies Act, 1972, is focused against the order dated 7.10.2011 passed by the President of the Kothapurinatham Primary Agricultural Co-operative Credit Society Ltd., No. P. 130 (for easy reference 'the society') imposing the punishment of dismissal on the petitioner herein from the post of Manager of the said society.

CHALLENGE

2. Castigating the order as misuse of power, arbitrary and unfair the petitioner filed this revision petition, inter alia, on the following grounds:

(i) He was appointed as Manager of the society in 1990 and continued to work for more than 20 years without any blemish. When the term of office of the President of the society was about to expire in December 2011, the President without consulting the board or Co-operative Department or the



financing bank, hastily ordered an enquiry by a person outside the State and passed the impugned order of dismissal from service.

(ii) The impugned order came to be passed against the petitioner as he did not support the misdeeds of the President of the society.

(iii) The President of the society placed him under suspension, vide order dated 7.2.2011 and directed him to handover charges to the former, contrary to the provisions of the bye-laws of the society.

(iv) A charge memorandum was issued on 9.6.2011 without the approval of the committee. In spite of his request, the President refused to supply the documents on which the charge memorandum was based and also the list of witnesses.

(v) The charges were vague and unsustainable.

(vi) The petitioner submitted his explanation without being allowed to peruse the documents he sought for.

(vii) On receipt of his reply to the charge memorandum, the President ordered for a domestic enquiry on 8.8.2011 and appointed a person from Tamil Nadu as enquiry officer. No intimation on the appointment of enquiry officer was issued to him.

(viii) The enquiry was held in haste and contrary to the established procedure. It was completed on 19.9.2011 without the participation of the petitioner in the proceedings.

(ix) Based on the enquiry report, the President of the society issued show cause notice to the petitioner. Without considering his explanation, the impugned order came to be passed on 7.10.2011.

(x) The petitioner was denied subsistence allowance during the period of suspension which was unjust.

3. As the petitioner was working as a Manager of the society he could not file an industrial dispute. When he filed a writ petition, the Hon'ble High Court of Madras advised him to approach the appropriate forum for relief. The Co-operative Tribunal has only appellate jurisdiction. In the above



premises, as advised by the Co-operative Department, he filed this revision petition invoking Section 141 of the Act. A petition was also filed to condone the delay in filing this revision petition.

4. His prayer in this revision petition is to reinstate him as Manager of the society by setting aside the impugned order, grant him all his arrears of pay and other monetary benefits.

THE DENIAL

5. The stand put forth by the petitioner was combated by the respondent. The respondent would pyramid his arguments which could be succinctly and precisely be set out thus:

(i) Right from the very beginning the petitioner was not co-operating in the proceedings initiated against him. The charges were enquired properly and the enquiry officer held him guilty of those charges. The charges were not contested by the petitioner satisfactorily. The President of the society passed the final speaking order imposing the penalty of dismissal from service on the petitioner.

(ii) The revision petition is not maintainable as it has not been filed within the period of limitation of three months from the date on which the proceedings of dismissal was communicated to the petitioner.

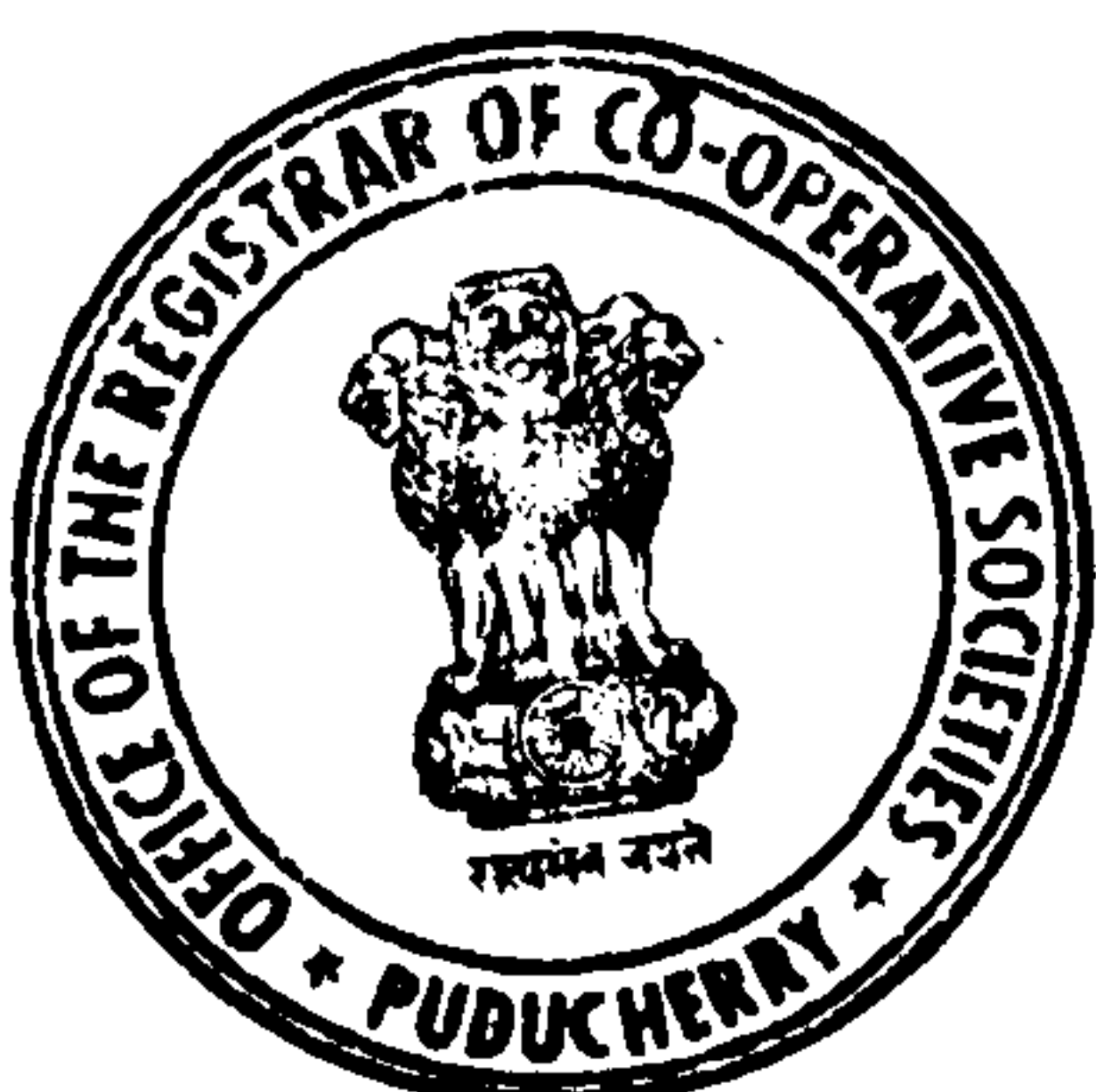
(iii) The principles of natural justice have been strictly followed in every respect and there is no infraction of legality, regularity or propriety to warrant revision of the impugned order.

6. For the reasons stated above, the respondent submitted that there was no merit in the revision petition and sought for its dismissal.

FOR AND AGAINST

7. When the revision petition came up for hearing before me the petitioner was permitted to be represented by Thiru S. Elumalai. The respondent was present.

8. The bottom line contention of the averment of the petitioner is that the whole enquiry was a stage managed show and with a vindictive attitude the



President of the society passed the impugned order. He submitted that the copies of the documents sought for were denied to him and hence he could not effectively meet the charges. As time was running out, he submitted his explanation without access to the documents. His explanation was based on his memory of the events narrated in the charge memorandum. He has no information about the appointment of enquiry officer. The notices stated to have been sent by the enquiry officer, directing him to appear for the enquiry, did not reach him at all. But in the enquiry report it was alleged as if they were sent to him by registered post and he refused to receive them. If such was the fact, it is for the respondent to prove such averment by producing the returned covers.

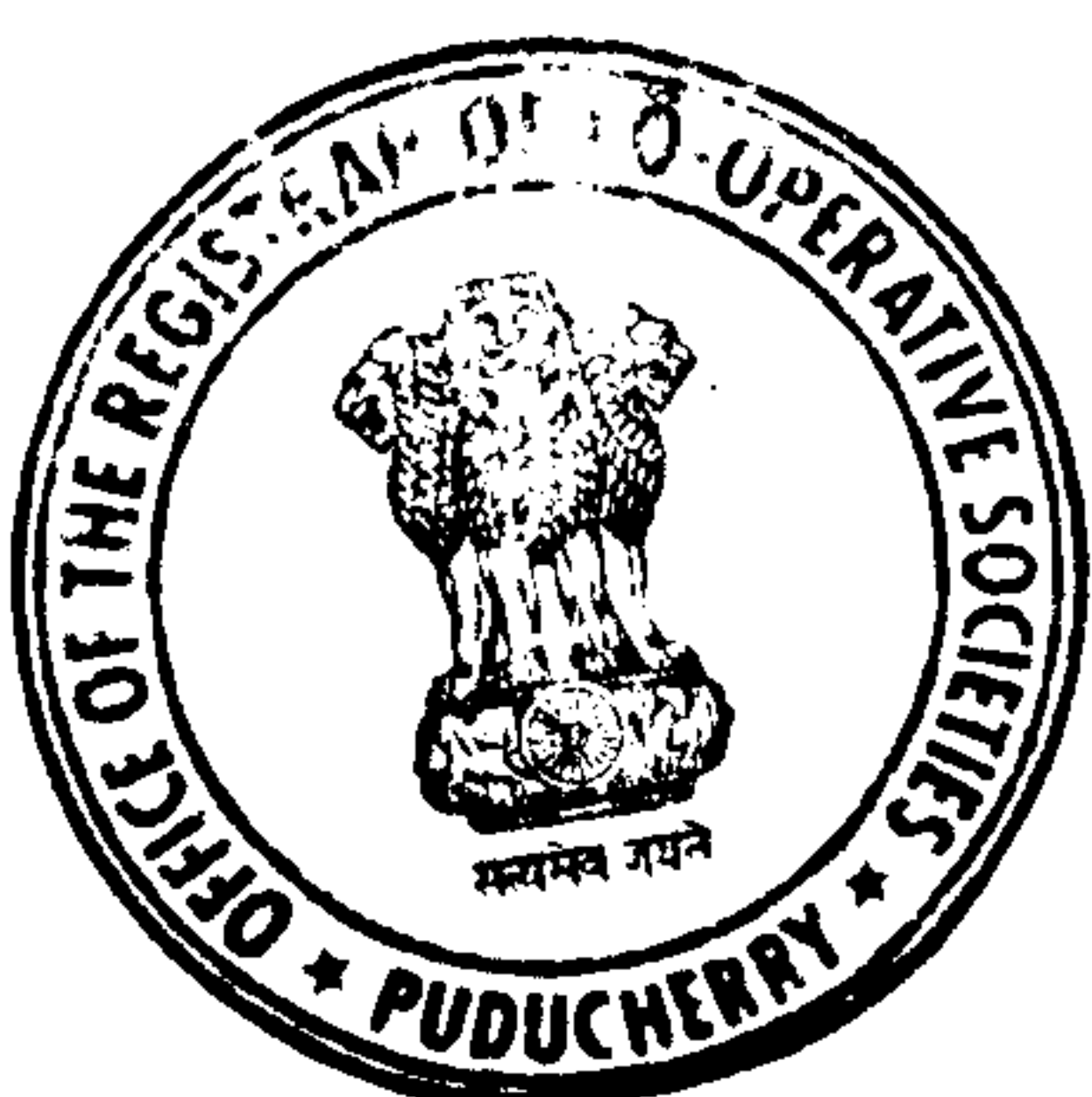
9. The petitioner averred that no subsistence allowance was paid to him during the period of suspension. Citing some lame reasons, such allowance was denied to him. Denial of subsistence allowance is contrary to labour legislations and he could not fight against the might of the President of the society.

10. The petitioner submitted further that the procedure spelt out in Regulation No. 31(1) & (2) of the subsidiary regulations governing the service conditions of the employees of the society was given a complete go-by as he was deprived of the opportunity even to peruse the documents specified in the charge sheet.

11. During the course of arguments, the petitioner did not press for his claims that before issuing the charge sheet and passing the impugned order, the President did not consult the committee or the financing bank or the Registrar and on the appointment of enquiry officer from Tamil Nadu.

12. The petitioner conceded that an notice was issued by the enquiry officer in 'Dina Malar' dated 26.8.2011 intimating that an enquiry into the charges would be held on 9.9.2011, but this notice came to his knowledge belatedly and he could not participate in the enquiry.

13. The respondent, on the other hand, could not deny the charges of the petitioner. He was given time to refute the charges and produce the documents to show that the enquiry was held by following due procedure.



14. When the revision petition came up for hearing today, the respondent could not substantiate and fortify that the petitioner was duly informed on the appointment of enquiry officer. He could not prove by documents that notices were sent to the petitioner by the enquiry officer, directing the petitioner to participate in the enquiry and such postal covers were returned with postal endorsement 'refused' or 'not claimed'.

15. Regarding the claim of the petitioner for subsistence allowance, it was brought to my notice that the President of the society has sent a memorandum to the petitioner on 18.7.2011 wherein, inter alia, it was indicated in the order of suspension dated 7.2.2011 that during the period of suspension the head quarters of the petitioner would be Kothapurinatham. But it was brought to the notice of the society that during the period of suspension the petitioner did not reside at Kothapurinatham. Further he has not furnished the non employment certificate and therefore he was not entitled for subsistence allowance.

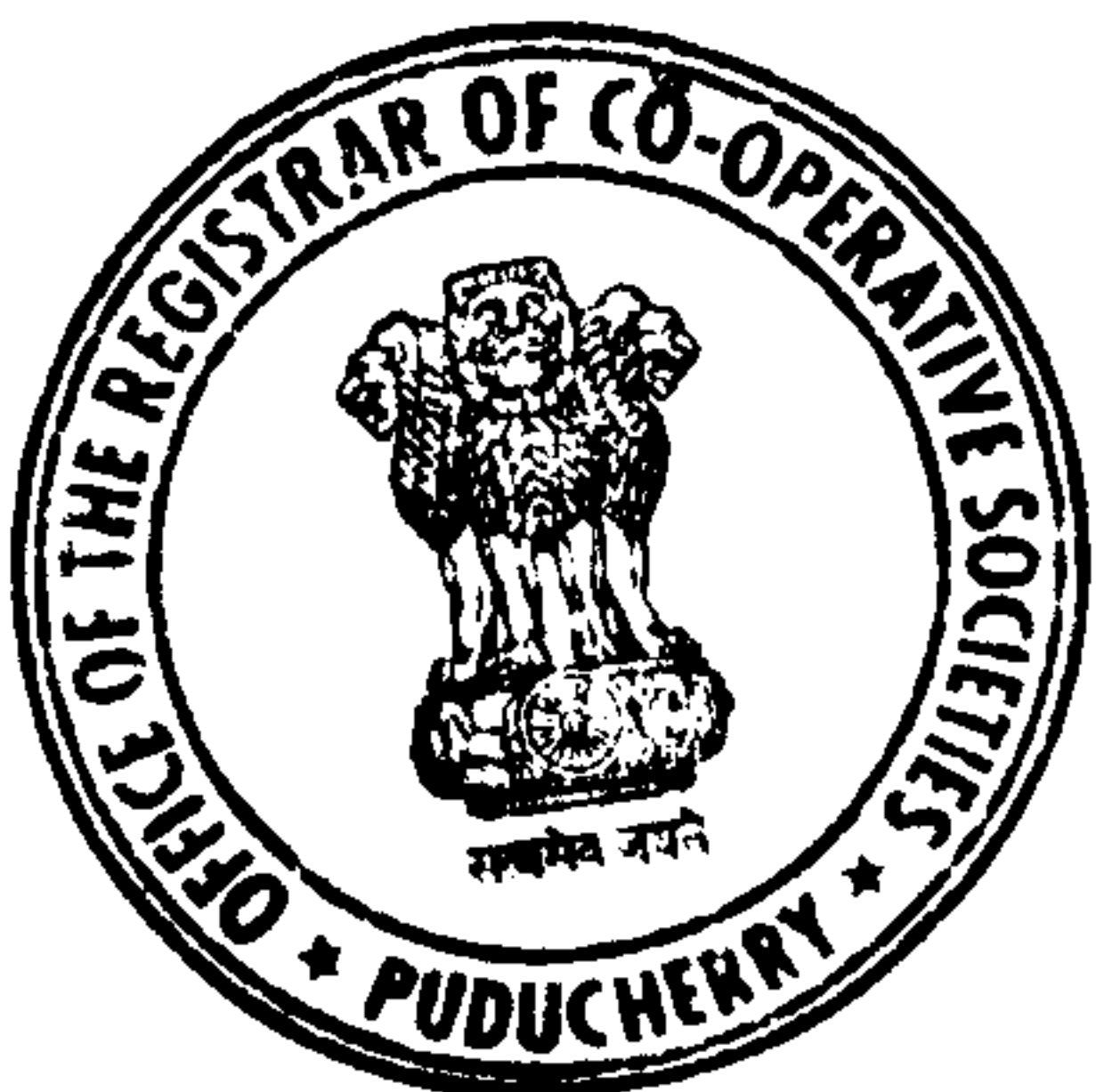
16. The petitioner submitted that he is residing in Nainarmandapam and he used to go the society daily from his home. He cannot shift his home to Kothapurinatham just because the President has indicated that during the period of suspension the headquarters would be Kothapurinatham. This is totally unheard of. Further there was no communication from the society seeking him to furnish the non-employment certificate.

THE SEMINAL ISSUE

17. From the averments and counter averments and the contentions of the rival parties, the seminal question that emanates for consideration is *"whether the procedure employed by the President of the society in conducting the enquiry against the petitioner was in accordance with the cannons of justice and whether the impugned order warrants interference?"*

DECIDING THE QUESTION

18. Though elaborate submissions have been made on various factual issues, the crux of the controversy lies in very narrow compass. The petitioner has repeatedly sought for copies of documents cited in his charge sheet, vide letters dated 15.6.2011 and 12.7.2011. To these letters the President of the society, vide his letter dated 18.7.2011, permitted him to



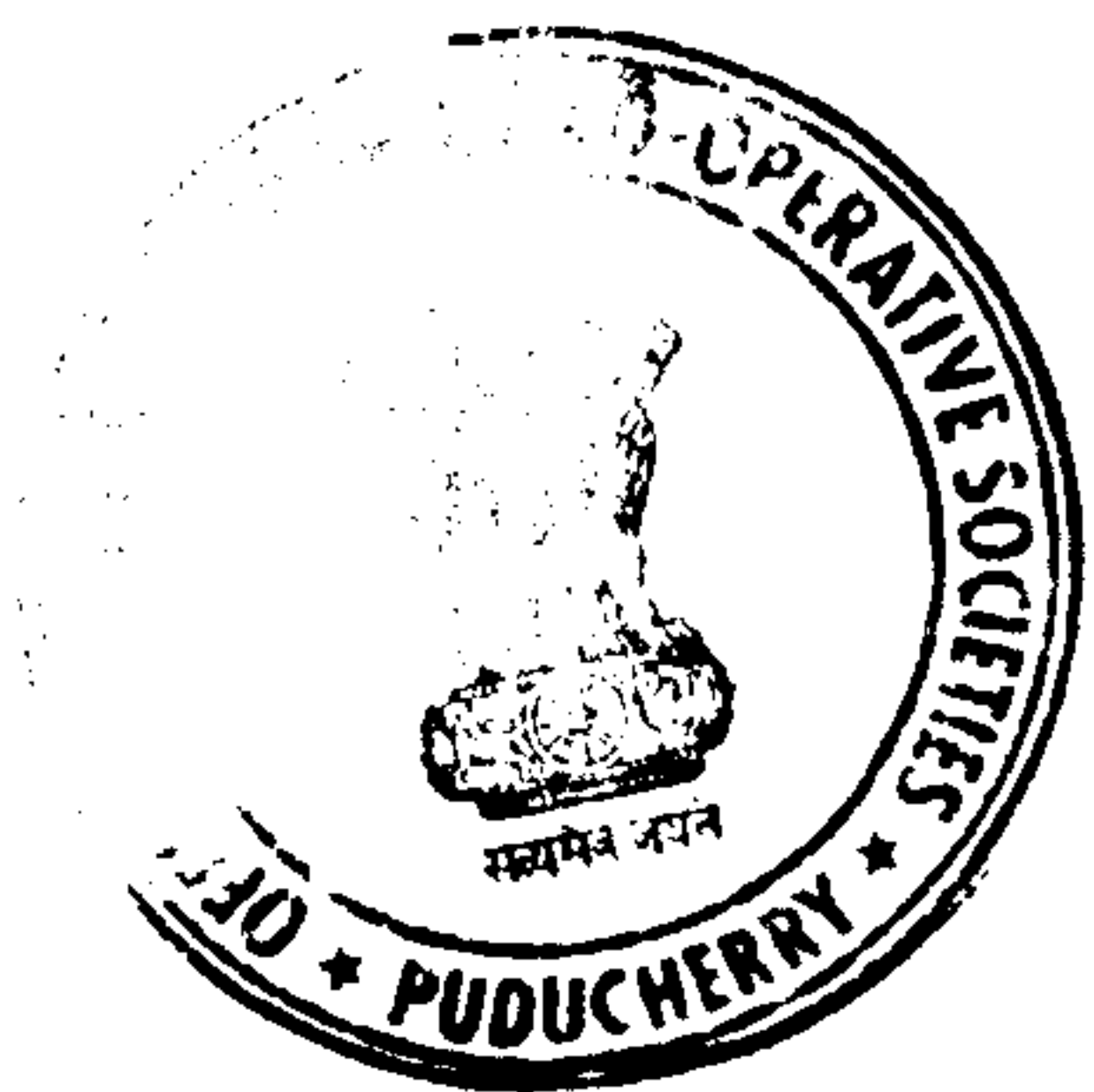
inspect these documents during office hours before the Manager (in-charge) and furnish his explanation within 15 days. The petitioner, in his letter dated 3.8.2011 stated that when he visited the society on 18.7.2011 and 19.7.2011 the Manager was on leave and without the approval of the President the documents were not shown to him. Hence the petitioner was constrained to furnish his explanation based on his memory of the documents.

19. I cannot appreciate the stand taken by the President of the society in this issue. When the copies of the documents on which reliance was placed by the President to indict the petitioner was requested by the petitioner, it is beyond comprehension as to why the copies could not be provided. No real opportunity was provided even to inspect the documents. The petitioner has gone on record to express his inability to contest the charges effectively.

20. A perusal of the subsidiary regulation No.31(1) & (2) would clearly show that the disciplinary authority is duty bound to allow perusal of all relevant documents which were cited against the employee to buttress the charges. It is only when the charge sheet together with documents is supplied that the employee can be said to have had an effective and reasonable opportunity to present his written statement of defence. The petitioner reiterated his utter helplessness in making an effective reply to the show cause notice as he had not been supplied the relevant documents in spite of his representation and reminder.

21. It is quite apposite and appropriate to quote the following observations of the Hon'ble Apex Court in *State of U.P. and others vs. Saroj Kumar Sinha*, Civil Appeal No. 254 of 2008 dated 2.2.2010:

"28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from



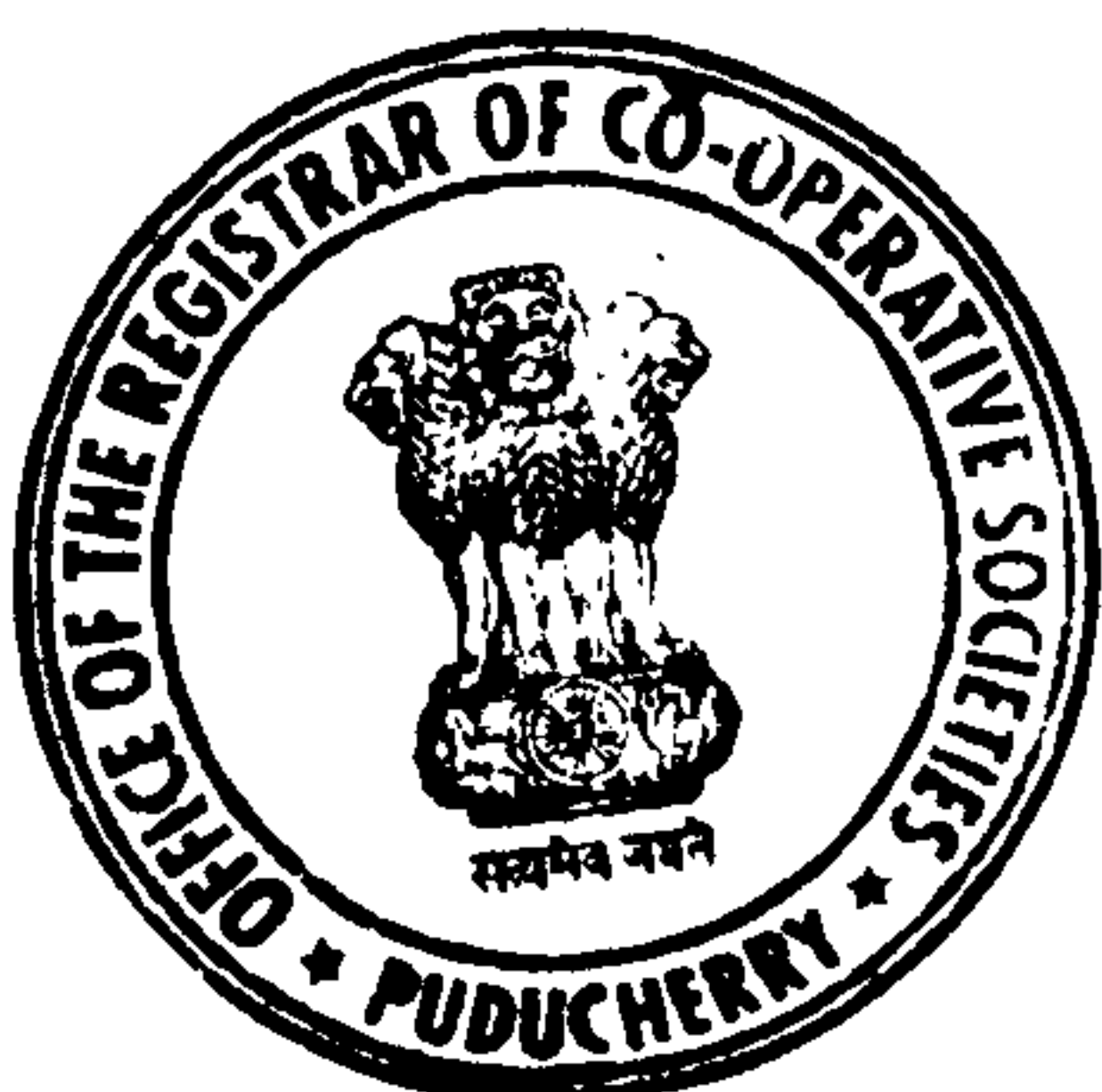
service. In the case of Shaughnessy v. United States, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

29. The affect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

22. In *State Bank of India and others vs. D.C.Aggarwal and another* reported in (1993) 1 SCC 13, the Hon'ble Apex Court has held that the disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself.

23. Another infraction I observed in the conduct of enquiry is that the respondent could not fortify that the petitioner was informed on the appointment of enquiry officer to go into the charges against the petitioner. The respondent could not produce the returned postal covers to prove that

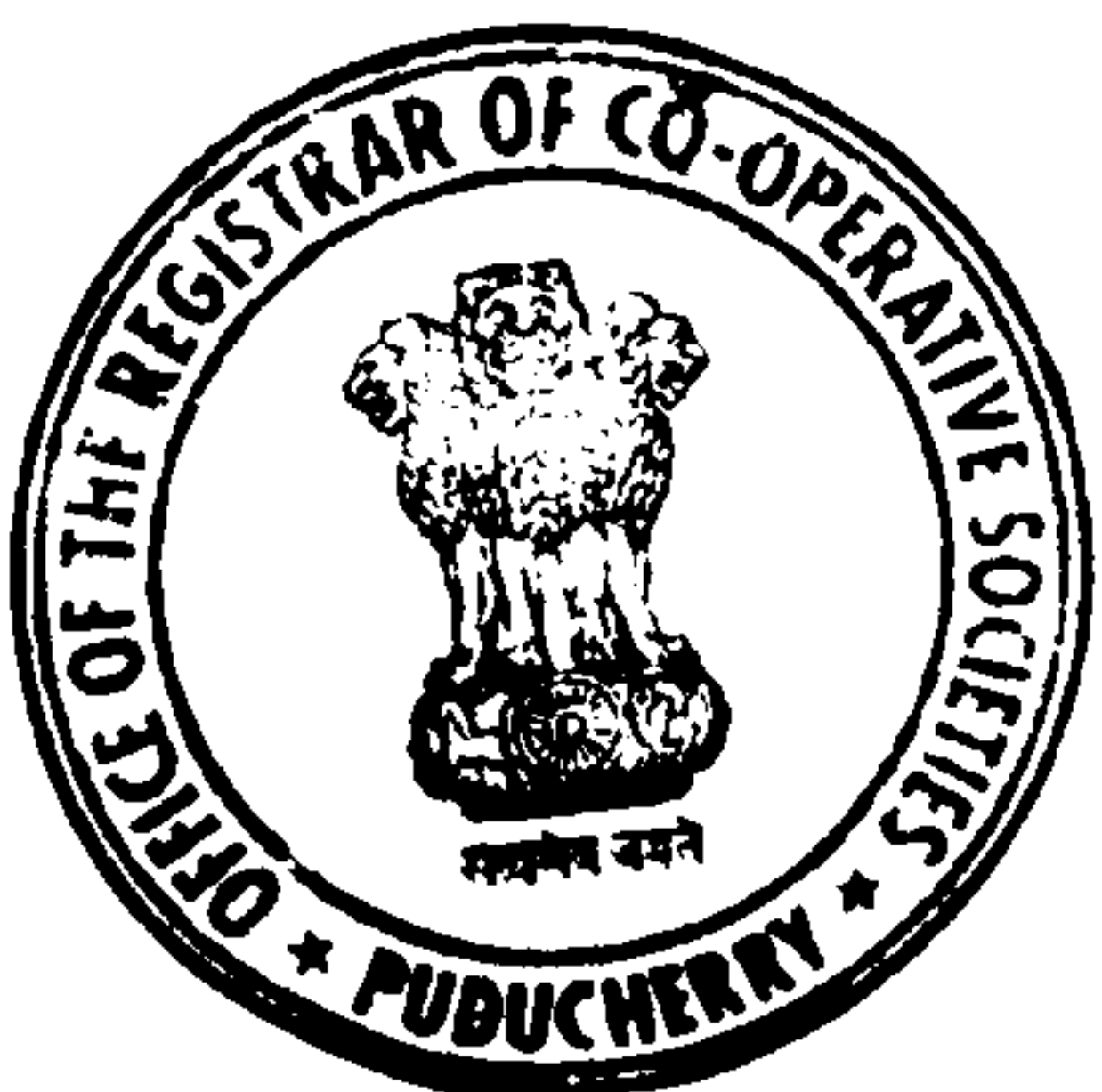


enquiry notices were sent to the petitioner and they were refused by him. It is the plea of the petitioner that without making an attempt to intimate him on the conduct of enquiry, the reported enquiry was held behind his back and thus he was prevented from participating in the enquiry to prove his innocence. When a charge was made against the respondent that he has not put the petitioner on notice, it is for the respondent to counter the charge. But unfortunately the respondent could not plead much less to substantiate that due procedure was employed in the matter of conduct of enquiry. In such a case I have draw an adverse inference against the respondent.

24. With regard to the contention of the respondent that the revision petition was filed beyond time and hence cannot be maintained, I would like to clarify that in the past no revision petition was entertained by the Registrar on the disciplinary action taken by the management against the employees of the societies. It is only after the dictum of the Hon'ble High Court of Madras in *J. Radhakrishnan vs. Union of India and others*, W.P. No.10806 of 2013 dated 25.4.2013, wherein it was held that Section 141 of the Puducherry Co-operative Societies Act, 1972 is pari materia with Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, revision petition on the orders of the officers of the societies are taken up for revision. The Hon'ble High Court observed in the above case that the power to entertain the revision cannot be said to be excluded in such cases. As an employee of the co-operative societies, the petitioner has very limited option. If revision is also shut out, the petitioner will be left with no remedy.

25. In this case the petitioner was knocking various doors, including the Hon'ble High Court. No relief was possible to him. When he made a representation he was advised to file the revision petition, invoking Section 141 of the Act, in tune with the judgment of the Hon'ble High Court of Madras [cited supra].

26. The reason adduced by the President to deny the subsistence allowance to the petitioner is illogical and farfetched. The petitioner cannot be expected to stay at Kothapurinatham, which was declared as the headquarters of the petitioner by the President of the society, during the period of suspension, leaving his home at Nainarmandapam. To creep up this view I derive assistance from a judgment of the Hon'ble Supreme Court.

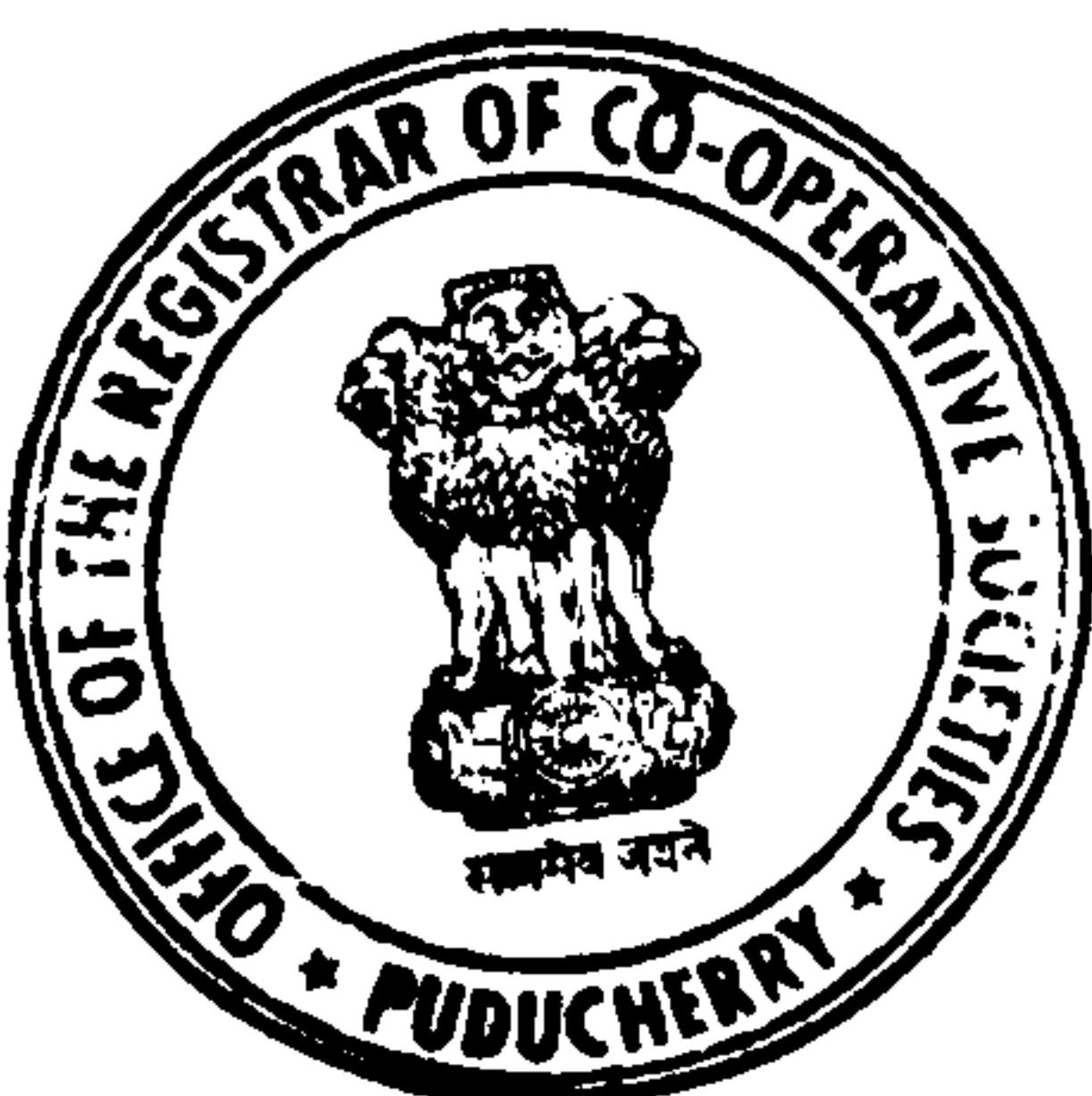


In *State of Bihar and others vs. Arbind*, AIR 2013 SC 3329, it was held that denial of subsistence allowance on the ground that the suspended employee had not stayed at headquarters despite a stipulation in the order of suspension is not proper in the absence of rule requiring suspended employee shall remain at headquarters. In this case denial of subsistence allowance was a certain disadvantage to the petitioner.

THE DECISION

27. In the aforesaid premises it is quite apparent that the disciplinary proceedings initiated against the petitioner was conducted in haste and in complete disregard to the principles of natural justice and established procedures. The contentions/allegations of the petitioner are not controverted by the respondent. No evidence, worth its name, was let in by the respondent to show that fair enquiry was conducted. Procedural wrangles are writ large on the impugned order. It does not stand to legal scrutiny and hence the petitioner is entitled to succeed. The impugned order deserves to be quashed and I order accordingly. In the ultimate analysis I conclude and hold that:

- (i) The order dated 7.10.2011 passed by the President of the society imposing the punishment of dismissal on the petitioner is set aside;
- (ii) From 7.2.2011 to 7.10.2011 the petitioner is entitled to full salary and bonus and the period shall be treated as on duty;
- (iii) The respondent shall take back the petitioner to service forthwith and issue an order to this effect within a week from the date of receipt of this order. The petitioner shall report for duty within a week from the date of receipt of the order from the respondent;
- (iv) The petitioner shall not be entitled to back wages from 8.10.2011 till the date of his re-joining in the society;
- (v) The period stated in (iv) above shall, however, be counted for pay fixation, increment and seniority.

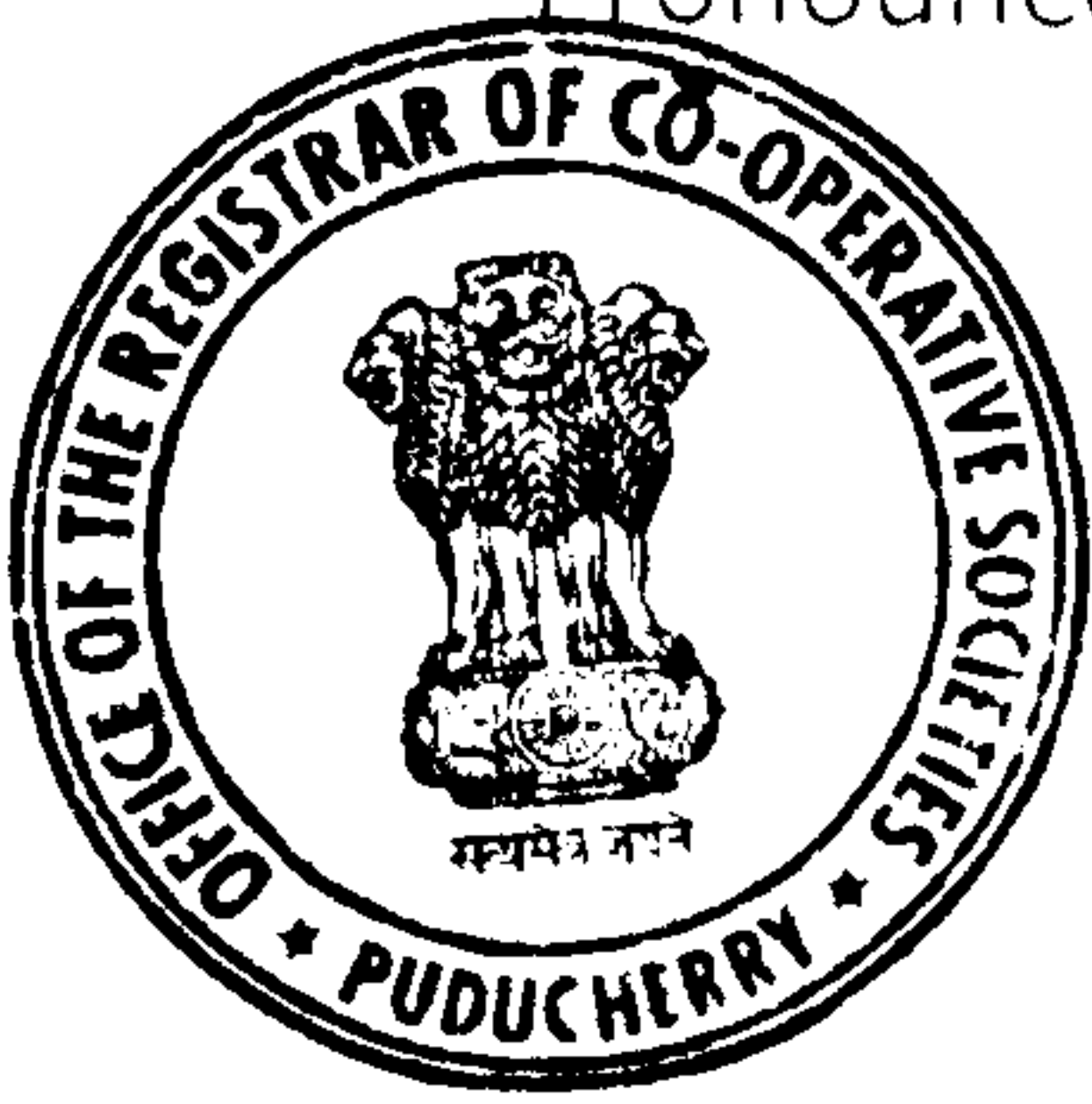


(vi) It is clarified that this order is passed without going into the merit of the charges levelled against the petitioner. Therefore, this order will not preclude the respondent from initiating disciplinary proceedings de-nova against the petitioner in the manner known to law, if so advised. No observation made in this order can be taken as an observation on the merit of the charges.

28. Both the parties have consented to the above propositions of the order and their consent is recorded.

29. The revision petition stands allowed to the extent indicated above. No costs.

Pronounced in the open forum on the 3rd day of December 2013.




[P. PRIYTARSHNY]
REGISTRAR OF CO-OPERATIVE SOCIETIES

To

The parties