KARNATAKA HIGH COURT JUDGEMENTS

Related to co-operative sector

Volume-3

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KARNATAKA HIGH COURT JUDGEMENTS

RELETED TO CO-OPERATIVE SECTOR

Collected, compiled and edited

By

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and

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ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿ ನಿ., ಬೆಂಗಳೂರು

ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳು

ಪ್ರಕಾಶಕರು : ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು,
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Authors Ackwoledjement

This book is are in continuation of the first publications in August 2015 by the Karnataka State Souhardha Federal Cooperative, titled "Karnataka High Court Judgment – related to Co-operation sector. These judgments will be useful to the department of cooperation, cooperatives, cooperative societies and general public. This is an attempt, that all cooperative related cases in compiled form, so that there is no need to search for cooperative decisions in Air, ILR, KLJ etc.

This work has no originality. The compilation is to provides important paras of the judgments, where in major observation are made by the Honorable judges. An attempt is also made to collect some supreme court decisions in addition to Karnataka High Court and other High Courts in India.

We are very greatful to the Karnataka States Souhardha Federal Cooperative for taking the initiatives in publishing this books. Personally we are thankful to the Sri. G. Nanjanagouda, Vice-president Sri. A. R. Prasanna Kumar, Managing Director Sri.Sharanagowda G Patil. We are specially thankful for justice M.Rama Jois for his appriciation wards. We are also thankful to justice Shivaraj Patil, former supreme court judge for his fore ward for earlier books.

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C.N.Parashivamurthy
C.P.Dayanandamurthy

In memory of

Smt. Saroja Parashivamurthy

ಮುನ್ನುಡಿ

ಶ್ರೀಯುತ ಸಿ.ಎನ್. ಪರಶಿವಮೂರ್ತಿಯವರು ಸಹಕಾರಿ ಇಲಾಖೆಯ ಹಿರಿಯ ನಿವೃತ್ತ ಅಪರ ನಿಬಂಧಕರು. ಮೈಸೂರಿನಲ್ಲಿ ವಾಸವಾಗಿದ್ದಾರೆ. ಸಹಕಾರಿ ಕಾಯ್ದೆಗಳ ರಚನೆಗೆ ವಿಶೇಷವಾಗಿ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಕಾಯ್ದೆ ರಚನೆ ಹಾಗೂ ಕಾಯ್ದೆಯು ಜಾರಿಗೆ ಬರುವಲ್ಲಿ ಪ್ರಮುಖ ಪಾತ್ರವನ್ನು ನಿರ್ವಹಿಸಿದ್ದಾರೆ. ಸಹಕಾರ ಕಾಯ್ದೆಗಳು ಹಳೆಯದಾಗಿರಲಿ ಹೊಸದಾಗಿರಲಿ ಯಾವುದೇ ಕಲಂನ ನಿರ್ವಹಣೆಯಲ್ಲಿ ವಿವರಣೆಗಳನ್ನು ನೀಡಿ ಕಾನೂನಿನ ಸಮಸ್ಯೆಗಳಿಗೆ ಪರಿಹಾರ ನೀಡುತ್ತಲಿರುವುದು ಮತ್ತು ಸಹಕಾರಿ ಕಾನೂನುಗಳ ಕಲಂನ ವ್ಯಾಖ್ಯಾನಗಳು ಸೇರಿದಂತೆ ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಅನೇಕ ವಿಷಯಗಳ ಬಗ್ಗೆ ನಿರಂತರ ಲೇಖನಗಳನ್ನು ಬರೆದು ಸಹಕಾರಿಗಳಿಗೆ ಮಾರ್ಗದರ್ಶನ ಮಾಡುತ್ತಿರುವುದು ಸಹಕಾರಿಗಳಿಗೆಲ್ಲ ಸಂತೋಷ ಹಾಗೂ ಹೆಮ್ಮೆಯ ವಿಷಯವಾಗಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಹಿರಿಯ ಸಹಕಾರಿಗಳು ನಿವೃತ್ತ ಸಹಕಾರಿ ಇಲಾಖಾಧಿಕಾರಿಗಳು ಬರೆದಿರುವ ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಬಗ್ಗೆ ಮತ್ತು ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಪುಸ್ತಕಗಳನ್ನು ಆಯ್ಕೆ ಮಾಡಿ ಪ್ರತಿ ವರ್ಷ ವಾರ್ಷಿಕ ಸಾಮಾನ್ಯ ಸಭೆಯ ದಿನದಂದು ಬಿಡುಗಡೆ ಮಾಡುತ್ತ ಬಂದಿದೆ. ಸಹಕಾರಿಗಳಿಗೆ ಈ ಪುಸ್ತಕಗಳ ಮೂಲಕ ಸಹಕಾರ ಕ್ಷೇತದ್ರ ಬಗ್ಗೆ ಜ್ಞಾನವನ್ನು ಹೆಚ್ಚಿಸುವ ಕಾರ್ಯ ಮಾಡುತ್ತಿದೆ. ಈ ಕಾರ್ಯವನ್ನು ಅನೇಕ ಸಹಕಾರಿಗಳು ಹಾಗೂ ಅಧಿಕಾರಿಗಳು ಕೂಡ ಮೆಚ್ಚಿರುವುದು ಸ್ವಾಗತಾರ್ಹ ಹಾಗು ಸಂಯುಕ್ತ ಸಹಕಾರಿಗೆ ಹೆಮ್ಮೆ ತಂದಿದೆ.

ಪ್ರಸ್ತುತ ಕರ್ನಾಟಕ ಆದಾಯ ತೆರಿಗೆ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ ಇಂಗ್ಲೀಷ ಭಾಷೆ, ಕರ್ನಾಟಕ ಹೈಕೋರ್ಟ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ, (ಇಂಗ್ಲೀಷ ಭಾಷೆ) ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಕಾಯ್ದೆ ಆಡಳಿತ ಕೈಪಿಡಿ ಕನ್ನಡ, ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಶ್ರೇಷ್ಠ ಹಾಗೂ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ, ಕನ್ನಡ ಭಾಷೆ ಪುಸ್ತಕಗಳನ್ನು ಅತ್ಯಂತ ಶ್ರದ್ಧೆಯಿಂದ ಸಿದ್ಧಪಡಿಸಿದ್ದಾರೆ.

ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಅಭಿವೃದ್ಧಿಗೆ ಸಹಕಾರ ತತ್ವಗಳಲ್ಲಿ ಪ್ರಮುಖವಾಗಿರುವ ಸಹಕಾರ ಶಿಕ್ಷಣ ಹಾಗೂ ಪ್ರಚಾರ ಮತ್ತು ಸಾಮಾಜಿಕ ಕಳಕಳಿ ಎಂಬ ತತ್ವಗಳ ಅನುಷ್ಠಾನದಲ್ಲಿ ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರು ಈ ನಾಲ್ಕು ಪುಸ್ತಕಗಳನ್ನು ಸಿದ್ಧಪಡಿಸಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಗೆ ಮುದ್ರಣ ಹಾಗೂ ಪ್ರಕಾಶನಕ್ಕಾಗಿ ಒದಗಿಸಿರುವುದಕ್ಕಾಗಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಆಡಳಿತ ಮಂಡಳಿಯ ಪರವಾಗಿ ಹಾಗೂ ವೈಯಕ್ತಿಕವಾಗಿ ಮತ್ತು ರಾಜ್ಯದ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳ ಪರವಾಗಿ ಹೃದಯಪೂರ್ವಕ ಕೃತಜ್ಞತೆಗಳನ್ನು ಸಲ್ಲಿಸುತ್ತೇನೆ.

ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಆಸಕ್ತ ಸಹಕಾರಿಗಳು ಸಹಕಾರಿ ಇಲಾಖಾಧಿಕಾರಿಗಳು ಸಹಕಾರಿ ಕಾರ್ಯಕರ್ತರು, ಈ ಎಲ್ಲ ಪುಸ್ತಕಗಳ ಪ್ರಯೋಜನವನ್ನು ಪಡೆದು ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಬಗ್ಗೆ ತಮ್ಮ ಜ್ಞಾನವನ್ನು ಹೆಚ್ಚಿಸಿಕೊಳ್ಳಲು ಸಾಧ್ಯವಾಗುತ್ತದೆ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಹಾಗೂ ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರ ಪ್ರಯತ್ನವೂ ಸಾರ್ಥಕವಾಗುತ್ತದೆ.

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72	200046/2017	Bidar Kisan Shakkar Karkhana Limited, represented by its Chairman and Managing Director, Mohammad Naseemuddin Patel S/o Mohammad Nizamuddin Patel Bidar, Humnabad v South India Corporation Limited, represented by its Assistant Manager and Authorised Signatory, P. L. Muthaiah S/o P. L. M. Palaniappan, Chennai and another, 2018 Indlaw KAR 2629	B. Veerappa	147-149
73	15388/2018 (CS-RES)	Keshava M. Kotian S/o Late Menkad Thinghalaya v Assistant Registrar of Co-Operative Societies, Recovery Officer, Kundapura and others, 2018 Indlaw KAR 4527	B.V. Nagarathna	150-150
74	13578 of 2018 (CS-RES)	Keshava N Kotian S/o Late Menkad Thinghalaya v Assistant Registrar of Co-Operative Societies, Udupi and others, 2018 Indlaw KAR 4876	B.V. Nagarathna	151-151
75	22110 of 2014 (CS-EL/M)	Jayamuthu S/o Chikkenegowda v State Election Commission for Co-operation Karnataka and others, 2015 Indlaw KAR 6692; 2016 (1) KarLJ 232	Ravi Malimath	152-154
76	32762/2015 (CS-EL/M)	Kalyankumar S. Shettar S/o Shantappa v State of Co-Operative Election Commission, Bengaluru, Represented by its Secretary and others, 2015 Indlaw KAR 6170; 2016 (1) KarLJ 367	Ravi Malimath	154-157

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78	13485 of 2015 (CS-EL/M)	Mulabagilu Taluk Produce, Co-operative Marketing Society Limited, Kolar and others v State of Karnataka, Represented by its Chief Secretary, Bangalore and others, 2015 Indlaw KAR 8657	Anand Byrareddy	163-164
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81	104673/2016 and 104700-104702/2016	Ayyappa Ningappa Gokannavar Director of Primary Agriculture Credit Co-operative Society Yadravi, Belagavi and others v State of Karnataka, Represented by Secretary, Bengaluru and others, 2016 Indlaw KAR 4921	P.S. Dinesh Kumar	167-168
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83	200494/2016 & 200498-502/2016 (CS-EL/M)	Jagadish S/o Manikappa and others v State of Karnataka, Department of Co-operation, by its Secretary, Bangalore and others, 2016 Indlaw KAR 6252	B.S. Patil & B.V. Nagarathna	169-170

84	14077 of 2015 (CS-RES)	Kenchattahalli Milk Producers Co-operative Society Limited, Represented by its Chief Executive Officer, G. R. Vasantha, Hassan Taluk and others v Government of Karnataka, Represented by Principal Secretary, Bengaluru and others, 2016 Indlaw KAR 2198	Anand Byrareddy	170-172
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87	44273 of 2015 (CS-RES)	Someswara Farmers Co-operative Spinning Mill Limited v State of Karnataka, Department of Co-operation and others, 2016 Indlaw KAR 510	Anand Byrareddy	173-175
88	15127/2012 (CS - RES)	Bogeshwara Consumer Cooperative Society Limited, represented by Its Secretary Anand and another v Joint Registrar of Co-operative Societies Mysore Division, Mysore and others, 2017 Indlaw KAR 5779	S.N. Satyanarayana	175-176
89	201669/2017 (CS-EL/M)	Chand Pasha S/o Abdul Nabi v Primary Agriculture Development Co-operative Society, by Its Chief Executive Officer Manvi, Raichur and others, 2017 Indlaw KAR 2934	B. Veerappa	176-177
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105	13202 of 2016 (CS-RES)	Vishwabharathi House Building Co-operative Society Limited, Represented by its Vice-president Uma Maheshwara, Bangalore v State of Karnataka, Represented by its Secretary Co-operation Department, Bangalore and others, 2016 Indlaw KAR 2261	Anand Byrareddy	204-208
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107	1520/2017 C/w C. R. L. P. Nos. 1521/2017 and 1522/2017	Kum. G. Saishivabhagya D/o Late G. N. Gowraiah v State Public Prosecutor, High Court of Karnataka, Cottonpet Police, Bengaluru and another, 2017 Indlaw KAR 3573	Aravind Kumar	211-214
108	103526 of 2018 (CS-RES)	Sarvada Multi Purpose Co-operative Society Limited, represented by its Chief Executive Officer, Dhananjay S/o Rajaram Patil, Belagavi v Deputy Registrar of Co-operative Societies, Belagavi and others, 2018 Indlaw KAR 8028	Dr. H.B. Prabhakara Sastry	214-216
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112	109194-109213 of 2014 (CS-RES) with W.P. Nos. 112106-112108 of 2014 (CS-RES)	Vijayalakshmi Souharda Sahakari Limited and another v State of Karnataka and another, 2015 Indlaw KAR 2684	Anand Byrareddy	219-224
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122	2313-2340/2015 (S-RES)	B. P. Kumaraswamy S/o P. N. Papanna and others v Bangalore, Bangalore Rural & Ramanagara District Co-Op. Central Bank Limited and others, 2015 Indlaw KAR 294; 2015 (3) KarLJ 15	B. V. Nagarathna	244-246
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128	200258/2016 (CS-RES)	Gulbarga-Bidar Co-Operative Milk Producers' Union Limited, represented by its Managing Director Dr. Bukka Mallikarjun v Manikappa S. S/o Adivappa and another, 2016 Indlaw KAR 5554	B.S. Patil & B.V. Nagarathna	254-256
129	23179 of 2015 (CS-RES)	Janatha Bazar by its General Manager v State of Karnataka by its Secretary Department of Co-Operation, Bangalore and others, 2016 Indlaw KAR 5242	Ashok B. Hinchigeri	256-258

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133	100345 of 2016 [S- RES]	Mahesh S/o Shankarnarayan Hegade v State of Karnataka, Represented by its Secretary and others, 2016 Indlaw KAR 1802	B.S. Patil	266-268
134	1115/2007 (L - RES) c/w W. P. Nos. 19077/2006, 4082/2007 AND 4083/2007 (L - RES)	Managing Director, Karnataka Milk Federation Limited, Bangalore and others v KMF Employees Federation and another, 2016 Indlaw KAR 102; 2016 (2) KarLJ 512	A.S. Bopanna	268-270
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136	19076-77/2014 C/W W. P. No. 39095/2014 (S-RES)	Ravikumar C. S/o Late M. Chikkabasavanna and another v Karnataka Co-operative Milk Federation, by its Managing Director, Bangalore and another, 2016 Indlaw KAR 4852; 2017 (2) KarLJ 162	B.S. Patil	274-276

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188	44176 of 2014 (CS-RES)	Scheduled Caste (Harijan), House Building Co-operative Society Limited, Bangalore Represented by its Chief Executive Officer v State of Karnataka, Department of Co-operation, Bangalore Represented by its Principal Secretary and others, 2016 Indlaw KAR 2000	Anand Byrareddy	358-360
189	49491 of 2015 (CS-RES), 38532 of 2015 (CS-RES)	Siddamma W/o Late S. K. Narasimhaiah v Bhavani Housing Co-operative Society Limited by its Secretary PH Dayanand, Bangalore and others, 2016 Indlaw KAR 3068; 2016 (4) KarLJ 302	Anand Byrareddy	360-362
190	33720/2016 (CS-RES)	Harish Shetty K. S/o Late S. K. Shetty v Bangalore City Employees Housing and Social Welfare Co-operative Society Limited, Bangalore, represented by Its President and others, 2017 Indlaw KAR 72	B.S. PATIL	363-365
191	51956-958/2016 (CS-RES)	Krishnamurthy Subramanyam S/o Late Subramanyam and others v Samyukta Bharath Housing Co-operative Society Limited, represented by its Assistant Secretary, Bangalore and others, 2017 Indlaw KAR 168	B.S. Patil	365-366
		Souharda		
192	68744 of 2010 (CS-Res)	Fakkirappa Basappa Sindagi v Joint Registrar of Co-operative Societies, Belgaum and others, 2015 Indlaw KAR 3980	A. N. Venugopala Gowda	366-367
193	48414 of 2018 (T-IT)/14381 of 2019 (T-IT)		Krishna S Dixit	368-378
194	208/2011 C/W 209/2011, 210/ 2011, 211/2011, 212/2011, 213/ 2011	A. S. Sunanda W/o G. K. Gopalagowda and others v C. R. Venkataramu S/o Rangappa and Others, 2015 Indlaw KAR 6839	L. Narayana Swamy	379-382

195	100051-100052 of 2014	Al-mehdi Co-operative Credit Society Limited, Represented by its Secretary Gadampalli Ibrahim, Belgaum v Income Tax Officer, Belgaum, 2015 Indlaw KAR 7675	Anand Byrareddy & S. Sujatha	382-383
196	100044 of 2014	Belgaum Merchants Co-operative Credit Society Limited, Belgaum, Represented by its Chairman K. Ratnakar N. Shetty v Commissioner of Income Tax, Belgaum and another, 2015 Indlaw KAR 9296; [2016] 236 Taxman 351	Anand Byrareddy & S. Sujatha	384-386
197	100043 & 100045 of 2014	Chandraprabhu Urban Co Operative Credit Society Limited, Nipani, Represented by Its Manager v Income-tax Officer Ward No. 1 Nipani, 2015 Indlaw KAR 7258	Anand Byrareddy & S. Sujatha	387-387
198	100012 of 2015	Commissioner of Income Tax, Belagavi and another v Siddeshwar Souhard Sahakari Niyamitha, 2015 Indlaw KAR 7333	Anand Byrareddy & S. Sujatha	387-390
199	100013 of 2015	Commissioner of Income Tax, Belagavi and others v Siddeshwar Souhard Sahakari Niyamitha, 2015 Indlaw KAR 7334	Anand Byrareddy & S. Sujatha	391-393
200	100095 of 2014	Commissioner of Income Tax, Belgaum and another v Chikodi Taluka Shree Saraswati Souharda Co-operative Credit Limited, Belgaum, 2015 Indlaw KAR 7355	Anand Byrareddy & S. Sujatha	394-396
201	100034 of 2014	Commissioner of Income Tax, Belgaum and another v Hungund Taluka Teachers Co-operative Credit Society Limited, Bagalkot, 2015 Indlaw KAR 7652	Anand Byrareddy & S. Sujatha	396-399
202	100127 of 2014	Commissioner of Income Tax, Belgaum and another v Laxmi Credit Souhard Sahakari Limited, Belgaum, 2015 Indlaw KAR 9303	Anand Byrareddy & S. Sujatha	400-403
203	100111 of 2014	Commissioner of Income Tax, Belgaum and another v Mercantile Co-operative Credit Society Limited, Belgaum, 2015 Indlaw KAR 9298	Anand Byrareddy & S. Sujatha	403-406

204	100079 of 2014	Commissioner of Income Tax, Belgaum and another v Siddheshwar Co-operative Credit Society Limited, Belgaum District, 2015 Indlaw KAR 7352	Anand Byrareddy & S. Sujatha	407-410
205	100099 of 2014	Jai Jinendra Credit Souhard Sahakari Niyamit, represented by its Manager Mahaveer S/o Gundu Udagave, Belgaum v Commissioner of Income Tax, Belgaum and another, 2015 Indlaw KAR 9302	Anand Byrareddy & S. Sujatha	410-412
206	100041 of 2014	Mallikarjun Co-operative Credit Society Limited, represented by its Secretary Rudragouda Ramagouda Patil, Belgaum v Commissioner of Income Tax, Belagavi and another, 2015 Indlaw KAR 7653	Anand Byrareddy & S. Sujatha	413-417
207	100083 of 2014	Markandeya Co-operative Credit Society Limited, Represented by its Secretary Vasant Yallappa Bhekane, Belgaum v Income Tax Officer, Belgaum and another, 2015 Indlaw KAR 7353	Anand Byrareddy & S. Sujatha	417-421
208	100021 of 2015	Navhind Co-operative Credit Society Limited, Represented by its Managing Director, Belagavi v Commissioner of Income Tax, Belagavi and another, 2015 Indlaw KAR 7335	Anand Byrareddy & S. Sujatha	412-425
209	100096 of 2014	Renuka Co-operative Credit Society Limited, Represented by its Secretary Shankar Oejappa Shetty, Belgaum v Income Tax Officer, Belgaum and another, 2015 Indlaw KAR 9297	Anand Byrareddy & S. Sujatha	426-429
210	16323 of 2006 (GM-DRT)	S. K. Agriculturists Co-operative Marketing Societies Limited Represented by its Managing Director Jeevandar Hegde S/o Bojaraja Shetty, Mangalore v Canara Bank Represented by its Manager, Mangalore and others, 2015 Indlaw KAR 3298	K.L. Manjunath & S. Sujatha	429-430

211	100056/2016	Principal Commissioner of Income Tax, Dr. B. R. Ambedkar Veedhi and another v Vijay Souharda Credit Sahakari Limited, Bagalkot, 2017 Indlaw KAR 6207	S. Sujatha & H.B. Prabhakara Sastry	431-432
212	7139-7143 of 2015 (CS-RES)	Chidananda .D S/o Lingappa Gowda and others v Deputy Registrar of Co-operative Societies, Mangalore, Dakshina Kannada and others, 2016 Indlaw KAR 71	Anand Byrareddy	432-433
213	171/2016	Commissioner of Income Tax, Belagavi and another v Mahila Credit Soudhardha Sahakari Limited, Belgaum, 2016 Indlaw KAR 6892; [2017] 395 ITR 287	Jayant Patel & B. Sreenivase Gowda	433-434
214	100069/2015	Commissioner of Income Tax, Mangaluru and another v Nagarbail Salt-owners Co-operative Society Limited, Kumta, 2016 Indlaw KAR 1815; [2016] 238 TAXMAN 689	P.S. Dinesh Kumar & H. Billappa	434-436
215	58/2015	Poornapragna House Building Co - Operative Society Limited, Bangalore, Represented by its Manager L. Nanjappa v Venkatappa S/o Hanumanthaiah, 2016 Indlaw KAR 4474	S.N. Satyanarayana	436-437
216	IN ITA 48/2016: ITA No. 48/2016 C/W ITA No. 49/2016	Pr. Commissioner of Income Tax Bangalore and another v Lokamanya Multipurpose Co-operative Society Limited, Belgaum, 2016 Indlaw KAR 4429	Jayant Patel & B. Sreenivase Gowda	437-438
217	8/2017 & 2160 - 2163/2017 (T - RES)	National Co-operative Bank Limited, represented by Nagesh M. Shastri S/o Madhukeshwar Shastri, Bangalore v Commissioner of Service Tax (Audit), Bangalore and others, 2018 Indlaw KAR 4849	S. Sujatha	438-440
218	R.A. (S.A.) No. 31 of 2008	Authorised Officer, Basaveshwar Co-Operative Bank Limited, Belgaum and Another v Umesh and Others, 2008 Indlaw DRAT 36; 2009 (1) DRTC 123	T.V. Masilamani	440-442

219	3095 of 2006	Narayanappa S/o Late Pillappa, Veterinary Inspector, Bangalore, Karnataka v NTI Employees Housing Co-operative Society Limited, Bangalore, 2010 Indlaw NCDRC 278;2011 (2) CPJ(NC) 21	Vinay Kumar (Member) & R. K. Batta (Presiding Member)	443-444
220	4603 of 2010	S. Parameshwar v Chief Post Master, 2012 Indlaw NCDRC 128	Suresh Chandra (Member), K. S. Chaudhari (Presiding Member	444-446
221		Income Tax Officer Ward I(1), Erode v Kasipalayam Primary Agricultural Co-operative Bank Limited, Erode, 2013 Indlaw ITAT 128; [2014] 147 ITD 70	N. S. Saini (Accountant Member), V. DurgaRao (Judicial Member)	446-449
222	324/Pnj/2013, I. T. A. No. 378/Pnj/2013, C. O. No. 56/Pnj/2013	ACIT, Belgaum and another v Belgaum District Central Co-operative Bank Limited, Belgaum and another, 2014 Indlaw ITAT 2756	D. T. Garasia (Judicial Member) & P. K. Bansal (Accountant Member)	450-455
223	1957/Bang/2018	Andhra Pradesh Mahesh Coop. Urban Bank Limited, Hyderabad v D. C. I. T., Circle 2(3) Hyderabad, 2014 Indlaw ITAT 2229	B Ramakotaiah (Accountant Member) shaVijayaraghavan (Judicial Member)	455-458
224	1355/Bang/2013	Bagalkot District State Government Employees Co-operative Credit Society Limited, Sector No.21, Navanagar, Bagalkot v Income Tax Officer, Ward 1, Bagalkot, 2014 Indlaw ITAT 1980; [2014] 36 ITR (Trib) 248	N. V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)	459-461
225		Belgaum Merchants Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 63	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	461-465
226		Brahmanath Co-operative Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3377; [2015] 152 ITD 615	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	465-467

227	142 & 143/PNJ/2013	Chandraprabhu Urban Co-operative Credit Society Limited, Nipani v Income Tax Officer, Nipani, 2014 Indlaw ITAT 3375; [2015] 152 ITD 477	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	468-470
228	1210/Bang/2013	Commissioner of Income Tax v tharamaMandiramSouhardaSahakari Limited, Bangalore, 2014 Indlaw ITAT 2909	RajpalYadav (Judicial Member), Jason P. Boaz (Accountant Member)	471-473
229	250/PNJ/2013	Gomatesh Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 45	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	474-477
230	165 & 166/PNJ/2014	HukkeriTaluka Primary Teachers Credit Co-operative Society Limited, Hukkeri v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3343; [2015] 153 ITD 615	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	478-481
231	1288 to 1290/Bang/2013	HungundTaluka Teachers Co-operative Credit Society Limited, Hungund v Income Tax Officer, Bagalkot, 2014 Indlaw ITAT 3142	N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)	481-484
232	98/Bang/2014	JamkhandiTaluka School Teachers Co-operative Society Limited, Bagalkot v Income Tax Officer, Bijapur, 2014 Indlaw ITAT 2784	N. V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)	484-486
233	1269/Bang/2013	Jyoti Cooperative Credit Society Limited, Bagalkot v Income Tax Officer, Ward 1, Bagalkot, 2014 Indlaw ITAT 2357	RajpalYadav (Judicial Member) & Abraham P. George (Accountant Member)	486-488
234	318/PNJ/2013	Kalloli Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 62; [2014] 63 SOT 119	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	489-491

235	1284/Bang/2013	KitturChannammaMahila Co-operative Society Limited v The Income Tax Officer, 2014 Indlaw ITAT 2529	N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)	491-494
236	443 & 444/PNJ/2013	Kuruhinshetty Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 64	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	494-497
237		Laxmananda Multipurpose Co-operative Society Limited v Income Tax Officer, 2014 Indlaw ITAT 1112; [2015] 152 ITD 318; [2014] 34 ITR (Trib) 472	Jason P. Boaz (Accountant Member) &RajpalYadav (Judicial Member)	497-499
238	02/PNJ/2014	Lokmanya Multipurpose Co-operative Society Limited, Belgaum v Income Tax Officer, Ward - 2(2), Belgaum, 2014 Indlaw ITAT 1535	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	500-504
239		TararaniMahila Co-operate Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3369; [2015] 152 ITD 621	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	504-507
240		Chitradurga City Multi Purpose Co-operative Society, Chitradurga v Income-tax Officer, Chitradurga, 2015 Indlaw ITAT 2038; [2015] 44 ITR (Trib) 61	Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Members)	507-511

241	Revision Petition No. 3005 of 2008, Revision Petition No. 2613 of 2015, Revision Petition No. 2614 of 2015, Revision Petition No. 2615 of 2015, Revision Petition No. 2616 of 2015, Revision Petition No. 2617 of 2015, Revision Petition No. 2618 of 2015, Revision Petition No. 2619 of 2015, Revision Petition No. 2620 of 2015, Revision Petition No. 2621 of 2015, Revision Petition No. 2622 of 2015, Revision Petition No. 2623 of 2015, Revision Petition No. 2624 of 2015, Revision Petition No. 2625 of 2015, Revision Petition No. 2626 of 2015, Revision Petition No. 2627 of 2015, Revision Petition No. 2628 of 2015, Revision Petition No. 2629 of 2015, Revision Petition No. 2631 of 2015, Revision Petition No. 2632 of 2015, Revision Petition No. 2633 of 2015	Hanuman SahakariPaniPruvathaSansthaMaryadit Through Secretary, ShivramBhausoBhandigare, Maharastra and others v RamchandraBapusoKhade and others, 2015 Indlaw NCDRC 706; 2016 (2) CPJ(NC) 42	K.S. Chaudhari	511-514
242	1504/Bang/2014	Income Tax Officer, Bijapur v JamkhandiTaluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365	N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)	515-516
243		Income-Tax Officer, Hubli v KPTC &Hescom Employees Co-operative Credit Society Limited, Hubli, 2015 Indlaw ITAT 502	Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Member)	516-518

245	344 to 347/PNJ/2015, C. O. No. 70/PNJ/2015	ITO, Belagavi and another v BasaveshwarSouhard and others, 2015 Indlaw ITAT 1617	N. S. Saini (Accountant Member), George Mathan (Judicial Member)	518-520
246	1504/Bang/2014	Income Tax Officer, Bijapur v JamkhandiTaluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365	N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)	520-521
247	I.T.A Nos. 348 and 349/ PNJ/2014, I.T.A Nos. 350/ PNJ/2014, I.T.A Nos. 351/ PNJ/2014, I.T.A Nos. 352/ PNJ/2014, I.T.A Nos. 353/ PNJ/2014, I.T.A Nos. 354/ PNJ/2014, I.T.A Nos. 355/ PNJ/2014, I.T.A Nos. 356/ PNJ/2014, I.T.A Nos. 357/ PNJ/2014	RyatarSahakariSakkare v ACIT, Bijapur and others, 2015 Indlaw ITAT 27	D. T. Garasia (Judicial Member) & P. K. Bansal (Accountant Member)	521-523
248	21/Bang/2015	Syndicate RytharaSahakara Bank Limited, Kopa v Income Tax Officer, Mysore, 2015 Indlaw ITAT 1856; [2015] 41 ITR (Trib) 476	Jason P. Boaz (Accountant Member) & P. Madhavi Devi (Judicial Member)	523-525
249	1183 & 1184/Bang/2015	Assistant Commissioner of Income-tax, Circle 3(1), Hubli v Regional Oild Seeds Growers Co-Operative Union Limited, Hubli, 2016 Indlaw ITAT 2291	Inturi Rama Rao (Accountant Member) AshaVijayaraghavan (Judicial Member)	525-526
250	1324 to 1337/Bang/2015	Income-Tax Officer, Bangalore v Kautilya House Bldg. Co-operative Society Limited, Bangalore, 2016 Indlaw ITAT 1037	George George K. (Judicial Member) & I. P. Bansal (Judicial Member)	527-528
251	1372/Bang/2014	Karnataka State Co-operative Apex Bank Limited v Deputy Commissioner of Income-Tax, Circle 3(1), Bangalore, 2016 Indlaw ITAT 4742; [2016] 46 ITR (Trib) 728	Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)	529-530

252	671/Bang/2017	Income-tax Officer, Ward 2(2), Hubballi v KVG Bank Employees Co-operative Credit Co-operative Society Limited, Dharwad, 2017 Indlaw ITAT 1124	Inturi Rama Rao (Accountant Member), Lalit Kumar (Judicial Member)	531-532
253		Karnataka State Co-operative Apex Bank Limited, Bangalore v Deputy Commissioner of Income-tax, Bangalore, 2016 Indlaw ITAT 2170	Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)	532-534
254	1384/Bang/2018	ChikmagalurJillaMahilaSahakara Bank Niyamitha, Chikmagalur v Assistant Commissioner of Income Tax, Hassan, 2018 Indlaw ITAT 3363	Laliet Kumar (Judicial Member), Inturi Rama Rao (Accountant Member)	534-535
255	1957/Bang/2018	prathmikKrushiPattinaSahakar SanghNiyamita v Income Tax Officer, Hospet, 2018 Indlaw ITAT 9708	Arun Kumar Garodia (Accountant Member)	535-537

Siddappa S/o Madevappa Hadpad and others v Assistant Registrar Co-Operative Societies, Sirsi and another, 2015 Indlaw KAR 3469

Case No: W.P. No. 65179 of 2011 [CS-RES]

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 - award passed u/s.69 Act – the relief sought for – can approach KAT u/s.105 and not under writ petition.

The Order of the Court was as follows:

1. Petitioners were the members of Managing Committee of respondent No.2. An order of supercession was passed and an enquiry u/s. 64 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'), vide Annexure 'A' was passed on 11.07.2008. The enquiry officer, appointed in pursuance of Annexure 'A', having submitted the report dated 14.04.2009, vide Annexure 'B', an order u/s. 68 of the Act vide Annexure 'C' was passed on 11.06.2009. A show-cause notice was issued to the petitioners and five charges were framed against them, vide Annexure 'D' , on 15.12.2010. Petitioners submitted a reply dated 30.12.2010, vide Annexure 'E' . A notice was issued, u/s. 69 of the Act, on 01.03.2011, vide Annexure 'F' and the petitioners submitted a reply, vide Annexure 'G', on 18.03.2011. Judgment dated 30.04.2011 was passed, directing the recovery of Rs. 35,42,600/- from the petitioners i.e., vide Annexure 'K' . Award was passed u/s. 69 of the Act vide Annexure 'L' i.e., in pursuance of judgment as at Annexure 'K'. This petition was fi led on 02.08.2011, to quash the enquiry report, as at Annexure 'B'; the order passed u/s. 68 of the Act, as at Annexure 'C' and the judgment dated 30.04.2011, as at Annexure 'K' and the consequential award, as at Annexure 'L'.

5. Sri.Anant Hegde, did not dispute the fact that the judgment as at Annexure 'K' and consequential award as at Annexure 'L', can be assai led in an appeal, u/s. 105 of the Act, before the Karnataka Appellate Tribunal. There being merger of the report vide Annexure 'B' in the order passed, u/s. 68 of the Act, vide Annexure 'C', based on which the surcharge proceeding was initiated, resulting in passing of the judgment as at Annexure 'K' and consequential award as at Annexure 'L', it is not open to the petitioners to question Annexures 'B' and 'C' at this stage. The petitioners, if are aggrieved by the judgment as at Annexure 'K' and consequential award as at Annexure 'L', may seek remedy by filing an appeal, u/s. 105 of the Act, i.e., before the Karnataka Appellate Tribunal. Since, the statutory remedy is available as against Annexures 'K' and 'L', I do not find justification to entertain this writ petition.

All contentions of both sides are left open for adjudication by the Tribunal, in case the petitioners seek the relief. Needless to observe that the Tribunal shall for the purpose of reckoning the period of l imitation, exclude the period of prosecution of this writ petition, from 02.08.2011, in case, the appeal is preferred on or before 28.02.2015.

If stay of execution of the impugned award is sought, the Tribunal shall keep in view the assertion of

the petitioners, that respondent No.2 has realised the dues in terms of Annexures 'H' and 'J' , i.e., in the matter of fulfilling the condition relating to the statutory deposit.

Ordered accordingly.

No costs.

Order accordingly

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Bandugowda S/o Late Sannegowda v State of Karnataka, represented by its Secretary, Department of Co-operation, Bangalore and others, 2018 Indlaw KAR 1324

Case No: Writ Petition No. 8611/2013(CS-RES)

Bench: S.N. Satyanarayana

Head Note :

KCS Act 1959 - Surcharge

When surcharge proceeding has already resulted in final order, it is not open for the petitioner to pursue this petition.

The Order of the Court was as follows:

2. Brief facts leading to this writ petition are as under:

Petitioner herein is father of fifth respondent against whom surcharge proceedings under Section 69 of the Karnataka Cooperative Societies Act, 1959 ('the Act' for short) is initiated by fourth respondent before third respondent - Assistant Registrar of Cooperative Societies, wherein properties which are lands bearing Sy.No.37/P2 measuring 4 acres of Rajegowdanahundi village, KasbaHobli, H.D.Kote Taluk, Sy.No.1/878/61/2 measuring 2 acres and Sy.No/1/39 measuring 3 acres of Padukote Kaval village, H.D.Kote Taluk is sought to be attached.

3. The order passed by third respondent was initially challenged by petitioner in WP.Nos.7953/2011 and 13283- 88/2011, which came to be disposed of reserving liberty to him to challenge the same before the Deputy Registrar of Cooperative Societies within 30 days there from. It is on the basis of such liberty reserved to him in said writ petitions, he preferred an appeal before the second respondent - Deputy Registrar of Cooperative Societies in Appeal No.DRM.B3.APL.04/2011-12 under Section 106 of the Act, which came to be dismissed by judgment dated 12.12.2012 and said judgment is subject matter of this writ petition.

4. The contention of petitioner herein is that lands which are sought to be attached are his exclusive properties in which his son, fifth respondent against whom surcharge proceedings is initiated has no right. Therefore, lands in question could not have been attached in surcharge proceedings. According to him, while passing order under Section 103 of the Act, no notice was given to him and he was not made as a party. However,

today learned counsel for fourth respondent has filed a memo along with copy of order passed in surcharge proceedings No.4/2006-2007, wherein petitioner herein is shown as second respondent and said proceedings is disposed of by order dated 26.7.2016.

5. After hearing the learned counsel for parties and after going through the order dated 26.7.2016 passed in surcharge proceedings No.4/2006-2007 which is produced by the learned counsel for fourth respondent, this Court would observe that the judgment impugned has already fructified in a final order being passed in aforesaid surcharge proceedings in accepting the properties in question as the properties in which fifth respondent has a right and the same is required to be considered for recovery under surcharge proceedings. In that view of the matter, this Court find that the judgment which is relied upon by the petitioner in the matter of *Lakshman T v Assistant Registrar of Cooperative Societies & Ors.,* reported in 1988 (2) KLJ 384 would not ensure to his benefit for two reasons. Firstly, on the premise that the facts on which said order is passed is different from the facts in the present case. In the instant case, fifth respondent herein and petitioner are accepted as members of the same family and the properties that are sought to be attached in the surcharge proceedings as the properties belonging to the family in which fifth respondent has a share. Secondly, the rights of the parties were decided on the basis of succession in the aforesaid decision whereas in this case it is decided on the basis of joint possession and cultivation as they are members belonging to same family. Therefore, said decision would not have any bearing to the facts of the present case. Even otherwise, when surcharge proceedings has already resulted in final order, it is not open for the petitioner to pursue this writ petition. However, liberty is reserved to him to challenge the order passed in surcharge proceedings No.4/2006-2007 dated 26.7.2016.

Accordingly, this writ petition is disposed of.

Petition disposed of

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M. A. Nandanu W/o S. U. Muthanna v Assistant Registrar of Co-operative Societies, Kodagu and others, 2018 Indlaw KAR 5832

Case No: Writ Petition No. 19351/2012 (CS-SUR)

Justice A.S. Bopanna

Head Note :

KCS Act 1959 – KAT – complete remedy not available – order passed without sufficient opportunity – KAT to reexamine.

The Order of the Court was as follows:

1. The petitioner is before this Court assailing the order dated 07/03/2012 passed by the Karnataka Appellate Tribunal ('KAT' for brevity) in Appeal No.764/2004. The order impugned is at Annexure-E to the writ petition. In a Surcharge proceedings initiated against the petitioner herein, an award dated 18.06.2004 was passed against him. The petitioner claiming to be aggrieved by the same preferred an appeal under Section 105 of Karnataka Co-operative Societies Act, 1959 before the KAT. The KAT having registered the appeal in Appeal

No.764/2004 had considered the same on different dates of hearing. Ultimately, through the judgment dated 07.03.2012 it has dismissed the appeal filed by the petitioner.

3. In that background, learned counsel having referred to the impugned judgment dated 07/03/2012 would point out that the necessary documents were not looked into by the Appellate Tribunal, as they were not available on record, yet the KAT has wrongly observed that it has heard the learned counsel on both sides and thereafter passed the order. In view of the same, it is contended that the consideration made by the KAT is incomplete, as the necessary documents were not available and the contentions has not been adverted to in its correct perspective.

4. Having taken note of the contentions, a perusal of the judgment passed in the appeal would indicate that though the KAT while answering point No.1 has adverted to the factual aspects of the matter and referred to the documents that had been taken note by the original Authority in the Surcharge proceedings, since it is evident that the entire records were not available before the KAT, a complete consideration has eluded the petitioner and that too without assistance from her learned counsel. Therefore in that circumstances essentially the judgment passed will have to be construed as a judgment without providing opportunity to the petitioner. In that view, keeping in perspective the fact that serious consequences would visit the petitioner, it is necessary that the petitioner has to be provided an opportunity.

5. In that view, the judgment dated 07/03/2012 is set aside. The matter is remitted to the KAT to restore Appeal No.764/2004, secure all documents relating to the case from the competent authority, provide an opportunity to the learned counsel for the parties and pass fresh orders in accordance with law.

6. To enable such consideration, parties shall appear before the KAT on 27/06/2018 without expecting notice from KAT. Thereafter, the KAT shall regulate the proceedings and consider the matter in the manner as indicated above and dispose of the matter expeditiously.

7. This court at the first instance had granted an interim order subject to the deposit of 50% and it has been taken note that a sum of Rs. 70,000/- has been deposited before this court was permitted to be withdrawn by the respondent-Bank. The withdrawal if any by respondent No.2 shall remain subject to the result of the final conclusion and if the petitioner ultimately succeeds, the amount shall be refunded.

Petition disposed of.

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U. Rathnakar Bayaru S/o Shankar Moily v Assistant Registrar of Co-operative Societies, Mangaluru and another, 2018 Indlaw KAR 10181

Case No: Writ Petition No. 28654/2018 (CS-RES)

Justice G. Narendar

The Order of the Court was as follows:

3. Petitioner is before this Court praying to quash entire surcharge proceedings in case No.2/2017-18 initiated to recover the loss suffered on account of the activities of the two Branch Mangers i.e., in the year 2009.

4. When the petitioner was discharging his duties as Chief Executive Officer, he noticed some irregularities and illegality in the business of respondent No.2-Society. Immediately, action was initiated by him against the Branch Mangers. The said Branch Mangers were under suspension, a Departmental Enquiry was initiated and thereafter, charges came to be framed on the basis of the audit report. That in the audit conducted for the financial year 2016-17, the audit team found fault with the said two Branch Mangers and no allegations or complaint have been noticed against the petitioner by the Statutory Auditors. That thereafter, the New Board of Management took over the Management, which deem it fit to proceed against the petitioner on the sole premise that he being the Chief Executive Officer was directly responsible for the supervision and control of his sub-ordinates i.e., the two Branch Managers. On the said premise, the impugned proceedings have been initiated against him and the other two Branch Mangers under Section 69 of the Karnataka Co-operative Societies Act, 1959.

7. On a query from the Court, it is fairly admitted by the learned HCGP that no Articles of Charges nor any allegations of dereliction of duty has been levelled against the petitioner and no enquiry has been held to determine his culpability or to demonstrate the fact that he had abetted the two Branch Mangers. In the peculiar circumstances of the case, this Court is of the considered opinion that ends of justice would be served if the impugned proceedings is read down as a Show Cause Notice and petitioner be permitted to file his reply to the said Show Cause Notice.

8. Thereafter, respondent No.1 shall take a decision if the petitioner is a guilty of dereliction of duty or negligence and thereafter shall take a decision as to whether he could proceed further against the petitioner with the enquiry under Section 69 of the Act.

With the above observations, the petition stands disposed of. This order shall not construed as an order prohibiting the continuation of any proceedings as against the others.

The petitioner shall submit his reply to respondent No.1 within a period of four weeks from today.

Petition disposed of

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A. M. Basavarajaiah S/o Sangaiah v State of Karnataka and others, 2015 Indlaw KAR 4843

Case No: W.P. No. 30995 of 2014

Justice Ashok B. Hinchigeri

Head Note :

The Karnataka Co-operatives Act 1959

The grievance of the petitioner is beyond the award. He has to approach for relief under section 70 of KCS Act or industrial tribunal.

The Order of the Court was as follows:

1. The petitioner has called into question the endorsements, dated 31.01.2012 (Annexure-E) and 05.04.2012 (Annexure-F) issued by the Deputy Director of Co-operative Societies, Davanagere and the Chief Executive Officer respectively, turning down the petitioner's request for the payment of arrears of salary.

2. Sri R.P. Somashekaraiah, the learned counsel for the petitioner submits that on the re-instatement of the petitioner into service on 25.07.1979, no salary whatsoever is paid to the petitioner. He submits that this Court by its order, dated 28.06.2011 (Annexure-K) passed in W.P.No.840/2011 has reserved the liberty to the petitioner to take recourse to such legal action as is available in law if the petitioner has any grievance over the non-payment of his dues.

3. Sri T.L. Kiran Kumar, the learned Additional Government Advocate appearing for the respondent Nos.1 to 4 submits that the petitioner's Application No.23/2009 claiming arrears of salary is rejected by the Labour Court, Hubli by its order, dated 06.12.2010. He brings to my notice that the there is a clear finding in the said order that the award, dated 24.4.1976 is completely implemented. He further brings to my notice that the said order of the Labour Court was challenged by the petitioner by filing W.P.No.840/2011. This Court by its order, dated 28.06.2011 (Annexure-K) rejected the petition.

4. The submissions of the learned counsel have received my thoughtful consideration.

5. In view of the finding delivered by the Labour Court in Application No.23/2009 to the effect that the award, dated 24.04.1976 is completely implemented and of negativing the challenge to the said order in W.P.No.840/2001, the grievance of the petitioner obviously appears to be outside and beyond the award, dated 24.04.1976. On the implementation of the award, dated 24.04.1976, if the petitioner has not been paid the salary, he has to ventilate his grievance either by raising the industrial dispute or by raising the dispute invoking S. 70 of the Karnataka Co-operative Societies Act, 1959 or by electing any other remedy that may be open to him in law. If the petitioner chooses to ventilate his grievance in a manner known to law, the concerned authority or forum shall consider the same in accordance with law.

6. This petition is accordingly disposed of. No order as to costs.

Petition disposed of

Alvekodi Meenugarika Sahakari Sangha Niyamitha and others v State of Karnataka, 2015 Indlaw KAR 397

Case No: W.P. No. 111506 of 2014 [GM-RES]

Justice A. N. Venugopala Gowda

The Order of the Court was as follows:

1. Petitioner is a Society established under the Karnataka Co-operative Societies Act, 1959. It had made an application for grant of land for the purpose of establishment of Ice plant for the welfare of its members. Respondent No.4, having been granted with lease of 3 guntas of land, for a period of 15 years, vide annexure 'R', this writ petition was filed to quash Annexure 'R' and to direct respondent Nos.1 to 3, to grant land, to the extent claimed by the petitioners, i.e., by considering the representations submitted by them vide Annexures 'C', 'L' and 'Q'.

2. Subsequent to the filing of this writ petition, petitioner No.1 has been granted lease of the land, as per an order dated 27.01.2015. Vide Annexure 'Q' , the petitioners sought grant of 3 guntas of land on lease basis, for the purpose of establishment of Ice plant for the benefit of its members. Considering the said representation, an order dated 27.01.2015 has been passed, wherein, petitioner No.1 has been granted lease of the property. Since, the claim of the petitioners made in Annexure 'Q' has been considered and lease has been granted, the petitioners cannot have any grievance as against the grant of lease to respondent No.4, vide Annexure 'R'.

In the said view of the matter, the petition is disposed of as not surviving for consideration. No costs.

Petition disposed of

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Lieutenant Colonel H. Shenoy S/o Late K. P. Rao and another v Government of Karnataka, Represented by Secretary, Department of Co-operation, Bengaluru and others, 2015 Indlaw KAR 5709; 2015 (6) KarLJ 430

Case No: Writ Petition No. 16551 of 2008 (CS-BL), Writ Petition Nos. 4054-57 of 2009 (CS-BL)

Justice Ravi Malimath

Head Note :

KCS Act 1959 – S.108 revision petition – maintainability S.70 does not contemplate a dispute between a member and the Registrar – the finding of the Government that it is not maintainability is incorrect – petition allowed.

The Order of the Court was as follows:

1. The case of the petitioners is that they are members of the 3rd respondent Society which is registered under the Karnataka Co-operative Societies Act, 1959(hereinafter called as 'the Act'). By the order of the Registrar

of Co- operative Societies a direction was issued that all members of the Society of the respondent Society to register their apartments by paying the stamp duty as applicable. In 2004 the 2nd respondent namely, the Registrar issued Model Bye-law for the respondent Society as well as other three Societies. The said Bye-law is withdrawn and in the year 2005 a fresh Bye-law was brought about by the 2nd respondent.

They submitted a representation to him with regard to the anomalies found in the new Bye-law. That they were not heard before the new Bye-law was brought into effect etc. Thereafter various authorities including the Hon'ble Minister for Co-operation had directed the 2nd respondent to withdraw the subsequent Bye-law in the year 2005. The same was not done. The Government referred the same to the Department of Law which gave an opinion that the Bye-law should be withdrawn. Even then it was not done. The Government by exercising its suo- motu powers under Section 108 passed an order on 4- 11-2006 vide Annexure-P wherein Bye-Law No. 3.13 was deleted. Since that was only part of the relief sought for, the petitioners filed the instant revision to take action under Section 108 of the Karnataka Cooperative Societies Act before the Government. By the impugned order, the revision was disposed off as being not maintainable. Hence, the present Petition.

3. On the other hand, the learned Government Advocate defends the impugned order.

4. On hearing learned counsels, I'am of the view that appropriate relief requires to be granted. Section 108 of the Act is with reference to the powers of the State Government which can be exercised suo-motu or on an application of any person aggrieved therein and various other Clauses. The aggrieved person is the member of the Society. They are aggrieved by the Bye-law. Exercising revisional powers under Section 70 for settling such a dispute is beyond law. Section 70 does not contemplate a dispute between a member and the Registrar. In the instant case, Model Bye-Law has been initiated by the Registrar. Section 70 is only with regard to disputes between the members of the Society or as narrated therein. It does not include any dispute vis-a-vis between the member and the Registrar. The same is apparently covered by the provisions of Section 108. Therefore, the finding of the Government that it is not maintainable is incorrect.

Consequently, the Petitions are allowed, holding that the revision petition is maintainable. Consequently, the 2nd respondent is directed to hear the petitioners and pass appropriate orders on merits and in accordance with law.

The petitioners shall appear before the 2nd respondent on 7th September, 2015.

In view of the long pendency of the dispute the 2nd respondent shall pass appropriate orders after hearing the petitioners within a period of 6 months from that date.

All contentions of the parties are kept open. Rule made absolute.

Petitions allowed

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Naragund Taluka Primary Co-operative Agriculture and Rural Development Bank Limited, Represented by Girija W/o Shankargouda Kariyappagouder, Gadag v Shivappa Dyavappa Kolliyavar and others, 2015 Indlaw KAR 4101

Case No: W. P. No. 100972/2015 (CS-Res)

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959

The mischief committed by an official of the office by altering the hearing date by pre poned from 19-01-2015 to 14-01-2015 without notice – case called in 14-01-2015 and adjourned to 19-01-2015 which is arbitrary and illegal – fresh notice for reasonable opportunity.

The Order of the Court was as follows:

1. Petitioner, a Co-Operative Society, registered under the Karnataka Co-operative Societies Act, 1959, passed a resolution on 23.09.2014, amending its bye- law No. 40 and the same, when submitted, was approved on 10.01.2014, by the 4th respondent. On 01.1.2015, 4th respondent having suggested amendments to bye-law, to bring it in tune with the Karnataka Act 35/2014, the bye-law was amended accordingly.

2. Respondent Nos.1 to 3, by filing an appeal before the 5th respondent, questioned the order dated 10.01.2014, approving the amendment to the bye-law. Appeal having been filed on 05.01.2015, was put up before the 5th respondent on 06.01.2015. By ordering the service of notice, the case was adjourned. There being no sitting of the 5th respondent on 13.01.2015, on account of he being engaged in the administrative work and was adjourned to 19.01.2015. Unilaterally, the said hearing date was altered i.e. without noticing to the respondents in the appeal and it was made to appear, as if the adjourned date is 14.01.2015. Without issue of notice to the petitioner herein, the case having been taken up at 11.00 a.m. in the first instance and at 3.00 p.m. in the second instance i.e., on 14.01.2015, was adjourned to 19.01.2015. The case having been preponed to 16.01.2015, an interim order as at Annexure-K was passed. Assailing the said order, this writ petition was filed.

3. Respondent No. 1 to 3, herein, who are the appellants before the 5th respondent, have entered caveat. Learned AGA accepted notice on behalf of respondent No. 4 to 6. With the consent of learned counsel on both sides, this writ petition is taken up for final hearing.

4. Heard the learned advocates appearing for the parties and perused the writ record.

5. Grievance of the petitioner that the 5th respondent has acted with material illegality in advancing the case from Annexure 19.01.2015, without issue of notice to it, is well founded.

There is mischief committed by the official working in the office of 5th respondent, in altering the hearing date from 19.01.2015 to 14.01.2015. 5th respondent, without noticing the mischief committed, has taken up case on 14.01.2015 and adjourned to 19.01.2015. The case having been pre-poned at the behest of the appellants,

without notice to the petitioner, the impugned order has been passed.

6. There being no dispute that the petitioner was not heard, prior to the passing of the impugned order and that there is delay in preferring of the appeal before the 5th respondent, the impugned order is, not only arbitrary, but is also illegal. Unless, the delay in filing the appeal is condoned, the 5th respondent would not get jurisdiction to pass interim order of stay in favour of the appellants. Without noticing the pendency of application filed seeking condonation of delay, the impugned order was passed. No ground was made out to prepone the case. Mechanically, the case was preponed, which is irrational and illegal. The impugned order is bareft of any reasons and is arbitrary. In the circumstance, impugned order cannot be sustained.

In the result, petition is allowed and the order, as at Annexure-K, is quashed. The petitioner and respondent Nos.1 to 3 herein are directed to appear before the 5th respondent, at 3.00 p.m. on 29.01.2015 and receive further orders. It is open to the petitioner to file objection to the application seeking condonation of delay in filing the application and the application filed seeking interim order of stay.

The 5th respondent shall grant reasonable opportunity of hearing to the parties and pass orders on the said applications in accordance with law.

Copy of this order be furnished to the learned Advocates appearing for the parties, for production before the 3rd respondent.

No costs. Petition allowed

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Nemiraja S/o Late Veerappa Ghongadi v Shirahatti Taluka Agricultural Produce Co-operative Marketing Society Limited Represented by its Manager and another, 2015 Indlaw KAR 2964

Case No: W.P. No. 64631 of 2010 [CS-DAS]

Justice A. N. Venugopala Gowda

Head Note :

The petitioner not being a member of the society and not being a person falling u/s.70 – the award passed is illegal – disputes filed was not maintainable – approach competent authorize for necessary.

The Order of the Court was as follows:

1. Petitioner had leased a premises to respondent No.1 . Notice was issued on 12.07.2002, to pay arrears of rent and other charges, etc. amounting to Rs. 3,67,581 /- with interest. The demanded amount having not been paid, a dispute was filed, u/s. 70 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act') against respondent No.1, before respondent No.2 . The dispute was allowed in part, on 06 .06.2005 vide Annexure ' A'.

Certain amount of interest having been disallowed, the petitioner, feeling aggrieved by the said award, filed

appeal No.293/2006, in the Karnataka Appellate Tribunal. An I. A. was filed to condone the delay. The Tribunal having found that sufficient cause was not shown, refused to condone the delay and as a result, dismissed the appeal on 16.02 .2010, as per the Judgment, as at Annexure 'D'. Assailing the said judgment, this writ petition was filed.

4. Concededly, the petitioner was not a member of respondent No.1 . He had leased the premises to respondent No.1 and demanded the arrears of rent and other charges, by issue of a notice dated 12.07 .2002. On account of the non- payment, dispute u/s. 70 of the Act was instituted before respondent No.2 .

Dispute having been referred to an Arbitrator, award vide Annexure 'A' was passed. Since, interest was not awarded and the amount as claimed in the dispute was also not awarded, in full, appeal No.293/2006 was filed before the Tribunal.

5. S. 70 of the Act can be invoked by the person falling within its scope. The petitioner being not a member of the Society and also being not a person falling within the scope of S. 70 of the Act, could not have instituted the dispute. The award passed vide Annexure 'A' is illegal. In Jyotiba Yellappa Jadhav & Others Vs. The Hubli Co-operative Cotton Sale Society Ltd. and Others, 1970 (2) Mys.L.J. 344, with regard to the scope of S. 70 of the Act, it has been held as follows:

"11. .....we have to read Section 70, which shows that a dispute to which one of the parties is a person who is not a member of any co- operative Society cannot be brought within the Scope of S. 70 or be submitted for adjudication by the special authorities under the statute. That such is the intention of the statute is also clear from the provisions of sub-s. (4) of S. 71 as well as the enumeration of the three different modes for execution of the awards in S. 101 of the Act. ..."

Even though, respondent No.1 satisfied the said award, the same being illegal and null and void, no credence can be given to it.

6. Though, the Tribunal has dismissed the appeal by refusing to condone the delay, in respect of which, certain explanation was offered, in view of the dispute being not maintainable and the Registrar having no jurisdiction to entertain and decide the case, it is unnecessary to interfere with the impugned judgment.

7. The award passed vide Annexure ' A' being one without any jurisdiction and the dispute filed being not maintainable, I do not find justification to quash the impugned judgment. However, it is open to the petitioner, to approach the competent forum for recovery of the dues, if any, from respondent No.1 .

The writ petition is disposed of accordingly, with no order as to costs.

Petition disposed of

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Ramakrishna S/o Late D. Lakshminarayanappa v Ramu and others, 2015 Indlaw KAR 8876

Case No: W. P. No. 42917/2015(GM - CPC)

Justice Aravind Kumar

Head Note :

KCS Act 1959 – Disputes.

The Order of the Court was as follows:

1. Heard Sri.B.S. Manjunath, learned counsel appearing for petitioner. Perused the records.

2. Petitioner is the defendant in O.S.1822/2011. 1st respondent herein has filed a suit O.S.1822/2011 for declaring the Codicil dated 15.02.1985 executed by late Sri.D. Lakshminaranappa in favour of defendant as per document No.7 is void and illegal and consequently to declare the Will dated 12.02.1976 as valid and for other consequential reliefs. During the pendency of suit writ petitioner/defendant filed an application to implead 2nd respondent herein i.e., Citizen Co-operative Bank contending that proposed defendant along with plaintiff are colluding to sell the property. As such proposed defendant which is claiming a right over the property in question is a necessary and proper party to the suit. Said application came to be resisted by proposed defendant contending that one Smt.Usha Raghavendra Rao had approached the bank for grant of loan by submitting an application on 13.08.2010 and after scrutiny of documents loan came to be sanctioned and as a security to the amount borrowed, she had mortgaged the suit property by depositing title deeds with the Bank. It was contended by Bank, that borrower had become a defaulter and as such recovery proceedings came to be initiated before Registrar of Co-operative Societies by raising a dispute and an award has been passed. It was also contended that suit filed by the writ petitioner in O.S.7034/2013 against proposed defendant was dismissed and by suppression of this fact and to stall the execution proceedings application in question has been filed. It is also contended that proposed defendant is neither necessary nor proper party.

In the suit in question i.e., O.S.1822/2011 the relief sought for is against defendant for declaring Codicil dated 15.02.1985 executed by late Sri.D. Lakshminaranappa i.e., father of writ petitioner and 1st respondent. Bank is nowhere concerned with interse dispute among brothers. It is always open to the writ petitioner to urge such contention as he may be advised to protect his property which he is claiming under the Will dated 12.02.1976 in appropriate proceedings and the proposed defendant-bank is neither a necessary nor proper party in the present suit in question i.e., O.S.1822/2011. Trial court can effectively pass a Judgment and decree without presence of the proposed defendant. As such without expressing any opinion with regard to the claim of writ petitioner, writ petition stands dismissed.

Petition dismissed

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S. G. Thimmegowda S/o Govindegowda v Secretary Taluk Agricultural Co-operative Society, Tumkur and others, 2015 Indlaw KAR 3989

Case No: R. S. A. No. 2667/2011

Justice Ravi Malimath

Head Note :

KCS Act 1959 – maintainability of the dispute was not raised – this court will not consider a fresh plea.

The Order of the Court was as follows:

1. Aggrieved by the concurrent findings recorded by both the courts below in decreeing the suit of the plaintiff and directing the second defendant to encash the Schedule Saving Certificates and to pay an amount of Rs. 60,000/- to the plaintiff-society within two months from the said date, the first defendant has filed this appeal. Parties would be referred to as per their rankings in the Trial Court.

2. The case of the plaintiff is that it is a Co- operative Department established under the Co-operative Societies Act; that the first defendant was working as a Secretary of TAPCMS, Thuruvekere. The second defendant is the Postal Department working under the third defendant, who is the Central Government; that the first defendant has taken 51/2 years Kissan Vikasa Patra Savings Certificates from defendant No. 2 in his name, out of the amount belonging to the plaintiff/Co-operative Society. It is deposited by the first defendant as a Secretary for the work done by him and with an intention to forfeit the amount in case of mis-conduct or mis-use of the powers or mis-use of the funds during the period of his duty to the Society. The same was given to the custody of the plaintiff.

3. It is the case of the plaintiff that during the service of defendant No. 1, he had mis-appropriated the money of the plaintiff in a total sum of Rs. 15,21,768.68. A complaint was also made before the Deputy Registrar of Co-operative Society (for short 'DRCS') in suit No.DRT4/1999-2000. An order was passed seeking recovery of the said amount from the first defendant. It is submitted at the bar that the appellate Tribunal allowed the appeal and set aside the impugned order and remanded the same before the DRCS, Tumkur. The matter before the DRCS is presently pending. Since defendant No. 1 is due in a total sum of Rs. 15,21,768.68 along with interest, the plaintiff seeks to recover the same through movable and immovable properties. The plaintiff being a public body is entitled to recover public money due to it. Therefore, it is necessary to obtain a decree to encash the Saving Certificates deposited by the first defendant to the plaintiff in a sum of Rs. 60,000/-. Hence, the instant suit for mandatory injunction directing the second defendant to encash the schedule Saving Certificates and pay the same to the plaintiff.

7 On hearing learned counsel, I'am of the considered view that there is no merit in this appeal. Admittedly, a case has been lodged against the first defendant on the ground of misappropriation in a sum of Rs. 15,21,768.68. A complaint was made as far back in the year 1999. 16 years thereafter, the proceedings are still pending. Misappropriation is of public money. What is sought to be recovered by virtue of the present suit is a sum of

Rs. 60,000/- vis-a-vis, a charge of misappropriation of more than Rs. 15 lakhs. On the first occasion, an award was passed against the appellant and criminal proceedings were lodged against him. It is only because the appellate court namely, the Karnataka Appellate Tribunal set aside the matter and remanded for fresh enquiry that the matter is still pending. In the circumstances, the contention of the appellant that the present suit is not maintainable in view of the proceedings being initiated by the Courts below is bereft of any merit.

Further, no ground has been urged to show that such a defence was taken by the appellant before the Trial Court with regard to non maintainability of the suit. The issues framed by the Trial Court did not touch upon the maintainability of the suit since such an issue was not contested. Therefore, it is inappropriate to consider such a plea for the first occasion by the second appellate Court.

8 On considering the facts and material evidence, I am of the considered view that both the Courts below have rightly applied the facts of the case as well as the prevalent law. I do not find any error that calls for interference much less any substantial question of law that arises for consideration. Consequently, the appeal being devoid of merit is dismissed.

Appeal dismissed

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Shivanand Yallappa Sungar and others v N. W. K. R. T. C. Sibbandi Sahakari Uphar Grahn Niyamita, Hosur, represented by Its President, 2015 Indlaw KAR 3571

Case No: W.P. No. 69051/2010 C/W W.P. No. 69050/2010 & W.P. No. 69052/2010 [S-DIS]

Justice Aravind Kumar

Head Note :

KCS Act 1959 – absent on the date of hearing before KAT – appearance notified and directed KAT to dispose on merit.

The Order of the Court was as follows:

3. It would emerge from the records that petitioner had approached Assistant Registrar of Cooperative Societies u/s. 70 of Karnataka Cooperative Societies Act challenging the order of dismissal and praying for reinstatement with award of back wages. Said dispute was rejected. Being aggrieved by said order, an appeal u/s. 70 of Karnataka Co-operative Societies Act, 1959 was filed in Appeal Nos.655/2008, 657/2008 and 656/2008 respectively. On account of certain defects having been noticed by the Registry, matter came to be adjourned from time to time to enable the learned counsel to rectify the defects in the appeal papers. Order sheet produced at Annexure - E in these writ petitions would indicate that though several opportunities came to be extended to the appellants to comply with office objections same was not complied. Hence, tribunal left with no other option has dismissed the appeal vide orders dated 23.03.2009 and 11.12.2008. It is these orders which are impugned in the present writ petitions.

4. Contention of Shri Anant P. Savadi, learned counsel appearing for petitioners is that on account of impression given by the Tribunal that appeals in question would be called at Belgaum Camp, petitioners/appellants were under the bona fide impression that these maters would be called at Belgaum Camp and were awaiting the notice from Tribunal. Hence, it is contended that appellants/petitioners being under said bona fide impression, they did not appear before the Tribunal on the said dates of hearing. Order sheet Annexure - E of the Appeals discloses that when the matters came to be listed on various dates for rectification of defects pointed out by the Registry, none have appeared on behalf of writ petitioners. All the petitioners are residents of Hubli. In the appeal filed by aggrieved parties who are residents of Hubli, Dharwad, Belgaum and in the vicinity of these areas, Camps are undisputedly being held by the Appellate Tribunal to enable the litigant public as well as learned advocates to appear before the Circuit Tribunals or Camps held by Appellate Tribunal.

5. In that view of the matter, I have no hesitation to accept the submission made by the learned counsel appearing for petitioner for their absence before Tribunal on the dates of hearing.

6. Shri Anant P. Savadi, learned counsel appearing for petitioners would also fairly undertake that without seeking for the matter being called at Belgaum Camp or Hubli Camp, these appeals may be disposed of by Appellate Tribunal at Bangalore itself and placing the said submission on record, prayer sought for in writ petitions deserves to be granted.

7. For the reasons aforestated, I proceed to pass the following:

Order

(i) Writ petitions are hereby allowed.

(ii) Order dated 23.03.2009 passed by Karnataka Co-operative Appellate Tribunal dismissing the appeals in Appeal Nos.655/2008, 657/2008 and 656/2008 in W.P. No.69051/2010 and W.P. No.69050/2010 at Annexure - E and order dated 11.12.2008 passed in W.P. No.69052/2010 at Annexure - E are hereby quashed.

(iii) Appeals are restored to file of the Appellate Tribunal for being disposed of on merits and in accordance with law.

(iv) Tribunal shall not issue any fresh notice to appellants/petitioners, since they are represented here and they shall appear before Appellate Tribunal on 13.03.2015. However, fresh Court notice shall be issued to respondents.

Petitions allowed

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Shivarudrappa S/o Malleshappa Bhavikatti v Daivjna Co-operative Housing Society by its Secretary, Dharwad and others, 2015 Indlaw KAR 2816

Case No**:** Civil Revision Petition No. 1094 of 2013

Justice Aravind Kumar

Head Note :

KCS Act 1959 – dispute u/s.70 – the dispute being civil in nature – not a u/s.70.

The Order of the Court was as follows:

2. Petitioner who is defendant No.1 in O.S.No.260/2011 having obtained an adverse order on issue No.1 whereunder the trial Court has held that issue involved in the suit would fall outside the scope of S. 70 of the Karnataka Co-operative Societies Act, 1959, (for short 'the Act'), is assailing the said order in the present revision petition.

3. It is the contention of Mr.V.P.Kulkarni, learned counsel appearing for the petitioner that respondent/plaintiff is a Co-operative Society and petitioner/defendant being a member of the Society and as per the admission of PW-1, S. 70 of the Act could be attracted and as such, respondent-Society has to raise a dispute and it cannot proceed with the suit. Hence, he prays for setting aside the order passed by the trial Court.

At paragraph 2, it has been contended by the defendant by an omnibus plea that trial Court does not have jurisdiction to try the said suit. Because of such plea having been raised, an additional issue came to be framed by the trial Court which reads as under:

"Whether the defendant No.1 proves that this Court has no jurisdiction to try the present suit in view of bar contained under the provisions of Karnataka Co-operative Societies Act*?"*

7. Suit in question as already noticed hereinabove being one for perpetual injunction said relief claimed in the suit would squarely fall u/s. 9 of the CPC namely said dispute is of civil nature and it cannot be adjudicated by a statutory authority constituted under S. 70 of the Act. Under sub S. (2) of S. 70 of the Act, all disputes touching the constitution, management, or the business of a co-operative Society namely 1) claim by the Society for any debt or demand due to it from its member or the nominee etc.; 2) claim by a surety against the principal debtor where the Society has recovered from the surety etc., 3) any dispute between the Co-operative Society and its employees or past employees touching the working condition and disciplinary action taken by the Co- operative Society: 4) claim by Co-operative Society for any deficiency caused in the assets of the Co-operative Society by a member, would be in the realm of the authority constituted under S. 70 of the Act to deal with such disputes. The dispute in question as noticed hereinabove being civil in nature same is required to be adjudicated by a Civil Court only and same cannot be held or construed as a dispute falling under S. 70 of the Act. In that view of the matter, this Court is of the view that no infirmity has been committed by the trial Court calling for exercise of revisional jurisdiction. Hence, petition being devoid of merits, stands dismissed. Petition dismissed

T. Sumangala Banuprakash W/o S. D. Banuprakash v State of Karnataka, Co-operative Department, Represented by its Chief Secretary, Bangalore and others, 2015 Indlaw KAR 8072

Case No: Writ Petition No. 16793 of 2015 (CS-DAS)

Justice Anand Byrareddy

The Order of the Court was as follows:

2. It transpires that the petitioner had filed a dispute before Respondent No.3 in a claim for damages from Respondent No.4 for illegal seizure and sale of her four vehicles. The maintainability of the petition having been questioned, the impugned order is an order passed in revision dismissing the dispute filed by the petitioner as not maintainable.

3. The question that arises for consideration is whether such a claim for damages could be raised as a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the KCS Act', for brevity).

5. From the circumstances present, it can certainly be said that a claim for damages would not be a dispute that is contemplated in terms of Section 70 of the KCS Act. Therefore, the impugned order cannot be faulted. This view is also supported by a decision of this Court reported in Sayed Ahmed Maktumsha Syed vs. Urban Co-operative Bank Ltd., Alnavar and others 2000 (1) KLD 210 and also in the case of Deccan Merchants Co-operative Bank Ltd. vs. M/s. Dalichand Jugraj Jain and others AIR 1969 SC 1320 1968 Indlaw SC 309.

In that view of the matter, the petition stands rejected.

Petition dismissed

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Vishna S/o Narayan Bagilkar v Lokmanya Co-Operative Credit Society Limited Represneted by its Authorised Officer Vivek V. Kamat, Belgaum and others, 2015 Indlaw KAR 4816

Case No: W.P. No. 60154 of 2009

Justice A. N. Venugopala Gowda

Head Note :

Multi State Co-operative Act – S.34 and S.84 – Arbitration

The Order of the Court was as follows:

1. Petitioner, a debtor of respondent-1 filed this writ petition on 5.1.2009 to quash arbitration award dated 22.9.2008 as at annexure-D and grant consequential reliefs.

2. Sri.J.S. Shetty, learned advocate for respondent-1 submitted that in view of order dated 20.9.2011 passed in W.P.62373/2011 and connected cases, the writ petition for non-exhausting alternative and efficacious remedy

of filing an application u/s. 34 of the Arbitration and Conciliation Act, 1996, before the Civil Court, is not maintainable and that in view of availability of the alternative and efficacious remedy, the petition may be dismissed.

3. Perusal of the Order passed by the learned Single Judge shows that the debtors had filed writ petition questioning the awards passed by the Arbitrator u/s. 84 of the Multi-State Co-operative Societies Act, 2002. Having noticed sub-s. (5) of s. 84 of the Act, this court declined to interfere with the impugned awards on the ground that the petitioners have an alternative and efficacious remedy of filing an application u/s. 34 of the Act before Civil Court to set aside the award.

4. The instant case being identical to the one considered and decided by the learned Single Judge, noticed supra, following the same, writ petition stands disposed of reserving liberty to the petitioner to file application u/s. 34 of the Arbitration and Conciliation Act, 1996 before the jurisdictional Civil Court as against the impugned award and seek relief.

All contentions raised in the writ petition are left open and petition is disposed of accordingly.

The time taken in prosecution of this writ petition from 5.1.2009 till date shall stand excluded for the purpose of computation of limitation in approaching the jurisdictional civil court. No costs.

Petition disposed of

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A. N. Nagaraj S/o Late Narayanagowda and others v Additional Registrar of Co-operative Societies (C and M), Bangalore and others, 2016 Indlaw KAR 3863

Case No: W. P. Nos. 9520-9533/2016 (S-RES)

Justice B.S. Patil

The Order of the Court was as follows:

1. In these writ petitions, petitioners are seeking a writ of mandamus against respondents 2 to 5 to implement the order dated 30.03.2012, 19.03.2012 and 28.03.2012 passed vide Annexures-A, B & C respectively in disputes raised by the petitioners by fixing a time frame.

2. Perusal of orders at Annexures-A, B & C would disclose that Additional Registrar of Co-operative Societies (C & M)), Bengaluru, has passed orders as per Section 71 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act') in the disputes raised under Section 70 of the Act and has granted certain reliefs to the petitioners in respect of their service. Though these orders have been passed way back in the year 2012, the benefit of the order has not been extended to the petitioners. That is how, they have approached this Court seeking a writ of mandamus.

3. Upon hearing the learned counsel for the petitioners and the learned High Court Government Pleader, who has taken notice for respondent No.1, I find that since award has been passed under Section 71 of the Act in a proceedings instituted under Section 70 of the Act, petitioners ought to have initiated execution proceedings

to enforce the award in terms of the provisions contained in Chapter - XII of the Act. Instead of resorting to such remedy, petitioners have approached this Court by filing these writ petitions invoking Article 226 of the Constitution of India. As the petitioners have got efficacious remedy of enforcing the orders passed by the Additional Registrar of Co-operative Societies - respondent No.1 herein, reserving liberty to avail such remedy, these writ petitions are disposed of declining to interfere with the matter.

Learned High Court Government Pleader is permitted to file memo of appearance within three weeks from today.

Order accordingly

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B. R. Aswathanarayana Setty S/o Late Ramabadraiah and others v State of Karnataka by its Secretary Co-operative Department, Bengaluru and others, 2016 Indlaw KAR 4448

Case No: W. P. No. 32155 of 2016 [CS-RES] and W. P. Nos. 33121 - 33122 of 2016

Justice Ashok B. Hinchigeri

Head Note :

I am not persuaded to accept the petitioners' contention that the principles of natural justice are violated, because the third petitioner was very much present before the Joint Registrar of Co-operative Societies on the date on which the hearing took place and the orders came to be passed thereafter.

The Order of the Court was as follows:

2. The petitioners have called into question the order, dated 14.11.2014 (Annexure-D) passed by the second respondent Joint Registrar of Co-operative Societies, dismissing the petitioners' application filed under Order VII Rule 11 of C.P.C. and the order, dated 30.4.2016 (Annexure-E) passed by the Karnataka Appellate Tribunal ('K.A.T.' for short) confirming the said order of the original authority. The third respondent Bank raised the dispute No.JRD/UBF/940/13-14 against the petitioners and the respondent Nos.4 and 5 for the recovery of a sum of Rs. 1,12,13,503/- (rupees one crore twelve lakhs thirteen thousand five hundred and three only).

In the said proceedings, the petitioners filed an application under Order VII Rule 11 of C.P.C. read with Section 70 of the Karnataka Co-operative Societies Act, 1959. The said application was rejected by the Joint Registrar of Co-operative Societies, by his order, dated 14.11.2014. This was upheld by the K.A.T. On suffering the concurrent orders, these petitions are instituted.

7. It is trite that the application under Order VII Rule 11 of C.P.C. has to be considered only looking into the averments made in the plaint. The Presiding Officer cannot look into the objections of the defendants while considering the said application. If all the plaint averments are taken to be true on their face value and then also if it does not disclose any cause of action, the plaint can be returned.

8. In the case of Bheemapa and another (supra), this Court has held that it is open to the mortgagee to bring

action for recovery of amounts due either upon the occurrence of default in repayment or wait until the entire term for repayment is completed. In the instant case, the loan was sanctioned on 31.3.2002. The borrowers were required to repay the same in 120 monthly instalments. The petitioners cannot contend with any rate of success that the dispute ought to have been raised within seven years from the date of the occurrence of the first default.

9. I am also not persuaded to accept the petitioners' contention that the principles of natural justice are violated, because the third petitioner was very much present before the Joint Registrar of Co-operative Societies on the date on which the hearing took place and the orders came to be passed thereafter. I am also not impressed of the hyper-technical argument that the Joint Registrar of Co-operative Societies was not a regular officer; he was only an incharge officer. It is trite that the incharge court or the incharge quasi-judicial authority can also dispose of the matters.

10. Not finding an iota of merit or bona fides in this case, these petitions are dismissed. No order as to costs.

Petitions dismissed

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Basava Kalyan Meenugarika Sahakara Sangha Niyamita Basava Kalyan Taluka, Through its President Roopchand S/o Shankar v Registrar of Co-operative Societies, Bangalore and others, 2016 Indlaw KAR 5270

Case No: Writ Petition Nos. 204124-125/2014 (CS-Res)

Justice Vineet Kothari

Head Note :

The said appeal admittedly and undoubtedly is still pending as the tenor of the impugned order only shows that the interim order granted earlier in favour of the petitioner was vacated finding it to be a complex case and requiring more detailed consideration by the said Deputy Registrar. In view of this, there is no reason to believe that the appeal filed has been closed and the said appeal is no longer pending.

The Order of the Court was as follows:

1. These writ petitions have been filed by the petitioner-Basava Kalyan Meenugarika Sahakara Sangha Niyamita, Basava Kalyan Taluka, through its President-Roopchand S/o Shankar against the registration of respondent No.4-Mahashakti Pardi Meenugarara Sahakara Sangha Niyamita, Basava Kalyan, as a Co-operative society under the provisions of the Karnataka Co-operative Societies Act, 1959.

2. The registration of Respondent No.4 vide Annexure-B challenged in the present writ petitions is nothing but the certificate of incorporation and registration given to respondent No.4-Society by the Assistant Registrar of Co-operative Societies on 15.11.2012 vide Registration No.SNB1/V- 4/Registration/43470/2012-2013.

3. The members of the petitioner-society are Fishermen of Golchawadi Parvan Galli, Basavakalyan, District Bidar. The challenge was made to the registration of respondent No.4. Respondent No.4 who undertook similar business on the basis of co-operative movement and under the regulation of the aforestated Karnataka Co-operative Societies Act, 1959.

5. Aggrieved by the said interim vacating of stay order dated 10.07.2014 the petitioner has filed the present writ petitions in this Court.

11. Having heard the learned counsels appearing for the parties, this Court is of the opinion that it is premature for this Court to pronounce upon the merits of the rival contentions raised before this Court. Since a regular appeal is admittedly pending before Respondent No.2-Deputy Registrar of Co-operative Societies, Bidar, and the impugned order before this Court Annexure-N dated 10.07.2014 is only an interim order, this Court need not interfere in the matter at this stage.

12. The said Deputy Registrar of Co-operative Societies-respondent No.2 is expected to decide the pending appeal before him by a speaking order after giving opportunity of hearing to both the parties. This Court does not find any force in the contention of the learned counsel for the petitioner that with the passing of the impugned order Annexure-N dated 10.07.2014, the appeal itself stood disposed of.

13. The said appeal admittedly and undoubtedly is still pending as the tenor of the impugned order only shows that the interim order granted earlier in favour of the petitioner was vacated finding it to be a complex case and requiring more detailed consideration by the said Deputy Registrar. In view of this, there is no reason to believe that the appeal filed has been closed and the said appeal is no longer pending.

14. In the facts and circumstances of the case, these writ petitions are disposed of with a direction to Respondent No.2, Deputy Registrar of Co-operative Societies, Bidar, to decide the pending appeal before him on merits in accordance with law after hearing the concerned parties. The parties may appear before the said authority in the first instance on 19.09.2016 i.e., Monday at 11.00 a.m., and thereafter, after providing reasonable opportunity of hearing to them, it is expected and therefore, Respondent No.2 is directed to decide the pending appeal by a reasoned order in accordance with law within a period of three months from today.

Petitions disposed of

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Basaveshwar Prathamic Krishi Pattian Sahakara Sangaha Niyamita Nej, Belgaum Represented by its Chief Promoter Appasaheb S/o Kuber Wadeyar v State of Karnataka Reported by its Secretary the Department of Co-operation, Bangalore and others, 2016 Indlaw KAR 4550

Case No: Writ Petition No. 105924 of 2014 [CS-RES]

Justice A.S. Bopanna

Head Note :

The next course that is required to be noticed is that in the proceedings before the Deputy Registrar of Co-operative Societies, in the appeal filed at the first instance, the respondent No.4 herein had not been impleaded as a party. Though the order therein is passed, the matter in any event has been remitted to the Assistant Registrar of Co-operative Societies to keep in view the observations made by this Court in the writ petitions while remanding the matter and reconsider the same.

The Order of the Court was as follows:

2. The petitioner Society is registered as per the Certificate at Annexure 'C' to the petition. At an earlier instance, the parties were before this Court in Writ Petition No.62116 of 2011 and connected petitions disposed of on 19t h November 2011. This Court had ultimately directed reconsideration as contemplated under Sections 4 and 7 read with Rule 3 and other relevant provisions of the Karnataka Co- operative Societies Act, 1959, since at that stage, the registration which was challenged in the said writ petitions was not found to be in order. It is pursuant to such directions issued, the order dated 14th March 2013 was passed by the Assistant Registrar of Co- operative Societies. The petitioner herein assailed the same in an appeal filed before the Deputy Registrar of Co-operative Societies.

3. The Deputy Registrar by the order at Annexure 'G' dated 02nd August 2013 had remitted the matter to the Assistant Registrar of Co-operative Societies to reconsider the matter in accordance with law, since it was found that the consideration as made was not in terms of the directions issued by this Court while remanding the matter.

4. The fact that respondent No.4 was not made a party to the appeal filed before the Deputy Registrar of Co-operative Societies cannot be in dispute. It is in that view, the respondent No.4 herein claiming to be aggrieved by the order passed by the Deputy Registrar of Co-operative Societies filed a Review Petition before the same authority, which resulted in the order dated 03r d October 2013 impugned herein. The petitioner is, therefore, aggrieved by such order.

6. In a normal circumstance, the appropriate course would have been to set aside the order and remit the matter to the Deputy Registrar of Co- operative Societies. However, since I have noticed that the power of review was not available, remanding the matter to the same authority does not arise.

7. The next course that is required to be noticed is that in the proceedings before the Deputy Registrar of Co-

operative Societies, in the appeal filed at the first instance, the respondent No.4 herein had not been impleaded as a party. Though the order therein is passed, the matter in any event has been remitted to the Assistant Registrar of Co-operative Societies to keep in view the observations made by this Court in the writ petitions while remanding the matter and reconsider the same. Hence, in the proceedings before the Assistant Registrar of Co- operative Societies, in any event, the respondent No.4 herein is also entitled to be heard as they were parties to the earlier writ petitions.

8. Therefore, if all these aspects are kept in view, it would be futile to interfere with the order dated 02nd August 2013, but an observation is required to be made that in the remitted proceedings before the Assistant Registrar of Co-operative Societies, the respondent No.4 shall also be made a party, notice be issued and after hearing the petitioner as well as the respondent No.4, fresh orders be passed by the Assistant Registrar of Co-operative Societies. All contentions in that regard are left open. To enable such consideration, in any event, the order dated 03r d October 2013 being unsustainable is set aside. Consideration shall be made by the Assistant Registrar of Co-operative Societies keeping in view the above observations in accordance with law.

Till the matter is considered and disposed of by the Assistant Registrar of Co-operative Societies, no other precipitative action shall be taken, as indicated in the communication at Annexure-B to the petition.

The petition is accordingly disposed of.

Petition disposed of

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Karthik K. S/o Late R. Kalaiselvan and others v Government of Karnataka, Department of Co-Operation, Represented by its Principal Secretary, Bangalore and others, 2016 Indlaw KAR 5219; 2016 (6) KarLJ 481

Case No: Writ Petition Nos. 36231-36233 of 2016 (CS-RES)

Justice Ashok B. Hinchigeri

Head note:

Karnataka Co-operative Societies Act, 1959, s. 29G(4) - Karnataka Co operative Societies Rules, 1960, r. 14AM(12) - Vakalathnama - Authority of law - Challenged - Whether, vakalathnama given to P, Advocate for Respondent Society is within authority of law.

Held, s. 29G(4) of Act states that Chief Executive Officer shall sue or be sued on behalf of Co operative Society subject to general supervision and control of Board of Directors. r. 14AM(12) of Rules dealing with his powers and functions states that he shall institute, defend, conduct, compound or abandon any suit or legal proceedings by or against Society and enter into compromise or arbitration with creditors and debtors of Society with approval of Board. Secretary has power coupled with duty to defend Co operative Society in any legal proceedings is not in dispute at all. Vakalathnama given to P, Advocate for Respondent Society is within authority of law. Petitions dismissed.

Trusts & Associations - Advocates & Judges - Apperance of Senior Advocate - Challenged - Whether, Senior Advocate, J can appear for P, Advocate who represents Respondent Society.

Filing of vakalathnama by P is neither unauthorized nor illegal. No disability can be attached to Senior Counsel, J for appearing for P for Respondent Society. Petitions dismissed.

The Order of the Court was as follows:

1. The petitioners' grievance is over the Joint Registrar of Co- operative Societies accepting the vakalath of the learned counsel, Sri P.Anand for the third respondent Society, over- ruling the petitioners' objections to it.

14. He relies on the Bombay High Court's decision in the case of Oil And Natural Gas Commission vs. Offshore Enterprises Inc. reported in AIR 1993 SC 217 wherein it is held that the constituted attorney of a suitor cannot combine with his role of an advocate in the same cause simultaneously.

15. He brings to my notice the Apex Court's judgment in re.Rameshwar Prasad Goyal reported in AIR 2014 SC 850 2013 Indlaw SC 531 wherein it is re-iterated that the lawyers play an important part in the administration of justice. They are equal partners with judges in the administration of justice. The profession requires the safeguarding of high moral standards. As an officer of the Court, the overriding duty of a lawyer is to the court, the standards of his profession and to the public. He has also relied on the Division Bench decision of the Delhi High Court in the case of Deepak Khosla vs. Union Of India reported in 2010 (4) Kar.L.J.13 2010 Indlaw DEL 1965 emphasizing the importance of filing the vakalathnama. The Delhi High Court has taken judicial notice of the following defects routinely found in the vakalathnama (a) failure to mention the names of the persons executing the Vakalathnama, and leaving the relevant column blank. (b) failure to disclose the name, designation or authority of the person executing the Vakalathnama on behalf of the grantor (where the Vakalathnama is signed on behalf of a company, society or body) by either affixing a seal or by mentioning the name and designation below the signature of the executant (and failure to annex a copy of such authority with the Vakalathnama).

18. No separate order is read out on 23.06.2016. In fact, as a matter of fact, when the petitioners sought the necessary relevant documents, a copy of the order, dated 23.06.2016 is not even issued to them. It is the specific case of the petitioners that the separate order is brought into existence subsequent to the writing of the order-sheet, dated 23.06.2016. He submits that the second respondent's order is not reasoned; it is cryptic. It does not consider the various materials produced by the petitioner and by the third respondent Society. In the impugned order one hardly finds the reference to the orders, dated 7.11.2015.

27. Sri Jayakumar S.Patil, learned Senior Counsel appearing on behalf of Sri P.Anand for the respondent No.3 submits that how the authorization to engage a counsel in any proceedings is obtained is not the concern of the petitioners. He submits that the vakalath is duly executed by the Secretary of the third respondent Society. It bears the seal and signature. If the Board of Directors of the third respondent does not want the services of the said counsel, it can always change the counsel. He submits that if the Directors do not want the services of the learned advocate Sri P.Anand or anybody for that matter, they can pass a resolution to that effect. No such resolution is passed. Under Section 30 of the Advocates Act, 1961 the learned counsel Sri P.Anand has every

right to represent the third respondent Society in the proceedings before the Joint Registrar of Co-operative Societies. He submits that the third respondent Society can sue or be sued through its Secretary.

36. The first question that falls for my consideration in this case is whether the vakalath filed by the learned counsel Sri P. Anand on behalf of the respondent Society before the Joint Registrar of Co-operative Societies suffers from any infirmity? The vakalath is signed by Smt. Manjula M, Secretary of the respondent Society. It also bears office seal. The vakalath is executed on 28.4.2016, two days after the commencement of the dispute proceedings (26.4.2016). It is filed on 19.5.2016. The vakalath does not suffer from any infirmity or incompleteness.

37. The next question that falls for my consideration is whether the vakalath given to Sri P. Anand is without the authority of law? Section 29-G(4) of the said Act states that the Chief Executive Officer shall sue or be sued on behalf of the Co- operative Society subject to the general supervision and control of the Board of Directors. Rule 14-AM(12) of the Karnataka Co- operative Societies Rules, 1960, dealing with his powers and functions states in sub-Rule (12) that he shall institute, defend, conduct, compound or abandon any suit or legal proceedings by or against the Society and enter into compromise or arbitration with the creditors and debtors of the Society with the approval of the Board. Thus, that the Secretary has the power coupled with the duty to defend the Co-operative Society in any legal proceedings is not in dispute at all. That the exercise of power and discharge of duties in any legal proceedings is subject to the general supervision, control and approval of the Board is also not in dispute.

38. The allied question would be whether the Board of Directors has to pass the resolution for contesting the case and for appointing the advocate. Bye-law No.56(5) of the respondent Society's Bye-laws require the Secretary to represent the Society in the Court and before the offices. But that does not mean that every time a case is filed against the Co-operative Society, the Secretary has to approach the Board of Directors for resolution and authorization. The petitioners' reliance on Bye-law Nos.55(14) and 25 does not come to their rescue in any way. Bye-law No.55(14) provides for the appointment of legal consultants on retainership basis by the Co-operative Society. Bye-law No.55(25) provides for initiating the legal proceedings or settling the dispute by the Board of Directors invoking the said powers. The Board of Directors can always pass a resolution not to contest the dispute on hand or to settle the matter. But the said Bye-laws cannot be marshalled to contend that the Secretary cannot defend the Society in the dispute on hand in the absence of any resolution by the Board of Directors. Even now also, there is no legal impediment for the Board of Directors to pass the resolution not to contest the case or to settle the matter and further to terminate the agency or power or vakalath given to Sri P. Anand.

39. The third question that falls for my consideration is whether the Senior Advocate Sri Jayakumar S. Patil can appear for Sri P. Anand, the learned counsel who represents the respondent Society before this Court? Sri P. Anand is an advocate, who appears for the respondent Society in the proceedings before the Joint Registrar of Co-operative Societies. Obviously he is not a party before the Joint Registrar of Co- operative Societies. For examining the issue of whether the vakalath given by the Secretary of the respondent Society, Sri P.Anand is neither a proper nor a necessary party. The petitioners appear to have made him the respondent No.4 by way

of abundant caution.

40. I am not persuaded to accept the submission urged on behalf of the petitioners that the Senior Advocate Sri Jayakumar S. Patil cannot appear for Sri P. Anand, as Sri P. Anand himself is a party to these writ proceedings. The filing of the vakalath by Sri P. Anand is neither unauthorized nor illegal. Therefore, no disability can be attached to the Senior Counsel, Sri Jayakumar S. Patil for appearing for Sri P. Anand for the respondent Society.

41. The last but not the least question that arises for my consideration is whether the impugned order, dated 23.6.2016 is liable to be quashed. By the impugned order, the Joint Registrar of Co-operative Society accepted the vakalath overruling the petitioners' objections thereto. My perusal of the impugned order (Annexure-J) reveals that what has weighed with him in accepting the vakalath is that the Board of Directors of the respondent Society passed the resolution in its meeting held on 7.11.2015 to contest the proceedings by justifying the cancellation of the membership of the petitioners. That the Joint Registrar's order could have been better is no ground for interfering in it, as he is neither a legal professional nor he is a judicially trained officer.

42. I am also not persuaded to accept that the separate order, dated 23.6.2016 was brought into existence subsequently for one simple reason. The order sheet, dated 23.6.2016 states that the order on the memo is read out in the open Court. The said order sheet, dated 23.6.2016 is also signed by the petitioner No.3. If separate orders on the petitioners' memo were not pronounced, the objections ought to have been raised then and there itself.

43. In the result, I dismiss these petitions. No order as to costs.

Petitions dismissed

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Krishnamurthy Subramanyam S/o Late Subramanyam and others v Samyukta Bharath Housing Co-operative Society Limited, Represented by its Assistant Secretary and others, 2016 Indlaw KAR 833; 2016 (3) KarLJ 91

Case No: W. A. Nos. 2 - 4/2012 (CS - EL/M)

JJ Vineet Saran & B. Sreenivase Gowda

Head Note

Karnataka Co-operative Societies Act, 1959 - Charging fees to become member - Whether respondent-Society is lawfully entitled to charge lump sum contribution against the provisions of the Act and Rules as well as Bye-laws of Society and lump sum contribution being charged by Society for becoming member could be termed as some sort of fee.

It may be true that general body has the power to prescribe the quantum of fees, but the fees has to be such, which is provided for under Bye-laws, and in terms of the Act and the Rules. Since lump

sum contribution of Rs.15,000/-, for which general body has passed resolution, cannot be termed as 'fees', rejection/returning of application of appellants on ground of non-payment of such contribution of Rs.15,000/- cannot be justified in law. Society cannot charge any lump sum contribution for inducting any new member. Thus, order passed by Single Judge is set aside and order passed by Joint Registrar of Co-operative Societies is uphold. Appeals allowed.

Ratio - In absence of there being any provision in Act, Rules or Bye-laws for deposit of any kind of contribution from person seeking membership, same could not be charged by way of resolution of general body of Society.

The Order of the Court was as follows:

2. Briefly the facts of this case are that in May, 2006 the appellants filed their respective applications seeking membership of the Society, which were rejected/returned on the ground that they had not deposited the lump sum contribution amount of Rs.15,000/- which was, by a resolution of the Society, required to be paid by them for becoming a member. This lump sum contribution of Rs.15,000/- which was being charged by the Society was besides the application fee of Rs.10/-; share fee @ Rs.10/- per share of Rs.500/-; and share value @ Rs.100/- per share for 50 shares i.e., Rs.5,000/-, totaling to Rs.5,510/-. Meaning thereby the appellants were required to deposit Rs.5,510/- + Rs.15,000/- i.e. Rs.20,510/- for becoming a member. The appellants are not aggrieved by the respondent-Society charging the application fee, share fee and the share value totaling to Rs.5,510/-. Their grievance is with regard to the Society charging lump sum contribution of Rs.15,000/- for which, according to the appellants, the Society has no authorization under the law. On their applications have been rejected/returned on 18.05.2006 by the respondent-Society, the appellants challenged the same by filing an appeal before the Joint Registrar of Co-operative Societies, which appeal was allowed on 14.08.2009 by a detailed reasoned order. Aggrieved by the said order, the respondent-Society filed Writ Petition Nos.30936-30938/2009 C/w W.P.Nos.30934-30935/2009, which have been allowed by the learned Single Judge by judgment and order dated 18.08.2011. Challenging the said judgment, these appeals have been filed by the appellants seeking membership of the Society.

4. The facts as stated above are not disputed by the parties. The only question for our consideration is as to whether the respondent-Society is lawfully entitled to charge lump sum contribution in the light of the provisions of the Act and Rules as well as the Bye-laws of the Society.

5. From the above, it is clear, that the bye-laws of the Society is to provide for entrance and other fees to be collected from the members. The relevant bye-law No.6(1) of the bye-laws of the respondent-Society, as quoted in the order of the Joint Registrar of Co-operative Societies, reads as under:

"A person who acquires an apartment by purchase or transfer from the members by way of gift or settlement, excluding the legal representatives who are entitled to succeed to the apartment owner, shall be admitted as a member subject to payment of share capital, share fee, admission fee and entrance fee as may be prescribed by the Annual/Special General Meeting from time to time"

8. What is to be considered now by this Court is as to whether lump sum contribution being charged by the

Society for becoming a member could be termed as some sort of fee or not. In our opinion, the answer to this would be a clear 'No'. A lump sum contribution can in no case be termed as a fee, either for admission or entry. The issue of the appellants being charged application fee, share fee and share value is not in question, as it is the legitimate fee, which the Society can charge from persons seeking membership in terms of the Act, Rules and the Bye-laws. In the absence of there being any provision in the Act, Rules or Bye-laws for deposit of any kind of contribution from a person seeking membership, the same cannot be charged by way of a resolution of general body of the Society. A general body resolution can be only with regard to such matters for which there is provision made in the Bye-laws of the Society, as well as Act and the Rules. It is only certain kinds of fees, which is permissible in law and can be charged from person seeking membership, and not any kind of contribution, as has been required by the Society to be paid in the present case. Though there is no provision for charging of contribution, yet by a resolution of the general body of the Society, it was provided on 24.07.2005 that 'to admit purchasers of Apartment in Various units of the Society from it erstwhile Members on payment of Rs.15,000/- per Apartment as Lump sum contribution and Rs.5,000/- as value of shares in the Society would be charged'. Requiring a person to pay any lump sum contribution to become a member would amount to charging a premium on the sale of flats, for which there is no authorization under the Act, Rules or Bye-laws, and hence would not be in accordance with law.

11. The learned Single Judge has erred in holding that the general body was empowered to prescribe any kind of lump sum contribution to be paid, as in our view, the same cannot be termed as fees. It may be true that the general body has the power to prescribe the quantum of fees, but the fees has to be such fees which is provided for under the Bye-laws, and in terms of the Act and the Rules. Since we are of the opinion that the lump sum contribution of Rs.15,000/-, for which the general body has passed a resolution on 24.07.2005, cannot be termed as a 'fees', the rejection/returning of the application of the appellants on the ground of non-payment of such contribution of Rs.15,000/- cannot be justified in law.

12. We are of the clear view that the Society cannot charge any lump sum contribution for inducting any new member. This we say so because a new member would normally have no say in the passing of a resolution, which may be against the bye-laws and if the general body is permitted to pass resolution for payment of lump sum contribution for entering as a member, without there being any authority for charging such amount under the Act and the Rules, the persons purchasing flats from existing owners would be saddled with the additional amount of contribution, which the Society may start charging as premium, which a non-profit making housing society cannot be allowed to charge. As such, we are of the view that the order passed by the Joint Registrar of Co-operative Societies in the appeals filed by the appellants is justified in law and the order passed by the writ Court is liable to be set aside.

13. Accordingly, we allow the appeals and set aside the order dated 18.08.2011 passed by the learned Single Judge in W.P.Nos.30936-30938/2009 C/w W.P.Nos.30934-935/2009 and uphold the order dated 14.08.2009 passed by the Joint Registrar of Co-operative Societies.

No order as to costs.

Appeals allowed

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Pasand Confectionary, Gadag and others v Joint Registrar of Co-operative Societies Belgaum, Belgavi and others, 2016 Indlaw KAR 1323

Case No: Writ Petition Nos. 101532 - 101534/2016 (CS - DAS)

Justice B. Veerappa

Head Note

KCS Act 1959 – Refund of excess amount not paid - Hence, instant petitions - Whether, action of Respondent No. 1 in not considering representation in terms of order passed by Court is sustainable in law.

Petitioners have filed writ petitions before cause of action matured and there is no material produced by petitioners in present writ petitions to show that Respondent No. 4 is biased and adverse orders are likely to be passed against them. Petitions dismissed.

The Order of the Court was as follows:

2. It is the case of the petitioners that the petitioners - firm had availed loan from respondent Nos. 2 and 3. When the said respondents issued auction notice, then the petitioners without making proper calculation, paid the amount which was demanded by the said bank. Thereafter, the petitioners came to know that they have paid excess amount has per the Government Order dated 8.2.2006. Therefore, the petitioners made representation to the 1st respondent on 26.9.2013. When the 1st respondent did not consider the said representation, the petitioners approached this court in Writ Petition No.84311 of 2013 and connected matters. This Court after hearing both the parties to the lis by the order dated 29.10.2015 disposed of the said writ petitions directing the 4th respondent therein-1st respondent herein to consider the said representation dated 26.9.2013 made by the petitioners and passed appropriate orders as expeditiously as possible and in any event within a period of 3 months from the date of receipt of certified copy of that order.

3. It is the further case of the petitioners that they requested the 1st respondent to consider the representation as per the order passed by this court, but respondent Nos. 2 and 3 approached the 4th respondent by filing necessary documents and the 4th respondent without seeing the documents, on 27.01.2016 expressed the opinion that the petitioners' case is very weak, and hence the petitioners have apprehended the 4th respondent hand with glove of respondent Nos.2 and 3-banks and he will defeat the interest of the petitioners, then filed a memo before the 1st respondent on 28.01.2016 for recalling the order dated 25.1.2016 vide Annexure-E and consider the representation as per Annexure-D.

4. It is the further case of the petitioners that a letter was addressed by the 4th respondent to the petitioners stating that further proceedings would not be conducted and requested to return all the documents produced by the petitioners and submit the same to the 1st respondent for consideration of the representation. It is

further submitted that 4th respondent bent upon to pass order in spite of the letter dated 6.2.2016 and petitioners again doubted the 4th respondent regarding the collusion with the bank. In spite of the request made by the petitioners, the 4th respondent fixed the date of hearing as 11.2.2016 for deciding the matter, but the petitioners did not appear and then exparte order was passed. Therefore, the petitioners are before this Court.

8. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

9. It is not in dispute that earlier petitioners had filed W.P. Nos. 84311 of 2013 and connected matters before this Court to quash the letters dated 16.9.2013 along with proceedings dated 11.9.2013 passed by the Karnataka Central Co-operative Bank Ltd., represented by its Manager. After considering the entire material on record, this Court disposed of the said writ petitions and only directed the Joint Registrar of Co-operative Societies, Belgaum-1st respondent herein to consider the representation dated 26.09.2013 within three months. On the basis of the order passed by this Court, the 1st respondent herein passed Annexure-E and appointed the 4th respondent to audit the accounts in respect of the dispute in question and on the basis of the same, the 4th respondent issued notice dated 5.2.2016 to the petitioners vide Annexure-J informing them that they shall appear before him on 11.2.2016 to furnish the written statements documents and any other records in support of their claim.

If they fail to appear on the said date, it will be presumed that there is nothing to be submitted except the papers furnished on 27.01.2016 and the investigation report will be finalized and the same will be submitted to JRCS Belgaum, before 12.2.2016. Therefore the contention of the petitioners that the 4th respondent has hurriedly passed the orders cannot be accepted and ultimately it is for the 1st respondent, who has to pass orders on the basis of the report submitted by the 4th respondent in terms of the order passed by this Court. Therefore, the petitioners have filed the writ petitions before the cause of action matured and there is no material produced by the petitioners in the present writ petitions to show that the 4th respondent is biased and adverse orders are passed against them. In the absence of any material produced before this Court, the mere allegations cannot be accepted and ultimately it is for the 1st respondent - The Joint Registrar of Co operative Societies, Belgaum, to consider the report to be submitted by the 4th respondent and pass appropriate orders in accordance with law.

10. In view of the aforesaid reasons, prayer sought for in the writ petitions cannot be granted at this stage. Accordingly, the writ petitions are dismissed.

Petitions dismissed

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B. R. Aswathanarayana Setty S/o Late Ramabadraiah and others v State of Karnataka by its Secretary Co-operative Department, Bengaluru and others, 2016 Indlaw KAR 4448

Case No: W. P. No. 32155 of 2016 [CS-RES] and W. P. Nos. 33121 - 33122 of 2016

Bench: Ashok B. Hinchigeri

Head Note :

KCS Act 1959 – Dispute u/s 70 – principles of natural justice.

The Order of the Court was as follows:

2. The petitioners have called into question the order, dated 14.11.2014 (Annexure-D) passed by the second respondent Joint Registrar of Co-operative Societies, dismissing the petitioners' application filed under Order VII Rule 11 of C.P.C. and the order, dated 30.4.2016 (Annexure-E) passed by the Karnataka Appellate Tribunal ('K.A.T.' for short) confirming the said order of the original authority. The third respondent Bank raised the dispute No.JRD/UBF/940/13-14 against the petitioners and the respondent Nos.4 and 5 for the recovery of a sum of Rs. 1,12,13,503/- (rupees one crore twelve lakhs thirteen thousand five hundred and three only).

In the said proceedings, the petitioners filed an application under Order VII Rule 11 of C.P.C. read with Section 70 of the Karnataka Co-operative Societies Act, 1959. The said application was rejected by the Joint Registrar of Co-operative Societies, by his order, dated 14.11.2014. This was upheld by the K.A.T. On suffering the concurrent orders, these petitions are instituted.

8. In the case of Bheemapa and another (supra), (1990 (3) KLJ (Smpl) 152/1990 Indlaw KAR 147) this Court has held that it is open to the mortgagee to bring action for recovery of amounts due either upon the occurrence of default in repayment or wait until the entire term for repayment is completed. In the instant case, the loan was sanctioned on 31.3.2002. The borrowers were required to repay the same in 120 monthly instalments. The petitioners cannot contend with any rate of success that the dispute ought to have been raised within seven years from the date of the occurrence of the first default.

9. I am also not persuaded to accept the petitioners' contention that the principles of natural justice are violated, because the third petitioner was very much present before the Joint Registrar of Co-operative Societies on the date on which the hearing took place and the orders came to be passed thereafter. I am also not impressed of the hyper-technical argument that the Joint Registrar of Co-operative Societies was not a regular officer; he was only an incharge officer. It is trite that the incharge court or the incharge quasi-judicial authority can also dispose of the matters.

10. Not finding an iota of merit or bona fides in this case, these petitions are dismissed. No order as to costs.

Petitions dismissed

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Shashikiran U. S/o Late Umanath Rao v Mahathma Gandi Memorial General Hospital, represented by its Chief Medical Officer, Chikmagalur and others, 2016 Indlaw KAR 6584

Case No: W. P. No. 54588/2015 (GM-RES)

Justice Aravind Kumar

Head Note :

KCS Act 1959 – Running a pharmacy in the premesis of the Hospital

The Order of the Court was as follows:

3. It is the contention of petitioner that on 03/08.08.2011 a notification came to be issued by third respondent stipulating thereunder that in the campus/premises of the Government hospitals, no private medical shop/ pharmacy can be established/commenced or conduct business and it has also been clarified under the said notification that licences which have already been granted should not be renewed and said notification is clearly applicable to first respondent- hospital and despite such notification, second respondent has been permitted to run the medical shop inside the first respondent - hospital and as such, a direction came to be issued by fourth respondent by communication dated 05.12.2012 (Annexure-A) directing first respondent to place on record that there is compliance of the condition imposed under the notification dated 03/08.08.2011 by taking steps to evict second respondent from the premises of Government hospital - first respondent. Despite subsequent orders on 31.12.2012 and 03.06.2013 directing first respondent to take necessary steps to evict second respondent from the premises of first respondent - hospital, same has not been implemented in its letter and spirit and as such, it is contended that there has been violation of these orders. Hence, seeking enforcement of the same, petitioner is seeking for issuance of a writ of mandamus to fourth respondent to implement its orders dated 05.12.2012, 31.12.2012 & 30.06.2013.

4. Second respondent has appeared and filed its statement of objections and except to the extent expressly admitting the averments made in the writ petition, it has denied that second respondent is a private medical shop. It is contended that second respondent cannot be equated with a private medical shop and as such it would fall under the notification dated 03/08.08.2011. It is also contended that second respondent is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 and it has been running a medical shop in the premises of first respondent - hospital since 1984 and said medical shop is run on 24 hour basis without any complaints. It is also contended that it is very much essential for the welfare of the public at large. It is also contended that decision taken by the authorities at different levels to continue medical shop run by the second respondent, by communication dated 28.01.2016 fourth respondent has withdrawn impugned notices - Annexures-A to C issued to second respondent and as such, nothing survives for consideration in this writ petition. Hence, second respondent has sought for dismissal of this writ petition.

6. In view of the fact that second respondent being a co- operative society registered under the Karnataka Co-operative Societies Act and has been running its pharmacy in the first respondent - Government hospital from the year 1984, it would be just and necessary to direct third respondent to take a decision as to whether second respondent would fall within the prohibited category as indicated in the notification dated 03/08.08.2011

(Annexure-R1) or it would fall outside the scope of said notification. It is needless to state that in the event of third respondent arriving at a conclusion that second respondent would not fall within the prohibited category as indicated in the notification dated 03/08.08.2011, question of enforcing said notification on the second respondent would not arise. However, in the event of third respondent arriving at a conclusion that said notification would be applicable to second respondent also, immediate steps shall be taken both by second respondent as well as by respondents-3, 4 & 5 to implement the notification/circular dated 03/08.08.2011 (Annexures-R1) within two months from the date of such decision being taken.

Accordingly, writ petition stands disposed of.

In view of writ petition having been disposed of, I.A.1/2016 does not survive for consideration. Hence, it is hereby dismissed.

Petition disposed of

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Suresh Nagappa Patil S/o Nagappa Patil and others v State of Karnataka, represented by Secretary, Bangalore and others, 2016 Indlaw KAR 7184; 2017 (1) KarLJ 536

Case No: W. P. Nos. 109830-109834/2014 (CS-RES) & W. P. Nos. 109835-837/2014

Justice G. Narendar

Head Note :

KCS Act 1959 – S.14 – condonation of delay

The Order of the Court was as follows:

3. It is the case of the petitioners that the second respondent exercised his power under Section 14 of the Karnataka Co-operative Societies Act and has passed an order dated 06.09.2014 for the division of fourth respondent Society.

That the petitioners are the members of the fourth respondent Society and that fourth respondent is the Primary Agricultural Credit Co-operative Society, registered under Karnataka Co-operative Societies Act. The total membership consists of 1150 and the area of operation of the fourth respondent society is restricted to eight small villages of Dharwad Taluk.

4. It is the case of the petitioners that the resolution ought to have been passed by a 2/3rd majority and there were not sufficient members present and voting on the said date.

7. The submission of the learned Additional Government Advocate and the learned counsel for the petitioners are placed on record and the writ petitions are disposed off reserving liberty to the petitioners to approach the appropriate authority under the provisions of Section 108 of the Karnataka Co-operative Societies Act, 1959.

8. It is pointed out by the learned Additional Government Advocate that the revision has to be preferred within six months. In the event, if the petitioners prefer the revision petition within four weeks from today, the

Revisional Authority shall not reject the same on the ground of being belated.

Accordingly, the writ petitions are disposed of in the above terms.

In view of the disposal of the writ petitions, I.A.No.2/2015 for vacating stay does not survive for consideration.

Petitions dismissed

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A. K. Karnachi v NWKRT's Employees Co-Operative Credit Society Limited and others, 2017 Indlaw KAR 3384

Case No: Writ Petition No. 103416/ 2017 (CS- EL/ M)

Justice B. Sreenivase Gowda

Head Note :

KCS Act 1959 – Appeal before KAT

Justice would be met if this writ petition is disposed of as not maintainable, in view of an alternative and efficacious remedy available to the petitioner, by granting liberty to the petitioner to avail alternative remedy available to him under law.

The Order of the Court was as follows:

1. Petitioner in the above writ petition has sought for a writ of certiorari to quash the impugned order dated 10.2.2017, passed by the 2nd respondent, vide Annexure-D and to issue appropriate order or direction or writ as this Court deems fit to grant.

2. Heard the learned counsel for the petitioner and the learned Addl. Government Advocate for respondent Nos.2 and 3. Perused the writ petition and the Annexures produced along with the writ petition.

3. Learned counsel for the petitioner fairly admits that the petitioner has got an alternative and efficacious remedy of appeal for redressal of his grievance under the provisions of Karnataka Co- operative Societies Act ('the Act' for short).

4. Learned Addl. Government Advocate appearing for respondent Nos.2 and 3 submits that if the petitioner is aggrieved by the order passed by the 2nd respondent, he has to challenge the same before the competent authority or Tribunal by preferring an appeal under Section 106 of the Act.

5. Perusal of Section 106 of the Act would show that the order impugned is an appealable order. If that is so, the writ petition is not maintainable. Therefore, justice would be met if this writ petition is disposed of as not maintainable, in view of an alternative and efficacious remedy available to the petitioner, by granting liberty to the petitioner to avail alternative remedy available to him under law. At this stage, the learned counsel for the petitioner submits that petitioner would challenge the order impugned in this writ petition by preferring an appeal before the concerned appellate authority or Karnataka Appellate Tribunal and in such case the appellate authority/the Tribunal may be directed to dispose of the appeal expeditiously. Hence the following:

ORDER

(i) Writ petition stands disposed of as not maintainable.

(ii) It is open for the petitioner to challenge the order impugned in the writ petition at Annexure-D by preferring an appeal before the concerned appellate authority/ Karnataka Appellate Tribunal as the case may be under Section 106 of the Act. If any such appeal is filed within one month from the date of receipt of a copy of this order, the concerned appellate authority/ Karnataka Appellate Tribunal shall consider and dispose of the same on merits and in accordance with law, after affording opportunity to all the parties, as expeditiously as possible in the facts and circumstances of the case at any rate within five months from the date of service of notice on all the parties in the appeal.

(iii) If there is delay in filing such appeal and if appeal is accompanied with an application for condonation of the said delay in filing the appeal, it may be considered liberally by excluding the time spent on this writ petition from 06.04.2017 i.e., the date of filing of this writ petition till the date of issuance of a copy of this order.

Petition disposed of

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Balaji Saunskarana Marata Sahakari Sangha Niyamita, Reported by Its President Govindappa Somappa Nalavadi v Agricultural Produce Market Committee, Hubballi, by its Administrator, Deputy Commissioner, Dharwad and another, 2017 Indlaw KAR 3496

Case No: Writ Petition No. 109447/2016 (APMC)

Justice B. Sreenivase Gowda

Head Note :

KCS Act 1959 – Appeal necessary – to establish processing units by the society – with in 3 months.

The Order of the Court was as follows:

2. Petitioner has preferred the above writ petition seeking the following reliefs:

"1. A writ of a mandamus directing the Respondent No.1 to consider the representation made by the petitioner society dated: 25/05/2016 vide at Annexure - F, respectively by granting a license to the petitioner society.

2. Any other appropriate writ or order or direction which deems fit to grant by this Hon'ble Court in the fact and circumstances of the case, in the interest of justice."

3. The case of the petitioner is, petitioner is a Society registered under the Karnataka Co-operative Societies Act, 1959. It has made an application under Section 72 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 (hereinafter referred to as 'Act' for short) before the 2nd respondent

seeking to issue license to establish processing unit, as per the provisions of Section 2(2-A) of the Act. The further case of the petitioner is though 2nd respondent after inspecting the processing unit of the petitioner proposed to be established, has passed a resolution on 08.09.2015 resolving to grant license as per Annexures - C and D, but has not taken any decision on the application of the petitioner so far. Hence, the petitioner has made a representation dated 25.05.2016, as per Annexure - F requesting the 1st respondent to issue license so as to enable him to establish processing unit. Therefore, learned counsel for the petitioner prays the Court to allow the writ petition by issuing necessary direction to the respondents.

4. Shri Mallikarjun C. Basareddy, learned counsel for the contesting 2nd respondent submit, the competent authority to consider the application submitted by the petitioner for grant of license to establish processing unit is the 2nd respondent and not the 1st respondent. The 1st respondent Deputy Commissioner is no longer Administrator of the Agricultural Produce Market Committee, Hubballi and now the Agricultural Produce Market Committee, Hubballi is represented by its Secretary and he submits the Agricultural Produce Marketing Committee may be granted a reasonable time to consider and dispose of the application of the petitioner in accordance with law.

The submission made by the learned counsel for the respondent No.2 is placed on record. Hence, the following:

ORDER

(1) Writ petition is allowed.

(2) The respondents-the Agricultural Produce Market Committee, Hubballi represented by its Secretary is hereby directed to consider and dispose of the application submitted by the petitioner for grant of licence to establish the processing unit on merit and in accordance with law within three months from the date of receipt of a copy of this order.

I.A. No.1/2016 filed for impleading is dismissed as not pressed.

Petition allowed

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Daivadnya Co-operative Credit Society Limited, reported by its Chief Executive Officer, Kirna vAssistant Registrar and Departmental Arbitrator of Co-operative Societies, Karwar and others, 2017 Indlaw KAR 2811

Case No: Writ Appeal Nos. 100051/2014 (CS-DAS) C/w 100052/2014 & 100053/2014

JJ, Vineet Kothari & H.B. Prabhakara Sastry

Head Note :

KCS Act 1959 -

Arbitrator could not have tinkered with the agreement of contractual rate of interest between the parties. No discretion could have been exercise by the arbitrator. The so called oral consequence, unless a proper written authority of the person who makes such concession was produced by the society.

The Judgment was delivered by Vineet Kothari, J.

2. The dispute between the petitioner Co-operative Society and the respondent borrower and sureties arose out of the order passed by the learned Arbitrator under Section 70 of the Karnataka Co-operative Societies Act, 1959, vide Annexure-E, dated 2.6.2009. The learned Arbitrator while passing the said award on the outstanding amount of Rs.4,75,000/- has directed the concerned borrowers for the payment of interest at the rate of 12% per annum with 1% penal interest from the date of filing of the dispute.

8. The learned Arbitrator could not have tinkered with the agreement and contractual rate of interest between the parties. No discretion could have been exercised by the learned Arbitrator in this regard. Even the so called oral concession was of no consequence, unless a proper written Authority of the person, who makes such concession was produced before the learned Arbitrator from the side of the appellant-Co-operative Society.

9. Accordingly, the above writ appeals are allowed and setting-aside the impugned award of the learned Arbitrator dated 2.6.2009, vide Annexure-E, the order of the learned Appellate Tribunal, dated 27.09.2013 vide Annexure-F and the order of the learned Single Judge of this Court passed in WP Nos.84449/2013, 84450/2013 and 84451/2013(CS-DAS), dated 18.11.2013, we restore the matter to the learned Arbitrator for deciding the dispute between the parties afresh.

10. The documents for contractual rate of interest may be produced before the learned Arbitrator and relying upon the same, as far as rate of interest is concerned, the learned Arbitrator will decide the dispute between the parties in accordance with law, within a period of six months from today. No costs.

11. Without any further notice, the parties may appear before the learned Arbitrator, in the first instance on 24.04.2017.

Appeals allowed

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H. M. Gopal S/o H. B. Manjacharya v President Vijaya Bank Employees Credit Co-operative Society Limited, Bangalore and another, 2017 Indlaw KAR 2694

Case No: Writ Petition No. 11276/2005 (S-R)

Justice A.N. Venugopala Gowda

Head Note :

KCS Act 1959 – Dispute U/s 70.

In the present case, the view taken by respondent No.2 and also the Tribunal, to deny gratuity is in complete ignorance of the decision rendered in the case of M. Thimmappa Rai (supra). The ratio of law laid down in the said decision squarely applies to the instant case and hence, following the said decision, it is ordered as follows:

Petition is allowed and the Award passed by respondent No.2 and also the Judgment passed by the Karnataka Appellate Tribunal, as at Annexures - L and M, are quashed.

The Order of the Court was as follows:

1. The petitioner joined service on 18.09.1987 as a Junior Assistant of the Vijaya Bank Employees Credit Co- operative Society Ltd. (for short, 'the Society'), Cubbonpet Main Road, Bengaluru - 560 002. He was promoted on 14.10.1996 as Secretary. He tendered resignation on 05.09.2000 and was relieved from service on 31.01.2001. A representation was submitted on 24.02.2001 to settle all the service benefits. The Society sought clarification from the Office of Joint Registrar of Co-operative Societies, Karnataka as to whether an employee of a Co-operative Society is entitled for payment of gratuity on resignation. The Office of the Joint Registrar having issued a clarification on 19.03.2001 to the effect that an employee of a co-operative society is not entitled for payment of gratuity, the Society issued an endorsement on 29.03.2001 declining to pay the gratuity amount. The petitioner assailed the said endorsement in W.P.No.22023/2001. The petition was disposed of on 18.06.2001 with liberty to approach the statutory authority under the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act').

2. Dispute No.D2/1936/2001-02 was filed under S.70 of the Act, before the Additional Registrar of Co-operative Societies (Industrial and Others), Bengaluru - 1. The dispute having been dismissed as per Award dated 01.04.2002, Appeal No.395/2002 was filed before the Karnataka Appellate Tribunal, Bengaluru. By a Judgment dated 19.07.2004, the appeal was allowed in part and the impugned Award to the extent of payment of PF amount was set aside and a direction was issued to the Additional Registrar of Co-operative Societies to determine the claim relating to payment of PF by following the provision under Rule 31(4)(a) of the Karnataka Co-operative Societies Rules, 1960. The claim made with regard to payment of gratuity was negated. This writ petition is directed against the aforesaid Judgment and the Award.

8. Undisputedly, the petitioner joined the services of the Society on 18.09.1987 as a Junior Assistant and promoted to the post of Secretary on 14.10.1996. Petitioner having tendered resignation to the post held by him on 05.09.2000, Managing Committee of the Society accepted the same and the petitioner relieved from service on 31.01.2001. Thus, the petitioner has rendered uninterrupted service to the Society from 18.09.1987 till 31.01.2001 i.e., for a period of 13 years and 4 months. The learned Registrar of the Tribunal even after noticing that the petitioner has rendered more than ten years of service in the Society has negated the claim for payment of gratuity on the ground that there being no definition of the word "Retirement" either in the 1959 Act or 1960 Rules, the petitioner is not eligible for payment of gratuity.

9. In the case of M.Thimmappa Rai (supra), he retired from Government service and subsequently South Kanara Central Co-operative Whole Sale Stores Ltd., Mangalore took him into service. There being continuous service of 7 years from 03.08.1964 till 30.06.1971, payment of gratuity etc. was sought and refused by the Management. Labour Court was approached under S.33C(2) of Industrial Disputes Act, 1947 for payment of the monetary benefits. Labour Court having refused to count the service for the purpose of payment of gratuity, the Award passed was assailed in a writ petition. Considering the scope of Rule 18, providing for payment of gratuity on retirement or death of employees of the Co- operative Societies, it was held as follows:

"4. It is true that Rule 18(4) confers a right on the employees to claim gratuity on retirement, but the word "retirement" in the context, cannot be restricted to only compulsory retirement on attaining the

age of superannuation. If it is so restricted, the persons who voluntarily retire before reaching the age of superannuation cannot claim gratuity even if they have put in more than five years service. That it is not the purpose of the Rule. Rule 18(4) is intended to confer some specific or substantial benefits or advantages to the employees who retire from service, and therefore it is not proper to construe the word 'retirement' in a technical or restricted sense. It should be liberally construed so that the relief contemplated by the Rule is not denied to the persons. If so construed, the word "retirement" in the context must mean "going out of service" and not necessarily on attaining the age of superannuation."

As a consequence, the case of the petitioner was held to be falling under Rule 18(4)(b) and the gratuity was directed to be determined accordingly.

10. In the present case, the view taken by respondent No.2 and also the Tribunal, to deny gratuity is in complete ignorance of the decision rendered in the case of M. Thimmappa Rai (supra). The ratio of law laid down in the said decision squarely applies to the instant case and hence, following the said decision, it is ordered as follows:

Petition is allowed and the Award passed by respondent No.2 and also the Judgment passed by the Karnataka Appellate Tribunal, as at Annexures - L and M, are quashed.

Respondent No.1 is directed to quantify and pay gratuity amount for the service rendered by the petitioner from 18.09.1987 till 31.01.2001 along with simple interest at the rate of 6% p.a. The quantified amount shall be paid to the petitioner within a period of 2 months from the date a copy of this order becomes available.

Having regard to the facts and circumstances of the case, the parties are directed to bear their respective costs.

Petition allowed

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Kamaxi D/o Srikant Joshi and others v Kasimsab Peersab Nadaf and others, 2017 Indlaw KAR 1439

Case No: Regular First Appeal No. 100042/2016

JJ. Anand Byrareddy & K. Somashekar

The Order of the Court was as follows:

2. It transpires that the plaintiff No.1 was the owner of the land bearing Sy. No.6/2A/1A measuring 3 acres 22 guntas and No.6/2B measuring 4 acres 301/2 guntas situated at Hindalaga Road, now known as Mahabaleshwar Nagar, Belgaum. The said land was agricultural land which was converted for non-agricultural purposes in the year 1988 and permission had been sought by plaintiff No.1 for change of use which was granted.

3. Respondent No.1 is said to be a Housing Co- operative Society under the name and style of 'Abhiman Apartment Co-operative Housing Society Limited', which was registered under the Karnataka Co-operative Societies Act, 1959, in the year 1982 and the respondents, plaintiffs are said to have entered into an agreement with the said Society on 19.06.1982 and had agreed to sell the property for a total consideration of Rs.5,00,000/-

and in terms of which the plaintiff No.1 is said to have received about Rs.4.59 lakh and the revenue entries were transferred in favour of the Society. Respondent No.1 is said to have executed a general power of attorney in favour of one M.N.Kenchagar and the balance of the sale consideration was paid by way of a cheque and on receipt of the entire sale consideration, a sale deed was executed. There were three sale deeds executed in the year 1988. In addition to the consideration of Rs.5,00,000/-, respondent No.1 is said to have sought for an extra amount of Rs.10,00,000/-, to which the Society did not agree. Therefore, the plaintiff had issued a notice on 28.03.1989 to M.N.Kenchagar making such unreasonable demand which was replied to. Later K.P.Nadafis said to have instituted an original suit for injunction in O.S. No.1181/1989 in the April 1989 against Kenchagar restraining him from alienating or disposing of the housing plots formed on the land. In the month of December 1988, the Society is said to have sold various plots to various members of the Society and it transpires that the suit, O.S. No.1181/1989 was dismissed against which an appeal was preferred which was also dismissed and second appeal in RSA No.896/1996 was filed before this Court and the appeal had been allowed and the suit was decreed.

4. Being aggrieved a Special Leave Petition was said to have been filed before the Supreme Court and it was said to have been allowed, setting aside the judgment of this Court and the matter was remanded to this Court. Thereafter, on such remand, the appeal was dismissed by a judgment dated 24.06.2000. While dismissing the appeal, this Court had observed that the alleged notice issued by K.P.Nadaf for revocation of General power of Attorney had not been served on the power of attorney holder and liberty was reserved to file a comprehensive suit. Therefore, respondent No.1 had instituted yet another civil suit in O.S. No.163/2003 seeking the relief of declaration that the sale deeds executed in favour of the Society were void ab initio and that the allotment of plot to defendant Nos.1 to 120 were invalid and sought for redelivery of possession of the suit land from defendant Nos.1 to 120 and also for permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property.

8. In other words, it is for the first time that the appellants seek to make out a case of their possession being disturbed by virtue of the judgment and decree. If the appellants were not parties to the suit, the decree would not bind the appellants. Therefore, they would have an independent right to protect their possession and the appropriate remedy would be to file an independent suit seeking protection of their possession and title. The appeal would be fruitless, as there are no issues that arise which could be considered for the first time in appeal and thereby converting this Appellate Court into a Trial Court which is not contemplated in law. Therefore, the appellants' remedy would be to independently protect their possession by the course to an appropriate suit.

10. In that view of the matter, the appeal is disposed of, while observing that the respondents shall not take advantage of this situation and seek to disturb the possession of the appellants, till such time that the appellants approach an appropriate Court for appropriate relief.

However, it is made clear that it would be the duty of the appellants to take expeditious steps in this direction and a week's time would be reasonable time within which the appellants should file such a suit and take such steps as may be open to them.

Appeal disposed of

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Mahalinga S/o Siddegowda v Additional Registrar of Co-operative Societies, Bangalore and others, 2017 Indlaw KAR 5365

Case No: Writ Petition No. 41712 of 2017 (CS-EL)

Justice B.S. Patil

Head Note :

KCS Act 1959 – sec.17(1)(2)

If prima facie, it was established from the records that responded from 4 & 5 herein are already members in another society, in view of express provision contained under sec.17(1)&(2) of KCS Act, necessary orders have to be passed either interim, or final, expeditiously, has other wise, it will tentamount to allowing persons who are disqualified to continue as members to discharge their duties as such- petition disposed accordingly

The Order of the Court was as follows:

2. Petitioner is one of the members of respondent No.3-Yashaswini House Building Co- operative Society. He has raised the dispute before respondent No.1 herein under Section 70 of Karnataka Co-operative Societies Act, 1959 (for short 'KCS Act') seeking declaration that respondent Nos.4 and 5 herein are disqualified from being members of the respondent No.3-Society on the ground that they were already members of respondent No.6-Advocates House Building Co-operative Society and as per law, dual membership was not permitted. Reliance has been placed on provisions of Section 17(1)(d) & 17(2) of the KCS Act to contend that if a member becomes subject to any of the disqualifications specified in sub-section (1), he shall be deemed to have ceased to be a member from the date when the disqualification was incurred.

3. According to the petitioner, respondent Nos.4 and 5 herein being already members of respondent No.6-Society were ineligible to secure membership of respondent No.3-Society let alone contest the election to become the members of Managing Committee of the Society.

4. Along with the Dispute, petitioner has filed an application under Section 71(3) of the KCS Act read with Section 151 of CPC seeking an interim order preventing respondent No.3 and 4 therein from participating, contesting and voting in the election scheduled to be held on 13.9.2017, said application has been dismissed by respondent No.1 herein on 6.9.2017 holding that directors could not be prevented from attending the meeting until the matter was finally decided regarding their eligibility. It is this order that is called in question in this writ petition.

5. When this matter came up before this Court for preliminary hearing, this court passed an interim order on 12.9.2017 permitting the election process to go on, but announcement of the result was directed to be deferred until further orders. Today, learned Additional Advocate General appearing for respondent Nos.1 and 2 submits that as per the interim order passed by this Court on 12.9.2017, election process has been

completed, but announcement of the result is withheld. However, it is urged by him that even if two votes cast by respondent Nos.4 and 5 herein were to be excluded and if the candidates contesting the election were to show that they had majority support, then there is no reason why election results shall not be announced.

6. On the request made by the learned Additional Advocate General, Returning Officer was permitted to count the votes secured by the candidates in the election in the presence of counsel for parties, petitioner and respondent No.5. It is reported to the Court by the Returning Officer that out of 11 votes, one candidate has secured 7 votes and other candidate has secured 4 votes for the post of President and similarly same number of votes has been secured for the post of Vice President. Therefore, even if two votes are excluded from 7 votes, person who has secured majority votes would get elected. He, therefore submits that Returning Officer may be permitted to announce the results for the post of President and Vice President by excluding the votes cast by respondent Nos.4 and 5 herein.

7. I find that this submission of the learned Additional Advocate General is just and fair. Hence, the returning officer is permitted to announce the result.

8. This takes us to the legality and correctness of the order passed by respondent No.1. Order passed by respondent No.1 is not a speaking order. He has to prima facie come to conclusion whether allegation made regarding disqualification of respondent Nos.4 and 5 herein is incorrect and is apparently demonstrable from the materials on record. If prima facie, it was established from the records that respondent Nos.4 and 5 herein are already members of another society, then, in the wake of express provision contained under Section 17(1) and (2) of the KCS Act, necessary orders have to be passed either interim or final, expeditiously, as otherwise, it will tantamount to allowing persons who are disqualified to continue as members to discharge their duties as such.

9. Accordingly, writ petition is disposed of. Order dated 6.9.2017 passed by the Additional Registrar of Co-operative Societies, respondent No.1 herein is set aside. Respondent No.1 is directed to hear both parties and after examining relevant records, pass appropriate orders on merits. Petitioner and respondent Nos.4 and 5 herein shall appear before respondent No.1 on 6.10.2017 and respondent No.1 shall dispose of the appeal before 30 days from 6.10.2017. Both the parties shall co- operate for expeditious disposal of the appeal.

Petition disposed of

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Secretary Virajpet Taluk Employees Co-operative Society Limited Gonikoppal and another Deputy Registrar of Co-operative Societies, Madikere Kodagu and others, 2017 Indlaw KAR 3394

Case No: Writ Appeal Nos. 3957-3958 of 2017 (CS -EL/M)

JJ. Subhro Kamal Mukherjee & P.S. Dinesh Kumar

The Order of the Court was as follows:

ORDERS ON I.A. NO.II OF 2017

1. Mr. Vivek Holla, learned high court government pleader, appears for the respondent Nos.1 and 2. Inspite of service of notice to the respondent Nos.3 to 5, none appears.

After hearing Mr. B.S. Sachin, learned advocate appearing in support of the application for condonation of delay in filing the appeals, Mr. Vivek Holla, learned high court government pleader, appearing for the respondent Nos.1 and 2 and considering the averments contained in the affidavit annexed to the application for condonation of delay, we are satisfied that the appellants were prevented by sufficient cause from presenting the memorandum of appeals in time. Therefore, the delay in filing the appeals is condoned.

3. One Mr. M.S. Kalaiah filed a dispute case under Section 70 of the Karnataka Co-operative Societies Act, 1959, challenging the election to the Board of Management held on March 1, 2015, inter alia, on the ground that illegally his nomination was rejected. The dispute was registered as Proceedings No.220 of 2014-2015 before the Deputy Registrar of Co-operative Societies. By order dated January 16, 2017, the dispute was allowed and the election was held to be invalid.

5. We are of the opinion that when an appeal is pending, operation of the order, which has a serious civil consequence, should remain stayed.

6. Challenging the order refusing to grant stay was moved before this Court. In the writ petitions, by the order impugned in these appeals, the Hon'ble Single Judge held that the elections would be subject to further orders of this Court.

7. We are informed that, already, the election has been held. Therefore, the prayer for stay has become infructuous.

8. We take this opportunity to request the Karnataka Appellate Tribunal to dispose of the Appeal No.45 of 2017, as expeditiously as possible, preferably within a period of two months from the date of communication of this order. We, however, express no opinion on the merits.

9. The election shall abide by the result of the decision of the Karnataka Appellate Tribunal.

Petition disposed of

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Shyla W/o S. R. Paramesh v Assistant Registrar of Co-operative Societies, Mysore and others, 2017 Indlaw KAR 3078

Case No: W. P. No. 22408 of 2017 (CS-Res)

Justice B. Veerappa

The Order of the Court was as follows:

4. It is the case of the petitioner that the petitioner was working as the Chief Executive Officer from 2008 in the second respondent Society and she has been working sincerely and there is no complaint what-so-ever against the petitioner. It is further contended that under the byelaws and under the KCS Act, the CEO has got the power to call for the meetings and also to issue notices for the meetings.

It is submitted that the respondent No.3, President issued a meeting notice dated 17.04.2017 calling for the meeting on 25.04.2017 without authority of law. In the said meeting Agenda -4 to be discussed was that the petitioner was not working as the CEO in accordance with the bylaws of the society. The entire proceedings was held in the absence of the petitioner and the meeting was conducted under the leadership of the president i.e., the respondent No.3 who had no power to issue meeting notice and to conduct the meting on 25.04.2017.

5. From the date of disqualification, the President has started to harass the petitioner on some or the other ground. In fact the petitioner has also lodged a complaint before respondent No.1 against the respondent No.3. The petitioner was not allowed to work in the Society by putting the lock where the documents were kept. The petitioner was mentally harassed by the President.

Therefore, the petitioner approached the first respondent and filed a dispute under the provisions of Section 70 of the KCS Act on 02.05.2017 and also filed an application on the same day for consideration of interim prayer. Inspite of the repeated requests made by the petitioner, the first respondent has not considered the said IA and in view of the delay in consideration of the interim prayer, the President is harassing the petitioner. Therefore, the petitioner is before this Court for writ of mandamus.

9. Having heard the learned counsel for the parties to the lis and in view of the fair submissions made by the learned HCGP for the first respondent, the first respondent Assistant Registrar of Cooperative Societies is directed to consider the application filed by the petitioner as per Annexure -F under the provisions of Section 71 (3) of KCS Act, and pass orders on interim application in accordance with law within a period of two weeks from today.

Petition disposed of

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Suresh Nagappa Patil S/o Nagappa Patil and others v State of Karnataka, represented by Secretary, Bangalore and others, 2016 Indlaw KAR 7184; 2017 (1) KarLJ 536

Case No: W. P. Nos. 109830-109834/2014 (CS-RES) & W. P. Nos. 109835-837/2014

Justice G. Narendar

The Order of the Court was as follows:

That the petitioners are the members of the fourth respondent Society and that fourth respondent is the Primary Agricultural Credit Co-operative Society, registered under Karnataka Co-operative Societies Act. The total membership consists of 1150 and the area of operation of the fourth respondent society is restricted to eight small villages of Dharwad Taluk.

4. It is the case of the petitioners that the resolution ought to have been passed by a 2/3rd majority and there were not sufficient members present and voting on the said date.

5. Per contra, the learned Additional Government Advocate would submit that the writ petitions are not maintainable, in view of the alternative remedy of revision, which is available to the petitioners.

7. The submission of the learned Additional Government Advocate and the learned counsel for the petitioners are placed on record and the writ petitions are disposed off reserving liberty to the petitioners to approach the appropriate authority under the provisions of Section 108 of the Karnataka Co-operative Societies Act, 1959.

8. It is pointed out by the learned Additional Government Advocate that the revision has to be preferred within six months. In the event, if the petitioners prefer the revision petition within four weeks from today, the Revisional Authority shall not reject the same on the ground of being belated.

Accordingly, the writ petitions are disposed of in the above terms.

In view of the disposal of the writ petitions, I.A.No.2/2015 for vacating stay does not survive for consideration.

Petitions dismissed

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Abdul Hameed Kasim Mulla and others v Kanara District Cerntral Co-operative Bank Limited, represented by its Managing Director, Sirsi and others, 2018 Indlaw KAR 4859

Case No: RSA No. 100195 of 2018 (DEC/INJ)

Justice Krishna S. Dixit

Head Note :

KCS Act 1957 - Dispute

Whether, Borrowing of loan, repayment of loan and satisfying Arbitral Award are all matters of fact which have been looked into by lower Appellate Court is valid.

Thus, dispute is essentially between Appellants as borrowers and Respondent Bank as lender. There is absolutely no scope for treating this dispute as tripartite dispute at all. Further, Appellants as to non appropriation of subsidy and interest waiver to their loan account could have been well agitated before Arbitrator and also in their Appeal before Karnataka Appellate Tribunal. That exercise having not been done, it was not open to Appellants to agitate same in their suit. Borrowing of loan, repayment of loan and satisfying Arbitral Award are all matters of fact which have been looked into by lower Appellate Court, by way of reappreciation of both facts and evidence. Appeal dismissed.

The Judgment was delivered by Krishna S. Dixit, J.

2. The brief facts stated are;

(a) The Appellant Nos.1 and 2 had borrowed certain sums of money from the Respondent-KDCC Bank in connection with the fisheries business and for prawn cultivation; the Respondent-Government has sanctioned lot of subsidy and interest waiver which have not been appropriated to the loan account of the Appellants; the Branch Manager of the Respondent-Bank has mis- appropriated the subsidy amount and also the amount remitted by the Appellants towards the loan repayment; despite all this, the Respondent-Bank was trying to harass the Appellants by threatening to auction their property which has been furnished by way of security for repayment of the loan.

(b) In the above circumstances, the Appellants had filed a Civil Suit in O.S.No.9/2013 for a declaration that no amount is payable by the Appellants to the Respondent-Bank and therefore the Respondent-Bank should be restrained from auctioning the Appellants' property that was furnished by way of security for the repayment of loan.

4. The Trial Court vide Judgment and Decree dated 05.04.2017 decreed the suit holding that no amount is due from the Appellants to the Respondent-Bank and therefore, the Respondent-Bank was injuncted from selling the suit property that was furnished by way of security for repayment of the loan. Appeal of the Respondent-Bank against the same came to be allowed; decree of the Trial Court is reversed and the Appellants suit itself is dismissed.

8. I have carefully considered the rival contentions advanced at the Bar. The law relating to the bar of jurisdiction of Civil Courts is well settled by the Apex Court in the Case of Dhulabhai Vs. The State of Madhya Pradesh reported in AIR 1969 SC 78 1968 Indlaw SC 137; para Nos.1 & 2 of the said ruling reads;

"1. Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

2. Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil c9ourts and prescribed by the said statute or not."

9. The suit of the Appellants in its pith and substance is one relating to the discharge of loans whether with their own money or the money that came from the Government or its agencies by way of subsidy or interest waiver. Merely because the money has come from other sources for the benefit of Appellants, does not metamorphose the lis in the suit into a tripartite dispute contra distinguished from the arbitrable disputes contemplated under Section 70. Therefore, the contention of the Appellants that it is a tripartite dispute is liable to be rejected.

11. The Appellants had borrowed money from the Respondent-Bank; the dispute was arbitrated and awards have been passed saddling the liability on the Appellants; these awards were challenged in statutory Appeals by the Appellants unsuccessfully before the Karnataka Appellate Tribunal and after dismissal of the Appeals, awards have attained finality. That being so, the only remedy left to the Appellants was to challenge the orders of the Appellate Tribunal by filing the Writ Petition and not by circuitous way of filing suit.

12. The contention of the learned counsel for the Appellant that the Respondent-Bank despite receiving subsidy and interest waiver has not given credit of the same has been duly considered by the Trial Court which should not have been interfered with by the lower Appellate Court is very difficult to accept; the Respondent-Bank in its Written Statement and evidence has meticulously stated as to how the subsidy and the interest waiver have been appropriated to the loan account of the Appellants. The Respondent-Bank is established under the provisions of Karnataka Co-operative Societies Act and that all its accounts are audited statutorily.

14. In any event, the borrowing of the loan, repayment of the loan and satisfying the Arbitral Award are all matters of fact which have been looked into by the lower Appellate Court, by way of re-appreciation of both facts and evidence. No substantial question of law arises from these facts. The questions framed by the Appellants in the Appeal memo at para 26 are only the mixed questions of law and facts and they are not the

substantial questions of law. Therefore, there is no merit in this Appeal.

The Appeal is dismissed as being unworthy of admission.

Appeal dismissed

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Anand Balkrishna Appugol v Nana Dhondiba Desai and another, 2018 Indlaw KAR 6072

Case No: Criminal Petition No. 100819/2018

Justice H.B. Prabhakara Sastry

Head Note :

KCS Act 1959

Criminal - Karnataka Protection of Interest of Depositors in Financial Establishment Act, 2004, Held, Petitioner/Society is not an assisted Society under Act. Even though petitioner Society is required to file its audit returns to Registrar of Co operative Societies and with respect to its accounts, it is subject to provision and control of Registrar of Co operative Societies u/s. 2A(6) of Act.

Merely because society is required to be registered under a particular statute or that it is required to submit its audited report to particular Department of Govt. annually, would by itself not make society as one under direct control of State. - even though petitioner/Society is a Cooperative Society, but it is not controlled by State Govt. or Central Govt., thus excluding it from definition of Financial Establishment u/s. 2(4) of Act, as such only contention taken up by petitioner in his petition that Act of taking cognizance by Special Court was bad in the eye of law, in view of alleged non application of Act to petitioner Society is not acceptable. Petition dismissed.

The Order of the Court was as follows:

2. The summary of the case which has lead the present petitioner to file this petition is that, the present petitioner is said to be the Chairman of Sri. Krantiveera Sangolli Rayanna Co-operative Society Ltd., a Co-operative Society registered under the provisions of Karnataka Co-operative Societies Act, 1959 (henceforth for brevity referred to as 'KCS Act') and governed by the provisions of the said Act and bye-laws framed under it.

3. The present respondent, as a complainant, has filed a private complaint under Section 18 of KPID Act before the Special Court for the offence punishable under Sections 3, 4, 6, 7, 8 and 9 of the said Act alleging that the present petitioner, who is in charge of Krantiveera Sangolli Rayanna Credit Co-operative Society Ltd., and also Gajaraj Credit Co- operative Society has failed to refund a sum of Rs. 66,27,282/- to the various depositors who had deposited the said amount with the said Co-operative Societies. It is further alleged in the complaint that the present petitioner, who is the accused before the Special Court has invested the money of the depositors, collected by him, in real estate business said to have been run by him. Thus, he has cheated

the general public/investors by misappropriation of the fund deposited by them. The Special Court took the cognizance of the said private complaint under Section 18 of the KPID Act and issued summons to the accused mentioned therein including the present petitioner. It is the said act of the Special Court in taking cognizance of the matter, the present petitioner has challenged with a prayer to quash the entire proceedings pending before the Special Court.

9. Learned High Court Government Pleader in his arguments submitted that the Co-operative Society of the petitioner is admittedly registered under KCS Act, 1959. Under the said Act though the said society is required to be registered under it, but the said registration and the supervision of its activities by the Registrar of the Co- operative Societies through his office cannot be called as a control exercised by the State with respect to the registered Co-operative Society. He further submitted that admittedly the petitioner Society is not an assisted Society. As such also, it cannot be said that it is controlled by the State. Therefore, KPID Act does not exclude from its ambit the petitioner's Society.

16. It is not in dispute that the petitioner Society is a registered Co-operative Society under KCS Act, 1959. Admittedly, the petitioner-Society is not an assisted Society under the KCS Act. Even though the petitioner Society is required to file its audit returns to the Registrar of Co- operative Societies and with respect to its accounts, it is subject to the provision and control of the Registrar of Co- operative Societies under Section 2A(6) of the KCS Act. Still it cannot be ignored of the fact that the society would have its own management to run its business and its entire management would vest in the Board constituted under Section 28A of the KCS Act. The Society would run its activities as per the bye-law framed by it. As such, the Society will frame the bye-law though on par the model bye-law, to conduct its business in the manner recognized under the law. Its internal management and affairs will be governed and controlled by the Board of Management constituted under Section 28(A) of the KCS Act. Merely because the society is required to be registered under a particular statute or that it is required to submit its audited report to the particular Department of the Government annually, would by itself not make the society as the oneunder the direct control of the State. In this regard, I rely upon a judgment of the Hon'ble Apex Court in Thalappalam Ser. Co-op Bank Ltd. and others v. State of Kerala and others reported in AIR 2013 SC (Supp) 437, wherein at paragraph Nos.15, 17 and 18 the Hon'ble Apex Court was pleased to observe as below :

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

operative Societies or State Government.

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in S.S.Rana v. Registrar, Co- operative Societies and another (2006) 11 SCC 634 : (2006) AIR SCW 3723). In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P Co-operative Societies Act this Court held as follows : (para 9 of AIR SCW)

"9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other co-operative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the co-operative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr.Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created ? (2) Whether it enjoys any monopoly character ? (3) Do the functions of the Society partake to statutory functions or public functions ? And (4) Can it be characterized as public authority ?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non- statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in Ajay Hasia v. Khalid Mujib Sehravardi (AIR 1981 SC 487 1980 Indlaw SC 244*). [See Zoroastrian Co-op. Housing Society Ltd. v. Distt. Registrar, Co-op. Societies (Urban) (2005 AIR SCW 2317).]*

12. It is well settled that general regulations under an Act, like the Companies Act *or the Co- operative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."*

18. We have, on facts, found that the Co- operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article

12 of the Constitution *and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment."*

17. A reading of the above observation makes it very clear that even though the present petitioner Society is also a Body Corporate, but under KCS Act, the final Authority of the said Society vests in the General Body of its members and under Section 28A of the KCS Act. The Societies managed by the Managing Committee constituted in terms of the bye-laws. Final Authority so far as the petitioner-Society is the general body and not the Registrar of Co-operative Societies or State Government. Therefore, merely because the petitioner-Society is regulated in its activities by the Registrar or Joint Registrar of Co-operative Societies, but the same cannot be said that the said regulatory act is by any means a direct or indirect control over the affairs of the Society bringing it within the ambit of the definition of Section 2(4) of KPID Act as the Co-operative Society controlled by the State. Thus, it is clear that even though the petitioner-Society is a Co-operative Society, but it is not controlled by the State Government or the Central Government, thus excluding it from the definition of Financial Establishment under Section 2(4) of KPID Act, as such the only contention taken up by the petitioner in his petition that the Act of taking cognizance by the Special Court was bad in the eye of law in view of the alleged non application of KPID Act to the petitioner Society is not acceptable. Accordingly I do not find any merit in the petition. As such the petition stands dismissed as not fit for admission.

18. In view of the main petition, IA No.1 of 2018 does not survive for consideration.

Petition dismissed

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Basavanagudi Co-Operative Society Limited, represented by its General Manager, Bengaluru v N. Nataraj S/o B. Nanjunda Rao and another, 2018 Indlaw KAR 3896

Case No: Writ Appeal No. 308 of 2018 (CS-RES)

JJ Dinesh Maheshwari & P.S. Dinesh Kumar

Head Note :

Karnataka Co-operative Societies Act 1959 – refund of the advance amount by the society.

The Single Judge, therefore, held that proceedings initiated by respondent No. 1 before Tribunal were in order. There appears absolutely no reason that appellant Society would attempt to retain part of amount of deposit available with them and hence, direction for its refund cannot be said to be unjustified. Appeal dismissed.

The Judgment was delivered by Dinesh Maheshwari, J.

2. Shorn of unnecessary details, the relevant background aspects of the matter are that the respondent No.1

herein had taken two shops on lease from the appellant-Society on monthly rent of Rs. 14,000/- commencing from June, 2001. The respondent No.1 made the deposit of an amount of Rs. 8 lakh as interest free deposit for the lease in question. The respondent No.1 allegedly suffered losses in the business and handed over the shops to the appellant-Society and demanded the refund of the advance amount of Rs. 8 lakh on 01.03.2002. The appellant-Society refunded an amount Rs. 3,63,682/- but, retained the remaining Rs. 4,36,318/- on the ground that the respondent No.1 had agreed to deposit towards advance amount Rs. 15,70,000/- but, he deposited only Rs. 8 lakhs and he was in fact to pay interest at the rate of 12% per annum on the balance amount payable by him; and that he had agreed to forego 25% of the advance amount payable by him. The appellant-Society allegedly passed a resolution for recovering the amount which was allegedly due to them and then refunded the aforesaid amount of Rs. 3,63,682/-.

3. The respondent No.1 herein questioned the action of the appellant-Society by raising a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959, before the Deputy Registrar-2, Co-operative Societies, Bengaluru, in case No.DRB-2:Dis:125/2002-03. The Deputy Registrar, by his order dated 16.11.2007, rejected the dispute. Feeling aggrieved, respondent No.1 challenged the said order by way of an appeal before the Karnataka Appellate Tribunal in Appeal No.85/2008 under Section 105 of the Karnataka Co-operative Societies Act, 1959. The Tribunal, by its order dated 18.03.2015, allowed the appeal while holding that the respondent No.1 herein is entitled to recover the said amount of Rs. 4,36,318/- from the present appellant with interest at the rate of 6% per annum.

4. The order passed by the Tribunal on 18.03.2015 was questioned by the appellant-Society in W.P.No.23662/2015, that has been considered and dismissed by a learned Single Judge of this Court, while essentially disapproving the resolution said to have been adopted by the appellant- Society.

5. The learned Single Judge, inter alia, observed that the said resolution was passed without extending any opportunity of hearing to the depositor and he was not under any obligation to be bound by any such resolution, which was not even the part of the terms of agreement of lease between the parties. The learned Single Judge approved the order of the Tribunal while observing and directing as under:

"3. When the order of the second respondent in Dava No.125/2003 is looked into it is seen that the same is dismissed on the premise that the petitioner-society had right to deduct 25% of the advance amount based on certain resolution passed by the petitioner - society. When the same was challenged before the Karnataka Appellate Tribunal in Appeal No.85/2008, the Tribunal on verification of the material available on record has come to the conclusion that the resolution of the society in authorising the society to deduct 25% of the advance amount as and by way of forfeiture was never communicated to the first respondent herein and as such he was not under any kind of obligation to be bound by such resolution which was not even part of the terms of the agreement of lease between the petitioner and the first respondent with reference to shops no.F2 and F3 which were leased out to the first respondent herein. In that view of the matter, this court is of the opinion that the order of the Karnataka Appellate Tribunal in directing the petitioner herein to refund the sum of Rs. 4,36,318/- with interest at 6% per annum from the date of dispute till its realisation and also to receive proportionate cost from the petitioner herein appears to be just and proper. The same does not call for

interference in this proceedings.

4. Accordingly, this writ petition is dismissed. While dismissing the writ petition this court would observe that the petitioner - society should refund the amount with interest within 30 days from today, failing which the first respondent is at liberty to initiate contempt proceedings against the petitioner to ensure prompt compliance of the order."

10. In an over all comprehension, we are satisfied that the views as taken by the Tribunal as also by the learned Single Judge are just and proper and serve the cause of justice. There appears absolutely no reason that the appellant- Society would attempt to retain a part of the amount of deposit available with them and hence, the direction for its refund cannot be said to be unjustified. This appeal is, therefore, required to be dismissed.

Appeal dismissed

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Bharath Co-operative Bank Limited v Additional Registrar of Co-operative Societies, Bangalore and another, 2018 Indlaw KAR 4376

Case No: Writ Petition No. 54564/2017 (CS-RES)

Justice B.V. Nagarathna

Head Note :

Banking & Finance - Karnataka Co-operative Societies Act, 1959, s. 105(2) - Order of Refund – Challenged.

Since award made against respondent no. 2 has been set aside and matter has been remanded to respondent no. 1 for fresh consideration, for present there is no award which is operating against respondent no. 2 and his family members. Therefore, Tribunal was justified in directing to refund of said amount to respondent no. 2. Therefore, impugned order would not call for interference. Order accordingly.

The Order of the Court was as follows:

4. The relevant facts of the case are that father of second respondent - Late Nagaraja had obtained a loan of Rs. 13,00,000/- from the petitioner - Bank. According to the second respondent, the said loan amount has been cleared. However, the Bank - petitioner herein raised a dispute U/s 70 of the Karnataka Co-operative Societies Act,1959. (hereinafter called as 'the Act' for brevity) before the first respondent. By award dated 11.3.2016, the second respondent herein and his family members being legal representatives of the deceased borrower - Nagaraja were directed to pay a sum of Rs. 6,45,950/- along with interest as stated in the said award. That award was assailed by the legal representatives of the deceased- Nagaraja before the Tribunal in Appeal No.142/2016. By judgment dated 24.3.2017, the Tribunal has allowed the appeal and set aside the award and remitted the matter to the first respondent herein for hearing afresh in accordance with law.

Thereafter, the second respondent herein filed an application seeking refund of Rs. 1,95,000/- said to have been deposited by him in the first respondent - Bank in respect of Appeal No.142/2016. By the impugned order dated 28.11.2017, the Tribunal has directed the petitioner - Bank to refund the said amount to the second respondent herein. Being aggrieved by that order, the petitioner- Bank has preferred this writ petition.

9. The detailed narration of facts and events would not require a reiteration except to high light the fact that the award passed by the first respondent at Annexure A dated 11.3.2016 has been set aside by the Tribunal on remanding the matter for fresh consideration. Therefore, in law, there is no award in the eye of law which is to be satisfied by second respondent and his family members. In the circumstances, second respondent sought for refund of Rs. 1,95,000/- paid to the Bank which, according to him was paid pursuant to Sub Section 2 of Section 105 of the Act or else the appeal would not have been entertained at all. Since the award made against the second respondent has been set aside and the matter has been remanded to the first respondent for fresh consideration, for the present there is no award which is operating against the second respondent and his family members. Therefore, the Tribunal was justified in directing to refund of the said amount to the second respondent. Therefore, the impugned order would not call for interference.

Order accordingly

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D. Nanjundaiah S/o Late Made Gowda v Management of Karnataka State Apex Bank Limited, Bengaluru and others, 2018 Indlaw KAR 5685

Case No: Writ Petition No. 39520 of 2010 (S-RES)

Justice A.S. Bopanna

Head Note :

Karnataka Co-operative Societies Act 1959 – dispute under sec.70 – KAT

It is seen that the petitioner had primarily raised dispute at the 1st instance before the labour court and as such he cannot be denied the benefit of consideration by the appropriate forum solely on the ground of delay and that too when he has acted promptly in the situation despite having suffered the process for such a long time.

The Order of the Court was as follows:

7. Be that as it may, the Hon'ble Supreme Court while considering such an aspect of the matter in its decision in the case of Collector, Land Acquisition vs. MST. Katiji reported in ILR 1987 Kar 2844 has explained the manner in which the term "sufficient cause" is to be considered while condoning the delay since what ultimately is required is to deliver even handed justice to the parties. Therefore, in that circumstances, it is seen that the petitioner had primarily raised the dispute at the first instance before the Labour Court and as such he cannot be denied the benefit of consideration by the appropriate forum solely on the ground of delay and that too when he has acted promptly in the situation despite he having suffered

the process for such a long time.

Petition disposed of

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D. Sugandhi W/o N. Manjunath and another v State of Karnataka and others, 2018 Indlaw KAR 9788

Case No: Writ Petition No. 1663 of 2018 C/W REVIEW Petition No. 236 of 2018 in Writ Petition No. 1661 of 2018 (GM-MMS)

JJ Krishna S. Dixit & Dinesh Maheshwari

Head Note :

KCS Act 1959

Held, not oblivious of fact that in certain situations, court having regard to purport and object sought to be achieved by legislature may construe word 'substitution' as an 'amendment' having a prospective effect but such a question does not arise in instant case'. Here again, case does not come to aid of Review Petitioner. No new ground that supportively differentiates this case from other is urged. Review dismissed

The Judgment was delivered by Krishna S. Dixit, J.

2. In Writ Petition No.1661/2018 filed before this Court, the Petitioner sought a declaration to the effect that in view of the amendment of the provisions of Karnataka Regulation of Stone Crushers Act, 2011, by the Amendment Act of 2013, enhancing the period of licenses from three years to five years, the period of licenses of the Review Petitioner earlier granted, automatically stood enhanced to five years. This contention was considered and rejected by this Court in its Order dated 21.06.2018, inter alia after holding that the amendment in question would not enure to the benefit of the licenses already granted before the amendment. In Review Petition No.236/2018, Petitioner seeks review of this order.

3. On the other hand, Writ Petition No.1663/2018 is founded on the same grounds as were taken in Writ Petition No.1661/2018, which was disposed of by the Order in Review and in this petition too, the Petitioner seeks direction to the Respondents to extend the validity of its license for a period of five years in view of the aforesaid Amendment to the Act of 2011. Obviously, the relief claimed in Writ Petition No.1663/2018 could be granted only if the earlier Order dated 21.06.2018 passed in Writ Petition No.1661/2018 is reviewed and hence, the present petition too stands covered by the said order.

(b) The Hassan Co-operative Milk Producers Societies Union Limited and Others v. State of Karnataka, Department of Co-operative Societies and Others reported in ILR 2014 KAR 4257: this case relates to Amendment Act, 2013 whereby, inter alia Section 28 of the Karnataka Co-operative Societies Act, 1959, was amended by introducing Section 28-A(4) whereby, the term of office of the elected members of the Committee was enlarged from three years to five years in terms of 97th Amendment to the Constitution of

India introducing Articles 243Z series. There was abundant intrinsic material available in the Amendment Act itself to hold it retrospective in operation and that the legislative intent was apparent as to extension of the tenure of the existing Committee also. No such things being available in the Karnataka Stone Crushers Amendment Act, 2013, this Ruling does not come to the aid of the Review Petitioner.

(c) Shamrao V Parulekar and others v. District Magistrate, Thana, Bombay and others reported in AIR 1952 SC 324 1952 Indlaw SC 64: this case related to Section 3 of the Preventive Detention (Amendment) Act, 1952, for prolonging the life of the Preventive Detention Act, 1950 for a further period of six months i.e., till 01.10.1952. The question inter alia was whether the said amendment also prolonged the period of detention. In that background, at Para 7 of the judgment, the Apex Court stated ".....the Rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity, as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the Amending Act at all.....".

10. The fact matrix of and the question of law involved in the connected case in W.P.No.1663/2018 (GM-MMS) is similar to that of W.P.No.1661/2018 (GM-MMS) which has been dismissed by the Order dated 21.06.2018 in Review. No new ground that supportively differentiates this case from the other is urged before us.

In the above circumstances, this Review Petition lacking in merits, stands dismissed and further, the Writ Petition in W.P.No.1663/2018 is also dismissed.

No costs.

Review dismissed

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D. V. Venkatesh Gowda S/o Late Doddavenkataramanappa v Karnataka Co-operative Milk Producers Federation Limited, represented Herein by its Director, Bengaluru and others, 2018 Indlaw KAR 5646

Case No: Writ Petition No. 9645 of 2018 (GM-TEN)

JJ Dinesh Maheshwari, Krishna S. Dixit

Head Note :

KCS Act 1959 – agreement

The non agreement of the present management for an act done by the earlier management would be solely between those two managements, which in no way affected the rights or liabilities of the barrower. Undisputedly, the then management of the society has issued a loan clearance document also in favour of the barrower in it's normal course of business. If at all the said act of the previous management is

not acceptable to the present management, it has got separate recourse under law to be taken against the previous management.

The Order of the Court was as follows:

1. The petitioner, who is a Member and Director of Chiikkanotuve Milk Producers Cooperative Society, Malur Taluk, Kolar District, said to be a part of Karnataka Co- operative Milk Producers Federation Limited - the first respondent, seeks to question the Scheme developed and promoted by the first respondent to set up Cattle Feed mixing plant on Design, Build, Finance, Operate and Transfer (DBFOT) basis at Arakalagudu, Hassan District.

2. Initially, on this petition being placed for preliminary hearing, the learned Single Judge of this Court observed that since the grievance put forth herein was in the interest of entire community of livestock farmers, the petition may be treated as a Public Interest Litigation('PIL').

3. However, having heard learned counsel for the petitioner and having perused the material placed on record, we are of the considered view that adequate and efficacious alternative remedies are available in the Karnataka Co- operative Societies Act, 1959, including those for enquiry by the Registrar as also raising of disputes touching the constitution, management or business of the co-operative society.

4. In view of the above and looking to the nature of grievance sought to be suggested that would entail enquiry into several factual aspects relating to the functioning and affairs of the co-operative society, the petitioner ought to take recourse to the appropriate alternative remedies in accordance with law.

5. Hence, PIL jurisdiction in this matter is declined. However, it is left open for the petitioner to take recourse to the appropriate remedies in accordance with law.

6. The petition stands disposed of accordingly.

Petition disposed of

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Daivandnya Co-Operative Credit Society Limited, represented by its Chief Executive Officer, Uttara Kannada v Deputy Registrar of Co-Operative Societies, Uttara Kannada, 2018 Indlaw KAR 7538

Case No: Writ Petition No. 104944/2017(CS-RES)

Justice Dr. H.B. Prabhakara Sastry

Head Note :

Karnataka Co-operative Societies Act 1959 – agricultural credit structure

The plain reading of the provision relating to credit structure makes it clear that a co-operative societies under the co-operative credit structure shall have the freedom of entry and exit at any tier and there shall be no mandatory restrictions of geographical boundaries for the conduct of the business of the

operations.

The Order of the Court was as follows:

2. The second respondent is said to have availed a mortgage loan of Rs. 4,50,000/- on 06.11.2000 by executing valid documents along with sureties who are respondent Nos. 3 and 4. The borrower is said to have committed default in repayment of the loan amount. This made the petitioner Society to file a dispute for recovery of the loan amount before the Arbitrator. The Arbitrator passed an award along with penal interest. When the petitioner Society took steps to recover the awarded amount, the Management of the petitioner Society is said to have given a waiver of a sum of Rs. 77,360/-, which was the quantum of penal interest and was payable by the defaulters (respondent Nos. 2, 3 and 4 herein).

The incumbent Management of the petitioner Society i.e., the present Board of Management of the Society, filed a dispute for recovery of the said waived amount of Rs. 77,360/-, claiming that the said waiver was illegal and unauthorized and was done by the former Chairman of the petitioner Society only to favour the borrower, who was his family member. The learned Arbitrator dismissed the dispute filed by the Society by his order dated 05.08.2008.

6. In the instant case, admittedly, the previous management has instituted a dispute against the alleged borrower and sureties for recovery of the money under Section 70 of the KCS Act, which dispute was referred to the Arbitrator, who passed an award in the matter. The said award was not challenged by the borrower, as such, the Society proceeded further in executing the said award at which point of time, the Society gave a waiver to the penal interest.

7. Thus undisputedly a dispute between the Society and the borrower for recovery of the loan amount was agitated between the parties and decided in accordance with law and in the said process of execution of the award, the management has given a waiver to the penal interest. The contention of the petitioner is that, the said act of the management in giving waiver to the penal interest in favour of the borrower was not warranted in the circumstances of the case and that the Chairman of the previous management has shown favouratism to the borrower.

8. Thus, the non-agreement of the present management for an act done by the earlier management would be solely between those two managements, which in no way affect the rights or liabilities of the borrower. Undisputedly, the then management of the Society has issued a loan clearance document also in favour of the borrower in its normal course of business. If at all the said act of the previous management is not acceptable to the present management, it has got separate recourse under law to be taken against the previous management.

On the other hand, the present management cannot rake up the issue which has already reached its finality in accordance with law, wherein the borrower has cleared the claimed loan amount enjoying the benefit of waiver of the penal interest granted in his favour by the Society. As such, the argument of the learned counsel for the petitioner that the present act of the Society gives any separate cause of action to claim recovery of the waived interest from the borrower is not acceptable.

9. For the said reason, I am of the view that the present petition does not deserve to be proceeded further by ordering notice upon other respondents.

Accordingly, at the stage of issuance of notice to the respondents itself, the petition stands dismissed as devoid of merits.

Petition dismissed

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Dr. M. S. Mahadevaswamy S/o M. Shivappa v Additional Registrar of Co-operative Society, Bengaluru and others, 2018 Indlaw KAR 2751

Case No: Writ Petition No. 11381 of 2018 (CS-RES)

Justice B.V. Nagarathna

Head Note

Karnataka Cooperative Societies Act, 1959, s. 29H - Denial of Stay - Challenged - Petitioner was elected as a President of respondent No. 4 - Notice for moving no confidence motion as against petitioner was made u/s. 29H of Act - No confidence motion against petitioner succeeded - Respondent No. 1 granted stay of proceedings of no confidence motion - Respondent no. 1 vacated interim stay - Petitioner approached Tribunal by filing petition seeking stay of order passed by Respondent No. 1 - Relief sought for by petitioner was declined - Hence, instant petition - Whether, Court was correct in denying stay of order passed by Respondent No. 1.

In circumstances, impugned order would not call for any interference by Court. It is for petitioner to establish before Respondent No .1 that resolution expressing no confidence against petitioner was illegal. In the event, petitioner is successful, then further proceedings which have taken place pursuant to resolution would automatically be invalidated. Therefore, if petitioner is successful before respondent No.1, then respondent No.8, who is elected to post of President of Respondent No. 4/Society would be invalid. In other words, eligibility of respondent no. 8 is subject to result of petition filed by petitioner before respondent No. 1. Petition dismissed

The Order of the Court was as follows:

2. Briefly stated facts are that the petitioner was elected as a President of the fourth respondent - Society in June 2015. On 6.12.2017, notice for moving no confidence motion as against the petitioner was made under Section 29-H of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'Act' for the sake of brevity). The no confidence motion against the petitioner succeeded on 26.12.2017. The petitioner thereafter, raised a dispute before the first respondent on 06.01.2018. The first respondent granted stay of the proceedings of no confidence motion on 08.01.2018. Subsequently, the first respondent vacated the interim stay on 03.02.2018. Being aggrieved by that order, petitioner approached the Tribunal in Revision Petition No.5/2018. Before the Tribunal, the petitioner sought for stay of the order dated 03.02.2018 passed by the first

respondent, by which the earlier stay granted was vacated. However, by the impugned order dated 5.3.2018, the prayer sought for by the petitioner has been declined. Being aggrieved, petitioner has preferred this writ petition.

5. An office bearer of a Co-operative Society shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of two-third of the total number of elected directors of a Co-operative Society at a meeting specially convened for the purpose.

6. In view of the said provision, there is a statutory vacating of office by an office bearer of a Co-operative Society when a resolution expressing want of confidence in him is passed by a majority of two-third of the elected directors of a Co-operative Society and therefore, in view of the said deeming provision, the first respondent as well as the Tribunal were right in not granting stay of the resolution expressing want of confidence in the petitioner and the said order does not call for any interference. But they submitted in any event, if the petitioner is able to establish that a resolution expressing want of confidence was illegal, null and void, then he could always revert to his position as President of the fourth respondent - Society. But till then, having regard to the object and purport of sub-section (2) of Section 29-H of the Act, the petitioner cannot continue to occupy the post of President of the fourth respondent-Society having a resolution expressing want of confidence against him.

7. It is further brought to my notice that, as the calendar of events was issued on 05.01.2018, for the purpose of holding election to the post of President of the fourth respondent-Society on petitioner vacating his office as per sub-section(2) of Section 29-H of the Act and which vacancy was not known to the first respondent initially and on coming to know the said fact by order dated 03.02.2018, the stay granted in favour of the petitioner was rightly vacated. It is also submitted that respondent No.8 has now taken charge as President of the fourth respondent -Society and that his continuing in the office would depend on the proceedings filed by the petitioner before the first respondent-Authority.

8. The detailed narration of facts and contentions would not call a reiteration, except emphasizing the fact that under Section 29-H of the Act, motion of no confidence against an office bearer of a Co-operative Society has been provided by virtue of amendment made to the Act with effect from 27.7.2016. Once a motion for no confidence is moved and a resolution is passed against the office bearer, sub-section (2) of Section 29-H of the Act would apply. The said sub-section (2) of Section 29-H of the Act reads as under:

"(2) An office bearer of a Co-operative Society shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of two-third of the total number of elected directors of a Co-operative Society at a meeting specially convened for the purpose."

9. Therefore, the office bearer can no longer continue in his office when faced with the resolution of no confidence passed against him. Sub-section (2) of Section 29-H of the Act is to ensure that an office bearer who is faced with a resolution of want of confidence does not continue in office. If that object is borne in mind, then first respondent could not have granted stay of the resolution in the first instance. Therefore, the first respondent-Authority could not have in the first instance granted stay of the resolution of no confidence

passed against the petitioner contrary to the object and purport to sub-section (2) of Section 29-H of the Act.

10. In this regard, reliance is also placed on the recent judgment of the Hon'ble Supreme Court reported in (2015) 8 SCC 1 2015 Indlaw SC 397 (VIPULBAHI M.CHAUDHARY v. GUJARAT CO-OPERATIVE MILK MARKETING FEDERATION LIMITED AND OTHERS). At paragraph Nos.19 and 20 it is held as under:-

"19. A co-operative society is registered on co-operative principles of democracy, equity and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity or agreement of feeling among the delegates, co-operativeness, etc., are some of the cardinal dimensions of the co-operative principles. A body built on such principles cannot be led by a captain in whom the co-sailors have no confidence.

20. If a person has been selected to an office through democratic process and when that person loses the confidence of the representatives who selected him, those representatives should necessarily have a democratic right to remove such an office-bearer in whom they do not have confidence, in case those institutions are viewed under the Constitution / statutes as democratic institutions."

12. In the circumstances, the impugned order would not call for any interference by this Court. It is for the petitioner to establish before the first respondent-Authority that the resolution expressing no confidence against the petitioner was illegal. In the event, the petitioner is successful, then further proceedings which have taken place pursuant to the resolution dated 26.12.2017 would automatically be invalidated. Therefore, if the petitioner is successful before the first respondent-Authority, then respondent No.8, who is elected to the post of President of the fourth respondent-Society would be invalid. In other words, the eligibility of the 8th respondent is subject to the result of the petition filed by the petitioner before the first respondent-Authority.

13. In the result, writ petition stands dismissed. However, liberty is reserved to the petitioner to seek expeditious disposal of his proceeding before the first respondent-Authority as at this stage, learned counsel for the petitioner seeks expeditious disposal of his dispute before the first respondent-Authority. He states that the next date of hearing is on 07.04.2018. In the circumstance, the first respondent is directed to dispose of the dispute in an expeditious manner at any rate within an outer limit of three months.

It is needless to observe that having regard to the aforesaid direction, parties to the dispute shall co-operate with the first respondent-Authority for speedy disposal of the dispute.

Petition dismissed

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Hassan District Central Co-operative Bank Limited, represented by its Chief Executive Officer, Hassan v Joint Registrar of Co-operative Societies, Mysore and others, 2018 Indlaw KAR 1295

Case No: Writ Petition No. 17155/2014 (CS-RES)

Justice: S.N. Satyanarayana

Head Note :

KCS Act 1959 – KAT

The proceedings before the assistant Registrar has not reached finality, as the case was not decided on merit, but it was dismissed for the death of the person and not bringing the legal representative on record, for which, the case was dismissed for non-prosecution. The KAT was asked to reopen and after receiving additional documents was asked to dispose of the case.

The Order of the Court was as follows:

2. Brief facts leading to this writ petition are as under: Petitioner herein is a cooperative society in which one T.L. Nagaraj who is husband of second respondent herein was working as a Senior Assistant. It is stated by the petitioner - society that said T.L.Nagaraj tendered resignation on 3.8.2002 from the post of Senior Assistant and same was accepted on 5.8.2002 and communicated on 14.8.2002. It is further stated that all the terminal benefits were settled when he was alive in 2002 itself. It is also stated by the petitioner - society that though the application for retirement was submitted by said T.L.Nagaraj voluntarily, same was in the background that a disciplinary enquiry proceedings was initiated against him by the petitioner - society with reference to three charges and besides that at the time of tendering resignation, there was also an allegation of misappropriation against him, which is said to have been admitted by T.L.Nagaraj in his resignation letter. It is stated that the charges which were framed against T.L.Nagaraj were subject matter of an enquiry in KTC.2/2002 before an in-house enquiry officer at Hassan. The said enquiry resulted in a report being submitted on 15.7.2002 and same is accepted by Board of Directors of the petitioner - society on 27.8.2002.

3. It is stated that when petitioner - society was contemplating initiating disciplinary proceedings against T.L.Nagaraj, he tendered resignation seeking to relieve him in accepting the finding against him and also to settle the terminal benefits. It is in this background that resignation of T.L.Nagarajis said to have accepted on 5.8.2002 and terminal benefits were settled on 14.8.2002. It is further stated that though T.L.Nagaraj tendered resignation and took exit from the petitioner - society subsequently, on 14.2.2005 he raised a dispute under Section 70 of the Karnataka Cooperative Societies Act, 1959 ('the Act' for short) in dispute No.JRM. DDR.3795/2004-05, which has resulted in an order being passed in his reinstatement with back wages by order dated 21.8.2007, which was subject matter of appeal by the petitioner - society before KAT in Appeal No.980/2007.

5. When this matter was taken up for consideration, this Court was not convinced with the averments made

by the petitioner - society that the circumstances under which T.L.Nagaraj submitted resignation is in the background of he being subjected to departmental enquiry of three charges as well as misappropriation. Therefore, the petitioner - society was called upon to produce documents in support of its averments, which are produced this day along with a memo. The same is taken on record. The said documents would indicate that infact proceedings was initiated against T.L.Nagaraj in KTC.2/2002, wherein by order dated 15.7.2002 the enquiry officer submitted final report indicting T.L.Nagaraj of all the charges levelled against him. Besides that with reference to misappropriation also, T.L.Nagarajis said to have accepted said charge in his resignation letter to wriggle out of the situation of facing criminal prosecution. In this background, it is stated that his resignation was accepted. However, grievance of the petitioner - society is that said documents/particulars could not be placed by it before KAT, where proceedings was required to be contested against the order of Assistant Registrar of Cooperative Societies in reinstating T.L.Nagaraj with back wages.

6. On going through the entire material on record, what could be seen is,nodoubt there is mistake on the part of petitioner - society in not pursuing the appeal before KAT at first instance i.e., in allowing the same to be dismissed for default for which an application is filed in Misc. Petition 52/2009. It is seen that said Misc. Petition also came to be dismissed due to death of T.L.Nagaraj and in not bringing his legal representatives on record. In that view of the matter, it is seen that proceedings which was initiated before the Assistant Registrar of Cooperative Societies in No.JRM.DDR.3795/2004-05 has not reached finality on merits but on technical grounds of non prosecution, which is not the right way of disposing of any proceedings. When the delay in filing Misc. Petition is looked into, it is seen that it is not so enormous as the same does not call for condonation of delay, more particularly in the fact situation where the application filed by T.L.Nagaraj in raising a dispute is after 21/2 years from the date of acceptance of his application for voluntary retirement. Indeed, this Court is unable to understand how an application which is filed seeking condonation of delay in bringing the legal representatives of a deceased on record could be taken so seriously by KAT, which is unacceptable.

7. In that view of the matter, the order under challenge dated 8.4.2013 in Misc. Petition 32/2011 as well as order dated 7.6.2010 in Misc. Petition 52/2009 are hereby set aside and Appeal in No.980/2007 is restored on the file of KAT, where in place of second respondent - T.L.Nagaraj his wife should be brought on record as second respondent and thereafter the matter may be proceeded. In the reopened proceedings Karnataka Appellate Tribunal after receiving additional documents from the parties shall dispose of the same on merits within six months from the date of receipt of this order.

With such observations, this writ petition is disposed of.

Petition disposed of.

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Holeyappa C. Nayak S/o Ane Channabasappa v Principal Secretary, Government of Karnataka Department of Co-Operation, Bangalore and others, 2018 Indlaw KAR 7769

Case No: Writ Petition No. 21693/2018 (CS-RES)

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – revision before the state government under sec.108 of the Act

There is a clear bar for the state government to entertain any revision petition. The order impugned is subject to an appeal or revision by the tribunal. The reason for the same is obvious that two forums cannot consider the correctness or otherwise of impugned award, one on the appellate side and other on the revisional side. The deputy secretary to the government, co-operation department was right on issuing the endorsement – the petition disposal accordingly.

The Order of the Court was as follows:

1. Writ petition is listed for 'Orders' seeking extension of interim order dated 22.05.2018. While considering the same, it is noted that the petitioner has not only assailed the award dated 06.10.2017 made by the Additional Registrar of Co-operative Societies-respondent No.3 herein, but has also assailed the endorsement issued by the Officer on Special Duty and Ex-Officio Deputy Secretary to Government, Co-operation Department dated 15.03.2018 (Annexure-C) stating that since the impugned award is appealable before the Karnataka Appellate Tribunal under Section 108 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'Act' for the sake of brevity), the revision petition under Section 108 of the Act would not be maintainable.

6. On perusal of the award dated 06.10.2017, it is noted that the same has been made in exercise of powers under Section 70 of the Act. If any person is aggrieved by an award passed under Section 70 of Act, he has an efficacious remedy of an appeal under Section 105 of the Act to the Karnataka Appellate Tribunal. Section 108 of the Act reads as under:

"108. Powers of revision of State Government.-[Subject to the provisions of Section 108-A, the State Government] suo motu at any time, and, on application of any person aggrieved, within a period of six months from the date of any order, may call for and examine the record of any case or proceedings of any officer subordinate to it except those subject to appeal or revision by the Tribunal or those in respect of which an appeal has been made and pending before the State Government or other authorities under Section 106, and the State Government after such enquiry as it deems fit is satisfied that the order of the officer is contrary to law and has resulted in a miscarriage of justice, pass such orders thereon as the State Government deems just:

Provided that no order shall be made to the prejudice of any person under this section unless he has been given a reasonable opportunity of being heard."

7. The aforesaid section categorically states that the State Government can consider suo motu at any time, and,

on an application of any person aggrieved, within a period of six months from the date of any order, except in those cases where the impugned order is subject to appeal or revision by the Tribunal or those in respect of which an appeal has been made and pending before the State Government or any other Authorities under Section 106 of the Act.

8. Therefore, there is a clear bar for the State Government to entertain any revision petition, if the order impugned is subject to an appeal or revision by the Tribunal. The reason for the same is obvious that two forums cannot consider the correctness or otherwise of an impugned award, one on the appellate side and other on the revisional side. Therefore, the Deputy Secretary to the Government, Co-operation Department was justified in issuing the endorsement at Annexure-C dated 15.03.2018 in the instant case.

9. In the circumstances, petitioner is reserved liberty to assail the impugned award dated 06.10.2017 before the Karnataka Appellate Tribunal, if so advised. In the event, there is any delay in assailing the same, the Appellate Tribunal may take note of the fact that the petitioner was under a misimpression while prosecuting a revision before the State Government and thereafter assailing the endorsement issued by the State Government before this Court. While filing an application seeking condonation of delay, petitioner is also at liberty to seek for any interim or protective orders before the said authority. If such an application is filed before the Tribunal, the same shall be considered in accordance with law.

10. Writ petition is disposed off in the aforesaid terms.

Interim order granted by this Court stands vacated.

Petition disposed of

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Karnataka Journalist Co-operative Society Limited, represented by its Secretary, Bengaluru v Additional Registrar of Co-operative Societies Limited, Bengaluru and another, 2018 Indlaw KAR 7675

Case No: Writ Petition No. 9086 of 2018 (CS-RES)

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – expulsion from membership of the society – this is 2nd round of litigation – the appellant authority granted stay – no need for interference by this court – to dispose of law within four months.

The Order of the Court was as follows:

2. Petitioner is a Co-operative Society. The Society has impugned order dated 25.03.2017 passed in Dispute No.AD/(H&M)/D2/NMD/13/2015-16 vide Annexure-L and order dated 25.07.2017 passed in Revision Petition No.44/2017 by the Karnataka Appellate Tribunal (hereinafter referred to as the 'Tribunal' for the sake of brevity), vide Annexure-M.

3. It is the case of petitioner-Society that respondent No.2 was a member of the Society and was also elected to the Committee of Management in the election held for the period from 2013-14 to 2017-18 and also got elected as president of the Society for a period of five years. That, on a letter submitted by the members of Board of Management to the Society against respondent No.2, the Board of Management had taken up the subject for discussion and passed proceedings in no confidence motion on 30.09.2014 and respondent No.2 was removed from the post of president of the Society on 03.11.2014. The said matter was taken up by respondent No.2 by way of a dispute raised under Section 70 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'Act' for the sake of brevity) and an ex parte interim order of stay was granted on 13.03.2015.

8. The detailed narration of facts would not call for reiteration, except stating that what has been assailed by the petitioner-Society is that an interim order granted by respondent No.1-Authority has been confirmed by the Tribunal by order dated 25.07.2017. The proceedings before respondent No.1 which is in the form of a dispute raised by respondent No.2 is still at large. It is stated at the Bar that respondent No.2 has let in evidence before respondent No.1-Authority and is being cross examined on behalf of petitioner-Society. In the circumstances, I find that the interim order granted by respondent No.1-Authority which has been confirmed by the Tribunal would not call for any modification or interference at this stage of the proceedings. It is necessary to note that on the controversy regarding grant of interim order, it is the second round of litigation before this Court. On an earlier occasion also, respondent No.1-Authority had exercised discretion to grant an interim order of stay of expulsion of respondent No.2 from the primary membership of the Society. On the direction issued by this Court, once again the very same matter has been reconsidered by respondent No.1-Authority and stay of expulsion has been granted, which order has also been confirmed by the Tribunal this time.

9. In the circumstances, I am of the considered view that rather than interfering with the interim order passed by respondent No.1-Authority, the said Authority could be directed to dispose off the dispute raised by respondent No.2 expeditiously and in accordance with law. In the circumstances, while not interfering with the impugned orders passed by respondent No.1-Authority and also by the Tribunal, respondent No.1-Authority is directed to dispose of the dispute in accordance with law, within a period of four months from 28.07.2018.

Petition disposed of

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Karnataka Sahakari Sakkare Karkahane Niyamit A Co-operative Society, represented by their Managing Director, Shashikal B. Paled, Haveri v GM Sugars and Energy Private Limited, represented by its Chiarman G. M. Lingaraju, Bangalore, 2018 Indlaw KAR 6195

Case No: Civil Miscellaneous Petition No. 165/2017

Justice B. Veerappa

Head Note :

KCS Act 1959 – Agreement between parties – the court appointed Justice A.J.Sadashiva as arbitrator under claim 54 of the agreement to settle the dispute.

The Order of the Court was as follows:

2. It is the case of the petitioner that, the petitioner is a Co-Operative Society registered under the provisions of the Karnataka Co-Operative Societies Act, 1959 and also running and operating a Sugar Factory to cater to the sugarcane growers in the district of Haveri. As the petitioner could not operate the sugar factor efficiently, suffered huge loss. Hence, the State Government suggested the Society that it could lease the factory premises on Lease, Rehabilitate, Operate and Transfer (LROT) basis to the highest bidder. The respondent became the highest successful bidder. Hence, a lease agreement for a period of thirty years was executed in the year 2008 in favour of the respondent.

3. It is further stated that the dispute with regard to the amount payable for settling the dues of the employees who opted for VRS arose between the parties. Therefore, the respondent filed the writ petition before this Court in W.P. No.56686/2015 to quash the letters dated 13.10.2015 and 03.11.2015 issued by the Commissioner for Cane Development and Director of Sugar in Karnataka. This Court after hearing both the parties, by an order dated 03.04.2017, disposed off the writ petition. However, it was observed that if there are any inter se disputes relating to the terms of the deed or the performance of the terms agreed between the parties, certainly it will be open for the petitioner to avail the appropriate remedy in accordance with law.

4. Being aggrieved by the said order, the respondent filed writ appeal No.4084/2017 before the Division Bench of this Court. The Division Bench of this Court by an order dated 28.04.2018 has dismissed the appeal. It is relevant to state at this stage that during the pendency of the writ appeal, the petitioner has issued the demand notice to the respondent demanding for payment amount which was due. But the respondent neither respond to the notice nor paid the amount. Therefore, the petitioner has issued arbitration notice on 15.05.2017, requesting the respondent to appoint an arbitrator, but the respondent failed to appoint any Arbitrator even after expiry of 30 days. Therefore, the present Civil Miscellaneous Petition is filed for the relief sought for.

7. It is also not in dispute that the conciliation made before the Sugar Cane Commissioner in terms of clause 54 of the lease deed also fails. Hence, there is no impediment to appoint the Sole Arbitrator to dissolve the dispute between the parties.

8. In view of the above, the petition is allowed. The Hon'ble Mr. Justice A.J.Sadashiva, Former Judge of this Court is appointed as a Sole Arbitrator to dissolve the dispute between the parties in terms of clause 54 of the lease agreement dated 18.02.2008 entered into between the parties.

Registry is directed to send the copy of this order to the Hon'ble Mr. Justice A.J.Sadashiva, Former Judge, the Sole Arbitrator, Arbitration Centre and the respondent for information.

Petition allowed

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NazirAhamad, Abdularazak, Lakshari v AnwarpashyaSayyadmeeraMujwar and another, 2018 Indlaw KAR 3812

Case No: RSA No. 7510/2010

Justice B. Veerappa

Head Note

Civil Procedure - Karnataka Cooperative Societies Act, 1959, s. 125 - Mysore General Clauses Act ,1899 - Relief of injunction - Dismissal of suit - Sustainability – Whether, s. 125 of Act is attracted to relief sought for by plaintiff/appellant in suit for injunction against defendants.

Therefore, suit for recovery of sale price due from society is not suit in respect of act touching business of society. Consequently, it has to be held that no notice u/s. 125 of Act was required preceding suit. Reasoning of trial Judge for holding that no notice u/s. 125 of Act was necessary however cannot be supported. In his view, notice is necessary only with regard to dispute or transaction between society and member of Society and it does not apply to non member who files suit for arrears due from society. That view is wholly erroneous but his conclusion can be supported for reasons already stated. Lower Appellate Court having held that suit should not have been instituted without issuing notice u/s. 125 of Act, it should have simply set aside Judgment and decree of lower Appellate Court and directed return of plaint instead of dismissing suit because it is still open to plaintiff to issue notice and file suit. Therefore, lower Appellate Court, to extent it dismissed suit is not justified. Appeal allowed.

1. The unsuccessful plaintiff has filed the present regular second appeal against the judgment and decree dated 11.01.2008 made in R.A.No.199/2006 on the file of the Principal Civil Judge (Sr.Dn.), Vijayapur dismissing the appeal, confirming the judgment and decree dated 22.09.2006 made in O.S.No.97/2005 on the file of Principal Civil Judge (Jr.Dn.), Vijayapur dismissing the suit with cost of Rs. 5,000/- mainly on the ground that the suit filed by the plaintiff was not maintainable in view of the provisions of Section 125 of the Karnataka Cooperative Societies Act, 1959 (for short 'the Act').

2. The present appellant was the plaintiff before the Trial Court filed a suit for permanent injunction restraining the defendants from evicting him from the suit house property bearing CTS No.915/1A2 measuring 117.58 sq. meters of Ward No.V of Vijayapur city without due process of law contending that the first defendant is the

owner of the suit property and he was in financial difficulty during the year 2001. Therefore, he approached the plaintiff and requested him to advance loan of Rs. 80,000/- to meet the legal necessities. The first defendant offered to let the suit property on rent till the amount is repaid. Accordingly, on 28.06.2001 the plaintiff paid a sum of Rs. 80,000/- to the first defendant and later executed the unregistered mortgage deed on the same day and put the plaintiff in possession of the suit property. It was also contended that the first defendant had obtained loan from the second defendant and charge was created in respect of the suit property and the first defendant became defaulter. Hence, the second defendant initiated recovery proceedings by visiting the suit property and threatening the plaintiff to dispossess him from the suit property. Therefore, the plaintiff has filed the suit for the relief sought for.

14. To understand better, the provisions of section 125 of the Karnataka Co-operative Societies Act, 1959is extracted as under:

125: Notice necessary in suits: No suit shall be instituted against the Co-operative society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

15. Admittedly in the present case, the plaintiff has sought for permanent injunction restraining the defendants from interfering with his possession of the suit schedule premises raising various contentions, the same is disputed. The provisions of section 125 of the Karnataka Co-operative Societies Act clearly depicts that when in suit, relief is in respect of any act committed by the society where its officer touching constitution, management or the business of the society, no such suit shall be instituted without issuing notice as mandatory under section 125 of the Karnataka Co-operative Societies Act. The word under Section 125 of the Karnataka Co-operative Societies Actdescribed as "shall" therefore issuing notice is mandatory on the part of the plaintiff before filing any suit.

16. Admittedly in the present case, the act of society or its officer relates to recovery of amount of Rs. 5,00,000/- with interest. Thus the act complained of relates to the business of the society, since it relates to the recovery of the amount due under the award, consequently it follows that the provisions under section 125 of the Karnataka Co-operative Societies Act are attracted to the relief sought for in the suit.

17. It is well settled that whenever a statute prescribes that a notice shall be issued before the institution of the suit, a suit brought without issuing such notice is bad in law and the court will have no jurisdiction to entertain such suit. A suit without issuing notice to the Government / Authorities not maintainable. What applies to the suit field without issuing notice under section 80 of Code of Civil Procedure will equally apply to the suit instituted without issuing notice under the provisions of Section 125 of Karnataka Co-operative Societies Act, 1959.

18. Admittedly in the present case, a specific issue was raised on the defense taken in the written statement of the second defendant that, whether the second defendant prove that the suit is not maintainable under

section 125 of the Karnataka Co-operative Society Act. Both the Courts below concurrently held that the suit filed by the plaintiff for want of notice under section 125 of the Karnataka Co- operative Soceity Act was not maintainable, if that is so, the Courts below ought to have returned the plaint instead of dismissing the suit, because it is still open for the plaintiff to issue notice and to file the suit. The same has not been done in the present case. My view is fortified by the dictum of this Court in the case of (Mahadevaiah V/s Sales Officer) in I.L.R 1990 KAR. 151 wherein it is held as under:

12. Section 125 of the Act specifically provides that when in any suit, the relief is in respect of any act committed by the society or its Officers touching the Constitution, management or the business of the society, no such suit shall be instituted without issuing the notice as required by Section 125 of the Act. In the instant case, the act of the Society and its officers relates to the amount due under the Award. Thus the act complained of relates to the business of the society since it relates to the recovery of the amount due under the award. Consequently it follows that the provisions of Section 125 of the Act are attracted to the reliefs sought for in the suit. In SomwarpetNad Agricultural Produce Marketing Co-operative Soceity Ltd. Case, what was challenged was the failure on the part of the society in not paying the amount due to the plaintiff. The Court has held that as long as the omission was not illegal, it did not result in an 'act' within the meaning of the Mysore General Clauses Act, therefore, Section 125 of the Act was not attracted. The relevant portion of the Judgment reads thus:

"Section 125 of the Act follows the words of Section 70 of the Bombay Co-operative Societies Act, 1925. Section 70 of the Bombay Act reads thus:

'No suit shall be instituted against a society or any of its Officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.'

Section 70 of the Bombay Co-operative Societies Act came up for consideration before this Court in The ANKOLA URBAN CO-OPERATIVE BANK LTD. V/S LAXMI BAI (1959 My.L.J BALWANT VENKATESH POTDAR (1961 Mys.L.J 397) In Ankola Urban Co-operative's case, the question was whether a suit for rent due by notice under Section 70 of the Bombay Co-operative Societies Act. Sri.S.R.Das Gupta, learned Chief Justice held that the non-payment of rent which is an omission connot be said to be an 'act' within the meaning of Section 70 of the Bombay Act and that an omission to constitute an act within the meaning of the Bombay General Clauses Act must amount to any illegal omission and that an act becomes illegal when it is forbidden by law.

The said decision was followed by a Bench of this Court (Hegde and Mir Iqbal Hussain JJ) in the Bank of Citizen's case. In that case, a suit was brought on a mortgage by the Bank of Citizens Ltd., Belgaum against the Belgaum Poineer Urban Co-operative Credit Bank Ltd., had purchased the mortgaged properties subject to the suit mortgage. The contention of the Belgaum Poineer Urban Co-operative Credit Bank Ltd., was that the suit was bad for want of notice under Section 70 of the Bombay Act. Following the earlier decision, the

Bench held that no notice was necessary to enforce the mortgage even though one of the defendants was a Co-operative Society.

Sri. A.C. Nanjappa, learned counsel for the appellant invited out attention to the decision of the Supreme Court in WARNA SAHAKARI SAKKARE KARKHANA LTD. v/s VITHALRAO ANNADRAO DESHMUKH (1969 (1) Unreported decision of S.C. 517 (Civil Appeal No.2687 of 1966 decided on 20-08-1969). In the said decision, the Supreme Court was considering the meaning of the expression touching the business of the society, and it was observed that the word touching is very wide and would include any matter which relates to or concerns the business of the society. The said decision does not deal with the question in issue in the instant case. The decision in Citizen's Bank case is binding on us:

The society was due to the plaintiff the price of the goods sold. The non-payment of the said sale price, which is an omission cannot be said to the an 'act' within the meaning of Section 125 of the Act. An omission of the Mysore General Clauses Act must amount to an illegal omission. Therefore, the suit for recovery of the sale price due from the society is not a suit in respect of an 'act' touching the business of the society. Consequently, it has to be held that no notice under Section 125 of the Act was required preceding the suit. The reasoning of the learned trial Judge for holding that no notice under Section 125 of the Act was necessary however cannot be supported. In his view, notice is necessary only with regard to a dispute or transaction between the society and a member of the Society and it does not apply to a non-member who files a suit for arrears due from a society. That view is wholly erroneous but his conclusion can be supported for the reasons already stated.

19. For the reasons stated above, the first substantial question of law framed in the present second Appeal has to be held in the negative holding that the Courts below were not justified in dismissing the suit for want of notice under section 125 of the Karnataka Co-operative Societies Act and second substantial question of law framed has to be answered in the affirmative holding that the Courts below ought to have returned the plaint.

20. For the reasons stated above, the regular second appeal is allowed. The impugned Judgment and decree dated: 11th January 2008 made in R.A. No.199/2006 on the file of Prl. Civil Judge (Sr. Dn.) Bijapur confirming the Judgment and decree dated: 22nd September 2006 made in O.S. No.97/2005 on the file of Prl. Civil Judge (Jr.Dn.) Bijapur are set aside and the plaint is directed to be returned to the plaintiff.

Ordered accordingly.

Appeal allowed

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Nitish Honayya Naik v Devidas S/o Nagappa Naik and others, 2018 Indlaw KAR 7713

Dr. H.B. Prabhakara Sastry

Case No: Writ Petition No. 104336/2018 (CS-RES)

Head Note :

KCS Act 1959 – appeal u/s 106 of the Act

The appellate authority u/s 106 has given sufficient opportunity to address detracted arguments on the stay application – 2nd and 3rd have agreed for conditional stay – the appellate authority has stated that appellant shall not interfere in the administration of the 4th respondent Bank – this does not regard interfere – petition dismissed

The Order of the Court was as follows:

1. The present petitioner who claims to be a 'A' Class member of the respondent No.4 bank had filed an application before the 2nd respondent herein under Section 29(c) of the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as 'the KCS Act', for brevity), alleging that the present respondent No.1 is a defaulter in paying the loan raised by him. With that, he had prayed for taking necessary action against respondent No.1.

The 2nd respondent herein, after issuing notice to all the interested persons and holding an enquiry, by its order dated 17.04.2018, was pleased to disqualify the respondent No.1, who was the Director of the 4th respondent bank, from contesting any election for the similar post in the Managing Committee of 4th respondent bank for a period of five years.

The 1st respondent challenged the said order of disqualification before the 3rd respondent under Section 106 of the KCS Act. Along with the appeal, the 1st respondent has also filed an interlocutory application seeking an order of stay of the impugned order dated 17.04.2018 passed by the 2nd respondent. The 3rd respondent Appellate Authority, after hearing the arguments from both sides on the said interlocutory application, by its order dated 08.05.2018, allowed the interlocutory application and passed an order staying the operation of the impugned order passed by the 2nd respondent dated 17.04.2018, which was under appeal before it. It is the said order, the petitioner has challenged in this writ petition.

4. No doubt, in the case, at the first instance, the Deputy Registrar of Cooperative Societies - respondent No.2, has allowed the petition filed by the present petitioner under Section 29(c) of the KCS Act and disqualified the 1st respondent from his Directorship with the 4th respondent bank and also from contesting election to the similar post for a period of five years. However, it cannot be ignored of the fact that the aggrieved person, who is respondent No.1 herein, has a right to prefer an appeal under Section 106 of the KCS Act, according to which, he admittedly has preferred an appeal before the 3rd respondent. While preferring the appeal, he has also filed an interlocutory application seeking stay of the impugned order challenged before the 3rd respondent.

5. A perusal of the impugned order which is at Annexure-A goes to show that, before passing any order on the said interlocutory application, the 3rd respondent has given an opportunity to both sides to address their detailed arguments on the application. It is only after hearing both sides and also considering the fact that the learned counsel for the 2nd and 3rd respondents have agreed to grant a conditional order of stay, has passed the impugned order, wherein he has stayed the order of the Deputy Registrar challenged before him on the condition that the appellant before him (respondent No.1 herein) shall not interfere in the administration of the present 4th respondent bank. As such, granting of the interim order of stay was not a blanket order, but it was a conditional one. Since the 3rd respondent has shown to have applied his mind and given opportunity to both sides to submit their arguments and thereafter has proceeded to pass an order of stay, which is also a conditional one, I am of the view that the 3rd respondent, while passing the impugned order has taken into consideration the interest of the 4th respondent bank and ensured non-interference by the appellant before it (respondent No.1 herein) in it's day to day administration.

Accordingly, the petition stands dismissed as devoid of merit at the stage of admission.

Learned AGA is permitted to file his memo of appearance within three days in the Registry.

Petition dismissed.

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PoornaPrajna House Building Co-operative Society Limited, Hanumanthanagar, Bangalore, represented by its Manager/ Secretary, L. Nanjappa v FaizTajmul Pasha S/o Abdul Lathif, Since Deceased by Legal Representatives and others, 2018 Indlaw KAR 799

Case No: Writ Petition Nos. 21002/2012 & 29622/2012(CS-RES)

Justice S.N. Satyanarayana

Head note :

KCS Act 1959 – disputes u/s 70

Deputy Registrar directed the society to convey plot measuring 150 square yards (35 feet x 45 feet) in favour of first respondent after collecting registration charges – the society would not get any right to dispose off the said plot to any other member of its choice – the fact that the sale consideration already being received for the sale of the said plot, conveying the same to same body else does not arise – petition dismissed.

The Order of the Court was as follows:

2. Brief facts leading to this writ petition are as under:

Petitioner - society decided to form a layout in several survey numbers of Katriguppe village, Bengaluru South Taluk in or around 1968. First respondent herein is one of the aspirants for allotment of a plot in

said layout. In that behalf petitioner - society received an initial deposit of Rs.200/- from him and issued an allotment letter bearing No.39 dated 15.8.1968, wherein the plot that is allotted in favour of first respondent is measuring 150 square yards for valuable consideration of Rs.600/-. In terms of allotment letter, first respondent was required to pay balance consideration of Rs.400/- which is paid by him and said fact is not in dispute. Further, he was required to pay 10% of expenses towards registration and other charges for allotment of plot, which is made in his favour vide Annexure-A, which is also said to be subject to confirmation by the City Improvement Trust Board (CITB for short) and formation of layout.

3. When matter stood thus, records would indicate that petitioner - society had formed layout in several survey numbers of Katriguppe village as shown in allotment letter dated 15.8.1968. It is also seen that it had secured approval by the then CITB, which is subsequently referred to as Bangalore Development Authority. The records would further indicate that since plot was not conveyed by petitioner - society in favour of first respondent, first respondent, initiated proceedings in Dava No.DRB.2.DIS.5206/1997-98 before the Deputy Registrar of Cooperative Societies-II, Bengaluru, which is disposed of by order dated 16.6.2000, wherein the Deputy Registrar directed petitioner - society to convey plot measuring 150 square yards (35 feet x 45 feet) in favour of first respondent after collecting registration charges for the same.

6. It is seen that being aggrieved by order passed by the Deputy Registrar, when an appeal is filed by petitioner - society before the Tribunal, the Tribunal has also rightly considered the order passed by second respondent in the light of grounds urged in the appeal to the extent that in the absence of material regarding cancellation of allotment in favour of first respondent petitioner - society would not get any right to dispose off said plot to any other member of its choice and when once allotment is made, that would remain for ever. More particularly, in the light of the fact that sale consideration already being received for the sale of said plot, question of conveying same to somebody else does not arise. Even otherwise also the Tribunal has rightly observed that in the absence of any document to show that there is cancellation of allotment made in favour of first respondent, denying execution of sale deed in respect of the plot, which is allotted in his favour does not stand to reason. Therefore, the Tribunal has rightly rejected all the grounds urged in the appeal and consequently, dismissed the appeal thereby directing petitioner - society to comply with the order of second respondent, which appears to be just and proper. In that view of the matter, this Court find that question of interfering with the same does not arise and accordingly, these writ petitions are dismissed.

Petitions dismissed

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Pramodkumar Jain S/o Late H. Padmaraja Shetty v Joint Re registrar of Co-operative Societies Mysore Region, Mysore and another, 2018 Indlaw KAR 2102

Case No: Writ Petition No. 12671 of 2018 (S-RES)

Justice B. Sreenivase Gowda

Head Note :

KCS Act 1959 – stay order – rejection the stay application having been rejected on the grand that the main dispute itself can be disposed of, is not disposing the dispute expeditiously. If that is so, justice would be done, if respondent No.1, is directed to dispose of the dispute raised by the petitioner expeditiously – petition allowed.

The Order of the Court was as follows:

3. Case of the petitioner is that, he was appointed as a clerk in respondent No.2-Bank on 24.06.1998 and on 25.06.1998, he was transferred to Mudabidri Branch, from there he was transferred to Belthangadi Branch on 03.10.1998 and his service was regularized on 24.10.1998. Later, he was promoted as Supervisor with effect from 07.01.1999 and on 18.10.2001, he was transferred to Madyantara Branch. On 07.03.2005, he was transferred to Bantwal Branch in Belthangadi Circle. On 07.01.2009, he was transferred to Madyantara Branch as incharge branch manager. Thereafter, on 30.07.2012, he was transferred to Belthangadi Branch and posted as incharge branch manager and on 27.05.2013, he was promoted as Senior Supervisor Clerk and continued as incharge branch manager of Belthangadi Branch. On 09.10.2014, he was promoted as Junior Bank Inspector/Branch Manager. That being so, respondent No.2, by impugned order dated 05.09.2017 produced at Annexure-B could not have transferred the petitioner from Belthangadi Branch to B.C. Road Branch as its Branch Manager.

4. The petitioner aggrieved by the impugned transfer order at Annexure-B, has challenged the same before respondent No.1 by raising a dispute under Section 71(3) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act' for short) along with an application for seeking stay for the operation and implementation of the transfer order.

7. The only grievance of the petitioner is that respondent No.1 having rejected the stay application on the ground that the main dispute itself can be disposed of, is not disposing the dispute expeditiously. If that is so, justice would be done, if respondent No.1 is directed to dispose of the dispute raised by the petitioner expeditiously.

In view of the above, the following: ORDER

b. Writ of mandamus is issued to respondent No.1 directing him to dispose of the dispute raised by the petitioner vide dispute No.JRM/DDS/1147/2017-18 within three weeks from the date of receipt of a copy of this order on merits and in accordance with law, after hearing learned counsel appearing for the parties.

Petition allowed

Ranebennur Taluka Primary School Teachers Credit Co-operative Society Limited, represented by its Secretary, Haveri v Deputy Registrar of Co-operative Societies, Haveri and another, 2018 Indlaw KAR 11347

Case No: Petition No. 113060/2015(CS-RES)

Justice S. Sunil Dutt Yadav

Head Note :

KCS Act 1959 – dispute – appeal before KAT – statutory deposit of amount in KAT – the amount already in deposit with the Bank along with interest at 6% could be taken as statutory deposit and if there is shortfall – that shall be paid by the appellant – petition disposed off.

The Order of the Court was as follows:

2. The petitioner-society had initiated proceedings by way of a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 for recovery of amount along with interest said to have been misappropriated by respondent No.2. The award came to be passed on 24.01.2012 entitling the petitioner-society to recover a sum of Rs. 10,69,727/- along with interest. Respondent No.2 aggrieved by the judgment and award had filed an appeal under Section 105 of the said Act, before the Karnataka Appellate Tribunal in Appeal No.200/2012. Respondent No.2 had deposited 25% of the award amount along with interest in accordance with the statutory deposit required to be made as provided under Section 105(2) of the Act. The said appeal came to be allowed setting aside the impugned award and remanding the matter for fresh adjudication with certain directions. In the meanwhile, after disposal of the appeal, respondent No.2 had filed an application before respondent No.1 seeking refund of the deposit of a sum of Rs. 4,36,748/- on the ground that the award earlier passed was set aside in appeal and that he was entitled to refund in terms of Section 105(2) of the Act.

3. However, respondent No.1 declined to entertain the request for refund stating that there was no direction for refund of the said amount while order of remand was passed by the Karnataka Appellate Tribunal. Challenging the said communication at Annexure-C an appeal came to be filed before the Karnataka Appellate Tribunal in appeal No.96/2014. The Karnataka Appellate Tribunal had allowed the appeal directing refund of amount of Rs. 4,36,748/- to respondent No.2 with 6% interest from 24.01.2012. The said order has come to be challenged by the petitioner herein. In the meanwhile, it is submitted that after remand with direction to be decide afresh, fresh award came to be passed which has been challenged by respondent No.2 herein in appeal No.156/2018. Respondent No.1 states that, in view of non-refunding of the amount in deposit i.e., lying before Karnataka Appellate Tribunal, necessary prayer has been made before the Karnataka Appellate Tribunal to adjust the earlier deposit made with respect to statutory deposit required to be made in appeal No.156/2018.

4. Counsel for the petitioner does not seriously dispute the submission of the counsel for respondent No.2 as regards appropriation of deposit earlier made to the statutory deposit required to be made in appeal No.156/2018. However, counsel for the petitioner would submit that, in view of a fresh award being passed

by order dated 30.05.2018, the amount of statutory deposit as envisaged under Section 105(2) of the Act is to be recalculated.

5. Accordingly, the present petition could be disposed of by observing that the amount deposited by respondent No.2 which is lying in deposit before respondent No.1 of a sum of Rs. 4,36,748/- with accrued interest at 6% could be appropriated towards statutory deposit in appeal No.156/2018, respondent No.2. Needles to state that, if the amount after adjustment falls short of the statutory deposit, the 2nd respondent to make good the requirement.

Accordingly, the petition is disposed of in the light of the above observations requiring no further orders as regards adjudication of the contentions relating refund the amount to respondent No.2.

Petition disposed of

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S. Rajesh S/o B. C. Surendra Raje Urs v Deputy Registrar of Co-operative Societies, Mandya and others, 2018 Indlaw KAR 7673

Case No: Writ Petition No. 29237/2018 (CS-RES)

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – Disputes – Appeal of KAT – statutory deposit

The tribunal has stated that the petitioner is bound to comply with the provisions pertaining to deposit of 25% of the amount before tribunal before appeal could be entertained – the order does not call for interference – the petitioner succeeds in the appeal, he can seek the amount refunded – petition disposed of accordingly.

The Order of the Court was as follows:

1. Petitioner is appellant in appeal No.110/2018 (C S) before the Karnataka Appellate Tribunal, Bengaluru (hereinafter referred to as 'the Tribunal' for sake of brevity). He has sought for quashing of the order dated 19.06.2018, by which, the application filed under section 151 of the Code of Civil Procedure, 1908 (CPC) requesting for exemption of deposit of 25% of the ordered amount in surcharge application No.5/2014-15 (Annexure-E) has been dismissed.

2. By the impugned order, the Tribunal has stated that the petitioner is bound to comply with the provisions pertaining to deposit of 25% of the amount before the Tribunal before the appeal could be entertained and that there is no material produced seeking dispensation of the mandatory provision of law. Being aggrieved by that order, the petitioner has preferred this writ petition.

6. Having heard learned counsel for the respective parties, it is noted that by notice dated 17.10.2011, the demand has been made against 3rd respondent to pay a sum of Rs. 6,52,068/- by virtue of the order dated 8.08.2011. It is not known as to whether the first respondent-department has yet recovered the said amount

or not. But the fact remains that the petitioner who is the appellant before the Tribunal would have to comply with sub-section (2) of Section 105 of the Karnataka Co-operative Societies Act. The said section categorically states that no appeal against an order, decision or award for payment of money shall be considered by the Appellate Authority under sub-section (1) unless it is accompanied by satisfactory proof for having deposited with the concerned society twenty-five percent of the amount due in terms of the order, decision or award. After the disposal of the appeal, the amount so deposited shall be adjusted towards the amount payable by the appellant and in case no amount is required to be paid by the appellant, the amount so deposited shall be refunded to him by the Society. In terms of the said provision, petitioner cannot be exempted from depositing 25% of the amount award, he would have to comply with the said provision before the appeal could be entertained. Therefore, the impugned order would not call for any interference. However, the petitioner is at liberty to seek refund of the said amount of 25% from the Tribunal during the pendency of his appeal or thereafter, in the event, the third respondent has paid back a sum of Rs. 6,52,068/- to the 1st respondent-department, pursuant to notice dated 17.10.2011.

7. Subject to the aforesaid liberty, writ petition is dismissed.

At this stage, petitioner's counsel pleads for some time to deposit the amount in terms of sub-section(2) of Section 105 of Karnataka Co-operative Societies Act, 1959. Petitioner is granted time till 31.08.2018 to deposit the said amount.

Ordered accordingly.

Petition disposed of

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Shankar S/o Ishwar Awati v Basaveshwar Prathamik Krushi Pattina Sahakari Sangha Limited, represented by its President Belagavi and others, 2018 Indlaw KAR 11336

Case No: Writ Petition No. 105408/2018 (CS-RES)

Justice S. Sunil Dutt Yadav

The Order of the Court was as follows:

2. The petitioner has filed the present petition seeking for issuance of a writ of mandamus directing respondent No.3 to decide the dispute bearing No.AR 11/D/DDS/524/2016-17 as expeditiously as possible. The petitioner states that he has sought for financial assistance and the decision was taken to sanction the loan to the petitioner. However by virtue of resolution dated 18.10.2016 the membership of the petitioner was cancelled and consequently the petitioner was informed that the loan that was sanctioned in his favour could not be disbursed. The petitioner has challenged the said resolution dated 18.10.2016 before respondent No.3.

3. The petitioner states that by virtue of Section 71 (5) of the Karnataka Co-operative Societies Act, 1959 the dispute pending before respondent No.3 is to be decided within a period of twelve months which could be extended for a period of eighteen months by the Registrar recording in writing the reasons for such extension.

The Proviso to Section 71(5) provides that the State Government on a report made by the Registrar could extend the period beyond eighteen months if there are genuine/valid grounds for such extension.

4. Noticing the statutory provision and that period of eighteen months for disposal already having lapsed, all that could be observed is that the dispute is to be expeditiously disposed of, if respondent No.3 is of the opinion that the matter requires further time permission of the State Government as envisaged under Section 71(5) proviso to be obtained. The writ petition is disposed of in the light of the above provisions.

All that could be observed is that respondent No.3 to take steps for expeditious disposal of the matter as evidence of the petitioner has already commenced. The petitioner undertakes to be present and co-operate with the disposal of the matter.

Respondent No.3 is to make efforts to ensure that the dispute is disposed of within a period of two months.

Petitions dismissed

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Sharanappa S/o Narsappa v Bidar Sahakari Sakkare Karkhane Niyamit, through its Managing Director, Bidar, 2018 Indlaw KAR 8653

Case No: W. P. No. 100042/2013 (L-K)

Justice S.N. Satyanarayana

The Order of the Court was as follows:

2. Brief facts leading to this writ petition are as under:

The petitioner herein would contend that 30 years prior to 2011, he joined the services of respondent-company as pump attender. According to him, from 24.12.2011, he was prevented to mark his attendance in the office of the company where he was working and that on 16.04.2012 by passing an order removed him from services.

3. Being aggrieved by the same, he raised dispute under Section 10 (4-A) of the Industrial Dispute Act and he also sought to set aside the order of dismissal and also for a direction for his reinstatement with continuity of service, full back wages and other consequential benefits.

5. The Court below on appreciating the material available on record answered the first issue with reference to his allegation that he was not allowed to sign the register from 24.12.2011 in the negative and the second issue with reference to the order of dismissal is just and reasonable in the affirmative and consequently as per final order his claim petition was dismissed by award dated 28.09.2012. Being aggrieved by the same, the petitioner is before this Court.

7. On going through the award impugned, it is seen that the Court below has observed that though the petitioner herein contended that he was appointed as Pump Attender 30 years prior to 2011, the relevant document with reference to his appointment has not been produced and no evidence is adduced in that behalf. When it comes to his accusation that he was prevented from signing the attendance from 24.12.2011 is concerned though

such an accusation or allegation is made by him, there is nothing on record to substantiate the same either in the form of complaint, petition or notice in denying the opportunity to work in the respondent-company until the order of dismissal was passed on 16.04.2012. It is after the said award was passed, the petitioner herein has approached the trial Court by raising a dispute under Section 10 (4-A) of Industrial Disputes Act. Even in the said proceedings also he was not able to justify when is the date of entry into service, renewal of service and other relevant material which was required to be established by him.

8. However, it is seen in the said proceedings another objection raised by the respondent-company is that the dispute under Section 10 (4-A) of Industrial Disputes Act is not maintainable, inasmuch as, the Labour Court has no jurisdiction to entertain the same in view of the fact that respondent-company being a Co-operative society where dispute between the society and its employee is required to be resolved in a proceedings under Section 70 of the Karnataka Co-operative Societies Act as decided by co-ordinate Bench of this Court in the matter of Veershaiva Co-Operative Bank Vs. P.O. Labour Court reported in ILR 2000 (4) Karnataka 3743.

9. In that view of the matter, the Court below has rejected the claim petition, which appears to be just and proper in the facts and circumstances of the case and also in the light of the judgment relied upon by the Labour Court. In that view of the matter, this Court find no justifiable grounds are made out to interfere with the award impugned. Accordingly, this writ petition is dismissed.

Petition dismissed

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Shivalingappa Kamadollishettar S/o Murigeppa Kamadollishettar and another v Registrar, Bangalore and others, 2018 Indlaw KAR 7746

Case No: Writ Petition No. 104788/2018 & WP No. 104808/2018 (CS-RES)

Justice Dr. H.B. Prabhakara Sastry

The Order of the Court was as follows:

2. The 3rd respondent society instituted a dispute against the principle borrower and the sureties before the Deputy Registrar of Co-operative Societies, Dharwad in No. DRZ/ABN/DDS/11/2012-13 under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for brevity herein after referred to as 'KCS Act'). Even though the present petitioners were originally not the parties in the said dispute before the Deputy Registrar of Co-operative Societies. However, during the pendency of the said dispute, the present petitioners were impleaded in the said dispute as respondent Nos.5 & 6 since they were the transferees of the properties. The said dispute came to be decided in favour of the Bank wherein, the Deputy Registrar of Co-operative Societies by his order dated 08.12.2017 allowed the petition and held the respondents before it jointly and severally liable to pay a sum of Rs. 37,74,645/- with the interest at the awarded rate. The present petitioners aggrieved by the said order have preferred this writ petition with the prayer to set aside the Judgment/award passed by the 2nd respondent i.e. Deputy Registrar of Co-operative Societies to set aside the Judgment/award dated

08.12.2017 passed by the said Deputy Registrar of Co-operative Societies (Respondent No.2). The petitioners have also prayed for a writ of mandamus for a direction to the respondent No.1 i.e. the Karnataka Revenue Appellate Tribunal, Bengaluru to register the appeal without insisting upon the deposit of 25% of the awarded amount.

5. Undisputedly, the original dispute between the respondent No.3 Society and respondent Nos.4 to 6 who are said to be the principal borrower and sureties was with respect to a loan said to have been given by the 3rd respondent in favour of the 4th respondent in the repayment of which, the respondent Nos.4 to 6 are said to have committed default. As such, as per the law a dispute has been instituted against them by the 3rd respondent Society under the KCS Act before the Deputy Registrar Co-operative Societies (Respondent No.2). The said respondent after hearing both side has decided the matter and passed its award on 08.12.2017 holding all the respondents before it including the present petitioners as jointly and severally liable to pay the claimed amount together with interest thereupon to the present 3rd respondent Society who was the petitioner before it. Since the said impugned order at Annexure-D was passed by the Deputy Registrar of Co-operative Societies under Section 70 of the KCS Act, the appropriate remedy for the present petitioner to challenge the same, if they are really aggrieved, is in the form of preferring an appeal under Section 105 of the KCS Act before the Karnataka Appellate Tribunal. Therefore since the petitioners have got an alternative efficacious remedy this Court in the present facts and circumstance of the case is not inclined to exercise its jurisdiction under Article 226 of Constitution of India and set aside the order of respondent No.2 which is at Annexure-D.

6. Section 105 of KCS Act deals with appeal provisions to the Tribunal. Sub Section 2 of Section 105 clearly states that no appeal against an order, decision or award or payment of money shall be considered by the Appellate Authority under Sub Section 1 of Section 105 unless it is accompanied by satisfactory proof for having deposited with the concerned society 25% of the amount due in terms of the order/decision or award. The said sub section further says that after the disposal of the appeal, the amount so deposited shall be adjusted towards the amount payable by the appellant and in case no amount is required to be paid by the appellant, the amount so deposited shall be returned to him by the society. The said sub section 2 of Section 105 was inserted by Act No.6 of 2010 with effect from 30.03.2010. Thus, the interest of the financial institutions and societies should not be hampered or affected because of the non-payment of the loan amount due to it by the borrower and the said awarded amount should not be kept in abeyance for a long time without its payment, probably the said sub Section 2 to Section 105 to KCS Act was inserted. When with such a intention of not to deprive the society of its entitlement and to ensure its activity go unhampered, such a sub section is introduced, merely on the alleged contention that the appellant expresses his financial difficulty the said statutory requirement cannot be diluted. In the instant case when the petitioners are stated to be the transferees of immovable property, with the available material it is difficult to believe that they are unable to meet the requirement under Section 105(2) of KCS Act.

7. For these reasons, I do not find any merit in this case even to order notice to the respondents. Accordingly, the petition stands dismissed at the stage of admission.

Petition dismissed

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Vinayak Ganapati Bhat S/o Ganapati Bhat v Vishwanath Ganapati Bhat S/o Ganapati Bhat and others, 2018 Indlaw KAR 8256

Case No: Writ Petition No. 28666/2018 (CS-RES)

Justice B.V. Nagarathna

Head Note

KCS Act 1959 - Whether, order permitting Respondent No.1 to produce additional documents is liable to be set aside.

Therefore, in order to discharge that burden, Respondent No.1 has sought to produce two documents. The Tribunal would have to consider said documents in order to give finding whether indeed Respondent No.1 is a member of Respondent No.2 Society or not. In order to carry out that exercise, Tribunal would have to first take on record those two documents; which is what Tribunal has done. Taking on record those two documents as sought for by Respondent No.1 does not imply that Respondent No.1 has proved his membership vis-a-vis Respondent No.2-Society. It is made clear that how Tribunal would proceed in matter on taking on record aforesaid documents is left to jurisdiction of Tribunal to be exercised, in accordance with law. Petition dismissed.

The Order of the Court was as follows:

3. Briefly stated, the facts of the case are that petitioner is a member of respondent No.2-Society. He has disputed the membership of respondent No.1 in respondent No.2-Soceity. That, petitioner and respondent No.1 are brothers. That respondent No.1 has raised a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1969 (hereinafter referred to as the 'Act' for the sake of brevity) against the petitioner herein. According to respondent No.1, petitioner herein had drawn a sum of Rs. 50,000/- from the account of respondent No.1 in respondent No.2-Society. Petitioner has disputed the membership of respondent No.1 in respondent No.2-Society and therefore, has denied the allegation made against him. With respect to the dispute raised by respondent No.2, an award was passed on 06.01.2017 as per Annexure-C, in Proceeding No.DRN/F/DDS/258/2009-10, directing the petitioner herein to repay Rs. 50,000/- with interest at the rate of 15% per annum into the account of petitioner No.1 therein. Being aggrieved by that award, petitioner herein has preferred Appeal No.57/2017 before the Tribunal.

4. During the pendency of the appeal, respondent No.1 herein filed an application under Regulation 36 of the Regulations read with Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC' for the sake of brevity). By the said application, respondent No.1 herein sought to produce two documents for consideration of the Tribunal: one, being original certificate dated 17.01.2008 stated to have been issued by respondent No.2, certifying that respondent No.1 is a member of respondent No.2-Society, having Account No.5107 and second is, original of the account statement

pertaining to the account of respondent No.1 in respondent No.2-Society for the period between 25.09.1997 and 10.06.2005. Respondent No.1 has sought for production of the aforementioned two documents to place the same on record and he has sought for consideration of the said documents as part and parcel of Case No. DRN/F/DDS/258/2009-10. To the said application, objections were filed by petitioner herein. On considering the case of respective parties, the Tribunal, by its order dated 05.04.2018, has allowed the application and permitted respondent No.1 to produce additional documents and has posted the matter for arguments on merits. The said order is assailed in this writ petition.

Take such evidence or direct any subordinate authority to take such evidence and to send it to the Tribunal. The Tribunal shall specify the points to which the evidence should be confined.

7. It is trite that mere taking on record documents produced is not a proof of the same. The proof of a document is subsequent to taking of such document on record. In the instant case, petitioner is denying the fact that respondent No.1 is a member of respondent No.2-Society. The burden of proving the said fact is on respondent No.1, as the petitioner herein cannot prove the negative. Therefore, in order to discharge that burden, respondent No.1 has sought to produce two documents. The Tribunal would have to consider the said documents in order to give a finding whether indeed respondent No.1 is a member of respondent No.2-Soceity or not. In order to carry out that exercise, the Tribunal would have to first take on record those two documents; which is what the Tribunal has done. Taking on record those two documents as sought for by respondent No.1 does not imply that respondent No.1 has proved his membership vis-a-vis respondent No.2-Society. It is made clear that how the Tribunal would proceed in the matter on taking on record the aforesaid documents is left to the jurisdiction of the Tribunal to be exercised, in accordance with law. In the circumstances, I do not find any merit in the writ petition.

Petition dismissed

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Mysore and Chamarajnagar District Central Co-operative Bank Limited, Represented by Its In Charge Chief Executive Officer Nehru Circle, Mysore v Deputy Labour Commissioner Cum Recovery Authority, Bangalore and others, 2015 Indlaw KAR 9056

Case No: Writ Petition No. 17300 /2012 (L-RES)

Justice S. Sujatha

Head Note :

Karnataka co-operative Act 1959 – Industrial disputes Act 1947 – reinstatement and recovery of amounts

That claim of workman, falls within ambit of s. 33(c)(1) of Act, where in s. 33(c)(1) of Act provided for workman to file application before Labour Commissioner as per notifications issued from time to time where any money was due to workman from employer under award for recovery of said money due to

him. It cannot be held that Labour Commissioner had no jurisdiction to entertain application filed by Respondent no. 2 u/s. 33(c) (1) of Act. Petition dismissed.

The Order of the Court was as follows:

2. Facts in brief are:

- that the 2nd respondent was working in Vyavasaya Seva Sahakara Sangha Niyamitha from 22.08.1969 as "paid secretary' and was drawing salary of Rs.745.80/-. His services were governed and controlled by the Common Cadre Committee, Mysore District with effect from 05.09.1980. 2nd respondent was under the direct control of the Chairman of Common Cadre Committee. It was alleged by the 2nd respondent that the petitioner/bank had refused employment to him with effect from 01.09.1988 and an Industrial Dispute was raised by him in I.D.No.170/88 before the Labour Court, Mysore. After adjudicating the dispute raised by the 2nd respondent, the Labour Court, Mysore passed an award on 13.07.1993 directing reinstatement of the 2nd respondent into service with full backwages and continuity of service and other consequential benefits. This award was challenged by the petitioner before this Court in W.P.No.36544/95 and the same was rejected as per the order dated 12.2.1997. Since the award passed by the Labour Court was not implemented, 2nd respondent approached this Court in W.P.21688/1997. This Court by order dated 12.11.1997 directed the petitioner to comply with the award of the Labour Court within four months. Since the petitioner did not comply with the order passed by this Court, a contempt petition was filed which came to be closed recording the submission of the respondents therein that they will pay the difference of pay to the complainant/respondent no.2 within eight weeks from the date of the order. However, it was observed that if the complainant has any grievance, it is open to him to adjudicate the same in accordance with law.

3. The 2nd respondent demanded a sum of Rs.12,85,424/- from the petitioner towards backwages which was computed after taking into account the benefit of the consequential benefits awarded by the Labour Court. Despite the representation made by the 2nd respondent, the same not being paid, the 2nd respondent being eligible for fixation of pay scales, revision of pay scale from time to time, annual increments etc., Writ Petition No.34605/2000 was filed before this Court by the 2nd respondent for a direction to the respondents to pay the salary of the petitioner on par with secretary of different societies who were working in CCA. This Hon'ble Court vide order dated 12.03.2001, disposed of the writ petition directing the Deputy Registrar of Co- operative Societies or the Common Cadre Committee to fix the scale of pay payable to the 2nd respondent by considering the representation of the 2nd respondent within six months from the date of the order. It is also observed that in respect of the scale of pay and allowances payable to the 2nd respondent, the same has to be fixed by the Deputy Registrar of Co-operative Societies or the Common Cadre Committee. This order has reached finality. Since the Deputy Registrar of Co- operative Societies had not complied with the order passed by this Court dated 12.03.2001 despite requests made by the 2nd respondent, contempt proceedings in CCC No.938/2002 was initiated by the 2nd respondent before this Court which was disposed of on 29.03.2005 with a direction to the Joint Registrar of Co-operative Societies, Mysore to implement the directions issued by this Court on or before 31.05.2005 pursuant to which the Joint Registrar of Co-operative Societies, Mysore fixed the pay scale of the 2nd respondent vide Annexure "D" dated 20.05.2005. This order was not given effect to

by the petitioner.

4. The 2nd respondent approached this Court in Writ Petition No.5337/2006. The Hon'ble Court directed the respondents therein to fix the salaries by taking into account and in giving effect to the pay scales fixed by the Joint Registrar of Co-operative Societies and to pay arrears of salary to the petitioner and consequential monetary benefits within six weeks from the date of receipt of the certified copy of the order against which review petition No.370/2011 was filed by the petitioner which came to be rejected by order dated 13.4.2012.

5. Petitioner/bank preferred Writ Appeal No.2598/12 challenging the order in Writ Petition No.5337/06. The Division Bench of this Court dismissed the appeal with costs of Rs.10,000/- to be paid to the respondent/ employee against which R.P.No.151/2013 was filed by the petitioner which came to be rejected by order dated 30.04.2014 This order also has reached finality.

6. Thereafter, 2nd respondent filed an application under Section 33(c)(1) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Labour Commissioner to implement the award passed by the Labour Court dated 13.07.1993. The Labour Commissioner after considering the facts and circumstances of the case and after hearing both the parties, directed the Deputy Commissioner, Mysore District to recover the amount of Rs.12,85,424/- from the petitioner/bank as the arrears of land revenue and to deposit the amount in the name of the Deputy Labour Commissioner, Region-2, Bangalore. This order passed by the 1st respondent is impugned in this writ petition.

12. The orders passed by this Court in the earlier round of litigation clearly indicates that the 2nd respondent was an employee of the petitioner/bank. Now at this juncture, the petitioner/bank cannot deny the relationship of employer and employee between 2nd respondent and the petitioner/bank which is already settled in view of the several decisions rendered by this Court confirming this relationship of employer and employee between petitioner/bank and the 2nd respondent. Which has reached finality. It is also to be noticed that the 2nd respondent has approached the Respondent no.1 under Section 33(c)(1) of the Act only to implement the award passed by the Labour Court in I.D.No.170/98 dated 13.07.1993. This claim of the workman, very well falls within the ambit of section 33(c)(1) of the Act, where in Section 33(c)(1) of the Act provides for a workman to file an application before the Labour Commissioner as per the notifications issued from time to time where any money is due to a workman from the employer under an award for recovery of the said money due to him. As such, it cannot be held that the Labour Commissioner had no jurisdiction to entertain the application filed by the 2nd respondent under Section 33(c)(1) of the Act. The arguments advanced by the learned counsel for the petitioner that in view of the provisions of the Co-operative Societies Act, the jurisdiction of the Labour Court or the Industrial Tribunal is ousted and the respondent no.1 exceeded its jurisdiction in passing an order under Section 33(c)(1) is not worthy of acceptance in view of the specific provisions of Section 33(c)(1) which contemplates the workman to approach the respondent no.1 for the recovery of money due from an award. Accordingly, the said contention of the petitioner is negated.

13. The other contention of the petitioner that the Common Cadre Committee is abolished from 1.7.2010 is of no consequence to the case on hand, as the petitioner/bank itself has approached this Court in Writ Appeal No.2598/12 and suffered an order.

14. For these reasons, I am of the considered opinion that no exception can be made out from the order passed by the respondent no.1 at Annexure "A". Accordingly, the writ petition being devoid of merits, stands dismissed.

15. However, it is noticed that this Court by its order dated 8.9.2015 has observed that, "the payment of the amount by the petitioner to respondent no.2 in a sum of Rs.12,85,424/- in terms of the recovery certificate at Annexure "A" cannot be disputed at this stage. Therefore, the 2nd respondent is permitted to withdraw the amount in deposit". Accordingly, the amount of Rs.6,50,000/- deposited before this Court was permitted to be withdrawn by the 2nd respondent. Now, the petitioner/bank is directed to pay the balance amount to the 2nd respondent within a period of four months from the date of receipt of the certified copy of the order. If the said balance amount is not paid within the stipulated period, the petitioner shall pay the balance amount with interest @ 6%p.a. from the date of the order of the respondent no.1 till the date of payment.

Petition dismissed

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Thimmaiah S/o Late Hallappa v State of Karnataka by Karnataka Lokayuktha Police Station, Bangalore and another, 2016 Indlaw KAR 3102; 2016 (4) Kar LJ 275

Case No: Writ Petition No. 5963 of 2016 (GM-RES)

Justice Pradeep D. Waingankar

Head Note

KCS Act 1959 - Criminal – Advocate & Judges - Prevention of Corruption Act,1988, s.13(1)(d),13(2) - Judges Protection Act,1985, s.2 –Setting aside sale - Initiation of proceeding - Sustainability - - - Petitioner-Joint Registrar of Cooperative Societies in collusion with Secretary of Society set-aside sale deed executed by society in favour of deceased clandestinely with ulterior motive to knock off schedule property for extraneous reasons and consideration - Whether petitioner is 'judge' as defined under the Act and proceeding initiated against him is liable to be quashed.

Petitioner is not a 'judge' as defined under 1985 Act. Whatever action is done by petitioner cannot be termed as having been done in good faith at this juncture. It is only final report of investigating agency, which can reveal that acts of petitioner are in good faith or otherwise. Uncontroverted allegation made therein prima facie attracts offences alleged against petitioner. Thus, it is premature to examine claims of petitioner as investigation is under progress and facts are hazy. Petition dismissed.

Ratio - A person cannot claim any protection under any other provisions of law which is central legislation has an over-riding effect on all other provisions of the Act.

The Order of the Court was as follow:

2. One Smt. Siddamma, the second respondent filed a private complaint dated 24.11.2015 before the

Superintendent of Police, Lokayukta, Bangalore City. It is alleged in the complaint that the complainant is the owner of the property bearing Site No.14, 'Q' Block, formed in Sy.Nos.132 and 133 of Katriguppa, Banashankari 3rd Stage, Bangalore formed by Bhavani Housing Cooperative Society Limited. The site measures 30' x 40'. Originally, the site was allotted to one K.S. Sowmya @ Soundarya by Bhavani Housing Cooperative Society Limited. A sale deed dated 22.6.1999 was executed by the society in favour of K.S. Soumya. Possession certificate dated 11.7.2001 was issued to K.S. Soumya. K.S. Soumya @ Soundarya died in an Aircrash accident on 17.4.2004. Soumya had agreed to sell the schedule property in favour of the complainant. But due to her sudden death, she could not execute the sale deed. As such, a sale deed dated 24.9.2005 was executed by G.S. Raghu, S/o. Subramanya Iyer to whom Soumya @ Soundarya had married in favour of the complainant in the office of Sub- Registrar, Basavangudi, Bangalore. An affidavit dated 23.9.2005 was also sworn to by K.S. Manjula-the mother of Sowmya. The complainant was in actual possession and enjoyment of the schedule site. The complainant is aged more than 80 years suffering from all kinds of ailments. On number of occasions, she was admitted and treated as inpatient in major hospitals in Bangalore.

The son of the complainant Narasimha Murthy visited the schedule property on 15.3.2015. It was still a vacant site. When he again visited the schedule property on 18.8.2015 while returning to his residence on way from his office, he was shocked to see a construction coming on the schedule property. Immediately, he called the complainant-his mother over telephone and informed to her and thereafter approached the jurisdictional police. The police failed to take any action on the ground that the matter is civil in nature. On further discreet enquiry, the complainant came to know that the petitioner who was working as Joint Registrar of Cooperative Society in collusion with the Secretary of Bhavani Housing Cooperative Society-M.H. Dayanand, one Smt. S. Nagarathna, Smt. Bhagyalaxmi and one Chandrappa set-aside the sale deed executed by the society in favour of Soundarya clandestinely with ulterior motive to knock off the schedule property for extraneous reasons and consideration. Therefore, the complainant filed a complaint against the petitioner Thimmaiah and four others for the aforesaid offences. The complaint came to be registered in Cr.No.80/2015 of Lokayukta police station, Bangalore Urban District for the offences punishable under Sections 13(1)(d) r/w 13(2) of Prevention of Corruption Act and Sections 409, 468, 471, 420 r/w 120-B IPC and FIR has been forwarded to the Special Judge. The investigation is going on. At this stage, the instant writ petition came to be filed by the petitioner, who is arrayed as accused No.1 to quash the proceedings mainly on the ground that the petitioner was working as Joint Registrar of Cooperative Societies and that he was discharging judicial function as a judge while passing the impugned order and therefore cognizance taken without obtaining previous sanction to prosecute is bad in law and as such proceedings initiated against the petitioner are liable to be quashed.

7. The Petitioner has contended that he is a quasi- judicial officer and that he comes under the definition "Judge" under the Judges Protection Act and that any act done by him while discharging his official duties are protected not only under the Judges Protection Act but also under the provisions of Section 127 of the Karnataka Co-operative Societies Act, 1959. Section 127 of the Act reads as under:

127. Indemnity.- No suit, prosecution or other legal proceedings shall lie against the Registrar or any person

subordinate to him or acting on his authority [or the [Director of Co-operative Audit] or any other person subordinate to him acting on his authority] [or against the new committee of the co-operative society or the Administrator or the Special Officer appointed under Section 30 or Section 30-A] in respect of anything in good faith done or purporting to have been done under this Act.

8. The learned counsels for respondents have vehemently argued that none of the acts done by the petitioner is in good faith. On the contrary the act is in bad faith. That the petitioner is actively involved in corrupt practices. The learned counsel for the 2nd respondent has referred to an order passed by the petitioner in another matter on an earlier occasion holding that he had no authority under law to cancel allotment of sites made in favour of a member of the Co-operative Society and that it is only the Civil Court which has such an authority and dismissed the petition. He has relied on a copy of the said order produced as Annexure R-2A along with the statement of objection dated 17.02.2016. The said document clearly states that the petitioner was fully and completely aware that he had no power or authority, which are performed by the Civil Court and that he could not set aside or cancel any allotment of site made in favour of a member of the Co-operative Society by the Management of the Society.

9. The complaint revolves around on an order dated 11.04.2014 passed by the Petitioner while discharging his duties as the Additional Registrar of Co-operative Societies canceling allotment of a site bearing No.14, which was made in favour of one Smt. K.S.Soumya contrary to what he had held in a similar situation earlier (Annexure R-2 dated 31.08.2013), which clearly establishes prima facie collusion with the other accused persons and officially favouring them.

11. A Division Bench of the Rajasthan High Court- Jodhpur in W.P.770/2016 in the matter of Bhanwar Lal Naga & Anr. Vs. State & Others and under similar circumstances has held as under:

In brief, facts of the case are that the Anti Corruption Bureau, Jaipur registered a criminal case against the appellant petitioners as per the First Information Report No. 235/2014. To quash the FIR aforesaid, the petitioner preferred a petition for writ with submission that whatever action he has taken that was part of his judicial/quasi judicial authority and, therefore, the petitioners have protection as per Judges Protection Act, 1985. *The learned Single Bench after examining the record arrived at the conclusion that a bare perusal of the FIR discloses an act of criminal nature, therefore, no interference is desirable. (under-lining by me).*

In appeal, learned counsel submits that the Court below failed to appreciate the issue agitated by the petitioner about the applicability of Judges' Protection Act, 1985.

We do not find any merit in the arguments advanced. From perusal of the averments contained in the FIR, it is apparent that as per the investigating agency the appellants petitioners were part of criminal conspiracy while discharging their official duty. In view of this specific allegation, we are of the considered view that the Act of 1985 cannot be made applicable qua the petitioners in the instant matter. Learned Single Judge has not committed any error that may warrant interference in appellate jurisdiction. (under-lining by me)

12. The Kerala High Court in Crl.Misc.283/2008 has held as under:

"Crucial legal question arising for consideration is the following: Whether the Collector defined in Section

3(c) of the Land Acquisition Act, 1894 *or the Land Acquisition Officer discharging the functions of the Collector under the said Act is entitled to claim protection under the* Judges (Protection) Act, 1985*?*

"In this Act, "Judge" means not only every person who is officially designated as Judge, but also every person - (a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or,

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Cl.(a)."

13. In the matter of Narayan Diwakar vs C.B.I, the Delhi High Court(reported in 129 (2006) DLT 258 2006 Indlaw DEL 1574 has held as under:

"petitioner cannot be said to be a 'Judge' either within the meaning of Section 19 IPC *or Section 2 of the* Judges (Protection) Act, 1985 *because by no stretch Page 897 it can be said that the functions discharged by the RCS within the meaning of the Act of 1972 were discharged by him in the capacity of a Court or a Judge except that he has been given certain powers of the civil court for summoning and enforcing the attendance of witnesses, requiring the discovery and production of any document and admitting the proof of facts by affidavits and for issuing commissions for examination of witnesses by Section 94 of the Act.*

15. This Court on a consideration of the matter and more particularly having regard to the provisions of the Delhi Co-operative Societies Act, 1972 *and* Judges (Protection) Act, 1985*, is of the considered opinion that the petitioner while exercising and discharging functions of the Act and more particularly the powers under Section 63(3) of the Act, cannot be deemed to be a 'Judge' within the meaning of Section 2 of the* Judges (Protection) Act, 1985 *and, consequently, he cannot claim any protection against prosecution or other legal proceedings. So far as the immunity available to the Registrar and other officers against prosecution etc. under Section 95 of the Act is concerned, suffice it would be to observe that the use of the expression 'good faith' in the said section clearly brings out the mind of the Legislature that the protection granted to the Registrar and other officers for any acts done by them in the discharge or their official duties is not absolute and is circumscribed by the essential condition that the action had been taken and power had been exercised by such officers in good faith. Converse of good faith is 'bad faith' or mala fide and, therefore, if a question arises as to whether the action taken by the Registrar Cooperative Societies or any other officer was in bad faith, the immunity envisaged by Section 95 of the Act will not be available and the question can be gone into by any competent authority including any statutory investigating agency(s) like CBI. In the opinion of this Court, the petitioner cannot be allowed to take refuge under the said provisions and to scuttle the investigation into the cases having large ramifications in the society.*

16. Having regard to the entirety of the facts and circumstances and the material brought on record, this Court has no hesitation in holding that the present petition for quashing of the FIRs registered against the petitioner on the above purported grounds is wholly misconceived and is liable to be dismissed, more particularly so when the investigation is still in progress in a large number of cases.

14. I am completely inclined to concur with the above judgments and hold that the Petitioner is not a "judge" as defined under Judges Protection Act, 1985.

15. The contention of the Petitioner that he has passed the impugned order in good faith cannot be accepted in view of the fact that he had, on an earlier and similar occasion passed an order diametrically opposed to the impugned order. Hence it is argued by the learned counsel for the Respondents that what is done by the Petitioner is not in good faith and converse of the same is bad faith. The learned counsel for the 2nd Respondent has vehemently argued that the immunity provided in a statute does not apply to the acts committed by the accused in bad faith. He has relied on the decision rendered in Narayan Diwakar's case which reads as under:

"So far as the immunity available to the Registrar and other officers against prosecution etc. under Section 95 of the Act is concerned, suffice it would be to observe that the use of the expression 'good faith' in the said section clearly brings out the mind of the Legislature that the protection granted to the Registrar and other officers for any acts done by them in the discharge or their official duties is not absolute and is circumscribed by the essential condition that the action had been taken and power had been exercised by such officers in good faith. Converse of good faith is 'bad faith' or mala fide and, therefore, if a question arises as to whether the action taken by the Registrar Cooperative Societies or any other officer was in bad faith, the immunity envisaged by Section 95 of the Act will not be available and the question can be gone into by any competent authority including any statutory investigating agency(s) like CBI. In the opinion of this Court, the petitioner cannot be allowed to take refuge under the said provisions and to scuttle the investigation into the cases having large ramifications in the society."

16. While completely agreeing with the decision rendered in Narayan Diwakar's case, I am inclined to hold that whatever action is done by the Petitioner cannot be termed as having been done in good faith at this juncture. It is for the investigating agency to decide whether acts done by the Petitioner while passing the impugned order are in good faith or bad faith. This Court, therefore, exercising powers under Section 482 of Cr.P.C. or under 226 & 227 of the Constitution cannot interfere with the investigation of the case. It is only the final report of the investigating agency, which can reveal whether the acts of the Petitioner are in good faith or otherwise.

21. The above guidelines of the Apex Court if examined with allegations made in the complaint by the 2nd respondent, it cannot be said that complaint is either frivolous or without any basis. The uncontroverted allegation made therein prima facie attracts the offences alleged against petitioner herein. In my opinion, it is premature to examine the claims of the petitioner as the investigation is under progress and facts are hazy, hence this is not a fit case to interfere at the threshold of registration of the case against the petitioner. Without expressing any opinion on the merits of the complaint or otherwise, I hold that the writ petition is devoid of merit.

Accordingly, the Writ Petition is dismissed. No costs. In view of disposal of the main matter, I.A.1/16 for direction does not survive for consideration. Accordingly, it is disposed of.

Petition dismissed

Bedkihal Urban Co-operative Bank Limited, Bedkihal by its Manager, Ramesh S. Bedkihal v Assistant Registrar Co-operative Societies (Rule 441), and Recovery Officer, Hubli and others, 2015 Indlaw KAR 1926

Case No: W.P. No. 15786 of 2007 [CS-RES]

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 – mortgage – auction sale

The Order of the Court was as follows:

1. The petitioner had advanced loan of Rs. 1,25,000/- to respondent No.4. To secure the said loan, respondent No.4 created a charge in respect of his property measuring 5 acres in extent, out of 11 acres 4 guntas, in land bearing Sy.No.71/1 of Borgaon Village. There being default and arbitration proceeding having been initiated, u/s. 70 of Karnataka Co-operative Societies Act, 1959, an award dated 27.04.2001 was passed.

Since, respondent No.3 claimed that there is a charge on the said property in its favour and the same was sold in public auction, having made correspondence, W. P. No.25211/2005 was filed and the same was allowed on 02.01.2006, directing respondent No.1, to consider the representation dated 14. 10.2005, in a time bound manner. Respondent No.1 having held an enquiry and having found that there was no mortgage in favour of the petitioner and the auction conducted by the sale officer on 27.09.2005 as legal and proper, vide order dated 31.07.2007, this writ petition was filed, to quash the said order, as at Annexure 'N' and the confirmation order, as at Annexure 'P'.

2. Sri.Ravi S.Balikai, learned advocate for the petitioner, filed a memo and produced Loan Clearance Certificate issued by the Manager of the petitioner/Bank to respondent No.4. He submitted that there being no dues to be recovered from respondent No.4, this writ petition may be disposed of as not pressed.

3. The memo filed by Sri.Ravi S. Balikai is placed on record and his submission, noticed supra, stands recorded.

The petition is dismissed as not pressed, without prejudice to the right of respondent No.4, to prosecute Writ Petition Nos.76261/2013 and 61752/2011, in accordance with law. No costs.

Petition dismissed

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Belgaum District Central Co-operative Bank Limited Represented by its General Manager, Belgaum v State of Karnataka Represented by its Principal Secretary Co-operation Department, Bangalore and others, 2015 Indlaw KAR 3258

Case No: Writ Appeal No. 1010/2010 [GM-RES]

JJ K. L. Manjunath & S. Sujatha

Head Note :

KCS Act 1959 – award and decree can always be executed.

The Order of the Court was as follows:

1. Appellant was petitioner in WP No.31564/2008. It is the case of the Appellant-Bank that it had advanced loan to the 4th respondent - Raibag Sahakari Sakkare Karkhane Limited, which was under liquidation. On account of non payment of dues payable to the appellant, appellant has secured Awards u/s. 70 of the Karnataka Co-operative Societies Act, 1959, for short 'Act'.

When the Awards were about to be executed, 1st respondent-State of Karnataka granted lease of the 4th respondent-Society in favour of 6th respondent in this appeal.

2. Contending that the lease granted in favour of 6th respondent by the Government is void and it comes in the way of the appellant to recover its dues, writ petition came to be filed.

3. Learned Single Judge came to the conclusion that the lease granted in favour of 6th respondent in respect of 4th respondent-Society is held to be valid and the said decision is taken in the earlier proceedings and therefore the same cannot be questioned by the appellant herein.

However, while disposing of the writ petition, learned Single Judge held that a sum of Rs.28 Crores shall be paid to the appellant herein and remaining amount, if any, shall be worked out by the appellant along with the 6th respondent in terms of the lease deed.

4. The present appeal is filed only aggrieved by the observations made by learned Single Judge that for the balance amount, petitioner has to work out with the 6th respondent in terms of the lease deed.

5. The contention of Sri. Jayakumar S. Patil, learned Senior Counsel for the appellant is that when the appellant is not a party to the lease deed entered into between the State of Karnataka and the 6th respondent and when the appellant has obtained Awards against the 4th respondent- Society, the condition imposed by the learned Single Judge is erroneous and the same would take away the rights guaranteed to the appellant u/s. 70 of the Act.

6. Smt. Poonam Patil, learned Counsel for 6th respondent submits that on 6.6.2014, appellant and 6th respondent along with 4th respondent have entered into a tripartite agreement and that the 6th respondent has agreed to pay the balance amount payable by the 4th respondent to the appellant in terms of the lease on installment basis and that the appellant has also agreed to receive the same.

7. Learned Senior Counsel for the Appellant does not dispute the tripartite agreement entered into between the appellant, 4th and 6th respondent on 6.6.2014. What he contends is while in terms of the agreement, if payment is made by the 6th respondent to the appellant, he has no objection to abide by the conditions of the Agreement dated 6.6.2014, but on the ground of that agreement, if the 6th respondent fails to pay the installments as and when it accrues, appellant shall not be precluded from executing the Awards.

8. If there is any settlement between the appellant and 6th respondent out of court and if there is failure on the part of the 6th respondent to pay dues as and when agreed upon to be paid, it is needless to state that the decree obtained by the appellant can always be executed by the appellant in accordance with law.

9. With the above observation, appeal is disposed of.

Appeal disposed of

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Kanara District Central Co-operative Bank Limited, Uttara Kannada, Represented by its Managing Director S. G. Mavinkurve v State of Karnataka Represented by its Secretary Department of Co-operation, Bangalore and others, 2015 Indlaw KAR 1922

Case No: W.P. No. 63046/2009 [CS-BL]

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 – Executive instruction shall have to yield to the statutary provisions.

The Order of the Court was as follows:

1. The petitioner is a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959. Respondent No.2, acting u/s. 12(5) of the Act introduced certain amendments on 23.09.1997 in bye-laws of the Primary Co-operative Societies. Respondent No.3 passed an order on 13.01.1999 vide annexure-B to the effect that the nominated representative of District Central Co-operative Bank shall be the official representative of the lending bank.

Request made by the petitioner on 15.05.2005 vide annexure-C to drop the order was rejected on 7.8.2006 vide Annexure-D. A direction having been issued by respondent-4 by his letter dated 30.08.2008 vide annexure-G to implement the order dated 13.01.1999, as at Annexure-B, with refernce to the order dated 9.4.2008 passed in W.P.8713/2007 this petition was filed to quash annexure-B and G.

2. On 18.01.2013 an interim order was passed to the following effect:

"If the bye-laws are not amended there shall be an interim order, not to amend the bye-laws".

3. Concededly, bye-laws of the petitioner was not amended and hence the said interim order has enured to the benefit of the bank.

4. Act was amended as per Karnataka Act.35/2014 with effect from 6.9.2014. The words "delegate" and "nominee" were inserted to the principal Act and the same being relevant read as follows:

"(e-1a). 'delegate' means a member of the board of a Co-operative society appointed by the board to represent that Co-operative Society in other co-operative societies."

"(f-3) 'nominee' means a member of a board or official of the Co-operative Society appointed by the board to represent that Co-operative society in other Co-operative societies."

5. In view of the amendment made to the Act, noticed supra, respondents cannot now insist that the petitioner should give effect to annexures B and G, impugned in this writ petition. Annexures-B and G being executive instructions shall have to yield to the statutory provisions, which were inserted with effect from 6.9.2014.

6. In view of the above, this writ petition is disposed of by making clear that the respondents shall not insist that the petitioner to give effect to Annexures-B and G, i.e. implement the same, in view of the amendments inserted vide Karnataka Act.35/2014 with effect from 6.9.2014. Consequently, interim order passed on 18.01.2013 is made absolute.

Petition is disposed of as having become unnecessary in view of the definitions "delegate" and "nominee" inserted to the Act, as per Karnataka Act.35/2014 with effect from 6.9.2014.

Petition disposed of

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Mainuddin S/o Murthuja Sab Patel and another v Minister for Co-Operation, Government of Karnataka, Bengaluru and others, 2015 Indlaw KAR 1897

Case No: W.P. No. 54860 of 2014 (CS-DAS)

Justice H. G. Ramesh

Head Note :

KCS Act 1959 – sale – revision before the Government u/s 108 – direction to dispose off early.

The Order of the Court was as follows:

1. Learned Additional Government Advocate is directed to take notice for respondent No.1. Notice to respondents No.2 to 6 is dispensed with.

2. In respect of the loan borrowed by the petitioners, proceedings have been initiated by respondent No.3. Properties in survey No. 336/1A/1B measuring 0.4 gutas of land situate at Hittanahalli Village, Bijapur Taluk and survey No.16 measuring 4 acres 16 guntas of land situate at Hanchanal Village, Bijapur Taluk were attached and the loan was borrowed and award has been passed for default on 24-3-2006 to recover the amount of Rs. 2,15,120/- with interest at the rate of 17% per annum. Stating that no notice has been issued by respondent No.2, petitioner No.1 has preferred an appeal before the Karnataka Appellate Tribunal, Bangalore,

in K.A.T No.416/2009. Subsequently, petitioner No.1 filed W.P. No.83162/2009 before the Circuit Bench at Gulbarga and there is a stay granted on 14-10-2009. However, petition is disposed on 15-6-2011 with liberty to approach the respondent - Bank on or before 31-7-2011 for one time settlement and it is also ordered that there shall not be any order of confirmation of sale. Petitioner No.1 approached the respondent - Bank by a letter dated 30-6-2011 and also reminded by his subsequent letter dated 19-7-2011 requesting for one time settlement.

The respondent - Bank has not considered the request of the petitioners and the properties were brought to auction without following the statutory provision and public auction has been confirmed by respondent No.5. As against which, the statutory appeal u/s. 106 of the Karnataka Co-operative Societies Act (for short 'the Act') has been filed before the District Registrar of Co-operative Societies. However, the same came to be dismissed. Against which the petitioners filed revision petition u/s. 108 of the Act before the Minister for Co-operation. Matter is pending consideration before the Minister for Co- operation. Hence, the petitioners are before this Court seeking a direction to respondent No.1 to consider pending Revision Petition No. CO/28/CAP/2013 filed by them on 7-11-2013 - Annexure-G.

3. Heard the learned counsel for the petitioners and the learned Additional Government Advocate.

4. Respondent No.1 - Minister for Co-operation or the concerned is hereby directed to take immediate steps to dispose of the matter, at the earliest. Petition is disposed of accordingly.

Learned Additional Government Advocate is permitted to file memo of appearance in four weeks.

Petition disposed of

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P. C. Rukmaniyamma W/o B Nagaraju and another v Karmikara Raithara Vasathi Nirmana Sahakara Sangha Limited, represented by Its Secretary, Bangalore and others, 2015 Indlaw KAR 8560

Case No: R. F. A No. 369/2014

JJ. N. Kumar & B. Manohar

Head Note

Trial court dismissed suit on ground that plaintiffs failed to prove title as well as possession of suit property and Defendants No.1 and 2 failed to prove that suit was hit by s. 10 of CPC and defendant No. 6 had proved to be bonafide purchaser of suit schedule property - Hence, instant first appeal - Whether, finding of trial Court that plaintiffs has failed to establish their title and possession over suit property calls for any interference.

No error committed by trial Court in recording finding as it was based on evidence. Appeal dismissed.

The Order of the Court was as follows:

3. The case of the plaintiffs is that the 1st defendant, Karmikara Raithara Vasathi Nirmana Sahakara Sangha Ltd. (hereinafter referred to as Rs. Sangha') formed residential sites over the land acquired by it situated at Channasandra village, Bangalore South to distribute to its members. The 1st plaintiff is one of the members of the 1st defendant-Sangha. The 1st defendant - Sangha allotted the suit schedule site in favour of the 1st plaintiff. After payment of entire sale consideration amount, the 2nd defendant executed a power of attorney in favour of the plaintiffs and issued possession certificate and no objection certificate in favour of the 1st plaintiff. Defendants No.1 to 4 are the office bearers of the Sangha. The 1st plaintiff got transferred the katha in her name and paid tax regularly. The 1st plaintiff is in possession and enjoyment of the suit schedule property as its absolute owner. After purchase, the BDA has acquired some portion of the plaintiffs' property for widening the road. Consequently, the site of the plaintiffs got reduced. After purchase, defendants No.1 to 3 colluding with each other went on postponing the execution of absolute sale deed in respect of the suit schedule property in favour of the 1st plaintiff stating that due to some technical reasons namely that the matter pertains to the sites formed by the 1st defendant - Sangha over the lands situated at Channasandra village are not yet settled. Therefore, the plaintiffs filed a suit in OS No.2012/2006 before the court for the relief of injunction in respect of the plaint schedule property. She pleaded that she is an innocent housewife and is not able to run from post to pillar to solve her problem. On 15.2.2007, she had executed a registered sale deed in favour of the 2nd plaintiff in respect of the suit schedule property. The 1st defendant represented by the 3rd defendant filed written statement in OS No.2012/2006 denying the right, title and interest of the 1st plaintiff over the suit schedule property. Further, he contended that he had not allotted the suit site to the 1st plaintiff and executed power of attorney in her favour. On the contrary, he contended that the 1st defendant had allotted the suit schedule property in favour of the 5th defendant and it had executed a power of attorney in her favour. Thereafter, on the strength of GPA, the 5th defendant executed a registered sale deed in favour of the 6th defendant. The said act of the defendants in execution of such documents is their collusive act and it is not affecting to the right, title and interest of the plaintiffs. It is created with the malafide intention to knock of the plaintiffs' valuable property and to dispossess her from the same. The plaintiffs complied with the provision of Section 125 of Karnataka Co- operative Societies Act by issuing a notice as contemplated under the same. Therefore, they filed the suit for the relief of declaration and permanent injunction in respect of the suit schedule property.

12. In the light of the aforesaid facts and rival contentions, the point that arises for our consideration is:

"Whether the finding of the trial Court that the plaintiffs have failed to establish their title and possession over the suit property calls for any interference?"

13. The facts are not in dispute that the suit property belongs to the 1st defendant - Sangha. The 1st plaintiff is the member of the Sangha. She had paid consideration for allotment of the site. She relied on Ex.P17 - GPA, Ex.P18 - affidavit, Ex.P19 - possession certificate and Ex.P20 - no objection certificate to substantiate her contentions. Not only the site was allotted to her, but also possession was delivered and katha was made out. However, the 1st defendant - Sangha has specifically denied the allotment of site, issue of possession certificate, swearing of affidavit and executing GPA - Ex.P17. It is the specific case of defendants No.1 to 3

that though the plaintiffs have paid initial amount towards the allotment of site, they have failed to pay the required escalation charges agreed to be paid by the members towards allotment in general body meeting. Therefore, the 1st plaintiff was not allotted the site and the documents which rely are all fabricated documents. Probably, when this stand was taken by the Sangha, she was constrained to file OS No.2012/2006 for the relief of injunction in respect of the suit schedule property. The said suit was filed on 10.4.2006. Defendants No.1 and 2 entered appearance on 21.12.2006 and filed a detailed written statement denying the allotment of site, issue of possession certificate, general power of attorney and affidavit. Further, it is specifically contended that the said allotment was made to another member i.e. 5th defendant in the suit, who in turn has executed a registered sale deed in favour of the 6th defendant on 1.9.2006. It is thereafter, the 1st plaintiff opened the eyes and then she executed the sale deed in respect of the schedule property in favour of her husband, the 2nd plaintiff on 15.2.2007. During the pendency of the suit for injunction, the 5th defendant executed the sale deed in favour of the 6th defendant. Now on the basis of the aforesaid saledeed, today the husband and wife claimed the title of the property. The trial Court has taken into consideration the documents produced by both the parties and came to the conclusion that on the day, the 5th defendant was an allottee of the site and she executed a saledeed in favour of the 6th defendant on 1.9.2006, the title of the property has been vested with the 6th defendant as on 15.2.2007. When the 1st plaintiff executed the power of attorney in favour of the 2nd plaintiff, she had no right in the property. The Sangha had no right over the property. Further more, the sale deed was executed during the pendency of OS No.2012/2006 after coming to know the 5th defendant executed the sale deed in favour of the 6th defendant. Therefore, it does not create interest. Even if the site is allotted to the 1st plaintiff, none of the documents are sufficient to grant declaration in favour of the 1st plaintiff. Realising this, the 1st plaintiff had executed a sale deed dated 15.2.2007 in favour of the 2nd plaintiff in respect of the plaint schedule property. But unfortunately, on that day, the 1st defendant - Sangha and 1st plaintiff were not the owners. Therefore, the plaintiffs were constrained to file the suit against the defendants for seeking relief of declaration and permanent injunction in respect of the plaint schedule property. By that time, on 1.9.2006, the 5th defendant had executed a sale deed in favour of the 6th defendant, who has become the owner of the property. Therefore, we do not find any error committed by the trial Court in recording the finding as it is based on the evidence.

In that view of the matter, we do not find any merit in this appeal. Accordingly, we pass the following:

Appeal is dismissed. No cost.

Appeal dismissed

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Dawuji S/o NathuLamani v Central Co-operative Bank Limited, by its Managing Director, Bijapur and another, 2016 Indlaw KAR 6745

Case No: W. P. No. 82028/2011 (CO-OP)

Justice A.N. Venugopala Gowda

Head Note :

As the petitioner has an alternative and statutory remedy, which is efficacious, it is inappropriate to entertain this writ petition.

The Order of the Court was as follows:

3. Indisputedly, the petitioner had availed loan from respondent No.1 and became a defaulter. A dispute under Section 70 of KCS Act, 1959 vide Annexure-A was instituted and the same having been referred to a Honorary Arbitrator, the Award vide Annexure-B was passed. To realize the outstanding amount, respondent No.1 having initiated recovery proceeding before respondent No.2, an attachment of property was ordered.

4. The Bank having introduced a scheme of One Time Payment, by availing of which the rate of interest would be reduced, the petitioner was notified of the benefit vide Annexure-K. It is for realization of the outstanding amount, respondent No.1 has published the notification vide Annexure-L.

5. Grievance of the petitioner is, that even after repayment of the entire loan amount, respondent No.1 has arbitrarily issued the impugned communication vide Annexure-L. Sir Ravindra Reddy, learned Advocate, contended that the Award passed vide Annexure-B having been satisfied, there is no scope for the respondents to initiate any further proceeding against the petitioner.

7. There being no dispute with regard to the petitioner availing loan from respondent No.1 and passing of Award against him vide Annexure-B, all matters concerning realization, discharge or satisfaction of the Award can be the subject matter of consideration before the Recovery Officer as per Section 101(2)(a) of the KCS Act. As the petitioner has an alternative and statutory remedy, which is efficacious, it is inappropriate to entertain this writ petition. Before the Recovery Officer, if necessary, evidence can be adduced by both sides with regard to the payment etc., towards satisfaction or otherwise of the Award.

In view of the above, this petition is disposed of, permitting the petitioner to raise objections before the Recovery Officer in the recovery proceeding initiated by respondent No.1. The Recovery Officer shall grant reasonable opportunity of hearing to the petitioner and consider the objections and proceed in the matter in accordance with law.

All contentions raised in the writ petition are left open. No costs.

Petition disposed of

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Nerpu Gundappa Poojary S/o Late Venkappa Poojary v State of Karnataka, Represented by Its Secretary, Bangalore and others, 2016 Indlaw KAR 6898

Case No: Writ Appeal No. 5036 of 2012 (CS-DAS)

Justice S. Sujatha

Head Note

KCS Act 1959 - Land & Property - Civil Procedure - Karnataka Co-operative Societies Rules, 1960, r. 38(5)(a) – Non-payment of loan - Auction Sale - Single Judge held that he had no right to pursue proceedings and only mother of petitioner could pursue proceedings and dismissed petition - Hence instant appeal.

As Court has observed earlier, second and third limb of arguments are considered on that appellant had locus to raise objection, when even if objections are considered and entertained, it was not a case where the Recovery Officer ought to have exercised power to set aside sale, more particularly when sustaining of substantial injury by objector was not satisfactorily demonstrated or is rather not satisfactorily demonstrated before Lower Authority as well as before Single Judge of Court, Court find that no useful purpose would be served in examining question of locus as sought to be canvassed on behalf of appellant and thereafter to consider merits of other contention at later stage. Court finds that no case is made out for interference. Appeal dismissed.

The Order of the Court was as follows:

6. Before we consider the submissions made by the learned Counsel for the appellant, it would not be out of place to mention that the occupancy rights of the land in question were conferred upon the mother of the original petitioner Smt.Poovamma Poojarthi, as per the certificate dated 20.03.1976 and as stated by the learned Counsel for the appellant, the age of the petitioner at the relevant point of time was 23. It is also undisputed position that the awards were passed against the appellant as well as the mother of the appellant and the wife of the appellant and in the transactions of loan, the properties in question were mortgaged. On 04.03.1996, the properties of the mother of the appellant were attached for the alleged non-payment of the loan. On 13.01.1998 the objections were filed by the mother of the appellant-petitioner. In the year 2000-2001, the awards were passed. The perusal of the order passed by the revisional authority, a copy of whereby is produced at Annexure 'A' shows that the notices were given to the judgment debtor- mother of the appellant to pay the amount, but the amount was not paid. The public advertisement was given in the newspaper and thereafter the auction was held. It is true that the notices were dated 16.03.2002 and 21.03.2002 and the date of auction sale was fixed on 28.03.2002 at the different convenient times specified.

7. In the another advertisement dated 24.05.2002 issued in the daily newspaper 'Vijaya Karnataka', auction sale was fixed on 30.05.2002 at different convenient times specified. It has also come on record that the valuation of the property was undertaken and as per the report of the valuer dated 28.05.2002, the property was valued

at Rs.5,15,000/-, whereas the auction amount for the sale of the property was realized at Rs.5,85,000/-. After this auction sale, the objections were raised by the appellant under Rule 38(5)(a) of the Rules claiming to have interest in the property, but the Recovery Officer had rejected the objections and the sale was ultimately confirmed. The appellant challenged the said action before the competent forum and ultimately upto the revisional authority and also before the learned Single Judge. The appellant did not succeed to get the sale set aside and under the circumstances, the present appeal.

8. We may record that it is not the case of the appellant that the appellant was ready and willing to pay the amount or the mother of the appellant was ready and willing to pay the amount by avoiding the sale of the property in question. On the contrary, at one point of time, the mother of the appellant gave in writing permitting sale of the property.

14. Examining the facts of the case further, it is not the case of the appellant-petitioner that on account of the curtailment of the period between publication of the notice and the auction sale, any buyer who was otherwise available and ready to offer higher price than the auction price could not submit the offer. Further as recorded by us hereinabove, as against valuation of the property made by the expert-valuer at Rs.5,15,000/- the property sold was at Rs.5,85,000/-. If the aforesaid two aspects are considered, it cannot be said that any substantial injury is sustained by the appellant or any prejudice is caused substantially or financially to the appellant.

15. In view of the aforesaid circumstances, we find that the second limb of argument and rather principal contention based on Rule 38(5) of the Rules cannot be accepted.

20. In our view, even if we consider the principles observed by the Apex Court in case of S.J.S.Business Enterprises (P) Ltd., Vs. State of Bihar And Others reported at (2004) 7 SCC 166 2004 Indlaw SC 206 for exercise of the power in bona fide of the Recovery Officer or the financial institution, the present case is not such where the power could be said to be not exercising bona fide. In the present case, it could not be said that the powers have not been exercised in bona fide, since the property is sold at a higher price than the market value assessed by the expert-valuer. Hence, the said decision is of no help to the appellant.

22. The ground contended for sale of the property to the auction purchaser who is alleged to be the relative of the former Secretary of the Society, cannot be accepted in absence of any sufficient material produced before the lower authority nor specifically contended, except that at one point of time, the appellant wanted to implead the person concerned as the party which ultimately did not materialize. The contention may have some substance, had the property sold at a throw away price or at a much lower price in comparison to the market value. But such are not the fact situation. Hence under these circumstances, it is not possible for us to accept that the sale is vitiated.

23. In view of the aforesaid observations made by us on the principal and rather second limb of argument and coupled with the third limb of argument, we do not find that on merits there was a case to set aside the sale. Hence even if the contention of the appellant- petitioner which is first limb of argument is considered for the sake of examination that he could be said to be a person having interest in the property and the learned Single Judge could not have non-suited him on the said ground, such aspect would lose its efficacy and the same

would be inconsequential. As we have observed earlier, the second and third limb of arguments are considered on the premise that the appellant-petitioner had locus to raise the objection, when even if the objections are considered and entertained, it was not a case where the Recovery Officer ought to have exercised the power to set aside the sale, more particularly when sustaining of the substantial injury by the objector was not satisfactorily demonstrated or is rather not satisfactorily demonstrated before the lower authority as well as before the learned Single Judge of this Court, we find that no useful purpose would be served in examining the question of locus as sought to be canvassed on behalf of the appellant-petitioner and thereafter to consider the merits of the other contention at the later stage.

24. In view of the above, we find that no case is made out for interference. Hence, appeal lacking merit is dismissed. Considering the facts and circumstances of the case, no order as to costs.

25. I.A.No.1/2016 would not survive, in view of disposal of the main writ appeal. Hence, shall stand disposed of.

Appeal disposed of

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Shivayogi Murugendraswamy Sahakara Bank Limited, Athani, by its Manager v Deputy Registrar of Co-operative Societies, Belgaum and others, 2016 Indlaw KAR 846

Case No: Writ Petition No. 8001/2008 (CS-DAS)

Justice B. S. Patil

Head Note :

KCS Act 1959 – S.101 B of the Act – Sale of the property

The Order of the Court was as follows:

1. Petitioner-Society is calling in question order dated 29.06.2007 passed by the Deputy Registrar of Co-operative Societies, Belagavi, produced at Annexure-A. Appeal was filed by the 4th respondent herein under Section 106 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act' for short) challenging the Action of the petitioner-society in bringing for sale the property owned by the 4th respondent to recover the loan amount advanced. Indeed, Assistant Registrar of Co-operative Societies had passed an order directing sale of the property for recovery of loan amount with interest. Pursuant to the said direction, property was first got transferred in the name of the petitioner-society on 09.11.2000 in terms of provisions contained in Section 101-B of the Act. Later on, the property was brought for sale on 29.01.2004. The 5th respondent herein Shri Balesh Mallappa Pujari purchased the said property. Sale deed was executed in his favour on 08.03.2004. It is thereafter that an appeal was preferred before the Deputy Registrar of Co-operative Societies by the 4th respondent challenging the sale conducted.

2. The Deputy Registrar has allowed the said appeal holding that there was violation of provisions contained in

Rule 38-A.(13) of the Karnataka Co-operative Societies Rules, 1960 (hereinafter referred to as 'the Rules', for short) inasmuch as no notice was issued to the defaulter/respondent No.4 herein before bringing the property for sale. The Deputy Registrar has given a further direction to return the property to the 4th respondent upon the 4th respondent remitting the principal amount, interest and the amount of solatium payable to the purchaser within a period of three months from the date of the order passed by him.

5. Having heard the learned counsel for both parties, I find that the Deputy Registrar could not have passed the order setting aside the sale in the absence of purchaser being made party to the proceedings. Order passed by the Deputy Registrar affects the interest of the bidder who has purchased the property in public auction. Without hearing him, such an order could not have been passed. Indeed, for this purpose only, this Court permitted the petitioner to implead the auction purchaser, who is stated to be in possession and enjoyment of the property in question pursuant to auction sale, as can be seen from the order- sheet dated 09.01.2015.

6. In such circumstances, order under challenge cannot be sustained. Matter requires reconsideration by the Deputy Registrar of the Co-operative Societies by hearing the purchaser. Fourth respondent is permitted to implead the purchaser as party-respondent in the proceedings before the Deputy Registrar. The purchaser, who has appeared before this Court, is directed to appear before the Deputy Registrar on 1st March 2016. So also, the petitioner and the 4th respondent shall appear before the Deputy Registrar on 1st March 2016. Whereupon, the appeal shall be heard and decided by providing a fair and reasonable opportunity to all the parties. All other contentions on merits are kept open. Writ petition is disposed of accordingly.

Petition disposed of

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Srikanth Samaga S/o Krishnamurthy Samaga and another v State of Karnataka and others, 2016 Indlaw KAR 1700

Case No: WA Nos. 2506-2507/2015 (CS-RES)

JJ Subhro Kamal Mukherjee & Ravi Malimath

Head Note :

KCS Act 1959 – S.101 - Execution

The Order of the Court was as follows:

1. The Assistant Registrar of Co-operative Societies passed an order of sale in favour of the appellant No.1 in a public auction. It is an admitted position that the auction sale has been set aside by this Court, which was confirmed by the Supreme Court of India in a Special Leave Petition.

8. In this case, when possession was not delivered by the judgment debtor, the appellants approached the Assistant Registrar seeking delivery of possession in execution. The Assistant Registrar, in terms of the power enumerated in Clause (c) of the first proviso of Section 101 of the said Act, executed the order of sale and handed over possession to the auction purchasers. Now that the sale has been set aside, the judgment

debtor approached the Assistant Registrar for re- delivery of possession. The Assistant Registrar shirked his responsibility by relegating the parties to the Civil Court.

9. The Hon'ble Single Judge was, therefore, right in asking the Assistant Registrar to execute the order as expeditiously as possible.

10. We do not find any merit in these writ appeals.

11. The writ appeals are summarily dismissed.

In view of dismissal of the writ appeals, I.A.No.I of 2015 for stay does not survive for consideration and is, also, dismissed.

12. We make no order as to costs.

Appeals dismissed.

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Thammannagouda S/o Mallanagouda Halemani v Deputy Registrar of Co-operative Societies, Dharwad and another, 2016 Indlaw KAR 4345

Case No: W. A. No. 100009/2016 (GM-CPC)

JJ H.G. Ramesh & Rathnakala

Head Note :

KCS Act 1959 – S.101 – Execution of award

The Judgment was delivered by H.G. Ramesh, J.

2. This writ appeal is directed against the order dated 24.01.2014 passed by a learned Single Judge of this Court allowing the writ petition filed by respondent No.2 herein in W.P.No.64146/2011 by quashing the order dated 16.12.2010 passed by respondent No.1 under Section 101(1)(a) of the Karnataka Co-operative Societies Act, 1959 granting permission to execute the award dated 03.03.2003 and consequently quashing Ex. Case No.106/2011 which was pending before the Court of the Prl. Senior Civil Judge, Dharwad.

3. The learned Single Judge has found that the dispute in respect of the aforesaid award was settled as per the joint memo filed by the appellant and respondent No.2 herein in W.A.No.175/2008 (DD 24.03.2009), and the appellant has received the amount payable as per the joint memo, and hence, question of executing the aforesaid award again did not arise.

4. It is relevant to refer the following reasoning of the learned Single Judge in allowing the writ petition:

"3. From the aforesaid materials on record, it is clear that before approaching the authority, the respondent has received the aforesaid amounts and acknowledged with full satisfaction and also acknowledged that there is no further claim. In the light of the aforesaid acknowledgement, in the first place he could not have approached the authority and authorities were also not justified in granting the permission. Therefore,

the petitioner was justified in challenging the permission granted and the execution proceedings, which is initiated. ....."

5. We find no error in the reasoning of the learned Single Judge in allowing the writ petition filed by respondent No.2 herein. The writ appeal is, therefore, devoid of merit. Hence, no purpose will be served by ordering notice on I.A.No.2/2016 filed by the appellant for condonation of the delay of almost two years (680 days) in filing this appeal. Accordingly, both I.A.No.2/2016 and the appeal are dismissed.

Appeal dismissed.

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Yellappagouda S/o Veeranagouda v Hubballi Taluka Agriculture Produce Co-operative Marketing Society Limited, represented by Alleged Authorized Person Basavaraj S/o Mallappa Chebbi, Hubballi, 2016 Indlaw KAR 5235

Case No: Regular Second Appeal No. 100630 of 2015 [POS]

Justice Aravind Kumar

Head note:

KCS Act 1959 - Suit property - Vacation - Challenged - Judgment and decree passed by Court decreeing suit for possession and directing Defendant to hand over vacant possession of suit schedule property within fifteen days from date of judgment came to be confirmed - Hence, instant appeal - Whether, time can be granted to Appellant to quit and vacate suit schedule property.

Held, plaintiff sought for production of sale certificate issued by municipal authorities in favour of plaintiff's vendors and said sale certificate issued by municipal authorities was accompanying said application. This application though available on record had not been adverted to by First Appellate Court. As such, Court held that said document was necessary to be examined by Lower Court and in that background, it came to be held that non consideration of said application was erroneous. Time is granted to Appellant to quit and vacate suit schedule property. Appeal dismissed.

The Order of the Court was as follows:

7. Insofar as the contention regarding maintainability of suit on the ground that defendant was a member of plaintiff / Society and as such, suit in question was not maintainable and a dispute under Section 70 of the Karnataka Co- operative Societies Act, 1959 had to be registered, does not hold water as rightly observed by both the Courts below inasmuch as relationship between defendant and plaintiff was that of landlord and tenant. Neither the tenancy was between the Society and a member and in that relationship, plaintiff had instituted the suit for ejectment of defendant nor on the ground that tenancy was created by virtue of defendant's father being a member of the plaintiff Society. As such, suit in question being a suit for possession simplicitor, defence now raised would not be available to defendant and same is rejected.

14. However, noticing that appellant has been in possession and enjoyment of suit schedule property for the past more than forty years, some reasonable time required to be granted. Hence, granting time to the appellant to quit and vacate suit schedule property, this appeal stands disposed of. Accordingly, judgment and decree passed by Courts below deserves to be modified.

15. Hence, I proceed to pass the following order:

O R D E R

(i) Second Appeal is hereby dismissed;

(ii) Judgment and decree passed by II Additional Senior Civil Judge, Hubballi, dated 24t h March 2015 in RA No.96 of 2010 confirming the judgment and decree passed by First Additional Civil Judge, Hubballi, in OS No.145 of 2007 dated 09t h July 2010 insofar as directing appellant - defendant to quit, vacate and hand- over vacant possession of suit schedule property is concerned, stands affirmed;

(iii) However, time granted by Courts below is modified, namely it is hereby extended and further time of thirty days is granted from today for the appellant to quit, vacate and hand- over vacant possession of the suit schedule property;

(iv) No order as to costs.

Appeal dismissed

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Eranagouda ShivanagoudaPatil S/o ShivanagoudaPatil v Deputy Registrar of Co-Operative Societies, Gadag District, Gadag and others, 2017 Indlaw KAR 2693

Case No: Writ Petition No. 109815/2016 (CS-DAS)

Justice B. Sreenivase Gowda

The Order of the Court was as follows:

5. Facts leading to this petition are, petitioner raised a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as an 'Act') against the Returning Officer and others before the 1st respondent praying to disqualify the 4th respondent from the Directorship of the 2nd respondent, on the ground that he got elected as Director on the basis of 15 fake votes franchised in his favour. Dispute was allowed and 4th respondent was disqualified from the Directorship of the 2nd respondent Society. 4th respondent aggrieved by the said award of the 1st respondent, challenged the same by preferring an appeal under Section 105 of the Act before the Tribunal along with an application under Section 5 of the Limitation Act for condoning the delay in preferring the said appeal and with an application seeking stay for the award passed by the 1st respondent.

6. The grievance of the petitioner in this writ petition is, the Tribunal without considering the delay application has committed an error in granting stay for the operation and execution of the award passed by the 1st

respondent. However, learned counsel for the petitioner submits if writ petition is disposed of by directing the Tribunal to dispose of the appeal itself within a period of three months from today, petitioner would be satisfied. The said request made by the learned counsel for the petitioner is not opposed by the learned AGA for respondent Nos.1 and 3 and by the learned counsel appearing for private respondent No.4. Hence, the following: ORDER

(i) Writ petition stands disposed of.

(ii) The Karnataka Appellate Tribunal is hereby directed to dispose of Appeal No.231/2016 (Co-operative) as expeditiously as possible, in the facts and circumstances of the case at any rate within three months from the date of receipt of a copy of this order on merits and in accordance with law after providing an opportunity of hearing to both the parties.

(iii) Petitioner is at liberty to get the appeal advanced, if it is already adjourned to a longer date, to any early date by bringing this order to the notice of the Karnataka Appellate Tribunal and request the Tribunal to dispose of the appeal within the time indicated herein above.

(iv) Petitioner as well as 4th respondent are hereby directed to extend co-operation with the Tribunal, so as to enable the Tribunal to dispose of the appeal within the time indicated herein above.

Petitions disposed of

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Bidar Kisan Shakkar Karkhana Limited, represented by its Chairman and Managing Director, Mohammad Naseemuddin Patel S/o Mohammad Nizamuddin Patel Bidar, Humnabad v South India Corporation Limited, represented by its Assistant Manager and Authorised Signatory, P. L. Muthaiah S/o P. L. M. Palaniappan, Chennai and another, 2018 Indlaw KAR 2629

Case No: C. R. P. No. 200046/2017

Bench: B. Veerappa

Head Note :

Karnataka Co-operative Act 1959 – recovery of amount under civil court proceedings.

Plaintiff pleaded cause of action and stated that defendant no. 1 paid last payment on 18-6-2008 and also responded to notice dt. 22-1-2009 and suit was filed within limitation period. Therefore, submission of petitioner that there is no cause of action and suit is barred by law cannot be accepted at this stage. Based on pleadings, Trial Court framed specific issues with regard to suit is barred by law. Issue with regard to suit is barred by law is a mixed question of law and fact, which cannot be decided at preliminary stage. It is well settled that plaint cannot be rejected only based on allegations made by defendant or in an application for rejection of plaint. Defendant has not made out any good ground to reject plaint.

Petition dismissed.

The Order of the Court was as follows :

2. The first respondent who is the plaintiff before the Trial Court filed a suit for recovery of Rs. 1,76,08,000/- with interest at the rate of 18% per annum from 07.05.2002 till the date of such payment. The plaintiff also sought for an interim direction to the first defendant to furnish the security for the suit amount pending disposal of the suit against the defendants contending that the plaintiff's Company and the first defendant entered into an agreement for the construction work of the first defendant's sugar factory by way of Articles of agreement entered into on 15.03.2001. The plaintiff's Company took up the execution of the contract for the purpose of completion of civil construction work of the first defendant's factory for the total tender value of Rs. 9.93 crores. The plaintiff's Company completed the work of the civil construction work of first defendant's factory to the tune of Rs. 231.26 lakhs. The first defendant has only paid a sum of Rs. 151.20 lakhs leaving a balance of Rs. 80.06 lakhs as per construction completed report submitted to the first defendant on 07.05.2002. Despite raising the bills, the first defendant failed to pay the balance of Rs. 80.06 lakhs and the plaintiff made various enquiries and came to know that the first defendant took financial assistance form the second defendant's Bank. As per the repayment schedule stipulated by the second defendant Bank, the first defendant did not keep up the repayment of the second defendant's Bank and the second defendant Bank initiated steps to auction the assets of the first defendant's factory. Further contended that in spite of the demand made, the first defendant not paid the balance amount. Therefore, cause of action arose on 15.03.2001 when the plaintiff and the first defendant entered into an agreement and failure of the first defendant to make payment after 18.06.2008 as also to respond to the notice dated 22.01.2009 etc. Therefore, the plaintiff filed a suit for the relief sought for.

9. Having heard the learned counsel for the parties, it is an undisupted fact that the plaintiff has filed a suit for recovery of Rs. 1,76,08,000/- with interest at 18% per annum by raising various grounds and there was a contract between the plaintiff and the first defendant for the purpose of completion of civil construction work of the first defendant's factory. According to the plaintiff, it has completed the construction at the cost of Rs. 231.26 lakhs and the first defendant has paid only Rs. 151.20 lakhs leaving a balance of Rs. 80.06 lakhs. In spite of repeated demand and legal notice, the first defendant not paid the balance amount and therefore, the suit was filed by the plaintiff to recover the balance amount. The defendants have filed the written statement and denied the plaint averments and contended that the suit filed by the plaintiff is not maintainable and barred by law.

10. As could be seen from the provisions of Order 7 Rule 11 (a) and (d) wherein the legislature has clearly depicts that the plaint can be rejected where it does not disclose a cause of action and where the suit appears from the statement in the plaint to be barred by any law. Admittedly, in the present case in paragraph Nos.21 and 22 of the plaint, the plaintiff clearly pleaded the cause of action and stated that the first defendant paid last payment on 18.06.2008 and also responded to the notice dated 22.01.2009 and the suit was filed within the limitation period. Therefore, the submission of learned counsel for the petitioner that there is no cause of action and the suit is barred by law cannot be accepted at this stage.

"11. In Mayar (H.K.) Ltd., V. Vessel M.V. Fortune Express (2006) 3 SCC 100 2006 Indlaw SC 580*, this Court*

has dealt with a similar issue. To the extent relevant, para 12 reads as follows: (SCC p.115)

"12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint."

12. It is not necessary to load this judgement with other judgements dealing with this first principle of Order 7 Rule 11(a) of the Code. As held by this Court in Virender Nath Gautam V. Satpal Singh (2007) 3 SCC 617 2006 Indlaw SC 942*, at para 52: (SCC P.632)*

"52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside."

12. The Trial Court by the impugned order dismissed the application filed by the first defendant and the same is in accordance with law. The petitioner has not made out any good ground to interfere with the impugned order by exercising the powers of this Court under Section 115 of Code of Civil Procedure.

Accordingly, the revision petition is dismissed.

However, it is made clear that if the issue relating to limitation/barred by law has not framed by the Trial Court, it is always open for the petitioner to raise such an issue and the same has to be adjudicated by the Trial Court in accordance with law.

Petition dismissed

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Keshava M. Kotian S/o Late Menkad Thinghalaya v Assistant Registrar of Co-Operative Societies, Recovery Officer, Kundapura and others, 2018 Indlaw KAR 4527

Justice B.V. Nagarathna

Case No: Writ Petition No. 15388/2018 (CS-RES)

Head Note :

KCS Act 1959 – Executive u/s 89-C of the Act by the Deputy Commissioner - possession to auction purchaser.

The Order of the Court was as follows:

2. By the said judgment, the Hon'ble Supreme Court has set aside the order passed by the Deputy Registrar as well as of this Court which confirmed the order of Deputy Registrar by setting aside the sale of the subject mortgage property in favour of the auction-purchaser (P.M.Abubakar)-appellant before the Hon'ble Supreme Court. Further, while dismissing the Civil appeals filed by the petitioner herein, who is the debtor, the Hon'ble Supreme Court observed that the appropriate authority shall proceed to disburse the amount already deposited by the debtor including the amount of sale proceeds, in accordance with law forthwith.

3. Pursuant to the judgment of the Hon'ble Supreme Court, and in order to implement the same, notice at Annexure L and Communications at Annexures-M, N and O have been issued to the petitioner which are assailed in this writ petition.

6. Having heard learned counsel for the petitioner and learned HCGP for respondent Nos. 1, 2, 3 on advance notice, it is noted that the impugned communications are only a prelude to the Deputy Commissioner taking action under Section 89-C of the Act. Although those communications stated that the petitioner may secure movables in the Bar and Restaurant situated on the auction property and that the possession of the property shall be delivered to the respondent No.4-auction purchaser who has been successful before the Hon'ble Supreme Court, the impugned communications have been issued to the petitioner having regard to the interest of the petitioner, so that he may secure his movables which are in the mortgage property before possession of the same is handed over to the respondent No.4 herein the auction purchaser.

7. In that view of the matter, the petitioner cannot be aggrieved nor is he prejudiced in any way by the said communications.

There is no merit in the writ petition. Hence, writ petition is dismissed.

Petition dismissed

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Keshava N Kotian S/o Late Menkad Thinghalaya v Assistant Registrar of Co-Operative Societies, Udupi and others, 2018 Indlaw KAR 4876

Case No: Writ Petition No. 13578 of 2018 (CS-RES)

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – S.89C – as per supreme court judgment – the court obscured that the dealing of possession shall be handed over to auction purchaser.

The Order of the Court was as follows:

3. The petitioner has annexed a copy of judgment of the Hon'ble Supreme Court passed in Civil Appeal Nos.10894-10895/2016 and connected matters (P.M. Abubakar Vs. State of Karnataka and Others). The said Civil Appeal arises out of S.L.P. (C) Nos. 30130- 30131/2012. The said Special Leave Petitions were filed by none other than respondent No.4 - P.M. Abubakar, the auction purchaser. The Hon'ble Supreme Court by judgment dated 17.11.2016 has set aside the order passed by this Court as well as the order passed by the Deputy Registrar and has confirmed the auction sale in favour of respondent No.4 herein. Further, the Hon'ble Supreme Court has said that petitioner herein is at liberty to seek disbursement of any amount that he is entitled to after adjustment of outstanding dues to respondent No.5 - Bank. The said observations have been made while dismissing the Civil Appeals of petitioner herein. Thereafter, petitioner herein had filed Review Petition (Civil) Nos.257-262/2017. The Hon'ble Supreme Court has dismissed the review petition by order dated 12.12.2017.

4. Further, yesterday in W.P.No.15388/2018, this Court has dismissed the writ petition by following the judgment of the Hon'ble Supreme Court and by directing that provisions of Section 89-C(2)(a) be followed while handing over possession of the auctioned property to the auction purchaser.

5. In this writ petition, the petitioner has assailed the auction sale proceeding held on 10.09.2008 and communications dated 17.02.2018 and 23.02.2018. In view of the judgment of the Hon'ble Supreme Court in the order passed yesterday, the aforesaid writ petition has been dismissed. Hence, this writ petition has become infructuous as the petitioner can no longer seek to assail the auction sale proceedings in this writ petition particularly after the judgment of the Hon'ble Supreme Court as well as the direction issued in the said judgment reserving the petitioner after dismissing the Civil Appeals filed by the petitioner. Further, in the afore mentioned writ petition, this Court has observed that the delivery of possession shall be handed over to respondent No.4 auction purchaser in accordance with Section 89-C of the Karnataka Co-operative Societies Act, 1959.

6. In that view of the matter, this writ petition cannot be considered any further as it does not survive for consideration. In this circumstances, it is dismissed.

Petition dismissed

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Jayamuthu S/o Chikkenegowda v State Election Commission for Co-operation Karnataka and others, 2015 Indlaw KAR 6692; 2016 (1) KarLJ 232

Case No: W. P. No. 22110 of 2014 (CS-EL/M)

Justice Ravi Malimath

Head Note :

KCS Act 1959

Election – rejection of nomination – order was passed and nomination paper of petitioner was rejected, hence the instant petition.

Window of opportunity is that interference by Writ court is only in a matter of extraordinary circumstance. No such extraordinary circumstance exists in case of petitioner. Petitioner always has remedy of filing election petition in furtherance of his grievance. No good ground to interfere. In election, petitioner was allowed to contest election in terms of interim order. Final order is dismissal of writ petition. Therefore, necessarily interim order would have to be dissolved. There is no scope for modifying said order under any circumstance whatsoever. It is only just and appropriate that all proceedings conducted by respondents subsequent to 22-5-2014 require to be quashed. Election process as on 22-5-2014 shall continue. Petition dismissed.

The Order of the Court was as follows:

1. The case of the petitioner is that he has been delegated by respondent No.5 to vote, contest and participate in the elections to respondent No.3-Society. The respondent No.5 has sent the details pertaining to the delegation. The final voters list was announced by respondent No.1. The name of the respondent No.3 - Society was also mentioned therein.

2. At that stage, respondent No.6 filed a complaint before the respondent No.2 stating that respondent No.5 - Society is not eligible to contest in the election, as the said Society is a new society and they cannot be classified in the 'B' Category and the audit report of the year 2012-13 has to be considered.

3. Thereafter the Returning Officer sought clarification from the first respondent with regard to the same. Notice was issued to the petitioner as well as respondent No.5. The written arguments were also filed by the petitioner. Thereafter, respondent No.1 passed an order holding that the Societies which have conducted the audit for the Year 2013-14 can furnish the same etc. Therefore, the controversy with regard to the Financial Year was sorted out.

5. On hearing the arguments, the impugned order at Annexure-F was passed and the nomination paper of the petitioner was rejected. Aggrieved by the same, the present petition is filed.

7. On maintainability, by relying on the judgment of the Division Bench of this Court reported in ILR (KAR)-

1991-11-40 in the case of L. Ramakrishnappa Vs. Presiding Officer and Assistant Registrar of Co- operative Societies, Bangalore 2013 Indlaw KAR 812, he contends that there is no bar for a Writ Court to entertain a matter pertaining to an election. Therefore, this court has ample power to interfere with the same.

8. Reliance is also placed on the full Bench judgment of this Court in the case of Nanjunda Swamy Vs. Assistant Registrar of Societies reported in LAWS (KAR)-1992-2-30, to support the same issue.

9. Reliance is placed on AIR 1966 SC 81(1) 1965 Indlaw SC 125 to contend that the High Court has a duty to reach injustice where it is found. Therefore, injustice having occurred in this case, the writ court should interfere with the same. Hence, he pleads that the petition be allowed.

14. So far as maintainability is concerned, petitioner's counsel by relying upon the aforesaid judgments contends that there is no bar for a Writ Court to interfere in matters pertaining to elections. That the writ court has power to interfere and stop any illegality. That the judgment reported in AIR 1966 SC 81(1) 1965 Indlaw SC 125 narrates the very effect. Whenever an injustice is found, the Writ Court should not hesitate but interfere. The exercise of power by a writ Court in matters pertaining to election, is well-defined, as narrated in the aforesaid judgments. The Full Bench of this Court have held that only if there is extraordinary circumstances could a writ Court interfere, in a matter where calendar of events has already been issued.

15. It is needless to state that there can be no fetter on the Writ Court to issue a writ whenever injustice is found. But this power is circumscribed by various judgments of this Court as well as the Hon'ble Supreme Court in matters pertaining to elections. Time and again, they have held that an election petition is an appropriate remedy to address the grievance of the petitioners. Once the calendar of events has been issued, the court should decline from interfering, exercising its discretion / jurisdiction. The interference by a writ Court in matters pertaining to election is well- defined as narrated in the aforesaid judgments. The Full Bench of this Court have held that only if there is extraordinary circumstances could a writ Court interfere, in a matter where calendar of events has already been issued. In so holding, an example of the extraordinary circumstance was also narrated in that case which was considered by the Hon'ble Full Bench. The calendar of events was issued seven years earlier. Three of the candidates who had filed their nomination/s pursuant thereto, had died. Therefore, the court was of the view that the same constitutes an extraordinary circumstance.

16. The present petition does not attract such an extraordinary reason for interference by a writ court. If the contentions are to be accepted, the same would amount to an error or an erroneous order being passed by the concerned authority. It does not mean under any circumstance that it is an extraordinary circumstance. Therefore, the window of opportunity is that interference by the Writ court is only in a matter of extraordinary circumstance. I do not find any such extraordinary circumstance exists in the present case. The petitioner, always has a remedy of filing an election petition in furtherance of his grievance. The Division Bench of this court as narrated hereinabove also has recently on 04.08.2015 taken the very same view. Under these circumstances, I do not find any good ground to interfere in the impugned order. Consequently the writ petition requires to be rejected.

17. The petitioner's counsel contends that by the interim order dated 22-5-2014 granted by this Court, the

Returning Officer was directed to include the name of the petitioner as a contesting candidate. But however, the result of the election would be subject to the result of the writ petition. Since the petitioner has been elected, no interference is called for.

18. It is presently contended that the petitioner having contested the election, has been elected as the Director of R4 and therefore, in view of the dismissal of the writ petition, the final order also requires to be modified in view of the interim order granted.

19. Apparently, in the election, the petitioner was allowed to contest election in terms of the interim order. It is needless to say that the interim order is always granted in aid of the final order. The final order herein is the dismissal of the writ petition. Therefore, necessarily the interim order would have to be dissolved. There is no scope for modifying the said order under any circumstance whatsoever. Since the petitioner was allowed to contest in the election in terms of the order dated 22-5-2014, since the petition is being dismissed, it is only just and appropriate that all the proceedings conducted by the respondents subsequent to 22-5-2014 requires to be quashed. The election process as on 22.05.2014 shall continue. Hence, the following order:-

ORDER

The writ petition is dismissed. All further proceedings and actions subsequent to 22-5-2014, to this date, are quashed. The respondents are directed to continue with the election process from 22-5-2014 onwards.

Rule discharged.

Petition dismissed

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Kalyankumar S. Shettar S/o Shantappa v State of Co-Operative Election Commission, Bengaluru, Represented by its Secretary and others, 2015 Indlaw KAR 6170; 2016 (1) KarLJ 367

Case No: Writ Petition No. 32762/2015 (CS-EL/M)

Justice Ravi Malimath

Head Note

Karnataka Co-operative Societies Act,1959, Returning Officer held that there was no direction by HC to include name of respondent no.6 or to exclude name of respondent no.7 - Hence, instant Petition - Whether petition u/arts.226,227 of the Constitution would be maintainable.

Petitioner is entitled to get dispute referred to Registrar within thirty days from date of declaration of results of the election. Hence, petition u/arts.226,227 of the Constitution would not be maintainable and remedy is always available to the petitioner in terms of s.70(A) of the Act. Petition dismissed.

Ratio - If there are other remedies available to aggrieved person then he cannot approach within writ jurisdiction of HC.

The Order of the Court was as follows:

1. The case of the petitioner is that respondent No.3 is a Co-operative Society registered under the Karnataka Co-Operative Societies Act (hereinafter referred to as 'the Act'). Its committee of management consists of the representatives of Bengaluru, Mysore, Belagavi, Kalaburagi Divisions and also from the District Co-operative Unions. These District Co-operative Unions and District Co-operative Federations elect 14 Directors in all and send their delegates to respondent No.3 Co-operative Federation, for exercising the vote on their behalf, to elect 14 Directors. As the period of the Board came to an end, respondent No.2 issued a voters list indicating the name of the Society, its enrollment member and its delegates name. Respondent No.7 was the delegate of respondent No.5, who has also filed a nomination paper to contest the post of Director representing respondent No.5 Union. The election was fixed on 01.08.2015. When the process of election was set in motion, respondent No.5 issued a meeting notice dated 21.07.2015 to withdraw the delegation of respondent No.7. Respondent No.7 therefore filed WP No.107717/2015 before the Dharwad Bench of the Hon'ble High Court challenging the said meeting notice. The learned Single Judge declined to stay the meeting. The request to include the name of respondent No.7 was declined. Thereafter, the returning officer again took up the proceedings.

3. Respondent No.1 passed an order vide Annexure-'K' stating that since the Hon'ble High Court has passed the order according to which only eligible candidates are entitled to participate in the election, since there was a change of delegation by the Bagalkot Union withdrawing the delegation of respondent No.7 and nominating respondent No.6 in his place, respondent No.6 should be included in the voters list and consequently respondent No.6 shall be permitted to cast his vote in the election to the Committee. On the basis of the said order, fourth respondent conducted the proceedings as to whether to permit respondent No.6 to vote or not. Since respondent No.1 had already passed an order to give voting rights to respondent No.6 instead of respondent No.7, the Returning Officer passed an order vide Annexure-'L' holding that there was no direction by the Hon'ble High Court to include the name of respondent No.6 or to exclude the name of respondent No.7. The order passed by respondent No.1 vide Annexure-K and the order passed vide Annexure-L are under challenge herein as well as to declare the entire election proceedings as illegal and to direct respondent No.1 to hold a re-election of respondent No.3 Federation.

"9. On a perusal of the provisions of Ss.100 and 101 of the Representation of the People Act, 1951*, it becomes clear that the Parliament had only enacted in a statutory from in those provisions, the various grounds on which elections had been set aside by several election Tribunal and Courts prior to their enactment under various laws governing the elections, which were in force in India and in England. It is, therefore, difficult to hold that merely because there are no express provisions similar to Ss.100 and 101 of the* Representative of the People Act*, either in* the Act *or the Rules framed there under, no dispute relating to an election can be entertained and decided under S.70 of* the Act*. If the principle enunciated by the Division Bench in Hayat Beig's case is extended to disputes under* the Act*, the result would be that the disputes regarding elections under* the Act *can neither be decided by a Civil Court by reason of S.118 nor by the Registrar or Arbitrator under S.70 of* the Act*, on the ground there are no provisions similar to Ss.100 and 101 of the* Representative of the People Act, 1951*. I do not think that the legislature ever intended that such a result should follow. It is*

the basic principle of administration of justice that wherever there is an injury there should be a remedy and where there is a remedy, it should not be lightly thrown away. It is the duty of the Court or the Tribunal to mould the relief suitably so that there may be no failure to justice. Although there are no statutory provisions corresponding to Ss.100 and 101 of the Representative of the People Act, 1951 *setting out the grounds on which the election to a Co-operative Society can be set aside, it is open to the Registrar or the Arbitrator to rely as for as possible upon the large volume of judicial precedents under the election law and to decide the disputes relating to election on the basis of principles of justice, equity and good conscience. But, while doing so, he should steer clear of principles which are contrary to or not warranted by* the Act.

(b). The learned counsel appearing for the petitioner relies on para-9 in support of his case. He further contends that since there are no statutory provisions corresponding to Sections - 100 and 101 of Representation of Peoples Act, setting-out the grounds on which the election of a co-operative society can be set-aside, it is open for the Registrar or the Arbitrator to rely as for as possible upon the large volume of judicial precedents under the election law and to decide the disputes relating to election. Therefore, he pleads that the said judgment is applicable to the case on hand.

(c). In the very same judgment, the Hon'ble Supreme Court held in Para-10 as follows:

"10. In view of the foregoing, I hold that the Tribunal has erred in holding that no dispute relating to election could be entertained under S.70 of the Act*, relying upon the decision of this Court in Hayat Beig's case which was applicable to disputes arising under Karnataka Village Panchayat (Election of chairman and Vice-Chairman) Rules, 1959 only. The Asst. Registrar was also not right in holding that the dispute before him was not maintainable. The impugned decision of the Asst. Registrar is, therefore, set aside. He is directed to dispose in accordance with law. No costs."*

Therefore, it is clear that the learned Single Judge held that the dispute relating to election can be entertained under Section-70 of the Act. Therefore, the said judgment will be of no avail to the petitioner's but on the contrary, would support the case of the respondents.

11.(a) He also places reliance on the judgment of Hon'ble Supreme Court reported in AIR 1984 SUPREME COURT 1911 in the case of Inderjit Barua and Others etc., v. Election Commission of India 1984 Indlaw SC 368 with reference to para.3 which reads are under:

"We are of the view that once the final electoral rolls are published and elections are held on the basis of such electoral rolls, it is not open to anyone to challenge the election from any constituency or constituencies on the ground that the electoral rolls were defective. That is not a ground available for challenging an election under Section 100 of the Representation of People Act, 1951. *The finality of the electoral rolls cannot be assailed in a proceeding challenging the validity of an election held on the basis of such electoral rolls vide Kabul Singh v. Kundan Singh [1970 (1) SCR 845(AIR 1970 SC 340)* 1969 Indlaw SC 354 *Article 329(b)] in our opinion clearly bars any writ petition challenging the impugned elections on the ground that the electoral rolls of 1979 on the basis of which the impugned elections were held were invalid".*

(b). A reading of the aforesaid judgment would clearly indicate that the Hon'ble Supreme Court held therein

that there is a clear bar to any writ petition challenging the defect in an electoral roll.

12. Further reliance is placed on the judgment of this court in the case of J.Robert vs. Ram Jethmalani, reported in ILR (KAR) 1990-0-1907, with reference to para-7, which reads as follows:

"7. Further, there can be no doubt, that as any illegality in the preparation of electoral rolls or inclusion of names in the electoral rolls prepared under the Act *cannot be a subject matter of challenge in an election petition, any order of the Registration Officer or of the Chief Electoral Officer in appeal, could be a subject matter of challenge in a petition under Article 226, in view of the decision of this Court in L.Shivanna v. State of Karnataka, ILR 1988 KAR 2121.*

14. The counsel for the respondent no.1 on the other hand relies on the judgment of the Hon'ble Supreme Court reported on AIR 2001 SCC 3982, in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanshta and Another vs. State of Maharashtra and Others 2001 Indlaw SC 225, with reference to para-12, which reads as follows:

"12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal."

15. The Hon'ble Supreme Court has clearly enunciated that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. Here too, the case is whether there is a breach of the relevant Act and Rule that is complained of. Notwithstanding the same, the Hon'ble Supreme Court held that even though there is an error in preparation of the electoral roll, the same cannot be questioned before the High Court. Under these circumstances, I'am of the considered view that keeping in mind the aforesaid judgments of the Hon'ble Supreme Court and a clear reading of the proviso to Section-70A of the Act, the dispute requires to be referred to the Registrar.

16. On hearing learned counsels, I'am of the considered view that the dispute would necessarily stand covered under the proviso to Section-70A of the Act. The dispute that could be referable is narrated therein. The preparation of an electoral roll, the addition, deletion of the name etc are all matters pertaining to a dispute relating to an election of a member etc. The judgments relied upon herein would clearly indicate that any dispute relating to an electoral roll cannot be entertained in a writ petition. Therefore, in terms of the proviso to Section- 70(A), the writ petitioner is entitled to get the dispute referred to the Registrar within 30 days from the date of declaration of the results of the election. Therefore, the writ petition under Article-226 and 227 would not be maintainable. Remedy is always available to the petitioner in terms of Section-70(A) of the Act.

Petition dismissed

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Konkadi Padmanabha S/o N. Narayana Bhat v Union of India, Department of Home Affairs, Represented by its Secretary, New Delhi, 2015 Indlaw KAR 6645

Justice H. G. Ramesh

Head Note

Multi-State Co-Operative Societies Act, 2002, s.44(2) - Re-election to post - Restriction of period - Constitutional validity - Petitioner was elected as President of multi-state co-operative society and his term was coming to end shortly - However, in view of s.44(2) of the Act, he was not eligible to seek re-election to post of President as he had held office of President during two consecutive terms, either full or part - Hence, instant Petition - Whether restriction of term limits imposed by Parliament u/s.44(2) of the Act for seeking re-election to post of President of multi-state co-operative society is constitutionally valid.

Courts cannot sit in judgment over the wisdom of legislature in enacting a law unless it offends constitutional limitations. Object of s.44(2) of the Act is to prevent concentration of power and to give opportunity to all the members of a society to participate in its management. Therefore, s.44(2) of the Act cannot be said to be irrational or arbitrary offending art.14 of the Constitution. Thus, restriction of term limits imposed by Parliament u/s.44(2) of the Act for seeking re-election to post of President of multi-state co-operative society is constitutionally valid. Petition dismissed.

Ratio - If restriction is imposed in Statute to restrict period of office of member of Managing Committee, same will promote object of enabling others to participate in management of society thereby promoting co-operation movement.

The Judgment was delivered by H. G. Ramesh, J.

1. Whether restriction of term limits imposed by the Parliament under Section 44(2) of the multi-state co-operative societies Act, 2002 for seeking re-election to the post of President of a multi-state co-operative society is constitutionally valid?

This is the question that requires determination in this writ petition. The question is answered in the affirmative. For clarity, it is necessary to state that there is difference between term limits and term lengths. Term limits limit the number of terms or number of times a person can be elected to office. Term lengths denote duration of a term.

2. The case of the petitioner is that he was elected as President of the Central Arecanut & Cocoa Marketing and Processing Co-operative Ltd. (CAMPCO Ltd.) which is a multi- state co-operative society and his term is coming to an end shortly. His grievance is that, in view of Section 44(2) of the multi-state co-operative societies Act, 2002 ('the Act'), he is not eligible to seek re-election to the post of President as he has held the office of President during two consecutive terms, either full or part. According to the petitioner, Section 44(2) of the Act which imposes restriction on seeking re-election to the post of President is violative of Articles 14

& 19(1)(c) of the Constitution of India, and therefore, it is unconstitutional.

6. In the context of the question raised, it is pertinent to have a look at the global thinking on imposing restriction of term limits to seek re-election. In several countries, provisions like Section 44(2) of the Act are in operation. There are more than 160 democracies in the world. In more than 100 electoral democracies which include United States of America, France, Germany, Finland, Ireland, Poland, Brazil, Russia, South Korea etc., term limits are imposed for heads of State and/or heads of Government. In this context, reference may be made to Section 1 of Article XXII of the Constitution of the United States brought by XXII Amendment:

"ARTICLE XXII

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term of which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term."

The Amendment extracted above limits the number of times that a person can be elected as President of the United States. A person cannot be elected as President more than twice, and a person who has served more than two years of a term to which someone else was elected cannot be elected more than once. The above amendment was passed by the United States Congress in the year 1947 and ratified by the required number of States in the year 1951. Amending the United States constitution is a complicated process. It has only been accomplished 27 times though the Constitution has been in operation since 1789. Supporters of the amendment argue that term limits prevent Dictatorships and will make the President less likely to hand out political favours, such as grants and subsidies to swing states, in an effort to get re-elected. Supporters of term limits also state that an infusion of fresh blood and new ideas on a regular basis is good for democracy.

7. In the context of the above discussion, it is appropriate to refer to the views of Alexis De Tocqueville (1805-1859), who was a French political thinker and historian best known for his works 'Democracy in America', and 'The old Regime and the Revolution'. His critical observations in 'Democracy in America' (Chap.1.8.3) on re- eligibility of the President of the United States to seek re-election are relevant to be quoted:

"When the head of the executive power is re- eligible, it is the State which is the source of intrigue and corruption-..... The natural evil of democracy is that it subordinates all authority to the slightest desires of the majority-The re-election of the President encourages this evil.

..... Intrigue and corruption are the natural defects of elective government; but when the head of the State can be re-elected these evils rise to a great height, and compromise the very existence of the country. When a simple candidate seeks to rise by intrigue, his manoeuvres must necessarily be limited to a narrow sphere; but when the chief magistrate enters the lists, he borrows the strength of the government for his own purposes. In the former case the feeble resources of an individual are in action; in the latter, the State

itself, with all its immense influence, is busied in the work of corruption and cabal. The private citizen, who employs the most immoral practices to acquire power, can only act in a manner indirectly prejudicial to the public prosperity. But if the representative of the executive descends into the combat, the cares of government dwindle into second-rate importance, and the success of his election is his first concern. All laws and all the negotiations he undertakes are to him nothing more than electioneering schemes; places become the reward of services rendered, not to the nation, but to its chief; and the influence of the government, if not injurious to the country, is at least no longer beneficial to the community for which it was created.

It is impossible to consider the ordinary course of affairs in the United States without perceiving that the desire of being re-elected is the chief aim of the President; that his whole administration, and even his most indifferent measures, tend to this object; and that, as the crisis approaches, his personal interest takes the place of his interest in the public good. The principle of re-eligibility renders the corrupt influence of elective government still more extensive and pernicious."

8. Thomas Jefferson, who was the third President of the United States (1801-09) and an ardent proponent of democracy had warned against unlimited tenure in the following words:

".....and history shows how easily that (unlimited tenure) degenerates into an inheritance".

13. Whether the right to stand for election is a fundamental right? On this aspect, it is apposite to refer to the following observations made by the Supreme Court in Jamuna Prasad v. Lachhi Ram (AIR 1954 SC 686) 1954 Indlaw SC 52*:*

"(5) ..... The right to stand as a candidate and contest an election is not a common law right. It is a special right created by the statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament.

....."

In the light of the law laid down by the Supreme Court in the above decision, a member of a board of a multi-state co-operative society cannot claim any fundamental right under Article 19(1)(c) of the Constitution to seek re-election to the post of President. Right to stand for election or re- election is a statutory right regulated by law and not a fundamental right. As the right to stand for re-election under Section 44(2) of the Act does not fall within the ambit of Article 19(1)(c) of the Constitution, testing its validity with reference to clause (4) of Article 19 of the Constitution does not arise. The following observations in State of U.P. v. C.O.D. Chheoki Employees' Coop. Society Ltd. [(1997) 3 SCC 681] 1997 Indlaw SC 2275 require to be noticed:

"17. So, the society having been formed is governed by the provisions of the Act*. The individual members do not have any fundamental right to the management of the committee except in accordance with the provisions of* the Act*, rules and bye-laws. The management of the Committee is regulated by Section 29 of* the Act*. The composition thereof is also regulated by* the Act *and has to be in accordance with the Rules and the bye-laws. The Rules referred to hereinbefore have to be in furtherance of and in conformity with the provisions contained in Section 130(2)(xii) and (xii-A) and the Rules providing for reservation in the election of the*

Committee or for nomination to the Management Committee of the members belonging to the weaker sections and women should be to effectuate socio-economic and political justice assured by the Preamble, Articles 38 and 46 of the Constitution*."*

14. The ambit and scope of the fundamental right under Article 19(1)(c) of the Constitution is explained by a five judge bench of the Supreme Court in Damyanti Naranga v. Union of India [1971(1) SCC 678] 1971 Indlaw SC 865 :

"6. ..... It is true that it has been held by this Court that, after an Association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however, inapplicable to the present case. the Act *does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by* the Act *and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association. ....."*

If any law interferes with the right of citizens (forming an association, union or co-operative society) to continue to be associated with only those whom they voluntarily admit to the association, union or society, such a law will be violative of Article 19(1)(c) of the Constitution. In my opinion, Section 44(2) of the Act is not such a law as it does not interfere with the aforesaid right of citizens.

17. In Tippannappa v. State [(1983)2 Kar.L.J. 269], a restrictive provision similar to the one impugned herein was upheld by this Court with the following observations:

"11. But S.29-D does not, in terms, go so far. S.29-D was incorporated in the Act *by Kar.Act No.39/1976. Previous to that a person could have held office, as an office bearer of a society, for any length of period. S.29-D puts a limitation or a bar on that and prohibits a person from holding any such office beyond the period of six consecutive years at a stretch. If he holds office in one or the other capacity continuously for*

six years, he must make way for others to any such office. This change has been brought about in the law to prevent powerful persons from entrenching themselves in the office creating in themselves a vested interest therein thereby preventing others, less powerful financially or otherwise, though fully qualified in all other respects, from actively participating in the management of the society concerned. What is it that S.29-D wants to achieve? It wants to prevent the danger referred to above and facilitate others from fully sharing the responsibility of an elective office of a co-operative society so that it helps in furthering co-operation and self help among all sections of the population of a local area."

A Division Bench of this Court in K.P. Shenoy vs. State of Karnataka (ILR 1995 KAR 510) 1993 Indlaw SC 1418 has endorsed the above view in Tippannappa (supra) in the following words:

"8..... If, as a matter of policy, a restriction is imposed in the Statute to restrict the period of office of a member of Managing Committee, the same would promote the object of enabling others to participate in the management of the society thereby promoting co-operation movement."

18. For the reasons stated above, my conclusions are as follows:

(i) The Parliament, in its wisdom, has thought it fit to impose restriction of term limits for seeking re- election to the post of President of a multi-state co- operative society. Courts cannot sit in judgment over the wisdom of legislature in enacting a law unless it offends constitutional limitations. The object of term limits imposed under Section 44(2) of the Act is to avoid concentration of power, prevent stagnation and to give opportunity to all the members of a society to participate in its management. Hence, the restriction of term limits imposed by the Parliament under Section 44(2) of the Act for seeking re-election cannot be said to be irrational or arbitrary, and therefore, Section 44(2) is not violative of Article 14 of the Constitution.

(ii) Section 44(2) of the Act does not place any restriction on the right of citizens to form co-operative societies. It does not interfere with the right of citizens, forming a co-operative society, to continue to be associated with only those whom they voluntarily admit to the society. Therefore, it is not violative of Article 19(1)(c) of the Constitution.

(iii) Right to seek re-election to the post of President of a multi-state co-operative society is a statutory right regulated under the Act and not a fundamental right under Article 19(1)(c) of the Constitution.

Petition dismissed.

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Mulabagilu Taluk Produce, Co-operative Marketing Society Limited, Kolar and others v State of Karnataka, Represented by its Chief Secretary, Bangalore and others, 2015 Indlaw KAR 8657

Case No : Writ Petition No. 13485 of 2015 (CS-EL/M)

Justice Anand Byrareddy

Head Note :

KCS Act 1959 – election to the board of directors – the Tahsildar was suspended, the present tahsildar will conduct elections with in two months - till then the present committee shall continue – no new policy.

The Order of the Court was as follows:

1. The present petition is filed raising several grounds challenging the validity of the Karnataka Co-operative Societies Act, 1959. It was a ruse only to ensure that the present Managing Committee continues in place. This is apparent from a plain reading of this petition. This Court however had granted an interim order directing that the existing Board of Directors of Petitioner No.1 - Society shall continue in office till the newly elected members of the Board assume office.

2. This order is dated 30.03.2015 and the term of the Board of Directors has expired on 31.03.2015. Thereafter, the Tahsildar by designation having been appointed as the Election Officer to conduct the elections to the Board, elections were proposed to be held on 3.5.2015 and 10.05.2015. However it transpires that no such election could be conducted. It is on the allegation that the Tahsildar concerned had certain political affiliations and he was interested in one or the other group gaining majority and it was in this background that there was non-cooperation in conducting the elections. The very Tahsildar was embroiled in some controversy and has been suspended.

Therefore, there is yet another officer in place. This would require the present Tahsildar to now conduct the election to the Board at the earliest.

3. The Tahsildar, Mulbagal Taluk is appointed as the Election Officer to hold and conduct the elections to the Board of the petitioner - Society and it is further directed that the petitioner - Management shall fully co-operate in the conduct of the election.

If there is any aberration, it is open for the Tahsildar to approach this Court for any further direction. It is expected that elections shall be conducted at the earliest, in accordance with law, in any event, within a period of two months if not earlier.

4. The petition stands disposed of on that note, with liberty to the Tahsildar to have the proceedings reopened, if there is non-cooperation on the part of the Committee of Management. The present Committee shall continue in place and is restrained from taking any policy decisions or inducting new members till the election is

conducted. They shall only function in order to carry on the day-to-day affairs of the Society and shall not create any new liabilities which would involve large financial implications.

It is clarified that the day-to-day affairs would mean making payments to employees, meeting sundry expenses and other liabilities which have already been incurred.

Petition disposed of

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Ramalingappa Kallakkanavar S/o Shivappa and others v State of Karnataka Department of Co-operative, Represented by its Principal Secretary, Bangalore and others, 2015 Indlaw KAR 5206

Case No: Writ Petition Nos. 101533-101538/2015 (CS-EL/M)

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 – election – non-inclusion of names – dispute after election.

The Order of the Court was as follows:

1. Petitioners claiming to be the members of the 2nd respondent, a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959, filed these writ petitions, on 06.02.2015, to quash the calendar of events dated 30.01.2015, as at Annexure-C, issued by the 3rd respondent.

2. According to the petitioners, there is defect in the voters' list and the petitioners have been left out from the eligible list of voters and hence, the election scheduled to take place on 14.02.2015, in pursuance of Annexure-C being a farce, interference is called.

3. Shri. S.M.Kalwad, learned advocate, made submissions in support of the claim made in these writ petitions.

4. Shri. S.S.Badawadagi, learned advocate appearing for respondent No.2, on the other hand, submitted that the petitioners being defaulters, their names were not included in the list of eligible voters.

He submitted that, being defaulters, petitioners have no right to assail the calendar of events, as at Annexure-C.

5. The election in pursuance of Annexure-C is scheduled to take place on 14.02.2015. Since respondent No.2 is contending that the petitioners are defaulters and hence, they were not included in the list of eligible voters, in the election scheduled to take place as per Annexure-C, it is inappropriate for this Court, at this stage, to entertain this writ petition.

Reserving liberty to the petitioners to challenge the result of the election, by leaving open all contentions, these writ petitions are disposed of accordingly.

Petitions disposed of

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Amregouda S/o Sharnegouda Mallipatil v State of Karnataka, Department of Co-operation Bangalore, Represented by Its Secretary and others, 2016 Indlaw KAR 1006

Case No: W. P. No. 200497/2016 (CS-EL/M)

Justice Aravind Kumar

Head Note

Election - Karnataka Souharda Sahakari Act, 1997, s. 39 - Conduct of elections - Challenged - Elections to Board of Directors

The petitioner has an alternative remedy by raising a dispute under sec.39 of the Act. The authorities are vested with the power under act would be in a better position to ascertain as to wither particular member is to be held eligible or ineligible or to be included or excluded from the voter list by examining relevant records of the cooperative for arriving at a decision – this court would not be in a position to examine such disputed question of fact, petitioner cannot be heard to contend before this court that voter list suffers from any irregularities – petition rejected.

The Order of the Court was as follows:

3. Petitioner is said to be a member of 9th respondent - Cooperative Society which was previously registered under the Karnataka Co-operative Societies Act, 1959 and later converted into Souharada Sahakari Niyamita under the Karnataka Souharda Act, 1997 (for short 'Souharda Act'). Elections to Board of Directors of 9th respondent - Society was held under the provision of Section 24 of un-amended Act. Term of Board of Directors elected to 9th respondent - Society is to expire during March, 2016 and as such for electing New Board of Directors an order dated 23.12.2015 came to be issued by Election Officer notifying the election and appointed the returning officer for conduct of said election.

In this regard Election Officer appointed Sri.Sheik Hussain to scrutinize the voters list. Pursuant to same, provisional/tentative list of voters came to be published and called upon the members to file objections if any to the said voters list. Being aggrieved by addition of 266 voters in the provisional list, petitioner is said to have filed objections on 20.01.2016, 22.01.2016 and 27.01.2016 before respondents and requested to rectify the irregularities found in the provisional/tentative voters list before issuing final voters list. On account of respondents having not considered his request, petitioner approached this Court in W.P.No.200436/2016. This Court by order dated 03.02.2016-Annexure-J rejected the writ petition as premature since last date for filing objections was available till 05.02.2016.

4. Under communication dated 04.02.2016- Annexure-J1 8th respondent is said to have issued directions to the Returning Officer who was conducting election to 9th respondent - Society to rectify the defects if any, in the provisional and final voters list in accordance with the provisions of Souharda Act and directed him to conduct elections in fair and transparent manner. Returning Officer published Calendar of Events on 05.02.2016 - Annexure-K and thereafter on 06.02.2016 9th respondent - Society has published final voters list

indicating thereunder that 339 voters are eligible to vote as per Annexure-L. In the same list certain members have been prohibited from contesting election, though permitted to vote. It is this voters list Annexure-L which petitioner is aggrieved and have been impugned in this writ petition.

7. Having heard the learned Advocates appearing for parties and on perusal of records, it would indicate when initially provisional voters list was published, petitioner has obtained copy of eligible voters list Annexure-H1 from 9th respondent - Society. Same is a provisional list of Members who were eligible to vote in the Annual General Body of 2015 and it consists of 136 Members. As per provisional list Annexure-H names of 402 persons are reflected who are said to be eligible to vote in the election due to be held on 21.02.2016. Section 20(2) (a) to (c) of Souharda Act would indicate that as to the category persons who would be ineligible to be continued as a member of the Society and it reads as under:

"Section 20(2) No person shall be eligible to continue as a member if such person:

(a) has not used the services of the co- operative for two consecutive [co-operative years] to the minimum level specified in the bye-laws; or

(b) has not attended three consecutive general meetings of the co-operative and such absence has not received the consent of the general body; or

(c) is in default regarding any payment to be made to the co-operative exceeding an amount and for a period specified in the bye-laws."

8. Perusal of said provision would clearly indicate that in the event of any contingency indicated in clause (a) to (c) were to occur then such member would not be eligible to be continued as a member or in other words such member would become ineligible to be continued as a member of the Society. As to whether such default/s has occurred or not in so far as members of 9th respondent - Society is concerned and if so, whether clause (a) to (c) is attracted or not cannot be examined by this Court in writ jurisdiction. It would be a disputed question of fact and as such a roving enquiry cannot be conducted under Article 226 of Constitution of India. Thus, contention of learned Advocate appearing for respondent No.9 that petitioner is having an alternate remedy of raising a dispute under Section 39 is susceptible to acceptance, since authorities vested with such power under the Act would be in a better position to ascertain as to whether particular member is to be held as eligible or ineligible or to be included or excluded from the voters list by examining relevant records of the Society and then arrive at a decision. Hence, this Court would not being in a position to examine such disputed question of fact, petitioner cannot be heard to contend before this Court that voters list suffers from any irregularity.

In that view of matter, this Court is not inclined to entertain this writ petition and same is hereby rejected. However, it is made clear no opinion is expressed on the claim made by petitioner in this regard and it is kept open.

Order accordingly

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Ayyappa Ningappa Gokannavar Director of Primary Agriculture Credit Co-operative Society Yadravi, Belagavi and others v State of Karnataka, Represented by Secretary, Bengaluru and others, 2016 Indlaw KAR 4921

Case No: Writ Petition No. 104673/2016 and Writ Petitions No. 104700-104702/2016

Justice P.S. Dinesh Kumar

Head Note :

In a democratic set up, it is desirable that management of affairs of a Co-operative Society vests with an elected body which is the purpose and intent of co-operative philosophy. On facts, it is to be noted that resignations are not withdrawn and petitioners have not challenged the subsequent action of Co-operative Election Commissioner notifying calendar of events. Therefore, it would not be desirable to interfere with the election process at this stage.

The Order of the Court was as follows:

1. Petitioners are directors of Primary Agriculture Credit Co-operative Society, Yadravi. The said Society is managed by a Board of 11 Directors. Out of them, 10 shall be elected members and one nominated member. Six Directors, who are all elected members tendered their resignation to the post of Director. The second respondent exercising powers under Section 31(1) of the Karnataka Co-operative Societies Act, 1959 ('Act' for short) passed an order on 11.5.2016 (Annexure 'G') appointing a Special Officer to take charge of the Society and to conduct election as early as possible and to hand over the Management to the Board after election. The said order is called in question in this writ petition.

7. The solitary contention of the petitioners, who are elected members and directors of the co-operative society is that the impugned order is hurriedly issued on 11.5.2015 before expiry of 15 days from the date of resignation of six elected directors. Resignation of a member is provided in Section 29-B of the Act and it reads as follows:-

29-B. Resignation of a member.- A member of a [board], other than a nominated member, may resign his membership in writing under his hand and delivered to the Chief Executive and his seat shall become vacant on the expiry of fifteen days from the date of such delivery unless within the said period of fifteen days he withdraws such resignation in writing under his hand and delivered to the Chief Executive. The Chief Executive shall place the letter of resignation before the meeting of the [board] convened next after the delivery of such letter."

8. Perusal of above provision shows that a seat of a member, who tendered resignation shall become vacant on expiry of 15 days from the date of delivery of letter of resignation. A member, who tenders resignation may withdraw the same within 15 days. Section 31 invests powers upon the Registrar to appoint a Special Officer, whenever the Committee falls short of quorum due to various contingencies such as disqualification, resignation, death or removal of a member.

9. The undisputed facts of this case reveal that the resignation is dated 26.4.2016. Further, as on date, none of the resignations are withdrawn. The Co-operative Election Commissioner has issued Calendar of Events and Election process has begun. The petitioners have not challenged the issuance of calendar of events. In a co-operative sector, it is desirable that the Management is in the hands of an elected body. The purpose for which Annexure 'G' is issued is to conduct election and to hand over the management back to an elected body and the said purpose is being fructified with the process of election having begun. In a democratic set up, it is desirable that management of affairs of a Co-operative Society vests with an elected body which is the purpose and intent of co-operative philosophy. On facts, it is to be noted that resignations are not withdrawn and petitioners have not challenged the subsequent action of Co-operative Election Commissioner notifying calendar of events. Therefore, it would not be desirable to interfere with the election process at this stage.

10. In the light of the above discussion, I refrain to exercise the discretionary jurisdiction under Article 226 of the Constitution of India. Hence, these petitions fail and are accordingly rejected.

Order accordingly

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Davanagere Taluk Agricultural Produce Co-operative Marketing Society Limited, Represented by Its Preisdent B. R. Veerappa S/o B. Rudrappa v State of Karnataka, Department of Co-operation, by its Secretary Bangalore and others, 2016 Indlaw KAR 2543

Case No: Writ Petition No. 14999 of 2016 (CS-RES)

Justice Anand Byrareddy

Head Note :

It would be appropriate if the petitioner is allowed to participate and the consideration of the appeal is expedited to avoid any further interested parties from making similar applications. Therefore, the answer is not to reject an interested party's application, but to expedite the consideration of the matter, which would put an end to things.

The Order of the Court was as follows:

2. The petitioner is said to be secondary Co-operative Society of the Agricultural Co-operative Processing Societies. The Respondent No.4, at a meeting held on 23.09.2013, had proposed an amendment to the bye-law, according to which one seat which was earlier reserved to be elected from amongst the 'B' class members as contemplated under Section 39-A and also as per the bye-law of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the KCS Act', for brevity), was proposed to be deleted. The proposal when sent to the Department for approval, it was rejected on the ground that no seat in fact was reserved for 'B' class members. Thereafter, it was resolved by the Society to reserve 20 seats for 'A' class members and one (1) seat for 'B' class members and then sent for approval. The Respondent No.3, in exercise of his power under Section 12(5) of the KCS Act, had passed an order directing Respondent No.4 to reserve 19 seats for 'A' class

members, one seat for 'B' class members and one seat for the Government nominee.

3. On 8.10.2015, it is the petitioner's case that the petitioner had filed an impleading application before the second respondent seeking to implead itself to be heard as a 'B' class member. However, the Respondent No.4 had filed objections to state that such members seeking to implead themselves, is impeding the progress of the case and therefore, the matter could be heard on merits without impleading anymore, such interested parties. It is on that note that the application filed by the petitioner has been rejected.

4. This does appear to cause injustice to the petitioner. It would be appropriate if the petitioner is allowed to participate and the consideration of the appeal is expedited to avoid any further interested parties from making similar applications. Therefore, the answer is not to reject an interested party's application, but to expedite the consideration of the matter, which would put an end to things.

5. Therefore, the petition is summarily allowed. The petitioner is permitted to participate in the proceedings before the second respondent and the second respondent is directed to pass appropriate orders with expedition, in any event, within a period of four weeks from the date of receipt of a copy of this order.

The learned Government Pleader is permitted to file her memo of appearance within two weeks.

Petition allowed

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Jagadish S/o Manikappa and others v State of Karnataka, Department of Co-operation, by its Secretary, Bangalore and others, 2016 Indlaw KAR 6252

Case No: Writ Appeal Nos. 200494/2016 & 200498-502/2016 (CS-EL/M)

JJ. B.S. Patil & B.V. Nagarathna

The Judgment was delivered by B.S. Patil, J.

3. The Assistant Registrar of Co-operative society passed an order dated 12.05.2016. This was preceded by a notice dated 16.04.2016. The Assistant Registrar found that all the six writ petitioners who were discharging their duties as directors of the 7th respondent - Society were guilty of irregularities in not refunding the amount deposited by the depositors and therefore they stood disqualified from continuing as directors. It was further ordered that for the next five years they were not eligible to contest for election as directors of the 7th respondent - Society. A Special Officer has been appointed to run the affairs of the society.

5. Learned Single Judge has declined to grant the interim order. He has further ordered that pendency of the writ petitions would not prevent the respondent from going ahead with the election to elect new Board Members excluding the present petitioners who had been disqualified by the impugned orders. This order has been called in question in these appeals.

7. The facts and circumstances of the case would reveal that appellants have been visited with serious

penal consequence as they have been disqualified from continuing as directors and also contesting election for a period of five years. Except extracting the order passed by the appellate authority, the learned Single Judge has not considered the adverse circumstances, if any, against the petitioners/appellants herein which would come in the way of grant of any interim order in their favour. The contention of learned counsel for the writ petitioners/appellants is that neither in the order passed by the Assistant Registrar, nor in the order passed by the appellate authority there was any specific indictment of the petitioners for any lapse or omissions. We refrain from expressing any opinion on this aspect of the matter. Suffice to observe that as rightly urged by learned counsel for the appellants question whether any prima facie case had been made out by the petitioners for granting interim order has not been considered by learned Single Judge while rejecting the prayer for stay.

9. Therefore, the writ appeals are allowed. The impugned order is set aside. Liberty is reserved to the parties to move the learned Single Judge with a request to consider disposal of the main matter expeditiously or in the alternative for any just and equitable interim or final during pendency of the writ petitions.

10. It is brought to our notice that for the three posts of directors election has been held and in so far as posts held by the petitioners/appellants no election have been so far held. In that view of the matter, we make it clear that until further orders final or interim to be passed in the writ petition, respondents shall not hold any further elections in respect of posts held by the writ petitioners.

Appeals allowed

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Kenchattahalli Milk Producers Co-operative Society Limited, Represented by its Chief Executive Officer, G. R. Vasantha, Hassan Taluk and others v Government of Karnataka, Represented by Principal Secretary, Bengaluru and others, 2016 Indlaw KAR 2198

Case No: Writ Petition No. 14077 of 2015 (CS-RES)

Justice Anand Byrareddy

Head Note :

KCS Act 1959 - appointment of administrator – acceptance of resignation

It cannot be accepted that a signed blank sheet for using has resignation letter. It ought to be held that the majority the committee of management that their resignation not having withdrawn within 15 days, it is deemed to have been accepted. The absence of the quorum, the committee of the management could not function at all. The administrator having been appointment for one year for conducting fresh election resulting in the controversy that there will be no proper managing committee – the administrator is permitted to continue till such time, the elections are completed and it shall be a done with in a period 3 months – petition allowed

The Order of the Court was as follows:

3. The first petitioner is a Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the KCS Act', for brevity). Petitioners 2 to 6 are said to be elected members of the Society and Respondents 5 to 10 are also said to be elected members of the Society. It transpires that they were elected for a period of six years from the year 2014. However, it transpires that Petitioners 2 to 6 and Respondents 8 and 9 had voluntarily submitted and delivered letters of resignation from their posts, copies of which letters are produced.

Since they did not withdraw their letters within 15 days from the date of submission, in view of Section 29-B of the KCS Act, their seats were deemed to have become vacant on the expiry of 15 days and in view of the bye-law No.46.5 of the Society, which provides that six members shall form the quorum for any meeting of the Committee of Management and by virtue of resignation of seven members of the Committee, the quorum was not available. The Society could no longer function through its Committee of Management. Hence, the Chief Executive Officer of the Society, on 18.07.2014 addressed a letter to the second respondent informing him of the situation. The third respondent in order to verify and ascertain the views of Petitioners 2 to 6 and Respondents 8 and 9, held an enquiry with regard to the manner in which the letters of resignation had been submitted and on recording the submissions that they have voluntarily resigned, the third respondent had formed an opinion that the Managing Committee was defunct on account of the Committee of members and the Board falling short of the required number to form a quorum and therefore, appointed the fourth respondent as the Special Officer, by order dated 12.08.2014. The fourth respondent took charge of the Society. Respondent Nos. 5 to 10 thereafter filed an appeal before the second respondent questioning the order passed by the third respondent. The third respondent had produced the entire record in the appeal. Thereafter, an order was passed on 30.02.2014 reversing the order of appointment of the fourth respondent. It is that order which is under challenge in the present writ petition.

4. The impleading applicant who is now impleaded as a respondent, is the Administrator. The learned counsel appearing for him would point out that the Administrator is normally appointed for a period of six months and his term could be extended for a further period of six months, beyond which the law does not contemplate his continuation. Therefore, it is contended on behalf of the Administrator that since the entire period of one year has expired, he would no longer be in a position to continue as an Administrator and seeks to bring this piquant situation to the notice of this Court in order that there be further direction so far as the fate of the Society is concerned.

7. In any event, it is not denied that the letters of resignation are available. If the other respondents had chosen to affix their signatures on blank papers and in fact had handed over the same to the Secretary, it was their folly and they are bound by whatever content is available on those letters of resignation. Hence, it cannot be accepted that they had done so in the manner as stated. Consequently, it ought to be held that the majority of the Committee of Management having submitted their resignations and not having withdrawn the same within 15 days, they are deemed to have resigned. In the absence of a quorum, the Committee of Management could not function at all. The Administrator having been appointed for over one year, it is now necessary that fresh

elections be conducted, for, this controversy to hang fire would leave the Society without a proper Managing Committee.

8. Hence, in the interest of justice, the petition is allowed. The Administrator is permitted to continue as such, till such time the elections are held and completed. He shall take all further steps as may be necessary for the conduct of elections and to ensure that the elections are held and completed within a period of three months if not earlier, from the date of receipt of a copy of this order.

Petition allowed

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Madalambika W/o Mahadevappa and others v Deputy Registrar Co-operative Societies, Chamarajanagawr and others, 2016 Indlaw KAR 7092

Case No: W. P. No. 60555/2016 & W. P. Nos. 61407-414/2016 (CS-EL/M)

Justice B.S. Patil

Head Note :

KCS Act 1959 – Election to the Board

The pleading of the counsel that fair and reasonable opportunity was not given to produce necessary materials in support of the defense of the petitioners and there was no material produced to show that petitioner had committed any irrregularity. Several other grounds were also urged and order was passed – the appellate authority ought to have stayed the order of the Deputy Registrar insofor as direction regarding holding of election within 3 months – joint Registrar was directed to the dispose of appeal within 30 days

The Order of the Court was as follows:

3. Petitioners are elected Directors of Primary Agricultural Co-operative Society, Hangala, Gundlupet. They have been elected during the year 2015 for a period of five years. A show- cause notice was issued to them on 24.05.2016 alleging certain irregularities against petitioners. Petitioners gave reply to the said notice.

4. The Deputy Registrar of Co-operative Societies, Chamarajanagar District, passed an order dated 08.06.2016 holding that allegations made against petitioners had been proved and therefore, the Managing Committee of the Society had to be superseded of and in its place, an Administrator had to be appointed. Accordingly, exercising powers under Section 30(1) of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'), an order was passed. Petitioners were disqualified from contesting any election to the Managing Committee for a period of one year from the date of the order.

5. This order was challenged before the Joint Registrar of Co-operative Societies, Mysuru Region - respondent No.2 herein. Along with the appeal, an application was filed seeking stay of the impugned order. The Joint Registrar has rejected the application for grant of stay and has posted the matter for hearing on 02.12.2016. Aggrieved by the same, present writ petitions have been filed.

6. I have heard the learned counsel for both parties. It is mainly contended by learned counsel for the petitioners

that proper procedure as prescribed under Section 30 of the Act has not been followed by the Deputy Registrar before passing the order appointing the Administrator by superseding the Managing Committee of the Society apart from ordering disqualification of the petitioners from contesting the election for a period of one year. He further points out that no fair and reasonable opportunity was given to produce necessary materials in support of the defence of the petitioners and that there was no material produced to show that petitioners had committed any irregularity. Several other grounds are urged on merits assailing the order passed by the Deputy Registrar.

7. It is not necessary, at this stage, for this Court to go into the merits of the contentions urged by the petitioners. But, it is apparent from the order passed by the Deputy Registrar that apart from superseding the Society, petitioners have been visited with disqualification for a period of one year, inasmuch as they are disentitled to contest the election. In addition, a direction has been issued to hold election to constitute new Committee within three months. If the said direction is given effect to, then a new Committee will be constituted within three months and the petitioners would be deprived of their right to agitate their grievance before the Appellate Authority and the appeal may eventually become infructuous. In that view of the matter, the Appellate Authority ought to have stayed the order of the Deputy Registrar insofar as direction regarding holding of election within three months is concerned. As regards other merits of the matter, the Joint Registrar was required to dispose of the case expeditiously by considering the contentions raised on merits.

8. Hence, there shall be an interim order of stay of the direction issued by the Deputy Registrar to hold election to the Managing Committee of Primary Agricultural Co-operative Society, Hangala Village, Gundlupet Taluk. The Joint Registrar of Co-operative Societies - respondent No.2 herein shall dispose of the appeal pending before him within 30 days from the date of receipt of a copy of this order positively. Accordingly, writ petitions are dispose of.

Petition disposed of

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Murigeppa Kashappa Nara S/o Kashappa Nara v Additional Registrar of Co-operative Societies, Bengaluru and others, 2016 Indlaw KAR 5449; 2016 (3) KarLJ 369

Case No: Writ Petition No. 2299 of 2015(CS-EL/M)

Justice Anand Byrareddy

Head Note

Karnataka Co-operative Societies Act, 1959 - Election dispute - Remedy - Jurisdiction - Hence, instant petition - Whether, remedy to approach Registrar was available to petitioner.

There are no express words debarring Registrar from entertaining disputes, cause of action for which may have arisen earlier. Hence, there is no difficulty in holding that even if cause of action arose, when such jurisdiction was taken away from Registrar; it is Registrar alone who has jurisdiction at present. Therefore, petitioner should not be left without any remedy and consequently election dispute, notwithstanding that cause of action for such dispute arose at a point of time when Civil Court alone

had jurisdiction, if petitioner is in a position to explain delay in approaching authority, Registrar would have to consider such application. Impugned order is set aside. Petition allowed.

The Order of the Court was as follows:

3. The brief facts of the case are as follows:-

The second respondent is a society registered under the provisions of the Karnataka Co-Operative Societies Act, 1959 ("KCS Act" for brevity). It is a federation and its area of operation is the entire State of Karnataka. Its members consist of other societies which are engaged in credit business and they are enrolled as life members of the second respondent. The Managing Committee of the second respondent is said to consist of 21 directors and are elected from five groups. Group No.4 consists of Bijapur, Bagalkot, Bellary, Koppal, Raichur, Gulbarga, Bidar and Yadgir districts from which five directors are elected. Insofar as the election was concerned, the term was a period of five years commencing from the year 2014. The calendar of events was said to have been issued on 28.06.2014 to elect the committee of management of the second respondent and the election was slated on 31.7.2014. The petitioner was said to be a delegate from Sree Billuru Gurubasava Pathina Sahakara Sangha Niyamitha, Bagalkot, and he contested the elections. The fifth respondent was said to be a delegate from the Eeshnya Karnataka Valmiki Nayakara Pathina Sahakara Niyamitha, Gulbarga. It is stated that the fifth respondent is working as a Deputy Transport Commissioner, Gulbarga. The fifth respondent being a government servant was required to obtain prior permission of the Government to contest the election. According to the petitioner, he appeared to have sought permission by letter dated 18.9.2015, but he had not sought permission to contest the particular election since there was no notification issued in respect of the calendar of events, as on the date of the letter.

7. In the present scenario, it is evident that the Registrar was originally vested with the jurisdiction to decide election dispute. It is only by the amendment brought about in the year 2013 that the Civil Court was conferred with the jurisdiction for a temporary period, till it was taken away by amendment Act No.35 of 2014 with effect from 06.09.2014. Therefore, the jurisdiction again vested with the Registrar. There are no express words debarring the Registrar from entertaining disputes, the cause of action for which may have arisen earlier. Hence, there is no difficulty in holding that even if the cause of action arose when such jurisdiction was taken away from the Registrar, it is the Registrar alone who has the jurisdiction at present. Therefore, the petitioner should not be left without any remedy and consequently the election dispute, notwithstanding that the cause of action for such dispute arose at a point of time when the Civil Court alone had jurisdiction, if the petitioner is in a position to explain the delay in approaching the authority, the Registrar would have to consider such application and that the delay could even be condoned and the dispute could be adjudicated.

8. In that view of the matter, the petition is allowed. The impugned order is set aside. The matter is remitted to the Registrar. The petitioner is granted liberty to file an application seeking condonation of delay and it may even be explained to the satisfaction of the Registrar having regard to the above sequence of events apart from the pendency of the matter before this Court and who shall consider such application and the dispute in accordance with law and dispose of the same. Since the election was of the year 2014 and since the term is for a period of five years and since more than one year has already expired, it would be appropriate that the

election dispute is decided at the earliest, subject to condonation of delay in the first instance.

Petition allowed

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Someswara Farmers Co-operative Spinning Mill Limited v State of Karnataka, Department of Co-operation and others, 2016 Indlaw KAR 510

Case No: Writ Petition No. 44273 of 2015 (CS-RES)

Justice Anand Byrareddy

Head Note :

KCS Act 1959 – Amendment of byelaw u/s 12(5)

The Order of the Court was as follows:

2. The petitioner is said to be a secondary Co-operative Society of the Agricultural Co-operative Processing Societies. Respondent No.4, at a meeting held on 23.09.2013 had proposed an amendment to the bye-law and in the said amendment, one seat which was reserved earlier to be elected from amongst the 'B' class members, was proposed to be deleted. Proposal was sent to the Department for confirmation. Respondent No.3 by order dated 03.07.2014, rejected the proposal on the ground that no seat is reserved for 'B' Class members. Thereafter, there was resolution to reserve 20 seats for 'A' class members and one seat for 'B' class and again it was sent for approval of the competent authority.

3. Respondent No.3, in exercise of power under Section 12(5) of the Karnataka Co-operative Societies Act, 1959, passed an order directing Respondent No.4 to reserve 19 seats for 'A' class members, one seat for 'B' class members and one seat for the Government nominee.

4. Respondent No.4 had promptly challenged the order passed by Respondent No.3 in an appeal before the second respondent. The second respondent is said to have allowed the appeal and set aside the order dated 19.01.2015 passed by the third respondent. This in effect results in no seat being reserved for 'B' class members and has deprived them of voting and contesting in the election. Some of the Primary Co-operative Multipurpose societies had challenged the said order before this Court in W.P.No.14548-551/2015, which was remanded to the second respondent - Registrar of Co-operative Societies by order dated 10.06.2015 directing to give an opportunity to 'B' class members.

Though several 'B' class members are before the said authority, it is the petitioner who had initially raised the objection of such orders depriving the 'B' class members of representation and therefore, the petitioner feels most competent to urge the case of 'B' class members and to protect their interest and accordingly had filed an application before the second respondent seeking to implead himself, which has been rejected on the footing that there are ample number of 'B' class members. The authority has taken a view that since the petitioner was not involved in the earlier proceedings, there is no warrant for the petitioner to be impleaded.

5. This view may be a short-sighted view, since the petitioner does represent the 'B' class members and has an interest. There is no prejudice caused if the petitioner is allowed to participate at the hearing. In fact, it would advance the interest of 'B' class members if the petitioner is permitted to participate at the hearing.

Therefore, the petition is summarily allowed. The impugned order is quashed. The petitioner shall be permitted to implead himself as a party and participate at the hearing.

Petition allowed

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Bogeshwara Consumer Cooperative Society Limited, represented by Its Secretary Anand and another v Joint Registrar of Co-operative Societies Mysore Division, Mysore and others, 2017 Indlaw KAR 5779

Case No: Writ Petition No. 15127/2012 (CS - RES)

Justice S.N. Satyanarayana

Head Note :

KCS Act 1959 – liquidation – cancellation under the Act

Conducting of election even by the officer of the co-operative society, without jurisdiction and any committee which has to come into existence pursuant to such election is not recognizable in the eye of law. The finding rendered by the first respondent in the appeal, dismissing the same to consider and to set aside the disqualification order is justifiable, particularly when the cancellation of registration was not even challenged by the president and secretary of the defunct society – writ petition dismissed

The Order of the Court was as follows:

1. This writ petition is filed by the Secretary and President of Shri. Bogeshwara Consumer Co-operative Society Ltd., which is admittedly ordered to be liquidated by Second respondent herein by order dated 05.01.2005 under section 72 of the Karnataka Co- operative Societies Act, 1959. It is also not in dispute that the registration of the said Society is cancelled by order dated 31.03.2005. It is stated by the petitioners that election was conducted to this Society subsequent to registration being cancelled on 09.03.2009. It is contended that said election was under the supervision of the Election Officer, said to have been appointed by the Government; that based on the said election, a Committee was constituted to run the Society; that the said Managing Committee which has come into existence pursuant to election dated 09.03.2009 is said to have preferred an appeal before the first respondent herein in JRM.DAP/1/2011-12 challenging the liquidation order and the same was dismissed by order dated 30.04.2012.

2. Thereafter, this present writ petition is filed impugning the said order dated 30.04.2012. In this petition writ of certiorari is sought to quash the order dated 05.01.2005 passed by the 2nd respondent, as well as another order dated 21.10.2011 passed by respondent No.4 in CSDCR 66/2011-12 which is with reference to the order being passed canceling the right of the petitioners' Society to secure supply of food- grains to it and also the order of the first respondent in the aforesaid appeal JRM/DAP/I/2011-12.

3. It is stated initially while issuing notice to the respondent, the order of stay was granted by the first

respondent against the order of dismissal challenged in the appeal. Thereafter, when the appeal was heard finally the same was dismissed by order dated 30.04.2012. The grievance of the petitioner herein is that when the election to the petitioners society was conducted, a Committee which is constituted pursuant thereto should have been accepted as Society being functioning legally in accordance with law. In that view of the matter the first respondent ought to have allowed the appeal and set aside the order of the 2nd respondent dated 05.01.2005 passed under Section 72 of the KCS Act, 1959 in liquidating the petitioners society. However, the said argument is countered by the contesting respondents No.1 to 4 on the premise that when the registration of the society itself is cancelled on 31.03.2005 which has remained unchallenged even in the appeal before the first respondent in JRM/DAP/1/2011-12 conducting of elections even by the officers of the Co-operative Society is without jurisdiction and any Committee which has come into existence pursuant to such election is not recognizable in the eye of law. Therefore, finding rendered by the first respondent in the aforesaid appeal in dismissing the same to consider and to set aside the disqualification order dated 05.01.2005 is justifiable, particularly when the cancellation of registration was not even challenged by the President and Secretary of the defunct Society. The said argument of the respondent appears to be just and proper.

4. In that view of the matter, this Court find that no justifiable grounds are made out to interfere with the order dated 30.04.2012 in dismissing the appeal filed by the president and secretary of the defunct society namely Bogeshwara Consumer Co-operative Society Ltd. Hence, this Writ petition filed impugning the said order does not merit consideration. Accordingly, this Writ petition is dismissed.

Petition dismissed

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Chand Pasha S/o Abdul Nabi v Primary Agriculture Development Co-operative Society, by Its Chief Executive Officer Manvi, Raichur and others, 2017 Indlaw KAR 2934

Case No: Writ Petition No. 201669/2017 (CS-EL/M)

Justice B. Veerappa

Head Note :

KCS Act 1959 – issue of showcase notice

No confidence motion notice is not issued by any authority either by following section 29H and Rule 14 KK to the petitioner – writ petition not maintainable – petitioner can challenge no confidence motion.

The Order of the Court was as follows:

5. It is the case of the petitioner that he was elected as a President of respondent No.1 - Bank on 24.02.2015 and now he has been working as a President of the said Bank. In terms of Annexures-A and B, his term will be for a period of five years. The learned counsel for the petitioner contended that there was no provision for holding no confidence motion against any Presidents of the Co-operative Bank. By virtue of amendment to the provisions of Section 29 (H) of the Karnataka Co-operative Societies Act (for short 'the Act'), which came into force on 27.07.2016, no confidence motion against the office bearer can be held only after two years from the date of election. He further contended that the said amendment has no retrospective effect and it is

only perspective. He further contended that now majority of directors of the Bank have made proposal to the respondents to conduct no confidence motion against the petitioner. His apprehension is that the respondents may initiate no confidence motion against the petitioner. Therefore, he sought to allow the writ petition.

6. Per contra, Sri R.V.Nadagouda, learned Additional Advocate General submits that the very writ petition filed by the petitioner is premature and liable to be dismissed. He fairly submits that Annexure-C proposal by the majority of directors of the Bank is on the basis of amendment to Section 29(H) of the Act and Rule 14 (KK) of the draft Rules. He further submits that the draft Rules issued only on 12.01.2017 and the same is not yet finalized. On the basis of the draft Rules there cannot be any no confidence motion against any office bearer and on the basis of the proposal made by majority of directors of the Bank, the State Government or any of the respondents not yet initiated any proceedings. Therefore, he sought to dismiss the writ petition as premature.

7. Without adverting to the merits and demerits of the case, it is suffice to observe that in view of the fair submission made by learned Additional Advocate General appearing for the respondents that the proposal made only by majority of directors of the Bank as per Annexure-C but no confidence motion notice is not issued by any of the authorities either by following Section 29 (H) of the Act and Rule 14 (KK) of draft Rules to the petitioner. Therefore, the writ petition is not maintainable at this stage.

8. Accordingly, the writ petition is disposed of as not maintainable with liberty to the petitioner to challenge the notice of no confidence motion proceeding, if any initiated against the petitioner in accordance with law.

Petition disposed of

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G. Basavaraja S/o G. Basappa and another v Assistant Registrar of Co-operative Societies, Ballari and others, 2017 Indlaw KAR 3331

Case No: Writ Petition Nos. 104329-104330/2017 (CS-RES)

Justice B. Sreenivase Gowda

Head Note :

KCS Act 1959 – Election Dispute.

If the petitioners are really aggrieved by the election of respondent Nos.3 to 8 to the Managing Committee of the 9th respondent Society, they should have raised dispute similar to the 2nd respondent or they could have joined the 2nd respondent while he was raising the dispute. As such, the 9th respondent was justified in rejecting the application submitted by the petitioners. Further if petitioners are not permitted to be impleaded as parties to the dispute raised by the 2nd respondent, they will not be put to any hardship as they have no personal interest in the matter.

The Order of the Court was as follows:

5. The grievance of the petitioners is 2nd respondent after raising dispute before the 1st respondent challenging the election of respondent Nos.3 to 8 to the Managing Committee of the 9th respondent Society, now by colluding with the respondent Nos.3 to 8 is not pursuing the dispute properly and seriously. Therefore, the petitioners on coming to know the same, made applications in the dispute praying the 1st respondent to permit them to be impleaded as petitioner Nos.2 and 3 in the said dispute. Whereas the 1st respondent without providing an opportunity of hearing to the petitioners to address argument on their applications by impugned order has rejected their applications. Therefore, they have approached this Court through the instant writ petitions praying this Court to set aside the order passed by the 1st respondent and allow their applications, thereby permitting them to be impleaded as petitioner Nos.2 and 3 in the dispute raised by the 2nd respondent.

6. Admittedly, 9th respondent is an Agricultural Co- operative Society registered under the provisions of the Karnataka Co-operative Societies Act, 1959. Petitioners and respondent Nos.2 to 8 are some among several members of the 9th respondent Society.

It is 2nd respondent who has raised the dispute under Section 70 of the Act before the 1st respondent challenging the election of the respondent Nos.3 to 8 as Directors to the Managing Committee of the 9th respondent Society on the ground that though they were disqualified from the membership of the Society, still they got re-elected as Directors to the Managing Committee of the 9th respondent Society. The grievance of the petitioners is the 2nd respondent by colluding with the respondent Nos.3 to 8 is not pursuing the dispute properly and seriously. Therefore, petitioners filed applications before the 1st respondent praying to implead them as petitioners so that they can pursue the dispute seriously.

7. It is not the case of the petitioners, that petitioners and respondent Nos.2 to 8 are the only members of the 9th respondent Society. It is an admitted case of the petitioners, that petitioners and respondent Nos.2 to 8 are some among several members of the Society. If every member one after another started making application after application similar to one filed by the petitioners praying the 1st respondent to implead them as parties to the dispute raised by the 2nd respondent there will be no end to it and dispute raised by the 2nd respondent cannot be concluded and it may render the same invalid.

If the petitioners are really aggrieved by the election of respondent Nos.3 to 8 to the Managing Committee of the 9th respondent Society, they should have raised dispute similar to the 2nd respondent or they could have joined the 2nd respondent while he was raising the dispute. As such, the 9th respondent was justified in rejecting the application submitted by the petitioners. Further if petitioners are not permitted to be impleaded as parties to the dispute raised by the 2nd respondent they will not be put to any hardship as they have no personal interest in the matter.

8. I have gone through the impugned order passed by the 1st respondent at Annexure - F and do not see any illegality or infirmity in the said order warranting interference. At this stage, the learned counsel for the petitioners submits petitioners may be granted liberty to raise dispute similar to one raised by the 2nd respondent. Hence, the following: ORDER

Writ petitions are dismissed as devoid of merit.

It is always open for the petitioners to raise dispute, challenging the election of respondent Nos.3 to 8 as Directors to the Managing Committee of the 9th respondent if they are entitled to do so under law.

Smt. VeenaHegde, learned AGA is granted three weeks' time to file her memo of appearance.

Petitions dismissed

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Gurulingappagouda S/o Nangouda Patil and another v State of Karnataka, Represented by Its Principal Secretary, Rural Development and Panchayat Raj Department, Bangalore and others, 2017 Indlaw KAR 5889

Case No: W. P. No. 20433/2017 (LB-ELE) C/w. W. P. No. 201935/2017

Justice S. Sujatha

Head Note

Election - Karnataka Scheduled Caste, Scheduled Tribe and other Backward Classes (Reservation of Appointments, etc.,) Act, 1990,

Held, challenging election of member as Adhyaksha / Upadhyaksha mainly on ground that such person did not belong to category B in terms of notification. Hence, it cannot be held that voter has no right to challenge election of Adhyaksha/Upadhyaksha other than by way of election petition.

19. In SRI GOVINDAPPA's case supra, the declaration of an election to the managing committee of a Co-operative Society was challenged on the ground that the elected candidate, the appellant therein was disqualified to be chosen, as a member under Section 29C of the Karnataka Co-operative Societies Act, 1959. In such circumstances, it was enunciated that notwithstanding such a disqualification being there, the election was held and the candidate was selected, in such circumstances, his selection can be challenged in an election petition under Section 70 of the Karnataka Co-operative Societies Act, 1959, within the period of limitation prescribed under Section 70A of the Karnataka Co-operative Societies Act, 1959, there is no quarrel with the said legal proposition, but the same would not be of any help to the petitioners in the present case in view of the Hon'ble Apex Court in SMT. BHARATI REDDY's case 2017 Indlaw SC 639 supra, as aforesaid.

Accordingly, stands dismissed.

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Jayamuthu S/o Chikkenegowda and others v State Election Commission for Co-operation Karnataka State Co-operative Housing Federation, by its Secretary, Bangalore and others, 2017 Indlaw KAR 4673, AIR 2017 KAR 109

Case No: Writ Appeal Nos. 3482/2015 c/w 4514/2015, 4515/2015, 4556/2015 (CS-EL/M)

JJ. Subhro Kamal Mukherjee & B.V. Nagarathna

Head Note

Karnataka Co- operative Societies Act, 1959 - Election - Writ petition - Maintainability - Whether, writ petition can be rejected in present case on ground that alternative remedy is available.

In case of improper rejection of nomination of candidate, aggrieved party cannot file writ petition, but would have to avail remedy by way of election petition which is statutory remedy. Judge was right in dismissing writ petition on ground of availability of alternative remedy. Judge was justified in directing that election process be continued from stage it was interfered with by HC by granting interim order, by dissolving that order. When writ petition was held to be not maintainable, any action taken pursuant to interim order granted by HC would also not survive and Judge has dissolved interim order. Appeals dismissed.

The Order of the Court was as follows:

5. It is the case of the appellant/petitioner in W.P.No.22110/2014 that he had been delegated by respondent No.5- Harohalli Milk Producers Co- operative Society Limited, to vote, contest and participate in the election to respondent No.4- Union. Respondent No.3 had sent the details of the application. The final voters' list was announced by respondent No.1. The name of the respondent No.5 was also mentioned herein. At that stage, respondent No.6 filed a complaint before the second respondent stating that respondent No.5-Society was not eligible to contest in the election as the said society was a newly constituted society and it could not be classified in the 'B' category. Further, the audit report of the said society for the year 2012-13 had not yet been considered. On that complaint, the Returning Officer sought clarification from the first respondent. Notice was issued to the petitioner as well as respondent No.5. Written arguments were submitted. Thereafter, respondent No.1 passed an order holding that the societies which had conducted audit for the year 2013-14 could furnish details of the same. Hence, the dispute with regard to the audit was sorted. But, on the date of scrutiny of the nominations, respondent No.6 persisted in his complaint, objections by respondent No.5 were heard. Respondent No.5 was also heard through its advocate as well as the petitioner. Thereafter, Annexure-H dated May 20, 2015 was passed to the effect that the petitioner had failed to comply with the provisions of the Co- operative Societies Act, 1959 and the bye laws of the 4th respondent - Bangalore City Milk Union and therefore his nomination was rejected. Being aggrieved by the rejection of his nomination he preferred the writ petition assailing the order of rejection of his nomination.

6. Hon'ble Single Judge entertained the writ petition and passed an interim order on May 22, 2014 directing the

Returning Officer to include the date of the petitioner as a contesting candidate for Channapatna Constituency in the election of respondent No.4 - Milk Union to be held on May 24, 2014, so that he could contest in the election. However, the result of the election was subject to the decision of the writ petition. Pursuant to the aforesaid interim order, poll was held and the petitioner was successful in the said election.

7. According to the petitioner, the writ petition was pending before this court. In fact, rule nisi was issued, question of law to be considered in the writ petition was also formulated. But by the impugned order dated September 03, 2015 passed by the Hon'ble Single Judge, the writ petition has been dismissed on the ground that it is not maintainable on account of availability of an alternative remedy. By virtue of the dismissal of the writ petition, the interim order dated May 22, 2015 has also dissolved. Therefore, the success of the petitioner in the election pursuant to the interim order has come to naught as a direction was issued to the effect that all proceedings subsequent to May 22, 2014 was quashed. The official respondents were directed to continue the election process from that date onwards. Being aggrieved by the dismissal of the writ petition and the consequent direction issued by the Hon'ble Single Judge, these writ appeals have been preferred.

8. At this stage, it may be noted, in these writ appeals, by order dated September 26, 2015 it was observed that election was scheduled to be held on September 27, 2015 pursuant to the directions of the Hon'ble Single Judge. Therefore, the holding of poll was permitted, but it was directed that the result ought not to be announced. The election process was completed pursuant to the direction issued by the Hon'ble Single Judge on dismissing the writ petition which had assailed the rejection of the nomination of the petitioner and on the basis of order dated September 26, 2015 passed in these appeals. Thereafter, writ appeals were listed on several dates and ultimately they were heard finally on March 17, 2017. In the interregnum, respondent No.6 Sri S.Lingesh Kumar, had approached the Hon'ble Supreme Court assailing order dated September 26, 2015 referred to above. The Special Leave Petition was disposed of with a request to this court to dispose of W.A.No.3482/2015 expeditiously and preferably within a period of eight weeks from February 17, 2014.

That, when a nomination is improperly rejected, the remedy by way of writ petition before the actual poll is also available. In support of his submissions, learned senior counsel has relied upon the following decisions namely,

(i) State of H.P and Others vs. Gujarat Ambuja Cement Ltd. and Another [(2005) 6 SCC 499]. 2005 Indlaw SC 1244

17. The point to be considered in these appeals is, whether, the Hon'ble Single Judge was right in dismissing the writ petition on the ground of maintainability and whether the consequential directions issued to complete the election process from the stage it was on May 22, 2014 was justified, when in the interregnum there were certain amendments made to the bye-laws?

18. At the outset, it is noted that under Article 329(b) of the Constitution there is a bar to interference by a court in matters pertaining to an election except as stated therein. The said clause states that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for

by or under any law made by the appropriate Legislature. Article 329(b) excludes the jurisdiction of courts to entertain the matter relating to election disputes prior to the conclusion of the election process. Thus, an election can be challenged in the manner laid down in law made by the appropriate legislature. The term 'election' has been interpreted by the Hon'ble Supreme Court in N.P. Ponnuswami vs. Returning Officer, Namakkal [AIR 1952 SC 64] 1952 Indlaw SC 117, to connote the entire procedure to be gone through to return a candidate. It has been held therein that rejection or acceptance of nomination is included in the term 'election'.

19. The question is, whether the express bar contained in Article 329(b) with regard to any election to be held to either House of Parliament or Legislature of a State applies to all other elections including the election in controversy in the instant case and, if so, whether the only remedy for an aggrieved party is an election petition. While considering the same, the question of alternative remedy or relief being available to a party, would act as a bar to avail the extraordinary remedy by way of a writ petition under Article 226 of the Constitution would also arise.

20. The salutary principle that, when remedies in the nature of statutory remedies are available to an aggrieved party, would not enable an extraordinary remedy to be availed of in substitution of the ordinary remedy, is one, which often arises, while entertaining writ petitions filed under Article 226 of the Constitution, as a remedy by way of a writ petition is an extraordinary remedy. Under Article 226 of the Constitution five types of writs could be issued which are also essentially intended to apply in exceptional cases, in which ordinary legal remedies are not adequate; although the language of Article 226 expressly does not say so. However, the powers under Article 226 of the Constitution confers extensive discretion in the High Court and when discretion is exercised it is on well established principles such as delay, suppression of facts, disputed question of fact, futile writs etc. The ground of availability of an alternative remedy is also one such reason not to exercise discretion under Article 226 of the Constitution and refusal to grant any relief if the aggrieved party can have recourse to an alternative or adequate remedy elsewhere.

23. Taking up the first contention, at the outset, it is held that there can be no distinction between a case of improper rejection of a nomination of a candidate in an election and improper acceptance of a nomination in the context of filing of a writ petition in order to assail the same though there is a vital difference between the two, in that, in the former case, the aggrieved party cannot participate in the election process and in the latter case the aggrieved party would be entitled to participate in the election. However, on getting the election of the successful party-whose nomination was illegally accepted-being set aside in a properly constituted election petition, the aggrieved party would get the relief. But the point is, whether, because of the aforesaid difference, it can be held that in the case of an improper rejection of nomination, a writ petition could be filed by the aggrieved party and not at the instance of an aggrieved party, when it is a case of improper or illegal acceptance of a nomination. We do not think that such distinction could be made for the purpose of Article 226 of the Constitution. In either case, whether it is a case of improper acceptance of a nomination or improper rejection of a nomination, the same would require proof of facts which cannot be adjudicated upon in a writ petition, merely on the basis of affidavit and counter affidavits. As the reasons for improper rejection

or improper acceptance of nomination could be for myriad reasons and merely because in a particular case proof of disputed question of facts would not arise, it cannot be held that the writ petition could be maintained. Therefore, when once the election process has commenced, courts ought not to interfere in the election process and particularly the High Court under Article 226 of the Constitution should not interfere with an election process. While saying so, we rely upon an early decision and time tested precedent of the Hon'ble Supreme Court in the case of N.P.Ponnuswami, which case arose precisely on the question of improper rejection of nomination of a candidate therein. Though in that case Article 329(b) of the Constitution applied, nevertheless the principles propounded therein would apply with all force to all elections.

26. Further, in the case of an election dispute, the law does not contemplate two attacks; one, prior to the holding of the poll and, the second, thereafter. Although there is no constitutional bar to the exercise of power in a writ jurisdiction in respect of election to the local bodies such as Municipalities, Panchayaths etc, or to bodies constituted under a statute such as a co-operative society or a Union of Co-operative Societies, as in the instant case, nevertheless courts are loathe to exercise discretion and interfere in such matters prior to the completion of election process. In Sangram Singh vs. Election Tribunal, Kotah, [AIR 1955 SC 425] 1955 Indlaw SC 126, the Hon'ble Supreme Court has held that no legislature can impose limitations on the constitutional powers (under Article 226) but it is a sound exercise of discretion to bear in mind, the policy of the legislature to have disputes about the special rights decided as speedily as may be. Therefore, it is necessary to resolve election disputes speedily through the machinery of election petition and the court in exercise of its discretion should always decline to invoke its writ jurisdiction in an election dispute, if an alternative remedy of an election petition is available. The aforesaid observations laying down a salutary principle has been subsequently reiterated in a decision of the Supreme Court in S.T. Muthusamy vs. Natarajan 1970 Indlaw SC 120, in which, the judgment of the High Court was set aside and the writ petition filed under Article 226 was dismissed.

28. In so far as this case is concerned, a further question would have to be considered and answered. The question is with regard to this court entertaining the writ petition out of which these appeals arise granting an interim order on May 22, 2014, the said interim order being given effect to, the petitioner being successful in the election held pursuant to the interim order dated May 22, 2014 and thereafter the question for consideration being framed and rule nisi being issued in the writ petition and the dismissal of the writ petition on the ground of maintainability. The point is, as to whether, after the aforesaid actions being taken in the writ petition, Hon'ble Single Judge could have dismissed the same on the ground of maintainability. In this context, reliance has been placed on a decision of the Hon'ble Supreme Court in the case of Smt. Kanak referred to above to drive home the proposition that it is one thing to say that the High Court in exercise of its jurisdiction under Article 226 of the Constitution may not grant a relief inter alia on the ground of existence of an alternative remedy but another thing to say that the writ petition was not maintainable at all. That when the matter is to be argued on merits after being entertained, it would not be proper to dismiss the writ petition on the ground of availability of an alternative remedy. That in the instant case, the Hon'ble Single Judge could not have done the same, is the submission of the learned senior counsel for the appellants.

33. The observation in L.Ramakrishnappa's case have been considered by the Full Bench of this court in Nanjundaswamy vs. Assistant Registrar of Co-operative Societies, [ILR 1992 KAR 972] and it has been categorically held that the remedy of an Election Petition is the remedy that is normally available in election disputes. The principle of law is that, when once the election process has begun it should not be interfered with. In that case also, the dispute arose with regard to the filing of nomination paper for being elected to the Committee of Management of a Co-operative Society. It was held that the remedy of election dispute was available under Section 70 of the Karnataka Co-operative Societies Act, 1959 in order to assail the improper rejection of the nomination paper of a candidate. The Full bench considered the correctness of the judgments of this court in Maruthi vs. State of Karnataka, [ILR 1990 KAR 1378] and B.Gurumallappa vs. State of Karnataka, [ILR 1991 KAR 577] and it opined that there so no divergence of opinion in the two judgments. According to the Full Bench, Maruthi's case lays down the law as set out therein and B.Gurumallappa's case is an illustration of the principle that the High Court could exercise power in election disputes only in the most extraordinary circumstances. The action of the Election Officer in that case to hold an election on the basis of a calendar of events issued seven years earlier although three candidates who had filed their nominations pursuant thereto, had died, was an extraordinary circumstance calling for interference. Therefore, in Gurumallappa's case, the interference was on the peculiar facts of that case, but the Full Bench found that in Nanjundaswamy's case no extraordinary circumstances arose to exercise discretion and interfere in the matter pertaining to improper rejection of a nomination. Hence, the writ petition was dismissed. Therefore, reliance placed on L.Ramakrishnappa's case by the appellant is of no assistance in view of the decision of the Hon'ble Supreme Court in S.T.Muthusami as well as the opinion of the Full Bench in Nanjundaswamy's case.

34. Therefore, on the second contention also, we hold that despite issuance of rule nisi, the Hon'ble Single Judge was justified in dismissing the writ petition on the ground of maintainability.

38. Hon'ble Single Judge was justified in directing that the election process be continued from the stage it was interfered with by this court by granting an interim order on May 22, 2014, by dissolving that order. When the writ petition was held to be not maintainable, any action taken pursuant to the interim order granted by this court would also not survive and hence, the Hon'ble Single Judge has also dissolved the interim order. When the writ petition was dismissed as not maintainable, the interim order dated May 22, 2015 could not have had an over arching effect and thereby, permitting petitioner, who was successful in the poll held on May 24, 2015 to continue in office. Consequently, the poll conducted on May 25, 2015 has been virtually set at naught and a direction has been issued to complete the election process with effect from May 22, 2014.

39. In the result, we dismiss all the writ appeals as being devoid of merit. Pursuant to the directions issued by the Hon'ble Single Judge as well as by us on September 26, 2015, the poll was conducted on September 27, 2015, but a direction was issued not to declare the result of the said poll. As we are dismissing the writ appeals, we now direct the respondent/Returning Officer to declare the result of the poll conducted on September 27, 2015 and accordingly complete the election process.

40. In view of the dismissal of the appeals, the pending interlocutory applications shall stand disposed.

41. Parties to bear their respective costs.

Appeals dismissed

MahanteshDasar S/o KallappaDasar and another v Regional Election Officer, Belagavi Region and Deputy Director of Co-Operative Societies C. Belagavi and others, 2017 Indlaw KAR 4968

Case No: Writ Petition No. 107019 / 2017 & Writ Petition No. 107053/ 2017 (CS- EL/ M)

Justice K.N. Phaneendra

Head Note :

KCS Act 1959 – sec.29E -Election

The court cannot interfere with the internal affairs of the society when statutory provision is provided to meet the situation particularly under sec.29E Act. Neither the court can direct the election commission (authority) or the authorized officer to postpone the election till the completion of the half of the tenur of the board nor it can direct the board of directors to coopt any members, if it falls less than half of the original term – petition disposal of accordingly.

The Order of the Court was as follows:

3. The petitioners are the share holders of 5th respondent bank. It is stated that one of the board of directors by name AlurBasappaHirenyappa expired on 13.5.2017 after he being elected as a director, he died before completion of half of his tenure i.e., after election within two years three months. It is submitted that there is a provision under Section 29-E of the Karnataka Co- operative Societies Act to co-opt a member to the board if any elected member dies before completion of 50% of his tenure.

4. It is urged before this Court by the petitioners that on the previous occasion an amount of twenty-two lakh rupees has been spent for the election of the directors. There is only shortage of three months for completion of 50% of the tenure by the deceased AlurBasappaHirenyappa. Out of that three months, two months have already been elapsed now. Only one month is remaining. In spite of that without waiting for one more month, the respondent No.1 has issued an order appointing one Mr.M.N.Mani as Returning Officer to conduct the election in order to fill up the said post of the deceased AlurBasappaHirenyappa. Therefore it is prayed before this Court to quash the order passed by the 1s t respondent in appointing an election officer to conduct the election to elect a director and also to direct the respondents to co- opt any eligible candidate in the place of deceased director.

6. On careful perusal of the above said provision (Sec.29E) it is clear that the election commission shall conduct election to fill up any vacancy in the office of the director, if any person dies or due to resignation or removal or otherwise, if the remaining term of the office of the board is more than half of its original term. This is the mandatory direction to the concerned to conduct the election. However there is also a provision provided to this Section which enables the board to nominate any person in the same category if the term of office of the board is less than half of its original term. Therefore the second proviso virtually runs as an exception to the first proviso. It is the discretion vest with the board of directors/board members to nominate

any persons even if the term or the tenure of the deceased person is less than the half of the original term.

7. The board of directors have to take appropriate decision in order to avoid spending of huge money for the purpose of conducting election as per the first proviso. This Court cannot interfere with the internal affairs of the said society or the bank when a statutory provision is provided to meet the situation particularly under section 29-E of the Act. Neither the Court can direct the election commission or the authorized officer to postpone the election till the completion of the half of the tenure of the Board nor it can direct the board of directors to co-opt any member if it falls less than half of the original term of the deceased. It is left open to the discretion of the board of directors to take appropriate decision in this regard.

8. Therefore under the above said facts and circumstances the writ petition fails and the same is liable to be dismissed. However as the motive of filing this writ petition is to avoid unnecessary spending of huge money by the bank by way of conducting election, the writ petitioners are at liberty either to convince all the board of directors to co- opt any member till completion of the remaining period of the board of directors and can make representation giving assurance to the election commission that they will take a decision to co-opt a director. Except doing that no remedy is available to the petitioners before this Court. With the above said observation these writ petitions are disposed of.

Petitions disposed of

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Bhaskar S/o Narayansa Jituri and another v State of Karnataka, represented by its Secretary, Department of Co-Operation, Bengaluru and another, 2018 Indlaw KAR 6590

Case No: W. A. No. 100175/2018 & W. A. No. 100182/2018 c/w W. A. Nos. 100184-100185/2018 (CS-EL/M)

JJ B.M. Shyam Prasad & L. Narayana Swamy

Head Note :

Karnataka Co-operatives Act 1959 – Calendar of events

The writ court could not have issued directions to revise the final voters list published on 02.11.17 or to re-notify fresh election to the board of the society, and if writ court could not issue such directions, the same can not be issue in these intra court appeals – writ appeals dismissed.

The Judgment was delivered by B.M. Shyam Prasad, J.

2. The essential facts leading to the present set of appeals are as follows:

3. The Final Voters' List and Calendar of Events were notified/published on 02.11.2017 in terms of which the election to the Board of the Society was to be held on 19.11.2017. However, certain members of the Society who were not included in the Final Voters' List initiated a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'Co-op Societies Act') before the Joint Registrar of Co-Op. Societies

in proceedings in No. PCS VBC 3/237/2017-18; and the Joint Registrar of Co-Op. Society by the interim order dated 16.11.2017 directed the Returning Officer, who was appointed by the concerned authority on 01.09.2017 as contemplated under the provisions of the Karnataka Co-operative Societies Rules, 1959 (for short, 'Co-op Societies Rules'), to conduct election granting voting rights to those members who were excluded from the notified Final Voters' List on the ground that they had not availed 'Minimum Service/Facilities' as required under Bye-laws of the Society.

5. W.P. No. 111531-534/2017: The Returning Officer by order dated 18.11.2017, referring to the interim orders of the Writ Court in W.P. Nos.111008-09/2017 on 17.11.2017 and recording that it would not be possible to finalize the voters' list including members as per the Interim Order/s after due process, postponed the election scheduled for 19.11.2017. The writ petition in W.P. No. 111531-534/2017 is filed impugning the Returning Officer's order dated 18.11.2017 and for a direction to continue with the election from the stage where is was stopped.

6. The Joint Registrar of Co-Op. Society, in exercise of the provision of Sec. 28-A(5) of the Co-op Societies Act, by order dated 13.12.2017, appointed an Administrator to oversee the affairs of the Society noting that the term of the Board of the Society would end on 13.12.2017 and elections were yet to be held.

8. Thus, the validity of the Calendar of Events, the Joint Registrar's interim order dated 16.11.2017 in the proceedings in No. PCS VBC 3/237/2017-18 directing the Returning Officer to include a certain category of members as noted above, the Returning Officer's order dated 18.11.2017 postponing the election, the Joint Registrar's order dated 13.12.2017 appointing the Administrator and the prayer for directions to re-notify the elections after revision of the Final Voter's List were the subject matters of challenge in the afore mentioned writ petitions which are disposed of by the Writ Court by the common order dated 30.05.2018.

9. As noted earlier, the Writ Court has disposed of the aforesaid batch of writ petitions quashing the Returning Officer's order dated 18.11.2017 postponing the election and directing the Returning Officer to proceed with the election to the Board of the Society from the stage where the elections were postponed subject to the observations therein.

10. The Writ Court has examined the rival contentions in the context of relevant provisions of the Constitution of India, provisions of the Co-op Societies Act and the Co-op Societies Rules; and the Writ Court has also taken note of the fact that the Final Voters' list is not challenged in any of these writ proceedings though Calendar of Events is challenged in one of the writ petitions and that after the notification of such Calendar of Events two contestants, i.e., Buddhi Rathnamala Jaganathsa and Bhundige Sarala Gurunathsa have been declared elected unopposed by the Returning Officer as per the provisions of Section 14-G (2) of the Co-op Societies Rules on 13.11.2017, which has not been challenged. As regards different contentions as to why the publication of the notification of the Final Voters' list was untenable, the Writ Court, relying upon the decision of the Hon'ble Supreme Court Babu Verghese and others vs. Bar Council of Kerala and others reported in (1999) 3 SCC 422 1999 Indlaw SC 998 wherein it has been held that if there is a breach of a statutory right and a remedy therefor is provided in the statute, recourse for redressal of the grievance against such breach must be had under such statute and considering that such rival contentions involve disputed questions of facts,

has concluded that the different contentions raised by the contesting parties being in the realm of disputed facts cannot be examined under Article 226 of the Constitution of India and it can only be examined under the appropriate proceedings contemplated under the Co-op Societies Act.

11. Insofar as the direction issued for conduct of the election and the Courts' interference with election process once the Calendar of Events are announced, the Writ Court, placing reliance upon the different decisions of the Hon'ble Supreme Court Pandit Ramanath Kalia vs. Election Commissioner of India and another reported in AIR 1957 SC 694 1957 Indlaw SC 22, Babu Verghese and others vs. Bar Council of Kerala and others reported in (1999) 3 SCC 422 1999 Indlaw SC 998 and Shaji K. Joseph vs. V. Visvanath and others reported in (2016) 4 SCC 429 2016 Indlaw SC 176 has held that once the election process is commenced, the Writ Courts cannot intervene, and if there is any breach or violation of the relevant Rules, it will have to be agitated in the proceedings contemplated under the relevant enactment at the appropriate stage and therefore, direction is issued to hold election from where it was stopped.

18. As regards the publication of the Final Voters' List with only 360 members being eligible to vote from out of a total strength of 5355 members, the learned counsel for the respondents have placed on record the details of members who are in default (99 members), members who have acquired membership within one year prior to the date of notification of the Calendar of Events (141members), members who have taken refund of shares (31 members), members who have failed to utilize minimum services (2053 members), members who have failed to attend the general body meetings (97 members), members who have failed to carry out transaction (188 members) and members who do not have even any account (2388 members), and in addition, they have also placed on record the details as to why the appellants themselves would be disqualified from being eligible voters. The learned Counsel emphasized that the appellants cannot champion the cause of all those who are excluded, and in any event those who are excluded, except the appellant, have not challenged their exclusion

19. The learned Counsel also asserted that as per the details placed on record the appellants would be disqualified because either they have not attended any general body meeting or not transacted in the last three years; and there are also those among appellants who have attended general body meeting but have not had any transaction as prescribed. The learned Counsel argued that failure by a member either to utilize minimum services/facilities or participate in such meetings would disqualify him/her from being eligible to vote in terms of Byelaw No. 20 of the Byelaws of the Society that are amended in 2014 after due process and mandate under Section 20 (2) (a-v) of the Co-operative Societies Act. They have also furnished the dates on which the draft of the voters' list with the list of default members was published, the date of notice calling upon the default members to pay the arrears, the date of publication of the draft of the voters' list post compliance and the date of publication of final voters' list to rebut the appellants' contention as regards the violation of Rule 13D of the Co-op. Society Rules.

20. Though at the initial stages of the proceedings viz., initiation of the different writ proceedings as referred to above, the appointment of the administrator for the Society was also one of the questions to be decided, but after the decision of the Writ Court, and in view of the grounds urged in these appeals, it is indubitable that there is no longer any challenge to the appointment of the administrator and the relief is confined, despite

observations as made by the Writ Court in para 30 of the impugned judgment of the Writ Court, to seeking a direction to include the names of the members excluded in the Final Voter's List and for re-scheduling of the elections thereafter. As such, and in view of the rival contentions canvassed in these appeals, the question that arise for consideration is:

Whether, in the facts and circumstances of the case, and especially after the notification of Calendar of Events, a direction could have been issued by the Writ Court under Article 226 of the Constitution of India, or now issued in these intra court appeals, to the concerned authorities to revise/re-publish the Final voters' list?

22. It is not disputed that after the notification of the Calendar of Events and the ensuing filing and scrutiny of the nominations filed, two contestants, Ms. Buddhi Rathnamala Jaganathsa and Ms. Bhundige Sarala Gurunathsa have been declared elected unopposed by the Returning Officer as per the provisions of Rule14-G (2) of the Co-op Societies Rules on 13.11.2017, and the relevant part of Rules 14-G (2) of these rules read as follows:

"14-G Procedure in Contested and Uncontested Elections: (1) If the number of contesting candidates in any area or constituency is more than the number of seats to be filled from that area or constituency a poll shall be taken.

(2) if the number of such candidates in any constituency is equal to the number of seats to be filled from that area or constituency, the returning office shall forthwith declare that all such candidates to be duly dec to fill these seats in Form XVII or Form No. XVIII as may be appropriate"3 Sub Clause (3) of Rule 14-G not being relevant for the purposes of the case is not extracted.

23. The declaration in the prescribed Form declaring Ms. Buddhi Rathnamala Jaganathsa and Ms. Bhundige Sarala Gurunathsa is made by the Returning Officer on 13.11.2017, but these declared elected candidates are not parties to proceedings before the Writ Court these, or in these proceedings; and if directions are issued to revise Final voters' list and to re-notify the Calendar of Events, the election of these unopposed members will be set at naught and that too without hearing them, and therefore, certainly no directions can be issued to their detriment.

26. The Chief Executive of a Co-op. Society is required to prepare the electoral roll under the general superintendence and directions of the Co-operative Election Authority, and the List prepared by the Chief Executive of a Society shall be verified and approved by the Election Officer. The Election Officer is required to send, at least 120 days before the date of expiry of the term of office of the Board of the Co-operative Societies in a District where elections are due, a consolidated list of such co-operative Societies, and the Co-operative Election Authority, upon receipt of such report from the Election Officer is required to be publish a Calendar of Events for the preparation of the Electoral rolls as well as conduct of elections.

27. It is thereafter the Election Officer who is required to take steps for publication of Voters' list in the manner stipulated under Rule 13-D (3), and the Election Officer commences such exercise after receipt of the List from the Chief Executive of a co-operative society as contemplated under Rule 13-D (5). This is evident from a conjoint reading of these two rules. It is seen therefore that though the onus of furnishing the details is on

the Chief Executive Officer of a Society, the Election Officer shall take steps for preparation of the Voters' List and thereafter approve the same as required under Rule 13-D of the Co-Operative Societies Rules. The appointment of a Returning Officer is under Rule 13-E of the Co-Operative Societies Rules, and the functions of the Returning Officer are enumerated in Rule 13-E (1)-A of the Co-Operative Societies Rules and such functions do not include finalization of the Voters' List.

28. There is no dispute that Election Officers are indeed appointed for the purpose of conduct of the elections to the Society/Societies, but the concerned Election Officer is not made a party to these proceedings; and in the absence of such Election Officer, the questions whether or not the Election Officer has adhered to the proceedings contemplated under the Co-Operative Societies Rules, which are essentially questions of facts, cannot be adjudicated in the writ proceeding.

31. The other ground which is strenuously urged on behalf the appellants is that the reduction of the number of eligible voters to 360 from the total strength of 5335 is contrary to the Official Circular dated 04.08.2015 issued by the Registrar of Co-Op. Societies. This Official Circular, according to the appellants, stipulates that the Co-Op. Societies must ensure while enforcing the requirement of Minimum Utilization of services/ facilities as per its Byelaws that at least 90% of the members continue to have voting rights. However, from the language in paragraph No. 3 of this Official Circular dated 04.08.2015 it is clear that the direction therein to the Co-Op. Society is to ensure that when Co-op Societies devise/define what would constitute Minimum Utilization of Services/facilities, the Co-op Societies should not devise/define such Minimum Utilization of Services/Facilities in such a manner so as to refuse or deny the voting rights to more than 10% of the members. This Official Circular dated 04.08.2015 cannot be read to mean that irrespective of compliance with the requirement of Minimum Utilization of Services/Facilities, the concerned, even while finalizing voter's list as per Rule 13-D of the Co-operative Societies, must ensure that a minimum of 90% of the total members should have voting rights.

34. In view of the above discussion the question formulated for consideration is answered in the negative and is concluded that the Writ Court could not have issued directions to revise the Final Voters' List published on 2.11.2017 or to re-notify fresh elections to the Board of the Society, and if the Writ court could not issue such directions, the same cannot be issued in these intra court appeals. Accordingly, the Writ appeals are dismissed.

Appeals dismissed

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C. Nanjunda Reddy S/o Late Chinnaswamy Reddy v State of Karnataka and others, 2018 Indlaw KAR 8701

Case No: Writ Petition No. 34828 of 2018 (CS-EL/M)

Justice B.V. Nagarathna

Head Note :

Karnataka Co-operative Societies Act 1959 – elections to the committee – allotment of symbol.

So long as a symbol is not allotted to any candidate, it is a free symbol. Once the symbol is allotted to any candidate, then it becomes a symbol of that member candidate. If the same symbol is chosen by more than one candidate, then the returning officer has to decide which free symbol could be allotted and to whom.

The Order of the Court was as follows:

2. Petitioner has averred that respondent No.4 is a Society registered under the provisions of the Karnataka Co-Operative Societies Act, 1959 (hereinafter referred to as 'the Act' for the sake of brevity); that the petitioner is a member of the Society and his name finds a place in the voters list; that the process of Election has been initiated for reconstitution of the Committee of Management of respondent No.4-Society and the calendar of events was published on 21.07.2018 as per Annexure-B; that the petitioner has filed his nomination on 01.08.2018 in general category; that the petitioner's nomination has been scrutinized and he is one of the eligible candidates to contest the Election in the said category; that the said Election Commission has notified the Election Symbols for allotment to candidates under Rule 14-E of the Rules made under the Act; that the petitioner has been allotted 'Bell' symbol by respondent No.4-Returning Officer on 06.08.2018, but it is not an approved symbol by the Election Commission and hence, he has assailed Form No.XVI issued by the Returning Officer as per Annexure-E.

7. What emerges from the detailed narration of facts and contentions is that one of the free symbols i.e., 'Bell' has been allotted to the petitioner as per his desire and such symbol need not be a symbol approved by the Election Commission. So long as symbol is not allotted to any candidate, it is a free symbol. Once the symbol is allotted to any candidate, then it becomes a symbol of that member candidate. If the same symbol is chosen by more than one candidate, then the returning officer has to decide which of the free symbol could be allotted and to whom. In the instant case, 'Bell' is a free symbol and the same has been allotted to the petitioner as per his option being exercised. The same ('Bell') is not claimed by any other candidate. Petitioner can have no grievance to Annexure-E which is Form No.XVI issued by Returning Officer with regard to symbol 'autorikshaw' being allotted to as many as five candidates for two reasons; firstly, because the same would not cause any prejudice to the candidature of the petitioner and secondly five candidates who have been allotted the same symbol of 'autorikshaw' have not assailed it and have contested in different categories of candidates. The same cannot be assailed by the petitioner by way of filing this writ petition. There is no merit in the writ petition.

Writ petition is hence dismissed.

Petition dismissed

G. Subba Reddy S/o Garigareddy and others v State of Karnataka, reported by Secretary, Bengaluru and others, 2018 Indlaw KAR 7656

Case No: Writ Petition Nos. 31031-31034/2018 (CS-RES)

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – election to committee – issue of calendar of events

The honorable supreme court in large number of decision has held that once calendar of events have been issued, courts ought not to interfere in the process of election, as it could be impediment in the democratic process – it would not be proper for this court to interfere with the calendar of events at this stage – petition dismissed

The Order of the Court was as follows:

2. Petitioners have assailed notice dated 15/07/2018 as well as calendar of events for holding elections to the Board of Directors of the fourth respondent-Society issued by third respondent vide Annexure-A.

5. Having heard the learned senior counsel for the petitioners and learned HCGP appearing for respondent Nos.1 and 2, it is noted that under 14(2) of the Rules, the election officer while issuing notification should specify the last date for making nomination which shall be seven clear days before the date of election. In the instant case, the date of election is 30/07/2018 and there are seven clear days before the last date for submission of nomination which is today (23/07/2018). Further the bye-law Nos.41 and 42 pertain to the issuance of voters' list. The petitioners have not sought for publication of the voters' in terms of the said bye laws.

6. That apart, the Hon'ble Supreme Court in a catena of decisions has held that once the calendar of events have been issued, courts ought not to interfere in the process of election, as it could be an impediment in the democratic process. In this regard, reference could be made to the case of N.P. Ponnuswami vs. Returning Officer, Namakkal, reported in 1952 AIR 668. Also the decision of a Division Bench of this Court in W.A.No.3482/2015 and connected writ appeals in the case of Jayamuthu v. State Election Commission for Co-operation & Others, disposed off on 21/04/2017 could be relied upon. In view of the aforesaid dicta, it would not be proper for this Court to interfere with the calendar of events at this stage. There is no merit in the writ petitions.

Writ petitions are hence dismissed.

Petitions dismissed

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L. Basavarajappa S/o Lokeshwarappa and others v Deputy Commissioner Chitradurga, Chitradurga and others, 2018 Indlaw KAR 825

Case No: Writ Petition Nos. 46312-314/2013 (CS-EL/M)

Justice S.N. Satyanarayana

Head Note :

KCS Act 1959 election of office bearers – alternative remedy available u/s 70 under the Act – disposed off.

The Order of the Court was as follows:

1. Petitioners 1 to 3 herein are the members of Halavudara Primary Agricultural Cooperative Society Limited, which is third respondent herein, represented by its Secretary.

2. It is seen that election to the office of President and Vice President of third respondent - society has taken place on 1.9.2013, wherein respondent Nos.4 to 6 are elected. So far as respondent No.4 is concerned, he is said to have been appointed as managing committee member under the category of BCM and so far as respondent Nos.5 and 6 are concerned, they are said to have been appointed as President and Vice President, respectively of third respondent - society, which is sought to be challenged in this proceedings on the premise that the manner in which election has taken place is not in accordance with law and that a foul play is played by respondent No.4 in projecting himself as a member belonging to BCM category, whereas he belongs to BCM(B) category as could be seen from the nomination which was filed by him while contesting election for the post of Director in APMC.

3. Heard the learned counsel for the petitioners as well as contesting respondent Nos.3 to 6 and learned additional Government Advocate for respondent Nos.1 and 2. On going through the grounds urged in this proceedings, it is seen that the petitioners herein having an alternate remedy in raising a dispute under Section 70 of the Karnataka Cooperative Societies Act, 1959 have approached this Court in haste without exhausting said remedy available to them. In that view of the matter, this Court find that the present writ petitions cannot be entertained inasmuch as the petitioners not having exhausted the alternate remedy available to them.

4. Accordingly, these writ petitions are disposed of reserving liberty to the petitioners to approach the competent authority for redressal of their grievance under Section 70 of the Karnataka Cooperative Societies Act, 1959.

Petitions disposed of

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Mohan S/o Korgappa Naik v State of Karnataka, repersented by Secretary, Benglauru and others, 2018 Indlaw KAR 6862

Case No: Writ Petition No. 104578/2018 (CS-EL/M)

Justice Dr. H.B. Prabhakara Sastry

Head Note :

KCS Act 1959 – Election of office bearers – effective remedy is available u/s 70 of the Act – writ dismissed.

The Order of the Court was as follows:

1. The present petitioner has challenged the election said to have been conducted for the committee of the respondent No.5 Sahakari Sangha. The petitioner who claims himself to be a member of the said Sangha in his writ petition has alleged that there is irregularity in conducting the election. According to the petitioner, the returning officer who was required under law to obtain the signatures of the voter on the counter foil of the ballet paper has omitted to do so in respect of five ballet papers. Added to that, the allocation of the colours with respect to the different categories of the posts reserved for, have also been inter changed. More particularly that category which was announced to be getting green colour was given yellow colour and the other category which was required to be given yellow colour as announced earlier was given green colour. This has lead irregularities in the election. With the said contention, he has prayed for quashing the result declared in the election by the respondent No.3 the election officer.

2. The learned AGA in response to the advance notice served upon him submitted that since there is an alternate remedy which is equally efficacious available to the petitioner, he cannot invoke the writ jurisdiction. He further submitted that in the election matter once the election is completed and the results are declared, the Courts would not generally entertain the writ petition under Article 226 of the Constitution of India.

3. Admittedly in the instant case, the dispute is with respect to the conduction of election. Section 70(2)(c) of the Karnataka Co-operative Societies Act, 1959 says that any dispute arising in connection with the election of a President, Vice-President or any office-bearer or Member of board of the society would be a dispute touching the constitution, management or the business of a co-operative society. Thus, such disputes which are touching the constitution management or business of a co-operative society are required to be agitated before the competent authority as provided under Section 70 of the same Act. In view of the said alternate remedy, which is equally efficacious available to the petitioner, I am of the view that this petition does not deserve to be entertained under Article 226 of the Constitution of India. Accordingly, reserving liberty to the petitioner to approach the competent authority in accordance with law, the writ petition stands dismissed due to availability of alternative remedy.

4. Learned Additional Government Advocate is permitted to file his memo of appearance within three weeks in the registry.

Petition dismissed

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Vanishree v Indian Farmers Fertilisers Co-operative Limited, represented by its Secretary, New Delhi and others, 2018 Indlaw KAR 1482

Case No: Writ Petition Nos. 12935-36/2014 (CS-BL)

Justice S.N. Satyanarayana

The Order of the Court was as follows:

1. The petitioner herein who is said to be President of Rythara Seva Sahakara Sangha Niyamitha, Singanayakanahalli, Bengaluru North Taluk has presented this Writ Petition impugning the communication dated 25.2.2014 vide Annexure - P in rejecting her candidature for Representative General Body ('RGB' for brevity) Election held at Mysuru on 25.2.2014 in the category of Societies whose turn over is more than Rs. 10 Lakhs. In this Writ Petition, she is also seeking a direction to quash Bye-law No.19(e) of the Indian Farmers Fertilizers Co-operative Limited ("IFFCO" for brevity) which is first respondent herein.

2. Admittedly, the Society to which the petitioner herein is the President, is a member of the first respondent - Indian Farmers Fertilisers Co-operative Limited ('IFFCO' for brevity) which is also a competitor of KRIBHCO (both are carrying on similar business). The material on record would indicate that the name of the petitioner was short listed as candidate for the Election of the first respondent - RGB of Mysuru Region which was stated to be held on 25.2.2014 under the category of the Societies whose turn over is more than Rs. 10 Lakhs. The name of the petitioner was short listed at Serial No.6 of Annexure-M which is Form No.3 i.e., the list of representatives (voters) nominated by eligible members of the Society in Mysuru constituency.

The said Form No.3 is as per Bye law 24(ii)(c)/24(ii)(f). When the matter stood thus, it is stated that the third respondent who is the President of Kolar Taluk Agricultural Produce Marketing Society Limited, Kolar, has complained to the second respondent - Senior Area Manager/Election Officer of the first respondent by letter dated 27.1.2014 alleging that the petitioner herein is not only the member of first respondent - IFFCO but also a member of KRIBHCO which is a competitor Society for IFFCO. Through communication dated 25.2.2014 issued to the petitioner, the IFFCO has stated that in view of Bye-law No.19(e) of IFFCO Bye-laws framed under the provisions of Multi State Co-operative Societies Act, 2002, is violated her Nomination Form to contest as a candidate in the aforesaid Election is rejected.

3. "Bye-law 19(e) of IFFCO reads as under:

19. A member society of IFFCO shall cease to be a member, if:

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) the business of the member is in conflict or competitive with the business of IFFCO and it represents on the General Body/Representative General Body/Board or any other Administrative Body of a cooperative society whose business is competitive with the business of IFFCO"

On going through the same, it is noticed that the said Bye law would clearly prohibit the candidature of the petitioner to be elected to the RGB at Mysuru Division. In that view of the matter, this Court find that rejection of nomination through communication dated 25.2.2014 vide Annexure - P does not survive for consideration in this proceeding.

4. Further, with reference to the second prayer i.e., to quash Bye-law 19(e) of the first respondent - IFFCO which is approved vide Certificate of Registration No.L-11015/8/75-L&M dated 26.9.2013, also does not call for interference inasmuch as, the same is approved pursuant to the provisions governing the issues of Bye - laws and provisions of the Multi State Cooperative Societies Act, 2002 wherein Section 11 provides for framing of such Bye-laws. Therefore without going into the correctness or otherwise of the aforesaid Section, the Bye laws framed thereunder cannot be dismissed in this Writ Petition. Accordingly, the second prayer also does not survive for consideration.

Accordingly these Writ Petitions are disposed of.

Petitions disposed of

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Coir Industrial Products Co-operative Society Limited, Represented by Its Managing Director P. Manjula W/o V. Om Prakash, Bengaluru and others v State of Karnataka, Represented by its Principal Secretary to Government, Department of Co-operation Karnataka and others, 2015 Indlaw KAR 6902

Case No: Writ Petition Nos. 40591-40595 of 2011(CS-RES)

Justice Ravi Malimath

Head Note

Karnataka Cooperative Societies Act, 1959, ss. 68, 69, 70, 106, 108 - Statutory enquiry - Setting aside - Appellate jurisdiction - Additional Registrar ordered statutory inquiry u/s. 68 of Act, on ground that there was grave financial irregularities, misappropriation of funds, etc.

The State Govt. has passed impugned order u/s. 108 of Act. In order to invoke provisions of s. 108 of Act, an inquiry has to be conducted and there has to be satisfaction that order of Officer is contrary to law. Having arrived at such a conclusion, State Govt. should also opine that the same has resulted in miscarriage of justice. It is on these two conditions that Govt. could exercise its powers u/s. 108 of Act. Order u/s. 68 of the Act is a direction to President to take action to remedy defects. Therefore, Society would have to initiate action u/ss. 69 or 70 of Act for recovery of amounts. Impugned order would

apparently indicate that what State Govt. sought to exercise is power under appellate jurisdiction, which is not governed by s. 108 of Act.

The Order of the Court was as follows:

1. The petitioner is a Cooperative Society registered under the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as 'the Act'). The object of the society is manufacturing hard board out of coir and coir products, ply-wood made from trees etc., in line with the policies of the Government of India.

2. The Additional Registrar of Cooperative Societies by its order dated 12.01.2005, ordered a statutory inquiry under Section-64 of the Act, on the ground that there is grave financial irregularities, misappropriation of funds, etc. The Joint Registrar of Cooperative Societies was appointed as an Inquiry Officer. A report was submitted. Thereafter, an order was issued under Section-68 of the Act, directing the President of the Society to initiate action as suggested in the said order. Direction was also issued for initiation of criminal action against the concerned persons who are responsible for the misappropriation.

3. Aggrieved by the said order, the petitioner filed an appeal under Section-106 of the Act, before the first respondent - Registrar of Cooperative Societies. The Appellate Authority, set-aside the findings of the second respondent, pertaining to the issue of misappropriation as contained in the charges. Thereafter, the Commissioner for Industrial Development and Director of Industries and Commerce, Bengaluru, requested to re-examine the order passed by the first respondent in an appeal under Section-108 of the Act, by initiating suo-motu revision by the Government. In exercise of powers under Section-108 of the Act, the impugned order was passed wherein the order dated 03.11.2007, passed by the Registrar of Cooperative Societies in the appeal was set-aside. Thereby the order passed by the Joint Registrar was sustained. Aggrieved by the same, the present petition is filed.

7. Admittedly, the order passed under Section-68 of the Act was set-aside in an appeal filed by the petitioners under Section-106 of the Act, in exercise of the powers under Section-108 of the Act. The State Government has passed the impugned order under Section-108 of the Act, which reads as follows:

"108. Powers of revision of State Government :

[Subject to the provisions of Section-108A, the State Government] suo motu at any time, and, on application of any person aggrieved, within a period of six months from the date of any order, may call for and examine the record of any case or proceedings of any officer subordinate to it except those subject to appeal or revision by the Tribunal or those in respect of which [an appeal has been made to the State Government or other authorities under Section 106], and the State Government after such enquiry as it deems fit is satisfied that the order of the officer is contrary to law and has resulted in a miscarriage of justice, pass such orders thereon as the State Government deems just:

Provided that no order shall be made to the prejudice of any person under this Section unless he has been given a reasonable opportunity of being heard."

8. The same would therefore indicate that subject to the provisions of Section-108A of the Act, the State

Government may suo-motu initiate any proceedings and after such enquiry as it deems fit and after satisfying that the order of the Officer is contrary to Law and has resulted in miscarriage of justice, pass such orders as the State Government deems just. Therefore, in order to invoke the provisions of Section-108 of the Act, two criteria have to be fulfilled. Firstly, an inquiry has to be conducted and there has to be satisfaction that the order of the Officer is contrary to Law. Having arrived at such a conclusion, the State Government should also opine that the same has resulted in miscarriage of justice. It is on these two conditions that the Government could exercise its powers under Section-108 of the Act. Apparently, the same is absent in the impugned order. Even though it is a detailed order culling out various facts, ultimately, the order is silent with regard to its satisfaction that the order of the Officer is contrary to Law or has resulted in miscarriage of justice.

9. The Government goes on to define the powers of the Authority under Section-68 of the Act. It was of the view that the report is not executable. That the order under Section-68 of the Act is a direction to the President to take action to remedy the defects. Therefore, the Society would have to initiate action under Sections - 69 or 70 of the Act, for recovery of the amounts.

10. A reading of the order would apparently indicate that what the State Government sought to exercise is the power under an appellate jurisdiction, which is not governed by Section-108 of the Act. The appellate jurisdiction has since been exhausted in terms of Section-106 of the Act. In the absence of any finding of the Government that the order under revision is contrary to Law or has resulted in miscarriage of justice, the said order becomes unsustainable.

11. Consequently, the petition is allowed. The order dated 17.09.2011, passed by the first respondent in Revision Petition No.CMW/17/CAP/2010 at Annexure-A is quashed.

Rule made absolute.

Petition allowed

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J. Ningegowda S/o Javare Gowda v Assistant Registrar of Co-operative Societies, Mandya and others, 2015 Indlaw KAR 6798

Case No: Writ Petition No. 34170 of 2011(CS-RES)

Justice Ravi Malimath

Head Note :

Karnataka co-operative soiceties Act 1959 – enquiry under sec.64 of the act.

The enquiry report clearly indicates that the petitioner is responsible for the loss to the extent mentioned therein – petition rejected.

The Order of the Court was as follows:

1. Petitioners 1 & respondent No. 3 were working as paid Secretary and clerk in the 2nd respondent society. The petitioner was the custodian of the documents, records, stocks of consumer articles and properties of the society. Respondent No.3 was working in the Section pesticides, Chemical & Fertilizer. He was the custodian

of the godown. The petitioner and 3rd respondents had worked during the year 1988-89 and 1990-1991. The allegation against them is that they have misappropriated the funds of the society by colluding with one another. The same was noticed during the inspection by the Inspector of Pandavapura Sub-Division. Proceedings were initiated to recover the said amount along with interest. Surcharge No.9/1992-93 was filed. During the pendency of the case an enquiry under Section 64 of the Karnataka Co- operative Societies Act was conducted and a report was submitted.

The report indicates that during the period from 12-11-1998 to 17-1-2000 the petitioner had misappropriated the funds of the society to the tune of Rs1,76,432.40p/- and 3rd respondent had misappropriated to an extent of Rs.1,70,401.40/- on various transactions. The society was directed under Section 68 of the Act to recover the said amount from respondents 1 to 3 by initiating proceedings. Accordingly, the surcharge case was filed for recovery of the said amount. The petitioner filed a written statement denying the allegations. So also the 3rd respondent. It was contended that the petitioner was not responsible for any of the loss. That he cannot be held responsible for the charges that have been levelled against him. In terms of the order of the Assistant Registrar the 3rd respondent was held responsible for the entire loss caused to the society. Aggrieved by the same, the bank filed an appeal before the tribunal. The tribunal by the impugned order set aside the order under surcharge and directed the petitioner to pay a sum of Rs.1,70,401.40/- along with 6% interest and respondents 2 & 3 was to pay Rs.1,70,401.40p/- along with 6% interest. Aggrieved by the same, the present petition is filed.

4. On hearing learned counsels, I find that there is no merit in these petitions. The proceedings before the Assistant Registrar of Co-operative Societies were contested by the petitioner. He relied on various material in support of his case. The same were considered and an order on merit has been passed. Therefore it cannot be said that the petitioner was not given a fair and adequate opportunity. Under these circumstances, I'am of the view that the scope for interference by the writ Court is minimal. This is not an appellate. Findings on fact have been recorded by the authorities. The appreciation by a writ Court is whether the impugned order has been passed after hearing both sides and granting them an adequate opportunity. Whether the impugned order is the result of lack of jurisdiction or is a perversity and violation of law. None of these conditions seems to get attracted to the case on hand. Therefore, it would not be proper for the writ Court to interfere with matters pertaining to evidence.

5. Even otherwise, so far as merit is concerned, substantial material was led in to show that large scale fraud was committed by the petitioner as well as the 3rd respondent. That almost 3 1/2 lakhs is the loss caused to the bank. Therefore, the tribunal was justified in bifurcating between the petitioner and the 3rd respondent herein. I find no ground to hold that the bank did not have authority to question the same. Even otherwise, an appeal being filed by the bank no legal right of the petitioner stood infringed by the said appeal. Hence the contention that they could not have maintained an appeal is unacceptable. The enquiry report clearly indicates that the petitioner is responsible for the loss to the extent mentioned therein. The same has been done after considering the material on record. Hence, I do not find any good ground to interfere on merits.

So far as the Judgment relied upon by the petitioner's counsel is with reference to para-4. Therein it was held

that no charges were framed against the petitioners therein. Therefore, the writ Court interfered with the same. The facts in this case is different. The charges have been levelled against the petitioner. It is not a case where he has been prosecuted in the absence of any charges. In the said circumstance, the said Judgment would not be applicable to the case on hand.

Consequently, the petition being devoid of merit, is dismissed. Rule discharged.

Petition dismissed

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C. Chanappa S/o Late Chennegowda v State of Karnataka Department of Co-operative Societies, Represented by its Secretary, Bangalore and others, 2016 Indlaw KAR 1895

Case No: Writ Petition No. 11287/2016 (CS-RES)

Justice Anand Byrareddy

The Order of the Court was as follows:

2. The petitioner is said to be the Chief Executive Officer of respondent No.4-society. The elections were conducted in the society less than a year ago. It is a milk producer's co-operative society, which functions within Ramanagar District. There was an order dated 16.05.2015 passed under Section 64 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to 'KCS Act' for brevity) by respondent No.3 and an enquiry officer was appointed to examine the financial irregularities, which is said to have taken place in the respondent No.4-society during the period 2013-14. Pursuant to that order, an enquiry was conducted and a report was submitted to the effect that Board was liable for all financial misappropriations which were brought to light in the books of account of the society. The president of the society had filed Writ Petition No.1500/2016 challenging the Government order, whereby the Government had directed that the accounts of the society be audited for a period of 7 years. There was an interim order directing that the audit shall be conducted only for the year 2013-14.

On re-audit being in progress vide letter dated 15.02.1016, the third respondent had appointed the enquiry officer to look into the irregularities of the same financial year, despite the fact that re-audit was yet to be completed. The respondent No.3 had passed an order on 16.11.2015 under Section 68 of the KSC Act, pursuant to the allegation against the management being re-iterated and it had directed the enquiry officer to submit a compliance report within 30 days. The president had submitted a compliance report on 15.12.2015 pointing out various discrepancies in the report submitted by the enquiry officer pursuant to the order under Section 64 of the Act. It was pointed out that re-audit was in progress and the persons responsible for misappropriation would come to light only after completion of such re-audit and therefore, there was a request not to make any further orders based on the enquiry report or under Section 68 of the Act.

3. As the matters stood thus, the petitioner, who is the Chief Executive Officer of the society, had filed an appeal before respondent No.2 under Section 106 of the Act alongwith an application for stay of the order dated

16.11.2015. There was an interim order of stay granted on the ground that since re-audit was in progress, the action based on the enquiry report and the order on 16.11.2015 were irregular and it was accordingly stayed. Respondent No.3 herein who was the party in the appeal had submitted his para wise comments against the interim order granted and prayed that the interim order be vacated. There were no private respondents in the proceedings. The third respondent proceeded to vacate the interim order by an order dated 22.01.2016, though the appeal continued to be pending. It is in this background that the present petition is filed.

In the result, there would be a total irregular proceedings as already pointed out, the proceedings undertaken would be totally frustrated and would lead to multiplicity of proceedings, if the order of stay is not continued and would seek that there be appropriate direction to the third respondent to continue the order of stay, pending hearing of the appeal on merits.

6. Since in the circumstances of case, it would be counter productive to keep the appeal pending while vacating the interim order of stay. The interim order of stay granted by the third respondent earlier shall continue in force, till such time, the appeal is disposed of merits. Therefore, there is no warrant to remand the matter for a fresh consideration of the application for vacating the stay. It would be more appropriate for the second respondent to dispose of the appeal on merits, in due course.

The petition is disposed of in terms as above.

The learned Government Advocate is permitted to file her memo of appearance within two weeks.

Petitions disposed of

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Girinagar Vishwabharathi and another v State of Karnataka, Represented by its Principal Secretary, Department of Co-operative, Bengaluru and others, 2016 Indlaw KAR 837

Case No: Writ Petition Nos. 36752 - 36753 of 2015 (CS - RES)

Justice Anand Byrareddy

Head Note :

The Registrar is bound to act on an application seeking an enquiry at the instance of a Co-operative Society, to which the Society concerned is affiliated, or by a majority of members on the Board of the Society, or not less than 1/3rd of the total number of members of the Society. It is not demonstrated that the petitioners constitute 1/3rd of the members of the Society in which event the Registrar is not bound to act on their complaint. However, if he has information of any illegal actions on the part of the erstwhile management of the Society, nothing precludes him from taking action on his own and if prima facie, he finds that there is material to hold an enquiry, the decision is his.

The Order of the Court was as follows:

1. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

2. The petitioners are before this court complaining of inaction on the part of the Registrar of Co-operative Societies on the ground that they had made a complaint against the management of the Society headed by Sri. K. Jayaram during the year 2009-2013 and that inspite of an earlier assurance that action has been initiated and an order has been passed to initiate surcharge proceedings and that a criminal case has also been registered, the petitions filed earlier by the petitioners were disposed of. However, it is now learnt that the so-called action taken was in respect of some other persons and not Sri. K. Jayaram and the committee of members headed by him, and therefore the petitioners are again before this court.

3. However, it is noticed that in terms of Section 64 of the Karnataka Co-operative Societies Act, 1959, the Registrar is bound to act on an application seeking an enquiry at the instance of a Co-operative Society, to which the Society concerned is affiliated, or by a majority of members on the Board of the Society, or not less than 1/3rd of the total number of members of the Society. It is not demonstrated that the petitioners constitute 1/3rd of the members of the Society in which event the Registrar is not bound to act on their complaint. However, if he has information of any illegal actions on the part of the erstwhile management of the Society, nothing precludes him from taking action on his own and if prima facie, he finds that there is material to hold an enquiry, the decision is his. It is entirely the discretion of the Registrar to take any further decisions one way or the other, on the basis of material furnished by the petitioners.

With that observation, the petitions stand disposed of.

The Government Advocate is directed to furnish a copy of this order to the Registrar of Societies, for him to take any further action, if necessary.

Petition disposed of

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S. D. Govindaraju S/o Doddarangaiah and others v Principal Secretary, Co-operation Department, Bangalore and others, 2016 Indlaw KAR 781

Case No: Writ Petition Nos. 3163 and 3164-3167 and 3265-3267 of 2016 (CS-RES)

Justice Anand Byrareddy

Head Note :

KCS Act 1959 – Enquiry u/s 64 of the Act - bias

The Order of the Court was as follows:

2. The petitioners are said to be members of the Committee of Management of the fourth respondent - Society. The second respondent had worked as an Administrator in the very society during the year 2012-13 and one N. Venkatesh, Deputy Registrar of Co-operative Societies had worked as a General Manager and one N.N. Raju had worked as Manager. These were all officers of the Department.

It is the petitioners' case that it is during that period there was re-conveyance deed executed in favour of

one S. Nagaraju in respect of a property belonging to the fourth respondent - Society as on 3.10.2013. The property was so re-conveyed for a sum of Rs.26,53,646.80/-, though the property was worth over Rs.70 lakhs, as assessed by a Civil Engineer. A private complaint had been initiated before the Karnataka Lokayukta, pursuant to which proceedings had been initiated against the second respondent and a criminal case is pending against the second respondent and others.

It is the case of the petitioners that on account of such proceedings having been initiated and in order to get back at the petitioners and with a mala fide intention, the second respondent has passed an order dated 19.12.2015 based on a complaint said to have been given by 10 members of the Society against the petitioners and the Society, alleging various acts of malfeasance and misfeasance, which are all false.

The second respondent, in exercise of his power under Section 64 of the Karnataka Co-operative Societies Act, 1959, has appointed the third respondent as an Enquiry Officer. Aggrieved by the said order, the petitioners are before this Court alleging clear bias against Respondent No.2 in view of the above said circumstances and the petitioners claim that the result of the enquiry is foreclosed, in view of the bad blood which the second respondent holds against the petitioners and therefore seek appropriate directions.

5. This apprehension of bias on the part of the petitioners cannot be ruled out, in the circumstances that there has indeed been criminal proceedings against the second respondent at the instance of the petitioners. Therefore, it would be appropriate if the Enquiry Officer now appointed should hold an enquiry in accordance with law, after giving full opportunity to the petitioners to defend themselves. And the report shall be submitted to the Registrar of Societies instead of the second respondent, who shall thereafter pass orders, if so warranted, in accordance with law, in view of the fact that the second respondent may be biased as against the petitioners.

The petitions are disposed of in the above terms.

The learned Government Advocate is permitted to file his memo of appearance within two weeks.

Petitions disposed of

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Vishwabharathi House Building Co-operative Society Limited, Represented by its Vice-president Uma Maheshwara, Bangalore v State of Karnataka, Represented by its Secretary Co-operation Department, Bangalore and others, 2016 Indlaw KAR 2261

Case No: Writ Petition No. 13202 of 2016 (CS-RES)

Justice Anand Byrareddy

Head Note

Karnataka Co-operative Societies Act,1959, s.64 - Registrar initiated enquiry u/s.64 of the Act and erstwhile President of petitioner, found him guilty and respondent no.2 passed order to attach his belonging - On disqualification of erstwhile President new committee was elected and Govt. appointed

Special Officer who was in charge from December, 2013 to October, 2014 – During the said period accounts of petitioner for year 2014-15 was audited and there were no irregularities found - However, on dt.9-11-2015 respondent no.3 passed an order directing that enquiry be conducted into affairs of petitioner - Hence, instant Petition - Whether direction to enquire in affairs of petitioner is justifiable.

Held, only point that could have been held to be in controversy was as to seniority list of members who were eligible for inter-se allotment was properly made or not and this was left open for Registrar of Cooperative Societies to decide as such matters fell squarely within his jurisdiction. Beyond this there were no other irregularities nor could any non compliance be pointed out in so far as directions issued by HC is concerned. It is only since November, 2015 that new management is in place. There would be no scope for any further enquiry in this regard. Thus, impugned order directing enquiry to be conducted into affairs of petitioner is clearly biased and liable to be set aside. Petition disposed of.

Ratio - When no allegations found in regard to irregularities during dispute period in affairs of society, direction to inquire is invalid.

The Order of the Court was as follows:

2. It is stated that the petitioner is a house building cooperative society and it had formed a layout known as Vishwabharathi Housing Complex Layout and when the 4th Phase of the layout was yet to be completed, it transpires that Registrar of Cooperative Societies had initiated proceedings against the erstwhile President, one, B Krishna Bhat alleging misappropriation of funds and mismanagement of the Society and he was even disqualified by an order dated 23.03.2009, pending enquiry. Pursuant thereto the Registrar of Cooperative Societies had initiated an enquiry under Section 64 of the Karnataka Co-operative Societies Act, 1959 (herein after referred to as the 'Act', for brevity) with regard to 11 charges, including a charge of misappropriation of the funds of the Society by Krishna Bhat. At the enquiry the Krishna Bhat was found guilty of the charges and the second respondent had passed an order dated 03.05.2012 to enforce the findings of the Enquiry Officer and consequently various properties belonging to Krishna Bhat and his family members were also said to have been attached.

3. On disqualification of Krishna Bhat an ad hoc committee was said to have been constituted by the petitioner and thereafter on election of the new management committee under the Presidentship of one Jayaram, was elected. Due to resignation of some directors in the year 2013, there was no quorum in the managing committee and the Government promptly appointed a Special Officer who was said to be in charge from December, 2013 to October, 2014. During the said period the accounts of the petitioner Society for the year 2014-15 was audited and there were no irregularities found in the functioning or administration of the petitioner's society at that point of time. However, a new elected committee having taken over the management from the said officer on 09.11.2015 the third respondent has now passed the impugned order directing that an enquiry to be conducted into the affairs of the Society.

4. The learned Senior Advocate would point out that this is wholly unfair and in the face of the earlier proceedings before this Court as for instance in the writ petition in W.P. No.18496/2007 connected with other

matters, which involved the affairs of the Society and in order to put a quietus to the controversies a Division Bench of this Court, by its order dated 16.11.2010, had issued the following directions.

" 44. In the light of what is stated above, we pass the following order:

(a) The BDA is directed to calculate the total amount payable by the society for bulk allotment in terms of the Government Order dated 4-10-2007 passed by the Government and thereafter inform the society in writing calling upon them to pay the said amount within 90 days from the date of receipt of the said notice.

(b) Though the land in question is in possession of the society and some of its members and others, the BDA shall formally handover possession of the land in question on receipt of the payment referred to clause (a).

(c) The society shall prepare the list of genuine members and the members who had applied for a site according to the seniority and submit the same to the BDA;

(d) In the seniority list prepared, membership number, date of membership, the date on which application was filed for allotment of site, the dates on which amounts were paid by the society shall be clearly mentioned;

(e) In the event of non availability of the list, the society shall give paper publication both in Kannada and English vernacular in local and South Indian editions calling upon the members of the society to furnish their membership number, the date on which they applied for the site, payments made if any, in respect of the said site along with receipts and other acknowledgments and the documents in support of the same within a period of 30 days from the date of publication of the notice:

(f) Thereafter, the society shall prepare:

(i) the seniority list of genuine members in terms of para 39 of the judgment.

(ii) a list of members who are eligible for allotment of site in accordance with paras 40 and 41 of the judgment.

(iii) Thereafter, they shall publish both the lists in their office, in the newspaper and handover copies of the same to the BDA as well as to the Registrar of Co-operative Societies.

The society shall also open web site and host all these information on the web site for information of the members and public at large.

(g) All such members who have any objections for such genuine/seniority lists are at liberty to approach the Registrar of Co- operative Societies for adjudication of their seniority.

(h) The Registrar of Co-operative Societies while adjudicating genuine and seniority of members, shall hear the society as well as the BDA and also take into consideration the observations made in this order as well as the order made in Writ Appeal No.1454 of 2008 at Para 14 and eschew the observations in the order dated 11-10-2007 passed in Writ Petition No.12236 of 2006, as directed in the said appeal. The decision of the Registrar of Co-operative Societies is subject to the remedies provided under the Registration of Society's Act *and other provisions of law. However, the said finding if it attains finality, is binding both on the society as well on the BDA.*

(i) In the meanwhile, the society shall prepare a layout plan, submit the same to the BDA for its approval and

also list out number of sites for allotment to its members according to the seniority list.

(j) Already a private layout is formed in the said land and number of persons have put up constructions and are living there. If those persons are eligible for allotment of site according to seniority list and the allotment and sale deeds had already been executed in their favour, such sale deeds shall be confirmed by the society, if there is no dispute regarding seniority in the matter of allotment of sites.

(k) Similarly, all those persons to whom sites have been allotted, who have not put up construction or who have enclosed their sites with compound walls, if they are eligible for allotment of sites in terms of the seniority, which is not disputed by anyone and such sale deeds have been executed, such sale deeds shall be confirmed by the society.

(l) If the persons who are not eligible for allotment of sites according to seniority or not even members, if they are in possession of the sites and have put up constructions, the said sale deeds and allotment orders shall have no legal effect and if such persons are parties to these proceedings, no further steps need be taken against them. If they are not parties to these proceedings who are in possession by virtue of such allotment or sale deeds, appropriate proceedings have to be initiated against them in accordance with law for cancellation of their allotment and sale deed and for recovery of possession.

(m) Till this process is completed, BDA and the society are directed to maintain status quo and no demolition of structure shall take place.

(n) It is made clear that no one who is a party to these proceedings shall put up any construction in the land in question after pronouncement of this order. If any attempt is made to put up any construction, BDA is at liberty to take immediate steps to demolish such construction.

(o) If any person has put up construction after Government Order till today under the cover of any interim orders granted by this Court in various petitions, such persons cannot plead equity in their favour and the validity of such construction depends upon their eligibility to get the site allotted based on their seniority. Otherwise, those constructions are liable to be demolished.

(p) It is only after being satisfied that the sites have been allotted to genuine members and according to seniority, BDA/BBMP shall make out khata in their respective names and BDA/BBMP shall sanction the plan.

(q) The process of bulk allotment by the BDA shall be completed within a period of five months from today if payment is made by the society.

(r) The Registrar of Co-operative Society shall ensure that these disputes regarding genuineness of the membership or the seniority of such members for allotment of site, if necessary, be entrusted to one official who shall take up these matters on day-to-day basis and try to dispose it of expeditiously as some of them have already invested huge amount for acquiring site, put up construction and living with their family and also in order to give effect to the Government Order where the only consideration was the human suffering.

(s) Writ Petition No.18496 of 2007 is dismissed.

(t) All other writ petitions are disposed of in the above terms."

5. Pursuant to the above said direction contempt proceedings were initiated alleging that there is non compliance with the directions issued by the above said order and in the contempt proceedings in CCC No.667/2013 and connected cases a Division Bench of this Court by its order dated 04.06.2013 has specifically found as follows:

" Therefore the question whether seniority list is prepared in terms of the court order, whether the members seniority is in accordance with their seniority, whether their objections to seniority list has properly been considered by the Society are all matters which falls with in the jurisdiction of Registrar of Co- Operative Societies. In that view of the matter these contempt proceedings are misconceived.

3. Accordingly contempt proceedings are dropped, reserving liberty to the complainants to approach the Registrar of Co-Operative Societies. If they approached the Registrar of Co-Operative Societies, he shall consider the same and pass appropriate orders in accordance with law keeping in mind the observations made by this Court in aforesaid writ petitions as well as this order."

6. Therefore, the learned Senior Advocate would submit that the only point that could have been held to be in controversy was as to whether the seniority list of members who were eligible for inter-se allotment was properly made and this was left open for the Registrar of Cooperative Societies to decide as such matters fell squarely within his jurisdiction. Beyond this there were no other irregularities nor could any non compliance be pointed out in so far as directions issued by this Court dated 16.11.2010 is concerned. It is also pointed out that it is only since November, 2015 that the new management is in place.

The allegations did not relate to any irregularities or illegalities during the period subsequent to November, 2015. The impugned order would indicate that the entire gamut of controversies are thrown upon for a fresh enquiry in the face of three earlier proceedings and those proceedings having culminated against the erstwhile President and his family members. There would be no scope for any further enquiry in this regard and hence the present impugned order is clearly biased and is with an intention to scuttle the management of the society by its elected body and the attempt is clearly to have a Special Officer in place and which would be clearly illegal and contrary to the object and interest of the members of the Society and therefore seeks that the petition be allowed summarily.

7. Given the above circumstance that the authority of the respondents in conducting an enquiry under Section 64 cannot be nipped in the bud as such power is indeed available. Given the circumstances of the present case on hand it would be prudent for the respondents even if they are acting on the basis of complaints lodged by several persons before the Lokayuktha, there shall be a preliminary enquiry, to address first of all, whether there has been non compliance with any of the directions issued by this Court in the first instance as per its order dated 16.11.2010 in WP No.18496/2007 and further as regards the irregularities if any in the seniority list. Beyond which there ought not to be scope for reopening the closed issues. If there are allegations pertaining to the period prior to November, 2015 there would be no scope for holding an enquiry against the present managing committee. With those observations the petition stands disposed of with liberty to the petitioner to reopen these proceedings if there is any aberration in the manner in which respondent would proceed further.

The learned Government Advocate is permitted to file her memo of appearance within two weeks.

Order accordingly

Fishereies Co Operative Society Limited, Represented by its President, Mysore and another v State of Karnataka, Department of Co-Operative Societies, Represented by its Secretary, Bangalore and others, 2017 Indlaw KAR 6202

Case No: Writ Petition Nos. 44541-44542/2017(CS-RES)

S.N. Satyanarayana

Head Note :

KCS Act 1959 – direction under sec.68 based on the enquiry report under sec.64 of the act

The serious allegation against 3 persons are based the enquiry report – the society is trying to protect the interest of 3 persons, who have committed serious irregularities in causing financial loss to the society as well as government. When such irregularities cited right from appointing one of accused as secretary to the society etc., - the president and secretary are trying to support the said 3 person by filing an appeal before the 3rd respondent deputy Registrar and also by filing these writ petitions – petitions dismissed.

The Order of the Court was as follows:

2. The brief facts leading to these writ petitions are as under:

These writ petitions are filed by the President and Secretary of Fisheries Co-operative Society Limited ('hereinafter referred to as 'Society' for short), Hampapura, K.R.Nagara Taluk, Mysur. Admittedly, the aforesaid Society is in-charge of Krishna Raja Sagara Reservoir (KRS Reservoir) where the breeding of fingerlings (fish seeds) is taken up by Society with the financial assistance of State Government on the understanding that 50% of fish harvested will be distributed among the members of Society for local sale by them, remaining 50% will be retained for public auction and proceeds thereof will be deposited in to the Society's account, which is accountable to Government. It is stated that said exercise is in pursuance of a scheme of Central Government through National Fisheries Development Board, which has identified the Society as Nodal Agency. The fact that entire breeding of fingerlings in the KRS reservoir, the yield which is harvested there from, the proceeds which are collected from disposing of 50% stock to the members of Society and remaining 50% by auction will have to go in to the account of Society which is required to be accounted to the Government, is not in dispute.

3. The allegations and accusations made by 6th respondent in these proceedings, who claims himself to be a whistle blower are to the effect that a large scale financial fraud is committed by several persons in connivance with the Managing Committee members of the Society in pumping in finance for leaving additional fingerlings to the KRS Reservoir from out of the money that is provided by financiers and harvesting agency, selling the fish grown in the reservoir through investors and proceeds thereof are not deposited in to the account of Society. When such serious allegations were made, the Government has appointed 5th respondent, namely Co-operative Development Officer, K.R.Nagara Taluk, as Enquiry Officer to conduct an enquiry under Section 64 of the Karnataka Co-operative Societies Act, 1959 ('the Act' for short).

4. In the aforesaid background, the 5th respondent after conducting an enquiry has submitted his report, which is at Annexure-A. A reading of the report would indicate that the enquiry officer has unearthed large scale misappropriation to the tune of nearly Rs.98.00 lakhs involving three persons mainly one Nanjegowda, who is Ex- President of Fisheries Federation of Karnataka State, another person by name Sri.Sheenappa, who was earlier Assistant Director of Fisheries and after retirement he has joined as Secretary of Society, which according to the learned Additional Government Advocate is contrary to the bye-laws. Another person is one Sri.L.C.Narasimha Prasad, who was Senior Auditor of Co-operative Department and also several officers of the Fisheries Department. The report also discloses that the aforesaid three persons in their name, in the name of their henchmen and also family members lent money to the Society against the bye-laws of Society and utilizing said money, Society is said to have released additional fingerlings to the KRS Reservoir. Thereafter, fish that were grown were sold and proceeds there from is distributed among the investors contrary to the bye-laws of Society causing loss to Society as well as to Government, which in turn would have received otherwise.

5. It is seen that when such serious allegations are made against aforesaid three persons, the said persons have not challenged the report of enquiry officer under Section 64 of the Act. However, pursuant to the report under Section 64 of the Act, proceedings were initiated under Section 68 of the Act before the Assistant Registrar of Cooperative Societies, Hunsur Sub Division, Hunsur, who by order dated 15.9.2015 accepted the report under Section 64 of the Act observing that there is total loss of nearly Rs.98.13 lakhs for the period from 2009-2010 to 2013-14 to Society, which is required to be recovered from the Directors and Secretary of Society for the said period along with interest at 18% p.a., for the amount due for each year.

In fact, this order of the Assistant Registrar under Section 68 of the Act is also not challenged by the aforesaid three persons. Instead, it is the President and Chief Executive Officer of Society who have challenged the same in Appeal No.9/2015-16 before the Deputy Registrar of Co-operative Societies, Mysuru. The Deputy Registrar dismissed said appeal by his order dated 31.8.2007, which is sought to be challenged by the petitioners herein. While filing these writ petitions all the three proceedings are sought to be challenged, namely the report under Section 64 of the Act, the proceedings under Section 68 as well as the order passed by Deputy Registrar in the appeal filed by petitioners.

6. Heard the learned counsel for the petitioners as well as learned Additional Government Advocate appearing for respondent Nos.1 to 5 as well as counsel for respondent No.6, who has claimed himself as whistle blower. After hearing the learned counsel appearing for parties to the lis and after going through the material available on record, it is clearly seen that the entire exercise that is conducted by the authorities under the Act, namely respondent Nos.3 to 5 at various levels on the basis of complaint by respondent No.6, appears to be just and proper. When specifically the names of several persons were cited in the report under Section 64 of the Act, it is seen that said persons are shying away from the Court. They do not seem to have moral courage or strength to stand against the said enquiry report as well as the order passed under Section 68 of the Act. Instead, on their behalf Society has held the cudgels to protect those persons, who are said to be causing financial harm to the Society by initiating proceedings before the authorities under the Act as well as before this Court.

7. This Court is unable to understand the locus of Society in trying to protect the interest of aforesaid persons cited in report under Section 64 of the Act as the persons, who have committed serious irregularities in causing financial loss to Society as well as Government. When such irregularities are cited right from appointing one of the accused as Secretary to Society, in raising financial support from private parties for doing business of growing fingerlings in KRS Reservoir, which belongs to Government, promoting private business on behalf of private entrepreneurs is contrary to bye-laws of Society, the same is ignored by Society in trying to protect the aforesaid persons who are named in the report under Section 64 of the Act.

It is rather a shameless job on the part of present President and Secretary of Society in trying to support said persons by filing appeal before 3rd respondent - Deputy Registrar and as well as these writ petitions. Therefore, this Court while disposing off these writ petitions would place on record its unhappiness about the manner in which present President and Secretary of Society are making attempt to shield those persons, who are shown to be the persons as perpetrators of alleged irregularities.

8. With aforesaid observations, these writ petitions are dismissed imposing cost of Rs.50,000/- each on the President and Secretary of Society for unnecessarily trying to interfere in conducting enquiry under Section 64 of the Act, implementation of said report under Section 64 before 3rd respondent under Section 68 and also with reference to initiation of proceedings for recovery of the alleged financial loss caused by the persons cited in Section 64 report.

9. It is further made clear that the cost which is imposed against the present President and Secretary of Society shall be deposited by them with the Registry of this Court within 30 days from the date of receipt of a copy of this order, failing which coercive steps will have to be initiated against them in holding them as personally liable for the alleged irregularities.

Petitions dismissed

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Kum. G. Saishivabhagya D/o Late G. N. Gowraiah v State Public Prosecutor, High Court of Karnataka, Cottonpet Police, Bengaluru and another, 2017 Indlaw KAR 3573

Case No : C. R. L. P. No. 1520/2017 C/w C. R. L. P. Nos. 1521/2017 and 1522/2017

Justice Aravind Kumar

Head Note :

KCS Act 1959 – enquiry under sec.64 of the Act recovery of amount of awarded under sec.69

The enquiry officer who conducted the enquiry as recorded that the petitioner has no role in the misappropriation, but he was negligent and hence the court is the view that the continuation of criminal proceedings against the petitioner would be an abuse of process of law and hence the criminal proceedings were quashed.

The Order of the Court was as follows:

3. Joint Registrar of Co-operative Societies ordered for an enquiry against 2nd respondent- Bank under Section 64 of Karnataka Co-operative Societies Act and Enquiry Officer on conducting such enquiry submitted a report on 20.11.2004 holding that petitioner and four other employees are jointly and severally liable to pay a sum of Rs.6,95,000/- with interest @ 18% per annum to 2nd respondent-bank.

4. Being aggrieved by this report and findings recorded by enquiry officer, fixing liability on the petitioner, 2nd respondent-bank raised a dispute by filing a petition under Section 69 of Co-operative Societies Act for recovery of the amounts from petitioner and 40 other employees which resulted in an order being passed on 09.03.2010 and order being passed allowing the petition and directing the respondents including the petitioner herein to pay the amounts with interest as ordered by Enquiry Officer. Being aggrieved by this order, petitioner herein filed an appeal under Section 105 of The Karnataka Co-operative Societies Act before Appellate Tribunal and by order dated 31.10.2014 passed in Appeal No.304/2010, Appellate Tribunal Authority has set aside the order dated 09.03.2010 by allowing the

7. Having heard the arguments of learned HCGP and learned counsel appearing for petitioner and on perusal of records, it would disclose that 2nd respondent-bank had initially lodged a complaint on 08.02.2005 alleging that petitioner and four other employees have misappropriated a sum of Rs.6,95,000/- from Akkipete Branch where they were working by withdrawing amounts from savings bank account holders (46 members) by using withdrawal slips. Said complaint on being registered, ended in filing of the chargesheet against petitioner and other accused persons. An enquiry was also ordered by the Registrar of Co- operative Society as contemplated under Section 64 of The Karnataka Co-operative Societies Act. Said enquiry report which is available on record when perused would disclose that a finding came to be recorded by the Enquiry Officer that there was no act of misappropriation committed by petitioner and act of petitioner can be construed as one of negligence in the words of Enquiry Officer it reads as under:

"ಶ್ರೀ ಪ.ಕುಮಾರ್ ಮತ್ತು ಶ್ರೀ ನಾಯಿ ಸೌಭಾಗ್ಯ ಇವರುಗಳು ನೀಡಿರುವ ಲಿಖಿತ ವಿವರಣೆಯಂತೆ: ನಗದು ಗುಮಾಸ್ತರಾದ ಶ್ರೀ ಎಸ್.ಎಸ್.ವಸಂತ್‌ಕುಮಾರ್ ಇವರು ವಿತ್‌ಡ್ರಾಯಲ್ ಸ್ಲಿಪ್‌ಸ್ಲ್ಲಿ ಯಾರದೋ ಖಾತೆಯ ಖಾತೆ ಸಂಖ್ಯೆ ಬರೆದು ಯಾರದೋ ಹೆಸರನ್ನು ಬರೆದು ಮೊಬಲಗನ್ನು ನಮೂದಿಸಿ. ಅವರೇ ಪಾಸ್ ಮಾಡಿ ಸಹಿಯನ್ನು ನಕಲು ಮಾಡಿ ಹಣವನ್ನು ಪಡೆದಿರುತ್ತಾರೆ.

ಎಸ್.ಎಸ್.ವಸಂತಕುಮಾರ್ ಇವರನ್ನು 3 ವರ್ಷಗಳ ಕಾಲ ನಗದು ಶಾಖೆಯಲ್ಲಿ ಮುಂದುವರಿಸಿರುತ್ತಾರೆ. ನಾವು ನಮ್ಮ ಶಾಖೆಯಲ್ಲಿ ಎರಡನೆ ವರ್ಷದ ಅಧಿಕಾರಿಯಾಗಿ ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತೇವೆ. ಮೊದಲ ವರ್ಷದ ಅಧಿಕಾರಿಯಾಗಿ ಶ್ರೀ ಜಿ.ವಿ.ನಾಗರಾಜ್ ಮತ್ತು ಶ್ರೀಮತಿ ಪ್ರಮೀಳ ಇವರು ಕೆಲಸ ನಿರ್ವಹಿಸಿರುತ್ತಾರೆ. ದುರುದ್ದೇಶಪೂರ್ವಕವಾದ ಅವಧಿಯಲ್ಲಿ ಶ್ರೀಮತಿ ಪ್ರಮೀಳ ರವರು ಚೆಕ್ಕುಗಳನ್ನು ಪರಿಶೀಲಿಸಿ. ಹಣ ಪಡೆದವರ ಹೆಸರು. ಖಾತೆಯ ಸಂಖ್ಯೆ. ದಿನಾಂಕ. ಮೊತ್ತ ಇತ್ಯಾದಿಗಳನ್ನು ಪ್ರತೀಕಲಂ ಚೆಕ್ ಪಾಸ್ ಮಾಡುವ ಪರಿಪಾಠವಿದ್ದು, ಅವರಂತೆ ಕಾರ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದರು. ಈ ಅಧಿಕಾರಿಗಳು ಪ್ರತಿ ತಿಂಗಳು ಕುಳಿತಾರು ಬಾಕಿ ಪಟ್ಟಿಗಳನ್ನು ತಾಳೆಮಾಡುವುದಕ್ಕೆ ಇತರೆ ಸಿಬ್ಬಂದಿಗಳಿಗೆ ಅವಕಾಶ ಕಲ್ಪಿಸದೆ ಈ ಹಣ ದುರುದ್ದೇಶಪೂರ್ವಕವಾಗುವುದಕ್ಕೆ ಕಾರಣರಾಗಿರುತ್ತಾರೆ. ಲಿಖಿತಾಯ ಖಾತೆದಾರರ ಖಾತೆಗಳಿಗೆ ಖರ್ಚು ಹಾಕಿರುವುದಿಲ್ಲ. ಪ್ರತಿ ತಿಂಗಳು ಲಿಖಿತಾಯ ಖಾತೆ ಕುಳಿತಾರು ಪಟ್ಟಿ ತಾಳೆಯಾಗಿರುವುದಿಲ್ಲ. ಜನರಲ್ ಲೆಡ್ಜರ್‌ಗೆ ಕಡಿಮೆಯಾಗುತ್ತಾ ಬಂದಿದೆ. ವ್ಯವಸ್ಥಾಪಕರು ಇದರ ಕಡೆ ಗಮನಹರಿಸಿರುವುದಿಲ್ಲ. ನಾವು ಯಾವುದೇ ಲಿಖಿತಾಯ ಬ್ಯಾಂಕಿಗೆ ಭೇಟಿ ಮಾಡಿರುವುದಿಲ್ಲ.

ಅಕ್ಕಿಪೇಟೆ ಶಾಖೆಯಲ್ಲಿ ರೂ.೬.೦೦ ಲಕ್ಷ ಹಣ ದುರುದ್ದೇಶಪೂರ್ವಕವಾಗಿರುವ ಅವಧಿಯಲ್ಲಿ ಇವರುಗಳು ಕೆಲವು ಸಂದರ್ಭಗಳಲ್ಲಿ ಚೆಕ್ ಪಾಸಿಂಗ್ ಅಧಿಕಾರಿಗಳಾಗಿ ಮತ್ತು ಲಿಕ್ವಿಡೇಟರಾಗಿ ಕಾರ್ಯನಿರ್ವಹಿಸಿರುವುದನ್ನು ಗಮನಿಸಬಹುದಾಗಿದೆ. ಇವರುಗಳು ನಡೆಸಿದ ಜಾಬ್ಜಾಲಿ ನಿರ್ವಹಿಸಿದ ದಿನದ ವ್ಯವಹಾರವನ್ನು ಸಂಬಂಧಿಸಿದ ಇತರೆ ಪಾಲುದಾರರೊಂದಿಗೆ ತಾಳೆ ಮಾಡಿದ್ದರೆ ಬಹುಶಃ ಈ ವ್ಯತ್ಯಾಸಗಳನ್ನು ಅದೇ ದಿನ ಕಂಡುಕೊಳ್ಳಬಹುದಾಗಿತ್ತು. ಇವರುಗಳು ಶಾಮೀಲಾಗಿದ್ದರೂ ಸಹ ಕೆಲಸ ಮತ್ತು ಜಾಬ್ಜಾಲಿಯಿಂದ ದೂರ ಸರಿಯಲಾಗುವುದಿಲ್ಲ."

(Emphasis supplied)

8. In conclusion, Enquiry Officer opined that financial loss which has been caused to the bank has to be recovered from erring officials, which include petitioner.

9. In the meanwhile, the 2nd respondent-bank namely the complainant obviously after looking into the report (report submitted after conducting enquiry under Section 64 of Co-operative Societies Act) which had been submitted on 20.11.2004 was fully satisfied that there was no role played by the petitioner in so far as misappropriation of the amounts is concerned and as such, submitted a letter to the jurisdictional police who had investigated the matter for withdrawal of the complaint as per communication dated 13.07.2010 at Annexure-D. Yet, the Investigating Officer has proceeded to file chargesheet against the petitioner.

10. As already noticed herein above, Authorities who had conducted enquiry had opined that there was no role played by the petitioner in so far as misappropriation is concerned but had been negligent and the fact that complainant bank itself being satisfied that there was no role played by the petitioner and two other officials in alleged misappropriation of bank funds had urged its wisdom to withdraw the complaint. Hence, this Court

is of the view that continuation of the criminal proceedings against petitioner would be an abuse of process of law and as such, this Court is of the considered view that it is liable to be quashed.

For the reasons aforestated, I proceed to pass the following:

ORDER

(i) Crl.P.No.1520/2017 C/w Crl.P.Nos.1521/2017 & 1522/2017 are hereby allowed.

(ii) Proceedings in C.C.Nos.11474/2016, 11475/2016 & 11476/2016 pending on the file of IV ACMM, Bengaluru is hereby quashed in so far as petitioner is concerned.

All pending applications stands rejected.

Petitions allowed

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Sarvada Multi Purpose Co-operative Society Limited, represented by its Chief Executive Officer, Dhananjay S/o Rajaram Patil, Belagavi v Deputy Registrar of Co-operative Societies, Belagavi and others, 2018 Indlaw KAR 8028

Case No: Writ Petition No. 103526 of 2018 (CS-RES)

Justice Dr. H.B. Prabhakara Sastry

Head Note

Karnataka Co-operative Societies Act, 1959, s. 64 - Notice of inquiry - Challenged - Whether, Respondent no. 1 rightly passed order u/s. 64 of Act, against Petitioner society.

Thus, based upon said report submitted to him by Respondent no. 2, Respondent no. 1 has passed order u/s. 64 of Act. For these reasons, it is held that the act of respondent No. 1 passing order, no irregularity or illegality can be noticed at this stage. Petition dismissed.

The Order of the Court was as follows:

1. The petitioner society is a society registered under the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'KCS Act', for brevity). The first respondent vide Annexure-G which is his order dated 28.02.2018 ordered for an inquiry to be held against the petitioner-society under Section 64 of the KCS Act. Accordingly, respondent No.2, who was appointed as an Enquiring Authority, has issued a notice of inquiry to the petitioner vide Annexure-H dated 01.03.2018. The said Annexures-G and H, the petitioner has challenged in this writ petition.

5. A perusal of the Annexures produced by the petitioner go to show that the first respondent is said to have received an anonymous compliant on 22.02.2018 which is at Annexure-A alleging certain illegalities in the affairs of the petitioner-society. Annexure-B is a letter by the first respondent. He, after referring to the complaint at Annexure-A, has asked respondent No.2 to visit the petitioner-society and after verifying to

submit his report. Annexures-C and D are two other complaints said to have been filed with the first respondent by respondent Nos.3 and 4 on 24.02.2018 and 26.02.2018 respectively. Annexure-E is a letter by the second respondent to the petitioner dated 27.02.2018, wherein the second respondent referring to the letter of the first respondent dated 26.02.2018, has directed the petitioner to produce certain documents pertaining to the society for verification. Annexure-F is a report by the second respondent submitted to the first respondent dated 27.02.2018 wherein the second respondent has stated that he has visited the petitioner-society on 23.02.2018 and observed certain discrepancies which he has listed in his report. Annexure-G is the impugned order passed by the first respondent ordering for an inquiry under Section 64 of the KCS Act against the petitioner-society and appointing the second respondent as Enquiring Authority. Annexure-H is a notice dated 01.03.2018 by the second respondent informing the petitioner about the inquiry and calling for certain documents.

7. It is clear from the wordings of the said sub-section that the Registrar on his own motion by himself or by a person authorized by him, by an order in writing, hold an inquiry. Thus, it is at the discretion of the Registrar who after satisfying himself or finding reasons that there are grounds to order for an inquiry with respect to a society, can invoke Section 64(1) and proceed for ordering of an inquiry. On the other hand, if the said Registrar receives any application by the society itself or by a majority of the members of the Board of the society or by not less than one-third of the total members of the society, under such a situation, he has no option but for ordering for an inquiry.

8. In the instant case, admittedly, the first respondent has received a complaint as per Annexure-A on 22.02.2018. On the very same day, vide his letter dated Annexure-B dated 22.02.2018, he has asked respondent No.2 to visit the society and submit his report. Incidentally, after the letter dated Annexure-B, which is dated 22.02.2018, first respondent also received two more complaints against the petitioner-society, which are at Annexures-C and D. Annexure-E, whcih is a letter by respondent No.2 calling for the Secretary of the petitioner-scoiety to produce certain documents, though, is dated 27.02.2018, it cannot be lost sight of the fact that the said letter has emanated but subsequent to the author of the said letter (Respondent No.2) is shown to have received one more letter from the first respondent which is referred to in Annexure-E. The said letter is dated 26.02.2018. Thus, it is clear that the letter by second respondent at Annexure-E has not germinated based on the letter of first respondent dated 22.02.2018 at Annexure-B. As such, the argument of the learned counsel for the petitioner that the second respondent issued Annexure-E after he received Annexure-B cannot be accepted and cannot be taken note of. More over, Annexure-E came into existence only because of Annexure-B. At the cost of repetition, it is once again observed that Annexure-E which is dated 27.02.2018 has come into existence based on another letter by first respondent which is dated 26.02.2018, a reference about which is made in Annexure-E itself.

9. The above flow of facts evidence that the second respondent received a letter at Annexure-B dated 22.02.2018 and the cause and reason of he visiting the petitioner-society on 23.02.2018 is stated by him in Annexure-F. Therefore, the cause and reason for the second respondent to visit the petitioner-society has arisen when he received the letter dated 22.02.2018 at Annexure-B but not after he receiving the letter dated 26.02.2018 referred in Annexure-E or after the second respondent issuing the letter dated 27.02.2018 at Annexure-E.

Therefore, the second argument of the learned counsel for the petitioner that the second respondent would not have visited the petitioner-society when in fact he issued the intimation only on 27.02.2018 at Annexure-E, cannot be accepted.

10. The contents of Annexure-F, at this stage and by prima facie look, go to show that the second respondent, who had personally visited the petitioner-society had found various irregularities said to have been committed by the petitioner-society and had submitted his report accordingly to the first respondent. Thus, based upon the said report submitted to him by the second respondent vide Annexure-F, the first respondent vide Annexure-G has passed an order under Section 64 of the KCS Act.

For these reasons, I am of the view that in the act of respondent No.1 passing the order at Annexure-G, no irregularity or illegality can be noticed at this stage. As such, I do not find any reason to order for issuance of notice to the respondents. Thus, at the stage of admission itself, this petition is dismissed as devoid of merit.

Learned Additional Government Advocate is permitted to file his memo of appearance within two weeks in the registry.

Order accordingly

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Bhavani House Building Co-operative Society Limited and others v Government of Karnataka Department of Co-operation and others, 2015 Indlaw KAR 6537

Case No: Writ Petition No. 10655 of 2011(CS) and Writ Petition NOS.10856-64 of 2011(CS)

Justice Ravi Malimath

Head Note :

KCS Act 1959 – issue of notes U/s 30 – ---------- the infration of any law – petition dismissed

The Order of the Court was as follows:

1. The 1st petitioner is a Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act. The petitioners 2 to 10 are the Directors. It is their case that they formed sites in Sy.No.17 of Kathriguppe village, Bengaluru South Taluk, for the benefit of their members. The Registrar of Co-operative Societies issued a show cause notice under Section 30(1) of the Karnataka Co-operative Societies Act, to the petitioner Society. The petitioners submitted their reply to the show cause notice. On considering the same, respondent No.2 dropped the proceedings. In the interregnum the majority of the members of the Committee of management of the petitioners tendered their resignation on various grounds. Thereafter an election was held. Petitioners 2 to 10 were declared unanimously elected as Directors of petitioner No.1 Society. It is the case of the petitioners that the then Minister for Transport, Food, Civil Supplies and Consumer Affairs, requested the Minister for Co-operation to enquire into the formation and disposing of sites by the society.

The Registrar of Co-operative Societies appointed respondent No.5 to enquire into the illegalities committed by the petitioner Society. The enquiry was conducted and a report was submitted. Certain defects were noted in the affairs of the said Society which are stated to be committed by the Committee members. On receipt of the same, the respondent issued a show cause notice under Section 30(1) of the Act to the petitioner Society as well as the petitioners asking for the reply. They replied to the same.

The duty of every Minister is to ensure cleanliness in the administration. That there are 11 charges that are leveled against the petitioner Society. Necessarily the same would require an appropriate consideration in a manner known to law. Therefore, the concerned respondent has been appointed to conduct a statutory inspection into the 11 charges in terms of Section 65 of the Co-operative Societies Act. Under these circumstances, I find no good ground to interfere with the said orders. The respondents have adequate authority in law to initiate a statutory inspection into the allegations that come to their notice. I find there is no Infraction of any law. The impugned orders are in tune with the Co-operative Societies Act. Consequently, the petitions being devoid of merit are dismissed. Rule discharged.

Petitions dismissed

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Prakash N. S/o Narashimaiah and another v Assistant Registrar of Co-operative Societies and others, 2015 Indlaw KAR 2963

Case No: W.P. Nos. 54091-54092 / 2014 (CS-RES)

Justice H. G. RAMESH

2. According to the petitioner, he has obtained mortgaged loan for a sum of Rs.15 lakhs on 8.12.2008 from the 2nd respondent-Society. The 2nd respondent-Society raised a dispute before the Registrar of Co-operative Societies and obtained an award in EP.No.4/2013 and auctioned the property of the petitioner and sale has been confirmed by the 1st respondent, consequently sale deed has been executed in favour of 3rd respondent. Being aggrieved by the same, petitioner is before this Court.

Heard the learned counsel for respective parties.

6. So far as issuance of notice is concerned, as per S. 106 of the Act, there is said to be notice issued, apart from paper publication in E-Sanje kannada daily news paper. However, this is a disputed aspect. Nothing has been demonstrated so as to show that notice has been duly served except denial. Though this Court has held that writ can be maintainable, in the circumstances, so far as disputed facts are concerned, the petitioner has to exhaust the remedy before the Deputy Registrar of Co-operative Societies challenging the illegality or irregularity.

Instead, straight away petitioner has approached this Court without exhausting the said remedy. In that view of the matter, it is for the petitioner to approach before the Deputy Registrar of Co-operative Societies in appeal. In the event there are exigencies, petitioner can maintain writ, but not at this stage. Both parties are directed to maintain status quo for a period of 15 days. In the meanwhile, it is for the petitioner to

approach the Deputy Registrar of Co-operative Societies.

Writ Petition is disposed of accordingly.

Petition disposed of

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S. R. Narayanamurthy S/o Late S. Rama Rao v Poornapragna House Building Co-Operative Society Mount Joy Road Hanumanthanagara, Bangalore by its President - Sri Hayagrivachar and others 2015 Indlaw KAR 9602; 2015 (5) KarLJ 462

Case No: Writ Appeals 2652 / 2009 & 3006 - 3007 / 2009 (GM Res)

JJ Vineet Saran & B. Manohar

Head Note :

KCS Act 1959

Just by being registered under the provisions of the Karnataka Co-operative Societies Act, without the Government having any control or having financed the society, in our view, it would not fall within the definition of 'Public Authority' as given under section 2(h) of the RTI Act, 2002.

The Order of the Court was as follows:

1. The moot question in these appeals is as to whether a private co-operative society would be amenable to the provisions of Right to Information Act, 2005. Learned Single Judge has, after relying on the decision of this Court in the case of Dattaprasad Co-operative Housing Society Ltd Vs Karnataka State Chief Information Commissioner - ILR 2008 KAR 4105, held that since the petitioner Society is not financed directly or indirectly by the appropriate government, it would not fall under the definition of public authority and therefore, the provisions of the RTI Act would not be applicable.

Heard learned counsel for parties.

2. Learned counsel for the appellant has strenuously argued that the overall supervisory control over the co-operative societies would be of the State Government and its officers and thus, would be falling within the meaning of Art.12 of the Constitution, more so as the Society is also registered under the Karnataka Co-operative Societies Act, 2009 and would have to comply with the provisions of the said Act.

3. Just by being registered under the provisions of the Karnataka Co-operative Societies Act, without the Government having any control or having financed the society, in our view, it would not fall within the definition of 'Public Authority' as given under section 2(h) of the RTI Act, 2002.

4. Further, the Apex Court, in the case of Thalappalam Service Co-operative Bank Ltd & Ors Vs State of Kerala & Ors - 2013 AIR SCW 5683 2013 Indlaw SC 663, has also held that co-operative societies which

do not have substantive control by the Government and over which there is only supervisory or regulatory control, would not be amenable to the provisions of the RTI Act.

Accordingly, in the facts and circumstance of this case and in view of the decision of the Apex Court in Thalappan's case 2013 Indlaw SC 663 (supra), we do not find merit in these appeals. Appeals are accordingly, dismissed. However, there would be no order as to costs.

Appeals dismissed

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Vijayalakshmi Souharda Sahakari Limited and another v State of Karnataka and another, 2015 Indlaw KAR 2684

Case No: W.P. Nos. 109194-109213 of 2014 (CS-RES) with W.P. Nos. 112106-112108 of 2014 (CS-RES)

Justice Anand Byrareddy

Head Notes

Karnataka Souharda Sahakari Act,1997, s.33(19) - Karnataka Souharda Co-operative (Amendment) Act,2013 - Karnataka Souharda Co-operative (Amendment) Act,2014 - Validity of law - Lack of proof - Petitioners-co-operatives were car-rying on business in accordance with provisions of 1997 Act which was amended by 2013 Act - During pendency 2013 Act was further amended by 2014 Act - By virtue of amendment, some of amendments effected by 2013 Act were omitted while intro-ducing fresh amendments therefore, petitioners withdrawing pending petitions - Hence, instant Petitions - Whether amendment in 1997 Act suffered from any irregularity.

It cannot be said that the said provision is arbitrary and unreasonable. However, In any event, State having imposed such a condition cannot be said to be unconstitutional, as endeavour apparently is to advance social justice by providing access to the backward classes to participate in management of Co-operatives. The State does have that prerogative, when in terms of the 97th Amendment to the Constitution; the State is empowered to amend provisions of 1997 Act and especially when it provides aid and assistance in ample measure to the co-operatives. Further, so far as challenge s.33(19) of 1997 Act of empowering the Director Co-operative Audit to frame guidelines to fix the auditor's fees only ensures that a panel of well qualified auditors is in place and the fees payable is also fixed, thereby ensuring better accountability. Hence, allegation that engagement of auditors is strictly the realm of contract and imposition of a panel of auditors and fixed fee being draconian, cannot be sustained. Petitions dismissed.

Ratio - If there is no nexus between object sought to be achieved by original Act and amending Act, it cannot be challenged in Court of Law.

The Order of the Court was as follows:

1. The petitioners in WP 109194-213/2014 are co- operatives registered u/s. 5 of the Karnataka Souharda

Sahakari Act, 1997 (Hereinafter referred to as the 'KSS Act', for Brevity). The petitioners are said to be carrying on business in accordance with the provisions of the KSS Act.

2. The KSS Act was said to have been amended by the Karnataka Souharda Co-operative (Amendment) Act. 2013, (Act no.4 of 2013). As some of the provisions, namely, Section 21A, disabling the Co-operatives registered under the KSS Act in admitting nominal and associate members; Section 24, providing reservation for two persons on the Board from amongst the members of backward classes; Section 25, providing disqualification of Directors under certain circumstances and also part of S. 33 relating to audit, are ultra vires the Constitution of India and opposed to the very object of the KSS Act, some of the petitioners had filed writ petitions in WP 77847-77858/2013 (CS-RES) and WP 80210- 217/2013 (CS-RES) questioning the vires of amendment to Section 21A, part of Sections 24, 25, and 33 of the KSS Act.

Even as the above said petitions were pending before this court, the KSS Act was further amended by the Karnataka Souharda Co-operative (Amendment) Act, 2014 (Act no.34 of 2014). By virtue of the amendment, some of the amendments effected by Act no.4 of 2013 were omitted while introducing fresh amendments. This had resulted in the petitioners withdrawing the above said writ petitions, with liberty to file fresh petitions, questioning the Constitutional validity of the provisions introduced both under Act no.4 of 2013 and Act no.34 of 2014.

The legislation was enacted with the following object and reasons.

"STATEMENT OF OBJECTS AND REASONS Act 17 OF 2000 - The Karnataka Souharda Saharakari Bill, 1997 among other things provide for ;-

(1) the recognition, encouragement and voluntary formation of co-operatives based on self help, mutual aid, wholly owned, managed and controlled by members as accountable, competitive, self-reliant and economic enterprises guided by co-operative principles specified therein;

(2) removing all kind of restrictions that have come to clog the free functioning of the co-operatives and the controls and interference by the Government except registration and cancellation;

(3) promotion of subsidiary organization, partnership between co-operatives and also collaboration between co-operatives and other institutions;

(4) registration of co-operatives, union co- operatives and Federal co-operative in furtherance of the objectives specified above.

(5) Conversion of co-operative societies registered under the Karnataka Co-operative Societies Act, 1959 as a co-operative under the proposed legislation.

The objects and reasons culled out above leave no doubt that the intention of Legislature is to remove all kinds of restrictions that have come to clog the smooth functioning of co-operatives and also to ensure partnership between co- operatives and other institutions. It also provides for a management, wholly owned by the members. In that view of the matter, proviso to Section 21-B not allowing more than 10% of the total membership of the co-operative to be associate members, runs contrary to the very object behind the enactment.

The restrictions imposed are impermissible under Art. 19(4) of the Constitution of India, as the restrictions on the number of associate members does not achieve the object of situations and circumstances set out in Art. 19(4) of the Constitution. There is no nexus between the object and amendment introduced by way of Section 21B of the KSS Act. On this count alone, a part of Section 21-B restricting total number of associate members to 10% of the total membership of a co-operative is liable to be struck down.

S. 22 of the KSS Act prohibits a co-operative, except the co-operative banks licensed by the Reserve Bank of India, from collecting deposits from nominal members. The definition of a 'member' as provided in S. 2(r) includes a nominal member. The restrictions imposed in S. 22 does not pass the test of reasonable restrictions found in Art. 19(4) of the Constitution of India. The restrictions imposed in S. 22 of the KSS Act is not applicable to co-operative banks licensed by the Reserve Bank of India and treating such co-operatives banks as holding license from the Reserve Bank of India and co-operatives not being so is violative of Art. 14 of the Constitution of India.

It is further contended that the nominal members form a major section of the co-operatives. If co-operatives are prevented from accepting deposits from such members, the co- operatives will lose a major portion of their working capital, which would have flown to the co-operative. Thus, the restriction imposed in S. 22 does not achieve the object of the KSS Act and its constitutional goal.

Article 243ZJ provides for representation of persons belonging to Scheduled Castes and Scheduled Tribes on the Board of a Co-operative. The Constitution does not mandate any other reservation. However, S. 24 mandates reservation of persons belonging to Backward Classes on the Board of the Cooperative. Thus, reservation to the Board mandated in S. 24 is contrary to the Constitutional mandate.

In view of the fact that Part IXB of the Constitution is struck down, there is no mandate to provide for reservation in respect of a scheduled caste, a scheduled tribe and women on the Board of Co-operative. S. 24 providing for reservation on the Board does not in any way help to achieve the object of the KSS Act. Thus, there is no nexus between the object sought to be achieved and the amendment. S. 24 also violates Art. 19(c) of the Constitution of India, as restrictions imposed are not permitted under Art. 19(4) of the Constitution.

S. 33(19) of the KSS Act before amendment empowered the General Body to fix the fees of the auditor. The amended S. 33(19) empowers the Director of Co- operative Audit to frame guidelines to fix the auditor's fees.

This amendment again is impermissible under Art. 19(4) of the Constitution of India.

It is contended that the provision to admit associate members has been reintroduced in S. 21 vide Government Notification dated 06.09.2014 published in Karnataka Gazette (Karnataka Souhardha Sahakari (Amendment) Act 2014), making provisions for admission of associate members not exceeding 10% of the total membership. Further, as per this new section, if the number of associate members is more than 10% of the total membership, such members shall be enrolled as regular members or removed from membership within a period of six months from the date of introduction of this amendment.

It is contended that regarding provision for reservations in respect of Scheduled Castes, Scheduled Tribes, Women and back ward classes on the Boards of Souharda Co-operatives, the petitioners' contention is that,

by providing reservation under S. 24 of the KSS Act, the State Government has taken away the fundamental rights, guaranteed under the Constitution, of the Co-operatives and reservation is not relevant to the business of the Co-operatives. The contention of the petitioners is baseless as it is an established fact that the Co-operative sector has an important role in the economic growth of the needy and providing reservation in Co-operatives ensures the economic growth of Co-operatives as well as the weaker sections of society, such as the Scheduled Castes and Scheduled Tribes, Women and Backward classes.

The Government policy, as envisaged in the directive principles of the Constitution, should be proactive in the promotion of Co- operatives and as substantial Government funds are being spent directly or indirectly for this purpose, it is the duty of the State Government to ensure justice while providing reservation to Scheduled Castes and Scheduled Tribes, Women and Backward classes. The 97th Amendment, keeping this in view, has mandated reservation to Scheduled Castes, Scheduled Tribes, Women and Back Ward classes.

It is contended that the main object of introducing S. 25(ii) is to ensure strict compliance and implementation of the KSS Act and the principles of Co-operative Movement. The disqualification of the member of the committee of the Cooperative occurs only if such committee fails to coordinate with the Election Commission, to conduct election to the Committee of such Co-operative and fails to convene the Annual General Meeting within six months after closing of the Co-operative year and to submit statutory reports and the information required by the Registrar. These are all the fundamental duties of the Committee of every Co-operative. If the committee fails to perform its duties, it is only then that the question of disqualification occurs. If there is no provision for disqualification, it will allow the committee to escape its obligation.

It is contended that the 97th amendment to Article 243ZM of the Constitution of India, the Director of Co-operative Audit is empowered to prepare a panel of audit firms based on the prescribed qualification and experience and also under the provisions of the Chartered Accountants Act, 1949. The General Body of the Co-operative shall have the power to appoint auditors from the panel prepared by the Director of Co-operative Audit. The purpose of introducing this provision is to prescribe the qualification and experience of the auditor which is essential to complete the audit of all the Co-operatives, effectively. Hence, the contention of the petitioner that the proviso to S. 33 restricts the choice of the General Body is baseless.

It is the claim of the petitioners that the said provision would result in several undesirable consequences, apart from running counter to other provisions of the Act. It is noticed that S. 20 of the KSS Act prescribes certain eligibility criteria to be a member of a Co-operative. Apart from this, the Co- operative itself is enabled u/s. 20(1)(c), to prescribe other eligibility criteria in its bye-laws, in addition to what is prescribed by the statute. It is hence contended that if for some valid reason, the Co-operative is unable to process an application for membership within the prescribed period, by virtue of the deeming provision, it is quite possible that an ineligible applicant would acquire membership. Secondly, it is sought to be pointed out that there are three categories of members, namely, a member who is a share holder, a nominal member and an associate member. And that the Section is silent as to the category of membership to which such an applicant is deemed to be admitted.

It cannot be accepted that the above said provision results in any grave consequences. It does place a compulsion

on the Board of Directors to deal with any application for membership - with expedition. Even in the event of an applicant being admitted by default, by virtue of the deeming provision aforesaid, should the applicant be found to be ineligible or if the application was, for any other reason - invalid, the Board of Directors are amply empowered under Sub-s. (3) of S. 20 of the KSS Act, to remove such member on account of such ineligibility or invalidity of the membership on other grounds.

Further, in so far as the contention that when an applicant is deemed to be member, it would not be evident as to the category to which he is admitted and therefore would result in an anomalous situation, is also not acceptable. For one, the application itself would require the applicant to state the category to which membership is sought. The share amount, submitted along with the application, would be another indicator as to the category to which membership is sought. A share amount is contemplated only in respect of a regular member and an associate member. A nominal member is not entitled to hold any shares.

Therefore, it cannot be said that the said provision is arbitrary and unreasonable.

In so far as the insertion of Section 21-B and the embargo that there shall not be more than 10% of the total members as associate members and that such members should either be made regular members or should be removed after a period of six months, if they do not choose to become regular members, is reasonable and would ensure that there is a compulsion to either participate fully in the affairs of the co- operative or make way for such other interested persons who may usefully contribute to the functioning of the Co-operative and its growth.

The contention that the management would be discriminating as between persons opting for such membership, when the 10% of such members are to be chosen periodically, is not a tenable ground of challenge to the Constitutional validity of the said prescription. The said provision seeks to ensure that the regular membership is not surpassed by the strength of the associate members. And that the Associate members do not indefinitely continue as such. The complaint that the Co-operative would be forced to discriminate as between applicants seeking such membership may not be tenable. The Co-operative in such an eventuality follow a first come first served - rule.

The insertion of Section - 22, which prohibits collection of deposits from a non -member, in the event the Co-operative has not obtained a license from the Reserve Bank of India to do banking business, is not unreasonable. It obviously seeks to protect the interest of non-members whose interest would be better protected if their deposits are made with a Co-operative with a license from the RBI to do banking business. No co- operative is prohibited from obtaining a license to do banking business from the RBI.

S. 24 of the KSS Act is sought to be questioned on the ground that the mandate of the Constitution of India in terms of Article 243ZJ cannot be pressed into service by the State Government in justifying the reservation for two members of the backward classes to be elected to the Board of Directors of the Co-operative, is not enforceable, on the footing that the State has no power to make law providing reservation on the Board, in view of Part IXB of the Constitution of India having been struck down as unconstitutional by the Gujarat High court. However, no such judgment is produced. In any event, the State having imposed such a condition

cannot be said to be unconstitutional, as the endeavour apparently is to advance social justice by providing access to the backward classes to participate in the management of Co-operatives. The State does have that prerogative, when in terms of the 97th Amendment to the Constitution of India, the State is empowered to amend the provisions of the KSS Act and especially when it provides aid and assistance in ample measure to the co-operatives.

In so far as the challenge to Sub-s. (19) of S. 33 empowering the Director Co-operative Audit to frame guidelines to fix the auditor's fees only ensures that a panel of well qualified auditors is in place and the fees payable is also fixed , thereby ensuring better accountability. The allegation that the engagement of auditors is strictly in the realm of contract and hence the imposition of a panel of auditors and the fixed fee being draconian, cannot be sustained. The provision is in the nature of a regulatory measure and does not result in oppression or the curtailment of a right warranting the interference of this court.

7. Hence, the petitions do not merit consideration and are dismissed.

Petitions dismissed

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Korangrapady Co-operative Agricultural Society Limited, by its Chief Executive Officer, Udupi and others v Union of India and others, 2016 Indlaw KAR 7403; 2018 (1) KarLJ 415

Justice Ashok B. Hinchigeri

Head Note :

KCS Act 1959 – restriction imposed on withdrawing of amounts from Bank

The restriction imposed cannot be and indeed is not on permanent basis – the notification states that it shall be reviewed.

If every decision taken by the authority is tested by a microscopic and a suspicious eye administration will come to a stand still and the decision-makers will lose all their initiative and enthusiasm – petition dismissed.

The Order of the Court was as follows:

1. The petitioners are all the agricultural/fishermen/ multipurpose/credit co-operative societies registered under the Karnataka Co-operative Societies Act, 1959. They have filed these petitions seeking the redressal of their grievances over the cap on the withdrawal of the amounts fixed by the respondent Nos.1 and 2 pursuant to the scheme of demonetization, as per the notification, dated 8.11.2016 (Annexure-A).

4. When the Parliament does not have the competence to enact any law pertaining to the co-operative societies, the enquiry into the motive, which weighed with the Central Government in coming out with the cap on the withdrawal of the amounts by the co-operative societies is not required at all. In support of his submissions, he relies on the Apex Court's judgment in the case of DHARAM DUTT AND OTHERS v. UNION OF INDIA

AND OTHERS reported in (2004) 1 SCC 712 2003 Indlaw SC 1509.

12. The submissions of the learned counsel have received my thoughtful consideration. The petitioners' appreciation of demonetization policy is discernable from paragraph No.5 of the memorandum of writ petitions. It is stated therein that the demonetization is a major, laudable initiative to eradicate black money. In paragraph No.7 of the memorandum of the writ petitions, the petitioners have stated that they welcome the scheme of demonetization whole-heartedly. Their only grievance is over the limitation imposed on withdrawing the amounts from the banks. The restriction imposed cannot be and indeed is not on permanent basis. Clause 2(vi) of the impugned notification itself states that the withdrawal limit shall be reviewed. Permitting the account-holders to withdraw more amounts depends upon the availability of currency notes and calibrating the A.T.M.s to issue new currency notes. As submitted by the learned Additional Solicitor General, the Central Government is also examining the issue from the angle of black money being pushed through the channels like Jandhan account, non-banking financial companies, societies, co-operative societies, etc.

13. But in a situation of this nature, no directions, much less time-bound directions, can be given to the Government of India and the Reserve Bank of India. The perusal of the impugned notification reveals that the Union Government and the Reserve Bank of India have come out with the demonetization scheme to tackle the menaces of fake currency notes, black money and terrorism. These laudable objectives cannot be achieved without imposing certain restrictions. In the larger interests of the society, when a comprehensive mission is being accomplished, certain regulatory measures during the period of transition are bound to affect the interests of some sections of people. There cannot be any dispute that the collateral damage, if any, on any section is to be minimized, if it cannot be avoided. What steps are to be taken and within what time-frame they are to be taken, are the matters for the Central Government and Reserve Bank of India to decide.

14. I am also not persuaded to give acceptability to the submission made on behalf of the petitioners that the impugned restrictions on the withdrawal of the amounts from the banks are violative of Article 19(1)(c) of the Constitution of India.

15. The menaces of black money, fake currency and terrorism are hydra-headed monsters. When one head of the monster is chopped off, it would raise its other ugly heads. Stamping them out is indeed a herculean task. It is next only to impossible for any policy-maker or decision-maker to anticipate all the difficulties and contingencies. As and when the difficulties are noticed in the course of implementing the policy, the necessary remedial measures have to be taken.

16. It is immensely profitable to refer to what the Apex Court had to say in the case of BALCO EMPLOYEES' UNION (REGD.) v. UNION OF INDIA AND OTHERS reported in (2002) 2 SCC 333 2001 Indlaw SC 20366 in paragraph Nos.92 and 93 of its decision.

"92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with

by the Court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001."

17. In the case of INDIA CEMENT LTD. AND OTHERS v. UNION OF INDIA AND OTHERS reported in 1990(4) SCC 356 1990 Indlaw SC 385, the Hon'ble Supreme Court has held that even if some persons are at a disadvantage and suffer losses on account of the formulation and implementation of the government policy, that is not by itself a sufficient ground for interference by the court.

18. The administrators and legislators are entitled to frame policies and take such administrative decisions, as they think necessary in the public interest. The courts should not ordinarily interfere with the policy-decisions, unless they are manifestly illegal and arbitrary. In this regard, I may usefully refer to what the Apex Court had to say in paragraph Nos.45 and 46 of its decision in the case of Bajaj Hindustan Limited (supra).

"45. In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.

46. In our opinion, it will make no difference whether the policy has been framed by the legislature or the executive and in either case there should be judicial restraint. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution *or is shockingly arbitrary but not otherwise."*

19. It is also helpful to refer to the Hon'ble Supreme Court's decision in the case of PATHAN MOHAMMED SULEMAN REHMATKHAN v. STATE OF GUJARAT AND OTHERS reported in (2014) 4 SCC 156 2013 Indlaw SC 771, wherein it is held that it is open to the State and its instrumentalities to take economic and management decisions depending upon the exigencies of the situation, guided by the appropriate financial policy notified in public interest. If every decision taken by the State is tested by a microscopic and a suspicious eye, administration will come to a standstill and the decision-makers will lose all their initiative and enthusiasm.

20. The challenges to Clause 2(vi) of the notification, dated 8.11.2016 (Annexure-A), circulars, dated 14.11.2016 and 21.11.2016 (Annexures-B and C respectively) fail. Consequently the prayers (ii) and (iii) are not acceded to.

21. These writ petitions are dismissed but subject to the observations made hereinabove. No order as to costs.

Petitions dismissed

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Devalatti Prathamik Krushi Pattin Sahakari Sangh Niyamit, represented by its Chief Executive and another v Deputy Registrar of Co-operative Societies, Belagavi and others, 2018 Indlaw KAR 11278

Case No: W. A. Nos. 100095-96/2018 (CS-RES)

JJ B. Veerappa & H.T. Narendra Prasad

Head Note :

KCS Act 1959 – no confidence motion

There is a statutory vacating of office by an office bearer of a co-operative society when a resolution expressing want of confidence in him is passed by a majority of 2/3 of the elected directors of a co-operative society and therefore, in view of the said deeming provision, the first respondent as well as the tribunal were right in not granting stay of the resolution expressing want of confidence in the petition and said order does not call for any interference.

It is apparent that an office bearer against whom the resolution expressing want of confidence in him is passed by a majority of 2/3 of total number of elected directors of a co-operative society at a meeting specially convened for the purpose, is deemed to have vacated his office forth with. The office bearer can no longer continue in his office when faced with the resolution of no confidence passed against him.

The Judgment was delivered by B. Veerappa, J.

2. It is the case of the appellants/petitioners before the learned Single Judge that respondents 3 and 4 made proposal to the 2nd respondent seeking registration of new society at Kamasinkoppa village by the proposal dated 08.08.2015. The petitioners and other members of the Society had submitted written objection to the registering authority requesting not to register new Society within the area of operation of the petitioner/Society by the objection dated 11.08.2015. The 2nd respondent without considering the objections and without hearing the petitioners has passed an order dated 15.07.2016 registering the 4th respondent-Society. Therefore, the petitioners preferred an appeal before the 1st respondent challenging the order passed by the 2nd respondent wherein the 1st respondent placing reliance upon the order dated 19.11.2011 passed by this Court in W.P.No.62116/2011, has dismissed the appeal on 20.12.2017 on the ground that the 4th respondent is already functioning.

3. The order passed by respondents 1 and 2 was the subject matter of the writ petitions before the learned Single Judge. The learned Single Judge by the impugned order dated 13.03.2018 has dismissed the writ petitions. Hence, the present appeals are filed.

7. Having heard the learned counsel for the parties, it is seen that both the authorities/respondents 1 and 2 concurrently have held that the Co-operative Society shall have the freedom of entry and exit at any tier and there shall be no mandatory restrictions of geographical boundaries for the conduct of its business

operations. The learned Single Judge considering the entire material available on record, has dismissed the writ petitions.

8. The provisions of Section 98-I of the Act, reads as under:

"98-I. Restriction regarding area of operation:-

A co-operative Society under the Co-operative Credit Structure shall have the freedom of entry and exit at any tier and there shall be no mandatory restrictions of geographical boundaries for the conduct of its business operations."

9. A plain reading of the said provision makes it clear that a Co-operative Society under the Co-operative Credit Structure shall have the freedom of entry and exit at any tier and there shall be no mandatory restrictions of geographical boundaries for the conduct of its business operations.

10. Admittedly, in the present case, the petitioners have not challenged the validity of the mandatory provisions of Section 98-I of the Act before the learned Single Judge. Therefore, the learned Single Judge is justified in dismissing the writ petitions which is in accordance with law.

11. We find no error to interfere with the impugned order passed by the learned Single Judge exercising jurisdiction under the provisions of Section 4 of the High Court Act. Accordingly, writ appeals are dismissed.

IA-1/2018 does not survive for consideration.

Appeals dismissed

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Mahila Halu Utpadakara Sahakari Sangha, represented by its Secretary, Belagavi and another v Deputy Registrar of Co-operative Societies, Belagavi and others, 2018 Indlaw KAR 7840

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – application for registration – wether order permitting to collect share capital for establishment of proposed society is liable to the set aside.

At this stage it cannot be visualised as to whether proposed society would be in a position to collect requisite share capital and thereafter make an application for registration of society. The proposed society may be able to seek registration or for any reason it may also not be in position to be registered as society. But at this stage, in absence of there being any violation nor infraction of any right of Petitioner, writ petitions on mere apprehension cannot be entertained. Merely because Petitioner society is in business of distribution of milk and proposed society is also intending to deal in same line, there cannot be any adverse impact on Petitioners/society. Petitions dismissed.

The Order of the Court was as follows:

1. First petitioner is Mahila Halu Utpadakara Sahakari Sangha represented by its Secretary while the second petitioner is the President of the said Sangha. They have assailed order dated 18/06/2018 passed by the second respondent-Assistant Registrar of Co-operative Societies, Bailhongal taluk, Bailhongal. By that order, the second respondent has permitted the third respondent for collection of share capital subject to certain terms and conditions and submit the proposal for the purpose of registration of the Society. At this stage itself, it may be noted that third respondent-Society has not yet been registered. According to the petitioners, the first petitioner society was registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'Act' for the sake of brevity) on 14/12/2011. The Society is established and comprises of women members. That the said Society is located at Kencharamanahala (Yadahalli), of Saundatti taluk. The area of operation of the Society comprises Kencharamanahala and Yadahalli villages. That the first petitioner-Society has been functioning as per the provisions of the Act.

2. When the matter stood thus, the third respondent, who is stated to be a promoter of the proposed Yadahalli Halu Utpadakara Sahakari Sangha, submitted an application for the registration of the proposed society. According to the petitioners, third respondent is not happy with the first petitioner society prospering in the area and therefore intended to set up a rival society. That on 21/12/2017, first petitioner Society passed a resolution opposing the commencement of the proposed society and thereafter had made a representation to the first respondent-Deputy Registrar of Co-operative Societies, Belagavi. The Deputy Registrar, on 02/02/2018 directed the second respondent-Assistant Registrar of Co-operative Society to ascertain as to whether Rule 3(b) of the Karnataka Co-operative Societies Rules, 1960 (hereinafter referred to as the 'Rules' for the sake of brevity) has been complied with or not. Thereafter on 18/06/2018, third respondent who is the chief promoter of the proposed society has been permitted to collect the share capital for establishment of the proposed society. The same is assailed in these writ petitions.

6. Having heard learned counsel for the respective parties, at the outset it would be useful to refer to Section 43B of the Constitution of India which is one of the directive principles of the State policy. It states that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of Co-operative societies. The said Article has been inserted by the Section 3 of Constitution of India (Ninety-seventh Amendment) Act, 2011 with effect from 15/02/2012. This mandate has been issued to the State to take steps to endeavour to promote voluntary formation of Co-operative societies. When a proposed co-operative society is to be commenced, Chapter II of the Act deals with mandatory requirements that have to be complied with by the promoters of the society under the provisions of the Act. Section 4 of the Act reads as under:

"4. Societies which may be registered.-Subject to the provisions of this Act, a Co-operative Society which has as its own objects the promotion of the economic interests or general welfare of its members, or of the public, in accordance with co-operative principles, or a co-operative Society established with the object of facilitating the operations of such a society, may be registered under this Act."

Section 6 deals with application for registration of co-operative societies while Section 7 deals with Registration

and Registration Certificate is issued under Section 8 of the Act. A reading of Section 4 of the Act would indicate that when a co-operative society is to be registered, then it is necessary that the said proposed society shall be economically sound and that the registration of the proposed society would not have any adverse effect on development of co-operative movement. The emphasis here is on the proposed society that the said society to be registered must not be economically unsound and that it must not have any adverse effect on the development of the co-operative movement. The same cannot be construed in the context of existing societies as the proviso categorically refers to these two requirements to be considered in the case of a proposed society to be registered. The manner in which the application for registration of co-operative societies is to be made is dealt with Section 6 of the Act. While Section 7 if the Act states that if the Registrar is satisfied that the application complies with the provisions of this Act, rules and the provisions of any other law for the time being in force; that the objects of the proposed society are in accordance with Section 4; that the aims of the proposed society are not inconsistent with the principles of social justice; that the proposed bye-laws are not contrary to the provisions of the Act and Rules and that the proposed society complies with the requirements of sound business and has reasonable chances of success then, the Registrar shall within a period of three months from the date of receipt of the application register the co-operative society and its bye-laws.

7. The petitioners apprehend that if any co-operative society is to be established in the vicinity then the business of the petitioner society would be adversely affected but that would be a case of injuria sine damno i.e., damage without injury, which is not justiciable. In the instant case, all that Annexure-E order dated 18/06/2018 states is to permit proposed third respondent society to collect the share capital and thereafter to make an application for registration. At this stage it cannot be visualised as to whether the proposed society would be in a position to collect the requisite share capital and thereafter make an application for registration of the society. The proposed society may be able to seek registration or for any reason it may also not be in a position to be registered as a society. But at this stage, in the absence of there being any violation nor infraction of any right of the petitioners, writ petitions on a mere apprehension cannot be entertained.

8. At this stage, there is no violation or infraction of any of those Sections or Rules. Therefore, the writ petitions being devoid of any merit are dismissed.

Petitions dismissed

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N. Krishnoji Rao S/o Late L. Narasoji Rao v Managing Director Hopcoms, Lalbagh, Bangalore, 2015 Indlaw KAR 9633; 2015 (6) KarLJ 602

Case No: Writ Petition No. 41676/2014 (S-RES)

Justice Raghvendra S. Chauhan

Head Note :

KCS Act 1959

When a case relating to legal resperesentative of deceased employee is a dispute coming under working condition and deciplinary action – dispute under sec.70 to be filed before Registrar.

The Order of the Court was as follows:

1. The petitioner has challenged the order dated 8.4.2014, whereby the petitioner has been denied the appointment on compassionate ground.

2. However, the learned counsel for the respondent has raised a preliminary objection about the maintainability of the present writ petition. According to the learned counsel, the petitioner has an alternative remedy under Section 70 of the Karnataka Co-operative Societies Act, 1959 ('the Act' for short). Therefore, if there is any dispute that has arisen between the petitioner and the Co-operative Society, he should first approach the Registrar of Co-operative Societies. Hence, according to the learned counsel for the respondent, the present petition is not maintainable.

5. According to sub-section (2) of Section 70 of the Act, in case a dispute arises between the heir or legal representations of deceased employee, including a dispute regarding the terms of employment, working condition and disciplinary action taken by the Co-operative Society, the said dispute comes within the definition of the words "constitution, management or the business of a co-operative society". Therefore, according to sub- section (1) of Section 70 of the Act, such a dispute is to be filed before the Registrar of Co-operative Societies.

6. Since the petitioner has not availed the alternative remedy as provided under Section 70 of the Act, this petition is premature. Liberty is granted to the petitioner to raise a dispute before the Registrar of Co-operative Societies.

With the said liberty, the Writ Petition is disposed of.

Petition disposed of

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B. A. Rangaraju S/o B. N. Ashwathappa v Taluk Agricultural Produce Co-operative Marketing Society Limited, Madhugiri, 2016 Indlaw KAR 1953

Case No: Writ Petition No. 42760/2015 (S-R)

Justice Raghvendra S. Chauhan

Head Note :

Clearly the petitioner has an efficacious alternate remedy available to him. Yet, the petitioner has failed to invoke the efficacious alternate remedy. Instead, the petitioner, at the first instance, has approached this court in its writ jurisdiction.

The Order of the Court was as follows:

2. Briefly the facts of the case are that on 01.07.1971 the petitioner was appointed as a Sales Clerk with the Taluk Agricultural Marketing Co-operative Society Limited ('Co-operative Society' for short). On 01.09.2006, he was appointed as the Secretary of the Co-operative Society. As a Secretary, the petitioner took the charge from one G.Venkatesh. According to the petitioner, Mr.Venkatesh did not hand over the bill pertaining to B.C.M.Hostel, Madhugiri, for a sum of Rs.1,10,840/-. The petitioner further alleges that Mr.Venkatesh had suppressed the same and had not accounted for the same to the Co-operative Society. During his tenure as the Secretary, the petitioner had fallen ill and was unable to discharge his duties as Secretary for four months.

Therefore, the petitioner submitted a resignation letter and the same was accepted by the Co-operative Society; he was relieved from his duties on 30.06.2010. On 19.07.2010, the petitioner had submitted a representation to the President of the Co-operative Society requesting for the arrears of salary, gratuity and earned leave amount, totaling Rs.1,51,523/-, to be paid to him. Since the said representation did not elicit any response, on 16/17.09.2010 and on 26.12.2011, the petitioner again submitted representations before the President of the Co-operative Society. Eventually, the petitioner gave an application on 04.09.2014 to the Deputy Director of Co-operative Society for payment of salary, gratuity and earned leave amount. In response to the said representation, the Deputy Director directed the Co-operative Society to pay the arrears of salary for Sixteen and a Half months, to pay the gratuity and to pay the earned leave amount not exceeding 300 days by the order dated 30.09.2014. Instead of acting on the direction issued by the Deputy Director, the respondent Co-operative Society issued a notice dated 21.10.2014 to the petitioner, informing the petitioner that he was required to collect the billing amount of Rs.1,10,840/- from the B.C.M. Hostel. Having received the said notice, the petitioner sent a notice to the respondent Co-operative Society, again insisting that he should be paid the arrears of salary, gratuity and earned leave amount by his legal notice dated 05.06.2015. Since even the legal notice has not brought about any response from the respondent, the present petition has been filed before this court.

3. Section 70 of the Karnataka Co-operative Societies Act, 1959, clearly stipulates that if there is any dispute between the constitution, management or business of the co-operative society, then the dispute should be

referred to the Registrar for his/her decision. Admittedly, there is a dispute which has cropped up between the petitioner, and the co-operative society both with regard to the notice dated 21.10.2014, and with regard to the payment of arrears of salary, gratuity and leave encashment. Thus, clearly the petitioner has an efficacious alternate remedy available to him. Yet, the petitioner has failed to invoke the efficacious alternate remedy. Instead, the petitioner, at the first instance, has approached this court in its writ jurisdiction.

4. Needless to say, once an efficacious remedy exists, the writ jurisdiction cannot be invoked. Therefore, it is hereby dismissed as not maintainable.

Petition dismissed

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Gulbarga - Bidar Co-operative Milk Producers' Union Limited, Represented by its Managing Director Dr. Bukka Mallikarjun v Manikappa S. S/o Adivappa and others, 2016 Indlaw KAR 5223

Case No: Writ Petition No. 200312/2016 (CS-RES)

Justice L. Narayana Swamy

Head Note :

KCS Act 1959

Even if the matter is remanded now, it will not be an end, even if time frame is fixed. No person shall complete the adjudication with the time frame and cannot be directed not to prefer in appeal and also not to approach competent court, thereby it will only prolong further. The prayer for remand may not be appropriate at the stage – the appellate tribunal has passed a reasoned order and has come to correct conclusion that dismissal order is unsustainable in law – petition dismissed

The Order of the Court was as follows:

1. The petitioner states that the first respondent was his employee and while he was in service, he was charged for an offence punishable under the provisions of Subsidiary Rules, 2001 for the fraudulent dishonest act, causing financial loss to the petitioner Union. It was the case of the petitioner that the first respondent misused his authority and unjustly enriched himself at the cost of the petitioner Cooperative Union. The Enquiry Officer was appointed and after due deliberation, the Enquiry Officer held that the charges leveled against the first respondent were proved. The order of the Enquiry Officer was challenged before the 2nd Respondent Joint Registrar of Cooperative Societies and the second respondent by the order dated 31.5.2008 dismissed the appeal of the first respondent, against which the first respondent preferred an appeal before the Karnataka Appellate Tribunal in Appeal No.419/2008. The Appellate Tribunal by its order dated 7.3.2011 allowed the appeal. The said order was challenged before the High Court in W P No.83216/2011 (CS) by the petitioner and the said writ petition was allowed on 5.2.2005 and the order of the Tribunal has been set aside and remitted for fresh consideration. After reconsideration, the Tribunal has allowed the appeal, by its order dated 31.7.2015, set aside the order passed by the Joint Registrar of Coop. Societies dated 31.5.2008 in Dispute No.149/2007-

08 and further the dismissal order passed by the first respondent, the petitioner herein, has been quashed and directed to reinstate the employee into service of the Milk Union immediately with all consequential financial and service benefits and back-wages. This order is challenged by the petitioner in this writ petition.

2. The grounds raised by the petitioner are that the order of the Tribunal is an error of law and fact and it is required to be quashed. The finding of the Tribunal that the enquiry proceedings of the Enquiry Officer, suffer from procedural and fundamental irregularity, the Tribunal further held that charges framed were vague and the documents that have been produced from Ex.P1 to P1(p) in the domestic enquiry have not been spoken to by any witness of the petitioner and the written argument filed by the Presenting Officer was not made available thereby vitiates the proceedings is not supported by material to show prejudice caused to the employee and it is his further submission that the respondent Delinquent Employee has remained absent on three occasions and in that period the Presenting Officer marked the documents Ex.P1 to P1(p) and since for no fault, he submitted to the Enquiry officer that he had no witnesses to examine. That itself has been taken as if the petitioner has committed a grave error and held against the petitioner. It is illegal and error committed by the Tribunal. Accordingly, the order of the Tribunal is to be quashed.

9. The Disciplinary authority appoints an enquiry officer for giving his finding. It is the duty of the officer or the authority to prove each and every allegations made against the delinquent. The charges made against the first respondent is that he has committed an offence along with other two officers by illegally cutting and removing and selling trees and enriching himself and unbecoming of an employee of the Union. On the basis of the very charges, Surcharge Proceedings were initiated against the first respondent under Section 69 of the Act and also criminal case was filed, thereby he was subjected to grave injustice as the same cahrges ere there before the authorities, surcharge proceedings, criminal case and departmental enquiry. In the departmental enquiry, the Presenting Officer marked the documents marked without examination of witnesses. On the basis of these charges, case of the prosecution that the first respondent has committed act of cutting and removing trees illegally and enriched himself, it is burden on him by marking documents and leading evidence. On the other hand, he submits that he has no documents to mark and no person to be examined. It is a well settled position in law, even if the delinquent official remains absent despite of notice duly served, it will not dispense the employer from proving its own case. Whether the delinquent official appears or not, it is the duty of the disciplinary authority or the appointing authority to prove its case by adducing evidence and marking documents. The documents, which are marked before the Enquiry Officer, have to be examined by adducing evidence on behalf of the prosecution. No matter, the delinquent chosen not to examine witness or remained absent it is for him but later on he cannot take that defence for not providing opportunity in the matter. But contrary to the said position of law, the petitioner has not examined any witness and not marked documents through any witness, but only marked the documents when the delinquent was absent, that means to say they have not proved their case by examining any witness.

10. The submission of the petitioner that since both the parties not chosen to adduce any evidence, matter has to be remanded to the competent authority to enquire into. In support of his submission, the learned counsel referred the decision referred to supra, where it is held, it is appropriate to remand for fresh enquiry. I have

given anxious consideration to the submission made by the petitioner that too on the basis of the judgment referred to above. The judgment of the Supreme Court it is in respect of a given case. In the case on hand, this application is of the year 2000, charge sheet was issued in 2001 and enquiry was ended in conviction in 2007. At this length of time, I am of the view that remanding only consumes time. For some error committed on behalf of the petitioner in not examination of witnesses Ex.P1 to Ex.P1(P) it is fatal to this case. The subject matter of allegation that he has cut and removed tree worth Rs.2,18,200/-. No doubt if it is proved, the first respondent is unbecoming employee but in order to prove whether he has committed such an act almost 16 years have gone by. Even if the matter is remanded now, it will not be an end even time frame is fixed. No person shall be compelled to complete the adjudication within the time frame and cannot be directed not to prefer an appeal and also not to approach the competent court, thereby it will only prolong further.

Hence the prayer for remand may not be appropriate at this stage. Accordingly, I am not inclined to consider the said request of the petitioner.

11. The Appellate Tribunal has passed a reasoned order and has come to correct conclusion that dismissal order I unsustainable in law. This Court exercising power under Article 227 of the Constitution is not exercising as a court of appeal but only a supervisory power in a matter of this nature. In that view of the matter, the impugned order does not call for interference.

Hence the petition is rejected.

Order accordingly

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K. Jayamma W/o B. Sadananda and others v Ganapathi Urban Co-operative Bank Limited by its Managing Director Anand Rao and another, 2016 Indlaw KAR 4364; 2016 (151) FLR 1053

Case No: Writ Petition Nos. 43552-570/2011 (L-PF)

Justice Aravind Kumar

Head note:

KCS Act 1959 - Maintainability of petition - Alternate remedy Whether the HC is vested to exercise extraordinary jurisdiction u/art.226 of the Constitution.

Availability of alternate remedy per-se by itself is not a ground on which the HC can refuse to entertain writ petition u/art.226 of the Constitution. However, non availment of alternate remedy available under statute would act as a bar for the HC to exercise extraordinary jurisdiction vested u/art.226 of Constitution. Therefore, availability of alternate remedy would not bar HC to exercise extraordinary jurisdiction vested u/art.226 of the Constitution. Hence, issue regarding maintainability is hereby rejected. Petitions allowed.

Thus, impugned order would indicate that respondent no.1 has not been heard before impugned order

came to be passed. That apart, impugned order also does not indicate as to whether exemption Clause of s.16 of the Act or exclusion Clause as defined in para (2)(f) of Scheme is applicable or not. Impugned order also does not indicate as to whether this aspect has been considered by respondent no.2. Hence, impugned order of respondent no.2 cannot be sustained. Petitions allowed.

Ratio – If any authority without hearing party has passed any order then the said order cannot be maintainable in the eyes of law.

The Order of the Court was as follows:

1. Petitioners have called in question order dated 16.08.2010, Annexure-A, passed by second respondent-Organisation whereunder Enforcement Officer of second respondent - Organisation having visited the first respondent - Bank on 13.08.2010 is said to have concluded that first respondent is an "industry" having employed 23 persons as on 01.01.2006 and as such, it came to be held that first respondent - Bank is to be covered under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'E.P.F. Act' for short).

4. It is the grievance of petitioners that they are all working in first respondent - Bank for past several years and first respondent - Bank is a Co-operative Bank registered under the Karnataka Co-operative Societies Act, 1959 and is engaged in banking activities and they are being paid Basic Wages, Dearness Allowances besides other allowances like HRA, Medical Allowance, etc., including festival, house and vehicle advance as part of employment provisions. It is further contended that first respondent - Bank was not coverable under provisions of E.P.F. Act by virtue of number of employees being less than 50 and as such, respondent - Bank used to deduct an amount equivalent to provident fund contributions from their salaries each month and so also contributing an equivalent amount as employer's share of contribution and was depositing the said amount under the Karlpavruksha Deposit Scheme (KVD) in District Central Co-operative Bank (DCC), which was earning interest ranging from 8.5% to 9.5% p.a., which interest was also compounded and net yield was much higher than the declared rate of interest of DCC Bank. It is also contended that on an average the number of employees of first respondent - Bank was around 15 to 16 and with effect from 01.01.2006 the number of employees was 23. Second respondent -Establishment Officer visited first respondent - Bank during August' 2010 and on verification of records and register maintained by first respondent - Bank, has brought the establishment under coverage of E.P.F. Act and Scheme by allotting the employees code number and coverage has been extended from 01.01.2006 on the ground that Bank had employed 23 persons as on 01.01.2006.

8. Apex Court has repeatedly held that availability of alternate remedy is not a bar for exercise of jurisdiction under Article 226 of Constitution of India.

For the said proposition following judgments can be looked up:

i. (2003) 2 SCC 107 Harbanslal Sahnia And Another Vs Indian Oil Corpn. Ltd. And Others 2002 Indlaw SC 1525

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was

available to the appellants and therefore the writ petition filed by the appellants was liable to the dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. V. Registrar of Trade Marks.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non- existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

ii. (2001) 10 SCC 445 :- Shashi Gaur Vs. Nct Of Delhi And Others 2000 Indlaw SC 3012

"8. In this view of the matter, we are persuaded to take the view that under sub section (3) of section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary authority, but also against termination, otherwise except, where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the writ application in exercise of its discretion though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the court under Article 226 of the Constitution*."*

iii. AIR 1977 SC 1132: State Of U.P. And Others. Vs. M/S. Indian Hume Pipe Co. Ltd. 1977 Indlaw SC 40

"4. Lastly, it was feebly argued by Mr. Manchanda that the High Court ought to have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the U.P. Sales Tax Act*, particularly when questions of fact had to be determined. In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Article 136 of the* Constitution *to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention."*

9. In the instant case, it is noticed that writ petitioners are the employees of first respondent - Bank. Their

grievance is that even if the strength of employees in first respondent - Bank exceeds 20, as indicated under Section 1(3)(b) of the Act, even then they would fall within the definition of "excluded employee" as indicated under para 2(f) of E.P.F. Scheme. This aspect having not been considered under the impugned order, In that view of the matter, this Court is of the considered view that availability of an alternate remedy would not bar this Court to exercise extraordinary jurisdiction vested under Article 226 of Constitution of India. Hence, issue regarding maintainability raised by learned counsel appearing for second respondent is hereby rejected.

10. It is no doubt true that petitioners must have vested right under the E.P.F. Act to contend that they were required to be heard, even otherwise, impugned order would indicate that first respondent - establishment has not been heard before impugned order came to be passed. That apart, impugned order also does not indicate as to whether exemption Clause of Section 16 or exclusion Clause as defined under para 2(f) of E.P.F. Scheme is applicable or not. Impugned order also does not indicate as to whether this aspect has been considered by second respondent - Organisation. As such, on these grounds, impugned order cannot be sustained.

(iii) Matter is remitted back to second respondent - Organisation for adjudication afresh, who shall after hearing first respondent - Bank pass orders on merits and in accordance with law keeping in mind the observations made hereinabove.

(iv) Since these writ petitions are pending before this Court nearly more than 5 years, it would be appropriate to fix the date of hearing as agreed to by the learned Advocates appearing for the parties to appear before second respondent - Organisation and accordingly, date of hearing is fixed on 20.07.2016 @ 3.00 p.m.

(v) It is made clear that no fresh notice is required to be issued by second respondent - Organisation and in the event first respondent - Bank were to succeed, it would be at liberty to make an application before second respondent - Organisation for refund of amount, which has been collected and on such prayer being made, second respondent shall consider the same on merits and in accordance with law.

Ordered accordingly.

Petitions allowed

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Karthik K. S/o Late R. Kalaiselvan and others v Government of Karnataka, Department of Co-Operation, Represented by its Principal Secretary, Bangalore and others, 2016 Indlaw KAR 5219; 2016 (6) KarLJ 481

Case No: Writ Petition Nos. 36231-36233 of 2016 (CS-RES)

Justice Ashok B. Hinchigeri

Head note:

Karnataka Co-operative Societies Act, 1959, s. 29G(4) - Karnataka Co operative Societies Rules, 1960, r. 14AM(12) - Vakalathnama - Authority of law - Challenged - Whether, vakalathnama given to P,

Advocate for Respondent Society is within authority of law.

Held, s. 29G(4) of Act states that Chief Executive Officer shall sue or be sued on behalf of Co operative Society subject to general supervision and control of Board of Directors. r. 14AM(12) of Rules dealing with his powers and functions states that he shall institute, defend, conduct, compound or abandon any suit or legal proceedings by or against Society and enter into compromise or arbitration with creditors and debtors of Society with approval of Board. Secretary has power coupled with duty to defend Co operative Society in any legal proceedings is not in dispute at all. Vakalathnama given to P, Advocate for Respondent Society is within authority of law. Petitions dismissed.

Trusts & Associations - Advocates & Judges - Apperance of Senior Advocate - Challenged - Whether, Senior Advocate, J can appear for P, Advocate who represents Respondent Society.

Filing of vakalathnama by P is neither unauthorized nor illegal. No disability can be attached to Senior Counsel, J for appearing for P for Respondent Society. Petitions dismissed.

The Order of the Court was as follows:

1. The petitioners' grievance is over the Joint Registrar of Co- operative Societies accepting the vakalath of the learned counsel, Sri P.Anand for the third respondent Society, over- ruling the petitioners' objections to it.

14. He relies on the Bombay High Court's decision in the case of Oil And Natural Gas Commission vs. Offshore Enterprises Inc. reported in AIR 1993 SC 217 wherein it is held that the constituted attorney of a suitor cannot combine with his role of an advocate in the same cause simultaneously.

15. He brings to my notice the Apex Court's judgment in re.Rameshwar Prasad Goyal reported in AIR 2014 SC 850 2013 Indlaw SC 531 wherein it is re-iterated that the lawyers play an important part in the administration of justice. They are equal partners with judges in the administration of justice. The profession requires the safeguarding of high moral standards. As an officer of the Court, the overriding duty of a lawyer is to the court, the standards of his profession and to the public. He has also relied on the Division Bench decision of the Delhi High Court in the case of Deepak Khosla vs. Union Of India reported in 2010 (4) Kar.L.J.13 2010 Indlaw DEL 1965 emphasizing the importance of filing the vakalathnama. The Delhi High Court has taken judicial notice of the following defects routinely found in the vakalathnama (a) failure to mention the names of the persons executing the Vakalathnama, and leaving the relevant column blank. (b) failure to disclose the name, designation or authority of the person executing the Vakalathnama on behalf of the grantor (where the Vakalathnama is signed on behalf of a company, society or body) by either affixing a seal or by mentioning the name and designation below the signature of the executant (and failure to annex a copy of such authority with the Vakalathnama).

18. No separate order is read out on 23.06.2016. In fact, as a matter of fact, when the petitioners sought the necessary relevant documents, a copy of the order, dated 23.06.2016 is not even issued to them. It is the specific case of the petitioners that the separate order is brought into existence subsequent to the writing of the order-sheet, dated 23.06.2016. He submits that the second respondent's order is not reasoned; it is cryptic. It does not consider the various materials produced by the petitioner and by the third respondent Society. In the

impugned order one hardly finds the reference to the orders, dated 7.11.2015.

27. Sri Jayakumar S.Patil, learned Senior Counsel appearing on behalf of Sri P.Anand for the respondent No.3 submits that how the authorization to engage a counsel in any proceedings is obtained is not the concern of the petitioners. He submits that the vakalath is duly executed by the Secretary of the third respondent Society. It bears the seal and signature. If the Board of Directors of the third respondent does not want the services of the said counsel, it can always change the counsel. He submits that if the Directors do not want the services of the learned advocate Sri P.Anand or anybody for that matter, they can pass a resolution to that effect. No such resolution is passed. Under Section 30 of the Advocates Act, 1961 the learned counsel Sri P.Anand has every right to represent the third respondent Society in the proceedings before the Joint Registrar of Co-operative Societies. He submits that the third respondent Society can sue or be sued through its Secretary.

36. The first question that falls for my consideration in this case is whether the vakalath filed by the learned counsel Sri P. Anand on behalf of the respondent Society before the Joint Registrar of Co-operative Societies suffers from any infirmity? The vakalath is signed by Smt. Manjula M, Secretary of the respondent Society. It also bears office seal. The vakalath is executed on 28.4.2016, two days after the commencement of the dispute proceedings (26.4.2016). It is filed on 19.5.2016. The vakalath does not suffer from any infirmity or incompleteness.

37. The next question that falls for my consideration is whether the vakalath given to Sri P. Anand is without the authority of law? Section 29-G(4) of the said Act states that the Chief Executive Officer shall sue or be sued on behalf of the Co- operative Society subject to the general supervision and control of the Board of Directors. Rule 14-AM(12) of the Karnataka Co- operative Societies Rules, 1960, dealing with his powers and functions states in sub-Rule (12) that he shall institute, defend, conduct, compound or abandon any suit or legal proceedings by or against the Society and enter into compromise or arbitration with the creditors and debtors of the Society with the approval of the Board. Thus, that the Secretary has the power coupled with the duty to defend the Co-operative Society in any legal proceedings is not in dispute at all. That the exercise of power and discharge of duties in any legal proceedings is subject to the general supervision, control and approval of the Board is also not in dispute.

38. The allied question would be whether the Board of Directors has to pass the resolution for contesting the case and for appointing the advocate. Bye-law No.56(5) of the respondent Society's Bye-laws require the Secretary to represent the Society in the Court and before the offices. But that does not mean that every time a case is filed against the Co-operative Society, the Secretary has to approach the Board of Directors for resolution and authorization. The petitioners' reliance on Bye-law Nos.55(14) and 25 does not come to their rescue in any way. Bye-law No.55(14) provides for the appointment of legal consultants on retainership basis by the Co-operative Society. Bye-law No.55(25) provides for initiating the legal proceedings or settling the dispute by the Board of Directors invoking the said powers. The Board of Directors can always pass a resolution not to contest the dispute on hand or to settle the matter. But the said Bye-laws cannot be marshalled to contend that the Secretary cannot defend the Society in the dispute on hand in the absence of any resolution by the Board of Directors. Even now also, there is no legal impediment for the Board of Directors to pass

the resolution not to contest the case or to settle the matter and further to terminate the agency or power or vakalath given to Sri P. Anand.

39. The third question that falls for my consideration is whether the Senior Advocate Sri Jayakumar S. Patil can appear for Sri P. Anand, the learned counsel who represents the respondent Society before this Court? Sri P. Anand is an advocate, who appears for the respondent Society in the proceedings before the Joint Registrar of Co-operative Societies. Obviously he is not a party before the Joint Registrar of Co- operative Societies. For examining the issue of whether the vakalath given by the Secretary of the respondent Society, Sri P.Anand is neither a proper nor a necessary party. The petitioners appear to have made him the respondent No.4 by way of abundant caution.

40. I am not persuaded to accept the submission urged on behalf of the petitioners that the Senior Advocate Sri Jayakumar S. Patil cannot appear for Sri P. Anand, as Sri P. Anand himself is a party to these writ proceedings. The filing of the vakalath by Sri P. Anand is neither unauthorized nor illegal. Therefore, no disability can be attached to the Senior Counsel, Sri Jayakumar S. Patil for appearing for Sri P. Anand for the respondent Society.

41. The last but not the least question that arises for my consideration is whether the impugned order, dated 23.6.2016 is liable to be quashed. By the impugned order, the Joint Registrar of Co-operative Society accepted the vakalath overruling the petitioners' objections thereto. My perusal of the impugned order (Annexure-J) reveals that what has weighed with him in accepting the vakalath is that the Board of Directors of the respondent Society passed the resolution in its meeting held on 7.11.2015 to contest the proceedings by justifying the cancellation of the membership of the petitioners. That the Joint Registrar's order could have been better is no ground for interfering in it, as he is neither a legal professional nor he is a judicially trained officer.

42. I am also not persuaded to accept that the separate order, dated 23.6.2016 was brought into existence subsequently for one simple reason. The order sheet, dated 23.6.2016 states that the order on the memo is read out in the open Court. The said order sheet, dated 23.6.2016 is also signed by the petitioner No.3. If separate orders on the petitioners' memo were not pronounced, the objections ought to have been raised then and there itself.

43. In the result, I dismiss these petitions. No order as to costs.

Petitions dismissed

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Abdulla A. K. S/o Kunhalli v Nanjarayapatna Vyavasaya Seva Sahakara Bank, represented by its Manager, Kodagu, 2018 Indlaw KAR 5014

Case No: Regular Second Appeal No.1315/2013 (Mon)

Head note :

KCS Act 1959 – Chief Executive

Whether, suit is maintainable without resolution by General body appointing any person to represent society as envisaged u/s. 15 of Act.

Held, reading of s. 2(a3) of Act go to show that though any employee of Cooperative Society irrespective of their designation can be called as Chief Executive but for him to be called so, it must be shown that he was discharging functions of Chief Executive Officer under Act, Rules or Byelaws. However, neither any material was placed nor evidence was led to effect that previous post of Secretary was later converted into post of Manager of plaintiff and same was subsequently redesignated as Chief Executive. In the absence of any such pleading or evidence and in present Byelaw, it appears to have still retaining its cl. 18(A)(5) of Bye law holding that Secretary alone shall sue on behalf of plaintiff, argument of Respondent that Secretary was Manager and himself has now designated as Chief Executive cannot be acceptable. Appeal allowed.

The Judgment was delivered by: H.B. Prabhakara Sastry, J.

2. The summary of the case of the plaintiff in the Trial Court was that, it is a Co-operative Society. Defendant No.1 who carries on pepper business, had taken from it a sum of Rs. 11,77,500/- by pledging pepper and inspite of repeated demands and notices, he did not repay the money due. The pepper pledged by him was brought for sale through which, only a sum of Rs. 6,28,400/- was recovered. However, the suit was filed restricting the claims to the balance amount of Rs. 5,00,000/- only. Defendant No.2 is the wife of defendant No.1. It is further alleged in the plaint that defendant No.1 in order to defraud the plaintiff has transferred his property in the name of defendant No.2, therefore, she was impleaded.

3. The case of defendant No.1, was one of the total denial. He also stated that when notice was received by him issued by the plaintiff, he approached the advocate who had not properly comprehended his instructions, but sent a reply admitting the transaction when, infact he had not borrowed any money from the plaintiff - Bank and was not due to pay any amount to it.

10. The appeal was admitted to consider the following substantials question of law:

"1. As the Bye-laws of the plaintiff Co-operative Society do not prescribe on whose name society would sue or be sued, was the suit maintainable without a resolution by the General body appointing any person to represent the society as envisaged under Sec.29G of the Karnataka Co-operative Societies Act*?*

16. For the sake of convenience, the parties would be referred to with the ranks they were holding before the

Trial Court respectively.

17. Even though the defence taken up by defendant No.1 / appellant herein in the trial Court was of total denial of the alleged suit transaction, however, both the Courts below by perusing the materials placed before it including both the oral and the documentary evidence have concurrently held that the plaintiff had proved the alleged suit transaction and that he was entitled to recover the suit claim together with interest thereupon. In view of the said concurrent finding of fact and in the absence of any substantial question of law involved in that regard, the substantial question of law was confined only regarding maintainability of the suit which was the bone of contention from the defendant side in both the Courts below. As such, learned counsel from both side in this appeal have addressed their arguments only on the aspect of maintainability of the suit.

Section 2(a-3) of KCS Act defines the Chief Executive as below:

"Chief Executive" means any employee of a co-operative society by whatever designation called and includes an official of the State Government, an employee of any other institution or co-operative society who discharges the functions of a Chief Executive under the Act, Rules or the Bye-laws;

28. A reading of the said Section go to show that though any employee of the Co-operative Society irrespective of their designation can be called as Chief Executive, but, for him to be called so, it must be shown that he was discharging the functions of a Chief Executive Officer under the Act, Rules or the Bye-laws. However, neither any material has been placed nor evidence has been led to the effect that the previous post of Secretary was later converted into the post of Manager of the plaintiff and the same was subsequently re-designated as Chief Executive. In the absence of any such pleading or evidence and in the presence of the Bye-law, it appears to have still retaining its Clause 18(A)(5) holding that the Secretary alone shall sue on behalf of the plaintiff, the argument of the learned counsel for the respondent that the Secretary was the Manager and himself has now designated as a Chief Executive cannot be acceptable. Consequently, the contention of the learned counsel for the appellant that the suit has instituted by the plaintiff, shown as being represented by its Manager was not maintainable as per the Bye-law of the plaintiff and in the absence of any resolution of the plaintiff in the General Body. As such, I answer the substantial question of law No.1 in the negative.

In view of the finding that the defendants in their written statement itself has taken a specific contention that the suit was not maintainable, since the representation of the plaintiff through its Manager was bad and he had no authority to institute the suit, but, both the Courts below have given a finding holding that the suit was maintainable, and those findings, since have found to be erroneous finding, the suit has to be held as not maintainable.

Consequently, the judgment and decree of the trial Court decreeing the suit of the plaintiff, as well, the judgment and decree of the First Appellate Court confirming the judgment and decree of the trial Court deserves to be set-aside and the suit of the plaintiff requires to be dismissed as not maintainable.

32. Accordingly, I proceed to pass the following;

ORDER

(i) The Regular Second Appeal is allowed.

(ii) The judgment and decree dated 23.03.2013 passed by the District Judge at Madikeri in R.A.No.39/2011 is set-aside.

(iii) The judgment and decree passed by the Senior Civil Judge at Madikeri in O.S.No.99/2002 dated 15.02.2011 is also set-aside.

(iv) The suit of the plaintiff is dismissed.

(v) In the circumstances of the case, there is no order as to costs.

Appeal allowed.

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B. P. Kumaraswamy S/o P. N. Papanna and others v Bangalore, Bangalore Rural & Ramanagara District Co-Op. Central Bank Limited and others, 2015 Indlaw KAR 294; 2015 (3) KarLJ 15

Case No: W.P. Nos. 2313-2340/2015 (S-RES)

Justice B. V. Nagarathna

HeadNote :

KCS Act 195 – Service matter - qualification

Held, matters of prescription of eligibility criteria and educational qualifications for a particular post, ultimately rest with the wisdom of the recruiting agency or employer and not the Court which can sit in judgment over such matters in a petition filed u/art. 226 of the Constitution. Petitions dismissed.

The Order of the Court was as follows:

3. It is the contention of the petitioners that when they entered service in the 1st respondent - Bank they did so with qualification of S.S.L.C. or P.U.C., and at any rate, they do not have a graduate degree. But now, by the impugned eligibility criteria, which has been prescribed, to be promoted to a post in middle management cadre, graduate degree is a requisite qualification. As a result, petitioners, who are not graduates cannot meet that criterion and therefore, would not be promoted at all. It is in these circumstances, that they have assailed clause - 44A of the said Government order in so far as it concerns promotion to the posts in the middle management cadre.

8. Having heard learned counsel for the parties and on perusal of the material on record, at the outset, it is stated that since the petitioners have contended that the eligibility criteria prescribed by the respondent- authorities is arbitrary and in violation of Art. 14 of the Constitution, they are entitled in law to approach this Court. This is because they could not have sought for striking down of the eligibility criteria before the statutory authority as that authority can only decide or adjudicate on the existing criteria, but would not have the jurisdiction to strike down the criteria as being arbitrary or in violation of the Constitution. Therefore, writ petitions cannot be dismissed on the ground of there being an alternative remedy.

9. This takes me to the contention that has been urged by learned senior counsel, on the prescription of the educational qualification for the purpose of promotion to the post in the middle management cadre. One cannot loose sight of the fact that 1st respondent is a co-operative Bank and is engaged in doing business in the Banking sector, which in today's world, depends almost totally on computerization. That apart, the posts to which, petitioners have been considered as promotees are in the middle management cadre where they would be Junior Branch Managers, Cashiers, Supervisors and other such posts. The skills that are required to discharge the duties in such posts have been taken note of by the 1st respondent - Bank. Based on those skills and duties, 1st respondent has prescribed that the persons to be recruited or promoted to the said middle management cadre post must possess a graduate degree.

The object and purpose of prescribing graduate degree as a minimum educational qualification cannot be lost sight of. It may be that persons like petitioners who do not possess a graduate degree have the requisite experience to discharge their duties, but when it comes to posts in the middle management cadre, what is required is not just the experience and the skill in discharging their duties, the personality of the bank Manager / Branch Manager is an important aspect that has to be considered. One of the aspects to ensure that an able person heads a branch or discharges the duties of the middle management cadre is based on educational qualification. One cannot doubt the fact that a person, who has a University Degree or has passed through University has a totally different outlook towards life and personality as compared to a person, who does not have University education.

That is the object with which the 1st respondent has prescribed a degree from recognized University as a minimum qualification.

10. In that view of the matter, it cannot be held that the prescription of a degree from a University does not have a bearing on the posts to which promotions have to be made or as to the nature of duties that have to be discharged. Consequently, a person who occupies the position in the middle management cadre must be sufficiently educated and therefore, the 1st respondent - Bank has thought that a degree from a recognized University is a basic qualification. This Court cannot sit in judgment over what has been prescribed by the 1st respondent - Bank in its wisdom.

In fact, there are innumerable decisions of the Hon'ble Supreme Court, wherein it has been held that in matters of prescription of eligibility criteria and educational qualifications for a particular post, they must ultimately rest with the wisdom of the recruiting agency or employer and not the Court which can sit in judgment over such matters in a petition filed u/art. 226 of the Constitution. In this context, reliance could be placed on a decision of the Hon'ble Supreme Court in (2011) 9 SCC 645 (Chandigarh Administration through The Director, Public Instructions (Colleges), Chandigarh v. Usha Kheterpal Waie and Others 2011 Indlaw SC 617), wherein it has been held as follows:-

"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties

attached to the post and are not violative of any provision of Constitution, statute and Rules. [J. Ranga Swamy v. Govt. of A.P. - (1990) 1 SCC 288 1989 Indlaw SC 352 *and P.U. Joshi v. Accountant General - (2003) 2 SCC 632* 2002 Indlaw SC 1524*]. In the absence of any rules, u/art. 309 or Statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable."*

11. For the aforesaid reasons, it can also be held that a degree in Commerce or Accountancy or Statistics is not a necessity for discharging the duties in the middle management cadre. Ultimately, it is the person, who, has, a University education, in the eyes of the respondent - authority has sufficient education and qualification to handle such duties, which is of importance.

Therefore, even if a person has a graduate degree in any discipline apart from Commerce, Accountancy or Statistics, it does not matter when it is to do with discharge of duties as Branch Manager. After all such person would have acquired experience by working in the Bank for several years prior to promotion, but when it comes to handling of duties as in the middle management cadre respondent-Bank has prescribed graduate degree from a recognized University, which cannot be termed as an over prescription or a criterion which cannot be met by the petitioner - employees.

12. In that view of the matter, educational qualification prescribed by 1st respondent cannot be found fault with. I do not find any infirmity in clause 44A of the policy order or Rules dated 05.09.2012. There is no merit in these writ petitions.

13. Writ petitions are dismissed.

Petitions dismissed

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Gangotri D/o Vijaykumar and others v State of Karnataka, Department of Co-Operation, Bangalore, by its Secretary and another, 2015 Indlaw KAR 2175; 2015 (1) KarLJ 386

Case No: W.Ps. No. 205991 to 205993 of 2014 (S-Res)

Justice L. Narayana Swamy

Head Note :

Karnataka public employement (Reservation in appointment of Hydrabad Karnataka Region) order 2013 – applicability – the co-operative society not being a state, the resanction not applicable.

The petition is to be rejected only on the ground that the notification was issued prior to the government notification dated 16.11.2013 – accordingly rejected.

The Order of the Court was as follows:

1. The petitioners have submitted their applications in response to the Notification Annexure-D dated 3rd August 2012 as per Annexure-D for considering their claim in reservation category for the posts of FDA, SDA

etc. The learned counsel appearing for the petitioners submits that all the petitioners are eligible and qualified for consideration to the said posts. The Notification has been challenged with reference to notification called the Karnataka Public Employment (Reservation in appointment for Hyderabad-Karnataka Region) Order, 2013 dated 16th November 2013 issued by Government of Karnataka which states that reservations have to be made as per the said Order only. On coming into force of the said notification, the respondents should have issued necessary orders for classification and reservation of posts for the purpose of Art. 371(J) of the Constitution of India. To fortify his submission, the learned counsel referred to S. 3 of the Act, which, according to him, contemplates that all the process of selection to be intercepted by virtue of Government Order dated 16th November 2013. He also submits that this order has got overriding effect on all the Acts, Rules, Regulations, by-laws, etc.

2. Per contra, the learned Counsel for the respondent submits to dismiss these petitions. He submits that the Notification dated 16th November 2013 is applicable only to the Civil Services or Civil Posts under the State Government in the Hyderabad-Karnataka Region or in Local Authority or Body or Organisation under the control of the State Government in that region. He further submits that the Society is registered under the Co-operative Societies Act and is not being controlled by the State Government and the posts against which notification is issued are not civil posts.

3. The learned Government Advocate though supports submissions made on behalf of the Society, further submits that the Society is also controlled by the Government and the benefit of Notification dated 16th November 2013 is applicable to the said post also.

4. Heard the learned counsel for the parties. The petition is to be rejected only on the ground that the Notification was issued prior to the Government Notification dated 16th November 2013. The Order Annexure-G is prospective in nature and the process of selection initiated or instituted was pursuant to the said Notification and shall not be an intercepted process of selection as per Notification Annexure-D dated 3rd August 2012 and as on that date Notification dated 16th November 2013 was not in existence. Under these circumstances, the Notification will have to proceed and complete its process of selection on the ground that retrospective application of the Government notification dated 16th November 2013 is not made applicable to the Notification dated 3rd August 2012. Accordingly petition stands rejected.

Order accordingly

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P. S. Guruprasad S/o Late P. K. Shankarnarayana Rao v Joint Registrar of Co-Operative Societies (U/R441), Arbitration Court Karnataka State Co-Operative Urban Bank Federation, Bangalore and another, 2015 Indlaw KAR 2177; 2015 (1) KarLJ 415

Case No: Writ Appeal No. 2200/2013 (S-Res)

JJ K. L. Manjunath & S. Sujatha

Head Note :

KCS Act 1959 – Service matter.

It is not a dispute that has per service regulations, the appellant is receiving subsistence allowance of 50% - this court can not hold that an error is commited by the single judge in reducing the subsistence allowance from 90% to 50%.

The Judgment was delivered by K. L. Manjunath, J.

3. The undisputed facts in this appeal are as hereunder:

The appellant was appointed as a Secretary in the 2nd respondent - bank in the year 1987. Since 23.10.2007 he is under suspension on the charges of misuse of funds and misappropriation. Challenging the order of suspension, the appellant raised a dispute u/s. 70 of the Karnataka Co-operative Societies Act which application came to be rejected by the concerned authority on 11.11.2008 against which the appellant filed an appeal before the Karnataka Appellate Tribunal, which appeal came to be allowed on 30.06.2011 remanding the matter to the Joint Registrar of Co-operative Societies who had dismissed the dispute. When the application was filed u/s. 71(3) of the Karnataka Co-operative Societies Act to revoke the order of suspension and to pay full salary as subsistence allowance till the disciplinary proceedings are concluded, the same came to be allowed. Therefore, the bank filed a Writ Petition in W.P.No.2198/13 contending that the order passed by the 1st respondent in directing the bank to pay 90% salary as subsistence allowance is erroneous to service conditions of the bank.

4. Learned Single Judge having examined the legal position, came to the conclusion that as per the service rules of the Grain Merchant Bank Co-operative Bank Limited, if an employee is kept under suspension, he is entitled to subsistence allowance equal to 50% of his salary or at such rate as is fixed by the Board from time to time. Accordingly, came to the conclusion that 90% of subsistence allowance allowed by the 1st respondent which is confirmed by the Karnataka Appellate Tribunal was erroneous and accordingly, writ petition came to be allowed. Challenging the same, the present appeal is filed.

5. Learned counsel for the appellant submits that the learned Single Judge has committed an error in not considering the hardship that is caused to the appellant in reducing the subsistence allowance from 90% to 50% since the disciplinary proceedings is being dragged on from 2007. Therefore, he submits that the learned Single Judge has committed an error and requests this Court to allow the appeal.

6. Having heard the counsel for the appellant, the only point to be considered in this appeal is, "Whether the learned Single Judge has committed an error in reducing the subsistence allowance as ordered by the 1st respondent"?

7. It is not in dispute that the appellant being an employee of the 2nd respondent - bank, is bound by the service regulations of the bank. The service regulations are not challenged by the appellant before any authority as ultra vires. It is also not in dispute as per the service regulations the appellant is receiving subsistence allowance of 50%. If it is so, in this background, if the learned Single Judge has allowed the writ petition and set-aside the order of the 1st respondent, this Court cannot hold that an error is committed by the learned Single Judge in reducing the subsistence allowance from 90% to 50%.

8. Accordingly, appeal is dismissed.

Appeal dismissed

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Bangalore Urban Bangalore Rural and Ramanagara District Cooperative Milk Producers Socieities Union Limited, represented by its Managing Director, Bangalore v Gangamma W/o Late Thippanna and others, *2016 Indlaw KAR 6044*

Case No: W. P. No. 48094/2011 (GM-RES)

Justice A.S. Bopanna

Head Note :

The very nature of the prayer therein relating to the entry of the date of birth was for the purpose of protecting the employment of the 2nd respondent herein with the petitioner by claiming a right to continue in service with the 2nd respondent. If that be the position, when an entry for the date of birth was being sought at the fag end of the service, petitioner herein as well as the 2nd respondent should have been parties to the proceedings in C.Mis.No.50/2011.

The Order of the Court was as follows

2. The 2nd respondent was employed in the petitioner - Cooperative society as dairy operator Grade-II. His date of birth had been recorded as 30.12.1951 in the service records. At the point when the 2nd respondent was to attain the age of superannuation, he made a request to the petitioner to correct his date of birth in the service records as 30.12.1961 and continue him in service based on the said date till he attains the age of superannuation. Petitioner herein issued the endorsement dated 11.01.2011 as at Annexure-C declining the request of the petitioner. Subsequent thereto, 1st respondent herein who is the mother of the 2nd respondent filed a petition in C.Mis.No.50/2011 under Section 13(3) of the Karnataka Birth and Death Registration Act, 1969 seeking a direction to the Tahsildar who was arrayed as respondent to the said petition to enter the date of birth of 2nd respondent herein as 30.12.1961 in the register and issue the birth certificate. The respondent therein remained ex-parte.

3. The Court below after considering the contentions as put forth by the petitioner before it, namely, 1st respondent herein has allowed the petition and directed the Tahsildar to enter the date of birth of 2nd respondent herein as 30.12.1961. Based on such birth certificate being issued in favour of 2nd respondent, the 2nd respondent on producing the same before the petitioner had sought continuation in service. The order has been stayed by this Court at the first instance and the 2nd respondent in any event has been superannuated as per the original entry that had been made in the service records. Insofar as that aspect of the matter though the 2nd respondent has raised a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 that aspect need not be gone into at this juncture.

4. Issue for consideration in the instant petition is as to whether the order impugned dated 23.06.2011 at Annexure-D passed in C.Mis.No.50/2011 would be sustainable in law.

5. As noticed, petition filed in the year 2011 by the 1st respondent, namely, mother of the 2nd respondent is for an order to enter the date of an event, which according to petitioner had occurred about 5 decades earlier. At that point in time, the 2nd respondent was employed with the petitioner herein. The very nature of the prayer therein relating to the entry of the date of birth was for the purpose of protecting the employment of the 2nd respondent herein with the petitioner by claiming a right to continue in service with the 2nd respondent. If that be the position, when an entry for the date of birth was being sought at the fag end of the service, petitioner herein as well as the 2nd respondent should have been parties to the proceedings in C.Mis.No.50/2011. This aspect of the matter need not be adverted in detail since such consideration has already been made by this Court in the case of Muniyamma And Others Vs. Devegowda And Others - ILR 2013 KAR 4703. If that be the position when the order impugned dated 23.06.2011 is passed without providing an opportunity to the petitioner herein by impleading them as party, such order would not be sustainable and the consequent birth certificate dated 19.07.2011 issued also would not be sustainable.

6. Accordingly, the order dated 23.06.2011 at Annexure-D and the birth certificate dated 19.07.2011 at Annexure-E stand quashed. However, since this Court has taken note that the order impugned would not be sustainable since no opportunity was available to the petitioner, if the respondents 1 and 2 at this point in time are still interested in prosecuting the matter before the Court below, it would be open for them to file an application seeking that C.Mis.50/2011 be restored and continued based on the order passed by this Court. To the said petition, only if the petitioner herein is impleaded as party, the Court below shall take note of the same, issue notice to the petitioner herein, provide opportunity and thereafter pass fresh order in accordance with law.

In terms of the above, petition stands disposed of.

Petition disposed of

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Brahmanath Credit Soudharda Sahakari Niyamit Limited, Reported by its Chairman, Belgaum v Joint Registrar of Co-operative Societies, Belgaum and another, 2016 Indlaw KAR 233

Case No: W. P. Nos. 107995/2014, 108905/2014 (S-RES), C/W W. P. No. 108619/2014 (S-RES), In W. P. No. 108619/2014

Justice B. S. Patil

Head Note :

Karnataka Souharada Act 1997 – KCS Act 1959 – sec.70

An employee cannot claim that he is entitled for payment of back wages and other consequential benefits – the consequential benefits will fallow the final decision in fresh enquiry. If the fresh enquiry goes in favour of the employee then also necessary order would be passed with regard to the entitlement for back wages and the extent of the entitlement of back wages – the employee cannot proceeds to recover back wages from the society by initiating execution proceedings. The execution proceedings initiated are wholly misconceived – petition dismissed

The Order of the Court was as follows:

2. Mr. Sunil Jayakumar Makannavar was working as the Secretary of the Sahakari Niyamitha Ltd. On the allegations of misappropriation of funds of the Society, an inquiry was initiated against him. The Inquiry Officer recorded findings holding that the charges were proved. Based on the report of the Inquiry Officer, the Disciplinary Authority dismissed the employee from service vide resolution dated 31.03.1995 passed by the Society. A dispute was raised by the employee under Section 70 of the Karnataka Co-operative Societies Act, 1959. The Assistant Registrar of Co-operative Societies passed an order dated 28.10.2004 dismissing the dispute and holding that the order of dismissal was in accordance with law. Aggrieved by the said order, the employee approached the Karnataka Appellate Tribunal. The Karnataka Appellate Tribunal has come to the conclusion that the Inquiry Officer did not provide a fair and reasonable opportunity of hearing to the delinquent employee, and therefore, the findings recorded by him were vitiated. Accordingly, the Tribunal has set aside the order passed by the Assistant Registrar of Co-operative Societies and the findings recorded in the inquiry against the employee. The matter has been remitted for holding a fresh inquiry against the employee. After the matter was remitted for fresh inquiry, the Society has reinstated the employee and has placed him under suspension and has been proceeding with the fresh inquiry. In the meanwhile, employee has initiated execution proceedings before the Assistant Registrar of Co- operative Societies contending that he ought to have been paid back wages from the date of dismissal with all other consequential benefits along with interest. At this stage, the Society has approached this Court challenging the order passed by the Karnataka Appellate Tribunal and the proceedings initiated before the Assistant Registrar of Co- operative Societies. The employee on his part is calling in question the order passed by the Karnataka Appellate Tribunal in so far as the de-novo inquiry ordered contending that such fresh inquiry was uncalled for.

4. The findings recorded by the Karnataka Appellate Tribunal holding that delinquent was not given fair and reasonable opportunity to have his say by appearing before the Inquiry Officer is borne out from the materials on record, particularly the facts narrated in paragraph 15 of the order passed by the Tribunal. Therefore, the Tribunal has rightly set aside the findings recorded against the employee and the consequent order passed by the Assistant Registrar of Co- operative Societies and has rightly ordered for fresh inquiry by providing fresh opportunity to the employee.

However, as can be noticed, while setting aside the order passed by the Assistant Registrar of Co-operative Societies and the Inquiry Officer, the Tribunal has not directed reinstatement of the employee, nor has it ordered for his reinstatement with back wages. It has no doubt stated that the allegations made against the delinquent were serious and they required fresh inquiry.

5. The society has rightly reinstated the employee and placed him under suspension while continuing with fresh inquiry. No exception can be taken to this action of the society.

6. In the absence of any order directing payment of back wages, the employee cannot claim that he is entitled for payment of back wages and other consequential benefits. The consequential benefits will follow the final decision to be taken in the fresh inquiry. If the fresh inquiry goes in favour of the employee, then also necessary orders could be passed with regard to the entitlement for back wages and the extent of entitlement of back wages.

Therefore, the employee cannot proceed to recover the back wages from the society by initiating execution proceedings. The execution proceedings initiated are wholly misconceived. However, so far as the grievance made by the employee regarding the remand of matter for fresh inquiry to the management is concerned, I do not find any illegality.

7. Hence, the writ petition filed by the society deserves to be and is allowed to the extent stated above. In so far as the writ petition filed by the employee is concerned, the same is misconceived and is accordingly dismissed. The fresh inquiry has been rightly directed against the employee because he was deprived of a fair opportunity of hearing before the Inquiry Officer and the order of dismissal was passed on the basis of the evidence recorded in his absence and without any opportunity to cross-examine the witnesses. The management of the society is directed to conclude the inquiry, expeditiously, at any rate, within a period of one month from the date of receipt of a copy of this order.

Petition dismissed

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C. Vishwanath S/o Chikkegowda and others v State of Karnataka, Represented by Its Secretary, Department of Co-operation, M. S. Buildings, Bengaluru others, 2016 Indlaw KAR 1865

Case No: Writ Petition Nos. 2772 AND 3008-3022 of 2016 (CS-RES)

Justice Anand Byrareddy

Head Note :

However, since the present petitioners have been serving the third respondent for over two decades and some of them being in the verge of superannuation and since the services of the petitioners is very much necessary for the third respondent, which is earning huge profits, to continue its business, there was no reason for the third respondent not to have absorbed the petitioners into permanent service.

Hence, leave is granted to the petitioners to reopen the matter if there is no further action taken by the respondent - State Government.

The Order of the Court was as follows:

1. The petitioners are before this court in the following background:-

The petitioners are said to be daily wage employees serving the third respondent society. They had joined the services during the period between 1992 and 1997. The third respondent is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. The society was bifurcated whereby the marketing and processing of horticultural produce were divided under two major units namely, HOPCOMS, Bangalore and HOPCOMS, Mysore. A memorandum of understanding is said to have been drawn up and signed by the two units on 24.12.2003, regulating the manner in which they shall operate. Under the agreements, several posts which were in the parent body were transferred to the Mysore division and at that point of time, there were many employees employed on daily wage basis and serving the society through out their life and without receiving corresponding returns from the society. There were several posts available to which they could have been posted on permanent basis. Since that was not done, a writ petition was filed before this court in WP 30821/2010, seeking regularization of their services against the vacant posts. That petition having been allowed on 15.4.2011, the petitioners therein had received the benefits of the order and their services were regularized.

2. However, since the present petitioners have been serving the third respondent for over two decades and some of them being in the verge of superannuation and since the services of the petitioners is very much necessary for the third respondent, which is earning huge profits, to continue its business, there was no reason for the third respondent not to have absorbed the petitioners into permanent service.

The third respondent is attempting to secure fresh sanction for cadre strength in respect of its work force since the year 2011. However, the authorities have dragged their feet in processing the same. Inspite of repeated appeals by the petitioners, the machinery of the State Government is oblivious to the fate of the petitioners, who have remained without any just returns for the services rendered in view of they being treated as daily

wage workers and not as permanent employees on the cadre strength of the society.

4. However, it is noticed that since the State of Karnataka is made a party represented by the Secretary, Department of Co-operation, it would be a simple matter for the State of Karnataka to call upon the DPAR, to take necessary steps for the matter has been hanging fire for the past several years.

5. The learned Counsel for the petitioners would formally amend the petition to implead the DPAR, represented by its Secretary, as a party to the present petition and the State Government as well as the DPAR is directed to fix the cadre strength for the third respondent - society and thereafter the same shall be implemented.

Insofar as fixing the cadre strength is concerned, since the State Government has not chosen to address the same over several years, four weeks' time is granted to do the needful and pursuant to which, the third respondent shall implement the same with expedition.

The petitions stand disposed of with the above observation. In the event if there is non-compliance by the State Government in this regard, serious view would have to be taken by this court. Hence, leave is granted to the petitioners to reopen the matter if there is no further action taken by the respondent - State Government.

Petitions disposed of

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Gulbarga-Bidar Co-Operative Milk Producers' Union Limited, represented by its Managing Director Dr. Bukka Mallikarjun v Manikappa S. S/o Adivappa and another, 2016 Indlaw KAR 5554

Case No: Writ Appeal No. 200258/2016 (CS-RES)

JJ B.S. Patil & B.V. Nagarathna

Head note:

Service - Dismissal from service - Legality of the order – Challenged - KCS Act 1959/ Whether, order passed by Tribunal, confirmed by Single Judge suffers from any illegality.

It was rightly held by Tribunal and Single Judge there was no material placed by way of acceptable evidence to hold that charges leveled against delinquent had been proved. Thus, no illegality or error found in findings recorded by Single Judge for confirming order passed by Tribunal. Appeal partly allowed.

Even when matter was taken up before Joint Registrar by delinquent challenging dismissal order urging that there was no evidence to substantiate or prove charge, Management did not take any steps to seek permission of Joint Registrar to lead evidence. Court from remitting matter back to subject delinquent for fresh enquiry. Appeal partly allowed.

The Order of the Court was as follows:

2. Facts, briefly stated, relevant for the purpose of disposal of this appeal are that 1st respondent Manikappa

was an employee of the appellant - Union. He was charge- sheeted for the alleged misconduct of unauthorisedly cutting eucalyptus and other trees standing on the land belonging to the appellant - Union. Enquiry Officer was appointed by the Disciplinary Authority to conduct enquiry into the said charges. The Presenting Officer produced 15 documents and got them marked. No evidence was led in support of charge framed or in proof of the documents produced and marked. The delinquent employee examined himself and produced 10 documents. His defence was that on oral directions issued by his superior officers including the then Managing Director of the Milk Producers' Union he had cut and removed eucalyptus trees so as to bring the land under cultivation. He further contended that certain amount was released for incurring expenditure to cut and remove the trees. According to him he remitted the proceeds of the eucalyptus trees after they were sold to the account of the Union.

11. We have given our anxious consideration to the contentions urged by the counsel for both parties. The question that falls for consideration is whether the order passed by the Tribunal confirmed by the learned Single Judge suffers from any illegality warranting our interference in this writ appeal. The undisputed fact is that the Management did not lead any evidence by examining any witness in support of the charges framed except producing 15 documents through the Presenting Officer and getting them marked. No other steps were taken to prove the charges. Mere production and marking of documents will not prove the contents of the documents. None of the documents produced were admitted by the delinquent. On the other hand, the delinquent has denied the documents. He has led his evidence contending that at the instance of his superior officers, namely, one Sri Abdul Rafeeq, Agricultural Extension Officer and Sri Narayanaswamy the then Managing Director he had undertaken the exercise of cutting eucalyptus trees standing on the land belonging to the Milk Federation Union so as to being the land under cultivation for the benefit of the Union. He sought to rely upon a statement given by the said Abdul Rafeeq in the criminal proceeding wherein he allegedly stated that there was indeed such a direction issued to the delinquent employee to remove the standing trees.

12. Be that as it may, fact remains that there was no evidence on the part of the Management except producing and marking certain documents that too from the Presenting Officer himself. There was absolutely no opportunity for the delinquent to cross-examine anybody let alone the author of the documents to find out their veracity and to hold that the said documents were proved by the Management. On the other hand, the delinquent employee adduced evidence in support of his defence that he was not guilty of the alleged offence. In such circumstances, as rightly held by the Tribunal and the learned Single Judge there was no material whatsoever placed by way of acceptable evidence to hold that the charges leveled against the delinquent had been proved. Hence, we do not find any illegality or error in the findings recorded by the learned Single Judge in this regard confirming the order passed by the Tribunal.

14. Even when the matter was taken up before the Joint Registrar by the delinquent challenging the dismissal order specifically urging that there was no evidence to substantiate or prove the charge, the Management did not take any steps to seek permission of the Joint Registrar to lead evidence. As rightly held by the learned Single Judge after lapse of 16 years, we do not find it either just or appropriate to vex the petitioner with a fresh enquiry particularly when the Management itself did not take any step to prove the allegations made against the delinquent employee. The aforesaid facts and circumstances dissuade the Court from remitting the matter back to subject the delinquent for fresh enquiry. We have to also notice

here that from the date of dismissal on 16.06.2007 the delinquent has been out of employment till today though he succeeded before the Tribunal twice and also before the learned Single Judge. Therefore, the contention urged by the counsel for the petitioner that this is a fit case where the matter has to be remitted for fresh enquiry does not commend for acceptance.

15. In so far as grant of financial benefits by way of backwages to the delinquent employee, on careful consideration of the entire materials on record we find that the 1st respondent has been out of employment for nearly 9 years. He cannot be granted entire backwages for the said period during which he was out of employment. Particularly, keeping in mind the implications it will have on the appellant - Union and the facts and circumstances of the present case, we are of the view that ends of justice would be met if 40% of backwages are allowed. With regard to other consequential benefits we are persuaded to confirm the order passed by the learned Single Judge. Accordingly, we pass the following order:

The writ appeal is partly allowed.

Order passed by the Tribunal confirmed by the learned Single Judge stands modified to the extent that 1st respondent shall be entitled for 40% of backwages with all consequential benefits. In all other respects the orders under challenge are left undisturbed.

Appellant is directed to reinstate the respondent within 60 days from the date of receipt of a copy of this order.

In view of disposal of the main appeal, I.A.I/2016 does not survive for consideration.

Appeal partly allowed

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Janatha Bazar by its General Manager v State of Karnataka by its Secretary Department of Co-Operation, Bangalore and others, 2016 Indlaw KAR 5242

Case No: Writ Petition No. 23179 of 2015 (CS-RES)

Justice Ashok B. Hinchigeri

Head Note :

KCS Act 1959

The Deputy Registrar of co-operative societies and KAT have arrived at judicious conclusion after considering all the material placed on their record. The interference in the concurrent orders is not warranted and the court up held the order but made an observation that the ends of justice would be met by modifying the orders in so far as if pertain to the payment of back wages and consequential benefits. Subject to the condition that the dismissed employee will file an affidavit to the effect that he was not gainfully employed and the burden to prove that he was gainfully employed shifts to the management - petition partly allowed

The Order of the Court was as follows:

2. The facts of the case in brief are that the respondent No.4 was working as the Manager of the petitioner Society. He was dismissed from service on 25.06.2001. On the enquiry officer holding the respondent No.4 guilty of three out of four charges levelled against him, the respondent No.4 challenged the said dismissal order by raising the dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 before the arbitrator. The arbitrator, by his order, dated 12.06.2006 set aside the dismissal order, directed the fourth respondent's reinstatement into the services of the petitioner Society with all the consequential benefits. Aggrieved by the said order, the petitioner Society filed Appeal No.109/2007 before the K.A.T. The K.A.T. dismissed the appeal and upheld the order of the Deputy Registrar of Co-Operative Societies. Aggrieved by the two concurrent orders, this petition is filed by the said Co- operative Society.

13. I find the K.A.T's order to be a reasoned and well considered order. As rightly noticed by the K.A.T., the byelaw Nos. 26(a) and 28(b) provide for the sending of the notice under the Certificate of Posting. Even assuming that the sending of the election meeting notice under the Certificate of Posting is impermissible, it is not known why the General Manager did not take any corrective steps. Admittedly, he was on leave only for half-a-day. On the next day of his resuming his duties, he ought to have taken the rectificatory steps, if necessary. Neither he has taken the rectificatory steps nor the petitioner Management has taken any action against the General Manager.

14. There is no specific charge that the respondent No.4 has favoured a particular member or faction of the Management or that he has misappropriated the amounts. The enquiry officer has held that the charge No.4 is not proved at all. Even if charge Nos.1, 2 and 3 are held against the respondent No.4, it cannot be said that he has caused any loss to the petitioner Society.

15. Both the authorities - Deputy Registrar of Co-operative Societies and the K.A.T. have arrived at judicious conclusions after considering all the materials placed on their record. The interference in the concurrent orders is not warranted, merely because it is possible to take a different view. I therefore uphold the orders passed by the two authorities insofar as they pertain to the setting aside of the dismissal order and directing the fourth respondent's reinstatement into the services of the petitioner.

16. However, that part of the impugned orders granting and confirming the payment of full back wages and consequential benefits requires modification in the light of the Apex Court's judgment in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and others reported In (2013) 10 SCC 324 2013 Indlaw SC 579.

18. The ends of justice would be met by my modifying the impugned orders insofar as they pertain to the payment of back wages and consequential benefits as follows:-

(i) The respondent No.4 shall file an affidavit to the effect that he was not gainfully employed from the date of his dismissal till the date of his reinstatement. If he does not file such an affidavit within ten days from today, he shall not be entitled to the back wages.

(ii) If he files such an affidavit, it is thereafter that the petitioner shall make the necessary enquiries and satisfy itself as to whether or not the respondent No.4 was gainfully employed. If he was gainfully employed during

the period in question or any part thereof, the respondent No.4 is not entitled to the back wages for the said period or for any part thereof. The respondent No.4 is entitled to the back wages for the period for which he was not gainfully employed. As held by the Apex Court in the case of Deepali Gundu Surwase 2013 Indlaw SC 579 (supra), the onus of proving that he is not gainfully employed cannot be placed on the employee, as the same amounts to compelling the party to prove the negative, which is not permissible. Once, he files the affidavit that he was not gainfully employed, the burden of showing that he was gainfully employed shifts on the employer.

19. This petition is allowed in part, but to the extent indicated hereinabove. No order as to costs.

Petition partly allowed

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Kaiga Project Employees Consumers Co-operative Society Limited, by its Secretary K. S. Umesh S/o Late K. S. Shrikantaiah v Assistant Registrar of Co-operative Societies, Karwar, Uttara Kannada and another, 2016 Indlaw KAR 6570

Case No: Writ Petition No. 63144/2009 (S-DIS)

Justice Ashok B. Hinchigeri

Head Note

KCS Act 1959 - Service - Dismissal from Service - Whether, dismissal order was sustainable and Tribunal was justified in awarding full back wages to respondent No.2.

Charge-sheet should specifically set out all charges which the delinquent is called upon to show-cause against and should also state all relevant particulars and details without which he cannot defend himself. If respondent No.2 has committed any misconduct, she should not go scot free. She has to be brought to book strictly in the manner known to law. Court expressly reserves liberty to the petitioner to issue articles of charges, list of witnesses, list of documents and imputation of misconduct and hold enquiry into misconduct alleged against respondent No.2. Respondent No.2 cannot be fastened with burden to prove that she was not gainfully employed, it amounts to calling upon party to prove negative, which is not possible. No illegality with order passed by Tribunal so far as directions for payment of backwages are concerned. Petition disposed of.

The Order of the Court was as follows:

1. The petitioner is a Co-operative Society and the respondent No.2 was its Junior Manager (Accounts). Alleging that the respondent No.2 has misappropriated certain amounts, committed the breach of trust, dereliction of duty on his part, the petitioner dismissed the respondent No.2 from its service vide its order, dated 23.04.2002 (Annexure-E). Aggrieved by the said dismissal order, the respondent No.2 raised the dispute before the first respondent Assistant Registrar of Co-operative Societies invoking Section 70 of the Karnataka Co-operative Societies Act, 1959. The first respondent by his order, dated 22.01.2005 (Annexure-A) set aside

the dismissal order directing that the period from the dismissal order till the date of his reinstatement be treated as the one spent on duty and directing the payment of backwages. The first respondent's order was challenged by the petitioner by filing Appeal No.212/2005 before the Karnataka Appellate Tribunal, Bengaluru ('K.A.T.' for short). The K.A.T. by its judgment, dated 30.01.2009 (Annexure-B) dismissed the appeal. On suffering two concurrent orders, this petition is filed by the petitioner Co-operative Society.

8. Merely making a bundle of loaded allegations does not enable the delinquent to defend himself/herself properly in the enquiry proceedings. The articles of charges have to be precise. In saying so, I am fortified by the Division Bench's judgment in the case of G. V. Aswathnarayana Vs. Central Bank Of India reported in ILR 2003 KAR 3066. Its relevant paragraphs are extracted hereinbelow.

"7. It is well settled that if a charge memo issued to a delinquent employee is defective in substantial terms, then the enquiry proceedings and the final order that may be made on the basis of such defective charge memo would be vitiated and only on that ground the penalty imposed on the delinquent is liable to be quashed. .....

8. It is trite that charge-sheet is the charter of disciplinary action. The domestic/departmental enquiry commences with the service of the charge-sheet. In other words, before proceeding with the departmental or domestic enquiry against a delinquent official, he must be informed clearly, precisely and accurately of the charges levelled against him. The charge-sheet should specifically set out all charges which the delinquent is called upon to show-cause against and should also state all relevant particulars and details without which he cannot defend himself. The object of this requirement is that the delinquent employee must know what he is charged with and have the adequate opportunity to meet the charge and to defend himself by giving a proper explanation, after knowing the nature of the offence or misconduct with which he is charged; otherwise, it will amount to his being condemned unheard. Fair hearing pre-supposes a precise and definite catalogue of charges so that the person charged may understand and effectively meet it. If the charges are imprecise and indefinite or vague or unintelligible, the person charged could not be able to understand them and defend himself effectively and in those circumstances, the subsequent enquiry would not be a fair and just enquiry. The charged official ought to be informed of the charges levelled against him as also the grounds upon which they are based. Charge of misconduct should not be vague. The charge-sheet must be specific and must set out all the necessary particulars and details irrespective of the fact whether the delinquent knows it or not; he must have told about the charges and it was not his duty to connect the charge-sheet with his alleged understanding or knowledge of the charge. .....

23. In this case, it is also relevant to notice that Regulations 6(5) (iii) requires a list of documents has to be enclosed with the charge memo itself. In this case, along with the charge memo, neither the list of witnesses nor the list of documents are enclosed."

10. The second question is whether the respondent No.1 and the KAT are justified in awarding the full backwages to the respondent No.2? To answer this question, I may usefully refer to the decision of the Hon'ble Supreme Court in the case of M/S.HINDUSTAN TIN WORKS PVT. LTD., VS. THE EMPLOYEES OF M/S. HINDUSTAN TIN WORKS PVT. LTD., AND OTHERS reported in AIR 1979 SC 75 1978 Indlaw SC 70.

"9. ..... The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved.

Ordinarily, therefore a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer."

11. The Hon'ble Supreme Court's decision in the case of DEEPALI GUNDU SURWASE VS. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA(D.ED) AND OTHERS reported in (2013) 10 SCC 324 2013 Indlaw SC 579 is also of immense value in considering the question of awarding backwages. In the said decision, the Apex Court has reiterated that the denial of backwages in cases of wrongful or illegal termination of service would amount to indirectly punishing the employee and rewarding the employer. Where the employer wants to deny backwages or test the employee's entitlement to get the consequential benefits, the employer has to plead and prove that the employee was gainfully employed during the intervening period.

12. In the light of the judgments referred to hereinabove, I modify those parts of the orders of the Assistant Registrar of Co- operative Society and of the K.A.T. insofar as they pertain to the direction for the payment of backwages. The respondent No.2 cannot be fastened with the burden to prove that she was not gainfully employed; it amounts to calling upon a party to prove the negative, which is not possible. Once the respondent No.2 denies that she was gainfully employed, the onus shifts to the petitioner Management. I am therefore directing the respondent No.2 to file an affidavit before the petitioner within two weeks from the date of the issuance of the certified copy of today's order stating that she was not gainfully employed during the period of interregnum, that is between the date of her dismissal and the date of reinstatement. Thereafter, the petitioner has to hold the summary enquiry to satisfy itself that the respondent No.2 was not gainfully employed. This enquiry shall be completed within six weeks from the date of the filing of the affidavit by the respondent No.2

13. If it is found that the respondent No.2 was gainfully employed and earning more or less similar emoluments as were being given to her by the petitioner, she is not entitled to any backwages. On the other hand, if it is found that she was not at all gainfully employed, the petitioner Management is required and directed to pay the full backwages. Further, if it is found that the respondent No.2 was gainfully employed to some extent

but her emoluments were lesser than the emoluments being given by the petitioner, her entitlement would be only to the differential amounts (her entitlement had she continued in the service of the petitioner minus the emoluments, which she has earned by gainfully employing herself during the said period).

14. On the allegation that the respondent No.2 has not turned up for work after 23 days of her reinstatement, I do not propose to deny any benefit to the respondent No.2, because there is serious dispute as to whether she has abandoned the work or whether the petitioner has refused to give the work to her. Be that as it may, it is a subsequent act and gives a separate cause of action, if any, for initiating disciplinary proceedings. It shall be open to the petitioner to initiate fresh disciplinary proceedings for the alleged subsequent unauthorised absence of the respondent No.2.

15. I do not see an iota of scope for interfering in the concurrent orders passed by the Assistant Registrar of Co-operative Societies and KAT insofar as they pertain to setting aside the dismissal order. They are modified only in so far as the directions for the payment of backwages are concerned. Further, the liberty is reserved to the petitioner to re-initiate the disciplinary proceedings in accordance with law.

16. This petition is accordingly disposed of. No order as to costs.

Petition disposed of

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Kodigehalli Milk Producers Co-Operative Societies Limited, Represented by its President Narayanappa and another v H. Govindaraju S/o Hanumaiah and others, 2016 Indlaw KAR 5281

Case No: W. P. Nos. 51756-757/2015 (S-RES)

Justice B.S. Patil

Head Note :

KCS Act 1959 – payment of subsistence of allowance

There is nothing to show on record that the secretary was officer of the society and was disentitled for claiming the subsistence allowance though he was kept under suspension – the society was not paying subsistence allowance to the secretary. The court will not express any opinion in this regard. The tribunal was right and justified in directing the society to pay subsistence allowance from the date of suspension till the date of reinstatement – petition disposed of

The Order of the Court was as follows:

1. Petitioner is a Milk Producers' Co-operative Society duly registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'). 1st respondent was appointed as Secretary of the Society during the year 1978. It was alleged against him that he had misappropriated the funds belonging to the milk producers. A resolution was passed by the Managing Committee of the Society on 17.02.2003 resolving to suspend the petitioner alleging that he was guilty of dereliction of duties.

2. Respondent-Secretary raised a dispute under Section 70 of the Act before the Assistant Registrar of Co-operative Societies in Dispute No.3/2005-06. The Assistant Registrar, after inquiry, dismissed the petition. Aggrieved by the same, respondent-employee approached the Karnataka Appellate Tribunal (for short, 'Tribunal') in Appeal No.761/2008. The Tribunal has allowed the appeal setting aside the order passed by the Assistant Registrar and the resolution passed by the Managing Committee of the Society resolving to suspend the respondent herein from service, with a direction to reinstate the petitioner into service with all consequential benefits. A further direction has been issued to the society to pay subsistence allowance for the entire period of suspension. Aggrieved by this order, the society has filed this writ petition.

3. The main contention urged by the learned Counsel for the petitioner is, that respondent-employee had been dismissed from service vide order 06.09.2007; without disclosing this fact, respondent by misleading the Tribunal had obtained the impugned order directing his reinstatement. It is urged that finding recorded by the Tribunal holding that order of suspension was not communicated to the respondent-employee is not legally sustainable. It is further urged that once the employee has been dismissed from service, question of directing payment of subsistence allowance or ordering reinstatement without going into the correctness of the order of dismissal would not arise.

7. Having heard the learned Counsel for all the parties, it emerges that though the dispute was pending right from 2005 till 17.11.2008, it was neither urged before the Assistant Registrar nor any document was produced before him by the society stating that respondent was dismissed from service on the charges of misappropriation by taking disciplinary action against him. Before the Tribunal, the matter was pending from 2008 till 16.10.2015. Petitioner-society does not whisper regarding the alleged dismissal order passed against the 1st respondent, let alone producing copy of the order of dismissal. For the first time before this Court while filing the writ petition, a document is produced at Annexure-D2 stated to be a resolution dated 06.09.2007 passed by the General Body of the society resolving to initiate civil and criminal proceedings against the respondent and to dismiss him from service. Nothing else is produced to show that pursuant to this resolution an order was passed dismissing the respondent from service nor is there anything to show that such order was communicated to the 1st respondent. Therefore, it has to be stated that there was no order passed dismissing the respondent from service and the one sought to be produced in the writ petition which is in the nature of a resolution dated 06.09.2007 cannot be construed as an order dismissing the respondent from service by way of disciplinary action taken in accordance with law.

8. Even if a mere resolution had been passed by the society and the society had chosen to keep it in its own record without acting on the basis of the said resolution by passing a separate order following the rules and principles of natural justice, then it cannot be said that the employee was dismissed from service by passing such resolution. If at all any such resolution had been indeed passed and the same had been acted upon, the society would have certainly brought it to the notice of the Assistant Registrar or of the Tribunal. Therefore, this contention urged by Counsel for the petitioner before this Court for the first time cannot be accepted.

9. In so far as the obligation of society to pay subsistence allowance during the period of suspension, facts as adverted to above, would disclose that 1st respondent has been placed under suspension without even

issuing him an order of suspension. He has been kept out of employment right from 17.02.2013 uptil now. There is no trace of any disciplinary inquiry that has been conducted against him nor was there any attempt made in that regard. It is now very strongly contended by the petitioner-Society that Secretary of the Society being an officer of the society in the absence of any provision made in the bye-laws providing for payment of subsistence allowance, he is not entitled for payment of such allowance. There is nothing on record to show the fact that Secretary was an Officer of the society or that he was disentitled from claiming any subsistence allowance though he was kept under suspension.

12. In the present case, as held above, definition of the term 'employee' under the provisions of the Act, includes all the salaried employees of the co-operative society. It even includes an officer of the State Government who for the time being has been working in the co-operative society. Therefore, for the purpose of Karnataka Payment of Subsistence Allowance Act, 1988, the respondent has to be treated as an employee and he is entitled for payment of subsistence allowance. The Tribunal has rightly taken note of the judgment of the Apex Court in the case of M.Paul Anthony vs Bharat Gold Mines Ltd. - 1999 (2) LLN 640 1999 Indlaw SC 346. In the said judgment, the Apex Court in paragraphs 29 & 30 at page 649 has held as under:

13. It is therefore clear that action of the petitioner-Society in not paying any subsistence allowance and in placing the respondent under suspension from 2003 till today, is an act which is highly illegal inhuman and deserves to be deprecated. Whether 1st respondent is guilty of causing any loss on account of his alleged acts of misappropriation is not a matter that has fallen for consideration in these proceedings. If there is any such misconduct for which 1st respondent has to be proceeded against, the Society would be at liberty to proceed against him in accordance with law. This Court will not express any opinion with regard to the same in this writ petition. Suffice to observe that the Tribunal was right and justified in directing the Society to pay subsistence allowance for the period from the date of suspension till the date of his reinstatement.

14. It transpires now that respondent has not been reinstated into service. Counsel for the petitioners submits that respondent has already attained the age of superannuation. If that is so, the Society has to pass necessary orders with regard to the date on which the respondent attained superannuation and until the said date, subsistence allowance payable to the respondent has to be calculated in terms of the provisions of the Karnataka Payment of Subsistence Allowance Act, 1988 and shall be paid to him.

15. Writ petition is disposed of in terms stated above, modifying the order passed by the Tribunal and making it clear that the amount of subsistence allowance shall be paid to the respondent within four weeks from the date of receipt of a copy of this order. Liberty is reserved to the Society to proceed in the matter of recovery of loss caused to the society, in accordance with law.

Petition disposed of

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Mahalingapur Urban Co-operative Bank Limited, Represented by its General Manager, Bagalkot v Joint Registrar (R. 441) Urban Bank Federation Cell, Hubbali and another, 2016 Indlaw KAR 547

Case No: Writ Petition No. 103667 of 2015 [S-RES]

Justice B. S. Patil

Head Note :

KCS Act 1959 – service matter – payment of full wages

The finding of the Joint Registrar was based on records made available – there is no justification of this court to interfere – however in so far as full back wages awarded for the period from 01.09.2005 till 09.08.2007 and 75% back wages awarded from 10.08.2010 are concerned, keeping in mind the financial implication on the petitioner bank and also the facts and circumstances, the order for full wages from 10.08.2007 is modified and employee is entitled to 50% back wages – petition disposed of accordingly

The Order of the Court was as follows:

1. Petitioner is Mahalingapur Urban Co- Operative Bank Ltd., and it is calling in question order passed by the Karnataka Appellate Tribunal dismissing the appeal filed by the petitioner against the order passed by the Joint Registrar, Urban Federal Cell, Hubli Division setting aside the order of dismissal passed against the respondent-employee and directing his reinstatement. The Joint Registrar has also ordered for payment of full wages w.e.f. 01. 09. 2005 till 09. 08. 2007 along with other emoluments and 75% back w.e.f. from 10. 08. 2007. The appellate Tribunal has confirmed this order.

2. Briefly stated, facts leading to the present dispute are that petitioner-Bank initiated disciplinary proceedings against the respondent- employee alleging that he was unauthorisedly absent from his duties and had showed negligence in discharging his duties; that he had misused the amount from the account of various account holders; exhibited dishonesty in the affairs of the Bank and had failed to credit interest payable to the account holders and caused loss to the Bank. An enquiry was held and the Enquiry Officer found the respondent-employee guilty of the misconduct alleged against him.

3. The report of the Enquiry Officer was placed for perusal of this Court by the learned counsel appearing for petitioner-Bank. As can be seen from the report one of the findings recorded against the respondent-employee is that he had remained unauthorisedly absent for duties with effect from 06.08.2005 without any justification and thus he had committed misconduct. It is also found against the respondent-employee that he had failed to remit the amount availed by him as loan from the Bank within the time prescribed. In order to come to this conclusion the Enquiry Officer has placed reliance on the written statement submitted by the General Manager of the Bank. The said statement has been accepted stating that delinquent employee did not cross- examine the General Manager, though he denied the charges leveled against him. The other allegations made against him have been held proved solely on the basis of the written statement given by the General Manager of the Bank

holding that as the General Manager had not been cross-examined the allegations spoken by him in the said statement had to be taken as duly proved.

4. This report of the Enquiry Officer has been accepted by the Chairman of the Bank vide his order dated 09.08.2007 and the respondent- employee has been dismissed from service. Aggrieved by this order the respondent employee raised a dispute under Section 70 of the Karnataka Co-Operative Societies Act, before the Joint Registrar.

5. The Joint Registrar allowed the appeal setting aside the order of dismissal. This was challenged before the Karnataka Appellate Tribunal by the Bank. Matter was remanded to the Joint Registrar for fresh consideration. The Joint Registrar after reconsidering the matter passed an order dated 07.10.2013 holding that on perusal of the entire documents the Enquiry Officer had dealt with four charges. At the outset he has recorded findings that there was no material found in the record to show that Enquiry Officer who had recorded the findings was appointed as an Enquiry Officer and that person who has acted as Presenting Officer was indeed appointed as Presenting Officer. He has also come to the conclusion that there was no material produced to show that person who acted as Presenting Officer was authorized to give his own evidence and that there was no list of witnesses furnished which included the name of the Presenting Officer as one of the witnesses and therefore the written statement given by him on 12. 05. 2007 could not have been made as part of evidence.

9. It is abundantly clear from the way the enquiry has been conducted against the delinquent officer that petitioner Bank has come up with a farce of an enquiry. The charges leveled against the 2nd respondent are vague. Articles of charges and imputation of charges with any clarity are not served on the 2nd respondent. There is no material to show that an Enquiry Officer was appointed to conduct the enquiry. There is nothing to show that Presenting Officer was engaged to represent the Bank in the enquiry. The Presenting Officer himself filed a written statement producing some documents. Based on the same, entire findings have been recorded.

10. It is found by the Joint Registrar that in the year 2005 itself, 2nd respondent was prevented from discharging his duties. It is true, the employee was absent from duties for 8 days for which he had submitted a representation enclosing Medical Certificate. What is the justification to refuse employment to the 2nd respondent for a so called absence from duty for 8 days is not forthcoming. He was kept out of employment from 01. 09. 2005. As already noticed above the Enquiry Officer conducted nothing but a farce of an enquiry, where fair and reasonable opportunity was not provided to the 2nd respondent. Thus, findings recorded by the Joint Registrar concurred by the Tribunal are totally based on the records and the material made available before them. There is no justification for this Court to interfere with these findings in exercise of the writ jurisdiction.

11. However, in so far as full back wages awarded for the period from 01.09.2005 till 09. 08. 2007 and 75% back wages awarded from 10. 08. 2007 are concerned, I am of the view that keeping in mind the financial implication on the petitioner-Bank and also the facts and circumstances, the order for full back wages from 10. 08. 2007 till today is modified and the employee is entitled to only 50% back wages. The 2nd respondent shall be reinstated into service forthwith and shall be entitled for payment of full salary with effect from 01. 02. 2016.

12. Accordingly, petition is disposed of.

Petition disposed of

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Mahesh S/o Shankarnarayan Hegade v State of Karnataka, Represented by its Secretary and others, 2016 Indlaw KAR 1802

Case No: Writ Petition No. 100345 of 2016 [S- RES]

Justice B.S. Patil

Head Note

Karnataka Co-operative Societies Rules,1960 – Service matter - r.18 - Age of superannuation - Amendment - Blindness of Petitioner, was employee of respondent no.3-Society - Respondent no.3-Society convened General Body Meeting and resolved to amend age of retirement of its employees by reducing it to 58 years from 60 years - Deputy Registrar rejected proposed amendment - In appeal, Joint Registrar approved amendment and ordered for its registration - Petitioner made representation for retirement at age of 60 years - Society issued endorsement rejecting request - Hence, instant Petition - Whether petitioner is governed by bye-law of respondent no.3-Society as amended.

As per r.18 of the Rules earlier, age of retirement was 58 years. During this period, when age of superannuation was 58 years, petitioner entered into service of respondent no.3-Society. R.18 of the Rules was subsequently amended enhancing age of superannuation and fixing it at 60 years, by virtue of Notification. There is no vested right in petitioner to claim that he shall retire after attaining age of 60 years only, because there was, at one stage, such a condition of service incorporated in r.18 of the Rules. Petition dismissed.

Ratio - In absence of any statutory Rule prescribing any other age of retirement, employees are bound by age of superannuation prescribed in bye-law of Society, which has been duly registered.

The Order of the Court was as follows:

1. Petitioner is the employee of respondent No.3- Sirsi Taluka Agriculture Produce Co-operative Marketing Society Limited. Respondent No.3 -Society is a Society registered under the Karnataka Co- operatives Societies Act, 1959 (for short 'the Act'). The age of retirement of the members of Co-operative Societies was earlier regulated by Rule 18 of the Karnataka Co- operative Societies Rules, 1960 (for short ' the Rules '). The said Rule provided for the age of retirement of the employees of Co-operative Societies in the State of Karnataka as 58 years. However, with effect from 17t h September 2008, the said Rule was amended enhancing the age of retirement to 60 years. By another amendment, Rule 18 has been substituted as per Notification dated 10th July 2013 with effect from 10t h July 2013. The amended Rule 18 reads as under:

2. In the result, with effect from the date of the aforesaid amendment, the Co-operative Societies have been conferred with discretion to lay down the conditions of service of their employees which includes the age of

superannuation. After this amendment, respondent No. 3-Society has convened a General Body Meeting on 21st September 2013 and resolved to amend the age of retirement of its employees by reducing it to 58 years from 60 years.

3. The proposed amendment was sent for approval of Deputy Registrar of Co-operative Societies, Karwar. The Deputy Registrar rejected the proposed amendment. Aggrieved by the same, the Society filed an appeal before the Joint Registrar. The Joint Registrar has, vide his order dated 09th March 2015, approved the amendment and ordered for its registration. Thereafter, respondent No.3 amended its bye-law in terms of the order passed by the Joint Registrar of Co- operative Societies, with effect from 29t h June 2015.

4. Petitioner along with other employees made a representation to the Society on 18th August 2015 contending inter alia that they were in service of the Society prior to the amendment and hence, were entitled to retire at the age of 60 years. The Society issued an endorsement rejecting the request, holding that the amendment, as approved by the Joint Registrar, would be effective from the date of its amendment and would regulate all the employees of the Society in service.

6. Sri. Mahantesh C.Kottursheттar, learned counsel appearing along with the learned Senior Counsel-Sri. Jayakumar S.Patil, has placed reliance on the judgment of this Court in 2005 (4) Kant.L.J. 82, in the case of SHivagouda Versus Joint Registrar Of Co-Operative Societies And Headquarters Assistant For The Commissioner For Cane Development And Director Of Sugar 2005 Indlaw KAR 448, and also on the judgment of the Apex Court in the case of BABURAM VERSUS C.C.JACOB, AIR 1999 SC 1845 1999 Indlaw SC 274, to support the contention that there cannot be retrospective operation given to such a Rule.

10. It is not in dispute that petitioner is an employee of respondent No.3-Co-operative Society. It is also not in dispute that initially, age of retirement of the employees of the Co-operative Societies in the State of Karnataka was regulated by Rule 18 of the Rules. As per this Rule, earlier, the age of retirement was 58 years. During this period, when the age of superannuation was 58 years. Petitioner entered into service of respondent No. 3-Society. Rule 18 was subsequently amended enhancing the age of superannuation and fixing it at 60 years, by virtue of the Notification dated 17t h September 2008 . This amendment was consistent with the amendment brought in respect of the age of superannuation of the Government Servants, which had also been enhanced to 60 years.

11. However, by the amendment introduced with effect from 10t h July 2013, Rule 18 was substituted, thereby leaving it to the discretion of the Co-operative Societies concerned to regulate the conditions of service of their respective employees. As a result, respondent No.3 -Society has passed a resolution in its General Body Meeting, proposing to amend the bye-law by fixing the age of superannuation to 58 years from 60 years. This amendment has been duly approved by the authorities under the Act and has come into force with effect from the date of registration of the bye- law.

12. Petitioner is going to retire on 29t h February 2016 . He is bound by the bye-law framed and his conditions of service are governed by the same. Rule 18 no longer prescribes the age of superannuation. In the absence of any statutory Rule prescribing any other age of retirement, the employees of respondent No.3 -Society are

bound by the age of superannuation prescribed in the bye-law of the Society, which has been duly registered. There is no vested right in the petitioner to claim that he shall retire after attaining the age of 60 years only, because there was, at one stage, such a condition of service incorporated in Rule 18 .

17. Likewise, in the case of BABURAM 1999 Indlaw SC 274 (supra), the matter pertained to promotion to the vacancy reserved for schedule castes. The contention was that percentage of reservation had to be worked out in relation to the number of posts, forming the cadre strength and not with reference to vacancy. In that context, the Apex Court referred to prospectivity given to the law on the point in R. K. Sabharwal Versus State Of Punjab, AIR 1995 SC 1371 1995 Indlaw SC 1756. This principle of law has no application to the facts involved in the present case.

Therefore, the grievance made in the petition, is devoid of merits. Hence, the Writ Petition is dismissed.

Petition dismissed.

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Managing Director, Karnataka Milk Federation Limited, Bangalore and others v KMF Employees Federation and another, 2016 Indlaw KAR 102; 2016 (2) KarLJ 512

Case No: W. P. No. 1115/2007 (L - RES) c/w W. P. Nos. 19077/2006, 4082/2007 AND 4083/2007 (L - RES)

Justice A.S. Bopanna

Head Note

KCS Act 1959 - Labour & Industrial Law - Abolition of contract labour - Whether reference order for adjudication by Labour Court is competent.

Even if workers were all engaged for working under Contractor at the first instance, nearly two decades have elapsed when present dispute is raised. In that context when contention is raised that the contracts are a sham and that the so called contractors are name lenders, these are all aspects which will require consideration by Labour Court before decision is taken. Further, whether the workmen who were working in the areas of operation regarding which contract labour is abolished are still working etc., are all issues which are to be determined. Thus, workers will require judicial adjudication and not summary decision by Govt. while performing its administrative function. Thus, reference order for adjudication by Labour Court is competent. Petitions dismissed.

Ratio - When there is abolition of contract labour, they shall not remain to be employees of contractor.

The Order of the Court was as follows:

1. The petitioners in all these petitions are the Co- Operative Milk Producers Societies/Unions/Federations of different Districts in the State of Karnataka. The respondents are the Employees Federation/Unions which are espousing the cause of its members who are seeking regularisation of their services in the petitioner Societies/Unions/Federations. In all these petitions, the petitioners have a common grievance with regard to

the order dated 09.11.2006 made by the Government referring the dispute under Sections 10(1)(c) and (d) of the Industrial Disputes Act, 1947 ('I.D Act' for short) to the Labour Court for adjudication. Hence these petitions are taken up together, heard and disposed of by this common order.

2. The gist of the case between the parties is stated herein. The petitioners are the District Milk Unions and Federation which undertakes the enhancement of milk production and in that regard would aid the Rural milk producers by dairy development activity on a Co-Operative basis. In order to perform its activities, the petitioners in addition to the regular workers have been engaging contract labourers to perform the work in some of the areas of its activity as according to the petitioners the work performed in such areas is not of perennial nature. The work performed by the contract labourers is the work which is available for a limited period and not of the nature to be performed by employing regular workmen. Hence, contact labourers are engaged for such activity and are being paid as per the labour regulations.

4. It is also contended that the petitioners are Co-operative Societies and in view of the provision contained in Section 70(2) of the Karnataka Co-Operative Societies Act the reference made under the I.D Act is incompetent. In that view they seek that the order of reference dated 09.11.2006 be quashed.

13. The learned Counsel for the petitioner would no doubt contend that the petitioner at the first instance had sought the abolition of contract and as such now cannot dispute the contract. However, I am not in a position to accede to that contention for more than one reason. Firstly, the very fact at the first instance the issue was raised more than two decades prior will disclose that there are several developments subsequently and much water has flown under the bridge. Secondly, in that regard an order was passed by the Government abolishing the contract labour. Though in respect of four areas of operation it is set aside, it is required to be reconsidered. Thirdly, in respect of three areas of operation the abolition is upheld.

14. Above all, even if they were all engaged for working under the Contractor at the first instance, nearly two decades has elapsed when the present dispute is raised. In that context when a contention is raised that the contracts are a sham and that the so called contractors are name lenders, these are all aspects which will require consideration by the Labour Court before a decision is taken. Further, whether the workmen who were working in the areas of operation regarding which contract labour is abolished are still working etc., are all issues which are to be determined.

15. Though the learned counsel for the petitioners relies on the decision of the Hon'ble Supreme Court in the case of Steel Authority Of India Ltd. and others -vs- National Union Waterfront Workers and others (2001(7) SCC 1) 2001 Indlaw SC 20484 to contend that even if there is abolition, the effect is that they remain to be the employees of the contractor to be engaged elsewhere, these are aspects which can only be determined based on the factual position as to whether such discontinuance has taken place or not. Considering all the above noticed aspects, as already indicated above they will require judicial adjudication and not by a summary decision by the Government while performing its administrative function. The decision of the Hon'ble Supreme Court in the case of Ram Avtar Sharma and others -vs- State of Haryana and another [AIR 1985 SC 915 (1)] 1985 Indlaw SC 285 relied on by the learned Counsel for the respondents will be relevant in this regard.

For all the aforestated reasons, I see no merit in these petitions. They are accordingly dismissed with no order as to costs.

Petitions dismissed

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R. Sridhar S/o Late B. Ramappa and another v State of Karnataka, Represented by its Principal Secretary, Department of Co-operative Societies, Bangalore and others, 2016 Indlaw KAR 3113; 2016 (4) KarLJ 382

Justice Anand Byrareddy

Head Note

KCS Act 1959 – appointment of an Additional Registrar as managing director - Whether deputation of petitioner as MD of respondent no.5 is contrary to art.243 ZI of the Constitution.

An amount of Rs.12 crore has been granted by State Govt. to said respondent, for establishing Mega Dairy. State Govt. does not claim to have any share capital in respondent no.5 It cannot be said that funding by State Govt. is of such substantial quantum as would be necessary for very existence of body or that very functioning of institution so funded would be at stake, but for such assistance. State Govt. could, by virtue of insignificant 'grant', claim right to exercise power, overriding power which may have been conferred on some other body or authority and such power could then be exercised for indefinite period of time. This would run counter to Constitutional mandate u/art.43-B of the Constitution, imposing duty on State to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative Societies. Thus, deputation of petitioner as MD of respondent no.5 is contrary to art.243 ZI of the Constitution. Petitions disposed of.

Ratio - State has duty to promote post, autonomous functioning, democratic control and appointment of professional of co-operative Societies.

The Order of the Court was as follows:

2. In the writ petition in WP 19162/2016, the facts stated are as follows. The petitioner was said to be working earlier in the cadre of Joint Registrar of Co-operative Societies and was the Secretary, Karnataka State Warehousing Corporation, Bangalore. He was then said to have been promoted to the cadre of Additional Registrar of Co-operative Societies. He was then said to have been deputed to the Kolar - Chickballapur District Co-operative Milk Producers' Union Limited, the fifth respondent herein as the Managing Director, by an order dated 5.3.2016. He was said to have been accordingly relieved from his earlier post of Secretary, Karnataka State Warehousing Corporation, as on 8.3.2016. He is then said to have reported for duty as the Managing Director of the fifth respondent on the same day and is said to have assumed charge.

3. It is contended that the fifth respondent is an assisted Society, as defined under Section 2 of the Karnataka Co-operative Societies Act, 1959, (Hereinafter referred to as the 'KCS Act', for brevity.) In this regard, it is

stated that the allotment of 15 acres of land in its favour by the State Government, is a case in point. It is also stated that an amount of Rs.400 lakh was released in favour of the fifth respondent for the establishment of a Milk Processing Unit at Chickballapur, in the year 2011. It is also stated that a sum of Rs.1200 lakh was released in the year 2012 for the establishment of a Mega Diary at Chickballapur.

It is stated that the Government of Karnataka and the Indian Dairy Development Board Corporation had entered into an agreement, as on 5.6.1982, whereby the Government had undertaken to fulfill several conditions, one of which was that the Government would grant complete freedom in the creation of positions and recruitment of personnel to carry out the several projects pertaining to milk production. This was to be overseen by a Committee consisting of a nominee of the State Government, a nominee of the NDDB and the Managing Director of the Federation.

In so far as the claim of the petitioner that the fifth respondent was an assisted society was concerned, on the ground that the State Government has allotted 15 acres of land to respondent no.5 to establish a mega dairy, is concerned, it is pointed out that in terms of a memorandum of Understanding, dated 18.3.1989, between the State Government and the NDDB, it was assured that the State Government would provide land wherever required for the project, apart from assisting in procuring supply of electricity, water and other facilities by the State. Therefore, by virtue of land having been provided to establish a mega dairy, the fifth respondent cannot be considered as an 'assisted society'.

It is further contended that the Kolar Milk Union has entered into an agreement, dated 21.8.2014, with the NDDB, that in consideration of the NDDB providing financial assistance from time to time subject to certain conditions, one of which is that the appointment of the Chief Executive Officer of Union would be in consultation with the NDDB. By virtue of this condition not being complied with, the very relationship of the fifth respondent with the NDDB, is in jeopardy. This, it is stated, is evident from a letter, dated 9.3.2016, received from NDDB by the fifth respondent expressing its discontent on a Chief Executive Officer being appointed without consulting it.

7. Respondents no. 4 & 5 have filed statement of objections to contend that in the State of Karnataka there exists a three tier structure of milk co-operative societies headed by the Karnataka Co-operative Milk Producers Federation Limited, the Co- operative Milk Unions, at the District level and the Primary Milk Co-operative Societies at the village level. This was in keeping with the structure chosen by Dr. V. Kurien, who was instrumental in ushering in a revolution in the country in so far as dairy farming and milk production is concerned. This has been labelled the 'White Revolution'. In the State of Karnataka, the model conceived by Dr. Kurien, is being implemented since the year, 1974. Commencing with a project called 'Operation Flood-I', followed by 'Operation Flood-II in the year 1981 and 'Operation Flood - III, in the year 1989. In this regard it is stated that the implementation of the policies governing the projects, is by tacit agreements arrived at between the State Government, the National Dairy Development Board and the Karnataka Milk Federation, the apex body in the State of Karnataka.

It is stated that the State Government itself has laid down the framework for successful implementation of various projects. It is specifically emphasized that the Co-operative sector would be provided adequate

autonomy in its functioning. And that it was always evident that the common cadre of officers in the KMF (above the scale of Rs.3170 - 4191) would continue and officers would be posted on deputation to the Union. The State Government had committed itself to comply with the conditions specified by not only the NDDB but also the World Bank, the EEC and other funding agencies for the release of grants and loans. And that it is in this context that the NDDB has taken exception to the appointment of non-technical person as the Managing Director of the fifth respondent as per letters dated 2.3.2016 and 8.3.2016, addressed to the Chief Minister of Karnataka, seeking his intervention.

It is not in dispute that the fifth respondent is a 'District Co- operative Milk Union', and in terms of a notification no.CO 226 CLM 2014 dated 6.6.2015, issued by the State Government, the Chief Executive Officer of such a union is to be made by deputation of an officer not below the rank of Joint Director from the KMF. If this prescription is applied, it would appear that the deputation by the State Government, of the petitioner, as the CEO of the fifth respondent is not in consonance with the same, whereas the deputation of the sixth respondent by the fourth respondent as the CEO of the fifth respondent is in order.

However, it is sought to be contended by the petitioner, and duly supported by the State Government, to the effect that the fifth respondent is an 'assisted society', as defined under Section 2 (a-1-1) of the KCS Act .

An 'assisted society ' under the said definition is as follows : "Assisted Society" means a co-operative society which has received the Government or State assistance in the form of share capital or loan or grant or guarantee for repayment of loan or interest.'

And that in terms of Section 29-G of the KCS Act, in the case of an assisted society, it is the State Government or the Registrar who shall have the power to appoint or remove a CEO.

Reliance is placed on circumstances stated hereinabove to assert that the fifth respondent has received financial and other assistance to come within the scope of the definition of an assisted society. And the added circumstance that there was a nominee of the Government as a member the Board of management of the said society, which was in terms of Section 28-A of the KCS Act, and the same was by virtue of the fifth respondent being treated as an assisted society.

It is seen that in the year 2011, a sum of Rs.4 crore has been granted by the State Government, to the fifth respondent for the establishment of a Milk Processing Unit. Thereafter, an amount of Rs.12 crore has been granted by the State Government to the said respondent, for establishing a Mega Dairy, in the year 2012. The State Government has also transferred an extent of 15 acres of land in Chikkaballapur District for the purpose of establishing a Mega Dairy. Further, in the financial years 2013-2014 and 2014-2015, a total amount of Rs.20.09 crore and Rs.20.17 crore, respectively, had been granted by the State Government for the Infrastructural development of the Union.

It is on record that the annual turnover of the fifth respondent Union is in excess of Rs.1000 crore as on date. The assistance provided by the State Government, to the said respondent, in any given year does not seem to have exceeded 3 to 5 % of its annual turnover. The State Government does not claim to have any share capital in the fifth respondent. It cannot therefore be said that the funding by the State Government is of such

a substantial quantum as would be necessary for the very existence of a body; or that the very functioning of the institution so funded would be at stake, but for such assistance. (See :

The State Government can appoint a Government representative as the Managing Director of a co-operative society under Section 29-G (i) of the KCS Act, only if there is a society assisted by the State Government in a substantial measure. The State Government does not have a share capital, nor has the State Government made any budgetary grants to the fifth respondent. Financial aid provided to improve infrastructure and provision of land, are not grants in the nature of budgetary allocation and the fifth respondent cannot be called an assisted society defined under the KCS Act.

If the expression 'grant', employed in the definition of an 'assisted society', under the KCS Act is to be given an interpretation, whereby any single grant made by the State Government in a given financial year, irrespective of the degree of support such 'grant' would actually assist the Society, it would lead to a situation where the State Government could, by virtue of an insignificant 'grant', claim a right to exercise power, overriding the power which may have been conferred on some other body or authority, as in the present case on hand . And such power could then be exercised for an indefinite period of time. This would run counter to the Constitutional mandate under Article 43-B of the Constitution of India, imposing a duty on the State to promote the voluntary formation, autonomous functioning, democratic control and professional management of co-operative Societies.

The deputation of the petitioner as the Managing Director of the fifth respondent is contrary to Article 243 ZI of the Constitution of India, which again mandates that Co-operative societies must function democratically and must have an autonomous functioning structure. Incidentally, the fifth respondent does not answer to the definition of a State or an instrumentality of State.

11. In the light of the above discussion, the writ petition in WP 19162 / 2016 is dismissed and the writ petition in WP 20594/2016 is allowed in part, as there is no warrant to strike down Section 29-G (i) as being unconstitutional, as prayed for at item

(ii) of the prayer. The grievance of the petitioner, in this petition, is adequately addressed, in the fifth respondent having been declared as not answering to the definition of an 'assisted society' under the KCS Act, in the present circumstances.

Petitions disposed of

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Ravikumar C. S/o Late M. Chikkabasavanna and another v Karnataka Co-operative Milk Federation, by its Managing Director, Bangalore and another, 2016 Indlaw KAR 4852; 2017 (2) KarLJ 162

Case No: W. P. Nos. 19076-77/2014 C/W W. P. No. 39095/2014 (S-RES)

Justice B.S. Patil

Head note:

KCS Act 1959 – Service matter - Higher Pay Scale - Denied - Challenged - Hence, instant petition - Whether, Petitioners are entitled for benefit of higher pay scale of Rs. 1050-1900 upon completion of period of five years.

Held, petitioners were initially employed by Karnataka Co operative Milk Federation and were asked to discharge their duties under Respondent No. 2. While they were serving as employees of Federation, decision was taken by Federation to extend promotional avenues for Extension Officers in matter of fixation of pay. Officials who were regarded as Assistant Extension Officers in pay scale of Rs. 750-1500 were extended higher pay scale of Rs. 1050-1900 on completion of 5 years service in their posts and they were re designated as Extension Officers. It was for Federation to implement this order and extend benefit. Before expiry of 5 years from date Petitioners were appointed, their services came to be permanently transferred to Respondent No. 2 with direction that they would be treated as employees of Respondent No. 2. Petitioners are entitled for benefit of higher pay scale of Rs. 1050-1900 upon completion of period of five years from date of their respective appointments, notionally. They would be entitled for consequential benefits on that basis in higher pay scale except payment of arrears of difference in pay scale. So far as arrears of pay scale are concerned, they would be entitled to claim same with effect from date dispute was raised before the Joint Registrar. Petition partly allowed.

The Order of the Court was as follows :

1. W.P.Nos.19076-77/2014 are filed by the two petitioners challenging the endorsement dated 28.01.2014 issued by 2nd respondent - Mysore and Chamarajnagar District Co-operative Milk Producers' Union Limited, Mysore, vide Annexure-AC thereby informing petitioners that request for implementation of order passed by the Karnataka Appellate Tribunal dated 20.3.2012 could not be considered as the same would adversely affect the 2nd respondent -Milk union. A writ of mandamus has been sought by petitioners for implementation of the order passed by the Tribunal in Appeal No.283/2007 disposed of on 20.03.2012 confirming the award dated 6.11.2006 passed by the Joint Registrar of Co-operative Societies, Mysore region, Mysore.

2. Petitioner No.1 was appointed as Extension Officer Grade II in the pay scale of Rs.750-1500/- on 13.10.1984 by the Karnataka Co-operative Milk Federation, Bengaluru. Appointment was made for the benefit of and to serve under 2nd respondent. Petitioner No.2 was appointed in the same grade on the same pay scale as per the order dated 29.06.1985 issued by 1st respondent and was asked to report for duty under the Dakshina

Kannada Milk Union, Mangalore. It is relevant to state at this stage itself that 2nd petitioner was subsequently transferred to 2nd respondent - Mysore and Chamarajnagar District Co-operative Milk Producers' Union Limited.

3. An Expert Committee was constituted regarding fixation of pay scale of the employees of 1st respondent - Federation. It made recommendations vide its proceedings dated 18.02.1984 to the effect that 1st respondent - Federation shall recruit extension officers only in the pay scale of RS.750-1500/-as against the earlier pay scale of Rs.1050-1900/-. The said officers on recruitment may be re-designated as Assistant Extension Officer. The Assistant Extension Officer would become an Extension Officer after completion of 5 years of service as Assistant Extension Officer subject to his suitability for the post. In every unit atleast 50% of posts in extension wing will have the pay scale of Rs.750-1500/- and others in the pay scale of Rs.1050-1900/-.

4. This recommendation of the Expert Committee was accepted by the Board of Directors of 1st respondent - Federation and an order was issued on 18.04.1984 copy of which is produced at Annexure-E. It is evident from the said order that 1st respondent - Federation decided to recruit Asst.Extension Officers only in the pay scale of Rs.750-1500/-. The said officer would become Extension Officer after completion of 5 years of service, if found suitable.

6. In the meanwhile, vide order dated 29.5.1987, the 1st respondent-Federation resolved to transfer the assets, liabilities and personnel of Mysore, Tumkur, Hassan and Kudige Dairies to the concerned milk unions of Mysore, Tumkur and Hassan. It was made clear in the said order that services of such employees who were working in the said unions shall be continued under the respective unions and eventually shall be treated as regular employees of the union. It is also necessary to notice that subsequently these unions have framed their own regulations regulating conditions of service of the respective employees of the union.

7. Some of the employees of Mandya District Co-operative Milk Producers' Union raised a dispute before the Joint Registrar of Co-operative Societies, Mysore Region, Mysore claiming the benefits flowing from the decision taken by the Federation vide order dated 18.04.1984. The Joint Registrar passed an order on 12.08.2002 allowing the dispute and directing fixation of pay scale to the said applicants in the pay scale of Rs.1050-1900/- from the date of completion of 5 years of service and for payment of difference of pay with effect from the date of the order.

8. It is urged by petitioners that employees in other unions such as Bangalore, Kolar and Shimoga have also secured benefits because the concerned unions extended the benefit. Petitioners who were working under Mysore and Chamarajnagar District Co-operative Milk Producers' Union went on making representations to their union requesting for extending the benefit of fixation of higher pay scale on completion of their 5 years service with effect from the date of their appointment. However, the said representations were not considered.

Therefore, they raised a dispute before the Joint Registrar of Co-operative Societies, Mysore Region in dispute No.JRM:D.No.36:2003-04. The Joint Registrar passed an order dated 06.11.2006 holding that petitioners were entitled for benefit of fixation of higher pay scale in the scale of Rs.1050- 1900/- with effect from expiry of 5 years from the date of their respective appointments. This order was challenged before the Karnataka

Appellate Tribunal by the Mysore and Chamarajnagar District Co-operative Milk Producers' Union Limited. The said appeal was dismissed on 20.03.2012.

11. Upon hearing the learned counsel for both parties, I find that it is undeniable that petitioners herein were initially employed by the Karnataka Co-operative Milk Federation and were asked to discharge their duties under 2nd respondent - Mysore and Chamarajnagar District Co-operative Milk Producers' Union. While they were serving as employees of the Federation, a decision was taken by the Federation on 18.02.1984 to extend promotional avenues for the Extension Officers in the matter of fixation of pay. The officials who were regarded as Extension Officers in the pay scale of Rs.750- 1500/- were extended higher pay scale of Rs.1050-1900/- on completion of 5 years service in their posts and they were re- designated as Extension Officers. Therefore, it was for the Federation to implement this order and extend the benefit. Before the expiry of 5 years from the date petitioners were appointed, their services came to be permanently transferred to 2nd respondent - Union with a direction that they would be treated as employees of 2nd respondent - Union.

15. Indeed, the judgment on which reliance is placed by learned counsel for petitioners in the case of M.R.Gupta Vs. Union Of India And Others - Air 1996 SUPREME COURT 669 1995 Indlaw SC 1163 supports the contention urged by petitioners only to this limited extent inasmuch as claim for fixation of higher pay scale can be termed as a matter of recurring cause of action but payment of arrears consequent upon such fixation will have to be subjected to the period of limitation prescribed. Viewed in this context and taking note of the entire materials on record including the relief granted to similarly placed persons by other unions, I am of the view that ends of justice would be met, if petitioners are held entitled for the benefit of higher pay scale of Rs.1050- 1900/- upon completion of a period of five years from the date of their respective appointments, notionally. They would be entitled for consequential benefits on that basis in the higher pay scale except payment of arrears of the difference in pay scale. So far as arrears of pay scale is concerned, they would be entitled to claim the same with effect from the date the dispute was raised before the Joint Registrar.

In the light of the above, writ petition filed by the two petitioners in W.P.Nos.19076-77/2014 are allowed in part. 2nd respondent - Union is directed to extend the benefit of higher pay scale in the scale of Rs.1050-1900/- to 1st petitioner with effect from 13.10.1989 and to 2nd petitioner with effect from 29.06.1990. They would be entitled for all benefits except arrears of pay with effect from the said dates. Insofar as arrears of pay is concerned, both petitioners shall be entitled for payment of arrears with effect from the date of raising the dispute before the Joint Registrar. This direction shall be implemented within three months from the date of receipt of a copy of this order.

Writ petition filed in W.P.No.39095/2014 is partly allowed in terms stated above.

Petition partly allowed

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Secretary, BSNL Employees Co-operative Society Limited, Hubballi and another v State of Karnataka, Represented by its Secretary, Department of Co-operative Societies, Bengaluru and others, 2017 Indlaw KAR 6222

Case No: Writ Petition No. 110264/ 2017 and Writ Petition No. 110881/ 2017 (CS- RES)

Justice K.S. Mudagal

Head Note :

KCS Act 1959 – age of superannuation

The society is governed under KCS Act and KCS Rules (the judgment uses the words Karnataka civil service Act and Karnataka civil services Rules 1960) apply to the petitioner society – the petitioner to amend it's byelaw in according with rules. It cannot sit over the matter and contend that unless amended, it's byelaw will prevail over the parent rules, therefore, it could not extend the benefit, the age of the superannuation the 3rd respondent – petition dismissed

The Order of the Court was as follows:

4. As per Rule 18(4) of the Karnataka Co- operative Society Rules,1960, the age of superannuation of an employee was 58 years. The Government amended the said Rule vide Notification dated C. O./140/CLM/ 2008 dated 17.09.2008 and prescribed the age of superannuation as 60 years. The Rules came into force on 17.09.2008 itself. According to the petitioners own case, third respondent furnished the said Government Notification to the petitioner on 28.12.2008 itself. On 22.04.2013 third respondent gave a representation to the petitioner to implement the said amendment and not to relieve him from the service till he attains 60 years. Despite that the petitioners relieved him from service on 31. 05.2013.

5. The third respondent raised dispute before the second respondent in Dispute No. AN(V & M)D-2 NMD/3/2014-15(Vide Annexure-'D'). The second respondent on hearing the parties granted the claim of third respondent holding that he is illegally relieved from the service and petitioner shall give him all financial benefits attached to his service till his actual age of retirement. The petitioner challenged the said order before Karnataka Appellate Tribunal, Bengaluru in appeal No. 293/2015(CH-6). The Karnataka Appellate Tribunal vide Annexure-A dated 07. 09.2017 upheld the order of the second respondent and dismissed the appeal.

6. Sri. M. G. Malavade, learned counsel for the petitioner seeks to assail the order Annexure A on the following grounds.

1. The petitioner raised the dispute after his relief from service. Therefore, he is estopped from claiming the benefits.

2. The petitioner society could not continue the petitioner in service as its by-laws were not amended in accordance with the amendment to the Karnataka Civil Service Rules, 2008.

7. Admittedly, the petitioner Society is governed by the Karnataka Civil Services Act and Karnataka Civil

Service Rules, 1960. As and when they came into force, they apply to the petitioner. The petitioner shall amend its by-law in-accordance with the Rules. It cannot just sit over the matter and contend that unless amended its by-laws prevail over the parent rules, therefore, it could not extend the benefit of age of superannuation to the third respondent.

8. So far as estoppel as per the petitioners themselves, the representation along with the copy of the amended Notification was furnished to them much in advance to the date of relief of the petitioner from service by third respondent. Therefore there is no question of estoppel. There are no grounds to interfere in the order. Petitions are dismissed.

Petitions dismissed

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Veeranna Basappa Yallali S/o Basappa Yelalli v Secretary, Department of Co-operation, Bangaluru, 2017 Indlaw KAR 2138; 2017 (3) KarLJ 688

Case No: W. P. No. 109806/2015

JJ. Vineet Kothari & Sreenivas Harish Kumar

Head notes

Service - Karnataka Co operative Societies Act, 1959, s. 69 - Dismissal from Service - Challenged - Whether, order passed by State Govt. dismissing Petitioner from service was proper.

From orders passed by Joint Registrar as well as Karnataka Appellate Tribunal, it is clear that these authorities did not find any merit in surcharge proceedings initiated against present Petitioner and even deleted his name from array of Respondents in these proceedings u/s. 69 of Act, indirectly finding him as not responsible for alleged misappropriation of bank funds - indisputably this has not been done by concerned Disciplinary Authority while passing impugned dismissal order on dt. 26-2-2014. Impugned order is set aside. Petition allowed.

The Order of the Court was as follows:

13. The learned counsel for the petitioner Mr. Sheelvant urged that all these orders discharging the present petitioner from his responsibility under Section 69 of the Act in surcharge proceedings were produced before the Disciplinary Authority along with the communications dated 18.05.2011 and 22.12.2011 of the petitioner. These communications were addressed to the Secretary of the Co- operation Department, who was the Disciplinary Authority for the present petitioner. But, the said documents which had an important bearing on the disciplinary action against the petitioner appears to have been either deliberately ignored or have escaped the notice of the said Disciplinary Authority and therefore, the said dismissal order passed by him after a gap of 6 years on 26.04.2014 cannot be sustained on this ground alone.

16. It is not in dispute before us that the respondent-Bank was very much a party to the Section 69 surcharge

proceedings not only before the Joint Registrar of the Co-operative Society, but, the respondent-Bank itself had filed revision petition before the learned Karnataka Appellate Tribunal, which came to be dismissed. These orders not only were fully within their knowledge, but, were also separately supplied and placed on record by the petitioner along with its communications dated 18.05.2011 and 22.12.2011. The copies which have been produced before us along with memo dated 18.01.2016. There was no rebuttal to the same from the opposite side.

17. Therefore, the question definitely arises in the present matter as to whether these orders passed under Section 69 of the Act, which is quoted below for ready reference will have any effect on the disciplinary proceedings against the petitioner or not and if it does have any effect, whether the impugned dismissal order without considering these facts and documents can be sustained or not?

19. From section 69 the orders passed by the Joint Registrar as well as Karnataka Appellate Tribunal, it is clear that these authorities did not find any merit in the surcharge proceedings initiated against the present petitioner and even deleted his name from the array of respondents in these proceedings under Section 69 of the Act, indirectly finding him as not responsible for the alleged misappropriation of the bank funds, while he was acting as a Liquidator under the duties assigned to him and other bank officials at the relevant point of time.These findings cannot be brushed aside by the Disciplinary Authority, even while he was passing an order under Karnataka Civil Services (Classification, Control and Appeal) Rules 1957.

20. The very basis of the charge framed and proved against the present petitioner was alleged misappropriation of bank funds, by charging lesser interest from the borrowers of the bank when the said bank was ordered to be liquidated under Section 72-A of the Act. Whether the petitioner had the power to do so or not and whether having done that, it amounts to misappropriation of the bank funds or not is a different question on which we are not required to express any opinion at this stage.

21. We are however of the definite opinion that the effect of the orders passed under Section 69 of the Act, was required to be considered by the concerned Disciplinary Authority, while passing any order after the conclusion of the enquiry, and serving a show-cause notice upon the petitioner and taking his explanation on record. During the gap of about 6 years, which ensued between the Enquiry Report and passing of the impugned dismissal order, this development of proceedings of Section 69 of the Act had taken place, and therefore, mention thereof in the Enquiry Report of 2008 could not simply be envisaged, but these factual developments in the case of the present petitioner, which had taken place in the year 2009 to 2011 under Section 69 of the Act had a definite bearing on the disciplinary action pending against him during this period, and therefore, the effect of these orders was definitely bound to be considered by the Disciplinary Authority. But, indisputably this has not been done by the concerned Disciplinary Authority while passing impugned dismissal order on 26.02.2014.

22. Therefore, we are of the clear opinion that the said impugned dismissal order cannot be sustained and deserves to be set aside.

23. The options available before us was to (i) either quash the impugned dismissal order of the petitioner as

well as the order passed by the Karnataka Appellate Tribunal and direct the reinstatement of the petitioner back in service and

(ii) the other option is to allow the concerned Disciplinary Authority to re-decide the case after considering the effect of the aforesaid orders passed in favour of the present petitioner under Section 69 of the Act and consider whether despite these orders, he deserves to be dismissed from the service or not?

24. We adopt the second option advisedly and therefore, while setting aside the impugned dismissal order Annexure-A14, dated 26.02.2014 as well as the impugned order passed by the Karnataka Appellate Tribunal, Annexure-A dated 30.07.2015, we remit the matter back to the concerned Secretary of the Government of Karnataka, the Disciplinary Authority for the present petitioner, with a direction to the said authority to pass fresh orders in accordance with law considering the effect of the orders passed in favour of the petitioner under Section 69 of the Act and as aforesaid and after giving an opportunity of hearing to the petitioner in this regard. A period of two months is allowed for the said purpose to the concerned Disciplinary Authority and we direct the petitioner to appear before the said Authority in the first instance on 07.03.2017.

25. With the aforesaid directions, the present writ petition is allowed. No order as to costs.

Petition allowed

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Managing Director, Karnataka Milk Federation Limited, Bengaluru v L. Kalappa, Junior Assistant, Karnataka Milk Federation Limited, Bengaluru and another, 2018 Indlaw KAR 3749

Case No: Writ Petition No. 27376/2016 (CS-RES)

Justice S.N. Satyanarayana

Head Note

KCS Act 1959 - Service - Disobeying of transfer order – Dismissal from service – Whether, impugned orders of respondent no. 2 and Disciplinary Authority is dismissing service of respondent no. 1 is sustainable in law.

If Enquiry reports are quashed, then order of the second respondent - Additional Registrar as well as judgment of Karnataka Appellate Tribunal would get confirmed. While setting aside orders of dismissal passed by Disciplinary Authority against respondent no. 1, de novo enquiry is required to be ordered to be conducted in respect of aforesaid three charge sheets issued against him. Accordingly, point for consideration is answered in affirmative. To avoid any further complication, enquiry is required to be conducted by respondent no. 2 Additional Registrar of Co-operative Societies (I & M) as conceded by both parties. Petition partly allowed

The Order of the Court was as follows:

3. It is the case of the petitioner that the first respondent - Kalappa joined the service of the petitioner - Federation as Junior Assistant on 10.01.1974. Initially, he was working at Cattle Feed Plant, Rajanakunte and subsequently, he was posted to work at Central Training Institute. According to the petitioner, since the first respondent was not having sufficient work load at the Central Training Institute and there was requirement of two Assistants, one for field activities and another for office work at Hubli Depot, where there was incremental growth in business, he was transferred from Central Training Institute, Bengaluru, to K.M.F., Hubli Depot, Hubli, by virtue of the order of Deputy Director (CHRM) dated 24.01.1997 (Annexure 'A' to the petition). The said order was communicated to him.

6. Pursuant to the said transfer order, the first respondent made a representation on 30.01.1997 to the petitioner - Federation alleging that his transfer order was punitive in nature and the same was motivated owing to the fact that he was Secretary of K.M.F. Employees' Union and was involved in Union activities. The first respondent requested the petitioner - Federation to keep the said transfer order in abeyance.

7. The Director (CHRM) of the petitioner - Federation after considering the representation of the first respondent, has issued endorsement dated 01.02.1997 / 05.03.1997, wherein he has brushed aside the allegations made by the first respondent and has stated that his transfer was necessitated on account of administrative exigency of work and the same was done by following the Service Rules applicable to the employees of the petitioner - Federation. Further, the first respondent was asked to report for duty at the place of his posting i.e., KMF Depot, Hubli.

9. It is the further case of the petitioner - Federation that the first respondent had submitted letter dated 17.04.1997 requesting them to grant him permission to participate in the training course that was to be held in Israel and scheduled to be commenced from 13.05.1997. In that behalf, the petitioner issued an endorsement dated 28.04.1997 directing the first respondent to submit his application in the prescribed format. It is alleged that the first respondent without complying the said direction and without obtaining permission from the petitioner, had attended the training course held at Israel.

10. In the circumstances, the petitioner - Federation decided to conduct a domestic enquiry against the first respondent and he was issued with a charge sheet-cum-enquiry notice dated 31.05.1997, wherein it was alleged that the first respondent had disobeyed the transfer order dated 24.01.1997 and failed to report for duty at Hubli. The other charges levelled against the first respondent are that he was habitually attending late to the office, remained absent from work without sanction of leave and he was negligent in discharging his duty.

14. It is pertinent to mention at this juncture that in the meanwhile, the first respondent - Kalappa being aggrieved by the order of transfer dated 24.01.1997 passed by the petitioner - Federation, preferred writ petition in W.P. No.3505/1997, before this Court.

15. In the said writ petition, it is noticed that no interim order was granted staying the order of transfer dated 24.01.1997. A coordinate Bench of this Court, by its order dated 24.03.1999, has observed that since the services of the petitioner therein - Kalappa had already been terminated by the respondents therein

by their subsequent order during the pendency of the said writ petition, the issues raised and the reliefs sought for by the petitioner therein, did not survive for consideration and accordingly, disposed off W.P. No.3505/1997 as having become infructuous. However, the petitioner therein was reserved liberty to take up all the contentions, which were available to him in the said writ petition including the validity of the transfer order in the subsequent petition that he may file before the appropriate Forum impugning the correctness or otherwise of the order of dismissal dismissing him from services of the first respondent therein - Federation.

17. It is seen that the said Enquiry officers conducted the enquiry. The first respondent - Kalappa participated in the enquiry. The presenting officer adduced evidence by examining the witnesses in support of the charges. The charge sheeted employee was given opportunity for cross-examination of witnesses examined on behalf of the management. It is stated that the first respondent did not examine any witness on his behalf.

20. The Disciplinary Authority, namely Managing Director of the petitioner - Federation, considering the gravity of charges levelled against the delinquent employee, issued a final show cause notice dated 27.02.1999 to the first respondent herein calling upon him to explain in writing within seven days from the date of receipt of the said notice as to why the tentatively proposed punishment of 'dismissal from service' should not be imposed for the charges proved against him.

25. The Additional Registrar considering the contentions of the parties and the material on record, by his order dated 04.08.2008 while dismissing the dispute, has upheld the order of dismissal dated 10/11-03-1999 passed by the Disciplinary Authority. The order of the Additional Registrar dated 04.08.2008 was subject matter of challenge in appeal No.698/2008 preferred by the delinquent employee - Kalappa before the Karnataka Appellate Tribunal (hereinafter referred to as 'the K.A.T.'), Bengaluru.

26. In the said appeal, the K.A.T., by its judgment dated 12.12.2012 (Annexure 'F' to the petition), has observed that the second respondent - Additional Registrar had failed to appreciate the oral and documentary evidence on record in the proper perspective and had not assigned valid reasons for dismissing the dispute raised by the delinquent employee. Accordingly, it has allowed the said appeal and has remanded the matter back to the Additional Registrar with a direction to dispose off the same afresh after appreciating the entire oral and documentary evidence available on record and after both the parties being heard by giving opportunity to them, within four months from the date of receipt of copy of the said judgment with lower Court records.

28. The Additional Registrar has set aside the order bearing No.1680/ADM-1/99 passed by the Disciplinary Authority dated 10/11-3-1999 dismissing the petitioner - Kalappa from service and the respondent - Federation was directed to reinstate the petitioner - Kalappa with all service benefits including backwages.

29. The Managing Director of the petitioner - Corporation being aggrieved by the order dated 27.04.2013 passed by the Additional Registrar preferred an appeal, which was numbered as 248/2013, before the K.A.T.

30. In view of the fact that the dispute between the appellant - Federation and the first respondent - Kalappa had a long history, the K.A.T., has held that it was not proper to remand the matter to the Additional Registrar for fresh enquiry. However, it is observed in para No.17 of the judgment that the appellant - Federation was at liberty to have a de novo enquiry initiated against the first respondent - Kalappa in accordance with the Subsidiary Rules, in case it was warranted. Accordingly, the K.A.T., has dismissed the appeal preferred by the petitioner herein - Federation. Based on the memo filed by the first respondent - Kalappa dated 24.03.2016, the K.A.T., has confirmed the order of the Additional Registrar in proceedings bearing new [VERNACULAR PORTION DELETED]7/2012-13 dated 27.04.2013 in respect of all the service benefits except the reinstatement in view of the fact that Kalappa had attained the age of superannuation. Being aggrieved by the same, the Managing Director of the petitioner - Corporation is before this Court.

32. It is seen that in the remanded matter i.e., proceedings bearing No. [VERNACULAR PORTION DELETED]7/2012-13, the Additional Registrar felt that the proceedings conducted by the petitioner herein - Federation with reference to the misconduct alleged against the first respondent herein - Kalappa pursuant to the three charge sheets issued against him is erroneous inasmuch as the Enquiry officers, namely Sri A.R. Ravi and Sri S.K. Patil appointed by the petitioner herein to conduct enquiry into the allegations levelled against the delinquent employee were outsiders and not employees of the petitioner - Federation. The petitioner herein was required to appoint a person, who is an employee of the Federation and senior in rank to the delinquent employee to conduct enquiry. Hence, there was violation of the procedure as contemplated under Rule 63 of the Subsidiary Rules.

34. However, the material on record would indicate that the observation of the Additional Registrar with reference to violation of clause (b) of Rule 61.3.3 of the Subsidiary Rules is erroneous, which fact is clearly conceded by the learned senior counsel for the first respondent - Kalappa also for the reason that the relevant documents were furnished to the delinquent employee.

35. Perusal of the order dated 27.04.2013 discloses that another aspect pertaining to violation of the provisions of Rule 63 of the Subsidiary Rules in appointing outsiders as Enquiry officers weighed the mind of the Additional Registrar in setting aside the order of dismissal passed by the Disciplinary Authority.

39. After giving careful consideration to the contentions of the learned counsel for the parties, this Court is of the considered opinion that there is a grave error on the part of the petitioner - Federation in appointing Sri A.R. Ravi and Sri S.K. Patil, who are total strangers to the petitioner - Federation and who are not employees of the Federation as Enquiry Officers to conduct enquiry with reference to the allegations made against the first respondent - Kalappa under three different charge sheets referred to above. Further, enquiry ought to have been conducted by an officer, who is senior in rank to the delinquent employee i.e., first respondent - Kalappa. In the fact situation, the said procedure not having been followed, the enquiry reports itself are liable to be quashed. If the Enquiry reports are quashed, then the order of the second respondent - Additional Registrar dated 27.04.2013 as well as the judgment of the Karnataka Appellate Tribunal dated 29.03.2016 passed in Appeal No.248/2013 would get confirmed.

43. In that background, if the charge sheets dated 31.05.1997, 03.01.1998 and 17.07.1998 are looked into,

it is seen that the first respondent, who was working at that time as Junior Assistant in the petitioner - Federation was subjected to transfer by order dated 24.01.1997. Thereafter, the first respondent has given representation dated 30.01.1997 to keep the said transfer order in abeyance. However, the allegation made by the first respondent in his representation to the effect that his transfer was punitive, unjustified and arising out of his activities related to Employees Union was denied as false by the petitioner - Federation vide its reply dated 01.02.1997/05.03.1997. Therefore, in the fact situation, as could be seen from the date of transfer dated 24.01.1997 till the order of dismissal passed by the Disciplinary Authority dated 10/11.03.1999, there is no effort on the part of the first respondent in reporting to duty at the place i.e., K.M.F. depot at Hubli, where he was posted under transfer order or giving any explanation for his inability to join for service, which is a serious lapse on his part.

44. In addition to that, there is accusation made by the petitioner - Federation against the first respondent - Kalappa that he had traveled to Israel to attend training programme without submitting the application in the prescribed format and obtaining permission from the petitioner - Federation. Another charge against the first respondent is that he was using title 'Labour Law Consultant' with his name even before termination of his service or without tendering resignation to his job, which according to the petitioner - Federation, amounted to serious misconduct on the part of the first respondent. The third allegation is with reference to the first respondent instigating the employees of Kolar Milk Union, an affiliated body of K.M.F., due to which there was a sudden strike called by the employees of the said Union on 29.06.1988, and consequently, K.M.F. had to incur loss to the tune of Rs. 15,00,000/- way back in the year 1998.

45. When the said aforesaid allegations are taken into consideration, the same are quite serious in nature and a thorough investigation into the matter is required. Therefore, this Court feel that while setting aside the order of dismissal passed by the Disciplinary Authority dated 10/11.03.1999 against the first respondent herein, a de novo enquiry is required to be ordered to be conducted in respect of the aforesaid three charge sheets issued against him. Accordingly, the point for consideration is answered in the affirmative. To avoid any further complication, this Court holds that the enquiry is required to be conducted by the second respondent - Additional Registrar of Co-operative Societies (I & M) as conceded by learned counsel for both the parties.

46. Accordingly, this Writ Petition is allowed in part. The Enquiry reports submitted by Enquiry Officers, namely Sri A.R. Ravi and Sri S.K. Patil dated 21.08.1998 and 18.01.1999 respectively, are hereby quashed. Consequently, the order dated 10/11.03.1999 (Annexure 'E' to the petition) passed by the Disciplinary Authority i.e., Managing Director of the petitioner - Federation is hereby quashed. The order dated 27.04.2013 (Annexure 'G' to the petition) passed by the second respondent - Additional Registrar of Co-operative Societies (I & M) in proceedings bearing new No. [VERNACULAR PORTION DELETED]7/2012-13 (old No.A(I & M)/DIS/D-2/122/2002-03) as well as the judgment dated 29.03.2016 (Annexure 'L' to the petition) passed by the Karnataka Appellate Tribunal, Bengaluru, in Appeal No.248/2013 are hereby set aside.

47. This matter is remanded back to the second respondent to hold fresh enquiry against the first respondent

- Kalappa on the basis of three charge sheets dated 31.05.1997, 03.01.1998 and 17.07.1998. To avoid any further delay, it is made clear that the remanded matter before the second respondent shall commence on 05.03.2018 and the same shall be disposed of within six months from that day.

Petition partly allowed

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Secretary, BSNL Employees Co-operative Society Limited, Hubballi and another v State of Karnataka, Represented by its Secretary, Department of Co-operative Societies, Bengaluru and others, 2017 Indlaw KAR 6222

Case No.: Writ Petition No. 110264/ 2017 and Writ Petition No. 110881/ 2017 (CS- RES)

Justice K.S. Mudagal

Head Note :

KCS Act 1959 – KCS Rule 1960 – Rule 18 – a/c of retirement

Petitioner society is governed by KCS Act 1959 and KCS Rules 1960 the petitioner society shall amend its byelaws in accordance with rules. It cannot sit over the matter and contend that unless amended its byelaws will prevail over the parent rules – therefore, it could not extend the benefit of age of superannuation to the third respondent.

The Order of the Court was as follows:

3. First petitioner is a Co-operative Society governed by the Karnataka Co-operative Societies Act, 1959 and Karnataka Co-operative Society Rules 1960. The third respondent was serving as a Secretary in the first respondent society. He attained 58 years as on 31.05.2013.

4. As per Rule 18(4) of the Karnataka Co- operative Society Rules,1960, the age of superannuation of an employee was 58 years. The Government amended the said Rule vide Notification dated C. O./140/CLM/ 2008 dated 17.09.2008 and prescribed the age of superannuation as 60 years. The Rules came into force on 17.09.2008 itself. According to the petitioners own case, third respondent furnished the said Government Notification to the petitioner on 28.12.2008 itself. On 22.04.2013 third respondent gave a representation to the petitioner to implement the said amendment and not to relieve him from the service till he attains 60 years. Despite that the petitioners relieved him from service on 31. 05.2013.

5. The third respondent raised dispute before the second respondent in Dispute No. AN(V & M)D-2 NMD/3/2014-15(Vide Annexure-'D'). The second respondent on hearing the parties granted the claim of third respondent holding that he is illegally relieved from the service and petitioner shall give him all financial benefits attached to his service till his actual age of retirement. The petitioner challenged the said order before Karnataka Appellate Tribunal, Bengaluru in appeal No. 293/2015(CH-6). The Karnataka Appellate Tribunal vide Annexure-A dated 07. 09.2017 upheld the order of the second respondent and dismissed the appeal.

2. The petitioner society could not continue the petitioner in service as its by-laws were not amended in accordance with the amendment to the Karnataka Civil Service Rules (KCS Rules 1960), 2008.

7. Admittedly, the petitioner Society is governed by the Karnataka Civil Services Act (KCS Act 1959) and Karnataka Civil Service Rules, 1960. As and when they came into force, they apply to the petitioner. The petitioner shall amend its by-law in-accordance with the Rules. It cannot just sit over the matter and contend that unless amended its by-laws prevail over the parent rules, therefore, it could not extend the benefit of age of superannuation to the third respondent.

8. So far as estoppel as per the petitioners themselves, the representation along with the copy of the amended Notification was furnished to them much in advance to the date of relief of the petitioner from service by third respondent. Therefore there is no question of estoppel. There are no grounds to interfere in the order. Petitions are dismissed.

Petitions dismissed

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Divisional Manager, New India Assurance Company Limited, Belgaum and another v Sunita W/o Narasu Sawale and another, 2016 Indlaw KAR 6002

Case No: MFA No. 24523/2010 (MV) C/W MFA No. 21188/2010

Justice B. Manohar

Head note

Insurance - Enhancement of Compensation - Whether, Respondent No. 2 was also liable to compensate Claimants for actionable negligence on part of driver of Tempo.

The tribunal after appreciating the oral and the document evidence of the parties and taking into consideration the spot panchanama inquest, panchanama, seizure panchanama, MVI report copy of the compliant and charge sheet and due actionable negligence on the part of the driver the accident occurred and claimants are depended of the deceased and entitled for the compensation – Insurance company case dismissed

The Order of the Court was as follows:

4. The claimants are the wife, children and mother of the deceased Narasu Sawale. The case of the claimants is that the deceased Narsu Sawale was working as a Weighman-cum-clerk at Shree Doodhaganga Krishna Sahakari Sakkare Karkhane Niyamit, Chikodi. On 08.03.2006 after completion of the work, while he was coming home on his motorcycle bearing reg.No.KA-23/E-820 on the left side of the road, near Chandur a Tempo Trax bearing Reg.No.MH-12/BA-5410 driven by its driver in a rash and negligent manner dashed against the motorcycle from hind side. Due to the said impact, the deceased fell down and sustained grievous injuries and subsequently, succumbed to the injuries. The police have registered a case in Crime No.76/2006

against the driver of the offending vehicle. The claimants claimed that the deceased was aged about 50 years working as a Weighman-cum-clerk and earning Rs.7,263/- p.m. The family was dependent on him and the claimants lost the only bread earner of the family. Due to the actionable negligence on the part of the driver of the Tempo Trax, the accident occurred and hence, the respondent No.1- owner of the Tempo Trax and respondent No.2-insurer are liable to compensate the claimants and sought for compensation of Rs.13,89,000/-.

8. The Tribunal after appreciating the oral and documentary evidence let in by the parties and taking into consideration the spot panchanama, inquest panchanama, seizure panchanama, MVI report, copy of the complaint and charge sheet held that, due to the actionable negligence on the part of driver of the Tempo Trax, the accident occurred and the claimants are dependents of the deceased and they are entitled for the compensation.

12. The records clearly disclose that the deceased was working as a Weighman-cum-clerk in Shree Doodhaganga Krishna Sahakari Sakkare Karkhane Niyamit, Chikodi, which was registered under the Cooperative Societies Act and getting salary of Rs.7,263/- p.m. as a permanent employee of the society, which was registered under the Cooperative Societies Act and audited every year by the state authority. Though the author of the salary certificate was not examined, it cannot be denied that the deceased was working in the said factory and getting salary. While awarding compensation, the gross salary is taken into consideration and only deduction is in respect of professional tax. Hence, after deducting Rs.200/- towards professional tax, the income of the deceased is determined as Rs.7,060/- p.m. As on the date of the accident, the deceased was aged about 50 years and the appropriate multiplier would be '13'. Taking into consideration the income of the deceased as Rs.7,060/- p.m. and applying the multiplier of '13', the claimants are entitled for a sum of Rs.7,34,240/- towards loss of dependency. A sum of Rs.45,000/- is awarded towards conventional heads. In all, the claimants are entitled for total compensation of Rs.7,79,240/-. Accordingly, I pass the following:

ORDER

(iii) The amount in deposit in MFA No.24523/2010 shall be transferred to the MACT, Chikodi.

Appeal dismissed

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Basavanni Shivappa Bagi v Deputy Registrar of Co-operative Societies, Belagavi, 2017 Indlaw KAR 2692

Case No: Writ Petition No. 109110/2016 (S-RES)

Justice B. Sreenivase Gowda

Head Note :

If the stay order granted by the Karnataka Appellate Tribunal in Appeal No.28/2016 (Co-operative) for the operation and execution of the award at Annexure - B is not continued or extended further, it is always open to the petitioner to initiate an appropriate proceeding before the 1st respondent or any other competent authority under the Karnataka Co-operative Societies Act, 1959 for enforcement of

the award passed by the 1st respondent at Annexure - B.

In the event of petitioner initiating such proceeding for enforcement of the award before the 1st respondent or any other authority concerned, they shall see to it that the award passed under Annexure - B is implemented by respondent Nos.2 and 3 without any delay.

The Order of the Court was as follows:

1. Petitioner has preferred this writ petition seeking a writ of mandamus to respondent No.1, directing him to consider and dispose of the representation submitted by the petitioner under Annexure - E, in accordance with law.

3. Shri Shivaraj P. Mudhol, learned counsel for the petitioner submits though the Government of Karnataka has extended the age of retirement or superannuation of Government employees including employees working in the Co-operative Societies coming under the purview of the Department of Co- operation, Government of Karnataka up to 60, the 2nd and 3rd respondent relieved the petitioner from service on 05.05.2015 on attaining the age of 58 years, instead of extending his service till he completes the age of 60. Learned counsel submits petitioner aggrieved by the said act of the 2nd respondent, challenged the same by raising a dispute under Section 70 of the Karnataka Co- operative Societies Act, 1959 (hereinafter referred to as an 'Act' for short) before the 1st respondent. Learned counsel submits 1st respondent allowed the dispute and directed the 2nd and 3rd respondents to continue the petitioner in service till he completes the age of 60 years. He fairly submits said award passed by the 1st respondent was challenged by the 2nd respondent by preferring an appeal under Section 105 of the Act before the Karnataka Appellate Tribunal. The Karnataka Appellate Tribunal which initially granted stay for a limited period, did not extend the stay further. Therefore, petitioner submitted a representation as per Annexure - E to the 1st respondent requesting him to direct 2nd and 3rd respondents to take him back to duty and continue him in service till he completes the age of 60. Therefore, he prays for allowing the writ petition, as prayed for.

4. Learned AGA appearing for the 1st respondent fairly submits he does not dispute the factual aspect submitted by the learned counsel for the petitioner. However, he submits if the award passed by the 1st respondent under Annexure - B, directing the 2nd and 3rd respondents to continue petitioner in service till completion of the age of 60, petitioner has to take steps for enforcement of the award by initiating an appropriate proceeding, as contemplated under Section 109 of the Act read with Rules 34 to 37 of the Karnataka Co-operative Societies Rules, 1960 (hereinafter referred to as 'Rules' for short). Therefore, learned AGA submits writ petition filed by the petitioner is not maintainable and no direction as sought by the petitioner can be issued to the 1st respondent and further submits the Karnataka Appellate Tribunal may be directed to dispose of the appeal expeditiously.

5. Smt. Geeta K.M., learned counsel for the respondent Nos.2 and 3 supports the argument advanced by the learned AGA.

In the year 2008 age of retirement of Government employees was increased from 58 to 60. Respondent Nos.2 and 3 instead of extending the said benefit to the petitioner, relieved him from service on petitioner attaining the

age of 58. Therefore, petitioner aggrieved by the said act of 2nd and 3rd respondents, challenged the same by raising a dispute under Section 70 of the Act before the 1st respondent. 1st respondent after hearing the learned counsel appearing for the parties perusing the relieving order passed by 2nd and 3rd respondents, allowed the dispute raised by the petitioner and directed the 2nd and 3rd respondents to continue petitioner in service till he completes the age of 60. The 2nd and 3rd respondents challenged the award passed by the 1st respondent at Annexure - B by preferring an appeal under Section 105 of the Act before the Karnataka Appellate Tribunal. The Tribunal though initially stayed the award passed by the 1st respondent at Annexure - B for a limited period, did not extend the same further. As such, there is no impediment in law for implementation of the award passed by 1st respondent at Annexure - B. If the award passed by the 1st respondent is not implemented by respondent Nos.2 and 3, petitioner has got an effective and efficacious remedy available to him under sub Section 109 of the Act read with Rules 34 to 37 of the Rules. Hence, the following: ORDER

(i) Writ petition stands disposed of.

(ii) If the stay order granted by the Karnataka Appellate Tribunal in Appeal No.28/2016 (Co-operative) for the operation and execution of the award at Annexure - B is not continued or extended further, it is always open to the petitioner to initiate an appropriate proceeding before the 1st respondent or any other competent authority under the Karnataka Co-operative Societies Act, 1959 for enforcement of the award passed by the 1st respondent at Annexure - B.

(iii) In the event of petitioner initiating such proceeding for enforcement of the award before the 1st respondent or any other authority concerned, they shall see to it that the award passed under Annexure - B is implemented by respondent Nos.2 and 3 without any delay.

(iv) It is open to the respondent Nos.2 and 3 to move the Karnataka Appellate Tribunal and request for disposal of their appeal expeditiously.

Petition disposed of

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S. Yathiraj S/o Late A. Subramani v Susma Taluja W/o Omprakash Taluja and others, 2015 Indlaw KAR 1239

Case No: M.F.A. No. 3067/2010 (CPC)

V. Chandrashekara

Head Note :

KCS Act 1959 - CPC

Approach adopted by the Trial Judge insofar as it relates to the return of the entire plaint under O.7 r.10 of CPC is not sustainable either in law or on facts. Therefore, order passed by Trial Court can only be considered only as insofar as it relates to the rejection of plaint relating to defendant no.2 only and the suit will have to proceed in accordance with law against defendant nos.1,3,4. Appeals partly allowed

The Order of the Court was as follows:

8. What is argued before this court is that at the time of admitting the suit, notice to defendant No.2 - Society had been dispensed with as per S. 80 of CPC and therefore, dismissing the suit against the 2nd defendant at a later point of time is not at all maintainable either on law or on facts. This Court is unable to accept the said contention for the simple reason that the provisions under S. 80 of CPC are not applicable to a Society established under the provisions of Karnataka Co-operative Societies Act, 1959.

9. S. 125 mandates issuance of notice prior to the filing of suit if it relates to the business of the Society or touching the constitution or management of the Society. Relief of injunction had been sought against the Society insofar as it relates to the auction proposed to be held by the Society. This definitely touches the business of the Society and therefore suit so filed against the 2nd defendant without issuance of prior notice as contemplated under S. 125 of Karnataka Co-operative Societies Act was not maintainable.

10. It is in this regard learned Judge has rightly referred to the Single bench decision rendered in the case of Mahadevaiah vs. Sales Officer reported in ILR 1990 Kar 151.

11. The Division Bench of this Court in the case of K.P. Arvind vs. Government of Karnataka reported in ILR 1992 Kar 307 has elaborately dealt with the effect of non-issuance of statutory notice prior to presenting a suit. While discussing the provisions of S. 80 of CPC and S. 64 of the Bangalore Development Authority Act, the Division Bench of this Court has held as follows:

"Admittedly, the reliefs sought for by the plaintiffs related to the action taken by the Bangalore Development Authority and the State Government in exercise of their power under the Act... As the suit was filed without issuing the notice as required by S. 64 of the Act and S. 80 of the CPC*, it was bad in law, because service of notice as per S. 64 of the Act on the BDA and as per S. 80 of the* CPC *on the State Government, having regard to the reliefs sought for in the plaint was a condition precedent for instituting a suit of the nature in question... In the absence of such a notice, plaint cannot at all be entertained by a Court. Therefore, on the face of it, the plaint was barred by S. 64 of the Act and S. 80 of the* CPC*. Hence, the trial Court ought to have rejected the plaint under Order 7 Rule 11(d) of the C.P. Code. In that event, it would have been open to the plaintiffs to file a fresh suit on the same cause of action on complying with S. 64 of the Act and S. 80 of the* CPC*, whereas the trial Court has dismissed the suit which is not permissible in law."*

14. The approach adopted by the learned Judge insofar as it relates to the return of the entire plaint under Order 7 Rule 10 of CPC is not sustainable either in law or on facts. It was incumbent upon the Trial Court to have discussed about the ultimate decision that could be taken in the absence of the 2nd defendant.

15. Therefore, the order dated 03.04.2010 passed by the learned XI Additional City Civil Judge in O.S.No.1515/2006 can only be considered only as insofar as it relates to the rejection of plaint relating to 2nd defendant only and the suit will have to proceed in accordance with law against defendant Nos.1, 3 and 4.

Hence, the following: ORDER:

Appeal is allowed in part. Rejection of the plaint insofar as 2nd defendant - Society is concerned is upheld.

Rejection of plaint in respect of other defendants is held to be invalid and improper.

Matter is remitted to the Trial Court to continue the suit insofar as it relates to defendant Nos.1, 3 and 4.

Any amount freezed by this Court during the pendency of this appeal be sent back to the City Civil Court with a direction to the City Civil Court to deposit the same in any Nationalized Bank till the disposal of the suit.

Since the matter is of the year 2006, the learned Judge of the Trial Court is directed to dispose of the matter as expeditiously as possible preferably within a period of 9 months from the next date of hearing.

Parties to appear before the Trial Court on 04.03.2015 without fail. Office is directed to send the LCR with a copy of this judgment for compliance.

I.A.No.1/2013, does not survive for consideration.

Appeals partly allowed

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Laxman S/o Chandrappa Horatti v Joint Registrar of Co-operative Societies, Belagavi and others, 2016 Indlaw KAR 7245; 2017 (1) KarLJ 153

Case No: Writ Petition No. 114772/2015

Justice A.S. Bopanna

The Order of the Court was as follows:

2. The petitioner is before this Court seeking issue of mandamus to respondents No.1 to 3 to hold inquiry under Section 109 of the Karnataka Co-operative Societies Act for misusing the loans.

3. The petitioner through the representation dated 10.07.2015 had made certain allegations against the fourth respondent. The said complaint made by the petitioner had been taken note by the third respondent and a notice dated 24.08.2015 was issued to the fourth respondent as also to the petitioner. By the said notice, the hearing date was indicated as 03.09.2015.

The grievance of the petitioner is that despite such notice being issued, no further progress has been made in the enquiry and a final conclusion has not been reached. In that view, the petitioner is before this Court seeking issue of mandamus to conclude the proceedings.

4. As noticed, the complaint made by the petitioner has been entertained and a notice has been issued. Since the third respondent is yet to take decision in the matter, this Court need not advert to the nature of allegations made by the petitioner.

All that is necessary to be directed herein is that the third respondent shall issue a fresh notice to the petitioner as well as the fourth respondent, fix the hearing date and thereafter proceed with the matter in accordance with law as expeditiously as possible but in any event the consideration shall be completed within the outer limit of four months. All contentions on the merits are left open.

The petition is accordingly disposed of.

Petition disposed of

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Lingegowda S/o Byrappa v State of Karnataka and another, 2016 Indlaw KAR 6810; 2016 (2) KarLJ 650

Case No: Criminal Petition No. 7123/2015

Justice Rathnakala

Head Note

KCS Act 1959 - Criminal - Indian Penal Code, 1860, ss. 409, 420 - Quashing of FIR - Charge-sheet - Challenged - Petitioner, former president of Co-operative Bank and member of loan sanctioning committee, alleged to have cheated bank by sanctioning loan to one person on security of immovable property which was already pledged to other Bank - Petitioner as accused, was charge sheeted for offence u/s. 409 r/w. s.420 of IPC - Hence, instant petition - Whether, Petitioner was rightly charge sheeted for offence u/s. 409 r/w. s.420 of IPC.

Held, The Chief Executive is the custodian of records, and not the President of the Bank. Hence, he cannot be attributed position of custodian of records of Bank. Complaint averments fail to make out how endorsement allegedly made on loan application subsequent to Loan Committee Meeting has resulted in any financial loss to Co-operative Bank. Complaint allegations fail to make out case either u/ss. 409 or 420 of IPC, nonetheless any other offences. Complaint allegation is vague as to when endorsement is made by the accused on document. Admittedly, at the instance of this petitioner, present Manager and President are brought to book on certain allegation. Glaringly so-called alleged original loan application and application marked in evidence in loan recovery proceeding are different. Therefore, FIR in question is quashed. Petition allowed.

The Order of the Court was as follows:

2. The allegation is, the petitioner is the former President of Sree Anjaneya Co-operative Bank Limited (for brevity 'the Co-operative Bank'). He was one of the members of the Committee of the Society sanctioned loan; during his tenure, the Committee sanctioned loan to one J.T.Rajan on the security of his immovable property vide resolution dated 9.4.2011 and the loan amount was disbursed on 15.4.2011. Subsequently, the Federal Bank instituted a suit before the Debt Recovery Tribunal alleging that, in respect of the property pledged to the Federal Bank, the Co-operative Bank has sanctioned loan. This petitioner by misusing his official position as the President of the Bank has subsequently tampered the loan application and at column No.7 page 4 meant for the opinion of the Board Members, endorsed to the effect that the title deed since is a Xerox copy, he has objection to sanction the loan and same shall be recorded in the proceedings of the meeting with his signature dated 9.7.2011, thereby he has cheated the Bank.

5. It is undisputed between the parties that, at the time of sanction of the loan, the petitioner was one of the

Members of the Loan Sanction Committee and the Committee has sanctioned loan. It is also not in dispute that on the default of the loanee to clear off the loan, the Bank initiated proceedings under Section 70 of the Act and the petition of the Bank is allowed for recovery of the loan amount with interest and penalty. On the failure of the loanee to abide by the order, execution proceedings were initiated and his property was brought for auction. Since nobody came forward to purchase the property, request was made to the Recovery Officer and the property is now made over to the Bank. Subsequently, before the Debt Recovery Tribunal, the Federal Bank has instituted a suit claiming that the property was mortgaged in their favour. The Co-operative Bank is arrayed as a party in the said case.

7. The Apex Court in the case of Bishan Dass Vs. State of Punjab and Another, reported in (2014) 15 SCC 242, has held thus:

"The essential ingredients to attract Section 420 of IPC *are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement".*

11. In the judgment of the Full Bench of this Court in State of Karnataka -vs- Marigouda (supra), on a survey of earlier decisions, it is held thus:

"A reading of the above provisions makes it clear that the offences punishable under the Act *are mentioned in Section 109 and as per Section 111(2) of* the Act *sanction to prosecute the accused is required only for the offences committed under* the Act *mentioned in Section 109 of* the Act*, and if any offence is committed under any other law, sanction to prosecute the accused is not necessary. In our view, in the given case, obtaining of the sanction under Section 111(2) of* the Act *is not necessary".*

The Full Bench judgment supra since is binding, the ruling of this Court in B.Y. Neelegowda's case (supra) cannot be availed by the petitioner. Hence, sanction under Section 111 of the Act is not a requirement to prosecute an offender on the allegation of offence under the Indian Penal Code, except the offences mentioned in Section 109 of the Act.

12. The President of the Co-operative Society is not the custodian of the records, but it is the Chief Executive of the Bank, who is responsible, as per Clause 63.5 of the Bye-Laws of Sree Anjaneya Co-operative Bank Limited, Bangalore. Hence, he cannot be attributed the position of a custodian of records of the Bank. The complaint averments fail to make out how the endorsement allegedly made on the loan application subsequent to the Loan Committee Meeting has resulted in any financial loss to the Co-operative Bank. It is not the case of the complainant that he has misappropriated any property of the Bank or converted any such property to the detriment of the persons, who entrusted it. The complaint allegations fail to make out a case either under Section 409 or 420 of IPC, nonetheless any other offences. The complaint allegation is vague as to when the endorsement is made by the accused on the document. Admittedly, at the instance of this petitioner, the present Manager and President are brought to book on certain allegation. Glaringly the so-called alleged original loan application and the application marked in evidence in the loan recovery proceeding are different. Such being the veracity of the documents relied for the complainant, in the light of the judgment of the Apex

Court in State of Haryana and Others Vs. Bhajan Lal and Others reported in 1992 Supp (1) SCC 335 1990 Indlaw SC 91, wherein it is held:

"Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge" the petition succeeds.

The petition is allowed. The F.I.R. in Crime No.212/2015 is quashed.

Petition allowed

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Yeeregowda S/o Ningegowda and another v Assistant Registrar of Co-Operative Societies, Mysore and others, 2016 Indlaw KAR 1137

Case No: Writ Petition Nos. 7394 - 7395 of 2016 (CS - RES)

Justice Anand Byrareddy

Head Note :

KCS Act 1959 – Misappropriation-action u/s 69 of the Act.

The Order of the Court was as follows:

1. The petitioners on the basis of an audit report are facing an enquiry as the former Chairman and former Secretary of the second respondent Society. It is the case of the petitioners that the alleged loss and misappropriation in a sum of over Rs.4,25,079/- is during the tenure of a Secretary, respondent No.3 and therefore had sought that the notice be issued to the said respondent by the Enquiry Officer. The Enquiry Officer had indicated that the request could be considered if an application for impleading was filed. Accordingly, an application having been filed, that application is said to have been rejected. Therefore, the present petition.

2. Under Section 69 of The Karnataka Cooperative Societies Act, 1969, as rightly pointed out by the learned Government Advocate the relevant parties who would face the enquiry are the persons who are named in the audit report as being responsible for the cause of action and therefore the petitioners having been issued with the notices and the petitioners having made a statement and even having named respondent No.3 as being answerable for the loss that has occurred, if the Enquiry Officer during the course of enquiry, should form an opinion that the third respondent is also answerable at the enquiry. It is open for him to initiate appropriate proceedings against third respondent as well. At this stage the belief of the petitioner that the third respondent is purely responsible for the mischief, cannot be countenanced and the Enquiry Officer in his discretion having rejected the application for impleading does not preclude him in naming the third respondent in the proceedings at a later stage. This is left open. The petition is disposed of in terms as above.

3. The learned Government Advocate is permitted to file his memo of appearance within two weeks.

Petition disposed of

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Shyamala B. L. W/o B. Murali and others v State by Kudur Police Station, Ramanagara, 2018 Indlaw KAR 9303

Case No: Criminal Petition No. 5299/2018

Justice Sreenivas Harish Kumar

The Order of the Court was as follows:

1. This is a petition under Section 438 of Cr.P.C. Petitioner has sought for anticipatory bail in relation to offences punishable under Sections 120B, 406, 420, 504, 506 read with Section 34 of IPC in Crime No.124/2017 registered by the respondent police.

2. Heard the petitioners counsel and the learned High Court Government Pleader.

3. The complaint was made by Chief Executive Officer of Sri. Lakshmi Mahila Souharda Credit Co-operative Limited, Mylanahalli Village, Magadi Taluk stating that the petitioner Nos.1 and 3 availed housing loan of Rs. 18,00,000/- on 21.11.2011 and Rs. 15,00,000/- on 02.09.2012 from the said Society on the membership of petitioner Nos.2 and 4. It is stated that the petitioners were demanding to repay the loan, abused the complainant in vulgar language and tried to assault them.

4. Learned counsel for the petitioners produce two documents which shows that the Society has already raised dispute against the petitioners under Section 70 of Karnataka Co-operative Societies Act, 1959. The date of filing dispute before the Joint Registrar of Co-operative Society is 14.03.2016. If the petitioners are due to the Society in any sum of money, same can be recovered by following the procedure prescribed under law. Since dispute is already raised, if the Chief Executive Officer of the Society would make the complaint on 13.04.2017 making certain allegations against the petitioners, the truth in it has to be thoroughly investigated. At this stage, the allegations made in the complaint cannot be prima facie believed. The apprehension of arrest expressed by the petitioners about arrest is well founded. Therefore, anticipatory bail can be granted. Hence, the following:

ORDER

Petition is allowed.

In the event of arrest of the petitioners by the respondent-police station, in connection with Crime No.124/2017, they shall be released on bail by obtaining from each of them a personal bond for Rs. 1,00,000/- (Rupees One Lakh only) and two sureties each for the likesum to the satisfaction of the Investigation Officer. The petitioners are also subjected to the following conditions:

i. They shall co-operate with the investigating officer till investigation is completed.

ii. They shall appear before the respondent-police for the purpose of investigation whenever their presence is necessary.

iii. They shall not tamper with the evidence collected by the investigating officer

iv. They shall not directly or indirectly threaten the witnesses.

Petition allowed

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Farooka Begaum W/o M. I. Makandar v Assistant Registrar of Co-operative Societies and others, 2015 Indlaw KAR 9647; 2016 (1) KarLJ 158

Case No: Writ Petition No. 80922/2013 (CS-SUR)

Justice Ashok B. Hinchigeri

Head Note :

KCS Act 1959

The right of the respondent No.2 society to recover the amounts stated to have been misappropriated by the respondent No.3 cannot be defeated by his wife.

The Order of the Court was as follows:

1. The petitioner has called into question the first respondent's order dated 3/3/2011 (Annexure-B), attaching the properties in question in exercise of the power conferred by the Section 103 of the Karnataka Co-operative Societies Act, 1959. She has also challenged the order dated 8/2/2013 (Annexure-C) passed by the Karnataka Appellate Tribunal, ('KAT' for short) confirming the said order.

2. Sri A.S.Patil, learned counsel for the petitioner submits that the first respondent- Assistant Registrar of Co- operative Society has attached the properties belonging to the petitioner and that too without putting her on notice. He submits that she was not even a party to the dispute between the respondent Nos.2 and 3.

3. Sri Patil submits that resorting to the attachment of the property without even initiating the surcharge proceedings is bad in law. He submits that the petitioner is not at all liable to make good the amounts alleged to have been misappropriated by her husband-(the respondent No.3 herein).

On being asked as to how the petitioner has purchased the properties in question and how she has become the owner of the property, he submits that her name figures in the record of rights. He submits that the entry in column No.10 shows that she has purchased the lands.

4. Sri Ravi V. Hosamani, learned Additional Government Advocate appearing for respondent No.1 submits that what is impugned is only a show cause notice. If the respondent No.3 furnishes the requisite security, the impugned attachment could be lifted. He submits that respondent No.3 and the petitioner together had earlier filed an appeal before the KAT. He also brings to my notice the affidavit filed by the petitioner undertaking not to alienate the property till the disposal of this writ petition.

5. The submissions of the learned counsel have received my thoughtful consideration. Nothing is placed on record to show as to how the petitioner has purchased the properties in question and how she has

become the owner of the properties. No title deeds are placed on the record of the Courts. It is trite that the record of rights do not constitute title deeds.

6. The right of the respondent No.2 to recover the amounts stated to have been misappropriated by the respondent No.3 cannot be defeated by his wife.

7. The impugned order dated 3/3/2011 is not even confirmed yet. The whole exercise is premature. It is open to the respondent No.3 to furnish the security to the satisfaction of the respondent No.1.

It shall be also open to the petitioner to make the necessary application before the first respondent himself, showing the source of her income and how she acquired the properties in question. It is for the respondent No.1 to consider such an application, if filed. With these liberties and observations, this petition is dismissed.

Petition dismissed

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Kanakamma W/o Gokuldas v Mangalore Teacher's Credit Co-Operative Society Represented by its Chief Executive Umesh S/o Late Raghu, 2015 Indlaw KAR 436

Case No: Criminal Revision Petition No. 970/2011

Justice R. B. Budihal

Head Note :

KCS Act 1959 – the CEO is authorisied to give evidence under S.29G(4) and (5)

The trial court held that the chief executive officer of the society is authorised to institute the case on behalf of the society and has held that there is no merit in the contention of the accused and accordingly convicted by imposed the penality. When the said judgement was challenged, the court concurred with the findings of the trial court and hence the appeal dismissed.

The Order of the Court was as follows:

6. The case of the respondent-complainant is that the complainant is a registered society and accused is the member of the Society. There was outstanding amount of Rs.2,79,719/- due from the accused towards loan account bearing No.SC 3726. In spite of arbitration award the accused has not settled the amount. She has issued a cheque bearing No.003414 dated 17.9.2007 for Rs.2,79,719/- drawn on Corporation Bank, Padavu Branch, Mangalore in favour of the complainant. When it was presented for encashment the same was dishonoured for insufficiency of funds as per the Memo dated 19.9.2007 issued by the Bank. Thereafter, complainant issued legal notice calling upon accused to make the payment of the amount within 15 days of the receipt of notice. In spite of service of notice the amount was not paid and hence complainant has filed the complaint before the trial Court. As regards issuance of cheque and signature on the said cheque there is no dispute and as per the case of the complainant, even with regard to the amount due, there is an arbitration

award and in spite of that liability was not discharged. The document Ex.P5 was produced under which the accused has admitted the liability. But the only contention of the revision petitioner-accused is that there was no authorization to complainant to file the complaint on behalf of the society.

7. In paragraph No.6 of its order, the trial Court has discussed in detail that the Chief Executive of the Society has filed the complaint and has given evidence in this matter and he has authority to give evidence as per S. 29(g) (4) and (5) of the Karnataka Co-operative Societies Act. The trial Court has also considered the decisions relied upon by the accused. Perusing the said judgments so also the provisions of the Act, the trial Court has come to the conclusion that by the statute itself, the Chief Executive Officer of the Society is authorized to institute case on behalf of the Society and has held that there is no merit in the contention of the accused and accordingly, convicted the accused by imposing penalty. When the said judgment has been challenged before the first appellate Court, it has also after re-appreciating the matter, concurred with the findings of the trial Court and dismissed the appeal.

8. Perusing the materials on record, so also the legal aspect involved in the case, it is seen that both the Courts below have decided the case in accordance with the provisions of law and no illegally has been committed by the Courts below. There is no merit in this revision petition. Accordingly, it is rejected.

Revision dismissed

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J. Ningegowda S/o Javare Gowda v Assistant Registrar of Co-operative Societies, Pandavapura Sub-division Pandavapura, Mandya and others, 2016 Indlaw KAR 5856

Case No: Writ Appeal No. 4500/2015(CS-RES)

JJ. Jayant Patel & Aravind Kumar

Head Note :

Karnataka Co-operative Societies Act, 1959, s.69 - Misappropriation - Recovery of property - Appellant/ Secretary of Society had detected misappropriation.

Appellate Authority considered deposition of Enquiry Officer, wherein it was stated that, in enquiry, it was found that liability is 50:50 of original respondent Nos.1 and 2. Based on appreciation of evidence, order of First Authority is modified by Appellate Authority. Such matter falls in arena of appreciation of evidence which would be outside scope of judicial review in a petition u/art. 227 of Constitution. Apart from the same, even if contention is considered for sake of examination, remarks in audit report is one aspect and finding recorded in enquiry u/s. 64 of Act based on which proceedings arise u/s. 69 of the Act. In view of said, order read with reasons recorded by Writ Court, it cannot be said that view taken by Writ Court would not call for interference in exercise of power in intra-court appeal. Hence, no case is made out for interference. Appeal dismissed.

The Order of the Court was as follows:

3. The contention raised on behalf of the appellant was that in the enquiry report the liability was fixed, but in the cross-examination of the Enquiry Officer, he admitted that in the audit report there was full liability held against original respondent No.2-respondent No.3 herein. It was submitted that on the basis of the evidence, the first authority under Section 69 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act') had taken the view of full liability of original respondent No.2- respondent No.3 herein. As per the contention of the learned counsel for the appellant in the appeal, the appellate authority could not have reversed the finding and he submitted that the finding recorded by the appellate authority in the impugned order before the learned Single Judge was not correct and therefore the learned Single Judge ought to have examined the matter. He also contended that the appellant in capacity as the Secretary of the Society had detected the misappropriation committed and therefore he could not have been held responsible for the amount of misappropriation.

5. We may at the outset record that the scope of judicial review in a petition under Article 227 of the Constitution would be limited to the question of error of law or error of jurisdiction or any breach of principles of natural justice or perversity of the finding. The learned Single Judge has rightly observed that this Court would not have appellate jurisdiction against the order of the first authority as well as of the appellate authority. Once, it is considered that there is no appellate jurisdiction, the question for appreciation and re-appreciation of the evidence on record could be outside the scope of judicial review in a petition under Article 227 of the Constitution.

6. In the present case it appears that before the first authority under Section 69 of the Act, the evidence of the Enquiry Officer is considered. But, more weightage is given to the audit remarks, wherein it was mentioned that original respondent No.2-respondent No.3 herein was only responsible for the so-called misappropriation and based on the same, the liability was held only as that of original respondent No2-respondent No.3 herein and not the appellant. Whereas in appeal, the appellate authority re- appreciated the evidence of Enquiry Officer. The appellate authority considered the deposition of the Enquiry Officer, wherein it was stated that, in the enquiry it was found that the liability is 50:50 of original respondent Nos.1 and 2. Thereafter based on the said appreciation of the evidence, the order of the first authority is modified by the appellate authority. In our view, such matter falls in the arena of appreciation of the evidence which would be outside the scope of judicial review in a petition under Article 227 of the Constitution. Apart from the same, even if the contention is considered for the sake of examination, the remark in the audit report is one aspect and the finding recorded in the enquiry under Section 64 of the Act based on which the proceedings arise under Section 69 of the Act is another aspect.

8. As such, the enquiry report under Section 64 of the Act proceeds on the basis that the appellant who was the Secretary during the period when misappropriation had taken place. Section 29G(4) of the Act if considered as it is, enjoins the liability upon the Secretary/Chief Executive of the Society of general supervision and control. Further, Secretary as per Section 29G(4)(f) of the Act is the custodian of all records. Hence, if the subordinate/ storekeeper who is working under the Secretary has misappropriated the goods of the Society, it cannot be said that the Secretary would not at all be responsible unless the Secretary who has records, proves that it was

exclusive power of the said subordinate/storekeeper and he had no say in the matter. Failure to supervise can be the one of the valid grounds to fasten the personal liability in absence of any evidence to the contrary. Of course it would vary from case to case, but in the present case, the Enquiry Officer has found conjoint liability, i.e., proportionally equal liability of 50:50 of original respondent Nos.1 and 2. Further, the Enquiry Officer was cross-examined in the proceedings under Section 69 of the Act. He has stood by the enquiry report and the finding recorded. It is not the case of the petitioner that during the course of enquiry, there was any breach of principles of natural justice nor it was the case of the petitioner that in the proceedings under Section 69 of the Act or in the proceedings before the appellate, there was any breach of principles of natural justice. Under the circumstances, after appreciation of the evidence, the appellate authority has taken a possible view, which would not call for interference under Section 227 of the Constitution.

In view of the aforesaid, read with the reasons recorded by the learned Single Judge, it cannot be said that the view taken by the learned Single Judge would not call for interference in exercise of the power in intra-court appeal. Hence, no case is made out for interference. Appeal is dismissed. No order as to costs.

In view of dismissal of the appeal, I.A.No.1/2015 for stay does not survive for consideration and consequently, the same stands dismissed.

Appeal dismissed

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Ramachandra Appanna Pujari and others v State of Karnataka, by Sadalaga Police Station, represented by State Public Prosecutor, High Court Building, Dharwad, 2017 Indlaw KAR 4175

Case No: Criminal Petition No. 101359/2017

Justice Budihal R.B.

The Order of the Court was as follows:

2. Brief facts as pleaded in the petition are that petitioner No.1 is the founder of Sri Beereshwar Backward & Minority Co-op Society Ltd.-Bhoj. Petitioner No.1 was also the Chairman of the said Society from 5th May 2001 till November end 2001 and thereafter, from 02.11.2012 till date. During his tenure as Chairman, no illegal transactions have taken place. Other petitioners are Directors of the said Society. As per the Co-operative Societies Act all the day to day affairs are to be managed by the Secretary. But the case of the prosecution that Asst. Registrar of Co-operative Societies, Chikodi, by his order dated 27.03.2017 bearing No.11/RR/01/2016-17 has directed Mr.S.P.Pujari to file the complaint as against the petitioners and six others for misappropriation of Rs.1,33,200/-, which was disbursed by way of salary of two persons viz., Mr.BhimaBheera Done and Mahadev Halappa Mekkalki. As such the Sadalga Police are about to register the criminal case in pursuance of the order passed by ARCS-Chikodi.

5. Learned counsel for the petitioner made the submission that looking to the order dated 27.03.2017, the

direction is given to register the complaint and to take action against the petitioners whose names are specifically mentioned in the said order. It is no doubt true FIR is not registered arraying the petitioners as accused persons. But registration of FIR is not a condition precedent to maintain the petition seeking anticipatory bail. If a person is able to make out a case that he is having reasonable apprehension of his arrest at the hands of respondent-police for non-bailable offence, petition can be entertained and anticipatory bail can be granted. Looking to the averments made in the petition so also the order dated 27.03.2017, the apprehension of these petitioners of their arrest at the hands of respondent-police is well founded.

6. The petitioners have contended that they are innocent and not involved in committing the said offences and they are ready to abide by any reasonable conditions to be imposed by the Court. The alleged offences are also triable by the Magistrate Court and they are not exclusively punishable with death or life imprisonment. Hence, I am of the opinion that petitioners can be released on bail by imposing reasonable conditions.

7. Accordingly, petition is allowed. The respondent Police are directed to enlarge the petitioners on bail in the event of their arrest for the offences punishable under Sections 406, 408, 409, 467, 468, 471 and 420 of IPC, subject to the following conditions:

i. Each petitioner has to execute personal bond for a sum of Rs.50,000/- and furnish one surety for the like sum to the satisfaction of the arresting authority.

ii. Petitioners shall not tamper with any of the prosecution witnesses directly or indirectly.

iii. Petitioners have to make themselves available before the I..O for interrogation, as and when called for.

iv. Petitioners have to appear before the concerned Court within 30 days from the date of this order and to execute the personal bond and the surety bond.

Petition allowed

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Yamanappa S/o Ningonda Atharga and others v State of Karnataka, 2017 Indlaw KAR 5693

Case No: Criminal Petition No. 101379/2017

Justice Budihal R.B.

Head Note :

When serious allegation are made against the petitioners/committing the alleged offence the complainant/ respondent number 2 are justified in making the submission that no prior sanction under sec.197 of Cr PC is required. The documents prima – facie shows that even the application for grant of loan was submitted, the loan was sanctioned. Therefore looking to the material placed on record, the complainant has made out a prima facie case the committing the alleged affence by the two petitioner – it is not a case by invoking sec.482 of Cr PC for quashing the proceedings – petition rejected

The Order of the Court was as follows:

4. Learned counsel for the petitioners has submitted that the relevant provision of Karnataka Co- operative Societies Act were not followed before lodging the complaint against the petitioners herein. There is no enquiry by the competent authority as contemplated under the Co-operative Societies Act, without such prior enquiry, the proceedings are not at all maintainable. He has also submitted that the loans were sanctioned as per the decision of the Board, therefore, there is no illegality committed by the petitioners in sanctioning the loan. Hence, he submitted that matter requires consideration in this petition at the hands of this Court. He drew the attention of this Court to Section 64 of Karnataka Co-operative Societies Act regarding the enquiry before lodging such complaint, so also, referring to Section 111 of the said Act, he submitted that all these mandatory provisions are not at all followed by the complainant.

5. Per contra, learned counsel for respondent No.1/complainant has submitted that looking to the complaint averments, it is very clear that the loans were sanctioned on the applications and those applications were signed by one Dr.R.S.Rathod, Veterinary Doctor, but he has submitted that on enquiry, it was transpired that no such person by name Dr.R.S.Rathod was working in the entire district as Veterinary Doctor. Hence, this itself shows that false seal has been used in the name of the person, who was not at all working in the said District.

6. Regarding prior sanction under Section 197 of Cr.P.C. is concerned, learned counsel for the complainant, as well as learned HCGP, both have consistently submitted that, when the offence committed under the provisions of Section 419, 409, 420, 465, 468 of IPC, for such offences, no prior sanction is necessary, only if it is in the discharge of the official duties bonafidely for the protection of such genuine transactions, prior sanction is necessary.But in this case as prima-facie illegal transaction have been effected by the petitioners by creating false documents in order to sanction loan. Hence, petition is not at all maintainable and submitted that petition is liable for rejection.

8. Looking to the allegations made in the complaint that petitioners/accused Nos.1 and 2 involved in sanctioning the loan from PLD Bank, Athani. Petitioner No.1 is the Manager and Petitioner No.2 is the Field Officer of PLD Bank. Government formed the scheme to provide financial assistance by way of loan to the poor farmers for the purchase of bullock carts, bullock, sheep through PLD Bank and in that process, these petitioners involved by creating and fabricating false documents and using the certificate i.e., health certificate of signature and stamp of Dr.R.S.Rathod, Veterinary Doctor was affixed styling it as Veterinary Doctor (Touring) Veterinary Hospital, Athani, and committed the alleged offence.But, on enquiry, it was transpired from the Assistant Director, Athani, to the effect that no such Doctor was working in Athani Taluk and there is a report that the applications are with false seal and signature of the said Veterinary Doctor. When such serious allegations are made against the petitioners herein for committing the alleged offence, learned HCGP as well as learned counsel for respondent No.2/complainant are justified in making the submission that no prior sanction under Section 197 of Cr.P.C. is required in this case.

9. I have also perused the document Annexure-D/loan application, so also, the document Annexure-C1 and these documents also prima-facie shows that even the applications were not submitted but loan was granted. Therefore, looking to these materials placed on record, the complainant has made out a prima-facie case for

committing the alleged offence by these two petitioners. Therefore, it is not a case for invoking Section 482 of Cr.P.C. for quashing the proceedings. There is no merit in this petition. Hence, petition is hereby rejected.

Order accordingly

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Fisheries Co Operative Society Limited, Represented by its President, Mysore and another v State of Karnataka, Department of Co-Operative Societies, Represented by its Secretary, Bangalore and others, 2017 Indlaw KAR 6202

Case No: Writ Petition Nos. 44541-44542/2017(CS-RES)

Bench: S.N. Satyanarayana

Head Note :

KCS Act 1959

It is a shameful job on the part of the present President and Secretary of the Society trying to support the persons by filing appeal before Deputy Registrar and as well as these writ petitions – the present president and Secretary are trying to shield those persons who have committed irregularities.

The Order of the Court was as follows:

2. The brief facts leading to these writ petitions are as under:

These writ petitions are filed by the President and Secretary of Fisheries Co-operative Society Limited ('hereinafter referred to as 'Society' for short), Hampapura, K.R.Nagara Taluk, Mysur. Admittedly, the aforesaid Society is in-charge of Krishna Raja Sagara Reservoir (KRS Reservoir) where the breeding of fingerlings (fish seeds) is taken up by Society with the financial assistance of State Government on the understanding that 50% of fish harvested will be distributed among the members of Society for local sale by them, remaining 50% will be retained for public auction and proceeds thereof will be deposited in to the Society's account, which is accountable to Government. It is stated that said exercise is in pursuance of a scheme of Central Government through National Fisheries Development Board, which has identified the Society as Nodal Agency. The fact that entire breeding of fingerlings in the KRS reservoir, the yield which is harvested there from, the proceeds which are collected from disposing of 50% stock to the members of Society and remaining 50% by auction will have to go in to the account of Society which is required to be accounted to the Government, is not in dispute.

7. This Court is unable to understand the locus of Society in trying to protect the interest of aforesaid persons cited in report under Section 64 of the Act as the persons, who have committed serious irregularities in causing financial loss to Society as well as Government. When such irregularities are cited right from appointing one of the accused as Secretary to Society, in raising financial support from private parties for doing business of growing fingerlings in KRS Reservoir, which belongs to Government, promoting private business on behalf

of private entrepreneurs is contrary to bye-laws of Society, the same is ignored by Society in trying to protect the aforesaid persons who are named in the report under Section 64 of the Act.

It is rather a shameless job on the part of present President and Secretary of Society in trying to support said persons by filing appeal before 3rd respondent - Deputy Registrar and as well as these writ petitions. Therefore, this Court while disposing off these writ petitions would place on record its unhappiness about the manner in which present President and Secretary of Society are making attempt to shield those persons, who are shown to be the persons as perpetrators of alleged irregularities.

8. With aforesaid observations, these writ petitions are dismissed imposing cost of Rs.50,000/- each on the President and Secretary of Society for unnecessarily trying to interfere in conducting enquiry under Section 64 of the Act, implementation of said report under Section 64 before 3rd respondent under Section 68 and also with reference to initiation of proceedings for recovery of the alleged financial loss caused by the persons cited in Section 64 report.

9. It is further made clear that the cost which is imposed against the present President and Secretary of Society shall be deposited by them with the Registry of this Court within 30 days from the date of receipt of a copy of this order, failing which coercive steps will have to be initiated against them in holding them as personally liable for the alleged irregularities.

Petitions dismissed

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Mallikarjun S/o Sangappa Mahajan v State of Karnataka, represented by Additional State Public Prosecutor, Bidar and another, 2018 Indlaw KAR 7019

Case No: Criminal Petition No. 200158/2017

Justice K.N. Phaneendra

Head Note :

KCS Act 1959 – sec 109 (3)

Allegations made in FIR as per s. 109(3) of Act r/w. s. 175 of IPC are in fact one and the same as seen. Therefore, private complaint required to be filed for purpose of prosecution u/s. 109(3) of Act r/w. s. 175 of IPC. Therefore, when there is statutory bar for Police to investigate matter, FIR could not have been registered and charge sheet could be filed u/s. 173 of CrPC. Petition allowed.

The Order of the Court was as follows:

3. The brief factual matrix of the case are that, the second Respondent has lodged the First Information Report before the police making allegations that, the petitioner - Mallikarjun s/o Sangappa Mahajan, the Chief Executive Officer of District Central Co-operative Bank Bidar has not produced the relevant documents as sought by the respondent No.2 during some enquiry. Thereby he has committed offence punishable under

Section 109 (3) of the Karnataka Co-operative Societies Act, 1959 read with Section 175 of the Indian Penal Code. It is also alleged in the First Information Report that, the Deputy Registrar has found about loss accrued to the bank in respect of the agricultural and non-agricultural lands to the extent of 10.22 crores. Therefore, on that context he directed the petitioner to produce the documents pertaining to those transactions, for which he has not produced the same. Therefore, the First Information Report came to be lodged.

4. The technical question before the Court is that, there is a bar under Section 195 of Cr.P.C. The police have no jurisdiction to investigate the offence under Section 175 of Indian Penal Code except on a complaint given as contemplated under Section 195 of Criminal Procedure Code and also the offence punishable under Section 109 (3) of the Karnataka Co-operative Societies Act, 1959. The legal procedure to be followed under Section 195 of Criminal Procedure Code, and further under Section 111 of the Karnataka Co-operative Societies Act, 1959 also says that, the prosecution can only be lodged by means of a criminal complaint.

5. The section 195 of the Cr.P.C. mandates that,

(1) No Court shall take cognizance -

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

(emphasis supplied)

6. Therefore, on plain reading of above said provisions it is clear that, there is a statutory bar for the purpose of filing the First Information Report before the Police for the offence punishable under Section 175 of Indian Penal Code.

7. Section 109 (3) of the Karnataka Co-operative Societies Act, 1959 read as follows:-

"A co-operative society or an [office bearer] or member thereof willfully making a false return or furnishing false information, or any person willfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act or willfully not furnishing any information or handing over any documents or property required from him by a person or body of persons authorized in this behalf under the provisions of this Act, shall be punishable [with imprisonment which may extend to two years but shall not be less than three months and with fine which may extend to three thousand rupees but shall not be less than five hundred rupees].

8. The above said section if juxtapose perused with that of Section 175 of the Indian Penal Code absolutely makes no difference at all.

9. Further added to that, the Section 111 of the Karnataka Co-operative Societies Act, 1959 read as follows:-

(1) No Court inferior to that of a Magistrate of the First Class shall try any offence under this Act,

[(2) No prosecution shall be instituted under this Act without the previous sanction of -

(a) the Director of Co-operative Audit in respect of matters arising out of audit other than matters relating to co-operative credit structure society;

(b) the Registrar in respect of all other matters including matters relating to audit in respect of co- operative credit structure society;

Provided that no sanction of the Registrar or the Director of Co-operative Audit shall be necessary for filing criminal complaints against the delinquents for alleged misappropriation or embezzlement of funds of a co-operative society detected during the course of audit, inquiry or inspection or in the normal course of business of a co-operative society.]

(3) The sanction under sub-section (2) shall not be given -

(i) without giving to the person concerned an opportunity to represent his case;

(ii) if the [Director of Co-operative Audit] or the Registrar, as the case may be is satisfied that the person concerned has acted in good faith].

10. On reading of above said provisions, in order to filing of complaint the same procedural aspects is to be followed. Even otherwise as stated above, the concerned officer has to file a private complaint, so far as the offence punishable under Section 175 of Indian Penal Code is concerned. The allegations made in the First Information Report as per Section 109 (3) of the Karnataka Co-operative Societies Act, 1959 read with Section 175 of the Indian Penal Code are in fact one and the same as seen. Therefore, the private complaint required to be filed for the purpose of prosecution under Section 109 (3) of the Karnataka Co- operative Societies Act, 1959 read with Section 175 of the Indian Penal Code.

11. Therefore, when there is a statutory bar for the police to investigate the matter, the First Information Report could not had been registered, and charge sheet could be filed under Section 173 of Cr.P.C. Under the above circumstances, the petition deserves to be allowed. Hence, the following....

ORDER

The petition is allowed.

Consequently, the charge sheet filed by the police in C.C.No.161/2016 for the offence punishable under Section 109 (3) of the Karnataka Co-operative Societies Act, 1959 read with Section 175 of the Indian Penal Code is bad in law and same is quashed.

However, the respondent No.2 is at liberty to file appropriate private complaint if advised in accordance with law.

Petition allowed

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J. R. Shanmukappa S/o Devappa v State of Karnataka, by its Secretary, Department of Co-operation, Bangalore and others, 2015 Indlaw KAR 8664

Case No: Writ Petition No. 31306 of 2015 (CS-EL/M)

Justice Anand Byrareddy

Head Note :

KCS Act 1959 – S.29C of the Act.

The petitioner have been elected, would have to be continued in office till such time that he is faced with any actual situation of disqualifications – Annexures E & F quashed.

The Order of the Court was as follows:

1. The present application I.A.1/2015 is filed seeking amendment of the writ petition. The consideration of the application may not be warranted, having regard to the circumstances of the case.

2. The petitioner and the seventh respondent are said to be elected as the Directors of the fifth respondent - Society for a term during the period 2013-14 to 2017-18. The election to the Board of Directors of the second respondent was scheduled to be held on 1.8.2015 and candidates were to file their nominations on 16.07.2015, withdrawal of the nominations was fixed on 26.07.2015, distribution of the symbols was fixed on 26.07.2015 and the date of election was fixed on 01.08.2015. Pursuant to the issue of calendar of events, the fifth respondent passed a resolution resolving to nominate the name of the petitioner as representative of the fifth respondent - Bank. Pursuant to the issuance of calendar of events and the resolution, the petitioner had submitted his nomination and the sixth respondent had accepted it.

Being aggrieved by the resolution, the seventh respondent had filed a dispute before the fourth respondent invoking the provisions of Section 70 read with Section 29(c) of the Karnataka Co-operative Societies Act, 1959 to pass a judgment and award disqualifying the petitioner under Section 29C from holding the post of Director of the Committee of Management of the fifth respondent, since he was disqualified as being a defaulter. The allegation was in the background that the petitioner was earlier a member of the Managing Committee of the defunct Society and that the Liquidator appointed pursuant to the dissolution of the Society, has instituted proceedings against the petitioner claiming that he was the defaulter. It transpires on the basis of such allegation, the fourth respondent proceeded to pass an exparte interim order disqualifying the petitioner from contesting the election. It is in that background that the present petition was filed.

3. By virtue of an interim order granted by this Court, the election was held and the petitioner was elected unopposed and he continues in office. It further transpires that only on the allegation being made that the petitioner even became aware of any such default on his part. On further enquiry, he has found that the proceedings instituted by the Liquidator has not made any further progress and the matter may even now be pending consideration.

4. Notwithstanding the same, the petitioner having been elected, he would have to be continued in office till such time that he is faced with any actual situation of disqualification. Given the above circumstances, there was no warrant for the fourth respondent to have passed an order exparte, disqualifying the petitioner when there was no concluded proceedings declaring the petitioner as a defaulter. In that view of the matter, the petition itself stands disposed of. Annexures "E" and "F" are quashed.

I.A.1/2015 is disposed of as it does not survive for consideration.

Petition disposed of

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Govind S/o Lokappa Harikantra v Deputy Registrar, of Co-operative Societies, Karwar and others, 2015 Indlaw KAR 1927

Case No: W.P. No. 30037 of 2008 [CS-RES]

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 – disqualification for membership

The Act makes clear that a person sentenced for any offence, other than an offence of a political character or an offence not involving moral turpitude, such sentence not having been reversed or the offence pardoned, shall be ineligible for admission as a member of a co-operative society, unless a period of five years has elapsed from the imposition of sentence.

The Order of the Court was as follows:

1. The petitioner was a member of respondent No.3, a Society registered under the Karnataka Co-operative Society, 1959 (for short 'the Act'). A criminal case was registered, on 22.09.1999 against the petitioner in Gokarna Police Station, on the allegation that he assaulted respondent No.4. Investigation was conducted and charge-sheet was submitted to the jurisdictional court. After taking cognizance and issuance of process, petitioner having pleaded guilty, was tried in C.C. No.396/2000 by learned JMFC, Kumta. By a judgment dated 09.05.2003, the petitioner was found guilty of the offences punishable u/ss. 447 and 324 read with S. 34 of IPC and was sentenced to undergo imprisonment, apart from payment of fine. Criminal Appeal No.67/2003 filed in the Court of Sessions Judge, Karwar, was allowed in part and conviction for the aforesaid offences was confirmed.

However, the sentence imposed by the learned Magistrate was set aside and the fine imposed was enhanced, with default clause. Criminal Revision Petition No.1058/2007 having been filed belatedly, by an order dated 16.12.2008, the application seeking condonation of delay was dismissed and consequently, the petition was also dismissed.

2. Respondent No.2 having passed an order dated 21.09.2007, vide Annexure 'B', disqualifying the petitioner from the membership of the Society and an appeal filed before respondent No.1 having been dismissed on

09.06.2008, vide order as at Annexure 'C', this writ petition was filed.

3. Heard learned advocates on both sides and perused the writ record.

4. S. 17 (1)(b) of the Act makes clear that a person sentenced for any offence, other than an offence of a political character or an offence not involving moral turpitude, such sentence not having been reversed or the offence pardoned, shall be ineligible for admission as a member of a co-operative society, unless a period of five years has elapsed from the imposition of sentence.

5. Subs. (2) of S. 17 makes clear that if a member becomes subject to any disqualification specified in subsection (1), he shall be deemed to have ceased to be a member from the date of disqualification is incurred. Subs. (3) confers jurisdiction on the Registrar to decide suo motu or on a report made to him, after giving an opportunity of hearing to the person concerned of being heard, decide the question whether the member is deemed to have ceased or has ceased to be a member under sub-s. (2 - A).

6. There being no dispute with regard to the conviction of the petitioner for an offence involving moral turpitude and the same having been confirmed in Criminal Appeal No.67/2003, decided on 29.09. 2005, by the learned Sessions Judge, Fast Track Court-I, Karwar and revision petition filed thereafter, having been rejected and the petitioner having deposited the modified sentence-fine imposed, in terms of the judgment passed in Criminal Appeal No.67/2003, ceased to be the member of the Society, respondent No.1 is justified in upholding the same, vide order as at Annexure 'C'. In view of the above, the impugned orders being neither perverse nor illegal, no interference is called for.

In the result, the petition being devoid of merit, is dismissed. However, five years period having been elapsed, after the judgment of conviction was passed by the learned Magistrate or from the date the Criminal Appeal vide judgment, as at Annexure 'A', was decided, it is open to the petitioner to apply for fresh membership with respondent No.3 and it is for the Managing Committee of respondent No.3 to take the decision, in accordance with law. No costs.

Petition dismissed

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Shekhar M. Naik v Deputy Registrar of Co-Operative Societies, Uttara Kannada and others, 2015 Indlaw KAR 4603

Case No: W.P. No. 101410 of 2015

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 – no order was passed u/s.29C, but only an endowersment is issue which is quashed.

The Order of the Court was as follows:

1. The petitioner, a member of the 3RD respondent- Grameena Vyavasaya Seva Sahakari Bank Ltd., Shirali, Taluk Bhatkal, filed a complaint on 28.01.2014 against respondent No.2 before respondent No.4 and sought disqualification by exercise of the power under Section 29- C of the Karnataka Co-operative Societies Act,

1959 (for short 'the Act'). The bank having submitted a communication dated 12.06.2014 i.e., in response to a notice dated 03.02.2014 of respondent No.4, petitioner was notified on 21.06.2014, that the loan having been discharged by respondent No.2, disqualification under Section 29-C of the Act is not attracted. Consequently, Petitioner's complaints dated 28.01.2014 and 10.06.2014 were disposed of. Feeling aggrieved, an appeal vide Annexure-B was filed. Treating Annexure-A as a communication and not an order, an endorsement dated 19.09.2014, vide Annexure-C having been sent, this writ petition was filed to quash Annexure-C and grant consequential reliefs.

3. The view taken, leading to the issue of Annexure-A, that it is only a communication and not an order, is illegal. In response to the complaints dated 28.01.2014 and 10.06.2014, respondent No.4, without granting opportunity of hearing either to the petitioner or respondent No.2, has arrived at the decision and communicated on 21.06.2014 vide Annexure-A. Since respondent No.4 arrived at the decision, that in view of the discharge of loan by respondent No.2, disqualification contemplated under Section 29-C of the Act is not attracted, appeal vide Annexure-B was filed. In the said background, respondent No.1 is unjustified in issuing the endorsement vide Annexure-C, inasmuch as, Annexure-A, though, is in the form of communication, is nothing but an order of the 4th respondent, holding that there is no ground to proceed against respondent No.2, with regard to the disqualification from Membership of Managing Committee of respondent No.3. Thus, annexure-C being arbitrary and illegal is liable to be quashed.

4. In the ordinary course, the matter would have been remitted to respondent No.1, for consideration of the appeal vide Annexure-B, on its merit. There being no dispute that neither the petitioner nor respondent No.2 were heard while arriving at the decision vide Annexure-A and there being violation of principles of natural justice, even Annexure-A is liable to be quashed.

In view of the above, writ petition is allowed. The communications/orders/endorsements, as at Annexures-A and C are quashed. Petitioner and respondent No.2 are directed to appear before respondent No.4, on 28.02.2015 at 3.00 p.m. and receive further orders. Respondent No.1 shall issue notice to respondent No.3 and thereafter consider the matter in accordance with law and pass order afresh, without being influenced by the decision arrived at on 21.06.2014, resulting in issue of the communication, as at Annexure-A.

All the contentions of both the parties are left open.

Petition allowed

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Shivaraj S/o Ramarao Jadhav and others v Deputy Registrar of Corporation Societies, Belgaum and others, 2015 Indlaw KAR 2296

Case No: W.P. Nos. 109884-888/2014 & 109889-892/2014 [CS-RES]

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 – application for impleeding persons disallowed by the court – reexamining records and pass fresh orders – petition allowed

The Order of the Court was as follows:

1. Petitioners being the members of the 3rd respondent/Prathamika Krishi Pattina Sahakara Sangh Niyamit, Nandikurli, Dist: Belgaum, were elected as members to the Board of management for the period 1.9.2013 to 31.8.2018. A notice vide annexure-B having been issued by respondent-2, reply vide annexure-C was submitted by petitioners. The 2nd respondent having passed an order of disqualification dated 25.8.2014 vide annexure-D, petitioners filed appeal vide annexure-E, u/s. 106 (1)(d-2) of the Karnataka Co-operative Societies Act, 1959, before respondent-1.

The complainants having filed Caveat before respondent-2 and an order dated 1.10.2014 having been passed, permitting the complainants to participate in the proceedings of the appeal, these writ petitions were filed, to quash the order as at Annexure- A.

5. In WP.12316/2014, decided on 9.4.2014, the Registrar having allowed application filed by respondents 3 to 5 therein, for being impleaded as additional respondents in the appeal filed by the writ petitioners and other Directors, challenging the order of disqualification passed u/s 29-C(8)(b) of the Karnataka Co-operative Societies Act, 1959, disqualifying the writ petitioners and other 12 Directors on a complaint given by respondents 3 to 5 therein, following catena of decisions, including the order dated 4.3.2014 passed in W.P.Nos.54844-849/2013, the impugned order allowing application filed by the complainants seeking impleading in the appeal was set aside and application filed by respondents 3 to 5 seeking impleading in the case pending before the appellate authority was dismissed.

6. The instant case, being identical to the one decided in W.P.12316/2014, following the said order and for the reasons set out therein, the impugned order has to be held as arbitrary and illegal.

7. In the result, writ petitions are allowed and the impugned order, as at annexure-A, permitting the complainants to participate in the appeal is quashed. However, respondent-1 shall examine the record of respondent 2, including complainants' version as found therein and decide Appeal No.DRL/DAP/04/2014-15 with expedition and within three months period and accordance with law.

Petitions allowed

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Timanna S/o Chandrashekhar Gaonkar v Deputy Registrar of Co-operative Society and others, 2015 Indlaw KAR 3263; 2015 (2) KarLJ 436

Case No: W.P. No. 81720/2013 (CS-EL/M)

Justice A. N. Venugopala Gowda

Head Note :

KCS Act 1959 – S.29C of the Act – a member of the board can be disqualified u/s.29C and not from the membership of the society. The order does not mention about S.17 of the Act - order without application of mind – writ allowed.

The Order of the Court was as follows:

2. The question for consideration is, whether respondent No.1 was justified in dismissing the appeal filed against the order passed by respondent No.2, disqualifying the petitioner's membership of the 5th respondent-Society, in exercise of the power under Section 29-C(8)(b) of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act').

3. Brief reference to the facts giving rise to the question is necessary. The petitioner being a member of Adarsha Seva Sahakari Sangh, Vajaralli, Taluk Yellapur, Uttara Kannada-Karwar (for short 'the Society'), along with respondent Nos.6 & 7, was elected as a member to the Managing Committee of the Society. Respondent Nos.6 & 7 having made a complaint to the 2nd respondent, alleging that the petitioner has acted against the interest of the Society, 2nd respondent having issued a notice, petitioner appeared and filed statement of objections and sought dismissal of the proceeding.

The 2nd respondent having passed an order, as at Annexure-B, disqualifying the petitioner from the membership of the Society, an appeal filed u/s. 106 of the Act, before the 1st respondent was also dismissed as per the order as at Annexure-A. Assailing the said orders, this writ petition was preferred.

It is clear from the above provision under sec.29C(8)(b), that a member of the Board of any Co-operative Society can be disqualified i.e., with respect to the membership of the Board and not membership of the Society. Disqualification for membership in respect of the Society can be in terms of S. 17. The order, as at Annexure-B, does not make any reference to S. 17 nor did the respondents contend that the petitioner was disqualified in exercise of the power under S. 17 of the Act.

7. When an appeal was filed against the said order, respondent No.1, without examining, whether the impugned order passed by respondent No.2, as at Annexure-B, is legal or otherwise, having misdirected himself, has affirmed the said order, without any application of mind.

Though, respondent No.1 has narrated the sequence of events in the order passed, he has failed to appreciate the case before him and has mechanically dismissed the appeal. Lack of application of mind and non-consideration of the case of the petitioner is apparent. Both the impugned orders are arbitrary and illegal.

8. In the result, writ petition is allowed and the impugned order as at Annexure-A is quashed. The case is remitted to respondent No.2 for consideration and decision afresh by keeping in view the observation made supra and in accordance with law.

9. No costs.

Petition allowed

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Ather Mateen S/o Late Jaffer Hussan v Deputy Registrar of Co-Operative Societies, Mysore and another, 2016 Indlaw KAR 382

Case No: Writ Petition No. 1489 of 2016 (CS - RES)

Justice Anand Byrareddy

Head Note :

Of would be in the fitness of things, that during the pendency of appeal, the petitioner is entitled to an order of stay of the order passed by the second respondent for otherwise the statutory provisions are turned on their head.

There shall be an order of stay of the order passed by the second respondent in which event he shall be deemed to be continued in office.

The Order of the Court was as follows:

3. It is the case of the petitioner that he had contested the election to third respondent Society and he was elected as a Director and later was nominated as the President. If transpires that there was a complaint lodged by the 4th respondent to the second respondent, dated 05.09.2015, alleging that the petitioner had misused power and had misappropriated monies of the Society. The same was said to have been treated as a dispute and proceedings under Section 29(1) of the Karnataka Cooperative Societies Act, 1959 (hereinafter, referred to as the K.C.S Act for brevity) was said to have been initiated. The petitioner is said to have appeared through counsel and is said to have sought leave to file objections on an adjourned date. The same was negated and the second respondent had passed an order holding that the petitioner was guilty of misappropriation and has held that he was disqualified to continue in office and that he should be removed. This was by an order dated 09.10.2015. The petitioner had immediately filed an appeal under Section 106 of the K.C.S Act before the first respondent, accompanied by an application seeking stay of the impugned order passed by the second respondent. That application not having been considered and the order passed by the second respondent being allowed to be enforced, the petitioner had approached this court by way of writ petition in W.P.No.55222/2015. The same was summarily allowed by this Court directing that the application, filed alongwith the appeal should be taken up for consideration, in the first instance.

5. The learned Senior Advocate would place reliance on a Division Bench judgment of this Court in W.A. No.1666/2008, dated 05.11.2008, in the case of M Thimmaiah and others vs. The Additional Registrar

of Cooperative Societies and others, wherein the Division Bench has noticed that a person who suffers disqualification has to lay down office and accordingly the 4th respondent therein had been removed from office. But the very same byelaw under which he was removed provided for an appeal against such disqualification and a statutory appeal having been filed, the appellate authority was empowered to pass an interim order under Section 106(3). If that be so, the basic question regarding the disqualification itself being the subject matter in appeal and if the appeal pending before the Appellate authority was ultimately allowed, and if the order of the original authority disqualifying the concerned respondent was not stayed pending the appeal, the concerned respondent would suffer irreparable loss. It was observed that it was not a case where by virtue of the order vacating the interim order the appellants were entitled to continue as Directors, but on the other hand it is not in dispute that but for the disqualification, the 4th respondent therein was entitled to continue as a Director. Similar is the present circumstance. Though there is a serious allegation against the petitioner, the order passed by the second respondent being without reference to the objections that may have been filed by the petitioner and the same having been questioned in appeal, during pendency of the appeal if there is no interim order, the appeal itself is rendered infructuous. Therefore it would be in the fitness of things, that during the pendency of appeal, the petitioner is entitled to an order of stay of the order passed by the second respondent for otherwise the statutory provisions are turned on their head. Accordingly the petitioner is entitled to an interim relief by the first respondent. This is dehors the serious allegations and findings that are placed on record as against the petitioner. This ultimately shall be the subject matter of adjudication by the appellate authority. Therefore without reference to the controversies that were raised on bona fides or otherwise of the petitioners, the petition is allowed.

6. As the appeal is pending before the first respondent, it is for the first respondent to deal with the same with expedition having regard to the fact that the respondents are in a hurry to conduct elections to the post which would fall vacant if the petitioner is held to be disqualified and removed from office. Therefore, there shall be an order of stay of the order passed by the second respondent in which event he shall be deemed to be continued in office. The appellate authority is certainly vested with the jurisdiction to pass any further orders with reference to the petitioner and as to his functioning in office in due course, during the pendency of the appeal. The petition is allowed in terms as above. The impugned order Annexure E is quashed and modified in terms as above.

Order accordingly

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R. K. Satyanarayana S/o Kommegowda v Department of Co-operative Societies, Bangalore and others, 2016 Indlaw KAR 3647

Case No: Writ Petition No. 21470 of 2016 (CS - RES)

Justice Anand Byrareddy

Head Note :

KCS Act 1959 – disqualification u/s 29C

The Order of the Court was as follows:

2. It is stated that at the instance of respondent No.6 and on his complaint that there was large scale irregularities on the part of the petitioner and other 9 directors action was initiated by respondent No.4, the Deputy Registrar of Cooperative Societies. The allegations were that respondent No.2 had permitted 10 directors of respondent No.5 to visit cooperative societies on a study tour within the State, and had sanctioned Rs.1,00,000/- as expenses for all the directors and the petitioner was one of them and during that period the petitioner was the President of respondent No.5 Society. The petitioner and 9 other directors had visited various places and societies on a study tour. It then transpires that respondent No.4 had issued a notice under Section 29(c) of the Karnataka Cooperative Societies Act, 1969 at the instance of respondent No.6 and the petitioners were asked to file a reply to the notice as regards the alleged misuse of the money sanctioned. The petitioner had appeared before respondent No.4 and filed his detailed reply alongwith all necessary documents and receipts to substantiate the costs incurred in the study tour and the acknowledgements from various societies they had visited during the tour. However, respondent No.4 according to the petitioner on account of political pressure and malafides had disqualified the petitioner under Section 29(c) though the documents produced by the petitioner were before the respondent No.4 which were completely ignored. In the order no mention or reference to the said documents. The petitioner had therefore challenged the same before the appellate authority and the appeal has also been dismissed summarily without reference to the said documents which were available on record. It is in this background that the petitioner is before this Court.

3. The learned counsel appearing for respondent No.6 has entered caveat would submit that he is one of the directors and it is noticed that the money of Rs.1,00,000/- was sanctioned and it was utilized by the petitioner for his own use and there was no study tour as was claimed and in this background that the action was taken against the petitioner. However, it was for the petitioner to defend himself by tendering evidence and since the documents produced by the petitioner were not been referred to, obviously an enquiry was conducted in haste without affording ample opportunity to the petitioner to adduce evidence. If there were 9 other directors who had accompanied him in the study tour it was incumbent that those directors ought to have been examined in the enquiry to arrive at a finding that the petitioner had misappropriated the entire amount. this exercise has not been carried out. Even the appellate authority having not chosen to refer to the evidence or find fault with the enquiry conducted by the 4th respondent would appear that

the impugned order has resulted in miscarriage of justice. Consequently, since the appellate authority is also a fact finding body the petition is summarily allowed. Since in terms of proviso to Section 29(c) (4) it is the respondent No.4 who would be in a position to gather the evidence, it is appropriate that the matter is remanded to the 4th respondent to conduct an enquiry in accordance with law after affording an opportunity of hearing and liberty to tender evidence to the petitioner. consequently, the petition is allowed. The impugned Annexures are quashed.

4. The learned Government Advocate is permitted to file his memo of appearance within two weeks.

Order accordingly

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Chikodi Taluka Agril Produce Co-op. Marketing Society Limited, represented by its Manager Gangadhar Vasant Chougule Belagavi and others v State of Karnataka, represented by its Secretary Department of Co-operative Bengaluru and another, 2017 Indlaw KAR 910

Case No: Writ Petition Nos. 107929-107939/2016 (CS-RES)

Justice L. Narayana Swamy

Heat Note :

KCS Act 1959 – disqualification u/s 29C

Where a showcase notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, in a writ court could not hesitate to interfere even at the stage of issue of showcase notice.

The Order of the Court was as follows:

1. The petitioners herein are challenging the proceedings dated 06.09.2016 initiated by the respondent No.2-Deputy Registrar of Co-operative Societies, Belagavi under passed Section 29-C of the Karnataka Co-operative Societies Act, 1959 vide Annexure-A series.

2. The ground urged by the petitioners is that the show cause notice issued under Section 29-C of the Act should have been issued against the individual members of the Society, but there is no such wording employed in the show cause notice. Hence, the said show cause notice under Section 29-C is nonest and without jurisdiction.

3. Learned counsel for the petitioners submits that this Court can exercise power under Articles 226 of the Constitution of India. To fortify the same, the learned counsel for the petitioner placed reliance on the unreported judgment of the Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Vicco Laboratories 2007 Indlaw SC 1256 in Appeal (Civil) No.5401/2007 and submits that normally the writ Court would not hesitate to interfere even at the stage of issuance of show cause notice. It is held by the Hon'ble Supreme Court in Appeal (Civil) No.5401/2007 (Supra), where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case the Writ Court would not hesitate to interfere even at the stage

of issuance of show cause notice. In the present case, complaint is said to have been made by the members, which is forged and fabricated one and all the members resolved to sell eight trucks. In this circumstance, issuance of show cause notice on the basis of the complaint by the members of the Society cannot be accepted.

4. Learned counsel for the respondent - Society submits that it is the society consisting of members, committed many irregularities without taking any prior permission against the interest of the first respondent and sold the trucks, which is contrary to law. Secondly, it is submitted that with the show cause notice, the petitioners are directed to appear on a particular date which does not take away the rights of the petitioners. Further, he relied upon the judgment of the Hon'ble Supreme Court in the case of Special Director and another vs. Mohd. Ghulam Ghouse and another reported in (2004)3 SCC 440 2004 Indlaw SC 1 and submitted that whether the show cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially.

5. Heard the learned counsel for the parties and perused the writ petition papers.

6. Normally, this Court would not interfere in the matter, where the show cause notice is issued. The question involves is that whether the show cause notice issued in the form of final proceedings to the interest of the individual or the Society. In this regard, I have examined the show cause notice, which is issued alleging that the decision taken from the existing Society. The decision taken by the Society is contrary and the petitioners had the opportunity to appear before the authority and place all the disputed facts. When the disputed facts are the subject matter, the Court cannot exercise power under Article 226 of the Constitution of India.

7. Learned counsel for the petitioners submits that notice under Section 29-C of the Act can be issued to only individuals. In this regard, issuance of notice under particular provision is not a ground to interfere. It is open for the petitioners to raise this ground also before the competent authority. If such ground is raised, the respondents to consider the same and pass appropriate orders.

8. In the light of the above, I do not find any reason to interfere with the order passed by the respondents. Accordingly, the writ petitions stand disposed of.

Petitions disposed of

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K. Bhoopal Director, Aircraft Employees Co-operative Society, Bangalore v Joint Registrar of Co-operative Societies, Bengaluru, 2017 Indlaw KAR 6100

Case No: W. A. No. 6444/2017 (CS-RES)

JJ B.S. Patil & Aravind Kumar

Head Note

Karnataka Cooperative Societies Act, 1959, ss. 29C, 106 - Whether, appellant/ petitioner is entitled to any relief against order of disqualification.

Single Judge has rightly asked writ petitioner to avail remedy of filing appeal. However, while doing so, right and interest of appellant ought to have been protected by passing appropriate order suspending order of disqualification for a limited period so as to enable him to file appeal and seek appropriate interim orders before Appellate Authority. It would be duty of Appellate Authority on the correctness of order of original authority disqualifying petitioner and also to find out if the same has to be stayed pending consideration of appeal. Hence, order of Single Judge declining to interfere with the matter in exercise of writ jurisdiction u/arts. 226 and 227 of Constitution when efficacious statutory remedy of appeal is provided u/s. 106 of Act, is upheld. However, appellant is granted time to file appeal along with necessary interlocutory application seeking interim stay. Order accordingly.

The Judgment was delivered by : B.S. PATIL, J.

2. It is necessary to advert to few facts which are relevant for the purpose of disposal of this appeal. A show cause notice was issued to appellant on 05.04.2017 proposing to initiate proceedings under Section 29-C of the Act for his disqualification. Certain allegations of irregularities were made against appellant during his tenure as Director of the Aircraft Employees House Building Co-operative Society.

3. Appellant filed objections along with an application requesting to treat preliminary objection raised by him regarding jurisdiction of the Joint Registrar of Co-operative Societies to entertain the matter as a preliminary issue and pass orders regarding his jurisdiction. The application was heard on 06.10.2017. An order was passed regarding the same on 09.10.2017 holding that decision on the issue raised regarding jurisdiction would be as good as consideration of the main matter itself and therefore, there was no need to examine the same.

4. Appellant obtained certified copy of the said order on 12.10.2017 and immediately filed writ petition in W.P.No.47076/2017 on the following day itself i.e., on 13.10.2017, challenging the order passed by the Joint Registrar.

5. The matter came up before the Court on 23.10.2017. On that day, according to appellant, he was informed that on 21.10.2017 itself final order had been passed by the Joint Registrar disqualifying the appellant under Section 29-C of the Act. On 25.10.2017, W.P.No.48378/2017 out of which the instant appeal arises came to be presented. Petitioner - appellant herein raised several contentions challenging the order of disqualification including the jurisdictional question.

6. As the appellant had contended that the Joint Registrar of Co-operative Societies had no jurisdiction to initiate proceeding under Section 29-C on the basis of allegations made in the show cause notice, petitioner laid challenge to the show cause notice also. It was also contended before the learned Single Judge that no fair and reasonable opportunity was given to the appellant to have his say with regard to the merits of the allegations.

With these among other grounds appellant contended in the writ petition that the order of disqualification deserved to be interfered with exercising jurisdiction under Articles 226 and 227 of the Constitution of India by this Court.

10. It emerges that appellant, at an earliest point of time when the proceedings were initiated against him by issuing show cause notice for disqualification, had raised jurisdictional question before the Joint Registrar. When the Joint Registrar rejected the application filed by him to decide the jurisdictional question as a preliminary issue, appellant filed writ petition. When the writ petition was pending before this Court, the Joint Registrar passed an order finally disposing of the proceedings thereby disqualifying the appellant. Extract of the order sheet maintained by the Joint Registrar discloses that proceedings have been expeditiously concluded.

11. Contention of appellant is that he was not given fair and reasonable opportunity to have his say with regard to the merits of the matter. We do not wish to go into this aspect of the matter as several factual aspects have been asserted which are seriously disputed by respondents. The fact remains that there is a statutory remedy of appeal provided under Section 106 against the order passed by the Joint Registrar of Co-operative Societies under Section 29-C of the Act and the appellate authority is vested with power to grant interim stay as is evident from sub-section (3) of Section 106 of the Act. Aggrieved party viz., appellant herein has got two months time as per the provisions of the Act and the rules framed there under to file an appeal. Appellant has chosen to file the writ petition, may be on account of the contentions he has been urging since beginning that the Joint Registrar did not have jurisdiction to entertain the matter and also that he was not given fair and reasonable opportunity to have his say in the matter and hence, principles of natural justice were not adhered to.

12. Be that as it may, learned Single Judge has rightly asked the writ petitioner to avail the remedy of filing an appeal. However, in our view, while doing so right and interest of appellant ought to have been protected by passing appropriate order suspending the order of disqualification for a limited period so as to enable him to file an appeal and seek appropriate interim orders before the Appellate Authority. Indeed, in matters like this, if such relief is not granted it may lead to irreparable and irreversible situation which may not be remedied subsequently.

14. Hence, while we are in agreement with the order passed by the learned Single Judge declining to interfere with the matter in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India when an efficacious statutory remedy of appeal is provided under Section 106 of the Karnataka Co-operative Societies Act, we are persuaded to grant time to the appellant till 14.11.2017 to file an appeal along with necessary interlocutory application seeking interim stay. Till consideration of the said application and until passing of appropriate orders on the same, order of disqualification passed by the Joint Registrar disqualifying

the appellant to be the Director of Aircraft Employees House Building Co- operative Society, shall stand suspended. It is open to the Joint Registrar of Co-operative Societies to consider the application on 14.11.2017 or on any other day of his convenience and pass orders in accordance with law. Ordered accordingly.

We make it clear that we have not expressed any opinion on the merits of the matter and the Joint Registrar shall pass the order strictly on the merits of the case.

Order accordingly

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K. Bhoopal, Director Aircraft Employees Co-operative Society, Bangalore v Joint Registrar of Co-operative Societies, Bengaluru, 2017 Indlaw KAR 7411; 2018 (2) KarLJ 259

Justice S.N. Satyanarayana

Case No: Writ Petition No. 48378 of 2017 (CS-RES)

Head Note

Karnataka Co-operative Society Act, 1959, ss. 29(c)(8)(b)(c) and (d), 106 - Maintainability of Petition - Whether, writ is maintainable.

Order impugned could be challenged u/s. 106 of Act by filing an appeal as provided under said Act. When such option is available, this Court feels that there is absolutely no justification for petitioner to approach this Court and also there is no reason for this Court to go out of way by bending itself backwards to take up these kind of writ petitions out of turn and to encourage unrighteous litigations which are in pursuit of power and money in guise of trying to enforce their so called legal right by filing this writ petition. Court finds that present writ petition cannot be entertained when alternate relief is available in form of appeal. Petition disposed of.

The Order of the Court was as follows :

2. The grievance of the petitioner is that the 2nd respondent has initiated proceedings under Section 29-C of the Karnataka Co-operative Society Act, 1959, (hereinafter referred to as 'the Act') in No.JRB/Dava/29(C)/01/2017-18. The said proceedings has culminated in an order dated 21.10.2017 in disqualifying the petitioner from holding the office of Director for a period five years by invoking Section 29(c)(8)(b)(c) and (d) of the aforesaid Act. The same is impugned in this proceedings, while doing so, the notice dated 5.4.2017 issued in the proceedings is also impugned.

4. However, the learned Senior Counsel for the petitioner would submit that the apprehension of the petitioner in the entire proceedings in No.JRB/Dava/29(C)/01/2017-18 is at the instance of people, who are enemically opposed to him. The same is in connivance with the respondent herein to ensure that in the absence of the petitioner and his followers his rivals in the society would take control of the Society by manipulating aforesaid litigation. Therefore, he would submit that the order impugned is required to

be interfered in this proceedings. He would further submit that though the order impugned is appealable, the petitioner is before this Court by filing writ petition seeking relief to ensure that he is not removed from the office in dubious manner and same should be discouraged. To substantiate filing of this petition instead of appealing the order impugned he would rely upon the judgment rendered in the matter of M/S. BABURAM PRAKASH CHANDRA MAHESHWARI VS. ANTARIM ZILA PARISHAD NOW ZILA PARISHAD, MUSAFFARNAGAR reported in AIR 1969 SUPREME COURT 556. Wherein, it is held that the High Court has inherent power to entertain writ petition in a matter where alternate forum is available to seek redressal.

6. The fact that there are thousands of litigations pending craving the attention of this Court where property rights and personal rights of the parties are involved is not in dispute. When the Courts are finding it difficult to cope up with such heavy burden of litigations of general public with very few judges available to attend, giving special importance to this kind of litigations would be disastrous. Merely because they have ability to engage the services of the best of the Senior Lawyers at the Bar, the Courts should not entertain them in approaching this Court at the drop of their hat by moving memos with the help of Senior Counsel and trying to coerce this Court under the guise of citing judgments of the Apex Court in taking up their matter out of turn and to give them importance keeping more important litigations aside.

7. Therefore, in this background this Court feels that when alternate forum is available to the parties, allowing them to approach this Court out of turn and to coerce this Court to exercise its power under Article 226 of the Constitution, should not be encouraged. More particularly, when more deserving litigations are pending in queue and in the fact situation where the numbers of Judges being less and chances of more deserving cases not being able to seek the attention of Courts, to entertain writ petitions of this nature where they have right to approach the authorities in alternate forum is available should be discouraged.

8. Incidentally, in the instant case, the order impugned could be challenged under Section 106 of the Karnataka Co-operative Societies Act, 1959 by filing an appeal as provided under the said Act. When such option is available, this Court feel that there is absolutely no justification for the petitioner to approach this Court and also there is no reason for this Court to go out of the way by bending itself backwards to take up these kind of writ petitions out of turn and to encourage the unrighteous litigations which are in pursuit of power and money in the guise of trying to enforce their so-called legal right by filing this writ petition.

9. In that view of the matter, this Court finds that the present writ petition cannot be entertained when alternate relief is available in the form of appeal, as stated supra. Accordingly, this writ petition stands disposed of.

In view of the main petition having been disposed of, I.A.No.1/2017 filed for impleading the proposed respondents does not survive for consideration, hence dismissed.

Petition disposed of

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K. Eeregowda S/o Late Kenchegowda v Department of Co-operative Societies, represented by its Secretary, Bangalore and others, 2017 Indlaw KAR 592

Case No: W. P. No. 1479/2017 (CS-EL/M)

Justice B.S. Patil

The Order of the Court was as follows:

1. Petitioner is challenging the notice dated 31.08.2015 issued by respondent No.3 - Assistant Registrar of Co-operative Societies, Hunsur Sub-Division, Hunsur. He has also challenged the order dated 20.12.2016 passed by respondent No.3 adjourning the case for enquiry and fixing the same on 24.12.2016. This order is passed on the memo filed by the petitioner enclosing the copy of the order passed by this Court.

5. Be that as it may, in view of the direction already issued by the Division Bench to consider the question of maintainability, petitioner is well advised to appear before the Assistant Registrar to bring to his notice the judgments on the point, whereunder it has been held that a private party complainant filing complaint against the Directors regarding their disqualification cannot, as a matter of right appear to contest the case, whereupon the Assistant Registrar shall consider the said question and first pronounce on the same at the time of disposal of the case on merits. Writ petition is accordingly disposed of.

Petitions disposed of

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K. Eregowda S/o Kenchegowda v Deputy Registrar of Co-operative Societies, Mysuru and others, 2017 Indlaw KAR 5946

Case No: W. P. No. 36759/2017 (CS-RES)

Justice B.S. PATIL

Head Note :

KCS Act 1959 – sec.29C read with sec.70 and sec.20C(8)

The appellate authority ought to have taken into consideration the balance of convenience and the prima facie case made out and ought to have granted an interim order pending disposal of the appeal, particularly when jurisdiction of the original authority itself was under serious challenge - disposal of accordingly.

The Order of the Court was as follows:

1. The question that falls for consideration in this case is whether the Deputy Registrar of Co-operative Societies was right and justified in dismissing the application filed by petitioner seeking interim stay of the order dated 31.07.2017 passed by the Assistant Registrar of Co- operative Societies, Hunsur Sub-Division, Hunsur. The Assistant Registrar disqualified the petitioner exercising powers under Section 29-C of the

Karnataka Co-operative Societies Act, 1959 (for short 'the Act').

2. Petitioner was duly elected as a member of Milk Producers Co-operative Society Limited on 02.09.2013. Proceedings were initiated against him as a result of a complaint given on the ground that before completing the period of one year from the date of becoming a member of the said society he had contested the election though he was ineligible to do so by virtue of Section 20(2) of the Act. This factual aspect was contested by petitioner before the Assistant Registrar. He also took up the contention that Assistant Registrar had no power or jurisdiction to examine the said question as Section 29-C of the Act only provided for enquiry into disqualification incurred by any member after he became the member of a co-operative society and during the term of his office as such. The Assistant Registrar repelled these contentions and disqualified the petitioner holding that he was not eligible to contest for election to the Society as he had not completed one year from the date he was admitted as member of the Society. This was challenged in appeal before the Deputy Registrar. An application was filed seeking interim stay of the order. Petitioner placed reliance on the Division Bench judgment of this Court in the case of GovindappaVs. SomasekharIshwarappa& Others - 1979(1) Kar.L.J. Page 124.

3. The Deputy Registrar has rejected the application for stay. He has observed that the judgment of the Division Bench was rendered in the light of Sub-section (7) of Section 29-C read with Section 70 of the Act, but the order passed by the Assistant Registrar was under Sub-section (8) of Section 29-C of the Act.

4. I have heard the learned counsel for all parties. I find from a perusal of Section 29-C of the Act, particularly, Sub-sections (7) and (8) and the judgment of the Division Bench in Govindappa's case referred to above. Law laid down by the Division Bench stating that enquiry with regard to disqualification incurred by the member of the Board in terms of Sub-sections (7) of Section 29-C of the Act could be permissible only if the member had incurred such disqualification after he became such a member of the board is very much applicable even in the wake of the provisions in sub-clause 8 of Section 29-C of the Act.

Therefore, reasons assigned by the Deputy Registrar trying to make a distinction by referring to Sub-section (8) of Section 29-C is wholly illegal. The Deputy Registrar has not examined the effect of the provisions in Section 29-C(7) and 20-C(8) while coming to such a conclusion. He has brushed aside the binding precedent of this Court lightly without taking note of the law laid down therein. Law laid down by the Division Bench is very clear inasmuch as in an enquiry under Section 29-C with regard to disqualification of the member of the board, what has to be examined is whether the disqualification was incurred after the concerned person became member of the board. If he had incurred any disqualification prior to his election as member of the board, that would not be the subject matter of enquiry under Section 29-C. Relevant observations made in the judgment of the Division Bench in Govindappa's case referred to above contained in Page 126 can be usefully extracted hereunder:

"Sub-Section (1) of Section 29-C of the Act *lays down that no person shall be eligible for being elected or appointed or continued as a member of the committee if he is suffering from any of the disqualifications mentioned therein. It follows that if a person is suffering from any disqualification before the election, he cannot be a candidate and his nomination paper has to be rejected. But if notwithstanding such a disqualification*

being there the election is held and he is elected, his election can be challenged in an election petition under Section 70 of the Act *filed within the period of limitation prescribed under Section 72A of* the Act. *If a member becomes subject to any disqualification mentioned in Section 29-C (1) of* the Act *after the election is held, then the question whether he has become subject to any such disqualification or not, has to be decided under Sub-section (7) of Section 29-C of* the Act *by the Registrar or any other authority on whom power is conferred. If this distinction between a pre-election disqualification and post-election disqualification is kept in view it is possible to give effect both to Section 70(1) and Section 29-C(7) of* the Act *without doing violence to the language and intendment of the statute".*

Again in Page 128 the Division Bench has proceeded to observe as under:

"Moreover the language of Sub-section (7) of Section 29-C also suggests that it cannot refer to the disqualification of a candidate before the election. It provides that it shall apply only to a member of a committee who was or has become subject to any disqualification. A person becomes a member only after he is duly elected. Hence, the said provision can apply only to a post election disqualification"

5. These observations are very much applicable to the facts on hand. Therefore, prima facie question regarding jurisdiction of the Assistant Registrar to embark upon an enquiry based on the report submitted to him is doubtful. Therefore, the Deputy Registrar ought to have granted an interim order of stay of disqualification order passed by the Assistant Registrar.

7. Therefore, appellate authority ought to have taken into consideration the balance of convenience and the prima facie case made out and ought to have granted an interim order pending disposal of the appeal, particularly, when jurisdiction of the original authority itself was under serious challenge and the judgment of the Division Bench of this Court prima-facie supported the case of the petitioner.

8. In the light of the above, this writ petition deserves to be allowed. Accordingly, petition is allowed. Impugned order passed by the Deputy Registrar is set aside.

There shall be an interim order of stay of the order passed by the Assistant Registrar till the disposal of the appeal by the Deputy Registrar. The Deputy Registrar is directed to dispose of the appeal within a period of three months from the date of receipt of a copy of this order.

Order accordingly

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K. N. Anilkumar S/o K. T. Nagendra v State of Karnataka, represented by its Secretary, Department of Co-operative, Bangalore and others, 2017 Indlaw KAR 3916

Case No: W. P. No. 20476/2017 (CS-EL/M)

Justice B.S. Patil

Head Note :

KCS Act 1959 – S.29C

Disqualification entails serious consequences on an elected representative – reasonable opportunity has to be given as per section, before passing an order – fresh opportunity be given.

The Order of the Court was as follows:

1. In this writ petition, petitioner is challenging the order passed by the 2nd respondent - Assistant Registrar of Co- operative Societies disqualifying the petitioner from continuing as Director of the 3rd respondent-PICARD Bank, Koppa in Chickmagalore District, exercising his power in terms of the provision contained under Section 29-C(a) of the Karnataka Co- operative Societies Act 1959 (for short 'the Act') on the ground that he was a defaulter in paying the loan availed from the 3rd respondent - Bank. This order of the Assistant Registrar has been confirmed in appeal by the Deputy Registrar of Co- operative Societies, Chickmagalore vide Annexure-G. Therefore, petitioner has challenged the order passed in appeal as well. In the appeal, the Appellate Authority has reduced the period of disqualification to contest the elections from five years to one year.

3. Main grievance of the petitioner in this writ petition is that without giving opportunity of hearing and without considering the objections filed and the documents produced by the petitioner, the Assistant Registrar has passed the impugned order at Annexure-C on 01.02.2017 disqualifying the petitioner and that the Appellate Authority did not apply its mind to the said aspect of the matter and has, without considering the contentions raised regarding total lack of opportunity provided to the petitioner mechanically disposed of the appeal though by reducing the period of disqualification to one year from five years.

The Assistant Registrar refused to grant time and posted the matter for orders. On 01.02.2017, he passed the impugned order disqualifying the petitioner holding that he was a defaulter. In the body of the order, the Assistant Registrar records that although petitioner had been notified and called upon to file his objections, he had failed to file any objections and give any statement. He proceeds to hold that petitioner failed to establish that he was not a defaulter.

9. An order of disqualification entails serious consequences on an elected representative. The same has to be passed after providing fair and reasonable opportunity to the persons concerned and by passing a reasoned order. Indeed, Counsel for the petitioner is right and justified in bringing to the notice of the Court proviso to sub-clause (a) of Section 29-C of the Act, which states that no order shall be made under sub-section (8) of Section 29-C unless a reasonable opportunity of being heard was given to the person against whom the order

was to be made.

10. Hence, this writ petition is allowed. Impugned orders are set aside. The matter is remitted for fresh consideration to the Assistant Registrar. The Assistant Registrar is directed to provide a fresh opportunity to petitioner to produce any other documents and lead such evidence as is permissible in law. The Assistant Registrar is also required to provide a fair and reasonable opportunity to respondent no.3-Bank and then pass a reasoned order.

Ordered accordingly.

Petitions allowed

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Bogeshwara Consumer Cooperative Society Limited, represented by Its Secretary Anand and another v Joint Registrar of Co-operative Societies Mysore Division, Mysore and others, 2017 Indlaw KAR 5779

Case No: Writ Petition No. 15127/2012 (CS - RES)

Justice S.N. Satyanarayana

Head Note :

KCS Act 1959 – Disqualification – Liquidation

Finding rendered by the first respondent in the appeal in dismissing the same to consider and to set aside the disqualification order is justifiable – particularly when the cancellation of registration was not even challenged.

The Order of the Court was as follows:

This writ petition is filed by the Secretary and President of Shri. Bogeshwara Consumer Co-operative Society Ltd., which is admittedly ordered to be liquidated by Second respondent herein by order dated 05.01.2005 under section 72 of the Karnataka Co- operative Societies Act, 1959. It is also not in dispute that the registration of the said Society is cancelled by order dated 31.03.2005. It is stated by the petitioners that election was conducted to this Society subsequent to registration being cancelled on 09.03.2009. It is contended that said election was under the supervision of the Election Officer, said to have been appointed by the Government; that based on the said election, a Committee was constituted to run the Society; that the said Managing Committee which has come into existence pursuant to election dated 09.03.2009 is said to have preferred an appeal before the first respondent herein in JRM.DAP/1/2011-12 challenging the liquidation order and the same was dismissed by order dated 30.04.2012.

2. Thereafter, this present writ petition is filed impugning the said order dated 30.04.2012. In this petition writ of certiorari is sought to quash the order dated 05.01.2005 passed by the 2nd respondent, as well as another order dated 21.10.2011 passed by respondent No.4 in CSDCR 66/2011-12 which is with reference to the order

being passed canceling the right of the petitioners' Society to secure supply of food- grains to it and also the order of the first respondent in the aforesaid appeal JRM/DAP/I/2011-12.

3. It is stated initially while issuing notice to the respondent, the order of stay was granted by the first respondent against the order of dismissal challenged in the appeal. Thereafter, when the appeal was heard finally the same was dismissed by order dated 30.04.2012. The grievance of the petitioner herein is that when the election to the petitioners society was conducted, a Committee which is constituted pursuant thereto should have been accepted as Society being functioning legally in accordance with law. In that view of the matter the first respondent ought to have allowed the appeal and set aside the order of the 2nd respondent dated 05.01.2005 passed under Section 72 of the KCS Act, 1959 in liquidating the petitioners society. However, the said argument is countered by the contesting respondents No.1 to 4 on the premise that when the registration of the society itself is cancelled on 31.03.2005 which has remained unchallenged even in the appeal before the first respondent in JRM/DAP/1/2011-12 conducting of elections even by the officers of the Co-operative Society is without jurisdiction and any Committee which has come into existence pursuant to such election is not recognizable in the eye of law. Therefore, finding rendered by the first respondent in the aforesaid appeal in dismissing the same to consider and to set aside the disqualification order dated 05.01.2005 is justifiable, particularly when the cancellation of registration was not even challenged by the President and Secretary of the defunct Society. The said argument of the respondent appears to be just and proper.

4. In that view of the matter, this Court find that no justifiable grounds are made out to interfere with the order dated 30.04.2012 in dismissing the appeal filed by the president and secretary of the defunct society namely Bogeshwara Consumer Co-operative Society Ltd. Hence, this Writ petition filed impugning the said order does not merit consideration. Accordingly, this Writ petition is dismissed.

Petition dismissed

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C. Vishwanath S/o Late Chowdappa v C. K. Ushakumari W/o Suresh and others, 2018 Indlaw KAR 2345

Case No: Writ Petition No. 13724/2018 (CS-RES)

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – disqualification of u/s 29C(8) – granting stay – no need to interfere

The Order of the Court was as follows:

2. The brief facts are that: petitioner has complained about the 1st respondent being a Member as well as an Officer Bearer of the 2nd respondent-society and also becoming member of the 3rd respondent-society on the premise that both the societies are engaged in carrying on business of the same kind viz., House Building Co-operative Society. On the complaint made by the petitioner, 4th respondent took up the complaint and passed order dated 3.3.2018 disqualifying the petitioner from being the office bearer of the 2nd respondent-Society

under Section 29(C)(8) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act' for short). Being aggrieved by that order, 1st respondent herein preferred an appeal before the 5th respondent-authority.

8. Having heard learned Senior Counsel for the petitioner and learned Counsel for the respondents it is noted that correctness of the order passed by the 4th respondent on 3.3.2018 is yet to be adjudicated upon by 5th respondent-authority. In the interregnum, the 1st respondent sought for stay of the order dated 3.3.2018 as by that order, 1st respondent was held to be disqualified under Section 29(C)(8) of the Act being member of the 2nd respondent-society. The question as to whether the 1st respondent is disqualified from being a member of the 2nd respondent-society consequent upon being a member of the 3rd respondent society or she is disqualified from being a member of the 3rd respondent is a matter for adjudication before the 5th respondent-society. Having regard to the adjudication of the said question, 5th respondent-authority has stayed the order passed by the 4th respondent, until further orders. In the circumstances, I do not find that the exercise of discretion by the 5th respondent-authority is illegal or not in consonance with settled principles of law.

9. That apart, 5th respondent-authority has placed reliance on the aforesaid decision in the case of Smt. Bhavani and Others -vs- Deputy Registrar of Co- operative Societies reported in 2015(2) Kar.L.J.1 2014 Indlaw KAR 2238 and the judgment of the Division Bench of this Court in W.A. 1666/2008 disposed off on 5.11.2008. In that view of the matter, I do not find any infirmity in the impugned order. Hence the following: ORDER

(i) Writ Petition is dismissed;

(ii) Having regard to the issues which arise in the proceedings before the 5th respondent, the said authority is directed to dispose of the appeal in an expeditious manner.

Petition dismissed

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H. M. Kumar v Additional Registrar of Co-operative Societies Housing and Miscellaneous, Bengaluru and others, 2018 Indlaw KAR 6975

Case No: Writ Appeal No. 816 of 2016 and Writ Appeal No. 832 of 2016 (CS-RES)

JJ Dinesh Maheshwari & R. Devdas

Head Note :

KCS Act 1959 – disqualification under sec.29C – enquiry under sec.64 of the Act

The proceedings for disqualification of respondent for dropped earlier, and by direction from this court led to the order of disqualification on 16.04.2016 by the additional Registrar. Admittedly the said order was passed after filing of these writ appeals and further the said disqualification was further enhanced for a period of 5 years in the order dated 04.07.2017. The petitioner questions these orders. In the

interested of justice, this court does not dispose on merit, but the petitioners may make application before the competent forum – the appeals are disposal of accordingly.

The Judgment was delivered by Dinesh Maheshwari, J.

6. The genesis of the present litigation had been that on the basis of the inquiry report aforesaid and the order passed under Section 68 of the Act, the Additional Registrar of Co- operative Societies, Bengaluru initiated disqualification proceedings against the appellant under Section 29C of the Act by issuing him show-cause notice on 19.12.2013. However, the disqualification proceedings were dropped by the said Additional Registrar on 19.04.2014, inter alia, on the ground that such proceedings initiated against the appellant were incompetent as the allegations were of pre-election matters and Section 29C of the Act was not applicable. Seeking to question the aforesaid order dated 19.04.2014, the respondent Nos.2 and 3 preferred the writ petitions bearing Nos.26772-26773/2014 that came to be decided by the order dated 24.02.2016, which is challenged in the present appeals.

8. However, when the said writ petitions bearing Nos.26772-26773/2014, after remand by the Division Bench, came up for consideration on 24.02.2016, the learned Single Judge disapproved the order passed by the Additional Registrar and while issuing direction for reconsideration of the matter in accordance with law, restrained the present appellant from discharging his duties as office bearer of the Society. The learned Single Judge also took note of, and negatived, the submissions on behalf of the present appellant that alternative remedy was available to the writ petitioners (respondent Nos.2 and 3 herein) and that the petitioners were having no locus standi to question the orders impugned. The relevant part of the impugned order dated 24.02.2016 reads as under:

"7. Since Section 29C(8) of the KCS Act would contemplate the orders being passed by Registrar of Co-operative Societies, it is appropriate that the matter is remitted to the Registrar of Co-operative Societies for further action in terms as aforesaid. The petition is allowed. The orders of the Additional Registrar are set at naught and he is directed to re-examine the findings insofar as second respondent is concerned and to exercise his discretion as to the consequence of disqualifying the second respondent from holding the office in the co-operative society for any length of time and pass appropriate orders. This exercise shall be completed within a period of four weeks, if not earlier from the date of receipt of a copy of this order. In the meantime, the second respondent is restrained from discharging his duties as an Office bearer.

8. Incidentally, the learned counsel for the second respondent would vehemently contend that the petitioners have come before this Court in the face of an alternative remedy available to the petitioners and secondly, they did not have locus standi to question the impugned orders. On both counts, since they are members of the society, who claim to be defrauded and denied their due, it cannot be said that they did not have locus standi. Insofar as alternative remedy is concerned, since the questions raised are one of jurisdiction and legal interpretation of Section 29- C of the Karnataka Co-operative Societies Act, 1959*, this Court having exercised jurisdiction is completely in order."*

9. Aggrieved by the order aforesaid the appellant has preferred these appeals.

12. In a comprehension of the aforementioned relevant facts and background aspects, it is but apparent that even when the proceedings against the appellant for disqualification were earlier dropped by the respondent No.1, the same were taken up afresh, pursuant to the directions of this Court and they, ultimately, led to the order dated 16.04.2016 by the Additional Registrar Co-operative Societies, Bengaluru. Admittedly, the said order was passed after filing of these appeals. Moreover, the period of disqualification in the said order dated 16.04.2016 has further been enhanced to a period of 5 years by the Registrar, Co- operative Societies in his order dated 04.07.2017, which has also been passed during the pendency of these appeals. The petitioner seeks to question the said orders dated 16.04.2016 and 04.07.2017, but the same had otherwise not been the subject matter of consideration before the learned Single Judge, for having been passed subsequent to the filing of these appeals.

15. In our view, instead of adjudication in these appeals, appropriate it would be to keep this question of locus standi of the writ petitioners (respondent Nos.2 and 3), also open to be raised in the appropriate proceedings against the aforesaid orders dated 16.04.2016 and 04.07.2017.

16. Accordingly and in view of the above, these appeals stand disposed of with liberty to the appellant to take recourse to appropriate remedies, in accordance with law, against the order dated 16.04.2016 passed by the Additional Registrar of Co-operative Societies, Bengaluru and the order dated 04.07.2017 passed by the Registrar of Co-operative Societies, Bengaluru; and for that matter, objections sought to be raised in this appeal, particularly as regards the locus standi of the writ petitioners and re-opening of the matter at their instance, would remain open to be raised by the appellant in such proceedings against the said orders dated 16.04.2016 and 04.07.2017.

17. In the interest of justice, it is also made clear that we have not pronounced on the merits of the case either way; and the respective submissions of the parties shall remain open to be raised and contested in appropriate forum and in appropriate manner.

18. In view of the disposal of these appeals, no further consideration of any of the applications, whether for impleadment or for amendment or for stay, is requisite. All the applications also stand disposed of.

19. No costs.

Appeals disposed of

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K. Bhoopal Director, Aircraft Employees Co-operative Society, Bangalore v Joint Registrar of Co-operative Societies, Bengaluru, 2017 Indlaw KAR 6100

Case No :W. A. No. 6444/2017 (CS-RES)

JJ. B.S. Patil & Aravind Kumar

Head Note :

Karnataka Cooperative Societies Act, 1959, ss. 29C, 106 - Constitution of India, 1950, arts. 226, 227 - Proceedings for disqualification - Writ - Alternative remedy Proceedings u/s. 29C of Act for disqualification was initiated against appellant/ petitioner - Appellant challenged show cause notice as well as jurisdiction to initiate proceeding u/s. 29C of Act - However, Single Judge declined to interfere.

It would be duty of Appellate Authority to correct the order of original authority - disqualifying petitioner and also to find out if the same has to be stayed pending consideration of appeal. Hence, order of Single Judge declining to interfere with the matter in exercise of writ jurisdiction u/arts. 226 and 227 of Constitution when efficacious statutory remedy of appeal is provided u/s. 106 of Act, is upheld. However, appellant is granted time to file appeal along with necessary interlocutory application seeking interim stay. Order accordingly.

The Judgment was delivered by: B.S. PATIL, J.

1. This appeal is filed challenging the order dated 09.11.2017 passed by the learned Single Judge dismissing the writ petition filed in W.P.No.48378/2017. Writ petition has been dismissed on the ground that appellant had an alternative remedy of preferring an appeal before the Additional Registrar of Co-operative Societies under Section 106 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act').

2. It is necessary to advert to few facts which are relevant for the purpose of disposal of this appeal. A show cause notice was issued to appellant on 05.04.2017 proposing to initiate proceedings under Section 29-C of the Act for his disqualification. Certain allegations of irregularities were made against appellant during his tenure as Director of the Aircraft Employees House Building Co-operative Society.

7. After hearing learned counsel for both parties, learned Single Judge has dismissed the writ petition declining to interfere with the matter as the appellant had an alternative remedy of preferring appeal under Section 106 of the Act. Appellant has not produced copy of the order passed by the learned Single Judge. It is contended by learned counsel for appellant that certified copy is not yet ready and that in the meanwhile proceedings regarding no confidence motion against the existing president have been initiated and appellant has been debarred from participating in the same on account of the order of disqualification passed by the Joint Registrar. Having due regard to this aspect of the matter and as the writ petition has been dismissed on the ground of availability of alternative remedy, without going into the merits of the matter we are persuaded to dispense with the production of the copy of order passed by the learned Single Judge.

11. Contention of appellant is that he was not given fair and reasonable opportunity to have his say with

regard to the merits of the matter. We do not wish to go into this aspect of the matter as several factual aspects have been asserted which are seriously disputed by respondents. The fact remains that there is a statutory remedy of appeal provided under Section 106 against the order passed by the Joint Registrar of Co-operative Societies under Section 29-C of the Act and the appellate authority is vested with power to grant interim stay as is evident from sub-section (3) of Section 106 of the Act. Aggrieved party viz., appellant herein has got two months time as per the provisions of the Act and the rules framed there under to file an appeal. Appellant has chosen to file the writ petition, may be on account of the contentions he has been urging since beginning that the Joint Registrar did not have jurisdiction to entertain the matter and also that he was not given fair and reasonable opportunity to have his say in the matter and hence, principles of natural justice were not adhered to.

14. Hence, while we are in agreement with the order passed by the learned Single Judge declining to interfere with the matter in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India when an efficacious statutory remedy of appeal is provided under Section 106 of the Karnataka Co-operative Societies Act, we are persuaded to grant time to the appellant till 14.11.2017 to file an appeal along with necessary interlocutory application seeking interim stay. Till consideration of the said application and until passing of appropriate orders on the same, order of disqualification passed by the Joint Registrar disqualifying the appellant to be the Director of Aircraft Employees House Building Co- operative Society, shall stand suspended. It is open to the Joint Registrar of Co-operative Societies to consider the application on 14.11.2017 or on any other day of his convenience and pass orders in accordance with law. Ordered accordingly.

Order accordingly

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Laxman Satayappa Shirgavi v Indumati Dondiram Chavan and others, 2018 Indlaw KAR 7423

Case No: Writ Petition No. 109235 of 2017 (CS-RES)

Justice H.B. Prabhakara Sastry

Head Note

KCS Act 1959 - Assistant Registrar vide order disqualified Respondent no.1 from Board of Directors of Respondent no. 2 Society - On appeal, Deputy Registrar allowed said appeal and set aside order of Assistant Registrar - Hence, instant petition - Whether, order setting aside Respondent no. 1 disqualification order is liable to be set aside.

When complainant cannot even be party to such proceeding, he cannot join in lis as an aggrieved party and assail an order, which is passed in favour of office bearers by which order of disqualification is set aside by Appellate authority or if no order of disqualification is made by Assistant Registrar who initiated action on complaint made by party. Petition dismissed.

The Order of the Court was as follows:

2. Briefly stated the facts are that petitioner was working as a Peon in 2nd respondent-Society. Respondent No.1 is the Member of Managing Committee of respondent No.2-Society. Respondent No.2 is a Primary Agricultural Credit Co-operative Society Limited. It is registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'Act' for the sake of brevity). That on 25.03.2015 at a meeting of the 2nd respondent-Society, there was a resolution sought to be passed against petitioner removing him from service. Though the said resolution was proposed, it was not passed because of lack of quorum and the meeting was postponed. Subsequently, petitioner is said to have been removed from service pursuant to resolution dated 14.05.2015. Being aggrieved by the same, petitioner sought for disqualification of the Members of the Board of Directors of the 2nd respondent-Society. By order dated 23.02.2017, which is at Annexure-G, 1st respondent herein was disqualified from the Board of Directors of the 2nd respondent-Society. Being aggrieved, she preferred an appeal before the 4th respondent-Deputy Registrar of Co-operative Societies, Belagavi. The said appeal was allowed by order dated 07.04.2017.

3. It is noted that when the petitioner was terminated from his service, he could have raised a dispute under Section 70 of the Act instead he made a complaint before the 3rd respondent-Authority. 3rd respondent-Authority directed reinstatement of the petitioner. The same was not complied with by the Directors of the Board of Directors of the 2nd respondent-Society. Thereafter, 3rd respondent disqualified the 1st respondent under Section 29(c)(8)(d) of the Act. Being aggrieved by that order, 1st respondent filed an appeal before the 4th respondent, which has been allowed vide order at Annexure-H dated 07.04.2017. Being aggrieved by that order, the petitioner has preferred this writ petition.

4. Though the petitioner may be a complainant, on the basis of which action was initiated by the 3rd respondent and being aggrieved by the order of the 3rd respondent an appeal was filed before the 4th respondent and that the appellant therein having succeeded before the 4th respondent, the same would not give any right or locus standi to the petitioner to file this writ petition.

7. In this context, reliance could be placed on an order passed by this Court in W.P.No.12316/2014 (CS-RES) in the case of Sri Shankaranna V/s the Registrar of Co-operative Societies and others, wherein this Court has held that there cannot be a lis between a person who has lodged the complaint or brought the facts to the notice of the Assistant Registrar against the Directors of the Society. The complaint filed will be a material for the Assistant Registrar to initiate action for removal or for disqualification as provided under the relevant provision. Applicant cannot, as of right, claim to become a party to the proceeding and as his rights are not involved, he cannot be termed as an aggrieved person in case the findings to be recorded by the Assistant Registrar go in favour of the persons against whom allegations are made. He will only be interested in bringing to the notice of the authorities the so-called irregularities which according to him were committed in discharge of the duties by the office bearers of the society. While holding so, this Court dismissed the application filed by the applicant to come on record as an additional respondent in the proceedings initiated by petitioner therein seeking disqualification of the Directors of the Board of Directors of the Society. When a complainant cannot even be a party to such proceeding, he cannot join in the lis as an aggrieved party and assail an order which is passed in favour of the office bearers by which the order of disqualification is set aside by the appellate

authority, as in the instant case, or, if no order of disqualification is made by the Assistant Registrar who initiated action on the complaint made by a party.

Hence, this writ petition is dismissed on the ground of locus standi as petitioner has no locus standi to maintain this writ petition.

Petition dismissed

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M. K. Venkatappa S/o Late Dodda Venkategowda v Election Officer, Deputy Registrar of Co-operative Soceities, Mandya and another, 2018 Indlaw KAR 9618

Justice B.V. Nagarathna

Head Note :

KCS Act 1959 – disqualification under sec.29C of the Act

Petitioner it is a defaulter and his name appears in annexure C which is list of defaulter. He has been issued with a notice as per annexure B. once the calendar of events has been issued to hold election to the board of directors of the society, courts ought not to interfere in the same. This is in keeping with the decision/principal laid down by the honorable supreme court in N P Ponnuswami V/s returning officer Namakkal reported in AIR 1952 SC 64. The principle is that issuance of calendar of events, commences the process of the election and same cannot be interfere by any court of law – petition dismissed

Case No: Writ Petition No. 35437 of 2018 (CS-EL/M)

The Order of the Court was as follows:

3. During the course of submission, petitioner's counsel drew my attention to Annexure-A, order dated 20.06.2018 under which, calendar of events to conduct election to the Board of Directors to respondent No.2-Soceity has been issued. Learned counsel for the petitioner has stated that subsequently, Annexure-B, notice dated 19.07.2018 has been issued to petitioner to pay up the dues if any, by 10.08.2018, in default of which, he would be ineligible to vote or to contest for election. Learned counsel further submitted that the list of defaulters is also not in accordance with law. In this regard, petitioner's counsel submitted that the State Government in its budget, has announced waiver of farm loans and that respondent No.2 is a Primary Agricultural Co-operative Society and therefore, the loans of the defaulters would have to be waived. In the circumstances, they cannot be termed as defaulters at all and therefore, there is no bar for the petitioner and other similarly situate defaulters from either contesting or voting in the ensuing election, which is to take place on 26.08.2018.

4. Per contra, learned Additional Government Advocate appearing on advance notice for respondent No.1, drew my attention to Section 29-C(1)(a) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred as the 'Act' for the sake of brevity) to contend that petitioner being a defaulter cannot seek umbrage under the announcement made in the said budget, as the scheme for waiver of loan is not yet been given effect to. He further submits that Annexure-B is a notice issued to petitioner to pay up the outstanding debts on or before 10.08.2018, so as to enable him to either contest or vote in the ensuing election. He further submits

that once the calendar of events has been issued by order dated 20.06.2018, this Court may not interfere in the ensuing election. Therefore, there is no merit in the writ petition.

5. Admittedly, petitioner is a defaulter. His name finds a place in Annexure-C, list of defaulters and he has been issued notice as per Annexure-B, dated 19.09.2018. The same is subsequent to issuance of calendar of events on 20.06.2018 as per Annexure-A. Once the calendar of events has been issued to hold election to the Board of Directors of a Co-operative Society, Courts ought not to interfere in the same. This is having regard to the principle enunciated by the Hon'ble Supreme Court in a catena of decisions starting from the case of N.P. PONNUSWAMI Vs. RETURNING OFFICER, NAMAKKAL, reported in AIR 1952 SC PAGE 64. The principle is that issuance of calendar of events commences the process of election and the same cannot be interfered by any Court of law. In the circumstances, Annexures-B and C cannot be interfered with, in this writ petition.

6. Further, Annexure-B is, in fact a notice issued to petitioner to pay off his dues, failing which, he shall be ineligible to vote or to contest in any election. This is in line with Section 29-C (1)(a) of the Act. Further Annexure-C is a list of defaulters. Petitioner cannot have grievance with regard to the list of defaulters being prepared by respondent No.2-Soceity, wherein his name is also found. Merely, because in the presentation of the State budget, reference has been made to loan waiver scheme, but no step has been taken towards implementation of the same, petitioner cannot contend that his name cannot find a place in the list of defaulters and that Section 29-C (1)(a) must be waived, in so far as the petitioner's case is concerned. There is no merit in the aforesaid reasons. It is impermissible for this Court to interfere in the matter at this stage. There is no merit in the writ petition.

Writ petition is, hence, dismissed.

Petition dismissed

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Mallesh S/o Subbaiah v Deputy Registrar of Co-operative Societies, Government of Karnataka, Mysore and others, 2018 Indlaw KAR 11398

Case No: Writ Petition No. 43038/2018 (CS RES)

Justice G. Narendar

Head Note :

KCS Act 1959 – disqualification u/s 29C – appeal u/s 106, it is not for the petitioner to dictate statutory authority as to what ought to be the nature of the relief that is to be granted to the litigant – appellate authority was of the opinion that an absolute stay would serve the ends of justice – petition dismissed.

The Order of the Court was as follows:

3. That the petitioner caused a complaint to the second respondent regarding the alleged unauthorized absence and that the second respondent initiated an enquiry and thereafter was pleased to hold that the third respondent had unauthorizedly absented himself and hence had incurred disqualification as provided under the provisions

of Section 29(c), (d) of the Karnataka Cooperative Societies Act, 1959 (for short 'the Act').

4. That aggrieved by the same, the third respondent preferred a statutory appeal as provided under Section 106 of the Act and the first respondent Deputy Registrar of Cooperative Societies was pleased to exercise his discretionary jurisdiction and was pleased to grant an interim relief staying the operation of the order passed by the second respondent. The petitioner is before this court being aggrieved by the same.

5. It is contended that the first respondent erred in granting a blanket order of stay and it ought to have been made conditional and the first respondent ought to have imposed conditions and thereby restricting the participation of the third respondent in the business of the 4th respondent-Society.

6. The authority and jurisdiction of the first respondent to grant an interim relief is not disputed. The only contention is that it ought to have been conditional order. It is not for the petitioner to dictate to the statutory authority as to what ought to be the nature of the relief that is to be granted to a litigant. If in the facts and circumstances of the case the appellate authority was of the opinion that an absolute stay would serve the ends of justice, it is entirely in the discretion of the appellate authority. It is not the case of the petitioner, that the exercise of the discretionary power is not judicious nor is any such case made out. No case is made out to demonstrate that the participation of the third respondent in the affairs of the business of the Society is detrimental to the Society. The present petition is nothing but a personal attempt by the petitioner to wreak vengeance.

Hence, this court is of the considered opinion that the writ petition is misconceived and being devoid of merits requires to be rejected and is accordingly rejected.

Petition dismissed

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Satish Lingappa Naik v Deputy Registrar of Co-Operative Society, Uttar Kannada and others, 2018 Indlaw KAR 8029

Case No: Writ Petition No. 104197 of 2018 (CS-RES)

Justice Dr. H.B. Prabhakara Sastry

Head Note :

KCS Act 1959 – disqualification u/s 29C of the Act

The authority has examined that the present petitioner before this court has committed serious irregulations – misappropriation – along with others and stay order could not be passed and authority rejected the same.

No prejudice to the intrest of the society by the absence of the petitioner/president - appeal dismissed.

The Order of the Court was as follows:

1. The present petitioner is said to have been a Director of 3rd respondent society who was disqualified

by the 2nd respondent vide his judgment dated 28.02.2017 which is at Annexure-C. A perusal of the said document would go to show that after verifying the audit report of the society, it was noticed that there was huge misappropriation of funds and apart from the concerned staff of the society, the present petitioner, as the President of the society was also observed to be responsible. It was further observed by the 2nd respondent in the said order that since the petitioner continues to be the President of the society for the current term also, continuation of the said President in the said post would adversely affect the interest of the society. The said order at Annexure-C goes to show that after issuing show cause notice and giving an opportunity, the order dated 28.02.2017 was passed. By virtue of the said order, the present petitioner was disqualified from the post of president of the society for a period of 5 years.

The petitioner is said to have challenged the said order in the form of an appeal in Appeal No.1 of 2017-18 under Section 106 of the Karnataka Co-operative Societies Act, 1959, before the 1st respondent. Along with the appeal, the petitioner has also filed an interlocutory application No.1 seeking stay of the impugned order under appeal. The 1st respondent by his order dated 28.04.2017 which is at Annexure-E has rejected the said I.A.1 filed by the appellant(petitioner herein). It is against the said order, the petitioner has preferred this petition.

5. Admittedly, the allegations made against the present petitioner is of misappropriation of huge sums of money which as per Annexure-C is in a sum of Rs. 1,12,91,420/-. In the impugned order at Annexure-E, respondent No.1 has given a detailed reasoning as to why the interim order of stay of the impugned order should not be granted. Apart from discussing as to the allegations made against the appellant and the order passed by the 2nd respondent, the 1st respondent/appellate authority has made an observation that, prima facie, there are material to show that the allegations of the alleged misappropriation of funds against the appellant are corroborated by the documents. Further, the appellant before it being in a responsible post as the President of the society is facing serious allegations of misappropriation of funds which has been disclosed in the audit report. With the said observations, the appellate Authority has come to the conclusion that the present petitioner being the President/Director of the society facing such a serious allegations, was not fair to be continued by virtue of an interim order. As such, it has rejected the interim order.

6. I do not find any error in the said reasoning given by the first respondent while rejecting the I.A.1 filed by the appellant before it. Needless to say that merely because an appeal is preferred before the appellate Court that by itself ipso facto does not does not give a right for the appellant to obtain an order of stay of the impugned order. In the instant case, while rejecting I.A.1 filed by the appellant before it, the 1st respondent has given convincing reasons as to why it has not allowed I.A.1. Just because the petitioner is said to be prevented for a temporary period from attending to the affairs of the society itself cannot be said that he would be put to irreparable loss or seriously prejudiced. On the other hand, when the allegations levelled against none other than the President of the society, being very serious involving misappropriation of huge funds of the society, no prejudice to the interest of the society, by the absence of the present petitioner/appellant during the period of the appeal, can be caused.

Appeal dismissed

J. P. Yogesh S/o Late J. S. Puttaiyya Gowda and others v State of Karnataka and others *Karnataka High Court*, 2016 Indlaw KAR 3653

Case No: Writ Petition Nos. 20188 - 192/2016 (CS - RES)

Justice Anand Byrareddy

The Order of the Court was as follows:

1. The present petitions are filed by certain members of a society, not really representing the society. The petitions are sought to be supplemented by filing an impleading application seeking to bring the society of which the petitioners are the directors, as a petitioner and that application is accordingly allowed.

2. The main grievance of the petitioners is to the effect that the direction being issued would have to be construed as being under Section 68 of the Karnataka Co-operative Societies Act, 1959 which would presuppose that there is default committed by the petitioners and would attract penal consequence.

3. However, it is made clear by the Additional Advocate General, Sri A S Ponnanna, that it is infact in exercise of the power under Section 65(3) of the Act that the impugned direction has been issued.

4. Learned Senior advocate Sri Jayakumar S Patil would submit that if this impugned direction is to be construed as one under Section 65(3) of the Act, petitioners have no grievance and that they would be in a position to respond to the same after placing before the Society the compliance sought for and seeks reasonable time to duly comply.

5. Accordingly, petitioners shall comply within 45 days from today. Recording the said submission, petitions stand disposed of.

Petition disposed of

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Heggandur Primary Agricultural Co-Operative Credit Society Limited, represented by its President, Mysore v Government of Karnataka, represented by its Secretary, Bengaluru and others, 2018 Indlaw KAR 5530

Case No: Writ Petition No. 6417/2018 (CS-RES)

Justice G. Narendar

Head Note :

KCS Act 1959 – inspection under sec.65 of the act

Statutory inspection proposed does not result in any penal consequence or adjudication of any right of the society. Inspection is a statutory function of the Registrar, which cannot be objected by the co-operative society, hence the petition was rejected.

The Order of the Court was as follows:

3. Petitioner is before this Court being aggrieved by the proceedings of respondent No.2 whereby respondent No.2 in the exercise of the statutory function under Section 65 of the Karnataka Co-operative Societies Act, 1959 (for short hereinafter referred to as 'the Act') has put the petitioner on notice regarding the intention of the Authority to conduct an inspection of the books of the petitioner's Society under provision Section 65 of the Act.

5. Per contra, the learned HCGP would place reliance on the ruling render by this Court in the case of Muslim Co- operative Bank Ltd., vs. Assistant Registrar of Co-operative Societiesi reported in ILR 1990 KAR 3705 whereby this Court in paragraph No.6 has observed as follows:

"6. As far as the exercise of suo motu powers is concerned, under what circumstances it should be exercised is left to the Registrar himself under the Societies Act as also under the Act. He could do so in whatever manner he gets information if he considers the information sufficient to institute an enquiry into the affairs of the Society or a Co-operative Society, as the case may be. Even if one member of a Society or a Co-operative Society lodges a complaint and requests the Registrar of a Society or a Registrar of a Co-operative Society, as the case may be, the Registrar concerned has the power to institute an enquiry under Section 25 of the Societies Act in the case of a Society and Section 64(1) of the Act in the case of a Co-Operative Society, if the Registrar is satisfied that sufficient basis is made out in such written representation. Such is the suo motu power conferred on the Registrar of Societies under Section 25(1) of the Societies Act and on the Registrar of Co-operative Societies under Section 64(1) of the Act. Therefore the fact that the Registrar has referred to the compliant made by a member in the order instituting the enquiry is no ground to hold that the Registrar had not acted suo motu. Naturally for exercise of suo motu powers also, there must be some source of information for the Registrar to do so. Such information may come to the Registrar of the Societies or the Registrar of Co-operative Societies, during his inspection of a Society or a Co-operative Society as the case may or by any other means including a written complaint by a member. For these reasons with great respect, we are unable to agree with the view expressed by Puttaswamy. J., in the case of Mahila Seva Samaj that if a Registrar institutes an enquiry on the basis of a complaint submitted by members who do not constitute either fifty per cent of the governing body members or one third of the members of the society, the enquiry instituted is illegal, and that his power to institute enquiry suo motu must be exercised without reference to any complaint by any member or members who do not fulfil the requirement prescribed under Section 25."

6. From a bare reading of the provision of Section 65 of the Act, it is apparent that the statutory inspection, proposed does not result in any penal consequences or adjudication of any rights of the Society. It clearly mandates that the Registrar on his own motion, or on the application of a creditor, direct for inspection the books of the Society and on conclusion of such inspection, forward a copy of the inspection Report along with the result of such inspection to the Director of Co-operative Audit and on receipt of such report and the result of the inspection, the Registrar is required to forward the same to the Board of Directors of the concerned Society and the Board shall initiate action to rectify the defects pointed out under the Report. Thus, it is apparent that there is no adjudication of any rights and the inspection of the books is a statutory

function which cannot be objected to by the Society. Hence, in the opinion of this Court, the writ petition is misconceived and premature and is liable to be rejected.

Accordingly, the writ petition stands rejected.

Petition dismissed

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C. R. Padmanabha Reddy S/o Late C Ranga Reddy and others v Additional Registrar of Cooperative Societies, (Housing and Others), Bangalore and others, 2018 Indlaw KAR 1297

Justice Satyanarayana

Case No: Writ Petition No. 18658/2014(CS-RES) C/W Writ Petition No. 28877/2014(CS-RES) C/W Writ Petition No. 35467/2014(CS-RES),

The Order of the Court was as follows:

1. Petitioners herein are aggrieved by order dated 29.3.2014 in proceedings No.AD(H&M) D2.DAP.09/2013-14 on the file of first respondent - Additional Registrar of Cooperative Societies, Bengaluru. The said proceedings is with reference to challenge to the closure of enquiry report by second respondent - Joint Registrar by order dated 27.6.2013 in NoJRB.Section.64/3/2008-09. While setting aside the order dated 27.6.2013, first respondent has observed that in the event of more than one offence is said to have been found against the members of second respondent - society in said proceedings, namely NGEF Employees and Former Employees House Building Cooperative Society, it is open for initiation of fresh proceedings, therefore, earlier proceedings could not be closed by quashing the FIR.

2. The order passed by first respondent is sought to be challenged by the petitioners in these three writ petitions on the premise that same would affect their interest, inasmuch as they have already secured an order in Appeal Nos. AD(H&M) D2.DAP.06 to 10/2012-13, where the order dated 24.8.2012 of Joint Registrar in proceedings No.JRB:Section 64:03/2008-09 is treated as show cause notice and permitted the appellants in said five appeals, out of which three are writ petitioners herein, to file their objections before the Joint Registrar, Bengaluru, within 15 days and the Joint Registrar is permitted to pass orders afresh under Section 68 of the Karnataka Cooperative Societies Act, 1959 within 45 days.

3. When the order impugned and the earlier order which is passed in favour of petitioners herein in the aforesaid five appeals are looked into, it is seen that they are totally different and infact the earlier order is in a set of appeals, which are filed in Nos. AD(H&M) D2.DAP.06 to 10/2012-13 on the file of Additional Registrar of Cooperative Societies, wherein certain observation are made by the Additional Registrar of Cooperative Societies. As against that when the order impugned is looked into, it is seen that it is totally a different proceedings in different set of facts and circumstances, in which the petitioners are not even parties. Therefore, their contention that the same would affect their interest cannot be accepted.

Accordingly, these three writ petitions are dismissed as they do not survive for consideration.

Petitions dismissed

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Maruti Laxman Kangralkar @ Patil S/o Kangralkar and others v Raghavendra Co-operative Housing Society Limited, Belgaum, 2016 Indlaw KAR 326

Case No: R. S. A. No. 5036/2011 (INJ)

Justice B. V. Nagarathna

Head Note

KCS Act 1959 - Land & Property - Properties belonged to defendants who agreed to sell property to plaintiff-Society and balance sale consideration was paid by plaintiff at the time of executing sale deed - Whether Appellate Court is justified in granting order of permanent injunction in favour of respondent restraining appellants from alienating suit schedule property during subsistence of agreement to sell when respondent is not party to said agreement.

Plaintiff-society is not a party to agreement to sell, and had no right to maintain the suit. Thus, plaintiff had no right to enforce the agreement entered into between defendant and one person. Therefore, Plaintiff being stranger to agreement could not seek specific performance of said agreement. In the circumstances, substantial question of law has to be answered in favour of appellants by holding that First Appellate Court was not justified in granting order of permanent injunction in favor of respondent restraining appellants from alienating suit schedule property during subsistence of agreement to sell as respondent was not party to said agreement. Hence, judgment and decree passed by First Appellate Court is set aside. Appeal allowed.

Ratio - A person, who is stranger to an agreement or contract, cannot seek any remedy on basis of said agreement or contract.

The Order of the Court was as follows:

5. It is the case of plaintiff that, it is the Co-operative Housing Society registered under the provisions of Karnataka Co- operative Societies Act, 1959. The Society deals in purchasing of agricultural lands, which are converted to non-agricultural use developed as housing layouts and sold to its members or allotted to its members and other needy persons. That the suit schedule properties belong to defendants. Defendants agreed to sell property to plaintiff for a consideration of Rs.18,000/- per gunta. Accordingly, defendants have received a sum of Rs.20,000/- as earnest money from plaintiff - Society and have issued a receipt in that regard. The agreement to sell is dated 05.05.1987 in favour of plaintiff - Society. Defendants No.2 and 3 are witnesses. Under the agreement it was agreed that permission from competent authority had to be obtained under the provisions of the Urban Land Ceiling Act, 1976, Income Tax Authority and sale deed had to be executed within a period of six months from the date of completion of the said legal formalities. That the defendants handed over actual physical possession of suit lands to the plaintiff for the purpose of fixing boundaries.

The balance sale consideration was to be paid by plaintiff at the time of executing sale deed. That after the execution of sale deed, plaintiff - Society paid a sum of Rs.40,000/- by cheque No.090473 dated 30.04.1998, another sum of Rs.40,000/- by cheque No.09474 dated 30.04.1998, both drawn on B.D.C.C. Bank Bazar

Branch, Belgaum. Thus, in all, defendants have received a sum of Rs.1,00,000/-, out of total consideration that has to be paid by plaintiff. That the plaintiff is ready and willing to perform his part of contract. But defendant No.1 has hatched a plan to dupe plaintiff - Society and instead of getting his name recorded, name of defendant No.2 and others are recorded in the records. Plaintiff has reliably learnt that there is a dispute between defendants and one Shirahatti, which has also come to an end. But the defendants are not coming forward to execute sale deed. As the plaintiff apprehended that defendants may alienate suit properties or create third party encumbrances of same during the subsistence of agreement dated 05.05.1987, hence, suit was filed by plaintiff seeking aforesaid reliefs.

17. It is noted that agreement to sell has been executed by Sri Maruti Laxman Kangralkar / Patil, defendant No.1 in favour of one Ramnath Santu Angolkar. The agreement states that seller is absolute owner of land bearing Sy. Nos.321/A measuring 1 acre 27 guntas 15 anas and R.S. No.323/1 measuring 2 acres respectively situate within the limits of Corporation of the city of Belgaum. The sale consideration is Rs.18,000/- per gunta. The purchaser, i.e., Ramnath Santu Angolkar has paid Rs.20,000/- as earnest money to seller in cash and seller has acknowledged the receipt of same by this agreement and remaining consideration is to be given at the time of execution and registration of sale deed. There are various other terms and conditions in the agreement to sell. On a detailed and close perusal of Ex.P-3 agreement to sell, it is noted that said agreement is between defendant No.1 and Ramnath Santu Angolkar. Nowhere in the said agreement it has been stated that the intending purchaser acted as a Secretary of plaintiff - House Building Society, as has been argued in the course of this appeal, nor is there any reference to the plaintiff -- Society in the agreement to sell. Therefore, plaintiff is a stranger to agreement. It is a settled position in law that a person, who is a stranger to an agreement or a contract cannot seek any remedy on the basis of said agreement or contract.

Therefore, plaintiff had no locus standi to maintain the suit. This aspect of the matter has not been gone into by I Appellate Court. In fact, trial Court has also not adverted to this aspect. But the fact remains that trial Court dismissed suit after recording evidence. But, the elementary consideration in adjudication of any suit is as to whether the party approaching Court, as a plaintiff, has a right to approach the Court as an aggrieved party and in the instant case whether plaintiff is a party to agreement to sell, as in the instant case the entire case of plaintiff is based on said agreement. It is noted that plaintiff Society is not a party to agreement to sell, and therefore, had no right to maintain the suit. Thus, plaintiff had no right to enforce the agreement entered into between defendant and Ramnath Santu Angolkar. Plaintiff Society being a stranger to agreement could not thus seek specific performance of said agreement. In the circumstances, substantial question of law has to be answered in favour of appellants herein by holding that First Appellate Court was not justified in granting an order of permanent injunction in favour of respondent herein restraining appellants from alienating suit schedule property during the subsistence of Ex.P-3 agreement to sell dated 05.05.1987 as respondent was not a party to said agreement. The appeal succeeds and is allowed by setting aside the judgment and decree dated 29.07.2010 passed by the First Appellate Court in R.A. No.286/2009.

Parties to bear their respective costs.

Order accordingly

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P. C. Rukmaniyamma W/o B Nagaraju and another v Karmikara Raithara Vasathi Nirmana Sahakara Sangha Limited, represented by Its Secretary, Bangalore and others, 2015 Indlaw KAR 8560

Case No: R. F. A No. 369/2014

JJ. N. Kumar & B. Manohar

Head Note :

KCS Act 1959 – Notice u/s.125 of the Act.

The Order of the Court was as follows:

2. For the purpose of convenience, parties are referred to as they are referred to in the original suit:

The subject matter of the suit is a vacant site bearing site bearing No.117 formed in various survey numbers of Channasandra village, Utrahalli Hobli, Bangalore South Taluk (hereinafter referred to as 'schedule property'). Pattanagere City Municipal Council is under the jurisdiction of Bengaluru Bruhat Mahanagara Palike, which is particularly described in the schedule of the plaint.

3. The case of the plaintiffs is that the 1st defendant, Karmikara Raithara Vasathi Nirmana Sahakara Sangha Ltd. (hereinafter referred to as Rs. Sangha') formed residential sites over the land acquired by it situated at Channasandra village, Bangalore South to distribute to its members. The 1st plaintiff is one of the members of the 1st defendant-Sangha. The 1st defendant - Sangha allotted the suit schedule site in favour of the 1st plaintiff. After payment of entire sale consideration amount, the 2nd defendant executed a power of attorney in favour of the plaintiffs and issued possession certificate and no objection certificate in favour of the 1st plaintiff. Defendants No.1 to 4 are the office bearers of the Sangha. The 1st plaintiff got transferred the katha in her name and paid tax regularly. The 1st plaintiff is in possession and enjoyment of the suit schedule property as its absolute owner. After purchase, the BDA has acquired some portion of the plaintiffs' property for widening the road. Consequently, the site of the plaintiffs got reduced. After purchase, defendants No.1 to 3 colluding with each other went on postponing the execution of absolute sale deed in respect of the suit schedule property in favour of the 1st plaintiff stating that due to some technical reasons namely that the matter pertains to the sites formed by the 1st defendant - Sangha over the lands situated at Channasandra village are not yet settled. Therefore, the plaintiffs filed a suit in OS No.2012/2006 before the court for the relief of injunction in respect of the plaint schedule property. She pleaded that she is an innocent housewife and is not able to run from post to pillar to solve her problem. On 15.2.2007, she had executed a registered sale deed in favour of the 2nd plaintiff in respect of the suit schedule property. The 1st defendant represented by the 3rd defendant filed written statement in OS No.2012/2006 denying the right, title and interest of the 1st plaintiff over the suit schedule property. Further, he contended that he had not allotted the suit site to the 1st plaintiff and executed power of attorney in her favour. On the contrary, he contended that the 1st defendant

had allotted the suit schedule property in favour of the 5th defendant and it had executed a power of attorney in her favour. Thereafter, on the strength of GPA, the 5th defendant executed a registered sale deed in favour of the 6th defendant. The said act of the defendants in execution of such documents is their collusive act and it is not affecting to the right, title and interest of the plaintiffs. It is created with the malafide intention to knock of the plaintiffs' valuable property and to dispossess her from the same. The plaintiffs complied with the provision of Section 125 of Karnataka Co- operative Societies Act by issuing a notice as contemplated under the same. Therefore, they filed the suit for the relief of declaration and permanent injunction in respect of the suit schedule property.

12. In the light of the aforesaid facts and rival contentions, the point that arises for our consideration is:

"Whether the finding of the trial Court that the plaintiffs have failed to establish their title and possession over the suit property calls for any interference?"

13. The facts are not in dispute that the suit property belongs to the 1st defendant - Sangha. The 1st plaintiff is the member of the Sangha. She had paid consideration for allotment of the site. She relied on Ex.P17 - GPA, Ex.P18 - affidavit, Ex.P19 - possession certificate and Ex.P20 - no objection certificate to substantiate her contentions. Not only the site was allotted to her, but also possession was delivered and katha was made out. However, the 1st defendant - Sangha has specifically denied the allotment of site, issue of possession certificate, swearing of affidavit and executing GPA - Ex.P17. It is the specific case of defendants No.1 to 3 that though the plaintiffs have paid initial amount towards the allotment of site, they have failed to pay the required escalation charges agreed to be paid by the members towards allotment in general body meeting. Therefore, the 1st plaintiff was not allotted the site and the documents which rely are all fabricated documents. Probably, when this stand was taken by the Sangha, she was constrained to file OS No.2012/2006 for the relief of injunction in respect of the suit schedule property. The said suit was filed on 10.4.2006. Defendants No.1 and 2 entered appearance on 21.12.2006 and filed a detailed written statement denying the allotment of site, issue of possession certificate, general power of attorney and affidavit. Further, it is specifically contended that the said allotment was made to another member i.e. 5th defendant in the suit, who in turn has executed a registered sale deed in favour of the 6th defendant on 1.9.2006. It is thereafter, the 1st plaintiff opened the eyes and then she executed the sale deed in respect of the schedule property in favour of her husband, the 2nd plaintiff on 15.2.2007. During the pendency of the suit for injunction, the 5th defendant executed the sale deed in favour of the 6th defendant. Now on the basis of the aforesaid saledeed, today the husband and wife claimed the title of the property. The trial Court has taken into consideration the documents produced by both the parties and came to the conclusion that on the day, the 5th defendant was an allottee of the site and she executed a saledeed in favour of the 6th defendant on 1.9.2006, the title of the property has been vested with the 6th defendant as on 15.2.2007. When the 1st plaintiff executed the power of attorney in favour of the 2nd plaintiff, she had no right in the property. The Sangha had no right over the property. Further more, the sale deed was executed during the pendency of OS No.2012/2006 after coming to know the 5th defendant executed the sale deed in favour of the 6th defendant. Therefore, it does not create interest. Even if the site is allotted to the 1st plaintiff, none of the documents are sufficient to grant declaration in favour of the 1st

plaintiff. Realising this, the 1st plaintiff had executed a sale deed dated 15.2.2007 in favour of the 2nd plaintiff in respect of the plaint schedule property. But unfortunately, on that day, the 1st defendant - Sangha and 1st plaintiff were not the owners. Therefore, the plaintiffs were constrained to file the suit against the defendants for seeking relief of declaration and permanent injunction in respect of the plaint schedule property. By that time, on 1.9.2006, the 5th defendant had executed a sale deed in favour of the 6th defendant, who has become the owner of the property. Therefore, we do not find any error committed by the trial Court in recording the finding as it is based on the evidence.

In that view of the matter, we do not find any merit in this appeal. Accordingly, we pass the following:

Appeal is dismissed. No cost. Appeal dismissed

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Telecom Employees Co-operative Housing Society Limited, Bangalore, represented by its Secretary Shanta and others v State of Karnataka Department of Co-operative Societies, represented by its Secretary, Bangalore and others, 2018 Indlaw KAR 824

Case No: Writ Petition No. 2661/2014 (CS-RES)

Justice S.N. Satyanarayana

The Order of the Court was as follows:

1. First petitioner is a house building cooperative society and petitioners 2 to 10 are members of the managing committee of said society. They are aggrieved by the order of respondent No.5 dated 6.9.2013 in proceedings No.HSG.2:85.HHS:2013-14, wherein respondent No.5 has ordered for statutory enquiry against first petitioner - society with reference to several allegations made against petitioner Nos.2 to 10. The grievance of the petitioners is that the allegations which are made as and by way of charges referred to in Annexure-C were raised against petitioner Nos.2 to 10 in the year 2009 itself and that said charges are dropped without any enquiry by an order of Assistant Registrar of Cooperative Societies in No.HSG.2/245/HHS/2008-09 dated 26.8.2009 vide Annexure-A. Therefore, the same could not have been taken up for consideration again by respondent No.5 and he could not have initiated any proceedings.

2. However, the learned Additional Government Advocate appearing for respondent Nos.1 to 3 and 5 would submit that respondent No.5 has not come to a conclusion that petitioner Nos.2 to 10 have committed irregularities which are referred to in Annexure-C. However, to ascertain the correctness or otherwise of allegations made against petitioner Nos.2 to 10 he has ordered for a statutory enquiry as contemplated under section 65 of the Karnataka Cooperative Societies Act, 1959, which cannot be found fault with by the petitioners. He would further state that in any event if it is found that accusations made against petitioner Nos.2 to 10 in the form of charges referred to in Annexure-C are not proved, then automatically the proceedings would get dropped and it is only if any of the accusations are established with reference to the materials collected in enquiry, it is open

for petitioner Nos.2 to 10 to challenge the same before an appropriate authority.

3. Placing the submission of learned Additional Government Advocate on record this Court find that the present writ petition is premature in nature inasmuch as the statutory enquiry which is initiated against first petitioner - society having not commenced, the apprehension of petitioner Nos.2 to 10 that they would be held responsible for the allegations made against them which are referred to as charges in Annexure-C, is without any basis.

Accordingly, this writ petition is dismissed.

Petition dismissed

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Lakshmamma W/o Late Marappa and another v Roopesh B. S/o Basavaraju and others, 2015 Indlaw KAR 9005

Case No: M. F. A. No. 7776/2015

Justice B.S. Patil

Head Note

Trial Court concluded that Plaintiffs had failed to make out a prima facie case for grant of an order of temporary injunction and balance of convenience was not in favour of grant of temporary in-junction - Hence, instant appeal - Whether, Trial Court correct in holding that Plaintiffs had failed to make out a prima facie case for grant of an order of temporary injunction.

No illegality in matter of consideration of pleadings, various documents produced by parties and in conclusion reached by Court below holding that no prima facie case had been made out by Plaintiffs. Appeal dismissed.

The Order of the Court was as follows:

3. According to the plaintiffs employees of BHEL had formed a house building co-operative society known as REMCO (BHEL) House Building Co-operative Society Limited, registered under the Co-operative Societies Act with the object of forming a layout to allot sites to the employees. The Government acquired certain lands of Pattanagere Village in Kengeri Hobli, for the benefit of the said society. 2nd defendant developed the layout. Marappa under whom plaintiffs claim was an employee- member of the society and was allotted site No.159 in the layout as per the allotment letter dated 26.04.1992. He was put in possession of the suit property on 01.04.1993. The society subsequently executed a registered sale deed dated 26.11.1992 in favour of the plaintiffs.

4. Plaintiffs allege that they were shocked to know on 31.08.2015 that some miscreants at the instance of defendants 1 and 2 had trespassed into the schedule property and were drilling bore well for the purpose of putting up construction.

5. It is also urged that acquisition of the land was challenged by some of the land owners and the same had

been set aside. But, as the layout had been completely formed and many allottees had already constructed their houses, defendant No.3 had entered into private negotiation and by paying additional consideration to the owners a ratification deed was executed whereby the land owners relinquished their rights over their lands in favour of defendant No. 3 and its members including the predecessor of plaintiffs; suppressing the said ratification deed, the land owners were trying to usurp vacant sites belonging to the allottees; the khata issued by the BBMP in favour of allottees was illegally sought to be cancelled and the same was challenged in the High Court and the High Court set aside the cancellation by allowing the writ petition. Thus, plaintiffs claimed that they were in possession. Temporary injunction was sought by reiterating the plaint averments.

6. Suit and the application were resisted by defendants 1 and 2. They contended that acquisition of the land was set aside by the High Court way back in the year 1991 and the same was confirmed by the Supreme Court. Therefore, question of 3rd defendant allotting site No.159 vide letter dated 26.04.1992 and the plaintiffs being put in possession on 01.04.1993 did not arise at all; for the same reason, the so called registered sale deed dated 26.11.1992 by the defendant - society had no effect on the rights of the owners of the land. The allegation of illegal trespass etc. was denied.

18. As against these contentions, learned Senior counsel Sri Nanjunda Reddy appearing for defendant No.1 has strongly contended that acquisition of the land for the benefit of 3rd defendant - Society has been quashed. The Apex court has upheld the said order with an additional direction to restore the possession of the land to the owners. Therefore, allotment made by the Society and sale deed executed by it which were based on the said acquisition were all rendered void and ineffective. He refers to the letter dated 09.10.2002 issued by the Society to contend that if there was a ratification deed in the year 2000, the said letter could not have been written by the said society. He has further pointed out that owners have not signed any ratification deed and the same was created at the instance of the Society. Hence, the said ratification deed not being a registered document cannot be looked into. As regards the compromise decree, he points out that the suit was filed on 07.11.2006 and it was compromised on 09.11.2006. The compromise was not signed by the persons who allegedly executed the ratification deed but a paid Secretary of the Society has acted as a power of attorney holder for the so called owners and therefore, the said decree cannot at all affect the rights of 1st defendant. As regards the order in W.P.No.21920/2010 and connected cases, he contends that a limited relief regarding katha of the land was the subject matter in that writ petition and so far as title to the property was concerned, the Court has not said anything. In any event, this order is taken up in writ appeal which is pending. He has placed reliance on the following judgments in support of his contention.

a. AIR 2007 SC 1151 - Vyalikaval House Building Co-Operative Society v V. Chandrappa And Others 2007 Indlaw SC 83

b. (2010) 10 SCC 677 - Ritesh Tewari And Another v State Of Uttar Pradesh And Others 2010 Indlaw SC 766

c. AIR 2008 SC 2033 - Anathula Sudhakar v. P. Buchi Reddy (Dead) By L.Rs. And Others 2008 Indlaw SC 1765

d. AIR 2012 SC 205 - Suraj Lamp And Industries Private Limited v State Of Haryana And Another 2011 Indlaw SC 647.

20. The most important fact which is not in dispute in this proceeding is that though the land in question was acquired for the purpose of 3rd respondent - Society, the acquisition was quashed in the year 1991 vide order passed by this Court which is reported in ILR 1991 KAR 2248. Allotment made in favour of plaintiff of the site in question is admittedly on 26.04.1992 followed by registered sale deed executed by the society in favour of the allottee - plaintiff. The Apex Court has upheld the quashing of the acquisition

and has issued a direction to the Society, the State government and other parties concerned to restore possession of the land to the land owners. Indeed, letter dated 09.10.2002 written by the 3rd respondent - Society to the Principal Secretary, Department of Revenue, Government of Karnataka makes it clear that the Society received the amount paid to the land owners. and as per the direction issued by the Apex Court, the lands were handed back to the original land owners. The land owners continue to be the absolute owners of the lands.

24. In the present case, the Court is concerned with actual possession of the suit property. In the absence of prima facie proof of such possession by the plaintiffs and in the absence of any prima facie case made out by the plaintiffs, the Trial Court has rightly held that there was no material placed by the plaintiffs to show that as on the date of filing of the suit, they had title or possession over the suit property. Whereas, the documents produced by the 1st defendant disclose that the land was got converted and thereafter under a registered sale deed dated 02.09.2011 he purchased the same from the 2nd defendant. The khatha certificate, tax paid receipts, layout plan and the photographs produced by him probablise his assertion that he was in possession of the property.

25. I do not find any illegality in the matter of consideration of the pleadings, the various documents produced by the parties and in the conclusion reached by the Court below holding that no prima facie case had been made out by the plaintiffs. The Court below has also observed that 1st defendant cannot claim any equity with regard to the construction made by him in the site. It has rightly taken note of the investment made by the 1st defendant over the property and has observed that if any injunction was granted, he would be put to serious hardship.

Appeal dismissed

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M. R. Khapali S/o M. V. Ramchandran v Jayashree W/o Achutha and others, 2015 Indlaw KAR 6901

Case No: Petition No. 37904 of 2011(CS)

Justice Ravi Malimath

Head Note :

KCS Act 1959 – allotment of second site to a person already owner of the site allotted by BDA

The BDA has executed a lease – cum – sale agreement on 04-12-1973 infavour of the husband of the first respondent. – the husband being the owner of the said site, he is not entitled for any allotment by the third respondent society.

The Order of the Court was as follows:

1. The case of the petitioner if that he is a member of the third respondent - Society. He was allotted a site bearing No.325-B, formed by the Society in the Ideal Homes Project Township, Kenchanahally, Bengaluru South Taluk. On deposit of the amount, a lease-cum-sale agreement dated 09.06.2000, was executed. Possession was handed over, katha was transferred to his name, ever since then, taxes were being paid by the petitioner.

2. On 05.03.2010, the society informed the petitioner that the said site allotted to the petitioner was earlier allotted to the first respondent on 20.05.1977. Since the first respondent had not got the katha transferred into his name and has not paid the rent what is assessed by the society, the terms of the lease-cum-sale agreement was violated. Therefore, the allotment was cancelled vide resolution dated 25.01.1994. The amount was refunded to the first respondent.

3. Thereafter, the first respondent vide letter dated 08.04.1994, requested the third respondent to allot an alternate site. Thereafter, a dispute was raised under Section-70 of the Karnataka Cooperative Societies Act by the first respondent, challenging the cancellation of allotment. The dispute was rejected. The third respondent - society was directed to allot an alternate site in the layouts. The said order was challenged before the Tribunal. By the impugned order, the appeal was allowed and the order of the second respondent was set-aside. The third respondent - society was directed to execute a sale deed in favour of the first respondent.

4. Thereafter, the society filed W.P.No.10723/2003, challenging the said order which came to be dismissed as withdrawn, with liberty to file a review before the Tribunal. The review was rejected. Aggrieved by the same, W.P.No.27733/2009 was filed before this court, which was dismissed on 04.01.2010. An appeal in W.A.No.1068/2010 was filed, which was also dismissed, reserving liberty to the petitioner to file a separate writ petition. Hence, the instant writ petition has been filed challenging the order of the Authority as well as the Tribunal.

5. The primary contention of the petitioner is that the third respondent - society could not have allotted any site in favour of the first respondent. That the erstwhile BDA has executed a lease-cum-sale agreement on 04.12.1973 in favour of the husband of the first respondent. Therefore, the husband being the owner of the said site, he is not entitled for any allotment by the third respondent - society. That the same is opposed to the Bye-Laws of the BDA as well as the third respondent - Society. Hence, it is pleaded that the impugned orders be set-aside.

10. The parties are permitted to file relevant material in support of their respective cases, including the additional documents also. The petitioner herein is directed to be impleaded as respondent before the Tribunal. All the contentions are left open. In view of the long passage of time, the Tribunal to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

Ordered accordingly.

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Shantinikethan Co-operative House Building Society and others v Raghavendra S/o Hanamantharao Kolhar and others, 2015 Indlaw KAR 7847

Case No: Regular Second Appeal No. 7117/2011

Justice A. N. Venugopala Gowda

Head Note

Karnataka Co-operative Act 1959 – Karnataka appellate tribunal Act 1976

If there is any express bar created in special statute or if special statute creates special Tribunal and makes decision final and not liable to be questioned in any Civil Court, then jurisdiction of Civil Court would stand barred. However, by s.9 of the Act Legislature has given finality to orders passed by Tribunal, and has barred Courts from examining award. There is express bar of jurisdiction by statute. S.9 of the Act being attracted, Trial Court has rightly allowed application of defendant and held that suit is barred under O.7 r.11(d) of CPC and as consequence, rejected plaint. Thus, rejection of plaint, as barred by law, is justified. Appeal dismissed.

Ratio - An application for rejection of plaint can be filed, if averments made in plaint are taken to be correct as whole, on their face value show suit to be barred by any law.

The Order of the Court was as follows:

2. In order to appreciate the point involved in this appeal, a few relevant facts need to be stated in brief. Appellant-plaintiff (for short 'the society') is a registered Co-operative Society, under the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). The defendant - respondent is its Member and in the matter of non- allotment of a site, had raised a dispute under Section 70 of the Act, in No.ADN 386/85-86, before the Assistant Registrar of Co-operative Societies at Bijapur, against the appellant. The dispute was rejected as per an award dated 28.04.1988. Assailing the award, Appeal No.451/1988 was filed, under Section 105 of the Act, before the Tribunal. The appeal was allowed on 28.08.1990 and the Society was directed to allot a plot/ site on payment of the charges. The judgment/award passed by the Tribunal became final. A certificate was issued to the respondent by the Assistant Registrar of Co-operative Societies at Bijapur, on 20.08.2001, under Section 101(a) of the Act. In pursuance thereof, E.P.No.391/2002 was filed, in the Court of Additional Civil Judge (Sr.Dn.), at Bijapur, to execute the judgment/award dated 28.08.1990 passed in Appeal No.451/1988 by the Tribunal.

4. The Trial Court, by noticing Section 9 of the Karnataka Appellate Tribunal Act, 1976 (for short 'the Tribunal Act') with regard to the finality of the orders passed by the Tribunal and not liable to be called in question in any court, held that the suit is not maintainable i.e., from the statements made in the plaint and as a consequence, rejected the plaint. An appeal having been filed there against by the plaintiffs, it was held that the Trial Court was justified in rejecting the plaint and the appeal was dismissed. Assailing the said order and the judgment, this second appeal, under Section 100 CPC was filed.

10. The plaintiff - appellant herein, is a Co- operative Society registered under the Karnataka Co- operative Societies Act, 1959 and the defendant - respondent is its Member. The dispute between the Society and its Member can be the subject matter of adjudication under Section 70 of the Act. The Registrar can decide the dispute in exercise of the power under Section 71 of the Act. An award passed by the Registrar can be assailed by the aggrieved person, before the Tribunal, by way of an appeal, under Section 105 of the Act. An award passed by the Registrar or the Tribunal, as the case may be, can be executed, under Section 101 of the Act, which reads as follows:

11. In the present case, the respondent being the member of the appellant had raised the dispute under Section 70 of the Act, which was dismissed on 28.04.1988 by the Assistant Registrar of Co-operative Societies and the said award was assailed in Appeal No.451/1988 before the Tribunal. The appeal was allowed and an award was passed against the Society to allot the site and extend the benefits, which the Member of the Society is entitled as per by law on payment of necessary charges. The judgment/award passed by Tribunal having not been challenged, became final. The Assistant Registrar of Co- operative Societies having been conferred with the power of the Registrar of Co-operative Societies, in relation to Section 101 of the Act, as per the notification of Government of Karnataka bearing No.DPC-73/CEA-74 dated 13.03.1974, issued a certificate, under a Section 101 of the Act, which enabled the decree holder to execute the decree in the Civil Court. In pursuance thereof, E.P.No.391/2002 was filed and an order dated 28.08.2007 was passed by the II Additional Civil Judge (Sr.Dn.), Bijapur, overruling the objections of the judgment debtor/Society. Challenge putforth to the said order, in W.P.No.16498/2007 was given up, by allowing the said writ petition to be dismissed on 17.02.2010, for non- prosecution.

12. The decision of the Apex Court, in Dhulabhai vs. State of Madhya Pradesh and Another, AIR 1969 SC 78 1968 Indlaw SC 137, makes it clear, that whenever a special statute bars the jurisdiction of the Civil Court by an express provision or by implication and makes decision of such authority not liable to be questioned in any Civil Court, the jurisdiction of the Civil Court would be excluded. If there is any express bar created in the special statute or if the special statute creates a special Tribunal and makes the decision final and not liable to be questioned in any Civil Court, then the jurisdiction of the Civil Court would stand barred.

15. In view of the finality of the order dated 28.08.2007 passed by the execution court and on account of the dismissal of W.P. No.16948/2007, separate suit filed is barred by law. Section 47 CPC bars determination of any question relating to the execution, discharge or satisfaction of the decree by way of a separate suit. Such questions shall be determined by the executing court .

16. Having regard to the above undisputed factual matrix, the courts below have not committed any illegality in passing the impugned order and the judgment respectively and the same have not given raise to any substantial question of law for consideration, in exercise of the power under Section 100 CPC. The rights of the parties having been decided by the Tribunal and its Judgment/Award having attained finality, the order and the Judgment passed by courts below, impugned in this appeal, do not directly or substantially affect the right of the appellants. Hence, no substantial question of law is required to be determined in this appeal.

The second appeal, sans substantial question of law, is not maintainable. Hence, the appeal is rejected.

Appeal dismissed

BEML HBCS Site Depositors Welfare Association Bangalore Represented by its Secretary and another v Additional Registrar of Co-operative Societies (H&M) Office of Registrar of Co-operative Societies In Karnataka Bangalore and others, 2016 Indlaw KAR 1532

Case No: W. P. Nos. 26772-73/2014 (CS-RES)

Justice Anand Byrareddy

Head Note

Karnataka Co- operative Societies Act, 1959, s. 29-C - Charges Dropped - Challenged - Additional Registrar erred in dropping all charges suo motu against defaulting directors on ground that acts of malfeasance and misfeasance alleged may have been collectively committed by several members of Managing Committee and no individual can be held responsible for same.

If the proceedings are taken through the currency of the term and if once the term has expired, any such consequential proceeding considering the disqualification of a member or office bearer would not require consideration is an incorrect opinion – In so for as alternative remedy is concerned, since the question raised are one of the jurisdiction and legal interpretation of the sec.29C of the act, this court having exercised jurisdiction is completely in order – order accordingly

The Order of the Court was as follows:

2. The second respondent is stated to be the President of BEML Employee's Co-operative Society Limited registered under the provisions of the Karnataka Co-operative Societies Act, 1959. The main object of the society was to procure lands and form a layout and to allot residential sites to the eligible members. The affairs of the society were managed by the elected Management Committee comprising of nine directors. The first petitioner is the Secretary of BEML EHBCS Site Depositors Welfare Association and petitioner No.2 is one of the member. It is their allegation that two of the present Directors of the Committee and the erstwhile Directors of the Managing Committee were guilty of various irregularities and in respect of which the competent authority had initiated proceedings and a comprehensive report was submitted under Section 64 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'KCS Act') and an enquiry was conducted over a period of two years. It was held that charges were found to be true and established. On receipt of the enquiry report, the Joint Registrar of Co-operative Societies, Bengaluru had passed an order dated 16.04.2013 directing the Secretary of the Society to rectify certain defects disclosed in the enquiry report and to submit a compliance report. This was not complied with immediately, but was belatedly complied. It then transpires that the Additional Registrar passed an order dated 19.04.2014 and dropped all the charges against the defaulting directors under Section 29-C of the KCS Act holding that the charges brought against the delinquents was in respect of a term, which has expired and therefore further proceedings could not be sustained. Thereafter, during the pendency of this petition, the Additional Registrar has passed a suo motu order holding that the acts of malfeasance and misfeasance alleged may have been collectively committed

by several members of the Managing Committee and no individual can be held responsible and accordingly, dropped the proceedings against present respondent No.2. It is this order which is sought to be questioned in the present petition as well.

3. The opinion formed by the Additional Registrar that in terms of Section 29-C(8) of the KCS Act, it is only in respect of a particular term that consequences would follow. If proceedings are taken through the currency of the term and if once the term has expired, any such consequential proceedings considering the disqualification of a member or an office-bearer would not arise and would not require consideration, is an incorrect opinion.

4. On a plain reading of sub-section (8) of Section 29-C of the KCS Act, it is evident that though the Section contemplates that if any member of a Society has during the term of the office acted fraudulently or gross negligence or in contravention of provisions of the Act and Rules of the society or without the sanction of the society etc., the Registrar, on the basis of the report, shall pass an order removing such member and in cases falling under clauses(a), (b), (c) and (d) of sub- section (8) disqualify him from holding any office in the society for such period not exceeding 5 years, notwithstanding the fact that term has expired.

5. The Additional Registrar in the present case on hand having formed an opinion that such consequences befall on such defaulting office bearer only during the currency of the term and not beyond the term, is incorrect. If this reasoning is adopted, it is possible that such office bearer would commit irregularities and since the term has expired, no consequences would follow on account of such acts of misfeasance. Such illogical act cannot be the intention of the legislature. On a plain reading of Section 29-C(8) of the KCS Act, the Registrar is bound to exercise his discretion on a case to case basis, on the ground that such discretion is warranted. In the present case on hand, since the Registrar has formed an opinion that consequences would not befall on account of expiry of such term is an incorrect opinion.

6. Insofar as earlier order passed by the Additional Registrar, to the effect that any acts of misconduct are relatable to a collective decision making and not on account of any individual act of any office-bearer, particularly, the second respondent, is also found to be not in accordance with the material on record.

7. Since Section 29C(8) of the KCS Act would contemplate the orders being passed by Registrar of Co-operative Societies, it is appropriate that the matter is remitted to the Registrar of Co-operative Societies for further action in terms as aforesaid. The petition is allowed. The orders of the Additional Registrar are set at naught and he is directed to re- examine the findings insofar as second respondent is concerned and to exercise his discretion as to the consequence of disqualifying the second respondent from holding the office in the co-operative society for any length of time and pass appropriate orders. This exercise shall be completed within a period of four weeks, if not earlier from the date of receipt of a copy of this order. In the meantime, the second respondent is restrained from discharging his duties as an Office bearer.

8. Incidentally, the learned counsel for the second respondent would vehemently contend that the petitioners have come before this Court in the face of an alternative remedy available to the petitioners and secondly, they did not have locus standi to question the impugned orders. On both counts, since they are members of the society, who claim to be defrauded and denied their due, it cannot be said that they did not have a locus

standi. Insofar as alternative remedy is concerned, since the questions raised are one of jurisdiction and legal interpretation of Section 29-C of the Karnataka Co- operative Societies Act, 1959, this Court having exercised jurisdiction is completely in order.

Order accordingly

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H. V. Rajanna S/o Late Venkataramaiah and others v Additional Registrar of Co-operative Society Housing and others, 2016 Indlaw KAR 6878

Case No: Writ Petition Nos. 44640-44641 of 2016 & Writ Petition Nos. 44907-44908 of 2016 (CS-RES)

Justice Raghvendra S. Chauhan

Head Note :

KCS Act 1959 – Allotment of sites to Associate Members.

The petitioners have not produce any evidence to show that the irregularities have been committed by the society before the additional Registrar, tribunal nor before this court. Merely because the society and as issued the circular where by giving opportunity to the member to pay the full amount of land site in five installments. Neither the Additional Registrar nor the tribunal nor this court, that due to demographic pressure on Bengalore, the prices of real estate phenomenally escalated. Therefore the contention raise of by the petitioner that the circular is a clever ploy for ignoring the interest for the regular members and selling land to the associate members, cannot be accepted by this court – petition dismissed

The Order of the Court was as follows:

2. The brief facts of the case are that the petitioners claim to be members of the Karnataka State Judicial Department Multipurpose Co-operative Society. According to them, this Society was formed in 1938. The Society has permanent office in the premises of the High Court of Karnataka. According to the bye-laws, the members of the Society must be either employees of the High Court, or Karnataka State Judicial Department, or of the Advocate General's Office. The aim and object of the Society is to grant personal loan up to Rs.1,25,000/-, and to form residential layout for the needy members of the Society.

3. The petitioners further claim that the Society not only inducted associate members, but also started giving preference to them over the regular members while allotting sites in the layout. Although in order to discover the malfunction of the Society, the petitioners had sought certain documents, but the documents were never given to them by the Society. The apprehension of the petitioners was further strengthened by circular dated 1-11-2015, whereby the Society proposed to commence the III Stage of residential layout. According to the said circular, the members of the Society were required to pay a huge amount for being allotted house sites in the III Stage. Since the amount demanded from the members were beyond their financial capacities, and since the petitioners were convinced that the Society was not working in their

interest, but was working in the interest of the associate members, they raised a dispute before the learned Additional Registrar of the Co-operative Societies. Along with their dispute, they filed an application for interim stay. Initially, on 15-12-2015, respondent No.1, the learned Additional Registrar, directed the Society to maintain status-quo till 18-1-2016. The Society submitted its objections. The petitioners submitted an application for extension of the interim order. However, by order dated 1-2-2016, the learned Additional Registrar dismissed the application for extension of interim order, and vacated the stay granted by him.

Secondly, merely because the Society has submitted an affidavit before the learned Tribunal that it would continue to allot the land sites to the regular members, and would not allot a land site to the associate members at the cost of the members, the learned Tribunal could not have relied upon the said affidavit.

Thirdly, the circular dated 1-11-2015 prescribes that the site amount shall be paid by the members in five installments; the five installments range from Rs.1,00,000/- to Rs.5,04,000/-. But the said amount cannot be afford by the members as they are merely employees of the High Court, or belonging to the State Judicial Department, or employees of the Advocate General's Office. Thus, the large amount demanded by the Society cannot be paid by the members. Hence, the circular is a clever ploy for benefiting the associate members at the expense of the regular members.

Fourthly, if the respondent - Society is permitted to create a third party right in favour of the members, it would lead to multiplicity of allegation. Therefore, the learned Additional Registrar is not justified in vacating the stay order initially granted by him on 15-12-2015. Further, the learned Tribunal is not justified in dismissing the revision petition. Hence, both the impugned orders deserve to be set aside by this Court.

6. On the other hand, Mr. Jayakumar S. Patil, the learned Senior counsel, submits that although initially according to the bye-laws, the associate members were not allowed to induct, but by subsequent amendment of the bye-laws, the Society is permitted to induct the associate members. It is only on the basis of the amended bye-laws, the associate members have been inducted.

Secondly, although the petitioners claim that irregularities are being committed by the Society, yet no evidence has been submitted by the petitioners.

Thirdly, due to the phenomenal rise in the real estate prices, the Society is justified in asking for installments to be paid by the members of the Society. Even if the installments asked for are big, even then, it would not lead to a conclusion that an irregularity has been committed by the Society.

Fourthly, the learned Tribunal has noted the fact that the petitioners have neither applied for allotment of sites, nor submitted any evidence to establish their allegations that the Society is committing irregularities. Since the petitioners have failed to establish a prima-facie case, the learned Additional Registrar was justified in not extending the stay order dated 15-12-2015. For the same reason, the learned Tribunal is also justified in dismissing the revision petition. Hence, the learned Senior counsel has supported the impugned orders.

10. Moreover, neither before the learned Additional Registrar, nor before the learned Tribunal, nor before this Court, the petitioners have produced any evidence to show that any irregularities have been committed by the Society. Merely because the Society has issued the circular dated 1-11-2015, whereby the Society has given an opportunity to its members to pay the full amount of a land site in five installments, merely because the amount to be paid ranges from Rs.1,00,000/- to Rs.5,04,000/-, only on this basis, an inference cannot be drawn that irregularities are being committed by the Society. Neither the learned Additional Registrar, nor the learned Tribunal, nor this Court is of oblivious of the fact that due to the demographic pressure on Bengaluru, the prices of real estate have phenomenally escalated. Therefore, the contention raised by the petitioners that the circular dated 1-11-2015 is a clever ploy for ignoring the interest of the regular members, and for selling land sites to the associate members, the said contention cannot be accepted by this Court.

11. Once the petitioners have failed to establish their allegations of irregularity, obviously, the petitioners have not succeeded in making a prima-facie case. Thus, the petitioners have failed to establish the first criteria of granting a stay order. Moreover, since the Society is continuing to deal with the associate members as permitted by the bye-laws, the petitioners are not in a position to claim balance of convenience in their favour. Even if any irregularities, or illegalities were to be committed by the Society, and if such irregularities, or illegalities were established by the petitioners, before the learned Additional Registrar, the same can be set aside by the learned Additional Registrar at the time of final hearing of the dispute. Hence, no irreparable loss would be caused to the petitioners, if the respondent - Society were not restrained by a stay order. Considering the fact that none of the three criterion is in favour of the petitioners, the learned Additional Registrar is justified in not extending the stay order dated 15-12-2015, and the learned Tribunal is justified in confirming the order passed by the learned Additional Registrar.

12. For the reasons stated above, this Court does not find any merit in these writ petitions. They are, hereby, dismissed.

However, it is clarified that any observation made by this Court with regard to merits of the cases shall not influence the final decision of the learned Additional Registrar with regard to the dispute that has been raised before him. The learned Additional Registrar is expected to pass his order on the evidence produced by both the sides. For, any observation in this regard is prima-facie in nature, and does not tantamount to a judicial finding.

Petitions dismissed

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K. R. Vijayalakshmi W/o H. A. Nanjegowda v Executive Officer Hassan and others, 2016 Indlaw KAR 2324

Case No: Writ Petition No. 9343 of 2013 (LB)

Justice L. Narayana Swamy

Head Note :

KCS Act 1959 – Cancellation of site allotted to milk society

The reasons assigned for cancelling the allotment of site, that there is public disturbance for the site allotted to the milk society itself is not a ground to cancel the resolution of 2007. The panchayath resolution is quashed.

The Order of the Court was as follows:

2. The case of the petitioner is that, it is a Society registered under the Provisions of Karnataka Co-operative Societies Act with an object to develop the animal husbandry and to uplift the villagers. The petitioner-Society is collecting the milk from the villagers and supplying the same to the Milk Federation. The said Sangha is not having its own building to carry on its day to day activities. Hence, the petitioner-Sangha requested the 2nd respondent- Gramapanchayath to allot a site in its favour.

3. Considering the case of the petitioner-Sangha, 2nd respondent passed a resolution on 27.10.2007 and allotted a site measuring 39 X 30 feet in favour of the petitioner- Sangha. A report has been made on 15.01.2013 to the effect that the site 39 X 30 feet was allotted and also boundaries were referred therein. On the basis of the note and resolution the petitioner-Sangha was permitted to put up construction and building licence was issued on 04.12.2007 in respect of the site in question with several conditions. Name of the petitioner-Sangh was entered in Katha and the 2nd respondent issued the Tax Demand extract in respect of the site in question. The petitioner-Sangha was allowed to put up the foundation for construction.

4. It is stated by the learned counsel for the petitioner that since there was no sufficient and particular space available for carrying on the business, temporarily it was done in the public school space. When the petitioner-Sangha were about to put up construction by organizing the money for the said purpose, at that time an order was passed by the Seege Gramapanchayath by passing one more resolution in the year 2010 by cancelling the resolution dated 27.10.2007 and allotment made in favour of the petitioner- Sangha is cancelled.

Before cancellation of the same, petitioner-Sangha was neither issued notice nor any opportunity was provided to have their say. Being aggrieved, petitioner-Sangha preferred an appeal before the Executive Officer, Hassan Taluk, and Executive Officer, Hassan Taluk which is still pending since it was not disposed hence, filed this petition in which petitioner Sangha made prayer to quash the order dated 10.04.2012 passed by the 1st respondent vide Annexure-N and to direct the 1st respondent to confirm the Resolution dated 27.10.2007 passed by the 2nd respondent vide Annexure-A. Learned counsel for the petitioner further submitted that, when the site is allotted to the petitioner- Sangha and it has got entered in Katha and same cannot be cancelled without providing an opportunity to the petitioner- Sangha. Therefore, he requested this Court to allow this petition.

7. The suit filed against the respondent-Grama Panchayath in O.S. No.132/2005 for declaration by the plaintiff

who claimed the ownership has been dismissed. It is submitted that the appeal is pending and no order has been passed so far. It is no doubt true that the Grama Panchayath has got the power to pass the resolution under Section 52 of Karnataka Grama Panchayath Raj, Act. When the resolution has been passed in the year 2007 allotting the site in favour of the petitioner and consequently the occupancy right of the petitioner is entered in the revenue records and katha certificate issued and licence was also issued for putting up construction when such being the case without providing any opportunity to the petitioner-Sangha, the Grama Panchayath should not have cancelled the resolution of 2007. The reasons assigned for cancelling the allotment of the site that there is public disturbance for the site allotted to the Milk Sangha itself is not a ground to cancel the resolution of 2007.

When the foundation is already put up by the petitioner- Sangha and in the open space some persons have tied cattles and it is not suitable for the school children to play and it is used for public purpose for the Milk Sangha. Be that as it may, suitable decisions of chosing the right place, whether it is suitable or not for a particular purpose it has to be decided by the Grama Panchayaht but they cancelled the resolution of 2007 which is 3 years before and cancellation is made without providing any opportunity that too after issuing the licence to put up construction. Under these circumstances, I hold that resolution 2010 passed by the respondent Grama Panchayath is not in conformity with Section 52 of the Act and also it is held arbitrary since occupancy right is issued in favour of the petitioner cannot be taken back without assigning any reasons by the Competent Authority.

8. Accordingly, petition is disposed of. Resolution dated 11.01.2010 passed by Grama Panchayath at Anenxure-H and the Order of Taluk Panchayath, Hassan dated 10.04.2012 produced at Annexure-N are quashed.

Petition disposed of

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Scheduled Caste (Harijan), House Building Co-operative Society Limited, Bangalore Represented by its Chief Executive Officer v State of Karnataka, Department of Co-operation, Bangalore Represented by its Principal Secretary and others, 2016 Indlaw KAR 2000

Case No: Writ Petition No. 44176 of 2014 (CS-RES)

Justice Anand Byrareddy

Head Note

Karnataka Co-operative Societies Act, 1959 - Allotment of sites - Direction to inquire - Jurisdiction - Whether direction by Minister of Social Welfare and Backward Classes to CREC for holding inquiry is within its jurisdiction.

It cannot be said that circumstances warranted any such action on part of Minister in having directed CREC to investigate or report at instance of impleading applicant, action initiated for holding inquiry is beyond jurisdiction of authorities and beyond scope of order dt.27-12-1975 as it pertains to private

affairs of society notwithstanding that it is society meant exclusively for SCs and STs. Petition allowed.

Ratio - Direction to inquire allotment of site by Minister of Social Welfare and Backward Classes in invalid as same is not within his power to direct.

The Order of the Court was as follows:

4. It is the case of the petitioner that it is a Building Co- operative Society, registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (Hereinafter referred to as the 'KCR Act', for brevity) and the Rules thereof. It was registered in the year 1964 with an object to provide residential sites to its members. It had applied to the Government and the BDA for allotment of land and in consideration of which, the Government had permitted the BDA to change the land user in respect of the land bearing survey no.32 situated at No.24, Sarakki, J.P.Nagar II phase, measuring 4 acres and 23 guntas from civic amenity site to residential area and thereby enabled allotment of land in favour of the petitioner -society for distribution of sites.

It is in this background that the Government had passed an order that if there is violation, the CREC would be empowered to investigate into various circumstances, particularly in respect of violation of the Rules pertaining to the grant of sites insofar as it relates to the claims of SCs and STs and that it is generally issued to ensure that CREC is empowered to investigate into any matters pertaining to violation of constitutional safeguards and protection extended to SCs and STs and any matter pertaining to contravention or violation of any law or rule or executive order aimed at the socio-economic upliftment and welfare of the SCs and STs.

It is this, the learned counsel would submit, is the basis for the action having been taken by the respondents and since it was initiated at the instance of the present applicant, the applicant is a proper and necessary party in ensuring that the complaint made by him is taken to its logical conclusion and seeks to urge that the very object of the State Government would be defeated if the present petition is entertained and if the applicant is not permitted to come on record. Whereas there are instances where a large number of sites were granted to single individuals who did not belong to the SC community. It is to address these serious irregularities, which has directly violated the rights of SC community, the learned Senior Advocate would submit, the petition be entertained.

7. From the reading of the order dated 27.12.1975, which according to the learned Senior advocate Shri Reddy, is the basis on which the impugned order has been passed by the Minister concerned, cannot be readily accepted. Apparently, the order refers to several legislations or such other rules and statutory provisions under which any rights or benefits are conferred on the SCs and STs and which does not reach the concerned. In the present case on hand, it is not under any statutory benefit that the sites have been allotted depriving any member belonging to a SC, his due. The sites according to the society have been allotted to its members. If there is any irregularity or violation of the law, it is open for the member of the society to raise a dispute in that regard before the appropriate forum under the KCS Act and it cannot be generally termed as violation of the civil rights of a member belonging to a SC or a ST. Reliance sought to be placed on a Government Order is, therefore, misplaced. It cannot be said that circumstances warranted any such action on the part of the Minister in having directed CREC to investigate or report at the instance of the impleading applicant.

Accordingly, the action initiated is beyond the jurisdiction of the authorities and beyond the scope of the order dated 27.12.1975 as it pertains to private affairs of a society notwithstanding that it is a society meant exclusively for the SCs and STs. Though other members have been admitted and their rights however have been reserved in any challenges made earlier, which are referred to hereinabove, this court is of the opinion that the impugned order is bad in law and is accordingly quashed.

Insofar as the claim of the impleading applicant that he is necessary and proper party is concerned, even if he is a necessary and proper party, in view of the petition having now been allowed, there is no warrant to implead the applicant. The application stand disposed of as having become infructuous.

The petition is allowed.

Petition allowed

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Siddamma W/o Late S. K. Narasimhaiah v Bhavani Housing Co-operative Society Limited by its Secretary PH Dayanand, Bangalore and others, 2016 Indlaw KAR 3068; 2016 (4) KarLJ 302

Case No: Writ Petition No. 49491 of 2015 (CS-RES), 38532 of 2015 (CS-RES)

Justice Anand Byrareddy

Head Note

KCS Act 1959 - Executive Director, KPTC Employees Co- operative Society Limited v The Joint Registrar2013 ILR(Kar) 2701Summary : Cancellation of allotment - Validity of - Petitioner had owned property in question from previous owner of property - Whether order of Additional Registrar of Co-operative Societies is liable to be quashed.

Without sale deed in favour of previous owner being cancelled by competent Court of law, petitioner who claims under her would continue to have valid and enforceable title to subject property and sale deeds in favour of respondent nos.3,2 are held to be void ab initio. However, petitioner should have cancelled same by recourse to appropriate suit. Thus, impugned order is quashed. Petitions allowed.

Ratio - When once sale deed is executed and registered, purchaser becomes absolute owner and neither Authority will have power to negate same unless it is cancelled by Competent Civil Court.

The Order of the Court was as follows:

2. The facts, as narrated by the petitioner, are as follows:

The petitioner is said to be the absolute owner of property bearing no.14, 'Q' Block (part of land bearing survey no.132 and 133 of Kathriguppe) Banashankari III Stage, Bangalore, measuring about 40 feet by 30 feet. It is said to be a residential site formed by a house building co-operative Society, known as Bhavani Housing Co-operative Society Ltd., the first respondent herein.

The above property was said to have been originally allotted to one K.S.Sowmya and conveyed to her under an absolute Sale deed dated 22.6.1999 by the said Society. Physical possession appears to have been delivered under a Possession Certificate dated 11.7.2001.

The said Sowmya, a well known Kannada film star, is said to have died in an air crash, as on 17.4.2004. It appears she had entered into an agreement to sell, the above said property, with the petitioner. After the death of Sowmya, her husband, who is said to have succeeded to her estate, is said to have executed a registered sale deed in favour of the petitioner, dated 24.9.2005.

However, it is stated that when he again visited the site on 18.8.2015, he found that there was construction activity in full progress, on the said property. Having failed to gather proper details of the person or persons at whose instance the construction was being carried on, it is said that he had immediately approached the jurisdictional police to prevent the illegal construction. However, the police had opined that it was a dispute of a civil nature and that he would have to take civil action. It transpires that a civil suit was filed in OS 7246/2015, before the City Civil Court, Bangalore, after ascertaining that it was the second respondent in the first of these petitions, who was constructing on the said property. The suit is said to be pending as on date.

It transpires that the second respondent who has entered appearance in the suit, has set up a defence that the site in question had been allotted by the first respondent - society in favour of the third respondent and had been conveyed under a registered sale deed dated 14.8.2012. And that the said third respondent, had in turn, executed a registered sale deed in favour of the second respondent, dated 18.3.2015. And that she was putting up construction as absolute owner thereof.

Incidentally, it is stated that it is significant to note that the third respondent is said to be the sister-in-law of the Secretary of the first respondent - Society. It is also alleged that there are several civil and criminal cases pending against the said Secretary, one P.H. Dayanand. It is alleged that the said person has poor antecedents and is accused of various instances of cheating and fraud. It is claimed that he is closely associated with a minister of Cabinet rank, in the present State Government. It is urged that the immunity developed by the said Dayananda, is evident from the circumstance that the police were unable to execute several non-bailable warrants issued against him, because of his political clout and ill-gotten financial strength.

It is contended that the said Dayananda, knowing fully well that the petitioner was the owner of the property in question had proceeded to allot the same clandestinely in favour of his sister-in-law and had thereafter executed a sale deed in her favour, representing the Society as its Secretary.

It is also stated that in order to facilitate the above illegal sale deed and seeking to regularise the same and in order to deprive the petitioner of her property, the respondent - Society - acting through the medium of its Secretary, Dayananda, had sought amendment of its Bye-laws before the fifth respondent, which appears to have been readily allowed as on 3.12.2013. The amendment was to the effect that a member was ineligible to be allotted a site if any member of his family possessed a site in Bangalore City.

The petitioner contends that the mala fides and the criminal intention of the said Secretary further becomes evident from the fact that the fourth respondent was set up to file a mischievous petition raising a dispute under

Section 70 of the Karnataka Co- operative Societies Act, 1959 (hereinafter referred to as 'the KCS Act', for brevity), within one week from the date of amendment against Sowmya and her family members, including her deceased brother - claiming that 4 sites had been allotted to members of the same family in violation of the amended bye-law. It is alleged that the fifth respondent had, without reference to basic documents such as an encumberance certificate, which would have disclosed the status of the ownership of the sites, had promptly allowed the petition on the basis of a statement filed on behalf of the society, represented by Dayananda, conceding that there was indeed a violation of the Bye-laws by the previous management, when in fact, there was no such prohibition at the time of allotment in favour of Sowmya and her family members. The order was made against a dead person.

The respondent - Society appears to have effected amendments to its Bye-laws, prescribing that a member is ineligible to be allotted a site by the Society if any of his family members already holds a site in the city of Bangalore. This amendment was brought into force with effect from 3.12.2013. A dispute under Section 70 of the KCS Act, naming the deceased Sowmya, her deceased brother, Amarnath, her mother and her sister-in-law as the respondents, apart from the Society, is raised by one Chandrappa, the fourth respondent in the first of these petitions as on 9.12.2013. It is seen to have been contended that the above named persons constituted a single family and each of them had been conveyed a house site by the Society, under four sale deeds - all dated 22.6.2009, which was in violation of the bye-laws (as amended in the year 2013, immediately prior to the filing of the dispute) .

Significantly, the sale deed of the petitioner herein has never been questioned or cancelled. It is seen that even the sale deed in favour of Sowmya is not cancelled. What the Assistant Registrar of Co-operative Societies has sought to cancel is the allotment made in her favour, which was ineffective as the registered title deed has remained unaffected. Chandrappa who had raised the dispute has not chosen to enforce the impugned order. Nor had the Society taken any steps. For it is noticed that Bhagyalakshmi who had purchased the site even as early as in the year 2012, when the petitioner's sale deed was in force, has subsequently sold the same under a purported registered sale deed dated 18.3.2015, in favour of the second respondent in the first of these petitions.

The petitioner should however, have the same cancelled by recourse to an appropriate suit in terms of Section 31 of the Specific Relief Act, 1963 and seek consequential reliefs of recovery of possession, if such reliefs are not already prayed for in the pending suit aforementioned.

10. The Order impugned, in the first of these petitions, is non-est in having been passed against dead persons and in the face of blatant suppression of facts by the respondent - Society and for the reason that the petitioner is directly affected by the same. Further, without the cancellation of a registered document, in the manner known to law, the Additional Registrar of Co-operative Societies could not have issued an order directing registration of the property in question in favour of a third party. The impugned order is hence quashed.

The petitions are allowed in terms as above.

Petitions allowed

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Harish Shetty K. S/o Late S. K. Shetty v Bangalore City Employees Housing and Social Welfare Co-operative Society Limited, Bangalore, represented by Its President and others, 2017 Indlaw KAR 72

Case No: W. P. No. 33720/2016 (CS-RES)

Justice B.S. PATIL

Head Note :

KCS Act 1959 – Allotment of Site.

In the instant case, as already pointed out, petitioner has discharged his part of the duty by paying the sital value as demanded by the Society in a sum of Rs.20,000/- as back as in the year 1988. The said amount is with the Society even as on today. The Society has not refunded the said amount informing the petitioner that he was not eligible for allotment of any site. Almost 8 years, after the sital value as demanded was paid, the Society has enhanced the value to Rs.60,000/-. There is nothing to show that petitioner was called upon to pay balance amount as enhanced within any stipulated period making it clear that failure on his part would entail forfeiture of the amount paid by him. In such circumstances, prima facie case has been made out by the petitioner for protecting his rights pending adjudication of his claim.

The Order of the Court was as follows:

1. This writ petition is filed challenging the order dated 30.04.2016 passed by the Karnataka Appellate Tribunal, Bengaluru, in Revision Petition No.3/2015. The said revision petition was filed by respondent No.1 - Society under Section 107 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act') challenging the legality and correctness of the interim order passed by the Joint Registrar of Co-operative Societies, Bengaluru Region, in Case No.JRD/MD/151/2012- 13 dated 13.10.2014, whereby the Joint Registrar had directed respondent No.1 - Society to reserve one flat constructed by the Society in Site No.291 situated at Vidyagiri Extension, Nagarabhavi 1st Stage, Bengaluru - 72.Petitioner has raised a dispute before the Joint Registrar under Section 70 of the Act contending inter alia that though he had paid entire value of the site as per notice dated 28.01.1988 by paying a sum of Rs.10,405/- on 28.01.1988 as 1st installment and Rs.9,595/- by way of 2nd installment on 10.09.1988, the Society had not allotted him any site.

3. The Joint Registrar, after considering the application filed for grant of interim order, directed respondent No.1 - Society to reserve one flat, so as to secure the interest of the petitioner in case, he succeeded in the matter. This interim order was challenged by respondent No.1 - Society before the Tribunal. The Tribunal has set aside the said order. It is this order that has been called in question in this writ petition.

4. I have heard learned counsel for both parties. A perusal of the order passed by the Joint Registrar and the order passed by the Tribunal and consideration of entire materials on record reveal that admittedly, petitioner

had paid the entire value of site amounting to Rs.20,000/- as back as in the year 1988. The Society has resolved to increase the sital value in the year 1996. Justification on the part of respondent No.1 - Society in utilizing the amount of Rs.20,000/- paid by the petitioner in the year 1988 without allotting any site till the year 1996 and proceeding to increase the sital value to a sum of Rs.60,000/- during the year 1996, is a matter that requires consideration by the Joint Registrar after permitting the parties to lead evidence.The Joint Registrar has come to the conclusion that in order to secure the interest of petitioner who was intimated with allotment of site and was called upon to pay the sital value based on which he had indeed paid the sital value, an interim direction to reserve one flat without allotting it to any other person needed to be granted.

5. The Tribunal has come to the conclusion that main dispute itself required to be considered and that without there being any evidence recorded, entitlement of writ petitioner for allotment of site could not be decided and therefore, it was not advisable to direct the Society to reserve a flat and hence, revision petition deserved to be allowed.

6. The approach of the Tribunal and the reasons assigned in allowing the revision petition is not in accordance with law. For grant of interim order, the authority concerned is required to examine prima facie case made out by the applicant, balance of convenience and the demands of justice.

7. In the instant case, as already pointed out, petitioner has discharged his part of the duty by paying the sital value as demanded by the Society in a sum of Rs.20,000/- as back as in the year 1988. The said amount is with the Society even as on today. The Society has not refunded the said amount informing the petitioner that he was not eligible for allotment of any site. Almost 8 years, after the sital value as demanded was paid, the Society has enhanced the value to Rs.60,000/-. There is nothing to show that petitioner was called upon to pay balance amount as enhanced within any stipulated period making it clear that failure on his part would entail forfeiture of the amount paid by him. In such circumstances, prima facie case has been made out by the petitioner for protecting his rights pending adjudication of his claim.

8. Insofar as directing the Society to set apart/reserve a flat to secure the interest of the petitioner, as rightly contended by learned counsel for respondent No.1 - Society, such an order would result in serious prejudice and loss to the Society. The Joint Registrar has not ascertained from the materials on record that indeed a vacant flat really existed which could be ordered to be reserved pending adjudication of the claim made by the petitioner. Such reservation of flat for an indefinite period would no doubt result in serious hardship to the Society. However, that does not mean that interest of the petitioner cannot be protected pending consideration of his claim.

9. The Society has to be put on terms as the petitioner has paid a sum of Rs.20,000/- in the year 1988. The said sum has to be secured along with interest, so that in case petitioner succeeds, appropriate orders could be passed. Therefore, in modification of the orders passed by the Joint Registrar and the Tribunal, a direction by way of an interim arrangement is issued to respondent No.1 - Society to deposit a sum of Rs.20,000/- along with interest calculated at 18% p.a. from 1988 as on today before the Joint Registrar of Co-operative Societies, Bengaluru Region, within four weeks from today. The said amount shall be invested in fixed deposit initially for a term of one year in any nationalized bank. The Joint Registrar of Co-operative Societies, Bengaluru

Region, is directed to hear and dispose of the main matter within six months from the date of receipt of a copy of this order. Amount in deposit shall await final orders to be passed by the Joint Registrar of Co-operative Societies, Bengaluru Region. Writ Petition is accordingly disposed of.

Petition disposed of

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Krishnamurthy Subramanyam S/o Late Subramanyam and others v Samyukta Bharath Housing Co-operative Society Limited, represented by its Assistant Secretary, Bangalore and others, 2017 Indlaw KAR 168

Case No: W. P. Nos. 51956-958/2016 (CS-RES)

Justice B.S. Patil

Head Note :

KCS Act 1959

There is no violation of principles of natural justice – no need to interfere after taken reward available – rejected.

The Order of the Court was as follows:

1. These writ petitions are filed seeking a declaration that action of 1st respondent - SamyuktaBharath Housing Co- operative Society Limited in passing a resolution on 11.09.2016 resolving to dispose of some of the properties of the Society is contrary to Sections 56 and 58 read with Section 61 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). A direction is also sought against 2nd respondent - Joint Registrar of Co-operative Societies not to approve the said resolution. In addition, a further direction is sought against 2nd respondent to supersede the society by exercising the power under Section 30 of the Act.

2. It is contended by petitioners that they were aspirants for becoming members of 1st respondent - Society. They had made an application seeking membership in this regard but the Society demanded payment of Rs.15,000/- as contribution and therefore, they were constrained to approach this Court challenging the said action of the Society by filing W.P.Nos. 30934-935/2009. The said writ petitions were dismissed. Aggrieved by the same, W.A.Nos. 2-4/2012 were filed and by order dated 29.01.2016, Division Bench of this Court allowed the appeals holding that the Society can only charge fees as per the bye-laws and the provisions of the Act and the Rules but cannot seek lump sum amount by way of contribution from the intending members. In the light of this order, it is contended by petitioners that they were entitled to be admitted as members of the Society without collecting the amount of Rs.15,000/-.

7. Upon hearing the learned counsel for all parties and on consideration of the entire materials on record, I find that the Division Bench of this Court has only found that lump sum contribution in a sum of Rs.15,000/- cannot be collected by the Society for enlisting the aspirants as members of the society because as per the bye-laws and the provisions of the Act and the Rules only fee could be collected and not lump sum contribution. There is no direction issued in the said order to admit petitioners as members of the society. Therefore, as long as petitioners are not admitted as members of the Society they have no locus standi to challenge the Action of the Society. If it is their case that by virtue of the order passed by this Court they shall be deemed to be members of the society, then, as provided under Section 70 of the Act, they have an alternative efficacious remedy to agitate their grievance. Indeed, impleading applicants who want to come on record contending that

they have been the members of the society and are also aggrieved by the Action of 1st respondent - Society in resolving to dispose of the immovable properties, the same logic would apply. Petitioners have got an efficacious alternative remedy. They have to approach the competent authority by raising a dispute under Section 70 of the Act.

8. The decisions on which reliance has been placed by the learned counsel for petitioners pertain to fact situations which do not have any similarity or parallel to the facts and circumstances involved in this case. In the case of B. SANKAPPA RAI - ILR 2004 KAR 4298, this Court persuaded itself to entertain the writ petition on the ground that as urged in the facts of the said case, the Tribunal was not competent to adjudicate the validity of the amended clause of the bye-law and therefore, petitioners could not lay any challenge to the same before the Tribunal by taking recourse to alternative remedy.Similarly, in the case of Scheduled Caste (Harijan) House Building Co-Operative Society Limited vs. STate of Karnataka & others - ILR 2006 KAR 2180 2006 Indlaw KAR 43, this Court was disturbed by the illegality committed by the Society in getting the sale deed (registered in the names of members) cancelled with the Active help of the Sub-Registrar and in attempting to allot the same to others instead of taking recourse to re-conveyance of the property in favour of the Society if the member who had been allotted with the property did not want to continue with the allotment. Likewise, in W.P.No.6908/2014 this Court entertained the matter without relegating the petitioners therein to the alternative remedy on the ground that the question involved was that of jurisdiction of the authority. In the case of I.R.ASRANNA, this Court interfered in the matter without asking the parties to avail alternative remedy on the ground that there was violation of the principles of natural justice.

9. In this case, no such issue regarding violation of principles of natural justice or the question of jurisdiction of the authority below is involved. The allegations are based on facts and the alleged illegality committed by the Society in trying to dispose of some of the immovable properties owned by it. If there is any grievance by the members of the Society, it is open for them to take recourse to the alternative remedy provided under Section 70 of the Act. If the petitioners cannot show that they are members of the society, then they have no locus standi to challenge the Action of the society.

Subject to the above observations, these writ petitions are rejected.

Order accordingly

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Fakkirappa Basappa Sindagi v Joint Registrar of Co-operative Societies, Belgaum and others, 2015 Indlaw KAR 3980

Case No: W. P. No. 68744 of 2010 (CS-Res)

Justice A. N. Venugopala Gowda

Head Note :

Karnataka Souharda Act 1997 – aggrieved person

Unless, he satisfies the court that he falls within the category of 'aggrieved person'. Only a person who has suffered or suffers from legal injury can present a writ petition u/art. 226 of the constitution for the purpose of enforcing a statutory or legal right.

The Order of the Court was as follows:

1. The petitioner was a Secretary of the 3rd respondent, a co-operative Society, which was converted as a 'Souhardha', as per S. 4(b) of the Karnataka Souharda Sahakari, Act 1997. The petitioner claims that he is

entitled for payment and allowances from 2005 up to 2010. 2nd respondent having submitted a proposal dated 26.08.2009 vide Annexure-E to the 1st respondent for winding up of the Souhardha Sahakari and to appoint a liquidator and the 1st respondent having passed an order dated 08.07.2010 vide Annexure-F, canceling the registration of Souhardha Sahakari and registering the 3rd respondent as a Co- operative Society, in exercise of the power u/s. 7 of the Karnataka Co-Operative Societies Act, 1959, this writ petition was filed to quash the order as at Annexure-F and asking for a mandamus to take action for liquidation of the Souhardha Sangha, pursuant to the proposal as at Anexure-E and direct the liquidator to take the properties of the Shirahatti Taluak Primary School Co-Operative Society and Shirahatti Souharda Sahakari and take action in terms of S. 47 of the Karnataka Souhardha Sahakari Act, 1977.

3. Smt.K.Vidyavathi, learned AGA and Sri.Laxman T. Mantagani, learned Advocates appearing for the respondents, on the other hand, contended that the petitioner has no locus-standi to question the order as at Annexure-F and hence, petition is liable to be dismissed. It was submitted that due to misconduct, misbehavior and wrongful administration of the Sahakari, it having suffered loss continuously, a statutory enquiry was ordered and it was found that the petitioner has enhanced his pay by himself and drawn the salary without approval of the managing committee or the Department and in the said circumstance, the proposal vide Annexure-E was submitted. They contended that the petitioner being the erstwhile Secretary of the Souhardha Sahakari, which is no more in existence, has no right to question the impugned order. They submitted that the petition being devoid of merit, may be dismissed.

6. A person cannot be permitted to meddle in any proceeding, unless, he satisfies the Court that he falls within the category of 'aggrieved person'. Only a person who has suffered or suffers from legal injury can present a writ petition u/art. 226 of the Constitution for the purpose of enforcing a statutory or legal right. Existence of a legally enforceable right is a condition precedent for invoking writ jurisdiction. Legal right that can be enforced, ordinarily, must be the right of the petitioner himself.

8. By the conversion of Souhardha Sangha into a Co-Operative Society and its registration by the 1st respondent as per in the order as at Annexure-F has not caused any prejudice to the petitioner.

The order as at Annexure-F has not adversely affected or jeopardized the right, if any, of the petitioner. On account of passing of the order as at Annexure-F, the petitioner has not suffered from any legal injury. The petitioner, if is due to recover any sum, he can do so by approaching the Competent Forum.

9. In the facts and circumstances of the case, the petitioner has no locus-standi to invoke the writ jurisdiction against the order as at Annexure-F, since, he has not suffered any legal injury and hence, cannot be permitted to assail the order as at Annexure-F.

In the result, writ petition is dismissed. However, it is open to the petitioner to seek remedy, if any, in accordance with law and before the Competent Forum i.e. in the matter of the payment of the arrears of salary and allowances.

10. No costs.

Petition dismissed.

2073/2020

Sri Krishna

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IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 16TH DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 48414 OF 2018 (T-IT)
C/W
WRIT PETITION NO. 14381 OF 2019 (T-IT)

IN W.P. NO. 48414/2018:

BETWEEN:

M/S SWABHIMANI SOUHARDA
CREDIT CO OPERATIVE LTD
BEING A REGISTERED CO OPERATIVE
REGISTERED UNDER THE KARNATAKA
SOUHARDA SAHAKARI ACT 1997,
HAVING ITS REGISERED OFFICE AT NO.125,
DIAGONAL ROAD, V.V.PURAM,
BANGALORE-560004 AND
REPRESENTED BY ITS CEO
VINAYAK M SHENOY,
PAN: AAFAS 0181 E

... PETITIONER

(BY SRI. MALLA REDDY B V, ADVOCATE)

AND:

1. GOVERNMENT OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVNUE,
CENTRAL BOARD OF DIRECT TAXES (CBDT)
INCOME TAX DEPARTMENT,
ROOM NO.7008, AAYAKAR BHAVAN,
VAISHALI GHAZIABAD, UP,
PIN-201009
REPRESENTED BY ITS DIRECTOR
/PRINCIPAL SECRETARY

2. STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF CO OPERATION,
M.S.BUILDING, DR.AMBEDKAR ROAD,
BANGALORE-560001

HIGH COURT KAR. IT-I BENGALURU

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3. PRINCIPAL COMMISSIONER OF INCOME TAX
C R BUILDING, NO.1 QUEENS ROAD,
BENGALURU-560001

4. INCOME TAX OFFICER (ITO)WARD-5(2)(3)
3RD FLOOR, ROOM NO.307, BMTC BUILDING,
COMMERCIAL COMPLEX, 80 FT.ROAD,
KORAMANGALA,
BANGALORE-560095.

... RESPONDENTS

(BY SRI. JEEVAN J NEERALGI, ADVOCATE FOR R1, R3 & R4;
SRI. T K VEDAMURTHY, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE AND THE REASONING GIVEN BY R-4 FOR ISSUING THE NOTICE UNDER SECTION 148 OF THE INCOME TAX ACT 1961, DATED 30.03.2018 VIDE ANNX-D IN FAVOUR OF M/S SWABHIMANI SOUHARDA CREDIT CO-OPERATIVE LTD., BY THE R-4.

IN W.P. NO. 14381/2019:

BETWEEN:

KARNATAKA STATE SOUHARDA
FEDERAL CO-OPERATIVE LIMITED
BEING A REGISTERED CO-OPERATIVE
REGISTERED UNDER THE KARNATAKA SOUHARDA
SAHAKARI ACT 1997,
HAVING ITS REGISTERED OFFICE AT
NIRMANA BHAVANA, DR RAJKUMAR ROAD,
1ST BLOCK, RAJAJINAGAR,
BENGALURU-560010.
AND REPTD BY ITS MANAGING DIRECTOR.

...PETITIONER

(BY SRI. MALLA REDDY B V, ADVOCATE)

AND:

1. GOVERNMENT OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES (CBDT)
INCOME TAX DEPARTMENT,
NORTH BLOCK, GATE NO.2,
NEW DELHI-110001
REPTD BY ITS DIRECTOR /PRINCIPAL SECRETARLY.

2. STATE OF KARNATAKA
REPTD BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF CO OPERATION,
M S BUILDING, DR AMBEDKAR ROAD,
BANGALORE-560 001.

3. PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
C R BUILDING NO.1, QUEENS ROAD,
BENGALURU-560001.

... RESPONDENTS

(BY SRI. C I SANMATHI, ADVOCATE FOR R1 & R3;
SRI. T K VEDAMURTHY, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECALRE THAT THE KARNATAKA SOUHARDA SAHAKARI ACT 1997 (KARNATAKA ACT NO.17 OF 2000) FALLS WITHIN THE MEANING OF THE WORDS "ANY OTHER LAW FOR TIME BEING IN FORCE IN ANY STATE FOR THE REGISTRATION OF CO-OPERATIVE SOCIETIES" FOUND IN SECTION 2(19) OF INCOME TAX ACT 1961 (ACT 43 OF 1961). AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner in W.P.No.48414/2018 is a Credit Cooperative, registered under the Karnataka Souharda Sahakari Act, 1997 (hereafter "1997 Act"); petitioner in W.P.No.14381/2019 is registered as the State Federal Cooperative, as provided under Section 33 of the said Act; they have knocked at the doors of writ court in substance for a prayer that they are entitled to seek deduction in respect of their income in terms of the scheme envisaged under section 80P of the Income Tax Act, 1961 (hereafter 1961 Act"), on the premises that they too are a

Cooperative Society, on par with those registered under the provisions of Karnataka Co-operative Societies Act, 1959.

2. After service of notice, the Respondent Nos.1 & 3 are represented by their Senior Panel Counsel and the State is represented by the learned AGA.

3. Regardless of unsatisfactory pleadings of the petitioners, their learned counsel submits that there have been two legislations relating to Cooperative Societies in the State of Karnataka viz., the Karnataka Co-operative Societies Act, 1959 & the Karnataka Souharda Sahakari Act, 1997; the entities registered under the 1997 Act also answer the definition of "cooperative society" enacted in sec. 2(19) of the Income Tax Act 1961 and therefore, they are entitled to seek the benefit of sec.80P thereof; the learned Panel Counsel for the Revenue per contra contends that the definition u/s 2(19) mentions of only a co-operative society and not a Souharda Co-operative; in the guise of judicial interpretation, the scope of the definition cannot be widened than what is prescribed by the Parliament; a stand in variance with this will have far reaching implications on the Exchequer.

4. In the light of the rival submissions half heartedly made at the Bar, the following question of law arises for consideration:

> *"Whether an entity registered under the Karnataka Souharda Sahakari Act, 1997 fits into the definition of "co-operative society" as enacted by sec. 2(19) of the Income Tax Act, 1961 for the purpose of Section 80P thereof?"*

5. Having heard the learned counsel for the parties and having perused the petition papers, this Court is of a considered opinion that the answer to the above question needs to be in the affirmative for the following reasons:

(a) sec.80P of the 1961 Act provides for deduction in respect of income of Co-operative Societies is obvious going by its very text; sub-section (1) of said section reads as under:

> *"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2) in computing the total income of the assessee."*

The other provisions of this section being not of much relevance to the question being treated, are not reproduced, although they too have been looked into.

Sec. 2(19) which finds a place in the Dictionary Clause of the 1961 Act reads as under:

> *'co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;'*

The provisions of sec.80P are enacted by the Parliament for promoting the co-operative movement in the Country in tune with what Father of the Nation Mahatma Gandhi preached to the countrymen; this Section needs to be liberally construed to effectuate the legislative object of encouraging & promoting the growth of co-operative movement vide **Kanga & Palkhivala's The Law and Practice of Income Tax**, 10th Edition, LexixNexis at page 1656; it is more so because the right to form a co-operative society itself is made a Fundamental Right, now enshrining in Article 19(1)(i) by virtue of 97th Amendment to the Constitution of India w.e.f. 15.10.2013;

(b) the object of enacting sec.80P of the 1961 Act may be defeated if a restrictive meaning is assigned to the definition of "co-operative society" as given u/s.2(19) inasmuch as the invokability of the provisions of sec.80P is dependent upon the entity seeking the benefit thereunder being a co-operative society; going by the text and context

of these provisions, one can safely conclude that all entities that are registered under the enactments relating to co-operative societies, regardless of their varying nomenclatures need to be treated as co-operative societies; this view accords with the purposive construction of sec.80P r/w sec.2(19) of the 1961 Act;

(c) in the State of Karnataka, there have been two statutes enacted by the State Legislature that relate to registration & regulation of co-operative societies viz., the Karnataka Co-operative Societies Act, 1959 ie., Karnataka Act No.11 of 1959 and the Karnataka Souharda Sahakari Act,1997 ie., Karnataka Act No.17 of 2000; both these Acts are enacted pursuant to Article 246(3) r/w Entry 32, List-II of Schedule VII of the Constitution of India; there is no other Entry to which this Act is relatable; the Legislative Entries being only the fields of legislation need to be very broadly interpreted, is the settled position of constitutional jurisprudence vide **UJAGAR PRINTS, ETC. vs. UNION OF INDIA, AIR 1989 SC 516;** Chapter X of 1997 Act containing sec.67 enacts important co-operative principles that animate and brood through almost all the provisions of this Act;

(d) the Karnataka Souharda Sahakari Bill, 1997 has the following as the Statement of Objects & Reasons:

"1. the recognition, encouragement and voluntary formation of co-operatives based on self help, mutual aid, wholly owned, managed and controlled by members as accountable, competitive, self-reliant and economic enterprises guided by co-operative principles specified therein;

2. removing all kinds of restrictions that have come to clog the free-functioning of the co-operatives and the controls and interference by the Government except registration and cancellation;

3. promotion of subsidiary organization, partnership between co-operatives and also collaboration between co-operatives and other institutions;

4. registration of co-operatives, union co-operatives and Federal Co-operative in furtherence of the objectives specified above;

5. Conversion of co-operative societies registered under the Karnataka Co-operative Societies Act, 1959 as a co-operative under the proposed legislation. Hence the Bill."

(e) the **preamble to the 1959 Act** reads as under:

"Whereas it is expedient (to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies) in the State of Karnataka;

Be it enacted by the Karnataka State Legislature in the Tenth Year of the Republic of India as follows-"

Similarly, the **preamble to the 1997 Act** reads as follows:

> *"Whereas it is expedient to provide for recognition, encouragement and voluntary formation of co-operatives based on self-help, mutual aid, wholly owned, managed and controlled by members as accountable, competitive, self-reliant and economic enterprises* ***guided by co-operative principles*** *and for matters connected therewith;*
>
> *Be it enacted by the Karnataka State Legislature in the Forty-eighth Year of Republic of India as follows-".*

A perusal of these two preambles and various provisions of these two Acts leads one to an irresistible conclusion that both these Acts are cognate statutes that deal with co-operative societies, regardless of some difference in their nomenclature and functionality, the subject matter being the same;

(e) the word 'co-operative' is defined by sec.2(d-2) of 1959 Act as under:

> *"2(d-2): 'Co-operative' means a Co-operative registerd under the Karnataka Souharda Sahakari Act, 1997 (Karnataka Act 17 of 2000), and includes the Union Co-operative and the Federal Co-operative"*

Similarly, the word 'co-operative' is defined by Sec. 2(e) of 1997 Act as follows:

> *"2(e): "Co-operative" means a co-operative including a co-operative bank doing the business of banking registered or deemed to be registered under Section 5 and which has the*

words 'Souharda Sahakari' in its name (and for the purposes of the Banking Regulation Act, 1949 (Central Act 10 of 1949), the Reserve Bank of India Act, 1934 (Central Act 2 of 1934), the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961) and the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 67 of 1981), it shall be deemed to be a Co-operative Society".

A close examination of these two definitions shows that they have abundant proximity with each other in terms of content and contours; it hardly needs to be stated that in both these definitions the word 'co-operative' is employed not as an adjective but as a noun; the definition of other relative concepts in the dictionary clauses of these Acts strengthens this view; this apart, sec.7 of the 1997 Act provides that the entity registered as a 'co-operative' shall be a body corporate, notwithstanding the conspicuous absence of the word 'society' as a postfix; sec.9 of the 1959 Act makes the entity once registered u/s.8 thereof a body corporate; both the entities have perpetual succession by operation of law; thus on registration be it under the 1959 Act or the 1997 Act, a *legal personality* is donned by them, so that *inter alia* they can own and possess the property;

(f) the employment of the word "Sahakari" in the very title of the 1997 Act is also not sans any significance;

'Sahakaar' in Sanskrit is the equivalent of 'sahakaara' in Kannada which means 'co-operation'; as already mentioned above both the 1959 Act and the 1997 Act employ this terminology; the 1997 Act is woven with the principles of co-operation; sec.4 of this Act bars registration of an entity unless its main objects are to serve the interest of the members in the area of co-operation and its bye-laws provide for economic and social betterment of its members through self-help & mutual aid in accordance with the co-operative principles; this apart, even sub-section (2) of sec.4 is heavily loaded with co-operative substance.

In the above circumstances, these writ petitions succeed; a declaration is made to the effect that the entities registered under the Karnataka Souharda Sahakari Act, 1997 fit into the definition of "co-operative society" as enacted in sec.2(19) of the Income Tax Act, 1961 and therefore subject to all just exceptions, petitioners are entitled to stake their claim for the benefit of sec.80P of the said Act; a Writ of Certiorari issues quashing the impugned notice dated 30.03.2018 at Annexure-D in W.P.No.48414/2018; other legal consequences accordingly to follow.

It is needless to mention that the other provisions of sec. 80P of 1961 Act and their effect on the claim of the petitioner-like-societies have been left to be addressed by the concerned authorities.

No costs.

Sd/-
JUDGE

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A. S. Sunanda W/o G. K. Gopalagowda and others v C. R. Venkataramu S/o Rangappa and Others, 2015 Indlaw KAR 6839

Case No: Regular Second Appeals No. 208/2011 C/W 209/2011, 210/2011, 211/2011, 212/2011, 213/2011

Justice L. Narayana Swamy

Head Note

Layout was developed because of efforts made by society and thereby respondent society is duty bound to honour both acts beneficial to respondent society and also acts which are prejudicial to interest of respondent society, because respondent society has taken benefit of acts and deeds done by society. Erstwhile respondent society did not take any developmental activity in respect of land for long time and it had no funds to develop it also. Further, societies function on the basis of resolutions to do certain things and deeds either by society itself or by authorized person. Without authority sale cannot take place and direction to deposit sale proceeds cannot be given. Courts below failed to appreciate both oral and documentary evidence adduced in case and have also failed to draw proper inferences from materials made available. Appeals allowed.

Ratio - In suit for permanent injunction, plaintiff will have to establish that as on date of suit he was in lawful possession of suit property and defendant tried to interfere or disturb such lawful possession.

The Order of the Court was as follows:

2. The common facts to be stated in brief are that the appellants are the absolute owners of site Nos.24, 14, 23, 13, 21 and 20 situated at Rs. D' Block, J C Layout, Chamundi Hill Road, Nazarbad Mohalla, Mysore City having purchased the same under registered sale deeds dated 4.4.2003 for valuable consideration, executed by Sri Jayachamarajendra Wodeyar Bahadur Awara Nivrutha Aramane Guards, Vadya Ghosti Mathu Himbalakara Gruha Nirmana Sahakara Sangha Niyamitha, a registered society under the Karnataka Cooperative Societies Act, hereinafter referred to as Rs. the society'.

3. Originally 51 acres of land in Sy.No.4 of Kurubarahalli village was gifted by His Highness Maharaja of Mysore late Sri Jayachamarajendra Wodeyar Bahadur on 11.1.1971 by means of a registered gift deed in favour of his Highness Maharaja Body Guard Co-operative Society Ltd., hereinafter referred to as Rs. the respondent society'. The said society later named as Karnataka Armed Reserve Police Employees Co-operative Society. It is stated, the society is formed by members of the respondent society for distribution of sites among employees. The society approached the Government for permission to sell the vacant plots to third parties for want of funds, after allotment of sites to the members. M/s.Chamundi Developers came forward to develop the layout by investing amount by offering tender. The society sold 8 sites to the persons nominated by M/s. Chamundi Developers for having developed the layout, that is how the appellants purchased the above sites on 4.4.2003 and they were put into physical possession and enjoyment. The khata, licence and approved plan were granted by M U D A for the construction of house in the said sites. The respondents having interfered,

the suits came to be filed.

10. The admitted facts in the case are that suit schedule properties are part and parcel of land in Sy.No.4 measuring 51 acres which was gifted by His Highness Maharaja in favour of erstwhile respondent society. The land was gifted with a direction to distribute sites among the employees. It is also an admitted fact that the retired employees of the palace formed the society. The office bearers of the society filed Misc. Case No.11/1980 before the learned District Judge for removal of executive committee members of erstwhile respondent society, which came to be dismissed. The Government had issued guidelines on 16.5.1998 in favour of the society with certain conditions. Condition No.7 therein entitled the society to auction sites adjacent to the main road to augment money for the purpose of development of the layout. The society also preferred W P No.29997/2003 before this Court challenging the government order dated 9.6.2003 and this Court quashed the order and remitted the matter to reconsider the same after giving sufficient opportunity to the petitioner to participate in the proceedings. By the impugned order therein, the Government had withdrawn the order dated 16.5.1998.

13. The courts below have proceeded on the basis that no title was passed on to the society, no possession was handed over to the society for distribution of sites. Under these circumstances, executing sale deeds in respect of the schedule sites to the appellants is without any right, title or interest in the said property. The society having no title and right over the property, no better title can be passed on to the appellants in whose favour the sale deeds have been executed by the society and therefore the appellants have not derived any title or valid title or possession in respect of the schedule properties. It is to be mentioned here that it is not the case of the respondent society that developmental charges are paid by the respondent society. Admittedly, the developmental charges are paid by the society in favour of MUDA and got approved the layout plan.

It is admitted in the evidence of DW-1 to DW-4 that the respondent society had no funds for development of the layout. The very recital of Ex.P8 continuation agreement depicts that it is in continuation of the agreement which the society had with M/s.Chamundi Developers. Admittedly, the society was formed by the ex- employees of the palace itself and it has undertaken the developmental work of the layout, obtained permission from the Government dated 16.5.1998, paid developmental charges in favour of M U D A on 4.2.1999 as per Ex.P9, got the plan approved and at that stage the Government order dated 2.7.2004 replaced the respondent society in place of the society and regularized the layout plan in favour of respondent society.

14. It is the specific case of the appellants that when the respondent society did not take any action for a long time for formation and distribution of sites, the ex-employees themselves formed registered society and undertook the developmental activity. The society has developed the layout and the benefit of that work is availed by the respondent society and it is not the case of the respondent society that the society has misused the funds or acted in prejudicial to the interest of the respondent society. From the records it is clear that the layout was developed because of the efforts made by the society and thereby the respondent society is duty bound to honour both the acts beneficial to the respondent society and also the acts which are prejudicial to the interest of the respondent society because the respondent society has taken benefit of the acts and deeds done by the society.

21. The appellants after having purchased the suit schedule properties for valuable consideration have acted upon the said sale deeds, obtained khata and paid taxes to the concerned as per the exhibits marked on their behalf and also obtained certificate of licence for construction of the house. It is also to be mentioned here that this Court while admitting the appeals, has permitted construction of the houses by the appellants subject to result of the appeals. The respondent society has not denied and could not deny the additional documents sought to be produced, which are either their own documents and certified copies issued by the Court. The lower appellate court has erroneously rejected the said documents, which has resulted in miscarriage of justice in the case by not properly appreciating the same.

22. This Court by the order dated 1.4.2011 appointed Executive Engineer, Mysore Urban Development Authority as the Commissioner to visit the spot and to ascertain whether the suit schedule properties come within the civic amenity area. Accordingly, the Commissioner has submitted report to the effect that sites sold in favour of the appellants namely, Site Nos.24, 14, 23, 13, 21 & 20, Rs. D' Block of the layout are not within the area earmarked for any civic amenity purpose. This supports the case of the appellants about possession and the properties are not part of civic amenity area.

23. It is to be mentioned here that the societies function on the basis of resolutions to do certain things and deeds either by the society itself or by the authorized person. The respondent society has directed the society to deposit the sale proceeds in the respondent society, that means, there is clear authorization for sale of the sites also which has to be gathered by implication. Without an authority sale cannot take place and direction to deposit the sale proceeds cannot be given. The courts below have failed to appreciate both oral and documentary evidence adduced in the case and have also failed to draw proper inferences from the materials made available as above.

31. In the instant case, the sites which are sold in favour of the appellants are after the allotment of sites in favour of the beneficiaries and they are not part of civic amenity area and the benefit of sale is made use for the development of the layout. In the circumstances, the provisions of Section 200 of Contract Act are not applicable to the facts of the present case. There is no damage caused to the third party.

32. In the decision of Parappa vs., Bhimappa, reported in AIRKARR-2008-4-122, it is stated in Para-9 of the judgment that "for admission of the said commissioner's report as evidence, it is not necessary that the Commissioner should enter the witness box, or he should produce the said report before the Court and the Court has to mark it as an exhibit in the case. In other words without marking the Commissioner's report as exhibit, without the Commissioner being examined in the case, the said commissioner's report can be taken as evidence in the case. Merely because the said piece of evidence is taken on record it does not follow that, all that is stated there is true or proved. Proof and relevancy is different from admissibility of the evidence". Therefore, the report of the Commissioner could be utilized as a piece of evidence supporting material to the case of the parties.

33. In the above facts and circumstances and for the reasons stated above, I am of the view that the courts below have committed an error in not considering the material evidence on record especially Ex.P8 and other relevant documents, and vital admission by the opposite parties as mentioned above and therefore the courts

below are not justified in refusing relief of injunction which has resulted in failure of justice to the appellants. The substantial questions of law are answered accordingly.

34. In the result, appellants have established lawful possession in respect of the suit schedule properties as on the date of the suit and interference by the respondents, thereby entitled to the relief of permanent injunction. Accordingly, the regular second appeals are allowed, impugned judgment and decrees are hereby set aside and the suits of the appellants are decreed as prayed for. However, the parties are directed to bear their own costs.

Appeals allowed

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Al-mehdi Co-operative Credit Society Limited, Represented by its Secretary Gadampalli Ibrahim, Belgaum v Income Tax Officer, Belgaum, 2015 Indlaw KAR 7675

Case No: Income Tax Appeal Nos. 100051-100052 of 2014

JJ. Anand Byrareddy & S. Sujatha

Head Note

Assessee-Co-operative Society filed its return of income claiming deduction u/s.80 P(2) (a) (i) of the 1961 Act, total income was declared as 'nil' - Assessing Officer rejected assessee claim holding that appellant society being primary co- operative bank, was not eligible for deduction u/s.80 P of 1961 Act.

In case of an assessee-Co-operative Society claiming deductions u/s.80P of 1961 Act an examination of factual aspects will have to be conducted by Revenue authorities on the basis of facts and materials on record to conclude whether assessee is to be treated as a 'primary co-operative bank' which fulfills three conditions. There is a seriously disputed question of fact which Authorities under 1961 Act have taken upon themselves to interpret in face of 1949 Act, prescribing that in the event of a dispute as to primary object or principal business of any co-operative society referred to in s.56 (cciv),(ccv),(ccvi) of 1949 Act, a determination thereof by Reserve Bank shall be final, would require dispute to be resolved by RBI, before Authorities could term assessee as a co-operative bank, for purposes of s.80 P of 1961 Act. Any opinion expressed is tentative and is not final. Therefore, as to the assessee being a co-operative society and not a co-operative bank in terms of s.80P (4) of 1961 Act, shall hold field and shall bind authorities unless held otherwise by RBI. Appeals allowed.

Ratio - Provision of s.80P (4) of 1961 Act is applicable only to co-operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members.

The Order of the Court was as follows:

4. The questions of law that arise for our consideration in these appeals are :

i. Whether the benefit of deduction, under Section 80 P (2) (a) (i) of the IT Act, could be denied to the assessee

on the footing that, though the appellant was said to be a Co-operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeals are allowed as prayed for.

Appeals allowed

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Belgaum Merchants Co-operative Credit Society Limited, Belgaum, Represented by its Chairman K. Ratnakar N. Shetty v Commissioner of Income Tax, Belgaum and another, 2015 Indlaw KAR 9296; [2016] 236 Taxman 351

Case No: Income Tax Appeal No. 100044 of 2014

JJ Anand Byrareddy & S. Sujatha

Head Note

Whether, benefit of deduction, u/s. 80 P (2) (a) (i) of Act can be denied to Assessee on footing that, though appellant is said to be Co operative Society, it is in fact Co operative bank.

When Statute enacted that something shall be deemed to be treated as something else, which in fact was not true, Court shall appreciate and ascertain for what purposes statut was resorted and then give full effect to statutory function to carry it to logical conclusion. Hence, in instant case examination of factual aspects will have to be conducted by Revenue authorities on basis of facts and materials on record to conclude whether Assessee was to be treated as 'primary co operative bank' which fulfilled above three conditions. Appeal allowed.

The Judgment was delivered by Anand Byrareddy, J.

2. The appeal pertains to the Assessment year 2009-10. The appellant - Society had filed its return of income for the assessment year 2009-10, and after claiming deduction under Section 80 P(2) (a) (i) of the IT Act, the total income was declared as 'nil'.

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the appellant was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a cooperative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the appellant society being a primary cooperative bank, was not eligible for deduction under Section 80P of the IT Act.

6. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been, repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. CIT v. Sri Biluru Gurubcisova Pattina Sahakari Sangha Niyamitha in ITA No.5006/2013.

2. CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha of the I T Act*, it was held as follows :*

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Cooperative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which, also carries on the business of lending money to. its. members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-operative society which fulfills three conditions namely.:

(i) The primary object or principal business of which is transaction of banking business.

(ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfills all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

After insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended and the co-operative societies engaged in carrying on business in banking with its members continued to be entitled for deduction.

The embargo put under Section 80P(4) are applicable only to a co-operative society, treated as a bank by a legal fiction created under Section 80P(4) as defined in the Explanation to the said section with reference to Part V of the Banking Regulation Act, 1949.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank4 and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

Attention is also drawn to the relevant portion of the Finance Minister's Budget Speech explaining the reasons for withdrawal of tax benefits to some Societies by way of insertion of sub-section 80P(4) and insertion of

new sub-clause (viia) in clause (24) of Section 2 definition of "income" by the Finance Act, 2006, with effect from 1.4.2007, is as under:

"The Co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefits. It is, therefore proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than primary, credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and /"primary co-operative agricultural and rural development bank".

9. In the light of the above contentions and on an examination of die relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to cooperative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society arid not a cooperative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary cooperative Bank, which is further defined as cooperative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for.

Appeal allowed

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Chandraprabhu Urban Co Operative Credit Society Limited, Nipani, Represented by Its Manager v Income-tax Officer Ward No. 1 Nipani, 2015 Indlaw KAR 7258

Case No: Income Tax Appeal Nos.100043 & 100045 of 2014

JJ Anand Byrareddy & S. Sujatha

Head Note

AO held that appellant society being a primary co operative bank was not eligible for deduction u/s. 80 P of 1961 Act - Appellant filed appeal before Commissioner of Income Tax (Appeals) (CIT(A)) who dismissed said appeal - Tribunal upheld order of CIT(A) - Hence, instant appeals - Whether, benefit of deduction u/s. 80 P(2)(a)(i) of 1961 Act, could be denied to Assessee.

The 1949 Act prescribing that in the event of a dispute as to primary object or principal business of any co operative society referred to in s. 56 of 1949 Act, a determination thereof by RBI shall be final, would require dispute to be resolved by RBI, before authorities could term assessee as a co operative bank, for purposes of s. 80P of 1961 Act. Any view expressed is tentative and is not final. View expressed by Court, as to assessee being a co operative society and not a co operative bank in terms of s. 80P (4) of 1961 Act, shall hold field and shall bind authorities unless held otherwise by RBI. Appeals allowed.

The Order of the Court was as follows:

1. These appeals are by the assessee under the Income Tax Act, 1961 (Hereinafter referred to as the 'IT Act, for brevity). The assessee is said to be a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1956, (Hereinafter referred to as the 'KCS Act', for brevity).

Appeals allowed

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Commissioner of Income Tax, Belagavi and another v Siddeshwar Souhard Sahakari Niyamitha, 2015 Indlaw KAR 7333

Case No: Income Tax Appeal No. 100012 of 2015

JJ. Anand Byrareddy & S. Sujatha

Cases Referred

Commissioner of Income-tax, Bangalore and another v Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, 2014 Indlaw KAR 2105; [2014] 369 ITR 86

Head Note :

KCS Act 1959 – applicability of deduction.

Whether benefit of deduction u/s.80P(2)(a)(i) of 1961 Act, could be denied to assessee and Authorities under 1961 Act possessed jurisdiction to resolve controversy under provisions of 1949 Act.

There are seriously disputed questions of fact, which Authorities under 1961 Act have taken upon themselves to interpret in the face of 1949 Act prescribing that in event of dispute as to primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of s.56 of 1949 Act, determination thereof by Reserve Bank shall be final, would require the dispute to be resolved by Reserve Bank of India, before Authorities could term assessee as co-operative bank, for purposes of s.80 P of 1961 Act. Any opinion expressed is tentative and is not final. Thus, view expressed by HC however, as to the assessee being co-operative society and not co-operative bank in terms of s.80P (4) of 1961 Act, shall hold field and shall bind Authorities unless held otherwise by Reserve Bank of India. Questions are answered in favour of Assessee. Appeal dismissed.

Ratio - Authorities under 1961 Act shall not have jurisdiction to arrive at finding in that regard and attention is drawn to Explanation appended to clause (ccvi) to s.56 of 1949 Act

The Order of the Court was as follows:

1. This appeal is by the revenue under the Income Tax Act, 1961 (Hereinafter referred to as the 'IT Act, for brevity). The assessee is said to be a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1956, (Hereinafter referred to as the 'KCS Act', for brevity).

2. The appeal pertains to the Assessment year 2009-10. The respondent - Society had filed its return of income for the assessment year 2009-10 and after claiming deduction under Section 80 P(2) (a) (i) of the IT Act, the total income was declared as 'nil'.

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the respondent was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the respondent - society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-

operative society which fulfills three conditions namely:

(i) The primary object or principal business of which is transaction of banking business.

(ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfills all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

After insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended and the co-operative societies engaged in carrying on business in banking with its members continued to be entitled for deduction.

The embargo put under Section 80P(4) are applicable only to a co-operative society, treated as a bank by a legal fiction created under Section 80P(4) as defined in the Explanation to the said section with reference to Part V of the Banking Regulation Act, 1949.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i) Attention is also drawn to the relevant portion of the Finance Minister's Budget Speech explaining the reasons for withdrawal of tax benefits to some Societies by way of insertion of sub-section 80P(4) and insertion of new sub-clause (viia) in clause (24) of Section 2 definition of "income" by the Finance Act, 2006, with effect from 1.4.2007, is as under:

"The Co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefits. It is, therefore proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than primary credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank".

Further, when a Statute enacts that something shall be deemed to be treated as something else, which in fact is not true, the Court shall appreciate and ascertain for what purposes the statutory fiction is resorted and then give full effect to the statutory fiction to carry it to the logical conclusion.

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 *of the* I T Act*, it was held as follows :*

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for

tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of co-operative Bank as envisaged under Part V of the Banking Regulation Act, 1949, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

Appeal dismissed

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Commissioner of Income Tax, Belagavi and others v Siddeshwar Souhard Sahakari Niyamitha, 2015 Indlaw KAR 7334

Case No: Income Tax Appeal No. 100013 of 2015

JJ Anand Byrareddy & S. Sujatha

Cases Referred

Commissioner of Income-tax, Bangalore and another v Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, 2014 Indlaw KAR 2105, [2014] 369 ITR 86

Head Note

Whether benefit of deduction, u/s.80P(2)(a)(i) of 1961 Act, could be denied to assessee on footing that, though respondent was said to be a Co- operative Society, within meaning as assigned to such bank under Part V of 1949 Act.

There are seriously disputed questions of fact, which Authorities under the Act have taken upon themselves to interpret in face of 1949 Act prescribing that in event of a dispute as to primary object or principal business of any co-operative society referred to in s.56(cciv),(ccv)and(ccvi) of 1949 Act, a determination thereof by Reserve Bank shall be final, would require dispute to be resolved by RBI, before Authorities could term assessee as a co-operative bank, for purposes of s.80P of 1961 Act. Thus, as the assessee being a co-operative society and not a co-operative bank in terms of s.80P(4) of 1961 Act, shall hold field and shall bind authorities unless held otherwise by RBI. Appeal dismissed.

Ratio - If any dispute arises as to primary object or principal business of any co- operative society a determination thereof by Reserve Bank shall be final

The Order of the Court was as follows:

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the respondent was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the respondent - society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

For the purpose of sub-section 80P(4), a co-operative bank has been given a meaning assigned to them in Part V of the Banking Regulation Act, 1949.

In Part V of the Banking Regulation Act, 1949, section 5(b), a "co-operative bank" means a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank.

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-operative society which fulfills three conditions namely:

(i) The primary object or principal business of which is transaction of banking business.

(ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfills all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

7. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 *in ITA No.5006/2013*

2. CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 *of the* I T Act*, it was held as follows :*

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which*

also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of co-operative Bank as envisaged under Part V of the Banking Regulation Act, 1949, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

Appeal dismissed

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Commissioner of Income Tax, Belgaum and another v Chikodi Taluka Shree Saraswati Souharda Co-operative Credit Limited, Belgaum, 2015 Indlaw KAR 7355

JJ Anand Byrareddy & S. Sujatha

Head Note

Appeal filed by respondent-Society was allowed by Commissioner of Income Tax(A) and same was affirmed by Tribunal - Hence, instant Appeals - Whether benefit of deduction u/s.80P(2)(a)(i) of the Act could be denied to respondent.

If co-operative society fulfills all three conditions, it is to be treated as co-operative bank for purpose of s.80P(4) of the Act and the benefit of deduction u/s.80P(2)(a)(i) of the Act is denied. Further, if respondent society does not fulfill any of the condition, it cannot be treated as 'primary co-operative bank' and as such will be eligible to get the deduction u/s.80P(2)(a)(i) of the Act. Therefore, in case of assessee-Co-operative Society claiming deductions u/s.80P of the Act, examination of factual aspects will have to be conducted by Revenue authorities on basis of facts and materials on record, to conclude that, respondent-Society is to be treated as 'primary co-operative bank' or not. Appeals allowed.

Ratio - Deduction u/s.80P of the Act shall not be allowable to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank.

Case No: Income Tax Appeal No. 100095 of 2014

The Order of the Court was as follows:

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the respondent was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the respondent - society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

Further, when a Statute enacts that something shall be deemed to be treated as something else, which in fact is not true, the Court shall appreciate and ascertain for what purposes the statutory fiction is resorted and then

give full effect to the statutory fiction to carry it to the logical conclusion.

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

7. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha in ITA No.5006/2013* 2014 Indlaw KAR 2105

2. CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is*

defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

Appeal dismissed

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Commissioner of Income Tax, Belgaum and another v Hungund Taluka Teachers Co-operative Credit Society Limited, Bagalkot, 2015 Indlaw KAR 7652

JJ Anand Byrareddy & S. Sujatha

Head Note

Whether benefit of deduction u/s.80P(2)(a)(i) of 1961 Act could be denied to the assessee and respondent was said to be Co-operative Society or co-operative bank, within the meaning under the 1949 Act.

The authorities under the Act were not competent and did not have the jurisdiction to arrive at a finding in that regard and attention is drawn to the Explanation appended to s.56(ccvi) of 1949 Act. Thus, viewed as to the assessee being a co-operative society and not a co-operative bank in terms of s.80P(4) of 1961 Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India. The said issues were answered in favour of the Assessee. Appeal dismissed.

Ratio - Where, in the case of an assessee being a co-operative society, the gross total income shall be deducted in accordance with the provisions of 1961 Act.

Case No: Income Tax Appeal No. 100034 of 2014

The Order of the Court was as follows:

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the respondent was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the respondent - society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The respondent - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been dismissed.

The respondent - Assessee had then approached the Income Tax Appellate Tribunal. The Tribunal having accepted the case of the respondent, it was held that:

(i) The assessee - Society had satisfied condition no.1 mentioned in Section 5(ccv) of the BR Act, to become primary co-operative bank as the assessee is carrying on banking business by accepting deposits from persons who are not members.

(ii) The second condition was also satisfied by the assessee since paid up share capital and reserves is more than Rs.1 lakh.

(iii) With regard to the last condition, i.e., the bye-laws of the society whether permits other co-operative society to become a member, the Tribunal held that the said condition is not satisfied since the bye-laws of the society permits other co- operative society to become its member.

The Tribunal held that the assessee - Society is not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with and therefore, it is not a co- operative bank and the provisions of section 80P(4) are not applicable in the case of the assessee and the assessee is entitled for deduction under Section 80P(2)(a)(i).

Hence, the Revenue is in appeal before this Court.

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-operative society which fulfills three conditions namely:

(i) The primary object or principal business of which is transaction of banking business.

(ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfills all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

After insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended and the co-operative societies engaged in carrying on business in banking with its members continued to be entitled for deduction.

The embargo put under Section 80P(4) are applicable only to a co-operative society, treated as a bank by a legalfiction created under Section 80P(4) as defined in the Explanation to the said section with reference to Part V of the Banking Regulation Act, 1949.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

Attention is also drawn to the relevant portion of the Finance Minister's Budget Speech explaining the reasons for withdrawal of tax benefits to some Societies by way of insertion of sub-section 80P(4) and insertion of new sub-clause (viia) in clause (24) of Section 2 definition of "income" by the Finance Act, 2006, with effect from 1.4.2007, is as under:

"The Co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefits. It is, therefore proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than primary credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank".

It is also proposed to insert a new sub-clause (viia) in clause (24) of the Section 2 so as to provide that ttheprofits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members shall be included in the definition of "income".

7. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 *in ITA No.5006/2013*

2. CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the IT Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural*

credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT

v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

Appeal dismissed

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Commissioner of Income Tax, Belgaum and another v Laxmi Credit Souhard Sahakari Limited, Belgaum, 2015 Indlaw KAR 9303

Case No: Income Tax Appeal No. 100127 of 2014

JJ. Anand Byrareddy & S. Sujatha

Head Note :

KCS Act 1959 -

Whether, Respondent entitled to benefit of deduction u/s. 80P(2)(a)(i) & Respondent is Cooperative Society.

It is seriously disputed question of fact which Authorities under 1961 Act have taken upon to interpret 1949 Act prescribing that in event of a dispute as to primary object or principal business of any cooperative society, a determination by Reserve Bank shall be final. Any opinion expressed therefore is tentative and is not final. Holding Respondent/assessee a cooperative society and not a cooperative bank in terms of s. 80P (4) of 1961 Act holds field and shall bind authorities unless held otherwise. Appeal dismissed.

The Order of the Court was as follows:

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the respondent was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the respondent - society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The respondent - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been dismissed.

The respondent - Assessee had then approached the Income Tax Appellate Tribunal. The Tribunal having accepted the case of the respondent, it was held that:

(i) The assessee - Society had satisfied condition no.1 mentioned in Section 5(ccv) of the BR Act, to become primary co-operative bank as the assessee is carrying on banking business by accepting deposits from persons who are not members.

(ii) The second condition was also satisfied by the assessee since paid up share capital and reserves is more than Rs.1 lakh.

(iii) With regard to the last condition, i.e., the bye-laws of the society whether permits other co-operative society to become a member, the Tribunal held that the said condition is not satisfied since the bye-laws of the society permits other co- operative society to become its member.

The Tribunal held that the assessee - Society is not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with and therefore, it is not a co- operative bank and the provisions of section 80P(4) are not applicable in the case of the assessee and the assessee is entitled for deduction under Section 80P(2)(a)(i).

Hence, the Revenue is in appeal before this Court.

4. The questions of law that arise for our consideration in this appeal are :

i. Whether the benefit of deduction, under Section 80 P(2) (a) (i) of the IT Act, could be denied to the assessee on the footing that, though the respondent was said to be a Co- operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

Attention is also drawn to the relevant portion of the Finance Minister's Budget Speech explaining the reasons for withdrawal of tax benefits to some Societies by way of insertion of sub-section 80P(4) and insertion of new sub-clause (viia) in clause (24) of Section 2 definition of "income" by the Finance Act, 2006, with effect from 1.4.2007, is as under:

"The Co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefits. It is, therefore proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than primary credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank".

7. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 *in ITA No.5006/2013*

2. CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv),

(ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

Appeal dismissed

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Commissioner of Income Tax, Belgaum and another v Mercantile Co-operative Credit Society Limited, Belgaum, 2015 Indlaw KAR 9298

Case No: Income Tax Appeal No. 100111 of 2014

JJ Anand Byrareddy & S. Sujatha

Head Note

Whether, Respondent/assessee entitled to benefit of deduction u/s. 80P(2)(a)(i) of 1961 Act and Co operative Society.

Assessee being co operative society and not co operative bank in terms of s. 80P(4) of 1961 Act, shall hold field and shall bind authorities unless held otherwise by Reserve Bank of India. Appeal dismissed.

Bench : Anand Byrareddy, S. Sujatha

Citation : 2015 Indlaw KAR 9298

Held, it is to be noticed that there is seriously disputed question of fact which Authorities under 1961 Act have taken upon themselves to interpret in face of 1949 Act prescribing that in event of dispute as to primary object or principal business of any co operative society referred to in ss. 56 (cciv),56 (ccv) and 56 (ccvi) of 1949 Act, determination thereof by Reserve Bank shall be final, would require dispute to be resolved by Reserve Bank of India, before authorities could term assessee as co operative bank, for purposes of s. 80P of 1961 Act. Any opinion expressed therefore is tentative and is not final. Hence, assessee being co operative society and not co operative bank in terms of s. 80P(4) of 1961 Act, shall hold field and shall bind authorities unless held otherwise by Reserve Bank of India. Appeal dismissed.

The Order of the Court was as follows:

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the respondent was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit

facilities) carried on by a cooperative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer heldthat the respondent - society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The respondent - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been allowed.

The appellant - Revenue had then approached the Income Tax Appellate Tribunal. The Tribunal having accepted the case of the respondent, it was held that:

(i) The assessee - Society had satisfied condition no.l mentioned in Section 5(ccv) of the BR Act, to become primary co-operative bank as the assessee is carrying on banking business by accepting deposits from persons who are not members.

(ii) The second condition was also satisfied by the assessee since paid up share capital and reserves is more than Rs. 1 lakh.

(iii) With regard to the last condition, i.e., the bye-laws of the society whether permits other co-operative society to become a member, the Tribunal held that the said condition is not satisfied since the bye-laws of the society permits other cooperative society to become its member.

4. The questions of law that arise for our consideration in The Tribunal held that the assessee - Society is not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with and therefore, it is not a cooperative bank and the provisions of section 80P(4) are not applicable in the case of the assessee and the assessee is entitled for deduction under Section 80P(2)(a)(i).

Hence, the Revenue is in appeal before this Court.

4. The question of law that arise for our consideration in this appeal are:

i. Whether the benefit of deduction, under Section 80 P (2) (a) (i) of the IT Act, could be denied to the assessee on the footing that, though the respondent-was said to be a Cooperative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

Part V of the Banking Regulation Act, 1949, section 5(cci): In order to examine in a given case of an assessee society whether it is a co-operative bank or not as defined in Part V of the Banking Regulation Act, 1949, of the said Act has to be looked into. Section 5(cci) states as under:

"Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary cooperative bank."

The primary co-operative bank is defined under Section5(ccv) of the BR Act as under:

"primary co-operative bank" means a co-operative society, other than a primary agricultural credit society-

(1) The primary object or principal business of which is transaction of banking business:

(2) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(3) The bye-laws of which do not permit admission of any other co-operative society as a member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such Co-operative society out of funds provided by the State Government 'for the purpose'".

Section 5(cciia) of Banking Regulation Act, 19^9 defines a Co-operative Society as under:

"Co-operative Society means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies or any other Central or State law relating to co-operative societies for the time being in force;"

7. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 *in ITA No.5006/2013*

2. CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of ihc assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Cooperative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e.*

carrying on the business of banking for providing credit facilities ' to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(J) to such society. Therefore, there was no error committed by the Assessing Authority."

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/2011, CIT v. Bangalore Commercial Transport Credit Co-operative

Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to cooperative Banks and not to credit Co-operative Societies, which are engaged in business of banking-including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a cooperative Bank in terms of sub section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary cooperative Bank, which is further defined as cooperative Society with the primaiy object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

Appeal dismissed

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Commissioner of Income Tax, Belgaum and another v Siddheshwar Co-operative Credit Society Limited, Belgaum District, 2015 Indlaw KAR 7352

Case No: Income Tax Appeal No. 100079 of 2014

JJ Anand Byrareddy & S. Sujatha

Head Note

Whether benefit of deduction u/s.80P(2)(a)(i) of 1961 Act could be denied to respondent on footing that, though respondent was said to be Co-operative Society within meaning as assigned to such bank under Part V of 1949 Act.

If respondent society does not fulfill any of three conditions as defined u/s.5(ccv) of 1949 Act, it cannot be treated as 'primary co-operative bank' and as such will be eligible to get deduction u/s.80P(2)(a)(i) of 1961 Act. Respondent as a co-operative society, was entitled to the benefit of deduction u/s.80P(2)(a) (i) of 1961 Act. Therefore, as to respondent being co-operative society and not co-operative bank in terms of s.80P(4) of 1961 Act shall hold field and shall bind authorities unless held otherwise by RBI. Appeal dismissed.

Ratio - If Co-operative Bank is exclusively carrying on banking business, then income derived from said business cannot be deducted in computing total income of assessee.

The Order of the Court was as follows:

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the respondent was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the respondent - society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The respondent - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been dismissed.

The respondent - Assessee had then approached the Income Tax Appellate Tribunal. The Tribunal having

accepted the case of the respondent, it was held that:

(i) The assessee - Society had satisfied condition no.1 mentioned in Section 5(ccv) of the BR Act, to become primary co-operative bank as the assessee is carrying on banking business by accepting deposits from persons who are not members.

(ii) The second condition was also satisfied by the assessee since paid up share capital and reserves is more than Rs.1 lakh.

(iii) With regard to the last condition, i.e., the bye-laws of the society whether permits other co-operative society to become a member, the Tribunal held that the said condition is not satisfied since the bye-laws of the society permits other co- operative society to become its member.

The Tribunal held that the assessee - Society is not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with and therefore, it is not a co- operative bank and the provisions of section 80P(4) are not applicable in the case of the assessee and the assessee is entitled for deduction under Section 80P(2)(a)(i).

Hence, the Revenue is in appeal before this Court.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

Attention is also drawn to the relevant portion of the Finance Minister's Budget Speech explaining the reasons for withdrawal of tax benefits to some Societies by way of insertion of sub-section 80P(4) and insertion of new sub-clause (viia) in clause (24) of Section 2 definition of "income" by the Finance Act, 2006, with effect from 1.4.2007, is as under:

"The Co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefits. It is, therefore proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than primary credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank".

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

7. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha in ITA No.5006/2013 2014 Indlaw KAR 2105

2. CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act are applicable only to co- operative Banks and not to credit Co-operative Societies, which are *engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv),

(ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

Appeal dismissed

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Jai Jinendra Credit Souhard Sahakari Niyamit, represented by its Manager Mahaveer S/o Gundu Udagave, Belgaum v Commissioner of Income Tax, Belgaum and another, 2015 Indlaw KAR 9302

Case No: Income Tax Appeal No. 100099 of 2014

JJ Anand Byrareddy & S. Sujatha

Head Note

Whether, benefit of deduction, u/s. 80 P(2)(a)(i) of 1961 Act, could be denied to Assessee and if Assessee was cooperative society or cooperative bank, as defined under provisions of 1949 Act.

Holding Appellant/Assessee a cooperative society and not a cooperative bank in terms of s. 80P(4) of 1961 Act holds field and shall bind authorities unless held otherwise. Authorities under 1961 Act have taken upon themselves to interpret in face of 1949 Act prescribing that in event of dispute as to primary object or principal business of any cooperative society referred u/s. 56(cciv), (ccv) and (ccvi) of 1949 Act, determination thereof by Reserve Bank shall be final, would require dispute to be resolved by Reserve Bank of India, before authorities could term Assessee as co operative bank, for purposes of s. 80P of 1961 Act. Any opinion expressed therefore is tentative and is not final. Assessee being cooperative society and not co operative bank in terms of s. 80P(4) of 1961 Act, shall hold field and shall bind authorities unless held otherwise by Reserve Bank of India. Appeal allowed.

The Order of the Court was as follows:

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the appellant was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative

bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the appellant society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

The appellant had then approached the Income Tax Appellate Tribunal. The Tribunal having affirmed the concurrent findings of the above authorities, the appellant is before this court.

4. The questions of law that arise for our consideration in this appeal are :

i. Whether the benefit of deduction, under Section 80 P (2) (a) (i) of the IT Act, could be denied to the assessee on the footing that, though the appellant was said to be a Co-operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

It is contended that it is also pertinent to note that it is necessary that a co-operative society should have a banking licence as per the definition under the Income Tax Act, for carrying on banking business and if the required licence is not obtained as per other laws, it can only be termed as an illegal banking business under a particular statute prescribing the same. Income Tax Act, however is concerned with the taxing of "income" as per the provisions of the Income Tax Act and "income" if any, has to be taxed whether it is from a legal or illegal business.

Hence, it is contended by the learned counsel that, by the insertion of Section 2(24(viia) and Section 80P(4), by adopting the words 'primary co-operative bank' means a co-operative society other than ...' in clause (ccv) of BR Act, the Legislature has created a legal fiction for the purpose of taxing under certain circumstances, a Society which is to be treated as a 'bank' for the purposes of the Income Tax Act, 1961 while dealing with the issue of its claim of deduction under Section 80P.

Further, when a Statute enacts that something shall be deemed to be treated as something else, which in fact is not true, the Court shall appreciate and ascertain for what purposes the statutory fiction is resorted and then give full effect to the statutory fiction to carry it to the logical conclusion.

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for.

Appeal allowed

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Mallikarjun Co-operative Credit Society Limited, represented by its Secretary Rudragouda Ramagouda Patil, Belgaum v Commissioner of Income Tax, Belagavi and another, 2015 Indlaw KAR 7653

Case No: Income Tax Appeal No. 100041 of 2014

JJ Anand Byrareddy & S. Sujatha

Cases Referred

Commissioner of Income-tax, Bangalore and another v Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, 2014 Indlaw KAR 2105, [2014] 369 ITR 86

Head Note

Held, s.80P (2)(a)(i) of the Act provides deduction of income of co- operative societies 'carrying on business of banking or providing credit facilities to its members'. In case of appellant-Co-operative Society claiming deductions u/s.80P of the Act, examination of factual aspects will have to be conducted by Revenue authorities on basis of facts and materials on record to conclude that, appellant-Society is to be treated as 'primary co-operative bank' or not. Appeals allowed.

Ratio - Deduction u/s.80P of the Act shall not be allowable to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank.

The Order of the Court was as follows:

1. This appeal is by the assessee under the Income Tax Act, 1961 (Hereinafter referred to as the 'IT Act, for brevity). The assessee is said to be a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1956, (Hereinafter referred to as the 'KCS Act', for brevity).

2. The appeal pertains to the Assessment year 2010-11. The appellant - Society had filed its return of income for the assessment year 2010-11, and after claiming deduction under Section 80 P(2) (a) (i) of the IT Act, the total income was declared as 'nil'.

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the appellant was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act.

For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the appellant society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The appellant - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been dismissed.

The appellant had then approached the Income Tax Appellate Tribunal. The Tribunal having affirmed the concurrent findings of the above authorities, the appellant is before this court.

4. The questions of law that arise for our consideration in this appeal are :

i. Whether the benefit of deduction, under Section 80 P (2) (a) (i) of the IT Act, could be denied to the assessee on the footing that, though the appellant was said to be a Co-operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

In CIT vs. Bangalore Commercial Transporter Credit Society (supra), this court has cited with approval the following differences between a co-operative society and a co-operative bank - as depicted by the Tribunal, in tabular form thus:

Nature	**Co-operative society registered under Banking Regulation Act, 1949**	**Co-operative Society registered under Karnataka Co-operative Society Act, 1959**

Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act.	1. As per the bye laws of the co-operative society.
	2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc.	2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc.
	3. Co-operative Banks can act as clearing agent for cheques, DDs, pay orders and other forms.	3. Society cannot act clearing agent, for cheques, DDs, pay orders and other forms.
	4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI).	4. Society are bound by rules and regulations as specified by in the co-operative societies act.
Filing of returns	Co-operative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the Bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to co- operative banks.	Part V of the Banking Regulation Act is not applicable to co- operative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a co-operative bank.	The word 'bank', 'banker', 'banking' cannot be used by a co- operative society.

The Tribunal has referred to section 16 of the Karnataka State Co-operative Societies Act, 1959 and held that the said provisions permit admission of any other co-operative society as a member. The Tribunal however has erred in not examining whether the bye-laws of the assessee society permits other co- operative society to become member as per Section 5(ccv) of the Banking Regulation Act, 1949. Provisions of Section 16(1) and 16(2) of the Karnataka State Co-operative Societies Act, 1959 does not help in any way to come to the conclusion that the bye-laws in the case of a particular assessee society permits admission of any other co-operative society as a member.

Proposition: The Tribunal has referred to section 20 to 21A of the Karnataka Souhardha Sahakari Co-operative Societies Act, 1997, and held that the said provisions permit admission of any other co-operative society as a member.

The Tribunal however ought to have examined into the aspect as to whether the bye-laws in the case of a

particular assessee society permits admission of any other co-operative society as a member.

Proposition: Referring to the bye-laws of the assessee society, the Tribunal has observed that the Societies registered under the Karnataka Societies Registration Act, 1960 are allowed to become members.

The Tribunal had failed to appreciate that a society registered under the Karnataka Societies Registration Act, 1960 is established or created for different purposes and cannot be treated as that of the one registered under the Karnataka Co- operative Societies Act, 1959 or that registered under the Karnataka Souhardha Sahakari Co-operative Societies Act, 1997.

Proposition: The issue is covered by the decision of a Division Bench of this Hon'ble Court in the case of Sri. Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot 2014 Indlaw KAR 2105 in ITA No.5006/2013 dated 5th February 2014:

The substantial question of law pleaded on behalf of the Revenue in the said case was as follows:

"In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being co-operative bank was not there?"

It is pointed out that this Court, in the above case, had not examined the applicability of the provisions of the definition of a co-operative bank as per Part V of the Banking Regulation Act, 1949 by reading Explanation to section 80P(4). The facts of the above case are clearly distinguishable and are not applicable. However, a Review Petition was filed in the said case and subsequently, a memo had been filed to withdraw the said Review Petition, which is pending. It is submitted that the matter is being taken up by the Revenue in appeal before the Hon'ble Apex Court.

It is contended that it is also pertinent to note that it is necessary that a co-operative society should have a banking licence as per the definition under the Income Tax Act, for carrying on banking business and if the required licence is not obtained as per other laws, it can only be termed as an illegal banking business under a particular statute prescribing the same. Income Tax Act, however is concerned with the taxing of "income" as per the provisions of the Income Tax Act and "income" if any, has to be taxed whether it is from a legal or illegal business.

Hence, it is contended by the learned counsel that, by the insertion of Section 2(24(viia) and Section 80P(4), by adopting the words 'primary co-operative bank' means a co-operative society other than ..." in clause (ccv) of BR Act, the Legislature has created a legal fiction for the purpose of taxing under certain circumstances, a Society which is to be treated as a 'bank' for the purposes of the Income Tax Act, 1961 while dealing with the issue of its claim of deduction under Section 80P.

Further, when a Statute enacts that something shall be deemed to be treated as something else, which in fact is not true, the Court shall appreciate and ascertain for what purposes the statutory fiction is resorted and then give full effect to the statutory fiction to carry it to the logical conclusion.

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an

examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for.

Appeal allowed

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Markandeya Co-operative Credit Society Limited, Represented by its Secretary Vasant Yallappa Bhekane, Belgaum v Income Tax Officer, Belgaum and another, 2015 Indlaw KAR 7353

Case No: Income Tax Appeal No. 100083 of 2014

JJ. Anand Byrareddy & S. Sujatha

Head Note

Whether assessee is entitled for deduction.

In the case of an assessee claiming deductions u/s.80P of the Act, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee is to be treated as a 'primary co-operative bank' which fulfills the conditions. However, as to assessee being a co-operative society and not a co-operative bank in terms of s.80P(4) of the Act, shall hold the field and shall bind the authorities unless held otherwise by RBI. Thus, assessee is entitled for deduction as claimed by it. Appeal allowed.

Ratio - When assessee is legally entitled for deduction, then no authority is justified in denying same.

The Order of the Court was as follows:

1. This appeal is by the assessee under the Income Tax Act, 1961 (Hereinafter referred to as the 'IT Act, for

brevity). The assessee is said to be a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1956, (Hereinafter referred to as the 'KCS Act', for brevity).

2. The appeal pertains to the Assessment year 2010-11. The appellant - Society had filed its return of income for the assessment year 2010-11, and after claiming deduction under Section 80 P(2) (a) (i) of the IT Act, the total income was declared as 'nil'.

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the appellant was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the appellant society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The appellant - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been dismissed.

The appellant had then approached the Income Tax Appellate Tribunal. The Tribunal having affirmed the concurrent findings of the above authorities, the appellant is before this court.

4. The questions of law that arise for our consideration in this appeal are :

i. Whether the benefit of deduction, under Section 80 P (2) (a) (i) of the IT Act, could be denied to the assessee on the footing that, though the appellant was said to be a Co-operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not*

want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."

In CIT vs. Bangalore Commercial Transporter Credit Society (supra), this court has cited with approval the following differences between a co-operative society and a co-operative bank - as depicted by the Tribunal, in tabular form thus :

Nature	Co-operative society registered under Banking Regulation Act, 1949	Co-operative Society registered under Karnataka Co-operative Society Act, 1959
Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act.	1. As per the bye laws of the co-operative society.
	2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc.	2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc.
	3. Co-operative Banks can act as clearing agent for cheques, DDs, pay orders and other forms.	3. Society cannot act clearing agent, for cheques, DDs, pay orders and other forms.
	4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI).	4. Society are bound by rules and regulations as specified by in the co-operative societies act.
Filing of returns	Co-operative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the Bank.	Registrar has the power to inspect accounts and overall functioning of the bank.

Part V	Part V of the Banking Regulation Act is applicable to co- operative banks.	Part V of the Banking Regulation Act is not applicable to co- operative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a co- operative bank.	The word 'bank', 'banker', 'banking' cannot be used by a co-operative society.

And this court had dismissed the appeal of the revenue following the decision in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 (supra).

The same view has been taken in the following decisions :

1. CIT vs. Bangalore Credit Co-operative Society Ltd. in ITA No.598/2013

2. CIT vs. Yeshwanthpur Credit Co-operative Society Ltd. in ITA 237/2012

3. CIT vs. Mysore University Employees Co-operative Credit Society Ltd. in ITA 298/2013

4. CIT vs. Vasavi Credit Co-operative Society Ltd. in ITA No.118/2012

5. CIT vs. Sri Vasavi Multi Purpose Souharda Sahakari Sangha Niyamitha in ITA No.505/2013

6. CIT vs. General Insurance Employees Co-operative Society Ltd. in ITA No.273/2013.

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-operative society which fulfills three conditions namely:

(i) The primary object or principal business of which is transaction of banking business.

(ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfills all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

After insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended and the co-operative societies engaged in carrying on business in banking with its members continued to be entitled for deduction.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

The substantial question of law pleaded on behalf of the Revenue in the said case was as follows:

"In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being co-operative bank was not there?"

It is pointed out that this Court, in the above case, had not examined the applicability of the provisions of the definition of a co-operative bank as per Part V of the Banking Regulation Act, 1949 by reading Explanation

to section 80P(4). The facts of the above case are clearly distinguishable and are not applicable. However, a Review Petition was filed in the said case and subsequently, a memo had been filed to withdraw the said Review Petition, which is pending. It is submitted that the matter is being taken up by the Revenue in appeal before the Hon'ble Apex Court.

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co-operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for.

Appeal allowed

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Navhind Co-operative Credit Society Limited, Represented by its Managing Director, Belagavi v Commissioner of Income Tax, Belagavi and another, 2015 Indlaw KAR 7335

Case No: Income Tax Appeal No. 100021 of 2015

JJ. Anand Byrareddy & S. Sujatha

Cases Referred

Commissioner of Income-tax, Bangalore and another v Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, 2014 Indlaw KAR 2105, [2014] 369 ITR 86

Head Note

Whether benefit of deduction, u/s.80 P(2)(a)(i) of the Act, could be denied to assessee on footing that, though appellant was said to be Co-operative Society, it was in fact co-operative bank.

When Statute enacts that something shall be deemed to be treated as something else, which in fact is not true, Court shall appreciate and ascertain for what purposes statutory function was resorted and then give full effect to statutory function to carry it to logical conclusion. Therefore, in case of assessee-Society claiming deductions u/s.80P of the Act, examination of factual aspects will have to be conducted by Revenue authorities on basis of facts and materials on record to conclude that assessee. Hence, Society was to be treated as 'primary co-operative bank' which fulfills conditions. Appeal allowed.

Therefore, view expressed by Court, however, as to assessee being co-operative society and not co-operative bank in terms of s.80P (4) of 1961 Act, shall hold field and shall bind authorities unless held otherwise by Reserve Bank of India. Appeal allowed.

Ratio - If societies do not fall within meaning of co-operative bank as per 1949 Act, then exception u/s.80P(4) of 1961 Act will not apply.

The Order of the Court was as follows:

1. This appeal is by the assessee under the Income Tax Act, 1961 (Hereinafter referred to as the 'IT Act, for brevity). The assessee is said to be a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1956, (Hereinafter referred to as the 'KCS Act', for brevity).

2. The appeal pertains to the Assessment year 2010-11. The appellant - Society had filed its return of income for the assessment year 2010-11, and after claiming deduction under Section 80 P(2) (a) (i) of the IT Act, the total income was declared as 'nil'.

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the appellant was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co- operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act', for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the appellant society being a primary co-operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The appellant - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been dismissed.

The appellant had then approached the Income Tax Appellate Tribunal. The Tribunal having affirmed the concurrent findings of the above authorities, the appellant is before this court.

4. The questions of law that arise for our consideration in this appeal are :

i. Whether the benefit of deduction, under Section 80 P(2)(a)(i) of the IT Act, could be denied to the assessee on the footing that, though the appellant was said to be a Co-operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

In CIT vs. Bangalore Commercial Transporter Credit Society (supra), this court has cited with approval the

following differences between a co-operative society and a co-operative bank - as depicted by the Tribunal, in tabular form thus :

Nature	Co-operative society registered under Banking Regulation Act, 1949	Co-operative Society registered under Karnataka Co-operative Society Act, 1959
Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act	1. As per the bye laws of the co-operative society.
	2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc.	2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc.
	3. Co-operative Banks can act as clearing agent for cheques, DDs, pay orders and other forms.	3. Society cannot act clearing agent, for cheques, DDs, pay orders and other forms.
	4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI).	4. Society are bound by rules and regulations as specified by in the co-operative societies act.
Filing of returns	Co-operative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the Bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to co- operative banks.	Part V of the Banking Regulation Act is not applicable to co- operative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a co-operative bank.	The word 'bank', 'banker', 'banking' cannot be used by a co-operative society.

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-operative society which fulfills three conditions namely:

(i) The primary object or principal business of which is transaction of banking business.

(ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfills all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

After insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended and the co-operative societies engaged in carrying on business in banking with its members continued to be entitled for deduction.

The embargo put under Section 80P(4) are applicable only to a co-operative society, treated as a bank by a legal fiction created under Section 80P(4) as defined in the Explanation to the said section with reference to Part V of the Banking Regulation Act, 1949.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for.

Appeal allowed

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Renuka Co-operative Credit Society Limited, Represented by its Secretary Shankar Oejappa Shetty, Belgaum v Income Tax Officer, Belgaum and another, 2015 Indlaw KAR 9297

Case No: Income Tax Appeal No. 100096 of 2014

JJ Anand Byrareddy & S. Sujatha

Head Note

Whether, Appellant/assessee is entitled to deduction u/s. 80P(2)(a)(i) & assessee is co operative society and not a co operative Bank.

There is a seriously disputed question of fact which Au-thorities have taken upon themselves to interpret that in event of a dispute as to primary object or principal business of any co operative society a determination thereof by Reserve Bank shall be final. Any opinion expressed therefore is tentative and is not final. Appellant/assessee being co operative society and not co operative bank shall hold field and shall bind authorities unless held otherwise by Reserve Bank. Appeal allowed.

In interpreting Section 80 P (4) in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co- operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."*

In CIT vs. Bangalore Commercial Transporter Credit Society (supra), this court has cited with approval the following differences between a co-operative society and a co-operative bank - as depicted by the Tribunal, in tabular form thus :

Nature	Co-operative society registered under Banking Regulation Act, 1949	Co-operative Society registered under Karnataka Co-operative Society Act, 1959

Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act.	1. As per the bye laws of the co-operative society.
	2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc.	2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc.
	3. Co-operative Banks can act as clearing agent for cheques, DDs, pay orders and other forms.	3. Society cannot act clearing agent, for cheques, DDs, pay orders and other forms.
	4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI).	4. Society are bound by rules and regulations as specified by in the co-operative societies act.
Filing of returns	Co-operative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the Bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to co- operative banks.	Part V of the Banking Regulation Act is not applicable to co- operative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a co-operative bank.	The word 'bank', 'banker', 'banking' cannot be used by a co-operative society.

And this court had dismissed the appeal of the revenue following the decision in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 (supra).

The same view has been taken in the following decisions :

1. CIT vs. Bangalore Credit Co-operative Society Ltd. in ITA No.598/2013

2. CIT vs. Yeshwanthpur Credit Co-operative Society Ltd. in ITA 237/2012

3. CIT vs. Mysore University Employees Co-operative Credit Society Ltd. in ITA 298/2013

4. CIT vs. Vasavi Credit Co-operative Society Ltd. in ITA No.118/2012

5. CIT vs. Sri Vasavi Multi Purpose Souharda Sahakari Sangha Niyamitha in ITA No.505/2013

6. CIT vs. General Insurance Employees Co-operative Society Ltd. in ITA No.273/2013.

The primary co-operative bank is defined under Section 5(ccv) of the BR Act as under:

"primary co-operative bank" means a co-operative society, other than a primary agricultural credit society-

(1) The primary object or principal business of which is transaction of banking business:

(2) The paid-up share capital and reserves of which are not less than one lakh of rupees and

(3) The bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such Co-operative society out of funds provided by the State Government 'for the purpose'".

Section 5(cciia) of Banking Regulation Act, 1949 defines a Co-operative Society as under:

"Co-operative Society means a society registered or deemed to have been registered under any Central Act *for the time being in force relating to the multi-State co-operative societies or any other Central or State law relating to co-operative societies for the time being in force;"*

Section 5(b) of the Banking Regulation Act, will also have to be looked into to examine whether the primary object or principal business of the co-operative society is transaction of banking business. The section is as under:

"banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise"

The learned counsel would incidentally contend that the Tribunal while taking the cue from the decisions of this Court in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha 2014 Indlaw KAR 2105 and other cases, in certain other appeals apart from the present has also formed an opinion on certain further propositions, namely:

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act *are applicable only to co- operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?*

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act *without considering the meaning of co-operative Bank as envisaged under Part V of the* Banking Regulation Act, 1949*, wherein it is defined that co-operative Bank includes primary co- operative Bank, which is further defined as co- operative Society with the primary object of transactions of Banking business?"*

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for.

Appeal allowed

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S. K. Agriculturists Co-operative Marketing Societies Limited Represented by its Managing Director Jeevandar Hegde S/o Bojaraja Shetty, Mangalore v Canara Bank Represented by its Manager, Mangalore and others, 2015 Indlaw KAR 3298

Case No: W.P. No. 16323 of 2006 (GM-DRT)

JJ K.L. Manjunath & S. Sujatha

Head Note :

KCS Act 1959

Before issue of cheques by petitioner, it has addressed letters to respondent no.1 stating that proceeds under bills would be sent to respondent no.1 directly and based on same, cheques were allowed to be discounted and if cheques were dishonoured subsequently, bank is justified in proceeding against petitioner. Petitioner cannot say that there is no privity of contract between respondent no.1 and it. Petitioner has not placed any material to show that defendant no.1 had not supplied copper sulphate to petitioner. Petition dismissed.

The Order of the Court was as follows:

2. The facts leading to filing of this writ petition are that: First respondent - Canara Bank - filed Original Application No 1299 of 1997 before the Debts Recovery Tribunal [DRT], Bengaluru against Canara Krishi Agencies and seven others. The writ petitioner was the eighth respondent in the original application. According

to the bank, the first defendant - Canara Krishi Agencies is a proprietorship concern engaged in agro-chemical business, defendants 2 and 3 stood as guarantors to the loan granted to first defendant by the bank, defendants 4 to 7 are the mortgagors and eighth defendant [writ petitioner] was a debtor to the first defendant, as per the supply bills.

4. Prior to the filing of the original application, the bank had raised a dispute against the writ petitioner invoking the provisions of S. 70 of the Karnataka Cooperative Societies Act, 1959 [for short, the Act] before the joint registrar of cooperative societies. The said dispute came to be dismissed on the ground that the provisions of S. 70 of the Act has no application, since the bank cannot be considered as a cooperative society.

Aggrieved by the dismissal of the dispute, the bank had filed WP No 36289 of 1995 against the writ petitioner herein and others. This court disposed of the said writ petition granting liberty to the bank to proceed against the writ petitioner herein by initiating proceedings before the DRT. In those circumstances, the writ petitioner was arrayed as eighth defendant in the original application, based on the promise made by the petitioner to the bank and also on the ground that the petitioner had not sent the proceeds of the bill Nos 806, 807 and 808.

11. It is not in dispute that on the application filed by the original borrower M/s Canara Krishi Agencies, various loans were sanctioned by the bank. It is also not in dispute that the writ petitioner used to purchase copper sulphate and other chemicals for its business from the original borrower M/s Canara Krishi Agencies and after supply of materials by the original borrower, cheques were issued by the writ petitioner and before issuing cheques, a promise is made to the manager of the bank that it would send the proceeds of the bill Nos 806 and 807 dated 31-1- 1995 and 2-2-1994 respectively directly to the bank. These documents are marked as Annexure-51 and 52.

12. Before issue of cheques by the writ petitioner, it has addressed letters to the bank stating that proceeds under the bill Nos 806 and 807 would be sent to the bank directly and based on the same, the cheques were allowed to be discounted and if the cheques were dishonoured subsequently, the bank is justified in proceeding against the petitioner.

Therefore, the writ petitioner cannot say that there is no privity of contract between the bank and it. We would have appreciated the contentions of the learned counsel for the petitioner if the petitioner had issued the cheques in favour of the original borrower, in the absence of Annexure-51 and 52 and even if said cheques were dishonoured, in such an event, it was for the bank to proceed against the original borrower and not against the petitioner.

According to us, DRT has committed an error in not considering the material evidence before dismissing the claim of the bank against the writ petitioner. The mistake committed by the DRT has been set at right by the DRAT. In the circumstance, we answer the point formulated by us in favour of the bank and against the petitioner. Consequently, the petition is dismissed.

Petition dismissed

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Principal Commissioner of Income Tax, Dr. B. R. Ambedkar Veedhi and another v Vijay Souharda Credit Sahakari Limited, Bagalkot, 2017 Indlaw KAR 6207

Case No: Income Tax Appeal No. 100056/2016

JJ. S. Sujatha & H.B. Prabhakara Sastry

Head Note :

KCS Act 1959 & Income Tax Act - sec.80P(2)(a)(i) - exemption

The activity of the appellate there in was to cater two distinct category of people namely nominal and ordinary members. The activities of the assess there in was construed to the financial business contrary to the provisions of the co-operative societies act as such it was held that, the said assesse was not entitled to deduction under sec.80P(2)(a)(i) of the act – accordingly disposal of

The Order of the Court was as follows:

1. Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred as the 'Act' for short). The relevant substantial question of law raised is,

Whether the assessee respondent who is dealing with the general public apart from its regular members is entitled for deduction under Section 80P(2) (a) (i) of the Income Tax Act, 1961 considering the law laid down by the Hon'ble Apex Court in the case of 'the Citizen Co-operative Society Limited V/s Assistant Commissioner of Income Tax, Circle-9(1), Hyderabad' in Civil Appeal No.10245 of 2017 dated 08.08.2017 on the availability of deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961?

2. The respondent-assessee filed its return of income for the assessment year 2011-12 declaring total income after claiming deduction under Section 80P(2)(a)(i) of the Act. The Assessing Authority completed the assessment under Section 143(3) of the Act holding that the respondent-assessee was not entitled to the deduction as claimed in view of the provisions of Section 80P(4) of the Act. The appeal filed by the respondent-assessee before the Commissioner of Income Tax came to be allowed, against which the revenue preferred an appeal before the Income Tax Appellate Tribunal. The said appeal came to be dismissed placing reliance on the judgment of the jurisdictional High Court in the case of CIT V/s Shri BiluruGurubasavaPattinaSahakari Sangha Niyamita,Bagalkot2014 Indlaw KAR 2105 in ITA No.5006/2013 dated 05.02.2014. Aggrieved by the same, the revenue is in appeal.

6. The sole substantial question of law raised by the appellants requires to be answered on the determination of the crucial question whether the respondent-assessee is a co- operative society or a co-operative bank. In the judgment referred to by the learned counsel for the revenue in the Citizen Co-operative Society Limited, supra, a categorical finding was given by the Assessing Officer that the Reserve Bank of India has itself clarified that business of the appellant does not amount to that of a co-operative bank, the appellants therefore would not come within the mischief of sub-section (4) of Section 80P. It was held that the Activities of the appellants therein was to cater two distinct categories of people namely, nominal members and the ordinary members.

the Activities of the assessee therein was construed to be financial business contrary to the provisions of the Co- operative Societies Act. As such, it was held that, the said assessee was not entitled to deduction under Section 80P(2)(a)(i) of the Act.

7. A cursory view of the order impugned herein would indicate that no finding is forthcoming regarding the aspect of the Activities carried out by the respondent- assessee, whether as a co-operative society or not. In the absence of such factual finding, the legal propositions rendered by the Hon'ble Apex Court cannot be applied. As such, we are of the considered opinion that the matter requires reconsideration by the Assessing Officer to the effect whether the respondent-assessee comes within the realm of co-operative society to get entitlement of deduction under Section 80P(2)(a)(i) of the Act.

8. Hence, we remand the matter to the Assessing Officer to answer this question and then decide the matter in the light of the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Society Limited, supra, as expeditiously as possible. Thus, without rendering any finding on the substantial question of law raised, order of the Income Tax Appellate Tribunal impugned herein, is set aside. We direct the Assessing Officer to reconsider the matter in the light of the observations aforesaid.

Appeal stands disposed of accordingly.

Appeal disposed of

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Chidananda .D S/o Lingappa Gowda and others v Deputy Registrar of Co-operative Societies, Mangalore, Dakshina Kannada and others, 2016 Indlaw KAR 71

Case No: Writ Petition Nos. 7139-7143 of 2015 (CS-RES)

Justice Anand Byrareddy

The Order of the Court was as follows:

2. The petitioners are said to be members and Directors of the Board of Management of the Bilinele Primary Agricultural Credit Co-operative Society Limited. It transpires that their term was to come to an end by the end of March 2015, at which point of time, the second respondent had caused a suo motu inspection under Section 65 of the Karnataka Co- operative Societies Act, 1959 (hereinafter referred to as 'the KCS Act', for brevity), and an order was passed under Section 68 of the KCS Act.

Though the petitioners have responded to the said order and complied with the directions issued under Section 68 of the KCS Act, on the basis of the said order, disqualification proceedings were said to have been initiated by the second respondent and in violation of principles of natural justice, an order of disqualification was passed.

4. In that view of the matter, there is certainly failure of principles of natural justice in the authorities addressing the case of the petitioners.

It would be appropriate therefore, if the orders are set aside and the matter is remanded to the second respondent for fresh consideration in accordance with law, after giving full opportunity to the parties to canvass their respective cases. Even though the term of office of the petitioners has elapsed as early as in March 2015, the fact remains that they are disqualified from contesting or holding in office of the Society, by virtue of the impugned orders.

Consequently, the petitions are allowed. The impugned orders are quashed. The matter is remanded to the second respondent for a fresh consideration, as already stated. The application I.A.1/2015 seeking impleading is rendered infructuous and is accordingly disposed of.

Petitions allowed

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Commissioner of Income Tax, Belagavi and another v Mahila Credit Soudhardha Sahakari Limited, Belgaum, 2016 Indlaw KAR 6892; [2017] 395 ITR 287

Case No: Gowda ITA No. 171/2016

JJ Jayant Patel & B. Sreenivase Gowda

The Order of the Court was as follows:

1. In this matter, there are office objections. However, learned counsel for the appellants submitted that the matter is covered by the decision of this Court against the Revenue. Hence, we find it appropriate to take up the matter.

2. Learned counsel for the appellants-Revenue has preferred this appeal by raising the following questions of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee- society is entitled to deduction under Section 80P(2)(a)(i) of the Income Tax Act *even when assessee is a Co-operative Bank mainly involved in lending credit facilities to its members in nature of bank transaction, treated on par with the new clause introduced in the definition of income in Section 2(24)(viia) of the Act and comes under the purview of Section 80P(4) w.e.f. 1/4/2007?"*

4. This Court had an occasion to consider the said question in ITA No.5006/2013 dated 05.02.2014 in the case of THE COMMISSIONER OF INCOME TAX vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA, BAGALKOT 2014 Indlaw KAR 2105*, where, after referring to the relevant provisions of the* Income Tax Act*, and the banking* Regulation Act*, held as under:*

"If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny*

the said benefit to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e., carrying on the business of banking for providing credit facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."

Therefore, the said issue was held in favour of the assessee and against the revenue.

5. The said judgment answers the issue in this case also. Accordingly, we pass the following order. The appeal is dismissed. The substantial question of law is answered in favour of the assessee and against the revenue."

5. In view of the above, we do not find any substantial questions of law arise for consideration as the appeal is dismissed.

In view of the dismissal of the main appeal, the office objection including the question of condonation of delay would not remain.

Appeal dismissed

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Commissioner of Income Tax, Mangaluru and another v Nagarbail Salt-owners Co-operative Society Limited, Kumta, 2016 Indlaw KAR 1815; [2016] 238 TAXMAN 689

Case No: I. T. A. No. 100069/2015

JJ P.S. Dinesh Kumar & H. Billappa

Head Note

Income Tax & Direct Taxes - Income Tax Act,1961, ss.143(2),(3),147 - Co-operative societies Act 1959 - Whether assessee is duty bound to offer its profits to tax before diverting any funds to Distributable Pool Fund Account.

Assessing Authority was right in holding that transfer of fund for subsequent distribution to members before payment of tax is not 'deductible expenditure' in computation of business income of assessee and income declared after disbursement of profits is not logical and has no relevance to determination of taxable profit under the Act. Further, assessee has transferred funds to Distribution Pool before offering to Tax and has indulged in enterprise of manufacture and sale of salt. Tribunal is not right in holding that assessee is managing its activity on behalf of its members in most beneficial way by selling products manufactured by members. Thus, assessee is duty bound to offer its profits to tax before diverting any funds to Distributable Pool Fund Account. Appeals allowed.

Ratio - Society which runs business and earned income and profit in course of business is liable to tax under the Act.

The Judgment was delivered by: P. S. Dinesh Kumar, J.

1. This appeal is presented by the Revenue by raising the following substantial question of law:

"Whether the Tribunal is right in law, considering the facts and circumstances of the case in holding that the respondent society is managing its activity on behalf of its members in the most beneficial way by selling the products manufactured by the members, without appreciating that the assessing authority has clearly brought on record that there is no active participation of members in its activities and the respondent society is carrying a commercial activity for the purpose of earning profit and as such the findings of the Tribunal are perverse?"

7. In sum and substance, learned Counsel for the Revenue submitted that this is a case in which the Assessee-Society being a juristic person was carrying on the business both 'manufacturing' and 'selling' salt and its' by-products. It was transferring funds to the Distribution Pools Fund and offered only the remaining income to tax. Therefore, the orders passed by the CIT and ITAT are unsustainable in law and deserve to be set aside. Accordingly, he prayed for allowing this appeal.

15. Learned Counsel for the Revenue has relied upon the judgment in the case of Radhasoami Satsang1 to contend that the doctrine of res-judicata does not apply to the income tax proceedings. He has relied upon the following passage in support of his contentions.

"We are aware of the fact that, strictly speaking, res judicata does not apply to income- tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

The law is fairly well settled that the doctrine of res-judicata does not apply to the income tax proceedings. However, we hasten to add that the Revenue cannot keep shifting its stance every now and then to the disadvantage of the assessee. But in the instant case, it is for the first time that the Revenue has issued a notice under Section 147 of the Act and adjudicated after hearing the Assessee- Society.

20. Based on evidence and admission of appellant, we have held, that the Society has transferred funds to Distribution Pool before offering to Tax. On facts, we have held that, the Society has indulged in the enterprise of manufacture and sale of salt. Non compliance of statutory provisions is sought to be justified by the Society on a plea that Society indulges in such enterprise on behalf of members of the society and tax demand on the entire income would run counter to cooperative movement.

21. There can be perhaps no disagreement with the proposition that Co-operative movement is benevolent to its members. Nonetheless, an ideology however lofty does not ipso facto exempt such entity from the solemn duty and sacrosanct obligation of obeying the law of the land nor does it insulate the entity from the vigour of

penal actions in case of default. Thus, assessee a co-operative entity which runs a business enterprise is duty bound to offer its profits to tax before diverting any funds to the Distributable Pool Fund Account.

22. In the result, this appeal merits consideration and it is accordingly allowed. The substantial question of law raised by the Revenue is answered in it's favour. The impugned order in I.T.A.No.252/PNJ/2014 dated 23.1.2015 passed by the ITAT, Panaji Bench is set aside.

Consequently, the order passed by the Assessing Authority stands restored.

No costs.

Appeals allowed

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Poornapragna House Building Co - Operative Society Limited, Bangalore, Represented by its Manager L. Nanjappa v Venkatappa S/o Hanumanthaiah, 2016 Indlaw KAR 4474

Case No: C. R. P. No. 58/2015

Justice S.N. Satyanarayana

The Order of the Court was as follows:

2. Brief facts leading to this revision petition are as under:

Revision petitioner, M/s. Poornapragna House Building Co-operative Society Ltd., (for short "Society") is a society registered under the Karnataka Co-operative Societies Act, 1959 ("the Act" for brevity) and respondent herein is plaintiff in O.S.No.3250/2003 on the file of the XVII Additional City Civil & Sessions Judge, Bengaluru who is said to be the owner of land bearing Survey Nos.50 and 53 of Uttarahalli, Kasaba Hobli, Bengaluru South Taluk.

3. Admittedly, the aforesaid land is subject matter of acquisition by BDA which in turn has allotted the same in favour of defendant - Society who is revision petitioner herein. The suit in O.S.No.3250/2003 is for the relief of permanent injunction restraining defendant - Society from interfering with the alleged peaceful possession and enjoyment of the suit schedule property by the plaintiff. In the said suit, an application in I.A.4 under Order VII Rule 11(d) of CPC is filed by the defendant - Society seeking rejection of the plaint for non-complaince of provisions of Section 125 of the Act on the ground that defendant being a registered co-operative society before filing a suit for any relief, notice was required to be given to them under Section 125 of the Act which is mandatory requirement and on that basis the suit was sought to be rejected. However, the court below has not accepted the same and rejected the said application by its order dated 7.1.2016 which is the subject matter of this revision petition.

6. After going through the judgments (2012 (4) KLJ 624, 2015 (1) Kar LJ 505, 2014 Indlaw KAR 2187) cited by both the parties, this Court is of the view that since very same question was subject matter in litigation before the Apex Court in Civil Appeal No. 5531/2001 arising out of SLP.No.11804/2000 which is in pursuance

to an order passed on an application in I.A.8 filed under Order 7 Rule 11(d) of CPC in O.S.No.9417/1998 with reference to very same property, this Court feel it is appropriate to follow the judgment of the Apex Court and allow this revision petition and consequently reject the plaint filed by the respondent herein reserving liberty to him to file the suit after issue of mandatory notice as contemplated in Section 125 of the Act.

7. Learned Senior counsel Sri.Udaya Holla alternatively submitted that the said provision of law i.e., Section 125 of Act, is unsustainable since there being no provision for seeking dispensation of the same as is available under Section 80 of CPC. Therefore the said provision of Section 125 of the Act is ultra vires. If that is the stand the respondent intends to take he is at liberty to challenge the same by filing appropriate Writ Petition before the competent Court.

8. With such liberties to the plaintiff - respondent herein, revision petition filed by defendant in O.S.No.3250/2003 is allowed. The order impugned is set aside. Consequently, the aforesaid suit is dismissed under Order 7 Rule 11(d) of CPC.

Revision allowed

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Pr. Commissioner of Income Tax Bangalore and another v Lokamanya Multipurpose Co-operative Society Limited, Belgaum, 2016 Indlaw KAR 4429

Case No: IN ITA 48/2016: ITA No. 48/2016 C/W ITA No. 49/2016

JJ Jayant Patel & B. Sreenivase Gowda

The Order of the Court was as follows:

1. The appellants-Revenue has preferred the present appeals by raising the following substantial question of law:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee - society is entitled to deduction under section 80P(2)(a)(i) of the Income Tax Act *even when assessee is a Co-operative Bank mainly involved in lending credit facilities to its members in nature of bank transaction, treated on par with the new clause introduced in the definition of income in section 2(24)(viia) of the Act and comes under the purview of section 80P(4) w.e.f 1/4/2007?:"*

2. The substantial question of law which is raised in the appeal is as under:

"Whether on the facts and in the circumstances of the case, the tribunal was justified in law in holding that the assessee - society is entitled to deduction under Section 80P(2)(a)(i) of the Income Tax Act*?"*

4. This Court had an occasion to consider the said question in ITA No.5006/2013 dated 05.02.2014 in the case of The Commissioner of Income Tax vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, where, after referring to the relevant provisions of the Income Tax Act, and the Banking Regulation Act, held as under:

"If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co- operative bank as defined under the Banking Regulation Act *includes the primary agricultural credit society or a primary co- operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e., carrying on the business of banking for providing credit facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."*

Therefore, the said issue was held in favour of the assessee and against the revenue.

4. In view of the above, we find that as the matter is covered by the above referred decision, no substantial questions of law would arise for consideration.

Hence the appeals are dismissed.

Appeals dismissed

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National Co-operative Bank Limited, represented by Nagesh M. Shastri S/o Madhukeshwar Shastri, Bangalore v Commissioner of Service Tax (Audit), Bangalore and others, 2018 Indlaw KAR 4849

Case No: W. P. Nos. 8/2017 & 2160 - 2163/2017 (T - RES)

Justice S. Sujatha

Head Note :

KCS Act 1959 – B R Act 1949 – show cause notice is necessary for disputed tax, interest and penalty – writ allowed.

The Judgment was delivered by : S. Sujatha, J.

1. The petitioner has challenged the communication dated 3.5.2016 at Annexure-C1 issued by respondent No.5 directing the petitioner to issue a letter to respondent No.2, waiving petitioner's rights to get a show cause notice issued in its name as well as the communication dated 28.7.2016 at Annexure-E to the writ petition issued by respondent No.4 whereby it has been held that the proceedings were concluded at the option of the petitioner and no show cause notice is liable to be issued under Section 73(3) of Finance Act, 1994 ['the Act', for short] and Annexure-F - Audit report dated 01.08.2016, interalia has sought for other consequential reliefs.

2. Petitioner is a Co-operative Bank, registered under the Karnataka Cooperative Societies Act, 1949, carrying on banking business as defined under Section 5(b) of the Banking Regulation Act, 1949. Certain activities of the petitioner were made exigible to service tax under Banking and other Financial Services under Section 65(12) r/w Section 65(105)(zm) r/w Section 66 of the Act, upto 30.6.2012. Said activities continued to be taxable for the period post 30.6.2012 under Section 65B(44) r/w Section 66-B of the Act. Petitioner had obtained service tax registration on 30.10.2004.

16. On reading of these provisions, it is clear that extended period of limitation of five years is available only in cases where the omissions or commissions enumerated in proviso to Section 73[1] are alleged. Section 73[4] further makes it clear that clauses enumerated in the proviso to Section 73[1] would not fall within the ambit of section 73[3]. Thus, tax, interest and penalty cannot be collected for five years period without alleging omission/commission of the clauses enumerated under the proviso to Section 73[1]. It is mandatory to allege, discharge burden of proof under the proviso to Section 73[1] before the tax can be collected for five years. Admittedly, in the present case, tax, interest and penalty of 15% has been collected for the period 1.4.2010 to 31.03.2016. The copies of service tax returns filed half yearly before the service tax department evinces the fact that petitioner had informed designated Officers and the Respondent No.2 from time to time during the impugned period, the petitioner had not reversed Cenvat Credit under Rule 6 of Cenvat Credit Rules. If so, prima facie, it can be inferred that there could be no allegation of omission/commission on the petitioner of suppression. In that event, extending the period of limitation of 18 months to 5 years to collect the short levy of tax may be subject to issuance of show cause notice. However, the same depends on the adjudication of the matter which could be concluded only after issuance of show cause notice as contemplated under section 73[1] read with Circular Instructions dated 18.08.2015 as well as judicial pronouncements made by the Hon'ble Apex Court in the Judgments discussed above.

18. On the other hand, the Judgments relied upon by the petitioner in LARSEN AND TOUBRO LTD., RAJ BAHADUR NARAIN SINGH SUGAR MILLS LTD., and HMM LIMITED supra, would be applicable and as such limitation for the extended period is not invokable unless show cause notice puts the Assessee to notice specifically as to various commissions/omissions stated in the proviso to Section 73[1] of the Act had been committed.

19. Section 78 of the Act deals with penalty for failure to pay service tax for reasons of fraud, etc. Section 78(1) of the Act provides that where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of Chapter-V or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent of the amount of such service tax. Second proviso thereof contemplates that where service tax and interest is paid within a period of thirty days of the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen percent of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be

concluded. Explanation - 2 to Section 73[3] provides that no penalty under any of the provisions of the Act or the rules made thereunder shall be imposed in respect of payment of service tax under section 73[3] and interest thereon. Even assuming Section 73[3] is invoked by the revenue, no penalty can be leviable. Otherwise also, if Section 78[1] is invoked, show cause notice is mandatory. It is well settled legal principle that penalty is not automatic. If the Assessee is making payment within 30 days after issuance of show cause notice, the penalty prescribed is 15% of such service tax, opportunity to show cause cannot be denied to the petitioner who is disputing the liability to tax extending the period of limitation.

20. For all these reasons, this Court is of the considered opinion that show cause notice is necessary for determining the disputed tax, interest and penalty. Hence, the following:

ORDER

[a] Writ Petitions are allowed.

[b] The Communication dated 3.5.2016 at Annexure- C1 issued by Respondent No.5 as well as communication dated 28.07.2016 issued by Respondent No.4 at Annexure-E and the audit report dated 1.8.2016 at Annexure-F issued by Respondent No.4 cannot be held to be justifiable and are accordingly quashed.

[c] The matter is remitted to the Respondent No.2 to issue show cause notice to the petitioner to determine the disputed tax, interest and penalty in accordance with the provisions of the Act. Respondent No.2 shall take a decision after issuing show cause notice and considering the objections if any, to be filed by the petitioner and providing an opportunity of hearing to the petitioner. This exercise shall be done by respondent No.2 in an expedite manner.

[d] No order as to costs.

Petitions allowed

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Authorised Officer, Basaveshwar Co-Operative Bank Limited, Belgaum and Another v Umesh and Others, 2008 Indlaw DRAT 36; 2009 (1) DRTC 123

Case No: R.A. (S.A.) No. 31 of 2008

Debt Recovery Appellate Tribunal, Chennai

T.V. Masilamani

Head Note

Karnataka Cooperative Societies Act,1959, s.118(3) – Recovery proceeding – Maintainability of – Setting aside of order - Appellant-bank initiated recovery proceedings - Whether proceedings initiated by appellant no.1 is maintainable in law and impugned order passed by DRT is liable to be set aside.

Proper remedy to respondent no.1 is that he may be initiate a proceedings before Appellate Authority, prescribed under 1959 Act or else to file a petition before HC for quashing impugned order passed by Authorized Officer

of appellant and it is apparent from records of case that respondent no.1 had not chosen to follow either of said courses open to him under law. Therefore, proceedings initiated by respondent no.1 before DRT is not maintainable in law. Thus, DRT has no jurisdiction to entertain application filed by respondent no.1 challenging action taken by appellant under 2002 Act and it follows necessarily that impugned order has to be set aside. Appeal allowed.

Ratio – Any order passed by Concerned Authority in lack of jurisdiction is liable to be set aside.

The Judgment was delivered by T. V. Masilamani (Chairperson)

This appeal is preferred by the appellant bank challenging the impugned order passed by DRT, Bangalore in A.S.A.-16/2006 on 12th February, 2008.

2. The fact of the case leading to the filing of this appeal may be set out briefly as under.

The appellant bank initiated the proceedings under Sec. 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as SRFAESI Act) against the respondent No. 1 and his guarantors for recovery of loan amount of Rs. 4, 92, 000/-, availed by the respondent No.1 Consequently, auction was conducted on 10th January, 2006 and the secured asset was sold on the same day to the respondent Nos. 2 and 3 herein. The said sale was confirmed saw certificate also issued by the appellant bank. The respondent No. 1 resisted the proceedings by filing the appeal before the DRT, Bangalore, challenging the action initiated by the appellant bank, on various grounds. The appellant bank and the auction purchasers (i.e.) the respondent Nos. 2 and 3 herein had also filed their objections in the said proceedings. After hearing the arguments of both sides and after considering the materials placed before the Tribunal, the learned Presiding Officer, disposed the appeal without costs, holding that in view of the decision rendered in "I.L.R. 2007 Knt. 4740", the appellant bank are not entitled to initiate the proceedings under Secs. 13 (2) and 13 (4) of the SRFAESI Act and the said proceedings are void.

A fair reading of the said provision of law and the principle laid down in the decision would indicate clearly that the provisions under SRFAESI Act have to be read in addition to the provisions under the RDDBFI Act, 1993 and therefore, as per the ratio of the decision cited above, it goes without saying that the appellant bank had no power or authority to invoke the provisions under SRFAESI Act and that the respondent No. 1 application filed before the D.R.T. is not maintainable in law.

8. Further, it is evident from the provisions in the Karnataka Cooperative Societies Act, 1959 (Karnataka Act 11 of 1959), that it is a self-contained enactment, which provides for recovery of the amount due from the member of the co-operative bank like the appellant bank herein. Section 2(b-1) defines "Co-operative bank" as meaning a co-operative society which is doing the business of banking and Sec. 2 (c) defines "Cooperative Society" as a society registered or deemed to be registered under this Act (Karnataka Act 11 of 1959). Section 2 (f) defines a "member" as a person admitted to membership in accordance with the said Act, the rules and the bye-laws. Sections 99 to 101 of the Karnataka Act 11 of 1959 prescribe the procedure for execution of award, decrees, orders and decisions made by the authorities empowered thereunder so as to recover the amount due under secured loan from the member of the bank.

9. It is relevant to note that under Sec. 118 (3) of the Karnataka Act 11 of 1959, no order, decision or award made under that Act shall be questioned in any Court on any ground whatsoever and the said provision of law reads as follows :

"118. Bar of jurisdiction of Courts.-(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever."

In this context, a fair reading of the provisions under Sec. 17 of the SRFAESI Act, 2002 would indicate that respondent No. 1 being aggrieved by the measures taken by the appellant bank could have initiated the proceedings before the D.R.T., only if there is no bar of jurisdiction under any law for the time being in force. As has been referred to above, Sec. 118 (3) of the Karnataka Act, 11 of 1959 clearly bars the jurisdiction of not only Courts but also Tribunals from entertaining any proceeding challenging the decision or award made by the Co-operative Society or bank, as the case may be, governed by the provisions contained thereunder. The proper remedy to the respondent No. 1 is that he may be initiate a proceedings before the appellate authority, prescribed under the Karnataka Act 11 of 1959 or else to file a writ petition before the High Court for quashing the impugned order passed by the Authorized Officer of the appellant bank and it is apparent from the records of the case that the respondent No. 1 had not chosen to follow either of the said courses open to him under law. Hence, this Tribunal is of the considered opinion that the proceedings initiated by the respondent No. 1 before the D.R.T., Bangalore is not maintainable in law.

10. Having regard to the facts and circumstances of the matter as narrated above in the light of the ratio laid down by the Hon'ble Supreme Court in the said decision, this Tribunal has no other option except to hold that the D.R.T., has no jurisdiction to entertain the application filed by the respondent No. 1 challenging the action taken by the appellant bank under the said Act and it follows necessarily that the impugned order has to be set aside and accordingly, the same is set aside.

11. For the aforesaid reasons, this appeal is allowed by setting aside the impugned order passed by the D.R.T., Bangalore is A.S.A-16/2006 on 12th February 2008 and consequently, the said application filed by the respondent No. 1 dismissed with costs. Further, the appellant bank is at liberty to proceed against the respondents under the provisions of the Karnataka Co-operative Societies Act, 1959 and the Rules made thereunder. However, there will be no order as to costs in this appeal.

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Narayanappa S/o Late Pillappa, Veterinary Inspector, Bangalore, Karnataka v NTI Employees Housing Co-operative Society Limited, Bangalore, 2010 Indlaw NCDRC 278; 2011 (2) CPJ(NC) 21

Case No: Revision Petition No. 3095 of 2006

National Consumer Disputes Redressal Commission, New Delhi Bench

Vinay Kumar (Member) & R. K. Batta (Presiding Member)

Head Note :

The scheme of the nature and stages of relief to a consumer under the Consumer Protection Act, 1986 is very clear and does not leave any scope for such confusion. If the complaint could take recourse to the provisions of this Act for invoking the jurisdiction of the District Consumer Forum, he would have certainly known that the appeal against the order of the consumer forum would lie to the State Commission.

The Judgment was delivered by Vinay Kumar (Member)

1. The Revision Petitioner was a member of NTI Employees Housing Corporation Society Bangalore, who had applied for allotment of house site in 1986. In several instalments between 1986 and 1994, he had reportedly paid in all Rs.75,443/- to the society. Yet, no house-site was allotted to him. His complaint was considered favourably by the District Consumer Disputes Redressal Forum, Bangalore (Urban) on 20.4.2005 and a refund of Rs.75,443/- was ordered in his favour, with 9% interest and compensation of Rs.5000/-.

2. The complainant apparently wanted a site and not refund of the sital value. Therefore, he chose to move Joint Registrar Cooperative Societies, Bangalore, seeking such a direction to the NTI Society under Section 70 of Karnataka Cooperative Societies Act. It is difficult to understand why he chose this route when under the Consumer Protection Act, 1986 the appellate authority against the order of the District Forum is the Consumer Disputes Redressal Commission of the State.

3. Eventually, he did prefer an appeal before the Karnataka State Consumer Disputes Redressal Commission, but only with a delay of 374 days. The State Commission in its order 6.6.2006, did not accept time spent before the Joint Registry of Cooperative Societies as a valid reason to justify the delay. His appeal was, therefore, dismissed on the ground of delay.

4. The present revision petition is against the above order of Karnataka State Commission dismissing the appeal of the Complainant. This revision petition was taken up on 1.09.2010 and the counsels for the two parties were heard. The case of the Revision Petitioner/Complainant is that he did not know the procedure of law and was wrongly advised to seek remedy before the Joint Registrar under the Karnataka Cooperative Societies Act. This explanation cannot be accepted and has rightly been rejected by the Karnataka State Commission. The scheme of the nature and stages of relief to a consumer under the Consumer Protection Act, 1986 is very clear and does not leave any scope for such confusion. If the complaint could take recourse to the

provisions of this Act for invoking the jurisdiction of the District Consumer Forum, he would have certainly known that the appeal against the order of the consumer forum would lie to the State Commission.

5. In view of the above, we find absolutely no ground to interfere with the order of the Karnataka State Consumer Disputes Redressal Commission in appeal No.1045 of 2006. The revision petition is consequently dismissed with no order as to costs.

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S. Parameshwar v Chief Post Master, 2012 Indlaw NCDRC 128

Case No: Revision Petition No. 4603 of 2010

National Consumer Disputes Redressal Commission, New Delhi Bench

Suresh Chandra (Member), K. S. Chaudhari (Presiding Member)

Cases Citing this Case

1. Branch Manager, State Bank of India, Kolkata v Shoba Mohan, 2015 Indlaw SCDRC 869

Head note

KCS Act 1959 - Consumer Protection Act, 1986 - Deficiency in service

District Forum dismissed said complaint on the ground that the petitioner had not made any allegation of fraud against the respondent hence, relief claimed by the petitioner could not be granted - State Commission dismissed appeal filed against said order - Hence, instant revision petition - Whether order of the District Forum as affirmed by the State Commission could be upheld –

There was no allegation that the article was lost by any fraudulent or willful act or default of any of the official of the Post Office - Unless these were alleged and proved by the petitioner, he was not entitled to claim relief by way of compensation for loss, misdelivery or delay or damage to any postal article in the course of its transmission - Revision petition dismissed.

The Judgment was delivered by Suresh Chandra (Member)

1. Petitioner in this case was the complainant before the District Forum and the respondent was the opposite party. The petitioner retired from State Government's Service on 30.11.2006 and requested his employer to make arrangement for the payment of Rs.50,127/- being the loan amount due to the Bangalore Zilla Padavidhara Co-operative Society Ltd., Bangalore out of his pensionery benefits. The employer, i.e., the Commissioner for Sericulture in turn wrote to the Accountant General who authorized the District Treasury Officer to prepare the cheque in favour of the concerned Society on behalf of the petitioner from out of his pension payment. Accordingly a cheque for Rs.50,127/- was dispatched on 16.8.2007 vide speed post by the District Treasury Officer. However, the Society did not receive the cheque and hence the Society called upon the petitioner to settle his outstanding loan immediately. The petitioner after obtaining the details of the dispatch of the cheque from the Treasury Office, went to the post office and lodged a written complaint on 15.11.20087.

According to him the complaint was not accepted. The petitioner again gave a written complaint on 13.5.2008 but the opposite party informed the petitioner that the speed post cover was lost in transit. Thereupon the petitioner requested the Treasury Officer, Bangalore to prepare a fresh cheque for Rs.50,127/-. However, since the loan amount had not been repaid, the aforesaid Society passed an order under rule 36 of the Karnataka Co-operative Society Act 1959 and confiscated all the valuables from the complainant's house. The fresh cheque as per the request of the petitioner was prepared by the Treasury Officer, Bangalore on 25.5.2009 and was handed over to the Society on 26.5.2009. In the meanwhile, the petitioner was made to pay a total amount of Rs.67,611/- instead of Rs.50,127/- to the Society for retrieving the valuables confiscated earlier by the Society. The petitioner, therefore, filed a consumer complaint praying for award of damages on account of deficiency in service on the part of opposite party/respondent and also for payment of Rs.17,484/- being the excess amount which he had been made to pay to the Society on account of default of his dues for no fault on his part.

2. On being noticed, the opposite party resisted the complaint and filed his written objections denying the allegations and deficiency in service. While accepting the fact that the speed post cover was lost in transit, it was pleaded by the opposite party/respondent that either the sender of the cheque or the addressee could claim eligible compensation as permissible under the rules of the department beyond which the respondent authority was not liable for any damages in view of the exemption provided for u/s. 6 of the Indian Post Office Act, 1898.

The OP also denied any deficiency in service on the part of the department. After hearing the parties and considering the evidence placed before it, the District Forum vide its order dated 9.2.2010 dismissed the complaint on the ground that the complainant/petitioner had not made any allegation of fraud against the OP/ respondent and hence in view of the protection provided to the OP/respondent u/s. 6 of the Act of 1898, the relief claimed by the complainant/petitioner could not be granted.

3. Aggrieved by the aforesaid order of the District Forum, the petitioner filed an appeal before the Karnataka State Consumer Disputes Redressal Commission, Bangalore ('State Commission' in short) which was dismissed by the State Commission vide its impugned order dated 26.8.2010. It is in these circumstances that the petitioner has filed the present revision petition challenging the order of the State Commission.

S. 6 of the Indian Post Office Act, which reads as follows:

"The Government shall not incur any liability by reasons of the loss, misdelivery or delay or damage to any postal article in course of transmission by post except in so far as such liability may in express be undertaken by the central government as here in above provided and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay of damage, unless he has caused the same fraudulently or by his willful act or default"

6. Admittedly, in the instant case, there is no allegation that the article was lost by any fraudulent or willful act or default of any of the official of the Post Office. Unless these are alleged and proved by the Appellant/ Complainant, he is not entitled to claim relief by way of compensation for loss, misdelivery or delay or damage to any postal article in the course of its transmission.

7. In view of the above decision of the National commission, we are of the opinion that the decision rendered by the DF as per its Impugned order is proper and correct. It does not call for interference. This appeal is liable to be dismissed."

8. We agree with the view taken by the State Commission and the District Forum and do not see any merit in the revision petition which would justify our interference with the impugned orders. The revision petition, therefore, stands dismissed in limine with no order as to costs.

Revision dismissed

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Income Tax Officer Ward I(1), Erode v Kasipalayam Primary Agricultural Co-operative Bank Limited, Erode, 2013 Indlaw ITAT 128; [2014] 147 ITD 70

Income Tax Appellate Tribunal, Chennai Bench 'C'

N. S. Saini (Accountant Member), V. Durga Rao (Judicial Member)

Head Note

KCS Act 1959 – Income Tax and Direct Taxes – Sec.80P of 1961 Act

No material could be brought before Tribunal to show that assessee was co-operative bank within meaning of s.80P(4) of Act and not co-operative Credit society. No material was brought Tribunal to show that provision of accepting nominal members was not in accordance with 1959 Act or Rules or persons who were made nominal members were, in fact, not members of assessee- society. In above circumstances, Court do not find any good reason to interfere with order of CIT(A) which has been passed following order of Tribunal as stated in his order and quoted. Appeal dismissed

The Judgment was delivered by N. S. Saini (Accountant Member)

The assessee claimed deduction u/s 80P of the Act of Rs. 36,76,329/-. According to the Assessing Officer, the assessee's main activity was only banking business and income from banking business was taxable from assessment year 2007-08 onwards by amending section 80P(2)(a)(i) of the Act. Hence, the provisions of section 80P are not applicable to any co-operative bank other than Primary Agricultural Credit Society with effect from 1.4.2007. According to the Assessing Officer, the intention of the legislature was to extend the benefit of deduction u/s 80P(4) only when the activities of the society are in connection with agricultural purposes and activities for which it was started. The totality of the circumstances clearly indicates that the activities of the society are never intended for any agricultural activities or purposes. Mere naming of a society as ' Primary Agricultural Co- operative Society' was not sufficient for claiming deduction under the above section, but the principal or predominant activities of the bank should be in connection with agricultural purposes or for purposes connected with agricultural activities. He, therefore, held that in the light of the factual position, the assessee was not eligible for deduction of Rs. 36,76,329/- u/s 80P(2)(a)(i) of the Act.

5. The assessee carried the matter in appeal before the ld. CIT(A). The assessee submitted that the Assessing Officer has treated the assessee as 'Primary Agricultural Credit Society'. It was submitted that section 80P(4) does not deal with Primary Agricultural Credit Society. In fact, section 80P(4) in the Explanation, defines in cl.(a) 'Co-operative Bank' and ' Primary Agricultural Credit Society' and in cl. (b) 'Primary Co-operative and Rural Development Bank'. Further, in the Explanation to section 80P(4), in clause (a), it has been mentioned that both the terms shall have the meanings assigned to them in Part V of the Banking Regulation Act, 1949 (BR Act). Thus, the assessee does not fall within the meaning of 'Co-operative Bank' or ' Primary Co-operative and Rural Development Bank' so as to fall within cl.(b) to the Explanation. Hence, what is left for consideration is as to under what definition the assessee falls. In other words, whether the assessee falls within the meaning of 'Co- operative Bank' or Primary Agricultural Credit' Society'. It was submitted that under the BR Act, s. 5(cci), Co-operative Bank means "a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank". Further s. 5(ccv), a Co-operative Bank means -

(1) The primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities(including the marketing of crops) and

(2) The bye-laws of which do not permit admission of any other co-operative society as a member. PROVIDED THAT this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such Co-operative Bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.

14. The ld. CIT(A), after considering the above arguments of the assessee, allowed the claim of the assessee by observing as under:

"6. I have gone through the submissions made by the appellant and the order of the Assessing Officer. The main motto of the appellant is lending for its members. Subs. (4) of Section 80P provides that deduction under the said section shall not be available to any cooperative bank other than a Primary Agricultural Cooperative Credit Society or rural development bank. For the purpose of the said subsection, cooperative bank shall have the meaning assigned to it in Part 5 of the Banking Regulation Act, 1949. In Part 5 of the Banking Regulation Act, cooperative credit means a State Cooperative Bank, a Central Cooperative Bank and a Primary Cooperative bank. From the above section, it is clear that the provisions of Section 80P(4) as got its application only to cooperative banks. Section 80P(4) does not define the word 'Cooperative Society'. The existing sub section 80P(2)(a)(i) shall be applicable to cooperative society carrying on credit facility to its members. This view is clarified by Central Board of Direct Taxes vide its clarification No.133/06/07/TPL dated 9th May 2007. The difference between Cooperative bank and Cooperative society are as follows:

Nature	Cooperative Society registered under Banking Regulation Act, 1949.	Cooperative Society registered under Karnataka Cooperative Society Act, 1959
Registration	Under the Banking Regulation Act, 1949 and Cooperative Societies Act, 1959	Cooperative Societies Act, 1959

Nature of business	1. As defined in S. 6 of Banking Regulation Act.	1. As per the bye laws of the cooperative society.
	2. Can open Savings Bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay order, gift cheques, lockers, bank guarantees, etc	2. Society cannot open Savings Bank account, current account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts, pay orders, gift cheques, lockers, bank guarantees, etc
	3. Cooperative banks can act as clearing agent for cheques, DDs, pay orders and other forms.	3. Society cannot act as clearing agent for cheques, DDs, pay orders and other forms.
	4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI)	4. Society is bound to follow the rules and regulations as specified by in the Cooperative Societies Act.
Filing of returns	Cooperative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to cooperative banks.	Part V of the Banking Regulation Act is not applicable to cooperative bank.
Use of words	The word 'bank', banking' can be used by a cooperative bank.	The word 'bank' 'banker', 'banking' cannot be used by a cooperative society.

New proviso to Section 80P(4) is brought into the statute for application only to cooperative banks and not to credit cooperative societies. The intention of legislature of bringing in cooperative bank into taxation structure was mainly to bring in par with commercial banks. The Hon'ble ITAT, 'B' Bench, Bangalore in the case of the ACIT, Circle-3(1), Bangalore Vs M/s Bangalore Commercial Transport Credit Cooperative Society Limited held that "the provisions of Section 80P(4) are applicable only to cooperative banks and not to credit cooperative societies". Further, the ITAT, Bangalore 'A' Bench in the case of M/s Yeshwantpur Credit in ITA No.737/Bang/2011 relied on the decision of the ITAT in the case of the ACIT, Circle-3(1), Bangalore Vs M/s Bangalore Commercial Transport Credit Cooperative Society Limited and held that if the assessee is a credit cooperative society, it is entitled to deduction u/s 80P(2)(a)(i). As seen from the facts of the case, they are identical with those of the observations and findings of the Bangalore Tribunal in the case of the M/s Bangalore Commercial Transport Credit Cooperative Society Limited and is entitled to deduction u/s 80P(2)(a)(i)."

16. We have heard the rival submissions and perused the orders of the lower authorities and materials available

on record. In the instant case, deduction claimed u/s 80P of the Act by the assessee was denied by the Assessing Officer on the grounds that firstly, with effect from 1.4.2007 sub-s. (4) of section 80P was inserted to provide that deduction u/s 80P shall not be allowed in case of a Co-operative Bank and secondly, that the assessee has two sets of members (i) normal members who became members by paying Rs. 10/- and Rs. 1/- with voting rights; and (ii) nominal members who became members by paying a nominal amount of Rs. 5/- and Rs. 2/- without voting rights and are the assessee's customers.

17. On appeal, the ld. CIT(A) allowed the deduction u/s 80P of the Act to the assessee by observing that new sub-s.(4) was brought into the statute for prohibiting deduction to Co-operative Banks only and not to Co-operative Credit Societies. He listed out difference between a Co-operative Society registered under the Banking Regulation Act, 1949 and a Co-operative Society registered under the Karnataka Co-operative Society Act, 1959. The ld. CIT(A) opined that the facts of the instant case were similar to the facts of the case before the Bangalore Bench of the Tribunal in the case of ACIT vs M/s Bangalore Commercial Transport Credit Cooperative Society Ltd and therefore, following the same, he allowed the appeal of the assessee.

18. Before us, the ld.D.R could not point out any specific error in the order of the ld. CIT(A). No material could be brought before us to show that the assessee was a Co-operative Bank within the meaning of sub-s. (4) of section 80P and not a Co-operative Credit Society. No material was brought before us to show that the provision of accepting nominal members was not in accordance with the Co- operative Societies Act or Rules or the persons who were made nominal members were, in fact, not the members of the assessee- society. In the above circumstances, we do not find any good reason to interfere with the order of the ld. CIT(A) which has been passed following the order of the Tribunal as stated in his order and quoted above. Thus, the grounds of appeal of the Revenue are dismissed.

19. The cross objection filed by the assessee is simply in support of the order of the CIT(A). Thus, there being no grievance of the assessee against the order of the CIT(A), the cross objection filed is infructuous and hence, dismissed.

20. In the result, both, the appeal of the Revenue and the cross objection of the assessee are dismissed.

Order pronounced on Friday, the 23rd of August, 2013, at Chennai.

Appeal dismissed

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ACIT, Belgaum and another v Belgaum District Central Co-operative Bank Limited, Belgaum and another, 2014 Indlaw ITAT 2756

Case No: I. T. A. No. 324/Pnj/2013, I. T. A. No. 378/Pnj/2013, C. O. No. 56/Pnj/2013

Income Tax Appellate Tribunal, Panaji Bench

D. T. Garasia (Judicial Member) & P. K. Bansal (Accountant Member)

Head Note

KCS Act 1959 - (A) Income Tax & Direct Taxes - Income-Tax Act, 1961, Whether, CIT(A) has erred in disallowing interest paid on term deposits in excess of Rs. 10,000/- without making TDS thereby adding Rs. 22,65,75,356/- to income, though same is claimed as exempt u/s. 194A(v) being interest paid to members.

Once the interest payment exceeds that amount the TDS is to be made. Neither in cl. (viia) nor in cl. (i) there is anything to restrict their applicability only to non members and therefore they apply to all depositors. In terms cl. (v) which is general in nature will not apply to the co op bank. The provisions of s. 194A (1)(viia) of the Act is clearly applicable and therefore the 'assessee' has to deduct T.D.S. on income credited or paid in respect of deposits except which falls under that provisions. Appeals dismissed.

Therefore, both the revenue authorities are justified in holding that provisions of s. 80P(4) of the Act is not applicable to co operative bank. Therefore, the addition of Rs. 60,12,920/- is con-firmed. Appeals dismissed.

The Judgment was delivered by D. T. Garasia (Judicial Member)

3. Brief facts of the case are that the assessee is a co-operative bank engaged in carrying on the business of banking. It had obtained necessary license from the Reserve Bank of India for carrying on its banking operations as a District Central Co-operative Bank. The assessee filed its return of income for the year under consideration on 29.9.2010 declaring total income of Rs.13,78,82,700/-. The assessment was completed under section 143(3) of the Act determining the taxable income of Rs.64,63,35,343/-, inter alia, making the following disallowances:

(i) Interest on term deposit in excess of Rs.10,000/- u/s.40(a)(ia) :Rs.22,65,75,356/-

(ii) Int. On receivable on loans & investment but not credited to : Rs.27,58,64,367/-

P & L account

(iii) Dividend income claimed as exempt : Rs. 60,12,920/-

"5.1.3 It is an undisputed fact that the appellant has paid interest on term to the tune of Rs.226575356/- to depositors without deducting tax at sour appellant contended that the provisions of TDS are not attracted in view of clause (v) of sub-section (3) of section 194A as the interest payments to the extent of Rs,22,65,75,356/- have been made to the members of the bank. In this regard, the AO has interpreted word 'co-operative society' as employed in sec.194A(3)v) to mean co-operative so other than co-operative bank as decided by the TAT,

Pune Bench, in Bhagani Nivedt Sahakari bank Ltd v. ACIT 87 TO 569 wherein, the Hon'ble ITAT has held that the term cooperative society' mentioned in section 194A(3)(v) to be interpreted as co-operative soc{et other than co-operative bank. Thus, the AO disallowed the entire interest payments exceeding Rs.20,000/- made to the members and non-members by the appellant bank for the reasons mentioned above.

51.4 On going through the provisions of section 194A(3), it is seen that the Assessing Officer is justified in disallowing the interest payments above the threshold limit of Rs.10,000/- paid to the depositors as the appellant bank had failed to deduct tax at source thereby rendering itself liable for disallowance under section 40(a)(ia) of the IT. Act, 1961. The submissions of the appellant are not acceptable in view of the decision of Hon'ble Pune ITAT in the case of Bhagani Nivedita Sahakari bank Ltd 2002 Indlaw ITAT 255 cited supra wherein, it is clearly held that section 194A(3)(via)(b) makes no distinction between members and non-members of co- operative bank for purpose of deduction of tax at source on interest on time deposits paid/ credited and therefore, co-operative bank would be liable to deduct tax at source under section 194A(1) on interest on time deposits paid/credit to its depositors, it such interest amount exceeded the limit prescribed in proviso to section 194A(3}(i}. Further, the Hon'be Kerala High Court in the case of Mootamattom Clectricity Board Employees Co-op Bank Ltd 238 ITR 630 1998 Indlaw KER 225 has made a clear distinction between primary credit society and a coop society engaged in banking business. Thus, section 194A deals with co-op societies engaged in the business of banking, co-operative societies engaged in providing credit facilities to the members, etc. As has been rightly held by the Assessing Officer that the moment the amount paid/credited to any depositor during the year exceeds Rs.10,000, the provisions of section 194A(1) shall apply and the co-operative society engaged in the banking business shall have to deduct tax on such payments. From the facts of the case, it is seen that the Assessing Officer categorically brought out the material on record to prove that the appellant bank is covered by the provisions of sub-clause (b) of clause (i) of Sec.194A(3) as well as the provisions of clause (viia) of Sec.194A(3) which are specific in nature and the appellant cannot put forth its claim under section 194(3)(v) which are general in nature. As the appellant is co-operative society engaged in the business of banking, it is covered under these specific clauses and as has been held by the Hon'ble ITAT, Pune Bench, Pune in Bhagani Nivedita Sahakari bank Ltd v. ACIT (2003)87 lTD 569 2002 Indlaw ITAT 255 that the term 'co-op society' in sub-clause (v) to be interpreted as 'co-op society other than cooperative bank, the appellant is liable for TDS provisions under section 194A.

5.1.5 The appellant's argument that clause(v) to sec.194A(3) may be taken as applying to members and other clauses to the said section may be taken to apply to non members is without any basis in as much as clauses (i) and (viia) apply to both the members as well as non members. Where ever the legislature intends to apply a particular provision to member or to a non member, it has done so expressly.

51.6 Now coming to the circular No.9 of 2002 issued by the CBDT relied upon by the appellant, the Board vide said circular had sought to interpret the definition of word 'member' clarifying that the word 'member does not include word 'nominal member'. It was held by the Bombay High Court in the case of Jalgaon District Central Co-op Bank Ltd & nr v. Union of India 265 1W 423 (Born), that the Board has no power to interpret the provisions of law by way of circular. The issue at hand of the Bombay High Court was the

definition of the word 'member' as appearing in clause (v) of section 194(3) and the powers of the Central Board of Direct Taxes to issue circulars u/s 119 which would override or detract from the provisions of the Income tax Act, The circular No.9 of 2002 dated 11-09- 2002 issued by the CBDT has been quashed and set aside by the Hon'ble High Court.

Therefore the circular No.9 of 2002 dated 11-09-2002 issued by the DOPT does not help the case of the appellant. The appellant's reliance on the said circular found to be ill-founded.

9. The short question before us for adjudication, whether or not, the assessee co-operative bank engaged in the banking business is liable for TDS or not. We find that the assessee's case falls under the ambit of sub-clause (b) of clause (i) of sub-section(3) of section 194A and, hence, TDS provisions are attracted. As per the said provisions of sub-clause (b) of clause (i) of section 194A(3) of the Income tax Act, 1961, any co-operative society which is engaged in the business of banking shall have to deduct tax on interest paid or payable to any person on time deposits, if the amounts of said interest exceeds Rs.10,000/-. The status of the assessee is co-operative bank vis-a-vis other co-operative societies. This has become important due to the fact that the assessee had claimed to be an ordinary co- operative society within the meaning of clause (v) of Section 194A(3) of the Act. The co- operative society includes different types of co-operative society in different type of activities. Wherever, the reference is made to any co-operative society, the Income tax Act, 1961 has clearly distinguished and specified the type of co-operative society based on the type of activity carried out. Such a distinction was required as the legislation intends to extend different benefits to different types of co-operative societies through the Income tax Act. The assessee claimed the benefit of sections 36(1)(viia), 269 SS and 269T on the ground that it is a co-operative bank but for availing exemption from TDS under section 194A, it is claiming itself as an ordinary 'co-operative society' within the meaning of section 194A(3)(v) of the Act. We find that this distinguishes the co-operative society and the cooperative society carrying on business of banking. The Hon'ble Kerala High Court in the case of Moolamatom Electricity Board Employees Co-operative Bank Ltd., 238 ITR 630 1998 Indlaw KER 225 has distinguished this. We also rely upon the decision of Hon'ble Jurisdictional Karanataka High Court in the case of CIT vs. Yeshwanthpur Credit Co-operative Society Limited in Income Tax Appeal No.2372012, wherein, the Hon'ble High Court has interpreted the co-operative bank by observing as under:

Nature	Co-operative society registered under Banking Regulation Act, 1949	
Co-operative Society registered under Karnataka CO-operative Society Act, 1959		
Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act.	1. As per the bye laws of the cooperative society.

	2. Can open, savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc.	2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, payorders, gift cheques,lockers, bank guarantees etc.
	3. Co-operative Banks can act as clearing agent for cheques, DDs, pay -orders and other forms.	3. Society cannot act clearing agent, for cheques, DDs, pay orders and other forms.
	4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI)	4. Society are bound by rules and regulations as specified by in the co- operative societies act.
Filing of returns.	Co-operative banks. have to submit annual return to RBI every year	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and over all functioning of the Bank	Registrar has the power to inspect accounts and over all functioning of the bank. Part V of the Part V
Part V of the Banking Regulation Act is applicable to co-operative bank		
Part V of the Banking Regulation Act is not applicable to co-operative banks.		
Use of words	The word 'bank' 'banker', 'banking' can be used by a co-operative bank.	The word 'bank' 'banker', 'banking cannot be used by a co-operative society

10. We find also support from the decision of Hon'ble High Court, wherein, it has been held as under:

"If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary cooperative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e., carrying on the

business of banking for providing credit facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."

12. From the judgements of Hon'ble Jurisdictional Karnataka High Court in the case of Yeshwanthpur Credit Co-operative Society Limited (supra) and Hon'ble Kerala High Court in the case of Moolamatom Electricity Board Employees Co-operative Bank Ltd 1998 Indlaw KER 225 (supra), we are of the view that the co-operative society and co-operative society carrying on business of banking are on different footing. The AO has also referred the explanatory notes to Finance (No.2) Act, 1991 given in the circular No.621 dated 19.12.1991 which among others, provides that "with a view to improving tax compliance, Section 194A of the Act has been amended to secure deduction of tax at source from interest on time deposits with the aforesaid banking companies and co-operative societies engaged in carrying on the business of banking" . Since the assessee bank is covered by the provisions of said clause (b) of clause (i) of section 194A(3) as well as provisions of clause (a) of said section, which are specific in nature, we hold that the assessee is not entitled for benefit by arguing that section 194A(3) is specific in nature. We find that wherever there is specific provision, it override the general provision. For this proposition, we rely upon the decision of the Jurisdictional Karnataka High Court in the case of M.L.Vasudeva Murthy and Sons and others vs.Joint Commissioner of Agricultural Income tax, 198 ITR 426(KAR) 1991 Indlaw KAR 176. The Hon'ble Supreme Court in the case of South Indian Corpn. (P) Ltd. vs. Secretary, Board of Revenue AIR 1964 SC 207 1963 Indlaw SC 357 has held that "a special provision should be given to the extent of its scope leaving the general provision to control cases where the special provision does not apply" Therefore, we are of the view that in this case, assessee's case is covered by the provisions of clause (i) and (va) which are the general provisions of clause (v) of Section 194A(3) of the Act.

16. The Assessing Officer noticed that the assessee had credited gross dividend receipts of Rs. 60,12,920/- to the P & L account and claimed the said income as exempt from tax in the statement of computation of income. The assessee did not give any reason for claiming the dividend income of Rs. 60,12,920/-as exempt. As per the provision of Sec. 80P(4) were inserted w.e.f. 01.03.2007 i.e. from AY 2007-08, which state that the provisions of Sec. 80P shall not apply in relation to any cooperative bank. Thus as per the law, a Co-operative bank shall not get any deduction u/s 8OP. Before the AO, the Authorised Representative has contended that these dividends received from another Co-operative Society are exempt u/s 80P(2)(d). The AO was of the view that since the assessee is a Co-operative bank, in view of the overriding provisions of Sec.(4), deduction u/s 80P is not available to the assessee and for that reason it is not entitled to any deduction of dividend income from its gross total income u/s 80P(2)(d). The AO observed that the assessee had without any basis claimed the dividend income of Rs. 60,12,920/- was exempt from tax and, accordingly, he taxed the income of Rs. 60,12,920/- and added the same to the total income of the assessee. On appeal, ld CIT (A) confirmed the AO's action.

17. During the course of hearing, ld A.R. has not given any submission on this issue. Therefore, we are of the view that both the revenue authorities are justified in holding that provisions of section 80-P(4) is not applicable to co-operative bank. Therefore, the addition of Rs. 60,12,920/- is confirmed.

18. The revenue in its appeal is aggrieved by the decision of ld CIT(A) in deleting the addition of Rs.27,58,64,367/- on account of accrued interest on loans.

19. Facts are that the AO noticed that assessee bank was following hybrid system or mixed system of accounting to compute the net income from the banking business but the AO observed that the audit report in Form No.3CD at column No.11(a) highlights this point as "mercantile system". In view of this, the assessee was asked to clarify on the method of accounting. In reply thereto, assessee submitted that as per RBI guidelines, the assessee was not following the accrual system of accounting in respect of standard assets, bad and doubtful assets. However, the AO rejected the contention of the assessee and disallowed the addition of Rs.27,58,64,357/-. On appeal, ld CIT(A) following the judgement of Hon'ble Apex Court in the case of UCO Bank vs CIT,237 ITR 889(SC) 1999 Indlaw SC 107 deleted the disallowance made by the AO. Hence, this appeal by the revenue.

20. After hearing both the sides, we find that this issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Uco Bank 1999 Indlaw SC 107 (supra), wherein, the Hon'ble apex Court has held that interest accrued on sticky advances which was not brought in profit and loss account but taken to separate suspense account should be added as income only when actually received, which is in the case of the assessee. Therefore, respectfully following the decision of Hon'ble Supreme Court in the case of Uco Bank 1999 Indlaw SC 107 (supra), we uphold the order of ld CIT(A) in deleting the addition of Rs. Rs.27,58,64,357/-.

21. The cross objection of the assessee is in support of the order of ld CIT(A) in respect of deletion of Rs.27,58,64,357/- on account of accrued interest on loans. Since, we have uphold the order of ld CIT(A) on this issue, the cross objection is rendered infructuous.

22. In the result, appeal filed by the assessee and revenue are dismissed. The cross objection filed by the assessee is also dismissed.

Pronounced in the open court on 14/11/2014 - Appeals dismissed

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Andhra Pradesh Mahesh Coop. Urban Bank Limited, Hyderabad v D. C. I. T., Circle 2(3) Hyderabad, 2014 Indlaw ITAT 2229

Case No: ITA No. 1957/Bang/2018

Income Tax Appellate Tribunal, Hyderabad Bench

B Ramakotaiah (Accountant Member) & Asha Vijayaraghavan (Judicial Member)

Head Note :

KCS Act 1959 – Direct and Indirect Tax

The issue should go back the CIT (A) for fresh decision in the light of the discussion in the order and hence the CIT(A) was set aside for fresh decision – the assessee as to obtain and produce the certificate from the Reserve Bank India regarding the nature of business of assessee. If it is found that as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction under Sec.80P – appeal allowed – remanded

The Judgment was delivered by Arun Kumar Garodia (Accountant Member)

2. The grounds raised by the assessee as per concise grounds of appeal are as under.

"1. On the facts and circumstances of the case and in law, order of the learned Commissioner of Income Tax (Appeals), Gulbarga ('CIT-A') is prejudicial to the interests of the Appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. On the facts and circumstances of the case, the learned CIT-A, failed to consider the submissions dated 11.11.2014 filed by the Appellant before the Assessing Officer on 19.11.2014 and resorted to pass the impugned order, therefore, the order passed is without affording the Appellant a reasonable opportunity of being heard and thereby violated the principles of natural justice.

3. On the facts and circumstance of the case, the learned CIT-A had failed to appreciate that the Appellant is a Primary Agricultural Credit Society and was dealing only with its members by providing the credit facilities to them. Therefore, in the facts of the case, the decision of Hon'ble jurisdictional High Court passed in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO reported in [TS-5931-HC-2014 (Karnataka)-O] is applicable.

4. The learned CIT-A has erred in upholding the judgment relied upon by the learned AO which are distinguishable from the facts of the Appellant case on hand. Thus, it is respectfully submitted that the ratios of judgment of the Hon'ble Apex Court in the case of Totgars Cooperative Sale Society Limited v. ITO reported in [TS-5012-SC-2010-O] and The Citizens Cooperative Limited v. ACIT reported in [TS-5136-SC-2017-O] is not applicable to the facts of the present case on hand. Therefore, the impugned order is not legally not sustainable and liable to be set aside as void.

5. The learned CIT-A erred in holding that the interest earned on term deposits held with Bank is liable to be taxed under the act. Without appreciating the nature of the transaction of the Appellant and fact of the case, the order levying of tax by the authority is against the settled principles of law and is in gross violation of the following decisions of the Hon'ble Jurisdictional High Court and therefore, liable to be quashed:

a. Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO [TS-5931-HC-2014 (Karnataka)-O];

b. CIT v. Shree Mahila Credit Souharda Sahakari Limited [TS-5541-HC-2017(Karnataka)-O];

c. CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot [TS-393-HC-2014(Karnataka)-O];

d. PCIT and Another v. Totgars Co-operative Sale Society [TS-5548-HC-2017(Karnataka)-O]; and

e. Shree Siddeshwar Souhardhana Sahakari Niyamit v. ITO, Bagalkot [TS-5361-HC-2015(Karnataka)-O]

6. It is submitted that the Hon'ble Bangalore Bench of ITAT in the case of Basavaraj CEO, Primary Agriculture Credit Cooperative Society Ltd v. CIT reported in [TS-6073-ITAT-2017(Bangalore)-O] by relying on the judgment passed by the Hon'ble Apex Court in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT reported in [TS-5004-SC-1978-O] has held that the word "attributable to" is certainly wider in import than the expression "derived from". The Hon'ble Bench has further held that if a Cooperative Society earns interest by depositing the income earned from providing credit facilities to its members or the capital, if not immediately required for lending, the said interest income earned is liable to be deducted under Section 80P

of the Act. Similar view is upheld by the Hon'ble High Court of Andhra Pradesh in CIT v. Andhra Pradesh State Cooperative Bank Ltd reported in [TS-294-HC-2011(AP)-O].

7. The Hon'ble Cochin Bench of the ITAT in the case of ITO v. Edanad Kannur SCB Ltd. reported in [TS-5009-ITAT-2018(Cochin)- O] followed the decision of Hon'ble High Court of Kerala in Chirakkal Service Co-operative Bank Limited reported in TS-5269-HC-2016(Kerala)-O and distinguished the decision of Hon'ble Apex Court passed in the case of Citizen Cooperative Society Ltd reported in [TS-5136-SC-2017-O] and observed that section 3 of the Banking Regulation Act, 1949 shall not apply to Primary Agricultural Societies and rejected the Revenue's contention of relying on the ratio laid down by the Hon'ble Apex Court in Citizens case.

8. In this connection reference may also be made to the decision of the Hon'ble Bangalore Bench of ITAT in the case of Primary Agricultural Credit Coop. Bank Ltd v. ITO reported in [TS-5782-ITAT-2018(Bangalore)-O] has categorically held that the Hon'ble jurisdictional High Court in its recent judgment passed in the case of PCIT and Another v. Totgars Co-operative Sale Society as reported in [TS-5548-HC-2017(Karnataka)-O] has distinguished the facts as held in the Totgars recent judgment. Therefore, the judgment is not applicable in the present case as there are dissimilarities in the facts of the case. Thus, the present impugned order suffers from factual and legal infirmities and therefore, it is liable to quashed.

3. Brief facts are that as per para no. 7 of the order of CIT(A), the revenue has decided the issue against the assessee following the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO as reported in 322 ITR 283(SC). In the same Para of his order on page no. 11, he has also referred to another judgement of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society as reported in TS-326-SC-2017 dated 16.08.2017 and thereafter, in Para 7.1 of his order, ld. CIT(A) has given finding that considering these two judgements of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and Citizen Co-operative Society (supra), the assessee is not eligible for deduction u/s. 80P(2)(d) of IT Act. The ld. AR of assessee submitted that in the present case, another judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vvs ITO as reported in 230 Taxman 309 is applicable. Regarding this aspect that whether the assessee is a co-operative bank or not, he submitted that as per para 24 of this judgement of Hon'ble Apex Court in the case of Citizen Co-operative Society (supra), it was held that in order to hold that the assessee society is a co-operative bank, it should be established that such assessee co-operative society is holding license from Reserve Bank of India. At this juncture, it was pointed out by the bench that in the same para of this judgement of Hon'ble Apex Court, it is also noted that in that case, the assessee does not possess license from RBI and the RBI has itself clarified that the business of the assessee does not amount to that of a co-operative bank. It was pointed out that in the facts of present case also, the assessee should obtain certificate from RBI regarding the nature of business carried on by the assessee. It was also observed by the bench that before following the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it has to be ascertained as to whether facts of the present case are in line with the facts in that case or the facts of the present case are in line with the facts in

the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) as per the judgement of Hon'ble Apex Court rendered in that case. In reply, it was submitted by ld. AR of assessee that the matter may be restored back to the file of CIT (A) for fresh decision and if this is done then the assessee will produce the certificate from RBI regarding the nature of business activity of the assessee and also submit the facts before CIT (A) to establish that the facts of present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). The ld. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. In my considered opinion, this issue should go back to the file of CIT (A) for fresh decision in the light of above discussion and hence, I set aside the order of CIT (A) and restore the matter back to his file for fresh decision with the direction that on this issue whether the assessee is a co-operative bank or not, the assessee has to obtain and produce the certificate from Reserve Bank of India regarding the nature of business of the assessee. If it is found that as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction u/s. 80P. If the assessee is not a co-operative bank as per this certificate of RBI then regarding the claim of the assessee for deduction u/s. 80P(2)(d), the facts of present case should be examined in the light of these two judgements of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and if it is found that the facts of the present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), then the issue should be decided in favour of the assessee and if the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra), then the issue should be decided against the assessee. Needless to say, ld. CIT(A) should pass necessary order as per law as per above discussion after providing adequate opportunity of being heard to both sides. In view of this decision, no separate adjudication on any other ground is called for.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Appeal allowed

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Bagalkot District State Government Employees Co-operative Credit Society Limited, Sector No.21, Navanagar, Bagalkot v Income Tax Officer, Ward 1, Bagalkot, 2014 Indlaw ITAT 1980; [2014] 36 ITR (Trib) 248

Case No: ITA No. 1355/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench "C"

N. V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act,1961, ss.80P(4),80P(2)(a)(i),(ii) - Claim of deduction - Entitlement - Assessee-co-operative society was engaged in providing credit facility to its members and it had claimed deduction u/s.80P(2)(a)(i) of the Act - Whether assessee is entitled to claim deduction u/s.80P(2)(a)(i) of the Act.

Sec.80P(4) of the Act is applicable only to cooperative banks and not to credit cooperative societies. Intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of s.80P(4) of the Act will not have application in the assessee's case. Therefore, assessee is entitled to deduction u/s.80P(2)(a)(i) of the Act. Appeal allowed.

Ratio - When assessee is lawfully entitled to claim deduction, then no authority is justified in denying same.

The Judgment was delivered by N. V. Vasudevan (Judicial Member)

2. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2006, Sub-s. (4) was inserted in Sec.80-P which provides as follows:

"(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation : For the purposes of this sub-section,-

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

7. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act.

9.3 If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for."

8. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. by judgment dated 15.1.2014 had to deal with the following question of law:-

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "cooperative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-s. (4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

9. Our attention was invited to a recent judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot in ITA No.5006/2013 dated 5.2.2014, wherein the Hon'ble jurisdictional High Court took the view that when the status of the assessee is a co-operative society and not a co-operative bank, the order passed by the AO extending the benefit of

exemption from payment of tax 80P(2)(a)(i) of the Act is correct and such an order is not erroneous and therefore, jurisdiction u/s. 263 of the Act cannot be invoked.

10. In view of the aforesaid decisions, we set aside the order of the CIT(Appeals) and hold that the assessee is a co-operative society entitled to claim deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

11. In the result, the appeal by the assessee is allowed.

Appeal allowed

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Belgaum Merchants Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 63

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

Karnataka Co-operative Societies Act, 1959 - Income Tax & Direct Taxes - ss. 80P(2)(a)(i), 80P(4) - - Co-operative society - Taxable Income - Determination - Assessee was co-operative society registered 1959 Act and had filed return, AO did not allow deduction to assessee u/s. 80P(2)(a)(i) of 2006 Act and income was assessed - Whether order passed by appellant authority was justified and in accordance with law –

The paid up share capital and reserves of assessee was more than Rs. 1 lac - Further, HC noted that bye law 13 to 20 dealt with membership and None of bye laws permitted admission of any other cooperative society to be member of impugned society - Hence, all three conditions in case of assessee for becoming primary cooperative bank stood complied with - Appeal dismissed.

The Judgment was delivered by : P. K. Bansal (Accountant Member)

2. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.11,22,267/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be “nil?. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.11,47,260/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

From the plain reading of Sec. 80P(2)(a)(i) it is apparent that if the co-operative society is engaged in carrying of business of banking or providing credit facilities to its members, the co-operative society is entitled for deduction on whole of the income relating to any one or more of such business. From the reading of Sec. 80P(4) it is apparent that this section denies deduction to a co- operative bank other than a primary agricultural credit society or primary co- operative agricultural and rural development bank. The provisions of Sec. 80P(4)

was introduced in the statute by the Finance Act, 2006 w.e.f. 1.4.2007. The explanation to the section defines the co-operative bank and primary agricultural credit society to have the same meaning as assigned to them in Part- V of the Banking Regulation Act, 1949. It is not the case of either of the parties that the Assessee is a primary co-operative agricultural and rural development bank. It is also not the claim of the Assessee that Assessee is a primary agricultural credit society. If we read both the sections, Sec. 80P(2)(a)(i) and Sec. 80P(4) together, we find that the provisions of Sec. 80P(4) mandates that the provisions of Sec. 80P will not apply to any co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank but as per the provisions of Sec. 80P(2)(a)(i), a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled for deduction. After the insertion of Sec. 80P(4), the provisions of Sec. 80P(2)(a)(i) were not amended, rather the co- operative society engaged in carrying on business of banking facilities to its members continued to be entitled for deduction u/s 80P(2)(a)(i). This pre- supposes that every co-operative society engaged in carrying on business of banking cannot be regarded to be a co-operative bank. The embargo put u/s 80P(4) are applicable only to a co-operative bank. In our opinion, it cannot be said that a co-operative society cannot carry on business of banking facilities to its members even if it is not a co-operative bank. If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2)(a)(i) will become redundant. Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

2.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which

relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

The relevant portion of the remand report reads as under :

"Thus, it is clear that the assessee society accepts deposits from other members i.e. non-members."

The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who were not members. So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

(2) No co-operative society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this [Act, rules and bye-laws]"

The aforesaid provision of Sec. 16 mandates admission of any other co- operative society as a member of the co-operative society. The word used in Sec. 16(1) is "shall?. This fact is clarified further by sub-s. (2) as re- produced hereinabove that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and bye-laws. This clearly proves that in case the rules and bye-laws of the other co-operative society provides otherwise, the co-operative society may not be admitted as a member of the co-operative society. The person, as per sub-section (2), must be qualified for becoming member not only u/s 16(1) but also as per the rules and bye-laws of the co-operative society. We cannot read sub-s. (2) in the manner that the rules and bye-laws cannot permit the admission of any other co- operative society as a member of the co-operative society. Had that been the intention of the legislature, they would have not used the words "this Act, rules and bye-laws" in sub-s. (2).

2.3.8 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed

the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term "credit co- operative society? u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors.1990 Indlaw KAR 166 (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in s. 5(b) of the Banking Regulation Act, 1949."

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money "from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. Accordingly, in

our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."

2.3.9 The other decisions as relied on by Ld. AR are also not applicable on the facts of the case before us.

3. In the result, the appeal filed by the Assessee is dismissed.

Appeal dismissed

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Brahmanath Co-operative Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3377; [2015] 152 ITD 615

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act,1961, s.80P(2)(a)(i), 80P(4) - Determination of status - Denial of deduction - Whether Assessee is co-operative bank and denial of deduction u/s.80P(2)(a)(i) of the Act is valid.

Assessee has to be regarded to be primary co-operative bank as all three basic conditions are complied with, it is co-operative bank and provisions of s.80P(4) of the Act are applicable in the case of Assessee and thus, assessee is not entitled for deduction u/s.80P(2)(a)(i). Appeal dismissed.

Ratio - Deduction u/s.80P(2)(a)(i) of the Act is allowable to co-operative society which is engaged in carrying on banking business facilities to its members but not co-operative bank.

The Judgment was delivered by P. K. Bansal (Accountant Member)

2. The brief facts of the case for the assessment year 2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co- operative Societies Act. The Assessee filed return declaring gross total income of Rs.10,70,982/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be "nil". The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.10,70,982/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee but did not allow deduction u/s 80P (2) (a) (i).

2.3.1. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- clause (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of

business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

2.3.8. We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-section (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to credit co-operative society a and not to co-operative bank. With due regards to the Bench, we are unable to find any term 'credit co- operative society' u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. 2014 Indlaw GUJ 639 in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are

to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in section 5(b) of the Banking Regulation Act, 1949."

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money 'from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."

We have also gone through the decision of ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi). Section 80P(4) clearly excludes primary agriculture credit society from its domain. Therefore this decision will not assist the assessee. We have also gone through the decision of Pune Bench in the case of ITO vs Jankalyan Nagri Sahakari Pad Sanstha Ltd, 24 Taxman.com 127 Pune. This we have already stated that section 80P(2)(a)(i) no where talks of co-operative credit society and therefore the distinction made under the Banking Regulation Act cannot be imported u/s 80P(2)(a)(i). This decision in our opinion will not assist the assessee.

2.3.9. We, therefore, in view of our aforesaid discussion hold that the Assessee has to be regarded to be a primary co-operative bank as all the three basic conditions are complied with, therefore, it is a co-operative bank and the provisions of Sec. 80P(4) are applicable in the case of the Assessee and Assessee is not entitled for deduction u/s 80P(2)(a)(i). We, therefore, confirm the order of the CIT(A) not allowing deduction u/s 80P(2)(a)(i) to the assessee.

4. In the result, the appeal filed by the Assessee is dismissed.

Appeal dismissed

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Chandraprabhu Urban Co-operative Credit Society Limited, Nipani v Income Tax Officer, Nipani, 2014 Indlaw ITAT 3375; [2015] 152 ITD 477

Case No: ITA No. 142 & 143/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income Tax Act,1961, s.80P(4) - Deduction - Entitlement for - Applicability of provision - Whether assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act and is hit by provisions of s.80P(4) of the Act which was introduced in statute by Finance Act, 2006 and assessee is co-operative bank.

Assessee will not fall within provisions of s.80P(4) of the Act assessee will be eligible to get deduction u/s 80P(2)(a)(i) of the Act in respect of whole of income which assessee derives from carrying on the business of banking or providing credit facilities to its members. S.80P(2)(a)(i), of the Act are applicable to co-operative society which is engaged in carrying on banking business facilities to its members if it is not co-operative bank. Thus, assessee is primary cooperative bank and hit by provisions of s.80P(4) of the Act. Appeals dismissed.

Ratio - Provisions of s.80P(2)(a)(i) of the Act, are applicable to co-operative society which is engaged in carrying on banking business facilities to its members if it is not co-operative bank.

The Judgment was delivered by : P. K. Bansal (Accountant Member)

3. The brief facts of the case for A.Y.2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.30,94,493/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be 'nil'. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.30,94,500/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

3.1. The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to promote the economic interest of its members and to encourage thrift, savings, co-operation and self help among themselves. For this, our attention was drawn towards the order of the CIT(A) which re- produces the bye-laws of the Assessee from (i) to (vii). The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in

favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. 2014 Indlaw GUJ 639 in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co-operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012.

3.2. The ld. DR, on the other hand vehemently contended that the Assessee is a co-operative bank. In view of the definition of the co-operative bank given under explanation to Sec. 80P(4) the Assessee is engaged in the business of banking. Sec. 80P(4) puts an embargo w.e.f. 1.4.2007 that if a co-operative society is carrying on banking business, the Assessee will not be entitled for the exemption. Reliance was placed on the decision of Hyderabad Bench of the Tribunal in the case of The Citizen Co-operative Society vs. Addl. CIT in ITA Nos. 1003/Hyd/2011 & 1004/Hyd/2011 dt. 2.7.2012.

3.3.1. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- clause (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

The relevant portion of the remand report reads as under :

"The society accepts deposits from Debtors who are regular members having "A" class members having

voting rights and also depositors who are nominal members who are not voting rights. We also accept deposits from general public who are Non-members of the society."

The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who were not members. So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money 'from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."

The other decisions also relied on are not applicable to the facts of the case of the assessee.

3.3.9. In view of our aforesaid discussion, we hold that the assessee is a primary cooperative bank and therefore hit by the provisions of section 80P(4).

4. In the result, both the appeals filed by the Assessee are dismissed.

Appeals dismissed

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Commissioner of Income Tax v Sree Seetharama Mandiram Souharda Sahakari Limited, Bangalore,2014 Indlaw ITAT 2909

Case No: ITA No. 1210/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

Rajpal Yadav (Judicial Member), Jason P. Boaz (Accountant Member)

Head Note

Karnataka Sourhardha Co-operative Act 1997 - Income Tax & Direct Taxes - Income-tax Act, 1961, ss. 80P(2)(a)(i), 80P(2)(d) –

Intention of legislature of bringing in cooperative banks into taxation structure was mainly to bring in par with commercial banks. Since assessee is cooperative society and not cooperative bank, s. 80P (4) of 1961 Act will not have application in assessee's case and it is entitled to deduction u/s. 80P (2) (a)(i) of 1961 Act. Tribunal is of opinion that CIT (A) is correct and in accordance with law. Tribunal did not find any merit in appeal. Appeal dismissed.

Ratio - It is well determined law that when assessee providing credit facilities carried on by co- opera-tive society with its member then said credit facilities is liable to be deducted under 1961 Act.

The Judgment was delivered by Rajpal Yadav (Judicial Member)

2. The brief facts of the case are that the assessee is a primary agricultural society. It has filed its return of income on 31.10.2007 declaring total income of Rs.68,590/- after claiming deduction of Rs.20,06,454/- u/s 80P(2)(a)(i) and 80P(2)(d) of the Act. According to the Assessing Officer, the assessee has earned interest income from various loans namely gold loan, over draft account, staff loan etc., He contended that the activity of the assessee is of a cooperative bank and therefore, it is not entitled for deduction u/s 80P(2)(a)(i). On the other hand, stand of the assessee is that it is a cooperative society providing credit facilities to its members. The Assessing Officer did not accept this contention of the assessee and held that it is a cooperative bank and therefore, not entitled for the deduction.

4. With the assistance of the learned representatives, we have gone through the record carefully. The dispute is, whether the assessee is a cooperative bank which will disentitle from claiming deduction u/s 80P(2)(a)(i) or it is a cooperative credit society extending benefit to its members only?. According to the Assessing Officer, cooperative society even if extending benefit of credit facility to its members would fall within the ambit of cooperative bank and they are not entitled for deduction u/s 80P. Assessing Officer has nowhere brought any evidence on the record to indicate that the assessee is engaged in banking activity. He merely classified the interest income earned by the assessee but, whether this income was earned from non members, he has nowhere shown. Apart from the, nature of interest income, he has not brought any other material. On the other hand, the assessee has pointed out that it has not availed any bank license from the RBI and it is not issuing cheque book etc. to non members.

6. At the time of hearing, it was brought to our notice by the parties that the issue raised by the Assessee has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. The following were the relevant observations of the Tribunal:-

"9. We have heard the rival submissions and perused the material on record. The assessee was denied the deduction u/s 80-P(2)(a)(i) of the Act for the reason of introduction of sub section 4 to section 80P. Section 80P(4) reads as follows:-

"(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank.

Explanation: For the purposes of this sub-section,

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary cooperative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities".

9.1 The above sub-section 4 of section 80P provides that deduction under the said section shall not be available to any cooperative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub section, cooperative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949. In Part V of the Banking Regulation Act, "cooperative bank" means a State Cooperative Bank, a Central Cooperative Bank and a Primate Cooperative Bank.

9.3 If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for."

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development

bank. As per the explanation, the terms "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of subsection(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007.

8. In view of the aforesaid decisions of the Hon'ble Gujarat High Court in the case of Jafari Momin Vikas Co-op Credit Society Ltd. 2014 Indlaw GUJ 639 (supra) and of the co=ordinate bench of this Tribunal in Bangalore Transport Credit Co-operative Society Ltd. (supra), we are of the view that there is merit in this appeal by the Assessee. Consequently, the same is allowed.

9. In the result, the assessee's appeal is allowed.

Pronounced in the open court on this 21st day of February, 2014".

In view of the above discussion, we do not find any merit in the appeal. The learned CIT (A) has appreciated the controversy in right perspective. Hence, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 19th November, 2014.

Appeal dismissed

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Gomatesh Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 45

Case No: ITA No. 250/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

Karnataka Co-operative Societies Act, 1959 - Income Tax & Direct Taxes - Finance Act, 2006, ss.80P(2)(a)(i), 80P(4) -, s.17 - Co-operative society - Taxable Income - Determination - Assessee was co-operative society registered under 1959 Act –

It could not held that Assessee society was not carrying on banking business - Further, paid up share capital and reserves of assessee was more than Rs. 1 lac - HC held that assessee did not file copy of its bye-laws before HC; neither were provisions of s. 17 of 1959 Act, hence, in interest of justice and fair play to both parties HC restored issue to file of AO with direction that AO would look into rules and bye-laws of Assessee co-operative society and in case AO found that bye-laws did not permit admission of any other co-operative society, it be treated that Assessee complied with all three conditions for becoming primary co-operative bank and in case of contrary finding, assessee would not be treated as co-operative bank and provisions of s. 80P(4) of 2006 Act would not apply to assessee and assessee would be entitled in that case for deduction as stipulated u/s 80P(1) read with s. 80P(2)(a)(i) of 2006 Act - Appeal disposed of.

The Judgment was delivered by P. K. Bansal (Accountant Member)

2. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.8,80,128/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown at „nil?. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.8,80,130/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

2.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to encourage the members of the organization to be economic and to follow the principles of cooperation while making savings. For this, our attention was drawn towards the order of the CIT(A) which re-produces the bye-laws of the Assessee from 1 to 17. The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin

Vikas Co-op. Credit Society Ltd. in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co- operative society governed by the Co-operative Societies Act nor can they be treated as banking companies.

The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012.

2.2 The ld. DR, on the other hand vehemently contended that the Assessee is a co-operative bank. In view of the definition of the co-operative bank given under explanation to Sec. 80P(4) the Assessee is engaged in the business of banking. Sec. 80P(4) puts an embargo w.e.f. 1.4.2007 that if a co-operative society is carrying on banking business, the Assessee will not be entitled for the exemption. Reliance was placed on the decision of Hyderabad Bench of the Tribunal in the case of The Citizen Co-operative Society vs. Addl. CIT 2008 Indlaw ITAT 276 in ITA Nos. 1003/Hyd/2011 & 1004/Hyd/2011 dt. 2.7.2012.

Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

2.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible

for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

2.3.7 The Assessee did not file copy of its bye-laws before us; neither are the provisions of Sec. 17 of The Karnataka State Co-operative Societies Act, 1959. Therefore, in the interest of justice and fair play to both the parties we restore this issue to the file of the AO with the direction that the AO shall look into the rules and bye-laws of the Assessee co-operative society and in case the AO finds that the bye-laws did not permit admission of any other co-operative society, it be treated that the Assessee complies with all the three conditions for becoming a primary co-operative bank. In case the bye-laws permit for the admission of any other co-operative society as a member, the Assessee will not be treated as a co-operative bank and the provisions of Sec. 80P(4) will not apply to the Assessee. The Assessee will be entitled in that case, in our opinion, for the deduction as stipulated u/s 80P(1) r.w.s. 80P(2)(a)(i).

2.3.8 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra).

We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term „credit co- operative society? u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para

12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in s. 5(b) of the Banking Regulation Act, 1949."

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money „from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."

2.3.9 We, therefore, in view of our aforesaid discussion set aside the order of the CIT(A) and restore the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i) to the file of the AO for ascertaining from the copy of the rules and bye-laws of the co-operative society whether the bye-laws of the Assessee permit admission of any other co-operative society. In case the AO finds that the bye-laws permit admission of any other co-operative society, the Assessee be allowed deduction u/s 80P(2)(a)(i). In case the AO finds that the bye-laws do not permit the admission of any other co-operative society, in our opinion, the Assessee will be regarded as a primary co-operative bank and will not be entitled for deduction u/s 80P(2)(a)(i).

3. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Appeal allowed

Hukkeri Taluka Primary Teachers Credit Co-operative Society Limited, Hukkeri v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3343; [2015] 153 ITD 615

Case No: ITA Nos. 165 & 166/PNJ/2014

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income-tax Act, 1961, ss. 43B, 80P (2) (a) (i), 80P (4) - Co-operative society - Banking business - On appeal, CIT(A) upheld order of AO and dismissed appeal of assessee - Hence instant appeals.

If co-operative society complied with three conditions, firstly that primary object or principle business transacted by it is banking business, secondly, paid up share capital and reserve of which are 1 lakh or more. Thirdly, by laws of co-operative society do not permit admission of any other co-operative society as member it will be regarded to be primary co-operative bank. Assessee has not to be regarded to be primary co-operative bank as all three basic conditions are not complied with, it is not co-operative bank and provisions of s. 80P(4) of Act are not applicable to assessee and he is entitled for deduction u/s. 80P(2)(a)(i) of Act. Tribunal sets aside order of CIT(A) not allowing deduction u/s. 80P(2)(a)(i) of Act to assessee and direct AO to allow deduction to assessee u/s. 80P(2)(a)(i) of Act in both assessment years on income as is generated by carrying on activities of cash/credit and banking business relating to its members. In result, both appeals filed by assessee are allowed. Appeals disposed of.

Ratio - U/s. 80P (2) (a) (i) of Act, co-operative society engaged in carrying on business of banking or providing credit facilities to its members is entitled for deduction.

The Judgment was delivered by P. K. Bansal (Accountant Member)

3. The brief facts of the case for the assessment year 2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.23,26,313/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be "nil". The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and also made disallowance u/s 43B for audit fees and the income was assessed at Rs.24,16,580/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec.80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-

operative society governed by the Co- operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012. Reliance was also placed on the decision of Panaji Bench in ITA No. 229 & 230/PNJ/2013 in the case of Tararani Mahila Co-operative Credit Society, vs ITO. Reliance was also placed in ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi), ITO vs Jankalyan Nagri Sahakari Pat Sanstha Ltd, 24 Taxman.com 127 (Pune). Reliance was also placed on the decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha 2014 Indlaw KAR 2105 dated 5.2.2014, which relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank.

7. From the plain reading of Sec. 80P(2)(a)(i) it is apparent that if the co-operative society is engaged in carrying of business of banking or providing credit facilities to its members, the co-operative society is entitled for deduction on whole of the income relating to any one or more of such business. From the reading of Sec. 80P(4) it is apparent that this section denies deduction to a co- operative bank other than a primary agricultural credit society or primary co- operative agricultural and rural development bank. The provisions of Sec. 80P(4) was introduced in the statute by the Finance Act, 2006 w.e.f. 1.4.2007. The explanation to the section defines the co-operative bank and primary agricultural credit society to have the same meaning as assigned to them in Part-V of the Banking Regulation Act, 1949. It is not the case of either of the parties that the Assessee is a primary co-operative agricultural and rural development bank. It is also not the claim of the Assessee that Assessee is a primary agricultural credit society. If we read both the sections, Sec. 80P(2)(a)(i) and Sec. 80P(4) together, we find that the provisions of Sec. 80P(4) mandates that the provisions of Sec. 80P will not apply to any co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank but as per the provisions of Sec. 80P(2)(a)(i), a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled for deduction. After the insertion of Sec. 80P(4), the provisions of Sec. 80P(2)(a)(i) were not amended, rather the co- operative society engaged in carrying on business of banking facilities to its members continued to be entitled for deduction u/s 80P(2)(a)(i).

This pre- supposes that every co-operative society engaged in carrying on business of banking cannot be regarded to be a co-operative bank. The embargo put u/s 80P(4) are applicable only to a co-operative bank. In our opinion, it cannot be said that a co-operative society cannot carry on business of banking facilities to its members even if it is not a co-operative bank. If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2)(a)(i)will become redundant. Therefore, in our opinion, before deciding

the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members. This section nowhere states co-operative credit society except mentioned under proviso 2 to section 80P which is relevant for sub-clause 6 or 7. It has nothing to do with section 80P(2)(a)(i).

If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

15. The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has been denied by the assessee or by his counsel in the submission made before us. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no.1 does not stand satisfied and it can be said that the Assessee society was not carrying on banking business.

16. The authorised representative took the plea that the assessee has not obtained banking licence. In our opinion it is not necessary that the co- operative society should have a banking licence as per the definition under the Income Tax Act for carrying on banking business. If licence is not obtained it may be an illegal banking business under the other statute. What we have to see whether the nature of the business carrying on by the assessee is a banking business or not. The Income Tax in our opinion is not concerned whether the banking business carried on by the assessee is legal or illegal. The income has to be assessed u/s 14 of the Income Tax Act under the same head even if the nature of the business is illegal. If we look into the bye-laws which consists of fund of the society, we noted that the types of the deposits which the assessee has accepted as per bye-laws are the same as are being accepted during the course of the carrying out the banking activities.

We have also gone through the decision of ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi). Section 80P(4) clearly excludes primary agriculture credit society from its domain. Therefore this decision will not assist the assessee. We have also gone through the decision of Pune Bench in the case of ITO vs Jankalyan Nagri Sahakari Pad Sanstha Ltd, 24 Taxman.com 127 Pune. This we have already stated that section 80P(2)(a)(i) nowhere talks of co-operative credit society and therefore the distinction made under the Banking Regulation Act cannot be imported u/s 80P(2)(a)(i). This decision in our

opinion will not assist the assessee. We have also gone through the decision of Tararani Mahila Co-operative Credit Society Ltd to which the undersigned is the author similar finding as has been given in this are given in that case also. The decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha 2014 Indlaw KAR 2105 dated 5.2.2014, relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank. Therefore, this decision is not applicable.

21. We, therefore, in view of our aforesaid discussion hold that the Assessee has not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is not a co-operative bank and the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee is entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order of the CIT(A) not allowing deduction u/s 80P(2)(a)(i) to the assesse and direct the assessing officer to allow deduction to the assesse u/s 80P(2)(a)(i) in both the assessment years on the income as is generated by carrying on the activities of cash / credit and banking business relating to its members. Thus the ground no. 1 to 3 in both the years are allowed.

22. Ground No. 4 relates to the disallowance u/s 43B in respect of the audit fees. After hearing the rival submission we are of the view that the provision of section 44B are not applicable to the audit fees we accordingly delete the disallowance by allowing ground no. 4 in assessment year 2009-10.

23. In the result, both the appeals filed by the assessee is allowed.

24. Order pronounced in the open court on 08.08.2014.

Appeals allowed

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Hungund Taluka Teachers Co-operative Credit Society Limited, Hungund v Income Tax Officer, Bagalkot, 2014 Indlaw ITAT 3142

Case No: I. T. A. Nos. 1288 to 1290/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income-tax Act, 1961, ss. 80P, 80P(2)(i), 80P(2)(a)(i) - Finance Act, 2006 Credit facilities - Deductions - Additions - Appellant/Assessee was co-operative society engaged in providing credit facility to its members - Assessee filed his return for relevant assessment year and claimed for deduction u/s. 80P(2)(a)(i) of 1961 Act - AO passed order as per amendment made under 2006 Act in which assessee was co-operative society carrying on banking business was not entitled to deduction u/s.80P(2)(i) of 1961 Act - On appeal CIT(A) confirmed same order passed by AO - Ag-grieved assessee preferred appeals

and challenged order passed by CIT (A) - Hence instant appeals.

When was co-operative banks other than those mentioned therein were meant to be excluded for purpose of deduction u/s. 80Pof 1961 Act, question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. It can be gathered that s. 80P (4) of 1961 Act will not apply to assessee which is not co-operative bank. In case clarified by CBDT circular clarified that said entity not being a cooperative bank, s. 80P (4) of 1961 Act would not apply to it. Assessee is admittedly not credit co-operative bank but credit co- operative society so s. 80P (4) of 1961 Act would not apply. Tribunal set aside order of CIT (A) and hold that assessee is co-operative society entitled to clam deduction u/s. 80P(2)(a)(i) of 1961 Act. Appeals disposed of.

Ratio - It is well settled law that when status of assessee is co-operative society then assessee is entitled for benefit of exemption from payment of tax u/s.80P (2) (a) (i) of 1961 Act.

The Order of the Court was as follows:

2. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2) (a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2006, Sub-section (4) was inserted in Sec.80-P which provides as follows:

7. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act.

9.3 If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for."

8. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013

with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd 2014 Indlaw GUJ 639. by judgment dated 15.1.2014 had to deal with the following question of law:-

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "co- operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of subsection(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction.

7. It can be gathered that sub- section(4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co- operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co- operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

9. In a recent judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot 2014 Indlaw KAR 2105 in ITA No.5006/2013 dated 5.2.2014, the Hon'ble jurisdictional High Court took the view that when the status of the assessee is a co-operative society and not a co-operative bank, the order passed by the AO extending the benefit of exemption from payment of tax 80P(2)(a)(i) of the Act is correct and such an order is not erroneous and therefore, jurisdiction u/s. 263 of the Act cannot be invoked.

10. In view of the aforesaid decisions, we set aside the order of the CIT(Appeals) and hold that the assessee is

a co-operative society entitled to clam deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

11. In the result, the appeals by the assessee are allowed.

Pronounced in the open court on this 12th day of September, 2014.

Appeals allowed

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Jamkhandi Taluka School Teachers Co-operative Society Limited, Bagalkot v Income Tax Officer, Bijapur, 2014 Indlaw ITAT 2784

Case No: ITA No.98/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

N. V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note :

The intension of the legislature of bringing in co-operative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee a co-operative society and not a co-operative bank, provisions of sec.80P(4) will not have application in assessees case and therefore, it is entitled to deduction under sec.80P(2)(a)(i) of the act – appeal allowed.

The Judgment was delivered by N. V. Vasudevan (Judicial Member)

2. None appeared on behalf of the assessee at the time of hearing. However, we proceed to dispose of the case on merits considering the material on record and after hearing the ld. DR.

3. There is a delay of 65 days in filing the appeal by the assessee. Application for condonation of delay along with affidavit has been filed by the assessee. In the affidavit, the Hon. Secretary of the assessee, one Shri Nagappa, has explained the reasons for the delay. It has been stated therein that the Hon. Secretary was looking after all the income tax affairs of the assessee society. The impugned order of the CIT(Appeals) was received by the assessee on 17.9.2013 and the appeal ought to have been filed on or before 18.11.2013. It appears that on 11.11.13, Shri Nagappa planned to visit the tax consultant, Shri Ashok Mudnur at Belgaum to file appeal before the ITAT, Bangalore. However, on 10.11.2013, he was unwell and was advised by Doctor not to travel. On 22.11.13, he was hospitalized and operated on 30.12.13 for heart problems. Copy of the discharge summary of KLES Heart Foundation, Belgaum has also been filed in support of the averments in the affidavit. Thus, reasons for the delay have been explained to be due to ill-health of the Hon. Secretary of the assessee.

4. On perusal of the reasons given in the affidavit in support of the application for condonation of delay in filing the appeal, we are satisfied that delay in fling the appeal was occasioned due to a reasonable cause. Accordingly, delay in filing the appeal is condoned.

5. The only issue involved in this appeal by the assessee is denial of deduction u/s. 80P(2)(a)(i) of the Income-tax Act, 1961 [hereinafter referred to as "the Act" in short"] by the revenue authorities.

6. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2006, Sub-section (4) was inserted in Sec.80-P which provides as follows:

"(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation : For the purposes of this sub-section,-

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

11. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act.

12. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. 2014 Indlaw GUJ 639 by judgment dated 15.1.2014 had to deal with the following question of law:-

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "co- operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of subsection(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007.

13. Our attention was invited to a recent judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot 2014 Indlaw KAR 2105 in ITA No.5006/2013 dated 5.2.2014, wherein the Hon'ble jurisdictional High Court took the view that when the status of the assessee is a co-operative society and not a co-operative bank, the order passed by the AO extending the benefit of exemption from payment of tax 80P(2)(a)(i) of the Act is correct and such an order is not erroneous and therefore, jurisdiction u/s. 263 of the Act cannot be invoked.

14. In view of the aforesaid decisions, we hold that the assessee society is entitled to deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

15. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 14th day of November, 2014.

Appeal allowed

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Jyoti Cooperative Credit Society Limited, Bagalkot v Income Tax Officer, Ward 1, Bagalkot,2014 Indlaw ITAT 2357

Case No: I. T. A. No. 1269/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

Rajpal Yadav (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act,1961, s.80P - Deduction - Entitlement to – Assessee being a cooperative society - claiming deducting of entire income u/s 80P(2)(a)(i) of the Act - Claim of assessee for deduction was rejected by Assessing Officer(AO) - CIT(A) confirmed denial of deduction -

Hence, instant Appeal - Whether CIT(A) was justified in holding that assessee is cooperative bank and as per s.80P(4) of the Act, it is not entitled for deduction u/s 80P(2)(a)(i) of the Act.

Intention of legislature of bringing in cooperative banks into taxation structure was mainly to bring in par with commercial banks. Since assessee is cooperative society and not cooperative bank, provisions of s.80P(4) of the Act will not have application in assessee's case and it is entitled to deduction u/s.80P(2)(a)(i) of the Act. Hence, AP is directed to grant deduction u/s.80P(2)(a)(i) of the Act. Appeal allowed.

Ratio - Benefit of provision of the law shall be granted in accordance with intention of legislature in granting such benefit.

The Order of the Court was as follows:

2. The brief facts of the case are that the assessee is a cooperative society. It has filed its return of income for assessment year 2008-09 on 30.09.2008 declaring nil income after claiming deducting of entire income of Rs.18,38,548/- u/s 80P(2)(a)(i) of the I.T. Act, 1961. According to the assessee, it is a cooperative society carrying on the business of banking for providing credit facilities to its members. Therefore, it claimed its income as exempt u/s 80P(2)(a)(i). However, the claim of the assessee for deduction was rejected by the Assessing Officer, on the ground that the assessee is a cooperative bank and hence not entitled to claim deduction. Assessing Officer relied upon section 80P(4).

7.The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. 2014 Indlaw GUJ 639 by judgment dated 15.1.2014 had to deal with the following question of law:

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co- operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-s. (4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of subs.(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under

section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007. Circular provides as under:-

"Subject: Clarification regarding admissibly of deduction under section 80P of the Income-Tax Act, 1961.

1. Please refer to your letter no.DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that sub-s.(4) of section 80P provides that deduction under the said section shall not be allowable to any co- operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub- section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act,"Co- operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, subs.(4) of section 80P will not apply in this case.

5. The issues with the approval of Chairman, Central Board of Direct Taxes."

7. From the above clarification, it can be gathered that sub-s.(4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co-operative society. Exclusion clause of sub-s.(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

8. In view of the aforesaid decisions of the Hon'ble Gujarat High Court in the case of Jafari Momin Vikas Co-op Credit Society Ltd. 2014 Indlaw GUJ 639 (supra) and of the co=ordinate bench of this Tribunal in Bangalore Transport Credit Co-operative Society Ltd. (supra), we are of the view that there is merit in this appeal by the Assessee. Consequently, the same is allowed.

9. In the result, the assessee's appeal is allowed.

Pronounced in the open court on this 21st day of February, 2014".

7. There is no disparity on facts. Respectfully following the order of the Tribunal, we allow the appeal of the assessee and direct the Assessing Officer to grant deduction u/s 80P(2)(a)(i) of the Income Tax Act.

Appeal allowed

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Kalloli Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 62; [2014] 63 SOT 119

Case No: ITA No. 318/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

Karnataka Co-operative Societies Act, 1959 - Income Tax & Direct Taxes - Practice & Procedure - Finance Act, 2006, ss. 80P(2)(a)(i), 80P(4) -, s. 17 - Co-operative society - Taxable Income - Determination - Assessee was co-operative society registered under 1959 Act

Held, assessee had received deposit from non-members for advancing loan to members - Further, if deposits were accepted from public, it could not be denied that society had carried out banking business and banking business was not limited in that case to members – In the interest of justice and fair play to both parties HC restored issue to file of AO with direction that AO would look into rules and bye-laws of assessee co-operative society and in case AO found that bye-laws did not permit admission of any other co-operative society, it be treated that assessee complied with all three conditions for becoming primary co-operative bank and in case of contrary view, assessee would not be not treated as co-operative bank and provisions of s. 80P(4) of 2006 Act would not apply to assessee and assessee would be entitled for deduction as stipulated u/s. 80P(1) read with s. 80P(2)(a)(i) of 2006 Act - Appeal disposed of.

The Judgment was delivered by P. K. Bansal (Accountant Member)

2. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.23,65,850/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be “nil”. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.23,65,850/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2)(a)(i) will become redundant. Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or

providing credit facilities to its members.

2.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members.

Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

2.3.5 It is apparent that if the co-operative society complied with all the three conditions; firstly that the primary object or principle business transacted by it is a banking business, secondly, the paid up share capital and reserve of which are 1 lakh or more and thirdly, by laws of the co-operative society do not permit admission of any other co-operative society as a member, it will be regarded to be primary co-operative bank. If co- operative society does not fulfil any of the conditions, it cannot be regarded to be a primary co-operative bank. Therefore, in the case of the Assessee we have to examine on the basis of the facts and materials on record whether the Assessee co-operative society complies with all the three conditions. In case, it does not comply with all the three conditions, it cannot be regarded to be a co- operative bank and the provisions of Sec. 80P(4), in our opinion, will not be applicable in the case of the Assessee. Once, the Assessee will not fall within the provisions of Sec. 80P(4), the Assessee, in our opinion, will be eligible to get deduction u/s 80P(2)(a)(i) in respect of whole of the income which the Assessee derives from carrying on the business of banking or providing credit facilities to its members.

2.3.9 We, therefore, in view of our aforesaid discussion set aside the order of the CIT(A) and restore the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i) to the file of the AO for ascertaining from the copy of the rules and bye-laws of the co-operative society whether the bye-laws of the Assessee permit admission of any other co-operative society. In case the AO finds that the bye-laws permit admission of any other co-operative society, the Assessee be allowed deduction u/s 80P(2)(a)(i).

In case the AO finds that the bye-laws do not permit the admission of any other co-operative society, in our opinion, the Assessee will be regarded as a primary co-operative bank and will not be entitled for deduction

u/s 80P(2)(a)(i).

3. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Appeal allowed

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Kittur Channamma Mahila Co-operative Society Limited v The Income Tax Officer, 2014 Indlaw ITAT 2529

Case No: ITA No. 1284/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income-Tax Act, 1961, s. 80(P)(2)(a)(i),(4) - Banking Regulation Act, 1949, - Claim for Deduction - AO disallowed deduction claimed u/s. 80(P)(2)(a)(i) of 1961 Act on grounds that assessee society was carrying on banking business by providing credit facilities to its member - Commissioner (Appeals) [CIT(A)] held assessee cooperative bank within meaning of Part V of 1949 Act and provisions of s. 80(P)(4) of 1961 Act applied, confirmed orders passed by AO - Hence, instant appeal - Whether, order passed by (CIT(A)) disallowing deduction claimed by cooperative society u/s. 80(P)(2)(i) of 1961 Act sustainable.

S.80P(4) of 1961 Act provides that deduction under the said section shall not be allowable to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. The order of [CIT (A)] that assessee is a cooperative society entitled to claim deduction u/s. 80P(2)(a)(i) of 1961 Act is set aside. Appeal allowed.

The Judgment was delivered by N. V. Vasudevan (Judicial Member)

2. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2006, Sub-section (4) was inserted in Sec.80-P which provides as follows:

3. The AO was of the view that after amendment by the Finance Act, 2006 w.e.f. 1.4.2007 by which sub-section (4) was inserted, the Assessee which was a co-operative society carrying on banking business was not entitled to deduction u/s.80P(2)(i) of the Act. According to the AO, the assessee was a co-operative bank and therefore the deduction u/s. 80P(2)(a)(i) cannot be allowed. In coming to the above conclusion, the AO noticed that the nature of the activity of the assessee, though registered as a credit co-operative society, is that

of a banking institution notwithstanding the fact that receipt of and lending money is limited to its members. The AO further noticed that clause (viia) in section 2(24) of the Act was inserted by the Finance Act 2006 effective from 1/4/2007, which provides that profits and gains of any business (including providing credit facilities) carried on by a co-operative society with its members the assessee's activity was also "income". That the deduction from gross total income of certain receipts is available only to primary agricultural credit societies or primary co-operative agricultural and rural development banks; and that the benefit of such deduction is not available to institutions like the assessee society. The AO also referred to section 5(b) of the Banking Regulation Act to hold that, if one of the two conditions of the appellant i.e. its primary object should be banking or its principal business must be transaction in banking business, is sufficient to bring the appellant into the concept of a banking institution. The AO referred to the objects of the assessee society in its bye laws that the activities of the assessee fall within the provisions of clause (cci), (ccv) & (ccvi) of section 5 of the Banking Regulations Act and held that, broadly, they are in the nature of banking activity.

7. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act.

9.3 If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for."

8. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. By judgment dated 15.1.2014 had to deal with the following question of law:-

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank

other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "co- operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of subsection(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007. Circular provides as under:-

"Subject: Clarification regarding admissibly of deduction under section 80P of the Income-Tax Act, 1961.

1. Please refer to your letter no.DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co- operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act,"Co- operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, subsection(4) of section 80P will not apply in this case.

5. The issues with the approval of Chairman,Central Board of Direct Taxes."

7. From the above clarification, it can be gathered that sub- section(4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co- operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case,

respondent assessee is admittedly not a credit co-operative bank but a credit co- operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

9. Our attention was invited to a recent judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot 2014 Indlaw KAR 2105 in ITA No.5006/2013 dated 5.2.2014, wherein the Hon'ble jurisdictional High Court took the view that when the status of the assessee is a co-operative society and not a co-operative bank, the order passed by the AO extending the benefit of exemption from payment of tax 80P(2)(a)(i) of the Act is correct and such an order is not erroneous and therefore, jurisdiction u/s. 263 of the Act cannot be invoked.

10. In view of the aforesaid decisions, we set aside the order of the CIT(Appeals) and hold that the assessee is a co-operative society entitled to clam deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

11. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 12th day of September, 2014.

Appeal allowed

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Kuruhinshetty Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 64

Case No: ITA No. 443 & 444/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 80P(2)(a)(i), 80P(4) - Disallowance of Deduction - Assessment of Income Challenged - CIT(A) partly allowed appeal of assessee and denied deduction u/s. 80P(s)(a)(i) - Hence, instant appeals.

There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members. Further, if the co-operative society complied with all the three conditions; firstly that the primary object or principle business transacted by it is a banking business, secondly, the paid up share capital and reserve of which are 1 lakh or more and thirdly, by laws of the co-operative society do not permit admission of any other co-operative society as a member, it will be regarded to be primary co-operative bank. If co- operative society does not fulfill any of the conditions, it cannot be regarded to be a primary co-operative bank. In instant case, assessee has not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is not a co-operative bank and the provisions of s. 80P(4) are not applicable. Hence, order of CIT(A) is set aside and direct AO to allow deduction u/s 80P(2)(a)(i) to the assessee. Appeals allowed.

The Judgment was delivered by P. K. Bansal (Accountant Member)

3. The brief facts of the case for the assessment year 2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co- operative Societies Act. The Assessee filed return declaring gross total income of Rs.37,07,382/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be "nil". The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.41,03,978/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) partly allowed the appeal of the Assessee but did not allow deduction u/s 80P (2) (a) (i).

3.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to develop self help. Economy and co-operative attitude among members and co member. For this, our attention was drawn towards the bye- laws of the Assessee from (1) to (18). The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co- operative society governed by the Co-operative Societies Act nor can they be treated as banking companies.

In our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

3.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a)

co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

These deposits must be accepted from the public, not only from the members. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. We noted that the Assessee has categorically accepted before the authorities below that the Assessee was accepting deposits of money not only from the members but also from the general public who are non-members. This fact as per the remand report of A.O dated 13.6.2013 before the CIT(A) confirms from the following :-

"Hence, it is clear from the above that the assessee society is not only dealing with members but also from the general public for acceptance of deposit, and thus doing banking business."

The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who were not members. So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

3.3.8 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding

that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term "credit co- operative society" u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular.

3.3.9 We, therefore, in view of our aforesaid discussion hold that the Assessee has not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is not a co-operative bank and the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee is entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order of the CIT(A) and direct AO to allow deduction u/s 80P(2)(a)(i) to the assessee.

4. In the result, both the appeals filed by the Assessee are allowed.

Appeals allowed

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Laxmananda Multipurpose Co-operative Society Limited v Income Tax Officer, 2014 Indlaw ITAT 1112; [2015] 152 ITD 318; [2014] 34 ITR (Trib) 472

Income Tax Appellate Tribunal, Bangalore Bench "A"

Jason P. Boaz (Accountant Member) & Rajpal Yadav (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s. 80P(2)(a)(i)

If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) of the Act, to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to cooperative banks and not to credit cooperative societies. Hence, there is merit in appeal and the same is allowed and stay petition is dismissed. Appeal allowed.

The Judgment was delivered by Jason P. Boaz (Accountant Member)

1. This appeal by the assessee is directed against the order dated 30.01.2014 of the CIT(Appeals), Mysore, relating to assessment year 2010-11. The assessee has also separately filed a Stay Petition (S.P) seeking stay on recovery of demand for A.Y.2010-11

2. The assessee is a co-operative society, engaged in providing credit facilities to its members. The assessee

had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction upto Assessment Year 2007-08. By the Finance Act, 2006 w.e.f. 1-4-2007, Sub-s. (4) was inserted in Sec.80-P which provides as follows:

"(4) The provisions of this section shall not apply in relation to any co- operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. Explanation : For the purposes of this sub-section,-

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

5. At the time of hearing, it was brought to our notice by the parties that the issue raised by the Assessee has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co- operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act.

6. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. by judgment dated 15.1.2014 had to deal with the following question of law:

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-s. (4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the

expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of subs.(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007. Circular provides as under:-

"Subject: Clarification regarding admissibly of deduction under section 80P of the Income-Tax Act, 1961.

1. Please refer to your letter no.DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that sub- s.(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act,"Co-operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, subs.(4) of section 80P will not apply in this case.

5. The issues with the approval of Chairman, Central Board of Direct Taxes."

7. From the above clarification, it can be gathered that sub-s.(4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co- operative bank but a credit co-operative society. Exclusion clause of sub-s.(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

7. In view of the aforesaid decisions, we are of the view that there is merit in this appeal by the Assessee. Consequently, the same is allowed.

8. In view of our allowing this appeal of the assessee, the assessee's stay petition in S.P. No.172/Bang/2014 is rendered infructuous and is accordingly dismissed as infructuous.

Appeal allowed

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Lokmanya Multipurpose Co-operative Society Limited, Belgaum v Income Tax Officer, Ward - 2(2), Belgaum,2014 Indlaw ITAT 1535

Case No: ITA NO. 02/PNJ/2014

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Banking & Finance - Income Tax Act,1961, ss.80P(4),80P(2)(a)(i) - Entitle to deduction - Whether assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act and assessee is hit by provisions of s.80P(4) of the Act.

There is no prohibition u/s.80P of the Act not to allow deduction to such co-operative societies in respect of business relating to its members. It is not necessary that co-operative society should have a banking license as per definition under the Act for carrying on banking business. If licence is not obtained it may be an illegal banking business under other statute. Further, it is clearly proves that in case rules and bye-laws of other co-operative society provides otherwise, co-operative society may not be admitted as a member of co-operative society. Therefore, it is apparent that bye-laws of society does not permit admission of any other co-operative society as member. Since, assessee does comply with all three conditions of s.80P(4) of the Act has regarded to be primary co-operative bank as all three basic conditions are not complied with, it is a co-operative bank and s.80P(4) of the Act are applicable in case of assessee and assessee is not entitled for deduction u/s.80P(2)(a)(i) of the Act. Hence, order of CIT not allowing deduction to assessee u/s.80P(2)(a)(i) of the Act is confirmed. Appeal dismissed.

Ratio - If there non-compliance of provision by assessee of the Act then it cannot be entitle for the benefit provided under the Act.

The Order of the Court was as follows:

2. The brief facts of the case for the assessment year 2010-11 are that the Assessee is a co-operative society registered under the Karnataka State Co- operative Societies Act. The Assessee filed return declaring gross total income of Rs.30,99,595/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be „nil?. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.30,99,595/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec.80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

2.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The main contentions of the assessee are that Assessee is not a co-operative bank but a co- operative credit society. The Assessee is a co-operative society duly registered under the Karnataka

State Co-operative Societies Act, 1959.The primary object of the Assessee is to promote social and economic betterment of members through self-help and mutual aid in accordance with co-operative principles as specified in first schedule of the Act. For this, our attention was drawn towards the bye-laws of the Assessee from (a) to (j). The Assessee is a credit society. He contended that the word credit is of outmost important to decide the status of the assessee under the Banking Regulation Act, 1949. According to him the assessee is a co-operative credit society but when we question that section 80P does not talk of co-operative credit society, he could not reply thereto but relied on Banking Regulation Act forgetting that the section 80P only uses the word „co-operative society engaged in-?. The activities of the Assessee are limited to its members. He also relied on CBDT Circular No.133 of 2007 dated 9.5.2007 for the proposition that section 80P(4) will not apply to an assessee which is not a cooperative bank. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeal Nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co-operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No.72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co- operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012. Reliance was also placed on the decision of Panaji Bench in ITA No. 229 & 230/PNJ/2013 in the case of Tararani Mahila Co-operative Credit Society, vs ITO. Reliance was also placed in ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 TAXMAN 318 (Delhi), ITO vs Jankalyan Nagri Sahakari Pat Sanstha Ltd, 24 TAXMAN 127 (Pune). Reliance was also placed on the decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha dated 5.2.2014, which relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank.

4. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub-cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre- supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities can be carried on by the

co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

9. Even we noted that when the matter went before the CIT(A), the CIT(A) asked for the remand report. In the remand report dated 14.8.2013, the assessing officer confirmed that the asseessee acceptsd eposits from the general public who are not members. The relevant portion of the remand report as reproduced by CIT(A) at page 38 -39 read as under :-

"Thus it is clear from the above that the assessee society is not dealing with members but also with the non-members i.e., general public for acceptance of deposits."

In view of this finding of fact which remain uncontroverted by the assessee as the onus remains on the assessee we hold that the assessee is carrying on the banking business that the first condition stand complied with for becoming primary co-operative bank. We may also hold that there is no term used co-operative credit society eligible for exemption u/s 80P(2)(a)(i).

14. We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to credit co-operative society a and not to co-operative bank. With due regards to the Bench, we are unable to find any term „credit co- operative society? u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of

deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :-

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in s. 5(b) of the Banking Regulation Act, 1949."

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co- operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. In ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author.

15. We have also gone through the decision of ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 TAXMAN 318 (Delhi). Section 80P(4) clearly excludes primary agriculture credit society from its domain. Therefore this decision will not assist the assessee. We have also gone through the decision of Pune Bench in the case of ITO vs Jankalyan Nagri Sahakari Pad Sanstha Ltd, 24 TAXMAN 127 Pune. This we have already stated that section 80P(2)(a)(i) nowhere talks of co-operative credit society and therefore the distinction made under the Banking Regulation Act cannot be imported u/s 80P(2)(a)(i). This decision in our opinion will not assist the assessee. We have also gone through the decision of Tararani Mahila Co- operative Credit Society Ltd to which the undersigned is the author similar finding as has been given in this are given in that case also. The decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha dated 5.2.2014, relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank. Therefore, this decision is not applicable.

16. We, therefore, in view of our aforesaid discussion hold that the Assessee has to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is a co-operative bank and the provisions of Sec. 80P(4) are applicable in the case of the Assessee and Assessee is not entitled for deduction u/s 80P(2)(a)(i). We, therefore, confirm the order of the CIT(A) not allowing deduction to the assessee u/s 80P(2)(a)(i) on the income generated for providing banking or credit facilities to its members.

17. In the result, the appeal filed by the assessee is dismissed.

18. Order pronounced in the open court on 26.09.2014.

Appeal dismissed

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Tararani Mahila Co-operate Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3369; [2015] 152 ITD 621

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income tax Act,1961, s.80P(2)(a)(i),(4) - Determination of status - Entitlement of deduction - Whether assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act.

None of aims and objects allows assessee co-operative society to accept deposits of money from public for purpose of lending or investment. Paid up share capital and reserves in case of assessee is more than rs.1 lac. None of the condition is fulfilled by assessee to become co-operative bank. Further, s.80P(2)(a)(i) of the Act are applicable to co-operative society which is engaged in carrying on banking business facilities to its members. Thus, assessee cannot be regarded to be primary co-operative bank and s.80P(4) of the Act are not applicable and assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act. Appeals allowed.

Ratio - Society which is not cooperative bank is entitled for deduction u/s.80P(2)(a)(i) of the Act.

The Judgment was delivered by : P. K. Bansal (Accountant Member)

3. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.18,10,916/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be 'nil'. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.18,10,920/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

3.1. The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to promote the economic interest of its members and to encourage thrift, savings, co-operative and self-help among themselves. For this, our attention was drawn towards the order of the CIT(A) which re- produces the bye-laws of the Assessee from (i) to (v). The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in

favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. 2014 Indlaw GUJ 639 in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co-operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012.

3.3.1. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- clause (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

These deposits must be accepted from the public, not only from the members. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. From the aforesaid objects, it is apparent that none of the aims and objects allows the Assessee co-operative society to accept deposits of money from the public for the purpose of lending or investment. In our opinion, until and unless this condition is satisfied, it cannot be said that the prime object or principal business of the Assessee is banking business. Therefore, in this case, the Assessee will not comply with the first condition as laid down in the definition as given u/s 5(ccv) of the Banking Regulation Act, 1949 for becoming primary co-operative bank. We may clarify that if the business of the Assessee is limited only to the members and even if it is a banking business, the Assessee will be entitled for deduction u/s 80P(2)(a)(i). So far as the second condition

is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

The word used in Sec. 16(1) is 'shall'. This fact is clarified further by sub-section (2) as re- produced hereinabove that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and bye-laws. This clearly proves that in case the rules and bye-laws of the other co-operative society provides otherwise, the co-operative society may not be admitted as a member of the co-operative society. The person, as per sub-section (2), must be qualified for becoming member not only u/s 16(1) but also as per the rules and bye-laws of the co-operative society. We cannot read sub-section (2) in the manner that the rules and bye-laws cannot permit the admission of any other co- operative society as a member of the co-operative society. Had that been the intention of the legislature, they would have not used the words "this Act, rules and bye-laws" in sub-section (2).

3.3.8. We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-section (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term 'credit co- operative society' u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 2014 Indlaw GUJ 639 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act. They are the co-operative societies registered under the Act, and

as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in section 5(b) of the Banking Regulation Act, 1949."

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author.

3.3.9. We, therefore, in view of our aforesaid discussion hold that since the Assessee cannot be regarded to be a primary co-operative bank, therefore, it cannot be a co-operative bank and therefore the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee shall be entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order of CIT(A) and allow deduction to the Assessee u/s 80P(2)(a)(i).

4. In the result, both the appeals filed by the Assessee are allowed.

Appeals allowed

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Chitradurga City Multi Purpose Co-operative Society, Chitradurga v Income-tax Officer, Chitradurga, 2015 Indlaw ITAT 2038; [2015] 44 ITR (Trib) 61

Case No: I. T. A No. 302/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Members)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes – Income Tax Act,1961, ss.80P(2)(a)(i),80P(2)(d) - Deduction – Whether CIT fell in error in construing order of AO as erroneous and prejudicial to interests of Revenue.

Assessee had claimed deduction u/s.80P(2)(a)(i) of the Act for interest on bank deposit and also for rental from building. Therefore, assessee's property income could only be construed as profits and gains attributable to business of banking. If that be so such amounts would also be eligible for claim of deduction u/s.80P(2)

(a)(i) of the Act. Thus, CIT(A) was justified in considering assessment order as erroneous and prejudicial to interests of Revenue. Hence, order of CIT is modified and directed AO to do assessment afresh in accordance with law. Appeal partly allowed.

Ratio – Commissioner have power to revise assessment if same is prejudicial to interests of Revenue.

The Judgment was delivered by Abraham P. George (Accountant Member)

5. Now before us, Ld. AR strongly assailing the order of CIT submitted that interest earned on deposits with a cooperative bank was also eligible for deduction u/s.80P(2)(d). As per the Ld. AR, a cooperative bank was also a cooperative society and therefore eligible for claiming the benefit of the said section. Reliance was placed on the decision of coordinate bench in the case of Menasi Seemeya Group Gramagala Seva Sahakari Sangha Niyamitha V. CIT [ITA Nos.609 & 610/Bang/2014, dt.06.02.2015]. Vis-a-vis the rental income, Ld. AR submitted that Hon'ble jurisdictional High Court in the case of CIT v. The Grain Merchants Co-operative Bank Ltd [(2004) 267 ITR 742 2003 Indlaw KAR 78], had held that income received from letting out of premises was a part of the income from the business of banking. As per the Ld. AR, banking business as per clause ((b) of Section 6 of the Banking Regulation Act, 1949, took into its ambit various types of business referred in clause (a) to (o) of sub-section (1) of section 6, as well. According to him, clause (b) covers rental income. Thus according to him assessee was justified in treating rental from building as a part of its business income. Once the rental income is treated as attributable to the banking business, such amounts have to be considered as profits and gains of business attributable to carrying on the business of banking or providing credit facilities. Hence according to him, deduction u/s.80P(2)(a)(i) was available on such sum also. Ld. AR submitted that assessee was not hit by the limitation set out u/s.80P(4) of the Act because it was not a cooperative bank as recognised by RBI and the judgment of Hon'ble jurisdictional High Court in the case of Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot [ITA No.5006/2013, dt.05.02.2014], would come to its aid. Reliance was also placed on the judgment of Hon'ble jurisdictional High Court in the case of Venugram Multipurpose Cooperative Credit Society Ltd v. ITO [ITA No.100042 of 2014, dt.17.09.2014] in support of his contention that even a multi purpose cooperative society would also fall under the definition of primary agricultural credit cooperative society given in Karnataka Cooperative Societies Act, 1959. Thus according to him, CIT fell in error in construing the order of AO, as erroneous and prejudicial to the interests of Revenue.

7. We have perused the orders and heard the rival contentions. There is no doubt that assessment order is very cryptic. Nothing whatsoever is mentioned with regard to the claim of the assessee for deduction u/s.80P(2)(a)(i) or 80P(2)(d) in the order. Assessee has also not been able to place on record any correspondence that might have been there between it and the AO during the course of assessment proceedings. Lack of enquiry into the aspect of the claim made by assessee for deduction u/s.80P(2)(a)(i) is therefore glaring on record. However, what we find is that assessee had claimed deduction u/s.80P(2)(a)(i) of the Act for interest on bank deposit and also for rental from building. Vis-a- vis interest from bank deposits, claim of the assessee is that such deposits were out of funds kept as statutory reserves. Hon'ble jurisdictional High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd, (supra) had held that interest earned on short-term deposits

out of funds which were not due to its members would not be hit by the restrictions placed by Hon'ble Apex Court in Totgars Cooperative Sale Society Ltd 2010 Indlaw SC 91 (supra). Relevant para 10 of the judgment dt.20.09.2014 is reproduced hereunder :

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME- TAX III, HYDERABAD vs. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12 In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order.

Appeal is allowed."

8. Vis-a-vis the rental income what we find is that in the case of Grain Merchants Cooperative Bank Ltd 2003 Indlaw KAR 78 (supra), an issue had arose as to whether income received from letting out of premises could be deemed as income from business of banking. Their Lordships after assimilating the facts held as under from para 2 to 10 of the judgment :

"2. The respondent is the Grain Merchants Co-operative Bank (hereinafter referred to as "the assessee"), engaged in banking activity. The assessee filed its return for the assessment years 1989-90, 1990-91 and 1991-92. The Assessing Officer, while completing the assessment, took the view that the rental income received by the assessee in letting out the portion of the building partly occupied by it and the interest received from setting apart certain funds as reserve fund, does not come within the purview of section 80P(2)(a)(i) of the Act and as such are not deductible while computing the income of the assessee. Aggrieved by the said assessment order, the assessee preferred an appeal to the Commissioner of Income-tax (Appeals)-II (hereinafter referred to as "the Appellate Commissioner"). The Appellate Commissioner, by means of his order dated March 16, 1993, allowed the appeals accepting the contention of the assessee that the rental income received by it as well as the interest received on reserve fund are exempted from payment of tax under section 80P(2)(a)(i) of the Act. Aggrieved by the said order of the Appellate Commissioner, the Revenue took up the matter in appeal to the Tribunal. The Tribunal, as noticed by us earlier, in the impugned order affirmed the order passed by the Appellate Commissioner.

3. Sri M. V. Sesachala, learned counsel appearing for the Revenue, challenging the correctness of the orders impugned, made two submissions. Firstly, he submitted that the Tribunal as well as the Appellate Commissioner have seriously erred in law in taking the view that the interest derived out of the income from funds maintained as reserve funds is also an income derived by the assessee on account of the banking activities carried on by the assessee and as such the same is deductible under section 80P(2)(a)(i) of the Act while computing the

income of the assessee. Elaborating this submission, learned counsel pointed out that the Tribunal as well as the Appellate Commissioner have failed to consider that the funds maintained as reserve funds have not been utilised by the assessee for its business activities. Secondly, he submitted that the Tribunal as well as the Appellate Commissioner have also seriously erred in law in taking the view that the rental income received by the assessee is an income received by it in carrying on the business of banking and as such is entitled for exemption under section 80P(2)(a)(i) of the Act. It is also his submission that the letting out of premises by the assessee and receiving rent out of it cannot be considered as carrying on the business of banking activity or providing credit facilities by the assessee to its members; and hence the income received by the assessee by way of rent in respect of the premises let out must be treated as an income which is liable for payment of tax under section 22 of the Act. In support of this submission, he referred to us clauses (a) to (f) of sub-section (2) of section 80P of the Act. It is also pointed out by him that clause (f) of sub-section (2) of section 80P of the Act clearly spells out that in the case of a co-operative society, not being a housing society or an urban consumers society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, wherein the gross total income does not exceed Rs. 20,000, the amount earned by way of interest on securities on any income from certain property is chargeable under section 22 of the Act. He pointed out that clause (f) of sub-section (2) of section 80P of the Act should be understood as making an exception to clause (a)(i) of sub-section (2) of section 80P of the Act wherein it is provided that if a co-operative society carrying on banking business receives income from house property, such an income is liable to be taxed under section 22 of the Act. It is his submission that when Parliament had made a distinction between the income received from banking business and the income received from non-banking business by way of rental income on account of letting out of premises belonging to the assessee, it is not permissible for the assessee to claim exemption relying upon clause (a)(i) of sub- section (2) of section 80P of the Act. It is also his submission that the assessee cannot derive any assistance from clauses (k) and (l) of sub-section (1) of section 6 of the Banking Regulation Act, 1949 (hereinafter referred to as "the Regulation Act"), as according to learned counsel the said provision only empowers the banking institution to carry on certain activities which are not considered as a banking business. In this connection, he referred to us the language employed in section 6 of the Regulation Act wherein it is referred that in addition to the business of banking, a banking company may engage in any of the businesses referred to in the said section.

9. No doubt for A. Ys. 1989-90 and 1991-92 for which the above judgment was rendered, sub-section 4 of section 80P was not in the statute book. Sub- section 4 of section 80P which disables a cooperative bank from claiming the benefit u/s.80P(2)(a)(i) came into the statute through Finance Act 2006 w.e.f.2007. Nevertheless the issue as to whether income from letting out of premises could be considered as income from business of banking has been dealt with by their Lordships in the case of Grain Merchants Cooperative Society 2003 Indlaw KAR 78 (supra) relevant paras of which we have reproduced above.

10. Thus in so far as construing the meaning of the words carrying on the business of banking by providing credit facilities to its members, is concerned, judgment of jurisdictional High Court in the case of Grain Merchants Cooperative Society mentioned 2003 Indlaw KAR 78 supra will apply on all four squares. If that be so, assessee has a good case that its property income could only be construed as profits and gains attributable

to the business of banking. If that be so such amounts would also be eligible for claim of deduction u/s.80P(2)(a)(i) of the Act. The CIT had directed the AO to make the disallowances mentioned at para four above, without giving him any room for taking the submissions and pleading of the assessee into consideration which in our opinion was not proper. At the same time it is also true that AO had made no enquiries on these vital issues at the time of assessment. Hence we are of the opinion that Ld. CIT (A) was justified in considering the assessment order as erroneous and prejudicial to the interests of Revenue. However in the circumstances of the case, direction of the CIT to assess the incomes mentioned at para four above is not correct. Therefore, while upholding the order of CIT u/s.263 of the Act, we modify it and direct the AO to do the assessment afresh in accordance with law, untrammelled by the observation of the CIT on merits regard.

11. In the result, appeal of the assessee is partly allowed for statistical purpose.

Appeal partly allowed

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Hanuman Sahakari Pani Pruvatha Sanstha Maryadit Through Secretary, Shivram Bhauso Bhandigare, Maharastra and others v Ramchandra Bapuso Khade and others, 2015 Indlaw NCDRC 706; 2016 (2) CPJ(NC) 42

Case No : Revision Petition No. 3005 of 2008, Revision Petition No. 2613 of 2015, Revision Petition No. 2614 of 2015, Revision Petition No. 2615 of 2015, Revision Petition No. 2616 of 2015, Revision Petition No. 2617 of 2015, Revision Petition No. 2618 of 2015, Revision Petition No. 2619 of 2015, Revision Petition No. 2620 of 2015, Revision Petition No. 2621 of 2015, Revision Petition No. 2622 of 2015, Revision Petition No. 2623 of 2015, Revision Petition No. 2624 of 2015, Revision Petition No. 2625 of 2015, Revision Petition No. 2626 of 2015, Revision Petition No. 2627 of 2015, Revision Petition No. 2628 of 2015, Revision Petition No. 2629 of 2015, Revision Petition No. 2631 of 2015, Revision Petition No. 2632 of 2015, Revision Petition No. 2633 of 2015

National Consumer Disputes Redressal Commission, New Delhi Bench

K.S. Chaudhari

Head Note

KCS Act 1959 - Consumer Protection - Consumer Protection Act, 1986, s.2(1) (d) - Non-supply of water - Deficiency of service - Compensation - Respondents/complainants became members of society - Opposite parties did not provided water supply to complainants land so that they suffered loss and unable to refund loan installments to bank- Respondents filed complaint before District Forum was allowed for opposite party nos. 1 to 12 and dismissed against opposite party no. 13 which was confirmed by State Commission - Aggrieved opposite parties filed revision petition against order passed by State Commission - Hence instant petitions.

District Forum while allowing complaint directed opposite party to supply water if complainants comply

with Rules and Regulations of Society which clearly proves that complainants did not comply with necessary formalities for supply of water and in such circumstances, complainants were not entitled to supply of water and claim for compensation for loss caused due to non- supply of water. Petitioners submitted that petitioner is ready to supply water even today if necessary formalities are complying with by complainants. As far as compensation is concerned, District Forum while granting compensation, observed, it appears that without any cogent evidence only on basis of certificate issued by Assistant Agriculture Officer which was not provided to opposite party for rebuttal, compensation has been allowed which could not have been allowed. Petitions disposed of.

Ratio - It is true that Revisional Court has limited jurisdiction and can exercise limited jurisdiction only if State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in exercise of its jurisdiction illegally or with material irregularity.

The Judgment was delivered by K. S. Chaudhari (Presiding Member)

3. Brief facts of the case are that complainants/respondents became members of Society-Opposite Party No. 1/Petitioner No. 1 for getting water supply for their land. Opposite Party No. 2/Petitioner No. 2 is Chairman, Opposite party No. 3-Vice Chairman and Opposite Party Nos. 4 to 12/ Petitioner Nos. 3 to 11 are Directors and Opposite Party No. 13 is Secretary of the said Society. Complainants mortgaged their lands to the land development Bank for raising loan for the formation of society and execution commissioning, and erection of irrigation Scheme for the purpose of providing water supply and accordingly the land development Bank have given finance for making the irrigations scheme operational in the form of loan to the Respondent Society. The said Scheme became operational in the year 2000 and despite the complainant made repeated oral as well as written request to the OP, they did not provide water supply to the complainants land, and therefore complainants could not take sugarcane crop in their respective land as the result of which they have suffered financial loss. The complainants mortgaged their lands and raised loans for the irrigations scheme of the OP to get water supply and due to non- supply of the water by the OP society, the complainant have suffered financial loss and therefore they are unable to refund the loan instalments to the land development Bank. Alleging deficiency on the part of opposite parties, complainants filed separate complaints before District Forum. Opposite Parties resisted complaints and submitted that complainants have mortgaged their lands to land development Bank for raising loan for the execution commissioning and erection of the water irrigation scheme. They have also stated that the complainants are the members of the Respondents society. However, they have harped on the non-compliance of the rules and bylaws of the society for the water supply by the complainants and hence due to such a non-compliance water supply could not made to them. They have also stated that OP society had sent intimation letter to the complainants on 26.7.2002 informing them to fill-up the printed form and comply with the rules and bylaws of the society and then only they shall be entitled to get the water. Similarly, the OP in their submission have stated that the complainants in the year 1998 had submitted written complaints to the D.D.R. Cooperative Society Kolhapur that since they have not received water supply on that date and hence do not wish to take the water supply from the OP and hence their lands be made emcumbrance free from any mortgage. The same Application given to the OP society and hence

the complainants cannot claim the water supply. The OP(s) have further stated that due to political rivalry between the complainant and the OP and with view to cause harassment to the OP, the complainants have not taken the water supply from the irrigations scheme. On the contrary the complainants have tried to create problems in the functioning of the OP society. The OP(s) have also raised the point of maintainability of the complaint before these Forums. The Cooperative Court and similarly situated offices are the only competent Forums to decide the dispute between the parties as it is dispute touching the business of the society and they have submitted that this Forum have no jurisdiction to try the dispute. They have also stated that the complaint is expressly barred by the other law. It was further submitted that if complainants are ready to comply with terms & conditions, Rules & Regulations of the Society, Society is ready and willing to supply water to the complainants even today. Complainants have not impleaded all necessary parties and prayed for dismissal of complaints. Learned District Forum after hearing both the parties, dismissed complaints against Opposite Party No. 13 and allowed complaint against Opposite Party Nos. 1 to 12 and directed them to pay each complainant Rs. 20,000/- as compensation, Rs. 300/- towards cost of the complaint, Rs. 1,000/- as lawyer's fee and Rs. 500/- for mental agony and it was further observed that if complainants comply with Rules & Regulations of the Society, they will be entitled to receive water from Opposite party within three days from such compliance. Appeals filed by Opposite Parties were dismissed by State Commission vide impugned order against which these revision petitions have been filed.

7. Admittedly, complainants are members of opposite party-Society which was formed for supply of water to complainant's land and for that purpose, loan was obtained by complainants by mortgaging their land. Opposite Party specifically pleaded that consumer fora has no jurisdiction to entertain complaints regarding disputes between Members of the Society and for redressal of their grievances, they could have approached to Cooperative Court under Maharashtra Co-operative Societies Act. Learned District Forum observed that there was relationship of consumer and service provider between complainants and opposite party-Society. This observation is not correct as it was a clear dispute between complainants and opposite party(s) touching business of the Society. Learned Karnataka State Commission in III (1994) CPJ 500- The Kulve Gram Seva Shahakari Sangha Ltd. Vs. Mahabaleshwar Ramakrishna Bhat; has held that as per Section 70 of Karnataka Cooperative Societies Act, dispute was to be settled only by Registrar of the Cooperative Societies and complaint before Consumer Fora was not maintainable. Similar view was expressed by State Commission, Maharashtra, Mumbai, in 1998 (1) CPR 630- Indrapuri Nagari Sahakari Pat Sanstha Ltd. & Ors. Vs. Shri Suryakant Ramchandra Gomase; in which it was observed that Consumer Fora was barred from entertaining any dispute between the Members and Society.This Commission in 1-1993(1) CPR 174- Dilip Bapat & Anr. Vs. Panchvati Co-op. Housing Society Ltd.; held that complainants being Members of Cooperative Housing Society cannot raise dispute regarding payment of escalation in cost of construction before Consumer Fora and right forum for Members of Society to agitate their grievances is Cooperative Court under Co-operative Societies Act.

8. In the light of aforesaid judgments, it becomes clear that dispute among complainants and their Society regarding loss due to non-supply of water for irrigation of land could have been decided only under the Cooperative Societies Act and Consumer Fora has no jurisdiction to entertain the complaint and in such

circumstances, as Fora below have exercised jurisdiction not vested in it by law, this Commission has power to set aside impugned order under revisional jurisdiction.

9. Perusal of record reveals that complainants by letter dated 1.11.1998 intimated to the Opposite Party -Society that they do not want to take water from the Society. They also gave similar intimation on 15.4.1998 to Branch Manager, Maharashtra State Co-operative Land Development and on 27.4.1998 to Assistant Registrar, Cooperative Societies which shows that complainants in the year 1998 intimated that they are not willing to take water from Opposite Party-Society. In such circumstances, opposite party-Society was not under any obligation to supply water to the complainants.

10. Perusal of record further reveals that opposite party specifically pleaded that complainants were required to make application in writing as per bylaws for supply of water and complainants have not complied with necessary formalities. It appears that as complainants were reluctant in taking water from OP/Society, they did not fill up requisite forms for taking water and in such circumstances, OP has not committed any deficiency in not providing irrigation facility to the complainants. Learned District Forum while allowing complaint directed Opposite Party to supply water within three days if complainants comply with Rules & Regulations of the Society which clearly proves that complainants did not comply with necessary formalities for supply of water and in such circumstances, complainants were not entitled to supply of water and claim for compensation for loss caused due to non- supply of water. Petitioners submitted that petitioner is ready to supply water even today if necessary formalities are complied with by complainants.

11. As far as compensation is concerned, Learned District Forum while granting compensation, observed as under:-"in these complaints the respondents have not laid adequate evidence substantiating the claim made by them hence the claim made by them cannot be allowed and hence forum has reached to the conclusion that the grant of such a relief would neither be just nor the proper. However, in the matter the complainants have submitted the certificate issued by the Assistant Agriculture Officer, stating approximately what would have been the income had the sugarcane cultivating the land." It appears that without any cogent evidence only on the basis of certificate issued by Assistant Agriculture Officer which was not provided to OP for rebuttal, compensation has been allowed which could not have been allowed.

12. In the light of aforesaid discussion, it becomes clear that Learned District Forum committed error in allowing complaint and Learned State Commission further committed error in dismissing appeals and impugned order is liable to set aside.

13. Consequently, revision petitions filed by petitioners are allowed and impugned order dated 4.6.2008 passed by Learned State Commission in FA No. 1265 of 2003- Hanuman Sahakari Pani Purvatha Sanstha Maryadit & Ors. VS. Ramchandra Bapuso Khade & Ors.and order of District Forum dated 23.7.2003 in Consumer Complaint Nos. 430-450 of 2002- Ramchandra Bapuso Khade & Ors. VS. Hanuman Sahakari Pani Purvatha Sanstha Maryadit &Ors., is set aside and complaints stand dismissed.

Parties to bear their own cost.

Revisions allowed

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Income Tax Officer, Bijapur v Jamkhandi Taluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365

Case No:ITA. No. 1504/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income Tax Act, 1961, s.80P(2)(a)(i) - Grant of deduction - Applicability of provision - Assessee claimed deduction u/s.80P(2)(a)(i) of Act - Assessing Officer-AO held that assessee was co-operative society carrying on banking business was not entitled to deduction u/s. 80P(2)(a)(i) of Act - Commissioner of Income Tax (Appeals)-CIT(A) allowed claim of assessee - Hence, instant Appeal - Whether assessee is entitled for deduction u/s. 80P(2)(a)(ii) of Act.

The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of s. 80P(4) of the Act will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, the order of the CIT(A) is correct and in accordance with law and no interference is called for. Appeal dismissed.

Ratio - Assessee shall entitle to deduction if he fulfilled the condition laid down by provision of statutes to claim deduction.

The Judgment was delivered by N.V. Vasudevan (Judicial Member)

3. The only issue involved in this appeal by the assessee is denial of deduction u/s. 80P(2)(a)(i) of the Income-tax Act, 1961 [hereinafter referred to as "the Act" in short"] by the revenue authorities.

4. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction.

5. In the course of scrutiny assessment proceedings u/s. 143(3), the AO was of the view that after amendment by the Finance Act, 2006 w.e.f. 1.4.2007 by which sub-section (4) was inserted, the Assessee which was a co-operative society carrying on banking business was not entitled to deduction u/s.80P(2)(i) of the Act. According to the AO, the assessee was a co-operative bank and therefore the deduction u/s. 80P(2)(a)(i) cannot be allowed. In coming to the above conclusion, the AO noticed that the nature of the Activity of the assessee, though registered as a credit co-operative society, is that of a banking institution notwithstanding the

fact that receipt of and lending money is limited to its members. That the deduction from gross total income of certain receipts is available only to primary agricultural credit societies or primary co-operative agricultural and rural development banks; and that the benefit of such deduction is not available to institutions like the assessee society since it was situated in urban area and having urban members to whom credit facilities were provided. The AO also referred to the provisions of the Banking Regulation Act to bring the assessee into the concept of a banking institution. The AO referred to the objects of the assessee society in its bye laws that the Activities of the assessee fall within the Banking Regulations Act and held that its activities are in the nature of banking activity. According to the AO, none of the criteria contemplated in sub-section (4) were fulfilled in the case of the assessee.

7. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co- operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co- operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

11. We find that in assessee's own case for the A.Y. 2010-11 on identical facts, the issue was decided in favour of the assessee, following the decision of the Tribunal cited supra and the judgments of the Hon'ble High Court of Karnataka and Hon'ble Gujarat High Court cited supra. Therefore, we uphold the order of the ld. CIT(Appeals) on the issue allowing deduction u/s. 80P(2)(a)(i) of the Act to the assessee. It is ordered accordingly.

12. In the result, the appeal by the Revenue is dismissed.

Appeal dismissed

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Income-Tax Officer, Hubli v KPTC & Hescom Employees Co-operative Credit Society Limited, Hubli, 2015 Indlaw ITAT 502

Case No: I. T(TP). A No. 666/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s. 80P - Depreciation - Deduction - Addition - Appellant/Assessee credit cooperative society was providing credit facility to its members filed its return on income for relevant assessment year and claimed deduction u/s.80P(2)(a)(i) of 1961 Act - AO found that assessee was hit by s. 80P(4) of 1961 Act and it was in business of giving credits and should be considered

as cooperative bank - On appeal CIT(A) reversed findings of AO - Aggrieved Revenue filed appeal against order passed by CIT(A) - Hence instant appeal.

Natural corollary is that s.80P (4) of 1961 Act is not attracted unless cooperative society is recognized by RBI as a cooperative bank as per rules made under RBI. Tribunal, therefore, hold that assessee was eligible for claiming deduction u/s.80P (2) (a) (i) of 1961 Act. Tribunal does not find it necessary to interfere with order of CIT (A).Appeal dismissed.

Ratio - As per s.80P of 1961 Act, income so derived is amount of profits and gains of business attributable to activity of carrying on business of banking or providing credit facilities to its members by co-operative society and is liable to be deduct from gross total income.

The Judgment was delivered by Abraham P. George (Accountant Member)

6. We have perused the orders and heard the rival contentions. There is no dispute that one of the main object of assessee society was providing credit facility to its members. AO himself has mentioned that this was the primary object for which assessee was incorporated. No doubt, out of substantial sum received as deposits from the members, only small portion were given by assessee as loans to its members. Major part of the funds were parked in FDs. However, it is an admitted position that assessee was bound to give interest to its members on the deposits received by it from them. Therefore, when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds idle, was to place it in banks for earning interest. After the judgment in Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit (supra), Hon'ble jurisdictional High Court had in the case of CIT v. Tumkur Merchants Souharda Credit Cooperative Ltd (ITA.307 of 2014, dt.28.10.2014), held as under in relation to a cooperative society having as its object, business of providing business credits to its members, at paras 3 to 10 of the judgement dt.28.10.2014

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME- TAX III, HYDERABAD vs. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12 In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order.

Appeal is allowed."

9. We are of the opinion that in view of the judgement of Hon'ble jurisdictional High Court reproduced above, where in at it has been clearly mentioned that the money meant for lending, remaining surplus, there being no

takers, if deposited in banks for earning interest, such interest income would be attributable to the business of banking carried out by the assessee. Natural corollary is that Section 80P(4) of the Act is not attracted unless the cooperative society is recognised by RBI as a cooperative bank as per the rules made under Reserve Bank of India Act. We, therefore, hold that assessee was eligible for claiming deduction u/s.80P(2)(a)(i) of the Act. We do not find it necessary to interfere with the order of the CIT (A).

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 1st day of October, 2015.

Appeal dismissed

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ITO, Belagavi and another v Basaveshwar Souhard and others, 2015 Indlaw ITAT 1617

Case No: ITA Nos. 344 to 347/PNJ/2015, C. O. No. 70/PNJ/2015

Income Tax Appellate Tribunal, Panaji Bench

N. S. Saini (Accountant Member), George Mathan (Judicial Member)

Head Note

Karnataka Co operative Societies Act,1959 - Income Tax & Direct Taxes - Income Tax Act,1961, s. 80P(2)(a)(i) - Claim for deduction - Entitlement to - Assessees filed return of income after claiming deduction u/s.80P(2)(a)(i) of 1961 Act - Assessing Officer rejected claim of assessee on ground that assessee was co-operative bank and not entitled to claim deduction - Commissioner of Income Tax (Appeals) allowed claim of assesses - Hence, instant Appeal - Whether CIT(Appeals) has justified in allowing claim of deduction.

CIT(A) in its order observed that appellant is a cooperative society registered under 1959 Act, engaged in providing credit facilities to its members. It is also not the case of AO that assessee is registered with RBI as bank. Revenue could not point out any specific error in order of CIT(A). Therefore, there was no good and justifiable reason to interfere with orders of CIT(A). Appeal dismissed.

Ratio - If a Co- operative Bank is exclusively carrying on banking business, then income derived from business cannot be deducted in computing total income of assessee.

The Judgment was delivered by N. S. Saini (Accountant Member)

3. The facts of the case are that the assessees filed return of income after claiming deduction under sec. 80P(2)(a)(i) of the Act at NIL. It was claimed that the society is entitled to deduction under sec.80P(2)(a)(i) as it was a Cooperative Society carrying on the business of banking or providing credit facilities to its members. However, the claim of the assessee for deduction under sec.80P(2)(a)(i) was rejected by the Assessing Officer in the order passed under sec. 143(3) of the Act on the ground that the assessee was a cooperative bank, and hence, not entitled to claim deduction by virtue of sec.80P(4).

4. On appeal, Commissioner of Income Tax (Appeals) allowed the claim of the assessees by observing as under:-

"6. I have carefully perused and considered the aforesaid submission made by the appellant and the contents of the Assessment Order passed by the Assessing Officer. I have also perused the case laws relied upon by the appellant and the Assessing Officer. The main plank of argument of the Assessing Officer has been that after careful analysis of Section 80P(4) read with section 2(24)(viia) of the Income- tax Act, 1961 and Part V of the Banking Regulation Act and the facts of the case, the appellant assessee co-operative credit society is held to be a 'Primary Co-operative Bank' hence is not eligible for deduction under sec.80P(2)(a)(i) in view of the newly inserted provisions of section 80P(4). The assessing Officer has arrived at a conclusion that if a cooperative society satisfies all the three conditions as laid down in the definition as given u/s 5(ccv) in Part V of the Banking Regulation Act, 1949, then it becomes a "primary co-operative bank", and therefore deduction u/s 80P(2)(a)(i) can be denied by virtue of Sec.80P(4).

7. We have heard rival submissions of both the parties and perused the orders of the lower authorities and the material available on record. The Assessing Officer observed that the assessee has debited pigmy commission of Rs. 7,78,247/- in the case of the assessee - Shri Basaveshwar Souhard Sahakari Niyamit and Rs. 6,26,901/- in the case of the assessee - Sunadholi Mahila Pattin Souhard Sahakari Niyamit. In the case of the assessee - Shri Neminath Urban Credit Souhard Sahakari Niyamit Ltd., the Assessing Officer observed that the assessee has paid interest in excess of Rs. 10,000/- without making TDS and, therefore, he made disallowance of Rs. 12,188/- by invoking the provisions of sec. 40(a)(ia). Similarly, in the case of Sunadholi Mahila Pattin Souhard Sahakari Niyamit, the Assessing Officer made disallowance of interest expenditure of Rs. 3,59,602/-.

8. On appeal, Commissioner of Income Tax (Appeals) deleted the disallowance made under sec. 40(a)(ia) of the Act on account of pigmi commission by observing that since the entire amount of profit of the society is itself eligible for deduction under sec. 80P, disallowance under sec. 40(a)(ia) would not make any difference. He also observed that the assessee-society is not held to be a cooperative bank, the provisions of sec. 194A(3)(v) would be applicable and it would not be required to deduct TDS. Therefore, he deleted the addition made under sec.40(a)(ia) of the Act. By making similar observations, the Commissioner of Income Tax (Appeals) deleted the disallowance of interest expenditure made under sec. 40(a)(ia) of the Act of Rs. 12,188/- in the case of Shri Neminath Urban Credit Souhard Sahakari Niyamit Ltd. and Rs. 3,59,602/- in the case of Sunadholi Mahila Pattin Souhard Sahakari Ltd.

9. The Departmental Representative during the course of hearing did not make any submissions on the above ground of appeal taken by the Revenue. Hence, we dismiss this ground of appeal of the Revenue.

10. In regard to Cross Objection No. 70/PNJ/2015 filed by the assessee-Shri Neminath Urban Credit Souhard Sahakari Niyamit, the Authorized Representative of the assessee, at the time of hearing submitted that he wants to withdraw the Cross Objection filed by the assessee and sought permission of the Bench and also made an endorsement to this effect on the ground of Cross Objections filed before the Tribunal along with the Cross Objection memo in Form No.36A.

11. Departmental Representative had no objection to the same. Therefore, we dismiss the Cross Objection of the assessee as withdrawn.

12. In the result, appeals of the Revenue and the Cross Objection of the assessee are dismissed.

Order Pronounced in the Court at the close of the hearing on Tuesday, the 17th day of November, 2015 at Goa.

Appeals dismissed

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Income Tax Officer, Bijapur v Jamkhandi Taluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365

Case No: ITA. No. 1504/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s.80P(2)(a)(i) - Grant of deduction - Applicability of provision - Assessee claimed deduction u/s.80P(2)(a)(i) of Act - Assessing Officer-AO held that assessee was co-operative society carrying on banking business was not entitled to deduction u/s. 80P(2)(a)(i) of Act - Commissioner of Income Tax (Appeals)-CIT(A) allowed claim of assessee - Hence, instant Appeal - Whether assessee is entitled for deduction u/s. 80P(2)(a)(ii) of Act.

The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of s. 80P(4) of the Act will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, the order of the CIT(A) is correct and in accordance with law and no interference is called for. Appeal dismissed.

Ratio - Assessee shall entitle to deduction if he fulfilled the condition laid down by provision of statutes to claim deduction.

The Judgment was delivered by N.V. Vasudevan (Judicial Member)

9. The issue raised by the assessee in these appeals has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act.

7. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co- operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co- operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

11. We find that in assessee's own case for the A.Y. 2010-11 on identical facts, the issue was decided in favour of the assessee, following the decision of the Tribunal cited supra and the judgments of the Hon'ble High Court of Karnataka and Hon'ble Gujarat High Court cited supra. Therefore, we uphold the order of the ld. CIT(Appeals) on the issue allowing deduction u/s. 80P(2)(a)(i) of the Act to the assessee. It is ordered accordingly.

12. In the result, the appeal by the Revenue is dismissed.

Appeal dismissed

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Ryatar Sahakari Sakkare v ACIT, Bijapur and others, 2015 Indlaw ITAT 27

Case No: I.T.A Nos. 348 and 349/PNJ/2014, I.T.A Nos. 350/PNJ/2014, I.T.A Nos. 351/PNJ/2014, I.T.A Nos. 352/PNJ/2014, I.T.A Nos. 353/PNJ/2014, I.T.A Nos. 354/PNJ/2014, I.T.A Nos. 355/PNJ/2014, I.T.A Nos. 356/PNJ/2014, I.T.A Nos. 357/PNJ/2014

Income Tax Appellate Tribunal Panaji Bench

D. T. Garasia (Judicial Member) & P. K. Bansal (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income Tax Act, 1961, ss.40(a)(ia), 201(1)/201(1A) - Addition - Period of limitation - Condonation of delay - Assessee/co-operative society carried on activities of manufacturing of sugar and its by-products - Assessee filed its return of income, wherein assessee paid above Rs.20,000/- in respect of harvesting charges, transportation charges and law and consultancy charges for all assessment years under consideration - AO disallowed above payments u/s 40(a)(ia) of 1961 Act - Type of additions were made by AO u/ss.201(1)/201(1A)of 1961 Act - Action of AO was upheld by CIT(A) by not admitting appeal on ground that assessee's appeal was barred by limitation - Hence ,instant appeals.

Appeal may not be decided on technical ground, but it must be decided on merit in interest of public. Assessee society has huge money of public. Therefore, in interest of justice and fair play, Court condone aforesaid delay in filing all appeals for all assessment years under consideration and restore matter to file of CIT(A) to decide

appeal on merits after giving assessee adequate opportunity of hearing. In result, all appeals of assessee are allowed for statistical purpose. Appeals disposed of.

Ratio - The Tribunal has power to condone the delay and remit the matter to the file of the CIT(A) to decide the matter on merit if reasonable causes exist in not filing cases within reasonable time

The Judgment was delivered by D. T. Garasia (Judicial Member)

3. Common short facts of the case are that the assessee is co-operative society registered under the Karnataka Co-operative Societies Act, 1959 carrying on the activities of manufacturing of sugar and its by-products. The assessee has filed its return of income for assessment years 2005-06 to 2012-13, wherein the assessee has paid above Rs.20,000/- in respect of harvesting charges, transportation charges and law and consultancy charges for all the assessment years under consideration. In respect of A.Y 2005-06 in ITA No.348/PNJ/2014 wherein the assessee has paid above Rs.20,000/- of Rs.60,75,515 towards harvesting charges, Rs.49,74,309/- towards transportation charges and Rs.4,27,626/- on Law and consultancy charges.

5. During the course of hearing before us the ld.AR has drawn our attention under the application under Rule 11 of the I.T.A.T. Rules 1963. The assessee seeks main relief against the denial of admission of appeal. The assessee has come in appeal before the tribunal for admission of the appeal by condoning the delay. During the course of hearing before us he has also filed an affidavit. In the affidavit the claimed that the assessee is a co-operative society registered under the Karnataka Co-operative Societies Act 1959 comprising of 20,000 members from the surrounding area of Timmapur village.

5.1 The assessee contended that the assessee has sought an opinion or advice from a Chartered Accountant in the matter of writing/deducting of TDS particularly with regard to the disallowance made u/s40(a)(ia) r.w.s 194C and TDS amount of interest u/s201(1/A) of the Act. The assessee got legal opinion from one Professor S.S Gupta, Ex-Principal, K.G Law College, Hubli. As per his opinion/advice the huge demand made by the AO is not tenable. The ld.AR submitted that there is delay from assessment 2005-06 in filing the appeal by six years 3 months and so on. But the assessee took the legal opinion. The ld.CIT(A) on merit has not admitted the appeal. Thus, he prayed before us the delay in filing the appeal may be condoned and matter may be restored to the file of the ld.CIT(A) to decide the appeal on merits.

The Tribunal has to exercise the power with reasonable cause where the delay was properly explained. Such misplacement occurred because continuous illness of the ld. counsel of the assessee. Such reason must be supported by an affidavit. We find that in the instant case the assessee society is registered under the Karnatka Co-operative Societies Act 1959. The assessee society's main object is to manufacture of sugars by procuring cane from members and non-members. Thus, the society runs on co-operative basis. The assessee could not obtain the legal advice. Moreover, the assessee's sugar factory was running in loss for so many years. Therefore, the assessee could not file appeal in time before the ld.CIT(A). The assessee has obtained legal opinion from an ex-principal, G.K.Law College, Hubli. The assessee has filed the appeal. The assessee has understood the legal position.

We are of the view that the assessee had reasonable cause in not filing the appeal in time before the ld.CIT(A).

The appeal may not be decided on technical ground, but it must be decided on merit in the interest of public. We find that the assessee society has huge money of the public. Therefore, in the interest of justice and fair play, we condone the aforesaid delay in filing all the appeals for all the assessment years under consideration and restore the matter to the file of the ld.CIT(A) to decide the appeal on merits after giving the assessee adequate opportunity of hearing.

8. In the result, all the appeals of the assessee are allowed for statistical purpose. Order is pronounced in the open court on 22-01-2015.

Appeals allowed

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Syndicate Rythara Sahakara Bank Limited, Kopa v Income Tax Officer, Mysore, 2015 Indlaw ITAT 1856; [2015] 41 ITR (Trib) 476

Case No: I. T. A. No. 21/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

Jason P. Boaz (Accountant Member) & P. Madhavi Devi (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 80P, 80P(2), 80P(2)(a)(i), 80P (2) (a) (iii) - Interest income - Claim of deduction - Disallowance - Assessee was co-operative society engaged in business of providing credit facilities to its members, facilitating purchase and supply of agricultural implements.

A co-operative society which is carrying on business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. Interest income so derived, if not immediately required to be lent to members, they cannot keep aid amount idle. If they deposit this amount in bank so as to earn interest, said interest income is attributable to profits and gains of business of providing credit facilities to its members only. Society is not carrying on any separate business for earning such interest income. Income so derived is amount of profits and gains of business attributable to activity of carrying on business of banking or providing credit facilities to its members by co-operative society and is liable to be deducted from gross total income u/s.80P of Act. Interest income cannot be said to be attributable either to activity mentioned in s.80P (2) (a) (i) of Act or u/s.80P (2) (a) (iii) of Act. Tribunal holds that CIT (A) was not correct in denying assessee deduction claimed u/s.80P (2) (a) (i) of Act Appeal allowed.

Ratio - Interest earned by co-operative society engaged in business of providing credit facilities to its members has to be regarded as income eligible for deduction u/s.80P(2) of Act.

The Judgment was delivered by Jason P. Boaz (Accountant Member)

2. The facts of the case, briefly, are as under:-

2.1. The assessee is a co-operative society registered under the Co-operative Societies Act, 1959 and is engaged in the business of providing credit facilities to its members, facilitating the purchase and supply of agricultural implements, seeds, live-stock and marketing of agricultural products grown by its members. For Assessment Year 2010-11, the assessee filed its return of income on 28.9.2010 declaring income of Rs.88,170 after claiming deduction under Section 80P(2) of the Income Tax Act, 1961 (herein after referred to as 'the Act'). The case was selected for scrutiny and the assessment was concluded under Section 143(3) of the Act vide order dt.5.3.2013, wherein the income of the assessee was determined at Rs.18,48,220. While doing so, the Assessing Officer observed that the assessee had earned interest income of Rs.26,16,800 from banks on fixed deposits that were kept out of surplus funds, brought the same to tax under the head 'Income from Other Sources' and denied the assessee's claim for deduction under Section 80P(2)(a)(i) of the Act. In this regard, the Assessing Officer placed reliance on the decision of the Hon'ble Apex Court in Totagars Co-op Sales Society 322 ITR 283 (SC) 2010 Indlaw SC 91. The Assessing Officer allowed NIL deduction under Section 80P(2) of the Act as the assessee's business income assessed by him was a loss. In this manner, the total income of the assessee was determined at Rs.18,48,200 after setting of losses under the head 'Business'.

2.2. Aggrieved by the order of assessment for Assessment Year 2010-11 dt.5.3.2013, the assessee preferred an appeal before the CIT (Appeals), Mysore. The learned CIT(A) observed that the assessee is a credit co-operative society that carries on the business of providing credit facilities to its members and it was entitled to deduction under Section 80P(2)(a)(i) of the Act as per the decision of the Hon'ble High Court of Karnataka in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha in ITA No.5006/2013 dt.5.2.2014. The learned CIT(A) further observed that the assessee had interest income of Rs.26,16,800 on fixed deposits kept with banks and not from members to whom loans were advanced. The learned CIT(A) held that the assessee cannot be allowed deduction in respect of the interest income earned from the banks as the same has to be assessed under the head 'Other Sources' and since the assessee's case was covered by the judgement of the Hon'ble Apex Court in the case of Totagars Co-operative Sales Society Ltd. 2010 Indlaw SC 91 (supra). The learned CIT(A) disposed off the assessee's appeal vide order dt.16.10.2014 allowing the assessee partial relief.

6.3.1. We have heard the rival submissions on the issue before us and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. We find that both the authorities below have placed reliance on the judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra) and held that the interest income earned by co-operative societies from bank deposits cannot be regarded as income earned from the business of providing credit facilities to its members and thereby, are not entitled to deduction under Section 80P(2)(a)(i) of the Act. However, the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra), has observed that the judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra) was confined to the facts of that case and that there was no law laid down by the Hon'ble Apex Court that interest income has to be assessed under the head 'Other Sources'.

6.3.2. Respectfully following the decision of the Hon'ble High Court of Karnataka in the case of Tumkur

Merchants Souharda Credit Co-operative Society Ltd. (supra), we hold that the learned CIT(A) was not correct in denying the assessee the deduction claimed under Section 80P(2)(a)(i) of the Act in respect of Rs.26,16,800 earned by the assessee. The judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra) relied upon by the learned CIT(A) has been considered and distinguished by the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra). We find that the facts of the case on hand are similar to the facts of the aforesaid case decided by the Hon'ble High Court of Karnataka, since in both cases the assessee was a credit co-operative society and invested in fixed deposits out of the surplus funds of business. Applying the ratio of the judgment of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra), we hold that the assessee is entitled to deduction under Section 80P(2)(a)(i) of the Act in respect of interest income earned on fixed deposits, as well as that the said interest income forms part of the business income earned by the assessee and the same is not to be taxed under the head 'Other Sources'. In this view of the matter, the deduction claimed by the assessee under Section 80P(2)(a)(i) of the Act in respect of interest of Rs.26,16,800 earned from investments in fixed deposits and Govt. Securities out of surplus funds from business, is allowed. Consequently the grounds raised by the assessee on this issue are allowed.

7. In the result, the assessee's appeal for Assessment Year 2010-11 is allowed.

Appeal allowed.

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Assistant Commissioner of Income-tax, Circle 3(1), Hubli v Regional Oild Seeds Growers Co-Operative Union Limited, Hubli, 2016 Indlaw ITAT 2291

Case No: ITA Nos. 1183 & 1184/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

Inturi Rama Rao (Accountant Member) & Asha Vijayaraghavan (Judicial Member)

Head Note :

KCS Act 1959 – deduction of sec.80P(2) under Income Tax Act

There is no dispute about the eligibility of the assessee co-operative society for deduction under sec.80P(2)(a)(iv) of the Act. The dispute is only with regard to method of arriving at profit from the activities which is eligible for under sec.80P(2) the activity of the society can be arrived at from the book of accounts maintained by the assessee under this tally system. This finding remains uncontroverted by the revenue. Hence do not find any reason to interfere with the order of CIT(A) – appeal dismissed

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

3. Briefly facts of the case are that the respondent-assessee is a co-operative society registered under the Karnataka Co-operative Societies Act. It is engaged in the business of distribution of oil seeds among the

members of the society and trading in edible oils. In the return of income filed, assessee-co-operative society claimed deduction u/s 80P(2)(a)(iv) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] in respect of income earned from sale of seeds to its members. While arriving at the income attributable to activity of sale of seeds, assessee-co-operative society had allocated common expenditure in proportion of the turnover whereas the AO arrived at the income by apportioning the net income in the proportion of turnover. As a result of this, it resulted in short- allowance of deduction under the provisions of section 80P(2)(a) of the Act.

4. On appeal, before the contention, contention of the assessee-co-operative society was accepted by holding that from the books of account maintained under tally system, gross profit from each activity can be arrived at and the method of apportionment of common expenditure between two activities was accepted by the CIT(A).

5.3. We heard the rival submissions and perused the material on record. There is no dispute about eligibility of the assessee co-operative society for deduction u/s 80P(2)(a)(iv) of the Act. The dispute is only with regard to method of arriving at profit from the Activity which is eligible for deduction u/s 80P. The bone of contention between the assessee co-operative society and the Revenue is only with regard to the method to be adopted for arriving at profit eligible for deduction u/s 80P(2). The ld.CIT(A) recorded a finding that GP in respect of each activity can be arrived at from the books of account maintained by the assessee under tally system. This finding remains uncontroverted by the revenue. Once GP is arrived at, question of apportionment of common overheads among the eligible activity and non-eligible activity. In our considered opinion, method of apportionment of common expenditure among the two activities adopted by the assessee co-operative society is acceptable and reasonable having regard to the ratio laid down by the Hon'ble Apex Court in the case of Consolidated Coffee Ltd. 2000 Indlaw SC 3659 (supra) wherein it was held that adoption of method of apportioning common expenditure on the basis of gross receipts could not be said to be perverse method and it is a reasonable method. Therefore, the view taken by the ld.CIT(A) cannot be found fault with. Hence, we do not find any reason to interfere with the order of the ld.CIT(A).

4. In the result, the appeals of the revenue are dismissed.

Order pronounced in the open court on this 07th day of March, 2016.

Appeals dismissed

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Income-Tax Officer, Bangalore v Kautilya House Bldg. Co-operative Society Limited, Bangalore, 2016 Indlaw ITAT 1037

Case No: ITA Nos. 1324 to 1337/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

George George K. (Judicial Member) & I. P. Bansal (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income-tax Act,1961, ss.194C,201(1),201(1A) – Nature of payment – Chargeability - Applicability of provision - To determine character of payments, it is essential to look into terms of contract. Perusal of clauses of agreements reveals that it is case of sale of developed sites of developer to individual members of co-operative society. Society was only acting as facilitator. Therefore, it does not involve any works contract. It is case of sale of plots to members of society. In such circumstances, provisions of s.194C of the Act are not applicable. Hence, no reason is found to interfere with order of CIT(A). Appeals dismissed.

Ratio – Assessee is not liable to pay tax on services conducted by him on which relevant provision of tax has no applicability.

The Order of the Court was as follows :

3. Brief facts of the case are that the respondent-assessee is a co-operative society registered under the provisions of Karnataka Co-operative Societies Act. The object for which the respondent-co-operative society was set up was to provide housing sites to its members. In order to achieve this object, various activities are required to be undertaken like acquisition of lands, getting necessary approvals, development of lands into sites etc. As the laws governing the lands in State of Karnataka do not permit a co-operative society to acquire lands on its own, it is stated that, the respondent-co-operative society had identified one person who would acquire lands and also develop lands as per requirements of the society after duly complying with the rules and regulations of local bodies. In this direction, the society approached a person by nameShri Lakshman to undertake these activities. Shri Lakshman, in turn, acquired lands, developed lands into sites as per norms prescribed by local bodies and thereafter sites were sold to members of the respondent-co- operative society. The society was acting as a facilitator.

In support of this contention, respondent-co-operative society relied upon the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Karnataka State Judicial Department Employees House Bldg. Co-operative Society in ITA No.1260/2006. The ITO, TDS, Ward 2(1) has not accepted this contention of the respondent-co-operative society and held that the agreement entered into by the respondent-co- operative society is in the nature of works contract and therefore, the provisions of section 194C are applicable and the assessee is held to be in default for not deducting tax at source under the provisions of sec.194C and accordingly he passed orders u/s 201(1) of the Act demanding TDS on payments made and orders u/s 201(1A) demanding interest on such TDS amounts.

6. Being aggrieved by the orders of the CIT(A), the revenue is in present appeals before us.

7. At the outset, there is a delay in filing present appeals. The ITO(TDS), Ward 2(1), Bangalore, prayed for condonation of delay as the delay had occurred on account of the fact that the ITO was under bona fide belief that the decision of the Hon'ble High Court of Karnataka in the case of Karnataka State Judicial Department Employees House Bldg. Co-operative Society (cited supra) was accepted by the revenue on merits. However, on verification of records, he found that the revenue had not preferred further appeal before the Hon'ble Supreme Court only account of low tax effect. On coming to know of this fact, the ITO(TDS), Ward 2(1), Bangalore initiated steps for filing of appeals. In the process, there was a delay of 144 days. It is prayed that the delay may be condoned in view of the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Khatiji & Others (167 ITR 471 1987 Indlaw SC 28811) wherein it was held that delay should be condoned liberally in order to advance the cause of substantive justice.

7.1. On the other hand, learned AR of the assessee has no serious objection for condonation of delay.

7.2. Therefore, we are of the opinion that it is a fit case for condonation of delay as the delay had occurred on account of mistaken impression that appeal was not filed against the decision of the Hon'ble High Court of Karnataka in the case of Karnataka State Judicial Department Employees House Bldg. Co-operative Society (cited supra) on merit of case. Keeping in view the ratio laid down by the Hon'ble Apex Court in the case of Mst. Khatiji & Others 1987 Indlaw SC 28811 (cited supra), we condone the delay of 144 days in filing the appeals and admit the appeal filed by the revenue.

8. The issue in the present appeals is whether the payments made by the respondent-co-operative society to Shri Lakshman, stated to have been paid to acquire lands are in the nature of payment made for any work contract or consideration paid for purchase of sites. It is needless to mention that the provisions of sec.194C are applicable only to works contract. Once it is established that payments made to Shri Lakshman are not in the nature of works contract, question of deducting tax at source under the provisions of sec.194C does not arise. To determine the character of payments, it is essential to look into terms of the contract.

The society was only acting as a facilitator. Therefore, it does not involve any works contract. It is a case of sale of plots to members of society. In such circumstances, it is settled law by now that the provisions of sec.194C are not applicable. We do not find any reason to interfere with the orders of the CIT(A) and accordingly, uphold the same.

9. In the result, the appeals filed by the revenue are dismissed.

Appeals dismissed

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Karnataka State Co-operative Apex Bank Limited v Deputy Commissioner of Income-Tax, Circle 3(1), Bangalore, 2016 Indlaw ITAT 4742; [2016] 46 ITR (Trib) 728

Case No: ITA No. 1372/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)

Head Note :

KCS Act 1959 – Income Tax Act 1961 – claiming of deduction under sec.140 of the Act for creation for funds like, common funds, special fund, PACS/DCCB funds, rural formers economic funds, were assesses through reopening by the assesses officer.

The approached the lower authorities cannot stand laid down by the privy council in the case of Indian radio communication company limited v/s CIT(5 ITR 270) 1937 Indlaw PC 7 wherein it is laid down that when the assessee makes payment which computed in relation to profits, it is still on item of expenditure though certain by reference to the profits.

Sec.57 of the KCS Act 1959 stipulates that 2% of its net profit be contributed towards co-operative education funds and it also further stipulates that the net profit of a co-operative society shall be determined only a according rules and regulation as may be prescribed for any class of the co-operative society.

It is clear that the fund contributed neither remains with the Apex co-operative banks nor come back to the assessee co-operative banks in other form. The amounts are spent only out of statutory fund – appeal filed by the assessee partly allowed

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

3. Brief facts of the case are that the assessee is a co-operative society registered under the provisions of the Karnataka State Co-operative Societies Act, 1959 and under the Banking Regulation Act, 1939. It is engaged in the business of banking. The main object for which the assessee-co-operative bank was established was to serve as a State Co-operative Bank. Return of income for the assessment year 2007-08 was filed on 31/10/2007 declaring income of Rs.40,77,27,150/-. The said return of income was processed u/s 143(1) of the Income-tax Act, 1961 ['the Act' for short]. There was no scrutiny assessment against the original return of income. However, subsequently, the Assessing Officer [AO] after noticing that the assessee-co-operative bank claimed deduction of contribution made to certain funds viz., Common Good Fund [CGF], Special Assistance Fund, PACS/DCCB Fund, Rural Farmers Social Economic Fund, reopened the assessment by issuing notice u/s 148.

6.1. During the course of hearing, it was submitted on behalf of the assessee-co-operative bank that during the previous year relevant to assessment year under consideration, while adding back the provisions of contribution made to (a) Common Good Fund, (b) Special Assistance Fund, (c) Payment to PACS/DCCB Fund and (d) Rural Farmers Socio Economic Development Fund, the assessee-co-operative bank had claimed deduction

of actual amounts spent out of provision created. It was submitted that it was a statutory obligation to spend money for the above purposes as the provisions of the Karnataka Co-operative Societies Act stipulates that certain percentage of profits should be spent towards the specified purposes. The amounts are spent only as a statutory obligation and it was also further submitted that the amounts were spent only to promote the business interest of the assessee-co-operative bank and therefore, they should be allowed as deduction under the provisions of sec.37(1) of the Act. As regards the additional claim of deduction on account of loss of securities of Rs.8,28,65,052/- it was submitted that it was not a fresh claim but only re-adjustment of the already made claim in the original proceedings. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works 1992 Indlaw SC 611 (supra) is not applicable.

It is not the case of the revenue that the above expenditure is capital in nature. The lower authorities had disallowed the above expenditure solely on the ground that it is only appropriation out of profits and not expenditure. The approach of the lower authorities cannot stand the test of law laid down by the Privy Council in the case of Indian Radio Cable Communications Co. Ltd. Vs. CIT (5 ITR 270) 1937 Indlaw PC 7 wherein it is laid down that when the assessee makes a payment which is computed in relation to profits, it is still an item of expenditure though ascertained by reference to the profits. The payment is not allowable as deduction only in the case of division of profits.

8.5. The reliance placed by the ld.CIT(DR) on the decision of the Hyderabad bench of Tribunal in the case of A.P.Mahesh Co-operative Urban Bank Ltd 2014 Indlaw ITAT 2229 (supra) rests on the decision of the Hon'ble Supreme Court in the case of Vellore Electric Corporation Ltd. Vs. CIT (227 ITR 557) 1997 Indlaw SC 3267. On perusal of the said decision, it is clear that the decision is relating to creation of reserve fund which always remained with the assessee-corporation. Therefore, the ratio of decision in teh case of A P Mahesh Co-operative Urban Bank Ltd 2014 Indlaw ITAT 2229 (supra) is not applicable to the facts of the case. We, direct the AO to allow the amount spent on the above fund of Rs.10,86,43,782/- as deduction while computing income of the assessee-co-operative bank.

9. In the result, grounds of appeal Nos.2 to 4 are allowed.

10. As regards ground No.5 about allowance of additional claim on account of loss on sale of securities of Rs.8,28,65,052/- it is undisputed fact that this claim was made only in the return of income filed in response to notice u/s 148. The issue is whether the assessee is entitled to agitate the issues which were concluded in the original assessment proceedings? This additional claim was obviously not made in the original assessment proceedings nor this issue is one of those issues which is sought to be reconsidered by the AO during the course of re-assessment proceedings. Therefore, concluded issue in the original assessment proceedings cannot be re-agitated during the course of re-assessment proceedings. The ratio laid down by the Hon'ble Supreme Court in the case of Sun Engineering 1992 Indlaw SC 611 (supra) is squarely applicable to the facts of the case. Even assuming that it is only re-adjustment of claim already made, such re-adjustment is not possible in the proceedings of re-assessment. The assessee can have recourse to any other provisions of the Income-tax Act, 1961. Hence, this ground of appeal is dismissed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order accordingly

Income-tax Officer, Ward 2(2), Hubballi v KVG Bank Employees Co-operative Credit Co-operative Society Limited, Dharwad, 2017 Indlaw ITAT 1124

Income Tax Appellate Tribunal, Bengaluru Bench

Inturi Rama Rao (Accountant Member), Lalit Kumar (Judicial Member)

Head Note :

KCS Act 1959 – exemption under sec.80P

In the present case both the parties to the transaction are contributors towards surplus, however, there are no participators in the surpluses. There is no common consent for participators as their identity is not establish – the assessee fails to satisfy the test of mutuality at the time of the making the payments - the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members – the society cannot claim the benefit of sec.80P of the Act – the appeal filed by the revenue is allowed by the statistical purposes.

Case No: ITA No. 671/Bang/2017

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

2. The revenue raised the following ground of appeal:

Whether, on fact & circumstances of the case and in law. The Ld. CIT(A), Hubballi was justified in law in holding that the assessee society is entitled to deduction under section 80P(2)(a)(i) of the Income tax Act even when the assessee-society is mainly involved in extending credit facilities to its members which is in the nature of a bank transaction, treated on par with the new clause introduced in the definition of Income in section 2(24)(viia) of the Act and comes under the purview of section 80P(4) w.e.f. 01.04.2007

3. Brief facts of the case are that the assessee is a co-operative credit society registered under the Karnataka Co-operative Societies Act. It is engaged in providing credit facilities to its members. The assessee filed return of income declaring nil taxable income after claiming deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. The Assessing Officer in the assessment order passed u/s 143(3) of the Act, held that the assessee-society is not eligible for deduction u/s 80P of the Act and determined the total income of the assessee-society at Rs.52.02,258/-.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-a-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs].

In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all."

(27) These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80P of the Act."

Following the same, we remit this issue to the file of the AO to verify whether the assessee-society had any transactions with non-members. If it is so, the concept of mutually cannot be applied and the decision of the Hon'ble Apex Court in the case of The Citizen Co-operative Society Ltd. (supra) shall apply with all fours.

3. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

Appeal allowed

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Karnataka State Co-operative Apex Bank Limited, Bangalore v Deputy Commissioner of Income-tax, Bangalore, 2016 Indlaw ITAT 2170

Income Tax Appellate Tribunal, Bangalore Bench

Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s. 148 - A/Y 2007-2008 - Re opening assessment - Disallowance of expenditure - Challenged - Assessee co operative bank claimed deduction of contribution made to certain funds - AO reopened assessment by issuing notice u/s. 148 of Act and disallowed expenditure claimed on account of said funds holding that amounts were expended only after appropriation of profits and therefore not allowable as deduction - CIT(A) upheld same - Hence, instant appeal - Whether, CIT (A) is justified in reopening assessment by issuing notice u/s. 148 of Act and disallowing expenditure claimed on account of funds.

It is statutory obligation of assessee co operative bank to contribute to Co opreative Education fund. For allowance of expenditure, it is settled proposition of law that expenditure should result in profit. It may be further stated that one of objects of assessee co operative bank is to develop or assist and co operative member district central co operative banks and other co operative societies and contribution was only made in further pursuance of objects of bank for which it was established and it cannot be said that there is business interest in incurring those expenditure. By grant of subsidies it has got business advantage and allowed deduction. Amounts spent cannot be disallowed. AO directed to allow amount spent on education fund as deduction while computing income of assessee co operative bank. Appeal partly allowed.

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

3. Brief facts of the case are that the assessee is a co-operative society registered under the provisions of the Karnataka State Co- operative Societies Act, 1959 and under the Banking Regulation Act, 1939. It is engaged in the business of banking. The main object for which the assessee-co-operative bank was established was to serve as a State Co-operative Bank. Return of income for the assessment year 2007-08 was filed on 31/10/2007 declaring income of Rs.40,77,27,150/-. The said return of income was processed u/s 143(1) of the Income-tax Act, 1961 ['the Act' for short]. There was no scrutiny assessment against the original return of income. However, subsequently, the Assessing Officer [AO] after noticing that the assessee-co-operative bank claimed deduction of contribution made to certain funds viz., Common Good Fund [CGF], Special Assistance Fund,

PACS/DCCB Fund, Rural Farmers Social Economic Fund, reopened the assessment by issuing notice u/s 148.

4. The assessee-co-operative bank filed return of income in response to notice u/s 148 on 13/9/2012 declaring a total income of Rs.36,19,77,100/-. After issuing notice u/s 143(2), the assessment was completed by the AO u/s 143(3) r.w.s. 147 vide order dated 30/3/2013 at a total income of Rs.51,71,70,670/-. While doing so, the AO has disallowed expenditure claimed on account of the following funds holding that the amounts are expended only after appropriation of profits and therefore not allowable as deduction.

5. Being aggrieved by the above order, an appeal was filed before the ld. CIT(A) who, vide impugned order, confirmed the additions made by the AO. The ld. CIT(A) concurred with the reasoning of the AO and upheld the additions made on account of amounts spent on contribution to various funds. In respect of deduction in respect of additional claim on account of loss on sale of securities, the ld. CIT(A) totally concurred with the views of the AO.

6. Being aggrieved by the order of the ld. CIT(A), the assessee-co- operative bank is before us with the present appeal.

6.1. During the course of hearing, it was submitted on behalf of the assessee-co-operative bank that during the previous year relevant to assessment year under consideration, while adding back the provisions of contribution made to (a)Common Good Fund, (b)Special Assistance Fund, (c)Payment to PACS/DCCB Fund and (d)Rural Farmers Socio Economic Development Fund, the assessee-co-operative bank had claimed deduction of actual amounts spent out of provision created. It was submitted that it was a statutory obligation to spend money for the above purposes as the provisions of the Karnataka Co-operative Societies Act stipulates that certain percentage of profits should be spent towards the specified purposes. The amounts are spent only as a statutory obligation and it was also further submitted that the amounts were spent only to promote the business interest of the assessee-co-operative bank and therefore, they should be allowed as deduction under the provisions of sec.37(1) of the Act. As regards the additional claim of deduction on account of loss of securities of Rs.8,28,65,052/- it was submitted that it was not a fresh claim but only re-adjustment of the already made claim in the original proceedings. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works 1992 Indlaw SC 611 (supra) is not applicable.

8.3. The Hon'ble Bombay High Court in the case of CIT vs. State Bank of India (261 ITR 82) 2003 Indlaw MUM 5, while dealing with the issue of allowability of subsidy granted by it to its subsidiary banks, held that by grant of subsidies it has got the business advantage and therefore, allowed deduction by holding as under:

"Lastly, by giving subsidy to the State Bank of Patiala, the State Bank of Saurashtra, etc., for opening branches, assets were created, but these assets belonged to the subsidiaries. The assets did not belong to the State Bank of India. Similarly, profits were earned by the subsidiaries and not the State Bank of India. At the highest, by giving subsidy under section 48(1) of the Act, the State Bank of India got a business advantage. In the circumstances, we hold that the expenditure incurred by the State Bank of India in giving subsidies to the State Bank of Saurashtra, the State Bank of Patiala, etc., under section 48(1) of the said Act of 1959, represented revenue expenditure. Lastly, we may mention that in the case of Empire Jute Company Ltd. v. CIT [1980] 124 ITR 1 1980 Indlaw SC 301, it has been held by the Supreme Court that what may be a capital receipt in the hands of the payee, need not necessarily be capital expenditure in relation to a payer. In the circumstances,

there is no merit in the argument of the Department that because the subsidy is not income in the hands of the payee, it cannot be revenue expenditure in relation to the payer.

8.4. Thus viewed from this angle, the amounts spent cannot be disallowed. The reliance placed by the ld.CIT(DR) on the decision of the Hyderabad bench of Tribunal in the case of A.P.Mahesh Co- operative Urban Bank Ltd (supra) rests on the decision of the Hon'ble Supreme Court in the case of Vellore Electric Corporation Ltd. Vs. CIT (227 ITR 557 1997 Indlaw SC 2601). On perusal of the said decision, it is clear that the decision is relating to creation of reserve fund which always remained with the assessee-corporation. Therefore, the ratio of decision in teh case of A P Mahesh Co-operative Urban Bank Ltd (supra) is not applicable to the facts of the case. We, direct the AO to allow the amount spent on the above fund of Rs.10,86,43,782/- as deduction while computing income of the assessee-co-operative bank.

9. In the result, grounds of appeal Nos.2 to 4 are allowed.

10. As regards ground No.5 about allowance of additional claim on account of loss on sale of securities of Rs.8,28,65,052/- it is undisputed fact that this claim was made only in the return of income filed in response to notice u/s 148. The issue is whether the assessee is entitled to agitate the issues which were concluded in the original assessment proceedings? This additional claim was obviously not made in the original assessment proceedings nor this issue is one of those issues which is sought to be reconsidered by the AO during the course of re-assessment proceedings. Therefore, concluded issue in the original assessment proceedings cannot be re-agitated during the course of re-assessment proceedings. The ratio laid down by the Hon'ble Supreme Court in the case of Sun Engineering 1992 Indlaw SC 611 (supra) is squarely applicable to the facts of the case. Even assuming that it is only re-adjustment of claim already made, such re-adjustment is not possible in the proceedings of re-assessment. The assessee can have recourse to any other provisions of the Income-tax Act, 1961. Hence, this ground of appeal is dismissed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order accordingly

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Chikmagalur Jilla Mahila Sahakara Bank Niyamitha, Chikmagalur v Assistant Commissioner of Income Tax, Hassan, 2018 Indlaw ITAT 3363

Case No: I. T. A. No. 1384/Bang/2018

Income Tax Appellate Tribunal, Bengaluru Bench

Laliet Kumar (Judicial Member), Inturi Rama Rao (Accountant Member)

Head Note :

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 194A(3)(i)(b), 194A(3)(v) - Assessment - Validity - Appellant was cooperative society - Whether, passing of assessment order against appellant was justified.

Looking into language used in above provisions more particularly 194A(3)(v), then it is clear that case of Appellant shall squarely fall within this provision, being specific provision, irrespective or more is paid by

assessee to its member or not and therefore in considered opinion of bench other provision i.e., 194A(3)(i)(b) shall not be applicable being general in nature. It is settled proposition of law that specific provision {i.e 194A(3)(v)}, shall override general provision, {i.e 194A(3)(i) (b)}, in case of over lapping or conflict, hence s. 194A(3)(v)} is applicable to facts of present case. Therefore contention of ld DR is not correct. Appeal allowed.

The Judgment was delivered by: Laliet Kumar (Judicial Member)

2. Brief facts are, the assessee is a cooperative society registered as a cooperative bank and is also registered under the Karnataka Cooperative Societies Act, 1959 and has obtained licence from the RBI to carry out banking operations as a cooperative bank. The assessee filed return of income for AY 2012-13 declaring total income of Rs. 59,86,750/-. However case of the assessee was selected for scrutiny and the AO passed an assessment order determining the total income at Rs. 1,05,46,100/-. Aggrieved the assessee filed an appeal before the CIT (A).

3. On appeal the CIT (A) had decided the issue against the assesse.

7. The present case before us pertains to the payments made by way of interest by the assessee society to its members would attracts the deduction of tax or not. In this regard, if we look into the language used in the above provisions more particularly 194A(3)(v), then it is clear that the case of assessee shall squarely fall within this provision, being specific provision, irrespective whether Rs. 10,000/- or more is paid by the assessee to its member or not and therefore in the considered opinion of the bench the other provision relied upon by the Ld. DR i.e., 194A(3)(i)(b) shall not be applicable being general in nature. It is settled proposition of law that the specific provision {i.e 194A(3)(v)}, shall override the general provision, { i.e 194A(3)(i) (b)}, in case of over lapping or conflict, hence the section 194A(3)(v)} is applicable to the facts of the present case. Therefore the contention of ld DR is not correct. Further the case is also covered in favour of assessee by the decision of the coordinate bench in the matter of Vasavamba Cooperative Bank Ltd (supra), further there is no reason for this bench to take a contrary view, as the facts are similar to the facts of present case. Following the same we allow the appeal of the assessee.

8. In the result, appeal of the assessee is allowed.

Appeal allowed

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Prathmik Krushi Pattina Sahakar Sangh Niyamita v Income Tax Officer, Hospet, 2018 Indlaw ITAT 9708

Case No: ITA No. 1957/Bang/2018

Income Tax Appellate Tribunal, Bangalore Bench

Arun Kumar Garodia (Accountant Member)

Head Note :

KCS Act 1959 – Income Tax Act sec.80P

Weather the assessee is a co-operative bank are not, for which the assessee are obtain and produce the certificate and the bank of India regarding the nature of business of assessee. If it is found as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction under sec.80P. If the assessee is not a co-operative bank as per this certificate of RBI than regarding the claim of the assessee for deduction under sec.80P(2)(d), the facts of present case should be examine in the light of the two

judgments of the Karnataka high court in the case of Tumkur Merchants Souhardha Co-operative limited v/s ITO (TS-5931-HC-2014 (Karnataka)-O and Totagars co-operative sale society v/s ITO (TS-5548-HC-2017 (Karnataka)-O the appeal was allowed for statistical purposes.

The Judgment was delivered by Arun Kumar Garodia (Accountant Member)

2. On the facts and circumstances of the case, the learned CIT-A, failed to consider the submissions dated 11.11.2014 filed by the Appellant before the Assessing Officer on 19.11.2014 and resorted to pass the impugned order, therefore, the order passed is without affording the Appellant a reasonable opportunity of being heard and thereby violated the principles of natural justice.

3. On the facts and circumstance of the case, the learned CIT-A had failed to appreciate that the Appellant is a Primary Agricultural Credit Society and was dealing only with its members by providing the credit facilities to them. Therefore, in the facts of the case, the decision of Hon'ble jurisdictional High Court passed in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO reported in [TS-5931-HC-2014 (Karnataka)-O] is applicable.

11. That each of the above ground is without prejudice to one another and theAppellant craves leave to add, alter, amend or modify any of the grounds of appeal and prays to be allowed the permission to submit further evidence / judgment / written submissions at the time of hearing before the Hon'ble Tribunal."

3. Brief facts are that as per para no. 7 of the order of CIT(A), the revenue has decided the issue against the assessee following the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO as reported in 322 ITR 283(SC). In the same Para of his order on page no. 11, he has also referred to another judgement of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society as reported in TS-326-SC-2017 dated 16.08.2017 and thereafter, in Para 7.1 of his order, ld. CIT(A) has given finding that considering these two judgements of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and Citizen Co-operative Society (supra), the assessee is not eligible for deduction u/s. 80P(2)(d) of IT Act. The ld. AR of assessee submitted that in the present case, another judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vvs ITO as reported in 230 Taxman 309 is applicable. Regarding this aspect that whether the assessee is a co-operative bank or not, he submitted that as per para 24 of this judgement of Hon'ble Apex Court in the case of Citizen Co-operative Society (supra), it was held that in order to hold that the assessee society is a co-operative bank, it should be established that such assessee co-operative society is holding license from Reserve Bank of India. At this juncture, it was pointed out by the bench that in the same para of this judgement of Hon'ble Apex Court, it is also noted that in that case, the assessee does not possess license from RBI and the RBI has itself clarified that the business of the assessee does not amount to that of a co-operative bank. It was pointed out that in the facts of present case also, the assessee should obtain certificate from RBI regarding the nature of business carried on by the assessee. It was also observed by the bench that before following the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it has to be ascertained as to whether facts of the present case are in line with the facts in that case or the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) as per the judgement of Hon'ble Apex

Court rendered in that case. In reply, it was submitted by ld. AR of assessee that the matter may be restored back to the file of CIT (A) for fresh decision and if this is done then the assessee will produce the certificate from RBI regarding the nature of business activity of the assessee and also submit the facts before CIT (A) to establish that the facts of present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). The ld. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. In my considered opinion, this issue should go back to the file of CIT (A) for fresh decision in the light of above discussion and hence, I set aside the order of CIT (A) and restore the matter back to his file for fresh decision with the direction that on this issue whether the assessee is a co-operative bank or not, the assessee has to obtain and produce the certificate from Reserve Bank of India regarding the nature of business of the assessee. If it is found that as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction u/s. 80P. If the assessee is not a co-operative bank as per this certificate of RBI then regarding the claim of the assessee for deduction u/s. 80P(2)(d), the facts of present case should be examined in the light of these two judgements of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and if it is found that the facts of the present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), then the issue should be decided in favour of the assessee and if the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra), then the issue should be decided against the assessee. Needless to say, ld. CIT(A) should pass necessary order as per law as per above discussion after providing adequate opportunity of being heard to both sides. In view of this decision, no separate adjudication on any other ground is called for.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Appeal allowed

ಸಹಕಾರಿ ಕಾನೂನುಗಳ ಜ್ವಲಂತ ನಿಘಂಟು ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿ

ಸಹಕಾರಿ ಕಾನೂನುಗಳು, ನಿಯಮಗಳು, ಅವುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳು ಅವುಗಳ ಪರಿಭಾಷೆ ಅವುಗಳ ವಿವರಣೆ ಎಲ್ಲವನ್ನು ಸರಾಗವಾಗಿ ವಿವರಿಸುವ ವ್ಯಕ್ತಿತ್ವ ಶ್ರೀ ಸಿ.ಎನ್ ಪರಶಿವಮೂರ್ತಿಯವರದು. ಅವರು ಆ ವಿಷಯದಲ್ಲಿ ಅಥಾರಿಟಿ. ಕಾನೂನು ಸಮಸ್ಯೆಗಳಿಗೆ ತ್ವರಿತ ಪರಿಹಾರ ಒದಗಿಸುವ ನಿಘಂಟು. ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ವಿನಂತಿಯ ಮೇರೆಗೆ 2015 ರಲ್ಲಿ ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ತೀರ್ಪುಗಳ ಸಾರಾಂಶ, 2018 ರಲ್ಲಿ ಭಾಗ –2, ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಮಾಹಿತಿ ಹಕ್ಕು ಕಾಯ್ದೆಯನ್ವಯ ನೀಡಲಾದ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳ ಸಾರಾಂಶ 2018, ಕರ್ನಾಟಕ ಹೈಕೋರ್ಟ ಜಡ್ಜಮೆಂಟ್ಸ 2015, 2017 ಮತ್ತೆ 2018 ರಲ್ಲಿ ಭಾಗ–2, ಸುಪ್ರೀಮ್ ಕೋರ್ಟ ಜಡ್ಜಮೆಂಟ್ಸ 2018 ಮತ್ತು 2018 ಭಾಗ–2 ಗಳನ್ನು ಸಂಗ್ರಹಿಸಿ ಬರೆದು ಕೊಟ್ಟಿರುವುದನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಮುದ್ರಣ ಹಾಗೂ ಪ್ರಕಾಶನ ಮಾಡಲಾಗಿತ್ತು ಈ ಎಲ್ಲ ಪುಸ್ತಕಗಳ ಬಗ್ಗೆ ಕಾನೂನು ಕ್ಷೇತ್ರದ ಪರಿಣಿತಿರಾದ ದಿಂ ಜಸ್ಟೀಸ್ ರಾಮಾ ಜೋಯಿಸ್, ಸುಪ್ರೀಮ್ ಕೋರ್ಟನ ವಿಶ್ರಾಂತ ನ್ಯಾಯಾಧೀಶ ಶ್ರೀ ಶಿವರಾಜ ಪಾಟೀಲ್, ಶ್ರೀ ಕೆ.ಎಮ್. ನಟರಾಜ ಸಾಲಿಸಿಟರ್ ಜನರಲ್ ಆಫ್ ಇಂಡಿಯಾ ಇವರುಗಳು ಈ ಪುಸ್ತಕಗಳಿಗೆ ಮುನ್ನುಡಿಯನ್ನು ಬರೆದಿರುವುದು ಈ ಎಲ್ಲ ಪುಸ್ತಕಗಳ ಘನತೆಯನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಕ್ರೀಯಾಶೀಲತೆಯನ್ನು ಎತ್ತಿ ಹಿಡಿದಿದೆ.

ಪ್ರಸ್ತುತ ಕರ್ನಾಟಕ ಆದಾಯ ತೆರಿಗೆ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ ಇಂಗ್ಲೀಷ ಭಾಷೆ 110 ಪುಟಗಳು, ಕರ್ನಾಟಕ ಹೈಕೋರ್ಟ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ 528 ಪುಟಗಳು (ಇಂಗ್ಲೀಷ ಭಾಷೆ) ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಕಾಯ್ದೆ ಆಡಳಿತ ಕೈಪಿಡಿ ಕನ್ನಡ 344 ಪುಟಗಳು ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಶ್ರೇಷ್ಠ ಹಾಗೂ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ ಕನ್ನಡ ಭಾಷೆ 170 ಪುಟಗಳ ಪುಸ್ತಕಗಳನ್ನು ಅತ್ಯಂತ ಶ್ರದ್ಧೆಯಿಂದ ಬರೆದು ಒದಗಿಸಿದ್ದಾರೆ. ಈ ಪುಸ್ತಕಗಳು ಬೇರೆ ಯಾವುದೇ ಸಹಕಾರ ಸಂಸ್ಥೆಯಲ್ಲಿ ಈ ರೀತಿ ಕ್ರೋಢೀಕೃತ ವ್ಯವಸ್ಥೆಯಲ್ಲಿ ಸಿಗುವುದು ಕಷ್ಟ. ಮಾನ್ಯ ಶ್ರೀ ಸಿ.ಎನ್. ಪರಶಿವಮೂರ್ತಿಯವರು ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಮೇಲೆ ಸಹಕಾರಿಗಳ ಮೇಲೆ ಸಹಕಾರಿ ಇಲಾಖೆ ಕಾರ್ಯನಿರ್ವಹಣೆಯ ಮೇಲಿನ ಅಪಾರ ಶ್ರದ್ಧೆಯಿಂದ ಈ ಪುಸ್ತಕಗಳನ್ನು ಸಿದ್ಧಪಡಿಸಿರುವುದು ಸಹಕಾರಿಗಳೆಲ್ಲರ ಸೌಭಾಗ್ಯ. ಸಹಕಾರಿ ಕ್ಷೇತ್ರ ಎಲ್ಲರಿಗೂ ಈ ಪುಸ್ತಕಗಳು ಹೆಚ್ಚು ಪ್ರಯೋಜನವಾಗುತ್ತದೆ ಎಂದು ಆಶಿಸುತ್ತೇನೆ.

ಎ.ಆರ್ ಪ್ರಸನ್ನಕುಮಾರ
ಉಪಾಧ್ಯಕ್ಷರು

ಸಹಕಾರ ಗೀತೆ

ಸಮಾಜ ಹೈ ಆರಾಧ್ಯ ಹಮಾರಾ, ಸೇವಾ ಹೈ ಆರಾಧನಾ !
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!
ಸಮಾಜ ಸೆ ಹೀ ಸಂಸ್ಕೃತಿ ಕೀ ಯಹ್, ಶ್ರೇಷ್ಠ ಧರೋಹರ್ ಹಮೆ ಮಿಲೀ !
ಧನ ಸಾಮರ್ಥ್ಯ, ಜ್ಞಾನ ಕೀ ಪೂಂಜೀ, ಸಮಾಜ ಸೆ ಹೀ ಹಮೆ ಮಿಲೀ !
ಯಹ ಸಮಾಜ್ ಋಣ್ ಪೂರ್ಣ್ ಚುಕಾನೆ, ಜೊ ಪಾಯಾ ಸೊ ಬಾಂಟನಾ !!
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!
ಸಮಾನ್ ಅವಸರ್ ಮಿಲೆ ಸಭೀ ಕೋ, ಕೊಯಿಭೀ ನ ಉಪೇಕ್ಷಿತ್ ಹೋ !
ಸಭೀ ಸ್ವಸ್ಥ ಶಿಕ್ಷಿತ್, ಸಂಸ್ಕಾರಿತ್, ಸಮರ್ಥ ಔರ್ ಸುರಕ್ಷಿತ್ ಹೋ !
ದಯಾ ನಹೀ, ಉಪಕಾರ ನಹೀ ಯಹ್, ಅಪನೆಪನ್ ಕಿ ಭಾವನಾ !!
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!
ಭಾಷಾ, ಪ್ರಾಂತ್, ಜಾತಿ ಜೊ ಭೀ ಹೋ, ಭಾರತ ಮಾ ಕೆ ಪುತ್ರ ಸಭೀ !
ಗ್ರಾಮ್, ನಗರ್, ವನವಾಸಿ ಗಿರಿಜನ್, ಅಪನೆ ತೊ ಹೈ ಬಂಧು ಸಭೀ !
ಜನತಾ ಕೆ ಸುಖ ಮೆ ಹೀ ತೊ ಹೈ, ಸಮಾಜ-ಸುಖ್ ಕೀ ಧಾರಣಾ !!
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!

ಶಾಂತಿ ಮಂತ್ರ

ಸರ್ವೇ ಭವಂತು ಸುಖಿನಃ ಸರ್ವೇ ಸಂತು ನಿರಾಮಯಾ !
ಸರ್ವೇ ಭದ್ರಾಣಿ ಪಶ್ಯಂತು, ಮಾ ಕಶ್ಚಿತ್ ದುಃಖಭಾಗ್ ಭವೆತು !!

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