

Karnataka High Court
Judgements
Related to Co operative Sector

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Karnataka State Souharda Federal Cooperative Ltd.,

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KARNATAKA HIGH COURT JUDGEMENTS - RELATED TO CO OPERATIVE SECTOR

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ಮೊದಲ ಮಾತು

ಆತ್ಮೀಯ ಸಹಕಾರಿ ಬಂಧುಗಳೇ,

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಅಭಿವೃದ್ಧಿಗಾಗಿ ಆರೋಗ್ಯಕರ ಬೆಳವಣಿಗೆಗಾಗಿ ಅಗತ್ಯವಾಗುವ ಅನೇಕ ವಿಷಯಗಳ ಬಗ್ಗೆ ಕೈಪಿಡಿಗಳನ್ನು, ಪುಸ್ತಿಕೆಗಳನ್ನು, ಪ್ರಕಟಣೆಗಳನ್ನು ಕಾಲಕಾಲಕ್ಕೆ ಪ್ರಕಟಿಸುತ್ತ ಬಂದಿರುವುದು ಸಹಕಾರಿಗಳಿಗೆಲ್ಲ ತಿಳಿದಿರುವ ವಿಷಯ.

ಅನೇಕ ವಿಷಯಗಳ ಬಗ್ಗೆ ಸಹಕಾರಿಗಳು ವ್ಯಾಜ್ಯಗಳನ್ನು ಬಗೆಹರಿಸಿಕೊಳ್ಳುವುದಕ್ಕಾಗಿ ನ್ಯಾಯಾಲಯಗಳ ನೆರವು ಪಡೆಯುವುದು ಸರ್ವಸಾಮಾನ್ಯ. ಆಡಳಿತ ಮಂಡಳಿ ರದ್ದುಪಡಿಸುವಿಕೆ, ಆಡಳಿತಾಧಿಕಾರಿಗಳ ನೇಮಕ, ವಿಚಾರಣೆ, ಅಧಿಭಾರ ನಡವಳಿಕೆಗಳು, ದಾವಾ ಪ್ರಕರಣಗಳು, ಸಾಮಾನ್ಯ ಸಭೆ, ನಿರ್ದೇಶಕರ ಅನರ್ಹತೆ, ಚುನಾವಣೆ, ಅನೇಕ ವಿವಾದಗಳಿಗೆ ಪ್ರಕರಣಗಳು ಸೇರಿದಂತೆ ಇತರೆ ಅನೇಕ ವಿಷಯಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಜ್ಯದ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಲವಾರು ಮಹತ್ವದ ತೀರ್ಪುಗಳಾಗಿವೆ. ಇಷ್ಟೊಂದು ತೀರ್ಪುಗಳಿದ್ದಾಗ್ಯೂ ಸಹ ಅನೇಕ ಬಾರಿ ಸಹಕಾರ ಸಂಸ್ಥೆಗಳು ಇವುಗಳ ಸರಿಯಾದ ಮಾಹಿತಿಗಳು ದೊರಕದೆ ಆತಂಕದಲ್ಲಿದ್ದು ಅನಗತ್ಯವಾಗಿ ಕಾನೂನು ಸಲಹೆ ಪಡೆಯುವ ಹಾಗೂ ನ್ಯಾಯಾಲಯಗಳ ಮೊರೆಹೋಗುವುದನ್ನು ಗಮನಿಸಲಾಗಿದೆ. ಈ ತೊಂದರೆಗಳನ್ನು ನಿವಾರಿಸುವುದಕ್ಕಾಗಿಯೇ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು “ಸಹಕಾರಿ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳ” ಪುಸ್ತಕವನ್ನು ಸಿದ್ಧಪಡಿಸಿದೆ.

ಈ ಪುಸ್ತಕದಲ್ಲಿ ಸರ್ವಸಾಮಾನ್ಯವಾಗಿ ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ ಕರ್ನಾಟಕ ಸಹಕಾರ ಸಂಘಗಳ ಕಾಯ್ದೆ 1959 ನಿಯಮಗಳು 1960 ಹಾಗೂ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ ಅನ್ವಯಿಸುವ ಕರ್ನಾಟಕ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಅಧಿನಿಯಮ 1997 ಇವುಗಳ ವಿವಿಧ ವಿಷಯಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ ಮಹತ್ವದ 1961 ವರೆಗಿನ 2013 ವರೆಗಿನ ತೀರ್ಪುಗಳನ್ನು ಪ್ರಕಟಿಸಲಾಗಿದೆ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಕಾನೂನು ವಿಭಾಗದ ಅಧಿಕಾರಿಗಳು ಕಳೆದ ಒಂದು ವರ್ಷದಿಂದ ತೀರ್ಪುಗಳನ್ನು ಸಂಗ್ರಹಿಸಲು ಶ್ರಮವಹಿಸಿದ್ದಾರೆ. ಕಾನೂನು ತಜ್ಞರ ಸಲಹೆ ಪಡೆಯಲಾಗಿದೆ. ಸಹಕಾರ ಇಲಾಖೆಯ ನಿವೃತ್ತ ಹಿರಿಯ ಅಪರ ನಿಬಂಧಕರಾದ ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರು ಇವುಗಳನ್ನು ಪರಿಶೀಲಿಸಿ ಮುನ್ನುಡಿ ಬರೆದಿದ್ದಾರೆ. ಶ್ರೀ ರಾಮಾಚೋಯಿಸ್ ಹೈಕೋರ್ಟಿನ ಮಾಜಿ ಮುಖ್ಯನ್ಯಾಯಾಧೀಶರು ಹಾಗೂ ನಿವೃತ್ತ ರಾಜ್ಯಪಾಲರು, ಶ್ರೀ ಕೆ.ಎಮ್.ನಟರಾಜ ಅಪರ ಸಾಲಿಸಿಟರ್ ಜನರಲ್ ಭಾರತ ಸರಕಾರ ಇವರುಗಳು ಈ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ ಕಾರ್ಯವನ್ನು, ಇದೊಂದು ಅತ್ಯಂತ ಮಹತ್ವದ ಕಾರ್ಯ ಎಂದು ಶ್ಲಾಘಿಸಿ ಮುನ್ನುಡಿಗಳನ್ನು ಕಳುಹಿಸಿದ್ದಾರೆ. ಈ ಪುಸ್ತಕ ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳಿಗೆ, ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ, ಸಹಕಾರಿ ನೇತಾರರಿಗೆ, ವಕೀಲರಿಗೆ, ಇಲಾಖಾಧಿಕಾರಿಗಳಿಗೆ ಅತ್ಯಂತ ಪ್ರಯೋಜನಕಾರಿಯಾಗಬಹುದೆಂದು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಭಾವಿಸಿದೆ.

ತಾವುಗಳು ಈ ಪುಸ್ತಕವನ್ನು ಓದಿ ಪ್ರಯೋಜನ ಪಡೆದುಕೊಂಡರೆ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಈ ಪ್ರಯತ್ನ ಸಾರ್ಥಕ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಈ ವಿಶೇಷ ಪ್ರಯತ್ನಕ್ಕೆ ತಮ್ಮ ಸಹಕಾರವನ್ನು ಹಾಗೂ ಈ ಪ್ರಕಟಣೆಯ ಬಗ್ಗೆ ತಮ್ಮ ಅನಿಸಿಕೆಗಳನ್ನು ಹಾಗೂ ಸಲಹೆಗಳನ್ನು ಸ್ವಾಗತಿಸುತ್ತೇವೆ.

ಗುರುನಾಥ ಜಾಂತಿಕರ

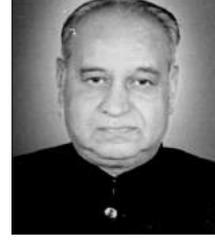
ಅಧ್ಯಕ್ಷರು

Justice Dr. M. RAMA JOIS

Former Chief Justice of Punjab and Haryana High Court and
Former Governor of Jharkhand and Bihar
Former Member of Parliament, (Rajya Sabha)

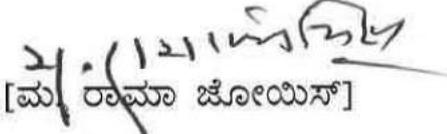
Date : July 30, 2015

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಹಕಾರಿ ಇಲಾಖೆಯಲ್ಲಿ ಸೇವೆ ಸಲ್ಲಿಸಿ, ನಿವೃತ್ತ ಅಪರ ನಿಬಂಧಕರಾಗಿರುವ ಶ್ರೀ ಸಿ. ಎನ್. ಪರಶಿವಮೂರ್ತಿಯವರು ಕರ್ನಾಟಕ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಅಧಿನಿಯಮದಡಿಯಲ್ಲಿ ಪರಸ್ಪರ ಸಹಕಾರದೊಡನೆ, ತಮಗೆ ಅವಶ್ಯಕವಾದ ಸೌಲಭ್ಯಗಳನ್ನು ಪಡೆಯಲು ಸೂಕ್ತ ಮಾರ್ಗದರ್ಶನ ಹಾಗೂ ನಿರ್ದೇಶನಗಳನ್ನೊಳಗೊಂಡಿದ್ದು, ಅವುಗಳನ್ನು ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳನ್ನು ರಚಿಸಿಕೊಂಡು, ಅದರ ಉದ್ದೇಶಗಳನ್ನು ಸಾಧಿಸಿಕೊಳ್ಳಲು ಅವಶ್ಯಕವಾದ ಎಲ್ಲ ಮಾಹಿತಿಗಳನ್ನು ಈ ಹೊತ್ತಿಗೆಯಲ್ಲಿ ಸಂಗ್ರಹಿಸಿ ನೀಡಿದ್ದಾರೆ ಹಾಗೂ ಪ್ರತಿಯೊಂದು ಸೌಹಾರ್ದ ಸಹಕಾರಿಗೂ ಅಂದರೆ ಅದರ ಸದಸ್ಯರಿಗೆ, ಆಡಳಿತ ಮಂಡಳಿಯ ಅಧಿಕಾರಿಗಳಿಗೆ ಅತ್ಯಂತ ಉಪಯುಕ್ತವಾಗಿದೆ. ಈ ಶಾಸನ ಮತ್ತು ಅದರ ಉದ್ದೇಶ್ಯವನ್ನು ಸ್ವಾರ್ಥರಹಿತವಾಗಿ, ಪರರ ಹಿತಕ್ಕಾಗಿ ಬಳಸುವುದರ ಮೂಲಕ ಶಾಸನದ ಸಾರ್ಥಕತೆ ಸಾಧಿಸಬಹುದು.



ಸ್ವಾಯತ್ತತೆ, ಸ್ವಯಂ ಆಡಳಿತ ಸೌಹಾರ್ದ ಸಹಕಾರಿಯ ಘೋಷಣಾ ವಾಕ್ಯಗಳಾಗಿರುವುದರಿಂದ ಅವುಗಳನ್ನು ಯಶಸ್ವಿಯಾಗಿ ನಡೆಸುವ ಜವಾಬ್ದಾರಿ ಎಲ್ಲ ಸದಸ್ಯರ, ಆಡಳಿತ ಮಂಡಳಿ ಸದಸ್ಯರ ಮತ್ತು ಸಹಕಾರಿಯ ನೌಕರರ ಜವಾಬ್ದಾರಿಯಾಗಿದೆ.

ಅವರೆಲ್ಲರೂ, ತಮ್ಮ ತಮ್ಮ ಕರ್ತವ್ಯಗಳನ್ನು ಜವಾಬ್ದಾರಿಯನ್ನು ಸಮರ್ಪಕವಾಗಿ ನಿರ್ವಹಿಸಲು ಈ ಪುಸ್ತಕ ಕೈಪಿಡಿಯಾಗಿದ್ದು, ಇವರೆಲ್ಲರ ಉಪಯೋಗಕ್ಕಾಗಿ ಶ್ರೀ ಪರಶಿವಮೂರ್ತಿಯವರು ಸಂಪಾದಿಸಿರುವ ಪುಸ್ತಕ ಸಮಗ್ರವಾಗಿದ್ದು, ಬಹಳ ಉಪಯುಕ್ತವಾಗಿದೆ. ಸಂಬಂಧಪಟ್ಟ ಎಲ್ಲರೂ ಇದರ ಉಪಯೋಗ ಪಡೆಯಬೇಕೆಂಬುದೇ ಈ ಪುಸ್ತಕದ ಉದ್ದೇಶ. ಇದೊಂದು ಅವರು ಮಾಡಿರುವ ಬಹು ಉಪಯೋಗಿ ಹಾಗೂ ಸ್ತುತ್ಯಾರ್ಹ ಪುಸ್ತಕವಾಗಿದೆ. ಸೌಹಾರ್ದ ಸಹಕಾರಿಯ ಚಟುವಟಿಕೆಗಳಲ್ಲಿ ಭಾಗವಹಿಸುವವರೆಲ್ಲರೂ ಇದರ ಉಪಯೋಗ ಪಡೆಯಬಹುದಾಗಿದೆ.


[ಮ. ರಾಮಾ ಜೋಯಿಸ್]

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ಸಹಕಾರ ಸಂಘಗಳ ಕಾಯ್ದೆಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ನ್ಯಾಯಾಲಯಗಳು ವಿವಿಧ ಸಂದರ್ಭಗಳಲ್ಲಿ ಕೊಟ್ಟ ತೀರ್ಪಿನ ಮುಖ್ಯಾಂಶಗಳನ್ನು ಕ್ರೋಢೀಕರಿಸಿ, ಕೈಪಿಡಿಯ ರೂಪದಲ್ಲಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಹೊರತರುತ್ತಿರುವುದು ಪ್ರಶಂಸನೀಯ.



ಸಹಕಾರ ಸಂಘಗಳು ಇದೀಗ ಸಂವಿಧಾನದ ಮಾನ್ಯತೆ ಪಡೆದ ಸಂಸ್ಥೆಗಳಾಗಿದ್ದು ಇವುಗಳ ಆಡಳಿತ 'ಸಹಕಾರಿ ತತ್ವಗಳ' ಮೇಲೆ ನಡೆಯಬೇಕಿದ್ದು, ಇಂತಹ ಸಂಸ್ಥೆಗಳನ್ನು ರೂಪಿಸುವುದು ನಾಗರಿಕನ ಮೂಲಭೂತ ಹಕ್ಕಾಗಿ ಇದೀಗ ಪರಿಗಣಿಸಲ್ಪಡುತ್ತಿದೆ. ಇಂತಹ ಸಂಸ್ಥೆಗಳು ಜನಸಾಮಾನ್ಯರಿಗೆ ತಲುಪಿ, ಸಹಕಾರದ ಮೂಲ ತತ್ವಗಳಡಿ, ಜನಸಾಮಾನ್ಯರ ಆಶೋತ್ತರಗಳನ್ನು ಈಡೇರಿಸಬೇಕಾದಂತಹ ಕಾರ್ಯದಲ್ಲಿ ತೊಡಗಬೇಕಾಗಿದೆ. ವಿವಿಧ ಸಂದರ್ಭಗಳಲ್ಲಿ ನ್ಯಾಯಾಲಯಗಳು ಸಹಕಾರಿ ಕಾನೂನಿನ ವ್ಯಾಖ್ಯಾನಗಳನ್ನು ಮಾಡಿದ ತೀರ್ಪುಗಳ ಮುಖ್ಯಾಂಶಗಳನ್ನು 'ಕನ್ನಡ ಭಾಷೆಯಲ್ಲಿ' ಹಾಗೂ ವಿವಿಧ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹವನ್ನು 'ಇಂಗ್ಲೀಷ್ ಭಾಷೆ'ಯಲ್ಲಿ ಕರ್ನಾಟಕದ ಜನಸಾಮಾನ್ಯರಿಗೆ ಸುಲಭವಾಗಿ ಅರ್ಥೈಸಿಕೊಳ್ಳುವ ರೀತಿಯಲ್ಲಿ ಕ್ರೋಢೀಕರಿಸಿ, ಪುಸ್ತಕ ರೂಪದಲ್ಲಿ ಹೊರತಂದಿರುವುದು ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ, ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿ ನೀಡಿದ ಬಹುದೊಡ್ಡ ಕೊಡುಗೆಯಾಗಿದೆ.

ಈ ಕೈಪಿಡಿಯು ಸಹಕಾರಿಗಳಿಗೆ ಸಹಕಾರಿಯಾಗಲಿ, ನ್ಯಾಯವಾದಿಗಳಿಗೆ ಮತ್ತು ಜನಸಾಮಾನ್ಯರ ಅಧ್ಯಯನಕ್ಕೆ ಪೂರಕವಾಗಲಿ ಮತ್ತು ರಾಜ್ಯದ ಎಲ್ಲಾ ಕಡೆ ಈ ಕೈಪಿಡಿಯು ದೊರಕುವಂತಾಗಲಿ ಎಂದು ಹಾರೈಸುತ್ತೇನೆ.

(K.M.NATARAJ)

Additional Solicitor General of India

Foreword

Co-operative legislation in India is voluminous wherein provisions are detailed and exhaustive as the Indian society is complex and diverse. The co-operative laws in other countries are very simple and the role of registering authority is limited whereas, in India, the legislation incorporates provisions relating to organizations, management, and financial areas, to ensure that the Board of Directors should easily manage the affairs. The constitution of India was amended in 2012 making organization of co-operation as a fundamental right and made provisions to ensure, certain guidelines are framed to state legislature to amend the co-operative law in keeping with the spirit of amendment to the constitution. This was done, because the subject of co-operation is a state subject and the law on co-operation can be made in by state legislature.



The Karnataka Co-operative societies Act 1959 is a consolidated act, as on the states reorganization, the laws enacted by the states of Maharashtra, Hyderabad, Madras, Coorg and Mysore were merged on reorganization. The co-operative laws which were in force in each state were consolidated to formulate, Karnataka Co-operative Societies Act 1959 and Rules 1960. The Karnataka State Souharda Co-operative Act was enacted in 1997, which became a liberal law, deregulating the powers of Registrar, to a body created under the act called “Federal Co-operative”, which acts on Registrar. Bothe the acts were amended after constitutional amendment in 2013 and 2014(The Karnataka Co-operative Societies Act 1959 was amended in 1998, was liberalized by deleting some regulatory powers- which were later re-incorporated. Similarly, the Souharda Act 1997 was amended in 2004 to regulate the Federal Co-operative).

There are about 37,000 co-operative institutions under Karnataka Co-operative Societies Act 1959 and 3000 Co-operatives under Karnataka Souharda Co-operatives Act 1997. The Co-operatives are required to manage the affairs in keeping with the provisions of the Act, rules and the Bylaws. While managing the affairs of the Co-operative, particularly at the time of elections to the Board of Directors, office bearers, preparation of voters list, filling of disputes relating to recovery, service matters etc, conduct of meetings of annual General Body, Board of Directors, recording of minutes of the meeting, quorum of the meeting, as the courts are interpreting the provisions of the Acts, Rules and Byelaws.

The Laws enacted by the legislature are interpreted by the High Courts and Supreme Court. After the enactment of the Karnataka Co-operative Society Act (Which includes Co-operative Societies of 1904). The High Court of Karnataka, and an appeal and revision, the Supreme Court of India have passed orders on Constitutionality, Jurisdiction, maintainability, Interpretation, intention of the Legislature which are published in All India Reporter, Indian law Reporter, Karnataka Law Journal, The Co-operative department and the co-operatives do not get decisions in a single source, the above decisions. The Federal co-operative is making an attempt in this direction to bring out the decisions relating to the co-operative Law as reported in the above journals.

The Federal Co-operative is intending to print the decisions/orders in full, in about 10 volumes. This attempt would have been made by the department of co-operatives as the decisions are basically useful to the department officers, while disposing off the cases filed before them. The attempt of the federal Co-operative is appreciable and commendable.

The present volume gives judgment year wise but without any classification like decisions on Registrations, Memberships, Constitution of committees , holding of meetings, filing of disputes and surcharge, Appointment of Administrators and Special officers, execution of decree/award etc. The future volumes may group the decisions on the above lines which can immediately be referred by the users of these volumes.

This publication may be priced in such a way that every co-operative and every interested person could purchase it.

I convey my Best Wishes to the Federal Co-operative, particularly to the Board of Directors, headed by Shri. Gurunath Jantikar, and Managing Director, Shri Sharang Gowda Patil and Shri Srikanth Baruve.

- C.N. Parashiva Murthy

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37.	W.A. No. 880 of 1983	09.08.1983	Appellants: Sri Padmamba Large Sized Co-operative Society Vs. Respondent: Labour Court and Anr.	Malimath, A.C.J. and Venkatachala, J.	For Appellant / Petitioner / Plaintiff: B. Veerabhadrappa, Adv. For Respondents / Defendant: R.N. Narasimha Murthy, Adv. General for Respondant-1	356-361
38.	W.P. Nos. 38041-42 / 2004	09.02.2005	Appellants: Krishna and Anr. Vs. Respondent: Sirsi Urban Co-operative Bank Ltd. Rep., by its President	Mohan Shantanagoudar, J.	For Appellant / Petitioner / Plaintiff: G.B. Shastry, Adv. For Respondents / Defendant: C.K. Subramanya, Adv.	362-367

S.No	Petition No.	Decided on	Parties	Hon'ble Judges / Coram	Counsels	Page No.
Removal from Directorship						
39.	W.P. No. 2844 of 1984	09.08.1984	Appellants: Bore Gowda Vs. Respondent: Asst. Registrar of Co-operative Societies	Hon'ble Judges / Coram: K.A. Swami, J.	For Appellant / Petitioner / Plaintiff: C.M. Desai, Adv. For Respondents / Defendant: Somayaji, G.P. for R-1 and 2, ShivarajPatil, Adv. for R-3 and H.K. Vasudeva Reddy, Adv. for R-5	368-376
Right to Information-Applicability to Co-operatives						
40.	WPNo. 7408 / 2006	30.03.2007	Appellants: Poornaprajna House Building Cooperative Society Ltd., A Cooperative Society registered Under the provisions of the Karnataka Cooperative Societies Act, 1959 repled. by its President, Sri H. Hayagreevachar Vs. Respondent: Karnataka Information Commission, Sri S.R. Narayana Murthy, S / o late Sri S. Rama Rao and The Assistant Registrar of Cooperative Societies	S. Abdul Nazeer, J.	For Appellant / Petitioner / Plaintiff: N.N. Harish, Adv. for Aaren A / S For Respondents / Defendant: B. Veerappa, AGA for R1 and 3 and Puttige R. Ramesh, Adv. for R2	377-384
Service						
41.	W.P. No. 15552 of 1986	08.09.1986	Appellants: Seetharama Rao Vs. Respondent: Karnataka Appellate Tribunal	ChandrakantarajUrs, J.	For Appellant / Petitioner / Plaintiff: B.G. Sridharan, Adv. For Respondents / Defendant: B.G. Somayaji, HCGP	385-387
42.	WPNo. 40225 of 1999	28.02.2006	Appellants: The Workmen of Chikmagalur, District Central Cooperative Bank Limited represented by its General Secretary of Chikmagalur District Central Cooperative Bank Employees' Union and Ramachandra T.G. Vs. Respondent: The Registrar of Cooperative Societies in the State of Karnataka and Ors.	R. Gururajan, J.	For Appellant / Petitioner / Plaintiff: M.C. Narasimhan, Adv. For Respondents / Defendant: S.Z.A. Khureshi, AGA for Respondents 1, 2 and 4, Krishna S. Dixit, CGSC for R-5 and Jayakumar S. Patil Associates for R-3	388-394

S.No	Petition No.	Decided on	Parties	Hon'ble Judges / Coram	Counsels	Page No.
43.	WPNo. 47077 / 2001	23.03.2006	Appellants: A. Hanumantha Reddy and Ors. Vs. Respondent: The Additional Registrar of Cooperative Societies (I and M) and Ors.	Nagamohan Das, J.	For Appellant / Petitioner / Plaintiff: Somashekar, Adv. for S.N. Murthy Adv. For Respondents / Defendant: A.N. Venugopala Gowda, Adv. for R-2 and A.R. Sharadamba, HCGP for R-1	395-399
44.	W.P. Nos. 11469 / 2008, 11305, 11385, 11386, 11470, 11540 and 14160 and 2631 / 2009	10.09.2009	Appellants: Sri Narayana S / o Karigowda Co-operative Milk Producers Societies Union Limited and Ors. etc. Vs. Respondent: The State of Karnataka Department of Co-operation, Registrar of Co-operative Societies Department of Co-operation and Mysore-Chamarajanagar District Co-operative milk Producers Societies Union Limited and Ors. etc.	S. Abdul Nazeer, J.	For Appellant / Petitioner / Plaintiff: D.N. Nanjunda Reddy, Sr. Adv. in W.P. Nos. 11469, 11470, 11540 and 14160 of 2008 for T.P. Rajendra Kumar Sungay, Adv. in W.P. Nos. 11469, 11470, 11540 and 14160 of 2008, B.K. Nagaraja, Adv. in W.P. No. 11305 of 2008, A.C. Balaraj, Adv. in W.P. Nos. 11385 and 11386 of 2008, Jayakumar S. Patil, Sr. Adv. in W.P. No. 2631 of 2009 and Jayakumar S. Patel, A / S in W.P. No. 2631 of 2009 For Respondents / Defendant: N.D. Jayadevappa, HCGP for R1 to R2 in W.P. Nos. 11305, 11385, 11386, 11469, 11470, 11540 and 14160 of 2008 and 2631 of 2009, S.S. Ramdas, Sr. Adv. in W.P. Nos. 11469, 11470 and 11540 of 2008, Sundaraswamy, Adv. in W.P. Nos. 11469, 11470 and 11540 of 2008, Ramdas, Adv. in in W.P. Nos. 11469, 11470 and 11540 of 2008, G.R. Prakash, Adv. for R2 in W.P. No. 11305 of 2008, Sampath, Adv. in W.P. Nos. 11385 and 11386 of 2008 and 2631 of 2009, Vatsala Law A / S for R4 in W.P. Nos. 11385 and	400-408

S.No	Petition No.	Decided on	Parties	Hon'ble Judges / Coram	Counsels	Page No.
					11386 of 2008 and 2631 of 2009 and H.C. Shivaramu, Adv. for R2 W.P. No. 14160 of 2008	
45.	Writ Petition No. 33425 / 2013 (CS-RES)	02.08.2013	Appellants: Sri Harish Acharya Major, President, Sri K. Jayaram Major, General Manager and VishwakarmaSahakara Bank Ltd. by its General Manager Vs. Respondent: The Joint Registrar of Co-operative Societies, Karnataka State Urban Banks Federation, The Joint Registrar of Co-operative Societies Urban Bank Cell and Sri Sadananda	A.N. Venugopala Gowda, J.	For Appellant / Petitioner / Plaintiff: Mrs. Deepthi for Sri ArunShyam M., Adv. For Respondents / Defendant: Sri T.K. Vedamurthy, HCGP for R1 & R2 and Sri N. Ramachandra, Adv. for R3	409-411
Supersession						
46.	WPNos. 58957- 963 / 2013 (CS-RES)	26.12.2013	Appellants: Basavalingaiah and Ors. Vs. Respondent: The Assistant Registrar of Co-operative Societies, DoddagangavadiVyavasayaSe vaSahakara Sangha NiyamithaDoddagangavadi, The Deputy Registrar of Co-operative Societies and DoddagangavadiVyavasayaSe vaSahakara Sangha NiyamithaDoddagangavadi	A.N. Venugopala Gowda, J.	For Appellant / Petitioner / Plaintiff: Sri. Jai Prakash Reddy, Adv. For Respondents / Defendant: Sri. I. TharanathPoojary, AGA for R1 & R3 and Sri. D.K. Sriramappa, Adv. for R2	412-413
Surcharge						
47.	W.P. No. 19406 / 1996	04.08.2003	Appellants: S. Seetharama Rao Vs. Respondent: The Secretary and Ors.	N.K. Patil, J.	For Appellant / Petitioner / Plaintiff: R.S. Ravi, Adv. For Respondents / Defendant: M. Keshava Reddy, HCGP for R2 and R3 and Deshraj, Adv. for R-1	414-419

Equivalent Citation: 2010(1)KarLJ379

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 29260 of 2009

Decided On: 07.12.2009

Appellants: **Sri Benaka Souradha Credit Co-operative Society Limited**

Vs.

Respondent: **State of Karnataka and Ors.**

Hon'ble Judges/Coram

H.N. Nagamohan Das, J.

Counsels:

For Appellant/Petitioner/Plaintiff: B.S. Nagaraj, Adv.

For Respondents/Defendant: R. Devdass, Additional Government Adv. for Respondent-1

Subject: Civil

Case Note:

Civil - Attachment of salary - Despite service of salary attachment warrant, Respondent 2 had not given effect to the same - Writ petition filed seeking attachment of sale - Held, it was obligatory on part of second Respondent to give effect to attachment of salary warrant issued by Assistant Registrar of Co-operative Societies - Failure on the part of second Respondent in not giving effect to attachment of salary warrant would lead to serious civil consequences - Hence, writ petition disposed of.

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959

Industry: Cooperative Societies

ORDER

H.N. Nagamohan Das, J.

1. Petitioner secured award against respondent 3 under Section 70 of the Karnataka Co-operative Societies Act, 1959. Further, petitioner had taken out execution proceedings before the Assistant Registrar of Co-operative Societies. The Executing Court issued salary attachment warrant of respondent 3 requesting respondent 2, who is salary drawing officer to give effect to attachment

of salary. Despite service of salary attachment warrant, respondent 2 has not given effect to the same. Hence, petitioner is before this Court.

2. It is obligatory on the part of the second respondent to give effect to the attachment of salary warrant issued by the Assistant Registrar of Co-operative Societies. The failure on the part of second respondent in not giving effect to the attachment of salary warrant will lead to serious civil consequences. Therefore, a writ of mandamus is hereby issued, directing second respondent to give effect to the attachment of salary warrant served on him by the office of the Assistant Registrar of Co-operative Societies in respect of third respondent in accordance with law.
3. Accordingly, the writ petition is hereby disposed of without reference to respondents 2 and 3.

Equivalent Citation: 2009(4)KarLJ728

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition Nos. 18112 and 18129 of 2009

Decided On: 26.06.2009

Appellants: **Hassan Town Women's Consumers Co-operative Society Limited and Anr.**

Vs.

Respondent: **State of Karnataka and Anr.**

Hon'ble Judges/Coram:

Ajit J. Gunjal, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Kempegowda, Adv. for K.V. Narasimhan, Adv.

For Respondents/Defendant: H.K. Basavaraj, High Court Government Pleader

Subject: Commercial

Case Note:

Commercial - Participation in tender process - Held, Petitioners cannot be prevented from participating in the tender process - If for any reason Petitioner did not satisfy the requirement, their tender could be rejected - Petitioners could not be prevented from participating in the tender process - Petition disposed of accordingly.

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959

Industry: Cooperative Societies

ORDER

Ajit J. Gunjal, J.

1. Mr. H.K Basavaraj, learned High Court Government Pleader is directed to take notice for respondents.

Copies to be served.

2. Even though the matter is listed for preliminary hearing, with consent, it is taken up for final disposal.

3. The petitioners-Societies are registered under the Karnataka Cooperative Societies Act, 1959. The date of registration of the 1st petitioner-Society is 14-11-1975 and the 2nd petitioner-Society was registered on 25-11-1991 and to that effect certificates has already been issued. Pursuant to an order passed by the Executive Officer, Taluk Panchayat, Belur, the 1st petitioner was supplying food articles/grains to the Anganawadi centres. The apprehension of the petitioners is that the respondents unreasonably, arbitrarily and for no valid reasons are not allowing the petitioners to participate in the tender process called for by them for supply of food grains/articles to the Anganawadi centres.
4. Mr. Kempegowda, learned Counsel appearing for Mr. KV. Narasimhan, for the petitioners submits that the subject-matter of this writ petition is covered by a ruling of this Court in W.P. No. 6069 of 2007 disposed of on 23-8-2007.
5. I have perused the papers. Apparently, the petitioners cannot be prevented from participating in the tender process. If for any reason they do not satisfy the requirement, their tender can be rejected. But however, they cannot be prevented from participating in the tender process. In identical case, the Division Bench of this Court in W.A. No. 1512 of 2007 disposed of on 14-2-2007 has observed thus:

In the operative portion of the order, the learned Single Judge had made it clear that application of both parties may be considered and it will be suffice for us to clarify further that the applications of both the parties shall be examined keeping in view the guidelines contained in the circular/instructions issued by the State Government on the basis of the observations of the Hon'ble Supreme Court. The observations made at paragraph 13 of the impugned order passed by the learned Single Judge shall not be construed that it is an indication that the respondents' societies applications must be considered for awarding contracts for supply of foodgrains to the Anganawadi centres in the Belgaum District.

6. Having regard to the decision rendered by this Court in the aforesaid writ petition as well as writ appeal, the petition stands disposed of in terms of the judgment of the Division Bench of this Court.

The petitioners are at liberty to participate in the tender, but however subject to the observations made in the earlier decisions.

Petition stands disposed of accordingly.

7. Mr. H.K Basavaraj, learned High Court Government Pleader appearing for the respondents is permitted to file memo of appearance within four weeks.

Equivalent Citation: ILR 2002 KARNATAKA 3978, 2002(4)KarLJ520, 2002(4)KCCRSN348

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 36818 of 2001

Decided On: 09.07.2002

Appellants: **S.N. Manjunath and Ors.**

Vs.

Respondent: **State of Karnataka and Ors.**

Hon'ble Judges/Coram:

A.V. Srinivasa Reddy, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.N. Aswathanarayana, Adv.

For Respondents/Defendant: Suman Hegde, High Court Government Pleader for Respondents-1 to 3 and L. Venkatarama Reddy, Adv. for Respondents-4 to 7

Subject: Constitution

Acts/Rules/Orders:

Karnataka Panchayat Raj Act, 1993 - Section 44, Karnataka Panchayat Raj Act, 1993 - Section 45(2), Karnataka Panchayat Raj Act, 1993 - Section 53, Karnataka Panchayat Raj Act, 1993 - Section 53(1); Constitution of India - Article 226, Constitution of India - Article 243O

Cases Referred:

Khatib, Irshad Ahmed, Mohammed Hussain and Ors. v. The Returning Officer for election to the Shishuvinahal Grama Panchayat, Shiggaon Taluk, Dharwad District, 2000(3) Kar. L.J. 455, ILR 1998 Kar. 1813; Ashok v. Tawanappa Siddappa Jakkannavara and Ors., 1988(3) Kar. L.J. 562, ILR 1989 Kar. 123; C. Subrahmanyam v. K. Ramanjaneyulu and Ors., (1998)8 SCC 703; Umesh Shivappa Ambi and Ors. v. Angadi Shekara Basappa and Ors., 1998(9) Supreme 175, (1998)4 SCC 529; M. Venkataramaiah v. Chief Election Commissioner, Bangalore and Ors., 1995(3) Kar. L.J. 433, ILR 1995 Kar. 1821; Shambugowda v. State of Karnataka and Ors., 2000(5) Kar. L.J. 359, AIR 2000 Kant. 381, ILR 2000 Kar. 3109, 2000(3) KCCR SN 103; Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman, AIR 1985 SC 1233, (1985)4 SCC 689; Indrajit Barua and Ors. v. Election Commission of India and Ors., AIR 1986 SC 103, (1985)4 SCC 531; Govindaswami v. State of Tamilnadu, AIR 1998 SC 2889, (1998)4 SCC 531, JT 1998(3) SC 260, 1998 Cri. L.J. 2913 (SC), 1998 Crimes 238 (SC), 1998(4) Supreme 147

Disposition:

Writ petition dismissed

Case Note :

KARNATAKA PANCHAYAT RAJ ACT, 1993-Section 53(1)-Quorum under Section 53(1)-Petition filed to quash the proceedings of the meeting-On the ground of lack of quorum required for such a meeting as prescribed under Section 53(1) of Karnataka Panchayat Raj Act, 1993-Bar to interference by Courts in electoral matters-The petition should be before the appropriate forum. Petition rejected.

ORDER

A.V. Srivastava Reddy, J.

1. In this writ petition preferred by the constituents of the Sadali Gram Panchayat the prayer is to quash the proceedings of the meeting conducted on 22-9-2001 by the Tahsildar, third respondent, in which the sixth respondent was unanimously elected as Adhyaksha of the Panchayat.
2. The main grievance of the petitioners in this petition is that, the meeting conducted by the third respondent, prescribed officer, in which the sixth respondent was unanimously elected lacked the quorum required for such a meeting as prescribed under Section 53(1) of the Karnataka Panchayat Raj Act, 1993 ('the Act' for short). The Gram Panchayat of Sadali consists of 14 elected members. Respondent 5 was the Adhyaksha of the said Gram Panchayat. She submitted her resignation to the post of Adhyaksha on 21-8-2001 to the second respondent. Consequently, the second respondent, Assistant Commissioner, Chikkaballapur Sub-Division, Chikkaballapur, Kolar District issued the notification dated 31-8-2001 as per Section 48(3) of the Act. In pursuance of the vacancy of the post of Adhyaksha the second respondent issued notification dated 10-9-2001 fixing the calendar of events. According to the calendar of events, the meeting of Gram Panchayat was scheduled to be held on 22-9-2001 at 12-30 p.m. in the headquarters of Gram Panchayat, Sadali. The notification dated 10-9-2001 to that effect was issued as per Annexure-B. As per the notification Annexure-B, the filing of nomination, scrutiny, withdrawal and election had been fixed on 22-9-2001 between 11 a.m. to 1.30 p.m. Respondent 6 alone had filed the nomination. On the date of the meeting i.e., 22-9-2001 only four members respondents 4 to 7, were present and in the meeting respondent 6 was unanimously elected as the Adhyaksha. The petitioners contend that the number of members present at the meeting falls short of the required 1/3rd quorum of the total strength of the Sadali Panchayat which is 14. Hence, the present petition for the relief aforesaid.
3. I have heard the learned Counsels on both sides.
4. The learned Government Pleader, Smt. Suman Hegde appearing for respondents 1 to 3, raised a preliminary objection that the writ petition is not maintainable as any dispute relating to the validity of the election of Adhyaksha or Upadhyaksha of Grama Panchayat under the Karnataka Panchayat Raj Act, 1993 shall be decided by the prescribed judicial officer having jurisdiction over the Panchayat area or the major portion of the Panchayat area, whose decision therein shall be final. It is further contended by her that even if the election of the sixth respondent is to be construed as a result of a violation of a statutory provision of the Act, still it could be

challenged only in an election petition filed under Section 45(2) of the Act and not under Article 226 of the Constitution of India.

5. In the light of the preliminary objections raised by the learned Government Pleader the questions that arise for my consideration are:

1. Whether an appropriate and efficacious alternative remedy is available to the petitioners under Section 45(2) of the Act?
2. If so, whether the petitioners could, yet, be permitted in this writ petition to call in question the declaration of the sixth respondent as the Adhyaksha on the basis that the meeting held on 22-9-2001 and the resolution passed thereon were in violation of Section 53 of the Act?

6. Points 1 and 2:

In order to decide the issues raised for decision in this writ petition it becomes necessary to refer to Section 45(2) of the Act. It reads:

“45. Procedure for election of Adhyaksha and Upadhyaksha on the establishment of Grama Panchayat, etc.—(1).. ...

- (2) Any dispute relating to the validity of the election of a Adhyaksha or Upadhyaksha of Grama Panchayat under this Act shall be decided by the prescribed judicial officer having jurisdiction over the Panchayat area or the major portion of the Panchayat area, whose decision thereon shall be final”.

(emphasis supplied)

The Karnataka Panchayat Raj (Gram Panchayat Adhyaksha and Upadhyaksha Election) Rules, 1995 ('the Rules' for short) have also been framed under the Act governing matters relating to the election of Adhyaksha and Upadhyaksha. Rule 14 of the Rules prescribes the forum as also the manner in which the election of Adhyaksha and Upadhyaksha could be challenged. The said rule reads:

(Editor: The text of the vernacular matter has not been reproduced. Please write to contact@manupatra.com if the vernacular matter is required.)

7. Mr. S.N. Aswathanarayana, learned Counsel appearing for the petitioner, relied on the decision in Ashok v. Tawanappa Siddappa Jakkannavara and Ors., MANU/KA/0153/1988 : ILR1989KAR123 wherein a Division Bench of this Court, while dealing with the question whether the legality of the declaration of the result of an election could be challenged in a writ petition, held:

“If the statutory Tribunal is not competent to examine the legality of the declaration of the result of an election, the aggrieved persons cannot be denied relief by refusing the writ jurisdiction”.

(emphasis supplied)

Relying on the said decision he submitted that the jurisdiction of this Court under Article 226 of the Constitution is not totally wiped out and this Court could still exercise its powers under Article 226 of the Constitution under certain circumstances. In the said case the Court was dealing with the legality of the nominations made under Kamataka Zilla Parishads, Taluk Panchayat Samitis, Mandal Panchayats and Nyaya Panchayat Act, 1983. The Zilla Parishads Act does not provide for any specific forum to examine the validity of the nomination of a member incompetent to be nominated to the Panchayat. Considering the fact that allowing such nomination to continue for want of a statutory provision to examine its validity would amount to a void act, the Division Bench held that the validity could be challenged in a writ petition filed under Articles 226 and 227 of the Constitution. But, that is not the position obtaining herein. The Act as well as the Rule, in the present case, do provide a particular forum for deciding any dispute relating to the election of Adhyaksha or Upadhyaksha. The forum so provided is to the exclusion of any other forum as the phrase, 'any dispute relating to the validity of the election of a Adhyaksha or Upadhyaksha of Grama Panchayat under this Act shall be decided by the prescribed judicial officer having jurisdiction over the Panchayat area' would indicate. Thus, the principle enunciated in the said ruling has no application to the facts of the present case.

8. Next, the learned Counsel for the petitioner placed reliance on the decision in Khatib, Irshad Ahmed, Mohammed Hussain and Ors. v. The Returning Officer for election to the Shishuvinahal Grama Panchayat, Shiggaon Taluk, Dharwad District., MANU/KA/0213/2000 : ILR1998KAR1813 to substantiate his contention that a writ petition is maintainable for challenging the order of the Returning Officer rejecting the nomination papers. The said decision does not advance the case of the petitioner any further because the decision proceeds to observe that a plain reading of Sub-section (1) of Section 15 together with the explanation of the phrase 'returned candidate' makes it clear that an election petition would lie when there is declaration of the results and there is a 'returned candidate'. There could be no quarrel in regard to the legal position of availability of the writ jurisdiction for calling in question any pre-election' action if it is in contravention of the provisions of the Act or the Rules framed thereunder. But the post-election scenario is exclusively governed by Section 15(1) of the Act in the case of election of a member and Section 45(2) in the case of election of a Adhyaksha or Upadhyaksha of Grama Panchayat. The Act and the Rules framed thereunder elaborately provide for the forum, the manner in which the challenge has to be made and the procedure to be adopted by the prescribed judicial officer while dealing with the election petition. In the case of such clear provisions both in the Act and the Rules there would be no gainsay in contending otherwise and such contention only merits to be rejected.
9. Further, Section 45(2) speaks of 'any dispute' whatever be its nature. The petitioner herein complains of non-observance of provisions of the Act and the Rules made thereunder which would be squarely covered by the description 'any dispute' as found in Section 45(2). The complaint of the petitioner herein is that the quorum prescribed under the Act was not present at the meeting in which the sixth respondent was elected, resulting in non-compliance of the provisions of the Act. If the election of the sixth respondent is as a result of non-compliance of Section 53 of the Act, in terms of Section 45(2) of the Act, the only proper remedy for the aggrieved party would be to call in question the result of such non-compliance in an election

petition. In *C. Subrahmanyam v. K. Ramanjaneyulu and Ors*, MANU/SC/1352/1998 : (1998)8SCC703 the Apex Court was seized of an order of the Andhra Pradesh High Court passed under the Andhra Pradesh Panchayat Raj Act, 1994 to the effect that a writ petition was maintainable against an order directing repoll made during the process of election. Dealing with the said issue, the Apex Court observed:

“In our opinion, the main question for decision being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution of India should not have been entertained for this purpose”.

To similar effect is the decision in *Umesh Shivappa Ambi and Ors v. Angadi Shekara Basappa and Ors.*, MANU/SC/1017/1998 : AIR1999SC1566 where the Apex Court settled the law as to the proper remedy that a party aggrieved by an election result has to pursue in the following terms:

“Once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere with the elections under Article 226. The High Court will not ordinarily interfere with the elections under Article 226. The High Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, under Section 70(2)(c) of the Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law. This was, therefore, not a fit case for intervention under Article 226”.

In *M. Venkataramaiah v. Chief Election Commissioner, Bangalore and Ors.*, MANU/KA/0416/1995 : ILR1995KAR1821 this Court had occasion to examine the question as to which is the right forum for calling in question the declaration of an election result under the Act. Dealing with the issue at para 8 of its order, the Court held:

“The election of the members of the Zilla Panchayat are held under the Karnataka Panchayat Raj Act, 1993. Section 19 of the Act provides the grounds for declaring the election void. A petition questioning the election can be filed before the Munsiff having jurisdiction. If there is any non-compliance with the provisions of the Act or any Rules or Orders made thereunder, the Munsiff shall declare the election of the returned candidate to be void. It is therefore clear that the forum is constituted for questioning the election of the candidate under the Panchayat Raj Act”.

Thus, the case-law on the point also leaves nothing to doubt that where the statute provides for an effective alternative remedy, the party aggrieved cannot invoke the jurisdiction of the High Court under Article 226 of the Constitution.

10. Perhaps comprehending the futility of pressing this point any further, the learned Counsel for the petitioner tried to wriggle out of the situation by contending that what is mainly under challenge in the present writ petition is the proceedings of the meeting which, according to him, is perforce illegal because it lacked the required quorum. Countering the argument of the

learned Government Pleader that the election petition alone is the remedy to challenge the election of the returned candidate, he submitted that he could still challenge the proceedings of the meeting held on the date of election in writ petition and if the proceedings of the meeting is held to be illegal, then as a natural corollary the election of the respondent 6 has to be declared void. The said submission overlooks the vital aspect that the meeting now under challenge was one convened under Section 44 of the Act essentially for electing the Adhyaksha of the Grama Panchayat. The meeting was held and the sixth respondent was elected as Adhyaksha. Even assuming that the meeting held to elect the Adhyaksha contravened any of the provisions of the Act and the Rules framed thereunder and the meeting resulted in the declaration of the sixth respondent as having been elected as Adhyaksha, any dispute relating to such a meeting would be a dispute relating to the validity of the election itself as the meeting was essentially one conducted for electing the Adhyaksha. The meeting if it contravened any of the provisions of the Act and the Rules framed thereunder would have the effect of nullifying the election itself and therefore a dispute relating to the validity of such a meeting is in law a dispute relating to the validity of the election itself. Therefore, any argument which attempts at segregating the meeting and the election of the Adhyaksha at the meeting cannot be countenanced at all because the meeting as well as the election of the Adhyaksha in the meeting go hand in hand and for purposes of determining the forum for deciding a dispute arising in relation to an election or the meeting in which an election takes place it would be the end result that serves as the deciding factor and hence in this case it would be the forum prescribed under Section 45(2) of the Act. Where the non-compliance of a statutory provision which is complained of leads to a greater mischief, the greater mischief alone would determine the forum for challenge and not the cause which led to the greater mischief. Even conceding that the petitioner would be entitled to challenge the non-compliance with the provisions of the Act under the writ jurisdiction, where such non-compliance leads further to a greater mischief which could be challenged only in an election petition, then, in such a situation, the forum which has the jurisdiction to deal with the greater mischief alone will have jurisdiction to decide the issue of non-compliance with the statutory provision also. To hold otherwise would bring about disastrous results. If an aggrieved party is allowed to challenge the non-compliance with the provisions of the Act in a writ proceedings while simultaneously permitting him to challenge the resultant election of the returned candidate in an election petition on the same set of facts and on similar grounds, then there is every possibility that it would bring about conflicting results. That would be a sheer abuse of process of law which cannot be countenanced at all. There is no need to elaborate much on this point as any dispute relating to the validity of the election of a Adhyaksha or Upadhyaksha of Grama Panchayat should be called in question exclusively in an election petition filed under Section 45(2) of the Act. The challenge now made to the election of Adhyaksha contrary to Section 45(2) of the Act is, therefore, not maintainable.

11. Be that as it may, there is a constitutional bar to interference by Courts in electoral matters under Article 243-O of the Constitution. Article 243-O(2) reads:

“243-O. Bar to interference by Courts in electoral matters.—Notwithstanding anything in this Constitution.-

- (a) xxx xxx xxx
- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State”.

Thus, an election to a Panchayat does not brook interference except by an election petition presented to such authority and in such manner as provided under the Act. A challenge to it could not be sustained in any other forum even on the ground that the meeting in which the resolution was passed was held in contravention of the Act and the Rules. Any dispute regarding the validity of the meeting held under Section 44 in which the Adhyaksha or Upadhyaksha has been elected also should exclusively be decided by the prescribed authority under Section 45(2) of the Act as it would invariably amount to a dispute relating to the election of Adhyaksha or Upadhyaksha. All disputes relating thereto including the validity of the meeting itself would be subject to the jurisdiction of the prescribed officer under the Act, once the process of election is complete and a member is returned as Adhyaksha or Upadhyaksha.

12. Learned Counsel for the petitioner also placed reliance on the decision in *Shambugowda v. State of Karnataka and Ors.*, MANU/KA/0380/2000 : AIR2000Kant381 which lays down the principle, ‘that since this fraction of difference being less than 50% of a full one number, it is desirable to construe and conclude this difference as negligible and will have to be ignored’. This decision would not be of any assistance to the petitioner as I do not propose to go into the aspect of sufficiency or otherwise of the quorum of the meeting held to elect respondent 6. The other decisions cited at the Bar viz., *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, MANU/SC/0173/1985 : (1985)4SCC689 *Indrajit Barua and Ors. v. Election Commission of India and Ors.* MANU/SC/0169/1985 : AIR1986SC103 and *Govindaswami v. State of Tamilnadu*, MANU/SC/0299/1998 : 1998CriLJ2913 have no bearing to the issues involved in this writ petition and there is no need to advert to them in this order.
13. In the view that I have taken, I find it is not necessary for me to decide the question whether the meeting constituted to elect the Adhyaksha and the Upadhyaksha was properly constituted or whether it had the required quorum. All these questions are left open for the petitioners to urge in a properly presented election petition before the appropriate forum.
14. In the result, for the reasons stated above, the writ petition is rejected as not maintainable.

Equivalent Citation: AIR2009Kant86, ILR 2009 KARNATAKA 378, 2009(2)KarLJ444, 2009(5)KCCR3734

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Contempt of Court Case No. 423/2008

Decided On: 16.12.2008

Appellants: **T. Srinivasa S/o Sri K.N. Thimmaiah**

Vs.

Respondent: **J.J. Prakash in-charge Secretary, Bhavasara Kshatriya Co-Operative Bank Limited**

Hon'ble Judges/Coram:

S.R. Bannurmath and A.N. Venugopala Gowda, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: N. Ramachandra, Adv.

For Respondents/Defendant: S.K. Sailesh, Adv. for Tarakaram Associates

Subject: Contempt of Court

Subject: Trusts and Societies

Acts/Rules/Orders:

Contempt of Courts Act, 1971 - Section 2, Contempt of Courts Act, 1971 - Section 10, Contempt of Courts Act, 1971 - Section 12; **Karnataka** Cooperative Societies Act, 1959 - Section 70, **Karnataka** Cooperative Societies Act, 1959 - Section 71, **Karnataka** Cooperative Societies Act, 1959 - Section 105, **Karnataka** Cooperative Societies Act, 1959 - Section 109, **Karnataka** Cooperative Societies Act, 1959 - Section 109(13); Code of Civil Procedure (CPC) - Order 39 Rules 1, Code of Civil Procedure (CPC) - Order 39 Rules 2, Code of Civil Procedure (CPC) - Order 39 Rules 2A, Code of Civil Procedure (CPC) - Order 39 Rules 2A(1)

Cases Referred:

K. Jagdish Ponraj and Ors. v. A. Muniraju and Ors. CCC No. 114/07(Civil)

Disposition:

Petition rejected

Case Note:

Contempt of Court - Disobedience - Maintainability - Sections 71 and 109 of Karnataka Cooperative Societies Act, 1959 (Societies Act) - Complainant referred dispute to arbitrator with prayer to direct society to admit him as regular member - Award passed and society directed to admit complainant as regular member - Award not complied - Hence, present contempt petition filed - Maintainability of petition challenged - Whether, for disobedience of Award passed by Arbitrator in exercise of power under Section 71 of Societies Act, contempt petition is maintainable? - Held, contempt petition not maintainable as complainant has remedy under Societies Act - Thus, complainant directed to have recourse to provisions contained under Section 109 of Societies Act - Not find it expedient to entertain contempt petition - Petition rejected as not maintainable

Industry: Banks

ORDER

A.N. Venugopala Gowda, J.

1. This contempt petition has been filed under Section 12 of the Contempt of Courts Act, 1971 (for short, the Act'), to take action for disobeying the Award/order dated 02.05.08 passed by the Joint Registrar of Cooperative Societies/Departmental Arbitrator, in Dispute NoJRD/UBF/10064/2005-06 and to punish the accused.
2. Briefly stated, the facts which have led to the filing of this contempt petition are as follows:

The complainant was admitted as an Associate member of the Bhavasara Kshatriya Co-operative Society Ltd. Bangalore - 53 (Society', for short) in the year 1991. He represented to the Society on 15.10.03 for regular membership, on which no action was taken. Consequently he filed a dispute under Section 70 of the Karnataka Cooperative Societies Act, 1959 (for short, 'Societies Act') with a prayer to direct the Society to admit him as a regular member. The said dispute which was referred for adjudication, was contested by the Society and the learned Departmental Arbitrator has passed an Award on 2.5.2008 allowing the dispute in part and directing the Society to admit the complainant as a regular member from the date of the Award. Alleging that, the said Award has not been complied with and that there is wilful disobedience by the accused, who is an in-charge Secretary of the Society, this contempt petition has been filed.
3. We have heard Sri. N. Ramachandra, learned Advocate for the complainant, who contended that, the Arbitrator stands on the same footing as that of a subordinate Court and the disobedience complained of falls within the definition of Section 2(b) of the Act and hence, this Court has the power under Section 10 of the Act to take cognizance of the contempt alleged against the accused and committed by him. He contended that, the provisions contained in Section 109 of the Society Act is not efficacious, because of the procedure contemplated therein, which is required to be followed, there would be undue delay in the matter of conclusion of the proceeding, which would defeat the very object of the Arbitrator passing the Award. He further contended that, to ensure that justice is being done to the complainant, the remedy provided under the Act, for the committing of contempt of an order passed by the subordinate Court, the petition may be entertained and further action taken against the accused as provided under Section 12 of the Act.

4. After hearing the learned Counsel and perusing the record, the short point that arises for our consideration is:

Whether, for the disobedience of the Award passed by an Arbitrator In exercise of power under Section 71 of the Karnataka Cooperative Societies Act, 1959, In a dispute filed under Section 70 thereof, the contempt petition under Section 10 read with Section 12 of the Contempt Act is maintainable?

5. As already noticed, the dispute filed by the complainant under Section 70 of the Societies Act was disposed of by the Arbitrator under Section 71 of the Societies Act and an Award was passed on 02.05.08, directing the Society to admit the complainant as a regular member. The complainant alleges that, the said order / Award has been wilfully disobeyed. On the contrary, the learned Counsel for the accused contends that, there Is no wilful disobedience, in view of the fact that, the aforesaid Award has been questioned by filing an appeal under Section 105 of the Societies Act, in the Karnataka Appellate Tribunal, which is pending.

6. Sub-section (13) of Section 109 of the Societies Act reads as follows:

(13) Any co-operative society or any (office bearer) or employee or paid servant thereof who falls to give effect to any decision or award under Section 71 including order if any passed by the appropriate appellate authority, such decision or award not being a money decree, shall if such failure is by,:

- (a) the Board, be punishable with fine which may extend to five thousand rupees, and
(b) an (office bearer) or an employee or a paid servant of such cooperative society, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

From a reading of the said petition, it is clear that, the Co-operative Society, its Managing Committee or its employee, if fails to give effect to any decision or Award not being a money decree, passed under Section 71 of the Act, Including an order if any passed by the appropriate Appellate Authority, shall be liable to be punished with Imprisonment or fine or both.

7. Thus, It is clear that, the Societies Act itself provides for a just procedure and remedy in case of failure to give effect to any decision or award other than being a money decree, by way of imposition of punishment. It is trite that, If the Act provides for a thing to be done in a particular manner, then, it has to be done in that manner alone and not otherwise. Sub-section (13) of Section 109 of the Societies Act enables to punish the Society, its management or the employee, for disobedience of the order or Award other than a money decree passed under Section 71. Such power has been conferred by the Legislature with an object that, the order or Award passed thereunder is obeyed and if breached, should be dealt with in the manner provided under the Societies Act itself. The power under Section 10 read with Section 12 of the Act, Is not intended to supercede the mode of obtaining relief as provided under Sub-section (13) of Section 109 of the Societies Act or to deny the defences legitimately open in such action.
8. In the case of K. Jagdish Ponraj and Ors. v. A. Muniraju and Ors. in CCC No. 114/07(Civil), disposed of on 04.12.08, the facts were that, the complainants as plaintiffs had obtained an

order of temporary injunction under Order 39 Rules 1 and 2 CPC in a Civil Court. They alleged disobedience of the said order by the accused. Without invoking the Jurisdiction of the Civil Court provided under Rule 2A thereof, a contempt petition was filed in this Court under Sections 10 & 12 of the Act. Considering the objections raised to the maintainability of the contempt petition, in view of the provision made in Order 39 Rule 2A CPC, it was held as follows:

9. The provision under Order 39 Rule 2A(1) relates to the consequence of disobedience or breach of Injunction. The remedy available in case of disobedience or breach of injunction Is provided therein itself, which in our view, has been made to provide a speedy inexpensive and effective forum and to avoid multiplicity of litigation before different forums. The Legislative policies and intendment should necessarily weigh with us In giving meaningful interpretation to the provision. We do not find any extraordinary case having been made out by the complainants, who are insisting for initiation and prosecution of the proceedings under the Act, than by availing the remedy provided under the Code. From the said perspective, taking into consideration the remedy provided under the Code, the complaint filed under the Act, for taking action for breach or disobedience of an order of temporary injunction made or granted by the subordinate Court, is not permissible. In our view, when the subordinate court itself has been sufficiently empowered to deal with the situation, where there is disobedience or breach of the injunction order granted by it, the same forum should be approached for relief and to see that its orders are honoured and given effect to rather than seeking punishment under Section 12 of the Act.
9. The case on hand is not much different. If the Society or its Managing Committee or any of its employees fails to give effect to the decision or Award, is liable to be punished by Imposition of fine or Imprisonment or both. Hence, in our considered view, the contempt petition under Section 12 of the Act is not maintainable and the complainant In the ordinary circumstances has to have recourse to the provisions contained under Section 109 of the Societies Act. Since, we do not find any exceptional case having been made out by the complainant, pointing out that the remedy provided under Sub-section (13) of Section 109 of the Societies Act is not adequate to deal with the situation, we do not find it expedient to entertain this contempt petition and to proceed against the accused by exercising the jurisdiction under Section 12 of the Act.
10. For the foregoing reasons, we reject this petition as not maintainable, by making it clear that, the rejection will not come in the way of the complainant having recourse to the remedy available under Sub-section (13) of Section 109 of the Societies Act. Ordered accordingly.

Equivalent Citation: ILR 2008 KARNATAKA 4048, 2009(1)KarLJ36, 2008(4)KCCR2524

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.A. No. 313 of 2008

Decided On: 24.06.2008

Appellants: **K.G. Rajashekar**

Vs.

Respondent: **The State of Karnataka rep. by its Secretary, Department of Co-operation, The President, Bharathi Credit Co-op. Society Ltd., The Secretary, Bharathi Credit Co-op. Society Ltd. and Cauvery Credit Co-op. Society Ltd. by its Secretary**

Hon'ble Judges/Coram:

K.L. Manjunath and B.V. Nagarathna, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: S. Prakash Shetty, Adv.

Subject: Service

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 34, **Karnataka** Cooperative Societies Act, 1959 - Section 34(1), **Karnataka** Cooperative Societies Act, 1959 - Section 34(2), **Karnataka** Cooperative Societies Act, 1959 - Section 70

Disposition:

Appeal dismissed

Case Note:

Karnataka Co-Operative Societies Act, 1959 - Section 34(1) & (2)—Deduction from salary to meet Society's claim—Whether there is any prohibition for a creditor to invoke Section 34(1) & (2) of the Act, even after obtaining an award—Held, It is clear from the provisions of Section 34 that there is no prohibition for a creditor to invoke Section 34(1) & (2), even though an award is obtained by him against the Debtor. Filing of a dispute under Section 70, is to obtain an award by raising a dispute within the stipulated time and thereafter also it is open for a creditor to invoke Section 34 and request the employer of the Debtor to deduct the amount as agreed upon out of his salary and therefore Section 34 can be pressed into service by a creditor either before raising a dispute and also after raising a dispute. By mere reading of Section 34(1) & (2) of the K.C.S. Act, it is clear that there is no prohibition for a creditor to invoke Section 34(1) & (2) of the Act even after obtaining an award.—Order of the Learned Single Judge is justified.

Appeal is dismissed.

JUDGMENT

K.L. Manjunath, J.

1. The appellant was respondent No. 4 in Writ Petition No. 9764/2007. The aforesaid Writ Petition was filed by the respondent-4 in this appeal.
2. According to the Writ Petitioner, it is a Cooperative Society registered under the provisions of the Karnataka Cooperative Societies Act (hereinafter referred to as the Society). The appellant herein has borrowed a sum of Rs. 5,000/- as loan on 25.11.1994 and he also stood. as surety for one K.R. Ramachandraiah who had also borrowed, a loan of Rs. 5,000/- on 21.10.1994 and that the appellant herein had executed an agreement in favour of the Society giving liberty for it to recover at the rate of Rs. 1,000/- per month out of his salary through his employer. The Society raised a dispute under Section 70 of the Karnataka Cooperative Societies Act against the appellant herein for recovery of the loan amount and an award has been passed. Thereafter an order of attachment is also obtained by the Society. Thereafter the society requested the employer of the appellant herein to deduct an amount Rs. 1,000/- per month from out of the salary of the appellant invoking the provision of Section 34 of the K.C.S. Act, 1959. Since the employer of the appellant did not deduct the amount as requested by the Society inspite of an order of attachment, the aforesaid Writ Petition was filed requesting the Court to issue a writ of mandamus directing the respondent-2 and 3 herein to deduct the amount from out of the salary of the appellant in terms of Section 34 of the KCS Act. The appellant herein did not file any objections to the Writ Petition. The Writ Petition was heard on merits. The learned Single Judge after considering the provisions of Section 34 of the K.C.S. Act, 1959 and relying upon Annexure-B which is an authorisation issued by the appellant to the society to recover out of his salary as required under Section 34(1) and (2) of the K.C.S. Act, allowed the Writ Petition. Being aggrieved by the same, the present appeal is filed.
3. According to Mr. Prakash Shetty, the learned Single Judge has committed an error in not considering the effect of obtaining an award under Section 70 of the K.C.S. Act raised by the society. According to him, when an award is passed, Section 34 cannot be pressed into service by the creditor of the appellant. He further submits that there was no privity of contract between the employer of the appellant and the society. Therefore, he requests the Court to set aside the order passed by the learned Single Judge.
4. After hearing the appellant's Counsel, we are of the opinion that there are no substance in the arguments advanced by the learned Counsel for the appellant for the following reasons:
5. The appellant has not filed any objection denying the execution of Annexure-B by him in favour of the society. From Annexure-B, it is clear to us that the appellant herein has given a consent in favour of the Society to recover a sum of Rs. 1,000/- per month out of his salary in accordance with Section 34 (1) and (2) of the K.C.S. Act. Annexure-B is addressed to the employer- Bharathi Credit Cooperative Society Limited. From this, it is clear that the appellant voluntarily has given consent for the 4th respondent to recover a sum of Rs. 1,000/- per month out of his salary under Section 34 (1) and (2) of the K.C.S. Act authorising the Society to

request his employer to deduct the amount and send it to the 4th respondent. When the appellant has not disputed this document, now it is not open for him to contend that the society cannot invoke Section 34 (1) and (2) of the K.C.S. Act. The only grievance of him is that when society has obtained an award under Section 70 of the K.C.S. Act, such award has to be executed in accordance with other provision of the K.C.S. Act and Section 34 (1) and (2) cannot be pressed into service. Section 34 of the K.C.S. Act reads as hereunder:

34. Deduction from salary to meet society's claim in certain cases;

- (1) Notwithstanding anything contained in any law for the time being in force, a member of a co-operative society may execute an agreement in favour of the society providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer; such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.
- (2) On the execution of such an agreement the employer shall, if so required by the cooperative society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amount so deducted to the society within fourteen days from the date of the deduction.

6. From the reading of the above provision it is clear to us, there is no prohibition for a creditor to invoke Section 34 (1) and (2), even though an award is obtained by him against the Debtor. Filing of a dispute under Section 70, is to obtain an award by raising a dispute within the stipulated time and thereafter also it is open for a creditor to invoke Section 34 and request the employer of the Debtor to deduct the amount as agreed upon out of his salary and therefore Section 34 can be pressed into service by a creditor either before raising a dispute and also after raising a dispute. By mere reading of Section 34 (1) and (2) of the K.C.S. Act, that there is no prohibition for a creditor to invoke Section 34 (1) and (2) of the Act after obtaining an award. Therefore as long as the loan advanced by a creditor is not recovered and if such consent is given by a Debtor under Section 34, the same can be made use by the creditor at any time.
7. In the circumstances, there are no merits in this appeal and we do not see any reasons to interfere with the well considered order of the learned Single Judge.
8. Accordingly, the appeal is dismissed.

Equivalent Citation: ILR 2003 KARNATAKA 4590

IN THE HIGH COURT OF KARNATAKA

Writ Petition Nos. 29148-29220/2003

Decided On: 10.09.2003

Appellants: **K.M. Manjunatha and Ors.**

Vs.

Respondent: **The State of Karnataka and Ors.**

Hon'ble Judges/Coram:

N.K. Patil, J.

Counsels:

For Appellant/Petitioner/Plaintiff: A. Nagarajappa, Adv.

For Respondents/Defendant: Kehsava Reddy, HCGP for R1 and 3 and Madhusudan R. Naik, Adv. for R2

Subject: Constitution

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Constitution of India - Article 226

Cases Referred:

K.V. Panduranga Rao v. Karnataka Dairy Development Corporation, Bangalore and Ors., 1994 (1) KLJ 149; Surya Narain Yadav and Ors. v. Bihar State Electricity Board and Ors., AIR 1985 sc 941; Keshava Mills Co. Ltd., and Anr. v. Union of India and ors., AIR 1973 SC 389; M.s. Nally Bharat Engineering Co. Ltd., v. State of Bihar and Ors., 1990(2) SCC 48; K.K. Rajanna and Ors. v. Sri Bettaswamy Gowda and Ors., W.Ps. No. 48389-48455/01 and connected matter dated 26.02.2002

Disposition:

Writ petition allowed

Case Note:

KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 - SECTION 30B — CONSTITUTION OF INDIA - ARTICLE 226 — If the order passed by the authority is contrary to the specific directions issued by the Court in writ petition, the petitioner can straight away, approach the Court under Article 226 complaining that the earlier directions have been disobeyed by the authority — There is no necessity for the petitioner to exhaust alternative remedy to invoke Article 226 — On facts. HELD: There were specific directions to the authorities to comply with the

directions in accordance with law before passing the order — In the facts and circumstances of the case, the impugned order passed by the authority is not according to the specific directions issued by this court — petitioners can question the impugned order under Article 226 - objection by the respondent that the petitioners have not exhausted alternative remedy is not sustainable — Principles of natural justice — giving an opportunity to the petitioners means — Requirement of law is — authorities must receive the objections, apply their mind to consider the objections provide an opportunity of hearing and to pass orders on merits by giving reasons — in view of the non compliance of the specific directions of this court in passing the impugned order — the order passed by the authority is set aside

Writ Petitions allowed, directing the respondents to comply with the specific directions issued in the earlier batch of Writ Petitions.

Held:

After careful perusal of the impugned order passed by the respondent No. 2, vide Annexure 'K' it is manifest on the basis of record that the respondent No. 2 has committed an error in passing the said order, without compliance of the specific directions issued by this Court.

ORDER

Patil, J.

1. Though these writ petitions are listed in orders list, with consent of the learned counsel appearing for the petitioners and respondents, the matter is taken up for hearing. The said writ petitions are heard on 09.09.2003 and 10.09.2003.
2. In these cases, the petitioners, assailing the legality and validity of the order dated 02.02.2002 vide Annexure 'G' issued by respondent No. 1 under Section 30B of the Karnataka Co-op. Societies Act, 1959 and Annexure 'N' issued by Respondent No. 3 dated 10.01.2003 and also the order passed by Respondent No. 2 dated 09.04.2002 vide Annexure 'K'; and further sought a direction directing Respondents No. 1 & 2 to follow the order vide Annexure 'C' and 'D' dated 22.06.2001 and 07.08.2001 respectively.
3. The grievance of these petitioners is that, earlier they had filed Writ Petitions before this Court in writ petitions No. 48389 -48455/01 and connected matter. Those writ petitions have come up on 26.02.2002. After hearing both sides, the writ petitions filed by the petitioners were allowed and stand disposed of directing Respondent No. 2 herein to hear the petitioners and give an opportunity to them and persuade the same on merits of the case without being influenced by the resolution passed by Respondent No. 2 in General Body and decide the same. The decision taken by Respondent No. 2 earlier, dated 4/6.12.2001 has been quashed. After remand, Respondent No. 2 herein has issued notice to these petitioners. In pursuance of the said notices, these petitioners have filed objections. After considering their objections, Respondent No. 2 has passed the impugned order Annexure 'K' dated 09.04.2002 holding that the petitioners are not entitled for skipping scale. Immediately these petitioners have given representation to Respondent No. 3. The said representation has been rejected. Being aggrieved by the impugned order, as stated supra, these petitioners have presented these writ petitions.

4. The principle submission canvassed by the learned Counsel for the petitioners is that, Respondent No. 2, herein has proceeded and passed an order in disobedience of the directions issued by this Court. This Court has specifically directed Respondent No. 2 to hear the petitioners and give an opportunity to them and pass the order strictly in accordance with law, without being influenced by the resolution passed in the General Body. The said specific directions issued by this Court is not complied with. Secondly he contended that in pursuance of the notice issued by Respondent No. 2, these petitioners have filed objections in batch-wise. The said objections have not been considered in accordance with law. Thirdly, he submitted that there is no hearing as such, has been given to these petitioners. If Respondent No. 2 has given hearing, in pursuance of the order vide Annexure 'C', they are entitled for skipping scale and the same was provided by other Societies also. Further he submitted that Respondent No. 2, inspite of specific directions issued by this Court has proceeded to pass the order without giving any reasons/findings and rejected the request of the petitioners for entitlement of skipping scale, as per Annexure 'C'. Except stating 'for the reasons in their objections, cannot be accepted nor they are entitled for consideration'. This is the only reason that has been given and there is no finding as such has been given by Respondent No. 2 inspite of specific directions issued by this Court. Therefore, he submitted that the impugned order passed by Respondent No. 2 vide Annexure 'K' is liable to be set-aside. Further, he fairly submitted that so far as prayer-(a) is concerned, the same is not pressed at this stage. If once the opportunity is given and directions are not complied, liberty may be reserved if required to assail Annexure 'G', the order passed under Section 30B of the Act.
5. Further to substantiate his submissions regarding preliminary objections by the learned Counsel for the respondents regarding maintainability of the writ petitions, he submits that it is not open for the learned Counsel for the respondent at this stage to raise such objection, when they conceded for issuing directions in the hands of this Court in the earlier course of litigation in Writ Petitions No. 48389-48455/01 and connected matter dated 26.02.2002. Regarding maintainability of the writ petitions is concerned, he placed reliance on the judgement of the Full Bench of this Court reported in the case of K.V. PANDURANGA RAO v. KARNATAKA DAIRY DEVELOPMENT CORPORATION, BANGALORE AND ORS. 1994 (1) KarLJ 149 and also on the judgment of the APEX COURT in the case of SURYA NARAIN YADAV AND ORS. v. BIHAR STATE ELECTRICITY BOARD AND ORS. MANU/SC/0233/1985 : AIR1985SC941 The Full Bench of this Court has held that the Karnataka Dairy Development Corporation, Bangalore, will come within Article 12 of the Constitution of India holding that the said Development Corporation is instrumentality of the State coming within the definition of the State. In this case, Respondent No. 2 is the Milk Union comes under the Karnataka Dairy Development Corporation. Therefore, the writ petitions filed by petitioners are maintainable. Regarding alternative remedy, he submitted that the petitioners have come up by way of filing writ petitions. He is quick to point out that, when the specific directions have not been complied with, the question of availing alternative remedy is not barred for the petitioners. He brought to the notice of the Court that because of non-compliance of the said specific directions, objections raised by the learned Counsel for the respondents is not sustainable.
6. Per-contra, the learned Counsel for Respondent No. 2, inter-alia, contended and submitted that the impugned order is passed by Respondent No. 2 vide Annexure 'K', he submitted that in

obedience of the directions issued by this Court, Show Cause Notice was issued to the petitioners calling for objections. Objections were filed in batch-wise and they were placed before the Authority. The Authority has conducted enquiry under strict provisions of Act. The proceedings disclose that each and every objections filed by the petitioners have been extracted in the proceedings dated 11.03.2002 vide Annexure-'R.2' and Annexure-'R.3', it is clearly mentioned that objections were filed by the petitioners, same was considered and discussed in detail. In column No. 2 and Column No. 3, it is stated that their request has been rejected on the ground that they are not entitled. And further he is quick to point out that the impugned order passed by Respondent No. 2 vide Annexure 'K' has been considered and discussed in page-3 of the impugned order and reasons have been assigned-Item No. 1 to 8 and further it is clarified that the petitioners are not entitled for skipping scale on the ground that the Government has directed to consider the same vide Annexure 'G'. The same is read in totality and not piece-wise. There has been a mistake creped in the earlier case and the benefit has been given to the petitioners and the same has been rectified keeping in view the byelaws of the society. No error as such has been committed.

7. Further, he vehemently submitted that the question of giving personal hearing does not aires on the ground that the objections filed by these petitioners have been considered in detail, the reasoning and findings are given for each and every objections in the proceedings vide Annexure-'R.3' along with statement of objections and submitted that the petitioners without availing alternative remedy available to them have come up with these writ petitions after lapse of more than one year. The impugned order is as early as 09.04.2002 and taking into consideration the financial difficulty faced by these petitioners a monthly 24 instalments to adjust the pay-scale has been given and already such order has been implemented for more than 14 months. This fact has been suppressed by the petitioners. Regarding the direction issued by this Court to hear the petitioners and give an opportunity to them, in the instant case, he is quick to point out that the objections have been considered in detail and after affording opportunity, a considered order has been passed. The submission of the learned Counsel for the petitioners that no personal hearing has been given, has got no substances. To substantiate, he placed reliance on the judgment of the Apex Court in the case of KESHAVA MILLS CO. LTD., AND ANR. v. UNION OF INDIA AND ORS. MANU/SC/0447/1972 : [1973]3SCR22 and also on the law laid down by the Apex Court in para-8 of the said judgment and submitted that, the concept of natural justice cannot be put into a straitjacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case.
8. In the instant case, Respondent No. 2 has given consideration to the stand taken by these petitioners. The question of giving personal hearing does not arise because, after affording sufficient opportunity, the matter has been decided. Further, he placed reliance on another judgment in the case of Management of M.S. NALLY BHARAT ENGINEERING CO. LTD., v. STATE OF BIHAR AND ORS. MANU/SC/0430/1990 : (1990)IILLJ211SC He placed reliance on para-20 of the law laid down by the Apex Court and submitted that, Respondent No. 2 has given sufficient opportunity to the petitioners, considered their objections and came to the conclusion that they are not entitled. A mistaken benefit has been given to the petitioners. The same has been rectified as per the bye-laws of the Society. Having regard to the financial position of the Union, he submitted that the petitioners have not made out any good ground to

interfere with the well considered order passed by Respondent No. 2-Union. He submitted that the writ petitions filed by the petitioners are liable to be rejected.

9. The learned Government Pleader appearing for Respondent Nos. 1 and 3, inter-alia, contended and prayed that, as per Annexure 'C' is concerned, the Government has clarified subject to the financial position and bye-laws, they can consider. But, in the instant case, instead of considering the purport of the directions issued by the Government, an alternative is given to the petitioners. The same is not permissible i.e., skipping pay scale, which they are not entitled. Therefore, he submitted that the said decision has been clarified and produced the Xerox of the scheme "Union". He is quick to point out that these petitioners in the scale of Rs. 2500-2830, selected time scale pay is Rs. 2600-4350. They have jumped from Rs. 2-775-4950 to Rs. 3000-5450 Skipping Scale No. 2. It is not permissible. Therefore, the Respondent No. 1 was compelled to pass order under Section 30B vide Annexure 'G'. No illegality or irregularity has been committed.
10. After hearing the learned Counsel for the petitioners and the learned Government Pleader appearing for the State at considerable length of time and after evaluating the entire material available on record and the contentions urged by the respective Counsel, the questions that arise for consideration in this case are;
 1. Whether the direction issued by this Court in W.Ps. No. 48389-48455/01 and connected matter dated 26.02.2002 (K.K. Rajanna and Ors. v. Sri Bettaswamy Gowda and Ors.) is complied with?
 2. Whether Respondent has considered the objections filed by the petitioners in accordance with law?
 3. Whether Respondent No. 2 has given sufficient opportunity of hearing to the petitioners?
11. After careful perusal of the impugned order passed by Respondent No. 2 vide Annexure 'K', it is manifest on the basis of record that Respondent No. 2 has committed an error in passing the said order, without compliance of the specific directions issued by this Court. It is worthwhile to extract the specific directions issued by this Court in its order dated 26.02.2002 in W.Ps No. 48389-48455/01, which is as follows:

"Having heard the learned Counsel appearing for the parties, I am of the view that the impugned order Annexure-F is liable to be quashed on the short ground that the said order came to be passed in disregard to the principles of natural justice by not giving an opportunity to the petitioners. It cannot be disputed that the impugned order results in civil consequence inasmuch as if the impugned order is given effect to, it takes away the monetary benefits already given to the petitioners. Under these circumstances, the minimum that was required by the first respondent was to hear the petitioners and given an opportunity to them. Admittedly the same has not been done. Merely because the General Body has passed a resolution, it would not confer any rights to take away the benefits given to the petitioners without hearing the petitioners."
12. This Court by its order dated 26.02.2002 has specifically directed Respondent No. 2 to hear the petitioners and give an opportunity to them without being influenced by the resolution passed

by the General Body and decide the case on merits. After careful perusal of the impugned order-Annexure 'K', in my considered view, I do not find the compliance of the directions issued by this Court.

13. During the course of the submissions, I have put question to the learned Counsel for the respondent to see the order sheet and show, whether any hearing has been given to the petitioners before passing the impugned order. He was unable to point out. The learned Counsel for Respondent No. 2 submitted that hearing, as such, has been given. Further, it reveals from Annexure 'R.3' -proceedings dated 06.04.2002 that, objections by Respondent No. 2 along with objections of the petitioners, are discussed and made a chart and prepared Columns Nos. 1, 2, 3 & 4 in the Chart. In Column No. 1, the objections filed by the petitioners is mentioned. In Column No. 2 objections filed by these petitioners has been narrated in nutshell. Column No. 3 discloses that they have not accepted objections raised by the petitioners regarding factual facts of the case. Column No. 4 is column for giving the findings for not accepting. But after careful perusal of Annexure-'R.3', it is only mentioned, "the objections raised are not maintainable. Hence rejected".
14. In my considered view, time and again, the Apex Court and this Court, have given a considered view to give reasons and findings for rejecting the plea taken by the parties. In the instant case, it is not coming from the proceedings of Respondent No. 2 dated 06.04.2002. Except stating 'their objections is not justified and it is rejected'. That is not the compliance of the mandatory provisions of the Co-operative Society and Rules and the directions issued by this Court. Therefore, the impugned order passed by Respondent No. 2 is liable to be set-aside for non-compliance of the specific directions issued by this Court.
15. The learned Counsel for the respondents contended that, in view of the judgment laid down by the Apex Court supra, there is no mandatory provision as such to give personal hearing to each and every person and that is not the requirement of law. The requirement of law is, whether the Authorities have considered their objections, applied their mind and given reasons. In the circumstances of the case, sufficient opportunity has been given to the petitioners. Notice has been issued. Objections have been received, considered, analysed and reasonings have been given, They have not accepted. So far as the findings is concerned, the same is not complied. The Apex Court has held that, it should be taken and read in totality as to, whether the principle of natural justice is not only the ground for interference by this Court. The said submission made by the learned Counsel for the respondents has got no substance.
16. In my view, after hearing the Counsel appearing for the petitioners, the learned Counsel for Respondent No. 2 - Union, in the light of specific directions issued by this Court, Respondent No. 2 was to hear the petitioners and give an opportunity to them. Having regard to the facts and circumstances of the case, this Court has given specific directions, the respondent has considered objections, analyzed the objections, but not accepted. Regarding consideration of the well settled law laid down by the Apex Court as referred above, there is no force in the contention of the learned Counsel. The ratio of law laid down is no way concerned to the facts and circumstances of the case and it is entirely different from the cases on hand.

17. In the case on hand, there is a specific directions issued by this Court. It is not disputed. There is no hearing as such given to the petitioners. If heard, their case would have been different and whether they are entitled for skipping scale under Government Order Annexure 'C' or not, should be decided. Therefore, I do not find any justification to sustain the order passed by the respondent. Hence, it requires to be set-aside.
18. Regarding alternative remedy and the writ petitions filed by the petitioners is not maintainable, the objections raised by the learned Counsel appearing for Respondent No. 2, he vehemently submitted that the petitioners without exhausting their right by filing Appeal before the competent Authority as provided under relevant rules, have straight away come up before this Court and filed these writ petitions. The Court cannot entertain these Writ Petitions and issue direction under Article 226 of the Constitution of India. The said submission has got no substance having regard to facts and circumstances of cases and it is liable to be rejected.
19. This Court has disposed of a batch of writ petitions giving specific direction to Respondent No. 2 to consider the matter, after affording sufficient opportunity and decide the same on merits of the case. In view of the non-compliance of the directions issued by this Court, the petitioners have brought to the notice of this Court and filed these writ petitions. Therefore, having regard to the facts and circumstances of the case, taking into consideration the totality of the case, I do not find any justification for consideration of objections raised by the learned Counsel appearing for Respondent No. 2 and it cannot be sustain the impugned order passed by Respondent No. 2.
20. Accordingly, the writ petitions are allowed. Order dated 09.04.2002 vide Annexure 'K' passed by Respondent No. 2 is hereby set-aside and the matter is remitted to Respondent No. 2 for consideration afresh with the following directions.
 1. Respondent No. 2 is directed to comply with the directions issued by this Court dated 26.02.2002 in W.Ps No. 48389-48455/ 2001 and connected matter (K.K. Rajanna v. Bettaswamy Gowda and Anr.) and decide the same in strict compliance of the directions issued by this Court as expeditiously as possible within one month from the date of receipt of this order.
 2. Respondent No. 2 herein is directed to proceed with the matter from the stage of hearing the petitioners and give reasoning/findings for non-considering the case.
 3. Respondent No. 2 herein is directed to decide the matter strictly on merits of the case without being influenced by the resolution passed by the General Body and the order passed by the Government under Section 30B of the Co-operative Societies Act dated 02.02.2002.

For the foregoing reasons, these Writ Petitions are disposed of. All contentions of both the parties are left open.

Government Pleader to file his Memo of Appearance within four weeks.

Equivalent Citation: ILR 2013 KARNATAKA 172, 2013(1)KarLJ651

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 45889/2011

Decided On: 28.06.2012

**Appellants: Tumkur District Central Cooperative Bank Ltd., Tumkur, Rep. By Its President,
B.N. Rajanna S/o. Late Nanjappa Aged About 61 Years**

Vs.

**Respondent: State of Karnataka Department of Co-operation M.S. Building Bangalore -
560001 Rep. By Its Secretary and Registrar of Co-operative Societies, Ali Askar Road
Bangalore**

[Alongwith Writ Petition No. 7398/2012 (S-Res)]

Hon'ble Judges/Coram:

Hon'ble Mr. Justice H.N. Nagamohan Das

Counsels:

For Appellant/Petitioner/Plaintiff: Sri. Jayakumar S. Patil, Sr. Adv.

For Respondents/Defendant: Smt Manjula R. Kamadalli, HCGP

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - Section 2(b)(2), Karnataka Co-operative Societies Act, 1959 - Section 30-B

Case Note:

Trusts and Societies - Validity of notification - Whether notification specifies method of conducting examinations, awarding marks, qualification to posts, roster etc. - Held, in present case, Karnataka Cooperative Societies Act there were cooperative societies other than one specified under Section 2(b)(2) of Karnataka Co-operative Societies Act, 1959 - Government, by exercising power under Section 30-B of Act might issue directions in public interest to cooperative societies other than cooperative societies referred to under Section 2(b)(2) of Act - Impugned notification of Government specifying guidelines in matter of recruitment were not applicable to cooperative societies/banks defined under cooperative credit structure under Section 2(b)(2) of Act - Petition partly allowed.

Industry: Banks

ORDER

Hon'ble Mr. Justice H.N. Nagamohan Das

1. In these writ petitions the petitioners have prayed for a writ in the nature of certiorari to quash the government notification dated 13.06.2011-Annexure F. The petitioner in W.P. No. 45889/2011 is District Central Cooperative Bank at Tumkur and petitioner in W.P. No. 7398/2012 is the South Canara District Central Cooperative Bank, Mangalore. The petitioner - banks are registered under the Karnataka Cooperative Societies Act (for short 'the Act'). The petitioners are engaged in banking business. The financial assistance to these petitioners are funded by the National Bank for Agricultural and Rural Development (for short 'NABARD') through the Apex Banks at the State level. The petitioners in-turn are extending financial assistance to Taluka Agricultural Societies and Primary Societies.
2. The first respondent Government of Karnataka by exercising power under Section 30-B of the Act issued the impugned notification dated 13.6.2011 imposing certain conditions on the cooperative societies in the matter of fixing the cadre strength and recruitment. The impugned notification specifies the method of conducting examinations, awarding marks, qualification to the posts, roster etc. Petitioners being aggrieved by the impugned notification are before this Court.
3. Heard arguments on both the side and perused the entire writ papers.
4. On 5.8.2004 the Government of India appointed a task force under the Chairmanship of Professor A. Vaidyanathan to suggest measures for revival of short-term cooperative credit structure in the country. This task force after extensive travel throughout the country and by interacting with the cooperative societies and cooperators made a critical study of the short-term credit cooperative structure in the country and submitted a report to the Government on 4.2.2005. Thereafter the Government of India held discussions with the representatives of the State Governments and formulated a revival package for revitalization of short-term credit cooperative structure. The Government of Karnataka has accepted the revival package and signed a tripartite memorandum of understanding with Government of India and NABARD on 25.3.2008. This tripartite memorandum of understanding envisages certain amendments to be brought to the Karnataka Cooperative Societies Act, 1959 giving more powers to cooperative societies. This obligation to bring amendments to the Act is a pre-condition under the tripartite memorandum of understanding for release of financial assistance by Government of India through NABARD.
5. Further the Government of Karnataka appointed three men committee on 27.5.2005 to suggest amendments to Karnataka Cooperative Societies Act, to remove restrictive provisions under the Act and to enable the cooperative societies to function in a transparent, accountable, vibrant and democratic manner. This committee submitted its report in the month of February 2006 recommending certain amendments to the Karnataka Cooperative Societies Act. The Government of Karnataka in the light of tripartite memorandum of understanding and also the report of three men committee brought certain amendments by Act No. 6 of 2010 to the Karnataka Cooperative Societies Act by way of incorporating certain provisions.
6. For the purpose of this case, the relevant amended provisions in the Act are Section 2(b)(2), Section 98-A, Section 98-B and Section 98-E(iii) and they read as under:

Section 2(b)(2)- “Co-operative Credit Structure means and includes Primary Agricultural Credit Cooperative Societies by whatever name called, Central Cooperative Banks, State Cooperative Bank, Agricultural and Rural Development Banks and State Agricultural and Rural Development Bank.”

98-A. Application of this Chapter.- This chapter shall apply only to cooperative societies in cooperative credit structure.

98-B. Overriding effect of Chapter XI-A -Notwithstanding anything contrary or inconsistent contained in any other chapter of this Act or rules framed thereunder or bye-laws of any co-operative society or orders issued thereunder, the provisions of this chapter shall have overriding effect in respect of societies in co-operative credit structure.

98-E. Freedom in all financial and internal administrative matters.- A Cooperative society under Cooperative Credit Structure shall have freedom to decide its financial and internal administrative matters, which include.-

- i. xxx
- ii. xxx
- iii. the personnel policies including issues relating to recruitment, promotion, staffing, training, posting and compensation to staff as per business recruitments of the society;
- iv. xxx
- v. XXX

7. Having regard to the nature of activity carried on by the petitioners they come under the above definition under Section 2(b)(2). Further there is no dispute that petitioners are the cooperative banks covered under the definition of cooperative credit structure. Section 98-A specifies that the provisions contained in Chapter XI-A shall apply only to cooperative societies in cooperative credit structure. Section 98-E specifies freedom in all financial and internal administration matters of these societies under cooperative credit structure. Further Section 98-E(iii) specifies that the cooperative societies under the cooperative credit structure shall have the freedom to decide issues relating to recruitment, promotion, staffing, training, posting and pension to staff as per the business requirement of the society. Thus the petitioners coming under the cooperative credit structure enjoy the freedom and autonomy in the matter of recruitment of its employees. Section 98-B of the Act specifies that notwithstanding anything contrary or inconsistency contained in any other chapter of this Act or rules framed thereunder or bye-laws of any cooperative society or orders issued thereunder, the provisions of this chapter shall have overriding effect in respect of societies in cooperative credit structure. This overriding provision under Section 98-B of the Act protects the freedom and autonomy granted to these societies under cooperative credit structure. This statutory freedom and autonomy given to these societies cannot be taken away by the Government by way of administrative order.
8. The Government of India by ninety-seventh amendment amended the Indian Constitution by way of incorporating Article 43B and Article 243ZH to 243ZT specifying that the State Government may endeavour to promote voluntary formation, autonomous functioning,

democratic control and professional management of co-operative societies. Thus the freedom and autonomy given to the Cooperative Banks under cooperative credit structure is also protected under the Constitution. This constitutional guarantee given to the petitioners cooperative Banks can not be taken away by the Government by an executive order.

9. Learned Government Pleader contends that in order to bring transparency and professionalization in the matter of recruitment process in these cooperative societies the Government of Karnataka by exercising power vested under Section 30-B of the Act have issued the impugned order specifying the guidelines to be followed in the matter of recruitment of employees. It is brought to my notice that the petitioners have adopted the Karnataka Government policy relating to reservation of certain posts to various categories. Further the petitioners have passed resolutions adopting Human Resources Policy for short term cooperative credit structure guidelines as specified by NABARD. Thus the petitioners are following the Rules relating to the recruitment and also following the reservation policy of the Karnataka Government. When the petitioners are following one set of Rules in the matter of recruitment then there is no need and necessity for the respondent Government to prescribe another set of guidelines in the matter of recruitment. It is not the case of respondent Government that the Rules adopted by the petitioners are arbitrary, lacks transparency and professionalism. It is also not the case of respondent Government that these petitioners are not following the reservation policy of the State. A perusal of the recruitment notification issued by the petitioners inviting applications from eligible candidates to fill certain vacancies specifies the number of posts reserved for various categories. Thereby the Rules adopted and the procedure followed can neither be said arbitrary nor opposed to transparency and professionalism and the concept of social justice.
10. A perusal of the conditions specified in the impugned Government notification - Annexure F makes it clear that it is nothing but interference with the freedom and autonomy guaranteed to the petitioners under Section 98-E of the Act. Therefore the impugned notification is contrary to Section 98-E of the Act.
11. Under the Karnataka Cooperative Societies Act there are cooperative societies other than the one specified under Section 2(b)(2) of the Act. The Government, by exercising power under Section 30-B may issue directions in public interest to the cooperative societies other than the cooperative societies referred to under Section 2(b)(2) of the Act. Therefore the impugned notification of the Government specifying the guidelines in the matter of recruitment are not applicable to the cooperative societies/banks defined under the cooperative credit structure under Section 2(b)(2) of the Act. For the reasons stated above, the following;

ORDER

- i. Writ petitions are partly allowed.
- ii. It is declared that the impugned notification dated 13.06.2011 Annexure F is not applicable to the petitioners and similarly situated cooperative societies covered under cooperative credit structure as defined under Section 2(b)(2) of the Act.
- iii. The petitioners shall strictly follow the reservation policy of the Government of Karnataka and Human Resources Policy for short term cooperative credit structure guidelines as specified by NABARD. Ordered accordingly.

Equivalent Citation: 2008(5)KarLJ18

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 12835/2007

Decided On: 10.01.2008

**Appellants: Sri Ramu Solanke S/o Solankee, Sri Amar Vasanthrao Patil S/o Vasantha Rao Patil
and Sri Vivek Vasantha Rao Patil S/o Vasantha Rao Patil**

Vs.

**Respondent: State of Karnataka by its Principal Secretary, Department of Commerce and
Industry and Ors.**

Hon'ble Judges/Coram:

S. Abdul Nazeer, J.

Counsels:

For Appellant/Petitioner/Plaintiff: E.R. Indrakumar, Sr. Adv. for M.V. Seshachala, Adv.

For Respondents/Defendant: Udaya Holla, Adv. General for R1 to 3 and 6, S.R. Hegde Hudlamane,
Adv. for R4 and 5 and S.S. Halalli, Adv. for R7 to 10

Subject: Commercial

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1957 - Section 9, Karnataka Cooperative Societies Act, 1957 -
Section 26, Karnataka Cooperative Societies Act, 1957 - Section 26(4), Karnataka Cooperative Societies
Act, 1957 - Section 30B, Karnataka Cooperative Societies Act, 1957 - Section 72(2), Karnataka
Cooperative Societies Act, 1957 - Section 106; **Karnataka** Cooperative Societies Act, 1959 - Section
30B; Karnataka Cooperative Societies (Amendment) Act, 2000; Bangalore Development Authority
Act - Section 65; Madras Cooperative Societies Act, 1932 - Section 60; Sugarcane (Control) Order,
1966; Constitution of India - Article 226

Cases Referred:

Daman Singh and Ors. v. State of Punjab and Ors. AIR 1985 SC 973; The Registrar of Cooperative
Societies, Trivandrum and Anr. v. K. Kunjabmu and Ors. (1980) 1 SCC 340; S.M. Mahendru & Co. v.
State of Tamilnadu and Anr. AIR 1985 SC 270; B. Madappa v. State of Karnataka ILR 1990 KAR
1785; Telecom Employees Cooperative Housing Society Limited v. Scheduled Castes, Scheduled Tribes,
Minority Communities and Backward Classes Improvement Centre ILR 1990 KAR 3320; Champalal
Binani v. The Commissioner of Income Tax, West Bengal and Ors. AIR 1970 SC 645; AIR India
Limited v. Cochin International Airport Limited (2000) 2 SCC 617; The Karnataka Sahakari Sakkare
Karkhane Niyamita and Anr. v. The State of Karnataka and Ors. W.P. No. 577/2006 (CS); Sri Somappa
v. The State of Karnataka W.P. No. 10372/2007

Disposition:

Petition dismissed

Case Note:

Trusts and Societies - Governments Power - Section 30B of Karnataka Cooperative Societies Act, 1959 (Act) and Article 226 of the Constitution of India - Petitioners are Director of Sugar Factory - Sugar Factory closed due to financial crises - Respondent invited tenders for lease of sugar factory - Hence, present petition for challenging invitation of tender - Whether such an order made in interest of farmers, members of society and its employees and also in interest of financial institutions can be interfered by exercise of power under Article 226 of Constitution?- Held, decision of respondents to invite tender not amenable to judicial review - However, it can be examined only if it is found vitiated by malafides and arbitrariness - No malafides and arbitrariness found - Further, Section 30B of Act empowers respondent to give direction to society in public interest - Hence, decision taken by respondent to lease sugar factory just and proper and could not be interfered by exercising power under Article 226 of Constitution - Petition dismissed

ORDER

S. Abdul Nazeer, J.

1. In this case, the petitioners have challenged the validity of the notification at Annexure 'E' dated 19.7.2007 issued by respondent Nos. 3 and 4 whereby tenders have been invited for lease of Ratbag Sahakari Sakkare Karkhane Niyamitha, Raibag, Belgaum District, under lease, rehabilitated, operate and transfer (for short 'LROT') basis for a period of 30 (thirty) years starting from the year 2007-08 to 2036-37. The petitioners have also challenged the proceedings of the State Government at Annexure 'G' dated 5.8.2006 whereby the State Government has decided to revive the aforesaid sugar factory by way of lease on the model of Srirama Sahakari Sakkare Karkhane Limited and the Government Order at Annexure 'H' dated 16.1.2007 deciding to lease the aforesaid sugar factory for a period of 30 years on LROT basis.
2. The petitioners are the shareholders and members of the 4th respondent-Raibag Sahakari Sakkare Karkhane Niyamitha, Ratbag, Belgaum District ('for short 'society'). The said society is registered under the Karnataka Cooperative Societies Act, 1959 (for short 'the Act'). The society is carrying on the activities of manufacture of sugar. The society purchases sugarcane from its members and also from farmers in the surrounding villages for the purpose of manufacture of sugar. The society commenced its activity of production of sugar in the year 1978 with an installed capacity of 1230 IDC. The society took up an expansion programme by increasing the crushing capacity of sugarcane from 1250 TDC to 2500 TDC. It is the case of the petitioners that for the purpose of increasing the crushing capacity, the society had availed financial assistance of Rs. 9.85 crores from NCDC and Rs. 7.45 crores from Sugar Development Fund from the Government of India. There was an inordinate delay in release of the fund from the Sugar Development Fund, which resulted in diversion of fund borrowed from the DCC Bank for expansion programme. During the same time, the turbine alteration failed resulting delay in crushing of sugarcane. Therefore, the society faced financial problems as a result of which the State Government appointed Managing Director to the sugar factory. It is further contended

that the Managing Director misappropriated the funds of the society. An enquiry was conducted in this regard. In the enquiry, it was found that the Managing Director has misappropriated the funds. Therefore, the society approached the State Government to put the factory back on rails and help the formers for whose benefit the society came into existence. The State Government by its order dated 1.3.2000 gave a guarantee for a sum of Rs. 71 crores for the finance to be given by the Apex Bank and Belgaum District Cooperative Bank Limited. By another Government Order dated 4.6.2001 superseding the earlier Government Order dated 1.3.2000, the Government stood guarantee for payment of pledged loan of Rs. 41.50 crores availed earlier by the society and as per the said Government Order, tripartite agreement was entered into between the society, DCC bank and the Deputy Commissioner, and thereafter, the Deputy Commissioner was to operate the accounts of the society. It is contended that the arbitrary action of the Deputy Commissioner made the DCC Bank not to accept the Government guarantee. Due to the inaction on the part of the Deputy Commissioner, spare parts were not purchased and crushing of sugarcane did not take place. The labour force remained idle and the sugarcane growers could not harvest their crops. The society in anticipation of the proposed tripartite agreement undertook large-scale repairs of machinery and placed orders for new parts and equipments. In view of the failure to enter into tripartite agreement, all the orders for supply of spares and new equipments were cancelled and the society suffered further louses. A legal notice was issued to the Deputy Commissioner calling upon him to forbear from interfering with the affairs of the society. Finally, a writ petition was filed before this Court in W.P. No. 3847/2002 seeking direction to the Deputy Commissioner to transfer the accounts of the factory to the management of the society. An interim order was passed in the said case on 9.9.2002 directing the Deputy Commissioner to make payment of all the pending bills and necessary payment to cane growers. In this background, the State Government convened a meeting presided over by the Minister for Sugar and Cooperative Societies. A decision was taken in the said meeting to immediately return the factory to the management with all accounts. The Executive Board reconditioned the plant and started manufacture of commercial sugar during the month of April/May, 2003. Since the society did not have a working capital, it sought for pledge loan from the DCC Bank. The DCC Bank refused to grant any loan. Therefore, crushing became extremely difficult. At this juncture, the Government appointed an Administrator to the society. According to the petitioners, the Administrator also misappropriated the Hindu of the society. At this stage, the state, the State Government decided to put up the sugar factory for sale by way of public auction, which was challenged in appeal No. CMW. 4. CAP. 2006. [Hiring the pendency of the appeal the State Government decided to revive the society and tender process initiated to sell the sugar factory came to be cancelled. It is the case of the petitioners that without taking into account the interest of the tanners, shareholders, cane growers, who are the beneficiaries, the State Government has unilaterally decided to lease out the sugar factory under LROT basis. Petitioners have called in question the said action of the State Government in this writ petition.

3. The respondent Nos. 1 to 3 and 6 have filed their statement of objections and additional objections. It is contended that Raibag Cooperative Sugar Factory Limited was registered during the year 1968-69. The sugarcane growing areas falling within 46 villages in and around Ratbag are reserved for this factory. The sugarcane requirement of this factory is around 4.5 to 5 lakh

metric tons. Over ten thousand farmers, who grow sugarcane supply their entire output of sugarcane to the said factory. It is further contended that over 50,000 to 60,000 persons depend upon the sugar factory in question for their livelihood. It is the case of the respondents that the factory has not paid arrears of cane price to the farmers right from the year 1998-99 onwards. The arrears of price payable to the farmers by the factory is over Rs. 16.25 crores. The factory has also not paid dues to its employees/workers, financial institutions, State Government and others. The factory was closed from the year 2001-02 due to financial distress. The total liabilities of the factory are in excess of Rs. 15057 lakhs. The details of the dues are as under:

Rs. in lakhs. 1. Cane price arrears to farmers - 1625.09 2. Salaries, PF, leave encashment, etc due to workers/employees. - 786.46 3. Taxes, dues, supplies dues to others - 1209.22 4. Loans due to State and Central Governments including interest - 3292.82 5. Dues to Financial Institutions and Banks - 7906.57 6. Deposits refundable to farmers, etc. - 236.84

It is further contended that the factory has sustained accumulated losses aggregating to over Rs. 9892 lakhs and cash loss of Rs. 6169 lakhs as on 31.3.2005. In view of the overwhelming losses sustained by the factory and its inability to pay the dues to the tanners, workers, financial institutions and the State Government, an order was passed by the Commissioner for Cane Development and Director of Sugars, Bangalore, on 24.1.2004 for liquidating the cooperative society in question. The liquidator initiated proceedings for sale of the sugar factory in question. The same came to be challenged before this Court in W.P. No. 27273/2005. It is further contended that most of the sugar factories in the State of Karnataka have sustained losses and have accumulated losses, which run into crores of rupees. The losses of these cooperative societies have gone on increasing. It is under these circumstances the State Cabinet took a decision to revive those sugar cooperative societies, which are defunct or not working to be leased on long term basis as the only methodology of reviving the same as it was impossible for the Government to pump in any more funds. It is further contended that leasing of sugar factories would result in the cooperative societies continuing to exist and the assets being available to the said societies. The State Government took a decision to revive the cooperative society in question by leasing out its factory by inviting tenders on the same lines as was done in respect of Pandavapura Cooperative Sugar Factory, Sri Srirama Sugar Factory, Sri Dhanalakshmi Sugar Factory. The State Government took a decision on 14.12.2006 to revive the society in question by leasing out its factory on long term basis and accordingly, the Government order was issued. The shareholders of the society had challenged the liquidation order passed by the Commissioner for Cane Development and Director of Sugars by filing an appeal before the State Government under Section 106 of the Act. In view of the decision of the State Government as per the Government Order dated 26.6.2006, the appeal was disposed of as having become infructuous. It is further contended that the bye-laws of the society which have been approved by the Registrar of Cooperative Societies way back in the year 1968-69 empowers the society to sell or otherwise dispose of the whole or any part of its business or assets or undertakings including its factory, buildings, machinery and lands in the interest of the society. It is further contended that quashing of the impugned order would result in continuance of the status quo as on date, viz., the continued closure of the factory and non-payment of enormous dues to the farmers, workers and employees, financial institutions and the State Government and public interest would not be served by granting the reliefs sought for by the petitioners. It is contended that there is no other methodology

by which the factory could be revived. If the lease is not resorted to, the only way out of the morass is to sell the factory. The sale of the factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out of the lease rentals and get the entire assets into their hands after the lease period is over and the cooperative movement is restored. Further, the lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. The National Bank for Agricultural and Rural Development (NABARD), a Government of India Organization, which funds the cooperative societies and agricultural sector also recommends under the package for leasing of factories under restructuring of cooperative sugar factories. The leasing of the factory would result in a win-win situation.

4. Respondent Nos. 4 and 5 in their statement of objections have contended that the sugar factory was registered on 9.2.1978 under the provisions of the Karnataka Cooperative Societies Act, 1959, with an installed capacity of 1250 TDC, it was later expanded to 2500 TDC. The management of the 4th respondent society did not make payment to the sugarcane growers towards purchase of sugarcane within 14 days from the date of procurement as per the provisions of Sugarcane (Control) Order, 1966. The management has defaulted in payment of the purchase price to the sugarcane growers to a tune of Rs. 1625.09 lakhs, the details of which are as under:
- 1998-1999 Rs. 578.00 lakhs 1999-2000 Rs. 379.93 lakhs 2000-2001 Rs. 671.16 lakhs Rs. 1625.09 lakhs

The other liabilities of the 4th respondent society are as under:

A. Wages for Labours. 11.72 B.LIC Subscription dues of Labours 1.27 C. P.F. dues 1.52 D. Professional Tax 0.58 E. Purchase Tax due to Government 288.00 F. SDF Loan due to Central Government 783.00 G. Pledge loan of sugar due to Belgaum District, Central Co.Op.Bank Ltd. 4150.00 H. OTS due to Government 1164.00 I. Deposits due 636.00 J. Other liabilities (interest on Bank Loan and etc.) 3901.96 K. Total liabilities 11053.49

It is further contended that the society has also defaulted in repayment of loan of Rs. 4150 lakhs borrowed from DCC Bank on pledge of sugar and the interest outstanding is Rs. 3901.96 lakhs. In the aforesaid circumstances, the third respondent passed an order of liquidation under Section 72(2) of the Act on 24.1.2004. The said order came to be challenged by the petitioners herein before the State Government under Section 106 of the Act in appeal No. CMW. 4.CAP. 2006 and sought for an interim order in the said appeal Since they failed to obtain an interim order, they approached this Court by filing a writ petition in No. 27273/2005. In the said writ petition, this Court directed the competent authority to consider the prayer of the petitioner with regard to interim order. Thereafter, the competent authority heard the appeal. In view of the Government Order dated 26.6.2006, the appeal became infructuous. Thereafter, the Government has taken a decision to lease out the factory as per the pattern of Pandavapura Sahakari Sakkare Karkhane, Mandya. It is further contended that with a view to rehabilitate the factory of the fourth respondent, Government has thought it fit to lease the same. In a meeting convened on 5.8.2006 under the Chairmanship of the first respondent, the representatives of the employees/workers union of the factories and also the Officers and

President of DOC Bank have participated and after a detailed discussion, it was unanimously agreed to revive the factory of the 4th respondent by way of leasing out on the models of Sriram Sahakari Sakkere Karkhane Limited for the benefit of all the shareholders.

5. Respondent Nos. 7 to 10 have also filed their objections seeking to justify the action of the State Government to lease out the factory of the 4th respondent society.
6. I have heard Sri E.R. Indrakumar, learned Senior Counsel appearing for the petitioners and Sri Udaya Holla, learned Advocate General appearing for respondent Nos. 1 to 3 & 6, Sri S.R. Hegde Hudlamane, learned Counsel appearing for respondent Nos. 4 and 5 and Sri S.S. Halalli learned Counsel appearing for respondent Nos. 7 to 10.
7. Sri Indrakumar, learned Senior Counsel appearing for the petitioners has mainly raised two contentions. The first contention is that the State Government has usurped the powers conferred on the general body of the society while taking a decision to lease the sugar factory of the society. Second contention is that the order at Annexure 'H' is totally without jurisdiction. Elaborating on the first contention, he submits that the unilateral action of the State Government is not in the interest of the members of the society. No general body meeting of the members of the society has been convened. The State Government has no jurisdiction to take a decision without any recommendation from the general body or the board of the society. Relying on the decision of the Apex Court in the case of *Daman Singh and Ors. v. State of Punjab and Ors.* MANU/SC/0392/1985 : [1985]3SCR580 , he submits that a cooperative society has the status of a body corporate having perpetual succession and a common seal with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. A cooperative society is a Corporation as commonly understood. Promotion of cooperative movement is one of the directive principles of the state policy. Placing reliance on the decision of the Apex Court in *The Registrar of Cooperative Societies, Trivandrum and Anr. v. K. Kunjabmu and Ors.* MANU/SC/0507/1979 : [1980]2SCR260 , he submits that the Cooperative Societies Act is a welfare legislation. The policy and guidelines are discernible from the preamble of the Act which proclaims that the law has been passed to facilitate the formation and working of the cooperative societies, for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs was to bring about better living, better business and better methods of production. He has also relied on the decision of the Apex Court in the case of *S.M. Mahendru & Co. v. State of Tamilnadu and Anr.* MANU/SC/0352/1984 : [1985]2SCR416 , wherein it has been held that the object of every cooperative society is to promote economic interest of its members by following cooperative principles where the profit motive will be restricted to a reasonable level unlike other commercial bodies where sky is the limit so far as their desire to earn profits is concerned. He also relied on a decision of this Court in the case of *B. Madappa v. State of Karnataka* MANU/KA/0390/1990 : ILR1990KAR1785 , wherein this Court has held that the General Body of a Cooperative Society enjoys sovereignty within the institution and even though the Board of Directors constitute the management to look after the day today affairs of management, it is not legally permissible for the Board of Directors to circumvent the General Body and to take a unilateral decision.

8. On the second contention, learned Senior Counsel submits that Section 30B of the Act does not empower the State Government to issue an order, which is opposed to the other provisions of the Act. It is submitted that the order issued is not in public interest and also not in the interest of the implementation of cooperative and other development programme. In this connection, he has relied on a Division Bench decision of this Court in the case of **Telecom Employees Cooperative Housing Society Limited v. Scheduled Castes, Scheduled Tribes, Minority Communities and Backward Classes Improvement Centre** MANU/KA/0441/1990 : ILR1990KAR3320 . He has drawn my attention to paragraph 28 of the judgment wherein it has been held that the Government cannot issue any direction to the BDA in disregard of the statutory provisions of the Bangalore Development Authority Act.
9. On the other hand, learned Advocate General appearing for respondent Nos. 1 to 3 and 6 contended that the sugarcane areas tailing within 46 villages in and around Raibag are reserved for the factory in question. Over ten thousand farmers, who grow sugarcane supply their entire output of sugarcane to the said factory. It is farther contended that over 50,000 to 60,000 persons depend upon the sugar factory for their livelihood. The factory has not paid cane price to the farmers right from the year 1998-99 onwards. The total price payable to the farmers by the factory is over Rs. 16.25 crores. It has also not paid dues to its employees/workers, financial institutions, State Government and others. The factory was closed from the year 2001-02 due to financial distress. The total liabilities of the factory are in excess of Rs. 15057 lakhs. The factory has sustained accumulated losses aggregating to over Rs. 9892 lakhs and cash loss of Rs. 6169 lakhs as on 31.3.2005. In view of the overwhelming losses sustained by the factory and its inability to pay its dues to the farmers, workers, financial institutions and the State Government, an order was passed by the Commissioner for Cane Development and Director of Sugars, Bangalore, on 24.1.2004 for liquidating the cooperative society in question. It is former argued that majority of the sugar factories have sustained losses and have accumulated losses which run into crores of rupees. It is under these circumstances that the Cabinet took a decision to revive those sugar cooperative societies, which are defunct or not working to be leased on long term basis as the only methodology of reviving the same, as it was impossible for the Government to pump in any more funds. It is further contended that leasing of sugar factories would result in the cooperative societies continuing to exist and the assets being available to the said societies. There is no other methodology by which the society could be revived. Some of the share holders of the society had challenged the liquidation order passed by the Commissioner for Cane Development and Director of Sugars by filing an appeal before the State Government under Section 106 of the Act. In view of the decision of the State Government as per the Government Order dated 26.6.2006, the appeal was disposed of as having become infructuous and a direction was issued to initiate action in terms of the Government Order dated 26.6.2006. The learned Advocate General further submits that the bye-laws of the society which have been approved by the Registrar of Cooperative Societies way back in the year 1968-69 empowers the society to sell or otherwise dispose of the whole or any part of its business or assets or undertakings including its factory, buildings, machinery and lands in the interest of the society. The petitioners had no grievance when the factory was closed in the year 2001-2002. The lease that is proposed is to lease out the factory for a period of thirty years on 'as is where is' basis. The lessee is required to invest a minimum of Rs. 100

crores in the factory and increase the crushing capacity as well as establish co-generation as well as the distillery and ethanol unit After the lease period is over, the entire assets including those that have been set up at the cost of the lessee would revert back to the society. The society and its members as well as farmers, employees of the society and financial institutions and the State Government would be benefited from such an arrangement. If the lease is not resorted to, the only way out of the morass is to sell the factory. The sale of the factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out of the lease rentals and get the entire assets into their hands after the lease period is over and the cooperative movement is restored. Further, the lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. The National Bank for Agricultural and Rural Development (NABARDX.) a Government of India Organization, which funds the cooperative societies and agricultural sector also recommends under the package for leasing of factories under restructuring of cooperative sugar factories. The leasing of the factory would result in a win-win situation. Learned Advocate General further submits that there is no prohibition to issue the impugned notification by the State Government under Section 30B of the Act. It is further submitted that this Court should not exercise its discretionary power to annul the decision taken by the State Government in public interest. He prays for dismissal of the writ petition.

10. Learned Counsel appearing for the other respondents have adopted the arguments of the learned Advocate General
11. I have carefully considered the arguments of the learned Counsel made at the bar and perused the materials placed on record.
12. It is not in dispute that the sugar factory of the 4th respondent-society has sustained heavy losses. It has failed to pay the cane price to the fanners right from 1998-1999 onwards. The factory has also not paid dues to its employees/workers, financial institutions, State Government and others. Material on record clearly establishes that the total liabilities of the factory is in excess of Rs. 15057 lakhs. The accumulated losses are aggregating over Rs.9292 lakhs and the cash loss of Rs. 6169 lakhs. The factory was closed from the year 2001-2002 due to financial distress. The factory was liquidated by an order passed by the Commissioner of Cane Development and Director of Sugars, Bangalore, on 24.1.2004. The said order was challenged by Sri K.A. Kulkarni and M.B. Hugar under Section 106 of the Act before the Secretary to the Government, Cooperation Department, Government of Karnataka. During the pendency of the appeal, the Government took a decision by an order dated 26.6.2006 proposing to lease the sugar factory. In view of the said order of the State Government dated 26.6.2006, the aforesaid appeal was disposed of on 28.6.2006 as having become in fructuous. The appellate authority directed the Commissioner, Sugarcane Development and Director of Sugar to initiate necessary action as per the directions of the Government in its order dated 26.6.2006. This order has become final. In terms of the said order, the State Government has taken steps to lease the sugarcane factory. The proceedings of the State Government as per Annexure 'G' dated 5.8.2006 gives the details of the deliberations held by the State Government before taking action to lease the sugar factory. The participants in the meeting have unanimously agreed to revive the sugar

factory by way of leasing out the factory on the models of Srirama Sahakara Sakkare Karkhane Limited for the benefit of all the shareholders and also to enhance the economic development of the area. Thereafter, Annexure 'H' order was passed by the State Government to lease the sugar factory. Thereafter, a notification has been issued as per Annexure 'E' dated 19.7.2007 calling for tenders for leasing out the sugar factory under lease, rehabilitated, operate and transfer basis for a period of 30 (thirty) years starting from the year 2007-08 to 2036-37.

13. It is clear from the Government Order dated 16.1.2007 (Annexure 'H') that the proposal to lease out the factory is for a period of 30 years on 'as is where is' basis. The lessee is required to invest a minimum of Rs. 100 crores in the factory and increase the crushing capacity as well as establish co-generation as well as the distillery and ethanol unit After the lease period is over, the entire assets including those that have been set up at the cost of the lessee would revert back to the society. It is also clear that if the lease is not resorted to, the only way out of the morass is to sell the factory. The state of the factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out of the lease rentals and get the entire assets into their hands; after the lease period is over. Further, the lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. This arrangement will benefit the society and its members as well as the farmers, employees of the society and the financial institutions of the State Government. It is thus clear that the impugned order has been passed by the State Government in the interest of the society and also keeping in view the public interest
14. The first question for consideration is whether such an order made in the interest of the farmers, members of the society and its employees and also in the interest of financial institutions can be interfered with in exercise of the power under Article 226 of the Constitution of India?
15. The Apex Court in the case of *Champalal Binani v. The Commissioner of Income Tax, West Bengal and Ors.* MANU/SC/0170/1969 : [1970]76ITR692(SC) , has held that a writ of certiorari is discretionary; it is not issued merely because it is lawful to do so.

In *AIR India Limited v. Cochin International Airport Limited* MANU/SC/0055/2000 : [2000]1SCR505 , the Apex Court has held:

The State, its corporations and agencies of the Government are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

(underlining is by me)

16. From the aforesaid decisions, it is clear that though the decision of the State and its instrumentalities are not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness. The Court must exercise its discretionary power with great caution and should exercise it in furtherance of public interest and not merely on the making out of a legal point. A writ of certiorari is discretionary. It is not issued merely because it is lawful to do. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. It is only when public interest requires interference, the Court should intervene. It is clear from the undisputed facts that the leasing of the factory on lease, rehabilitated, operate and transfer scheme is in the interest of the farmers, workers and employees, financial institutions and the State Government and also in public interest. The State Government has taken a decision keeping in view the larger public interest in mind. Having regard to the facts and circumstances of the case, the decision taken by the State Government to lease the sugar factory on LROT basis is just and proper.
17. Now let me consider the two contentions urged on behalf of the petitioners.

The Cooperative Societies Act is a welfare legislation. The object of every cooperative society is to promote economic interest of its members by following cooperative principles when the profit motive will be restricted to a reasonable level unlike other commercial bodies as held in *S.M. Mahendru's* case (supra). A cooperative society has the status of a body corporate having perpetual succession and a common seal.
18. The Karnataka Cooperative Societies Act, 1959, has been enacted to consolidate and amend the Cooperative Societies in the State of Karnataka. Section 9 of the Act states that the registration of a cooperative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Chapter IV of the Act provides for the management of cooperative societies. Section 26 of the Act states that subject to the provisions of the Act, the rules and the bye-laws, the final authority of a cooperative society shall vest in a general body of members. Sub-section (4) of Section 26 of the Act states that the exercise of any power by the representative general body shall be subject to such restrictions and conditions as may be prescribed by the rules or by the bye-laws. Thus, it is clear that the final authority of a cooperative society vest in the general body of members subject to the provisions of the Act, the rules and the bye-laws and the exercise of any power by the representative general body is always subject to the restrictions and conditions contained by the rules or by the bye-laws.
19. Bye-law No. 27 of the society lays down the duties and powers of the board of directors. Bye-law No. 27(9)(d) empowers the general body to approve sale or lease of the lands and other movable and immovable property (if not required) belonging to the society. Thus, the general body has power to approve the sale or lease of the lands and other properties belonging to the society.

20. Section 30B of the Act inserted by Act No. 13/2000, which has come into effect w.e.f. 26.2.2000 lays down the power of the State Government to give direction to the society in public interest. It is as under:
- 30-B: Powers to gives direction in public interest:** (1) Where the State Government is satisfied that in public interest and for the purpose of securing proper implementation of Cooperative and other development programmes approved or undertaken by the State Government or for specially safeguarding the interest of the members belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes and ensuring reservation to persons belonging to such Castes, Tribes or Classes in the services under the Cooperative Societies, it is necessary to issue directions to any class of Cooperative Societies generally or to any Cooperative Society or Cooperative Societies in particular, it may issue directions from time to time and all such Cooperative Societies or the Cooperative Society concerned shall be bound to comply with such directions.
21. Section 30B of the Act empowers the State Government to give directions to any class of Cooperative Societies generally or to any Cooperative Society or Societies in particular if it is satisfied that in public interest and for the purpose of securing proper implementation of cooperative and other development programmes approved and undertaken by the State Government and all such cooperative societies or the cooperative societies concerned shall be bound to comply with such directions. The direction issued by the State Government as per Annexure 'H' is in public interest, and in the interest of cooperative society. It has been issued for the purpose of securing proper implementation of cooperative and for the development of the Cooperative Society. As has been stated above, the cooperative society has sustained heavy loses and it is unable to pay its dues to the farmers, workers, financial institutions and the State Government. The cooperative society was closed from the year 2001-2002 due to financial distress. If the lease is not resorted to, the only way out of the morass is to sell the factory. The sale of the factory would result in liquidation of the society whereas the lease of the factory would revive keeping the society intact and would facilitate the members to get dividends out of the lease rentals and get the entire assets into their hands after the lease period is over and the cooperative movement will also be restored. This lease would result in expansion of the factory and installation of new units, which add value to the tune of Rs. 100 crores to the assets of the society. Therefore, there is no merit in the contention of the learned Counsel for the petitioner that the impugned orders are without jurisdiction.
22. It is nodoubt true that the final authority of a cooperative society vest in the general body of members subject to the provisions of the Act, the rules and the bye-laws. The exercise of any power by the representative general body is subject to the restrictions and conditions as may be prescribed by the rules or by the bye-laws. The bye-laws empower the general body to lease the property in question. If the power is vested with the general body to lease the property, the same power is also vested with the State Government to give directions under Section 30B of the Act in public interest and also for securing implementation of cooperative and other development programmes approved or undertaken by the State Government Vesting of final authority of the cooperative society in the general body of members is subject to the provisions of the Act as provided in Section 26 of the Act Therefore, even if the general body of the cooperative society has not passed resolution to lease the sugar factory, the same can be done

by the State Government in public interest and for the purpose of securing proper implementation of the cooperative and other development programmes approved or undertaken by the State Government. The proposal to lease the sugar factory is a development programme undertaken by the State Government keeping in view the state of affairs of the sugar factory in question and the society it bound to comply with the direction issued under Section 30B of the Act This Court in the case of *The Karnataka Sahakari Sakkare Karkhane Niyamita and Anr. v. The State of Karnataka and Ors.* in W.P. No. 577/2006 (CS) disposed of on 24.2.2006 has upheld a similar Government Order Issued under Section 30B of the Act. In the case of *Sri Somappa v. The State of Karnataka* in W.P. No. 10372/2007 (GM-RES) disposed of on 5.10.2007, this Court has followed the decision of this Court in *The Karnataka Sahakari Sakkare Karkhane Niyamita's* case (supra).

23. Now let me consider the decisions relied on by the learned Counsel for the petitioners. In the case of *K. Kunjabmu* MANU/SC/0507/1979, while upholding Section 60 of the Madras Cooperative Societies Act, 1932, the Apex Court has held that the Cooperative Societies Act is a welfare legislation. In *S.M. Mahendru's* case MANU/SC/0352/1984, the Apex Court has held that the object of every cooperative society is to promote economic interest of its members by following cooperative principles where the profit motive will be restricted to a reasonable level unlike other commercial bodies. In *Daman Singh's* case AIR 1985 SC 97S, the Apex Court has held that a cooperative society is a Corporation as commonly understood. There cannot be any dispute with regard to the principles laid down by the Apex Court in the aforesaid decisions. In the present case, the question for consideration is the validity of the decision of the Government to lease the sugar factory of the 4th respondent society which has been done in public interest in general and in the interest of members of the society in particular. Therefore, the aforesaid decisions have no application to the facts of this case. In *B. Madappa's* case MANU/KA/0390/1990, this Court has held that the General Body of a Cooperative Society enjoys sovereignty within the institution and even though the Board of Directors constitute the management to look after the day today affairs of management, it is not legally permissible for the Board of Directors to circumvent the General Body and to take a unilateral decision. The Court was not considering the scope of Section 30B of the Cooperative Societies Act, 1959. Therefore, this decision does not advance the case of the petitioners. In *Telecom Employees Cooperative Housing Society Limited's* case MANU/KA/0441/1990, a Division Bench of this Court was considering the power of the Government to issue directions to make bulk allotment under Section 65 of the Bangalore Development Authority Act. The language employed in Section 30B of the Karnataka Cooperative Societies Act, which is under consideration in this writ petition is not in pari materia with Section 65 of the Bangalore Development Authority Act Therefore, this decision also will not assist the petitioners.
24. I do not find any error in impugned orders. In the result, writ petition fails and it is accordingly dismissed. No costs.

Equivalent Citation: ILR 1986 KARNATAKA 1252

IN THE HIGH COURT OF KARNATAKA

W.P. No. 25008 of 1981

Decided On: 20.02.1986

Appellants: **Kalappa**

Vs.

Respondent: **State of Karnataka**

Hon'ble Judges/Coram:

Rama Jois and Ramakrishna, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: B.M. Krishna Bhat, Adv.

For Respondents/Defendant: Chandrasekharaiah, HCGP

Subject: Constitution

Acts/Rules/Orders:

Karnataka Co - Operative Societies Act, Karnataka Co - Operative 1959; Constitution of India - Article 14

Cases Referred:

A.K. Kraipak v. Union of India, AIR 1970 SC 150

Case Note:

(A) KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (Karnataka Act No. 11 of 1959) - Section 99 — Principles of natural justice to be observed before recovery of amount — Registrar to consider objections raised regarding sums actually due, supported by proof and after notice to society arrive at a decision and after communication proceed to recover — Open to Registrar to direct society to raise a dispute under Section 70, if claims are doubtful.

Constitutional validity of Section 99 of the Act challenged on the ground conferment of power to recover amount claimed by society with a mere seven days notice, without opportunity to the concerned person to make out amount was not due, is arbitrary and violative of Article 14 of the Constitution.

Held:

The principles of natural justice must be observed before proceeding to recover the amount demanded in a notice issued under Section 99..... It is well settled principle of law that natural justice must be regarded as superadded to a statutory provision, unless by express words or by necessary implication, the application of natural justice is excluded.

If in a given case after the receipt of demand notice, the person concerned comes forward with material to prove that the whole or part of the amount demanded was not due from him and produces material evidence in support of such a plea, the Registrar is bound to consider the said representation after due notice to the Society concerned and only after coming to the conclusion that the amount either in part or in full was due, and after communicating his decision to the person concerned the Registrar can proceed to recover the same by the sale of the property, which has been the subject matter of the charge.

It is also open to the Registrar if he finds that the request made by the Society for recovery of amount under Section 99 of the Act, is not free from doubt, in view of the objections raised by the party concerned, he can ask the Society to raise a dispute under Section 70 of the Act.

(B) CONSTITUTION OF INDIA — Article 14 — Section 99 of the Karnataka Co-operative Societies Act, not excluding rules of natural Justice, is not violative of Article.

If the person to whom notice is served were to say that the amount as demanded was not due from him and also produces evidence in support of his plea, the Section cannot be understood as conferring power to straightaway proceed to sell the property and to recover the amount, notwithstanding the objection by the concerned person, if Section is read as conferring power to recover the amount, without such inquiry, then it invites the criticism that it confers arbitrary power and therefore, violative of Article 14 of the Constitution. It is well settled rule of interpretation that when two interpretations of a provision are plausible, one of which comes into conflict with the constitutional provisions find the other does not, the former should be eschewed and the latter should be accepted. Section 99 should be read as not excluding rules of natural justice of holding enquiry as to the actual amount due from the person concerned, and so read the vice pointed out for the petitioner, in the Section would not exist.

ORDER

Rama Jois, J.

1. In this Writ Petition, the petitioners have questioned the constitutional validity of Section 99 of the Karnataka Cooperative Societies Act, 1959, ('the Act' for short) as also an order made under the said Section on an application presented by the 3rd respondent - Society.
2. The facts of the case in brief as stated in the petition are as follows: The petitioners had jointly borrowed in the year 1980 a sum of Rs. 13,000/- from the 3rd respondent-Vyavasaya Seva Sahakari Sangha Niyamitha, Chowdalu, Somwarpet, which is a Co-operative Society constituted and functioning under the provisions of the Act.
3. On an application made by the 3rd respondent Society, the Assistant Registrar issued a notice dated 16-9-1981, under Section 99 of the Act, to the petitioners calling upon them to pay an amount of Rs. 14,820/-, together with further interest. Thereafter the petitioners presented this petition questioning the legality of the notice as also the constitutional validity of Section 99 of the Act. The contention of the petitioners is that Section 99 confers arbitrary power to recover whatever amount is claimed by the society without even verifying after notice to the parties concerned as to whether the said amount was due or not and therefore violative of Article 14 and therefore the notice issued thereunder is also invalid.

4. Section 99 has been incorporated into the Act, for the purpose of speedy recovery of the amounts due to a Society from an individual by sale of the property which is subject to a charge under Sub section-(1) of Section 32, Sections 32(1) and 99 read :

“32. First charge of co-operative society on certain assets.-(1) Notwithstanding anything contained in any law for the time being in force, but subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue, any debt or outstanding demand owing to a co-operative society by any member or past member or deceased member shall be a first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials, belonging to such member, past member or forming part of the estate of the deceased member, as the case may be.”

“99. Enforcement of charge :- Notwithstanding anything contained in Chapter IX, or any other law for the time being in force but without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered by the Registrar in this behalf, may, on the application of a co-operative society, make an order directing the payment of any debt or outstanding demand due to the society by any member or past or deceased member, by sale of the Property which is subject to a charge under Sub-section (1) of Section 32 :

Provided that no order shall be made under this Section, unless the member, past members or the nominee, heir or legal representative of the deceased member, has been served with a notice of the application and has failed to pay the debt or outstanding demand within seven days from the date of such service.”

A reading of Sections 32 and 99 would indicate that when a particular individual has taken a loan from a co-operative institution and any of his properties are subject to a charge as provided in Section 32 of the Act and he fails to repay the loan, according to the terms of Loan, Section 99 provides that the Society may approach the Registrar with an application praying for recovering the amount due and the Registrar could proceed to recover the amount due to a Society by bringing the property which is subject to a charge under Section 32(1) of the Act, for sale. However, the proviso to Section 99, requires, that before proceeding to take the coercive steps for recovering the amount a notice giving 7 days time to pay the amount has to be served on the person concerned and if he fails to pay the amount as demanded within 7 days, the Registrar is given the power to proceed to recover the amount by the sale of the property after the expiry of 7 days.

The contention of the petitioners however is the Section merely provides, the giving of the 7 days notice without the requirement of giving opportunity to the person concerned to make out that the amount demanded was not due from him, if it was so, and therefore it is void as offending Article 14, on the ground it confers arbitrary power.

6. In our opinion, the principles of natural justice must be observed before proceeding to recover the amount demanded in a notice, issued under Section 99. Therefore when a demand notice is

issued under Sub-section 1 of Section 99 to an individual on the application of a society praying for the recovery of any amount stating that it was due to it, and the individual to whom notice was issued does not dispute the amount due to the Society, as specified in the notice, the Registrar can straightaway proceed to recover the amount from the property which has been in view of Section 32 the subject matter of charge. In such a case, there is nothing unreasonable in the provision which confers power for recovery of the amount, due to a Society by the sale of the property, which had been the subject matter of a charge. But if in a given case after the receipt of demand notice, the person concerned comes forward with material to prove that the whole or part of the amount demanded, was not due from him and produces material evidence in support of such a plea, the Registrar is bound to consider the said representation after due notice to the Society concerned and only after coming to the conclusion that the amount either in part or in full was due, and after communicating his decision to the person concerned the Registrar can proceed to recover the same by the sale of the property, which has been the subject-matter of the charge. It is well settled principles of law that natural justice, must be regarded as superadded to a statutory provision, unless by express words or by necessary implication, the application of natural justice is excluded. (See A.K. Kraipak v. Union of India, MANU/SC/0427/1969 : [1970]1SCR457). As the power given under Section 99 is to recover the amount due from a person to a society after issuing of a demand notice, it follows that if the person to whom notice is served were to say that the amount as demanded was not due from him and also produces evidence in support of his plea, the Section cannot be understood as conferring power to straightaway proceed to sell the property and to recover the amount, notwithstanding the objection by the concerned person. If Section is read as conferring power to recover the amount, without such inquiry, then it invites the criticism that it confers arbitrary power and therefore violative of Article 14 of the Constitution. It is well settled rule of interpretation that when two interpretations of a provision are plausible, one of which comes into conflict with the constitutional provisions and the other does not, the former should be eschewed and the latter should be accepted. In our view Section 99 should be read as not excluding rules of natural justice of holding enquiry as to the actual amount due from the person concerned, and so read the vice pointed out for the petitioner, in the Section would not exist, In this behalf, we also consider it useful to refer to Section 100 of the Act, which also provides for recovery of money due to approved societies. The said Section reads :

100. Recovery of moneys due to Societies :- Notwithstanding anything contained in Chapter IX or any other law for the time being in force, on an application made by an approved society for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crops or seasonal finance and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making an enquiry in such manner as may be prescribed, grant a certificate for the recovery of the amount stated therein to be due as arrears :

Provided that if the determination of the amount due from any person to the society depends upon decision on complicated questions of fact or law, the Registrar shall dispose of the case in accordance with the provisions of Section 71 as if it were a dispute referred to him for decision under Section 70.

(2) A certificate granted by the Registrar under Sub-section (1) shall be final and conclusive. The arrears stated to be due therein shall be recoverable as arrears of land revenue or according to the procedure provided in Section 101 :

Provided that any error in such certificate may be rectified by the Registrar suo motu or on the application of the society or the member affected by the certificate.

(underlining by us)

The underlined part of Sub-section (1) would indicate that in respect of approved societies, the Registrar is required to make an enquiry before granting a certificate for recovery. Though expressly such a provision has not been proved under Section 99, the Registrar would have to do the same thing by invoking the rules of natural justice. It is also open to the Registrar, if he finds that the request made by the Society for recovery of amount under Section 99 of the Act, is not free from doubt, in view of the objections raised by the party concerned, he can ask the society to raise a dispute under Section 70 of the Act, for the reason that Section 99 is an enabling provision which confers power on the Registrar and does not make it obligatory for him to recover in the manner provided in the Section, even if he is not satisfied with the truthfulness of the claim made by a society in an application made by a society under Section 99.

7. In the result, we make the following :

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) A direction shall issue to the 2nd respondent to consider any representation of the petitioner, if made within one month from the date of receipt of the order as to the correctness of the demand made in the impugned notice after giving an opportunity of hearing to him.
- (iii) The 2nd respondent shall be at liberty to proceed to recover the amount found due from the petitioner, after enquiry to the 3rd respondent society in the manner provided in Section 99 of the Act.

Equivalent Citation: 1989(3)KarLJ450

IN THE HIGH COURT OF KARNATAKA

R.S.A. No. 56 of 1989

Decided On: 04.08.1989

Appellants: **Mahadevaiah**

Vs.

Respondent: **Sales Officer**

Hon'ble Judges/Coram:

K.A. Swami, J.

Counsels:

For Appellant/Petitioner/Plaintiff: C.N. Kamath, Adv.

For Respondents/Defendant: N.K. Ramesh, Adv. for R-2

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co - Operative Societies Act, Karnataka Co - Operative 1959; Code of Civil Procedure, 1908 (CPC) - Order 7 Rule 10, Code of Civil Procedure, 1908 (CPC) - Order 7 Rule 10B

Cases Referred:

Somwarpet Nad Agricultural Produce Marketing Co-operative Society Ltd., Somwarpet v. Sha Mangilal Mohanlal and Co. and Ors., RFA No. 65 of 1989; Amarnath Dogra v. Union of India, AIR 1963 S.C. 424; The Ankola Urban Co-Operative Credit Bank Ltd. v. Laxmi Bai, 1959 Mys.L.J. 523; The Bank of Citizens Belgaum v. Balwant Venkatesh Potdar, 1961 Mys.L.J. 397; Warna Sahakari Sakkare Karkhana Ltd. v. Vithalrao Anandrao Deshmukh, 1969(1) S.C. 517

Disposition:

Appeal allowed

Case Note:

(A) KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (Karnataka Act No. 11 of 1959) - Section 125 - Notice to precede suit in respect of act touching constitution, management or business of society - Recovery of amount due under Award relates to business of society - Suit for injunction restraining distraint and interference with movables attracts Section 125 - Plaint to be returned being open to plaintiff to issue notice and file suit.

Held:

- (i) 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 are attracted to the reliefs sought for in the suit.

- (ii) The lower Appellate Court having held that the suit should not have been instituted without issuing a notice under Section 125 of the Act, it should have simply set aside the Judgment and decree of the lower Appellate Court and directed the return of the plaint instead of dismissing the suit because it is still open to the plaintiff to issue notice and file a suit.

- (B) CIVIL PROCEDURE CODE, 1908 (Central Act No. 5 of 1908) - Order 7, Rules 10 & 10B - Suit filed without issue of notice under Section 125 of Karnataka Co-operative Societies Act, 1959 - Suit not to be dismissed; plaint to be returned.**

Vide: Headnote A supra

JUDGMENT

Swami, J.

1. This second appeal arises out of O.S. No. 17/1978 filed by the plaintiff-appellant for a permanent injunction restraining the defendants from distraining or interfering in any manner with the movables of the plaintiff kept in the schedule premises and compelling the plaintiff in any manner to make payments and for costs.
2. The case of the plaintiff is that he had raised a loan from the 2nd defendant-society. It was a secured loan in a sum of Rs. 4,000/- in the year 1961; that an award was obtained by the 2nd defendant against him in the year 1963 for a sum of Rs. 4,480-47 and subsequently he paid a sum of Rs. 5,950/- and satisfied the award; that in spite of that, the 2nd defendant with his staff members surprisingly visited the schedule premises in which the plaintiff was residing and attempted to distrain the movables of the plaintiff by force though they had no authority to do so. Hence the plaintiff filed the suit for a permanent injunction as stated above.
3. The defendants resisted the suit.
4. The trial Court raised the following issues:
 - 1) Does plaintiff prove the payment of Rs. 5,950/- in full satisfaction of the midterm loan due to Service Co-operative Society, Haralur as contended in plaint para-2?
 - 2) Whether the plaintiff further proves the attempts of the defendants attaching his movables is illegal and without any authority as contended in plaint paras 4 and 5?

- 3) Is this present suit maintainable as contended in para 4 of the written statement of 1st defendant?
 - 3A) Whether the. defendants prove that the sum of Rs. 5,500/- paid by the plaintiff as admitted by the defendants, has been appropriated towards the discharge of the loans referred to in para 3 other than that of the transactions pleaded by the plaintiff?
- 4) Whether the present suit is bad for nonjoinder of parties?
- 5) Has this suit cause of action?
- 6) Is this present suit in time?
- 7) To what reliefs the parties entitle?
- 8) What decree or order?

There is no doubt that the issues are not happily worded. The trial Court answered all the issues in favour of the plaintiff. Accordingly, it granted a decree for permanent injunction as prayed for by the plaintiff.

5. Being aggrieved by the Judgment and decree passed by the trial Court, the 2nd defendant went up in appeal before the Additional Civil Judge, Tumkur in R.A. No. 20/1981. In the appeal, the learned Appellate Judge has held that the plaintiff had satisfied the award and nothing was due from him. However, a question of law was raised before the lower Appellate Court that the suit itself was not maintainable as no notice as required by Section 125 of the Karnataka Co-operative Societies Act (for short the 'Act') was issued to the defendants.
6. It was not disputed before the lower Appellate Court that no notice as required by Section 125 of the Act was issued. The lower Appellate Court held that Section 125 of the Act attracted to the relief prayed for by the plaintiff and therefore, in the absence of a notice under Section 125 of the Act, the suit could not have been instituted against the defendants. Accordingly, it allowed the appeal and set aside the Judgment and decree of the lower Court and dismissed the suit.
7. Sri C.N. Kamath, learned Counsel for the appellate contends that as no contention was raised in the written statement about the maintainability of the suit in the absence of a notice issued under Section 125 of the Act, as such the same ought not to have been entertained by the first Appellate Court.
8. It is not possible to accept this contention. Pure question of law going to the root of the matter can be raised at any stage of the proceeding. Therefore, a contention which goes to the root of the matter affecting jurisdiction of the Court and for deciding the same no fresh evidence is required to be recorded, can very well be allowed to be raised. In the instant case, it is not the case of the plaintiff that he had issued a notice as required by Section 125 of the Act. The contention does not require a fresh evidence to be recorded. The point urged before the first Appellate Court was as to whether Section 125 of the Act ought to have been complied with before instituting the suit.

9. The learned Counsel for the appellant has placed reliance on a Division Bench decision of this Court in SOMWARPET NAD AGRICULTURAL PRODUCE MARKETING CO-OPERATIVE SOCIETY LTD., SOMWARPET v. SHA MANGILAL MOHANLAL & CO. AND ORS., RFA No. 65 of 1989: DD 5-7-1971. It is also further contended that even if it is accepted that the lower Appellate Court was right in holding that in the absence of a notice issued under Section 125 of the Act, the suit could not have been instituted, the highest the lower Appellate Court could or should have done, was to return the plaint to the plaintiff and it should not have dismissed the suit. These contentions are refuted by the learned Counsel appearing for the respondent-defendants.
10. In view of these contentions, the points that arise for consideration are as follows:
- 1) Whether Section 125 of the Karnataka Cooperative Societies Act, 1959 is attracted to the reliefs sought for by the plaintiff-appellant?
 - 2) Whether the lower Appellate Court out to have returned the plaint to the plaintiff?

POINT NO. 1

11. Section 125 of the Act reads thus:

“Notice necessary in suits - No suit shall be instituted against a 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.”

In this case, the plaintiff has sought for a permanent injunction restraining the defendants from distraining or interfering in any manner with the movables kept in the schedule premises and from compelling in any manner the plaintiff to make payment. It is averred in the plaint that the plaintiff has satisfied the award obtained by the 2nd defendant and in spite of that, the defendants and their officials have unauthorisedly entered the house and taken away movables on the ground that the plaintiff has not satisfied the sum due under the Award. Thus the plaintiff has sought the relief in respect of the positive acts committed by the defendants.

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 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 Somwarpet Nad Agricultural Produce Marketing Co-operative Society 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 CREDIT BANK LTD. v. LAXMI BAI (1959 ML.J. 523) and in THE BANK OF CITIZENS BELGAUM v. BALWANT VENKATESH POTDAR (1961 M.L.J. 397). In Ankola Urban Co-operatives case, the question was whether a suit for rent due by a Co-operative Society was bad for want of notice under Section 70 of the Bombay Cooperative Societies Act. Sri S.R. Das Gupta, learned Chief Justice held that the non-payment of rent which is an omission cannot 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 an 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 Pioneer Urban Co-operative Credit Bank Ltd., against others as the Belgaum Pioneer Urban Co-operative Credit Bank Ltd. had purchased the mortgaged properties subject to the suit mortgage. The contention of the Belgaum Pioneer 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 attention to the decision of the Supreme Court in WARNA SAHAKARI SAKKARE KARKHANA LTD. v. VITHALRAO ANANDRAO DESHMUKH [1969(1) S.C. 517] (Civil Appeal No. 2687 of 1966 decided on 20-8-1969). 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’s 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 be an ‘act’ within the meaning of Section 125 of the Act. An omission to constitute an ‘act’ within the meaning 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.

Thus it is clear that the decision in Somwarpet Nao Agricultural Produce Marketing Co-operative Society Ltd. is not applicable to the case on hand inasmuch as in this case, it is the positive act of the defendants that has been challenged in the suit. Therefore, it was all the more necessary for the plaintiff to issue a notice as required by Section 125 of the Act.

13. Whenever, a statute prescribes that a notice shall be issued before the institution of the suit, a suit brought without issuing such a notice is bad in law and the Court will not have jurisdiction to entertain such a suit. The Supreme Court considered this aspect of the matter while considering the institution of a suit without issuing a notice under Section 80 C.P.C. (See MANU/SC/0028/1962 : [1963]1SCR657), Amarnath Dogra v. Union of India. What applies to the suit filed without issuing a notice under Section 80 of the C.P. Code will equally apply to the suit instituted without issuing a notice under Section 125 of the Act. Therefore, point No. 1 is answered in the affirmative.

POINT NO.2

14. The lower Appellate Court having held that the suit should not have been instituted without issuing a notice under Section 125 of the Act, it should have simply set aside the Judgment and decree of the lower Appellate Court and directed the return of the plaint instead of dismissing the suit because it is still open to the plaintiff to issue notice and file a suit. Therefore, the lower Appellate Court, to the extent it dismissed the suit is not justified. Accordingly, point No.2 is answered in the affirmative.
15. For the reasons stated above, this appeal is allowed, the Judgments and decrees of both the Courts below are set aside and the plaint is directed to be returned to the plaintiff.

Equivalent Citation: 2009(4)KarLJ294

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 12299 of 2008

Decided On: 27.02.2009

Appellants: **S.R. Narayana Murthy**

Vs.

Respondent: **Joint Registrar of Co-operative Society, Bangalore Region and Ors.**

Hon'ble Judges/Coram:

D.V. Shylendra Kumar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: M.R. Rajagopal, Adv.

For Respondents/Defendant: H. Hanumantharayappa, Adv. for Respondent-1 and Chandrashekaraiah, Adv. for Respondent-2

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 3, **Karnataka** Cooperative Societies Act, 1959 - Section 6(2), **Karnataka** Cooperative Societies Act, 1959 - Section 6(3), **Karnataka** Cooperative Societies Act, 1959 - Section 7, **Karnataka** Cooperative Societies Act, 1959 - Section 12, **Karnataka** Cooperative Societies Act, 1959 - Section 70, **Karnataka** Cooperative Societies Act, 1959 - Section 70(1), **Karnataka** Cooperative Societies Act, 1959 - Section 71, **Karnataka** Cooperative Societies Act, 1959 - Section 105, **Karnataka** Cooperative Societies Act, 1959 - Section 106; Karnataka Appellate Tribunal Act, 1976 - Section 6, Karnataka Appellate Tribunal Act, 1976 - Section 7; General Clauses Act

Case Note:

Trust and Societies - Jurisdiction - Karnataka Cooperative Societies Act, 1959 - Registrar, examined dispute under Section 70 of the Act and held that dispute itself was not tenable particularly as relief sought for was to set aside, and rejected Petitioner's Application - Appellate Tribunal dismissed Appeal of Petitioner - Hence, this Petition - Whether, Tribunal was justified in dismissing Appeal - Held, in terms of statutory provisions, single member was enabled to admit Appeal and also to grant order of stay or interlocutory order subject to such condition as single member of Tribunal might deem fit - In respect of all other proceedings of Tribunal, matter could be heard and disposed of only by Division Bench - In case of matter relating to department of cooperation by Bench comprising of District Judge and co-operation member -

Hence, order dismissing Appeal was whether, on ground that Appeal itself was tenable or otherwise should necessarily be passed only by Division Bench of Tribunal and could not be passed by single member Bench of Tribunal - Hence, order passed by single Bench of Tribunal to dismiss an appeal was not a valid order and it was beyond jurisdiction of a single member of Tribunal to pass such an order - Petition allowed.

Ratio Decidendi

“Court shall not entertain any matter beyond jurisdiction.”

ORDER

D.V. Shylendra Kumar, J.

1. Writ petition by a member of second respondent-House Building Cooperative Society Limited, who is fighting with his back to the wall to retain the membership of the society against the intention of the society and its committee of the management as well as the General Body to dismember the petitioner from the membership of the society.
2. Present writ petition is in the wake of such tussle between the petitioner and society and for getting over an order passed by Karnataka Appellate Tribunal in Appeal No. 567 of 2008, as a single Member of the Tribunal has in terms of an order dated 17-9-2008 dismissed the appeal, appeal had been preferred under Section 105 of the Karnataka Cooperative Societies Act, 1959, aggrieved with the view taken by the Joint Registrar of Societies in terms of his order dated 19-5-2008 passed in dispute No. JRB/MD/29/07 before him, holding that the dispute itself was not maintainable.
3. Petitioner had raised the dispute before the Registrar seeking for the following relief:
 - (a) set aside the amendment made to the bye-law in Bye-law No. 10(3) and 10(5) as amended to the bye-law of society and also set aside all consequential proceedings, including the Agenda No. 10 proposed to be debated in the General Body which is scheduled to be held on 3-9-2005 declaring as void and clouded with mala fides and allow this dispute with cost in the ends of justice and equity.
4. Being aggrieved by the amendments carried out to the bye-laws of the society particularly by the addition of special Clauses 3 and 5 of bye-law of 10 which had been added by way of an amendment. The General Body of the society had approved the same after its resolution dated 29-4-2003 and the resolution elicited the approval of the Registrar as per order dated 27-1-2005 and the society armed by this amendment was in the process of dismembering the petitioner. One of the subjects on the agenda of the General Body Meeting scheduled to be held on 3-9-2006 as per item No. 10 was to remove the petitioner from the membership of the society due to anti-societal activities.
5. The Registrar, who examined this dispute under Section 70 was of the view that dispute itself is not tenable particularly as the relief sought for was to set aside, an amendment to the bye-law a proportion has passed by the General Body and has approved by the Registrar under the provisions of Sub-section (2) of Section 12 of the Act. The Joint Registrar opined that a

relief of this nature was not falling within the scope of Section 70 of the Act and therefore rejected the dispute.

6. It was against this order of rejecting the dispute itself, petitioner had appealed to the Karnataka Appellate Tribunal. Appellate Tribunal at the relevant time though comprised of the lone member has nevertheless dismissed the appeal being of the view that the Registrar was fully justify in rejecting the dispute as not maintainable and so also is the appeal before the Tribunal and therefore the appeal also having been dismissed by the Tribunal (copy produced at Annexure-L). Present writ petition to get over these two orders.
7. Writ petition itself was heard. Notice had been issued to the respondents. First respondent-Registrar is represented by Sri H. Hanumantharayappa. Society itself is represented by Sri Chandrashekaraiiah.
8. With the consent of the Counsel for parties petition is taken up for disposal. I have heard Sri M.R. Rajagopal, learned Counsel for the petitioner, Sri Chandrashekaraiiah, learned Counsel for society and Sri H. Hanumantharayappa appearing for the statutory authority, the Joint Registrar.
9. While Mr. M.R. Rajagopal, learned Counsel for petitioner would urge many contentions not only to submit that the order of the Registrar is bad, but also the order of the Tribunal dismissing the appeal, it may not be necessary to go into all these contentions except for examining the legality of the order passed by the Tribunal and which is characterised as an order contrary to the statutory provisions for the reason that a single member of the Tribunal cannot by himself dismiss an appeal under Section 105 of the Karnataka Co-operative Societies Act.
10. In this regard learned Counsel Sri M.R. Rajagopal would draw attention to the provisions of Section 6 of the Karnataka Appellate Tribunal Act, 1976. It reads as under:
 6. Conduct of business of the Tribunal.-(1) The powers of the Tribunal in all matters relating to appeals, revisions and other proceedings shall, subject to the provisions of Sub-sections (2) and (3) be exercised by a Bench of two members, of whom one shall be a District Judge, constituted by the Chairman.
 - (2) A single member of the Tribunal may, subject to any special or general orders made in this behalf by the Chairman, exercise the powers of the Tribunal in respect of:
 - (i) admission of an appeal or revision petition;
 - (ii) admission of an appeal or revision petition presented after the expiry of the period allowed by law;
 - (iii) stay orders pending disposal of an appeal, revision, reference or other proceedings;
 - (iv) any matter of an interlocutory character in appeals, revisions, references or other proceedings;
 - (v) such other matters and subject to such conditions as may be prescribed.

- (3) The Bench hearing any matter relating to.:
- (a) the Department of Co-operation, shall consist of.:
 - (i) a District Judge; and
 - (ii) a Co-operation Member.
 - (b) the Department of Commercial Taxes, shall consist of.:
 - (i) a District Judge; and
 - (ii) a Commercial Taxes Member.
- (5) Where an appeal, revision, reference or application is heard by a Bench, the appeal, revision, reference or application shall be decided in accordance with the opinion of majority.
11. It is submitted that while a single member is enabled to admit an appeal and also to grant orders of stay, a decision otherwise can be taken only by a Division Bench of the Tribunal and as this is a matter arising under the Karnataka Co-operative Societies Act, a Division Bench comprising of learned District Judge and a Co-operation Member and therefore submits that the single member while could have admitted and granted stay of the order, is not enabled to dismiss the appeal, whether at the threshold or ultimately on hearing both sides.
12. Learned Counsel for the petitioner submits that the order of the Tribunal is not tenable in law, it has to be set aside and the matter remitted to the Tribunal for proper examination of the appeal and for disposal on merits by the competent Bench of the Tribunal.
13. On the other hand Sri Chandrashekaraiah, learned Counsel for respondent-society would submit that the appeal of the petitioner virtually had no merit that the dispute raised by the petitioner before the Registrar himself was not one within the scope of Section 70 of the Act, an appeal under Section 105 is contemplated only in a situation where a party has suffered an adverse order on a valid dispute referred to the Registrar under Sub-section (1) of Section 70 of the Act and decided under Section 71 of the Act. When there was no referable dispute within the scope of Section 70 of the Act as legality of a bye-law which has been put in place after going through the motions of being passed by General Body and approved by the Registrar, is not a subject-matter for reference under Section 70 and therefore no valid reference was made and no decision was contemplated, that the order being no order in the eye of law, the appeal is also equally not tenable under Section 106 of the Act and the Tribunal is fully justified in dismissing the appeal.
14. With regard to the argument that appeal under Section 105 before the Appellate Tribunal can be dismissed only by a Division Bench of Tribunal submission of Sri Chandrashekaraiah, learned Counsel for society is that the single member of the Tribunal having been enabled to pass orders at the time of admission for the purpose of admitting and granting interim order if admitted and at that stage if the learned member of the Tribunal should come across an appeal which is otherwise not tenable and it is not one coming within the scope of Section 105 of the

Act, such a presentation being no proper appeal under Section 105, even a single member could reject such an appeal which is otherwise not tenable under Section 105 of the Act. Therefore, it is submitted that a single member could have definitely passed an order as in the present case. Mr. Chandrashekaraiah submits that the order of the Tribunal dismissing the appeal can also be sustained with reference to the provisions of the general clauses of the Act as an authority which has power to admit and entertain an appeal by implication also has the power to reject the appeal and therefore no interference is warranted.

15. The provisions of the General Clauses Act can definitely be called in aid in a situation where statutory provisions are silent and there is a gap required to be filled up.
16. In the present situation the manner in which the Karnataka Appellate Tribunal has to dispose of the appeals presented before it is regulated under the Karnataka Appellate Tribunal Act, 1976. Section 6 of the Act referred to above provides the manner in which the Appellate Tribunal has to exercise the appellate power as well as the revisional power in respect of proceedings before it.
17. Sub-section (2) of Section 6 while specifically includes a single member of the Tribunal to pass orders as referred to in Clauses 1, 2, 3, 4 and 5 in Sub-section (2) of Section 6, Sub-section (3) of Section 6. On the other hand enjoins the appeal or a revision relating the department of co-operation shall be heard by a Bench comprised of a District Judge and a co-operation member by implication. That means the subject-matter of appeal or revision should be heard and decided only by a Division Bench as mentioned in Section 3. In fact, Sub-section (5) which contemplates that there being a division of opinion between the members of the Bench being resolved, by the opinion of the majority and by making the opinion a majority opinion by seeking the opinion of a larger Bench by constituting the larger Bench as provided under Section 7 of the Act by the Chairman, is another point to conclude that matter should be heard for disposal only by a multi-member Bench and not by a single member Bench of the Tribunal.
18. In terms of the statutory provisions while a single member is no doubt enabled to admit an appeal and also to condone the delay if any in preferring appeal or revision and also to grant an order of stay or interlocutory orders subject to such conditions as the single member of the Tribunal may deem fit, in respect of all the other proceedings of the Tribunal the matter can be heard and disposed of only by a Division Bench and in the case of a matter relating to the department of cooperation by a Bench comprising of District Judge and co-operation member and therefore an order dismissing the appeal is whether on the ground that the appeal itself is tenable or otherwise, should necessarily be passed only by a Division Bench of the Tribunal and cannot be passed by a single member Bench of the Tribunal.
19. At the stage of admission of an appeal under Section 105 of the Act, a single member of the Tribunal could well admit in appeal and also pass an order of stay, if the learned member so is of the view the appeal merits admission. On the other hand the learned member is of the view that the appeal lacks merit and is to be dismissed, it cannot be done by himself but can only

direct the appeal being placed for orders before a proper Bench of the Tribunal. The Tribunal is also wrong in thinking that appeal itself was not tenable before the Tribunal.

20. Be that as it may the order passed by the single Bench of the Tribunal to dismiss an appeal is not a valid order and it is definitely beyond the jurisdiction of a single member of the Tribunal to pass such an order. It is for this reason this writ petition is allowed. The order passed by the Tribunal is set aside and the matter is remitted to the Tribunal for a proper disposal of the appeal in accordance with law and on its merits by a competent Bench as discussed above and as indicated in Section 6 of the Karnataka Appellate Tribunal Act, 1976. Writ petition is allowed. Rule issued and made absolute.

With the disposal of the writ petition, the interim order granted in this petition comes to an end, it is open to the petitioner to move the Tribunal for any interim order during the pendency of the appeal before the Tribunal. Petitioner can move the Tribunal for such purpose within six weeks from today and till then the respondent-society not to resort to any further adverse action against the petitioner.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 23599 of 2010

Decided On: 02.08.2011

Appellants: **Babanna Naik, S/o. Late Vittu Naik, Sudakar Naik, Suresh Naik and Sadananda Naik all are S/o. Kalu Naik**

Vs.

Respondent: **The Director The Primary Co-Operative Agricultural and Rural Development Bank, The Assistant Commissioner and Recovery Officer, Co-Operative Societies, The Deputy Commissioner and Sri Vijaya Chandra, S/o. Anantha Krishna**

Hon'ble Judges/Coram:

D.V. Shylendra Kumar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Harish Ganapathy, Adv.

For Respondents/Defendant: R. Omkumar, AGA for R2 and R3 and K.A. Ariga, Adv. for Respondent 4

Subject: Property

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 71, **Karnataka** Cooperative Societies Act, 1959 - Section 105; Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Section 4, Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Section 4(2), Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 - Section 7

Cases Referred:

H.S. Lakshamma v. K.K. Ahammed Kutty MANU/KA/0186/2008 : ILR 2008 KAR 3528

Disposition:

Appeal allowed

Case Note:

Property - Confirmation of auction sale - Co-operative societies passed impugned order purporting to exercise his power under Section 71 of the Karnataka Cooperative Societies Act, 1959 affirming auction sale - Hence, present petition - Held, in present case, so far as challenge to confirmation order was concerned, it was at a nascent stage for purpose of examination of applicability or otherwise of the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (the Act) - Main ground urged on behalf of

the Petitioners was manner of operation of Section 4 of the Act and limited extent of operation Section 7 of the Act etc - Suffice to say that present writ petition did not has sufficient merit to interfere with affirmation order - Petition dismissed.

ORDER

D.V. Shylendra Kumar, J.

1. An extent of 2 acres 80 cents of land in Sy 153/2 of Hirebettu village, Udupi taluk and district had been granted in favour of one Vittu Naik under grant order No. DR 561/1969 dated 22-7-1969. It appears, the grantee had mortgaged this land in favour of first Respondent-bank as per mortgage transaction dated 24-4-1998, but nevertheless retained possession of the land. The borrower having defaulted in repayment of loan, the bank, it appears, had taken steps to raise a dispute for recovery of loan amount and the matter went before arbitrator resulted in an award in favour of the bank and in execution of the award, the subject land had been sold through revenue authorities for a sum of ‘ 5,08,500/- as per auction sale dated 29-9-2005.
2. Thereafter, the assistant registrar of cooperative societies has passed the impugned order dated 21-7-2010 [copy at Annexure-E to the writ petition], purporting to exercise his power under Section 71 of the Karnataka Cooperative Societies Act, 1959 [for short, KCS Act] affirming the auction sale.
3. It is contending to be aggrieved by this sale confirmation order, the present writ petition seeking for quashing of this order.
4. Notices had been issued to the Respondents. Though served, first Respondent-bank remained unrepresented. Respondents 2 and 3 are represented by Sri R Omkumar, learned AGA and Sri K A Ariga, learned Counsel, appears for fourth Respondent-auction purchaser.
5. I have heard Sri Harish Ganapatny, learned Counsel for the Petitioners and the learned Counsel appearing for the Respondents.
6. Submission of learned Counsel for the Petitioners is that the subject land being a granted land the transaction being a sale in favour of first Respondent-bank, though the land had been mortgaged in favour of the bank by the original grantee and for non-payment of borrowed amount, the land had been brought to sale, in execution of the award passed by the registrar in arbitration proceedings between the bank and the grantee, it, nevertheless, attracts the provisions of Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 [for short, the PTCL Act], being a transaction subsequent to the PTCL Act coming into force; that the sale transaction is not saved under Section 7 of PTCL Act, as it is a second transaction and therefore the assistant registrar could not have confirmed such auction sale, as it is in contravention of Section 4(2) of the PTCL Act.
7. On the other hand, Sri K.A. Ariga, learned Counsel for fourth Respondent, submits that in the light of the decision of this Court in the case of **H.S. Lakshamma v. K.K. Ahammed Kutty** MANU/KA/0186/2008 : ILR 2008 KAR 3528, a transaction of the present nature is also saved

under Section 7 of the PTCL Act, as the provisions of the PTCL Act are not applicable and in identical situation, this Court had upheld the court auction sale and also held that auction purchaser is entitled for recovery of possession etc. and therefore no need for interference.

8. Sri R Omkumar, learned AGA, submits that in fact the first Respondent-bank has obtained permission of the state government on 5-12-2009 for the transaction i.e. court auction sale and though auction sale was held on 29-5-2005 nevertheless the sale transaction having not been completed and affirmation being only under the impugned order at Annexure E and thereafter sale deed has to be executed and registered, permission granted prior to such registration is to be taken as prior permission within the scope of Section 4(2) of the PTCL Act and therefore no need for interference.
9. Learned AGA also points out that as against the impugned order, apart from the questions raised, Petitioners have a remedy by way of an appeal under Section 105 of KCS Act.
10. In so far as the challenge to the confirmation order is concerned, it is at a nascent stage for the purpose of examination of the applicability or otherwise of the provisions of the PTCL Act. The main ground urged on behalf of the Petitioners is the manner of operation of Section 4 of the PTCL Act and limited extent of operation Section 7 of the PTCL Act etc. Assuming these are questions which have some significance and importance, they do not directly arise in the present case and if at all they are questions which can be examined in a matter arising under the provisions of the PTCL Act and in the instant case, there being no proceedings taken under the provisions of the PTCL Act, no occasion to examine such contentions at this stage.
11. Suffice to say that the present writ petition does not has sufficient merit to interfere with the affirmation order at this stage and while this writ petition is dismissed, it is open to the Petitioners to pursue not only the statutory remedies under the KCS Act but also to invoke the provisions of the PTCL Act, if so advised for relief under this Act.

Equivalent Citation: ILR 2007 KARNATAKA 5286, 2008(2)KarLJ271, 2007(4)KCCR2751

IN THE HIGH COURT OF KARNATAKA

Writ Petition No. 16060/2007

Decided On: 09.10.2007

Appellants: **Ronald Jerome D'Souza**

Vs.

Respondent: **State of Karnataka represented by the Secretary to Government,
Co-operative Department and Ors.**

Hon'ble Judges/Coram:

N.K. Patil, J.

Counsels:

For Appellant/Petitioner/Plaintiff: B.M. Krishna Bhat, Adv.

For Respondents/Defendant: G. Chandrashekaraiiah, AGA

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Karnataka Cooperative Societies Rules ;Constitution of India - Article 226, Constitution of India - Article 227

Cases Referred:

Channabasappa v. State of Karnataka and Anr. 2001 (1) Kar. Law Journal 542

Disposition:

Petition dismissed

Case Note:

KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 - SECTION 29-C(1)(a) - Notice under - Allegations against the petitioner as per the report submitted by the third respondent - Petitioner, drawing amounts under various heads, in his capacity as a Director and failure to repay the same in time - Show cause notice - Challenge to - HELD, The impugned notice is only a show cause notice calling upon the petitioner to put forth his case by replying to the contents of the report submitted by the third respondent -The impugned notice is not an order of disqualifying the petitioner from his post of Director - It is open to the petitioner to reply to the said notice - Petitioner cannot maintain writ petition against the show cause notice.

Writ Petition is dismissed.

ORDER

N.K. Patil, J.

1. Petitioner, questioning the legality and validity of the impugned order/notice (as claimed by petitioner) dated 28th September 2007 bearing No. UBC/4/77/ (disqualification)/ 2007-08 passed/issued by second respondent herein, has presented the instant writ petition.
2. The only grievance of petitioner in the instant writ petition is that, petitioner is one of the elected Directors of the Managing Committee of the Akshaya Co-operative Credit Society Limited, Karwar, Uttara Kannada District ('Society' for short). When petitioner was so discharging his duties as elected Director of the said Society, to the shock and surprise of petitioner, the impugned order cum notice dated 28th September 2007 vide Annexure A came to be issued without issuing notice to the petitioner and without giving reasonable opportunity of hearing to the petitioner to meet the allegations made against the petitioner. Therefore, it is the case of petitioner that, the second respondent has proceeded to issue the impugned order cum notice, which is one without jurisdiction for the reason that, the same is issued on the basis of the alleged report submitted by third respondent. Therefore, being aggrieved by the impugned notice issued by second respondent, invoking its power under Section 29-C(1)(a) of the Karnataka Co-operative Societies Act, 1959, as referred above, petitioner herein felt necessitated to present the instant writ petition, seeking appropriate reliefs, as stated supra.
3. The principal submission canvassed by learned Counsel appearing for petitioner is that, the second respondent has no jurisdiction as such to hold that, petitioner has been disqualified for being continued as member of the Committee of Management of the said Society without following the procedure known to law in as much as the petitioner was not given an opportunity of hearing and therefore, the action of second respondent is opposed to principles of natural justice. Further, it is pleaded that, the assertion made by second respondent in the impugned notice that, petitioner suffered disqualification under different heads of Accounts and on different dates and that, He has borrowed and has not paid back the loan etc. and hence, it became difficult is absolutely incorrect for the reason that, the second respondent has not supplied to the petitioner all the required particulars of the information as required under law. Therefore, the contents of the notice are extremely bald and as vague as it could be. Further, it is canvassed that, petitioner has not been issued with any notice or reminders from the said Society nor from the Deputy Registrar of Co -operative Societies, Karwar at any point of time earlier to the alleged report of the third respondent referred in the impugned notice. Therefore, learned Counsel appearing for petitioner submitted that, the impugned notice issued by second respondent vide Annexure A is liable to be set aside at the threshold itself as the same is one without jurisdiction. Further, he vehemently submitted that, when the law itself states that, the disqualification to continue as Member of the Society in question is a very serious matter and the second respondent has no power to remove the petitioner from the Membership of the Board of Management of the said Society unless the petitioner incurs disqualification to continue as Member, he is entitled to continue as Member of the Committee of Management of the Society in question. This

being the law, the impugned order passed by second respondent is liable to be quashed at the threshold itself. To substantiate the said proposition and the subject matter involved in the instant writ petition, learned Counsel for petitioner placed reliance on the judgment of this Court reported in Channabasappa v. State of Karnataka and Anr. MANU/KA/0064/2001 and also taken me through the relevant provision of Section 29-C(1) (a) of the Karnataka Cooperative Societies Act, 1959 (“Act” for brevity) and submitted that, the statute has not provided any power to the second respondent to issue the impugned notice cum order, disqualifying the petitioner without affording opportunity. Therefore, taking into consideration, the grounds urged by petitioner, as referred above, the impugned notice cum order issued/passed by second respondent is liable to be set aside.

4. Per contra, learned Additional Government Advocate appearing for respondents, inter alia, contended and submitted that, the impugned notice issued by second respondent by invoking Section 29-C(1)(a) of the Act is purely on the basis of the report submitted by third respondent. It is crystal clear from the contents and preamble of the notice that, as per the report submitted by third respondent, the petitioner who is one of the Directors of the Akshaya Co-operative Credit Society Limited, Karwar has drawn amounts under different heads/accounts and has failed to repay the said amounts well within the time and therefore, he has been issued with the show cause notice, calling upon him to comply with the mandatory requirement of Section 29-C of the Act. Further, he submitted that, the impugned notice cum order, as contended by petitioner is only a show cause notice issued to petitioner, affording an opportunity and calling upon him to file the objections, if any, in writing and appear before the second respondent on 15th October 2007 at 11.00 A.M. failing which, appropriate decision will be taken in accordance with law. Therefore, he submitted that, the second respondent has not committed any error or illegality in issuing the impugned notice nor petitioner has made out any good grounds to entertain the instant writ petition and hence, the prayer sought for by petitioner is liable to be rejected at the threshold itself.
5. I have heard learned Counsel appearing for petitioner and learned Additional Government Advocate appearing for respondents.
6. After careful perusal of the impugned notice dated 28th September 2007 issued by second respondent vide Annexure A, it is crystal clear that, the said notice has been issued solely on the basis of the report submitted by third respondent dated 7th September 2007 bearing No. DRN/D/complaint application /2007-08 and it has been specifically referred that, as per the report of the said authority, petitioner has obtained loan under different heads/Accounts and thereafter, has failed to repay the said loan within the time and consequently, has become a defaulter. Therefore, the second respondent, exercising the power conferred upon the said authority under the statute under Section 29-C(1)(a) of Karnataka Co-operative Societies Act, has rightly issued the impugned notice calling upon the petitioner to show cause as to why petitioner should not be disqualified and membership should not be cancelled. Further, an opportunity has been afforded by the said authority by issuing the impugned notice, mentioning that, if he has to say anything in the matter, he is entitled to give his reply in writing and to be

present before the said authority on 15th October 2007 at 11.00 A.M. to substantiate his stand. Further, it is stated that, if petitioner fails to reply and be present before the said authority, it will be presumed and accepted that, he does not have any defence as such and appropriate proceedings will be initiated as per the mandatory provisions of the Act. Therefore, from a plain reading of the impugned notice issued by second respondent, it can easily be concluded that, it is only a show cause notice, calling upon the petitioner to put forth his case regarding the contents of the report submitted by third respondent in due compliance with the statutory provisions of the Act, as referred above and to show cause as to why he should not be disqualified from the Directorship of the Committee of Management of the said Society. There is no disqualification order as such passed by the competent authority and before passing such an order, petitioner has been issued with the impugned show cause notice calling upon him to have his say in the matter regarding disqualification. Therefore, the impugned notice vide Annexure A is not a disqualification order itself as futilely contended by learned Counsel for petitioner. Therefore, the said submission of the learned Counsel for petitioner falls to dust in view of the specific reference made in the impugned notice to the effect that, petitioner having obtained loan and not paid the same, has become defaulter and as such has become ineligible to continue as Director of the said Society or member of Committee of Management of any other Cooperative Society of the State and called upon the petitioner to have his say in the matter and be present on 15th October 2007. Before appearing before the said authority and putting forth his case, petitioner has rushed to this Court stating that, petitioner has been disqualified from the membership of the Committee of Management of the said Society. Therefore, petitioner is not entitled to assail the correctness of the impugned notice by invoking the extra ordinary jurisdiction of this Court as envisaged under Articles 226 and 227 of the Constitution of India. Petitioner cannot maintain the writ petition against the show cause notice issued calling upon him to show cause as to why he should not be disqualified. Anyway, it is very much open for petitioner to take such defence and urge all the grounds urged in the petition by way of reply to the said notice and substantiate his case before the second respondent. It is settled proposition of law laid down in catena of judgments that, interference in notice issued by the jurisdictional competent authority exercising its power under the statute is not justifiable nor I find any such good grounds to entertain the instant writ petition. Hence, the writ petition filed by petitioner is liable to be dismissed on this ground alone.

7. So far as the reliance placed by learned Counsel for petitioner, as referred supra is concerned, it is seen that, the ratio of law laid down in the said case is, the person nominated as member does not hold office during pleasure of State Government which has nominated him, but is entitled to hold office till expiry of term specified in the order of nomination, unless he incurs disqualification to continue as member and that State Government has no power to arbitrarily remove nominated member. In the instant case on hand, the decision of disqualification of petitioner is yet to be taken by the competent authority after reply, if any, filed by petitioner and his appearance on 15th October 2007 and the impugned notice vide Annexure A is only a show cause notice calling upon the petitioner as to why he should not be disqualified and to reply to the same and be present on some specific date. Therefore, the reliance placed by learned Counsel

for petitioner, is of no assistance to him in the instant writ petition nor the principle of law laid down in the said decision can be made applicable to the facts of the case on hand.

8. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is liable to be dismissed. Accordingly, it is dismissed, reserving liberty to petitioner to redress his grievance before the appropriate competent authority, as envisaged under the relevant provisions of the Karnataka Cooperative Societies Act and Rules, if he is so advised or if it is required. Ordered accordingly.
9. Learned Additional Government Advocate is permitted to file memo of appearance on behalf of respondents within three weeks from today.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 19046 of 2006

Decided On: 15.09.2008

Appellants: **Sri K.T. Krishnegowda S/o Late Thimmegowda**

Vs.

Respondent: **The Joint Registrar of Co-op Societies, Mysore Division, The Deputy Registrar of Co-operative Societies Mysore Division, Taluk Co-operative Agricultural and Rural Development Bank Ltd. by its Manager and Sri Lakkannagowda S/o Not Known Secretary of Taluk Co-operative Agricultural and Rural Development Bank Ltd.**

Hon'ble Judges/Coram:

D.V. Shylendra Kumar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: M.S. Padmarajaiah, Sr. Counsel for R. Tharesha, Adv.
For Respondents/Defendant: Sarojini Muthanna, AGA for R1-R2 and Ashok Kumar, Adv. for R3-R4

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 29C, **Karnataka** Cooperative Societies Act, 1959 - Section 29C(1), **Karnataka** Cooperative Societies Act, 1959 - Section 29C(7), **Karnataka** Cooperative Societies Act, 1959 - Section 29C(8), **Karnataka** Cooperative Societies Act, 1959 - Section 106

Disposition:

Petition allowed

Case Note:

Banking - Disqualification - Petitioner was elected director of Co-operative and Rural Development Bank Ltd Disqualification order passed against petitioner on ground of default - Petitioner filed appeal before Respondent no 1 - Appeal dismissed - Hence, present petition - Whether steps taken by respondents were right? - Held, respondent never served notice that petitioner had become defaulter - Respondents taken action without hearing petitioner - No record placed before court to show that petitioner had become defaulter - Hence, petition allowed

JUDGMENT

D.V. Shylendra Kumar, J.

1. Writ petition by a person who was an elected Director of Krishnarajanagar Taluk Co-operative Agricultural and Rural Development Bank Limited, Krishnarajanagar Taluk, Mysore District, who is aggrieved by the adverse order that he has suffered at the hands of the second respondent - Deputy Registrar of Co-operative Societies, Mysore Division, Mysore who had in exercise of his powers under Section 29-C of the Karnataka Cooperative Societies Act, 1959 [for short the Act'] disqualified him from holding the Directorship of the society in terms of his order dated 6.7.2006 (copy at Annexure-D) and which the petitioner was unable to get over in his appeal before the first respondent - Joint Registrar of Co-operative Societies in an appeal under Section 106 of the Act as the appeal came to be dismissed affirming the order passed by the Deputy Registrar as per order dated 19.12.2006 passed in Appeal No. 5/2006-07 [copy at Annexure-K].
2. It is to get over these orders, the present writ petition seeking for quashing of these orders.
3. The respondents had been put on notice. Statutory functionaries - respondents 1 & 2 are represented by Smt. Sarojini Muthanna, learned Additional Government Advocate, the society and the secretary of the society -respondents 3 & 4 respectively are represented by Sri. Ashok Kumar, learned Counsel.
4. Writ petition is mainly on the premise that the orders passed by the Deputy Registrar and affirmed by the Joint Registrar are not tenable in law; that it is without any proper foundation; that it is also in violation of the principles of natural justice; that no proper or adequate opportunity had been given to the petitioner before passing such orders; that the orders visit the petitioner with serious consequences and can act as a stigma even in future; that the orders are required to be quashed etc.,.
5. On behalf of the respondents, the respondents 3 & 4 have filed statement of objections. These respondents have supported the impugned orders and have contended that the writ petition is wholly false, vexatious; that the petitioner being one of the Directors of the Bank had availed the loan for purchase of sheep, bullocks and bullock carts; that an inspection of the premises of the petitioner on 8.3.2006 as a routine or surprise visit revealed that the petitioner in fact had sold away the bullock carts, bullocks and sheep; that nothing was found at his house; that the petitioner having misused the loan by selling away the bullock carts, bullocks and sheep purchased from out of the money advanced by the bank, the bank had in terms of the agreement recalled the entire loan, had called upon the petitioner to make payment of the full loan amount with interest within fifteen days; that the petitioner instead of repaying the loan amount had given an untenable reply and had become a defaulter, that the Bank and its officials visited the house of the petitioner again on 16.6.2006 and even then bullocks, bullock carts or sheep were not found, a mahazar was drawn in the presence of the villagers; that the petitioner had misused the loan amount and also had become a defaulter and it is for such reason, the bank had requested the Deputy Registrar to take suitable action against the petitioner; that the continuation of the petitioner as a Director of the Bank was detrimental to the interest of the bank and the Deputy

Registrar on enquiry having found the petitioner guilty was disqualified in terms of the provisions of Section 29-C of the Act; that the appeal being without merit had been rightly dismissed by the first respondent - Joint Registrar of Co-operative Societies; that the petitioner has made false and untenable allegations even against the fourth respondent; that certain allegations are leveled against the fourth respondent only as a counter blast to the action initiated by the fourth respondent against the petitioner; that the fourth respondent was a very honest, upright person who was working with dignity and the action initiated by him was only in the interest of the Bank; that the action was not of the fourth respondent but by the committee of the management headed by the President; that the writ petition is without merit and is to be dismissed.

6. It is also indicated in the statement of objections filed on behalf of these respondents that the petitioner had not only become a defaulter incurring disqualification under Section 29-C[1][a] of the Act but also a person who had committed a fraud, acted in gross negligence, in contravention of the provisions of the Act, Rules and Bye-laws of the society and therefore had incurred a disqualification even in terms of the provisions of Section 29-C[8][b] of the Act; that the action taken is fully warranted and justified and therefore the writ petition should be dismissed.
7. Writ petition had been admitted by issue of rule and respondents had been directed to place the record before the court.
8. The matter is taken up for hearing. I have heard Sri M S Padmarajaiah, learned senior counsel appearing for the petitioner, Smt. Sarojini Muthanna, learned Additional Government Advocate appearing for respondents 1 & 2 and Sri. Ashok Kumar, learned Counsel appearing for respondents 3 & 4.
9. Sri. M S Padmarajaiah, learned senior counsel appearing for the petitioner has mainly put forth the contention that the orders are vitiated for not affording a proper opportunity; that there was no proposition put forth to the petitioner proposing disqualification under any specific provision of the Act; that no authority had determined that the petitioner has either become a defaulter or that he has committed an act of "fraud" within the meaning of this expression under Section 29-C[8] of the Act; that the petitioner's response before the Deputy Registrar has not been taken note of; that the Bank and the Secretary - respondents 3 & 4 respectively had deliberately foisted such disqualification on the petitioner to see that the petitioner is removed from his elected post; that the orders are even otherwise not sustainable and are liable to be quashed.
10. Sri. Ashok Kumar, learned Counsel for the respondents 3 & 4 has very vehemently urged that the petitioner is a person who has not even placed any material either before the Deputy Registrar or before the Joint Registrar to show that he had not committed any act of fraud; that at no point of time the petitioner had asserted that he had not committed an act of misuse of the loan amount; that while two inspections revealed nonavailability of the goods and livestock which the petitioner had purported to have purchased from the loan availed from the Bank, the petitioner had never come forward to show their availability either to the Bank or before the authorities under the Act and that in itself proves the fraudulent act of the petitioner; that the Bank having recalled the entire loan in terms of the very agreement and the petitioner having not paid the amount within fifteen days from the date of the recall, had become a defaulter and therefore

action taken is justified both in terms of Section 29-C[1][a] as well as Section 29-C[8](b) of the Act.

11. Further submission is that the petitioner had been given sufficient opportunity; that it is the petitioner who has not availed of the opportunity; that no material was ever placed by the petitioner before the authorities to disprove the version of the Bank and the allegation that he had committed an act of fraud and therefore the orders do not warrant interference and is to be dismissed.
12. Learned Counsel for the respondents 3 & 4 would also submit that even the record of the Bank have been submitted to the Deputy Registrar which would show that the Bank had called upon the petitioner to show cause as to why he should not be treated as a defaulter for nonpayment etc.,; that those records can be summoned from the respondents 1 & 2 etc.,.
13. Appearing on behalf of respondents 1 & 2, Smt Sarojini Muthanna, learned Additional Government Advocate would support the orders and would point out to the provisions of Section 29-C of the Act and submits that the action is justified; that the petitioner if had not paid the entire loan amount which had been recalled, obviously becomes a defaulter, putting forth untenable or raising merit-less grounds will not in any way absolve the petitioner from the operation of the provisions of the Act; that it is very conduct of the petitioner which resulted in disqualification of the petitioner and there is no merit in the writ petition and is to be dismissed.
14. So far as placing of the records before the court is concerned, while the record of the Joint Registrar of the Co-operative Societies is placed, it is submitted that what has been furnished by way of record of the Deputy Registrar is only the copy of the order sheet of the proceedings before the Deputy Registrar, true copy of the notice dated 20.3.2006 issued by the Bank to the petitioner, true copy of the communication dated 3.5.2006 issued from the Bank to the Deputy Registrar for taking action against the petitioner in terms of Section 29-C of the Act for having incurred the disqualification, true copy of the mahazar dated 16.6.2006 etc.,.
15. On pointing out that this does not constitute the original record of the Deputy Registrar, it is only xerox copy of the order sheet and true copies of the notice, communication & mahazar which does not constitute the original record, learned Additional Government Advocate would submit that the learned Additional Government Advocate was under the impression that in itself was the original record and given time would secure the original record and place it before the court.
16. The matter is being heard for the past more than two weeks and had been adjourned to 8.9.2008 only to enable learned Additional Government Advocate to secure records in terms of the order dated 21.8.2008. Even on 8.9.2008, it had been submitted by counsel appearing for respondents 3 & 4 that the record was with the respondents 1 & 2 and the learned Government Pleader was specifically directed to secure records from respondents 1 & 2 by 15.9.2008.
17. I do not find any need or necessity to adjourn the matter further to enable the learned Additional Government Advocate to secure the records as the respondents 1 & 2 have not acted with any

sense of responsibility in placing the proper record before the court though time had been given for the very purpose and an act of irresponsible conduct on the part of the respondents 1 & 2 cannot be a good ground to keep adjourning the matter time and again.

18. While the record of the Joint Registrar is only that of the appellate authority which may not throw much light, the record of the original authority - the Deputy Registrar which could have thrown some light on the pertinent question as to whether the petitioner was given proper opportunity or not is not placed before the Court.
19. Be that as it may, the present matter requires examination on the touchstone of the provisions of Section 29-C of the Act and therefore non-production of the record at the best can lead to drawing of adverse inference with regard to the availability on the basis of which a factual position is asserted on the part of the respondents 1 & 2 and nothing beyond.
20. Disqualification from the membership of the committee in terms of Section 29-C of the Act is a very serious matter. An elected Member of the Managing Committee of the society is disqualified from holding his elected post Such disqualification is in the nature of a penalty and should be visited upon an erring member of the Managing committee only after complying with the procedure contemplated in this regard. It is not an order that can be passed in a casual manner or without following the proper procedure or without the supporting material and the finding which attracts disqualification.
21. It has been noticed that the provision has been time and again used by rival political factions to visit the adversary with disqualification, misusing the office of the Deputy Registrar or the other Registrars functioning under the Act to the detriment of the adversaries. It is for this reason, an order under Section 29-C of the Act merits serious scrutiny by this Court even in writ jurisdiction.
22. In a democratic set up, allowing persons who have assumed office through an electoral process is the norm and throwing them out of the office is exception. That exception is to be resorted to only on situations justifying and warranting such action which is penal in nature and on satisfactory proof of the disqualification.
23. In the present proceedings, I find that the order passed by the Deputy Registrar woefully lacks all requirements that are to be fulfilled to justify an order of disqualification under Section 29-C of the Act. Section 29-C of the Act has several sub-clauses indicating disqualification under different heads and grounds. This court had an occasion to examine such matters and had indicated that the procedure should be strictly followed and duly complied. Unfortunately, the orders that are being passed by the authorities functioning under the Act and even the appellate authorities do not show sufficient awareness to such requirements.
24. In the present case, on alleged facts the petitioner could have been disqualified on the ground of being a defaulter and also on the ground of being a person who had committed an act of fraud or who had acted with gross negligence or who had contravened the provisions of the Act, Rules and Bye-laws etc.,. In either event, it should be made known to the petitioner that he is being disqualified under what heading and for what reason. This is the statutory requirement even in terms of Sub-section (7) of Section 29-C of the Act which is as under

29C. Disqualification for membership of the committee:

(7) *Any question as to whether a member of the committee was or has become subject to any of the disqualifications mentioned in this section shall be decided by the Registrar after giving the person concerned a reasonable opportunity of being heard.*

25. In the present case, except that the Bank had indicated that the petitioner had become a defaulter and that it is possible that he had misused the loan amount by selling away the goods and livestock purchased by using the loan amount, even before the repayment of the loan amount is a serious aspect and which should have been found as a matter of fact either by the Deputy Registrar or if he is so relying upon an earlier finding by the Bank if it had been so proved. I find neither has happened in the present case. The Bank contends that the petitioner incurs disqualification as a defaulter for the reason that the loan amount had been recalled and the petitioner had been asked to repay the entire loan amount in one installment which he had not done and therefore had become a defaulter. Here again recalling of the loan is on the premise that the petitioner had sold away the goods and livestock which he had purported to have purchased by utilizing the loan amount borrowed from the Bank. There is no finding anywhere on record whether by the Bank or by the Deputy Registrar that the petitioner has in fact sold the goods and livestock which he had purchased using the loan amount. On the other hand, the stand of the petitioner is that he had not done so and that it is still available with him.
26. Whether it is available with him or not, it was incumbent on the part of the Deputy Registrar to have recorded a finding of this nature without which the Deputy Registrar could not have passed an order disqualifying the petitioner either under Section 29-C[1][a] or under Section 29-C[8][b] of the Act. In fact, the show cause notice does not even indicate that there is a proposition to disqualify under specific head. In a matter of this nature, the show cause notice proposing disqualification should be explicit enough to indicate as to what reason the petitioner is incurring disqualification so that the petitioner gets an opportunity to defend himself. Otherwise, opportunity contemplated in terms of the requirement of Section 29C(7) of the Act or adherence to the principles of natural justice is not met.
27. While Sri Ashok Kumar, learned Counsel for the respondents 3 & 4 would draw attention to the notice dated 22.5.2006 issued by the Deputy Registrar to submit that the relevant requirements of putting the petitioner on notice has been met by this notice, a perusal of this notice only indicates that the Bank had petitioned the Deputy Registrar to take action under Section 29-C of the Act for the reason that the loan availed from the petitioner for the purpose of purchasing bullock carts, bullocks and sheep etc., has not been properly used and therefore action under Section 29-C of the Act is warranted and for such purpose there will be an enquiry which the petitioner is required to attend on 8.6.2006 at 10.30 am.
28. A notice of this nature while does not necessarily propose action for disqualification, but being a general notice for an enquiry is neither here nor there. If as a result of the enquiry the Deputy Registrar is of the definite view that the petitioner has incurred disqualification, it is for the Deputy Registrar to propose such action in terms of the specific sub-clauses or sub-sections of Section 29-C of the Act. The action sought for by the Bank appears to be only on the ground of misutilization and not on the ground of the petitioner being a defaulter which is a separate head

for incurring disqualification under Section 29-C[1](a) of the Act A notice for action under Section 29-C[1](a) of the Act should be precise and should communicate to the person against whom the notice is issued, as to what requirements are to be met by him, as to what action is proposed, for which violation of particular provision. Otherwise, the notice becomes nebulous, ambiguous and not one, which can be properly defended by the person.

29. Though considerable reliance is placed by Sri. Ashok Kumar, learned Counsel for the respondents 3 & 4 on the so called mahazar said to have been conducted by the Bank and its officials on 16.6.2006 at the house of the petitioner and at which time also there was neither the bullock carts & bullocks nor sheep was available as per the mahazar, Sri. M S Padmarajaiah, learned senior counsel appearing for the petitioner submitted that the mahazar itself is a farce; that the thumb impression of the petitioner's mother who is aged 85 years had been obtained on the mahazar without explaining as to what it contained; that in fact the petitioner had sought for examination of the witness before the Deputy Registrar but when the petitioner had appeared for hearing on 3.7.2006, the matter was adjourned to 6.7.2006 without permitting the petitioner to examine the witness.
30. The order sheet also indicates that the Deputy Registrar had not directed for any inspection of the premises of the petitioner. The mahazar is one drawn up during the pendency of the proceedings before the Deputy Registrar and it could have been only as per the direction of the Deputy Registrar and after putting the parties on notice. A material of this nature cannot be used for proving the case before the Deputy Registrar in an enquiry pending before him without awareness or knowledge of the authority before whom the proceedings are pending. Though it is submitted by Sri Ashok Kumar, learned Counsel for the respondents 3 & 4 that it was because the petitioner made such a request before the Deputy Registrar, the mahazar was drawn on 16.06.2006. No record is placed before the court to substantiate this position and on the other hand as the entire original record is not placed before the court inference can only be to the contrary. On the other hand, a xerox copy of the order sheet produced before the court also indicates that the hearing which was to take place on 3.7.2006 was adjourned to 6.7.2006 as the Presiding Officer was busy elsewhere. The first date of hearing before the Deputy Registrar as indicated in the notice for enquiry is on 8.6.2006 and on that day the inquiry had been adjourned to 24.6.2006. There is no mention of the proposed mahazar to be conducted on 16.6.2006. Be that as it may, on a perusal of the entire record placed before the court, pleadings and on examination of the statutory provisions, I find that in the instant case, neither the petitioner had been specifically apprised of the kind of action proposed against him in terms of Section 29-C of the Act nor in that context the petitioner was heard. The stand of the petitioner in terms of the representation before the authority and also in terms of the pleadings in this writ petition are to urge that the orders are bad indicating that the petitioner had disputed the allegation of parting with the goods and livestock he had purchased and having also indicated that he had made payment of the installment and that he was not a defaulter and in the absence of any record being placed before the court either by the Bank or by the authorities to indicate that the petitioner had been given an opportunity before recalling the loan that he had been apprised that he had become a defaulter etc., neither the factum of the petitioner being a defaulter had been made good nor the factum of the petitioner having acted in a fraudulent matter had been made good by the authorities below which alone could have invited action for disqualification.

31. In the absence of such a clear finding, the impugned orders cannot be sustained.
32. The order dated 6.7.2006 passed in No. DRM.Dispute.Col.29-C: 1/06-07 passed by the second respondent - Deputy Registrar of Co-operative Societies [copy at Annexure-D] and the order dated 19.12.2006 passed in Appeal No. 5/2006-07 passed by the first respondent - Joint Registrar of Co-operative Societies [copy at Annexure-K] are hereby quashed by issue of a writ of certiorari.
33. Writ petition is allowed. Rule made absolute.
34. The manner of response by the respondents - authorities even for production of the record being rather lukewarm, tardy and the respondents - authorities acting in a very casual manner only elicits adverse remarks and invites commensurate cost which is valued at Rs. 2,000/- on each of the respondents payable to the petitioner.
35. However, it is made clear that it is open to the Bank or the authorities to take such action against the petitioner as is permitted and warranted in law even at this point of time.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. No. 41531 of 2010

Decided On: 28.12.2010

Appellants: **Sri. O.G. Ravi S/o Gopala Gowda**

Vs.

Respondent: **The Joint Registrar of Co-operative Societies, The Deputy Registrar of Co-operative Societies and Manager Primary Co-operative Agriculture and Rural Development Bank Ltd.**

Hon'ble Judges/Coram:

A.N. Venugopala Gowda, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Anandaram, Adv.

For Respondents/Defendant: Manjula Kamadolli, HCGP

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 29C, **Karnataka** Cooperative Societies Act, 1959 - Section 106, **Karnataka** Cooperative Societies Act, 1959 - Section 106(3)

Disposition:

Petition dismissed

Case Note:

Trusts and Societies - Grant of interim stay - Section 29C of Karnataka Cooperative Societies Act, 1959 (the Act) - Petition seeking interim stay of disqualification order - Held, in present case first Respondent having regard to fact situation and also fact that appeal itself was to be heard and decided at earliest, fixing final hearing date, had declined to stay impugned order - Granting stay or otherwise of impugned order was within discretion of first Respondent - Since first Respondent had decided to hear main appeal itself at earliest and as a result, had declined to stay impugned order before him, it could not be said that, there was any arbitrariness or irrationality on part of first Respondent - First Respondent should decide case of appeal within a time frame - Petition rejected.

ORDER

A.N. Venugopala Gowda, J.

1. Petitioner was elected as a Director to the Managing Committee of 3rd Respondent - co-operative bank. The 2nd Respondent issued to the Petitioner a show cause notice dated. 03.12.2010 under Section 29C of the Karnataka Cooperative Societies Act, 1959 (for short 'the Act'). The 2nd Respondent upon hearing the Petitioner passed an order, disqualifying the Petitioner from holding office in the 3rd Respondent or in any other co-operative society for a period of five years. The Petitioner has deposited in the 3rd Respondent `57,548/- on 14.12.2010. The 3rd Respondent has issued a confirmation letter dated 14.12.2010 with regard to the payment and the Petitioner ceasing to be a defaulter.
2. The Petitioner filed an appeal before the 1st Respondent questioning the aforesaid order passed by the 2nd Respondent. Alongwith the appeal, an application under Section 106(3) of the Act was filed to stay the impugned order in the appeal i.e., the disqualification order passed by the 2nd Respondent. The 1st Respondent upon consideration of the said application and finding that, on the date the disqualification order was passed, the Petitioner was a defaulter and the amount has only been deposited on 14.12.2010, has rejected the prayer for interim relief and has directed the appeal to be posted for hearing on 07.01.2011. The 1st & 2nd Respondents were directed to be present with the record without fail on the hearing date. Feeling aggrieved, the Petitioner has filed this writ petition to quash the said order passed by the 1st Respondent and to grant an interim stay of the disqualification order passed by the 2nd Respondent.
3. Sri Anandarama K, learned advocate appearing for the Petitioner contended that, the order dated 13.12.2010 passed by the 2nd Respondent is arbitrary and illegal, in that, he has exercised the jurisdiction not vested in him under law by disqualifying the Petitioner from holding any office in any of the co-operative societies for a period of five years, which is not contemplated under Section 29C(8) of the Act. Learned Counsel further contends that, the 1st Respondent has not considered the matter in the correct perspective and hence, the impugned order is bad and illegal. Learned Counsel submits that, the Petitioner would suffer great prejudice if the order passed by the 2nd Respondent is not stayed, as the Managing Committee of the 3rd Respondent may co-opt another member to be its Director, which would result in multiplicity of proceedings.
4. I have perused the writ petition papers.
5. The 3rd Respondent is a co-operative society. Petitioner had borrowed loan from the 3rd Respondent. On receipt of the information that the Petitioner is a defaulter, show cause notice was issued to the Petitioner by the 2nd Respondent. Upon hearing the Petitioner, the order dated 13.12.2010 was passed. It is thereafter, the Petitioner has remitted the arrears of `57,548/- and the 3rd Respondent has issued confirmation letter, wherein it has been stated that, as on 14.12.2010 the Petitioner has ceased to be the defaulter.
6. The 1st Respondent having regard to the fact situation and also the fact that the appeal itself is to be heard and decided at the earliest, fixing the final hearing date as 07.01.2001, has declined

to stay the impugned order. Granting stay or otherwise of the impugned order is within the discretion of the 1st Respondent. Since the 1st Respondent has decided to hear the main appeal itself at the earliest and as a result, has declined to stay the impugned order before him, it cannot be said that, there is any arbitrariness or irrationality on the part of the 1st Respondent.

7. Co-option, if were to be made by the 3rd Respondent before the hearing and disposal of the appeal by the 1st Respondent, the same shall be subject to the result of the appeal filed by the Petitioner, pending before the 1st Respondent. Needless to observe that, in case the appeal filed by the Petitioner were to be allowed, any action taken by the 3rd Respondent as a result of the order passed by the 2nd Respondent, will get nullified and the status of the Petitioner will stand restored.
8. In the said view of the matter, I do not deem it appropriate to entertain this writ petition and interfere with the interlocutory order passed by the 1st Respondent. In the circumstance of the case, it is more appropriate to direct the 1st Respondent to decide the case of the appeal within a time frame.

In the result, the writ petition stands rejected. However, the 1st Respondent is directed to hear the appeal on 07.01.2001 and decide the same before 14.01.2011.

Contentions of the Petitioner raised in the appeal pending before the 1st Respondent are kept open for consideration for decision by the 1st Respondent, who shall decide the appeal on its merit uninfluenced by the observations made herein or in the order dated 20.12.2010 passed by him.

Equivalent Citation: AIR1982Kant220, 1981(2)KarLJ414

IN THE HIGH COURT OF KARNATAKA

Writ Petn. No. 18522 of 1981

Decided On: 04.09.1981

Appellants: **M.N. Veerappa**

Vs.

Respondent: **The T. Narasipur Taluk Silk Reelers &
Industrial Co-operative Society Ltd. and Ors.**

Hon'ble Judges/Coram:

N.D. Venkatesh, J.

Counsels:

For Appellant/Petitioner/Plaintiff: B.M. Chandrashekhariah, Adv.

Subject: Trusts and Societies

Case Note:

Trusts and Societies - Rejection of nomination paper - Petitioner filed his nomination paper - Returning Officer, rejected that nomination paper on ground that Petitioner while mentioning in his nomination paper year for which election was being held, mentioned figure (198081" instead of "1981-82", and also that while mentioning serial number, instead of mentioning figure '57', mentioned as '59' - Petition presented by Petitioner stating that rejection of his nomination paper was incorrect - Held, in instant case Petitioner kept quiet for almost a month after rejection of his nomination paper and now, after declaration of results of election to all posts of Directors, wanted to challenge entire election - He might do so, but in a proper forum provided in law - Petitioner further argued that facts were all quite clear, do not require any elaborate investigation, and taking recourse to Section 70 of the Act would not be an efficacious remedy and, therefore, writ be entertained - This Court was unable to agree with him - Facts being clear and not requiring an in depth investigation alone was no ground to entertain a petition on writ side when there was an effective alternative remedy in law - Petition dismissed.

Acts/Rules/Orders:

Constitution of India - Article 226; Karnataka Co - operative Societies Act,
Karnataka Co - operative 1959

Industry: Textile

ORDER

1. M.N. Veerappa, son of Nagarajappa, Mugoora, T. Narasipura Taluk, Mysore District, the petitioner herein, in order to contest to the Directorship of the 1st respondent Society, the term of which was for the year 1981-82, had filed his nomination paper. The 2nd respondent, Returning Officer, rejected that nomination paper on 9-8-1981 on the ground that Veerappa, while mentioning in his nomination paper the year for which the election was being held, had mentioned the figure (198081" instead of "1981-82", and also that while mentioning the serial number, instead of mentioning the figure '57', had mentioned as '59'. (Annexure-D).
2. The proposed election was held on 7-8-1981, but without the participation of the petitioner. Results have been declared. Steps are afoot for further selection of the office bearers of that society from amongst the Directors.
3. Now, on 31-8-1981 this petition is presented by Veerappa stating that the rejection of his nomination paper was incorrect; that he had suffered great injustice; that that election held pursuant to the calendar of events referred to above, should be quashed; and that, in the meanwhile, pending disposal of this petition, the Directors should be stopped from meeting and transacting any business including the selection of office bearers.
4. Is taking recourse to Art. 226 of the Constitution alone the, remedy for the alleged injustice said to have been suffered by Veerappa? The Legislature certainly would not have intended that it should be so. S. 70 Karnataka cooperative Societies Act, 1959 (the Act) provides adequate alternative remedy to a person feeling aggrieved like Veeranna. Clause (c) of sub-sec (2) of S. 70 confers power on the Registrar to try "any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer, or Member of a Committee of the Society". May also see a decision of this Court in Channegowda v. State of Karnataka 1975 (2) Kant LJ 235,
5. Counsel for the petitioner, while seeking admission of the petitioner referred to a few decisions of this Court including a Division Bench decision of this Court in Sangappa. v. T. R. Srinivasamurthy, MANU/KA/0118/1981 : AIR1981Kant114 . But, they are all cases wherein the aggrieved persons had challenged the rejection of their nomination papers prior to the completion of the process of elections. In the instant case Veerappa kept quiet for almost a month after the rejection of his nomination paper and now, after the declaration of results of the election to all the posts of Directors, wants to challenge the entire election. He may do so, but in a proper forum provided in law.

Counsel for the petitioner further argues that facts are all quite clear, do not require any elaborate investigation, and taking recourse to S. 70 of the Act will not be an efficacious remedy and, therefore, the writ be entertained. I am unable to agree with him. Facts being clear and not requiring an in depth investigation alone is no ground to entertain a petition on the writ side when there is an effective alternative remedy in law. Neither would it be appropriate to open the doors of the writ domain of this Court only because the alternate forum provided in the Act may not decide the issue quickly though the procedural law governing such enquiries by those per a speedy authorities may not hamper. It is for the litigant to pursue the course and to pursue with all vigour at his command.
6. I decline to issue Rule. Petition dismissed.
7. Petition dismissed.

Equivalent Citation: ILR 2001 KARNATAKA 681, 2001(1)KarLJ542

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 5756 of 2000 connected with Writ Petition Nos. 40687 to 40689, 42493 to 42495, 43767, 43768, 40249, 40460, 40461, 41231, 40598 of 1999 and 5757 of 2000

Decided On: 13.04.2000

Appellants: **Channabasappa**

Vs.

Respondent: **State of Karnataka and Another**

Hon'ble Judges/Coram:

G. Patribasavan Goud, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sri S.M. Byadagi, Sri Shantesh Gureddi, Ms. Prema Hatti, Advs.

For Respondents/Defendant: Sri M.N. Ramanjaneya Gowda, Additional Government Adv.,

Sri Mahesh R. Uppin, Sri M.R.C. Ravi, Advs.

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co - Operative Societies Act, Karnataka Co - Operative 1959 Karnataka General Clauses Act, 1899 - Section 21 Karnataka Co-operative Societies (Amendment) Act, 1997; Karnataka Act, 1998 - Section 24

Cases Referred:

Kumaraswamy v. State of Karnataka and Others 1979(1) Kar. L.J. 105; Naganna Gowda N.G. and Another v. State of Karnataka and Others 1987(2) Kar. L.J. 389; Tammanna and Others v. State of Karnataka and Others, 1994(1) Kar. L.J. 325; Om Narain Agarwal v. Nagar Palika, Shahjahanpur MANU/SC/0224/1993 : AIR 1993 SC 1440; S.M. Sadanandaiah v. State of Karnataka MANU/KA/0263/1993 : 1993(4) Kar. L.J. 522 : ILR 1993 Kar. 3119; Lachmi Narain v. Union of India MANU/SC/0012/1975 : AIR 1976 SC 714; Gopi Chand v. Delhi Administration MANU/SC/0056/1959 : AIR 1959 SC 609; State of Bihar v. D.N. Ganguly MANU/SC/0111/1958 : AIR 1958 SC 1018; The Scheduled Caste and Weaker Section Welfare Association (Regd.) and Another v. State of Karnataka and Others MANU/SC/0271/1991 : AIR 1991 SC 1117

Case Note:

Trusts and Societies - Cancellation of nomination - Sections 29(1)(2), 29-C(7), 53-A, 54 and 121 of Karnataka Co-Operative Societies Act, 1959 - Section 21 of Karnataka General Clauses Act, 1899 - Section 24 of Karnataka Act, 1998 - Nominations was held null by State Government in exercise of its power under Section 29(1) of Act read with Section 21 of Karnataka General Clauses Act, 1899 - Impugned order under challenge - Held, in its application to category of members of Committee, opening part of Section 29-C(I) of Act takes in its sweep both elected and nominated persons, latter having been described by word 'appointed', and that since there was nothing in Section 29-C of Act which would make it impossible or impracticable to apply said provision in respect of a nominated member, Section 29-C must be taken as applicable both to elected and nominated members - It was therefore that it had to be concluded that once State Government nominates a person under Section 29(1) of Act and specified period of tenure, it was no longer open to it to cut short that tenure by issuing another notification under Section 29 read with Section 21 of General Clauses Act - That was because Section 21 of General Clauses Act enabled issuance of notification for varying or rescinding earlier notifications subject to conditions if any in statute concerned i.e., in Co-operative Societies Act - State Government could not have rescinded earlier orders of nomination in respect of these writ Petitioners which was made earlier in 1999 - State Government thus can neither invoke doctrine of pleasure nor can it invoke Section 21 of General Clauses Act for purpose of rescinding earlier orders of nominations of writ Petitioners and for passing impugned orders of revocation - Impugned orders were therefore without any authority of law - Petitions allowed.

ORDER

1. These petitioners had been nominated to the Committee of various cooperative societies arrayed as respondents in the respective writ petitions, the State Government, one of the respondents, having nominated them in exercise of its power under Section 29(1) of the Karnataka Cooperative Societies Act, 1959 ('Act' for short). In all these proceedings, the petitioners have invariably been nominated by various orders passed in the first week of October, 1999, the order in respect of each of the petitioners specifying that he is appointed for a period of five years or until the term of the Committee expires, whichever is earlier. All these nominations however came to be annulled by the State Government passing orders to that effect in the last week of October, 1999, purportedly in exercise of its power under Section 29(1) of the Act read with Section 21 of the Karnataka General Clauses Act, 1899 ('General Clauses Act' for short). What is of significance is that, the nominations had been made in the first week of October, 1999, by the outgoing Government of one political party, while cancellation was done in the last week of October by the Government of another political party which had just then come into power after the General Elections. It is these orders of cancellation that were passed in the last week of October, 1999, that are impugned in these writ petitions.
2. The petitioners urge that the order of cancellation of nomination is illegal and without any authority of law, that it is actuated by mala fides, the only view being to cancel the nominations done by the previous Government as political vendetta, that the nominated members of the Committee had acquired right to hold office as members of the Committee of the concerned society for the period specified with no power being there for the State Government to take

away that right, that the act of nullifying the nominations has been accomplished in violation of the principles of natural justice, inasmuch as, the same is done without affording opportunity of being heard to the petitioners, that the State Government is wrong in invoking the provisions of the General Clauses Act, that the petitioners could not have been removed from the membership of the Committee without recourse to Section 29-C of the Act, that once nomination was made under Section 29 of the Act, the process of nomination stood exhausted, and that the Government had no power under the said provision to cancel the nominations, and that the impugned orders are arbitrary and capricious.

3. The State Government, in the common statement of objections, contended that it is empowered to nominate three persons on the Committee of any assisted society under Section 29 of the Act, that it is empowered to nominate whomsoever it wants to safeguard its interest in the share capital that it has invested in the societies, that the persons so nominated are there at the 'pleasure' of the Government irrespective of term and duration mentioned in the order nominating the said persons, and that it is not necessary for the Government to assign any reason either while making nominations or while revocation of such nomination. The State Government has contended that, whenever and wherever the Government felt it necessary to nominate any person, the earlier nominations can be cancelled and new persons nominated and that it was empowered to add, amend, vary or rescind the Notification under Section 21 of the General Clauses Act. In the rejoinder, the petitioners pointed out that the doctrine of pleasure that the State Government had pleaded in its statement of objections no doubt had been there in Section 29 of the Act as it stood prior to the Amendment Act 25 of 1998, but that after the said amendment, the pleasure doctrine was no longer available, and that the person nominated under Section 29 shall have that term as specified in the order of nomination. It was also pointed that Section 21 of the General Clauses Act cannot be invoked to rescind the order of nomination since the very order/s specified the nominations for a specified period as required by Section 29 of the Act itself.
4. I have heard at length Sri K. Channabasappa, Sri S.M. Byadagi, Sri Shantesh Gureddi and Ms. Prema Hatti for the petitioners, and the learned Advocate-General for the State Government.
5. The Act was extensively amended by the Karnataka Co-operative Societies (Amendment) Act, 1997 (Karnataka Act 25 of 1998) ('Amendment Act' for short), that came into force on 15-9-1998. Prior to the amendment, there were two provisions in the Act that enabled the State Government to make nominations to the Committee of a Co-operative Society of a particular class. They were Sections 29 and 53-A. The said two provisions read thus prior to amendment:

“29. Nominees of the Government on the Committee of a Co-operative Society.—(1) Where the State Government:

 - (a) has subscribed to the share capital of a Co-operative Society; or
 - (b) has assisted indirectly in the formation or augmentation of the share capital of a Co-operative Society as provided in Chapter VI; or

- (c) has guaranteed the repayment of principal and payment of interest on debentures issued by a Co-operative Society; or
- (d) has guaranteed the repayment of principal and payment of interest on loans and advances to a Co-operative Society, the State Government or any authority specified by the State Government in this behalf, shall notwithstanding anything contained in this Act or the rules or the bye-laws of the Co-operative Society, but subject to any notification or order, for the time being in force, issued or made under Section 54 or 121, have the right to nominate as its representatives not more than three persons or one-third of members of the total number of members of the Committee of the Co-operative Society, whichever is less.
- (2) A person nominated as a member of a Committee of a Co-operative Society under sub-section (1) (hereinafter in this section referred to as 'nominated member') shall hold office as such member during the pleasure of the State Government.
- (3) Subject to the provisions of sub-section (2), a nominated member shall hold office as such member for such period as the State Government, or the specified authority, may by order specify.
- (4) Where an officer of the State Government is nominated as a member of a Committee under sub-section (1), such officer may be nominated by virtue of his office, and when any such nomination is made, such officer may, if unable to be present himself at any meeting of the Committee, depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be the person nominated as a representative of the State Government for purpose of such meeting”.

“53-A. Nomination of members of Committee by State Government in certain cases.—(1) Notwithstanding anything contained in Section 29, where the State Government has subscribed to the share capital of a Co-operative Society to the extent of not less than.—

- (i) fifty per cent of the total share capital; or
- (ii) five lakhs of rupees, the State Government shall have the right to nominate as its representative one-third of the total number of members of the Committee of the Co-operative Society.
- (2) A person nominated as a member of Committee of a Co-operative Society under sub-section (1) (hereinafter in this section referred to as nominated member) shall hold office as such member during the pleasure of the State Government.
- (3) Subject to the provisions of sub-section (2), a nominated member shall hold office as such member for such period as the State Government may, by order specify.
- (4) Where an officer of the State Government is nominated as a member of a Committee under sub-section (1) such officer may be nominated by virtue of his office, and when

any such nomination is made, such officer may, if unable to be present himself at any meeting of the Committee, depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be the person nominated as a representative of the State Government for purpose of such meeting”.

By the Amendment Act, while Section 53-A of the Act was omitted, so far as Section 29 is concerned, for Section 29 of the principal Act, the Amendment Act substituted Section 29 as follows:

“29. Nominees of Government on the Committee of an assisted Co-operative Society.—(1) The State Government may nominate not more than three persons as its representatives on the Committee of any assisted society of whom one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a woman.

- (2) The persons so nominated shall not have the right to become office bearers of the Society.
- (3) The persons nominated under sub-section (1) shall hold office as members of the Committee for such period as the State Government may, by order specify.
- (4) Where an officer of Government is nominated under sub-section (1), such officer may, if unable to be present himself at any meeting of the Committee, depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be a person nominated as a representative of the State Government for the purpose of such meeting”.

6. On 25-2-2000, the Governor of Karnataka has promulgated the Karnataka Co-operative Societies (Amendment) Ordinance, 2000 (Karnataka Ordinance 1 of 2000) (‘Ordinance’ for short), further amending various provisions of the Act. Section 29 of the Act is left untouched. But Section 53-A has come to be inserted, which is as follows:

“53-A. Nomination of members of Committee by State Government in certain cases.—

- (1) Notwithstanding anything contained in Section 29, where the State Government has subscribed to the share capital of a Co-operative Society to the extent of not less than.—
 - (i) fifty per cent of the total share capital; or
 - (ii) five lakhs of rupees,

the State Government shall have the right to nominate as its representatives one-third of the total number of members of the Committee of the Co-operative Society.

- (2) A person nominated as a member of a Committee of a Co-operative Society under sub-section (1) (hereinafter in this section referred to as nominated member) shall hold office as such member during the pleasure of the State Government.
- (3) Subject to the provisions of sub-section (2), a nominated member shall hold office as such member for such period as the State Government may, by order specify.

(4) Where an officer of the State Government is nominated as member of a Committee under sub-section (1), such officer may be nominated by virtue of his office, and when any such nomination is made, such officer may if unable to be present himself at any meeting of the Committee depute a subordinate officer to the meeting as his representative and such subordinate officer shall be deemed to be the person nominated as a representative of the State Government for purposes of such meeting”.

7. Section 21 of the General Clauses Act reads thus:

“21. Power to make to include power to add, to amend, vary or rescind notifications, orders, rules or bye-laws.—Where, by any enactment, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to like sanction and conditions (if any), to add, amend, vary or rescind any notifications, orders, rules or bye-laws so issued”.

8. Firstly about the ‘doctrine of pleasure’.

It could be seen from the above that Section 29 of the Act, as it stood prior to the Amendment Act, specifically provided that a person nominated as member of the Committee under sub-section (1) of Section 29, shall hold office as such member during the ‘pleasure’ of the State Government. That was the position in respect of nomination under Section 53-A also. But, after the Amendment Act, while Section 53-A was omitted, Section 29, as substituted by the Amendment Act, pointedly gave up the ‘pleasure’ clause. The position after the Amendment Act with effect from 15-9-1998 therefore was that the doctrine of pleasure was consciously denied to the State Government by the Legislature. Even when several amendments were effected in February 2000 by the Ordinance, the said Section 29 was left untouched, but, at the same time, the said Ordinance, inserting Section 53-A, virtually taking the position back to the principal Act stage so far as the said Section 53-A is concerned. That means that, even while providing for the doctrine of pleasure in Section 53-A of the Act by the Ordinance issued on 25-2-2000, and being conscious of the fact that the ‘pleasure’ clause had been removed by the Amendment Act in Section 29 of the Act, still it was not felt necessary to introduce the doctrine of pleasure into Section 29 of the Act when the said Ordinance was issued.

In view of the above, so far as Section 29 of the Act is concerned, there was ‘pleasure’ clause prior to Amendment Act, and, after the Amendment Act came into force with effect from 15-9-1998, ‘pleasure’ clause was no longer available to the State Government in course of exercise of its power under Section 29 of the Act. Even after the ordinance was issued in February 2000, therefore, if we look to Section 29 alone, the State Government cannot seek to have the ‘pleasure’ clause when it makes nomination under Section 29 of the Act. After the Amendment Act, the position so far as Section 29 is concerned is that the State Government may nominate someone under sub-section (1) of Section 29 of the Act, and such person as per sub-section (3) of Section 29 holds office as member of the Committee for such period as the State Government may, by order specify. It is a different matter if a person is now, i.e., on or after 25-2-2000, is nominated under Section 53-A of the Act, in which event, in respect of such nomination, the State Government could invoke the doctrine of pleasure.

9. In the above background, the contention of the State Government as to its still having 'pleasure' clause under Section 29 of the Act is based on the following submission as made by the learned Advocate General: It is no doubt true that while prior to Amendment Act, the 'pleasure' clause was there in Section 29 of the Act, after the Amendment Act and even after the Ordinance in February 2000, the said clause is not there in Section 29 of the Act. But, there is Section 53-A of the Act, in which the doctrine of pleasure is incorporated. Sections 29 and 53-A are not to be considered as being independent of each other, but that Section 53-A has to be read as a proviso to Section 29 of the Act. So read, the doctrine of pleasure available in Section 53-A of the Act is as much available in respect of nominations made under Section 29 of the Act also.

Learned Advocate General, in support of the above said submission, has referred to two decisions, both by the learned Single Judge of this Court. His Lordship Mr. Justice M. Rama Jois, J., as he then was: (1) *Kumaraswamy v State of Karnataka and Others* and (2) *Naganna Gowda N.G. and Another v State of Karnataka and Others*. In the latter decision, what had been held in the earlier case of *Kumaraswamy, supra*, was only reiterated. What had arisen therein was as to whether the State Government had the power to nominate as its representatives on the Committee of the Co-operative Society, both under Sections 29 and 53 of the Act. It was answered in the negative with the learned Single Judge holding that though Section 53-A is incorporated as a separate section, in truth and substance, it is in the nature of a proviso to Section 29 of the Act.

The aspect of doctrine of pleasure had not arisen in the said two decisions. Learned Advocate General however would urge that in respect of State Government's power to nominate under Sections 29 and 53-A of the Act, if it can thus be held as above, that Section 53-A should be taken as a proviso to Section 29 of the Act thereby drastically curtailing the number of persons that the State Government can nominate as members of the Committee of a Co-operative Society, then, when it comes to doctrine of pleasure in respect of which such interpretation as above would have the effect of enlarging the power of the State Government, so much so that if Section 53-A is read as a proviso to Section 29 of the Act, the doctrine of pleasure available in Section 53-A could be held equally available in respect of Section 29 also, a different interpretation cannot be placed so as to deprive the State Government of that enlarged power. Learned Advocate General submits that just as for limiting the number of members of the Committee that the State Government can nominate by treating Section 53-A as a proviso to Section 29 of the Act, similarly, even for the purpose of doctrine of pleasure, these two sections must be read in the same way, the result being that even though the 'pleasure' clause is not there in Section 29 of the Act, the said clause being there in Section 53-A of the Act, those nominated under Section 29(1) of the Act also would be at the 'pleasure' of the State Government. Learned Advocate General then refers to two decisions of Division Bench of this Court, one in respect of the very provision Section 29 of the Act, and the other one in respect of a different statute, but also relating to the pleasure doctrine. First decision that is relied upon which was in respect of the very Section 29 of the Act is *Tammanna and Others v State of Karnataka and Others*. The Division Bench of this Court negated the contention of the petitioners therein that even in case where the Government acted in exercise of the power of 'pleasure' conferred on it by a statute and revoked the nomination or made a fresh nomination, it should be supported

by reasons, as otherwise the act would be arbitrary. After referring to the decision of the Supreme Court in *Om Narain Agarwal v Nagar Palika, Shahjahanpur*, the Division Bench pointed out that the observations of the Supreme Court therein would show that the nominations to banks, societies or such other institutions are made purely on political considerations, and on the subjective satisfaction of the Government, and that it was not necessary for the Government to give any reasons for such nominations or revocation of nominations. The Division Bench also noticed that with regard to the nomination that was being dealt with, no mala fides had been attributed.

The other decision the learned Advocate General referred to is one by a Division Bench of this Court in *S.M. Sadanandaiah v State of Karnataka*, with reference to the pleasure doctrine available under the Karnataka Urban Development Authorities Act, 1987. The Division Bench pointed out that where the statute had conferred 'pleasure' on the State Government, the Government's cutting short the tenure of the office of the nominated person would be subject only to the rider that its action should not be shown to be either arbitrary, mala fide or capricious, and that subject to this sole limitation, the Government can cut short the tenure of the office of the nominated member of the Board at its pleasure.

Learned Advocate General, therefore, would submit that the doctrine of pleasure specifically conferred on the State Government by Section 53-A of the Act, in the light of the ratio enunciated in the said two decisions of His Lordship Mr. Justice M. Rama Jois, J., referred to above being available in respect of the nominations under Section 29(1) of the Act also, the nomination of the petitioners concerned herein as also its revocation being at the pleasure of the Government, and there being nothing but vague mention of revocation being mala fide, arbitrary and capricious, in the light of what the Division Bench has said in *Tammanna's case*, supra, in respect of the very provision of Section 29, revocation must be held valid as being in exercise of the pleasure clause available to the State Government.

Assuming for a moment that the 'pleasure' clause in Section 53-A of the Act can be extended to the nominations made in Section 29(1) of the Act also, the argument based on this assumption presupposes that, for the purpose of examining the validity of the orders of revocation impugned in these writ petitions, there are available to the Court for reference, both Sections 29 and 53-A of the Act. It is to be remembered that the decision of the Division Bench in *Tammanna's case*, supra, was delivered in respect of Section 29 of the Act as it stood prior to its amendment by the Amendment Act and in the said Section 29 as it stood prior to amendment, 'pleasure' clause was specifically there. Even when two decisions were rendered by His Lordship Rama Jois, J., as he then was, both Sections 29 and 53-A of the Act were there on the statute concerned. It is only on the said basis of availability of both Sections 29 and 53-A of the Act for reference that the learned Advocate General developed his arguments. As said earlier, assuming for a moment that 'pleasure' clause in Section 53-A can be extended to nominations under Section 29 as urged by the learned Advocate General, the fact however remains that so far as the present cases are concerned, undertaking an exercise to find out as to whether this assumption of the availability of the 'pleasure' clause under Section 53-A of the Act for the purpose of nomination under Section 29(1) also would be purely of academic interest, for the reason that so far as the notifications impugned in these writ petitions are concerned, there existed no

provision like Section 53-A at all, and that the impugned notifications have to be examined solely in the background of Section 29 of the Act as it exists after the Amendment Act. We have noticed earlier that the nomination under Section 29(1) of the Act for a period of five years or till the term of the Committee expires had been made in the first week of October, 1999 and the revocation impugned herein was also made in October 1999 but in the last week. During this relevant period of October 1999, in the Act, there was only Section 29. That did not contain “pleasure” clause. Section 53-A that had been in the Act initially, had been omitted by the Amendment Act with effect from 15-9-1998, and it came to be inserted only by the Ordinance with effect from 25-2-2000. In respect of revocation orders, during the period between 15-9-1998 upto 25-2-2000, no such arguments as advanced by the learned Advocate-General, entirely based on the availability of both Sections 29 and 53-A, can be advanced for the simple reason that during the said period, there remained on the statute concerned, only Section 29, not both Sections 29 and 53-A. Notifications impugned herein relate to the said period between 15-9-1998 and 25-2-2000, they being of October 1999. So far as notifications impugned herein are concerned, what is available for reference is only Section 29 of the Act as it stands after the Amendment Act with effect from 15-9-1998. The said Section 29 does not contain ‘pleasure’ clause. In fact, as the said Section 29 stood prior to Amendment Act, sub-section (3) thereof not only specified that a nominated member would hold office for such period as may be specified by order, but further stipulated that this shall however be subject to sub-section (2) thereof, and it is under this sub-section (2) that the Legislature conferred on the State Government the ‘pleasure’ during which the nominated members would hold office. It was subject to this ‘pleasure’ of the State Government under sub-section (2), that sub-section (3) of Section 29 provided that a nominated member would hold office for such period as specified in the order. When Section 24 of the Amendment Act i.e., the Karnataka Act 25 of 1998, substituted the present Section 29 for Section 29 as it stood in the principal Act, the pleasure doctrine contained in sub-section (2) of old Section 29 of the Act was completely omitted, and sub-section (3) of the substituted Section 29 made it absolutely clear that the persons nominated under sub-section (1) shall hold office as members of the Committee for such period as the State Government may by order specify. Thus, by the Amendment Act, the Legislature expressly took away the ‘pleasure’ that it had conferred on the State Government in the matter of tenure of the nominated members on the Committee of the Co-operative Society. The Legislature thereby provided, for the tenure of the nominated members, as one specified by the State Government in the order concerned. It was thus a conscious denying of the ‘pleasure’ to the State Government by the State Legislature as regards the tenure of the nominated members. Such being the position, the State Government cannot contend that it can still invoke the doctrine of pleasure. This is the position so far as the impugned notifications are concerned, because, while examining the validity of the said notifications, as explained earlier, it is only Section 29 of the Act that is available for reference and not both Sections 29 and 53-A.

10. As seen at the outset, in respect of these petitioners, the period specified as tenure for their membership of the Committees of the concerned societies was five years or until the term of the Committee of the concerned society expires, whichever is earlier. All these nominations with the periods so specified were made in October 1999. When the said nominations were revoked by notifications impugned herein in the last week of October 1999 neither five year period had expired nor had the term of the Committees concerned had come to an end. Even

then, the revocation took place. On the face of it, the impugned orders amounted to cutting short the tenure of the petitioners as nominated members, because, otherwise, they were entitled to continue as such members for a period of five years or until the term of the Committee expired, whichever was earlier. As noticed earlier, in the statement of objections, the State Government sought to justify the revocation on two grounds - one was invoking the doctrine of pleasure. Another was taking recourse to Section 21 of the General Clauses Act.

11. Section 21 of the General Clauses Act has already been extracted at the outset. It could be seen therefrom that where, by any enactment, a power to issue notification, order, etc., is conferred, then, that power includes a power to rescind that notification or order also, subject however to the condition that the said power of rescinding needs to be exercised in the like manner and subject to like sanction and conditions if any that the enactment itself provided for. In other words, revocation of nomination made under Section 29(1) of the Act is not to be done independently under Section 21 of the General Clauses Act, but the source of the power is always Section 29 of the Act. That is how the impugned notifications also are issued. Since the doctrine pleasure is not available to the State Government, from the manner in which the State Government revoked the nominations by issuing the notifications under Section 29 of the Act read with Section 21 of the General Clauses Act, the State Government appears to have thought that doing away with nominations could be done in the same manner as the earlier nomination had been done, namely, by just issuing an order to that effect. It could have been so done in view of Section 21 of the General Clauses Act, had the Act, that is the Co-operative Societies Act, not provided otherwise. In *Lachmi Narain v Union of India*, the Supreme Court observed that Section 21 of the General Clauses Act as pointed out by the Supreme Court in *Gopi Chand v Delhi Administration*, embodies only a rule of construction, and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification. In *State of Bihar v D.N. Ganguly*, it was held that the rule of construction embodied in Section 21 of the General Clauses Act can apply to the provisions of the statute only where the subject-matter, the context or the effect of such provision are in no way inconsistent with such application. Even otherwise, in *The Scheduled Caste and Weaker Section Welfare Association (Regd.) and Another v State of Karnataka and Others*, the Supreme Court observed that it was one of the fundamental rules of our Constitution set up that every citizen is protected against the exercise of arbitrary authority by the State Government or its officers, and that if there is power to decide and determine to the prejudice of the person, the duty to act judicially is implicit in the exercise of such power, and the rule of natural justice operates in areas not covered by any law validly made. The Supreme Court observed that what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. The Supreme Court held that it is only where there is nothing in the statute to actually prohibit giving of opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the *audi alteram partem* rule could be imported.

From the principles laid down by the Supreme Court in the above said decisions, two things are clear so far as the present matters are concerned. If there are no other conditions in the Act

of which Section 21 of the General Clauses Act speaks of, then, of course, revocation could be done by issuing notification under Section 29 of the Act read with Section 21 of the General Clauses Act. While doing so, however, since the earlier order of nomination specified a particular period for which nominated members' tenure would last, and since, by the revocation order, if the said tenure is proposed to be cut short, and since in the Act there was nothing to prohibit giving opportunity of being heard to the nominated members concerned in the light of what the Supreme Court said in Scheduled Caste and Weaker Section Welfare Association's case, supra, principles of natural justice demanded opportunity of being heard, given to the nominated persons concerned before the revocation order could be passed. Any other argument taking a contrary position would amount to indirectly bringing in the doctrine of pleasure which the State Legislature has denied to the State Government when it substituted the present Section 29 by the Amendment Act. If the pleasure doctrine was not available, and if the revocation still had to be done by the State Government, that could have been done only by complying with the principles of natural justice, as held by the Supreme Court in the said Scheduled Caste and Weaker Section Welfare Association's case, supra. But, as will be presently seen, the situation in respect of a nominated member is altogether different, having regard to the other provisions of the Act that I shall presently refer to. Once a member is nominated, the provisions of the Act to be presently referred to make it clear that he is to be treated in a way no different from an elected member, and disqualification would be fastened on the nominated member for continuing as such nominated member only in the manner in which such disqualification can be fastened on an elected member. This is a condition before telling a member that his tenure is cut short. This is the condition available in Section 29-C of the Act. Section 21 of the General Clauses Act speaks of this condition. Therefore, with such condition being available, this is not a case wherein, even after affording opportunity of being heard in the light of the principles enunciated by the Supreme Court in Scheduled Caste and Weaker Section Welfare Association's case, supra, that the tenure of a nominated member could be cut short by the State Government. That is because, Section 21 of the General Clauses Act speaks of a condition in the statute concerned, namely, the Co-operative Societies Act herein, and the condition in this regard in my opinion is Section 29-C of the Act. I shall elaborate on this.

12. If we look to the constitution of a Committee of a Co-operative Society in the light of the provisions contained in Chapter IV of the Act, it is evident that while the tenure of an elected member is 5 co-operative years as per Section 28-A(4) of the Act, the tenure of a nominated member is the one as specified by the State Government in the order as per Section 29(3) of the Act. It could so happen as in the case of the present writ petitioners, that while specifying the period under Section 29, the State Government may specify the same as five years or until the term of the Committee expires, whichever is earlier. In that event, so far as the tenure is concerned, the elected member and the nominated member would be placed on the same footing. The next question is as to otherwise than the period specified expiring in the normal course in respect of a nominated member, and otherwise than by the term of the Committee coming to an end in respect of an elected member, how would the elected member and the nominated one can cease to continue to be as such members. Section 29-B enables the member other than the nominated member, to resign his membership by following the procedure provided therein. Though Section 29-B excludes from its purview a nominated member, I am of the opinion that

because the Act is silent as regards the resignation of a nominated member, one who is nominated should be forced to continue to act as a member of the Committee of a Co-operative Society even if, at a particular point of time during his tenure, he decides to quit. In that event, in my opinion, while Section 29-B of the Act should be taken as providing the procedure for an elected member to resign, where a nominated member wants to resign, all he should do is to send his resignation to the authority which nominated him, namely, the State Government. The State Government would then be free to nominate another person in his place.

Even when the term of the Committee has not expired in respect of an elected member or when the period specified under Section 29 of the Act has not expired in the case of nominated member, and where they do not resign during their tenure, the next stage is another set of circumstances when a member of a Committee can be told that from a particular point of time, he shall cease to continue as member of the Committee. This is available in Section 29-C of the Act. It speaks of the circumstances, the existence of which can be said to lead to disqualification of a member of the Committee to continue as such. Of course, majority of them relate to elected members. But there are certain circumstances which can be said to apply both in respect of an elected member and nominated member; for example, under clause (i) of subsection (1) of Section 29-C, where he has been convicted for certain offences specified therein, and under clause (j) where he has been convicted and sentenced to imprisonment. Sub-section (7) of Section 29-C inter alia provides that if any question arises as to whether a member of the Committee was or has become subject to any of the disqualifications mentioned in the said section, same shall be decided by the Registrar after giving the person concerned reasonable opportunity of being heard. There is then sub-section (8) which speaks of further circumstances calling for disqualification, and which circumstances could be said to apply to both elected and nominated members. Proviso to the said subsection (8) also requires reasonable opportunity of being heard to be given to the person against whom the order fastening the disqualification is to be passed. Disqualification could extend for such period not exceeding five years. This is the machinery that is provided for cutting short the tenure of a member of the Committee of a Co-operative Society, even before his normal tenure ends. It is the application of the provisions contained in this Section 29-C that is the subject-matter of a serious dispute, with the petitioners contending that it applies to both elected and nominated members, while on behalf of the State Government, it is being contended that it could apply only to elected members. I am of the opinion that Section 29-C of the Act applies to both elected and nominated members. Opening part of sub-section (1) of Section 29-C of the Act reads thus:

“29-C. Disqualification for membership of the Committee.— (1) No person shall be eligible for being elected or appointed or continued as a member of the Committee of any Co-operative Society, if— . . .”

(emphasis supplied)

In the entire scheme of the Act, there is no such category as ‘appointed members’ of the Committee unless it can be referred to the category of nominated members under Section 29 of the Act, or to Section 53-A if, during the relevant period, Section 53-A was or is in force. If Section 29-C of the Act were to be held applicable only to elected members, then, the word

'appointed' would not have been employed in the said Section 29-C. If the said word is thus employed by the Legislature, it must be taken as having been done with a purpose, namely, that the person appointed i.e., nominated, would incur disqualification for continuing as such member if his case falls under one or the other of the circumstances specified therein. Of course, even to be appointed in the first instance, the said disqualification could come in the way. For example, if a person has been convicted in the circumstances specified in clause (i) or clause (j) of sub-section (1) of Section 29-C of the Act, there could be no question of the State Government nominating such person under Section 29(1) of the Act for the reason that he would not be eligible for being appointed in view of Section 29-C of the Act. I am therefore of the opinion that both for being elected or appointed in the first instance i.e., at the point of being elected in the case of an elected member, and at the point of being appointed or nominated under Section 29(1) of the Act in the case of nominated member, the person concerned should be free from circumstances enumerated in Section 29-C. Even to continue as such member, elected or nominated, he should be free from the said circumstances. It is only then that they will complete their tenure of 5 co-operative years in the case of elected members and of the period specified in the order of nomination in the case of nominated members, unless they resign in the meantime. If they did not incur disqualification under Section 29-C of the Act, then, there is no way their tenure can be otherwise cut short. Of course, in the case of nominated members, it is the Registrar who is required to pass orders of disqualification under Section 29-C of the Act, whereas nomination would have been made by the State Government under Section 29(1) of the Act. The question raised on behalf of the State Government is as to how a member nominated by the State Government should be found by the Registrar to be disqualified by continuing as such member. That is the scheme of the Act, and that is how the Legislature has provided for. The State Government therefore has to take it that, while it has got the power, while nominating a person under Section 29(1) of the Act, to specify the period for which he would be such a member, it still lies with the Registrar, of course, after providing reasonable opportunity of being heard to the nominated member concerned, to tell that person that he had incurred disqualification and that he would cease to continue to be such member notwithstanding the fact that the authority which had nominated him had specified longer tenure for him. I am thus of the opinion that since, in its application to the category of members of the Committee, the opening part of Section 29-C(I) of the Act takes in its sweep both elected and nominated persons, the latter having been described by the word 'appointed', and that since there is nothing in Section 29-C of the Act which would make it impossible or impracticable to apply the said provision in respect of a nominated member, Section 29-C must be taken as applicable both to elected and nominated members. It is therefore that it has to be concluded that once the State Government nominates a person under Section 29(1) of the Act and specifies the period of tenure, it is no longer open to it to cut short that tenure by issuing another notification under Section 29 read with Section 21 of the General Clauses Act. That is because Section 21 of the General Clauses Act enables issuance of notification for varying or rescinding the earlier notifications subject to the conditions if any in the statute concerned i.e., in the Co-operative Societies Act. The condition is one to be seen in Section 29-C of the Act. As we have seen, it is not just on incurring of disqualification, but that further, on being afforded reasonable opportunity

of being heard also, that a nominated member could be told by the Registrar that his tenure is cut short. Since this is the condition subject to which earlier order of nominating the person for a period of five years or till the term of the Committee expires could be cut short, Section 21 of the General Clauses Act would not come to the aid of the State Government to issue another notification under Section 29 of the Act to revoke nomination made earlier, or in other words, to rescind the earlier order under Section 29(1) of the Act. In that view of the matter, the State Government, in the last week of October 1999, by the orders impugned herein, could not have rescinded the earlier orders of nomination in respect of these writ petitioners made in the first week of October 1999. The ground urged on behalf of the State Government with reference to Section 21 of the General Clauses Act in order to support the legality of the impugned orders, also is thus not available.

13. The State Government thus can neither invoke the doctrine of pleasure nor can it invoke Section 21 of the General Clauses Act for the purpose of rescinding the earlier orders of nominations of the writ petitioners and for passing the impugned orders of revocation. Impugned orders are therefore without any authority of law.
14. Petitions are therefore allowed. Impugned orders are quashed.

Equivalent Citation: 2014(1) AKR 830, 2014(1)KCCR569

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. Nos. 795-796/2012 (CS-EL/M)

Decided On: 26.09.2013

Appellants: **K.T. Nijalingappa and B. Krishnamurthy**

Vs.

Respondent: **The State of Karnataka, Rep by its Principal Secretary To Government,
Department of Co-Operation and Ors.**

Hon'ble Judges/Coram:

B.S. Patil, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sri G. Chandrasekharaiah, Adv.

For Respondents/Defendant: Sri K.A. Ariga, AGA for R1 to R3, Sri K. Nageswarappa, Adv. for R6 and Sri B.K. Manjunatha, Adv. for R7 to R12

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - Section 14, Karnataka Co-operative Societies Act, 1959 - Section 28-A, Karnataka Co-operative Societies Act, 1959 - Section 28-A(5), Karnataka Co-operative Societies Act, 1959 - Section 29-A, Karnataka Co-operative Societies Act, 1959 - Section 39-A, Karnataka Co-operative Societies Act, 1959 - Section 39-A(2)(b)

ORDER

B.S. Patil, J.

1. In these writ petitions, petitioners are challenging the calendar of events issued by the 3rd respondent on 14.12.2011 vide Annexure-A insofar as it related to the election of the two 'B' Class members to the Managing Committee of the 4th respondent - Society. A direction is also sought declaring that the petitioners having been duly elected to the two 'B' Class category of members of the 4th respondent - Society, there was no need to hold election to the 'B' Class seats. Respondent No. 4 is a Taluka Agriculture Produce Cooperative Marketing Society Limited, Challakere in Chitradurga District. It is a Secondary Co-operative Society comprising of both Primary Agricultural Credit Co-operative Societies in the Taluk consisting of 'A' class members and also individuals who are categorized as 'B' class members. Petitioners fall in the category of 'B' Class members of the 4th respondent - Society. As per the bye-law of the Society,

particularly bye-law No. 22, the management of the affairs of the 4th respondent vests in a Committee consisting of 11 members, out of them, 7 members are elected from 'A' class category and 2 members are elected from 'B' class category consisting of individual members. One representative is from the Financing Bank and the other one is the Assistant Registrar of Co-operative Societies, Chitradurga Sub-Division, Chitradurga. The second category members are holding office as ex-officio members.

2. Election to the Committee of the 4th respondent - Society was held in the month of March, 2006 for a term of five years i.e. to say from 2006-07 to 2010-11. The term of the committee came to an end on 31.03.2011. Therefore, the 4th respondent - Society was required to hold election to constitute a new Committee in terms of Section 39-A(2)(b) of the Karnataka Cooperative Societies Act, 1959 (for short, 'the Act'). Accordingly, election was fixed on 21.03.2011 to elect seven members from 'A' class and two members from 'B' class. Calendar of events was published on 12.02.2011 vide Annexure-B.
3. Totally 16 members including the two petitioners had filed their nomination papers seeking election for the two seats of 'B' class members. For 'A' class seats, 22 members had filed nominations. At the time of scrutiny of nomination papers, the Returning Officer rejected all the 22 nominations filed for 'A' class category as they did not have the eligibility pertaining to the minimum transaction as fixed by the Government. Therefore, nobody could be elected for the 7 seats of 'A' class category.
4. As regards, 'B' class category, except the petitioners herein, all the other members who had submitted their nominations withdrew their nomination papers. Therefore, as, only petitioners had been left in the fray, the Returning Officer declared the petitioners as having been elected unopposed. A declaration in this regard was made on 16.03.2011 vide Annexure-C. As majority of the elected members were not available to function as members of the 4th respondent - Committee, an administrator was appointed on 31.03.2011 for the 4th respondent - Society making it clear that he shall conduct elections for constituting the managing committee.
5. Thereafter, the administrator who took charge of the affairs of the 4th respondent - Society issued the impugned calendar of events vide Annexure-A for electing the members both from both 'A' & 'B' category. This has impelled the petitioners to approach this Court challenging the election scheduled to be conducted for the two posts of 'B' category members to which the petitioners have been already duly elected.
6. This Court vide order dated 10.01.2012 granted interim stay of the calendar of events at Annexure-A insofar as it related to the election of the two 'B' category members. It is not in dispute that now the Administrator has got the election conducted in respect of 7, 'A' category members.
7. The contention urged by the leaned counsel for the petitioner is that in view of the election duly conducted for filling up 'A' and 'B' category members and as the committee is duly constituted, necessary direction may be issued to the Administrator to entrust the management of the affairs of the 4th respondent - Society to the newly elected committee.

8. Sri B.K. Manjunath, learned counsel who represents the elected members from 'A' category who are arrayed as respondents 7 to 12 submits that once an Administrator is appointed as a result of the Committee not being duly constituted, the petitioners, though elected to the two vacancies in the 'B' category lose their membership and fresh elections are required to be held not only for the unfilled 'A' category members but also in the 'B' category to which the petitioners were elected. He draws support from Sub-Clause (5) of Section 28-A of Act to contend that the deeming provision contained therein has the effect of superseding the elected members such as petitioners and the administrator would be duty bound to hold election afresh to the entire committee. He also relies upon Sub-Clause (2) of Section 29-A of the Act to contend that the Committee shall be deemed to be duly constituted only when the majority of the elected members were available to function as members of the board after the election. Therefore, according to him, what follows from the provisions contained in Sub-Clause (2) of Section 29-A, is that if the number of members who could constitute the quorum are not duly elected in the election, then, not only the Board shall be deemed not to have been duly constituted but also its effect is that all the elected members will lose their posts because the administrator will have to hold fresh election to the entire committee.
9. Learned Additional Government Advocate submits that the provisions of the Act do not conceive such a situation and there is no need to hold election to 'B' category posts which have been duly filled up by electing the petitioners as members. He points out that the duty of the Administrator in such a situation is to hold election to the vacant posts in 'A' category and ensure that a duly elected committee comes into existence.
10. Learned counsel for the petitioner has placed reliance on the judgment in the case of Madegowda v. Assistant Registrar of Co-Operative Societies - 1982 (1) KLJ SN 13 to contend that where the candidates who had filed nominations had withdrawn their nominations leaving only few in the fray and the Returning Officer declared only three candidates as duly elected, election could be held for the remaining unfilled seats and that insofar as the duly elected members were concerned, no fresh election was called for.
11. Having heard the learned counsel for both parties and on careful perusal of the provisions contained under Section 28-A and Section 29-A of the Act, I do not find any provision in the Act to nullify the election of the two members for the 'B' category seats, only because in the said election, required number of members constituting the quorum had not been elected.
12. Appointment of administrator was necessitated because the affairs of the 4th respondent-Society could not be managed by the elected committee as there was no quorum. The administrator was required to manage the affairs of the Committee and hold election within a period of six months to ensure that a new committee was duly constituted. That does not mean that already elected members will lose their seats and fresh election to their posts also has to be held. This is not the effect of the provisions contained under Section 28-A or 29-A of the Act or for that matter any other provisions to which the attention of the Court is drawn.
13. Section 28-A of the Act states about the vesting of the management of a Co-operative Society in the Board and also regarding the composition of the Board and its term. Section 28-A(5) of the Act reads as under:

- (5) If the new Board is not constituted under Section 29-A on the date of expiry of the term of office of the Board or if the elections are not held within the time-limits specified in Section 39-A, the Registrar or any other officer within whose jurisdiction the Society is situated and who is authorized by the Registrar, shall be deemed to have assumed charge as Administrator and he shall, for all purposes function as such Board of management. The Administrator shall, subject to the control of the Registrar, exercise all the powers and perform all the functions of the Board of the Cooperative society or any office bearer of the co-operative society and take all such actions as may be required, in the interest of the co-operative society:

Provided that the Registrar shall appoint an administrator to a Co-operative Society or each of the Co-operative Societies formed after amalgamation or reorganization or division in accordance with Section 14 for a period of three months and the administrator so appointed shall arrange for holding elections to a Committee of such Co-operative Society or Societies as the case may be.

14. Section 29-A which deals with the commencement of term of office of the members of the Board states as under:

29-A Commencement of terms of office:- (1) The term of office of the members of the Board shall commence on the date on which the majority of the elected members of the Board assume office or the terms of the outgoing Board expires, whichever is later.

- (2) Notwithstanding anything contained in this Act or the Rules or the bye-laws of a co-operative society, the Board shall be deemed to be duly constituted when the majority of the elected members of the Board are available to junction as members of the Board after the election.

- (3) The Board deemed to be constituted under Sub-Section (2) shall be competent to exercise all the powers and perform all the functions of the Board of the co-operative society.

15. A conjoint reading of these two provisions makes it clear that the Board of the Co-operative Society has got a fixed term and the term of office of the members of the Board will commence on the date on which the majority of the elected members of the Board assume office or the term of the outgoing board expires, whichever is later. If the Board is not constituted on the date of expiry of the term of office of the Board and if elections are not held within the time specified in Section 29-A, the Registrar shall be deemed to have assumed charge as Administrator and he shall discharge the functions of the Board of Management. Nowhere in these provisions it is stated that once such Administrator assumes office on account of the failure to elect majority of the members of the Board, the already elected members will be deemed to have vacated their office. Such a consequence is not contemplated under the provisions of the Act. The same cannot be inferred nor such an inference is warranted. No such inference also can be drawn by reading these provisions. It is well established that when the words of a statute are clear, plain or unambiguous and are reasonably susceptible of only one meaning, the Courts are bound to

give effect to that meaning. Useful reference can be made to the decision rendered by the Apex Court in the case of Gurudevdatla Vksss Maryadit vs. State of Maharashtra - MANU/SC/0191/2001 : AIR 2001 SC 1980 and in the case of Harshad S. Mehta vs. State of Maharashtra - MANU/SC/0540/2001 : (2001) 8 SCC 257, in that regard.

16. There is no ambiguity in the language used in the aforesaid provisions. Therefore, it cannot be inferred that if majority of the members are not elected for any reason, on the Administrator assuming the charge, the other elected members shall be deemed to have vacated their office and fresh election shall be held to all the posts in the Board. For no fault on the part of the elected candidates/petitioners, they cannot be saddled with such consequence. It is also not in public interest to hold election yet again for these posts, when their election has not been in any manner cancelled or nullified. Therefore, the contention urged by the learned counsel for the petitioner deserves to be accepted. In the result, these writ petitions are allowed. The calendar of events insofar as it notifies election of two 'B' category members is set aside. The duly elected committee will be entitled to manage the affairs of the 4th respondent - Society.

Equivalent Citation: 2014(3) AKR 283

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.A. Nos. 734, 780-784, 792-796, 797-806, 808-815, 851 and 866/2014 (CS-EL/M)

Decided On: 30.04.2014

Appellants: **The Hassan Co-Operative Milk Producers Societies Union Limited**

Vs.

Respondent: **State Of Karnataka**

Hon'ble Judges/Coram:

D.H. Waghela, C.J., Dilip B. Bhosale and B.V. Nagarathna, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Jayakumar S. Patil, Sr. Adv., Varun Kumar, Adv., Varun J. Patil and A. Mahammed Tahir, Advs. for Jayakumar S. Patil Associates, Dayanand S. Patil, M. Ravindranath, K. Chandrashekar Achar and S.K. Acharya, Advs.

For Respondents/Defendant: Prof Ravivarma Kumar, AG, A.S. Ponnanna, PRL Govt. Advocate, M. Keshavareddy, Dayanand S. Patil, Ramachandra R. Naik, Deviprasad Shetty, S.K. Acharya, Advs. and M/s. Kumar & Kumar Advocates

Subject: Trusts and Societies

Acts/Rules/Orders:

Constitution Of India - Article 243ZH, Constitution Of India - Article 243ZJ, Constitution Of India - Article 243ZK, Constitution Of India - Article 243ZT; Karnataka Co-operative Societies Act, 1959 - Section 14, Karnataka Co-operative Societies Act, 1959 - Section 15, Karnataka Co-operative Societies Act, 1959 - Section 2(e-4), Karnataka Co-operative Societies Act, 1959 - Section 2(t), Karnataka Co-operative Societies Act, 1959 - Section 28(4), Karnataka Co-operative Societies Act, 1959 - Section 28-A, Karnataka Co-operative Societies Act, 1959 - Section 28-A(4), Karnataka Co-operative Societies Act, 1959 - Section 28-A(5), Karnataka Co-operative Societies Act, 1959 - Section 28-B, Karnataka Co-operative Societies Act, 1959 - Section 28-B(2), Karnataka Co-operative Societies Act, 1959 - Section 28A, Karnataka Co-operative Societies Act, 1959 - Section 29-A, Karnataka Co-operative Societies Act, 1959 - Section 29-B(2), Karnataka Co-operative Societies Act, 1959 - Section 29A, Karnataka Co-operative Societies Act, 1959 - Section 39-A, Karnataka Co-operative Societies Act, 1959 - Section 39A

Disposition:

Disposed off

Industry: Cooperative Societies

JUDGMENT

Dilip B. Bhosale, J.

1. The order of reference dated 20th March 2014, which has occasioned the constitution of this Full Bench, has been passed by a Division Bench, in Hassan Co-operative Milk Producers Societies Union Limited and others vs. State of Karnataka and Others, W.A. No. 734/2014 in Writ Petition No. 10005/2014. The Division Bench in this case, having disagreed with the view taken by another Division Bench of this Court in Shankarappa Mallappa Kelageri and others vs. The Co-operative Election Commission, Karnataka State and others, W.A. Nos. 100076-80 & 100081-83/2014, formulated the following questions which consequently required determination by the Full Bench:
 - “i) Whether Section-28-A(4) of the Karnataka Cooperative Societies Act, 1959, as substituted by the amended Act dated 11.02.2013, is prospective or retrospective in nature?
 - ii) When the elections are to be conducted to a cooperative society by the second respondent-State Cooperative Societies Election Commission-and for any reason if the Election Commission fails to conduct the elections within the stipulated time, whether an Administrator can be appointed automatically under Section 28-A(5) of the Act? and
 - iii) Whether Section-28-A(4) is ultra vires?”
2. The appellant-Hassan Co-operative Milk Producers Societies Union Ltd., which is a ‘Federal Society’ as defined by Section 2(e-4) of the Karnataka Cooperative Societies Act, 1959 (for short “the Act”), shall be hereinafter referred to as ‘Hassan Milk Union for short. The judgment dated 31-01-2014, in Shankarappa Mallappa Kelagiri, vs. The Co-operative Election Commissioner, Karnataka in W.A. Nos. 100076-80 & 100081-83/2014, shall be hereinafter referred to as the judgment in S.M. Kelagiri’.
3. Learned counsel appearing for the parties are ad idem that the third question formulated by the Division Bench does not arise for our consideration since none of the appellants/petitioners in this group of appeals challenged the validity of Section 28-A(4) of the Act.
4. In S.M. Kelagiri, the Division Bench, was considering the question whether the term of committee, which was elected on 12-6-2009 for five co-operative years would stand extended in view of the amendment of Section 28-A of the Act, in particular, sub-section (4) thereof, by the amending Act No. 3 of 2013, whereby the words “five co-operative years” were substituted by the words “five years from the date of election”. The Division Bench, in this case, has taken a view that it is a case of substitution which cannot be given effect to mechanically from the date of the statute itself. Then the Division Bench proceeded to observe that “even if the legislature amends the existing provision in a statute by way of substitution and the substituted

provision comes into effect from the date of the Act, it is not an invariable rule”. It was further observed that “in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word ‘substitution’ as an amendment having a prospective effect. If the amendment expressly states that the substituted provision shall come into force from the date of the amendment coming into force, the said provision is prospective in nature. Then, there is no scope for interpretation whether the said amendment is prospective or retrospective. The legislature had made its intentions clear by such express words, which is to be followed by the Courts. However, if such an express provision is not there in the amendment, it does not necessarily mean that it has to be retrospective in nature”. The Division Bench then proceeded to observe that “to decide whether such an amendment in the absence of express words is prospective or retrospective in nature, the Court can look into the scheme of the amendment, the object sought to be achieved, the mischief sought to be prevented and they, by interpretative process, can declare whether the said amendment is prospective or retrospective”. Having so observed, the Division Bench refused to grant interim order as prayed for in the writ petition holding that their (Committee/Board) term came to an end on 31st March 2014.

5. The Division Bench in Hassan Milk Union independently considered the provisions contained in Section 28-A(4) of the Act and so also the judgment in S. M Kelagiri to take a divergent view on the question decided by the Division Bench in that case. In the order of reference dated 20.03.2014, in this appeal, the Division Bench observed that “when a provision of law has been amended by way of a substitution, it relates back to the date of the Act unless otherwise specifically stated.” It was further observed that “it is well within the wisdom of the legislature to bring about the amendment by way of an addition, deletion, insertion etc. It has, however, chosen that the present amendment should be a substitution and not otherwise. It has deliberately not assigned date of substitution since a substitution, always relates back to the date of enactment unless otherwise specified. This is the will of the legislature and this is what they intended the law to be. The substitution is clear and unambiguous. Therefore the substitution will extend the term of office upto a period of five years from the date of the election”. In short, the Division Bench in Hassan Milk Union, held that the amended provisions contained in sub-section (4) of Section 28-A would have retrospective effect. The Division Bench also considered the provisions contained in Section 28-A(5) and observed that “election to the Federal Society has to be conducted only by the State Cooperative Societies Election Commission (for short “Election Commission”) and if for any reason the Election Commission fails to conduct election, the appellant cannot be blamed for the default committed by them for not conducting the election within the stipulated time. The intention of the legislature is to see that the Co-operative sector shall be run and maintained by the elected representatives elected from amongst shareholders. On account of the default committed by the Government, the Administrator cannot be appointed to the first appellant-Federal Society”. Having so observed, the Division Bench, as aforementioned, framed the questions with a request to the Hon’ble Chief Justice for constitution of a larger Bench and restrained the respondents-State from appointing an Administrator.
6. This group of writ appeals arise from the order dated 6th March 2014 passed by learned single Judge disposing of several writ petitions filed by individual members of the committees/boards

as well as by the Hassan Milk Union. Challenge in all the writ petitions and the prayers made therein being similar, the petitions were disposed of by the common order. The learned Judge dismissed all the writ petitions in terms of the judgment of the Division Bench in S. M Kelageri case.

6.1. In order to understand and to deal with the referred questions we would like to state in brief the background facts in Writ Appeal No. 734/2014 arising from the order of the learned single Judge dated 6th March 2014 in Writ Petition No. 10005/2014. Hassan Milk Union and 13 members of its Managing Committee, in this writ petition, impugned the communication dated 29-1-2014 issued by the State Government addressed to the Election Commission, informing that in respect of such of the Managing Committees of the Societies whose term comes to end by 31-3-2014, the election could be held to elect the new managing Committee after the expiry of the present term (five co-operative years) but, until the elections are held, an Administrator could be appointed to enable him to conduct the elections, and therefore, there was no need to resort to removal of difficulty clause as suggested by the Election Commission.

6.2. The Managing Committee of Hassan Milk Union was elected on 1-7-2009 for a period of five co-operative years as contemplated by Section 28-A(4) of the Act, i.e. till the end of 31-3-2014. Even before expiry of their term on 31-3-2014, an amendment vide the amending Act No. 3/2013 was introduced whereby, the words 'five cooperative' years, as occurred in sub-section (4) of Section 28-A of the Act, were substituted by the words "five years from the date of election". In this view of the matter, Hassan Milk Union and members of its Managing Committee approached this Court by way of writ petition, apprehending the appointment of an Administrator in view of the communication dated 29-1-2014.

6.3. Writ Appeal Nos. 792-796/2014, though technically arise from the order dated 7th March 2014, by this order, the writ petitions were disposed of in terms of the order dated 6th March, 2014, in S. M Kelageri. Thus, in effect, all the writ petitions, from which the present writ appeals arise, have been disposed of in terms of the judgment of the Division Bench in S. M Kelageri case.

7. We have heard learned counsel for the parties in extenso and with their assistance gone through the orders passed in 'Hassan Milk Union' and in 'S.M. Kelageri' and so also, the judgments relied upon by them in support of their submissions.

7.1. Mr. Jayakumar S. Patil, learned Senior Counsel appearing on behalf of the appellants at the outset invited our attention to the provisions contained in Sections 28-A, 28-B, 29-A and 39-A of the Act and so also to the amending Act No. 3 of 2013 and submitted that when the old provisions have been substituted by new provisions, the inference is that the legislature intended the substituted provisions to have retrospective operation. He submitted that it is the amended provisions that have to be applied and not the old provisions which have ceased to exist. He submitted that substitution combines repeal and fresh enactment. The substitution therefore has the effect of just deleting the old provision and making the new provision operative right from inception. He then submitted

that the process of substitution consists of two steps as observed by the Supreme Court: first, the old provision is made to cease to exist and, next, the new provision is brought into existence in its place. In view thereof, the election of next Managing Committee are being conducted in accordance with the amended provisions and that being so, as contemplated by the amended sub-sections (4) and (5) of Section 28-A of the Act, the existing Managing Committee, would continue till their term of five years is completed from the date of their election and so also till the new Managing Committee is elected and takes over. In support of his submission, he invited our attention to sub-section (5) of Section 28-A of the Act and so also Section 28-B(2) which, he submitted, clearly provide that the existing managing Committee shall be deemed to have vacated their office on the last day of the time limits specified in Section 39-A. In short, he submitted that under any circumstance, an Administrator cannot be appointed, if the new committee is not constituted under Section 29-A, on the date of expiry of the term of office of the committee or if the elections are not held within the time limits specified in Section 39-A. Next, he submitted that it is the cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. He submitted that in view of the scheme of the provisions contained in the amended Sections 28-A, 28-B, 29-A and 39-A of the Act, and the provisions of the Constitution introduced by way of 97th amendment, it is clear that the legislature, intended to give retrospective effect to these provisions. In support, Mr. Patil placed reliance upon the judgments of the Supreme Court in *Zile Singh v. State of Haryana and others*, MANU/SC/0876/2004 : AIR 2004 SC 5100; *Government of India and others v. Indian Tobacco Association*, MANU/SC/0502/2005 : (2005) 7 SCC 396; and *Shamrao Parulekar and others v. District Magistrate, Thana Bombay and others*, MANU/SC/0017/1952 : AIR 1952 SC 324.

- 7.2. Mr. A.S. Ponanna, Prl. Govt. Advocate appearing on behalf of respondents-1 and 3 to 6, on the other hand, submitted that when substitution takes place, unless the amending Act specifically indicates that it is retrospective, it cannot be presumed or implied that such substitution would be retrospective and as such, it is to be necessarily held as prospective. He invited our attention to the notification issued by the State in exercise of its power under Section 1(2) of the amending Act No. 3 of 2013, appointing the date on which the amending Act was brought into force i.e. 11-2-2013, and contended that substituted provision would be applicable from the appointed date and in view thereof, the submissions advanced on behalf of the appellants deserves to be rejected outright. In support of his contention, he invited our attention to the judgment of the Supreme Court in *Sham Sunder and others vs. Ram Kumar and another*, MANU/SC/0405/2001 : (2001) 8 SCC 24. Based on this judgment he submitted that the amending Act No. 3 of 2013 is presumed to be prospective in operation since there is nothing in the Act to indicate that it was made retrospective, either expressly or by necessary intendment or implication and that there is no such indication in the amending Act No. 3 of 2013. He submitted, by amendment new rights are created and therefore, it should be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication.

8. Before we look into the relevant provisions and advert to the submissions advanced by learned counsel for the parties, it would be advantageous to refer to the judgments relied upon by learned counsel for the parties in support of their contentions.

8.1. The Supreme Court in *Zile Singh* (supra) was dealing with Haryana Municipal (Amendment) Act, 1994 (Act No. 3 of 1994) whereby, Section 13A in Chapter III of the Principal Act was inserted. Section 13A provided disqualification for being chosen as and for being a member of Municipality if he has more than two living children provided that a person having more than two children on or after expiry of one year of the commencement of the amendment Act, shall not be deemed to be disqualified. In this backdrop, the Supreme Court stated the principles of construction and interpretation of the provisions introduced/substituted by way of amendment. Paragraph 13 and 15 are relevant for our purpose, which read thus:

“13. **It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations.** Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only ‘nova constitutio futuris formam imponere debet non praeteritis’ - a new law ought to regulate what is to follow not the past. (See: Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p. 438). **It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication** especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid, p. 440).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. **If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity.** Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p. 388). The rule against retrospectivity does not extend to protect from the effect of a repeal a privilege which did not amount to accrued right. (p. 392)

(emphasis supplied)

7.2. In *Indian Tobacco Association*, (supra) the question that fell for the consideration of the Supreme Court was as to what would be the effect of subsequent notification, 'substituting' the list of places specified in the original notification. The Supreme Court in this judgment in paragraphs-15 and 16 considered the word substitute and observed thus :

“15. The word “substitute” ordinarily would mean “to put (one) in place of another”, or “to replace”. In *Black’s Law Dictionary*, 5th Edn., at p. 1281, the word “substitute” has been defined to mean “to put in the place of another person or thing”, or “to exchange”. In *Collins English Dictionary*, the word “substitute” has been defined to mean “to serve or cause to serve in place of another person or thing”; “to replace (an atom or group in a molecule) with (another atom or group)”; or “a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague”.

16. **By reason of the aforementioned amendment no substantive right has been taken away** nor any penal consequence has been imposed. Only an obvious mistake was sought to be removed thereby.”

(emphasis supplied)

8.3. It would be relevant to notice the following observations made by the Supreme court in *Zile Singh* (supra), while dealing with the amendment by way of substitution in paragraph 25 of the judgment:

“....Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see *Principles of Statutory Interpretation*, *ibid.*, p. 565).....In *West U.P. Sugar Mills Assn.* case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative.....”

8.4. In *Sham Rao V Parulekar*, (supra) the Preventive Detention Act 1950 was due to expire on the first of April 1951, but in that order, an amending Act was passed which, among other things prolonged its life to the first of April 1952. The order of detention in the case before the Supreme Court was passed under the Act of 1950 as amended by Act of 1951. According to the above decision of the Supreme Court the detention would have expired on the first of April 1952 when the Act of 1950 as amended in 1951 would itself have expired. But fresh Act was passed in 1952, namely, the Preventive Detention (Amendment) Act, 1952. The effect of this Act was to prolong the life of the Act of 1950 for a further six months, namely, till the 1st of October 1952. In this backdrop, the question that fell for consideration of the Supreme court was whether that Act also prolonged the detention and whether it had the 'vires' to do so. The following observation made by the Supreme Court, while dealing with the question, in paragraph-7 are relevant for our purpose:

“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, then 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.

- 8.5. In *Sham Sundar*, (supra) the question that fell for the consideration of the Supreme Court was, what was the effect of substituted Section 15 introduced by Haryana Amendment Act 1995, in the parent Act i.e. the Punjab Pre-emption Act, as applicable to the State of Haryana whereby, the right of a co-sharer to pre-empt a sale had been taken away during the pendency of an appeal filed against a judgment of the High court affirming the decree passed by the trial Court in a pre-emption suit. The Supreme court in this case considered the effect of substituted Section 15 introduced by Amendment Act 1995 on the substantive rights of the parties and after considering the judgments in *Hitendra Vishnu Thakur v. State of Maharashtra*, MANU/SC/0526/1994 : (1994) 4 SCC 602; *Garikapati Veeraya v. N. Subbaiah Choudhary*, MANU/SC/0008/1957 : AIR 1957 SC 540; *Dayawati v. Inderjit*, MANU/SC/0022/1966 : AIR 1966 SC 1423 and *K.S. Paripoornam v. State of Kerala*, MANU/SC/0200/1995 : (1994) 5 SCC 593, in paragraph 28 observed thus :

“From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment.....”

9. It is in this backdrop, we now proceed to have a glance at the relevant provisions of the Act as they stand before and after the amending Act No. 3 of 2013.

- 9.1. Sub-section (4) and sub-section (5) of Section 28-A are relevant for our purpose. Sub-section (4) as it stood before the amending Act No. 3 of 2013 read thus:

“(4) Subject to the provisions of Section 29A and 39A, the term of office of the members of the committee shall be **five Co-operative years** and they shall be deemed to have vacated office as such members of the committee on the date of completion of the said term.”

(emphasis supplied)

The proviso and explanation to this sub-section are not relevant for our purpose.

- 9.2. Sub-section (5) of Section 28A as it stood before its amendment by amending Act No. 3 of 2013 read thus:

“(5) If the new committee is not constituted under Section 29A on the date of expiry of the term of office of the Committee, the Registrar or any other officer within whose jurisdiction the society is situated, and who is authorised by the Registrar shall be deemed to have assumed charge as Administrator and he shall for all purposes function as such Committee of management. The Administrator shall, subject to the control of the Registrar, exercise all the powers and perform all the functions of the Committee of the Co-operative Society or any office bearer of the co-operative society and take all such actions as may be required, in the interest of the co-operative society.

Provided that the Registrar shall appoint an administrator to a Co-operative Society or each of the Co-operative Societies formed after amalgamation or reorganization or division in accordance with Section 14 for a period of three months and the administrator so appointed shall arrange for holding elections to a Committee of such Co-operative Society or Societies as the case may be.”

- 9.3. From bare perusal of sub-section (4), it is clear that subject to the provisions of Section 29-A and 39-A, the term of office of the members of the Committee was “five co-operative years” and they were deemed to have vacated office as such members of the Committee on the date of completion of said term. Sub-section (5) provided if the new committee was not constituted under Section 29-A, on the date of expiry of the term of the outgoing committee, the Registrar or any other officer, authorised by the Registrar was deemed to have assumed charge as Administrator. In short, sub-section (4) and sub-section (5) provided that under any circumstances, the outgoing committee would not continue on expiry of “five cooperative years”.
- 9.4. Section 28-A was amended by Act No. 6/2010 with effect from 30-03-2010. By this amendment, the words “term of office of the committee” in sub-section (5) of Section 28-A were substituted by the words “term of office of the committee or if the elections are not held within the time limits specified in Section 39-A”. Subsection (4) was not amended and it remained the same.
- 9.5. Section 28-A was once again amended by the amending Act No. 3 of 2013 whereby, the word “committee”, not only in this provision but wherever it occurred in the Act was substituted by the word “board”. Insofar as sub-section (4) is concerned, the words “five co-operative years” were substituted by the words “five years from the date of election”. Insofar as subsection (5) is concerned, it remained the same.
- 9.6. By the amending Act No. 3 of 2013, the legislature made the term of elected board five years from the date of election. In sub-section (5) of Section 28-A, by the amending Act No. 6 of 2010, one more contingency/situation was inserted, whereby, the Registrar was conferred with the power to appoint an administrator if the elections are not held within the time limits specified in Section 39-A, in addition to the situation, if the new Board is not constituted under Section 29-A, on the date of expiry of the term of office of the Board.

10. That takes us to consider Section 29-A of the Act. This provision deals with the commencement of term of office. It would be relevant to reproduce Section 29-A as it stood prior to the amendment Act No. 3 of 2013, which reads thus:

“Section 29-A: Commencement of Term of Office: (1) The term of office of the elected members of the committee shall commence on the date on which the majority of the elected members of the committee assume office or the term of the out going committee expires, whichever is later.

(2) Notwithstanding anything contained in this Act or the rules or the bye-laws of a cooperative society, the committee shall be deemed to be duly constituted when, the majority of the elected members of the committee are available to function as members of the committee after the election.

(3) The committee deemed to be constituted under sub-section (2) shall be competent to exercise all the powers and perform all the functions of the committee of the co-operative society.”

10.1. This Section was amended by Act No. 6/2010 with effect from 30-03-2010. By this amendment, the words, “The term of office of the elected members of the committee” in sub-section (1) were substituted by the words “The term of office of the members of the committee”. The amendment by Act No. 6/2010, for our purpose, is insignificant.

10.2. Section 29-A was then amended by the amending Act No. 3 of 2013, by which, only the word ‘committee’ occurring at all places in this provision was substituted by the word ‘board’.

10.3. Thus, the amendments made from time to time, insofar as Section 29-A is concerned, for our purpose, are insignificant. Under this provision, the term of office of the members of the Board commences on the date on which the majority of the elected members of the board assume office or the term of the outgoing board expires, whichever is later. In other words it means, if the election is held before expiry of the term of the office of board as contemplated under Section 28-A(4) of the Act, the newly elected members of the board shall assume office on expiry of the term of the outgoing board and not before that.

11. Next we would like to consider the provisions contained in 39-A of the Act. Before its amendment by Act No. 6 of 2010, it did not specify the time limits, as provided after this amendment. By the amending Act No. 6 of 2010, sub-section (2) as it stood prior to 03-11-2009 was substituted by sub-section (2), whereunder, time limits were specified for conducting general election of the members of the committee in respect of primary societies, secondary societies, federal societies and apex societies. The amended sub-section (2) only is relevant for our purpose.

11.1. Again, by the amending Act No. 3 of 2013, Section 39-A was amended with effect from 11.2.2013. By this amendment, no significant changes were made, insofar as these appeals are concerned. The amended provision specified time limits for the elections of Boards

of societies of all categories and further provided that the incumbent boards of all such co-operative societies shall continue to be in their respective offices till the conduct of the elections, as provided therein. Further, it provided that the Election Commissioner should start the preparatory work for the conduct of elections during the last six months prior to the expiry of the term of office of the board and till the elections are conducted the incumbent board shall continue in their respective office.

12. Section 28-B, in particular, sub-section (2) thereof is also relevant to know the intendment of the legislature. Sub-section (2) prior to its amendment by the Amending Act No. 3 of 2013 and after the amendment remained the same except the substitution of the word 'committee' by the word 'board'. Under this provision, the members of the board who failed to make arrangements for election within the time limits specified in Section 39-A, shall be deemed to have vacated their office on the last day of the time limit so specified and such members shall not be eligible for election as members of the Board for a period of five years from the expiry of their term.
13. Sub-section (4) of Section 28-A provides five years term of office from the date of election of the members of the committee, subject to provisions of Section 29A and 39-A, and on expiry of the term, the members of the committee shall be deemed to have vacated office as such members on the date of completion of the said term. Under Section 39-A, the Election Commissioner is obliged to start the preparatory work for the conduct of the elections during the last six months prior to the expiry of the term of office of the board of the co-operative society and till the elections are conducted the incumbent board shall continue in their respective office. Similarly under sub-section (2) of Section 28-B, the election of a board shall be conducted before expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the term of office of the members of the outgoing board. If for any reason, the elections are not held before expiry of the term, the consequences, as provided for under sub-sections (4) and (5) of Section 28-A and sub-section(2) of Section 28-B shall follow.
14. It is not in dispute and there cannot be any cavil that the election of members of the board shall now (after the amending Act No. 3 of 2013 was brought into force on 11.2.2013) be conducted as per the amending Act No. 3 of 2013. Sub-section(5) of Section 28A provides that if a new committee is not constituted under Section 29-A, on the date of expiry of the term of the office of the board, or if the elections are not held within the time limits specified under Section 39-A, the consequences provided therein shall follow, viz., deeming effect of Section 28(4), Section 29-B(2) and appointment of an administrator under Section 28-A(5) of the Act. We hold that the amended provisions, introduced by way of substitution by the amending Act No. 3 of 2013, would operate retrospectively and as a result thereof, members of the existing boards/committees would continue till expiry of the term of five years from the date of their elections, and since the said term has not yet expired, they shall continue till the elections are held within the time limits specified in Section 39-A of the Act or till the newly elected board assume office or the term of outgoing board expires, whichever is later. We make it clear, that we are not considering a situation, where the term of the elected Board, as provided for under sub-section (4) of Section 28-A, once gets over whether such board would also continue till the elections are held within the time limits specified under Section 39-A of the Act. Such contingency/situation, has

not arisen in the present cases apart from the fact that none of the appellants/petitioners made such prayer in the writ petitions. Thus, if the amended sub-section (4) of Section 28-A is held to be retrospective in operation, the term of the boards/committees in all these appeals would stand extended till expiry of the period of five years from the date of their election and they shall continue till the time limits specified in Section 39-A of the Act to hold elections get over.

15. In this backdrop, before we proceed to consider whether substituted provisions, vide Act No. 3 of 2013, would operate retrospectively, we would also like to have close look at the provisions inserted in the Constitution of India, by the Constitution (Ninety-seventh Amendment) Act, 2011 (for short “the Act of 2011”), which deal with co-operative societies. We, however, make it clear that we are making reference to the Act of 2011, for a limited purpose to find out whether by necessary implication, the legislature intended the substituted provisions to have a retrospective operation.

15.1. Article 243ZJ speaks of the number and term of members of board and its office bearers. ‘Board’ is defined under clause (b) of Article 243ZH to mean the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction and control of the management of the affairs of a society is entrusted to; Clause (2) of Article 243ZJ states that the term of office of elected members of the board and office-bearers shall be five years from the date of election and the term of office-bearers shall be co-terminus with the term of the board. Article 243ZK deals with election of members of board, which reads thus:

“243ZK. Election of members of board.- (1) Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board.

(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a cooperative society shall vest in such an authority or body, as may be provided by the Legislature of a State, by law:

Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such election.”

15.2. Article 243ZT speaks of continuance of existing laws in the following terms:-

“243ZT. Continuance of existing laws.- Notwithstanding anything in this Part, any provision of any law relating to cooperative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.”

15.3. On a conjoint reading of the aforesaid Articles, it is clear that the term of office of the elected members of the board and its office bearers is prescribed as five years from the

date of election and the term of the office bearers is co-terminus with the term of the board. The election of a board has to be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board. The prescription of the term of office of the elected members of the board of a Co-operative Society may vary from State to State. Therefore, Article 243ZT has provided a non obstante clause stating that any prescription contrary to clause (2) of Article 243ZJ shall continue to be in force till the period it is amended or repealed by a competent Legislature or until expiration of one year from the date of commencement of the constitutional amendment, whichever is less.

- 15.4. Thus, having regard to the mandate of Article 243ZT, the provisions of the Act were amended, particularly with regard to the term of office as stated in Section 28-A of the Act. It is also significant to note that initially, the term of office was five years from the date of election. By an amendment brought about in the year 2004, the term of office was prescribed as five cooperative years. The term 'Co-operative year' was defined in Section 2(t) of the Act to mean the year commencing from the first day of April. In view of the constitutional mandate contained in Article 243ZT, an amendment was made to the Act by virtue of the amending Act No. 3 of 2013 with 11th February 2013 as the date for enforcement of the provisions of the Act which was within one year from the date of commencement of the constitutional amendment, which was 15.02.2012. Therefore, in order to prescribe the term of office of the board of the Cooperative Society in consonance with the constitutional prescription, sub-section (4) of Section 28-A was amended to the effect that the term of office of the Board would be five years from the date of election.
16. The Act was introduced in 1959 to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies in the State of Karnataka. The object of the Act is to provide good and efficient management of cooperative societies through the elected members of the board. Election as members of the board, is not a substantive right of the members and it is only a right of being a member of the Managing Committee for the term specified under the Act.
17. As to the effect of the amending Act No. 3/2013, the language will have to be examined to find out the intendment of the legislature. Every statute is prima facie prospective unless it is expressly or by necessary implications or intendment made to have retrospective operation. This rule, however, is applicable where the object of the statute is to affect vested rights or to impose new burden or to impair existing obligations. As observed by the Supreme Court in *Zile Singh* (supra), unless there are words in the statute sufficient to show the intention of the legislature to affect the existing rights, it is deemed to be prospective. It is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. As observed by the Supreme Court, in the absence of a retrospective operation having been expressly given, it is necessary to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity.

18. The retrospectivity is liable to be decided on a few touchstones such as the words used must expressly provide or clearly imply retrospective operation and the retrospectivity must be reasonable and not excessive or harsh. (See National Agricultural Co-operative Marketing Federation of India Limited vs. Union of India (MANU/SC/0243/2003 : (2003) 5 SCC 23). Thus, the absence of a provision expressly giving retrospective operation to the legislation is not determinative of its prospectively or retrospectivity. The other factors will have to be seen to find out whether the amendment was necessarily intended to have retrospective effect and if one can unhesitatingly conclude in favour of retrospectivity there is no reason why the Court should hesitate in giving the Act or the relevant provision that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statute. We do not find any such mandate in the amending Act No. 3 of 2013.
19. The amendments, by amending Act No. 3 of 2013, were introduced by the State legislature, as observed earlier, to bring it in tune with the 97th amendment to the Constitution of India. On perusal of the amended provisions, more particularly, sub-section (5) of Section 28-A read with sub-section (2) of Section 28-B and Section 39-A of the Act and so also the provisions of the Act of 2011, (97th Amendment to the Constitution), it is clear that by necessary implication/intendment, as it appears from the language employed therein, the legislature intended to give retrospective effect to these provisions.
20. Thus, having regard to the language employed in the Amending Act No. 3 of 2013 and the Act of 2011 (97th Amendment to the Constitution) we are satisfied that by necessary implication/intendment the amended provision would operate retrospectively and as a result thereof, term of all the boards shall stand extended till expiry of the period of five years from the date of their election.
21. We would also like to examine the effect of amendment by way of substitution and to find out whether amendment by Act No. 3 of 2013, by way of substitution would have retrospective operation. It is true that substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. When the legislature amends the old provision by way of substitution it intends to keep alive the old provision. The Supreme Court in Zile Singh (supra) while dealing with such situation observed that having regard to the totality of the circumstances centered around the issue the Court can hold that the substitution has the effect of just deleting the old provision and making the new provision operative. The Supreme Court in State of Rajasthan vs. Mangilal Pindwal, MANU/SC/0549/1996 : AIR 1969 SC 2181 upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held the substitution would have the effect of a amending operation of law during the period in which it was in force. Similarly, in Koteswar Vittal Kamath v. K. Rangappa Baliga, MANU/SC/0036/1968 : AIR 1969 SC 504, the three Judge Bench of the Supreme Court emphasized the distinction between supersession of rule and substitution of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. Thus, what emerges from the aforesaid judgments of the Supreme Court is that an amendment which has the effect of substitution of a provision has the effect of replacing the old provision by the substituted provision and in the absence of repugnancy, inconsistency and absurdity, must be construed as

if it has been incorporated in the Act right from ab-initio. In other words, an amendment by way of substitution has retrospective operation.

22. The State Government, in the present case, by substituting new provisions of the Act in the place of old one, in our opinion, did not intend to keep alive the old provisions, otherwise, it would have made its intention clear in the amending Act No. 3 of 2013. Having regard to the totality of the circumstances centering around the issue, we have no hesitation to hold that substitution, by the amending Act No. 3 of 2013, had the effect of just deleting the old provisions and making the new provisions operative as if the same were in existence from inception. It is well settled that the process of substitution consists of two steps, first, the old Rule is made to cease to exist and, next, new rule is brought into existence in its place. Having regard to this principle, we find that all the substituted provisions introduced by way of Amending Act No. 3 of 2013, have retrospective operation. Thus, the rule against retrospectivity is not applicable when an amendment is made to a provision by way of substitution. Considering that the elected members of the Managing Committee do not have any substantive/vested right and their term is governed by the provisions, in particular, the amended Sub-section (4) of Section 28-A of the Act, shall continue till the expiry of the period of five years from the date of their election. We do not agree with the view taken by the Division Bench in S.M. Kelageri.
23. The judgment of the Supreme Court in Shyam Sunder, in our opinion, is of no avail to the respondents since the elected members of the board do not have any substantive/vested right in continuing as members of the board or to make any grievance even about curtailment of their right to continue as such. Their term is governed by the provisions of the Act.
24. We, accordingly in answer to the first question referred to the Full Bench hold that Section 28-A(4) of the Act is retrospective in nature and that an administrator cannot be appointed under Section 28-A(5) of the Act, till expiry of the period of five years from the date of their election as contemplated by sub-section (4) of Section 28-A of the Act.
25. Insofar as the second question is concerned, in our opinion, in the facts and circumstances of the case, prayers made in the writ petitions by the appellants and so also our opinion on the first question, it does not arise for our consideration. We say so, because it would not be necessary for this Court to consider the situation where the elections are not conducted even till after expiry of the term of five years from the date of election as per the amended provisions of the Act. Apart from that, it is not in dispute that the Election Commissioner has already started preparatory work to conduct elections, as contemplated by Section 39-A of the Act, and that the elections are slotted to be conducted in the last week of May, 2014 and the newly elected boards shall assume charge on expiry of the period of five years from the date of elections of the existing boards. This Bench has so recorded in order dated 21.4.2014.
26. The Board of Hassan Milk Union was elected on 1st July 2009 and their term as per the amended provisions contained in Sub-section (4) of Section 28-A of the Act would come to an end on 30th June 2014. It is mandatory to hold elections within the time limits specified under Section 39-A of the Act. In this view of the matter, the second question as formulated by the Division Bench while making reference to the Full Bench need not be answered and suffice it to say that till the elections are conducted and charge is handed over to the newly elected board,

the existing members of the board shall continue to hold office. We have not entered into a question whether the Registrar or any other officer within whose jurisdiction the society is situated, and who is authorised by the Registrar can take charge as administrator on expiry of term of office of the members of the board, as provided for under sub-section (4) of Section 28-A viz., of five years from the date of election. Since none of the appellants/petitioners raised such issue or made any prayer to that effect, we are of the opinion that the second question as formulated need not be answered. It could be considered in an appropriate matter. Similarly, the third question, as observed earlier, does not require our answer as its validity was not a subject matter of debate before this Bench. In this view of the matter the order dated 21-4-2014 passed by us shall continue to operate with the modification that the existing elected boards of the societies shall continue to hold office till expiry of the period of five years from the date of their elections.

27. We shall finally conclude thus:

- i) Sub-section (4) of Section 28-A of the Act has retrospective operation.
- ii) The members of the existing boards shall continue to hold office till expiry of the period of five years from the date of their election and no administrator can be appointed till then.

The Reference is answered accordingly.

28. After answering the reference, it would have been more appropriate to direct the Registry to place all the writ appeals before appropriate Bench for their disposal, in light of the opinion expressed in this judgment. However, in view of the ensuing summer vacation which is starting from 5th May 2014 and holidays prior thereto and considering that the appeals pertain to the elections of co-operative societies, we deem it appropriate to dispose of the writ appeals by the following order :

The order of the learned single Judge dated 6th March 2014 disposing of the writ petitions from which these appeals arise is set-aside. The elected boards of the societies shall continue to hold office till expiry of the period of five years from the date of their elections and till then, no administrator shall be appointed and the elected board shall take charge only on expiry of the term of office of the members of the board. In view thereof, the communication dated 29.01.2014, impugned in the writ petitions is rendered ineffective. The writ appeals are accordingly disposed of in terms of the opinion expressed by us in this judgment.

Equivalent Citation: 2010(5)KarLJ574, 2010(4)KCCR2627

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 14160 of 2010

Decided On: 31.05.2010

Appellants: **M. Sadananda S/o Late M. Subba Rao**

Vs.

Respondent: **Chief Executive Officer/The General Manager, Kadaba Co-operative Agricultural Bank Ltd.**

Hon'ble Judges/Coram:

Aravind Kumar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sarat Chandra Bijai, Adv.

Subject: Civil

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959

Disposition:

Petition dismissed

Case Note:

Civil - Dismissal of execution petition - Order passed by executing Court dismissing the execution petition on the ground of not maintainable - Order under challenge in present petition - Held, in present case, certificate issued by the Registrar under Sub-clause (a) of sub-Section (1) of Section 101 of the Karnataka Co-operative Societies Act, 1959 (the Act) enable the person in whose favour the award was passed to file an execution petition before the civil Court for executing the award - It would emerge from Section 101(1)(a) the Act that in order to execute the award through the process of civil Court, the issuance or grant of certificate would be necessary without which execution petition could not be filed - Issuance of certificate signed by the Registrar would have to be construed as enabling provision - Then in such an event the certificate contemplated under Section 101(1)(a) the Act would not arise at all - It could not be held that the certificate if it were to be contrary to award, would also became executable - Petition dismissed.

Industry: Banks

ORDER**Aravind Kumar, J.**

1. Order dated 10-11-2009 passed in Ex. No. 7/2006 by the Civil Judge, (Sr.Dn.) and Addl. C.J.M. Puttur, Dakshina Kannada is impugned in the present writ petition. An award came to be passed by the Assistant Registrar of Co-operative Societies, Puttur Sub Division, Puttur, in dispute No. 675/1999-2000 by order dated 9-2-2001 holding that domestic enquiry held by the respondent is invalid and ordered reinstatement of petitioner in the post held by him and also directed the Executive Officer of the respondent bank to hold fresh enquiry in accordance with law and thereafterwards to take steps against the petitioner based on the said enquiry.
2. This order came to be challenged by the respondent bank before the Karnataka Appellate Tribunal at Bangalore in Appeal No. 1040/2001 which resulted in dismissal, by order dated 18-6-2004 which came to be confirmed by this Court in W.P. No. 33126/2004 dated 26-11-2004. During the interregnum period namely between 9-2-2001 and 26-11-2004 the petitioner attained age of superannuation on 5-10-2004 and was deemed to have superannuated from service.
3. After the disposal of the writ petition on 26-11-2004 petitioner sought for issuance of certificate as required under Section 101 of Karnataka Co-operative Societies Act, 1959 to enable him to file execution petition before the Civil Court for enforcing award dated 9.2.2001. The said certificate came to be issued under Annexure-'C' dated 10-2-2006 by the jurisdictional Assistant Registrar of Co-operative Societies. On the basis of the same Execution Petition came to be filed in Execution No. 7/2006 before the Civil Judge (Sr.Dn.) and Addl. C.J.M., Puttur Dakshina Kannada by the petitioner. On hearing the decree holder and the judgment debtor about the maintainability of the execution petition, the executing Court by Order dated 10-11-2009 dismissed the Execution Petition as not maintainable. It is this order which is impugned in the present writ petition.
4. Heard. Sri Sarat Chandra Bijai, learned Counsel appearing for the petitioner would contend that order of the executing Court is erroneous and executing court could not have gone beyond the certificate issued by the jurisdictional Assistant Registrar of Co-operative Societies, particularly when the judgment debtor have not questioned Annexure 'C' and thus, Annexure-'C' having become final it was incumbent upon the executing Court to accept the certificate issued by Assistant Registrar of Co-operative Societies in toto and execute the same as if it were a decree and in support of his proposition he pressed into service sub Clause (a) of Sub-Section (1) of Section 101 of the Karnataka Cooperative Societies Act, 1959.
5. Having heard the learned Counsel for the petitioner and having perused the order passed by the trial Court it would be necessary to extract the provisions pressed into service by the learned Counsel for the petitioner namely Section 101(1)(a) which reads as under:

101. Execution of orders, etc. (1) Every order made by the Registrar under Sub-section (1) of Section 69 or under Section 99, every decision or award made under Section 71, every order made by the Liquidator under Section 74 and every order made by the Tribunal under Sections

105 and 107, and every order made under Section 106 or 108 shall subject to any other provision of this Act be binding on the person or co-operative society against whom the order, decision or award has been obtained or passed and shall, if not carried out.

- (a) on a certificate signed by the Registrar, or any person authorised by him in this behalf, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or*
- (b) XXXXX*

6. A perusal of the same, would depict that certificate issued by the Registrar or any person authorised by him in the said behalf, is to be deemed a decree of Civil Court for purpose of executing the same before the Civil Court. In the instant case the award dated 9-2-2001 has been passed to reinstate the petitioner and hold a fresh enquiry and such being the position, the certificate has been issued by the Assistant Registrar of Co-operative Societies calling upon the respondent herein to pay certain amounts which admittedly is not awarded under the award dated 9-2-2001. Considering this fact executing Court has found that there is no award passed for payment of amount and accordingly held that the certificate cannot be executed. A certificate issued by the Registrar or any person authorised by him under Sub-clause (a) of sub-Section (1) of Section 101 enable the person in whose favour the award is passed to file an execution petition before the Civil Court for executing the award. Thus, it would emerge from combined reading of Section 101(1)(a) that in order to execute the award through the process of Civil Court, the issuance or grant of certificate would be necessary without which execution petition cannot be filed. The issuance of certificate signed by the Registrar or any person authorised by him would have to be construed as enabling provision. A person in whose favour award has been passed, would entitled to ignite the execution proceedings before the Civil Court on the strength of such certificate. The award may also be executed by the authorities designated by the Registrar or such other person empowered under the Act itself. Then in such an event the certificate contemplated under Section 101(1)(a) would not arise at all. In view of this it cannot be held that the certificate if it were to be contrary to award, would also become executable.
7. In view of the same the order passed by the Executing Court is required to be confirmed as it does not suffer from any infirmity in law and accordingly the writ petition is dismissed as devoid of merits. No order as to costs.

Equivalent Citation: AIR1990Kant290, 1989(2)KarLJ277

IN THE HIGH COURT OF KARNATAKA

W.Ps. Nos. 18782 of 1988 and 304 of 1989

Decided On: 21.02.1989

Appellants:**C. Channabasappa**

Vs.

Respondent: **Davangere Primary Co-operative Agriculture &
Rural Development Bank Ltd., and another**

Hon'ble Judges/Coram:

P.P. Bopanna, J.

Counsels:

For Appellant/Petitioner/Plaintiff: V.H. Ron, Adv.

For Respondents/Defendant: F.V. Patil, Vishwanatha Shetty, Advs. and Smt. Aileen Nimmy Swamy,
High Court Govt. Pleader

Subject: Banking

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Karnataka Co - operative Societies Rules, Karnataka Co - operative 1960; Karnataka Municipalities Act - Section 18(1)

Cases Referred:

H.S. Prakash v. State of Karnataka, ILR (1988) Kant 619; London Rubber Co. Ltd. v. Durex Products Incorporated, AIR 1963 SC 1882;

Case Note:

Election - Cancellation of Election - Sections 27, 28A(4) and 28A(4) of Karnataka Cooperative Societies Act, 1959 and Rule 13 of Karnataka Co-operative Societies Rules, 1960 - Present petition filed against Government to issue directions regarding all matters connected with annual general meeting or election including directions for cancellation or postponement of such meeting or election - Held, Court has considered object of Act and purpose for which Sections 28A(3) and 28A(4) of Act were enacted - Keeping the object and purpose of those sections in mind, Court has come to conclusion that a literal interpretation of Section 28A(4) would be doing violence to Section 27 which provides for annual general meeting to be held and the Scheme under Section 28A(3) which provides election to Committee of Management once in 3 years and also scheme of Rule 13 of Rules which provides for handing over charge of affairs of Society tot new Committee

of Management after election takes place - All societies in this State, uniformly new President and Vice-President have been elected and decision taken by this society for electing new president and Vice President 'would' be undone - Court does not think that such situation would arise since enforcement of impugned notification against other societies will not be affected by this decision unless some members of those societies choose to challenge elections already held to posts of President and Vice President following decision of this Court and whether they would succeed at this distance of time would be matter for consideration by this Court - Accordingly, petition is allowed

Industry: Banks

ORDER

1. The petitioner who was elected as the President of the 1st respondent/ Primary Co-operative Agriculture & Rural Development Bank Ltd. (in short the Bank) has questioned the correctness of the notice issued by the Bank dt. 24-12-1988 (produced as Ann-H in the writ petition) as also the order of the Deputy Registrar of Co-operative Societies, Chitradurga, which is produced as Ann. J in the writ petition on the ground that they are violative of the provisions of S. 28A(4) of the Karnataka Cooperative Societies Act, 1959 (in short the Act) read with the proviso to R. 13 of the Karnataka Co-operative Societies Rules, 1960 (in short the Rules). The facts are not in serious controversy, but the application of these facts to the relevant provisions of the Act has caused some difficulty in deciding this matter.
2. The petitioner was elected as the President of the Bank in the year 1987 and his term of office in the ordinary course expired on 30-9-1988. Likewise the term of members of the Committee of Management (in short the Committee) also would expire on 30-9-1988 as they have finished the term of 3 years as provided under S. 28A(3) of the Act. Now under the scheme of S. 28A which was put in the statute book by the Amendment Act No. 5 of 1984 with effect from 9-1-1984, the term of office of the Committee is 3 years and the term of office of the elected President and the Vice-President and other Office bearers is one year. The petitioner, as noticed earlier, was elected as the President of the Bank and his term expired on 30-9-1988. The Annual General Meeting of the Bank has to be held once in a year but within 3 months after the date fixed for making up its accounts for the year under the rules or bye-laws for the time being in force and in that Annual General Meeting the election of the Members of the Committee should have taken place. But under the proviso to S. 27 the Registrar may, by general or special order, extend the period for holding such meeting by a period not exceeding six months. But, in this case the Registrar did not extend the period for holding the Annual General Meeting of the Bank. But, the State Government by virtue of the amendment made to the notification dt. 8-9-1988, inserted in sub-s. (1) to S. 27 of the Act, by notification dt. 15-12-1988, a further proviso as follows :

“Provided further that every annual general meeting or election to a Co-operative Society, shall be subject to the control and supervision of the Government and it shall be lawful for the Government to issue directions regarding all matters connected with annual general meeting or election including directions for cancellation or postponement of such meeting or election.”

The Note appended to the notification dt. 15-12-1988 reads as under :

“The above modification to S. 27 shall remain in force up to 30th April, 1989 and upon its expiry, the provisions of the said S. 27 which were in force prior to the modification by this order shall stand revived but shall not affect the previous operation of the said section as modified by this order.”

But for the above notification, the annual general meeting of the Bank would have been held on or before 30-9-1988 and in that meeting there would have been elections for the Committee and also to the posts of President and Vice-President. But pursuant to the second proviso introduced by the notification dt. 15-12-1988 the State Government has now postponed the election to the Committee of all the Co-operative Societies up to 30-4-1989. However, the annual general meeting of the Bank is permitted to be held as per the provisions of S. 27 of the Act.

3. Now the point for consideration is what is the effect of S. 27(1)(b) of the Act, on the provisions of S. 28A(3) of the Act. If the annual general meeting is not postponed but the life of the committee is extended as in this case by the postponement of the elections to the Committee, what will be the effect of such postponement of the election to the Committee on the provision of S. 28A(4) which provides for election of the office bearers of the Committee every year. Mr. Vishwanatha Shetty contends that full effect must be given to S. 28A(4) of the Act irrespective of the period of extension given to the Committee by the impugned notification and the order. According to him, the Bank has to elect anew President and Vice-President even for the truncated period of the term of the committee, that is to say, for the extended period of 4 months there should be elections to the posts of President and Vice-President. He says that if the election is postponed for 9 months or for 12 months, the life of the Committee is also extended by 9 months or 12 months as the case may be and consequently there shall be fresh elections to the posts of President and Vice-President in terms of S. 28A(4) of the Act. He relied on the decision of this Court rendered under the relevant provisions of the Karnataka Municipalities Act in *H. S. Prakash v. State of Karnataka* MANU/KA/0106/1988 : ILR (1988) Kar 619 in support of his contention. In that case, the point that arose for consideration was the effect of the notification u/s. 18(1)(a) of the Karnataka Municipalities Act extending the term of councillor beyond four years. U/s. 42(11) of the Act the elected councillors shall elect the President and the Vice-President. But under the provisions of S. 42(11) the term of office of a President or Vice-President ceases on the expiry of the terms of office of the councillor. The first proviso thereto empowers the Government to limit the term of President and Vice-President to two years and the said provision directs, the holding of the election, in such a case, for the office of President and Vice-President every second year. What happened in that case was that the State Government in exercise of its powers u/s. 18 of the Karnataka Municipalities Act extended the term of the Councillors up to 31-12-1987. Respondents 3 and 4 therein were elected as the President and the Vice-President of the Municipal Council on 8-9-1987 and their term of office was for a period of two years. The point for consideration was whether their term of office came to an end on 7-9-1987 (sic) on the expiry of 2 years and whether there should be a fresh election to the elective posts of President and the Vice-President after their term came to an end. In that case the State Government by the impugned notification in exercise of the powers under S.

42(12) of that Act appointed Respondents 3 and 4 therein as the President and the Vice-President of the Municipal Council till 31-12-1987. That notification was challenged in that writ petition. The view taken by me in that writ petition that there should be fresh election to the posts of President and the Vice-President was affirmed by the Division Bench in the above reported decision, Mr. Viswanatha Shetty relies on the very same decision in support of the plea that notwithstanding the truncated period of extension of the life of the Committee, the President and the Vice-President of the Bank should be elected once again after their term expired on 30-9-1988. According to him, S. 28A(4) of the Act does not provide for any exception and whatever may be the reasons for extending the life of the committee by the impugned notification, those reasons would not come to the aid of the petitioner herein for remaining in office till fresh elections to the Committee are held. On the contrary, Mr. Ron, learned counsel for the petitioner, relying on the definition of the word 'Committee' u/s. 2(b) of the Act and the proviso to S. 27(1) read with the proviso to R. 13(3) submitted that the provisions of S. 28A(4) would be applicable to a case where the life of the Committee is not extended by the postponement of the election as in this case and in the absence of any provision prohibiting the President and the Vice-President to continue beyond the period of one year under the Act and in the circumstances of this case they should be permitted to continue as the President and the Vice-President till a new Committee is elected on the expiry of the period fixed under the impugned notification. According to him, the life of the Committee was extended up to 30-4-1989 by the notification. Till then the petitioner could continue as the President of the Bank notwithstanding the provisions of S. 28A(4) of the Act.

4. That takes me to the scheme of the Act in so far as it relates to the Management of the Co-operative Societies. Chapter IV of the Act deals with Management of Co-operative Societies. The Co-operative Society is managed by a Committee of Management. The Committee is defined as a 'governing body' of the Co-operative Society, by whatever name called, to which the management of the affairs of the Society is entrusted. As already noticed, S. 27(1) of the Act, the annual general meeting of the Co-operative Society should be held once in a year and in that meeting election to the members of the Managing Committee takes place and after the elections to the Managing Committee, the President and the Vice-President are elected from amongst the members of the Committee. The election to the Managing Committee in the annual general meeting takes place only in case the term of 3 years comes to an end and not earlier. In this case, admittedly its term has come to an end and, therefore, there should be an election to the said Committee in the annual general meeting which had been permitted under the impugned notification. To quote the words of the impugned notification:

“However the annual General Meetings of all Co-operative Institutions shall be held as per the provision of the Karnataka Co-operative Societies Act, 1959.”

That means to say, annual general meeting under S. 27(1) of the Act is permitted to be held and what is not permitted is the election to the Committee of Management. What is this Committee of Management? Going by the definition of the word 'Committee' under S. 2(b) of the Act, “'Committee' means the governing body of a Co-operative Society, by whatever name called, to which the management of the affairs of the society is entrusted.” In other words the Committee of the management means the members elected in the annual general meeting of the society

and the persons who are nominated by the Government under the relevant provisions of the Act. But the term of the elective members of the Committee comes to an end on the expiry of the period of 3 years under S. 28A(3) of the Act, but their term is extended by postponing the elections. Under S. 28A(4) of the Act the term of the President is not extended on the ground that he had ceased to hold the office after the period of one year.

5. Mr. Shetty contended that there is no escape from compliance with S. 28A(4) of the Act and accordingly the President having ceased to hold his office on the expiry of one year, a vacuum is created and that must be filled up in the interest of management of the society by holding fresh elections to their posts. Elaborating his contention he submitted that S. 28A(4) of the Act imposes a mandate on the Committee to elect a President and Vice-President the moment they ceased to hold office after the expiry of one year.
6. On these competing contentions, the first point that requires determination is whether the decision of this Court in *H. S. Prakash v. State of Karnataka* MANU/KA/0106/1988 : ILR (1988) Kar 619 is applicable to the facts of this case. I have already referred to S. 42(11) of the Karnataka Municipalities Act. The language of S. 42(11) of this Act is not similar to the language of S. 28A(4) of the Act. Nor the scheme of Chapter 4 of the Act is similar to the scheme of the Municipalities Act providing for election to the offices of the President and the Vice-President. There is no such Committee of management under the Municipalities Act. Under the Municipalities Act there is an elected body for discharging the statutory obligations under that Act and for that purpose the President and the Vice-President are elected in terms of S. 42(11) of that Act. The Committee of Management of the Co-operative Society is constituted for the purpose of carrying on the business of the co-operative society. Every co-operative society is empowered in terms of its bye-laws of the Society to carry on its business within the framework of the Act and in this case the business of banking and the business of rural development. So, the objects of the two Acts are different; the scheme of management of the co-operative society is different from the scheme of running a local administration under S.42 of the Municipalities Act and, therefore, it is not proper for this Court to adopt the reasoning of the aforesaid decision pertaining to Municipalities for the purpose of considering the scope and intendment of S. 28A(4) of the Act. What is troubling this Court is, in a situation like the one before us, where the annual general meeting is permitted to be held under S. 27(1) of the Act, but only the election to the Committee is postponed by a few months, should there be a change in the office bearers of the committee by election to the posts of the President and the Vice-president under S. 28A(4)? Under S. 28A(3) the members of the Committee of Management shall hold their office for a period of 3 years. Under S. 28A(4) of the Act, the President and the Vice-President as the case may be are elected for a period of one year. What should happen if he continues after the expiry of one year is not provided for in the statute. In the Municipalities Act, subject to the provision of S.42(11), the term of office will be for 2 years and the election should be held every 2nd year. So, there is a positive mandate limiting the period of office to 2 years and there is a direction to hold the election every second year. Therefore, what would be the effect the notification postponing the election to the Committee up to 30-4-1989. The annual general meeting is not postponed. But only the election to the Committee is postponed. If this election had not been postponed, the members of the co-operative society would have elected a new committee of management since their term had come to an end on 30-9-1988 and they in turn

would have elected a President in terms of S. 28A(4) of the Act. But. in this case the election is postponed for reasons which appear to me are quite in order and bona fide, since the State Government is contemplating of bringing certain changes in the working of the co-operative societies by making suitable amendments to the Act in the light of the report of Jairaj Committee. So, this is an extraordinary situation created by a policy decision taken by the Government to bring about certain radical changes in the working of the co-operative societies in the light of the above said report. Therefore, this Court while construing S. 28A(3) and S. 28A(4) should keep in view whether these provisions should be strictly given effect to, in view of the extraordinary situation created by the policy decision of the Government. In my view. S. 28A(4) comes into operation under the normal state of affairs pertaining to the management of the co-operative societies, that is to say, when annual general meeting has to be held within the time stipulated under S. 27 and in that meeting the election to the Committee takes place and thereafter the members of the committee elect the President and the Vice-President under S. 28A(4) of the Act. This is also clear from the proviso to R. 13 of the Rules. Though R. 13 was enacted prior to the amendment to S. 28A of the Act, it does not in any way conflict with the amended provisions and therefore it is still good law and must be given effect to for the purpose of ensuring the continuity in the management of the co-operative societies. Rule 13(3) reads as under:

“The election of the members of the committee shall be held on or before the date specified in the bye-laws, for the expiry of the term of office of the members. If no such date is specified in the bye-laws, the term of office of the members of the Committee shall be deemed to have expired at the time of the annual general meeting and the election of the new members shall be held at such annual general meeting :

Provided that the committee whose term of office is deemed to so expire, shall continue in office till the new committee is elected and shall thereafter hand over charge of the office to such new committee.”

In this case even without resorting to R. 13(3), the term of the Members of the Committee had come to an end on the expiry of 3 years and, therefore, there should be a fresh election for constituting a new Committee. That fresh election now is postponed under the order at Ann. D. If that election is postponed, the proviso to R. 13(3) must be given effect to because the proviso says that the Committee whose term of office is deemed to so expire, shall continue in office till the new committee is elected and shall thereafter hand over charge of the office to such new committee. This committee consists of the President and the Vice-President and the other members. Therefore, it is not possible to interpret the word ‘committee’ as it appears in the proviso by excluding the office bearers, viz.. President and the Vice-President all because there should be a fresh election for their inclusion in the Committee under S. 28A(4) of the Act. Under R. 13(3) the very same committee chooses to continue in office till it hands over charge of the office to the new committee. Handing over charge” to the new committee means the President and the Vice-President and the other members shall hand over charge to the President and the Vice-President and Members of the new Committee. The members of the Committee do not play an important part in the day-to-day management of the Society but it is the President, Vice-President and other officers namely, Secretary and Treasurer, etc. who manage the day-

to-day affairs of the society and it is these office bearers who would be in a position to hand over charge of the affairs of the society to the new committee. In the circumstances, the provisions of S. 28A(4) have to be interpreted taking into consideration the impact of the notification at Ann. D on the working of the Society, on the holding of annual general meeting and on the elections to the Committee after the annual general meeting is held. The Government order, in my view, having permitted the annual general meeting to be held and having postponed the election to the Committee, it should not come in the way of a proper working of the society by throwing out the President and the Vice-President out of office for the truncated period on the ground that they should seek re-election under S. 28A(4) the Act.

7. Mr. Shetty's contention is that this view will be in violation of S. 28A(4) of the Act, since on the plain term of that subsection there should be an election every year to the Office of the President and the Vice-President. No doubt, in the ordinary course as noticed earlier, there should be an election every year for the posts of President and the Vice-President. But in the changed circumstances, I am of the view that giving effect to the literal meaning of the words as found under S. 28A(4) would be giving a set back to the proper functioning of the co-operative society and such a situation is not contemplated under the Government order at Ann. D.
8. Mr. Shetty has relied on the decision of the Supreme Court in *London Rubber Co. Ltd. v. Durex Products Incorporated*, MANU/SC/0134/1963 : [1964]2SCR211 , wherein the Supreme Court in para 15 of the judgment observed thus :

“Indeed, it is the duty of the Court to give full effect to the language used by the legislature. It has no power either to give that language a wider or narrower meaning than the literal one, unless the other provisions of the Act compel it to give such other meaning.”

That observation does not run counter to the interpretation I have put on S. 28A(4) Of the Act since I have taken into consideration the other provisions in Ss. 28A(3) and 27 of the Act and R. 13 of the Rules in order to come to the conclusion that a literal meaning of S. 28A(4) would be contrary to the intendment of the Government notification and also to the entire scheme of the Act. He also relied on Craies on Statute Law (7th edition). Chapter 5 deals with ‘Construction where the Meaning is Plain’. Mr. Shetty invited my attention to the following observation under the heading ‘Construction according to intention’ :

“Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.”

It should be noticed that the learned author has also stated in the same chapter that :

“In 1953 Lord Goddard C.J. said: ‘A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered.’”.

While interpreting S. 28A(4) I have considered the object of the Act and the purpose for which Ss. 28A(3) and 28A(4) were enacted. Keeping the object and purpose of those sections in mind, I have come to the conclusion that a literal interpretation of S. 28A(4) would be doing violence to S. 27 which provides for annual general meeting to be held and the Scheme under

S. 28A(3) which provides election to the Committee of Management once in 3 years and also the scheme of R. 13 of the Rules which provides for handing over charge of affairs of the Society to the new Committee of Management after the election takes place. In the view I have taken, it is not possible to apply the decision of this Court in H. S. Prakash v. State of Karnataka MANU/KA/0106/1988 : ILR (1988) Kar 619 to the facts of this case. The language of S.41(11) and (12) and the object and scheme of the Karnataka Municipalities Act are different from the language, object and scheme of the Act and, therefore, it would not be proper for this Court to apply the ratio of the case to the facts of this case.

9. Mr. Shetty submitted that in almost all societies in this State, uniformly new President and Vice-President have been elected and the decision taken by this society for electing a new president and Vice President 'would' be undone. I do not think that such a situation would arise since the enforcement of the impugned notification against other societies will not be affected by this decision unless some members of those societies choose to challenge the elections already held to the posts of President and Vice President following the decision of this Court and whether they would succeed at this distance of time would be a matter for consideration by this Court.
10. Accordingly, W.P. No. 18782 of 1988 is allowed and the impugned order of respondent-2 at Ann J directing fresh election to the post of President is set aside and the election held in violation of the stay order granted by this Court, i.e., the election held on 2-2-1989 to the post of President is set aside. The petitioner shall continue in the office of the President of the Bank till a new Committee is constituted in accordance with the provisions of S. 28A(3) of the Act. No costs.

W. P. No. 304 of 1989 does not survive in view of the order made in W. P. No. 18782 of 1988 and accordingly the same is dismissed as having become infructuous. No costs.
11. Order accordingly.

Equivalent Citation: ILR 2008 KARNATAKA 2245, 2009(2)KarLJ291

IN THE HIGH COURT OF KARNATAKA

R.F.A. No. 809 of 1997

Decided On: 13.04.2007

Appellants: **Binny Mill Labour Welfare House building Co-operative Society Limited**

Vs.

Respondent: **D.R. Mruthyunjaya Aradhya**

Hon'ble Judges/Coram:

N. Kumar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: M.N. Pramila, Sr. Counsel

For Respondents/Defendant: R. Pushpahasa, Adv.

Subject: Contract

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Specific Relief Act, 1963 - Section 31; Mysore Co - operative Societies Act, Mysore Co - operative 1959; Indian Contract Act, 1872 - Section 2, Indian Contract Act, 1872 - Section 19, Indian Contract Act, 1872 - Section 23, Indian Contract Act, 1872 - Section 24, Indian Contract Act, 1872 - Section 25, Indian Contract Act, 1872 - Section 26, Indian Contract Act, 1872 - Section 27, Indian Contract Act, 1872 - Section 28, Indian Contract Act, 1872 - Section 29, Indian Contract Act, 1872 - Section 30; Indian Registration Act, 1908 - Section 47, Indian Registration Act, 1908 - Section 48, Indian Registration Act, 1908 - Section 49; Transfer of Property Act, 1882 - Section 54; Companies Act

Cases Referred:

R. v. Paddington Valuation Officer and Anr. Ex parte Peachey Property Corporation, Ltd. (1965) 2 All ER 836; Director of Public Prosecution in v. Head 1959 AC 83; Dhurandhara Prasad Singh v. Jai Prakash University and Ors. AIR 2001 SC 2552; Co-Operative Central Bank Ltd. and Ors. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and Ors. AIR 1970 SC 245; In Re: Mec. (A. Minor) case 1985 1 AC 528

Authorities Referred:

Salmond on Jurisprudence, 12th Edition

Disposition:

Appeal dismissed

Case Note:

- (A) **Indian Contract Act, 1872 - Sections 2(h), 2(i), 2(g), 2(j), Valid, Void, Voidable Contracts—Enforceability in law—Legal effect of transactions—Held, A valid agreement is one, which is enforceable by law as a contract, by the parties to the agreement. A void agreement is one, which does not exist in the eye of law, and therefore fails to receive any legal recognition or sanction. In legal parlance it is a nullity or non-est. It is not a contract at all. It would be automatically null and void without more ado. Its existence or continuation has no value, as one cannot continue a nullity—Further Held, If a Statute specifically provides that a contract contrary to the provisions of the Statute would be void, it is no contract in the eye of law, it is void ab initio, and the said agreement is unenforceable in law. In between these two extreme positions, lies the voidable agreement. In law it exists and also recognized. It is a contract. It can also be enforced. But because of some defect in its origin, at the option of the party to the agreement, it is liable to be cancelled or set aside. In other words, a voidable agreement is one which is void or valid at the election of one of the parties. However, it is valid, till it is declared void by a competent court of law, in a manner known to law. Therefore, it is not a nullity or non est. It is valid and good unless avoided. It requires to be set aside.**
- (B) **Indian Contract Act, 1872 - Chapter II—Contracts, Void and Voidable agreements—Section 19—Contract voidable at the option of the party—Statutory recognition to a Contract—Binding effect on the parties—Held, Unless the Statute specifically provides that a Contract contrary to the provisions of the Statute would be void, the Contract would remain binding between the parties and could be enforced between the parties themselves. The question whether a particular thing is prohibited by the Statute must in every case depend upon the true construction of the Contract.**
- (C) **Indian Registration Act, 1908 - Part X—Effect of registration and non-registration of an instrument—Provisions of Section 47, 48 and 49—Registration of an instrument—Effect of non-registration—Transfer of title—Legality of transactions—Held, A combined reading of Sections 47, 48 and 49 makes it clear that an instrument which purports to transfer title to the property requires to be registered, the title does not pass until registration has been affected. The registration by itself does not create a new title. It only affirms a title that has been created by the deed. The title is complete and the effect of registration is to make it unquestionable and absolute. Section 47 of the Act makes it clear that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration—Further Held, However, Section 47 of the Registration Act makes it clear that, though a document is registered on a particular date, the effective date would be the date on which the said document was executed and not from the date of registration. If the document is not registered but is compulsorily registerable, though the document is duly executed, it has no legal effect and it does not affect the immovable property comprised in the said document in view of Section 49 of the Act. The registration**

of such a duly executed document comes into operation, the moment it is duly registered, not from the date of registration but from the date of execution of the said document.

- (D) **Specific Relief Act, 1963 - Section 31—Cancellation of a sale deed under—Unilateral cancellation of a sale deed by a vendor who had executed the sale deed—Legality of cancellation—Held, If after execution and registration of the sale deed, the owner wants to get back the property, it has to be done by canceling the sale deed on any of the grounds which are available to him under the provisions of the Indian Contract Act. Unilaterally he cannot execute what is styled as a deed of cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property—Further Held, In the case of a sale deed executed and registered the owner completely loses his right over the property and the purchaser becomes the absolute owner. It cannot be nullified by executing a deed of cancellation because by execution and registration of a sale deed, the properties are being vested in the purchaser and the title cannot be divested by mere execution of a deed of cancellation. Therefore, even by consent or agreement between the purchaser and the vendor, the said sale deed cannot be annulled. If the purchaser wants to give back the property, it has to be by another deed of conveyance. If the deed is vitiated by fraud or other grounds mentioned in the Contract Act, there is no possibility of parties agreeing by mutual consent to cancel the deed. It is only the Court which can cancel the deed duly executed, under the circumstances mentioned in Section 31 and other provisions of the Specific Relief Act, 1963. Therefore, the power to cancel a deed vests with a Court and it cannot be exercised by the vendor of a property.**
- (E) **Karnataka Co-operative Societies Act, 1959 - Society registered under—Bye law of the society—Statutory force—Held, Bye-law cannot be equated to law, rules or regulations. The said bye-laws only govern the internal management, business or administration of a society. They are in the nature of Articles of Association of a Company incorporated under the Companies Act. It has no Statutory force. Any act of the society contrary to the said bye-law ipso facto do not render the said act void and without authority. When the society enters into a contract with third parties or outsiders, those outsiders are in no way bound by the said bye-law—Further Held, The sale deed executed by the society represented by the President, Secretary and the Treasurer in favour of a non-member is valid and binding on the society and it is not void—Therefore, it can not be said that the sale deed executed is contrary to bye-law 36 and the same is void.**
- (F) **Karnataka Co-operative Societies Act, 1959—Binny Mills Employees Co-operative Society—Management vest with the Board of Directors—Powers of the Board of Directors, as per the Rules and Bye-laws of the Society—Sale of site by the society in favour of non-members—Special general body meeting—Prior approval by passing resolution—Validity of the sale transaction—Held, The sale was for a valid consideration. There is no prohibition in the bye-laws to sell the sites in favour of non-members. Therefore, the sale deed executed by the society in favour of the non-members cannot be said to be void. The said agreement is not forbidden by law or is of such a nature that it would defeat the provisions of any law or it is immoral or opposed to public policy. Therefore, the said agreement is lawful and not void. It is a valid contract, which is enforceable.**

Appeal is dismissed.

Industry: Cooperative Societies

JUDGMENT

N. Kumar, J.

1. This is a defendant's Regular First Appeal.
2. This appeal along with other six connected appeals were heard by this Court and by a common order dated 15.4.1999 they were allowed and the suit of the plaintiff was dismissed. Aggrieved by the said common judgment and decree dated 15.4.1999 the aggrieved persons, preferred Special Leave Petition to the Hon'ble Supreme Court of India. In the Supreme Court, the counsel for the parties agreed for setting aside the impugned judgment of this Court and remitting the appeals to the High Court for fresh disposal in accordance with law. Accordingly, the judgment and decree passed by this Court on 15.4.1999 was set aside and the appeals were remitted back to this Court for fresh decision in accordance with law with a request to dispose of the appeals as expeditiously as possible. It is thereafter, this appeal is heard along with other six connected appeals. Though the parties are different, the question of law involved in all these appeals are one and the same. For a proper appreciation of the legal issues all the advocates appearing in these appeals were heard and the legal issues have been answered. However, as the factual position differed from appeal to appeal, in the light of the finding recorded on legal issues, these appeals are decided by writing separate judgments relating to the facts of each appeal. For the sake of convenience, the parties are referred to as they are referred to in the suit.
3. The subject matter of the suit is a site bearing No. 79, 1st Phase of Kempapura Agrahara, Hosahalli extension, Bangalore-40, measuring East to West 30' and North to South 50' which is more fully described in the schedule and hereinafter referred to as the "schedule property". The case of the plaintiff is that the defendant is the owner of the schedule property. The defendant sold the schedule property to one Sri C. Janardhan Rao under a registered sale deed dated 11.3.1974 and the purchaser was put in possession on 15.10.1975 under a possession certificate. The said Sri C. Janardhan Rao sold the schedule property to one P. Noorulla Bhasha through a registered sale deed dated 1.8.1974 and put him in possession of the same. The plaintiff purchased the schedule property from the said P. Noorulla Bhasha under a registered sale deed dated 22.11.1980 and he was put in possession of the same. Thus, the plaintiff is in peaceful possession and enjoyment of the schedule property. Katha of the schedule property was transferred in his name by the Bangalore Development Authority and he is paying taxes. The plaintiff had purchased this schedule property for putting up a house and for residing therein. When he made arrangements to start the foundation work, he was obstructed by the defendant on the ground that the plaintiff has no right in the property and by a registered cancellation deed dated 5.6.1981, the defendant has cancelled the sale deed dated 11.3.1974 which was executed in favour of Sri C. Janardhan Rao. Therefore, immediately, the plaintiff got issued a legal notice under Section 125 of the Co-operative Societies Act, to the Registrar of co-operative Society and requested him to advise the defendant suitably. The notice is duly served. However, the

defendant continued his illegal activities. Therefore, the plaintiff was constrained to file the suit for the relief of declaration.

4. After service of summons, the defendant entered appearance, filed a written statement contesting the claim. They contended that the plaintiff is neither the owner nor is in the possession of the suit schedule site. The cancellation deed was registered on 5.6.1981. The suit for cancellation of the said document had to be brought within six years from the date of the document and therefore, the suit brought for the declaratory relief is barred by time. The suit is not properly valued. It was contended that the defendant society has formed a layout, to provide house sites to its employees. It is impermissible under the bye law of the Society, to sell the sites to a person other than the employee of the Binny Mills who has become a member. The plaintiff was not an employee of the Binny Mill and not a member of the defendant Society. The Purchaser Sri C. Janardhan Rao was also not an employee or member of the defendant - Society. The Defendant - Society has not sold the said site in favour of Sri C. Janardhan Rao and put him in possession of the same under a registered sale deed dated 11.7.1974. The sale deed stated to have been executed in favour of Sri C. Janardhan Rao is a void document. He cannot claim any legal right, or title over the same. He could not transfer title in favour of P. Noorulla Bhasha under the alleged sale deed dated 1.8.1974. Therefore, P. Noorulla Bhasha could not have sold the property in favour of the plaintiff under the registered sale deed dated 22.11.19 80. They denied the transfer of katha in favour of the plaintiff and contended that the document produced is a created document and it has no validity in the eye of law. Notice issued under Section 125 of the Karnataka Co-operative Societies Act to the Registrar of Societies is not in accordance with law. Therefore, they sought for dismissal of the plaintiff's suit.
5. The plaintiff filed a rejoinder reiterating the allegations made in the plaint and also contending that the suit is not barred by time and the market value of the property is correctly given and the market value of the property mentioned in the written statement is false.
6. On the aforesaid pleadings, the Trial Court has framed the following issues:
 - (1) Whether the plaintiff proves that he is the owner of the suit property?
 - (2) Whether the plaintiff proves that he is in possession of the suit property?
 - (3) Whether the plaintiff proves that defendant interfered with his possession of the suit property?
 - (4) Whether the plaintiff proves that he has issued notice to the Registrar of Co-operative Societies in conformity with Section 125 of the Karnataka Co-operative Societies Act, 1959?
 - (5) Whether the defendant proves that sale deed in favour of the plaintiff relating to the suit property is void?
 - (6) Whether the defendant proves that it is entitled to unilaterally cancel the sale deed in favour of C. Jagannath Rao?
 - (7) Whether the plaintiff proves that he is entitled to the relief sought for by him?
 - (8) What relief the parties are entitled to?

In pursuance of the amended written statement, the following additional issues were framed on 2.3.1995:

- (1) Whether defendants prove that the suit is barred by time?
 - (2) Whether defendants prove that the court fee paid is insufficient? If so, what is the court fee properly payable?
7. The plaintiff in support of his case examined himself as PW-1, produced 14 documents which are marked as Ex.P-1 to P-14. On behalf of the defendants, Vice President of the Society one K. Beeraiah is examined as DW-1. They have produced 4 documents which are marked as Ex.D-1 to D-4.
 8. The Trial Court on consideration of the oral and documentary evidence on record, held that the plaintiff has proved that he is the absolute owner of the suit property. He is in possession of the property. The defendants are interfering with the possession of the plaintiff. The plaintiff has proved that he has issued notice under Section 125 of the Karnataka Co-operative Societies Act as required under law. The defendant has failed to prove, that the sale deed of the plaintiff is void, the defendant also failed to prove that they are entitled to unilaterally cancel the sale deed in favour of Sri C. Janardhan Rao. It held the suit is not barred by time, the suit is properly valued and the court fee paid is sufficient and thus, it decreed the suit of the plaintiff as prayed for. Aggrieved by the said Judgment and decree, the Society has preferred this appeal.
 9. The Learned Counsel for tire appellant, assailing the Judgment and decree, contended that Sri C. Janardhana Rao was not an employee of the Binny Mills or a member of the defendant society. As per the bye laws, the society could not have sold the property in favour of anon member. Therefore, the said sale is void. He further contended as per Clause 36 of the bye laws, the President, Secretary, Treasurer and three directors of the Society are authorised to sell the sites of the society.
 10. Admittedly, the three Directors of the Society have not joined in executing the sale deed in favour of Sri C. Janardhan Rao. The amendment to the bye-laws, sought to be brought about in 1973 by the Secretary Sri Annayyappa, was not approved by the Asst. Registrar of Co-operative Societies. Similarly, the permission sought by the Society for sale of site to non members was refused by the Asst. Registrar of Co-operative Societies and therefore the sale deed on the basis of which, the plaintiff claims title is void and plaintiff has no right to the suit schedule site. The General body meeting authorised the new office bearers in the meeting held on 28.9.1980 to cancel the sale deeds executed in favour of non members. It is in pursuance of the said authorisation, the impugned cancellation deed came to be executed by the Society. It is valid and legal. The courts below committed a serious error in ignoring the aforesaid material facts and in passing the impugned Judgment and decree which cannot be sustained.
 11. Per contra, the Learned Counsel appearing for the respondent - plaintiff contended that there is no prohibition in the bye-laws for execution of a sale deed in favour of a non-member. Even if it is to be held that a non-member is not entitled to a sale deed from the society, the sale deed executed by the society would be voidable at the instance of the society. Admittedly no steps are taken in accordance with law for cancellation of such sale deed. Therefore, until and unless

the said sale deed is cancelled in a manner known to law, the said sale deed is valid in the eye of law. The society ceases to be the owner of the site having conveyed absolute title in favour of non-members. If the society is held to be entitled to get the sale deed executed in favour of a non-member cancelled, such a cancellation cannot be done by the society unilaterally executing the cancellation deed and getting it registered. The cancellation of the sale deed has to be by a Court as contemplated under Section 31 of the Specific Relief Act, 1963. The bye-laws of a society cannot be equated to law, rules or regulations. It is only an agreement between the society and its members. It would not partake the character of law. Therefore, even if the sale deed executed by the society is held to be contrary to bye-law 36 it does not fall within the mischief of Section 23 of the Contract Act as contended and is not void.

12. In order to appreciate the rival contentions, the three resolutions of the society passed on 09.12.1973, 25.12.1973 and 25.09.1980, are relevant and also assumes significance.
13. In a meeting of the Board of Directors of the society held on 09.12.1973, President, Secretary and Treasurer have been specifically authorised to execute the sale deed in favour of outsiders who may be admitted as nominal members in terms of Section 18 of the Mysore Co-operative Societies Act, 1959. After the aforesaid resolution was passed by the Board of Directors, the Secretary wrote a letter to the Assistant Registrar of the Co-operative Societies on 10.12.1973, requesting permission to sell the surplus building sites owned by the society to outsiders. By a letter dated 13/14.12.1973 the Assistant Registrar declined to grant permission.
14. Thereafter, in the Special General Body meeting convened on 25.12.1973 R. Annayappa, the Secretary informed the members that the progress cannot be made in the layout work due to non-availability of funds. He therefore, requested the members to pay the balance amount due from them towards the value of the sites allotted to them. In this connection, he also informed the members that the State Housing Corporation has not only refused to give any more loan to the society but also is pressing the society to return Rs. 3,00,000/-, which it had lent to the society earlier.
15. In reply to the question of a member Sri. Rajagopal, the Secretary Sri Annayappa answered that if all the members pay the amounts due to the society, the society will be in a position to pay the loan to the Corporation and avoid payment of interest. It is because of the members' non-cooperation, the society is unable to pay the loan to the State Housing Corporation. Few others suggested that instead of charging interest from the members for delay in payment of the sital value, the society may sell those excess 51 sites to non-members for higher value and adjust the same towards interest payable by members and by such method even the loan of the Corporation may be reduced. This suggestion was fully supported by members including Sri. Rajagopal. Then, the Secretary explained that if the society were to sell sites to non-members, then they have to amend the Bye-laws and admit those outsiders as nominal members and sell those sites as provided in Co-operative Societies Act. It was agreed by the large number of members who were present in the meeting. Therefore, it was unanimously resolved to amend the Bye-laws, to admit outsiders as nominal members and to allot sites to them on payment of Rs. 32/- per sq.yard. After the Special General Body meeting approved the amendment of Bye-laws, the society forwarded the said proposal for the approval of the Assistant Registrar of the Co-operative Societies, by a letter dated 12.08.1974. The Assistant Registrar informed the

society that the proposal for the amendments cannot be approved as it was not submitted within thirty days from the date of passing of the resolution and he also pointed out certain procedural irregularities and called upon the society to comply with the procedural requirements and then get the amendment passed in the general body and then submit the same for approval. However, no steps were taken by the society.

16. Thereafter, the society was superseded and an administrator was appointed. The administrator did not take any steps. However, after elections were conducted the new office bearers took over on 25.04.1980 and the very same proposals were sent to the Assistant Registrar of the Co-operative Societies, who by a letter dated 03.09.1980 declined to approve the proposed amendments on the ground that the approval is sought after seven years from the date of passing of the resolution and informed the society to re-examine all the Bye-laws and bring a fresh amendment proposal before the General Body and submit the same for necessary action.
17. Thereafter a General Body Meeting was conducted on 28.09.1980. On the day of this meeting, Annayappa was not the Secretary, but still he participated in the General Body Meeting. It was Rajagopal who was the Secretary on that day. The aforesaid letter dated 03.09.1980 was placed before the General Body. In fact, in the said meeting, Sri. Annayappa spoke in support of the amendment. However, the General Body opposed the said amendment and passed a resolution that persons who are not the employees of Binny Mills should not be admitted as members of the society. Further it resolved to cancel the membership of such persons who are not the employees of the Binny Mills. Further it was resolved that the allotment of sites to them without the approval of the Bye-law is not in accordance with law and the Secretary at that point of time had no right to sell the properties and therefore, even if such an allotment has been made, such nominal members do not acquire any title to the property. Therefore, President was authorised to initiate suitable proceedings against such illegal allottees and further he was authorised to take steps even against such allottees, who have put up constructions on such sites. It is in pursuance of the said resolutions, the society has executed the sale deeds to its members, the very same sites which were sold to such nominal members without taking steps to cancel the same. But, after execution of the sale deed, they have executed cancellation deed cancelling the earlier sale deeds and got the same registered.
18. In this background the points that arise for consideration are as under:
 - (1) Whether the sale deed executed by the Society in favour of a non-member is void or voidable?
 - (2) Whether the sale deeds executed by the Society represented by its office bearers contrary to bye law 36 is valid or void?
 - (3) Whether the sale deed executed by the Society in favour of its member in respect of the sites for which the society had already executed sale deed in favour of non-member is void or voidable?
 - (4) Whether the cancellation deeds executed unilaterally by the Society is void or voidable?

19. In order to answer these questions one should have clear distinction between the legal terms such as valid, invalid, void and voidable.
20. Section 2 of the Indian Contract Act, 1872, states that in what sense the aforesaid expressions are used in the Act. Section 2(h) states that an agreement enforceable by law is a contract. Section 2(i) states that an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. Section 2(g) states that an agreement not enforceable by law is said to be void. Section 2(J) states that contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Chapter II of the Act deals with contracts, voidable contracts and void agreements. Section 19 of the Act provides that, when consent to an agreement is caused by coercion, fraud, misrepresentation or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. However, if both the parties are under a mistake as to a matter of fact the said agreement is void.
21. Section 23 of the Act declares what considerations and objects are lawful, and what not and about the contract being void, reads as under:
23. What considerations and objects are lawful, and what not.- The consideration or object of an agreement is lawful, unless-

it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law;

or

is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Sections 24 to 30 deals with void agreements. Certain types of contingent agreements are also declared to be void under the Act.

22. These statutory provisions have been the subject matter of interpretation by jurists as well as courts, and these concepts are now well crystallized.

Salmond on Jurisprudence, 12th Edition:

In respect of their legal efficacy agreements are of three kinds, being either valid, void, or voidable. A valid agreement is one which is fully operative in accordance with the intent of the parties. A void agreement is one which entirely fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is conditional and not absolute. By reason of some defect in its origin it is liable to be destroyed or cancelled at the option of one of the parties to it. On the exercise of this power the agreement not only ceases to have any efficacy, but is deemed to have been void ab initio. The avoidance of it

relates back to the making of it. The hypothetical or contingent efficacy which has hitherto been attributed to it wholly disappears, as if it had never existed. In other words, a voidable agreement is one which is void or valid at the election of one of the parties to it.

23. De Smith, Woolf and Jowell in their treatise *Judicial Review of Administrative Action*. Fifth Edition, paragraph 5-044, has summarised the concept of void and voidable as follows:

Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is *ultra vires* in the sense of outside jurisdiction, it was said to be invalid or null and void. If it is *intra vires* it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record.

24. Cilve Lewis in his works *Judicial Remedies in Public Law* at page 131 has explained the expressions “void and voidable” as follows:

A challenge to the validity of an act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant.

25. This question was examined by Court of Appeal in the case of *R. v. Paddington Valuation Officer and Anr. Ex parte Peachey Property Corporation, Ltd.* (1965) 2 All ER 836, where the valuation list was challenged on the ground that the same was void altogether. On those facts, Lord Denning, M.R. laid down the law observing at page 841 thus:

It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more ado. The other kind is when the invalidity does not make the list void altogether, but only voidable. In that case it stands unless and until it is set aside. In the present case the valuation list is not, and never has been, a nullity. At most the first respondent-acting within his jurisdiction - exercised that jurisdiction erroneously. That makes the list voidable and not void. It remains good until it is set aside.

26. In the case of *Inre Mec. (A. Minor)*, 1985) 1 AC 528, the House of lords followed the dictum of Lord Coke in the *Marshalsea* case quoting a passage rendered in (1613), 10 CO rep 68b at P.76a where it was laid down that where the whole proceeding is *coram Non-judice* which means void *ab initio*, the action will be without any regard to the precept or process. The court laid down at page 532 thus:

When a Court has jurisdiction of the cause, and, proceeds in *verso ordinal* or erroneously, there the party who sues, or the officer or minister of the Court who executes the precept or process of the Court no action lies against them. But when the Court has no jurisdiction of the cause,

there the whole proceeding is coram Non-judice, and actions will lie against them without any regard of the precept or process....

27. In another decision, in the case of Director of Public Prosecution in v. Head 1959 AC 83, House of Lords observed at pill while considering validity of an order passed in a criminal case, the Court of criminal appeal quashed the conviction on the ground that the aforesaid order of secretary was null and void and while upholding the decision of the Court of criminal appeal thus:

This contention seems to me to raise the whole question of void or voidable for if the original order was void, it would in law be a nullity. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because you cannot continue a nullity.

28. The Supreme Court in the case of Dhurandhara Prasad Singh v. Jai Prakash University and Ors. MANU/SC/0381/2001 : [2001]3SCR1129 had an occasion to consider these expression. It held that the expressions “void and voidable” have been subject-matter of consideration on innumerable occasions by Courts. The expression “void” has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, abinitio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceedings the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.

29. Therefore, the law on the point could be summarised as under:

A valid agreement is one, which is enforceable by law as a contract, by the parties to the agreement. A void agreement is one, which does not exist in the eye of law, and therefore fails to receive any legal recognition or sanction. In legal parlance it is a nullity or non-est. It is not a contract at all. It would be automatically null and void without more ado. Its existence or continuation has no value, as one cannot continue a nullity. If a statute specifically provides that a contract contrary to the provisions of the statute would be void, it is no contract in the eye of law, it is void ab initio, and the said agreement is unenforceable in law. In between these two extreme positions, lies the voidable agreement. In law it exists and also recognized. It is a contract. It can also be enforced. But because of some defect in its origin, at the option of the

party to the agreement, it is liable to be cancelled or set aside. In other words, a voidable agreement is one which is void or valid at the election of one of the parties. However, it is valid, till it is declared void by a competent court of law, in a manner known to law. Therefore, it is not a nullity or non est. It is valid and good unless avoided. It requires to be set aside.

30. Unless the statute specifically provides that a contract contrary to the provisions of the statute would be void, the contract would remain binding between the parties and could be enforced between the parties themselves. The question whether a particular thing is prohibited by the statute must in every case depend upon the true construction of the contract. One has to know the clear distinction between the word “excess of authority” or “wholly without jurisdiction or power” as well as “something illegal which is prohibited by law” and “exercising jurisdiction erroneously”. These things are substantially different. If the transaction is tainted with any illegality and consequently the contract is not avoided, the title under the said contract passes. If the object of the agreement is not shown to be illegal there is no impediment to the enforcement of the said agreement. The idea of illegality is different from the idea of excess of authority, or wholly without jurisdiction or power.
31. It is in the light of this settled legal position, the point that arise for consideration in this appeal are to be answered.

Point No. 1

32. Binny Mills Employees Cooperative Society is a society registered under the provisions of the Karnataka Cooperative Societies Act, 1959. It is a body corporate by the name under which it is registered having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. The management of the said society vests with the Board of Directors constituted in accordance with the Act, Rules and Bye-laws of the society. The Board of Directors exercise such powers, discharge such duties and perform such functions as are conferred upon it by the Act, Rules and the Bye-laws. The society has a President, Secretary, Treasurer who are elected in accordance with the provisions of the Act, Rules or Bye-laws. The Board of Directors of the society in the meeting held on 9.12.1973 authorised the President, the Secretary and the Treasurer to execute the sale deeds in favour of outsiders who may be admitted as nominal members in terms of Section 18 of the Mysore Cooperative Societies Act, 1959.
33. It is in pursuance of the said authorisation, the President, the Secretary and the Treasurer of the society have executed the sale deeds in favour of non-members. A registered society under the Co-operative Societies Registration Act is a Corporation or a quasi Corporation capable of entering into contracts. The registration confers on it a legal personality and consequently any contract entered into by it would be legally enforceable unless it is vitiated by an illegality or is shown to be void for any other reason. In the entire Bye-laws of the society there is no express prohibition prohibiting the society from selling the sites belonging to the society in favour of non-members. Till today the said resolution of the society is not challenged or annulled by the society. In the special General Body Meeting held on 25.12.1973 the Secretary Rajagopal also participated and supported the proposal to sell the sites to outsiders at a higher price. The

object of selling the sites to the non-members is to raise money to pay the loan to the Corporation which the society had borrowed for the formation of the layout and also to avoid payment of interest as the members of the society were not co-operating in contributing funds for the said purpose. Therefore, the object behind the sale of the sites to non-members at the market price is neither illegal nor against the interest of the members of the society.

34. In so far as the non-members who have purchased the property are concerned have dealt with the society represented by its President, Secretary and Treasurer. All the three of them have executed the sale deeds in their favour. The sale was for a valid consideration. There is no prohibition in the bye-laws to sell the sites in favour of non-members. Therefore, the sale deed executed by the society in favour of the non-members cannot be said to be void, the said agreement is not forbidden by law or is of such a nature that it would defeat the provisions of any law or it is immoral or opposed to public policy. Therefore, the said agreement is lawful and not void. It is a valid contract, which is enforceable.

Point No. 2

35. In so far as the contention that the sale deed executed is contrary to bye-law 36 and, therefore, it is void is without any substance. Clause 36 of the bye-law reads as under:

36. Powers of President: The President shall have general control over the working of the society and he shall whenever present, preside over the meetings of the Board as well as the general meeting.

The President, Secretary and three other Directors shall sign all documents executed on behalf of the society.

36. It is true under the aforesaid bye-law the sale deed on behalf of the society is to be executed by the President, the Secretary, and three other Directors. In the instant case it is executed only by the President. Secretary and Treasurer, who is one of the Director and two other Directors have not executed the said sale deed. The question is whether it renders the sale void. In this regard it is useful to refer to a judgment of the Supreme Court in the case of Co-Operative Central Bank Ltd. and Ors. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and Ors. MANU/SC/0611/1969 : (1969)IILLJ698SC wherein it has been held as under:

The bye-laws of a co-operative society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of Statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute.

37. In view of the aforesaid authoritative pronouncement of the Supreme Court the said bye-law cannot be equated to law, rules or regulations. The said bye-laws only govern the internal management, business or administration of a society. They are in the nature of Articles of Association of a Company incorporated under the Companies Act. It has no statutory force. Any act of the society contrary to the said bye-law ipso facto do not render the said act void and without authority. When the society enters into a contract with third parties or outsiders those outsiders are in no way bound by the said bye-law. The society is a body corporate by name having a perpetual succession and a common seal and when a contract is entered into by the office bearers of the society i.e., the President, the Secretary and the Treasurer on behalf of the society with the third parties, it is binding on the society even though it is contrary to the bye-law. In fact on that ground till today no steps are taken by the society to get the sale deed annulled. On the contrary, the society has executed the cancellation deed.
38. The defence taken by the society clearly shows that it is under the impression that the sale deed in favour of a non-member is executed only by the Secretary and he has misappropriated the said amount and he had no authorization to execute the sale deed. But, the material on record demonstrates that before the execution of the sale deed, there was resolution dated 9-12-1973 authorizing the President, the Secretary and Treasurer to execute the sale deed in favour of non-members for the purpose of raising finance to complete the layout work as well as to pay interest due by the society which the members of the society were incapable of discharging. In pursuance of the said resolution, the President, Secretary and the Treasurer have executed the sale deed. Neither the subsequent sale deed executed by the society in favour of member nor the cancellation deed executed by the society is executed by the President, Secretary and Treasurer. It is only the Secretary who has executed the said documents. If the argument of the society is to be accepted, then the cancellation deed as well as sale deed in favour of a member also becomes void. The allegations made against the previous Secretary Sri Anniyappa is without any basis as is clear from the aforesaid three resolutions. Therefore, in the light of the aforesaid discussion, there is no merit in the said contention. The sale deed executed by the society represented by the President, Secretary and the Treasurer in favour of a non-member is valid and binding on the society and it is not void.

Points No. 3 and 4

39. When the owner of a property sells/conveys the property to - the purchaser under a written document and get the same registered, the right and the title to the said property is transferred from the owner to the purchaser on registration of the said documents. After such registration the owner of the property ceases to have any interest and all his rights in the property gets extinguished. He would not have any right to meddle with the property thereafter. If such a person were to execute one more sale deed and get it registered in respect of the said property the said sale deed has no value in the eye of law. The reason being on the date of the second sale deed, he is not the owner of the property. Therefore, the purchaser would not get title to the property as the vendor could convey only that title which he has in the property on the date of execution and registration of the sale deed. Similarly, if after execution and registration of the sale deed, the owner wants to get back the property, it has to be done by canceling the sale deed on any of the grounds which are available to him under the provisions of the Indian Contract

Act. Unilaterally he cannot execute what is styled as a deed of cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property. Normally what can be done by a Court can be done by the parties to an instrument by mutual consent. Even otherwise if the parties to a document agree to cancel it by mutual consent for some reason and restore status quo ante, it is possible to execute such a deed. An agreement of sale, lease or mortgage or partition may be cancelled with the consent of the parties thereto. Because in the case of agreement of sale, lease, mortgage or partition, each of the parties to the said document even after the execution and registration of the said deed retains interest in the property and, therefore, it is permissible for them to execute one more document to annul or cancel the earlier deed. However, it would not apply to a case of deed of sale executed and registered. In the case of a sale deed executed and registered the owner completely loses his right over the property and the purchaser becomes the absolute owner. It cannot be nullified by executing a deed of cancellation because by execution and registration of a sale deed, the properties are being vested in the purchaser and the title cannot be divested by mere execution of a deed of cancellation. Therefore, even by consent or agreement between the purchaser and the vendor, the said sale deed cannot be annulled. If the purchaser wants to give back the property, it has to be by another deed of conveyance. If the deed is vitiated by fraud or other grounds mentioned in the Contract Act, there is no possibility of parties agreeing by mutual consent to cancel the deed. It is only the Court which can cancel the deed duly executed, under the circumstances mentioned in Section 31 and other provisions of the Specific Relief Act, 1963. Therefore, the power to cancel a deed vests with a Court and it cannot be exercised by the vendor of a property. In this context it is necessary to see Section 31 of the Specific Relief Act, which reads as under:

31. When cancellation may be ordered.-

- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.
- (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

40. A reading of the aforesaid provision makes it clear that both void and voidable instruments can be cancelled by the Court. The cause of action for such an action is an apprehension, if such an instrument is left outstanding may cause serious injury to the person against whom the written instrument is void or voidable. Such a person has the discretion to approach a competent Civil Court for adjudging the said instrument to be delivered up and cancelled. Even though in law a void instrument is unenforceable, has no value in the eye of law, void ab initio, the very physical existence of such a document may cause a cloud on the title of the party or cause injury or one can play mischief. Therefore, the law provides for cancellation of such instruments which are also non est, but which are in existence as a fact physically to get over the effect of

such instrument. Once such an instrument is registered, the said registration has the effect of informing and giving notice to the World at large that such a document has been executed. Registration of a document is a notice to all the subsequent purchasers or encumbrances of the same property. The doctrine of constructive notice is attracted. Therefore, the effect of registration of an instrument not only affects the rights of the parties to the instrument but also affects parties who may claim under them. Therefore, once such an instrument is ordered to be delivered up and cancelled an obligation is cast upon the Court to send a copy of its decree to the officer in whose office the instrument was registered, so that such an officer shall note on the copy of the instrument contained in his books the fact of its cancellation. Once such an entry is made in the books of the Sub-Registrar about the cancellation of the registered instrument, it also acts as a notice of cancellation to the whole World and it is also a constructive notice of cancellation of the said instrument.

41. Part X of the Indian Registration Act, 1908 deals with effect of registration and non-registration of an instrument. A combined reading of Sections 47, 48 and 49 makes it clear that an instrument which purports to transfer title to the property requires to be registered, the title does not pass until registration has been affected. The registration by itself does not create a new title. It only affirms a title that has been created by the deed. The title is complete and the effect of registration is to make it unquestionable and absolute. Section 47 of the Act makes it clear that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. The Section however does not say when a sale would be deemed to be complete. However, Section 47 of the Registration Act makes it clear that, though a document is registered on a particular date, the effective date would be the date on which the said document was executed and not from the date of registration. If the document is not registered but is compulsorily registerable, though the document is duly executed, it has no legal effect and it does not affect the immovable property comprised in the said document in view of Section 49 of the Act. The registration of such a duly executed document comes into operation, the moment it is duly registered, not from the date of registration but from the date of execution of the said document. Section 54 of the Transfer of Property Act, 1882, which deals with sales of immovable property mandates emphatically the transfer of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument.
42. Thus, without registration there is no transfer of ownership of the property. Therefore, it is clear that the act of registration in the scheme of things is not a mere instance of the State collecting some registration fee and providing authenticity to a written instrument. It is by the act of registration, the title in the property passes to the transferor, from the date of execution of the deed of transfer. Once such sale takes place, transfer is complete, the vendor of the property ceases to be the owner of the property. Thereafter if he executes one more sale deed in respect of the same property or a cancellation deed in respect of the property already sold, in law it has no value, and it in no way affects the sale deed already executed. It is invalid, void, and non-est.
43. In the instant case, the plaintiff is seeking declaration that the cancellation deed dated 5.6.1981 executed by the defendant unilaterally canceling the sale deed dated 11.3.1974 executed in

favour of Sri. C. Janardhana Rao, the predecessor in title of the plaintiff, is illegal and not binding on the plaintiff and his predecessor in title. 40. Ex. P1 is the sale deed in the name of the plaintiff executed by Sri. P.NoorullaBasha on 22.11.1980. In Ex.P1 there is a recital to the effect that the purchaser was put in possession on 22.11.1980 upon receipt of Rs. 10,000/-. Ex. P2 is the sale deed executed by C.Janardhana Rao in favour of Sri. P. Noorulla Basha for a sum of Rs. 6,000/- and C. Janardhana Rao put Noorulla Basha in possession of the property. The sale deed dated 11.3.1974 executed by the society in favour of C. Janardhana Rao refers to C. Janardhana Rao being admitted as a nominal member by virtue of the resolution of the general body meeting on 25.12.1973. Ex. P6 is the katha certificate in the name of the plaintiff issued by the revenue officer on 7.7.1981. Exs. P7 to P9 are the tax paid receipts. Ex. P 12 is the certified copy of the deed of cancellation. The said cancellation deed sets out the reasons for cancellation. The resolution passed in the general body meeting held on 28-9-1980 is the basis for cancellation. In the said resolution there is no whisper about the cancellation of the sale deed as per Ex. P3. The various reasons mentioned in Ex. P1 2 do not find a place in the said resolution. A careful scrutiny of the resolution shows that Secretary of the defendant-society was not empowered to execute the deed of cancellation of the sale deed executed by the defendant-society in favour of nominal members of the defendant-society. Defendant has not produced the extracts of the meeting held on 2.3.1980. The defendant-society has not issued notice to the previous owners of the suit property in question as per Ex. P2.

- 4.4 DW-1 has admitted that the sale deed Ex. P3 was executed by the President, Secretary and Treasurer of the defendant-society in favour of C. Janardhana Rao. Exs. P4 and P5 are the receipts which show payment of money by Sri C. Janardhana Rao to the defendant society. Ex. P14 is the possession certificate issued by the defendant-society to C. Janardhana Rao. He was giving evidence in his capacity as Vice President of the society. He has pleaded his ignorance about the resolution passed in the Board of Directors meeting on 9.12.1973 and what was decided in the special general body meeting held on 25.12.1973. He also admits that society did not give any notice to the nominal members before cancelling the allotment and sale of sites made in favour of those persons. The society has not refunded a sum of Rs. 4,175/- or any such amount to C. Janardhana Rao when his sale deed was cancelled. He was unable to answer whether the society after cancellation called upon the allottees to surrender the sale deeds and possession certificates. He was unable to give the boundaries of the suit property. He was also unable to say whether the society took back possession of the suit property from C. Janardhana Rao after cancelling his sale deed.
45. From this undisputed material on record it is clear that the sale deed executed in favour of C. Janardhana Rao by the society was unilaterally cancelled without notice to him, without due authority of law. On the date of cancellation the plaintiff was in possession of the suit schedule property. He was in lawful possession of the suit schedule property and the society did not take possession from the plaintiff or from C. Janardhana Rao. It is after execution of the cancellation deed unilaterally the defendant tried to interfere with the plaintiff's lawful possession over the suit property. In those circumstances, the plaintiff had no option except to file the suit. Before

filing of the suit he has issued notice to the Registrar of Cooperative Societies, under Section 125 of the Karnataka Co-operative Societies Act, 1959.

46. The trial Court on careful appreciation of the oral and documentary evidence rightly held that the plaintiff has established his title to the property. Plaintiff is in lawful possession of the property. The unilateral cancellation deed has no legal effect. The suit is not barred by time. Suit is not hit by Section 125 of the Karnataka Cooperative Societies Act. Court fee paid is sufficient and it rightly granted the declaration that the cancellation deed dated 5.6.1981 brought into existence by the defendant unilaterally purported to cancel the sale deed dated 11.3.1974 executed by it in favour of C. Janardhana Rao is illegal and not binding on the plaintiff and his predecessor in title and it rightly granted an order of injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the suit schedule property. The said judgment and decree of the trial Court is in accordance with law and do not suffer from any legal infirmity which calls for interference. Under these circumstances, I do not find any merit in this appeal. Accordingly, the appeal is dismissed.

No costs.

Equivalent Citation: ILR 2005 KARNATAKA 3882, 2006(2)KarLJ528, 2005(3)KCCR2212

IN THE HIGH COURT OF KARNATAKA

Writ Petition Nos. 6717 and 32623 of 1997 and etc.

Decided On: 18.07.2005

Appellants: **The Management of Hukkeri and Ors.**

Vs.

Respondent: **S.R. Vastrad and Ors.**

Hon'ble Judges/Coram:

N. Kumar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: B.C. Prabhakar, Shantesh Gureddi, N.R. Krishnappa, S.V. Shastri, P.S. Rajagopal, Anant Mandgi, Ravi G. Sabhahit, C.S. Ramdas, M.B. Ravikumar, A. Gopalaiah, M.R.C. Ravi, K.M. Nataraj, B.B. Ballari, M. Babu Rao, Basavaraj G. Godachi, B. Prabhu Devaru, D. Leelakrishnan, F.V. Patil, B.S. Kamate, G.F. Hunasikattimath, V.S. Naik, S.B. Mukkannappa, Vigneshwar S. Shastri, G. Balakrishna Shastry, T.V. Narayana Murthy, B. Srinivasa Gowda, T.A. Karumbaiah, T.N. Raghupathy, Ashok R. Kalyanashetty and Ramesh B. Anneppanavar, Advs., Subba Rao and Company and Raj and Reddy,

For Respondents/Defendant: Puttige R. Ramesh, Adv. and S.Z.A Khureshi, AGA for R1, K. Subba Rao, Sr. Counsel for Subba Rao and Co., F.V. Patil, G. Balakrishna Shastry, G.F. Hunasikattimath and G. Balakrishna Shastry, Advs. for R2, S.V. Shastri, Adv. for R2 and R3 and Ashok R. Kalyanashetty, V.S. Naik, T. Narayanaswamy, Ramesh B. Anneppanavar, Kirankumar, T.L., K.T. Mohan, Ramesh B. Anneppanavar, B.C. Prabhakar, M.R.C. Ravi, N.R. Krishnappa, Anant Mandgi, Suresh P. Hudedagaddi, Changalraya Reddy, T.N. Raghupathi, N.R. Krishnappa and C.S. Ramadas Advs., M.S. Cariappa and Co., Subba Rao and Co. and S.N. Murthy, Associates

Subject: Constitution

Subject: Labour and Industrial

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 70, **Karnataka** Cooperative Societies Act, 1959 - Section 70(1), **Karnataka** Cooperative Societies Act, 1959 - Section 70(2); Karnataka Cooperative Societies (Amendment) Act, 1976; Industrial Disputes Act, 1947 - Section 10, Industrial Disputes Act, 1947 - Section 2, Industrial Disputes Act, 1947 - Section 10; Karnataka Cooperative Societies (Amendment) Act, 2000; Karnataka Cooperative Societies Rules - Rule 15, Karnataka Cooperative Societies Rules - Rule 17, Karnataka Cooperative Societies Rules - Rule 18, Karnataka

Cooperative Societies Rules - Rule 18(9), Karnataka Cooperative Societies Rules - Rule 18(12); Constitution of India - Article 32, Constitution of India - Article 141, Constitution of India - Article 142, Constitution of India - Article 145(5)

Cases Referred:

Cooperative Central Bank Limited and Ors. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad, AIR 1970 SC 245; Chairman, Dharwad District Government Employees Cooperative Bank Limited v. Marthand Bhimabai Hangal and Anr., 1976(1) KLJ 102; Kunnimellihalli Dodda Pramanada Prathami Pattin Vyavasaya Sahakari Sangh Limited v. Shivappa Guddappa Surad, 1972 (2) M.L.J. 327; Sri Padmamba Large Sized Cooperative Society v. Labour Court and Anr., ILR 1985 KAR 50; Harugeri Urban Co. op Bank v. State of Karnataka and Ors., 1981 (1) Kar.L.J. 136; Veerashiva Co. Op Bank Limited v. Presiding Officer, Labour Court and Ors., ILR 2000 KAR 3743; R.C. Tiwari v. M.P. State Cooperative Marketing Federation Limited and Ors., AIR 1997 SC 2652; Sagamal v. District Sahkari Kendriya Bank Limited, Mandsaur and Anr., 1997(9) SCC 354; The Krishna District Cooperative Marketing Society Limited, Vijayawada v. N.V. Pumachandra Rao and Ors., AIR 1987 SC 1960; Rajajinagar Cooperative Bank Limited, Bangalore v. Presiding Officer, Bangalore and Anr., 2002 (I) LLJ 684; Devanur Grama Seva Sahakari Sangh Limited, Devanur v. Virupaxayya and Ors., ILR 2001 KAR 4839; Karnataka Sugar Workers Federation (R) v. State of Karnataka and Ors., ILR 2003 KAR 2531; H. Muniswamy Gowda v. Management of KSRTC and Anr., ILR 1997 KAR 509; Great Northern Railway v. Sunburst Oil and Ref. Co., (1932) 287 US 358 : 77 Law Ed 360; Chicot County Drainage District v. Baxter State Bank, (1940) 308 US 371; J. Graffin v. Peoples of The State of Illionis, (1956) 351 U.S. 12; Golak Nath and Ors. v. State of Punjab and Anr., AIR 1967 SC 1643; Union of India and Ors. v. Mohd. Ramzan Khan, 1991 (1) SCC 588; Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors., 1993 (4) SCC 727; Lily Thomas and Ors. v. Union of India and Ors., 2000 (6) SCC 224; Sarwan Kumar and Anr. v. Madan Lal Aggarwal, 2003 SAR (CIVIL) 226; Sushil Kumar Mehta v. Govind Ram Bohra, 1990(1) SCC 193; D.P. Sharma v. State Transport Authority, ILR 1987 KAR 3255

Authorities Referred:

American Jurisprudence

Disposition:

Petition allowed

Case Note:

(A) KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (AMENDMENT ACT 19/1976) SECTION 70 - INDUSTRIAL DISPUTES ACT, 1947-SECTION 10-Constitution of India-Articles 226 and 227-Doctrine of “Stare Decisis” and “Prospective overruling”-Whether the awards passed by the Labour courts after the law declared by the Division Bench of this Court in Sri Padmambha Large sized Co-operative Bank’s case (ILR 1985 KAR 50) till the declaration of law by this Court in Veerashiva Co-operative Bank’s case (ILR 2000 KAR 3743), which was affirmed by the Full Bench of this Court, in the Karnataka Sugar Workers’s Federation Case (ILR 2003 KAR 2531) could be saved by the application of Doctrine of “Stare Decisis” and “prospective overruling”-HELD-The Full Bench when it declared the law upholding the law laid down in the Veerashiva Cooperative Bank’s case did not make the law declared by it prospectively as it had

no jurisdiction to do the same. If that is so this Court cannot hold that the law declared either in the case of Veerashiva Cooperative Society Bank's case or by the Full Bench affirming the same as prospective in operation only and does not apply to the awards which are impugned in these Writ Petitions which are passed in pursuance of the law which held the field for more than two decades prior to the aforesaid declaration. No such power is conferred on this Court either under the Constitution or otherwise. The effect is the law declared by the Full Bench is the law in reality which is in force from the day Karnataka Act 19/1976 came into force. When the Court interprets a provision of law it does not lay down any new law, but the Court interpret the existing law which was in force. It is settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the Court does not legislate but only give an interpretation to an existing law. Therefore, any award passed during this period is one without jurisdiction and it cannot be sustained/saved either on the principle of stare decisis nor on the principle of prospective overruling.

(B) DOCTRINE OF STARE DECISIS-Once a law has been declared, reversing the earlier law, is it open to another Court to hold that this law declared is not applicable to the decrees and orders passed following the law prior to such declaration-Whether the doctrine of stare decisis confer any such power on a judge or a Court to make such declaration-HELD-(NO). The doctrine of stare decisis does not confer any such power on a judge or a Court to make such a declaration. It would be wholly outside the jurisdiction of such judge or Court and would be one without jurisdiction.

Held:

The doctrine of stare decisis is a rule of policy which promotes predictability, certainty, uniformity and stability, which has to be kept in mind by the Judge or the Court before reversing the settled legal position. However, doctrine of stare decisis is not an imprisonment of reason. It is not inflexible. But, if it is shown that the decision was clearly or manifestly wrong and it has been followed by the Court in other cases and its maintenance is injurious to public interest, then not only it has the power to declare the earlier law as wrong but it becomes its duty to reverse the said law as otherwise it amounts to permitting to perpetuate errors to the detriment of the general welfare or a considerable section thereof. If after taking into consideration all these aspects if the Court reverses the earlier decision and declares the law, the said declaration does not lay down any new law. It only corrects an earlier wrong interpretation of the law and, therefore, it dates back to the date of the law itself. Once such a law has been declared, reversing the earlier law, it is not open to another Court to hold that this law declared is not applicable to the decrees and orders passed following the law prior to such declaration. The doctrine of stare decisis does not confer any such power on a Judge or a Court to make such declaration. It would be wholly outside the jurisdiction of such Judge or Court and would be one without jurisdiction.

(C) DOCTRINE OF PROSPECTIVE OVERRULING-Powers to invoke-Who has-HELD-The Doctrine of prospective overruling is a doctrine which could be invoked only by the Supreme Court of India. Only the Supreme Court has the constitutional jurisdiction to declare law binding on all the Courts in India. Such a power is not conferred on the High Court. No such power could be located in the Constitutional Provision.

(D) INDUSTRIAL DISPUTES ACT, 1947-SECTION 10-KARNATAKA CO-OPERATIVE SOCIETIES ACTS, 1959 (AMENDMENT ACT 19, 1976) SECTION 70-Disputes between management of Co-operative Societies and Co-operative Banks with its employees-Jurisdiction or labour Court to decide such disputes-In view of the law declared by the Full Bench and the Amendment Act No. 19/1976-Whether the labour Court has jurisdiction to entertain the dispute between the employee of a Co-operative Societies and the bank-Legality of awards passed by the Labour Courts subsequent to 20-1-1976 which have not yet reached finality-HELD-It is well settled that a pure question of law could be urged in appeal, revision or in a Writ Petition for the first time though the same is not urged in the earlier proceedings. In view of the law declared by the Full Bench and the Amendment Act No. 19/1976 came into force on 20.1.1976, the Labour Court has no jurisdiction to entertain the dispute between the employee of a cooperative society and the bank. Therefore, all these awards which are passed by the Labour Courts subsequent to 20.1.1976 which are under challenge before this Court as they have not reached the finality yet, are liable to be quashed on the short ground that the Labour Court which passed these awards had no jurisdiction to pass the same.

In all these Writ Petitions the persons who are aggrieved by an award passed by the Labour Court during that interregnum period have challenged the legality of the said order before this Court. Now when the matters are listed for final hearing, in view of the law declared by the Full Bench of this Court they are urging an additional ground to get rid of the awards in addition to the grounds which they have urged on merits. This was a ground which was not available to them when the matter was pending before the Labour Court. Therefore, they have not taken that contention. At the earliest point of time after the pronouncement of the judgment of the Full Bench they are urging this ground to assail the award. As this ground goes to the very root of the matter and a jurisdiction point, this Court has to entertain the said ground and consider the same on merits. In the aforesaid judgment in the case of Devanur Grama Seva Sahakari Sangh Limited the Division Bench declined to entertain the said ground on the ground that the ground was not urged either before the Labour Court or before the learned single Judge, thereby meaning if the said contention had been urged before the learned single Judge they would have considered the said ground on merits. In the Writ Petition this ground is urged. Therefore, this Court is bound to consider the said ground, as it is not only a question of jurisdiction but is also purely a question of law.

(E) DOCTRINE OF STARE DECISIS-Whether by applicablity of this Doctrine there can be reconsideration of the earlier decisions and should it be confined to questions of great public importance-HELD-Legal problems should not be treated as mere subjects for mental exercise. An earlier decision may therefore be overruled only if the Court comes to the conclusion that it is manifestly wrong, not upon a mere suggestion that if the matter were res integra, the members of the later court may arrive at a different conclusion. It is impossible to maintain as an abstract proposition that the Court is either legally or technically bound by previous decisions. Indeed, it may in a proper case be its duty to disregard them. But the rule should be applied with great caution, and only when the provision is manifestly wrong. Otherwise there would be grave danger of a want of continuity in the interpretation of the law. It is not possible to say that it is not open to the Court to review its previsions decisions on good cause. The question is not, whether the Court can do so, but whether it will, having due regard to the need for continuity and consistency in judicial decisions. The doctrine of stare decisis is not an inflexible rule of law and cannot be

permitted to perpetuate errors to the detriment to the general welfare of the public or a considerable section thereof.

The necessity for certainty and continuity in the declaration of law by the highest courts in the country is recognised on all hands. That necessity is all the greater, and not the less, by reason of the Constitution itself having formally provided that the decisions of the Supreme Court are declaratory of the law. The rule as to the binding character of a judicial precedent is based on a juristic principle of universal application. The reason for its adoption is the disastrous inconvenience of subjecting each question decided by a previous judgment to re argument, thereby rendering the dealings of mankind doubtful by different decisions; so that in truth and in fact there would be no real final Court of appeal.

The Court bows to the lessons of experience and the force of better reasoning recognising that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function. The Court can always listen to argument as to whether it ought to review a particular decision. The strongest reason for an overruling is that a decision is manifestly wrong, and its maintenance is injurious to the public interest. Only in case it is shown that the decision was clearly wrong and it has been followed by this Court in other cases, that it would be in the interest of the public to reverse it. The Court has never committed itself to any rule or policy that it will not bow to the lessons of experience and the force of better reasoning by overruling a mistake precedent. Stare decisis is not, like the rule of res judicata, a universal, inexorable command.

(F) DOCTRINE OF PROSPECTIVE OVERRULING-When can be made applicable-HELD-As a matter of constitutional law retrospective operation of an overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose the particular overruling decision seeks to serve. The court would look into the justifiable reliance on the overruled case by the administration: ability to effectuate the new rule adopted in the overruling case without doing injustice: the likelihood of its operation whether substantially burdens the administration of justice or retards the purpose. All these factors are to be taken into account while overruling the earlier decision or laying down a new principle. The benefit of the decision must be given to the parties before the Court even though applied to future cases from that date prospectively would not be extended to the parties whose adjudication either had become final or matters are pending trial or in appeal. The crucial cut-off date for giving prospective operation is the date of the judgment and not the date of the cause of action of a particular litigation giving rise to the principle culminating in the overruling decision. There is no distinction between civil and criminal litigation. Equally no distinction could be made between claims involving constitutional right, statutory right or common law right. It also emerges that the new rule would not be applied to ex post facto laws nor acceded to plea of denial of equality. This Court would adopt retroactive or nonretroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation.

Writ petitions allowed.

ORDER

N. Kumar, J.

1. In all these Writ Petitions as common question of law is involved they are taken up for consideration together and disposed of by this common order.
2. The petitioners in W.P. Nos. 6717 of 1997 Writ Petition Nos. 32623 of 1997; 3371 of 1998; 20189 of 1998; 22897 of 1998; 22898 of 1998; 22899 of 1998 ; 36040 of 1998; 22925 of 1999; 24945 of 1999; 37914 of 1999; 39020 of 1999; 45731 of 1999; 44802 of 1999; 13826 of 2000; 21040 of 2000; 28946 of 2000; 31466 of 2000; 33528 of 2000; 36407 of 2000 are all cooperative societies/banks registered under the Karnataka Cooperative Societies Act, 1959 and are governed by the provisions of the said Act. The petitioners in W.P. Nos. 18025 of 1997; 25812 of 1997; 18191 of 1998; 29650 of 1998; 30229 of 1998; 30562 of 1998; 2542 of 1999; 7112 of 1999; 13813 of 1999; 16780 of 1999; 22928 of 1999; 29657 of 1999; 32148 of 1999; 35275 of 1999; 36461 of 1999; 38729 of 1999; 113 of 2000; 6304 of 2000; 3997 of 2001; and 47510 of 2001 are all employees of a cooperative society/bank who are also governed by the provisions of the said Act. They have challenged in all these Writ Petitions the awards passed by the Labour Court under Section 10 of the Industrial Disputes Act, 1947.
3. The State legislature enacted the Karnataka Cooperative Societies Act, 1959 with an object to consolidate and amend the laws relating to co-operative societies in the State and it generally provides for the establishment of societies, their registration, membership, rights and liabilities of members, powers of the general body, management of societies and their properties and funds, audit, winding up and dissolution and execution of awards, decrees and other matters. By Karnataka Act 19/1976 Section 70 of the Act was amended introducing Clause (d) to Sub-section (2) of Section 70 which reads as under :-

“Any dispute between a cooperative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a Cooperative Society.”
4. In view of the judgments rendered in Cooperative Central Bank Limited and Ors. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad MANU/SC/0611/1969 : (1969)IILLJ698SC Chairman, Dharwad District Government Employees Cooperative Bank Limited v. Marthand Bhimabai Hangal and Anr. 1976(1) KLJ 102 and Kunnimellihalli Dodda Pramanada Prathami Pattin Vyavasaya Sahakari Sangh Limited v. Shivappa Guddappa Surad 1972 (2) M.L.J. 327 it was clear that before the Act was amended by Karnataka Act 19/1976 a dispute of the nature falling under Clause (d) of Sub-section (2) of Section 70 of the Act could not have been entertained under Section 70 of the Act and that the workman should have invoked the relevant provisions of the Industrial Disputes Act for adjudication of the dispute. It is in this back ground the Karnataka Legislature amended the Act and introduced Clause (d) to Sub-section (2) of Section 70 to confer jurisdiction for the first time on the Registrar or his nominee, under Section 70 to deal with the dispute of the type mentioned in Clause (d) of Sub-section (2) of Section 70 of the Act.

5. Therefore, the question arose whether after the aforesaid amendment to the Act, whether the jurisdiction of the Labour Court to adjudicate disputes which are covered by Clause (d) is taken away.
6. A Division Bench of this Court in the case of Sri Padmamba Large Sized Cooperative Society v. Labour Court and Anr. MANU/KA/0174/1983 : ILR1985KAR50 held that:-

“The Industrial Disputes Act is an existing law in respect of the matters enumerated in the concurrent list. The Karnataka Co-operative Societies Act, 1959 has been enacted by the State Legislature under Entry 32 of List II (State List) of VII Schedule of the Constitution. Clause (d) of Sub-section (2) of Section 70 of that Act, which has been added by Karnataka Act 19 of 1976, confers jurisdiction on the Registrar or his nominee to decide disputes regarding wrongful termination of service between a Co-operative Society and its employee. As the provisions of the Industrial Disputes Act conferring jurisdiction on the Labour Court to decide Industrial dispute are not ultra vires, it is not possible to agree with the contention that the jurisdiction of the Labour Court under the Industrial Disputes Act gets curtailed by the State enacting Section 70(2)(d) of the Karnataka Co-operative Societies Act. Following the decision of the Supreme Court, we have no hesitation in holding that the relevant provisions of the Industrial Disputes Act cannot either be regarded as ultra vires or inapplicable, merely because the State Legislature has enacted Clauses (d) of Sub-section (2) of Section 70 empowering the Registrar or his nominee to decide the dispute between a Society and its employees. Invoking of the provisions of the Industrial Disputes Act in this case was, therefore, clearly permissible. The reference to the Labour Court under Section 10 was legal and valid.”
7. A learned single Judge of this Court in the case of Harugeri Urban Co. op. Bank v. State of Karnataka and Ors. 1981 (1) Kar.L.J. 136 held that:-

“All these factors clearly indicate that the I.D. Act is a special Act and, therefore, the employees of co-operative societies who come within the definition of the word ‘workman’ under S. 2(s) of the I.D. Act, have a right to have their disputes adjudicated by the appropriate authorities under the I.D. Act and their right has not been taken away by the provisions of Section 70(1)(c) read with Section 70(2)(d) of the C.S. Act.”
8. A Division Bench of this Court in the case of Veerashiva Co. Op Bank Limited v. Presiding Officer, Labour Court and Ors. ILR 2000 KAR 3743 dealing with the question whether reference under Section 10 of the Industrial Disputes Act is maintainable in view of the provisions of Section 70 of the Karnataka Cooperative Societies, 1959, after referring to the judgments of the Supreme Court in the case of R.C. Tiwari v. M.P. State Cooperative Marketing Federation Limited and Ors. MANU/SC/0698/1997 : (1997)IILLJ236SC Cooperative Central Bank Limited v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad MANU/SC/0611/1969 : (1969)IILLJ698SC Sagamal v. District Sahkari Kendriya Bank Limited, Mandsaur and Anr. : (1997)9SCC354 The Krishna District Cooperative Marketing Society Limited, Vijayawada v. N.V. Pumachandra Rao and Ors. MANU/SC/0440/1987 : (1987)IILLJ365SC held as under:-

“By reading the above provisions, it is manifest that power is vested in the Registrar to deal with disciplinary matters relating to employees in the society or class of societies including the terms and conditions of employment where the dispute relates to the terms of employment,

working conditions and disciplinary action taken by the society or arises between the society and its employees or past employees and the same can be decided by the Registrar or any Officer appointed by him to decide the dispute and his decision shall be binding on the society and its employees. Thus, the section is very comprehensive and takes in all the matters including the service conditions and disciplinary matters regarding employees. Rules 15 of the Karnataka Cooperative Societies Rules deal with remuneration payable to the Administrator and Special Officer; Rule 17 deals with qualifications of Officers and employees of the Co-operative Societies and eligibility criteria for appointment. Rule 18 deals with the conditions of service of officers and employees of co-operative Societies and also retirement age, leave, gratuity and other conditions. Rule 18(9) deals with punishment. Rule 18(12) provides an appeal against the punishment imposed on an employee. Thus, the Act provides remedy to all employees if any dispute arises. The question is whether the remedy provided under the Co-operative Societies Act excludes the jurisdiction of the Labour Court.”

After referring to the various Supreme Court judgments referred to above held as under :-

“The above Supreme Court judgments clearly held that when a comprehensive procedural remedy is available under the Cooperative Societies Act, the jurisdiction of the Labour Court is excluded. We accordingly hold that the jurisdiction of the Labour Court is excluded and the dispute before the Labour Court is not maintainable. Writ Petition is allowed as prayed for. The respondents -employees are permitted to file an application before the Registrar of Cooperative Societies within a period of six weeks from today. On filing of such application, the Registrar shall entertain and dispose of the said application according to law.”

9. Again another Division Bench of this Court in the case of *Rajajinagar Cooperative Bank Limited, Bangalore v. Presiding Officer, Bangalore and Anr.* 2002 (I) LLJ 684" answering the question whether the disputes arising between the cooperative society and its employees can be subjected to the adjudicatory process under the Industrial Disputes Act, held:-

“so far as the State of Karnataka concerned, all the disputes arising between Co-operative Societies and its employees including those concerning the terms of employment working conditions and disciplinary actions can be referred for decision only to the ‘Registrar’ under the Co-operative Act and no dispute in relation to such matters can be raised, referred to and decided under the provisions of the I.D. Act.

10. Yet another Division Bench of this Court in the case of *Devanur Grama Seva Sahakari Sangh Limited, Devanur v. Virupaxayya and Ors.* MANU/KA/0002/2002 : ILR2001KAR4839 though after noticing the judgment in *Veerashiva Cooperative Bank’s* case did not disagree with the same, did not apply the law declared in the aforesaid case to the case which was under their consideration on the ground that the said point of jurisdiction was not raised either before the Labour Court or the single Judge and, therefore, they did not permit the said ground to be raised before them. It is under those circumstances, the matter was referred to the Full Bench. It was called upon to pronounce whether the judgment of the Division Bench in the *Veerashiva Cooperative Bank’s* case requires reconsideration. After elaborate consideration of the judgments referred to, the Full Bench in the case of *Karnataka Sugar Workers Federation (R) v. State of Karnataka and Ors.*, MANU/KA/0222/2003 : (2003)IIILLJ502Kant held that the law laid down

in Veerashiva Cooperative's case do not require any reconsideration. One of the additional reason given for upholding the said view was the legislature itself has amended Section 70(1)(d) and 70(2)(d) by Act 2/2000 which came into effect from 20.6.2000 where expressly the jurisdiction of the Labour Courts or Industrial Tribunal is excluded.

11. The State Legislature by Act No. 2/2000 amended Section 70(1) as well as 70(2)(d). The said amendment came into force from 20.6.2000. As per the said amendment in respect of disputes referred to in Section 70(1) no Court or Labour Court or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. To the existing Section 70(2)(d) the following words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14/1947) was added. Therefore, by this amendment the legislature has expressly excluded the jurisdiction of the Labour Court and the Industrial Tribunal to decide the disputes which fall within Section 70(1), 70(2)(d) of the Act, thus approving the interpretation placed by this Court in the Veerashiva Cooperative Bank's case.
12. Sri K. Subba Rao, the learned senior counsel appearing for the workmen contended from 1976 after the amendment by Karnataka Amendment Act 19/1976 till the judgment was rendered in Veerashiva Cooperative Bank's case on 9.3.2000 the law which held the field was that the Labour Court had jurisdiction to entertain an industrial dispute under the provisions of the Industrial Disputes Act notwithstanding introduction of Clause (d) to Sub-section (2) of Section 70 of the Act. Though subsequent to the judgment of Veerashiva's Cooperative Bank's case, amendment is brought about expressly excluding the jurisdiction of Labour Courts and Industrial Tribunals to decide an industrial dispute under the provisions of the Industrial Disputes Act which view has been now affirmed by the Full Bench in the case of Karnataka Sugar Workers Federation's case, the decisions rendered prior to these judgments should be saved on the principle of stare decisis. In support of his contention he relied on a judgment of the Division Bench of this Court in the case of H. Muniswamy Gowda v. Management of KSRTC and Anr. MANU/KA/0210/1997 : ILR1997KAR509 where the awards passed prior to the overruling of the law was saved by applying the doctrine of stare decisis.
13. Sri M.C. Narasimhan, the learned senior counsel appearing for the workmen contended, all the awards passed by the Labour Courts prior to Veerashiva Cooperative Bank's case as well as the judgment of Full Bench could be saved by applying the doctrine of "prospective overruling" and submits accordingly this Court should make a declaration that all the awards which are the subject matter of these Writ Petitions before this Court should be decided in terms of the law which was prior to the decision in Veerashiva Cooperative Bank's case and the Full Bench case.
14. Per contra, Sri. S.V. Shastri, the learned counsel appearing for the Societies, contended once this Court declares the law overruling an earlier binding precedent, the effect is the law declared by this Court is the law from the inception. The interpretation placed earlier is an incorrect interpretation and the later interpretation is the correct interpretation. If by a later pronouncement, it is held that the said Labour Court had no jurisdiction, it means it had no jurisdiction from the day Clause (d) of Sub-section (2) of Section 70 was introduced by way of amendment and all

the proceedings initiated which culminated in the award are one without jurisdiction and as all those awards are challenged before this Court in these Writ Petitions and as the awards have not become final, the question of jurisdiction being purely a question of law not only could be adjudicated in the Writ Petition for the first time but also this Court has the jurisdiction to set aside the awards passed by the Labour Courts in view of the law declared by the Full Bench of this Court. Therefore, he submits neither the doctrine of stare decisis nor the doctrine of prospective overruling is applicable to the case on hand as the awards passed by the Labour Courts are under challenge in these proceedings and have not become final.

15. Therefore, the question for consideration in these batch of writ petitions is,

“whether the awards passed by the Labour Courts after the law declared by the Division Bench of this Court in Sri Padmambha Large Sized Co-operative Society’ case till the declaration of law by this Court in Veerashiva Co-operative Bank’s case, which was affirmed by the Full Bench of this Court, in the Karnataka Sugar Workers Federation case could be saved by the application of doctrine of “stare decisis” and “prospective overruling”.

16. To answer the said question it is necessary to know and understand what these legal doctrines of stare decisis and prospective overruling means, before applying the same to the facts of this case.

17. STARE DECISIS:

The legal effect of the previous decisions is governed by a complex set of conventions for which the Latin phrase “STARE DECISIS” is often used. Black’s new Dictionary defines stare decisis mean “to avoid by”, or adhere to decided cases. The other expressions commonly used is “PRECEDENT”. The doctrine of stare decisis is the basis of common law. It originated in England and was used in the colonies as the basis of their judicial decisions. The genesis of the rule may be sought in factors peculiar to English legal history, amongst which may be singled out the absence of a Code. The older the decision, the greater its authority and the more truly was it accepted as stating the correct law. As the gulf of time widened, Judges became increasingly reluctant to challenge old decisions.

17.1. The principle of stare decisis is also firmly rooted in American Jurisprudence. It is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is important to further fair and expeditious adjudication by eliminating the need to relegate every proposition in every case. When the weight of the volume of the decisions on a point of general public importance is heavy enough, courts are inclined to abide by the rule of stare decisis, leaving it to the legislature to change long-standing precedents if it so thinks it expedient or necessary. Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right. Though the court has the power to reconsider its own decisions, that should not be done upon a mere suggestion that some or all the members of the later court may arrive at a different conclusion if the matter were res integra.

- 17.2. The history of the World's constitutional law shows that the principle of stare decisis is treated as having a limited application only. It is a wise policy to restrict the principle of stare decisis to those areas of the law where correction can be had by legislation. Otherwise, the constitution loses the flexibility which is necessary if it is to serve the needs of successive generations. The doctrine of stare decisis is not an imprisonment of reason. Older the standing of a decision, greater the provocation to apply the rule of stare decisis.
- 17.3. Our Constitution which has made detailed provision about various matters relating to the Supreme Court including a matter relating to its practice, such as, whether there can be a dissenting judgment [Article 145(5)] has not, in terms made any provision in this behalf. Article 141, no doubt, provides that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The phrase "all Courts" refers to Courts other than the Supreme Court. In the absence, therefore, of any clear provision in the Constitution and in view of the fact that the Supreme Court of India has historically succeeded to the pre-existing Federal Court and the Judicial Committee of the Privy Council, it would not deny itself the competence to reconsider its prior decisions. But, it does not follow that such power would be exercised without restriction or limitation or that a prior decision can be reversed on the ground that, on later consideration, the Court disagreed with the prior decision and thinks it erroneous.
- 17.4. Stare decisis is ordinarily a wise rule of action. But, it is not a universal, inexorable command. The doctrine of stare decisis has hardly any application to an isolated and stray decision of the Court very recently made and not followed by a series of decisions based thereon. The rule of stare decisis, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which again is called upon to consider a question once decided.
- 17.5. The necessity for certainty and continuity in the declaration of law by the highest courts in the country is recognised on all hands. That necessity is all the greater, and not the less, by reason of the Constitution itself having formally provided that the decisions of the Supreme Court are declaratory of the law. The rule as to the binding character of a judicial precedent is based on a juristic principle of universal application. The reason for its adoption is the disastrous inconvenience of subjecting each question decided by a previous judgment to reargument, thereby rendering the dealings of mankind doubtful by different decisions; so that in truth and in fact there would be no real final Court of appeal.
- 17.6. The Court bows to the lessons of experience and the force of better reasoning recognising that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function. The Court can always listen to argument as to whether it ought to review a particular decision. The strongest reason for an overruling is that a decision is manifestly wrong, and its maintenance is injurious to the public interest. Only in case it is shown that the decision was clearly wrong and it has been followed by this Court in

other cases, that it would be in the interest of the public to reverse it. The Court has never committed itself to any rule or policy that it will not bow to the lessons of experience and the force of better reasoning by overruling a mistake precedent. Stare decisis is not, like the rule of res judicata, a universal, inexorable command.

- 17.7. Reconsideration of the earlier decisions should be confined to questions of great public importance. Legal problems should not be treated as mere subjects for mental exercise. An earlier decision may therefore be overruled only if the Court comes to the conclusion that it is manifestly wrong, not upon a mere suggestion that if the matter were res integra, the members of the later court may arrive at a different conclusion. It is impossible to maintain as an abstract proposition that the Court is either legally or technically bound by previous decisions. Indeed, it may in a proper case be its duty to disregard them. But the rule should be applied with great caution, and only when the provision is manifestly wrong. Otherwise there would be grave danger of a want of continuity in the interpretation of the law. It is not possible to say that it is not open to the Court to review its previous decisions on good cause. The question is not, whether the Court can do so, but whether it will, having due regard to the need for continuity and consistency in judicial decisions. The doctrine of stare decisis is not an inflexible rule of law and cannot be permitted to perpetuate errors to the detriment to the general welfare of the public or a considerable section thereof.

[Refer:- MANU/SC/0095/1953 : [1953]4SCR1069 , MANU/SC/0019/1953 : [1954]1SCR674 , MANU/SC/0083/1955 : [1955]2SCR603 , MANU/SC/0092/1980 : AIR1981SC271 , 348 US 236(1958), 362 US 572 (1946), 264 US 219 (1924)].

18. “PROSPECTIVE OVERRULING”

This doctrine of prospective overruling is borrowed from American Law. There are two doctrines familiar to American Jurisprudence, one is described as Blackstonian theory and the other as “prospective overruling”.

- 18.1. Blackstone in his Commentaries, 69 (15th Edition 1809) stated the common law rule that the duty of the Court was “not to pronounce a new rule but to maintain and expound the old one”. It means the Judge does not make law but only discovers or finds the true law. The law has always been the same. If a subsequent decision changes the earlier one, the latter decision does not make law but only discovers the correct principle of law. The result of this view is that it is necessarily retrospective in operation.
- 18.2. Doctrine of prospective overruling as expounded by other Jurists suggest that it as “a useful judicial tool”. In the words of Canfield the said expression means, “... a Court should recognize a duty to announce a new and better rule for future transactions whenever the court has reached the conviction that an old rule (as established by the precedents) is unsound even though feeling compelled by stare decisis to apply the old and condemned rule to the instance case and to transaction which had already taken place.”

- 18.3. Justice Cardozo while addressing the Bar Association of New York said thus:-
 “The rule (the Blackstonian rule) that we are asked to apply is out of tune with the life about us. It has been made discordant by the forces that generate a living law. We apply it to this case because the repeal might work hardship to those who have trusted to its existence. We give notice however that any one trusting to it hereafter will do at his peril”.
- 18.4. The Supreme Court of United States of America in the case of *Great Northern Railway v. Sunburst Oil and Ref. Co.*, (1932) 287 US 358, 366 : 77 Law Ed 360 held as under:-
 “This is not a case where a Court in overruling an earlier decision has come to the new ruling of retroactive dealing and thereby has made invalid what was followed in the doing. Even that may often be done though litigants not infrequently have argued to the contrary This is a case where a Court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal. We think that the Federal Constitution has no voice upon the subject. A state in defining the elements of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may be so that the decision of the highest courts, though later overruled, was law nonetheless for intermediate transactions. On the other hand, it may hold to the ancient dogma that the law declared by its Courts had a platonic or ideal existence before the act of declaration, in which event, the discredited declaration will be viewed as if it had never been and to reconsider declaration as law from the beginning. The choice for any state may be determined by the juristic philosophy of the Judges of her Courts, their considerations of law, its origin and nature”.
- 18.5. The opinion of Justice Cardozo tried to harmonize the doctrine of prospective overruling with that of *stare decisis*.
- 18.6. In 1940 Hughes C.J., in *Chicot County Drainage District v. Baxter State Bank* (1940) 308 US 371 stated thus, “the law prior to the determination of unconstitutionality is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.”
- 18.7. Frankfurter. J in the case of *J. Graffin v. Peoples of The State of Illionis* (1956) 351 U.S. 12, 20 observed that, in arriving at a new principle, the judicial process is not important to define its scope and limits. Adjudication is not a mechanical exercise nor does it compel ‘either/or’ determination.”
- 18.8. In short, in America the doctrine of prospective overruling is now accepted in all branches of law, including constitutional law. But the carving of the limits of retrospectivity of the new rule is left to courts to be done, having regard to the requirements of justice.
- 18.9. Though English Courts in the past accepted the Blackstonian theory and though the House of Lords strictly adhered to the doctrine of ‘precedent’ in the earlier years, both the doctrines were practically given up by the “Practice State (Judicial Precedent)” issued by the House of Lords recorded in (1966) 1 WLR 1234. Lord Gardiner L.C.,

speaking for the House of Lords made the following observations, “Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears to do so.”

“In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.”

“The announcement is not intended to affect the use of precedent elsewhere than in this House.”

- 18.10. The decision rendered in a given case and making it prospective in operation cannot be termed as obiter what the court in effect does is to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be perpetuated. An illuminating article on the subject is found in Pennsylvania Law Review.

“It is a modern doctrine suitable for a fast moving society. It does not do away with the doctrine of stare decisis, but confines it to past transactions. It is true that in one sense the court only declares the law, either customary or statutory or personal law. While in strict theory it may be said that the doctrine involves making of law, what the court really does is to declare the law but refuses to give retroactivity to it. It is really a pragmatic solution re-conciling the two conflicting doctrines, namely, that a court finds law and that it does make law. It finds law but restricts its operation to the future. It enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It is left to the discretion of the Court to prescribe the limits of the retrospectivity and thereby it enables it to mould the relief to meet the ends of justice”.

19. On consideration of the aforesaid legal position the Supreme Court in the case of *Golak Nath and Ors. v. State of Punjab and Anr.* MANU/SC/0029/1967 : [1967]2SCR762 held as under:

“In India there is no statutory prohibition against the court refusing to give retrospectivity to the law declared by it. Indeed the doctrine of res judicata precludes any scope for retroactivity in respect of a subject matter that has been finally decided between the parties. Further, Indian Courts by interpretation reject retroactivity to statutory provisions though couched in general terms on the ground that they affect vested rights.”

“Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. In deed, Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and justice. Under Article 32, for the enforcement of the fundamental rights the Supreme Court has the power to issue suitable directions or orders or writs. Article 141 says that the law declared by the Supreme Court shall be binding on all Courts; and Article 142 enables it in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders, as are necessary to do complete justice. The expression “declared” is wider than the words “found or made”. To declare is to announce opinion. Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by the Supreme Court is the law of the land. If so, we do not see any acceptable reason why it, in declaring the law in suppression of the law declared by it earlier, could not restrict the operation of the law as declared to future and save the transactions, whether statutory or otherwise that were effected on the basis of the earlier law. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.”

As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions:

- (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution;
- (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India;
- (3) the scope of the retrospective operation of the law declared by the Supreme Court superseding its “earlier decisions” is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

(underlining by me)

20. This principle was applied by the Supreme Court in the case of Union of India and Ors. v. Mohd. Ramzan Khan MANU/SC/0124/1991 : (1991)ILLJ29SC It held that the law laid down in the aforesaid judgment shall have a prospective application and no punishment imposed shall be open to challenge on the ground laid down in the aforesaid judgment. But, after laying down the law and making it prospective, that law was applied in that case and relief was given to the petitioner setting aside the orders passed against him which orders were perfectly legal in view of the law which was in operation till the judgment in the said case. Therefore, several High Courts applied the law laid down in Ramzan Khan’s case even to the order of dismissal passed before the said judgment on the ground by giving relief to Ramzan Khan the Supreme Court had applied the law declared by them which is made prospective to dismissal orders passed before the said case. Because of the conflicting view the matter was referred to a Constitution Bench.
21. A Constitution Bench of the Supreme Court in the case of Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors. MANU/SC/0237/1994 : (1994)ILLJ162SC has further clarified the position. Justice Sawant speaking on behalf of the other three Judges held the law which is expressly made prospective in operation in Mohd. Ramzan Khan’s case, cannot be applied retrospectively on account of the Supreme Court granting the relief in that case which

is an error and it is obviously per incuriam. It is now well settled that the Courts can make the laws prospective in operation to prevent unsettlement of the settled positions, to prevent administrative chaos and to meet the ends of justice. After referring to Golak Nath and various other cases they affirmed the aforesaid legal position.

22. Justice K. Ramaswamy rendering a separate but a concurrent judgment held that, adherence to precedents and retrospective overruling has its legacy from the declaratory theory of precedent propounded by Blackstone that the duty of the court is not to “pronounce a new law but to maintain and expound the old one” and that “if it is to be found that the former decision is manifestly unjust or absurd, it is declared, not that such sentence was bad law, but that it was not the law”. Steadfast adherence to stare decisis is being advocated for stability, consistency and certainty as inherent values on the premise that it is much more conducive to the laws’ self-respect and it provides greatest deterrence to judicial creativity tampering with the restraining influence of certainty.
23. Prospective overruling, therefore, limits to future situations and excludes application to situations which have arisen before the decision was evolved. Supreme Court of United States of America in interpretation of the Constitution, statutes or any common law rights, consistently held that the Constitution neither prohibits nor requires retrospective effect. It is, therefore, the court to decide, on a balance of all relevant considerations, whether a decision overruling a previous principle should be applied retrospectively or not. Further it was held that, Supreme Court of USA has consistently, while overruling previous law or laying a new principle, made its operation prospective and given the relief to the party succeeding and in some cases given retrospectively and denied the relief in other cases. As a matter of constitutional law retrospective operation of an overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose the particular overruling decision seeks to serve. The court would look into the justifiable reliance on the overruled case by the administration: ability to effectuate the new rule adopted in the overruling case without doing injustice: the likelihood of its operation whether substantially burdens the administration of justice or retards the purpose. All these factors are to be taken into account while overruling the earlier decision or laying down a new principle. The benefit of the decision must be given to the parties before the Court even though applied to future cases from that date prospectively would not be extended to the parties whose adjudication either had become final or matters are pending trial or in appeal. The crucial cut-off date for giving prospective operation is the date of the judgment and not the date of the cause of action of a particular litigation giving rise to the principle culminating in the overruling decision. There is no distinction between civil and criminal litigation. Equally no distinction could be made between claims involving constitutional right, statutory right or common law right. It also emerges that the new rule would not be applied to ex post facto laws nor acceded to plea of denial of equality. This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation.

24. The Supreme Court in *Lily Thomas and Ors. v. Union of India and Ors.* MANU/SC/0327/2000 : 2000CriLJ2433 held, we are not impressed by the arguments to accept the contention that the law declared in *Sarla Mudgal* case cannot be applied to persons who have solemnised marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law.
25. Following the aforesaid judgment, the Supreme Court in the case of *Sarwan Kumar and Anr. v. Madan Lal Aggarwal* 2003 SAR (CIVIL) 226 held, the doctrine of “prospective overruling” was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of “prospective overruling” the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of doctrine of “prospective overruling” is left to the discretion of the court to mould with the justice of the case or the matter before the court.
26. In *Sushil Kumar Mehta v. Govind Ram Bohra* MANU/SC/0593/1989 : (1990)1SCC193 it is held, thus it is settled law that normally a decree passed by a court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as *res judicata* in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a *coram non iudice*. A decree passed by such a court is a nullity and is nonest. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party.
27. From the examination of the aforesaid two legal doctrines it is clear both the doctrines are inter connected. They are overlapping. The doctrine of *stare decisis* is a rule of policy which promotes predictability, certainty, uniformity and stability, which has to be kept in mind by the Judge or the Court before reversing the settled legal position. However, doctrine of *stare decisis* is not an imprisonment of reason. It is not inflexible. But, if it is shown that the decision was clearly or manifestly wrong and it has been followed by the Court in other cases and its maintenance is injurious to public interest, then not only it has the power to declare the earlier law as wrong but it becomes its duty to reverse the said law as otherwise it amounts to permitting to perpetuate errors to the detriment of the general welfare or a considerable section thereof. If after taking into consideration all these aspects if the Court reverses the earlier decision and declares the law, the said declaration does not lay down any new law. It only corrects an earlier wrong interpretation of the law and, therefore, it dates back to the date of the law itself. Once such a law has been declared, reversing the earlier law, it is not open to another Court to hold that this law declared is not applicable to the decrees and orders passed following the law prior to such

declaration. The doctrine of stare decisis does not confer any such power on a Judge or a Court to make such declaration. It would be wholly outside the jurisdiction of such Judge or Court and would be one without jurisdiction.

28. Similarly, the doctrine of prospective overruling is a doctrine which could be invoked only by the Supreme Court of India. As held in the *Golak Nath's* case the said principle could be applied only by the highest court of a country, i.e., the Supreme Court and it has the constitutional jurisdiction to declare law binding on all the Courts in India. Such a power in view of the aforesaid judgment is not conferred on the High Court. No such power could be located in the constitutional provisions.
29. Therefore, rightly the Full Bench when it declared the law upholding the law laid down in the *Veerashiva Cooperative Bank's* case did not make the law declared by it prospectively as it had no jurisdiction to do the same. If that is so this Court cannot hold that the law declared either in the case of *Veerashiva Cooperative Society Bank's* case or by the Full Bench affirming the same as prospective in operation only and does not apply to the awards which are impugned in these Writ Petitions which are passed in pursuance of the law which held the field for more than two decades prior to the aforesaid declaration. No such power is conferred on this Court either under the Constitution or otherwise. The effect is the law declared by the Full Bench is the law in reality which is in force from the day Karnataka Act 19/1976 came into force. When the Court interprets a provision of law it does not lay down any new law, but the Court interpret the existing law which was in force. It is settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the Court does not legislate but only give an interpretation to an existing law. Therefore, any award passed during this period is one without jurisdiction and it cannot be sustained/saved either on the principle of stare decisis nor on the principle of prospective overruling.
30. A Division Bench of this Court in the case of *D.P. Sharma v. State Transport Authority MANU/KA/0240/1987 : ILR1987KAR3255* had held that mere reversal or overruling of the judgment does not have the effect of uprooting a quasi judicial determination made in another case relying upon that decision at a time when it was a binding precedent. It is trite proposition that even inter parties, if the law laid down in a pronouncement is later over-ruled, as distinguished from it being reversed, its binding effect inter parties is not set at naught. The decision itself has to be assailed and got rid of in a manner known to or recognised by law. Therefore, those persons who are aggrieved by the awards passed by the Labour Courts during this interregnum have to assail them and get rid of them in the manner known to or recognised by law.
31. In all these Writ Petitions the persons who are aggrieved by an award passed by the Labour Court during that interregnum period have challenged the legality of the said order before this Court. Now when the matters are listed for final hearing, in view of the law declared by the Full Bench of this Court they are urging an additional ground to get rid of the awards in addition to the grounds which they have urged on merits. This was a ground which was not available to them when the matter was pending before the Labour Court. Therefore, they have not taken that contention. At the earliest point of time after the pronouncement of the judgment of the Full Bench they are urging this ground to assail the award. As this ground goes to the very root

of the matter and a jurisdiction point, this Court has to entertain the said ground and consider the same on merits. In the aforesaid judgment in the case of Devanur Grama Seva Sahakari Sangh Limited the Division Bench declined to entertain the said ground on the ground that the ground was not urged either before the Labour Court or before the learned single Judge, thereby meaning if the said contention had been urged before the learned single Judge they would have considered the said ground on merits. In the Writ Petition this ground is urged. Therefore, this Court is bound to consider the said ground, as it is not only a question of jurisdiction but is also purely a question of law. It is well settled that a pure question of law could be urged in appeal, revision or in a Writ Petition for the first time though the same is not urged in the earlier proceedings. In view of the law declared by the Full Bench and the Amendment Act No. 19/1976 came into force on 20.1.1976, the Labour Court has no jurisdiction to entertain the dispute between the employee of a cooperative society and the bank. Therefore, all these awards which are passed by the Labour Courts subsequent to 20.1.1976 which are under challenge before this Court as they have not reached the finality yet, are liable to be quashed on the short ground that the Labour Court which passed these awards had no jurisdiction to pass the same.

32. Under these circumstances, I pass the following order:-
- (a) All these Writ Petitions are allowed.
 - (b) The impugned awards passed in each of these cases by the respective Labour Courts are hereby quashed, as having been passed without jurisdiction.
 - (c) The findings recorded on merits by the Labour Court also would become a finding without jurisdiction and consequently the finding on merits also is hereby quashed.
 - (d) Liberty is reserved to the parties to approach the Registrar of Cooperative Societies or such other appropriate forum for challenging the orders passed by the Cooperative Societies imposing penalty on them. If such applications are made within eight weeks from today the authorities shall entertain those applications on merits without going into the question of limitation as all these petitioners were agitating their grievances in a wrong forum because of the law which was prevailing then.
 - (e) However, it is open to both the parties to make use of the pleadings, evidence, documents, produced in the course of enquiry subject to the law of admissibility and relevancy before the Registrar of Cooperative Societies and the authorities shall consider the same on its merits and in accordance with law.
 - (f) As these claims are pending for sufficiently long time the authorities should make every endeavor to take up these applications or claim petitions out of turn and dispose of the same within one year from the date of appearance of both the parties before them.
33. In the circumstances, parties to bear their own costs.

Equivalent Citation: ILR 2010 KARNATAKA 3110, 2010(2)KCCR1548

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

R.S.A. No. 865/2003

Decided On: 01.07.2009

**Appellants: S. Sandeep S/o N. Srinivasa Reddy, Kumari S. Soumya D/o N. Srinivasa Reddy
and Smt. Jayalakshmi S. Reddy W/o N. Srinivasa Reddy**

Vs.

**Respondent: N. Srinivasa Reddy S/o late Narasimha Reddy and
The Secretary, Navodaya Sahakara Bank Ltd.**

Hon'ble Judges/Coram:

S.N. Satyanarayana, J.

Counsels:

For Appellant/Petitioner/Plaintiff: P.D. Surana, Adv.

For Respondents/Defendant: B.K. Nagaraj, Adv. for R2

Subject: Property

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 70, **Karnataka** Cooperative Societies Act, 1959 - Section 100, **Karnataka** Cooperative Societies Act, 1959 - Section 118, **Karnataka** Cooperative Societies Act, 1959 - Section 118(1)(C); Code of Civil Procedure (CPC) - Order 9, Code of Civil Procedure (CPC) - Order 17 Rule 2

Cases Referred:

Jyotiba Yellappa Jadhav v. Hubli Cooperative Cotton Sale Society Ltd. and Ors. 1970(2) Mys. Law Journal 344

Citing Reference:

Jyotiba Yellappa Jadhav v. Hubli Cooperative Cotton Sale Society Ltd. and Ors. - Mentioned

Disposition:

Appeal allowed

Case Note:

Property - Maintainability - Section 118 of the Karnataka Cooperative Societies Act, 1959; Order 17, Rule 2 of the Code of Civil Procedure, 1908 (CPC) - First Appellate Court confirmed judgment and decree of Trial Court, which rejected plaint of Appellants herein - Challenge against thereto - Hence, the present Appeal - Whether dispute regarding recovery of monies pursuant to an award between 2nd defendant and 1st defendant falls under Section 118(1)(C) of the Act - Held, Section 118 of the Cooperative Societies Act clearly mentions matter barring jurisdiction of Civil Court - Provision of Section 118 apply only if Trial Court concludes that suit schedule properties are absolute properties of 1st defendant - Order 17, rule 12 indicates that when case gets posted for plaintiffs to appear, only option available to Court below for non appearance of plaintiff is to dismiss suit for non prosecution and not to proceed with suit on its merits - Procedure adopted by Court below in disposing of suit on merits in absence of any proper representation by plaintiffs contrary to provisions of Order 17, Rule 2 of CPC - Decree passed by first Appellate Court confirming Judgment passed by Trial Court erroneous - Until and unless right of plaintiffs to suit schedule property gets decided, question of answering maintainability does not arise - Impugned order set aside and matter remitted back to Trial Court to give finding whether suit schedule properties were coparcenary or absolute properties of 1st defendant - Appeal allowed

Industry: Banks

JUDGMENT

S.N. Satyanarayana, J.

1. This is plaintiffs' second appeal challenging the Judgment and Decree dated 05.07.2003 on the file of the Principal District Judge, Bangalore Rural District, Bangalore in R.A. No. 7/2001 wherein the Judgment and Decree dated 21.07.2000 in O.S. No. 485/1994 on the file of Principal Civil Judge, Bangalore Rural District, Bangalore, rejecting plaint of the appellants herein, was confirmed.
2. The essential facts leading to this appeal are that, the appellants 1 to 3 are respectively the son, daughter and wife of the 1st respondent herein, who was the 1st defendant in the original suit wherein the plaintiffs have challenged the award secured by the 2nd defendant (who is the 2nd respondent herein) in dispute No. DRD.988/92-93 against the 1st defendant and also for the relief that the 2nd defendant should not seek sale of 3/4th share of the plaintiffs in the suit schedule property for satisfying the aforesaid award passed in favour of the plaintiffs. In the said proceeding the 1st defendant did not contest the suit. It is only the 2nd defendant who entered appearance and filed written statement stating that the 1st defendant borrowed money from the 2nd defendant on the security of the suit schedule properties and for recovery of the same proceedings were initiated before the Deputy Registrar of Co-operative Societies in dispute No. DRB.988/92-93 which came to be allowed by an award against which the 1st defendant filed appeal before the Karnataka Appellate Tribunal in appeal No. 449/1994 wherein at the time of filing of the appeal the award amount that was due from the 1st defendant to the 2nd defendant was Rs. 11,89,114.65 and in the said proceeding before the Tribunal an interim order was passed staying the auction of item No. 1 of the suit schedule property subject to the 1st defendant depositing Rs. 7,50,000/- with the 2nd defendant bank within four weeks from the

date of the said order of stay i.e., 28.07.1994, which was not complied with by the 1st defendant. Thereafter, the plaintiffs have filed the suit in O.S. No. 485/1994 stating that the plaintiffs and 1st defendant together constitute a coparcenary joint family, the suit schedule properties are coparcenary properties, as such, each one of them have 1/4th share in the suit, schedule properties and the 2nd defendant bank cannot execute the award so far as it pertains to 3/4th share of the plaintiffs in the suit schedule properties.

3. The 2nd defendant denied the fact that the suit schedule properties are co-parcenary properties and the existence of joint family status among them. It took up a specific contention that the suit is not maintainable in view of Section 118 of the Karnataka Cooperative Societies Act, which bar the jurisdiction of Civil Court so far as it pertains to the dispute referred to in Section 70 of the Cooperative Societies Act, 1959.
4. After the pleadings were complete, the trial Court framed the following issues:
 1. Whether the plaintiffs prove that the loan borrowed by the first defendant from the 2nd defendant is not for legal necessity of the family and the award decree in DRP 988/92-93 obtained by the 2nd defendant is not binding on them?
 2. Whether the plaintiffs prove that they have got 3/4th share in the suit schedule properties?
 3. Whether the suit is liable to be dismissed for the reasons stated at para 5 of written statement of the 2nd defendant?
 4. Whether the suit is barred Under Section 118 of the Karnataka Cooperative Societies Act?
 5. Whether the suit is liable to be dismissed for the not making the registrar of Cooperative Society as a party to the suit?
 6. Whether the suit has been properly valued and the court fee paid is sufficient?
 7. Whether the plaintiffs are entitled for the relief of declaration sought by them?
 8. Whether the plaintiffs are entitled for permanent injunction sought, by them?
 9. What order?
5. Out of the said 9 issues, issue Nos. 3 and 4 were regarding maintainability of the suit before the Civil Court and the Trial Court decided to hear the said issues and posted the matter for hearing on 12.08.1998 and adjourned the same from time to time till 13.07.2000. On 13.07.2000 also the plaintiffs did not appear and did not go on with the matter. Therefore the Trial Court without hearing the parties proceeded to pass order on issue Nos. 3 and 4 holding that the suit is not maintainable and accordingly, dismissed the suit filed by the plaintiffs. Against which, the plaintiffs filed appeal in R.A. No. 7/2001. In the said appeal two of the grounds that were urged by the plaintiffs are that dismissing of the suit on merits without hearing the plaintiffs is bad in law, contrary to the provisions of Order 17, Rule 2 of CPC which specifically prohibits the Court from disposing of the suit on its merits and it should be dismissal for non prosecution only. The second one is that the bar of suit as contemplated under Section 118 of the Karnataka

Cooperatives Societies Act pursuant to the provisions of Section 70 does not arise for the reason that the plaintiffs are not the members of any of the Co-operative Societies and that the plaintiffs in this suit are not seeking title to the property in dispute from the 1st defendant against whom there is an award passed under the provisions of the Karnataka Cooperative Societies Act. The 1st Appellate Court framed the following points for consideration and answered the said points in the negative thereby dismissed the regular appeal filed by the plaintiffs. The plaintiffs are before this Court challenging the said Judgment and Decree.

6. At the time of admission after hearing the Counsel for the appellants this Court has framed the following substantial question of law for consideration.

Whether the finding of the trial Court that the suit is not maintainable under Section 118 of the Karnataka Co-operative Societies Act, is contrary to the division Bench decision of this Court in 1970(2) Kar LJ 344 (Jyotiba Yellappa Jadhav v. Hubli Cooperative Cotton Sale Society Ltd. and Ors.)?

When the appeal is taken up for hearing this Court felt that one more substantial question of law is required to be answered in this proceeding and it is framed as under:

Whether the Trial Court was justified in dismissing the suit on merits without hearing the plaintiffs?

7. After framing of the additional substantial question of law, the Counsel for both the parties to the appeal were heard on both substantial question of law framed in this appeal. The arguments of the plaintiffs so far as the 1st question of law is concerned is that the award said to have been passed by the Deputy Registrar of Co-operative Societies in favour of 2nd respondent in dispute No. DRB.988/92-93 is in respect of loan transaction that was between the 1st defendant and the 2nd defendant in the Trial Court. The plaintiffs are not parties to the said proceeding. However, the property that is sought to be attached for satisfaction of the award amount is suit schedule 1 and 2 properties which according to the plaintiffs is a co-parcenary property in the hands of the 1st defendant in which the appellants 1 to 3 have a share, that the plaintiffs neither seek share in the suit schedule properties either through or under the 1st defendant, who is a member of the 2nd defendant Co-operative Society. Therefore, the respondent No. 2 cannot proceed to attach and sell the property on which plaintiffs have a share and that the share of plaintiffs in suit schedule property is not available to satisfy the award passed against the 1st defendant and the same is not binding on them, that they are not obliged to challenge the same before the Registrar of Co-operative Societies instead of going to the Court as stated in Section 70 of the Cooperative Societies Act. Since the plaintiffs are not the members of any of the co-operative Society and as they are not seeking right over the suit, schedule property through the 1st defendant, they have an independent right, which could be adjudicated in a competent Civil Court. This contention of the plaintiffs has reasonable force.
8. Section 118 of the Cooperative Societies Act clearly states in which of the matter there is a bar regarding jurisdiction of the Civil Court. They are as under:

118. Bar of jurisdiction of courts.- (1) Save as provided in this Act, no Civil, labour or revenue court of Industrial Tribunal shall have any jurisdiction in respect of.-

- (a) the registration of a cooperative society or bye-laws or of an amendment of a bye-law;
- (b) the removal of a committee or member thereof;
- (c) any dispute required under Section 70 to be referred to the Registrar or the recovery of moneys under Section 100;
- (d) any matter concerning the winding up and the dissolution of a co-operative society;

(2) While a cooperative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with, or instituted against, the Liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may Impose.

(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.

9. According to the 2nd defendant the dispute between the 2nd defendant and the 1st defendant falls under Section 118(1)(C) of the Act i.e., dispute regarding recovery of monies pursuant to an award passed in his favour and the competent authority to challenge the same is the Registrar before whom the said award should be referred to and adjudicated. The contention of the 2nd defendant does not appear to be just and proper.
10. In the instant case this provision applies only if the Trial Court comes to a conclusion that the suit schedule properties are the absolute properties of the 1st defendant
11. It is elicited in the evidence of DWs.1 and 2 that DW.2 does not know to read and write any language, much less Kannada language. Further, first defendant can speak Malayalam and Kannada and second defendant can speak only Malayalam and they are not in a position to read, write and understand the agreement of sale, which is typed in English. However, it is seen that the signature of first, defendant on Ex.P1 is in English, for which the explanation he has given in his evidence is that he can only put his signature in English but he cannot read and write English.
12. Further, it is seen that plaintiff has not properly explained the circumstances under which he could get the suit schedule property purchased for a smaller sum of Rs. 45,000/- when he himself admits that his property which is situated adjacent to suit schedule property is valued at Rs. 2 to 5 lakhs as on the date when he entered into agreement of sale of the suit schedule property. Incidentally, the property of defendants, which was purchased around that time, also measured the same extent with a construction of similar extent on the said property. This for

hearing of the said preliminary issues. It is seen that on 13.07.2000 also the plaintiffs or their Counsel did not appear before the Court and addressed arguments regarding the said two preliminary issues. At that juncture, the Trial Court has proceeded to post the matter for 21.07.2000 and dismissed the said suit on merits giving a finding on the said Issues 3 and 4 holding the same against the plaintiffs. The procedure adopted by the Court below in disposing of the suit on merits in the absence of any proper representation by the plaintiffs is contrary to the provisions of Order 17, Rule 2 of CPC. Order 17, Rule 2 of CPC reads as under:

Procedure if parties fail to appear on day fixed - Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other orders as it thinks fit.

13. A reading of the said provision clearly indicates that when the case is posted for the plaintiffs to appear, the only option that is available to the Court below is to dismiss the suit for non prosecution and not to proceed with the suit on its merits and pass the Judgment and Decree on its merits. Therefore, the Court below has grossly erred in deciding issues 3 and 4 on its merits when the plaintiffs have not argued the same. It is seen that the 1st Appellate Court in its judgment agrees with this proposition of law and holds that the Trial Court should not have dismissed the suit on its merits when the plaintiffs failed to appear before the Court and addressed arguments on merits. Instead of holding that the procedure adopted by the Trial Court in deciding the matter on merits is incorrect the 1st Appellate Court proceeds to give a finding as under:

still I do not think that the matter is required to be remanded to the Trial Court. This is for the simple reason that an opportunity has been given to the plaintiffs before the Trial Court who are appellants before me and the learned Counsel has addressed elaborate arguments on the question to be decided and I have held that the suit is barred. When that is so, there is no point in remanding the suit to the Trial Court again for consideration of the same point on which I have given my decision after hearing elaborately the plaintiffs' Advocate in this appeal.

The finding of the 1st Appellate Court on this aspect is grossly erroneous. When the 1st Appellate Court has rightly come to the conclusion that the Trial Court has failed to follow the procedure in disposing of the suit, it ought to have set aside the Judgment and Decree and ought to have remanded back the matter for fresh consideration on merits to the Trial Court. Therefore, the Judgment and Decree passed by the 1st Appellate Court confirming the Judgment and Decree passed by the Trial Court is erroneous, incorrect for the reasons stated above and the same is required to be remanded back to the Trial Court for fresh consideration of all the issues and to give a finding whether the suit schedule properties are the coparcenary or the absolute properties of the 1st defendant. If the suit schedule properties are the absolute properties of the 1st defendant then the Trial Court would be justified in holding that the suit is not maintainable for the reason that Section 118 of the Cooperative Societies Act bars filing of suit before Civil Court in which the right of the properties as contemplated under Section 70 of the Act is required to be decided

by the Registrar of the Co-operative Societies and not the Civil Court. In the present case until and unless the right of the plaintiffs to the suit schedule property is decided, the question of answering the maintainability does not arise.

14. For the reasons stated above, the appeal is allowed. The Judgment and Decree passed by the Courts below i.e., the Judgment and Decree dated 05.07.2003 on the file of the Principal District Judge, Bangalore Rural District, Bangalore in R.A. No. 7/2001 and the Judgment and Decree dated 21.07.2000 in O.S. No. 485/1994 on the file of Principal Civil Judge, Bangalore Rural District, Bangalore, are set aside. The matter is remitted back to the Trial Court for fresh consideration of all the issues that are framed in the suit and the Trial Court is directed to dispose of the matter within one year from the date of receipt of copy of this Judgment.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 9200 of 2005

Decided On: 19.04.2006

Appellants: **Shantinagar House Building Co-operative Society Limited**

Vs.

Respondent: **State of Karnataka and Ors.**

Hon'ble Judges/Coram:

Anand Byrareddy, J.

Counsels:

For Appellant/Petitioner/Plaintiff: V. Lakshminarayana, Adv.

For Respondents/Defendant: B. Srinivasa Gowda, Additional Government Adv. for Respondents 1 and 2, B.S. Manjunath and Sachin M. Mahajan, Adv. for Respondents 3 to 8 and C.G. Gopala Swamy, Adv. for Sriyuths S.V. Bhat, V.T. Reddy and B.T. Girish, Adv. for Respondents 9 to 15

Subject: Property

Subject: Civil

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 ;Karnataka Land (Restriction on Transfer) Act, 1991 - Section 3, Karnataka Land (Restriction on Transfer) Act, 1991 - Section 4, Karnataka Land (Restriction on Transfer) Act, 1991 - Section 8; Land Acquisition Act ;Bangalore Development Authority Act, 1976 - Section 19; Karnataka Urban Development Authorities Act, 1987 - Section 19

Cases Referred:

Special Land Acquisition Officer, Bombay and Ors. v. Godrej and, Boyce AIR 1987 SC 2421 : (1988)1 SCC 50; Sudama Singh v. Nath Saran Singh and Ors. AIR 1988 SC 84 : (1988)1 SCC 57 : 1988 SCC (L and S) 173; Balwant Narayan Bhagde v. M.D. Bhagwat and Ors. AIR 1975 SC 1767 : (1976)1 SCC 700; ITI Employees' Housing Co-operative Society Limited v. Venkatappa Disposed off on 23-12-2005 (Kar.); Rajendra Kumar v. Kalyan (dead) by L.Rs AIR 2000 SC 3335 : (2000)8 SCC 99; Mahavir Prasad Gupta and Anr. v. State of National Capital Territory of Delhi and Ors. AIR 2000 SC 3101 : (2000)8 SCC 115 : 2000 SCC (Cri.) 1453; Maharaj Singh v. State of Uttar Pradesh and Ors. AIR 1976 SC 2602 : (1977)1 SCC 155; Thakur Mohd. Ismail v. Thakur Sabir Ali 1962(1) SCR 20; Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors. (1997)1 SCC 35; Dutta Associates (Private) Limited v. Indo Merchantiles (Private) Limited and Ors. (1997)1 SCC 53; Northern Indian Glass Industries v. Jaswant Singh and Ors. AIR 2003 SC 234 : (2003)1 SCC 335 : 2002(7) Supreme

607; The Fruit and Vegetable Merchants' Union v. The Delhi Improvement Trust AIR 1957 SC 344 : 1957 SCR 1; S.P. Gururaja and Ors. v. The Executive Member, Karnataka Industrial Areas Development Board and Anr. 1998(3) Kar. L.J. 223 : ILR 1998 Kar. 1212 : AIR 1998 Kant. 223; M. Sanjeeva and Anr. v. State of Karnataka, represented by Secretary, the Department of Co-operation, Bangalore and Ors. 2003(6) Kar. L.J. 420 : ILR 2003 Kar. 4867 (DB) SCC 148; D. Nagaraj v. State of Karnataka and Ors. 1977(1) Kar. L.J. 175 (SC) : ILR 1977 Kar. Kar (SC) : AIR 1977 SC 876 : (1977) 2; State of Maharashtra v. The Central Provinces Manganese Ore Company Limited AIR 1977 SC 879 : (1977)1 SCC 643 : (1977)39 STC 340 (SC); Calcutta Gas Company (Proprietary) Limited v. State of West Bengal and Ors. AIR 1962 SC 1044 : (1963)1 SCJ 106; Izhar Ahmad Khan v. Union of India and Ors. AIR 1962 SC 1052 : 1962(2) Cri. L.J. 215 (SC)

Disposition:

Petition dismissed

Case Note:

Property - transfer of land - Section 3 of the Karnataka Land (Restriction on Transfer) Act, 1991 - whether subsequent sale in respect of the same land in void ab initio - petitioners contended lands having been acquired and in possession of the petitioners ,the subsequent execution of sale deeds by the respondents were void ab initio - there is an embargo for registration of any conveyances as it is a subject matter of acquisition - Hence the petition - Held, regarding transfer of land that has already vested in the State and possession of which is with the Society, the nullity of the transaction precedes the registration. Section 3 of the Act prohibits the transfer itself. Registration of any such conveyance is superfluous. The conveyance of acquired land, not being denied, and the nullity of such transactions not being capable of declared without reference to factual data, however trivial, would not be the province of this Court in its writ jurisdiction. The petitioner would necessarily have to approach a Civil Court of competent jurisdiction and seek appropriate declaratory relief - petition dismissed

Ratio Decidendi:

transfer of land that has already vested in the State and possession of which is with the Society, the nullity of the transaction precedes the registration is a matter to be looked into by a civil court of competent jurisdiction

Industry: Cooperative Societies

ORDER

Anand Byrareddy, J.

1. The petitioner is a society registered under the Karnataka Cooperative Societies Act, 1959. It is contended that lands in Survey Nos. 1, 2/1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Srinivagilu, Amanikere, Begur Hobli, Bangalore South Taluk and Survey No. 12/1 of Jakkasandra Village, Bangalore South Taluk, came to be acquired by the State for the benefit of the petitioner-society and its members, and the proceedings were completed in the year 1988.

2. That the petitioner-Society has in turn allotted sites to its members and conveyance of the same by registered documents in favour of such members is substantially completed.
3. It is the petitioner's complaint that respondents 3 to 8 who are erstwhile owners of the acquired land (to the extent of 60 acres 20 guntas out of 66 acres 22 guntas acquired) are seeking to alienate the very lands and that the said respondents have, in collusion with respondents 9 to 15, executed sale deeds and have even got the same registered. Copies of such sale deeds are annexed to the petition.
4. The petitioner contends that the sale deed are illegal and opposed to public policy. The petitioner contends that in terms of Karnataka Land (Restriction on Transfer) Act, 1991 (hereinafter referred to as 'the Act' for brevity) and Section 3 thereof, imposes an embargo on transfer of land which is the subject-matter of acquisition under the Land Acquisition Act or any other law. Respondents 3 to 8 having lost their title over the lands pursuant to the acquisition, there is a total embargo under Section 8 of the Act - in respect of registration of any conveyances in respect of the said land by the erstwhile owners. The petitioner complains that inspite of the petitioner having brought these facts to the knowledge of the second respondent, the registering authority, the above sale deeds were registered and hence the petition seeking a declaration that the above sale deeds are null and void and other incidental reliefs.
5. Sri V. Lakshminarayana, appearing for the petitioner contends that the lands having been acquired and the possession of the lands having been delivered to the petitioner, respondents 3 to 8 stood divested of their title. The subsequent execution of the sale deeds was therefore void ab initio and there was a failure on the part of the second respondent in abiding by the provisions of the 1991 Act.
6. Sri Lakshminarayana has cited a large number of decisions, namely:-
 - (1) Special Land Acquisition Officer, Bombay and Ors. v. Godrej and, Boyce MANU/SC/0560/1987 : [1988]1SCR590
 - (2) Sudama Singh v. Nath Saran Singh and Ors. MANU/SC/0713/1987 : [1988]1SCR1049
 - (3) Balwant Narayan Bhagde v. M.D. Bhagwat and Ors. MANU/SC/0002/1975 : AIR1975SC1767
 - (4) ITI Employees' Housing Co-operative Society Limited v. Venkatappa Disposed off on 23-12-2005 (Kar.);
 - (5) Rajendra Kumar v. Kalyan (dead) by L.Rs MANU/SC/0474/2000 : AIR2000SC3335
 - (6) Mahavir Prasad Gupta and Anr. v. State of National Capital Territory of Delhi and Ors. MANU/SC/0608/2000 : 2000CriLJ4665
 - (7) Maharaj Singh v. State of Uttar Pradesh and Ors. MANU/SC/0361/1976 : [1977]1SCR1072
 - (8) Thakur Mohd. Ismail v. Thakur Sabir Ali 1962(1) SCR 20;

- (9) Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors. MANU/SC/1002/1997 : (1997)1SCC35
 - (10) Dutta Associates (Private) Limited v. Indo Merchandiles (Private) Limited and Ors. MANU/SC/1017/1997 : (1997)1SCC53
 - (11) Northern Indian Glass Industries v. Jaswant Singh and Ors. MANU/SC/0965/2002 : AIR2003SC234
 - (12) The Fruit and Vegetable Merchants' Union v. The Delhi Improvement Trust MANU/SC/0082/1956 : [1957]1SCR1 .
7. Respondents 3 to 8 and respondents 9 to 15 have resisted the petition on various grounds including the validity of the acquisition proceedings.
8. Sri C.G. Gopaldaswamy, appearing for respondents 9 to 15 argued at length on these contentions and relied on the following.-
- (1) S.P. Gururaja and Ors. v. The Executive Member, Karnataka Industrial Areas Development Board and Anr. MANU/KA/0182/1998 : AIR1998Kant223
 - (2) M. Sanjeeva and Anr. v. State of Karnataka, represented by Secretary, the Department of Co-operation, Bangalore and Ors. MANU/KA/0599/2003 : ILR2003KAR4867
 - (3) D. Nagaraj v. State of Karnataka and Ors. MANU/SC/0319/1977 : [1977]2SCR626
 - (4) State of Maharashtra v. The Central Provinces Manganese Ore Company Limited MANU/SC/0417/1976 : [1977]1SCR1002
 - (5) Calcutta Gas Company (Proprietary) Limited v. State of West Bengal and Ors. MANU/SC/0063/1962 : AIR1962SC1044
 - (6) Izhar Ahmad Khan v. Union of India and Ors. MANU/SC/0094/1962 : AIR1962SC1052.
9. The limited question for consideration in the present writ petition is, whether in the given facts and circumstances, the reliefs sought for can be granted.
10. The statement of objects and reasons in the passing of the Karnataka Land (Restriction on Transfer) Act, 1991, reads as follows.-

Statement of Objects and Reasons

Act 17 of 1992.-Some of the major bottlenecks faced by Bangalore Development Authority and the Urban Development Authorities in accelerating the much needed formation and distribution of sites in Bangalore City and other urban areas are the following.-

- (1) Unauthorised sale of cities by the affected land holders through registered sale deeds or against power of attorneys or entering into agreements of sale, after collecting advance payments;

- (2) Unauthorised construction activity by the transferees in various parts of Bangalore and other urban areas under the cover of the aforementioned sale deeds and power of attorneys.

The value of the land in the areas notified for acquisition tends to increase, and advantage thereof is taken by many unscrupulous landholders, by selling their lands to unsuspecting buyers, in violation of various laws. The transferees, in turn indulge in unauthorised construction rendering the process of acquisition of land and planned urban development extremely difficult, if not impossible.

Similar laws passed in other States in the country have greatly helped in preventing such unauthorised transactions. The present measure is expected to prevent the difficulties caused in the way of acquisition of lands and to help in the speedy formation and distribution of sites.

Hence the Bill.

(Obtained from L.A. Bill No. 7 of 1991 published in Karnataka Gazette, Extraordinary, Part IV-2A, dated 21-3-1991 as No. 124).

11. In line with the above, the restriction under Section 8 is in respect of lands referred to under Section 4 of the Act.
12. Section 4 of the Act reads as follows.-
 4. Regulation of transfer of lands in relation to which acquisition proceedings have been initiated.-No person shall, except with previous permission in writing of the Competent Authority, transfer, or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which is proposed to be acquired in connection with the scheme in relation to which the declaration has been published under Section 19 of the Bangalore Development Authority Act, 1976 or Section 19 of the Karnataka Urban Development Authorities Act, 1987.
13. Having regard to the fact that the allegation is regarding transfer of land that has already vested in the State and possession of which is with the Society, the nullity of the transaction precedes the registration. Section 3 of the Act prohibits the transfer itself. Registration of any such conveyance is superfluous. The conveyance of acquired land, not being denied, and the nullity of such transactions not being capable of declared without reference to factual data, however trivial, would not be the province of this Court in its writ jurisdiction. The petitioner would necessarily have to approach a Civil Court of competent jurisdiction and seek appropriate declaratory reliefs.
14. The writ petition is accordingly dismissed.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 10750 of 2007 (KLR-RES)

Decided On: 02.11.2012

Appellants: Smt Muniyamma Since Deceased Rep. By Her Lr (Muniyappa S/o Late Muniyappa @ Dommanna), Sri Narayanaswamy S/o Late Muniyappa @ Dommanna Aged About 49 Years, Sri Avalappa S/o Late Muniyappa @ Dommanna Aged About 42 Years and Sri Kempanna Since Deceased Rep. By His Lrs (Smt Anasuyamma W/o Late Kempanna Aged About 30 Years, Kum Ashwini D/o Late Kempanna Aged About 9 Years and Mr. Arun S/o Late Kempanna Aged About 6 Years All Are Residents of Sathanur Village Jala Hobli Bangalore North (Addl.) Taluk)

Vs.

Respondent: Sri Hemanna Since Deceased Rep. By His Lrs (Smt Akkayamma W/o Late Hemanna Aged About 70 Years, Sri Danegowda S/o Late Hemanna Aged About 54 Years, Sri Munivenkategowda S/o Late Hemanna Aged About 50 Years and Sri Gopalagowda @ Prakash S/o Late Hemanna Aged About 47 Years), R1(a) To R1(d) Are R/o Sathanur Village, Jala Hobli Bangalore North (Addl.) Taluk, Sri. Muniraju S/o Pille Gowda Aged About 50 Years R/o Sathanur Village, Jala Hobli Bangalore North (Addl.) Taluk, Sri Channappa Since Deceased Rep. By His Lrs (Smt Rudramma W/o Late Channappa Aged About 70 Years R/o Sathanur Village, Jala Hobli Bangalore North (Addl.) Taluk and Ors.) and The Special Deputy Commissioner Bangalore Urban District Bangalore

Hon'ble Judges/Coram:

Hon'ble Mr. Justice D.V. Shylendra Kumar

Counsels:

For Appellant/Petitioner/Plaintiff: Smt D.P. Revathi, Adv. for Sri D.P. Shivaprasad, Adv. For Respondents/Defendant: Sri V.F. Kumbar, Adv. for C/R1 (a-d), Sri Balaraj A.C., Adv. for R2, R3 (a & b) and Sri R.B. Sathyanarayana Singh, HCGP for R4, R3(c), R3(d) & R3(e) Are Served

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - Section 83, Karnataka Co-operative Societies Act, 1959 - Section 87-B, Karnataka Co-operative Societies Act, 1959 - Section 89, Karnataka Co-operative Societies Act, 1959 - Section 89-C(2), Karnataka Co-operative Societies Act, 1959 - Section 89-C(2)(b), Karnataka Co-operative Societies Act, 1959 - Section 95, Karnataka Co-operative Societies Act, 1959 - Section 95(2)

Disposition:

Petition allowed

Case Note:

Property - Mutation - Legality of - Present Petition filed against setting aside order of Tahsildar who mutated entries in revenue records in respect of subject land in favour of Petitioners - Held, Deputy Commissioner under impugned order, had indicated that there could not be tenancy between close relatives and that conferment of occupancy rights in favour of predecessor in title of Petitioners was not valid - While order passed by Tahsildar was based on order passed by Tribunal conferring occupancy rights in favour of predecessor of Petitioners- Proceedings of Tribunal and conferment of occupancy rights in favour of tenant was virtually in nature of conferment of title on tenant and order passed by Tribunal attained finality - When order of Tribunal registering occupancy rights in favour of predecessor of Petitioners had been questioned before Court by way of filing Petition by Respondent No. 1, it did not result in any positive order in favour of Respondent No. 1 nor order of Tribunal was set aside, order of Tribunal stands affirmed - It appeared that reasoning assigned by Assistant Commissioner and Deputy Commissioner was contrary to legal position - Petition allowed and impugned orders quashed and order passed by Tahsildar restored

ORDER**Hon'ble Mr. Justice D.V. Shylendra Kumar**

1. Writ petitioners are aggrieved by the order dated 7-9-2004 passed in RA No. 50/2004-05 by the Assistant Commissioner, Bangalore North vide Annexure-J to the writ petition, whereby the Assistant Commissioner has allowed the appeal of the first respondent and has set aside the order dated 15-11-2003 passed by the Tahsildar, Bangalore north additional taluk in RRT(DIS) 32/01-02, mutating the entries in the revenue records in respect of an extent of 1 acre of land in Sy. No. 4 of Sathanur village, Jala hobli, Bangalore north taluk and also an extent of 2 acres 8 guntas of land in Sy. No. 6 of the very village, in favour of fourth petitioner and have sought for quashing of this order and also further confirmation order dated 22-6-2007 [copy at Annexure-A to the writ petition] passed by the special Deputy Commissioner, Bangalore district in Revision Petition No. 97/2004-05, dismissing the revision petition at the instance of second petitioner and also the order of the passed by the very Deputy Commissioner in the very same common order, allowing Misc Appeal No. 10/2005-06, that had been filed by the first respondent under Section 89-C(2) of the Karnataka Cooperative Societies Act, 1959 [for short, the Societies Act]. Writ petitioners have sought for quashing of the order of the Assistant Commissioner and also the special Deputy Commissioner, which are said to be adverse to their interest, on the premise that the writ petitioners had been conferred with occupancy rights in respect of the subject lands and to the extent referred to above as per the order dated 13-7-1982 [copy at Annexure-B to the writ petition] passed by the land tribunal, Devanahalli, on an application filed before it by one Muniyappa @ Doomanna s/o Muniswamappa-husband of first petitioner, father of petitioners 2 and 3 and grandfather of fourth petitioner.
2. Writ petitioners have also placed reliance on the order of the Karnataka Appellate Tribunal dated 11-7-1980 passed in Appeal No. 544/1979, an appeal filed by the daughters of one Muniswamappa, who, undoubtedly, owned the subject lands to an extent of 3 acres 21 guntas in Sy. No. 4 and 2 acres 8 guntas in Sy. No. 6, having inherited the same in a family partition.

In the said appeal, the tribunal had set aside the award dated 4-11-1973 passed by in Dispute No. 77/73-74 by the arbitrator of cooperative societies, Bangalore district, which was an award that had come to be passed at the instance of primary land development cooperative bank limited, Devanahalli on a dispute raised by this bank as against the said Muniswamappa, who had, without any dispute, mortgaged both parcels of these lands in the above mentioned survey numbers in favour of the said cooperative bank and had defaulted in repayment of loan and for recovery of the said amount, the bank had obtained an award as against the borrower Muniswamappa.

3. There is multiplicity of proceedings both on the side of the efforts for recovery of amount by the cooperative bank from its borrower and also proceedings on the side of writ petitioners through their predecessor-in-title namely Muniyappa, who had filed an application in Form No. 7 for grant of occupancy rights in respect of the two parcels of land to be the tenant under his very father, but to an extent of 1 acre in Sy. No. 4 and 2 acres 8 guntas in Sy. No. 6. It is this application which had resulted in the order of the land tribunal dated 13-7-1982.
4. The developments on the proceedings under the Societies Act are that subsequent to the award dated 4-11-1973, which the bank had obtained as against its borrower, it appears, the bank had in execution of the award sought to bring the two parcels of agricultural land to auction through auction sale conducted on 15-4-1978 and was sold on 17-4-1978 and it is the version of first respondent that he purchased the subject lands in the auction sale and the auction sale was further confirmed on 30-6-1978. Thereafter, the auction sale was confirmed by the assistant registrar of cooperative societies, Doddaballapura on 14-12-1978 and the same was notified in the gazette dated 28-12-1978. Under the sale deed, it appears, the entire extent of the land in the two survey numbers referred to above had been conveyed in favour of first respondent.
5. It appears, that the writ petitioners had petitioned to the Tahsildar in the year 2001 for mutating their names in the revenue records on the strength of the order passed by the land tribunal and after it became known that the order of the land tribunal had more or less attained finality and in the background of the very order having been challenged by the first respondent before this court by filing WP No. 28672 of 1982 and this petition came to be allowed as per order dated 17-9-1984 [copy at Annexure-C to the writ petition] and the matter was remanded to the land tribunal. However, the applicant before the land tribunal namely Muniyappa preferred writ appeal in WA No. 667 of 1985, which came to be allowed in terms of judgment dated 16-4-1987 [copy at Annexure-D to the writ petition], in the sense, the order of the learned Single Judge was set aside, but, as in the meanwhile an appellate authority had been constituted to hear appeals against orders passed by land tribunals, the matter was transferred, in the sense, the writ petition papers were transferred to the appellate tribunal. The matter went before the appellate tribunal, but remained pending there for a considerable length of time (and by way of an amendment to the Karnataka Land Reforms Act, 1961 [for short, Reforms Act], the appellate tribunal itself was abolished. Whereupon, the matter returned to this court and was numbered as CP 3393 of 1991 and later renumbered as WP No. 25394 of 1992. The said writ petition, was dismissed for non-prosecution in terms of order dated 17-7-1993 [copy at Annexure-E to the writ petition]. Thereafter, CP No. 1281 of 2001 was filed for restoration of the petition, but which was also dismissed as per order dated 7-12-2001 [copy at Annexure-F to the writ petition]

and a further review petition to review the order in the civil petition also came to be dismissed as per order dated 26-8-2004 [copy at Annexure G to the writ petition].

6. It is in the wake of such developments, it appears, the writ petitioners had filed an application before the tahsildar for effecting entries in their favour in the revenue records and the tahsildar passed favourable orders in favour of writ petitioners as per his order dated 15-11-2003 [copy at Annexure-H to the writ petition]. But this order came to be set aside by the Assistant Commissioner at the instance of first respondent as per order dated 7-9-2004 [copy at Annexure-J to the writ petition] in an appeal and a further confirmation order passed by the Deputy Commissioner as per order dated 5-2-2007 [copy at Annexure-K to the writ petition].
7. Such is the background leading to the filing the present petition and questioning these two orders of the Assistant Commissioner and the Deputy Commissioner with a further relief in favour of first respondent on his application under Section 89 of the Societies Act.
8. Notice had been issued to the respondents and the writ petition had been admitted by issue of rule. First respondent, later by his LRs, is represented by Sri V.F. Kumbhar, Advocate and other private respondents are represented by counsel Sri A.C. Balaraj. The Deputy Commissioner is represented by Sri R.B. Sathynarayana Singh, learned government pleader.
9. The matter was heard at some length, over a period and during several hearings and was heard further today.
10. Submission of Ms. D.P. Revathi, learned counsel for the petitioners, placing reliance on the order of the land tribunal and the incidental order of the Karnataka appellate tribunal setting aside the award, is that the orders now passed by the Assistant Commissioner and the Deputy Commissioner virtually amounts to sitting in judgment over the order of the land tribunal, which order has attained finality in view of the proceedings before this court in writ proceedings at the instance of first respondent, which was not fruitful and therefore the Assistant Commissioner and the Deputy Commissioner could not have ventured disturb the order passed by the tahsildar based on the order of the land tribunal.
11. It is submitted that in view of the provisions of Section 44 of the Reforms Act, reading as under:

44. Vesting of land in the State Government:-

- (1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under section 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government.
- (2) Notwithstanding anything in any decree or order of or certificate issued by any Court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely:—

- a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances;
- (b) [x x x] amounts in respect of such lands which become due on or after the date of vesting shall be payable to the State Government and not to the landowner, landlord or any other person and any payment made in contravention of this clause shall not be valid;
- (c) all arrears of land revenue, cesses, water rate or other dues remaining lawfully due on the date of vesting in respect of such lands shall after such date continue to be recoverable from the landowner, landlord or other person by whom they were payable and may, without prejudice to any-other mode of recovery, be realised by the deduction of the amount of such arrears from the amount payable to any person under this Chapter;
- (d) no such lands shall be liable to attachment in execution of any decree or other process of any Court and any attachment existing on the date of vesting and any order for attachment passed before such date in respect of such lands shall cease to be in force;
- (e) the State Government may, after removing any obstruction which may be offered, forthwith take possession of such lands:

Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed, that he is prima facie entitled to be registered as an occupant under this Chapter;

- (f) the landowners, landlord and every person interested in the land whose rights have vested in the State Government under clause (a), shall be entitled only to receive the amount from the State Government as provided in this Chapter;
- (g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government, be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act; and' any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and determine and shall not be enforceable against the State Government.

a tenanted land and in the present case to the extent of 1 acre in Sy. No. 4 and 2 acres 8 guntas in Sy. No. 6 of Sathanur village, Jala hobli, Bangalore north taluk, came to be vested in the state government, free of all encumbrances; that this happened as on 1-3-1974, the appointed date under the Reforms Act; that thereafter, the charge on the lands by the bank by way of mortgage, assuming was initially valid, stood extinguished and further proceedings pursuant to the charge viz., mortgage in favour of the bank, shall all became null and void and therefore neither the auction sale of the year 1978 nor further proceedings pursuant to the same can not lend any semblance of legality to those proceedings and therefore are all of no consequence in

law and in this background the order of the Assistant Commissioner, affirmed by the Deputy Commissioner, is not sustainable and for the very reason, it is submitted that the order of the Deputy Commissioner on an application filed by- first respondent under Section 89-C(2) of the Societies Act cannot be sustained; that the proceeds which the first respondent had deposited before the Deputy Commissioner pursuant to the order passed by this court during the pendency of WP No. 12045 of 1979, appointing first respondent as interim receiver and permitting that amount to be drawn by the first respondent cannot also be sustained and that amount has to necessarily enure to the benefit of the writ petitioners, as the order of the land tribunal having become final and proceedings in favour of first respondent being null and void, particularly for purchase of the subject land in the auction sale, which was also subject matter of proceedings before the land tribunal, being nonest in law, the amount should necessarily enure to the benefit of the petitioners and the order to the effect that it should be released in favour of the first respondent should also be set aside.

12. Per contra, Sri V.F. Kumbar, learned counsel for first respondent, now represented by LRs, has very vehemently urged that the first respondent is a bona fide purchaser in a public auction conducted by the bank, a cooperative bank in this case; that the relationship between a cooperative bank and its customer and member is all regulated by a special enactment viz., the Societies Act; that these provisions have an overriding effect in respect of all other provisions and statutes; that the original owner of the subject lands having mortgaged the lands in favour of the bank way back in the year 1965 as per two mortgage deeds dated 13-8-1965 and 29-11-1965, the bank has first charge over such lands; that the owner of the lands cannot create any interest, whether by way of tenancy or otherwise, in respect of the lands after their mortgage in favour of the bank and the tenancy is subject to the mortgage cannot be of any avail and in this regard has placed reliance on the provisions of Sections 83, 87-B and 95 of the Societies Act and therefore submits that creation of a tenancy lease in favour of the predecessor of petitioners, assuming that it was so, is voided in terms of sub-section (2) of Section 95 of the Societies Act, reading as under:

95. Mortgagor's powers to Lease :-

- (1) XXX
- (2) Any lease granted in contravention of the provisions of sub-section (1) shall be void and if the tenancy itself is void, proceedings under the provisions of Reforms Act falls to the ground and therefore there is no need for interference with the order passed by the Assistant Commissioner and affirmed by the Deputy Commissioner in a further revision petition.

13. Sri Kumbar has also submitted that the order passed by the Karnataka Appellate Tribunal at Annexure-M is of no impact on the first respondent for the reason that the appeal had been preferred by persons claiming to be legal heirs of the mortgager after the award had been passed by the arbitrator in favour of the bank and the bank in execution of the award had sold the properties and in view of the auction sale before filing of the appeal, the interest of the auction purchaser cannot be affected, even assuming for argument's sake that the award has been set aside subsequently. In support of the submission, Sri Kumbar has relied on the decision

of the Supreme Court in the case of JANAK RAJ vs. GUREDIAL SINGH [MANU/SC/0033/1966 : AIR 1967 SC 608.

14. Sri Kumbar also submits that the application filed by the first respondent under Section 89-C(2)(b) of the Societies Act, reading as under:

89-C Certificate to purchase, delivery of property and title of purchaser

(1) XXX

(2) (a) xxx

(b) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under the foregoing sub-section, the Deputy Commissioner shall, on the application of the purchaser and after notice to such tenants or other persons, order the delivery to be made by affixing copy of the certificate of the sale in a conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, that the right, title and interest of the mortgagor have been transferred to the purchaser.

is therefore justified in the above narration of facts and developments and the Deputy Commissioner is also right in passing the impugned order for resumption infavour of the auction purchaser-first respondent.

15. Sri R.B. Sathyanarayana Singh, learned Government Pleader, appearing for fourth respondent Deputy Commissioner strongly supports the orders passed by the authorities.
16. The Deputy Commissioner under the impugned order, which is quite elaborate, has indicated that there cannot be a tenancy between close relatives and that conferment of occupancy rights in favour of predecessor in title of writ petitioners is not valid. While, the order passed by the tahsildar is based on the order passed by the land tribunal conferring occupancy rights in favour of the predecessor of the writ petitioners namely Muniyappa, the Assistant Commissioner in the first instance accepted the contention urged on behalf of the auction purchaser that his interest should not be affected by the order of the land tribunal and therefore cannot enure to the benefit of the writ petitioners and set aside the order of the tahsildar. This is confirmed by the Deputy Commissioner. The order relating to resumption of the lands and direction for releasing the deposited amount is only consequential. Therefore, the crux of the matter in the present petition that is required to be examined is as to whether the Assistant Commissioner and the Deputy Commissioner could have in any way interfere with the order passed by the tahsildar mutating the entries in the revenue records infavour of the writ petitioners?
17. It by now well settled that the entries in the revenue records follow title to the land. Proceedings of the land tribunal under the provisions of the Reforms Act and conferment of occupancy rights in favour of the tenant is virtually in the nature of conferment of title on a tenant and the order passed by the land tribunal, which is a specialized tribunal under the provisions of the Reforms Act attained finality. In fact, even civil courts have no jurisdiction to interfere or set

aside order passed by the land tribunal. When the order of the land tribunal registering occupancy rights in favour of predecessor of writ petitioner had been questioned before this court by way of filing a writ petition by the first respondent, but did not result in any positive order in favour of first respondent nor the order of the land tribunal was set aside, the order of the land tribunal stands affirm or independently and at any rate it is the bounden duty of the revenue authorities to take note of this order and to give effect to the order. That part of the requirement on the part of the revenue authorities was initially performed by the tahsildar as per the order at Annexure-H, but is set aside by the Assistant Commissioner and affirmed in revision by the Deputy Commissioner. The reasoning assigned by the Assistant Commissioner and Deputy Commissioner is clearly contrary to the legal position and at any rate the Assistant Commissioner or Deputy Commissioner has no powers to sit in judgment over the orders of the land tribunal. It is, therefore, the order relating to setting aside of the entries in the names of writ petitioners by these two authorities does not sustain.

18. In so far as the argument relating to the auction purchaser having obtained valid title and that title being unimpeachable though subsequently the right, which is akin to a decree passed civil court, is set aside and based on the judgment of the Supreme Court in the case of JANAK RAJ [supra] and as submitted by Sri Kumbar, learned counsel for first respondent is concerned, it is found in the present case that the judgment or award passed by the arbitrator had been set aside, though at the instance of daughters of the original owner, and though it is claimed that first respondent had not been made as a party to that proceedings, nevertheless, that is an order which stands as on date and having set aside the award of the arbitrator. While it is contended by Sri Kumbar that it was without notice and cannot bind first respondent, irrespective of these contentions, it is found in the present case that even the proceedings for auction sale etc., on and after 1-3-1974 are all of no consequence in law, in view of the provisions of Section 44(2)(a) of the Reforms Act. The land tribunal having recorded a finding of fact that as on 1-3-1974, predecessor of petitioners was a tenant and based on that fact having registered him as tenant in respect of the land in question, it was not also open to the Assistant Commissioner or the Deputy Commissioner to characterize such order conferring occupancy rights is bad in law or void for the reason that there existed relationship between the parties i.e. landlord and tenant. Whether such reasoning is right or wrong or justified or otherwise, it is not within the domain of the revenue authorities to assign such reasons to get over the order passed by the land tribunal.
19. In so far as judgment of the Supreme Court cited supra is concerned, I find that when the original proceedings for bringing the auction sale itself is voided, I am of the view that the judgment is of no application, as the judgment will apply to a case where the sale proceedings are independently valid and sustain. The very sale proceedings are voided in the present case by operation of statute and not by any private act by parties. In fact, reliance placed by Sri Kumbar on the provisions of Section 95(2) of the Societies Act also is of no avail to the first respondent, as it is not by any volition of the parties rights are created in favour of a tenant under the statute and extinguishing of the right of the bank-mortgagee is by operation of Section 44 of the Reforms Act. In view of such statutory position, I am of the view that in the present set of facts in the present case, the judgment of the Supreme court cited supra is not applicable to enure to the benefit of first respondent.

20. It is also not possible nor necessary for this court to go into the question as to at what point of time tenancy had been created, particularly to go back the order of the land tribunal, as it is not based on any legal position, but on question of fact, which, though urged by Sri Kumbar, learned counsel for first respondent, should enure to the benefit of the first respondent, in the absence of any concluded pleadings and fact on this aspect, it is not open to this court to reexamine the validity of the order of the land tribunal in this writ petition, more so at the instance of a person for whose benefit the order had been passed to invalidate the order when without any dispute an attempt on the part of the first respondent has failed before this court to get over the order of the land tribunal.
21. Though it is contended by Sri Kumbar that an auction sale once held unless is challenged by a person who is interested or who claims aggrieved by the auction sale, but the writ petitioners having not done so, cannot claim any benefit to the contrary, is an argument that cannot be accepted, in the wake of the reasoning assigned above and as in the instant case the consequence in law follow due to statutory provisions.
22. In the result, this writ petition is allowed, orders at Annexure-A and J are both quashed by issue of writ of certiorari and the order passed by the tahsildar at Annexure-H is restored. Annexure-K order being only of the nature of a consequential order, is also not sustainable and being an order passed on an application made by the first respondent, is also quashed and direction is issued to the Deputy Commissioner to refund the amount in deposit in favour of the writ petitioners. Rule made absolute to the extent indicated above.

Equivalent Citation: ILR 1995 KARNATAKA 631, 1995(6)KarLJ95

IN THE HIGH COURT OF KARNATAKA

W.P. No. 717 of 1995

Decided On: 12.01.1995

Appellants: **Vishnu**

Vs.

Respondent: **State of Karnataka**

Hon'ble Judges/Coram:

Eswara Prasad, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Patil & Patil, Adv.

For Respondents/Defendant: A.N. Swamy, HCGP

Subject: Tenancy

Acts/Rules/Orders:

Karnataka Co - Operative Societies Act, Karnataka Co - Operative 1959

Cases Referred:

Kumari Shrilekha Vidyarthi v. State of U.P., AIR 1991 SC 537; Om Narain Agarwal and Ors. v. Nagar Palika, Shahjahanpur, AIR 1993 SC 1440; Sadanandaiah v. State of Karnataka, ILR 1993 KAR 3119

Disposition:

Petition dismissed

Case Note:

KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 - Section 29 : NOTIFICATION DATED 21.12.1994 - State Government empowered to cancel nomination of all members appointed under Section 29(1) holding office during pleasure of Government.

Held:

The State Government has the power to cancel the nomination of all members who were appointed under Section 29(1) of the Act, as they hold office during the pleasure of the Government. Once the petitioner ceased to be Director by virtue of the cancellation of his nomination as Director under the impugned order, he cannot hold the office of the President of the Board of Directors. The very basis on which he was elected as President goes, with his ceasing to be a Director of the Society.

ORDER**Eswara Prasad, J.**

1. The petitioner was nominated to the Board of Directors of the 2nd respondent Society by the 1st respondent in the year 1991, in exercise of the power under Section 29(1) of the Karnataka Cooperative Societies Act, 1959 (the Act for short). The petitioner was later elected as the President of the Society on 3.5.1994 for the year 94-95. Later, the 1st respondent Government issued a Notification dated 21.12.1994 withdrawing the nominations of Directors made all over the State, by Annexure-C, resulting in the petitioner ceasing to be a nominated member and consequently, as the President of the Board of Directors came to an end. The petitioner questions the Notification dated 21.12.1994 - Annexure-C.
2. The learned Counsel for the petitioner contended that the removal of all the nominated Directors en masse by the 1st respondent is illegal. He further contends that the petitioner, on election as the President of the Board of Directors was entitled to continue for one calendar year ending with 2.5.1995 and that he is entitled to hold office during the said period and his membership as a Director of the Board cannot be terminated by the impugned order.
3. The petitioner was appointed as a Director of the Society under Section 29(1) of the Act. The petitioner holds office as a Member of the Committee as a nominated member during the pleasure of the State Government under Sub-section (2) of Section 29. The contention of the learned Counsel for the petitioner is based on KUMARI SHRILEKHA VIDYARTHI v. STATE OF UP. MANU/SC/0504/1991 : AIR1991SC537, where the Law Officers in the entire State of U.P. were removed at one stroke, where under the Rules, the Law Officers could be removed by the State Government without assigning any reasons. The said Decision is not applicable to the facts of the present case for the simple reason that there was no provision similar to Sub-section (2) of Section 29 in the provisions under which the petitioners therein were appointed. In the case on hand, the petitioner holds office during the pleasure of the State Government.
4. Under similar circumstances in OM NARAIN AGARWAL AND ORS. v. NAGAR PALIKA, SHAHJAHANPUR MANU/SC/0224/1993 : [1993]2SCR34, the Supreme Court held that there is no question of any violation of principles of Natural Justice in not affording opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth Proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members.
5. The doctrine of pleasure was considered by the Division Bench of this Court in SADANANDIAH v. STATE OF KARNATAKA MANU/KA/0263/1993 : ILR1993KAR3119 while dealing with the provisions of the Karnataka Urban Development Authority Act. A similar provision was made under the Act enabling the appointment of members to the Local Authority, to hold Office during the pleasure of the State Government. Relying on the Decision in Om Narain Agarwal and Ors. v. Nagar Palika, Shahjahanpur, the Division Bench held that the cancellation of the appointment of the nominated member in terms of the provisions was not arbitrary or violative of Article 14 of the Constitution.

6. It has therefore to be held that the State Government has the power to cancel the nomination of all members who were appointed under Section 29(1) of the Act, as they hold office during the pleasure of the Government. Once the petitioner ceased to be Director by virtue of the cancellation of his nomination as Director under the impugned order, he cannot hold the office of the President of the Board of Directors. The very basis on which he was elected as a President goes, with his ceasing to be a Director of the Society.

The Writ Petition therefore fails and it is accordingly dismissed.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

CrI. R.P. No. 1395 of 2010

Decided On: 31.07.2013

Appellants: **Dr. H. Narayan**

Vs.

Respondent: **State of Karnataka**

Hon'ble Judges/Coram:

H.N. Nagamohan Das, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sri. S.K. Venkata Reddy, Adv.

For Respondents/Defendant: Smt. T.M. Gayathri SPL. PP

Subject: Criminal

Acts/Rules/Orders:

Code of Criminal Procedure, 1973 (CrPC) - 227; Companies Act, 1956 - 617; Prevention Of Corruption Act, 1988 - 13(1)(e), Prevention Of Corruption Act, 1988 - 13(2), Prevention Of Corruption Act, 1988 - 2, Prevention Of Corruption Act, 1988 - 2(c)(iii)

Disposition:

Petition dismissed

Case Note:

Criminal - Sanction to prosecute - Applicability of provision - Clause 20.1, 20.2 and 26.8(a) of Karnataka Cooperative Societies Act, 1959 - Special Court dismissed Application filed by Petitioner and held that Petitioner was public servant, sanction to prosecute Petitioner was valid as there were material on record to frame charge - Hence, this revision Petition - Whether Special Court was correct in passing an order of sanction to prosecute Petitioner - Held, Mother Dairy was unit of Karnataka Milk Producers Federation Limited, cooperative society registered under provisions of Act - Clause 20.1, 20.2 and 26.8(a) of Act specified that Government had control over it - Therefore any person working in cooperative society was public servant - Hence public servant as enumerated under provisions of Indian Penal Code 1860 (I.P.C.) was different from public servant as defined under provisions of Prevention of Corruption Act, 1988 (P.C. Act) - Further word 'public servant' in P.C. Act was having wider meaning and it was very narrow in provisions of I.P.C. - Thus Special Court was correct in passing order of sanction to prosecute Petitioner - Petition dismissed.

Ratio Decidendi:

“Court shall pass an order of sanction to prosecute Accused person if there is material on record to frame charge.”

ORDER

H.N. Nagamohan Das, J.

1. This criminal, revision petition is directed against the order dated 29.07.2010 in Spl. CC. No. 39/2005 passed by the Special Judge, Bangalore Urban District, Bangalore dismissing the application filed under Section 227 of Cr.P.C. Petitioner was the Director of Mother Dairy, Yelahanka, Bangalore. The Mother Dairy is a unit of Karnataka Co-operative Milk Producers Federation Ltd, a society registered under the provisions of the Karnataka Cooperative Society Act. According to the respondents petitioner is a public servant and had amassed wealth of Rs. 14,14,087.76 disproportionate to his known source of income. After investigation the respondents filed charge sheet for the offences punishable under Section 13(1)(e) and 13(2) of Prevention of Corruption Act in C.C. No. 39/2005 on the file of Special Judge, Bangalore Urban District, Bangalore city. During the pendency of the proceedings before the Special Court, the petitioner filed an application under Section 227 of Cr.P.C. for discharge mainly on the ground that he is not a public servant as defined under the provisions of the P.C. Act, the sanction to prosecute the petitioner as not valid and there is no material on record to frame a charge. Respondents filed objections inter alia contending that the application filed by the petitioner is not maintainable, the cooperative society is an authority, petitioner is an employee of cooperative society and as such he is a public servant. The investigating material prima-facie establishes the charge against the petitioner. On the basis of the rival contentions the special court framed the following points for its consideration:
 - I) Whether the accused is a public servant?
 - II) Whether the sanction for prosecution of the accused is proper and valid?
 - III) Whether the material on record is sufficient to frame charge against the accused?
 - IV) What order?
2. After hearing arguments and on appreciation of material on record, the special court passed the impugned order holding that the petitioner is a public servant, sanction is valid, there are material on record to frame charge and consequently dismissed the application filed by the petitioner. Hence this revision petition.
3. Sri S.K. Venkata Reddy, learned senior counsel for the petitioner contends that the employer of the petitioner is an establishment and is not receiving any financial aid or assistance from the Government. The employer of the petitioner is an independent body and the Government has no control over it. In the evidence of PW. 1 no documents are produced to establish that Government has extended any financial assistance nor exercised any control over the establishment of the petitioner. The special court without appreciating the grounds urged by

the petitioner commuted an error in passing the impugned order and as such the same is liable to be set-aside.

4. Per contra, Smt. T.M. Gayathri, learned counsel for the respondent supports the impugned order passed by the Special Court. It is contended that the employer of the petitioner is an authority which falls under Section 2 of the PC Act. The Special court by following the law laid down by the Apex Court rightly passed the impugned order.
5. Heard arguments on both the side and perused the entire petition papers.
6. Section 2(c)(iii) of the P.C. Act reads as under:

Any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956(1 of 1956)

Keeping the above definition in mind, it is necessary to examine the fact situation in the present case. It is not in dispute that Mother Dairy is a unit of Karnataka Milk Producers Federation Limited, a cooperative society registered under the provisions of the Karnataka Cooperative Societies Act. Clause 20.1, 20.2 and 26.8(a) specifies that the Government has control over it. Therefore, any person working in a cooperative society is a public servant. Learned counsel for the petitioner relying on a decision of the supreme court in State of Maharashtra vs. Laljit Rajshi Shah, MANU/SC/0134/2000 : AIR 2000 SC 937 contend that a public servant under the provisions of Maharashtra Co-operative Societies Act is not a public servant under the provisions of the Indian Penal Code and therefore the petitioner is not a public servant for the purpose of provisions of P.C. Act. I decline to accept this contention of learned counsel for the petitioner. The public servant as enumerated under the provisions of IPC is different from the public servant as defined under the provisions of the P.C. Act. The word 'public servant' in P.C. Act is having a wider meaning. On the other hand it is very narrow in the provisions of the IPC. Therefore, the decision relied on by the learned counsel for the petitioner has no application to the facts on hand.

For the reasons stated above, the petition is hereby dismissed.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Criminal Revision Petition No. 1381/2010

Decided On: 26.09.2013

Appellants: Sri N.S. Nanja Reddy, Ex-Managing Director, Fruits Growers Marketing and Processing Co-operative Societies Limited

Vs.

Respondent: State of Karnataka by Co-operative Extensive Officer

Hon'ble Judges/Coram:

N. Ananda, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sri R.V. Shivananda Reddy, Adv.

For Respondents/Defendant: Sri Vijayakumar Majage, HCGP

Subject: Criminal

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - Section 109, Karnataka Co-operative Societies Act, 1959 - Section 109(3), Karnataka Co-operative Societies Act, 1959 - Section 109(9)

Disposition:

Petition dismissed

Case Note:

Trusts and Societies - Commission of offence - Supersession of Society - Section 109(9) of Karnataka Cooperative Societies Act, 1959 - Courts below held that Petitioner/Accused had committed offence punishable under provision of Act on ground that Petitioner failed to hand over documents to Special Officer pursuant to supersession of Society - Hence, this Petition - Whether order of Court below was justified - Held, it was cleared from evidence that Petitioner being Managing Director of Society should have handed over charge and documents in his possession to Special Officer - Consequent to supersession of Society, Petitioner did not hand over documents - Therefore matter was brought to notice of Joint Registrar who caused first notice - However there was no satisfactory reply from Petitioner - Thereafter second notice on 1998 was caused for which also there was no satisfactory response - Ultimately Joint Registrar accorded permission to initiate complaint against Petitioner - Petitioner had relied on contents of Ex.D.1/list of documents and this document was submitted in year 2001 - It was obvious that Petitioner had not handed over all documents - Even list did not contain all documents which were in possession of Petitioner - Even otherwise, documents handed over after initiation of complaint would not absolve Petitioner of his liability and he avoiding penal consequences under

Section 109 of Act - Hence in this circumstances, there were no reasons to interfere with judgments passed by Courts below - Petition dismissed.

Ratio Decidendi:

“Court will not come to aid of person, who failed to discharge statutory burden imposed on him.”

Industry: Cooperative Societies

ORDER

N. Ananda, J.

1. There are concurrent findings of the Courts below that petitioner (accused) has committed an offence punishable under Section 109(9) of the Karnataka Co-operative Societies Act, 1959 ('the Act' for short). The law is fairly well settled that this Court while exercising revisional jurisdiction, does not sit as a Court of Second Appeal. This Court can interfere with the impugned judgment if it is demonstrated that the Courts below have committed glaring errors in appreciation of evidence or errors of law resulting manifest injustice to petitioner.
2. The petitioner was the Managing Director of District Fruits Growers' Marketing and Processing Cooperative Society Limited, Srinivasapura. As the affairs of the Society were not being properly managed, so also the accounts, the Society was superseded on 09.08.1996 and a special Officer was appointed. In the circumstances, petitioner was expected to hand over the charge and documents in his possession to the special officer. But petitioner has failed to do so. The matter was brought to notice of the Joint Director of Co-operative Societies who caused notice to petitioner on 10.03.1997 and 25.03.1998. There was no response from petitioner. Ultimately on 24.07.1998, the Joint Director ordered to lodge a complaint against petitioner under Section 109(3) of the Act.
3. The Courts below on proper appreciation of evidence, have recorded concurrent findings that petitioner (accused) failed to hand over documents to the special officer, pursuant to supersession of the Society on 09.08.1996.
4. I have heard Sri R.V. Shivananda Reddy, the learned counsel for petitioner and Sri Vijayakumar Majage, the learned Government Advocate.
5. The learned counsel for petitioner would submit that petitioner had handed over documents which were available with him to the special officer and some of the documents were with other Directors. Therefore, Courts below should not have held petitioner guilty of offence punishable under Section 109(9) of the Act.
6. The learned Government Advocate would justify the impugned judgment.
7. On reconsideration of evidence, I find that petitioner being the Managing Director of the Society should have handed over the charge and documents in his possession to the special officer, consequent to supersession of the Society on 09.08.1996. The petitioner did not hand over the documents. Therefore, matter was brought to the notice of Joint Registrar who caused first notice on 10.03.1997. However, there was no satisfactory reply from petitioner. Thereafter,

second notice was caused on 25.03.1998 for which also there was no satisfactory response. Ultimately, on 24.07.1998, the Joint Registrar accorded permission to initiate complaint against petitioner.

8. Petitioner has relied on contents of Ex. D.1/list of documents dated 06.08.2001. This document was submitted in the year 2001. It is obvious that petitioner has not handed over all documents. The list does not contain all documents which were in possession of petitioner. Even otherwise, the documents handed over on 06.08.2001 after initiation of complaint would not absolve petitioner of his liability and he avoiding penal consequences under Section 109 of the Act. In the circumstances, there are no reasons to interfere with the judgments passed by the Courts below. The petition is dismissed.

Equivalent Citation: 1998CriLJ763

IN THE HIGH COURT OF KARNATAKA

Cr. P. No. 675 of 1997

Decided On: 10.07.1997

Appellants: **S.B. Halli**

Vs.

Respondent: **Vyavasaya Seva Sahakari Sangha Sasanur and another**

Hon'ble Judges/Coram:

M.P. Chinnappa, J.

Counsels:

For Appellant/Petitioner/Plaintiff: A.S. Bellary, Adv.

For Respondents/Defendant: B.S. Patil and Smt. Shoba Patil, Adv.

Subject: Criminal

Case Note:

Criminal - Adduce documents - Offence committed punishable under Section 464 of the Indian Penal Code, 1860 and 109(1) of the Karnataka Co-operative Societies Act, 1959 and 91 & 93 of the Code of Criminal Procedure, 1973 - Held, If Section 94 was construed to include an accused person, some unfortunate consequences would follow - Under those circumstances, it was clear that the accused cannot be compelled to produce documents before Court - Section 94 of the Code of Criminal Procedure, 1973 corresponds to Section 91 of the new Act - There was no prohibition for the Court to issue search warrant under Section 93 of the Code of Criminal Procedure, 1973 - Impugned order quashed - Magistrate directed to consider the application filed under Section 93 of the Code of Criminal Procedure, 1973 on its own merits and also proceed further, according to law - Hence petition allowed.

Acts/Rules/Orders:

Code of Criminal Procedure, 1973 (CrPC) - Section 91, Code of Criminal Procedure, 1973 (CrPC) - Section 93

ORDER

1. In this petition the petitioner has questioned the order passed by the learned Magistrate directing the petitioner to produce documents sought for by the respondents.
2. The brief facts of the case are, the respondents filed a complaint against the petitioner alleging that he has created certain documents against the interest of the society, thereby he has committed

an offence under Sec. 464 IPC and 109(1) of the Karnataka Co-op. Societies Act, 1959, (for short 'the Act'). Along with the complaint, the respondents also made an application U/Ss. 91 & 93 Cr. P.C. supported with an affidavit. The learned Magistrate however has not taken cognizance of the offence and he has posted the matter for recording sworn statement of the complainant but he passed an order on the application filed by the respondents under Ss. 91 & 93 Cr. P.C., the operative portion of which reads :

“Heard Sri M. N. B. and G. B. B. Adv., on the application filed u/Ss. 91 & 93 Cr. P.C.

Perused the affidavit in support of application filed u/Ss. 91 & 93 Cr. P.C. and the documents. There are reasonable grounds to summoning the accused for the production of the ‘g’ documents and other new documents if any as shown in the second part of the list, to this Court.

Hence issue summons to the accused for the production of the documents as shown in the second part of the List annexed to the complaint, to this Court on or before 3-2-97 and also call for the sworn statement of the complainant and his witnesses by 3-2-97.”

This order is questioned in this petition.

3. Heard.

4. The learned counsel for the petitioner at the very outset submitted that the impugned order is illegal as the Court cannot direct the accused himself to produce the documents which may be used against him. In support of his argument he placed reliance on a decision reported in MANU/KA/0177/1973 wherein this Court has held :

“Summons under Sec. 94 Cr. P.C. cannot be issued on an accused to produce documents which are incriminatory and may be used against him at the trial.”

This decision came to be rendered by this Court following the decision reported in MANU/SC/0092/1964, State of Gujarat v. Shyamlal Mohanlal Chokshi, wherein their Lordships of the Supreme Court also held that Art. 20(3) has been construed by the Supreme Court in Klau Oghad’s case, MANU/SC/0134/1961 : 1961CriLJ856 to mean that an accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge. Sec. 94, Cr. P.C. terms the production of all documents including the above mentioned class of documents. If Sec. 94 is construed to include an accused person, some unfortunate consequences would follow. Under those circumstances, it is clear that the accused cannot be compelled to produce documents before Court. Sec. 94, Cr. P.C. corresponds to Sec. 91 of the new Act. Therefore, the impugned order is liable to be quashed.

5. The learned counsel for the respondents further submitted that the respondents had filed the applications both under Secs. 91 and 93, Cr. P.C. and the learned Magistrate has not passed any order. Therefore, the respondents may be permitted to pursue the application under S. 93, Cr. P.C. This submission has some force. There is no prohibition for the Court to issue search warrant under Sec. 93, Cr. P.C. Therefore, the petition is allowed. The impugned order is quashed directing the learned Magistrate to consider the application filed under Sec. 93, Cr. P.C. on its own merits and also proceed further, according to law.

6. Petition allowed.

Equivalent Citation: ILR 1991 KARNATAKA 24, 1990(2)KarLJ479

IN THE HIGH COURT OF KARNATAKA

W.P. Nos. 3487, 3853 and 3978 of 1989

Decided On: 29.08.1990

Appellants: **H.N. Ramesh**

Vs.

Respondent: **Primary Co-operative Agriculture and Rural Development Bank Ltd.**

Hon'ble Judges/Coram:

Rama Jois and Mirdhe, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: A.V. Gangadharappa, B.B. Mandappa, B.V. Ramamurthy, Advs. for R.B. Deshpande, Adv.

For Respondents/Defendant: N. Devadas, Govt. Adv., B.H. Patil, S.G. Bhat, K.T. Mohan and Somanatha Reddy, Advs.

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Karnataka Co - operative Societies Rules, Karnataka Co - operative 1960

Cases Referred:

C. Channabasappa v. Davanagere Primary Co-Operative Agriculture and Rural Development Bank Ltd., 1989(2) KLJ 277; H.S. Prakash v. State of Karnataka, ILR 1988 KAR 619

Disposition:

Petition dismissed

Case Note:

KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (Karnataka Act No. 11 of 1959) - Section 28A(4): KARNATAKA CO-OPERATIVE SOCIETIES RULES, 1960 - Rule 13 - Obligatory for Managing Committee to hold elections to President & Vice President every year whether term of Members of Committee normal or extended under Section 27(1) Proviso read with Rule 13.

Question of Law:

Whether the obligation to hold election to the offices of President and the Vice President of a Co-operative Society functioning under the provisions of the Karnataka Co-operative Societies Act, 1959 every year imposed on the Committee of Management by Sub-section (4) of Section 28A of the Act, applies even during the period when the term of the Managing Committee stands extended by virtue of the Notification issued by the State Government In exercise of its power under Section 28 of the Act?

Held:

In view of Sub-section (4) of Section 28A of the Act, it is obligatory for the Managing Committee to hold elections to the President and Vice President every year. Neither this sub-section nor any other provisions of the Act give an indication that the obligation to hold election for the office of the President and Vice President applies only during the normal term of office prescribed under Section 28A(3) of the Act, which is three years and not during the extended term of office brought about by the postponement of election by an action of the Government under Section 27 of the Act. In the absence of any such restriction incorporated in the Act itself, no such limitation can be read into Section 28A(4) of the Act. There is nothing in Rule 13 of the Rules also to take a view to the contrary. All that the proviso to Rule 13 provides is that whenever election required to be held for the Committee of a Society is not held in due time, until a new Committee is elected, the old Committee continues in office. If the mandate of Sub-section (4) of Section 28A is that there shall be an election of President and Vice President every year, it must be so whether the term of office of the Members of the Committee is the normal term of three years as fixed in Section 28A or the extended term brought about by the postponing of election consequent on the issue of Notification by the State Government under proviso to Sub-section (1) of Section 27 of the Act read with Rule 13 of the Rules.

Answer:

The obligation to hold election to the offices of President and Vice President of a Co-operative Society functioning under the provisions of the Karnataka Co-operative Societies Act, 1959 every year imposed on the Committee of Management by Sub-section (4) of Section 28A of the Act, applies even during the period when the term of the Managing Committee stands extended by virtue of the Notification issued by the State Government in exercise of its power under Section 28 of the Act.

Industry: Banks

ORDER

Rama Jois, J.

1. In all these Writ Petitions referred to Division Bench under Section 9 of the Karnataka High Court Act, the following question of law arises for consideration:

Whether the obligation to hold election to the offices of President and Vice President of a Co-operative Society functioning under the provisions of the Karnataka Co-operative Societies Act 1959 every year imposed on the Committee of Management by Sub-section (4) of Section 28A of the Act, applies even during the period when the term of the Managing Committee stands extended by virtue of the Notification issued by the State Government in exercise of its power under Section 28 of the Act?

2. For the purpose of answering the above question, it is necessary and also sufficient to set out the facts in one of the cases. Therefore, we proceed to set out the facts in W.P. No. 3487 of 1989: Primary Co-operative Agriculture and Rural Development Bank Limited, Arsikere, is a Co-operative Society established and functioning under the provisions of the Karnataka Cooperative Societies Act, 1959 ('the Act' for short). A General Body Meeting of the Society was held on 30th October 1985. In the said Meeting, election to the Committee of Management of the Society called the Board of Directors, was held. The petitioner and others were elected as Members of the Board of Directors ('the Board' for short). The first Meeting of the Board was held on 10-11-1985. Section 28-A(4) of the Act requires that there shall be an election of Officers of the Society every year. The word 'Officer' is defined under Section 2(g) of the Act which means the President and Vice President also. In the first meeting of the Board held on 10-11-1985, two members of the Board were elected as President and Vice President. In view of Section 28-A(4) after one year there was again election of the President and Vice President for one more year. In the third year again, there was an election on 30-9-1987 at which the petitioner was elected as the President and another as Vice President. By the end of the said co-operative year, a General Body Meeting was convened, inter alia, to elect fresh Board of Directors. At this stage, the State Government issued a Notification on 17-12-1988 postponing the election to the Managing Committees of all the Co-operative Societies in the State. The operative portion of the Notification reads:

"Now, therefore in exercise of the powers conferred by proviso to Sub-section (1) of Section 27 of the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) as modified in Government Order No. CMW 160 LCM 88 dated 15th December 1988 and published in Karnataka Gazette (Extraordinary) dated 15th December 1988 in Part IV-20(ii), the Government of Karnataka hereby postpone the election to the committees of management of all Co-operative Societies scheduled to be held in December 1988 and subsequently upto 30th April 1989 with immediate effect. The calendar of events, if any, issued already in this regard stands cancelled. However, the annual general meeting of all co-operative institutions shall be held as per the provisions of the Karnataka Co-operative Societies Act, 1959."

As a result, the Board which was elected at the General Body Meeting held on 30-10-1987 was continuing. It is common ground that there have been subsequent Notifications issued from time to time under which the election of the Managing Committee of Co-operative Societies functioning, under the Act have been postponed. Consequently, the Managing Committee elected earlier continued in office. During this period, a meeting of the Managing Committee was called on 18-2-1989 in terms of Section 28-A(4) of the Act. At the election, respondents 3 and 4 were elected as President and Vice President of the first respondent-Society. Questioning the legality of the said election, the petitioner in W.P. No. 3487 of 1989 presented the said petition contending that when the term of the Managing Committee elected for three years under Section 27 of the Act gets extended on account of postponement of election effected by the exercise of the power of the State Government under Section 27 of the Act, the President and Vice President, who were holding office on the date of such notification continues to hold their respective office until the election of a new Committee of Management of the Society and during that period there can be no fresh election of a President and Vice President in terms of Sub-section (4) of Section 28A of the Act.

3. The other Writ Petitions have been presented under similar circumstances raising similar contentions.
4. As against the above contention, it is the contention of all the persons who have been elected as President and Vice President during the extended term of the Managing Committee that the mandate of Section 28-A(4) that the Committee of Management must elect President and Vice President every year and there is nothing in the provisions of the Act to restrict the operation of Section 28-A(4) only for a period of three years and not for the extended period.
5. In order to appreciate the question for consideration, we shall in the first instance refer to the relevant provisions of the Act. Under the scheme of the Act, the management of a Co-operative Society rests in a Committee of Management, elected by the General Body of the Society, by whatever name it is called. This is evident from the definition of the word 'committee'. Section 2(b) of the Act reads:-

“‘Committee’ means the governing body of a Co-operative Society, by whatever name called, to which the management of the affairs of the society is entrusted.”

Section 27 of the Act provides that a General Body Meeting of a Co-operative Society shall be held once a year, inter alia, for the purpose of approving the programme of the activities of the Society prepared by the committee for the ensuing year and for purpose of election of the Members of the Committee other than the nominated members. Section 28A of the Act provides that the management of a Co-operative Society shall vest in a Committee constituted in accordance with the Act. According to Sub-section (3) of Section 28A of the Act, the term of office of a committee elected at a General Body Meeting is three years. Sub-section (4) of Section 28A reads:

“Management of Co-operative Societies vest in the committee: (1) the management of a Cooperative Society shall vest in a committee constituted in accordance with this Act, the Rules and the Bye-laws of such society. The committee shall exercise such powers, discharge such duties and perform such functions as may be conferred or imposed upon it by this Act, the Rules and the Bye-laws.

XXX XXX XXX

- (4) The members of the committee shall, every year, elect from among themselves the officers of the Co-operative Society, The election for the office bearers shall be by ballot.”

(Underlined by us)

The above Sub-section requires that the members of the committee elected at a General Body Meeting shall every year elect from among themselves the Officers of the Co-operative Society. There is no doubt that the Bye-laws of the Society with which we are concerned provide for an election of a President and Vice President. Therefore, under Sub-section (4) of Section 28A of the Act, it is obligatory for the Board/Committee of Management to elect the President and Vice President every year. From this it follows the terms of office of President and Vice President is one year.

6. As stated earlier, in view of Sub-section (3) of Section 28A read with Section 27 of the Act, it is obligatory for every Co-operative Society to elect a Managing Committee, every three years, at the General Body Meeting. But under the proviso inserted below Section 27, the State Government is empowered to postpone the holding of Annual General Meeting of a Cooperative Society functioning under the Act. Once such a power is exercised under Rule 13 of the Rules framed under the Act, the Managing Committee once elected continues in office until the election of a new Committee. Therefore, the effect of postponing the Annual General Body Meeting in relation to election to the Managing Committee of a Society read with Rule 13 of the Karnataka Co-operative Societies Rules, is the Committee of Management whose term is about to expire or has already expired continues in office until the election is held. To this extent, there is no controversy.
7. The question, however, raised by the Petitioners in these Petitions is, during the extended term of office of the Members of the Managing Committee of a Society consequent on the postponing of election, Sub-section (4) of Section 28A has no application and therefore there can be no election for the office of the President and Vice President every year during the extended period. Such a question has been raised because in each of the cases, during the extended period of office of the Managing Committee, meeting of the concerned Managing Committee was convened, at which a President and a Vice President were elected.
8. Sri A.V. Gangadharappa, the learned Counsel for the petitioner, contended that Sub-section (4) of Section 28A gets attracted only during the normal period of term of office of three years of a Managing Committee of a Society as prescribed under Section 28-A(3) of the Act and the said sub-section has no application to the extended term of office of the Managing Committee of the Society brought about consequent on the postponing of the elections by issue of a Notification by the State Government under the proviso to Section 27 of the Act. In support of this contention, the learned Counsel relied on the Judgment rendered by Bopanna, J, in the case of C. Channabasappa v. Davanagere Primary Co-Operative Agriculture And Rural Development Bank Ltd. MANU/KA/0049/1990 : 1989 (2) KARLJ 277 The said decision does support the contention urged by Sri A.V. Gangadharappa.
9. These petitions have been referred to Division Bench under Section 9 of the Karnataka High Court by Chandrakantaraja Urs, J, expressing doubt about the correctness of the view taken by Bopanna, J, in the case of Channabasappa. It is seen from the Judgment in the case of Channabasappa, in support of the contention that during the extended term of the Managing Committee also it was obligatory for the Managing Committee to hold election to the office of President and Vice President in view of Section 28-A(4) of the Act, reliance was placed on an earlier Division Bench decision in H.S. Prakash v. State of Karnataka, MANU/KA/0106/1988: AIR1988Kant211 That case arose under the provisions of the Karnataka Municipalities Act, 1964. Under the scheme of the said Act, after election of Councillors to any particular Municipal Council at a general election, the Councillors are required to elect a President and Vice President at the first meeting of the Councillors. Section 42(11) of the Act provides for limiting the term of office of President and Vice President for two years by an order made by the Government with the consent of the Municipality. In the case of Prakash such an order had been made. In the said case, the question which arose for consideration was whether during the period when

the term of the Municipal Council got extended due to the postponing of the election to the Municipal Council, was there any obligation to hold election to the President and Vice President every two years as provided in Section 42(11) of that Act. The Division Bench held that Section 42(11) applies even during the extended term of Councillor and therefore holding of the election to the office of the President and Vice President even during the extended period of the Council every two years was mandatory. The learned Judge distinguished the said decision on the ground that the provisions of the Municipalities Act and the provisions of the Co-operative Societies Act were not similarly worded and held that Sub-section (4) of Section 28A applied only for the normal term of office of the Managing Committee which is three years in view of Section 28-A(3) of the Act.

10. Sri Somanatha Reddy, the learned Counsel for the respondents, submitted that the ratio of the decision in the case of H.S. Prakash, and also the decision in the case of Seetharama Reddy v. The Election Officer 1966 (2) KARLJ 236 in which, two Division Benches of this Court had taken the view that even during the extended term of office of Municipal Councils, it was obligatory to hold election to the office of the President and Vice President in view of the limiting of the term of offices of persons elected to these for two years by an order made by the Government with the consent of the Municipal Council under Section 42(11) of the Municipalities Act 1964 applies on all fours to the interpretation of Section 28-A(4) of the Co-operative Societies Act. He also submitted that except that this is a case of election of President and Vice President of a Society and those were cases of election to the office of President and Vice President of Municipal Councils, there could be no difference in principle.
11. After giving our careful thought and respectful consideration to the views expressed by Bopanna, J, and the two Division Bench decisions in the case of Prakash and Seetharama Reddy we are of the view that the ratio of the two Division Bench decisions applies on all fours to these cases also, for, the purport of the provisions of Section 42(11) of the Municipalities Act and Section 28-A(4) of the Co-operative Societies Act, is one and the same, namely, limiting the term of office of President and Vice President, which necessitates the periodical election to these offices. As can be seen from Section 18 of the Municipalities Act, though the term of office of Municipal Councillors elected at a general election is four years, it could be extended by the Government. Section 42(11) of that Act prescribes that the term of office of President and Vice President elected by a Municipal Council, could be limited to two years, by an order made by the State Government with the consent of the Municipal Council concerned. Once such an order is made, there has to be election of President and Vice President every two years. It is immaterial whether the term of office of the Municipal Council is the normal period of four years for which it was elected or is continuing because of the extension of its term by an order under Section 18 of the Act. The same reasoning holds good for Section 28-A(4) of the Act, for, it expressly provides that the members of the Committee shall elect from among themselves, the Officers of the Co-operative Society every year. The definition of the word 'Officer' in Section 2(g) of the Act includes President and Vice President. Therefore, in view of Sub-section (4) of Section 28-A of the Act, it is obligatory for the Managing Committee to hold elections to the President and Vice President every year. Neither this sub-section nor any other provisions of the Act give an indication that the obligation to hold election for the office of the President and

Vice President applies only during the normal term of office prescribed under Section 28-A(3) of the Act, which is three years and not during the extended term of office brought about by the postponement of election by an action of the Government under Section 27 of the Act. In our opinion, in the absence of any such restriction incorporated in the Act itself, no such limitation can be read into Section 28-A(4) of the Act. There is nothing in Rule 13 of the Rules also to take a view to the contrary. All that the proviso to Rule 13(3) provides is that whenever election required to be held for the Committee of a Society is not held in due time, until a new committee is elected, the old Committee continues in office. This Rule in fact, lends support to the contention urged by Sri Somanatha Reddy. If the mandate of Sub-section (4) of Section 28-A is that there shall be an election of President and Vice President every year, it must be so whether the term of office of the Members of the Committee is the normal term of three years as fixed in Section 28-A or the extended term brought about by the postponing of election consequent on the issue of Notification by the State Government under: proviso to Sub-section (1) of Section 27 of the Act read with Rule 13 of the Rules.

12. As stated earlier, in the present case, the first Notification postponing the election was issued on 17-12-1988 and it is more than one and a half year from the said date and the Notifications are being issued extending the term of office and even now there is no certainty when the election is going to be held. In fact, the exercise of power under Section 27 has no effect or bearing at all on the term of office as President and Vice President and it has got to be regulated by Section 28-A(4) only. Therefore, so long as a Managing Committee is in office, it is obligatory for the Committee to hold elections to the office of President and Vice President every year in view of Section 28-A(4) of the Act.
13. For the reasons aforesaid, we overrule the decision rendered in Channabasappa's case and answer the question set out in the first paragraph as under:

“The obligation to hold election to the offices of President and Vice President of a Cooperative Society functioning under the provisions of the Karnataka Co-operative Societies Act 1959 every year imposed on the Committee of Management by Sub-section (4) of Section 28-A of the Act, applies even during the period when the term of the Managing Committee stands extended by virtue of the Notification issued by the State Government in exercise of its power under Section 28 of the Act.”
14. In the result, we make the following order:
 - (i) The Writ Petitions are dismissed.
 - (ii) No costs.

Equivalent Citation: ILR 2011 KARNATAKA 3242

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

WP No. 64254 of 2010

Decided On: 29.03.2011

**Appellants: Shree Renuka Sugars Ltd. a Public Ltd. Company Incorporated Under
The Companies Act rep. by its Legal Officer Mr. Sanjay Kulkarni**

Vs.

**Respondent: Union of India (UOI) Ministry of Consumer Affairs Food and Public Distribution
Department of Food and Public Distribution by its Secretary and Ors.**

[Alongwith Writ Petition Nos. 66903-66907 and 66926-66935 of 2010, 66920 of 2010 and
66972-66990/2010, 37143 of 2010]

Hon'ble Judges/Coram:

N. Kumar and Ravi Malimath, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: K.G. Raghavan, Sr. Adv. for Prashant R. Goudar and Veeresh R. Budihal, Advs. in WP No. 64254 of 2010, Ravi Verma Kumar, Sr. Adv. for B.B. Patil and Associates in WP 66903-66907 and 66926 of 2010, S.S. Naganand, Sr. Counsel for Shridhar Prabhu Associates in WP No. 66920 of 2010 and 66972-66990/2010 and D.N. Nanjunda Reddy, Sr. Adv. for Reuben Jacob and D.P. Mahesh, Advs. in WP No. 37143 fo 2010

For Respondents/Defendant: Pramod, CGSC for R1-3 and 7; Veda Murthy, GA For R4 and 5; S. Vijaya Shankar, Sr. Adv. for Anand M. Sholapurmath, Adv. for R6 in WP No. 64254 of 2010, B. Papegowda, CGSC for R1-R3 and R6; T.K. Veda Murthy, GA for R4 and R5; M.R. Naik, Sr. Adv. for Anand M. Sholapurmath, Adv. for R7, R8-16 in WP 66903-66907 and 66926 of 2010, Madhusudhan R. Naik, Sr. Counsel for Anand M. Sholapurmath, Adv. for R7, Gangadhar Hossakeri, Adv. for R1-3 in WP No. 66920 of 2010 and 66972-66990/2010 and B.V. Acharya, Sr. Council for Anand M. Sholapurmath. Adv. for R17, Madhusudan Naik, Adv. for R18, Asst. Soliciter General for R1 to R3, Ashok Harnahalli, AG for State, T.K. Veda Murthy, HCGP for R4-9, D. Nagraj, Adv. for R15 and 16, G. Balakrishana Shastry, Adv. for R10-14 in WP No. 37143 fo 2010

Subject: Commercial

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 ; Karnataka Multi State Co-operative Societies Act, 2002; Essential Commodities Act, 1965 - Section 3; Karnataka Panchayath Raj Act, 1993 - Section 63(3), Karnataka Panchayath Raj Act, 1993 - Section 64, Karnataka Panchayath Raj Act, 1993 - Section 65,

Karnataka Panchayath Raj Act, 1993 - Section 66, Karnataka Panchayath Raj Act, 1993 - Section 311; Karnataka Panchayath Raj Rules, 1994 - Rule 3; Companies Act, 1956 ; Essential Commodities Act, 1955 ; Sugar Cane (Control) (Amendment) Order, 2006 ; Water (Prevention and Control of Pollution) Act, 1974 ; Water (Prevention and Control of Pollution) Amendment Act, 1988 ; Air (Prevention and Control of Pollution) Act, 1981 ; Karnataka Land Reforms Act, 1961 - Section 79B(1), Karnataka Land Reforms Act, 1961 - Section 79C, Karnataka Land Reforms Act, 1961 - Section 80, Karnataka Land Reforms Act, 1961 - Section 109, Karnataka Land Reforms Act, 1961 - Section 109(1); Karnataka Land Revenue Act, 1964 ; Industrial (Development and Regulation) Act, 1951 - Section 29B; Factories Act - Section 7; Code of Criminal Procedure, 1973 (CrPC) - Section 133; Code of Civil Procedure (CPC) - Section 148, Code of Civil Procedure (CPC) - Section 151; Constitution of India - Article 14, Constitution of India - Article 19(1), Constitution of India - Article 19(6), Constitution of India - Article 21, Constitution of India - Article 48A, Constitution of India - Article 51A, Constitution of India - Article 226

Cases Referred:

Kisan Shakari Chini Mills Ltd. v. Union of India and Ors. in Civil Writ Petition No. 31199/2005; Oudh Sugar Mills Ltd. v. Union of India And Ors. Civil Writ Petition No. 12078/2005; Balrampur Chini Mills Ltd., v. Ojas Industries Pvt. Ltd. and Ors. in Transfer Petition [Civil] No. 421 of 2006; OJAS Industries[P] Ltd. v. OUDH Sugar Mills Ltd. and Ors. MANU/SC/1606/2007 : (2007) 4 SCC 723; Commissioner of Wealth Tax, Madras v. Ramaraju Surgical Cotton Mills Ltd. MANU/SC/0167/1966: AIR 1967 SC 509; Western India Vegetable Products. Ltd. v. Commr. of Income-tax, Bombay City. MANU/MH/0169/1954 : 1954 26 ITR 151 : AIR 1955 Bom 13; Kabini Minerals (P) Ltd. and Anr. v. State of Orissa and Ors. MANU/SC/1944/2005 : (2006) 1 SCC 54; Dresser Rand S.A. v. Bindal Agro Chem. Ltd. MANU/SC/0151/2006 : AIR 2006 SC 871; Assistant Collector of Customs and Superintendent Preventive Service Customs, Calcutta and Ors. v. Charan Das Malhotra MANU/SC/0605/1971 : AIR 1972 SC 689; Narayanappa v. Commissioner of Income Tax, Bangalore MANU/SC/0124/1966 : 63 ITR 219 : AIR 1967 SC 523; Mahanth Ram Das v. Ganga Das MANU/SC/0027/1961: AIR 1961 SC 882; Lachmi Narain Marwari v. Balmakund Marwari ILR Pat 61 : AIR 1924 PC 198; Lila Deb Chowdhury and Ors. v. State of West Bengal and Ors. (2002) 1 CALLT 278 (HC); Mohd. Safdar Shareef (died) per L.Rs. and Ors. v. Mohammed Ali (died) per L.R. MANU/AP/0288/1993 : 1993 (1) ALT 522; Achintya Ghosh v. State of West Bengal and Ors. MANU/WB/0253/2007 : 2007 (4) CHN 705; State of Karnataka v. Shankara Textiles Mills Limited 1994 INDLAW SC 2100; M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Ors. MANU/SC/0999/1999 : (1999) 6 SCC 464; State of Bombay v. Laxmidas Ranchhoddas and Anr. AIR 1952 Bom 475; Pleasant Stay Hotel v. Palani Hills Conservation Council and Ors. MANU/SC/0793/1995 : 1995 (6) SCC 127.139; Cantonment Board. Jabalpur and Ors. v. S.N. Avasthi and Ors. MANU/SC/1487/1995 : 1995 Supp. (4) SCC 595, 596; Pratibha Cooperative Housing Society Ltd. And Anr. v. State of Maharashtra and Ors. MANU/SC/0335/1991 : 1991 (3) SCC 341; The Nagar Rice and Flour Mills and Ors. v. N. Teekappa Gowda and Bros. and Ors. MANU/SC/0453/1970 : AIR 1971 SC 246; Daman Singh and Ors. v. State of Punjab and Ors. MANU/SC/0392/1985 : 1985 (2) SCC 670; State of Uttaranchal v. Balwant Singh Chaufal and Ors. MANU/SC/0050/2010 : 2010 (3) SCC 402; Holicow Pictures (P) Ltd. v. Prem Chandra Mishra MANU/SC/8219/2007 : (2007) 14 SCC 281; Commercial of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors. in Civil Appeal Nos. 1878-880/2004 with Civil Appeal No. 1631/

2001 and Civil Appeal Nos. 568-569/2009; Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd. MANU/SC/1019/2010 : (2011) 1 SCC 640; Dalchand v. Municipal Corporation. Bhopal and Anr. MANU/SC/0061/1982 : AIR 1983 SC 303; Indian Council for Enviro-Legal Action v. Union of India and Ors. MANU/SC/1189/1996 : (1996) 5 SCC 281

Disposition:

Petition allowed

Case Note:

(A) **Constitution of India - Articles 226 and 227 -Establishment of Sugar Industry by an enterprenuer in contravention of law governing such establishment - Action of the Authorities in aiding and abeting such illegal action of the enterprenuer under the purported exercise of power under statute - Remedy available to a law abiding citizen of the Country to curb the illegal action of the enterprenuer and the Authorities who have supported his illegal action -Obligation of the ruler and the subjects in protecting the law - Interference under Writ Jurisdiction - Held, As the ruler expects the subjects to obey and observe the law, the ruler is also under an obligation to obey and observe the law. No one is above law. However, high one may be, law is above him. -If law is nullified by arbitrary acts in excess, and derogation of power or non exercise of power conferred on them, the Courts owe a duty to the public to quash such orders, in order to maintain and uphold the rule of law. An excess of statutory power or no exercise of such power cannot be validated by acquiescence in or by the operation of an estoppel. The Courts of equity would not permit the statute to be made an instrument of fraud. In a democracy wedded to the rule of law and governed by a written Constitution, both the ruler and the ruled are governed by the rule of law. - If an entrepreneur establishes an industry, without following the procedure prescribed under law, and in contravention of law governing such establishment the Government and its agencies instead of taking action against such illegal actions, aids and abets such illegal action under purported exercise of powers under statute, what is the remedy to a law abiding citizen of this Country. Has he to be a silent spectator of such illegal activity. Does he have any right to move the Courts for enforcement of law and upholding the rule of law. What should be the approach of the Courts, especially when High Court is approached under Article 226 of the Constitution of India, either by way of public interest litigation or as a private interest litigation. - Further Held, If persons who come to Court risking their interest and establish in a Court of law the violation of several provision of legislation in establishing of such an industry, their complaints cannot be thrown out on the ground of delay, laches and on other considerations. A public wrong where all the possible laws have been violated and the State and its instrumentality's have not taken any action and taking advantage of the situation if construction are put up, money is invested and even Statutory Authorities have granted extension of time and permission, ignoring the law and principles and when the matters reached to Courts, the Courts cannot be just remain silent spectators. If that is permitted, it would render the statute to be a instrument of fraud. It is the duty of the Courts to take into consideration the totality of the circumstance and if the public wrong is substantiated from the material on record to the maximum extent, then it will be the**

duty to strike down such illegal action, prevent further actions and also direct the Authorities to take action against the violators of law. If there is a substantial compliance with the statutory provisions and every thing goes in accordance with law, in such circumstances, the Court in its equitable jurisdiction can throw away the Petitions of the Petitioners on the ground of delay and laches or like terms. - Constitution of India - Articles 226 and 227 - Grant of Relief Under -Delay and Laches - Discussed.

- (B) **Sugarcane (Control) Order, 1996 (Insertion of Clauses 6A to 6E by The Sugarcane (Control) Amendment Order, 2006) - Statutory recognition to the policy of the Government - Mandate of the provisions of Clauses 6A to 6E - Non-compliance of the legal requirement as per Clause 6A to 6E - Consequences -Concept of distance is not a Government Policy, it is a legal requirement - Discussed Held, The first step in the establishment of the Sugar Factory is obtaining Distance Certificate as stipulated in Clause 6B. After obtaining a Distance Certificate within 30 days therefrom, an IEM has to be filed. After filing of an IEM and its acknowledgement as per Clause 6C, effective steps have to be taken for implementation of the IEM within two years from the date of IEM. The date of IEM is 08.06.2006. Two years prescribed expires on 08.06.2008. Now, the question for consideration is whether effective steps as contemplated in Explanation 4 to Section 6A has been taken. - A company formed for the purpose of setting up of Sugar Factory is entitled to acquire any land whether as a land owner, landlord, tenant or mortgagee in possession or otherwise. Therefore, Section 109 of the Karnataka Land Reforms Act provides for exemptions being granted by the Government from the application of Section 79A and 79B. That is the reason why the company applied for such exemption under Section 109 and obtained the exemption. But mere obtaining permission to purchase agricultural land does not amount to purchase of agricultural land in the name of the factory. In fact, the aforesaid three sale deeds were registered even without such permission on the ground, for purchase of the said lands Sections 81(1)(d) of the Karnataka Land Reforms Act grants exemption. - The condition precedent is that application of the said provision on the date of the sale of Sugar Factory should be in existence. The sale deed is dated 30.11.2007. No Sugar Factory had been set up as on that date. Therefore, claiming exemption under Section 81(1)(d) and purchasing the land is clear contravention of the provisions of Sections 79A and 79B of the Act. As is clear from the sale deeds, the land was purchased for purposes of achieving the said object i.e., Research and Seed Formation and further purchaser intended to set up a Sugar Factory at Yadrav. Be that as it may. The material on record does not disclose that Shivashakti Sugars Ltd., had purchased the required land in the name of the factory to set up Sugar Factory at Saundatti Village, the place where they intended to set up a factory as per the IEM. Therefore, the declaration made by them in the prescribed form is incorrect and it cannot be said, in the light of the aforesaid material that the Shivashakti Sugars Ltd., had taken effective steps for purchase of the required land in the name of the factory within two years period prescribed under law from the date of filing of the IEM. -FURTHER Held, They were under legal obligation under Section 95(2) of the Karnataka Land Revenue Act to obtain permission from the Deputy Commissioner for such diversion of land use. The material on record do not disclose that any application is made under Section 95(2) of the Karnataka Land Revenue**

Act, 1964 for such diversion of land use once from agricultural use to industrial use nor any such permission has been granted under the Act by the Deputy Commissioner. No building could be constructed on an agricultural land and no industry can be set-up on agricultural land without such permission from the Deputy Commissioner. - The No Objection Certificate granted by the Panchayats did not constitute as permission granted by the Village Panchayat under Section 64 of the Karnataka Panchayat Raj Act, 1983. - Therefore, it is clear that no permission was obtained under Section 64 of the Grama Panchayat Act for erecting a building. - For construction of factories permission under Section 66 is a must and for construction of any other building, a permission under Section 64 is a must. Without such permission no construction of factory building is permissible. - Absolutely no material has been placed on record to show that any plans were prepared and submitted for consideration and the permission was obtained in writing under Section 7 of the Factories Act, 1948, when no construction of a factory premises could have been taken up by M/s. Shiva Shakthi industry. - (1) Water (Prevention & Control Of Pollution) Act, 1974 - (2) The Karnataka Panchayat Raj Act, 1993 - (3) Air (Prevention & Control Of Pollution) Act, 1981 -

(4) Karnataka Land Reforms Act, 1961 -

(5) Karnataka Land Revenue Act, 1964 -Discussed. (Paras 17,89,93,94,97,120,122,124)

(C) Constitution of India - Articles 226-227 -Petitioners grievance is that Sugar Factories have to be set up in accordance with law governing such establishment -Public Interest Litigation - Duty of the Court to ascertain the credential of the Petitioners - Tests to be applied by the. Courts while entertaining Public Interest Litigations - Held, While entertaining a Public Interest Litigations what the Court has to see is the credential of the petitioners. In the instant case, the Petitioners are the Public Interest Litigants, residents of the locality, farmers and sugarcane growers. They are not opposed to setting up of any Sugar Factory. What they are interested is the sugar factories have to be set up in accordance with law governing such establishment. These villagers cannot be characterized as busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest. Interest for personal gain or private profit either of themselves or as a proxy of others or any other extraneous motivation or for clare of publicity. The second requirement also have a bearing on the credential of the application is the correctness or nature of information given by them. The correctness and nature of information furnished by these petitioners or petitioners in private interest litigation are not disputed. No information given by them is shown to be incorrect. Therefore, they satisfy the second test. Therefore, it cannot be said that the Writ Petitions which are filed with oblique motives without any basis and there is any illegality in the actions of the Respondents.

(D) Constitution of India - Articles 226 and 227 -Establishment of industry - Effect of not taking effective steps within the prescribed period. -Held, The object behind stipulating the effective steps by way of a statutory provision cannot be lost sight off. - If an entrepreneur could not take effective steps within the stipulated time and if he is entitled

to extension of time, the said extension of time can be granted only on the recommendation of the State Government concerned. Therefore, the said recommendation by the State Government and the extension of time should be before the IEM stands derecognized. There is no provision for retrospective extension of time provided under those statutory provisions. - Further Held, In other words, before an IEM stands derecognized by operation of law, the person who had filed an IEM, if he wants extension of time, he should take such steps requesting the appropriate authority for extension of time and the Government which is empowered to make a recommendation should make a recommendation before the said period of two years. It is only then the authority vested with the power to extend the time could exercise the power provided under the statute and extend the period stipulated for taking effective steps in accordance with law. Therefore, it is clear as effective steps were not taken within the period of two years from the date of filing of IEM and no extension was granted within a period of one year from the date of expiry of two years period the IEM stood de-recognized. - On Facts, Held, M/ s. Shivashakti Sugars Limited did not submit any request for grant of extension of time in the validity period of IEM for implementing the IEM and commencement of commercial production within 2 years time limit with the Central Government. - Therefore, as no effective steps were taken for implementation of IEM within 2 years from the date of filing of an IEM and a recommendation made by the Government of Karnataka was beyond the time limit to grant extension of time and the factors mentioned in the recommendation of the Government do not constitute a sufficient reason for extending the time, if at all, the Central Government was clear of the view that IEM stood derecognized.

Industry: Sugar

ORDER

N. Kumar, J.

1. All these Writ Petitions are listed before this Bench by a Special Order of the Hon'ble Chief Justice for decision. The subject matter of all these petitions is identical though one of the writ petition is by way of public interest litigation. Therefore, they are taken up for consideration together and disposed of by this common order.
2. The Petitioners in W.P. No. 66920/2010 herein are the member shareholders of the Doodhganga Krishna Sahakari Sakkare Karkhane Niyamit, Chikkodi. It is a Cooperative sugar factory registered under the Karnataka Cooperative Societies Act. 1959. It was established to cater to the needs of the sugarcane farmers In and around Chikkodi, Raibagh and Athani Taluk in Belgaum District. Later it was converted into a Multi-State Co-operative Society under the Karnataka Multi State Co-operative Societies Act, 2002, by extending its area of operation to more than one State (Karnataka & Maharastra) Earlier, they were having crushing capacity of 2500 TCD with 13 MW Co-generation Power Plant and 40 KL Distillery. The crushing capacity of Co-generation power production was also increased to 23 MW. Thus, they have established an integrated, unique cooperative sugar factory with the total investment of more than Rs. 300 Crores. On 31-8-1998 the Government has completely de-licenced the sugar industry with

effect from 14-9-1998 wherein the concept of filing of IEM with the Secretariat of Industrial Assistance in Ministry of Industry, Government of India has been introduced. Prior to the issuance of Press Note No. 12 dated 14-9-1998 the minimum radial distance between two sugar factories for the first time was fixed at 30 Kilometers during the Sixth Five Year Plan vide Press Note No. 7/1984. This was increased to 40 Kilometers during the Seventh Five Year Plan vide Press Note No. 1 (1989 series) dated 2-1-1987. The distance was reduced to 25 Kilometers on fulfillment of certain conditions vide Press Note No. 12/1989 dated 19-5-1989. Again vide Press Note No. 16/1991 dated 8-11-1991 the distance between proposed and existing sugar factories was down to 25 kilometers with the stipulation of reduction to 15 Kilometers in special cases where the cane availability is justified. This was further reduced to 15 Kilometers by Press Note No. 1/1997 dated 10-1-1997. The Central Government in exercise of powers conferred on it by Section 3 of Essential Commodities Act, 1965, and by virtue of an amendment dated 10-11-2006 inserted Clause 6A, 6B, 6C, 6D, and 6E in the Sugarcane (Control) Order 1966 by virtue of which it had imposed clear restriction on setting up of two sugar factories within the radius of 15 Kilometers and thus there is clear prohibition of setting up of a sugar factory within the radius of 15 Kilometers from an existing sugar factory.

3. Respondent No. 7 namely M/s. Shivshakathi Sugars Limited., is trying to set up a sugar factory within 15 Kilometers radius from the existing Doodhganga Krishna Sahakar Sakkate Karkhane Niyamit, Chikkodi, a existing sugar factory. The 7th Respondent filed an IEM for setting up of a sugar factory in Village Saundatti Raibag Taluka, Belgaum District, on 8-6-2006. Respondent No. 7 cannot set up or barred from setting up of sugar factory within the 15 Kilometers radius from the existing Doodhganga Krishna Sahakar Sakkate Karkhane Sugar factory. The proposed site of Respondent No. 7 at Saundatti Village is situated within 15 kilometers radius of the Petitioners' factory. They have produced a map issued by the Department of Public Works, Ports & Inland Water Transports, Government of Karnataka to substantiate the same. The 7th Respondent by furnishing false details appears to have obtained distance certificate. Respondent No. 7 had already failed to take any of the effective steps for the commencement of the commercial production till this date. Therefore, the time limit prescribed under the provisions of the Sugarcane (Control) Order for taking steps has lapsed resulting in de-recognition of IEM filed by Respondent No. 7. Respondent No. 2 has already issued a show cause notice to Respondent No. 7 on 2th April, 2010 and sought an explanation for cancelling and derecognizing the IEM of Respondent No. 7. The second Respondent ought to have re-recognized the IEM filed by Respondent No. 7 and forfeited the performance guarantee furnished by Respondent No. 7 and ought to have declared that the IEM of Respondent No. 7 as lapsed. The Petitioners being aggrieved by the failure of Respondent No. 2 in de-recognizing the IEM filed by Respondent No. 7 are constrained to approach this Court by way of writ petition. Therefore, they sought for declaration that the IEM filed by Respondent No. 7 dated 8-6-2006 is null and void and the same has been lapsed and de-recognized in law and for a direction directing Respondents 1 to 6 not to allow Respondent No. 7 from setting up of a sugar factory within 15 Kilometers radius from the Petitioners' factory.
4. The Petitioners in W.P. No. 66920/2010 have filed an application for amendment of the writ petition on 05.03.2010. The additional facts sought to be pleaded is that the Shivashakti Sugars Limited is factually establishing the factory at Yadrav Village of Raibag Taluk and not in

Saundatti Village of Raibag Taluk. It is evident from the No Objection Certificate' issued by Diggewadi Village Panchayath, which is having jurisdiction over the Yadrav Village and has set out the survey numbers situated at Yadrav Village, where the factory is proposed to be set up.

5. They contend that the distance between the Shivashakti Sugars Limited and the Petitioner's factory is within the radius of 15 kms from both Yadrav Village and Saundatti Village, which is prohibited under law. The said No Objection Certificate' is of no consequence in law as specific permission under Section 64 read with 66 of the Karnataka Panchayath Raj Act. 1993 read with the Karnataka Panchayath Raj (Gram Panchayaths Control Over Erection of Buildings) Rules. 1994 is the requirement of law. The show cause notice dated 27th April 2010 issued by the 1st Respondent is itself bad in law since there is no provision in law to issue a notice for an IEM, which is already dead in law. Shivashakti Sugars Limited has not brought to the notice the further extension granted by the 2nd Respondent by the letter No. 25 dated 1st December 2010. The IEM was filed by the Shivashakti Sugars Limited on 8th June 2006 and in terms of the Clause 6C of the Sugar Cane (Control Amendment) Order, 2006, effective steps ought to have taken on or before 7th June 2008 and commercial production ought to have commenced within four years i.e., on or before 7th June 2010. Admittedly, there being no such compliance from Shivashakti Sugars Limited, the IEM granted in favour of Shivashakti Sugars Limited stood lapsed on 07th June 2008. Once the IEM stood lapsed, the Ist Respondent has no authority in law to extend the time period of a lapsed IEM. It is settled proposition in law that a dead instrument cannot be infused with fresh lease of life for the dead instrument would have been a nullity in law on the very day it lapsed. Therefore, the contention of Shivashakti Sugars Limited that the IEM has been extended on various dates is untenable and bad in law. At any rate, the extension purportedly given to the Shivashakti Sugars Limited is in respect of establishment of a factory at Saundatti Village and not for Yadrav Village wherein the factory construction is being carried out. There is no provision in law to grant an extension beyond two years. The OC granted to the Shivashakti Sugars is in respect of the Saundatti Village and the factory is being established in Yadrav Village. The authorities have not even bothered to verify the location and have granted the approval without following the due process of law. The additional prayer sought for was for quashing the extension granted by the order dated 1st December 2010 and also for quashing the Environment Clearance Certificate issued on 28th December 2010.
6. The Petitioners in W.P. No. 66903/2010 are the members and share holders of Raibag Sahakari Sakkare Karkhane Niyamit (for short hereinafter referred to as "RSSKN"), which is a society registered under the provisions of the Karnataka Co-operative Societies Act. 1959. The total strength of the shareholders of the said factory is 8.903 and the primary objects of the Society was establishment of a Sugar Factory, production of sugar and further establishment of down stream unit like co-generation, power plant and distillery. The society is having 50 thousand cane grower farmer members in and around Raibag Taluk of Belgaum District. The Sugar Factory commenced its production in the year 1978 with a capacity of 1250 TCD and later in the year 1992-93, the capacity was increased to 2500 TCD.

7. Due to financial crisis, the Sugar Factory stopped its crushing operations since 2004-05. The Government of Karnataka passed an order to lease out the Sugar Factory on LROT basis for a period of 30 years and invited bids from the prospective bidders for taking a lease of RSSKN with a condition to expand the crushing capacity from 2500 TCD to 5000 TCD by investing an amount to the tune of Rs. 220 crores. Shree Renuka Sugars Limited was awarded the said lease for a period of 30 years on LROT basis. The lessee has entered into an agreement of lease vide lease deed dated 16.10.2008 by depositing an amount of Rs. 30 crores on 15.10.2008 towards the lease rent for the first year. They have further deposited a sum of Rs. 28 crores in furtherance of the order passed by this Hon'ble Court in the writ petition at the time of modifying the interim order already granted. The Shivashakti Sugars Limited and other neighbouring Sugar Factories wanted to see to it that RSSKN should not commence crushing operations continuously for more than 5 years so as to enable them to establish and start their own Sugar Factory within the radius of 15 kms, which fact is evident from the fact that writ petitions bearing W.P. Nos. 2375-88/2009 were filed to thwart the process of rehabilitation and restarting of the RSSKN. But, all their efforts to stall the process of rehabilitation of the RSSKN turned futile and the RSSKN commenced its crushing operations.
8. Shivashakti Sugars Limited has left no stone unturned to see to it that the RSSKN. becomes defunct, so that the entire cane grown in the command area of RSSKN could be crushed by them. It is contended that the very fact that Shivashakti Sugars Limited objected to the commencement of the crushing by M/s. Renuka Sugars Limited and when the learned Single Judge of this Hon'ble Court has modified the interim order by permitting the said M/s. Renuka Sugars Limited to commence the crushing subject to certain conditions by virtue of the order dated 06.08.2009 in the above said writ petition; Shiva Shakthi Sugars Limited challenged the said order in W.A. No. 3105/2009, stands testimony to the averment made by the Petitioners.
9. As the RSSKN was tiding through severe crisis and as a matter of fact, being under liquidation, they were not crushing cane. Respondent No. 5 temporarily allocated 20 villages to the Shivashakti Sugars Limited by passing the Karnataka Sugar Cane (Regulation and Distribution) M/s. Shivashakti Sugars Limited on 04.08.2007 under the name of Governor of Karnataka by withdrawing the said 14 villages from RSSKN only on a temporary basis.
10. The Shivashakti Sugars Limited is trying; to establish a sugar factory within a radius of 15 kms from the RSSKN by furnishing false and fabricated documents and particulars and very strangely, the Respondents. we also granted the same, which is in utter breach and violation of the requirements of the Sugar Cane Control Order and the ratio laid down by the Hon'ble Supreme Court of India. The IEM of Shivashakti Sugars Limited is illegal and it is arbitrarily granted to them to start a new Sugar Factory proposed to be set up by the Shivashakti Sugars Limited as it is situated within less than 15 kms. The certificate issued to that effect by the Department of Public Works, Ports and Inland Water Transports, dated 28.07.2009 is enclosed.
11. The Petitioners who are the members of RSSKN and whose livelihood depends upon the crushing of cane by RSSKN, caused a representation to be made to the authorities concerned to do the needful. The Respondents have failed to take any action and hence aggrieved by the grant of IEM dated 08.06.2006 by the Respondent No. 3 to Shivashakti Sugars Limited and further aggrieved by the State to take any appropriate action, they have preferred this writ petition by setting out several grounds pointing out how the IEM of the Shivashakti Sugars

Limited is illegal and void and seeking for quashing of the same. After the Respondents filed their statement of objections, the Petitioners have filed a rejoinder.

12. The Petitioner in W.P. 64254/2010 Shree Renuka Sugars Limited is a public limited company incorporated under the Companies Act. It is an integrated manufacturing company with strategic focus on sugar and its allied products in power and ethanol, having its registered office in Belgaum. Karnataka and Corporate Office at Mumbai.
13. They state that RSSKN was liquidated by virtue of order dated 24.01.2004 by the Commissioner for Cane Development and Director of Sugar in Karnataka. The Cabinet Sub-Committee recommended the sale of the said Karkhane and by virtue of the order dated 26.06.2006 and 27.06.2006, the State Government withdrew its decision to sell the assets of the factory and was further pleased to decide to revive the said factory by leasing out. In terms of the decision, the State of Karnataka called for bids and the Petitioner was awarded the said lease for a period of 30 years on LROT basis, which was challenged before the Hon'ble High Court of Karnataka which came to be rejected. Subsequently, on 16.10.2008, a registered lease deed came to be executed in their favour. The 6th Respondent in the said writ petition i.e. Shivashakti Sugars Limited is also a company registered under the provisions of the Companies Act, 1956. They have filed IEM for setting up of a Sugar Factory in Saundatti Village of Raibag Taluk. Belgaum District. The Competent Authority had issued an IEM on 08.06.2006. The IEM dated 08.06.2006 stood lapsed for the failure of the Shivashakti Sugars Limited to take effective steps enumerated under Clause 6A Explanation 4 of the Order. The IEM stood derecognized by the operation of law.
14. The 5th Respondent has passed an order on 04.08.2007 temporarily allocating 20 villages to Shivashakti Sugars Limited. Out of the 20 villages, 14 villages were earlier allocated to RSSKN. The 4th Respondent had issued a Distance Certificate without scientific study and has forwarded the same to the 2nd Respondent certifying that the radial distance between the sugar factory proposed to be established by the Shivashakti Sugars Limited and the existing adjacent sugar factories is more than 15 kms. The said certificate is based only on Topo Maps and without verifying the correctness of the positions of the sites has issued the Distance Certificate dated 16.07.2007. The actual distance is less than 15 kms and in support of their case, they have produced a certificate issued by the Department of Public Works. Ports and Inland Water Transports, dated 28.07.2009. The Petitioner have also addressed a letter to the 4th Respondent to restore the Cane Command Area as originally allotted to RSSKN by withdrawing the said 14 villages allotted to Shivashakti Sugars Limited. RSSKN has been leased by the Government to the Petitioner with a condition to expand the crushing capacity from 2500 TCD to 3500 TCD and further to establish 21 MW co-generation plant and 45KL distillery at the factory premises and the failure to reallocate the villages amounts to the abdication of power by the State.
15. Shivashakti Sugars Limited has not taken any effective steps. They have failed to purchase and procure he required land in the name of the Company or the factory, and has not at all commenced the construction or civil work for the factory. They have failed to commence the commercial production till date. The time limit as prescribed under Clause 6C of the Sugar Cane Control Order for taking effective steps has lapsed, as a result of which the IEM filed by Shivashakti Sugars Limited stood derecognised on 07.06.2010. No extension of time has been provided to

the Shivashakti Sugars Limited. Therefore, the authorities ought to have exercised the powers under Clause 6D and forfeit the performance guarantee furnished by the Shivashakti Sugars Limited and ought to have declared that the IEM of the Shivashakti Sugars Limited has lapsed and restored the villages to the Petitioner. The authorities failed to restore the villages to the Petitioner. Therefore, they have preferred the writ petition seeking declaration that IEM dated 08.06.2006 stood lapsed and derecognized by law and for a direction to reallocate and restore the villages to the Petitioner that were originally allocated to RSSKN and for other consequential reliefs. In the petition filed by the farmers, it was pleaded that the crushing operations stopped in the years 2004-05.

16. The petition in W.P. No. 37143/2010 is filed on 26th November 2010. It is tiled as a Public Interest Litigation by the Petitioners who are the permanent resident of Yadrav Village of Raibag Taluk in Belgaum District. Their grievance is that the Respondent No. 17 in the said petition which is Shivashakti Sugars Limited, a body corporate, promoted by Respondent No. 18, obtained an IEM dated 08.06.2006 from the Respondent No. 3 to set up a Sugar Factory by representing the place of establishment as village Saundatti in Raibag Taluk of Belgaum District. The Company has all along represented to various authorities in State and Central Government that they intend to establish a Sugar Factory with co-generation power plant in Saundatti Village of Raibag Taluk. The Company has not filed any IEM for setting up of a Sugar Factory in Yadrav Village of Raibag Taluk. The Company is in the thick of establishing a Sugar Factory at Yadrav Village, for which they do not have an IEM, a very fundamental pre-requisite under the Sugar Cane (Control) Order. The said act of the Company to establish a Sugar Factory at the place for which it does not hold an IEM is a clear violation of the existing law in that respect. This is only one of the several glaring and brazen violations of provisions of the law of the land. The Company in its bid to obtain IEM, has very conveniently and deliberately suppressed the most important fact that the distance between two existing Sugar Factory i.e. RSSKN, Bhavachi, Raibag Taluk and Shri. Doodhganga Krishna Sahakari Sakkare Karkhane Niyamit. Chikodi and the proposed Sugar Factory of the Company is less than 15 kms, which is violative of the provisions of Clause 6A of the Sugar Cane (Control) (Amendment) Order.
17. Raibag Taluk comprises of 33 village Panchayaths and among them, Yadrav Village comes under Diggewadi Gram Panchayat in Raibag Taluk. The said Diggewadi Gram Panchayath comprises of 3 villages including Yadrav. The Company is setting up the factory in question by indulging in several other equally glaring and brazen violations of provisions of law, like
 - a. Essential Commodities Act, 1955
 - b. Sugar Cane (Control) (Amendment) Order 2006,
 - c. Water (Prevention & Control of Pollution) Act. 1974,
 - d. The Karnataka Panchayat Raj Act, 1993,
 - e. Air (Prevention & Control of Pollution) Act. 1981
 - f. Karnataka Land Reforms Act, 1961 and
 - g. Karnataka Land Revenue Act, 1964

They have clearly set out in tabular column, the various violations of law indulged in by the Company and in collusion with Respondents 1 to 15, its

WHAT WAS REQUIRED TO BE DONE UNDER THE LAW BT COMPANY	WHAT RESP. No. PRESENT LY DOING	WHAT IT AMOUNTS IN THE EYES OP LAW	PROCEDURE REQUIRED TO BE FOLLOWED BY THE STATUTORY AUTHORITIES	REPERCUS-SIONS
Ought to have obtained permission of the concerned Gram Panchayat Under Section 64 & 66 of	Setting up an illegal construed on of the sugar factory, without obtaining the permission	It is clear violation of Sections 64 & 66 of the Karnataka Panchayat Raj	The PDO/Secy. Gram Panchayat, Diggewadi & Saundatti should have initiated action under Section.	It amounts abdication of power and authority by the PDO/Secretary
Karnataka Panchayat Raj Act, 1993. before erecting the building and constructing of the sugar factory.	n from the concerned Gram Panchayat (i.e. from Resp. No. 12. 13 & 14)	Act. 1993.	64(3) & Section 296 R/W Section 298 of the Act.	Gram Panchayat Diggewadi/Soundatti.
Ought to have obtained the permission of Karnatak	Setting up an illegal construction of the sugar factory, without	It amounts to a violation of Sections 42(g), 44	The KSPCB ought have initiated action for the said violation Under Section 49(1)(a)	Water bodies and other sources of water including ground
State Pollution Control Board Under Section 25 of Water (Prevention & Control of Pollution) Act, 1974 before starting the establishing of Sugar factory.	obtaining the permission from the Karnataka State Pollution Control Board.	R/W 47 of Water (Prevention & Control of Pollution Act, 1974.	of the Act.	water. are being contaminated by construct ion material & untreated waste generated by the factory in future poses further threat to them. resulting in alluvial

				and fertile lands being subjected to reckless exploitation of a point of no return.
Ought to have obtained the permission of KSPCB under	Setting up an illegal construction of the sugar factory, without obtaining	It amounts an offence under Section 37. 38(g) R/W	The KSPCB ought have initiated action for the violation Under Section 43(1)(a) of the Act.	Air is being polluted by particulate cement and asbestos
Section 21 of Air (Prevention & Control of Pollution) Act, 1981 for establishment of sugar factory.	the permission from the KSPCB Under Section 21 of Air (Prevention & Control of Pollution) Act. 1981.	Section 40 of the Air (Prevention & Control of Pollution) Act, 1981.		matters. Even benevolent earth, which gives so much and produces food, is being adversely affected.
Ought to have obtained the permission of the Deputy	Setting up an illegal construed on of the sugar factory, without	Its clear violation of prohibition contained in	The Deputy Commissioner ought to have ordered for eviction of the	It amounts abdication of power and authority
Commissioner Belgaum, for the change in the land user Under Section 95 of Karnataka Land Revenue Act, 1964.	obtaining the permission from the Deputy Commissioner, Belgaum, for change in the land user.	Section 79B(1)(b)(ii) of Karnataka Land Reforms Act 1961.	occupant and forfeited the land by initiating action under Section 96 of Karnataka Land Revenue Act, 1964 and further directed his subordinates to investigate Under Section 79B(3) of Karnataka Land Reforms	by the Deputy Commissioner and his subordinates, thus emboldening unscrupulous elements to get way with an audacious violation of law.

			Act. 1961 for vesting of a land in the State Government	
Ought to have obtained IEM from the Secretariat for Industrial Assistance Ministry of Commerce & Industry,	Setting up an illegal construction of the sugar factory, without obtaining the IEM in violation of Clause 6A of Sugarcane (Control)	It amounts an offence Under Section 7, 8, 9 and 10 of the Essential Commodities Act. 1955.	The authorized officer ought to have initiated criminal proceedings Under Section 10A and 11 of EC Act, 1955.	It is nothing but defeating the very purpose of the Act, for which it is enacted i.e. passing Sugarcane
Govt. of India, under Sugarcane (Control) (Amendment) Order 2006.	(Amendment) Order 2006 and in violation of order made under Section 3 of Essential Commodities Act. 1955.			(Control) Order. 1966 in exercise of powers under Section 3 of Essential Commodities Act, 1955.

18. The above noted violations of binding statutory provisions under the very nose of the State and its instrumentalities, to which they have turned a blind eye, reflect a sorry abdication of power and authority by them. As a consequence of such abdication of statutory and constitutional responsibility by the State, ordinary citizens and their constitutional right to dignified existence, as enunciated by and forming part of Article 21 of the Constitution, stands violated. It is the primary duty of the State to protect and improve the environment under Article 48A and 51A(g) of the Constitution.
19. Respondent No. 13 /the Panchayath Development Officer, Gram Panchayath and Respondent No. 14/the Secretary, Gram Panchayath in reply to the information sought for, replied stating that no permission to construct the sugar factory is obtained by the Company nor any application is filed seeking such permission under the provisions of Karnataka Panchayat Raj Act. 1993 and Rule 3 of the Karnataka Panchayat Raj (Gram Panchayaths Control Over Erection of Buildings) Rules, 1994. Respondents 13 and 14 being the Chief Executives of the Gram Panchayath ought to have initiated action under Section 64(3)(a) & (b) of the Karnataka Panchayat Raj Act, 1993 and directed the Company to stop the construction and further ordered for the demolition of the said structure, building by giving show cause notice to Respondent No. 16. But to the unfortunate fate of the villagers of Yadrav, the said authorities viz. Respondents No. 12 to 14. instead of performing their statutory obligations under the law are colluding with

the Respondent No. 17 and performing their duties as per the whims and fancies of the needs of Respondent No. 17. This act of the Respondents is infringement of the basic Fundamental Rights guaranteed to the villagers of Yadrav in Raibag Taluk as guaranteed under Article 21 of the Constitution. The Respondent No. 9-Tahsildar, in response to the application seeking information has stated that no application for conversion of land to non-agricultural tenure has been filed. The lands on which the construction is being taken up by them are still agricultural lands and the same is the blatant violation of provisions of Sections 79B(1)(b)(ii), 79C and 80 of the Karnataka Land Reforms Act, 1961. This fact was also brought to the notice of the District Magistrate/Deputy Commissioner of Belgaum. But the authorities have tried to snub the grievances and resistances shown by the villagers and preferred to be a mute spectator to the illegal activities of Company.

20. The Respondent No. 13/the Panchayat Development Officer of Diggevadi Gram Panchayath, Raibag Taluk has granted 'No Objection Certificate' to the Company for construction of sugar factory illegally without consulting the members of Gram Panchayath and without following the due process as laid down in Karnataka Panchayat Raj Act and without notice to the villagers and under the pressure of Respondent No. 17. It clearly shows that the Panchayat Development Officer was acting under the pressure and coercion from Respondent No. 17. The Respondent No. 17 Mr. Prabhakar B. Kore, is a Bharatiya Janatha Party (Rajyasabha) Member of Parliament and he is using all his powers being the member of ruling party to get his illegal activities done at the cost of the lives of the residents of the Yadrav Village in Raibag Taluk. After learning this fact, the villagers questioned the elected members of the Respondent No. 12, Panchayath, Diggewadi and thereafter, the members of the Panchayat convened an emergency meeting and passed a resolution canceling the illegal 'No Objection Certificate' granted by the Respondent No. 13, the Panchayat Development Officer. But the Respondent No. 13, who was colluding with the Respondent No. 17 has not signed on the resolution dated 10.11.2010 as he is in support of the illegal NOC granted by him on 09.11.2010. Copy of the said resolution and the explanation given by the Development Officer for not signing the resolution are enclosed to the writ petition.
21. All the prayers to the concerned authorities to stop the Company from putting up unauthorized structure, have met with silence. The villagers have made representations to Respondents No. 7, 8 and 9 who are the District, Sub-Division and Taluka Magistrate to take action under Section 133 of the Code of Criminal Procedure, 1973 for the removal of illegal and unlawful construction and also order for stopping of the illegal activities. The authorities who are helping the Respondent No. 17, were working in collusion with him and started ignoring the grievances of villagers of Yadrav. The copy of the letters addressed to various authorities by the Petitioners in that behalf are annexed to the writ petition.
22. The promoter of the Company/Respondent No. 17 Mr. Prabhakar Kore, is a sitting Member of Parliament (Rajya Sabha) from Karnataka since 2008 and belongs to the ruling Bharatiya Janata Party in the State. He is using his political clout and exerting pressure upon the State authorities to allow him to proceed with the construction of the factory without following any of the provisions of the law. He is maliciously targeting villagers who openly express their resentment and opposition to the illegal activities and voices of people raised against construction of the

factory without following the due procedure of law; and the State authorities on the other hand are turning a deaf ear to the various representation made by the villagers to them. Respondent No. 17 is thus acting in a high handed manner and arm twisting the villagers and government officials alike in order to realize his selfish goals.

23. The Petitioners have approached the Department of Forest, Environment and Ecology, Government of Karnataka and the Karnataka State Pollution Control Board and requested not to grant permission. Respondent No. 17 without there being any valid licence for the setting up of a Sugar Factory at Yadrav Village of Raibag Taluk is illegally and high handedly proceeding with the construction of the factory. They have produced the Map of Raibag Assembly Constituency showing the locations of Saundatti and Yadrav Villages and also the proposed map issued by the Survey of India showing the two different locations of Saundatti and Yadrav Villages. Saundatti and Yadrav Villages are situated at a distance of 5 kms. The Respondent No. 17 has not at all obtained any IEM nor any of the permissions to set up a Sugar Factory at Yadrav Village of Saundatti Taluka in Belgaum District. The Respondent No. 17 is proceeding with the construction of the Sugar Factory with full force and in the process of demoting the existing road and other basic amenities of the villagers of Yadrav Village. Photographs are produced to substantiate the said claim.
24. The sons, daughter, and wife of the Petitioner No. 13 had filed a suit for partition against him and the Respondent No. 17 in O.S. No. 146/2010. The said suit is pending. In the written statement filed therein, the Respondent No. 17 has categorically stated on oath that he has already started construction over the said property bearing No. Rs. No. 98/1A in Yadrav Village and therefore. they have preferred this writ petition seeking for a writ of mandamus to Respondents 1 to 16 to take immediate steps against Respondent No. 17 who is putting up the unauthorized construction of the Sugar Factory at yadrav Village, Raibag Taluk, Belgaum District and restrain the Company forthwith from putting up any further construction of the said factory and initiate criminal action against the Respondent No. 17 under the provisions of various enactments which are violated by him and for other consequential reliefs.
25. The Respondents 1, 2 and 3 have filed a detailed statement of objections setting out the background of the amendment to the Sugarcane (Control) Order and justifying the extension orders passed by them as under-
- Clause 6 of the Sugarcane (Control) Order, 1966 give powers to the Central Government to regulate distribution and movement of Sugarcane. The powers of the Central Government under Clause 6 of the Order have been delegated to the State Government vide notification dated 16.07.1966. By virtue of such delegation of powers, it was expected that the State Government should manage to keep the minimum distance of 15 kms between existing and a new sugar mill as required under the Press Note dated 31.08.1998. However, this could not be done.
26. The Hon'ble Allahabad High Court in Civil Writ Petition No. 31199/2005 in the matter of Kisan Sahakari Chini Mills Ltd. v. Union of India and Ors. vide judgment dated 01.02.2006 held that the minimum distance criteria of 15 kms as mentioned in Press Note dated 31.08.1988 is directive in nature and not mandatory. The Delhi High Court in Civil Writ Petition No.

12078/2005 in the matter of Oudh Sugar Mills Ltd. v. Union of India and Ors. in their judgment dated 22.12.2005 ruled that the Press Note dated 31.08.1988 provides for the minimum distance to be observed between an existing sugar mill and a new sugar mill and not between the two proposed sugar mills. In view of the said developments, expert advice of the Department of Legal Affairs was sought for in the matter and they opined as under:

Since there is no provisions regarding providing limitation of minimum distance between the two existing or proposed sugar mills in the Sugarcane (Control) Order, 1966. the Sugarcane (Control) Order, may be amended suitably

27. On receipt of the above advise of the Ministry of Law, the Department initiated the process to amend the Sugarcane (Control) Order, 1966. In the meanwhile, the Hon'ble Supreme Court vide its order dated 05.09.2006 in the case of *Balrampur Chini Mills Ltd. v. Ojas Industries Pvt. Ltd. and Ors.* granted eight weeks time to Union of India to iron out some of the difficulties highlighted by the parties in these cases. After due consultation with the State Governments and other stake holders, the Sugarcane (Control) Order, 1966 was amended vide order dated 10th November 2006 giving statutory backing to the concept of minimum distance. The order was made applicable from the date of its publication in the official i.e. with effect from 10th November 2006.
28. Clause 6A puts restriction on setting up of two sugar factories within the radius of 15 kms. It provides that no new Sugar Factory shall be set up within the radius of 15 kms of an existing Sugar Factory or another new Sugar Factory in a State or two or more States. However, the State Government has been authorized to notify the minimum distance higher than 15 kms with the prior approval of the Central Government. Then, they have referred to the Explanation appended to Clause 6A, 6B, 6C.
29. They have also set out the judgment of the Apex Court in the case of *Ojas Industries (P) Ltd. v. Oudh Sugar Mills Ltd., and Ors.*, which has held that the Sugarcane (Control) Order is retrospective in operation and the consequences of non-implementation of IEM within the period stipulated. It reads as under:

We hold that the Sugarcane (Control) (Amendment) Order, 2006 imposes a bar on the subsequent IEM holders in the matter of setting up of new sugar factories during the stipulated period given to the earlier IEM holders to take effective steps enumerated in Explanation 4 to 6A of Sugarcane (Control) (Amendment) Order, 2006 order operates retrospectively.

... If the first IEM holder or the earlier IEM holder take effective steps to implement its IEM then the subsequent IEM holder cannot proceed with his IEM. If the first IEM or earlier IEM for that area shall become non est, they shall however, remain in suspense during stipulated period when the earlier IEM holder takes effective steps for implementing its IEM
30. Since the Sugarcane (Control) (Amendment) Order, 2006 provides 4 years time to commence commercial production and the Hon'ble Supreme Court has made the said amendment order applicable retrospectively, advice of the learned Additional Solicitor General of India was sought for as to whether this Department should accept this Bank Guarantees from those persons whose IE Ms were acknowledged in 1998/1999/2000 i.e prior to June 2003 and have not taken

effective steps or have taken some effective steps to implement the IEM. The learned Additional Solicitor General in his letter dated 18th June 2007 has advised the Government that in the light of the categorical judgment of the Hon'ble Supreme Court holding the notification of 2006 is clarificatory and retrospective, the Department should not accept the Bank Guarantees from the first or earlier persons whose IE Ms were acknowledged in the years 1998/1999/2000 i.e. prior to June 2003 who have not taken effective steps. Bank Guarantees can only be accepted from the first or earlier IEM holders in terms of Clause 6E If the time limit of 4 years, as prescribed in Clause 6C has not expired.

31. M/s. Shivashakti Sugars Limited filed an IEM with Department of Industrial Policy and Promotion which was acknowledged by DIPP vide acknowledgement No. 3080/SIA/IMO/2006 dated 08.06.2006 for setting up of a new Sugar Factory at Saudatti Village, Raibag Taluk, Belgaum District, Karnataka. The IEM was subsequently amended on 19.10.2007 for change of address and capacity. However, the village in which the Shivashakti Sugars was permitted to start the sugar factory remained the same i.e. they ought to put up the factory at Raibag Taluk, Belgaum District, Karnataka and what was amended was only the address and the capacity.
32. In response to the notification dated 1.11.2006. M/s. Shivashakti Sugars Limited as per Clause 6E(2), furnished the performance guarantee of Rs. One Crore vide letter dated nil received on 05.06.2007. They have also vide letter dated 14.06.2007 furnished a Distance Certificate dated 05.06.2006 issued from the Cane Commissioner, Government of Karnataka certifying that the proposed new factory of M/s. Shivashakti Sugars is more than 15 kms from other existing sugar mills. The Sugar Factory of M/s. Shivashakti Sugars at Saudatti Village, Raibag Taluk, Belgaum District, Karnataka was taken on record as a "New Sugar Factory" as provided in Explanation 2 to Clause 6A of Sugarcane (Control) (Amendment) Order, 2006 vide order dated 15.04.2008. The IEM was granted to Shivashakti Sugars on 08.06.2006 and that Shivashakti Sugars ought to have taken effective steps on or before 08.06.2008 and further, they ought to have started the commercial production of sugar by 07.06.2010.
33. The Government of Karnataka i.e., Respondent No. 5. vide letter dated 09.03.2010 addressed to the Respondent No. 2 recommended the case of M/s. Shivashakti Sugars Limited for grant of extension of six months for implementing the IEM and commencement of commercial production when the time limit to grant extension of time was already over. The Government of Karnataka in the aforesaid letter informed that M/s. Shivashakti Sugars Limited reported to have taken the following effective steps:
 - (1) Purchase of 77.03 acres of land and Its conversion is under process;
 - (2) Machinery purchase orders finalization is under process;
 - (3) They have already spent considerable for the project;
 - (4) Obtained orders from Irrigation Department to lift 50 lakh liters of water from the river Krishna;
 - (5) Obtained clearance from Karnataka State Pollution Control Board.

34. As M/s. Shivashakti Sugars Limited did not take effective steps as enumerated in Explanation 4 below Clause 6A of Sugarcane (Control) (Amendment) Order, 2006 within the stipulated time limit of two years from the date of acknowledgement of IEM, a show cause notice dated 27.04.2010 was issued to M/s. Shivashakti Sugars Limited on 27.04.2010. In response to the show cause notice, M/s. Shivashakti Sugars Limited have furnished the details of the effective steps taken by them upto 07.06.2010 vide letter undated (received on 26.05.2010) and 22.07.2010.

The copy of the details furnished by M/s. Shivashakti Sugars Limited is as under:

(i) Land Purchased:

They have purchased 77.17 acres of land and registered the same in the name of M/s. SSL on 04.02.2008.

(ii) Placement of Machinery orders:

Boiler, Turbines and Mills are the major machineries required for the sugar plant and they have placed orders for those machineries. For boiling house also they have issued order. So far they have invested Rs. 10 crores.

(iii) Civil Works:

For construction of building for sugar factory they have made an agreement with Shree M/s. Pratibha Construction Ltd. And already basement civil work is over and now they are waiting for machinery drawings so that they can construct the building according to the weight of the machines. In civil work 10% works are over and further works are under progress.

(iv) Sanction of Term Loan from Banks or FIS:

Bank of India and Indian Overseas Bank have sanctioned terms loans to the tune of Rs. 136 vide letters dated 19.05.2008 and 29.01.2008 respectively.

35. The main reason given by M/s. Shivashakti Sugars Limited for not taking effective steps within the prescribed period of 2 years is that there was a family feud and the Chairman of the Company Shri. Prabhakar B. Khore, M.P.(Rajya Sabha) was shot at by his nephew three times by revolver on 19.10.2006 and he remained in hospital for more than 1 year i.e. from 19.10.2006 to 24.10.2007 and two bullets were removed from his body and third is still in his body. Therefore, he could not attend to work and take further action to implement the IEM and hence, the project was delayed. It was only after his health improved, that he approached the Government of Karnataka to give approval for their factory.
36. In view of the explanation given by M/s. Shivashakti Sugars Limited, the show cause notice dated 27.04.2010 was dropped and in exercise of powers conferred by Clause 6C of Sugarcane (Control) (Amendment) Order, 2006, they have been granted extension of time for ix months with effect from 07.06.2008 to implement the IEM dated 08.06.2006 and to commence production thereof by 07.12.2010 vide Orders dated 19.08.2010. They have referred to the Distance Certificate produced by the Petitioner as well as the Respondent and they have contended that it is the distance certificate issued by the Survey of India- 7th Respondent

which is valid and according to the said certificate, M/s. Shivashakti Sugars Limited is setting up the Sugar Factory is beyond 15 kms from the existing factory and therefore, they contend that there is no merit in the writ petition and seek for rejection of the same.

37. The 4th Respondent-Sugar Cane Commissioner has filed his statement of objections. He states that the State Government has been vested with the power under the Sugarcane (Control) Order, 1966, for allocation of sugarcane area for different factories. On an application made by Respondent No. 6, the State Government, by an order dated 07.11.2007 was pleased to grant 'in-principle clearance' for establishment of the Sugar Factory. Raibag Sahakari Sakkare Karkhane is a society registered under the provisions of the Karnataka Co-operative Societies Act, 1959. It was closed for several years. An order of liquidation was passed by the State Government on the recommendation by the Commissioner. From the year 2001-02 itself, the crushing activity of the Petitioner came to be stopped. In order to rejuvenate the Sugar Factory, the factory had floated tenders, in which the Petitioner was declared as the successful tender. However, even before this, when the factory was not functioning, permission to Respondent No. 6 has been granted. In the year 1995 itself, Raibag Sahakari Sakkare Karkhane has conveyed a "No Objection Certificate" for establishment of Respondent No. 6 factory. Apart from this, on a recommendation made by the Deputy Commissioner regarding the viability and availability of the cane in the area concerned, Respondent-Authority has passed an order known as "The Karnataka Sugarcane (Regulation of Distribution) M/s. Shivashakti Sugars, Saudatti Village, Raibag Taluk, Order 2007". The said order admittedly is not called into question by the Petitioner nor by Raibag Sahakari Sakkare Karkhane. They have accepted the said order. The allocation of cane area made in favour of M/s. Shivashakti Sugars is an informed decision. It is a decision made on the basis of relevant materials. It is a decision made eminently in public interest, that is to say, in the interest of sugarcane farmers growing sugarcane in and around Raibag Taluk.
38. The Deputy Commissioner, Belgaum, by communication dated 25.08.2006 made a recommendation for allocation of 16 villages situated in Raibag Taluk and 7 villages situated in Chikodi Taluk to be allocated in favour of M/s. Shivashakti Sugars. In this regard, it was recommended that Doodhganga Sahakari Sakkare Karkhane by communication dated 12.08.2006, had informed that they had no objection for about 7 villages to be allocated in favour of M/s. Shivashakti Sugars and, therefore, M/s. Shivashakti Sugars was requested to be allocated with 16 villages from Raibag Taluk and 7 villages in Saundatti Taluk.
39. On receipt of the said communication, a meeting was convened under the Chairmanship of the Secretary, Commerce & Industries Department, on 12.05.2006. It was noticed that the Taluk Agricultural Officer had reported that the total potential of sugarcane growth is 23.22 lakh tones per year and that the necessity of M/s. Shivashakti Sugars was merely 5 lakh tone per year. It was also noticed that In view of the closure of Raibag Sahakari Sakkare Karkhane, sugarcane growers of the said area were forced to supply sugarcane to Doodhganga Sahakari Sakkare Karkhane and Halasiddanatha Sahakara Sakkare Karkhane. Those two factories also were unable to receiver the sugarcane so grown, resulting in the sugarcane farmers being forced to carry their sugarcane to the neighbouring State of Maharashtra, which has counter productive of the interest of the farmers in general.

40. Notice was issued to M/s. Doodhganga Sahakari Sakkare Karkhane and M/s. Raibag Sahakari Sakkare Karkhane. In the said meeting held on 04.06.2007, the Managing Director of Raibag Sahakari Sakkare Karkhane concurred with the recommendation made by the Deputy Commissioner. Doodhganga Sahakari Sakkare Karkhane had also issued no objection. In taking into account these factors, the State Government passed an order dated 07.11.2007. It also requires to the mentioned before this Hon'ble Court that for the year 2008-09, Raibag Sahakari Sakkare Karkhane has only crushed 20.573 tones of sugarcane, whereas its crushing capacity is 4 lakh tones. Out of 23 lakh tones of sugarcane so grown in that area, if the entire 4 lakh tones is given away to Raibag Sahakari Sakkare Karkhane, yet there would be excess cane available in the area. In these circumstances, the commencement of M/s. Shivashakti Sugars would be actually in the interest of sugarcane farmers, which would encourage sugarcane growth and also prevent the farmers from transporting their sugarcane outside the State. There has been under-crushing of sugarcane grown in the entire State as such. In fact, for the year 2007-08, it was noticed that as against the growth of 340 lakh tones of sugarcane, only 270 lakh tones was crushed, thereby leaving about 70 lakh tones of sugarcane remaining uncrushed. For the year 2008-09, it was projected that 90 lakh tones would go without crushing. Therefore, the State Government announced several incentives to sugarcane farmers for paying compensation for uncrushed sugarcane and also incentives to Sugar Factory were given to crush sugarcane apart from the allocated area with an incentive of Rs. 100/- for every tone of sugarcane so crushed. All these would go to show that commencement of new Sugar Factories would be in the interest of all concerned and in the public interest. The Karnataka Geo Spatial Data Centre has also issued a Certificate intimating that the distance between the Petitioner and the Respondent No. 6 factory is more than 15 kms. The present Respondent has also issued a Certificate to the effect indicating that all the factories are not within the radius of 15 kms. It cannot be disputed that having an establishment like Respondent No. 6 would help the farmers of the said area. The grant of certificate is based on the material on record and the data collected by this Respondent. It cannot be said to be a certificate without any basis. The office of this Respondent has also been informed about the progress made by Respondent No. 6 in establishment of the factory. Looking at the progress made, the Respondent has also made a recommendation to the Central Government for extension of the IEM granted, which has also been granted. The Petitioner has no independent right. Raibag Sahakari Sakkare Karkhane has accepted the order of sugarcane allocation. The order of the Government allocating the sugarcane area is not called into question before this Hon'ble court. In these circumstances, the question of allocating the sugarcane area in favour of the Petitioner does not arise.

41. M/s. Shivashakti Sugars Limited have filed a detailed statement of objections.

From paragraph 2 to 9, the 6th Respondent has clearly set out what was the legal position prior to amendment to the Sugarcane (Control) Order, 2006 and what are the legal requirements to be complied with by a Sugar Factory for being set up. Therefore, it is clear that the 6th Respondent is fully aware of the legal requirements to be complied with by a Sugar Factory to set up a Sugar Factory. It is stated that the Respondent No. 6 filed an application with the Government of India seeking grant of license, for establishment of a sugar mill with a capacity of 2500 TCD at village Saundatti, Tehsil, Raibag Taluk, District Belgaum. The Government of India on

03.07.1996 granted a letter of intent/permission for issuance of Industrial License under the Industrial (Development and Regulation) Act, 1951 for location of the sugar unit at Saundatti Village, Tehsil Raibag, District Belgaum. The Petitioner industry had issued a no objection to set up a Sugar Factory, when the 6th Respondent had made the application to the Central Government under the IDR Act. Even before the letter of intent was to be implemented, the 1998 notification intervened and the Government of India itself permitted persons like the 6th Respondent to file only Part-B of the IEM and if there was any variance, to file part A of IEM if there was any IEM. In accordance with the press note dated 31.08.1998, 6th Respondent filed an application before the Government of India and accordingly on 08.06.2006, it was granted an IEM. The Respondent No. 6 Company was acknowledged with an IEM in respect of which LOI was granted. In accordance with Sugarcane (Control) Order, 1966, 6th Respondent in terms of amended provisions gave a Performance Guarantee of Rs. One Crore executed by M/s. Canara Bank, Belgaum Main Branch, in favour of Chief Director of Sugar, Government of India for due establishment of the factory.

42. On 19.10.2007, a small correction was to be made as regards the Registered Office, which was also effected by the Department. On 04.08.2007, based on the application filed by Respondent No. 6. the Government of Karnataka, in exercise of its power conferred under the Sugarcane (Control) Order, 1966, passed an order known as Karnataka Sugarcane (Regulation & Distribution) M/s. Shivashakti Sugars, Saudatti Village, Raibag Taluk, 2007. By such an order, 28 villages situated in Raibag Taluk were exclusively allocated in favour of Respondent No. 6 factory for supply of sugarcane. The effect of such an order is that sugarcane grown in the said area has to be exclusively allocated to the said factory. On 07.11.2007, the Government of Karnataka, based on an application and the clearance given by the State High Level Clearance Committee, passed an order approving the Sugar Plant to establish 3000 TCD Sugar Plant with 14 MW Co-generation Plant and 30 KLDP Distillery Plant. Various infrastructural facilities were also granted by the Government. On 25.10.2006, the Government of Karnataka by an Order, in exercise of its powers under Section 109(1) of the Karnataka Land Reforms Act was pleased to permit Respondent No. 6 to purchase various agricultural lands in the area where the Sugar Factory was to be established. On 23.10.2007, the Government of Karnataka has been pleased to permit usage of 0.0625 TMC water from Hippargi Village. The Department of Central Excise and Customs Tax had also granted a Registration Certificate in Form No. RC for the Respondent No. 6. On June 5, 2006, a certificate was issued by the Commissioner for Cane Development and Director of Sugar stating that there was no Sugar Factory within the radius of 15 kms from the proposed plant. On 20th July 2007, the Commissioner for Cane Development and Director of Sugar has granted a Certificate intimating that M/s. Raibag Sahakari Sakkare Karkhane had stopped its operation from the year 2001-02 till date. On August 17, 2007, the Commissioner for Cane Development & Director of Sugar has granted a Distance Certificate to Respondent No. 6 intimating that the Chief Director of Sugar certified that the distance between the Sugar Factory to be set up by Respondent No. 6 and other sugar factories is beyond 15 Ions. The 6th Respondent has already taken the following steps for implementation of the IEM:

- i) It has totally purchased 73 acres 29 guntas of land. A tabular column depicting the sale effected is produced and marked as Annexure-R7.

- ii) As regards purchase of plant and machinery, it was stated that on 05.11.2007, the Company had placed order with M/s. Kay Bouvet Engineering Pvt. Ltd. for supply of complete boiling house for a total consideration of 21,25,00,000 and they have enclosed Annexure-R8, the order placed.
- iii) In so far as civil works are concerned, it was stated that advance final amount of Rs. 10 lakhs vide Cheque No. 359715 dated 30.06.2008, IDBI, Tirupur paid to Sree Sabari Constructions and gave the particulars of the work done which shows that they had undertaken work of land leveling. Copy of the agreement with M/s. Sree Sabari Constructions is also produced as Annexure-R9.
- iv) They have also stated that they obtained requisite term loans from the banks and financial institutions. The amount sanctioned was Rs. 136 crores. Copy of the credit facilities sanctioned by the Bank of India, Coimbatore Corporate Banking Branch and Indian Overseas Bank, R.S. Puram, Branch and copies of the same are also produced as per Annexure-R11 and 12. Copy of the Certificate issued by the Chartered Accountant of Respondent No. 6 M/s. P.G. Ghalli & Co. indicating the expenditure already incurred towards the 3500 TCD plant is produced as Annexure-13.
43. Respondent No. 6 filed an application before the Chief Director of Sugar seeking extension of time limit and accordingly, on 13th August 2010, the Chief Director of Sugar has granted time for implementing the IEM upto 07.12.2010. In the absence of any challenge to it, the question of seeking judicial review and declaration in terms of Prayer A does not arise. Malafides are alleged against the Petitioner. Then, they have stated the legal position and also pointed the delay and laches on the part of the Petitioner in approaching the Court and therefore, they have sought for dismissal of the writ petition.
44. Managing Director of the 6th Respondent Sri. Prabhakar Khore has been made as a party in person in the Public Interest Litigation filed as allegations are made against him. Therefore, he has filed a statement of objections traversing the allegations made against him. He contends that he is the Director of the 6th Respondent -company. The Petitioners have alleged that he being a Member of Rajya Sabha from Bharatiya Janatha Party has used all powers to get his illegal activities done at the cost of the lives of the residents of Yadrav Village in Raibag Taluk. He being a promoter of the factory, is using the political clout and exerting pressure upon the State Authorities to allow him to proceed with the construction of the factory. He adopted the statement of objections filed by the Company. He has stated that this writ petition is a classic case of abuse of process of Court of Law. The petition does not disclose any public interest. On the contrary, the Petitioners who have been set up M/s. Renuka Sugar Factory who have, on being unsuccessful in their individual capacity to obtain an interim order, they have set up the Petitioners in these petitions. He has referred to writ petition filed by the Petitioners in W.P. Nos. 68189-191/2010 and 68213-216/2010 in the Circuit Bench at Dharwad, seeking the very same reliefs. On their request under a memo for withdrawal reserving liberty to them to file appropriate petition before the appropriate forum: the said writ petition was dismissed as withdrawn. Though the Petitioners are 15, all of them belong to two families. In fact, in the Circuit Bench of Dharwad, same writ petition was filed by 7 persons, one Sri. Sadashiv S/o

Maruti Ninganure and others. After hearing notice was ordered. Thereafter, they have withdrawn the petition. The reason for withdrawal is not mentioned. The Petitioner No. 1 Sri. Kallappa S/o Ramachandra Khot in the present writ petition, is none other than, son of one Sri. Ramachandra S/o Siddappa Koth, who was Petitioner in writ petition No. 68189-191/2010. The said writ petitions were withdrawn and present writ petition has been filed. The Petitioner Sri. Sadashiv S/o Marui Ninganure and others having abused the processes of this Hon'ble Court are guilty of gross criminal contempt of court and they are liable to be prosecuted for the same. They have tried to mislead the court and therefore, the petition itself requires to be dismissed with exemplary cost. Then, they have referred to the connected writ petitions filed which according to him is an unending harassment. In ail the writ petitions allegations are the same and there is a collusion and these Petitioners are mere name lenders and have been 'set up' by M/s. Renuka Sugars to stall the commencement of the factory, by one or the other way. M/s. Renuka Sugar by themselves have monopolistic tendency; not only stalling the present factory but initiating series of proceedings in respect of others also. They have filed 22 IE Ms for different locations in Karnataka State alone and Anr. 18 IE Ms for 10 more locations in other parts of the country. They have obtained these IE Ms to block locations from being available to other entrepreneurs, who can implement the sugar mill projects promptly. They have set out number of IE Ms and how the Renuka Sugars are operating. At any rate, he has, at no point of time, used his office or his status as a Member of Parliament belonging to Bharatiya Janatha Party for the purpose of getting clearance by the State Authorities and therefore, the said allegations are false and have been calculatedly made in order to prejudice the case in favour of the Petitioners. The fact that the allegations are false can be demonstrated by the fact that, Respondent No. 18 became Rajya Sabha Member, sponsored by Bharatiya Janatha Party only in the year 2009. whereas, the factory was conceived way back in the year 1996 and all permissions including statutory clearances were obtained much earlier to 2008. The Petitioners without ascertaining any facts, or without any basis, have made an allegation that Respondent No. 18 has used his position in order to get the clearances in their favour. The Petitioners have not substantiated as to which of the orders are passed by which of the authorities, under the influence of Respondent No. 18 for getting clearances. In the absence of the same, the petition requires to be rejected with exemplary costs. It is further stated that he is totally hurt by the allegations made by Petitioners for the reason that in his long years of public life, he has endeavored high values and practiced the same. Since such wild allegations have been made, he deems it necessary to place on record that he has done yeoman service to the cause of education and co-operative sector in the northern part of Karnataka. He has been single handedly instrumental in establishing and managing number of educational institutions providing education from Kinder Garden to Post Graduation and extending health care to the entire region. He was nominated as a Member of the Legislative Council for the services rendered by him in co-operative sector. He was earlier a Member of Rajya Sabha in the year 1990. In all years of his public life, he has maintained high standards and has never given cause for complaints in his discharge of duties. It is false and misleading for the Petitioners to contend that this Respondent has exerted any political influence to violate the rule of law and has sought for dismissal of the writ petition with exemplary costs.

45. The 7th Respondent, Survey of India have also filed the Statement of Objections. They state that the Respondent is the National Survey and Mapping Organization of the Country and

functions under the umbrella of the Department of Science and Technology, Government of India and is also the oldest Scientific Department of the Government of India. It is further stated that they provide base maps for expeditious and integrated development and ensure that all resources contribute with their full measure to the progress, prosperity and security of our country. They issued a Distance Certificate to M/s. Shivashakti Sugars Limited as per the then existing e laid down procedure which was prevailing till 31.12.2007 in Survey of India, according to which, the Indenter used to mark the position of Sugar Mills in topo sheets, and further that based on the said topo sheets, this Respondent was to compute the horizontal distance from the marked position in the topo map and issued the certificate accordingly. Since the Respondent issued the distance certificate, based on the data provided by the indenter the accuracy of marking of location on the topo map lies with the Indenter and this Respondent as such does not have any responsibility or liability regarding such a certificate issued by it. Topo maps are produced after a ground survey in a scientific method applying the knowledge of distance and direction in the field. Since 1:50,000 scale maps are used for determination of horizontal distance, a shift of one dot in the map for the location of sugar mills marked on it will have a shift of 12.5 meters only in the ground. That is to say that there will not be significant variation in the distance with a little shift in the location of sugar mills marked in the topo maps. Hence, the claim and the averments of the Petitioners are not sustainable. The Surveyor General of India is the authority for the publication of topo maps. These topo maps depict all the topographical features existing on the ground at the time of survey as permitted by the sale. The directions under which the distances were given prior to 01.01.2008 to the Indenter is enclosed as Annexure-R1 and the procedure followed is set out as under:

- (a) The indenter should mark the position of the Sugar Factories (existing and proposed), whose distances are required on original/xerox copy of the topographical map and submit it with application and required amount of fee in the form of Demand Draft.
- (b) The indenter has to mention the name and location of the Sugar Factories from where the distances are required.
- (c) After receiving the application from the indenter. Survey of India will find out the distances from the existing topographical maps. The distances are calculated from the marked positions, which generally meet the required accuracy. The policy was amended with effect from 01.01.2008 and new policy was also set out.

46. Thereafter, they also stated that the Respondent having been issued the certificate strictly in compliance with the existing guidelines and norms, this Respondent cannot be faulted. Therefore, they also sought for dismissal of the writ petition.

47. The 7th Respondent has filed his objections to the application under Order VI Rule 17 opposing the said petition. They contend that the Petitioners have not challenged the order dated 18.08.2010. What is challenged is only further extension of time granted on 01.12.2010. If the amendment is allowed, great prejudice would be caused to the Respondent No. 7. It is also stated that the power vested with the Chief Director of Sugars has been exercised bonafidly. The Chief Director of Sugars considering the investment made by the Respondent No. 7 and considering that there is compliance with all requirements of law and being fully satisfied

about need of grant of extension of time has done so. Both the Yadrav Village and Saudatti Village are abutting to each other and on perusal of approved plan shows that the factory is spread over in both villages. The entrance to cane yard and Sugar Factory is only in Saudatti Village and other portion of the factory comes in Yadrav Village. The permission of both village Panchayats are obtained. The factory does fall within Saundatti Village and also spread over Yadrav Village and therefore, the application is liable to be dismissed.

48. The Karnataka State Pollution Control Board, which is the Respondent in PIL petition, have filed their counter contending that the Petitioners have not come to this Court with clean hands. The Respondent No. 15 has granted the Consent for Establishment (for short CFE) to the Respondent No. 17 by its order dated 18.12.2008 for setting up of a sugar industry with crushing capacity of 3500 TCD and co-generation plant of 4.5 Mega Watt in survey number shown in the said order. While granting consent for establishment for setting up of a sugar industry to the 17th Respondent, they have imposed conditions to control both water and air pollution. In so far as the trade effluents generated in the said sugar industry are concerned, they have imposed the conditions to provide effluent treatment plant comprising in the units as mentioned in the Statement of Objections. It is only after providing the said effluent treatment plant comprising the units and after satisfying the efficiency of ETP, these Respondents considered the issuing of consent for operation and in which event only, the Respondent No. 17 would be authorized to operate the industrial plant i.e. after getting CFO-Consent for Operation.
49. In so far as air pollution, disposal of solid waste is concened, they have imposed conditions as per law and only after those conditions are complied with, the Respondent No. 17 will be permitted to operate its Sugar Factory. Therefore, while issuing the consent for establishment, the Respondents 15 and 16 have taken sufficient care to see that the 17th Respondent would operate its sugar industry in accordance with the provisions of both Water and Air Acts. These facts have not been placed by the Petitioners before the Hon'ble Court. If at all the Petitioners are aggrieved against issuing of CFE by these Respondents, it is always open to the Petitioners to question the same before the appellate authority constituted under both Water and Air Acts. Along with the said statement of objections, they have filed Annexure-R1 dated 18.12.2008 granting consent for establishment of the sugar industry.
50. Sri. S.S. Naganand, learned Senior counsel appearing for Doodganga Sugar Factory submitted that the establishment of the sugar factory by the Shivashakti Sugars at Saundatti Village is within 15 kms from Doodganga Sugar Factory. According to the certificate issued by the PWD, the distance is 13.8 kms. Infact, the sugar factory is not established in Saundatti Village at all It is set up at Yadrav Village which is in between Saundatti Village and Nanadhi Village of Chikkodi Taluk, which is still less than 13.8 kms. Therefore, under the Sugarcane Control Order, no new sugar factory could be established within 15 kms. As such, the IEM filed by Shivashakti Sugars is invalid, contrary to law and they are not entitled to set up any industry. Further, he also pointed out that the distance certificate which they have produced is not on the basis of the actual measurement made by the Survey Department, but on the information given by Shivashakti Sugars and as is clear from the certificate Issued by the Survey Department, they are not prepared to work out as regards the correctness of the measurement. Therefore, he submits that there is flagrant violation of the statutory provision. which is mandatory in nature

and Shivashakti Sugars have no right to set up an industry within the prohibited area. He also submitted that according to the material produced by Shivashakti Sugars, hardly 66.7 acres is situated in Yadrav Village and the IEM is obtained to set up an industry in Saundatti Village and therefore, the sugar factory set up in Yadrav Village is illegal and cannot be permitted. Shivashakti Sugars have not taken effective steps as contemplated under Explanation IV of Section 6A of the Sugar Control Order within a period of two years and the documents produced in support of the contention that they have taken effective steps do not substantiate their claim, on the contrary, they clearly disclose that no such effective steps were taken. In fact, the certificate issued by the Chartered Accountant clearly proves this point. Therefore, he contends that when there is a violation of the statutory provisions, Shivashakti Sugars should not be permitted to set up the industry.

51. Sri. Ravi Varma Kumar, learned Senior counsel appearing for the shareholders of Raibagh Sugar Factory, adopting the aforesaid argument, contended that Raibagh Sugar Factory is situated in Bavachi Village at Raibagh Taluk. Yadrav Village is nearer to Bavachi Village when compared to Saundatti Village. The material on record discloses that no factory is established at Saundatti Village and therefore, within 15 kms from the place of Raibagh Sugar Factory, Shivashakti Sugars would not have established their factory. He also submitted that the distance certificate issued by the authorities are not in accordance with law and even if It is taken to be correct, as no sugar factory is established in Saundatti Village and is sought to be established in Yadrav Village which is nearer to Bavachi Village, it falls within 15 kms., as such, there is a contravention of the mandatory provision of law.
52. Sri. K.G. Raghavan, learned Senior counsel appearing for the lessee of Raibagh Sugar Factory viz. Renuka Sugars contended that the IEM was filed on 8.6.2006 prior to the amended Rules came into effect from 10.11.2006 as by that time, no effective steps had been taken as is clear from Section 6(c)(i). Shivashakti Sugars were under an obligation to file a fresh IEM and comply with the requirements of amended provisions, which they have not done. Therefore, IEM filed prior to the Rules coming Into force spelt itself and it is not yest. Even a liberal interpretation is to be placed on these provisions as per Clause 6E of the Sugar Cane Control Order. The first step in the establishment of a sugar factory is obtaining a distance certificate from a competent authority. Thereafter, within thirty days' therefrom, enclosing the distance certificate, IEM is to be filed. From the date of acknowledgement of the said IEM within two years, as a second step, the effective steps as contemplated in Explanation IV to Section 6A is to be complied with. As on the day the amended Rules came into force, no effective steps had been taken. The persons who had filed IEM were required to offer / furnish a performance Bank Guarantee of Rs. 1,00,00,000/-. The commercial production should commence within four years from the date of IEM. If, for any reason, within the aforesaid stipulated period it is not possible to implement the IEM, law proceeds for one year's extension, in installment of six months each. In the instant case, the material on record discloses that no effective steps were taken within two years from the date of the IEM filed. No request for extension of time was made and on the day the Central Government granted extension, two years' period had expired. But, by that time, by operation of law, the IEM stood de-recognised. Therefore, the order passed by the Central Government extending the time has no legal effect, it is void ab initio and nonest in the eye of law. He also pointed out that none of the four steps which are contemplated in

Explanation IV, is fulfilled and unless all the effective steps were effected within the stipulated period, Shivashakti Sugars could not have established the sugar factory under the Sugar Cane Control Order. Therefore, he submits that firstly IEM was not in existence. Even if it is to be held in existence, it stood de-recognised as no effective steps were taken within two years from the date of IEM. These provisions being mandatory of actions, after the IEM stood de-recognised, is without any legal effect and has to be ignored.

53. Sri. Nanjunda Reddy, learned Counsel appearing for the Petitioners in the public interest litigation, adopting the aforesaid submission made, contended that apart from the infirmities pointed out by the learned Counsel appearing In other cases, this sugar factory has been set up in total disregard to the Rule of law. Shivashakti Sugars have not obtained a license under Section 64 of the Grama Panchayat Act for establishment of the sugar factory either in Saundatti Village or in Yadrav Village. Similarly, they have not obtained any sanctioned plan as contemplated under Section 65 of the Grama Panchayat Act to put up any construction either in Saundatti Village or in Yadrav Village. They have also not obtained permission under the Factories Act which is mandatory. They have not obtained orders of conversion for using agricultural land for industrial or non-agricultural purposes. They have also not obtained permission in respect of the entire extent of Land for purchasing agricultural land as admittedly, under provisions of the Karnataka Land Reforms Act, they could not purchase agricultural land. Similarly, requisite permissions have no been obtained under the Air Act and the Water Act. The permission granted by the Pollution Control Board ex-facie is illegal. It purports to give no objection for establishing of an industry in the survey numbers mentioned "herein in Saundatti Village. Those survey numbers do not belong to Shivashakti Sugars. Shivashakti Sugars have not acquired those lands and therefore, there is total non-application of mind by the authorities in granting the said no objection certificate. Infringement of law which is actively or passively condoned for personal gain, if encouraged, will inturn lead to a lawless society. That is precisely what is happening in so far as establishment of Shivashakti Sugars is concerned. Therefore, the public interest is in maintaining of Rule of law, upholding the Rule of law and therefore, they have locus standi to maintain these writ petitions.
54. Per contra, Sri. B.V. Acharya, learned Senior counsel appearing for Shivashakti Sugars in the public interest litigation submitted that all the actions taken by the sugar factory is strictly in accordance with law. Infact, a letter of indent was applied for on 3.7.2006. On 8.6.2006 IEM was filed and duly acknowledged to set up a sugar factory in Saundatti Village. Sugar Control Order was amended introducing Section 6A to 6E on 10.11.2006. On the day the IEM was filed, there was no sugar factory in existence within a radius of 15 kms from Saundatti Village and therefore, there was no necessity for a distance certificate and it cannot be said that the IEM filed is illegal. He pointed out how efforts were made by the Petitioners in the other cases to scuttle the establishment of a sugar factory and when they failed to get any interim orders, they have set up these papers for filing a public interest litigation in Bangalore, the Principal Bench. He also pointed out that certain civil litigations and other writ petitions were pending and withdrawn and submitted that this writ petition is not filed in public interest which is actuated with malafides. It is instigated by Raibagh Sugars, the rival in the business and therefore, he submits that on the short ground, the writ petition is liable to be dismissed.

55. Learned Advocate General, defending the action of the State in allocating 14 Villages which had earlier been allotted to Raibagh Sugar Factory and Anr. 7 villages which were allotted to Doodaganga Sugar Factory, stated that those two sugar factories gave no objection for the said allotment. In Raibagh Sugar Factory, crushing of sugarcane is stopped in 2001-02. Infact in Raibag Taluk, there was excess sugarcane available which was not utilised. Infact, the fanners were compelled to take their sugarcanes to the State of Maharashtra which is not in the interest of the State or commerce. The sugar factory which is now sought to be established is beyond 15 kms from these two factories. Under these circumstances, the Cabinet took principle decision to allocate 21 villages to the new factory to be set up. The bar contained in Section 6A of the Sugacane Control Order is not attracted to the facts of this case. In so far the Government is concerned, public interest is of paramount consideration. Assuming that the existing sugar factories need sugarcane and by allotting the villages which is allotted to the earlier, attracted to the better interest. They could approach the Government after hearing all the parties. The Government do not mind re-allocating these villages. Therefore, whatever action taken by the Government is in public interest in order to protect the interest of sugarcane growers and is also strictly in accordance with law and it cannot be found fault with.
56. Sri. Vijaya Shankar, learned Senior counsel appearing for the sugar factory contended that the writ petition filed by Raibagh Sugars which is a business rival, is not maintainable as held by the Apex Court in the case of The Nagar Rice Flour Mill And Ors. v. N. Teekappa Gowda and Ors. reported in MANU/SC/0453/1970 : AIR 1971 SC 246. The whole object is to drive out all competitors and virtually have monopoly in sugar industry which should not be permitted. Shivashakti Sugars owns land in Saundatti Village as well is in Yadrav Village which are adjoining each other. The lands owned by the factory in these two villages is a compact single block. A sugar house is situated in Saundatti Village and crushing of sugar is done in Yadrav Village. It is transported by pipes to the sugar house. Therefore, the establishment of the sugar factory at Yadrav Village do not contravene any law. He further submitted that the IEM filed and recognised on 8.6.2006 for the purpose of computing the distance between the existing factory and the new factory to be set up, that date is not crucial. The date to be taken is the date on which the sugar factory is set up or at any rate, the date on which the Government allocated villages to the said sugar factory. If those dates are taken into consideration, five years prior to the date, there was no crushing of sugarcane in Raibagh Sugar Factory and therefore, there is no necessity of a distance certificate as no sugar factory exists within 15 kms radius from the proposed factory. Even otherwise, the distance between these two existing sugar factories and the proposed sugar factory is beyond 15 kms as is clear from the certificate issued by the Cane Commissioner which is inturn based on the measurements furnished by the Survey Department who are the only authorities who are competent to give the distance certificate. Therefore, the distance certificate issued by other authorities on which reliance is placed, has no legal effect. He also pointed out from the material on record, how effective steps have been taken within two years from the date of filing of IEM, It is thereafter, as the IEM could not be completed within a period of four years permitted under law, request was made for extension. Infact, the Government of Karnataka recommended for extension. Taking into consideration the reply given to the show cause notice and the recommendation of the Government, the Central authority has extended the time for implementation of the IEM. not once, but twice which is strictly in

accordance with law and by that official act, a presumption flows that Shivashakti Sugars had taken effective steps within a period of two years. The certificate produced by the Chartered Accountant clearly gives the amount of expenditure incurred in the establishment of the factory under various heads and therefore, he contended that these writ petitions filed with oblique motive are liable to be rejected.

57. Sri. Madhusudhan R. Nayak, learned Senior counsel appearing for the promoter of Shivashakti Sugars contended that the material on record discloses that there is excess sugarcane grown in the area. The Government policy and the whole object behind de-licensing and establishment of sugar factories is to cater to the need of the farmers who are growing sugarcane and thus, to avoid hardship which would otherwise cause to them. The Apex Court in more than one cases, has held that the Courts have to keep in mind the financial condition of the farmers, availability of sugarcane in the area and the facility of crushing sugarcane. If those circumstances are taken into consideration, there is no substance in any of the contentions of the Petitioners. These petitions are endeavoured by Raibagh Sugars who are the rival in the business. Though the IEM was filed in the year 2006, for nearly four years, none of them moved their little finger. It is only in 2010 when the factory was nearing completion, several petitions were filed in order to throat the establishment of the factory. Therefore, these petitions lack bonafides and are liable to be dismissed. He also pointed out that once a person becomes a member of a co-operative society, he puts his individuality for the society and he has no independent right except those given to him by the statute and the bye laws and therefore, these writ petitions by the shareholders of a co-operative society is not maintainable as the society itself have not chosen to challenge the action of the Respondents and therefore, he contended that there is no merit in any of these writ petitions and they are liable to be dismissed.
58. The case was heard continuously for about ten days and the parties were given equal opportunity to produce documents in the course of hearing apart from what they had produced along with the pleadings and therefore, at the fag end of hearing, Shivashakti Sugars filed a compilation of all these documents including those documents which were not produced earlier, for perusal of the Court. Therefore, we have on record, documents which have no reference in the pleadings, but which were produced to meet the case of the parties at the time of hearing. We may also record herein that ail the documents were also not produced and therefore, if documents are not produced inspite of sufficient opportunity being granted which is relevant in deciding the issues involved in the case, the Court has to draw such inferences as available in law because one batch of writ petitions are filed agitating the private interest, a public interest litigation is also filed. It is because of that, complete freedom was given to the parties to produce documents, submit arguments so that ultimately the Court will be able to find out where lies the truth and it is well settled in public interest litigation, these Rules of procedure cannot be strictly in applied. It is in this background, now we have to appreciate the material on record and find out the correctness or otherwise of the various contentions urged by all the parties to the proceedings. Therefore, the points that arise for our consideration in all these proceedings are as under:
- (1) Whether Shivashakti Sugars has set up a sugar factory at Saundatti Village in accordance with law in as much as

- (a) *is mere a valid industrial entrepreneur memorandum filed in accordance with the Sugarcane Control Order:*
 - (b) *is the new sugar factory established beyond 15 kms from the existing sugar mills viz. Doodaganga Sugar Mills and Raibagh Sugar Mills;*
 - (c) *the distance certificate obtained is in accordance with law;*
 - (d) *after filing of the IEM whether effective steps have been taken in terms of Explanation N to Clause 6A of the Sugarcane Control Order such as:*
 - (i) whether the land required for setting up the industry is acquired;
 - (ii) whether civil construction and building was commenced within the stipulated period of two years;
 - (iii) *whether firm order for plant and machinery and the letter of credit was within two years period;*
 - (iv) *whether requisite finance has been arranged*
 - (2) *If effective steps are not taken within the stipulated period of two years, whether IEM stands de-recognised?*
 - (3) *Whether the order of extension passed by the Central Government is valid in accordance with law or is void ab initio and nonest?*
 - (4) *Whether these writ petitions filed are not maintainable and liable to be dismissed on the ground of delay, laches, want of bonafides and on the ground that no public interest is involved?*
 - (5) *What order?*
59. In order to answer these questions it is necessary to have a bird's view of the Government policy on sugar, the object with which Sugarcane (Control) Order was passed and the circumstances which led to its amendment and the scope of the emended provisions of the Sugarcane Order.
60. In exercise of the powers conferred by Section 3 of the Essential Commodities Act. 1955 (Act No. 10 of 1955), the Central Government has made the Sugarcane Control Order. 1966 providing for fixing the minimum price of sugarcane to be paid by producers of sugar, additional price for sugarcane purchase for regulating distribution of movement of sugarcane, for issue of license to power crushers candasal units and for other materials connected therein. The Parliament enacted Industries (Development and Regulation) Act, 1951 for the development and regulation of certain industries. Sugar factory is one such industry which fell within the aforesaid Act. The Central Government was issuing guidelines for licensing of sugar factories by virtue of the power conferred by the aforesaid Act from time to time. By virtue of press note No. 16. the Government of India formulated a revised guideline for licensing new and expansion of existing sugar factories. It provided for the minimum economic capacity of 2500 tonnes cane crush per

day. One of the important guideline was that licenses for new sugar factories will be issued subject to the condition that the distance between the proposed new sugar factory and an existing / already licensed sugar factory should be 25 kms. The distance criterion of 25 kms could however be relaxed to 15 kms in special cases where cane availability so justifies. Other things being equal, preferences in licensing will be given to proposers from the co-operative sector and the public sector in that order as compared to the private sector. In case more than one application is received from any zone of operation, priority will be given to the application received earlier. However, in such cases also, preference will be given to the co-operative sector followed by the public sector and the private sector, in that order, even though the applications of the first two sectors may be of a late date.

61. Applications for licences will be initially screened by the Screening Committee of the Ministry of Food. While considering such applications, the comments of the State Government/Union Territory Administration concerned would also be obtained. The State Government/Union Territory Administration would be required to furnish their comments within 3 months of the receipt of communication from the Ministry of Food.
62. All applications for grant of Industrial Licences for the establishment of new sugar factories as well as the expansion of existing units should be submitted directly to the Secretariat for Industrial approvals in the Department of Industrial Development in Form IL alongwith the prescribed fee of Rs. 2,500/-. The said guidelines came into force from 8.11.1991. On 10.1.1996. revised guidelines were issued by way of Press Note No. 1. One such guideline which came to be modified is the licences of new sugar factories will be issued subject to the condition that the distance between the proposed new factory and an existing/already licensed sugar factory should be not less than 15 kilometers. The basic criterion for grant of licence of new sugar factory would be cane availability or the potential for the development of sugarcane or both. The said guideline was again amended on 28.5.1987 by way of Press Note No. 6 to the effect, the guidelines for consideration of applications for industrial licenses for sugar factories were revised vide Press Note No. 1 of 1997 dated 10.1.1997. Interalia. the guidelines provide for maintaining a minimum distance criteria of 15 km among sugar factories. It was seen that many of the letters of intent issued for sugar factories do not fructify and remain approvals on paper for the entire initial validity period of three years. The location mentioned in such Letters of Intent remains unavailable for other applicants and other locations less than 15 KM away from the location mentioned in a valid LOI also cannot be considered. If the entrepreneur is not serious, the farmers in the zone allocated to the proposed unit suffer for no fault of their own. Consumer interests too would be adversely affected. In order to safeguard the interests of farmers, industry and consumers, it is necessary that the licensed capacity is created to the intended time schedule. Accordingly, it has been now decided that the initial validity period of the LO Is granted for setting up new units of sugar should be reduced to one year and to prescribe some milestones, the fulfillment of which would be a precondition for further extension of the period of validity of LOI.
63. The following are considered as important milestones:
 - (a) Acquisition of land for location of sugar mill.

- (b) Commencement of Civil works.
 - (c) Placement of order for Plant & Machinery.
 - (d) Filling of application for term loan [if required].
64. The applicant should fulfil conditions 1 and 2, and one of the remaining two conditions and provide documentary evidence to that effect to the Administrative Ministry and the Approval Committee to qualify for further extensions of validity beyond one year. Requests for change of location, if any, would have to be filed within 3 months from the date of issue of LOI. In terms of this Press Note, the LO Is already issued would be valid for a period of one year from the date of issue of Press Note, or the present date of validity of the LOI, whichever is earlier. By yet another press note dated 15.6.1998, grant of extension in validity period of the Letters of Intent granted for setting up new Sugar Units was issued. If the LO Is could not be implemented because of the Court orders or proposals for entrepreneurs for change of location for the project that period was excluded while calculating the one year period. It is on 31.8.1998. by way of a press note No. 12. a very important policy decision in the establishment of sugarcane factory was taken by the Government of India. The Government after reviewing the list of industries retained under compulsory licensing, and has decided to delete sugar industry from the list of industries requiring compulsory licensing under the provisions of Industries [Development and Regulation] Act, 1951. However, in order to avoid unhealthy competition among sugar factories to procure sugarcane, a minimum distance of 15 KM would continue to be observed between an existing sugar mill and a new mill by exercise of powers under the Sugarcane Control Order, 1966. The entrepreneurs who wish to avail themselves for the de-licensing of the sugar industry would be required to file an Industrial Entrepreneur Memorandum [IEM] with the Secretariat of Industrial Assistance in the Ministry of Industry as laid down for all de-licensed Industries in terms of the Press Note dated 2.8.1991, as amended from time to time. Entrepreneurs who have been issued Letter(s) of Intent [LOI] for manufacture of sugar need not file an initial IEM. In such cases, the LOI holder shall only file part “B” of the IEM at the time of commencement of commercial production against the LOI issued to them. It is however open to the entrepreneurs to file an initial IEM [in lieu of the LOI/Industrial licence held by them] if they so desire, whenever any variation from the conditions and parameters stipulated in the LOI/Industrial license is contemplated.
65. In exercise of the powers conferred by Sub-section (1) of Section 29-B of the Industries [Development and Regulation] Act, 1951, the Central Government amended the notification of the Government of India in the Ministry of Industry [Department of Industrial Development] No. S.O. 477(E) dated 25.7.1981 namely., in Schedule II to the said Notification, Item 4 relating to sugar and the entries thereunder shall be omitted. Thus, the sugar Industry was deleted from the list of industries requiring compulsory licensing under the aforesaid Act. From the Statement of Objections filed by the Central Government in these proceedings, it is clear at para-7 of the Allahabad High Court in **Civil Writ Petition No. 31199/2005 in the matter of Kisan Shakari Chini Mills Ltd. v. Union Of India And Ors.**, in their judgment dated 1.2.2006 held that the minimum distance criteria of 15 km as mentioned in press note dated 31.8.1988 directive in nature and not mandatory. The Delhi High Court In **Civil Writ Petition No. 12078/2005 in the**

matter of Oudh Sugar Mills Ltd. v. Union of India And Ors., in their judgment dated 22.12.2005 that the Press Note dated 31.8.1988 provides for the minimum distance to be observed between an existing sugar mill and a new sugar mill and not between the two proposed sugar mills. In view of the said developments, expert advice of the Department of Legal Affairs was sought in the matter and they opined: “since there is no provisions regarding providing limitation of minimum distance between the two existing or proposed sugar mills in the Sugarcane [Control] Order, 1966, the Sugarcane [Control] Order, may be amended suitably.” On receipt of the above advise of the Ministry of Law. this Department initiated the process to amend the Sugarcane [Control] Order, 1966. In the meantime, the Hon’ble Supreme Court vide its order dated 5.9.2006 in **Transfer Petition [Civil] No. 421 of 2006 in the case of Balrampur Chini Mills Ltd., v. Ojas Industries Pvt. Ltd., and Ors.**, granted eight weeks time to Union of India to iron out some of the difficulties highlighter, by the parties in these cases. After due consultation with the State Governments and other stake holders, the Sugarcane (Control) Order, 1966 was amended vide the order dated 10.11.2006. giving statutory backing to the concept of minimum distance. The order was made applicable from the date of its publication in the Official gazzette i.e., w.e.f. 10.11.2006. The Apex Court **in the case of Ojas Industries [P] LTD. v. Oudh Sugar Mills Ltd. and Ors.** MANU/SC/1606/2007 : (2007) 4 SCC 723, upheld the validity of the Sugarcane [Control] [Amendment] Order. 2006 and held it is retrospective in nature. The Supreme Court also observed that these amendments are clarificatory in nature. Thus, the amendments to the Sugar [Control] Order. 1966 inserting Section 6-A to 6-E was only to giving statutory backing/recognition to the policy of the Government which was in vogue. In no way it affected the rights of persons, who wanted to establish new sugar factories from the Sugarcane growers. It is in these background when it is to overcome to a decision of the Allahabad High Court which has held this prescription of distance is only directory and not mandatory. When the Central Government faced such a piquant situation, on the advise of Law Ministry amended these Sugarcane [Control] Orders, incorporating Clause 6-A to 6-E. The intention was to make these provisions mandatory and not directory. When the intention is expressed in so unequivocal terms having regard to the orders passed by the Courts, the problems faced and the object of it amendments was brought about and when the Apex Court declared that these amendments are only clarificatory in nature and therefore prospective. There is no ambiguity. Intention is to make these prescriptions mandatory, a rule of law and to enforce it. It is in these backgrounds, we have to appreciate the provisions, which were inserted by way of amendment to find out now, What is the Law, which occupies the establishment of new sugar factories in the country. The amended provisions are set out as under:

6-A Restriction on setting up of two sugar factories with n the radius of 15 km.-
Notwithstanding anything contained in Clause 6, no new sugar factory shall be set up within the radius of 15 km of any existing sugar factory or another new sugar factory in a State or two or more States:

Provided that the State Government may with the prior approval of the Central Government where it considers necessary and expedient in public interest notify such minimum distance higher than 15 km or different minimum distances not less than 15 km for different regions in their respective States.

Explanation 1.- An existing sugar factory shall mean a sugar factory in operation and shall also include a sugar factory that has taken all effective steps as specified in Explanation 4 to set up a sugar factory but excludes a sugar factory that has not carried out its crushing operations for last five sugar seasons.

Explanation 2.- A new sugar factory shall mean a sugar factory, which is not an existing sugar factory, but has filed the Industrial Entrepreneur Memorandum as prescribed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Central Government and has submitted a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in Clause 6-C.

Explanation 3.- The minimum distance shall be determined as measured by the Survey of India.

Explanation 4.- The effective steps shall mean the following steps taken by the person concerned to implement the industrial Entrepreneur Memorandum for setting up of sugar factor-

- (a) *purchase of required land in the name of the factory;*
- (b) *placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers;*
- (c) *commencement of civil work and construction of building for the factory;*
- (d) *sanction of requisite term loans from banks or financial institutions;*
- (e) *any other step prescribed by the Central Government in this regard through a notification.*

6-B. Requirements for filing the Industrial Entrepreneur Memorandum.- (1) *Before filing the IEM with the Central Government the concerned person shall obtain a Certificate from the Cane Commissioner or Director [Sugar] or specified authority of the State Government concerned that the distance between the site where he proposes to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance prescribed by the very Central Government or the State Government, as the case may be, and the person concerned shall file the Industrial Entrepreneur Memorandum with the Central Government within one month of issue of such certificate failing which validity of the certificate shall expire.*

- (2) *After filing the Industrial Entrepreneur Memorandum, the person concerned shall submit a performance guarantee of rupees one crore to Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within thirty days of filing the Industrial Entrepreneur Memorandum as a surety for implementation of the Industrial Entrepreneur memorandum within the stipulated time or extended time as specified in Clause 6-C failing which Industrial Entrepreneur Memorandum, shall stand derecognised as far as provisions of this order are concerned.*

6-C, Time-limit to implement Industrial Entrepreneur Memorandum,- *The stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filing the Industrial Entrepreneur Memorandum with the Central Government, failing which the Industrial Entrepreneur Memorandum shall stand derecognised as far as provisions of this order are concerned and the performance guarantee shall be forfeited:*

Provided that the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution on the recommendation of the State Government concerned, may give extension of one year exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.

6-D. Consequences of non-implementation of the provisions laid down in Clauses 6-B and 6-C- If an Industrial Entrepreneur Memorandum remains unimplemented within the time specified in Clause 6-C, the performance guarantee furnished for its implementation shall be forfeited after giving the person concerned a reasonable opportunity of being heard.

6-E. Application of Clauses 6-B, 6-C and 6-D to the person whose Industrial Entrepreneur Memorandum has already been acknowledged.

(1) Except the period specified in Sub-clause 12) of Clause 6-B of this order, the other provisions specified in Clauses 6-B, 6-C and 6-D shall also be application to the person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to Clause 6-A.

(2) The person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to Clause 6-A shall furnish a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution. Ministry of Consumer Affairs. Food and Public Distribution within a period of six months of issue of this notification failing which the Industrial Entrepreneur Memorandum of the person concerned shall stand derecognised as far as provisions of this order are concerned.

66. An analysis of the aforesaid provisions would show what are the steps which an entrepreneur has to take in establishment of a sugar factory.

67. The first step in the establishment of a Sugar factory as is clear from Clause 6(B) is the requirements for filing the industrial Entrepreneur Memorandum. Before filing the IEM with the Central Government, the concerned persons shall obtain a Certificate from the Cane Commissioner or Director (Sugar) or specified authority of the concerned State Government that, that the distance between the site he proposes to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance prescribed by the very Central Government or the State Government, as the case may be. Clause 6(a) emphatically states that notwithstanding anything contained in Clause 6, no new Sugar Factory shall be set

up within the radius of 15 Km of any existing sugar factory or another new sugar factory in a State or two or more States. After prescribing the minimum distance, the proviso to the said provision amplifies the intention of the Government. The proviso provides the State Government may with the prior approval of the Central Government, where it considers necessary and expedient in public interest, notify such minimum distance higher than 15 Kms or different minimum distances not less than 15 Kms for different regions in their respective States. The bottom line is 15 Kms. The 15 Km is prescribed for the entire country. In a particular State, if the State Government feels it would be the interest of the farmers to prescribe a higher minimum distance than what is prescribed for the country, they are so authorised subject to approval by the Central Government. Therefore, this prescription of 15 Kms is the bare minimum, it is mandatory. Under no circumstances, the said rule can be diluted. Therefore, the first step in the establishment of a new sugar factory is obtaining a distance certificate as provided under Clause 6-B(1).

68. The second step provided is after obtaining such distance certificate, the concerned person shall file the IEM with the Central Government within one month of issue of such certificate, failing which, the validity of the Certificate shall expire. Therefore, the law is clear and unambiguous. The validity period of distance certificate is only one month. If an IEM is not filed within one month from the date of obtaining distance Certificate, the validity of the Certificate shall expire. Thereafter, the person has to file an IEM, he has to obtain a fresh distance certificate. Therefore, a period of one month is prescribed for filing the IEM after obtaining a distance certificate.
69. After filing such IEM. the concerned person shall submit a performance guarantee of rupees one crore to Chief Director [Sugar]. Department of Food and Public Distribution. Ministry of Consumer Affairs, Food and Public Distribution Department, within 30 days of filing the IEM as a surety for implementation of the IEM within the stipulated time or extended time as specified in Clause 6-C. failing which. IEM shall stand derecognised as far as provisions of this order are concerned. This is the time limit i.e., within 30 days from the date of filing of IEM, a performance guarantee of rupees one crore is to be furnished for implementation of the IEM. It is made clear if the performance guarantee is not furnished within 30 days period, the IE Ms shall stand derecognised. Section 6-C provides for time limit to implement IEM. Two years is the period prescribed for taking the effective steps and another two years is the time stipulated for commercial production. In other words, the commercial production shall commence within four years w.e.f. the date of filing the IEM with the Central Government. The consequences of not commencing commercial production is also provided. The IEM shall stand de-recognised. If commercial production is not commenced within 4 years and consequently the performance guarantee shall be forfeited. The proviso added to this Clause provides for extension of time. On the recommendation of the concerned State Government, the Chief Director [Sugar], Department of Food and Public Distribution, Ministry of Consumer Affairs. Food and Public Distribution is authorised to give extension of one year not exceeding six months at a time for implementing the IEM and commencement of commercial production thereof. Therefore, two years period prescribed for taking effective steps from the date of IEM or 4 years for commencement of commercial production from the date of production could be extended by maximum period of one year. What is the effective steps to be taken by a person, who has set up a Sugar Factory is spelled out in Clause 6-A at Explanation 4, it reads as under:

Explanation 4.- The effective steps shall mean the following steps taken by the person concerned to implement the industrial Entrepreneur Memorandum for setting up of sugar factory-

- (a) purchase of required land in the name of the factory;
- (b) placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers;
- (c) commencement of civil work and construction of building for the factory;
- (d) sanction of requisite term loans from banks or financial institutions;
- (e) any other step prescribed by the Central Government in this regard through a notification.

70. Clause 6-B provides for consequences of non implementation of the provisions laid down in Clause 6-B and 6-C. A IEM remains unimplemented within the time specified in Clause 6C, the performance guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard. What is of importance to be noticed herein is though Clause (c) provides for derecognition of the IEM and forfeiture of performance guarantee, if effective steps are not taken within the stipulated period since that only speaks of a notice to be given to the entrepreneur before forfeiting the performance guarantee. It is because in the event of not taking effective steps within two years from the date of IEM and within the extended period by operation of law the IEM stands derecognised. Whereas in the case of forfeiture of performance guarantee law provides giving an opportunity to the entrepreneur and thereafter forfeiting the IEM. Therefore, before the performance guarantee is forfeited a positive order after hearing the entrepreneur is the requirement of law. Insofar as the derecognition of IEM is concerned, the effective steps are not taken within the stipulated period, it is by an operation of law and no express order is contemplated from the authorities.

71. Clause 6A also defines what is an existing sugar factory; what is a new factory and explanation 3 in particular stipulates how the minimum distance of 15 Kms provided under Clause 6A shall be determined. It provides that the minimum distance shall be determined as measured by the Survey of India and therefore no such certificate evidencing the distance between the proposed Sugar Factory and the existing or new Sugar Factory is recognised under law. The importance of the effective steps and the distance certificate is succinctly explained by the Apex Court **in the case of Ojas Industries [P] Ltd. v. Oudh Sugar Mills Ltd. and Ors.** MANU/SC/1606/2007 : (2007) 4 SCC 723, in paragraphs 28, 29, 30 and 34 are as follows:

28. *Suffice it to state, that the Sugarcane (Control) (Amendment) Order, 2006 shall apply retrospectively to all cases, including the present cases in which IE Ms are pending.*
29. *In this connection, the question which arises for determination is: firstly, whether the Sugarcane (Control) (Amendment) Order, 2006 operates retrospectively and if so whether the effective steps enumerated in Explanation 4 to Clause 6-A are adequate. In this connection, we have to keep in mind the conceptual difference between the distance certificate, the concept of effective steps to be taken by an IEM-holder and the question of bona fides.*

30. *The Sugarcane (Control) (Amendment) Order, 2006 inserts Clauses 6-A to 6-E in Clause 6 of the Sugarcane (Control) Order, 1996. It retains the concept of “distance”. This concept of “distance” has got to be retained for economic reasons. This concept is based on demand and supply. This concept has to be retained because the resource, namely, sugarcane, is limited. Sugarcane is not an unlimited resource. “Distance” stands for available quantity of sugarcane to be supplied by the farmer to the sugar mill. On the other hand, filing of bank guarantee for Rs 1 crore is only as a matter of proof of bona fides. An entrepreneur who is genuinely interested in setting up a sugar mill has to prove his bona fides by giving bank guarantee of Rs 1 crore. Further, giving of bank guarantee is also a proof that the businessman has the financial ability to set up a sugar mill (factory). Therefore, giving of bank guarantee has nothing to do with the distance certificate.*
34. *Before concluding on this issue we may reiterate that raising of resources and application of resources by a unit is different from the condition of distance. The concept of “distance” is different from the concept of “setting up of unit” in the sense that setting up of a unit is the main concern of the businessman whereas a concept of “distance” is an economic concept which has to be taken into account by the Government because it is the Government which has to frame economic policies and which has to take into account factors such as demand and supply.*
72. Therefore, it is clear the concept of “distance” is different from the concept of “setting up of unit” as well as the concept of taking effective steps. The concept of taking effective steps that ‘setting up of unit’ is the main concern of the business. Whereas, a concept of distance is an economic concept, which has to be taken into account by the Government because It is the Government which has to frame economic policy and which has to take into account factors such as demand and supply. As this distance is based on a policy of the Government, which was reflected prior to amendment in the form of press note and when the judicial authority held this concept of distance is directory in nature, the Government of the day thought it fit to give statutory recognition to this concept of distance by amending the Sugarcane (Control) Order. Therefore, today the concept of distance though originated from the Government policy is no more a policy, which is a requirement of law, which has complete backing of a statutory force. This is a factor, which today Courts have to bear in mind while interpreting the concept of distance factor in finding out whether the establishment of a factory is in accordance with law. The Government was conscious on the day they were amending these rules in pursuance of the press note of 1988 by which time the Sugar Industry has been de-licensed number of IE Ms were pending. Keeping those IE Ms. which are pending on those day, the amendment came into force. Clause 6-E was introduced, which reads as under:
- 6-E. Application of Clauses 6-B, 6-C and 6-D to the person whose Industrial Entrepreneur Memorandum has already been acknowledged.-(1) Except the period specified in Sub-clause (2) of Clause 6-B of this order, the other provisions specified in Clauses 6-B, 6-C and 6-D shall also be application to the person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to Clause 6-A.*

(2) *The person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to Clause 6-A shall furnish a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within a period of six months of issue of this notification failing which the Industrial Entrepreneur Memorandum of the person concerned shall stand derecognised as far as provisions of this order are concerned.*

73. Sub-clause (2) of Clause 6B provided for submission of a performance guarantee of rupees one crore within 30 days of filing the IEM as a surety for implementation of the IEM. Otherwise, the consequences was it shall stand derecognised. Therefore, if IEM has been filed before amendment and if 30 days from the date of filing of the IEM has expired by virtue of the amended clauses of the pending IE Ms would have stood de-recognised. The intention was to save such IE Ms. Therefore, Sub-clause (2) of Clause 6E provided that, the person, whose IEM has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to the Clause 6A shall furnish a performance guarantee of rupees one crore within a period of 6 months of issue of this Notification, failing which, IEM of the concerned person shall stand de-recognised. In other words, though one month is the period prescribed for persons, who are filing IEM after the amendment persons, who had filed IEM prior to the amendment and who had not taken effective steps were given an opportunity to furnish performance guarantee of rupees one crore within 6 months from the date of the Notification. A concession was made to persons who have filed IEM. However, Sub-clause (1) of Clause 6E makes it clear but for the benefit of this period, the other provisions specified in Clauses 6B, 6C & 6D shall be applicable to the persons whose IEM has already been acknowledged as on the date of notification, but who has not taken effective steps as specified in Explanation 4 to Clause 6A. In other words, insofar furnishing performance guarantee was concerned, a concession was shown to persons, who had already filed IEM by giving them 6 months time from the date of notification, but in all other respects i.e. insofar as the legal requirements prescribed under Clause 6A, 6B & 6C are concerned, it was made applicable mutatis & mutandis to all the pending IE Ms. The effect of the provision is, if a person, who had filed IEM earlier to the Notification, if he has not taken effective steps he has to comply with the requirement of Section 6B and 6C. he would be liable for the consequences of non implementation of the provision laid down in 6B & 6C as stipulated in Clause 6B. Therefore, eventhough Clause 6B provide, the first step is obtaining a distance certificate and then within 30 days of Issue of such certificate, failing which, validity of the distance Certificate shall expire. If already the IEM is filed, they shall produce the distance certificate within 30 days from the date of Notification. Otherwise, The IEM which had been filed prior to notification shall stand de-recognised. Similarly, if the distance Certificate is obtained beyond 30 days from the date of Notification it would have no life.
74. Similarly, the persons who had filed IEM prior to the date of notification had to implement the IEM within the period stipulated in Clause 6C to be calculated from the date of IEM or at least from the date of amendment. That is the purport and intention of Clause 6E. If the distance certificate is not produced within 30 days from the date of notification or if effective steps are

not taken within 2 years from the date of filing of IEM and if no extension is sought for taking effective steps, if it had not been taken within 2 years, the IEM filed prior to the notification stands de-recognized. That is the legal position which flows from the aforesaid provisions.

75. It is in this background we have to find out whether Shivashakthi Sugars have set up the sugar factory in compliance with these amended provisions which are retrospective as held by the Apex Court.

POINT No. 1: IS THERE A VALID IEM FILED IN ACCORDANCE WITH THE SUGARCANE CONTROL ORDER?

76. It is not in dispute that Shivashakthi Sugars filed their IEM on 8.6.2006. Though there was an obligation on their part to maintain a distance of 15 Kms from the existing sugar factories and set up a new sugar factory beyond 15 Kms, there was no requirement of enclosing a distance certificate along with IEM as now prescribed under Clause 6D. Therefore, no distance certificate was enclosed to the said IEM filed on 8.6.2006. Now it is also not in dispute that on 10.11.2006 when the Sugarcane Control Order was amended they also had not taken effective steps. Therefore, they were legally bound to comply with Sub-clause (2) of Clause 6E. i.e. furnishing of a performance guarantee of Rs. 1 Crore within six months from the date of the notification. Accordingly, they furnished the performance guarantee on 7.5.2007 within 6 months from the date of notification. In view of the fact Clause 6E made Clause 6B applicable to IEM which had already been acknowledged there was a statutory obligation on their part to furnish a certificate from the Cane Commissioner or Director of Sugars or Specified Authority of the concerned State Government stating that the distance between the site where the proposal to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance of 15 Kms. The said certificate ought to have been furnished within 30 days from the date of notification. It is not in dispute that no such certificate was furnished within 30 days from the date of notification.
77. On record we have the certificate dated 5.6.2006 certifying that Shivashakthi Sugars Limited is a holder of LOI for establishment of sugar factory proposed at Saundati Village, Raibag Taluk in Belgaum District and there are no sugar industries existing within the radius of 15 Kms of the proposed site as per the report cited at reference above. The reference shows that the Assistant Commissioner, Chikodi Division. Chikodi has given the said information in his letter dated 3.6.2006. This certificate is issued by the Commissioner for Cane Development and Sugar in Karnataka. Even if this is the certificate filed along with the IEM filed on 8.6.2006, the said certificate do not satisfy the legal requirements prescribed under Clause 6B. The requirement of Clause 6B is the concerned person shall obtain a certificate from the Cane Commissioner or Director (Sugar) or Specified Authority of the concerned State Government that the distance between the site where he proposes to set up sugar factory and adjacent sugar factories and new sugar factories is not less than the minimum distance by the prescribed Central Government or State Government. Therefore, necessarily the said certificate would state what is the distance between the existing sugar factory, new sugar factory and the proposed sugar factory and only if that measurement shows that the proposed sugar factory is beyond the 15 Kms then he can file an IEM enclosing the said factory. In the certificate which is dated 5.6.2006 what is stated is there are no existing sugar factories within a radius of 15 Kms. That apart Clause 6A after defining what is an existing sugar factory, a new sugar factory, in

explanation 3 prescribes that the minimum distance shall be determined as measured by the Survey of India. Therefore, the basis for a certificate being issued by a competent authority should be the measurement conducted by the Survey of India and not the Assistant Commissioner as was done in the aforesaid document. It is because of this legal requirement it is clear that Shivashakthi Sugars approached the Survey of India on 14.6.2007 deposited a sum of Rs. 5,000/- for issue of a distance certificate as per Annexure-R32 produced in the case. This distance certificate ought to have been produced within 30 days from 10.11.2006, i.e., 10.12.2006 whereas it is on 14.6.2007 they have approached the Survey of India. Annexure-R33 is the letter dated 16.7.2007 addressed by Survey of India to Shivashakthi Sugars Limited which reads as under:

The approximate aerial distances between the existing and proposed sugar factories mentioned in your letter referred as above are given in the annexure:

2. *The distances are determined from the Topo Maps of the area on which the locations of existing and proposed sugar factory sites were marked and submitted by you.*
3. *This office is not responsible for the correctness of the positions of the sites marked by you on the maps and the address of the existing factory, etc., as these not verified by our department.*

And to that letter they enclosed an annexure which is as under:

Sl. No.	Addresses / Location of existing Sugar factories (From)	Addresses/location of proposed sugar factories (To)	Aerial distance in Km	Sheet No.
1	Raibag SSKN Raibag, Taluk, Dist. Belgaum (Closed)	M/s. Shivashakti Sugar's Ltd., Saundatti, Taluk Raibag, Dist. Belgaum	15.4	47L/15 47L/10
2	Anandi Sugars Ltd. Kankanwadi, Taluk Raibag, Dist. Belgaum (Proposed)	M/s. Shivashakti Sugar's Ltd. Saundatti, Taluk Raibag, Dist. Belgaum	31.3	47L/15
3	Bhagyashree Lagamavva Sugar Works, Alagawadi, Taluk Raibag Dist. Belgaum (Proposed)	M/s. Shivashakti Sugar's Ltd. Saundatti, Taluk Raibag, Dist. Belgaum	19.1	47L/15
4	Ugar Sugar Works Ltd. Ugar (KH) Taluk Athani Dist Belgaum (Existing)	M/s. Shivashakti Sugar's Ltd. Saundatti, Taluk Raibag, Dist. Belgaum	15.1	47L/14
5	Shree Doodhaganga Krishna S.S.K.N. (Nandi) Chikkodi Dist. Belgaum (Existing)	M/s. Shivashakti Sugar's Ltd. Saundatti. Taluk Raibag. Dist. Belgaum	15.0	47L/11

78. The Survey of India which is the 7th Respondent has filed a counter. In the counter they have categorically stated at para 3 that they issued a distance certificate based on the data provided by the indenter the accuracy of marking of location on topo map lies with the indenter and they as such do not have responsibility of liability regarding such a certificate issued by them. They have also stated since 1:50.000 scale maps are used for determination of horizontal distance, a shift of one dot in the map for the location of sugar mills marked on it will have a shift of 12.5 meters only in the ground. In the procedure which is prescribed which is also reflected in the statement of objections they have stated that the indenter should have marked the existing and proposed sugar factories whose distances are required on original/xerox copy of the topographical map and submit it with an application and required amount of fee in the form of demand draft. The indenter has to mention the name and location of the sugar factories from where the distances are required. After receiving the application from the indenter. Survey of India will find out the distances from the existing topographical maps. The distances are calculated from the marked portions, which generally meet the required accuracy.
79. Therefore, it is obvious that the Survey of India has not determined the distance by conducting measurement independently They have gone by the topo maps where Shivashakthi Sugars have pointed out where the existing sugar factory and the new sugar factory to be set up are situated without making any independent measurement. Therefore, in the letter Annexure-R33 they are categorical in stating that they are not responsible for the correctness of the positions of the sites marked by Shivashakthi Sugars on the maps and the addresses of the existing factory, etc. as they were not verified by the Department. Neither the sugar factories nor the seventh Respondent have produced before this Court the said topographs to show the marking which is the basis for measurement. In this context it is relevant to notice in the IEM which is filed on 8.6.2006 it is clearly mentioned that Saundatti is the place where they intend setting up the sugar factory. Therefore, in the topograph they could only point out a place in Saundatti as the place where they want to set up a sugar factory. It is from that point this 15 Kms is to be measured by the Survey of India. The distance between Shivashakthi Sugars and the Doodhaganga sugar factory as is clear from the annexure to the aforesaid letter is exactly 15 Kms. In so far as Raibagh sugar factory is concerned, it is 15.4 Kms.
80. In the application for amendment filed to the writ petition in W.P. No. 66920/2010 where it is asserted that no Objection Certificate was given only to Soundatti Village and not Yadrav village. In reply to the same, Shivashakti Sugar have stated in their objection that both Yadrav village and Soundatti Village are abutting to each other. On perusal of the approved plan, it shows that the factory is spread over in both villages. The entrance to Doodganga sugar factory is only in Soundatti village and other portion of the factory in Yadrav village. Therefore, it is clear, the entrance to Doodganga Sugar Factory is from Soundatti village and in Soundatti Village no sugar factory is situated. The sugar factory is in Yadrav Village. IEM is filed for setting up sugar factory at Soundatti Village and not at Yadrav Village. Therefore, the measurement ought to have been taken if at all from Yadrav Village where the factory is situated and as no IEM is filed for setting up a sugar factory at Yadrav Village, the Distance Certificate issued by the Cane Commissioner and the measurement made by the Survey of India in the light of these undisputed facts do not depict the correct state of affairs. Moreover, from the map of the Taluk which is produced before the court, it is clear, Yadrav Village is situated in between

Soundatti Village and Bavachi Village where Raibagh Sugar Factory is situated, between Soundatti Village and Nandi Village where Doopganga Sugar Factory is situated. Therefore, the Yadrav village is nearer to these places when compared to Soundatti village and therefore, not only the said measurement is inaccurate, even if it is to be held as correct, the factory which is situated is well within 15 kms. from the place of the existing factories. Probably, realizing this difficulty, an alternative argument is put forth i.e. both Doodganga Sugar Factory as well as Raibagh Sugar Factory have issued no objection certificate stating, they have no objection for establishment of sugar factory at Soundatti village. Therefore, they contend, it is not open to them to challenge the establishment of the sugar factory at Soundatti. At this length of time, even if these measurements are to be taken to be correct, issued by the appropriate authority, no objection is issued to set up a sugar factory at Soundatti, whereas the sugar factory is now set up at Yadrav village. Therefore, the said no objection certificate has no relevance.

81. That apart, the prescription of 15 kms. distance between an existing sugar factory and a new sugar factory to be set up is provided under a statute. It is well settled that parties by consent, by agreement cannot nullify the legal requirement of a statutory provision. Therefore, the said No Objection Certificate has no value in the eye of law. On the contrary, the very fact that those two no objection certificates are obtained shows that the sugar factory comes within 15 kms. and unless they gave no objection certificate, it is not possible to set up the sugar factory at Soundatti. Therefore, it supports the case of the Petitioners that the sugar factory is established within 15 kms. in utter violation of the statutory provisions.
82. Yet another argument canvassed was that this Raibagh Sugar Factory is not an existing sugar factory as defined under Clause 6A of the Sugarcane (Control) (Amendment) Order, 2006, and therefore, mandatory requirement contained in Clause 6A is not attracted. In support of that contention, it was pointed out, the Raibagh Sugar Factory has stopped crushing activity in the year 2001-2002. Explanation (1) to Clause 6A defines, what is the existing sugar factory, which reads as under:
- Explanation (1): An existing sugar factory shall mean, (a) a sugar factory in operation, (b) a sugar factory that has taken all effective steps as specified in Explanation 4 to set up a sugar factory and (c) a sugar factory though has stopped crushing operations less than 5 sugar seasons.*
83. Relying on this definition, it was contended, as Raibagh Sugar Factory has stopped crushing operations from the year 2001-2002, the question of measuring 15 kms. from that factor/ would not arise. It is in that context. it was contended, the 5 years period is to be computed not from the date of filing of the IEM, 5 years period either from the date the State Government passed an order allocating 21 villages to Shivashakti Sugars Ltd., which is dated 04.08.2007 or if it is from the date of setting up of the industry.
84. In that connection, learned Counsel for the Shivashakti Sugars Ltd., relied on Commissioner of Wealth Tax, Madras v. Ramaraju Surgical Cotton Mills Ltd. reported in MANU/SC/0167/1966 : AIR 1967 SC 509 V 54 C 105. At Para 3, it is held as under:

3. *The High Court held that unless a factory is erected and the plants and machinery installed therein, it cannot be said to have been set up. The resolution of the Board of Directors, the orders placed for purchasing machinery, licence obtained from the Government for constructing Ore machinery, are merely initial stages towards setting up, however necessary and essential they may be to further the achievement of the end. It is not however, the actual functioning of the factory or its going into production that can alone be called setting up of the factory. The setting up is perhaps a stage interior to the commencement of the factory. Thereafter, the High Court referred, to a decision of the Bombay High Court in Western India Vegetable Products. Ltd. v. Commr. of Income-tax, Bombay City. MANU/MH/0169/1954 : 1954 26 ITR 151: AIR 1955 Bom 13 and on its basis, concluded that the proper meaning to be assigned to the expression “set up” in Section 5(1) (xxi) would be “ready to commence business”. We are unable to agree with the learned Counsel for the Commissioner that in arriving at this view, the High Court committed any error. A unit cannot be said to have been set up unless it is ready to discharge the function for which it is being set up. It is only when the unit has been put into such a shape that it can start functioning as a business or a manufacturing Organisation that it can be said that the unit has been set up. The expression used in the proviso, under which the period for which the exemption is available is to be determined, is not the same as used in the principal clause. In the proviso, the period of five successive years of exemption has to commence with the assessment year next following the date on which the company commences operations for the establishment of the unit Operations for the establishment of a unit from the very nature of that expression, can only signify steps that have to be taken to establish the unit. The word “set up” in the principal clause, in our opinion, is equivalent to the word “established”, but operations for establishment cannot be equated with the establishment of the unit itself or its setting up. The applicability of the proviso has, therefore, to be decided by finding out when the company commenced operations for establishment of the unit, which operations must be antecedent to the actual date on which the company is held to have been set up for purposes of the principal clause. This is also the meaning that the Bombay High Court derived in the case of Western India vegetable Products Ltd., MANU/MH/0169/1954 : 1954 26 ITR 151: (AIR 1955 Bom 13) (supra) where that Court was concerned with the interpretation of the expression “set up” as used in Section 2(11) of the Income-tax Act That Court held:*

It seems to us that the expression “setting up” means, as is defined in the Oxford English Dictionary, “to place on foot” or “to establish”. and is contradistinction to “commence”. The distinction is this that when a business is established and is ready to commence business, then it can be said of that business that it is set up. But before it is ready to commence business it is not set up.

This view was expressed when that Court was considering the difference between the meaning of the expression “setting up a business” and “commencing of a business”. In the case before us the proviso does not even refer to commencement of the unit The criterion for determining the period of exemption is based on the commencement of the

operation for the establishment of the unit. These operations for establishment of the unit cannot be simultaneous with the setting up of the unit, as urged on behalf of the Commissioner, but must precede the actual setting up of the unit. In fact, it is the operations for establishment of a unit which ultimately culminate in the setting up of the unit.

85. Again, the Apex Court in the case of *Kabini Kabini Minerals (P) Ltd. and Anr. v. State of Orissa and Ors.* MANU/SC/1944/2005 : (2006) 1 SCC 54 where it has been observed at Paras 8, 9 and 10 as under:
8. *Appellant 1 had also not set up an industry. It had merely entered into an agreement for purchasing the land and placed orders for the machineries. The expression "set up" has a definite connotation of its own.*
 9. *The expressions "setting up" means, as is defined in the Oxford English Dictionary, "to place on foot" or "to establish", and is in contradistinction to "commence". The distinction is this that when a business is established and is ready to commence business, only then it can be said of that business that it is set up. But before it is ready to commence business it is not set up. (See CWT v. Ramaraju Surgical Cotton Mills Ltd.)* 10. *In the said case, it was further held that the word "set up" is equivalent to the word "established" but operations for establishment cannot be equated with the establishment of the unit itself of (sic or) its setting up.*
86. Relying on the judgments it was contended, setting up' is equivalent to the word 'established' and operations for the establishment cannot be equated to the establishment of the unit itself on its setting up. Therefore, as the sugar factory is now established, this 5 years period is to be computed from 2010 onwards or 5 years, during which period admittedly, the crushing activity has not taken place.
87. We do not see any substance in the said contention. Having regard to the scheme of the Sugarcane Control Order and in view of the expressed words used in Clause 6B, the concerned person shall obtain a certificate from the appropriate authority to the effect that distance between the site where he proposes to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance prescribed by the Central Government or the State Government. Therefore, the distance of 15 kms. Is to be measured even before filing of the IEM. Therefore, this 5 years period prescribed should be calculated from the date and anterior to the date of filing of the IEM. If 5 years is calculated anterior to date of IEM, in this case, the crushing activity has not been stopped for 5 years and therefore, it cannot be said, Raibagh Sugar Factory was not in existence at all. That apart, the material on record discloses, the crushing activity of sugar factory was stopped in the year 2001-2002. But thereafter, an attempt was made to revive the sugar factory. The government was successful in partially reviving the sugar factory. We have on record a letter addressed by the Raibagh Sugar Factory to the Commissioner for Cane Development on 02.01.2004 submitting, the final manufacturing report for the season 2003-2004 in the prescribed RT8(C) under Rule 83, which document is not in dispute. The said report discloses, for the season 2002-2003, cane crushed is 72,596.39 quintals and for the season 2003-2004, it is 1.621.893 metric tons. Therefore, it is clear, a small

extent of cane was crushed for the season 2003-2004, whereas the IEM was filed on 08.06.2006 and it cannot be said that Raibagh Sugar Factory was not an existing factory at all. Therefore, this argument that there was no obligation to maintain 15 kms. distance from Raibagh Sugar Factory as it was not an existing sugar factory at all, is untenable. That apart, that argument loses sight of the fact that Doodganga Sugar Factory is situated even nearer than Raibagh Sugar Factory to the Sugar Factory intended to be set up at Soundatti. Therefore, the said argument has no substance.

88. In the light of these material on record, it is clear that though IEM was filed prior to 11.10.2006. amendment to the Sugar Cane Control Order and along with the said IEM. the certificate was filed which is dated 05.06.2006 certifying that no sugar factory exists within 15 kms. from the place the proposed sugar factory at Soundatti. In view of the amended provisions being retrospective, the said certificate not being in conformity with the certificate stipulated under Clause 6B, it is of no assistance. The certificate as prescribed under Clause 6B ought to have been produced within 30 days from the date of notification and admittedly, it has not been done and therefore, the consequences flowing from such non production of the Distance Certificate, the IEM filed prior to the amendment of the Rules ceases to exist. Even thereafter, when certificate is obtained, it does not pass the test of the legal requirements. At any rate, all these certificates refer to establishment of a sugar factory at Soundatti village and when no sugar factory is established at Yadrav village in respect of which no IEM is filed as on this date and the material on record clearly points out that the Soundatti Village as well as Yadrav Village falls within the 15 kms. as contemplated under Clause 6A of the Act and no sugar factory could have been established within the prohibited area.
89. As already discussed, the first step in the establishment of the sugar factory is obtaining Distance Certificate as stipulated in Clause 6B. After obtaining a Distance Certificate within 30 days therefrom, an IEM has to be filed. After filing of an IEM and its acknowledgement as per Clause 6C. effective steps have to be taken for implementation of the IEM within two years from the date of IEM. The date of IEM is 08.06.2006. Two years prescribed expires on 08.06.2008. Now. the question for consideration is whether effective steps as contemplated in Explanation 4 to Section 6A has been taken.

IS LAND REQUIRED FOR SETTING UP INDUSTRY ACQUIRED?

90. It is clear from the explanation 4. the first effective step to be taken is purchase of required land in the name of the factory. As is clear from the words used, two things assumes importance. The first is purchase of the required land and second is such a purchase is to be in the name of the factory to be set up. It is in this context, the specific case pleaded by the Shivashakti Sugar Limited is that they have purchased in all 73.29 acres of land in Soundatti village, Raibagh District of Belgaum Taluk. This is what they have said in the quarterly progress report submitted by them to the Director (Cost) Government of India, Ministry of Consumer Affairs. Food and Public Distribution. As the said fact was disputed by the Petitioners at the time of arguments, they have produced documents to substantiate the said claim. The first document which is produced is Annexure R41. The order passed by the Deputy Commissioner, Belgaum District dated 28.10.2006 granting permission under Section 109 of the Karnataka Land Reforms Act,

1961 in respect of land bearing Re. Sy. Nos. 95/2, 95./3, 98/3/2, 99/a1 and 99/1B dated 20.12.2006 measuring in all 17 acres 32 guntas situate in Yadrav Village. Yet another order passed by the Deputy Commissioner of Belgaum which is dated 20.01.2007 granting permission to purchase land bearing Re. Sy. Nos. 5/16/15/2. 6/3, 6/4, 7/1, 98/1 situated in Yadrav village and land bearing Sy. No. 177/3 in Soundatti Village in ail measures 38 acres 11 guntas i.e., they were granted permission to purchase 56 acres 3 guntas. However, no sale deed is produced showing purchase of these lands in the name of Shivashakti Sugars. However, they have produced sale deed dated 30.11.2007 in respect of which Sy. Nos. 92/1 B/2 measures 1 acre 37 guntas. sale deed dated 30.04.2007 in respect of land bearing Sy. No. 92/2 measuring 5 acres 8 guntas and sale deed dated 30.11.2007 showing purchase of land bearing Sy. No. 99/2A measuring 2 acres 30 guntas, thus, in all, 9 acres 35 guntas. In the aforesaid 3 sale deeds produced, the recitals therein make it clear that the said lands were purchased with an intention to set up the sugar factory at Yadrav village and not at Soundatti. Therefore, the aforesaid sale deeds do not show that the said lands were purchased in the name of the Shivashakti Sugars for purposes of establishment of a sugar factory at Soundatti which is the requirement to be complied with as per Clause 6A to Explanation 4. That apart, the Doodganga Sugars, in order to show that the aforesaid survey numbers which claims to have been purchased for setting up sugar factory at Soundatti is not situated in Soundatti village, have produced the Record of Rights in respect of those Sy. Nos. showing the name of the owners of the sad land. The said documents discloses that those properties stand in the names of Jakate Annasaheb Eshwar, Mahara Maruthi Bhujappa, Ranavalle Raheemana Mammulal, Tambata Moula Daadu, Tambata Ramzana Moula, Mohite Babasaheb Balavantharao, Patil Babu Tathyasaab. Patel Appusab Tathyasaab, Patil Annappa Tathyasaab, Patel Bheemugouda Tathyasab, Patil Vasantha Tathyasab, Kore Kallappa Erappa, Bane Adevappa Babu, In fact, in the entire correspondence which is made by the Shivashakti Sugar Factory Ltd. with all the Government authorities they have represented that all these lands are situated in Soundatti village and are purchased by them and they have put up the new sugar factory in the said land.

91. After all these, in the course of arguments, it is said that existing land bearing Sy. No. 177/3 measuring 1 acre 17 guntas and 178/A1 measuring 5 acres 3 guntas, the two extents of land falls within the Soundatti village and all the rest of the survey numbers fall within Yadrav village. As stated in the earlier part of the order, full opportunity was given to the parties to produce ail the documents to substantiate their claim. Though Shivashakti Sugars Ltd., have produced number of documents including the aforesaid order granting permission and the three sale deeds, they have not produced the sale deeds showing the purchase of the aforesaid lands in the name of Shivashakti Sugar Ltd., In this context, it is necessary to know the provisions of the Karnataka Land Reforms Act as well as the provisions of the Karnataka Land Revenue Act.
92. Sections 79-A & 79-B of the Karnataka Land Reforms Act, 1961 prohibits acquisition of land by certain persons which reads as under:
- 79-A. Acquisition of land by certain persons prohibited—(1) On and from the commencement of the Karnataka Land Reforms (Amendment) Act, 1995, no person who or a family or a joint family, which has an assured annual income of not less than rupees two lakhs*

from sources other than agricultural lands shall be entitled to acquire any land whether as land owner, landlord, tenant or mortgagee with possession or otherwise or party in one capacity and partly in another.

(2) *For purposes of Sub-section (1) -*

(i) *the aggregate income of all the members of a family or a joint family from sources other than agricultural land shall be deemed to be income of the family or joint family, as the case may be, from such sources:*

(ii) *a person or a family or a joint family shall be deemed to have an assured annual income of not less than rupees two lakhs from sources other than agricultural land on any day if such person or family or joint family had an average annual income of not less than rupees two lakhs from such sources during a period of five consecutive years preceding such day.*

Explanation: A person who or a family or a joint family which has been assessed to income tax under the Income Tax Act, 1961 (Central Act 43 of 1961) on an yearly total income of not less than rupees two lakhs for five consecutive years shall be deemed to have an average annual income of not less than rupees two lakhs from sources other than agricultural lands.

(3) *Every acquisition of land otherwise than by way of inheritance or bequest in contravention of the section shall be null and void.*

(4) *Where a person acquires land in contravention of Sub-section (1) or acquires it by bequest or inheritance he shall within ninety days from the date of acquisition, furnish to the Tahsildar having jurisdiction over the Taluk where the land acquired or the greater part of it is situated a declaration containing the following particulars, namely:*

(i) *particulars of all lands:*

(ii) *the average annual income of himself or the family;*

(iii) *such other particulars as may be prescribed.*

(5) *The Tahsildar shall on receipt of the declaration under Sub-section (4) and after such enquiry as may be prescribed send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall by notification, declare that with effect from such date as may be specified in the notification, such land shall stand transferred to and vest in the State Government without further assurance free from all encumbrances. From the date specified in such notification the Deputy Commissioner may take possession of such land in such manner as may be prescribed.*

(6) *For the land vesting in the State Government under Sub-section (5), where the acquisition of the land was by bequest or inheritance, an amount as specified in Section 72 shall be paid and where the acquisition was otherwise than by bequest or inheritance, no amount shall be paid.*

79-B. Prohibition of holding agricultural land by certain persons - (I) With effect on and from the date of commencement of the Amendment Act except as otherwise provided in this Act -

- (a) no person other than a person cultivating land personally shall be entitled to hold land: and
 - (b) it shall not be lawful for,
 - (i) an educational, religious or charitable institutions or society or trust other than an institution or society or trust referred to in Sub-section (7) of Section 63. capable of holding property;
 - (ii) a company;
 - (iii) an association or other body of individuals not being a joint family, whether incorporated or not: or (iv) a co-operative society other than a cooperative farm, to hold any land.
- (2) Every such institution, society, trust, company, association, body or co-operative society;
- (a) which holds lands on the date of commencement of the Amendment Act and which is disentitled to hold lands under Sub-section (1), shall, within ninety days from the said date furnish to the Tahsildar within whose jurisdiction the greater part of such Land is situated a declaration containing the particulars of such land and such other particulars as may be prescribed; and
 - (b) which requires such land after the said date shall also furnish a similar declaration within the prescribed period.
- (3) The Tahsildar shall, on receipt of the declaration under Sub-section (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification, declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner.
- (4) In respect of the land vesting in the State Government under this Section an amount as specified in Section 72 shall be paid.

Explanation: For purposes of this section it shall be presumed that a land is held by an institution, trust, company, association or body where it is held by an individual on its behalf.

93. Therefore, a company formed for the purpose of setting up of sugar factory is entitled to acquire any land whether as a land owner, landlord, tenant or mortgagee in possession or otherwise. Therefore. Section 109 of the Karnataka Land Reforms Act provides for exemptions being granted by the Government from the application of Section 79A and 79B. That is the reason why the company applied for such exemption under Section 109 and obtained the exemption. But mere obtaining permission to purchase agricultural land does not amount to purchase of agricultural land in the name of the factory. In fact, the aforesaid three sale deeds were registered even without such permission on the ground, for purchase of the said lands Sections 81(1)(d) of the Karnataka Land Reforms Act grants exemption. It reads as under:

The sale of any land in favour of a sugar factory for purposes of research or seed farm or sale in favour of the Coffee Board constituted under the Coffee Act 1942.

94. The condition precedent is that application of the said provision on the date of the sale of sugar factory should be in existence. The sale deed is dated 30.11.2007. No sugar factory had been set up as on that date. Therefore, claiming exemption under Section 81(1)(d) and purchasing the land is clear contravention of the provisions of Sections 79A and 79B of the Act. As is clear from the said sale deeds, the said land was purchased for purposes of achieving the said object i.e. Reserarch and Seed Formation and further purchaser intended to set up a sugar factory at Yadrav. Be that as it may. The material on record does not disclose that Shivashakti Sugars Ltd. had purchased the required land in the name of the factory to set up sugar factory at Soundatti Village, the place where they intended to set up a factory as per the IEM. Therefore, the declaration made by them in the prescribed form is incorrect and it cannot be said, in the light of the aforesaid material that the Shviashakti Sugars Ltd., had taken effective steps for purchase of the required land in the name of the factory within two years period prescribed under law from the date of filing of the IEM.
95. Even if agricultural land is purchased after obtaining permission from the Government, before it is used for industrial purpose, i.e. setting up of a sugar factory, the permission of the Government for user of the agricultural land for industrial purpose is required.
96. Section 95 of the Karnataka Land I venue Act. 1964 states that for use of agricultural land and the procedure for use of agricultural land for other purposes. It reads as under:

Section 95: Uses of agricultural land and the procedure for use of agricultural land for the other purpose:

- (1) Subject to any law for the time being in force regarding erection of buildings or construction of wells or tanks an occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land or its more convenient use for the purpose aforesaid.
- (1) If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall apply for permission to the Deputy Commissioner who may, subject to the provisions of this section and the rules made under this Act, refuse permission or grant it on such conditions as he may think fit:

Provided that the Deputy Commissioner shall not refuse permission for diversion of such land included in the (Master Plant) published under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963), if such diversion is in accordance with the purpose of land use specified in respect of the land in such plan;

- (2) Permission to divert may be refused by the Deputy Commissioner on the ground that (that the diversion is lively to defeat the provisions of any law for the time being in

force or that it is likely to cause a public nuisance) or that it is not in the interests of the general public or that the occupant is unable or unwilling to comply with the conditions that may be imposed under Sub-section (4).

97. In the instant case admittedly Shivashakti Sugars Limited sought permission of the Government under Section 109 of the Karnataka Land Reforms Act for purchase of agricultural lands to set-up a sugar factory as under the Act they were disentitled to purchase the agricultural lands without such permission. Though they contend that they have purchased about 77.31 acres of land, the registered sale deeds under which the said agricultural lands purchased is not forthcoming. Even after such purchase of agricultural lands, as the purpose of purchase is not to carry on agricultural activities but to use the agricultural lands for setting up a sugar factory - a non-agricultural use. They were under legal obligation under Section 95(2) of the Karnataka Land Revenue Act to obtain permission from the Deputy Commissioner for such diversion of land use. The material on record do not disclose that any application is made under Section 95(2) of the Karnataka Land Revenue Act, 1964 for such diversion of land use once from agricultural use to industrial use nor any such permission has been granted under the Act by the Deputy Commissioner. No building could be constructed on an agricultural land and no industry can be set-up on agricultural land without such permission from the Deputy Commissioner.

98. In this regard, it is necessary to refer to a judgment of the Apex Court dealing with this issue in the case of State of Karnataka v. Shankar Textiles Mills Limited 1994 INDLAW SC 2100 wherein it has been held as under:

7: The obvious purpose of this section is to prevent indiscriminate conversion of agricultural land for non-agricultural use and to regulate and control the conversion of agricultural land into non-agricultural land. Section 83 of that Act provides for different rates of assessment for agricultural and non-agricultural land. That provision strengthens the presumption that agricultural land is not to be used, as per the holder's sweet will for nonagricultural purposes. This is also clear from the absence of any provision under the Act requiring permission to convert non-agricultural land into agricultural land. In a country like ours, where the source of livelihood of more than 70 percent of the population, is agriculture, the restriction placed by the Revenue Act is quite understandable.

Such provisions and restrictions are found in the Revenue Acts of all the States in the country. The provision has, therefore, to be construed as mandatory and given effect to as such.

99. The Apex Court has held the said provision is to be construed as mandatory and give effect to as such. The said provision has been incorporated with the obvious purpose of preventing the indiscriminate conversion of agricultural land into non-agricultural use and regulate and control the conversion of agricultural land into non-agricultural land which strengthens the presumption that agricultural land need be used for non-agricultural purpose. Therefore, there is a contravention of Section 95(2) of the Karnataka Land Revenue Act, 1964 and no order of conversion is obtained to this day.

PLACEMENT OF FIRM ORDER FOR PURCHASE OF PLANT AND MACHINERY FOR THE FACTORY

100. The second requirement to show the effective steps is, placement of the firm order for purchase of plant and machinery for the factory and payment of requisite advance for opening of the irrevocable letter of credit to the suppliers. It is nobody's case that Shviashakti Sugars Ltd. had opened an irrevocable letter of credit to its suppliers. It is their specific case that, they have placed orders for purchase of the plant and machinery and they have been paid requisite advance. Whether such an effective steps had been taken is required to be considered from the material on record.
101. In the quarterly progress report under the heading of purchase of plant and machinery it is categorically stated that they have placed orders with M/s. Kay Bouvet Engineers Pvt. Limited, Pune. The cost of the equipment is Rs. 21.25 crores. a sum of Rs. 2.05 crores is paid as advance. The said payment is made on 14.5.2008 and the expected date of delivery is after completion of the civil work. The date of installation/likely date of installation as September 2009. Further it is also stated as under:

Name of the equipment	Name of the supplier(s) with whom orders have been placed	cost of equipments	Advance/ final amount paid to suppliers	cheque/ draft No. and date	Expected date of delivery	Date	Remark installation/ likely date of installation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Boiling House & Allied Machi-Nery	M/s Kay bouvet Engineering (P) Ltd. Pune	Rs. 21.25Cr	RS. 2.05crs		14.05.08 after completion of civil work		Sept 2009
a) Name of the equipments already purchased during the previous quarter						NIL	
b) Name of the equipments purchased during the current quarter						NIL	
c) Name of the equipments purchased upto the end of current quarter						NIL	
d) Name of the equipments already installed during the previous quarter						NA	
e) Name of the equipments installed during the current quarter						NA	
f) Name of the equipments installed upto the end of current quarter						NA	
(d)+(e)							

102. From the aforesaid particulars furnished it is their case that they have placed orders with M/s. Kay Bouvet Engineers Pvt. Limited. Pune and in support of that, they have produced the letter of intent for sugarmills project. It reads as under:

SHIVASHAKTI SUGARS LIMITED

Ref: SSS/BH/07

Date: 05/11 /07

To,

Messrs. Kay Bouvet Engineering Pvt. Limited Mayfair Eleganza B-7, NIBM Road, Kondhwa PUNE-411048.

Kind Attention Mr. Y.G. Kunjir, General Manager

Dear Sir.

Sub: Letter of Intent for Boiling House of our Sugar Mill Project - Reg.**Ref:** Your Various Technical Discussions & Datas submitted with Sosam Sugar Consultancy.

We are pleased to place our letter of Intent for Boiling House as per the discussion we had with you as follows for our Sugar Mill.

Sl. No.	Description	Price
Option A	Complete Boiling House as per the technical discussions with Sosam Sugar Consultancy and technical datas submitted by you, excluding Two Continuous Vacuums of 36-t and 25-t with Two receiving Crustallizer. Two Condenser and Vapour Piping between Continuous Pan and Condenser & Automation for pans	20,25,00,000-00 (Rupees Twenty Crore and Twenty Five Lakhs Only)
B.	Complete Boiling House as above including Continuous Pan Package	21.25.00,000-00 (Rupees Twenty One Crore and Twenty Five Lakhs only)

Price: Above price Includes Basis Price, Packing, forwarding. Freight, Handling charges at site, Erection and Commissioning etc., (Turn Key Basis). All Taxes Duties, i.e. Excise Duty, Sales Tax against Form C, Service Tax. Insurance and any other levies will be paid extra.

Validity: Above all inclusive price is firm and supplier is not entitled to any price escalation.

Payment and Commercial Terms:

- 10% Advance along with Commercial Agreement
- 10% alter submission of load data & layout drawing

- 05% On submission of purchase orders of ail bought-outs
- 70% against proforma Invoice based on the sequence of erection and the material should reach within 7-10-days from the date of payment
- 5% against submission of Performance Bank Guarantee for two seasons
- Erection & Commissioning:
 - 30% at the time of starting of the Erection. 65% as per work progress.
 - 5% after erection & commissioning

Delivery: Will be decided later.

- Detailed Commercial Agreement with terms and conditions will be executed separately
Kindly accept this order and do the needful

With thanks and regards,

For Shivashakthi Sugars Limited

Authorised Signatory

103. From the said letter of intent it is clear, they had two options and on the day they were placing the letter of intent, they had not made up their mind to install which machinery. The afore aid letter of intent makes it clear, 10% is to be paid as advance along with the commercial agreement and the period for delivery is also to be decided as against the claiming delivery. They have also produced a commercial agreement which they purported to have been entered with M/s. Kay Bouvet Engineers Pvt. Limited. Pune. The said agreement do not contain the facing sheet showing that Shivashakti Sugars Ltd., have entered into a commercial agreement with M/s. Kay Bouvet Engineers Pvt. Limited, Pune. The said agreement starts with the definition clause. The printed terms in the entire agreement, there is no mention of any advance paid. However, at Clause 2.15.1 under the head terms of payment, it is stated that 10% of the contract price shall be paid on signing of the contract document as advance of Rs. 2.05 Crores only. But there is no indication that such an amount was paid under the agreement. Though in the quarterly returns it was mentioned the date of the cheque is 14.05.2008. nothing is produced to show that such payment is made. No invoice is produced. The bank statement showing the encashment of the cheque if it had been issued is not produced. in this context, certificate issued by the Chartered Accountant which is not in dispute assumes importance, which reads as under:

CERTIFICATE

This is to certify that M/s. Shivshakti Sugars Ltd., having Registered Office at Mayor Chitramandir Road, At post Ankali Belguam. and Plant at Yadrav. Soundatti. Taluka Raibag, Belgaum has already incurred the following expenditure towards the Project of 3500 TCD Sugar Plant and 14 MW Co-Generation upto 13.10.2010.

1. Purchase of Land	2,13,00,000
2. The Expenses incurred towards civil work, plant & machinery and preliminary expenses (as per list enclosed)	21,51,35,089
3. The expenditure bills submitted Pending for Payment	
a) Plant & Machinery	2,70,07.065
b) Iron & Steel	2,56.80,228
c) Cement	15.77.599
d) Pratibha Construction Civil Construction Bill	1.56.00.000
Total	30.62.99.981

The above information is correct as per the Books of Accounts records of the Company proceeds to us.

*For M/s. P.G. Ghali & Co
Chartered Accountants*

*Place: Belgaum
Date: 15.10.2010*

*(C.A. Prakash G. Ghali)
Partner
M. No. 013132*

104. Along with the certificate, a statement of account supporting the expenses is produced showing the total expenses incurred towards several work plant and machinery and preliminary expenses to the extent of 21,51,35,089/-. In the said statement of account, this payment of Rs. 2.05 crores being 10% of the purchase order. Rs. 2.05 crores is not reflected at all. On the contrary, the expenses were incurred from 07.06.20120 onwards only. It gives an indication, nothing has been spent for a period earlier to that point of time It was pointed out, the said letter of intent did not satisfy the requirements of placement of the firm order for purchase of plant and machinery which is the requirement stipulated in Clause (b) Explanation (4).
105. In that connection, the judgment of the Apex Court in the case of Dresser Rand S.A. v. Bindal Agro Chem. Ltd. reported in MANU/SC/0151/2006 : AIR 2006 SC 871 is relied upon. which reads as under:

It is now well settled that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in

contracts involving detailed procedure, in order to save time, to issue a letter of Intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter.

106. The Apex Court has held that the letter of intent merely indicates the parties intention to enter into a contract with the other party. The letter of intent is not intended to bind either party, ultimately to enter into any contract. Whether the letter of intent is merely an expression of an intention to place an order in future or whether is a final acceptance for the other, thereby to lead into a contract is a matter that is to be decided with reference to the terms of the letter. Therefore, the letter of intent placed in this case do not satisfy the requirement of placement of a firm order for purchase of plant and machinery for tow reasons. Firstly, in the letter of intent. they have placed the order for two types of machineries, option given to purchase either of them. There is nothing on record to show that exercise of the option and place orders for purchase of either of those two options. Therefore, a firm order had to follow the letter of intent before the seller supplies the plant and machinery for which the order is placed.
107. Secondly, it is incumbent on the Shivashakti Sugars Ltd., to show the payment of requisite advance is stipulated at 10%. Therefore, atleast they should have paid the advance amount within the period of two years from the date of letter of intent which they have failed to establish, on the contrary, the certificate and the enclosure of the certificate issued by the Chartered Accountant shows, no such payment is made even after April, 2010. Whether nearly about 21 crores and odd had been paid which does not include payment of 10% towards purchase of plant and machinery.
108. Therefore, in the light of the aforesaid material we have no hesitation in holding that the Shivashakti Sugars Ltd., have not complied with the second requirement of the placement of firm order for purchase of plant and machinery for the factory as well as the payment of requisite advance.

COMMENCEMENT OF CIVIL WORK AND CONSTRUCTION OF BUILDING FOR THE FACTORY

The third requirement is regarding commencement of civil works and construction of building for the factory.

109. In that, quarterly progress filed as against the column commencement of civil works and construction of the building, they have stated as under:

Item Of Work	Name and address of the Contractor	Estimated cost	Advance/ final amount paid with Cheque/ Draft No. And date	Date of commencement	Date of completion/	Remark
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Basement For Factory building	Sri SABARI Constructions	Rs. 54.48lakhs	Rs. 10lakhs ch. No. 359715 dtd30-03-2008 IDBI. Tirupur	14-04-2008	31.12.2008	
a) Item of work already commenced during the previous quarter land levelling						
b) Items of work commenced during the Current quarter excavation					Earth work 10350CFT	
c) Items of work commenced up to the and of the current quarter (a) + (b)					38950CFT	
d) Items of work already completed During the previous quarter					28600CFT	
e) Items of work already during the Current quarter					10350 CFT	
f) Items of work already completed upto the End of the current quarter (d) + (e)					38950 CFT	

It discloses that they entrusted the construction of basement of factory building through M/s. Sabari Constructions at an estimated cost of Rs. 54.48 crores. They have also paid a sum of Rs. 10.00 lakhs as advance by cheque No. 3597150 dated 30.03.2008 drawn on IDBI. The said date mentioned as 30.03.2008 is a mistake and correct date is 30.06.2008 i.e. two years after the expiry of the dates on which IEM is filed. On the basis of it, civil construction work has not commenced within two years from the date of IEM. Even otherwise, in order to substantiate that contention, they have produced an agreement entered into between Shivashakti Sugars Ltd. and M/s. Sabari Constructions on 03.04.2008. within two years from the date of filing of the IEM. A perusal of the agreement shows, the said agreement was entered into for the construction of the ancillary buildings, roads, drains, compound walls, fencing and all other connected civil works for their proposed sugar plant at Shviashakti Sugars Ltd. Saundatti. Raibagh Taluk, Belgaum District. Karnataka. It also recites that scope of the work shall be as indicated in the tender documents in general. The total estimated value of the work entrusted to

the contractor is Rs. 21.09 lakhs only, excluding the material cost which will be purchased by the company directly. The company agreed for an advance of 10% of contract price towards mobilization of work force and materials against submission of bank guarantee as per the firm to be engaged by the company till completion of works. The running bills of the two shall be once in a month for a value of Rs. 50.00 lakhs or 15% of the contract value whichever is high. The company shall pay 75% as advance against each running bill within 10 days of general scrutiny and the balance within 21 days after the final scrutiny. Time for the works to be completed is as per the schedule. The date of handing over the site to the contractors shall be taken as base date for time schedule. The completion period is 8 months. The actual schedule of completion of various other works keeping 1 1/2 months to four months for completion of all machinery foundations shall be furnished to match machinery erection schedule at the time of signing the agreement. Therefore, if the said contract had been given effect to and construction work had commenced in terms of the contract, 10% of the total amounts which reflect the cost of Rs. 21.09,000/- should have been paid and the construction should have been completed within 8 months and if the amount had been paid as against running bills, those particulars should have been produced.

111. The Certificate issued by the Chartered Accountant shows that a sum of Rs. 1,56,00,000/- is to be paid towards M/s. Prathibha civil construction bill. Therefore, it is obvious that the persons with whom they entered into an agreement and paid Rs. 10.00,000/- lakhs has not completed the construction of the building. As annexed to the Certificate issued by the Chartered Accountant there is no reference to any amount paid by M/s. Sree Sabary Constructions. That apart this aforesaid statement shows that the work done by M/s. Prathibha construction is nothing but land levelling, earth work excavation and digging up the soil as mentioned therein. But the requirement of Clause (c) of Explanation (iv) (e) is in respect of civil works and construction of building for the factory. Therefore, within two years period prescribed under law. the civil works did not commence much less the construction of the building for the factory was taken up. In this context it is necessary to see if really the said construction had been put up, what are the legal requirements which had to be satisfied before taking up of such construction activity.
112. The construction is sought to be made either in Soundatti or in Yadrav Village. Both the villages are governed by the provisions of the Karnataka Panchayat Raj Act, 1983. Chapter-IV of the said Act deals with definitions, duties and powers of Grama Panchayat Adhyaksha and Upadhyaksha. Section 64 of the said Act deals with the Regulation of the erection of the building which reads as under:
64. Regulation of the erection of buildings -(1) Subject to such rules as may be prescribed no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Grama Panchayat. The permission may be granted on payment of such fees as may be specified by bye-laws.
- 2) If the Grama Panchayat does not within sixty days from the receipt of the application determine whether such permission should be given or not and communicate its decision to the applicant, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

- 3) Whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under Sub-section (1) or any conditions imposed by the permission granted, the Grama Panchayat may, whether any action is taken or not against such person under Section 298. -(a) direct that the building, alteration or addition be stopped; or (b) by written notice require within a reasonable period to be specified therein, such building, alteration or addition to be altered or demolished as it may deem necessary for the promotion of public health or the prevention of danger to life or property.
 - 4) In the event of non-compliance with the terms of any notice under Clause (b) of Sub-section (3) within the period specified in the notice, it shall be lawful for the Grama Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Grama Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under Section 199.
 - 5) An appeal shall lie to the (Executive Officer) from any order of direction or notice of the Grama Panchayat under Sub-section (1), (2) or (3) and his decision on such appeal shall be final.
 - 6) Any appeal under Sub-section (5) pending before the Public Works and Amenities Committee of the Zilla Parishad shall on the date of commencement of the Karnataka Panchayat Raj Act. 1993 stand transferred to the Assistant Commissioner and such appeal shall be decided by him as if it had been filed before him.
113. A perusal of the aforesaid provision makes it clear that no person shall erect any building without the written permission of the Grama Panchayat. The permission may be granted on payment of such fees as may be specified by law. Before a permission is granted by the Grama Panchayat the applicant should give an application. The said application has to be considered within 60 days from the receipt of the application. After the expiry of the said 60 days if no permission is granted the permission shall be deemed to have been given and the applicant may proceed to execute the work. Therefore the law contemplates a written application is to be filed by the applicant to the Grama Panchayat for grant of permission to erect any building in the village, the payment of fees as specified in the first bye-law and the written permission of the Grama Panchayat shall be obtained for undertaking the construction of the building. The legal requirement of such permission is not disputed by M/s. Shivashakthi Sugars Limited.
114. By virtue of the powers conferred by Sub-section (1) of Section 64 of the Karnataka Panchayat Raj Act (For short hereinafter referred to as “The Act”) read with Section 311 of the said Act, the Government of Karnataka has made the Karnataka Panchayath Raj (Grama Panchayath Control Over erection of buildings) Rules, 1994. Rule 3 deals with application to erect a building which reads as under

Rule 3. Application to erect a building:

- (1) *any person intending to erect a building shall apply in writing to the Grama Panchayat for permission to erect the building and shall furnish, along with the application,-*

(A) *in case of erection of a new building, -*

(i) *a site plan, in duplicate, of the land on which he intends to erect the building, showing the position of the building to be erected in relation to the land:*

Provided that, if the building to be erected is of less than five thousand rupees in value, it shall be sufficient if the site plan shows the size of the proposed building and its position in relation to the land.

(ii) *the plan of the building to be erected such plan being in duplicate and showing:*

(a) *the plan of the ground floor and of each other floor if any, with sections and elevations:*

(b) *the levels of the foundation with reference to the level of the centre of the adjacent roads or streets:*

(c) *depth and thickness of foundations:*

(d) *the dimensions and structure of roof:*

Provided that if the building to be erected is of less than five thousand rupees in value it shall be sufficient to show levels at which the foundation of the lowest floor is proposed to be laid:

(B) *in case of alteration or addition to any existing building or reconstruction of a building, a copy of the attested previous sanctioned plan:*

Provided that if the applicant for any reasons sworn to in an affidavit, cannot produce the previous sanctioned plan of the existing building, then in such cases the plan of the existing Building alongwith site plan shall be furnished and it shall be examined in the light of the existing rules and bye-laws relating to erection of building.

(2) *The Grama Panchayat may on receipt of an application under Sub-rule (1), require the applicant in writing to furnish such other particulars as may be necessary in the circumstances of the case, and on such requisition, the applicant shall furnish such particulars unless there are reasonable grounds for not furnishing such particulars.*

115. Rule 4 deals with 'Calling for objections', which reads as under:

4. Calling for objections, etc.-(1) The Grama Panchayat may, on receipt of an application under Rule 3, give public notice by affixing such notice on the notice board of the office of the Grama Panchayat calling for objections thereto, within a period not exceeding seven days from the date of such notice, as may be specified therein.

(2) *If any objections are received within the time specified regarding the proposed erection of the building the Grama Panchayat shall consider such objections before granting or refusing the permission.*

116. Rule 5 deals with grant of permission subject to payment of requisite fees which reads as under
- Rule 5: Grant of permission: If the Grama Panchayat is satisfied that the proposed erection of the building is in accordance with the provisions of these rules and the bye-laws made under the Act, it shall grant the permission applied for subject to payment of the requisite fee.*
117. Rule 6 deals with conditions to be imposed which are as under:
- Rule 6: Conditions to be imposed:
- (1) Within the boundary of every site on which a building is to be erected, there shall be provided and maintained, a minimum margin of three feet of open space of the two sides and the rear and four feet in the front.
 - (2) Every building intended for human habitation shall be so erected that it has plinth height of not less than two feet from the ground level.
118. From the aforesaid rules, it is clear any person who intends to erect a building should comply with the following requirements:
- (a) Application in writing for permission to erect a building.
 - (b) A site plan in duplicate showing the land where he intends to erect a building and also showing the possession of the building to be erected in relation to the land.
119. On receipt of such application, the Grama panchayath may give public notice by affixing such notices on the notice board giving 7 days period for such objections. ... objections are filed, it has to be considered. However, if the Grama Panchayath is specified that the proposed erection of the building is in accordance with the provisions of the rules and the byelaws made under the Act, it shall grant permission prayed for subject to payment of the requisite fees. Therefore, the permission to erect a building shall be in writing, it shall granted on payment of requisite fees. In the instant case, admittedly, no application is filed for such permission. No site plan in duplicate is produced. No requisite fee is paid for such licences or sanctioning of the plan. No written permission permitting erection of the building is granted by the Village Panchayath.
120. Their contention is that they have taken such written permission both from Soundatti Village Panchayat as well as Hubbarwadi within which Yadrav village is situated. To substantiate the said contention they rely on two documents. The first document is dated 27-8-2008 which is styled as 'No Objection Certificate' issued by the Chairman of the Grama Panchayat, Soundatti. On the face of it, this no objection certificate has been issued after the expiry of two years period from the date of IEM. A reading of the said Certificate shows that M/s. Shivashakthi Sugars intend to construct a 3.000 PCD capacity sugar factory and 45 M. Watt co-generation building and a residential quarters in Sy. No. 178/1 and 177/3. For the other purpose they have applied to the Panchayat for No objection Certificate. After considering the said application they have stated that they have no objection whatsoever for such construction and accordingly they are issuing the document. Similarly, the airman of the Village Panchayat of Diggewadi the very same day that is on 27-8-2008 has issued a No Objection Certificate for the aforesaid constructions in Sy. No. 98/1. 02/2. 6/1. 6/2. 6/C. 6/4. 98/3b/2. 95/2. 95/3. 99/2A, 99 1b/ 1. 99/

2b/1, 5/1, 7/1, 92/2 and they have no objection whatsoever. Therefore It is clear that what is granted by these two Panchayats is No Objection Certificate. The Panchayat Raj Act did not contemplate any such No objection Certificate to be issued by a Grama Panchayat to enable a person to put up construction in a village. On the contrary what Section 64 requires is that the person intending to put up a construction, has to make an application for grant of permission but he should pay such fees as may be prescribed and then a written permission for erection of any building is to be granted by the Grama Panchayat. Therefore, the said Certificate did not constitute permission granted by the Village Panchayat under Section 64 of the Act. In fact in reply to the information sought under the Right to Information Act, Soundatti Grama Panchayat on 14-3-2001 have replied that no permission is obtained by M/s. Shivashakthi Sugars Limited for establishment of factory under Section 64 and 66 of the Karnataka Panchayat Raj Act. Therefore it is clear that no permission was obtained under Section 64 of the Grama Panchayat Act for erecting a building. As stated earlier even the said no objection issued is beyond the period of two years.

121. Section 66 of the said Act deals with the permission for the construction of factories and the installation of machinery which reads as under:
66. Permission for the construction of factories and the installation of machinery - No person shall without the permission of the Grama Panchayat and except in accordance with the condition specified in such permission -
- a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power or electrical power, or
 - b) install in any premises, any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by rules made by the Government under this Act.
122. A reading of the aforesaid provision makes it clear that without the permission of the Grama Panchayat and except in accordance with the provisions specified in such permission no person can establish any factory in the Grama Panchayat. Therefore for construction of factories permission under Section 66 is a must and for construction of any other building, a permission under Section 64 is a must. Without such permission no construction of factory building is permissible under the aforesaid two provisions.
123. The learned Counsel appearing for M/s. Shiv Shakthi Sugar Mills contended that within two years period from the date of IEM they have taken effective steps for commencement of civil works and for construction of building for the factory, the legal obligation is cast upon them under the aforesaid statutory provisions to get permission of the Grama Panchayat for erection of building and for erection of factory premises. Admittedly no such permission is obtained. Even more than four years have elapsed to this date, the said effective steps are not taken. As the intended construction is to establish a factory apart from the permission under the provisions of the Karnataka Panchayat Raj Act, they are also required to obtain permission under the Factories Act, 1948. Section 6 of the Factories Act deals with approval licensing and registration of factories which reads as under:

6. Approval, licensing and registration of factories:
- 1) The State Government may make rule-1(a) requiring, for the purpose of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;
 - (aa) requiring, the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories:
 - a) requiring for the purpose of considering applications for such permission the submission of plans and specifications:
 - b) prescribing the nature of such plans and specifications and by whom they shall be certified:
 - c) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences:
 - d) requiring that no licence shall be granted or renewed unless the notice specified in Section 7 has been given.
 - 2) If on an application for permission referred to in (Clause (aa)) of Sub-section (1) accompanied by the plans and specifications required by the rules made under Clause (b) of that Sub-section, sent to the State Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.
 - 3) Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in any other case.

124. The aforesaid provision requires the statement of plans of any class or description of factories to the Chief Inspector of the State Government and requires the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be constituted and for the construction or extension of any factory or class or description of factories. It also requires for the purpose of considering the applications for such permission, the submission of plans and specifications prescribed the nature of such plans and specifications and by whom that shall be certified. Therefore before taking up any construction activity of a factory, plans have to be prepared. The said plans have to be submitted to the Chief Inspector of the State Government for consideration and only after a written permission is granted by the appropriate authority for establishment of the factory on the site on which the factory is to be situated then the applicant can proceed with the construction. Absolutely no material has been

placed on record to show that any plans were prepared and submitted for consideration and the permission was obtained in writing under Section 7 of the Factories Act, 1948, when no construction of a factory premises could have been taken up by M/s. Shiv Shakthi industry. That apart, under the provisions of the Air (Prevention & Control) of Pollution Act. Section 21 provides for restrictions on use of certain industrial plans which reads as under:

21. Restrictions on use of certain industrial plants.-(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so far a period of three months from such commencement or if he has made an application for such consent within the said period of three months, till the disposal of such application.

- (2) An application for consent of the State Board under Sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed.

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, such person shall make the application under his Sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

- 3) The state Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (i) and in making any such inquiry, shall follow such procedure as may be prescribed.
- 4) Within a period of four months after the receipt of the application for consent referred to in Sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:) Provided that it shall be open to the State Board of cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are no fulfilled:

Provided further that before canceling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

- 5) Every person to whom consent has been granted by the State Board under Sub-section (4) shall comply with the following conditions namely:

- (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) the existing Control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
- (iii) the control equipment referred to in Clause (1) or Clause (ii) shall be kept at all times in good running condition;
- (iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;
- (v) such other conditions as the State Board may specify in this behalf; and
- (vi) the conditions referred to in Clauses (I), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that -

- a) after the installation of any control equipment In accordance with the specifications under Clause (I), or
 - b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under Clause (ii) or
 - c) after the erection or re-erection of any chimney under Clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.
- 6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred in to Sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent conditions and thereupon such person shall be bound to comply with the conditions as so varied.
 - 7) Where a person to whom consent has been granted by the State Board under Sub-section (4) transfers his interest in he industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

125. Similarly. Section 25 of the Water (Prevention and Control of Pollution)Act. 1974 provides for restrictions on new outlets and new discharges which reads as under:

Section 25. Restrictions on new outlets and new discharges - Subject to the provisions of this section, no person shall, without the previous consent of the State Board -

- a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- b) bring into use any new or altered outlet for the discharge of sewage: or
- c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act. 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

- 2) An application for consent of the State Board under Sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed,
- 3) The State Board may make such inquiry as it may deem lit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.
- 4) The State Board may-
- e) grant is consent referred to in Sub-section (1), subject to such conditions as it may impose.being -
 - i) in case referred to in Clauses (a) and (b) of Sub-section (1) of Section 25 conditions as to the point of discharge of sewage of as to the use of that outlet or any other outlet for discharge of sewage:
 - ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made: and
 - iii) that the consent will be valid only for such period as may be specified in the order;
- (5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet or making the discharge, as the case may be a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

- (6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.
- 7) The consent referred to in Sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in ail respects to the State Board.
- 8) For the purposes of this section and Sections 27 and 30 -
- (a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement:
- (b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.
126. From the No Objection Certificate issued by the Karnataka State Pollution Control Board it is clear that under the aforesaid two provisions an application was submitted on 27-7- 2008, which is clearly after two years period from the date of IEM. Thereafter, the Karnataka State Pollution Control Board has granted No Objection Certificate for setting up a sugar industry with capacity of 3500 TCD and co-generation plan of 4.5 MW at Sy. Nos. 5/1. 6/1. 7/1. 92/1B/ 2, 92/2A, 95/2 & 3 98/1/3B/2. 99/1A. 991B/1. 99/2A. 99/2B1, 177/3. 178/1 of Soundatti Village, Raibagh Taluk, Belgaum District. As stated earlier except Sy. No. 177/3 and 178/1 which is situated in Soundatti Village, all other Survey Numbers are situated in Yadrav village. Therefore, not only there is a misrepresentation on the part of M/s. Shivshakthi Sugars in respect of the aforesaid Survey Numbers, the authority without properly appreciating and without application of mind has mechanically granted No Objection Certificate to set up sugar factory in the aforesaid Survey Numbers. Realising that the said Survey Numbers did not depict the true state of affairs an attempt was made to cover up the laches by filing in the Court a inspection report of the Senior Environmental Officer. The said inspection report shows that except Survey Numbers 171/3, 178/1, the rest of the Survey Numbers are situated in Yadrav Village. The location details given in the said inspection report shows the proposed site is located adjacent to Ankali to Raibag MDR on the North side direction. The village Yadrav is located at South-East direction which is at a distance of 1.5 Kilometers away from the proposed site. Raibag town is located at South-East direction at a distance of about 8 kilometers away from the proposed site. The

Nasalapur village is located at North-West direction at a distance of about 4 Kilometers away from the proposed site. Ankali village is located at North-West direction, that is about 6 kilometers away from the proposed site. There are no settlements/dwellings at a distance about 1.5 Kilometers away from the proposed site.

127. This document also clearly demonstrates that no construction of building for the factory and the civil works commenced within two years from the date of IEM. If as they contend they have put up constructions as evidenced by the photographs produced, the constructions are put up without a written permission under Section 64 of the Panchayat Raj Act, without prior permission under Section 66 of the Panchayat Raj Act and without a written permission under Section 7 of the Factories Act. Therefore, all those constructions are illegal, contrary to law and those constructions are put up after the expiry of two years period from the date of IEM which do not assist M/s. Shivshakthi Sugars from showing that effective steps have been taken within two years period. In fact at this juncture, it is relevant to notice M/s. Shivshakthi Sugars Ltd., in their letter dated 27-1-2010 have stated that they have taken some effective steps, wherein they have stated as under:

- 1) The purchase of 77.03 acres of land and its conversion is under process.
- 2) The machinery purchase orders finalisation is under process.
- 3) They have already spent considerable amount for the project.
- 4) Obtained orders from the Irrigation Department to lift 50 lakh Litres of water from river Krishna.
- 5) Obtained clearance from Karnataka State Pollution Control Board.
- 6) Entry tax exemption is under process.
- 7) Central Excise Certificate and Certificates under Commercial Taxes have been obtained.

128. Therefore it is clear that even as on 9-3-2010 the conversion of agricultural land for industrial purpose was under process. The machinery purchase orders had not yet been finalised. There is no mention about any Civil work or construction of the factory building.

129. Therefore it is clear from the aforesaid admission that even as on 9-3-2010 effective steps as contemplated had not been taken by M/s. Shivshakthi Sugars. The contention that they had taken effective steps such as commencement of civil works for construction of the building for the factory is not substantiated.

SANCTION OF REQUISITE TERM LOANS FROM BANKS OR FINANCIAL INSTITUTIONS

130. In order to show the compliance of this effective steps the following documents are relied on:

Name of The banks/ Financial Institutions	Date of submission of application to banks/financial Institutions for Term loans	Amount applied for	Amount sanctioned	Letter No. and date of sanction letter	Amount disturbed	Remark
(1)	(2)	(3)	(4)	(5)	(6)	(7)
IOB	19.12.2007	Rs. 61 crs	Rs. 61 Crs	29.01.2008	Rs. 0.22	2 crs
BOI		Rs. 75 crs	Rs. 75 Crs	19.05.2008	NIL	

131. To substantiate the contention of the said statement, they have produced a letter from Bank of India dated 19.5.2008 addressed to M/s Shivasakthi Sugars Limited on the subject or request for sanction of credit facilities. There is no indication that the said credit facility is sanctioned for the establishment of a sugar factory at Saundatti village. In fact the letter is addressed to Shivashakti Sugars Limited No. 5, AKS Nagar, T.. Road, Coimbatore 641001.
132. Similarly, yet another document on which reliance is placed is a letter from Indian Overseas Bank. R S Puram Branch. Coimbatore to Shivashakti Sugars Limited 624. II main Road. HAL II Stage, Indiranagar, Bangalore -38. Here also in the entire letter there is no reference to any sugar factory to be set-up at Saundatti village. However, in the column where nature of facility is to be mentioned, it is stated that the term loan is towards part financing for setting up a new sugar mill of 5000 tcd capacity ethanol plant of 60 KLPD and 24 mega watt co-generation power plant at a total cost of Rs. 308.37 crores. Total debt Component is 200 crores. A short term loan towards soft loan to be received from Sugar Development Fund Loan of Rs. 45 crores. Having regard to the specification mentioned in the other documents at Saundatti, Shivasakti Sugars is not setting up a mill of 5000 tcd capacity, ethanol plant of 60 KLPD. The capacity of the sugar plant to be set-up at Saundatti Village is only 3000 TCD and 30 KLPD is the capacity of Ethanol plant and 12 mega watt is the capacity of co-generation power plant whereas what is mentioned is 24 mega watt. Therefore, it is clear the said loan document do not pertain to the Sugar Factory to be established at Saundatti Village. The auditor who has endorsed the expenses for the period from 1.4.2010 to 14.10.2010 do not indicate that any amount has been drawn from these two banks. On the contrary, the said statement of account refers to only Federal Bank as well as Dr. Prabhakar Kore. M/s SSL and ail those entries are from 7.10.2006 to 11.10.2010 i.e., much after the expiry of the two years period. Therefore, it is clear even the 4th requirement as contemplates under explanation IV is not complied with by the Shivasakthi Sugars.
133. Explanation 1 to Section 6(A) makes it very clear an existing factory shall also include a sugar factory that has taken all effective steps as specified in Explanation IV to set-up a sugar factory.

Therefore, explanation 4 has to be read conjunctively and not distinctively. If, only all the effective steps stipulated in explanation IV is taken, then it could be said it is an existing sugar factory and it continues to be a new sugar factory only as defined under Explanation II.

134. In the light of the aforesaid undisputed material on record, it is clear that Shivasakti Sugar Limited had not taken effective steps within two years from the date of filing of the IEM.

WHAT IS THE EFFECT OF NOT TAKING EFFECTIVE STEPS WITHIN THE PRESCRIBED PERIOD?

135. Dealing with the effective steps, the Apex Court in the case of Ojas Industries Private limited, it is held at Paras 27, 31 and 32 as under:

27. *However, by way of Sugarcane Control) (Amendment) Order. 2006 dated 10.11.06 a bar is introduced vide Clause 6A to 6E for setting up a new sugar factory (mill) by a person taking effective steps after filing IEM. In other words, if the First IEM Holder or the Earlier IEM Holder takes effective steps to implement its IEM then the Subsequent IEM Holder cannot proceed with his IEM. If the First or Earlier IEM Holder completes its Projects successfully then the Remaining IE Ms for that area shall become non est. They shall however, remain in suspense during stipulated period when the Earlier IEM Holder takes effective steps for implementing its IEM...*

31. *As far as effective steps are concerned we may point out that apart from the steps enlisted in the earlier Notification dated 11.9.98 read with Press Note No. 12 dated 31.8.98, the Sugarcane (Control) (Amendment) Order, 2006 has laid down such steps like purchase of required land in the name of the factory (mill), placement of a firm order for purchase of plant and machinery for the factory, payment of advance or opening of letter of credit with suppliers, commencement certificate of civil work and construction of building, sanction of requisite term loans from the banks or financial institutions and any other step prescribed by the Central Government in this regard. In our view Clauses 6A to 6E have been introduced in Clause 6 of Sugarcane (Control) Order, 1966. In our view Clauses 6A to 6E are clarificatory in nature. There are certain norms mentioned in the Accounting Standards of Institute of Chartered Accountants for setting up industries. They may be sugar mills, paper mills, textile mills etc. When effective steps are enlisted in Sugarcane (Control) (Amendment) Order, 2006 dated 10.11.06 vide Explanation 4 to Clause 6A those in-built norms are made explicit therefore, Explanation 4 to Clause 6A is clarificatory. Therefore, it is retrospective.*

32. *There is one more reason why we hold that the Sugarcane (Control) (Amendment) Order. 2006 is retrospective. The Central Government has taken note of various pending matters in different courts on the interpretation of Sugarcane (Control) Order. 1966. Press Note No. 12 and the Notification dated 11.9.98 issued under Section 29B(1) of the said 1951 Act to put an end to litigations and keeping in mind the concept of "Distance Certificate" as distinct from the concept of "effective steps", the Central Government has issued tile Sugarcane (Control) (Amendment) Order, 2006. It is to plug the loophole that the said Order has been issued on 10.11.06. In our view, therefore, the Sugarcane (Control) (Amendment) Order. 2006 is retrospective. In all pending cases the Central Government*

now seeks to put a bar for setting up new sugar factory (mill) for a limited period during which the Former or Earlier IEM Holder is required to take effective steps. The said Order of 2006 is not putting a ban on setting up of new units. It is only giving a priority in the matter of setting up of new units. Therefore, the said 2006 Order operates retrospectively. It will not apply to mills which are already functioning. The said 2006 Order will apply only to cases where IE Ms are pending in disputes in various courts. The said 2006 Order will also apply after our judgment to those cases which are under dispute and where milling has not commenced or permitted to commence.

136. Therefore, the object behind stipulating the effective steps by way of a statutory provision cannot be lost sight off. Though even prior to the amendment, such effective steps were contemplated as it was held to be discretionary, the Government provided the statutory provisions making it retrospective as it was only clarificatory in nature. The effect of taking effective steps is if the first IEM holder or earlier IEM holder takes effective steps, to implement its IEM then, the subsequent IEM holder cannot proceed with his IEM. If the first or earlier IEM holder completes its project successfully then the remaining IEM holder for that area shall become non-est, they shall, however, remain in suspense from the stipulated period when the first IEM holder takes effective steps for implementing this IEM. If the earlier IEM holder do not take effective steps within the period stipulated under those statutory provisions, the legal effect is the IEM filed by a subsequent IEM holder comes to Life, it becomes active and the earlier IEM holder stand derecognized. Yet another consequences flowing from non-implementation of the IEM within the stipulated time is provided in Explanation 1 and 2 to Clause 6A. if after filing the IEM and has submitted a performance guarantee of Rs. 1 crore for implementation of the IEM. then it is called as a new Sugar Factory. Once the said new Sugar Factory takes all effective steps as specified in Explanation 4, then it becomes an existing Sugar Factory as defined in Explanation 1. If after tiling the IEM furnishing the bank guarantee, if no effective steps were taken, then such a factory will be considered as a new Sugar Factory and not as an existing Sugar Factory and the persons who have filed IEM can proceed to implement their IEM. Therefore, taking all effective steps, is a very important concept, which is now introduced by way of a statutory provision so as to protect the entrepreneurs in so far as setting up of a Sugar Factory is concerned especially after de-licencing of Sugar Factories. It is in this context Clause 6C assumes importance which reads as under:

6C: Time limit to implement Industrial Entrepreneur Memorandum:

The stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filing the industrial Entrepreneur Memorandum with the Central Government, failing which the Industrial Entrepreneur Memorandum shall stand de-recognized as Jar as provisions of the Sugarcane (Control) Order are concerned and the performance guarantee shall be forfeited:

Provided that Chief Director (Sugar), Department of Food and Public Distribution. Ministry of Consumer Affairs. Food and Public Distribution on the recommendation of the concerned State Government may give extension of one year not exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.

137. Therefore, the stipulated time for taking effective steps shall be two years, failing which, the IEM shall stand de-recognized so as far as provisions of this Order are concerned and the bank guarantee shall be forfeited. The legal effect of such not taking effective steps is clearly set out in the said clause i.e. by operation of law IEM shall stand derecognized. The word used is "shall". Therefore, it is automatic. No further act is required to derecognize an IEM filed.
138. If the proviso to Clause 6E is to be interpreted as the provision for extension of time for taking effective steps, the appropriate authority on the recommendation of the State Government concerned has been vested with the power to give extension of one year and not exceeding 6 months for implementing the IEM. Therefore, maximum time is one year and the said extension should be for a period of 6 months at a time. In the nature of things, if an entrepreneur could not take effective steps within the stipulated time and if he is entitled to extension of time, the said extension of time can be granted only on the recommendation of the State Government concerned. Therefore, the said recommendation by the State Government and the extension of time should be before the said IEM stands derecognized. There is no provision for retrospective extension of time provided under those statutory provisions, in other words, before an IEM stands derecognized by operation of law the person who had filed an IEM. if he wants extension of time, he should take such steps requesting the appropriate authority for extension of time and the Government which is empowered to make a recommendation should make a recommendation before the said period of two years. It is only then the authority vested with the power to extend the time could exercise the power provided under the statute and extend the period stipulated for taking effective steps in accordance with law. Therefore, it is clear as effective steps were not taken within the period of two years from the date of filing of IEM and no extension was granted within a period of one year from the date of expiry of two years period the IEM stood de-recognized.

WHETHER VALIDITY OF ORDERS PASSED GRANTING EXTENSION?

139. We have to see whether the recommendation of the State Government for extension of IEM, extension of time for implementing the IEM and the order passed by the Central Government extending the period for taking steps are in accordance with law.
140. The IEM was filed on 08.06.2006. Two years period for taking effective steps is to be computed from that day which expires on 08.06.2008. As we have already set out no effective steps as stipulated in Explanation 4 was taken by M/s. Shivashakti Sugars Limited before 08.06.2008. it is not their case that they did make any request to the Central Government for extension of time before the expiry of 08.06.2008. The only event which has happened between 08.06.2006 and 08.06.2008 is the order passed by the State Government allotting 21 villages to M/s. Shivashakti Sugars by their order dated 04.08.2007. The one year period from 08.06.2008 expires on 08.06.2009. We have on record that the Chief Director (Sugar) before the expiry of the period of 2 years i.e. 08.06.2008, passed an order dated 15th April 2008 acknowledging the IEM filed by M/s. Shivashakti Sugars Limited and also the performance guarantee dated 10th May 2007 furnished by them and also a Distance Certificate dated 17th August 2007 from Commissioner for Cane Development. It was made clear that the Sugar Factory of M/s. Shivashakti Sugars Limited at Saundatti Village is taken on record as a New Sugar Factory' as

provided in Explanation 2 to Clause 6A of the Sugarcane (Control) (Amendment) Order. 2006. They made it very clear that as per Clause 6C and D of the Amendment Order. 2006, the time limit for taking effective steps would be 2 years and the commercial production should commence within 4 years with effect from the date of filing of IEM with the Central Government failing which, the said performance guarantee shall be forfeited. Further M/s. Shivashakti Sugars Limited was required to furnish the progress report of the effective steps taken by them with regard to the implementation of aforesaid IEM to the Department on quarterly basis in the prescribed proforma.

141. From the aforesaid letter, it is clear that as on 15th April 2008, the Central Government was treating the Sugar Factory as a New Sugar Factory' and not as an existing Sugar Factory as no effective steps had been taken in pursuance of the IEM filed and therefore, they reminded the M/s. Shivashakti Sugars Limited to take effective steps within 2 years from the date of filing of IEM and to send a progress report of the effective steps taken. From the material on record, we do not find any reply that has been sent to this communication. M/s. Shivashakti Sugars Limited also did not furnish the steps taken by them with regard to the implementation of the aforesaid IEM to the department on quarterly basis in the prescribed proforma.
142. The Government of Karnataka on 05.03.2010 addressed a letter to the Secretary to Government. Commerce & Industries Department. Vikasa Soudha, Bangalore as under:

GOVERNMENT OF KARNATAKA

(Commissioner for Cane Development and Director of Sugar)

No. DSK/DEV/57/2006-07

**Office of the
Commissioner for Cane Development
and Director of Sugar. Bangalore.**

*The Secretary to Government,
Commerce & Industries Department
Vikasa Soudha, Bangalore.*

Date:5/3/2010

Sir,

Sub: Shivashakti Sugars Ltd. New Sugar unit at Saudatti Village of Raibag Taluk, Belgaum District:

- Ref: 1. Letter dated 27.1.2010 of M/s. Shivashakti Sugars Limited*
2. IEM No. 3080/SIA/IMO/2006 dated 8.6.2006
3. No. CI/245/SGF/06 dated 23.6.2007
4. No. CI/245/SGF/06 dated 4.8.2007

M/s. Shivashakti Sugars Ltd., a new sugar unit at Saudatti Village of Raibag Taluk, Belgaum District vide reference (1) above have requested for extension of time for one year from 8.6.2010

for implementing the IEM. They have obtained IEM on 8.6.2006 vide reference (2) above. As per the Sugarcane (Control) Amendment Order, 2006, Clause 6-A, Explanation-4, the following effective steps should be taken by the concerned persons to implement the IEM for setting up of sugar factory.

- a) Purchase of required land in the name of the factory.
- b) Placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers.
- c) Commencement of Civil work and construction of building for the factory.
- d) Sanction of requisite term loan from banks or financial institutions.
- e) Any other steps prescribed by the Central Govt. in this regard through a notification.

Clause 6-C reads as follows:

The stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filing of IEM with the Central Govt. failing which the IEM shall stand de-recognized as far as provisions of the Sugarcane (Control) Order are concerned and the performance guarantee shall be forfeited:

Provided that Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution on the recommendation of the concerned State Government may give extension of one year not exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof

M/s. Shivashakti Sugars Ltd., have taken some effective steps mentioned in para above. They have obtained IEM on 8.6.2006. As per the proviso to the Clause 6-C, the State Govt. can give extension of one year not exceeding six months at a time, for implementing the IEM and commencement of commercial production thereof Govt. of Karnataka has already given in principle approval and cane area for this unit vide order cited at reference (3) and (4) above respectively.

M/s. Shivashakti Sugars Ltd. has already taken some effective steps like purchase of land, placement of order for plant and machinery etc. Therefore. I request you to kindly recommend the case of M/s. Shivashakti Sugars Ltd., Saudatti Village. Raibag Taluk. Belgaum District to Govt. of India for extension of time by six months from 8.6.2010 for implementing the IEM and commence of commercial production thereof. M/s. Shivashakti Sugars has to commence commercial production before 8.12.2010, positively of 6 months extension is given by Govt. of India.

Copy of the letter received from the factory is enclosed.

Yours faithfully,
Commissioner for cane Development
and Director of Sugar.

Copy to M/s. Shivashakti Sugars Ltd., #624, 11th Main. HAL 2nd Stage, Indiranagar, Bangalore-38.

Sd/-
Commissioner for cane Development
and Director of Sugar.

143. On 09.03.2010, the Secretary, Commerce and Industries Department, Government of Karnataka addressed a letter to the Chief Director (Sugar), Government of India, which reads as under:

GOVERNMENT OF KARNATAKA
CI: 41 SGF 2010 Karnataka Government Secretariat.
Vikasa Soudha,
Bangalore, dated 09.03.2010.

From

The Secretary,
Commerce and Industries Department
Government of Karnataka.
Bangalore-01.

To.

The Chief Director, (Sugar),
Government of India,
Ministry of Consumer Affairs
Food and Public Distribution,
Dept. of Food & Public Distribution,
Director of Sugar
Krishi Bhavan, New Delhi - 01.

Dear Sir,

Sub: M/s. Shivashakti Sugars Ltd., - New Sugar Unit at Saudatti Village of Raibagh - Taluk, Belgaum District - recommendation for extension of IEM for six months regarding.

Ref:(1) IEM No. 3080/SIA/IMO/2006 dated 08.06.2006

(2) Letter addressed to Government of India by Shivashakti Sugars Ltd. dated 27.01.2010.

M/s. Shivashakti Sugars Ltd., have obtained IEM on 08.06.2006 vide reference (1) above for establishment of a new sugar unit at Saudatti village of Raibagh Taluk, Belgaum District Now M/s. Shivashakti Sugars Ltd requested to recommend Govt. of India for extension of time for 6 months for implementing the IEM and commencement of commercial production. Copy of the request letter dated 27.01.2010 of M/s. Shivashakti Sugars Ltd., is enclosed herewith for reference.

As per the Sugar Cane (Control) Amendment Order 2006 dated 10.11.2006. Clause 6-C reads as follows:

The Stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filling of IEM with the Central Govt. failing which the IEM shall stand de-recognized as far as provisions of the Sugarcane (Control) Order are concerned and the performance guarantee shall be forfeited

Provided that the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs. Food and Public Distribution on the recommendation of the concerned State Government may give extension of one year not exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of Commercial Production thereof.

M/s. Shivashakti Sugars Ltd., in their letter stated that they have taken some effective steps like 1) Purchase of 77.03 acres of land and its conversion is under process 2) Machinery Purchase orders finalization is under process. 3) They have already spent considerable amount for the project 4) Obtained orders from Irrigation Department to lift 50 lakhs liters of water from the river Krishna 5) obtained clearance from Karnataka State Pollution Control Board 6) Entry Tax exemption is under process 7) Central Excise Certificate

And Certificates under Commercial Taxes have been obtained.

The Stipulated time for commencement of commercial production expires on 07.06.2010. As per proviso to the Clause 6-C, the Central Govt. can give extension of one year not exceeding six months at a time, for implementing the IEM and commencement of commercial production thereof. Hence requested for extension of time for 6 months.

From the above facts. M/s. Shivashakti Sugars Ltd., has already taken some effective steps. Therefore Govt. of Karnataka recommends the case of M/s. Shivashakti Sugars Ltd., Saudatti Village. Raibagh Taluk. Belgaum district for taking suitable decision for giving extension of 6 months for implementing the IEM and commencement of commercial production.

Yours faithfully,

Sd/-

(B.D. Obappa)

*Deputy Secretary, (Seri. and Sugar),
Commerce and Industrial Department*

144. However, the Government of India, Ministry of Consumer Affairs, Food and PD, Department of Food and PD, Directorate of Sugar issued a show cause notice dated 27th April 2010, after referring to Explanations 1, 2, 3 and 4 to Clause 6A. the judgment of the Apex Court in the case of OJas Industries (P) Ltd., v. Oudh Sugar Mills Ltd., and Ors. and other provisions of the amended rule and also referred to their earlier order dated 15.04.2008. The Paras 9, 10, 11, 12, 13 and 14, which reads as under:

9. *Whereas, as per Clause 6D of the Sugarcane (Control) (Amendment) Order, 2006. as indicated in para 5 above, if an IEM remains unimplemented within the time specified in Clause 6C. the Performance Guarantee furnished for its implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard.*
10. *Whereas, M/s. SSL did not submit any request for grant of extension in the validity period of IEM for implementing the IEM and commencement of commercial production within two years time limit for taking effective steps from the date of filing the IEM with the Central Government.*
11. *Whereas, Government of Karnataka vide letter No. CI 41 SGF 2010 dated 09.03.2010 recommended the case of M/s. SSL for grant of extension of six months for implementing the IEM and commencement of commercial production when the time limit to grant extension of time is already over.*
12. *Whereas, Government of Karnataka in the aforesaid letter, have reported that M/s. SSL have taken following effective steps:*
 - (i) *Purchase of 77.03 acres of land and its conversion is under process:*
 - (ii) *Machinery purchase orders finalization is under process:*
 - (iii) *They have already spent considerable for the project:*
 - (iv) *Obtained orders from Irrigation Department to lift 50 lakh liters of water from the river Krishna:*
 - (v) *Obtained clearance from Karnataka State Pollution Control Board.*
13. *Whereas, M/s. SSL as per Clause 6C of the Sugarcane (Control) (Amendment) Order, 2006 failed to take effective steps as enumerated in Explanation 4 below Clause 6A of Sugarcane (Control) (Amendment) Order. 2006 within the stipulated time limit of two years from the date of acknowledgement of IEM*
14. *Now, therefore, I. Kalyan Nag. Director (Cost), Department of Food & Public Distribution Directorate of Sugar, Krishi Bhavan, New Delhi hereby call upon to Show-Cause why M/s. SSL did not take effective steps within the stipulated time limit and why their Bank guarantee No. 3/07 dated 10.5.2007 of rupees one crore submitted in reference to IEM No. 3080/SIA/IMO/2006 dated 08.06.2006 acknowledged for setting up of a new sugar factory at Saudatti Village. Raibag Taluk. Belgaum District, Karnataka should not be forfeited in terms of Clause 6D of Sugarcane (Control) (Amendment) Order, 2006.*
145. *A perusal of the aforesaid letter makes it clear hat M/s. Shivashakti Sugars Limited did not submit any request tor grant of extension of time in the validity period of IEM for implementing the IEM and commencement of commercial production within 2 years time limit with the Central Government. Further at Para 11, it is categorically stated that the Government of*

Karnataka by the letter dated 09.03.2010 recommended for extension for 6 months for implementing IEM and commencement of commercial production when the time limit to grant extension of time is already over. They have referred to what the Government of Karnataka stated in the report and thereafter, it was held that M/s. Shivashakti Sugars Limited has failed to take effective steps as enumerated in Explanation 4 to Clause 6A within the stipulated time limit of 2 years from the date of acknowledgment of IEM. Therefore, as no effective steps were taken for implementation of IEM within 2 years from the date of filing of an IEM and a recommendation made by the Government of Karnataka was beyond the time limit to grant extension of time and the factors mentioned in the recommendation of the Government do not constitute a sufficient reason for extending the time, if at all, the Central Government was clear of the view that IEM stood derecognized. However, Clause 6B2 provides for an opportunity being given to the entrepreneur before forfeiting the performance guarantee amount of Rs. 1 crore. The said notice was issued to show cause as to why Rs. 1 crore furnished as performance guarantee should not be forfeited. In fact, the bank guarantee which was furnished by the M/s. Shivashakti Sugars Limited expired on 09.11.2009 and it was not extended at all. The next guarantee, they have furnished is dated 14.10.2010 which is in force. Therefore, on the day when the show cause notice issued calling upon them to show cause as to why bank guarantee should not be forfeited, there was no valid bank guarantee at all so that the authorities to encash the same and forfeit the amount. In reply to the said show cause notice, the M/s. Shivashakti Sugars Limited sent their reply dated 06.05.2010, which reads as under:

Date: 06.05.2010

To

*The Director (Cost),
Government of India,
Ministry of Consumer Affairs,
Department of Food and Civil Supply,
Krishi Bhawan, New Delhi*

Sir,

Sub: Reply to, show cause notice dt. 27.4.2010 in the case of M/s. Shivashakti Sugars Ltd., Saudatti Village, Taluk Raibag, Karnataka-

With reference to your above show cause notice regarding setting of sugar factory by M/s. Shivashakti Sugars Ltd., Saudatti Village, Taluk Raibag, Belgaum District, Karnataka state, we would like to respectfully submit as under:

- 1. We have taken all effective steps for implementation of IEM within a stipulated time of 2 years and submitted the same to Commissioner of Cane Development & Director of Sugar, Govt. of Karnataka vide our letter dt. 30.7.2009 (copy enclosed) along with enclosures.*
- 2. On satisfactory compliance of timely effective steps taken by the Sugar Mill, Commissioner has recommended our proposal for extension of time limit for implementation of IEM to the Secretary, Commerce and Industries Department, Govt. of Karnataka.*

3. *The Secretary, Commerce and Industry Department, Govt. of Karnataka favourably recommended our proposal to the Chief Director of Sugar. Govt. of India, Ministry of Consumer Affairs, Food & Public Distribution, Director of Sugar Krishi Bhawan vide letter dt. 9.3.2010.*
4. *M/s. Shivashakti Sugars Ltd. taken following steps within a period of two years.*
 - i) *We have purchased 73.29 acres of land and all those lands registered in the name of Shivashakti Sugars Ltd on dated. 15.2.2003 & 30.11.2007 list of land enclosed.*
 - ii) *After receipt of IEM we approached Govt. of Karnataka which had in its 8th State High Level Clearance Committee Meeting held on 23.2.2007 granted its approved vide its order No. C-1/176 SPL 2007 dt 7.11.2007 (copy enclosed)*
 - iii) *Based on the above said order we have already approached various Govt. Authorities and taken further steps.*
 - iv) *Karnataka Govt. already allowed 20 villages to Shivashakti Sugar Ltd. vide letter dt. 4.8.2007 (copy enclosed)*
 - v) *Our petition HESCOM Hubli for power is under active consideration.*
 - vi) *Obtained orders from irrigation Deptt. To lift 50 lacks liters of water from River of Krishna.*
 - vii) *We have placed order for purchase of machinery with M/. Kay Bouvet Ltd. dt 14.5.2008 and remitted advance (copy enclosed).*
 - viii) *Term Loan facility is made available by Indian Overseas Bank dt 19.2.2007 (copy enclosed).*
 - ix) *Obtained order from Highway Department to lay pipes to Cannel water to the Mill site.*
 - x) *Obtained Karnataka State Pollution Control Board Consent.*
 - xi) *Our application for Entry Tax Exemption is under process with the state Govt.*
 - xii) *Central Excise Certificate and Certificate under Commercial Taxes have been obtained.*
 - xiii) *We have already spent considerable amount towards the project.*
 - xiv) *Quarterly Progress Report ending Sept 2008 is submitted to your office vide letter dt. 1.10.2008 giving all the details of effective steps taken by us within a period of two years, (copy enclosed).*

In view of the above we would like to say that all effective steps for implementation of IEM have already taken by M/s. Shivashakti Sugars Ltd. within stipulated limit of 2 years.

We therefore earnest request your honour to consider or plea and grant us extension of time limit for implementation of IEM for a period of one year and obliged.

Thanking you.

*Yours faithfully,
Shivashakti Sugars Ltd.*

146. In the reply after setting out what they have done after filing of IEM, they requested for extension of time for implementation of IEM for a period of one year. In the said reply, it was categorically asserted that they have purchased 73.29 acres of land and the same are registered in the name of M/s. Shivashakti Sugars Limited and they have stated that copies are enclosed. As stated earlier except the sale deeds, which they have produced before the Court, the rest of the sale deeds are yet to see the light of the day. They also stated that they have placed orders for purchase of machinery with M/s. Kay Bouvet Ltd. dated 14.05.2008 and remitted advance and they have stated that copies are enclosed. What is enclosed is only the letter of intent to which already we have recorded a finding in detail. So even as on 06.05.2010 apart from these 2 documents, there was no documents such as a copy of the invoice and payment particulars showing placement of a firm order for purchase of machinery. They have also referred to the term loan facility made available by Indian Overseas Bank dated 19.02.2007 and with regard to the same, we have already referred to above. It is interesting to note now that they do not refer to the facility availed from the Bank of India on which reliance was placed in the quarterly report. In the entire reply sent, there is no reference to any civil work, there is no reference to any licence sanctioned or obtained from the Village Panchayat for establishment of the factory building. There is no reference to any order of conversion passed by the Deputy Commissioner permitting them to change of land uses from agricultural to industrial or non-agricultural. When the said reply was received by the Director of Sugar, he was not satisfied with the reply. Therefore, he sent a communication dated 21st May 2010, which reads as under:

File No. 25 (1985) 2010 ST/141

Government of India
*Ministry of Consumer Affairs, Food and PD,
Department of Food and PD,
Directorate of Sugar*

*Krishi Bhava, New Delhi
Dated 21st May 2010.*

To

*M/s. Shivashakti Sugars Limited.
624, 11th Main, HAL 2nd Stage,
Indira Nagar, Bangalore-560 038.*

Sub: Setting up of sugar factory at Saudatti Village, Raibag Taluka, Belgaum District, Karnataka - reg.

Sir,

I am directed to refer to your letter dated 06.05.2010 forwarding therewith reply to the Show Cause notice dated 27.04.2010 on the above mentioned subject and to advise you to furnish the effective steps taken by you upto 07.06.2008 (within two years from the date of acknowledgement of IEM dated 08.06.2006) in the prescribed proforma which was enclosed with this Directorate's Order dated 15.04.2008 (copy again enclosed for ready reference) with regard to implementation of the aforesaid IEM to examine the matter further. The requisite information may be furnished within 15 days of issue of the letter failing which further necessary action shall be taken as per law.

Yours faithfully,

*Sd/-
(Kalyan Nag)
Director (Cost)
Ph.011-2338 3433*

Encl As Above

147. In reply thereto, they furnished the information in the prescribed proforma showing the details of the effective steps taken upto 07.06.2008 with regard to the implementation of IEM and they sought for extension of time for 6 months for commercial production. The quarterly report, which is already extracted above, does not show that any effective steps were taken within two years. Again the Director of Sugar was not satisfied with the explanation offered. Therefore, by their communication dated 17th June 2010, they called upon the Shivashakti Sugars to furnish the documents. The said letter reads as under:

File No. 25 (2052) 2007-ST/184

Government of India
*Ministry of Consumer Affairs, Food and PD,
Department of Food and PD,
Directorate of Sugar*

*Krishi Bhava, New Delhi,
Dated 17th June 2010.*

To

*M/s. Shivashakti Sugars Limited,
624, 11th Main, HAL 2nd Stage,
Indira Nagar, Bangalore-560 038.*

Sub: Setting up of sugar factory by M/s. Shivashakti Sugars Ltd. at Saudatti Village, Raibag Taluka, Belgaum District Karnataka - Amendment of Show-Cause notice - reg.

Sir:

I am to refer to your letter dated Nil on the above mentioned subject and to advise you to furnish following documents:

- (i) *Purchase of required land in the name of the factory:*

Photocopies of documents relating to purchase of land in the name of the Company with English or Hindi version.

- (ii) Placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with supplier:
- (a) *Photocopy of the agreement with the machinery supplier:*
- (b) *Details of DD/Cheques (No. & date) paid or LC opened in favour of concerned supplier as an advance: and*
- (c) *Photocopy of the letter placing order with M/s. Kay Bouvet Engineering (P) Ltd along with cheque No. and date*
- (iii) Commencement of Civil Work and construction of building for the factory:
- (a) *Photocopies of the agreement with Architect/Contractor(s): and*
- (b) *Details of DD/Cheques (No. and date) paid to above Architect/Contractor as an advance.*
2. *The requisite documents as stated above may be furnished within 15 days of issue of this letter falling which further action shall be taken as per law.*

Yours faithfully.

*Sd/-
(Kalyan Nag)
Director (Cost)
Ph.011-2338 3433*

148. In reply there to, the Shivashakti Sugars furnished the documents. A copy of the said letter dated 21.06.2010 reads as under:

SHIVASHAKTI SUGARS LIMITED
*Mayoor Chitra Mandir Road. At Post Ankali, Raibag
Taluk. Dist: Belgaum.*

Date: 21.06.2010

*To.
The Chief Director (Sugar)
Govt. of India
Ministry of Consumer Affairs. Food & PD
Directorate of Sugar,
Krishi Bhavan. New Delhi.*

*Sub: Setting up of Sugar Factory M/s. Shivashakti Sugars Ltd. at Saudatti Village, Raibag
Taluk. Dist Belgaum*

Sir,

With reference to your amended show cause notice dated 17.6.2010, we are furnishing herewith the following for your kind consideration.

(1) Purchase of Land:	Enclosed the details of the Lands purchase along with zerox copies of purchase deeds of land in the nature of the Company (Encl. Page No. from 1 to 7 (in English))
(2) Placement of Firm order for Plant & Machinery:	
(3) Photo copy of Agreement	The copy of Minutes of Meeting with suppliers
	Kay Bouvet Engineering (P) Ltd. for amendment of Agreement duly acknowledged enclosed.
(b) Details of DD/Cheque paid in advance	Advance paid to Key Bouvet Engineering (P) Ltd by Cheque No. 68908 dated 15.5.2008 drawn on Bank of India.
(c) Copy of Letter Placing Order	The copy of letter placing the order for Boiling House to Key Bouvet Engineering (P) Ltd.
3. Commencement of Civil Work	
(a) Photo copy of Agreement	Zerox copy of Agreement with M/s. Shree Sabari Constructions Coimbatore dated 3 rd April 2008.
(b) Details of DD/Cheque paid as advance	Ch. No. 359715 dated 30.06.2008 drawn on IDBI Bank Tirupur Branch of Rs. 10,00,000/-

We hope that the above information is in order and kindly do the needful to grant us the extension of IEM as requested at your earliest & oblige.

Thanking you.

Yours faithfully,

Sd/-
(Shri. S.D. Gurav)
Chief Executive Officer

149. In so far as purchase of land is concerned, it is stated that they have purchased 77.17 acres of land. Therefore, it obvious that if at all purchased, they should have produced before this Court They have produced the sale deeds what they are having as on 21.06.2010. If really they

were purchased, the sale deeds in respect of the entire land, in spite of sufficient opportunity being given by this Court in the course of hearing, when they have produced other documents and the sale deeds are yet to see the light of the day. In respect of placement of firm order of plant and machinery, they referred to the photocopy of the agreement. It has been already discussed at length. No firm order has been placed was produced before this Court as on 21.06.2010 which is the position even to this day. However, they gave the particulars regarding payment of Cheque No. 68908 dated 15.05.2008. Except the cheque No. and date, nothing is produced on record to show what is the amount paid under the said cheque. The said amount is conspicuously missing. That apart, that is a cheque which is said to have been issued to Bank of India where in the reply to the show cause notice, they have stated that the term loan facility is made available by Indian Overseas Bank and thus, Bank of India do not find a reference at all. Even before the Court, they were unable to furnish the amount of the said cheque and proof for payment of the said amount. They have also referred to a copy of the letter placing the order for boiling house to M/s. Kay Bouvet Engineering (P) Ltd having been submitted to the authorities. No such copy of the letter is produced before this Court. In so far as commencement of the Civil Work is concerned, they rely on the agreement with Shree Sabari Constructions dated 3rd April 2008. We have discussed at length about the validity of the said agreement and the particulars of the cheque makes it clear that the payment is made on 30.06.2008 that is subsequent to the expiry of two years period and the said payment is made through IDBI Bank. Tirupur Branch which is not the Bank which is approached by M/s. Shivashakti Sugars Limited for financial assistance to set up a sugar factory at Saudatti Village. Thereafter, M/s. Shivashakti Sugars Limited addressed a letter to the Director (Cost). Government of India. Ministry of Consumer Affairs, on 22.07.2010 setting out the steps they have taken for setting up the industry. They again reiterated that they have purchased 77.17 acres of land and registered in the name of Shivashakti Sugars and the copies of the sale deed are already submitted to the Director (Cost) along with their letter dated 21.6.2010. Even as on 22.07.2010, they are still ascertaining for placement of boiler, turbines and mills, the major machinery's required for the sugar factory. Very interestingly, they have stated that without waiting for sanction of loan by banks, they have invested Rs. 10 crores so far. As is clear from the material on record that even as on 22.07.2010. Banks had not sanctioned the finance for setting up of sugar factory at Saudatti Village, The documents on which they rely on points out that no loan facility was obtained for setting up of a sugar factory at Saudatti Village. Therefore, it is clear that even as on 22.07.2010, no loan had been sanctioned for setting up of a sugar factory and they have spent upto Rs. 10 crores on their own. In the documents produced, it was contended that the Civil Works is entrusted to Sabari Constructions. Coimatore and payment of Rs. 10,00,000/- was made on 30.06.2008. But in this letter, it is stated that for construction of building for sugar factory, they have made an agreement with M/s. Pratibha Constructions Ltd. It was further contended that 10% of the civil works are over and further works are under progress i.e. as on 22.07.2010. Therefore, the agreement with the Sabari Constructions do not reflect the true state of affairs and as on 22.07.2010. only 10% of the civil work was over which clearly demonstrate that no civil work had been taken before the expiry of two years period as falsely contended by them in their quarterly report. Therefore, this letter unequivocally justifies the findings, which we have recorded above on appreciation of material placed on record. In fact, strangely, though letter refers to a letter from the Director (Cost). Ministry of Consumer Affairs, Food and PD. New Delhi No. 25 (2052)/2007-ST/184 dated 17th June 2010, we really do not find how the letter dated 17.06.2010 can find reference in letter dated 22.07.2010.

150. Strangely. the Chief Director (Sugar), Government of India, after referring to the correspondence proceeded to pass an order dated 18th August 2010. which reads as under:

No. 25 (1985)/07-ST/244

Government of India
Ministry of Consumer Affairs.
Food and Public Distribution,
Department of Food and Public Distribution.
(Directorate of Sugar)

Krishi Bhavan, New Delhi
Dated 18th August 2010.

ORDER

Sub: Setting up of sugar factory by M/s. Shivashakti Sugars Ltd. at village Saudatti, Raibag Taluka, District Belgaum, Karnataka - reg.

Whereas, the sugar factory of M/s. Shivashakti Sugars Limited, (hereinafter referred to in short as M/s. SSL) was taken on record as a “New Sugar Factory” as provided in Explanation 2 to Clause 6A of Sugarcane (Control) (Amendment) Order, 2006 vide Directorate of Sugar’s order dated 15.04.2008 in reference to the IEM No. 3080/SIA/IMO/2006 dated 08.06.2006.

2. *Whereas. Clause 6C of the Sugarcane (Control) (Amendment) Order, 2006 provides that the time limit for taking effective steps would be two years and commercial production should commence within four years with effect from the date of filing of the IEM with the Central Government failing which the IEM shall stand derecognized as far as provision of the Sugarcane (Control) Order, 1966 are concerned and the Performance Guarantee of Rupees one crore shall be forfeited. However, the proviso below Clause 6C authorizes the Chief Director (Sugar), Department of Food and Public Distribution’. Ministry of Consumer Affairs. Food and Public Distribution to given extension of one year not exceeding six months at a time, for implementing the IEM and commencement of commercial production on the recommendation of the concerned State Government:*
3. *Whereas, the Government of Karnataka vide letter dated 09.03.2010 recommended the case of M/s. SSL for grant of extension for six months for implementing the IEM and commencement of commercial production:*
4. *Whereas, a Show Cause notice was issued to M/s. SSL on 27.04.2010 directing them to explain as to why they did not take effective steps within the stipulated time:*
5. *Whereas. M/s. SSL submitted detailed reply vide their letters dated 06.05.2010 (received on 26.05.2010). 21.06.2010 and 22.07.2010:*
6. *Whereas, the explanation of the M/s. SSL has been considered and found satisfactory: and*
7. *Now, therefore I R.P. Bhagria, Chief Director (Sugar), Department of Food and Public Distribution, in exercise of the powers conferred by Clause 6C of the Sugarcane Control)*

(Amendment) Order, 2006 drop the Show-Cause notice dated 27.04.2010 and grant extension of time for six months with effect from 07.06.2008 to implement the IEM No. 3080/SIA/IMO/2006 dated 08.06.2006 and commence commercial production thereof by 07.12.2010 failing which the said Performance Guarantee shall be forfeited. Further. M/s. SSL are directed to send the progress report with regard to implementation of the aforesaid IEM to this Department on quarterly basis in the prescribed proforma as enclosed with Order dated 15.04.2008.

*Sd/-
(R.P. Bhagira)
Chief Director (Sugar)*

M/s. Shivashakti Sugars Limited

*Mayoor Chitra Mandir Road,
At Post Ankali Raibag Taluka,
District - Belgaum,
Karnataka.*

151. A reading of the order makes it clear that they were satisfied with the explanation offered by M/s. Shivashakti Sugars Limited and in exercise of powers conferred by Clause 6C of the Sugarcane (Control) (Amendment) Order. 2006 dropped the show cause notice dated 27.04.2010 and granted extension of time for six months with effect from 07.06.2008 to implement the IEM dated 08.06.2006 and commercial production thereof by 07.12.2010 failing which the said Performance Guarantee shall be forfeited. Further. M/s. SSL was also directed to send the progress report with regard to implementation of the aforesaid IEM to this Department on quarterly basis in the prescribed proforma.
152. The Shivashakti Sugars could not implement the IEM within the said six months period. Again, Government of Karnataka on 16.11.2010 made a recommendation for further extension of time, which reads as under:

*GOVERNMENT OF KARNATAKA
(Commissioner for Cane Development
and Director of Sugar)*

No. DSK/DEV/57/2006-07

*Office of the
Commissioner for Cane Development
and Director of Sugar. Bangalore.*

No. DSK/DEV/57/2006-07

Date: 16/11/2010

*The Secretary to Government,
Commerce & Industries Department,
Vikasa Soudha Bangalore.*

Sir,

Sub: Shivashakti Sugars Ltd.-New Sugar unit at Saudatti Village of Raibag Taluk. Belgaum District-Recommendation for extension of time-reg.

- Ref:*
1. Letter dated 27.1.2010 of M/s. Shivashakti Sugars Limited
 2. IEM No. 3080/SIA/IMO/2006 dated 8.6.2006
 3. Letter No. CI/41/SGF/2010 dated 9.3.2010
 4. Letter No. CI/245/SGF/06 dated 23.6.2007
 5. Letter No. CI/245/SGF/06 dated 4.8.2007
 6. Letter dated 9.11.2010 of M/s. Shivashakti Sugars Ltd.,

M/s. Shivashakti Sugars Ltd., a new sugar unit at Saundatti Village of Raibag Taluk, Belgaum District vide reference (6) above have requested for 2nd extension of time for another six months from 8.6.2010 for implementing the IEM. They have obtained IEM on 8.6.2006 vide reference (2) above. As per the Sugarcane (Control) Amendment Order, 2006, Clause 6-A. Explanation-4. the following effective steps should be taken by the concerned persons to implement the IEM for setting up of sugar factory.

- a) Purchase of required land in the name of the factory.
- b) Placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers.
- c) Commencement of Civil work and construction of building for the factory.
- d) Sanction of requisite term loan from banks or financial institutions.
- e) Any other steps prescribed by the Central Govt. in this regard through a notification.

Cause 6-C reads as follows:

The stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filing of IEM with the Central Govt. failing which the IEM shall stand de-recognized as far as provisions of the Sugarcane (Control) Order are concerned and the performance guarantee shall be forfeited:

Provided that Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution on the recommendation of the concerned State Government may give extension of one year not exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.

The Government of Karnataka has recommended to Government of India vide reference (3) above for extension of time for another six months. So far extension letter jam Government of India has not been received. M/s. Shivashakti Sugars has again requested for 2nd extension.

M/s. Shivashakti Sugars Ltd., have reported that they have taken most of the effective steps mentioned in para above (copy enclosed).

Since M/s. Shivashakti Sugars Ltd. has reported that they have already taken most of the effective steps like purchase of land, placement of order for plant and machinery etc., it is requested to kindly recommend the case of M/s. Shivashakti Sugars Ltd., Saundatti Village, Raibag Taluk. Belgaum District to Government of India for extension to time by another six months from 8.12.2010 for implementing the IEM and commence commercial production thereof.

The Government of Karnataka has already given in principle approval and cane area for this unit vide order cited at reference (4) and (5) above respectively.

Meanwhile. M/s. Renuka Sugars Ltd., has filed a writ petition against Government of India and others in W.P. No. 64254/2010 (GM) with a prayer to stay the operation and exhibition of IEM dated 19.10.2007. The matter is pending before the Hon'ble High Court of Karnataka. Circuit Bench. Dharwad (copy enclosed).

Copy of the letter received from the factory is enclosed.

Yours faithfully.

Sd/-

**Commissioner for cane Development
and Director of Sugar.**

Copy to M/s. Shivashakti Sugars Ltd., #624. 11th Main. HAL 2nd Stage. Indiranagar, Bangalore-38.

Sd/-

**Commissioner for cane Development
and Director of Sugar.**

153. Acting on the said recommendation, fully knowing that the matter is pending before the Court, the 2nd extension of time as sought for was granted as per Annexure-R71 dated 1st December 2010. The same reads as under:

No. 25 (1985)/07-SST/412

Government of India
*Ministry of Consumer Affairs. Food & Public
Distribution
Department of Good and Public Distribution
(Directorate of Sugar)*

*Krishi Bhavan, New Delhi
Dated 1st December, 2010.*

ORDER

Subject : Setting up of sugar factory by M/s Shivashakti Sugars Ltd. at village Soundatti, Taluka-Raibag, District Belgaum. Karnataka - reg.

Whereas, the proposed sugar factory of M/s Shivashakti Sugars Ltd. (hereinafter referred to in shot as M/s SSL) was taken on record as a "New Sugar Factory" as provided in Explanation 2 to Clause 6A of the Sugarcane (Control) Order, 1966 vide Order dated 15.04.2008 in reference to the IEM No. 3080/SIA/IMO/2006 dated 08.06.2006 subsequently amended vide Amendment No. 1 dated 10.10.2007.

- 2. Whereas. Clause 6C and 6D of the Sugarcane (Control) (Amendment) Order, 2006, provide that the time limit for taking effective steps would be two years and commercial production should commence within four years with effect from the date of filing the IEM with the Central Government failing which the said performance Guarantee shall be forfeited. However, the proviso below Clause 6C authorizes the Chief Director (Sugar), Department of Food and Public Distribution. Ministry of Consumer Affairs, Food and Public Distribution to give extension of one year not exceeding six months at a time, for implementing the IEM and commencement of commercial production on the recommendation of the concerned State Government.*
- 3. Whereas, M/s SSL, on the recommendation of Government of Karnataka, was granted 1st extension of time for six months to implement the above said and commence commercial production thereof by 07.12.2010.*
- 4. Whereas, the Government of Karnataka vide letter No. CI 212 SGF 2010 dated 19.11.2010 has recommended 2^{ns} extension of time for a period of six months to implement the IEM and commencement of commercial production. It is mentioned therein that the Commissioner for Cane Development and Director of Sugar has informed the State Government that M/s. SSL have taken most of the effective steps like (I) Purchase of land (ii) Placement of plant and machinery etc.*
 - 4.1 Whereas. M/s. Renuka Sugars Ltd, has filed a Writ Petition No. 65454/2010 (GM) against the UOI and Ors. in the Circuit Bench of Hon'ble High Court of Karnataka at Dharwad praying, inter-alia, to declare that IEM dated 08.06.2006 as amended on 19.10.2007 has stood to be lapsed and derecognized at law.*
- 5. Now, therefore. I, R.P. Bhagria, Chief Director (Sugar) in view of the recommendation of the Government of Karnataka and in exercise of powers conferred by Clause 6C of the Sugarcane (Control) Order, 1966 accede to the request of M/s SSL and grant further extension of time for six months IE Me., upto 07.06.2011 to implement the above said IEM and commence the commercial production thereof.*

This Order is subject to outcome of Writ Petition No. 65454/2010 pending before the High Court of Karnataka.

(R.P. Bhagira)
Chief Director (Sugar)

*M/s. Shivshakti Sugars Ltd.
Maurya Chitra Mandir, Ankali Taluka - Chikod.
District - Belgaum, Karnataka*

154. The W.P. No. 64254/2010 was filed on 17.06.2010. Whereas W.P. Nos. 66903-907/2010 & 66926-935/10 and W.P. Nos. 66920/2010 & 66972-990/10 were filed on 14.09.2010 and W.P. No. 37143/2010 was filed on 26.11.2010.
155. Therefore, it is clear that the 1st extension of time which is granted on 18.08.2010 is subsequent to the filing of the writ petition in W.P. No. 64254/2010. Whereas, the nd extension of time was passed during the pendency of all these writ petitions.
156. It is in this context. Sri. Vijayashekar, learned Senior Counsel submitted that once the authorities have passed an order extending the time, a presumption could be drawn that they have applied their mind and the order of extension is in accordance with law and all factors which need to be taken is taken note off and the very extension is a proof that all legal requirement is met and the Court in its power of judicial review cannot go into these facts. In support of their contention, they relied on the judgment of the Apex Court in the case of the Assistant Collector of Customs and Superintendent. Preventive Service Customs. Calcutta and Ors. v. Charan Das Malhotra reported in MANU/SC/0605/1971 : AIR 1972 SC 689. In the said judgment it is pointed out that the enquiry to be held by the Collector has to be on facts i.e. material placed before him. Therefore, if the material on record do not constitute a sufficient cause and an order is passed without taking into consideration the said material placed on record, it would be a case of a non-exercise of power which is vested in law. No doubt, the act confers power for extension of time. If any authority exercises such power bonafide on being satisfaction about the legal requirements, certainly, the courts declined to interfere with such orders. But if the authority which is vested with the said power do not exercise the power in accordance with law ignores the undisputed facts and then, passes an order, it would be a case of perverse exercise of power which calls for judicial interference because the power to extend time cannot be exercised arbitrarily. It has to be exercised in accordance with law. It should satisfy the test of Article 14 of the Constitution. For exercise of that power as said in the aforesaid judgment, it is not the satisfaction of the authority but it should be based on record. When the power is conferred to extend the time before the expiry of stipulated expired, such a power cannot be exercised after the expiry of the stipulated period. If even in such cases, the power is exercised, it is in excess of jurisdiction which is vested in such authority under law. In this contention, several judgments were referred to which are as under:

Mandatory or directory: in MANU/SC/0061/1982 : AIR 1983 SC 303, in the case of Dalchand v. Municipal Corporation. Bhopal and Anr., the Apex Court has led the following test:

There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important The object of the particular provision must be considered. The link between the two is most important The weighing of the consequence of holding a provision to be mandatory or directory is vital and more often that not determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular

provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done is not the prescription of a period of limitation with painful consequences if the act is not done within that period. Rule 9(j) of the Prevention of Food Adulteration Act as it then stood, merely instructed the Food Inspector to send by Registered post copy of the Public Analysts Report to the person from whom the sample was taken within 10 days of the receipt of the report. Quite obviously the period of 10 days was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued. The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the report of the Public Analyst, for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analysts Report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for, complaint as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint I am clearly of the view that Rule 90 of the Prevention of Food Adulteration Rules was directory and not mandatory.

157. What is substantial compliance: the Apex Court in the case of the Commercial of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors., explaining the meaning of the substantial compliance has held as under:

Para 24: The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential.

158. When an extension of time after the expiry of the period stipulated under law, the Apex Court in the case of *The Assistant Collector of Customs and Superintendent Preventive Service Customs, Calcutta and Ors. v. Charan Das Malhotra* MANU/SC/0605/1971 : AIR 1972 SC 689 held as under:

*Para 13. The question, therefore, is as to the nature of such a function and power entrusted to and conferred on the Collector by the proviso. It will be noticed that whereas Sub-section (1) of Section 110 uses the expression "reason to believe" for enabling a Customs officer to seize goods, the proviso to Sub-section (2) uses the expression "sufficient cause being shown": It would seem that Sub-section (1) does not contemplate an inquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are reasons to believe that the goods are liable to confiscation by reason of their: illegal importation Even so, such satisfaction, as laid down in *Narayanappa v. Commissioner of Income Tax, Bangalore* MANU/SC/0124/1966 : 63 ITR 219 : AIR 1967 SC 523, is not absolutely subjective inasmuch as the reasons for his belief have to be relevant and not extraneous, It is clear that the legislature was not prepared to use the same language while giving power to the Collector to extend time and deliberately used the expression "sufficient cause being shown". The point is why should the legislature have used such a different expression while enacting the proviso if its intention was to confer power which would depend on a mere subjective satisfaction as to the cause for extension. The words "sufficient cause being shown" must mean that the Collector must determine on materials placed before him that they warrant extension of time, Where an order is made in bona fide exercise of power and within the provisions of the Act which confers such power, the order undoubtedly is immune from interference by a Court of law, and therefore, the adequacy of the cause shown may not be ground for such interference. But there can be no doubt at the same time that the inquiry to be held by the Collector has to be on facts, i.e., materials placed before him. There is therefore no question in such cases of the subjective satisfaction of the Collector, for what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time.*

159. The Apex Court in the case of *Mahanth Ram Das v. Ganga Das* reported in MANU/SC/0027/1961 : AIR 1961 SC 882 held as under:

Para 5: The case is an unfortunate and unusual one. The application for extension of time was made before the time fixed by the High Court for payment of deficit court fee had actually run out. That application appears not to have been considered at all in view of the peremptory order which had been passed earlier by the Division Bench hearing the appeal, mainly because on the date of the hearing of the petition for extension of time, the period had expired. The short question is whether the High Court in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment If the Court had considered the application and rejected it on merits, other considerations might have arisen: but the High Court in the order quoted, went by the letter of the original order under which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and Section 149 is equally liberal A fortiori, those sections could be invoked by the applicant when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been

considered in dealing with it even on July 13, 1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from July 8, 1954. How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that if the Appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed. We need cite only one such case, and that is Lachmi Narain Marwari v. Balmakund Marwari, ILR 4 Pat 61:(AIR 1924 PC 198. No doubt, as observed by Lord Phillimore, we do not wish to place an impediment in the way of Courts in enforcing prompt obedience and avoidance of delay, any more than did the Privy Council. But we are of opinion that in this case the Court could have exercised its powers first on July 13, 1954, when the petition filed within time was before it and again under the exercise of its inherent powers, when the two petitions under Section 151 of the Code of Civil Procedure were filed. If the High Court had felt disposed to take action on any of these occasions Sections 148 and 149 would have clothed them with ample power to do justice to a litigant for whom it entertained considerable sympathy, but to whose aid it erroneously felt unable to come.

160. The Calcutta High Court in the case of Lila Deb Chowdhury and Ors. v. State of West Bengal and Ors. (2002) 1 CALLT 278 (HC) held if there is no express legislative intent in the amendment effected to the Land Acquisition Act, 1894 to revive an acquisition notice which stood lapsed by reason of the mandate contained in Section 7A of the Act. No requisition order could be issued after the lapse of time. They proceeded to held that:

By reason of the acquisition notice becoming then void, in the absence of an appropriate mandate of the legislature, the requisition, which has come to an end by reason of the selfsame notice, will not revive. It is to be kept in mind that the Land Acquisition Act, 1894 does not authorise requisition, it by reason of the amendment only authorise acquisition of land which has already been requisitioned in accordance with the authority of Law.

161. The Andhra Pradesh High Court in the case of Mohd. Safdar Shareef (died) per L. Rs. and Ors. v. Mohammed Ali (died) per L.R. MANU/AP/0288/1993 : 1993 (1) ALT 522 at Para 10 explaining the meaning of the word abatement held as under:

The meaning of the word abate' as per Law Lexicon of Venkataramaiya's, is "to throw down, to beat down, destroy, quash: to do away with: to put an end to, to nullity, to make void". In view of this meaning, the appeal which has abated by operation of law, cannot be revived and the decree which has become a nullity being decree against a dead person, cannot also be revived. Therefore, the inescapable result of the above discussion is that the appeal before the learned single Judge has become abated and the decree passed by him is a nullity.

162. The Calcutta High Court in the case of Achintya Ghosh v. State of West Bengal and Ors. reported in MANU/WB/0253/2007 : 2007 (4) CHN 705 dealing with the question of extension of time under the Land Acquisition Act held “law is well-settled to the effect that result flowing from a statutory provision is never an evil and Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation: whether the Court likes the result or not the statute has to be given effect to.

Further, it held as under:

Since the Petitioner had not commenced construction within two years, the building permit by operation of law had lapsed and the same could not have been given afresh lease of life by an order passed by the Executive Engineer. Any action of a public authority which is palpably contrary to the provisions of law cannot vest a citizen with an enforceable right. The said order for all intents and purposes is non est and is declared so.

163. The Apex Court in the case of State of Karnataka v. Shankara Textiles Mills Limited 1994 INDLAW SC 2100 dealing with the question where a specific order of conversion is necessary to utilise an agricultural land which for all intended and purpose is situated in adopted area and used for non-agricultural purpose held as under:

Para 7: The obvious purpose of this section is to prevent indiscriminate conversion of agricultural land for non-agricultural use and to regulate and control the conversion of agricultural land into non-agricultural land. Section 83 of that Act provides for different rates of assessment for agricultural and non-agricultural land. That provision strengthens the presumption that agricultural land is not to be used, as per the holder's sweet will for nonagricultural purposes. This is also clear from the absence of any provision under that Act requiring permission to convert non-agricultural land into agricultural land. In a country like ours, where the source of livelihood of more than 70 per cent of the population, is agriculture, the restriction placed by the Revenue Act is quite understandable. Such provisions and restrictions are found in the Revenue Acts of all the States in the country. The provision has therefore, to be construed as mandatory and given effect to as such.

164. The Apex Court in the case of M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Ors. reported in MANU/SC/0999/1999 : (1999) 6 SCC 464 dealing with judicial review on administrative action, which is illegal in contravention of the prescribed procedure, unreasonable or irrational or malafide results in bad governments and sets bad example and the Court can interfere in such cases, held at para 59 as under:

Para 59: When we keep in view the principles laid by this Court in its various judgments and which we have noticed above, it has to be held that the agreement dated November 4, 1993 is not a valid one. The agreement defies logic. It is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in fatuous manner in entering into such an agreement. It is a case where the High Court rightly interfered in exercise of its powers of judicial review keeping in view the principles laid by this Court in Tata Cellular v. Union of India. Every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is

permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. On the principle of good governance reference was made to a decision of Division Bench of Bombay High Court in State of Bombay v. Laxmidas Ranchhoddas and Anr. AIR 1952 Bom 475 (Para 12). It was submitted that bad governance sets a bad example. That is what exactly happened in the present case.

165. The Apex Court in the case of Pleasant Stay Hotel v. Palani Hills Conservation Council and Ors. MANU/SC/0793/1995 : 1995 (6) SCC 127.139 observed as under:-

...acceptance thereof would mean giving judicial imprimatur to utter and flagrant breach of statutory provisions to which the Hotel resorted to in spite of repeated opportunities given and reminders issued to retrace their steps and any sympathy shown to the Hotel would, be wholly misplaced.

166. The Apex Court in the case of Cantonment Board, Jabalpur and Ors. v. S.N. Avasthi and other MANU/SC/1487/1995 : 1995 Supp. (4) SCC 595, 596 observed as under:

...construction made in contravention of law would not be a premium to extend equity so as to facilitate violation of the mandatory requirements of law.

167. The Apex Court in the case of Pratibha Cooperative Housing Society Ltd. And Anr. v. State of Maharashtra and Ors. (MANU/SC/0335/1991 : 1991 (3) SCC 341) held as under:

... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules regulations and by-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits.

168. The Apex Court in the case of Dr. G.N. Khajuria and Ors. v. Delhi Development Authority and Ors. reported in MANU/SC/0064/1996 : 1995 (5) SCC 762. observed as under:

... The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officer of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not however, have happened for two reasons.

169. From the aforesaid judgments, it is clear that a judicial review is permissible if the impugned action is against the law or in violation of the prescribed procedure or is unreasonable or irrational or malafide.

170. The statutory provisions confers such power for extension of time and prescribes that effective steps should be taken within two years tailing which the IEM shall stand de-recognised. In other words, the IEM shall stands de-recognised if effective steps are not taken within 2 years from the date of filing of IEM. The said de-recognition is by operation of law. After said legal effect, if an IEM is to be given life, there should be a specific provision empowering the authority to bring back to life of the dead IEM. Keeping in mind, the difficulties that an entrepreneur may face in keeping with these time stipulation, specific provision is provided

for extension of time. Therefore, necessary application for extension of time to extend the period statutorily prescribed is to be made before the expiry of time limit. When the statute specifically prescribes the consequences of not performing acts within the stipulated time, before such a legal consequence flow, the extension of time is to be granted. Once, the legal effect as prescribed under the statute takes place in the absence of a specific provision in the very same statute, the clock cannot be put back. That is precisely what the Director of Sugars in his show cause notice has pointed out to the Shivashakti sugars. That is the Shivashakti Sugars has not made a request for extension of time. The recommendation for extension of time has been made after the period prescribed for taking effective steps, the same has no value. Hence, they were asked to show cause as to why Performance Guarantee should not be forfeited. The State Government while making the recommendation has not kept in mind these legal requirements and they have recommended a case, which do not satisfy the legal requirement. On the contrary the contents of the very letter shows that the effective steps had not been taken within the stipulated time and legal requirements had not complied with. The extension of time arise only if effective steps as contemplated under the Statute is not taken within the two years, and extension is sought for, for such implementation. Now the extension request is made beyond one year period. Therefore, the authority had no jurisdiction to grant the extension, which it has granted. As is clear from the extension order, the extension is given after the expiry of two years. Therefore, the said extension is illegal and liable to be set aside. In fact, the extension is granted alter filing of the writ petition complaining to the Court that Shivashakti Sugars has not taken effective steps, their IEM stands de-recognised but still they are proceeding with the implementation of the project illegally contrary to law. In fact in the second recommendation, the pendency of these writ petitions proceedings also referred and ignoring the same, second extension of time is granted. When the authority had no power to grant extension i.e. alter expiry of 2 years period and even after expiry of one year period, after 2 years period and this extension are given during the pendency of these proceedings, it is a clear case of non-application of mind, abuse of authority which is vested in them, exercising of power, contrary to statutory provisions and illegal. In fact, it is void ab initio, non-est in the eye of law. In those circumstances, as these documents have come into existence subsequent to the filing of these writ petitions, it has no value in the eye of law and requires to be quashed and accordingly, it is quashed.

Maintainability of the writ petitions:

171. It was contended that the Petitioner in W.P. No. 64254/2010 is a rival in the business and therefore. he has no right to maintain the writ petition at all challenging any setting up of an industry by his rival. In support of the said contention, reliance is placed on the judgment of the Apex Court in the case of *The Nagar Rice and Flour Mills and Ors. v. N. Teekappa Gowda & Bros. and Ors.* MANU/SC/0453/1970 : AIR 1971 SC 246. The Apex Court dealing with the right of a competitor to challenge the establishment of a rice mill by another, held as under in paras 9 and 10:

9. *The Parliament has by the Rice Milling Industry (Regulation) Act. 1968. prescribed limitations that an existing rice mill shall carry on business only after obtaining a licence and if the rice mill is to be shifted from its existing location, previous permission*

of the Central Government shall be obtained. Permission for shifting their rice mill was obtained by the Appellants from the Director of Food & Civil Supplies. The Appellants had not started rice milling operations before the sanction of the Director of Food & Civil Supplies was obtained. Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the Respondents may raise against the grant of permission by the authority permitting the installation of machinery on a new site. The right to carry in business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i).

10. *Section 8(3)(c) is merely regulatory: if it is not complied with, the Appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the Appellants from exercising their right to carry on business, because of the default, nor can the rice-mill of the Appellants be regarded as a new rice mill Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The Appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the Respondents would have no locus standi for challenging the grant of the permission, because no right vested in the Respondents was infringed.*

172. The aforesaid judgment makes it clear that competition in the trade or business may be subject to certain restrictions as are permissible and are imposed by the state by a law enacted in the interest of the general public, but a person cannot claim Independently on such restriction, any other person shall not carry on business or trade so as to affect his trade or business. In that case, the Appellant had complied the statutory requirements for carrying Rice Milling operations in the building and new site and therefore, it was held, whether rival cannot question the setting up of a rice mill in accordance with law. that is not the position herein. The objections to raising of a sugar factory is because of the prohibition contained in the statute for establishment of a factory within 15 Kms. from the existing sugar factory. The Petitioner has taken the existing sugar factory on lease for a period of 30 years on a monthly rental of Rs. 130.00 crores. He has already paid Rs. 58 crores to the Government under the terms of the lease deed. He has to extend the sugar factory and also should invest the money in the industry as per the agreed terms. It is in that context, when yet another sugar factory is sought to be established within the prohibited area, he is approaching this Court. It is not a case where Petitioners are challenging their right on Shivashakti Sugar Ltd.. to set up an industry. Shivashakti Sugars has a fundamental right to set up an industry, but it is subject to the restrictions imposed under law. When the law prohibits establishment of a sugar factory within 15 kms. from the existing sugar factory, he cannot be heard to say that the Petitioner who is a rival in the business cannot maintain petition challenge as illegal action and therefore, on that ground, the petition cannot be rejected.

173. Secondly, it was contended, the petition is liable to be rejected on the ground of delay and laches. The argument is IEM was filed on 08.06.2006. At that point of time, this rival in the business was nowhere in the picture. He became a successful bidder and a lease deed came to be executed only on 16.10.2008. by which time, nearly two years has lapsed and therefore, he cannot file petition in 2010. on 17.06.2010 challenging the setting up of the factory.
174. We have also discussed about how IEM filed on 08.06.2006 has spent itself. It was not tiled within the time. We have also pointed out how for not taking effective steps within two years from the date of filing of the IEM. the IEM stood derecognised. Therefore, on the day when he took out the sugar factory on lease there was no IEM in existence. However, his interest is affected only when Government made recommendation for extending the period for implementation of the IEM on 9.3.2010. This petition is filed on 17.6.2010. In fact extension is granted on 18.08.2010 after the filing of the writ petition. In the light of these undisputed facts, it cannot be said that this petition is liable to be dismissed on the ground of delay and laches.
175. In so far as other two writ petitions filed by the shareholders of the societies are concerned, it was contended that, they have no independent right to maintain the writ petition when the society itself has not chosen to file the writ petition. In support of the said contention, the judgment of the Supreme court in the case of Daman Singh and Ors. v. State of Punjab and Ors. MANU/SC/0392/1985 : 1985 (2) SCC 670. which reads as under:
- Once a person becomes a member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So if the statute which authorises compulsory amalgamation of cooperative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members. That is why Section 13(9)(a) provides for the issue of notice to the societies and not to individual members. Section 13(9)(b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a cooperative society, in our opinion, is opposed to the very status of a cooperative society as a body corporate and is, therefore, unnecessary.*
176. The said observation came to be made as is clear from the facts of the case that, in a proceeding for amalgamation of the society the law provides for notice to the society and not to its members. When the members complain that principles of natural justice is violated, the Apex Court rejected the said contention by holding that, once a person becomes a member of the co-operative society, he loses his individuality and he has no independent right except those given to him by the statute and the bye-laws. That judgment has no application to the facts of this case as in law. there is no provision in a co-operative society to give a No Objection Certificate to another company or a society to set up a sugar factory within the prohibited area. In fact, such action on the part of the Managing Director or persons who are in management is against the interest of the society and its members. In fact, in so far as Raibagh Sugar Factory is concerned, it was at that relevant point of time under the control of the official from the co-operative society. In fact, the material on record shows, the Managing Director was removed

on the ground of misappropriation of funds. If such persons had issued No Objection Certificate, in the absence of any statutory provision, it is against the interest of the society, members of the co-operative society who are really affected has a right to challenge the action of setting up an industry contrary to the statutory provisions. The said act is not inconsistent with the interest of the society. on the contrary when the persons incharge of society fails to protect me interest of the society and its members, have every right to initiate legal proceedings to protect the interest of the society. On that ground it cannot be said the petiton filed by them is not maintainable.

177. It was contended, all these Petitioners who have preferred this petition are members of the society are instigated by the Renuka Sugars, rival in the business and it is only when no interim orders were granted by the Circuit Bench at Dharwad in their petitions, they have engineered a public interest litigation and therefore, they submit, this petition lack bonafides.
178. If an interim order is not granted in writ petition. it does not mean that the court is pronouncing upon merits of the case. That is not the factor which is to be taken note of. In so far as the allegation that these people are before the court at the instigation of the rival in the business, as is clear from the record, the rival himself has filed a petition before this Court. In fact, he is lessee of Raibagh Sugar Factory. He has nothing to do with the Doodganga Sugar factory. In fact. Doodganga Sugar Factory also has preferred an independent writ petition. Therefore, we do not see any substance in any of the allegations to justify that, action of these Petitioners is not bonafides and it is actuated with malafides. As the shareholders of the society, fanners, cane growers, they contend that their interest is affected When a sugar factory is established within the prohibited area, certainly, the existing sugar factories and its members are the persons aggrieved. Therefore, on that score, these petitions cannot be dismissed.

PUBLIC INTEREST LITIGATION

179. In so far as the petition filed as public interest litigation is concerned, it was contended that there are no bonafides. The family members of some other Petitioners had initiated writ petitions which they have withdrawn. In fact, a suit is also filed which is pending. Those facts are suppressed in the writ petition and therefore, it is contended, the petition lacks bonafides.
180. It is in this context, several judgments of the Apex Court were relied upon. Therefore, now we shall consider the law as laid down by the Apex Court regarding how these Public Interest Litigations have to be considered by this Court.
181. In a recent judgment in the case of State of Uttaranchal v. Balwant Singh Chaufal and Ors. MANU/SC/0050/2010 : 2010 (3) SCC 402, the Supreme Court reviewed all the judgments of the Apex Court rendered the law and held as under at paragraphs 178 & 179:
178. *We must abundantly make it clear that we are not discouraging the public interest litigation in any manner; what we are trying to curb is its misuse and abuse. According to us, this is a very important branch and, in a large number of PIL petitions, significant directions have been given by the courts for improving ecology and environment and the directions helped in preservation of forests, wildlife, marine life, etc.. It is the bounden duty and obligation of the courts to encourage genuine bonafide PIL petitions and pass directions and orders in the public interest which are in consonance with the Constitution and the laws.*

179. *The public interest litigation, which has been in existence in our country for more than four decades, has a glorious record. This Court and the High Courts by their judicial creativity and craftsmanship have passed a number of directions in the larger public interest in consonance with the inherent spirits of the Constitution. The conditions of marginalised and vulnerable section of society have significantly improved on account of Courts' directions in PIL.*
182. In the aforesaid case, after holding that there was clear case of abuse of process of the court in the name of Public Interest Litigation, in order to curb its tendency effectively, they felt it was now become imperative to examine all connected issues of public interest litigation by authoritative judgment in the whole, that in future no such petition can be filed and are entertained by the court. They have set out the definition of a public interest litigation as understood in various countries. Thereafter they have traced the origin of public interest litigation, then, the evaluation of the public interest litigation in India is also clearly set out. Thereafter they actually divided Public Interest Litigation into three phases. Phase I deals with cases of the Supreme court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginased groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach the Supreme Court or High Courts. Phase 2 deals with cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc.. Phase 3 deals with the directions issued by the courts in maintaining the probity, transparency and integrity in governance. However, in this case we are not concerned with cases falling under phase 1 or phase 2. this case falls within Phase 3. In dealing with Transparency and Probity in Governance, they held as under in para 96:

In the 1990s, the Supreme Court expanded the ambit and scope of public interest litigation further. The High Courts also under Article 226 followed the Supreme Court and passed a number of judgments, orders or directions to unearth corruption and maintain probity and morality in the governance of the State. The probity in governance is a sine qua non for an efficient system of administration and for the developments of the country and an important requirement for ensuring probity in governance is the absence of corruption. This may broadly be called as the third phase of the public interest litigation.

183. They have referred to various judgments rendered by the Supreme Court under this head. They have also referred to evaluation of public interest litigation in other judicial systems, namely, Australia. UK, USA and South Africa. Bangladesh. Sri Lanka. Nepal and Pakistan. Thereafter they have also dealt with abuse of public interest litigation. Therefore, the question for consideration is the public interest litigation which is filed in this case falls within the ambit of abuse of public interest litigation or within the ambit of third phase as indicated earlier. As it was contended that it is a case of abuse of public interest litigation, let us deal with the said aspect as settled by the Apex Court in the aforesaid judgment. At para 143, it is observed as under:

Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out. created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when

genuine and bonafide public interest litigation should be discouraged. In our considered option. we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.

184. Then they have referred to various judgments of the Apex Court, in particular, they have referred to the judgment of the Apex Court in *Holicow Pictures (P) Ltd., v. Prem Chandra Mishra* reported in MANU/SC/8219/2007 : (2007) 14 SCC 281. The relevant portion is as under:

Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances to unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up. detenue expecting their release from the detention orders, etc.. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they have lose faith in the administration of our judicial system.

185. Again they relied on the following passage in the very same judgment which reads as under:

10. *“13. Public interest litigation is a weapon which as to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity - seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to he citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.*

186. After referring to these besides they have approved the criteria prescribed in the said judgment. To satisfy the bonafides of the public interest litigation, it has set out in para 15 of the aforesaid judgment. It reads as under:

The court has to satisfy about (a) the credentials of the applicant: (b) the prima facie correctness or nature of information given by him: (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.

187. If we apply the aforesaid criteria prescribed by the Apex court and approved in the aforesaid judgment. what the court has to see is the credential of the Petitioners. In the instant case, the Petitioners are the Public Interest Litigants residents of the locality, farmers and sugar cane growers. They are not opposed to setting up of any sugar factory. What they are interested is the sugar factories have to be set up in accordance with law governing such establishment. These villagers cannot be characterized as busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest. Interest for personal gain or private profit either of themselves or as a proxy of others or any other extraneous motivation or for clare of publicity.
188. The second requirement also have a bearing on the credential of the application is the correctness or nature of information given by them. The correctness and nature of information furnished by these Petitioners or Petitioners in private interest litigation are not disputed. No information given by them is shown to be incorrect. Therefore, they satisfy the second test.
189. The third test is, the information should show the gravity and seriousness involved. All the information furnished by the Petitioners in the Public Interest Litigation as well as the Petitioners in other cases, clearly demonstrates the contravention of law by the Shivashakti Sugars in establishment of a sugar factory at every stage. Therefore, it cannot be said that these writ petitions which are filed with oblique motives without any basis and there is any illegality in the actions of the Respondents. Therefore, the Petitioners do satisfy the test prescribed by the Apex Court in the aforesaid judgment.
190. Realizing this, an alternative submission was pressed into service i.e.. in the area there is availability of excess sugar cane because existing sugar factories are not able to purchase the sugar cane grown in the area, some other farmers are forced to sell the sugar cane to the sugar factories situated in the adjoining state of Maharashtra. The State also has contended that to mitigate the loss sustained by the sugarcane growers, they have to pay compensation as they could not find market for the sugarcane grown. As these factories are all set up keeping in mind the sugarcane growers as excess sugarcane is available in the area, none of the Petitioners are really affected by such establishment. Even if the establishment of the sugar factory is not strictly in conformity with the law and such establishment. It was also contended, the sugar factory is nearing completion and production would start. The sugarcane factory has complied substantially in the legal requirements and therefore, it was contended, in the facts of this case, no case is made out for judicial intervention.
191. This argument is quite attractive on the lace of it. But. a deeper examination of this argument, if accepted by this Court would result in negation of rule of law. Before going into the particulars, it is necessary to notice the latest judgment of the Constitution Bench of the Apex Court

explaining the meaning of substantial compliance which would weight with the courts from interfering with a project of this nature.

192. The Apex Court in the case of the Commercial of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors., in Civil Appeal Nos. 1878-1880/2004 with Civil Appeal No. 1631/2001 and Civil Appeal Nos. 568-569/2009 decided on 18th November 2010 elaborately dealt with the doctrine of substantial compliance. At Para 24. it held as under:

Para 24: The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it. but failed or faulted in some minor or inconsequent aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a dear statutory prerequisite which effectuates the object and the purpose of the statute has not been met Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

193. Keeping in mind this enunciation of law by the Apex Court as to the meaning of substantial compliance, we have to see what the Apex Court in Ojas Industries Ltd. v. Ough Sugar Mills and Ors. MANU/SC/1606/2007 : (2007) 4 SCC 723 case dealing with these amended provisions has held. At para 26 it held as under:

26. India has adopted the policy of economic reforms, free trade and liberalization in 1991. The Government has taken several steps in that direction. The Licence Raj has been dismantled in phases. Sugar industry is accordingly liberalized. It has been de-licensed The object being to increase the production of sugar. The object being to make the sugar industry competitive in the world. The object being continuous supply of sugarcane to the entrepreneurs proposing to set up new sugar plants of viable capacities. The object being disciplined procurement of sugarcane and sufficient supply of sugarcane to the mills (factories). This last object is the basis of Press Mote No. 12 dated 31.8.1998. If sugar mills are allowed to be set up in close proximity then the demand of sugarcane will be much higher than supply and in which event the existing sugar mills will be starved of the sugarcane and will become unviable: consequently, the farmers will also suffer.

At Para 30, it held as under:

- 30. The Sugarcane (Control) (Amendment) Order, 2006 inserts Clauses 6A-6E in Clause 6 of the Sugarcane (Control) Order, 1966. It retains the concept of “distance”. This concept of “distance” has got to be retained for economic reasons. This concept is based on*

demand and supply. This concept has to be retained because the resource, namely, sugarcane, is limited. Sugarcane is not an unlimited resource. "Distance" stands for available quantity of sugarcane to be supplied by the farmer to the sugar mill. On the other hand, filing of bank guarantee for Rs. 1 crore is only as a matter of proof of bona fides. An entrepreneur who has genuinely interested in setting up a sugar mill has to prove his bona fides by giving bank guarantee of Rs. 1 crore. Further, giving of bank guarantee is also a proof that the businessman has the financial ability to set up a sugar mill (factory). Therefore, giving of bank guarantee has nothing to do with the distance certificate.

At para 34, it held as under:

Before concluding on this issue we may reiterate that raising of resources and application of resources by a unit is different from the condition of distance. The concept of "distance" is different from the concept of "setting up of unit" in the sense that setting up of a unit is the main concern of the businessman whereas a concept of "distance" is an economic concept which has to be taken into account by the Government because it is the Government which has to frame economic policies and which has to take into account factors such as demand and supply.

194. Following the said judgment, the Supreme Court in the case of Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd. MANU/SC/1019/2010 : (2011) 1 SCC 640, at para 20, it held as under:

20. *In view of the judgment of this Court in Ojas Industries upholding the validity of the press note prescribing distance norms and subsequent amendments in 2006 in the sugarcane (Control) Order, 1966 and making it retrospective, the issues involved in the present case have been substantially decided. The challenge of the writ Petitioner in the High Court was based on the setting up of a sugar mill in its vicinity (though beyond 15 km away) because of the policy of delicensing prescribed under Notification dated 11-9-1998 issued in exercise of powers under Section 29-B(1) of the IDR Act, 1951. This Court has upheld the distance norms i.e. a minimum distance of 15 km between two mills retrospectively. The main thrust of the Petitioner's challenge to the delicensing policy thus disappears.*

195. Therefore, it is in this context, it was contended that the language employed in this amended provision is unambiguous. Therefore, the Court should interpret those provisions keeping in mind the object with which these provisions are inserted by way of an amendment and in support of the said contention, a reliance is placed on the passage from Maxwell on the Interpretation of Statutes -11th Edition. At page 221, where it has been held as under:

MODIFICATION OF THE LANGUAGE TO MEET THE INTENTION:

Where the language of a statute, in its ordinary meaning and grammatical construction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of

grammar, by giving an unusual meaning to particular words, or by rejecting them altogether. on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: "the canons of construction are not so rigid as to prevent a realistic solution.

196. There is absolutely no quarrel with the aforesaid proposition. The question is whether these amended provisions are unambiguous. They do not reflect the intention with which these provisions are enacted. We have already set out above that even before these statutory provisions, this distance criteria was specifically enforced prior to abolition of licence and also after abolition, it is clear from the press note referred to earlier. However, while interpreting these provisions, the Allahabad High Court held that they are directory and not mandatory. That put the Central Government in a state of fix. It is in that context as they wanted these criteria to be a mandatory criteria, on legal advice, they amended the Sugar Cane Control Order by incorporating these provisions and leaving statutory recognition to the policy decision of the Government. That is why the Apex Court in the Ojas's case has categorically held that these provisions do not state anything new. That was the position prior to the amendment. As the said position was not backed by a statutory provision, the statute was amended. It is retrospective as well as clarificatory in nature and therefore, the intention is clear. The said course is open to the Court only when the intention is not clear and the particulars among as used words, which do not reflect the intention of the legislature. Then, the action of Court interpreting it and reiterating the section arises. It is settled law that if the language employed in a statute is clear, unambiguous, the golden rule of interpretation says interprets the same literally. No question of interpretation arises when there is no ambiguity in the Statute. Therefore we do not see any substance in the said contention. In fact, the question whether those provisions are mandatory or directory should be gone into by the operation of law as laid down by the Apex Court in the case of Dalchand v. Municipal Corporation. Bhopal and Anr. MANU/SC/0061/1982 : AIR 1983 SC 303. Wherein, the Apex Court has led the following test:

There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to noncompliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to

promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done is not the prescription of a period of limitation with painful consequences if the act is not done within that period. Rule 9(j) of the Prevention of Food Adulteration Act as it then stood, merely instructed the Food Inspector to send by Registered post copy of the Public Analysts Report to the person from whom the sample was taken within 10 days of the receipt of the report Quite obviously the period of 10 days was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued. The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the report of the Public Analyst for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analysts Report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint. I am clearly of the view that Rule 9(j) of the Prevention of Food Adulteration Rules was directory and not mandatory.

197. Therefore, the test to be applied is the object with which the particular provision is enacted. In the instant case, as stated above, these provisions were incorporated because of a decision of a Allahabad High Court which said that this distance criteria is only directory and it is to get over the said judgment and to declare that it is a mandatory, these statutory provisions are enacted by way of an amendment. As held by the Apex Court in the aforesaid few judgments, it is the distance criteria. In so far as establishment of sugar factory is a very important criteria which is to be maintained especially after delicensing of a sugar industry in the interest of sugarcane growers as well as the owners of a sugar factory.

198. It is in the aforesaid background, it is necessary to see what are the allegations made by the Petitioner in Public Interest Litigation. After clearly setting out the various contravention of various enactments and accusing Respondents 1 to 17 colluding with Respondent No. 18, the promoter of Shivashakti Sugars at Para 11, it is stated as under:

The promoter of the Company Respondent No. 17 Mr. Prabhakar Kore, is a sitting Member of Parliament (Rajya Sabha) from Karnataka since 2008 and belongs to the ruling Bharatiya Janata Party in the State. He is using his political clout and exerting pressure upon the State authorities to allow him to proceed with the construction of the factory without following any of the provisions of the law. He is maliciously targeting villagers who openly express their resentment and opposition to the illegal activities and voices of people raised against construction of the factory without following the due procedure of law and the State authorities on the other hand are turning a deaf ear to the various representation made by the villagers to them. Respondent No. 17 is thus acting in a high handed manner and arm twisting the villagers and government officials alike in order to realize his selfish goals.

199. The Respondent No. 18 has tiled an affidavit traversing these allegations. In para 15 of the Statement of Objections, the allegations in para 11 are traversed. He has stated as under:

15. *This Respondent humbly submits that, Petitioner apparently in their desperate attempt to seek the relief, have made wild and unsubstantiated allegations which are not true and his Respondent hereby categorically denies the unfounded and wholly baseless allegations, made against him personally in para 11 of the writ petition. The allegations are reckless, without any basis and are defamatory in nature. Respondent-18 denies that: he has in any way committed any act, which is contrary to law, for the purposes of the construction of the 17th Respondent-Factory. At any rate, he has, at no point of time, used his office or his status as a Member of the Parliament belonging to Bharatiya Janatha Party, for the purposes of getting clearance by the State Authorities and, therefore, the said allegations are false and have been calculatedly made in order to prejudice the case in favour of the Petitioners. The fact that the allegations are false, can be demonstrated by the fact that, Respondent-18 became Rajya Sabha Member, sponsored by Bharatiya Janatha Party only in the year 2009. whereas, the Factory was conceived way back in the year 1996 and, all permissions including statutory clearance, were obtained much earlier to 2008. The Petitioners, without ascertaining any facts, nor without any basis, have made an allegation that Respondent-18 has used his position in order to get the clearance in their favour. Petitioners have not substantiated as to which of the orders are passed by which of the Authorities, under the influence or Respondent-18 for getting clearance. In the absence of the same, the petition requires to be rejected with exemplary costs.*

At Para 17. he has stated as under:

17. However, since such wild allegations have been made, Respondent-18 deems it necessary to place on record that he has done yeoman service to the cause of education and co-operative sector in the Northern part of Karnataka. He has been single handedly instrumental providing education from Kinder Garden to Post Graduation: and extending health care to the entire region. He was nominated as a Member of the Legislative Council for the services rendered by him in co-operative sector. He was earlier a Member of Rajya Sabha in the year 1990. In all years of his public life, he has maintained high standards and has never given cause for complaints in his discharge of duties. *It is false and misleading for the Petitioners to contend that this Respondent has exerted any political influences to violate the rule of law.*

200. In the light of these allegations and counter allegations, the material on record has to be seen.

Letter of intent was filed in the year 1996. As no effective steps were taken, it lapsed. IEM was filed on 08.06.2006, 10 years thereafter. The position was in nowhere better. As we have already held that as no effective steps were taken for 2 years from the date of filing of the IEM, the IEM should be de-recognised. It is only on 06.03.2009. then the Government made a recommendation for extension of time, things started moving and that is followed by two extension orders and other permissions which they have obtained.

201. It is on the record that in establishing the sugar factory, the land required is to be purchased in the name of the sugar factory. Except the 3 sale deeds, even to this day. sale deeds showing the acquisition of the land in the name of factory is not produced. What is purchased according to

the Respondent is an agricultural land. If the agricultural land is to be utilised for setting up of a factory, permission for change of land use is required as per Section 95(2) of the Karnataka Land Revenue Act. Till today, no such permission is taken and no such order is produced before us. To start an industry in a village, permission of the Village Panchayat is required as per Section 64 of the Gram Panchayat Act. In order to obtain licence, they are expected to produce the plan of the building in duplicate. The plan of building is neither produced before the Village Panchayat or before this Court showing construction is being put up. Therefore, there is a violation of Sections 64 and 66 of the Gram Panchayat Act and the Rules framed thereunder. Under Section 7 of the Factories Act, 1948 when a factory is to be established and the building is to be constructed, they have to obtain the approval of the building plan from the Factory Inspector and obtain requisite licence. Till today, no such plan or permission sought for or obtained at any rate produced before this Court. None of the governmental authorities have initiated action against the Company for violating these provisions as contemplated from putting up of a factory building in the agricultural land without permission. As it is clear from the IEM, the factory is to be set up in Saudatti Village and it is for that purpose they have obtained a no objection certificate from Karnataka State Pollution Control Board. Instead, such a No Objection Certificate is required before construction. From the material on record, it clarifies that the factory is constructed in Yadrav Village. Whereas, they have obtained No Objection Certificate for Saudatti Village and not for Yadrav Village. Therefore, from these substantiated facts on record, by producing relevant material, it is clear that things started moving only after 2009 and therefore, the allegations made by the Petitioners in the writ petitions cannot be said to be baseless or meritless. *res ipsa loquitur*.

JUSTIFICATION FOR INTERFERENCE

202. In the background of all these discussions, the larger question which this case throws open for consideration is, if an entrepreneur establishes an industry, without following the procedure prescribed under law, and in contravention of law governing such establishment the Government and its agencies instead of taking action against such illegal actions, aids and abets such illegal action under purported exercise of powers under statute. What is the remedy to a law abiding citizen of this country. Has he to be a silent spectator of such illegal activity. Does he have any right to move the Courts for enforcement of law and upholding the rule of law. What should be the approach of the courts, especially when High Court is approached under Article 226 of the Constitution of India, either by way of public interest litigation or as a private interest litigation.
203. The breach of a statutory duty created for the benefit of an individual or a class is a tortious act. In order to succeed in an action for damages for breach of statutory duty the Plaintiff must establish a breach of statutory obligation which, on the proper construction of the statute was intended to be a grant of civil liability to a class of persons of whom he is one. He must establish an injury or damage of a kind against which the statute was designed to give protection. The statutory authorities act for the public benefit in enforcing the law. Where they act in excess of the powers conferred by the Act, or abuse those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality or Village, the exercise of that right has been regulated in the interest

of the community residing within the limits of the Municipality or Village. If under the pretence of any authority which the law does give to the Municipality or Panchayat it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the Courts. If sanction is given to build by contravening a bye-law, the jurisdiction of the Courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. When that being so, if buildings are erected without permission and sanction of the plan, the said construction is *ex facie* illegal and cannot be permitted. An illegal construction materially affects the right to or enjoyment of the property by persons residing in the area. The authorities own a duty and obligation under the statute to see that such unauthorised constructions are not put up. The law is for the benefit of residents of the locality. The authorities act in aid of the statute. The rights of the residents in the area are invaded by an illegal construction. It is to be remembered that law is meant for orderliness in accordance with the requirements of the residents in a locality or village. If law is nullified by arbitrary acts in excess, and derogation of power or non exercise of power conferred on them, the courts owe a duty to the public to quash such orders, in order to maintain and uphold the rule of law. An excess of statutory power or no exercise of such power cannot be validated by acquiescence in or by the operation of an estoppel. The courts of equity would not permit the statute to be made an instrument of fraud. In a democracy wedded to the rule of law and governed by a written constitution, both the ruler and the ruled are governed by the rule of law. As the ruler expects the subjects to obey and observe the law, the ruler is also under an obligation to obey and observe the law. No one is above law. However, high one may be, law is above him.

204. The Government Policy as reflected in the Press Notes issued from time to time indicates the distance between two Sugar Factories was a primary concern. Gradually, from 40 kms it was reduced to 25 kms and from 25 kms it was reduced to 15 kms. While granting licence to start a new Sugar Mill, the Licencing Authority kept in mind this particular aspect and declined to grant licence, if this condition is not fulfilled. That is how the Government regulated the establishment of Sugar Factories at a particular distance which is based on public policy. When the Licence Raj came to be abolished, this primary concern as reflected in the Government policy found recognition by way of statutory provision. When there was no necessity for obtaining a licence to establish a Sugar Factory, if a person establishing a Sugar Factory within the aforesaid distances, there was no mechanism through which it could be controlled and regulated. Therefore the necessity for a statutory provision arose. Therefore Section 6-A was introduced by way of amendment which categorically states that no new Sugar Mill could be established within 15 kms from an existing Sugar Mill. Therefore, this insistence of a distance of 15 kms between two Sugar Mills is every much necessary in the interest of public at large, sugarcane growers and producers of sugar. Therefore, this legal requirement has to be interpreted keeping in mind the state of affairs which was prevailing prior to the said amended provision.
205. The object of licence was to enforce the rule of law. Instead of enforcing the law, when it was abused, in the name of licencee and permission, to set up an Industry, it was abolished in the interest of industrial growth of the Country, in public interest. What is dispensed with is the licence and permission and not the rule of law. With the abolition of Licence Raj, the entrepreneurs has to obey the rule of law, and establish industry in accordance with the law

governing that industry. Now they cannot abuse the law. taking advantage of the abolition of Licence. On the contrary, as there is no Government control by way of licence, the law governing the establishment of industry has to be strictly construed and enforced, as otherwise it would lead to lawlessness, and the public confidence in rule of law will be seriously affected. Then might become right. The persons who are wealthy, in power, or close to the corner of power, will rule the roost. Rule of law would become a casualty. Therefore, the role of courts assumes utmost importance, and that would be the last resort to the believers in rule of law.

206. The Apex Court in the case of Indian Council for Enviro-Legal Action v. Union of India and Ors. MANU/SC/1189/1996 : (1996) 5 SCC 281, though dealing with the environmental issues, has held as under:

26. *Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary.*

XXX

When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society.

207. In the background of the aforesaid discussion, when the violation of law is clearly established, when the Petitioners who have approached the Court have a right and when they establish a public wrong and when the Government and its agencies instead of enforcing the law and taking action against the violators aids and abets such violation by a positive action, the Courts cannot be silent spectators. In the society, where money, power, nearness counts, it is not easy for any honest, tax payer to rise his voice against the atrocities which these people commit and come to Court for upholding the rule of law. If persons who come to court risking their interest and establish in a court of law the violation of several provision of legislation in establishing of such an industry, their complaints cannot be thrown out on the ground of delay, laches and on other considerations. A public wrong where ail the possible laws have been violated and the State and its instrumentality's have not taken any action and taking advantage of the situation if construction are put up, money is invested and even Statutory Authorities have granted extension of time and permission ignoring the law and principles and when the mattes reached to Courts, the Courts cannot be just remain silent spectators. If that is permitted, it would render the statute to be a instrument of fraud. It is the duty of the Courts to take into consideration the totality of the circumstance and if the public wrong is substantiated from the material on record to the maximum extent, then it will be the duty to strike down such illegal action,

prevent further actions and also direct the authorities to take action against the violators of law. If there is a substantial compliance with the statutory provisions and every thing goes in accordance with law, in such circumstances, the Court in its equitable jurisdiction can throw away the petitions of the Petitioners on the ground of delay and laches or like terms.

- 208 It is unfortunate that the Central Government has laid down a sugar policy and was carefully monitoring them from time to time. The policy of the Central Government is reflected in the press note issued from time to time. When the Allahabad High Court held that the policy as evidenced in these press notes are directory in nature and set aside the action of the Central Government in preventing a factory being set up within the radius of 15 kms. the Central Government was not prepared to accept the said decision. They approached the Law Department to find a way out to enforce these distance criteria inspite of the judgment of Allahabad High Court. It is on the advice of the Legal Department, the Government made a statutory rule by amending the Sugarcane Control Order. This action of the Central Government was upheld by the Apex Court. Alter all these when it came to the enforcement of these government orders, in spite of the judicial pronouncement having now held it to be mandatory which is consistent view of the Central Government throughout have failed to give effect to these provisions. In the show cause notice issued to Shivashakti Sugars, they have clearly set out all these provisions. As on the date, there was a recommendation by the State Government for extension of time, which is referred to in the show cause notice. Further, they have made it very clear that the said recommendation has been made, after the stipulated period of two years because alter the expiry of two years period, if effective steps are taken, the IEM stands de-recognized. When the show cause notice was replied to by the Shivashakti Sugars giving particulars, they were not satisfied with the particulars furnished by them. Once again, they were called upon to furnish better particulars. Even after furnishing the better particulars, they were not satisfied with the furnished information. Even on the recommendation made by the State Government effective steps had not been taken. Unfortunately, the Central Government has exercised its powers on extension in a very casual manner without taking into consideration the relevant factors, without taking into consideration the fact in the first place that when there is clear violation of Clause 6B of the order. Even otherwise, IEM stood de-recognized because Shivashakti Sugars utterly failed to take effective steps within two years from the date of filing of IEM. No effective steps were taken. No extension of time sought for by party or by the Government and even the recommendation of the Government is alter the expiry of the two years period. This is not the way the authorities who is vested with the power to enforce these mandatory provisions should exercise these power. It has granted extension by mere looking into the recommendation of the Government without applying its mind and when the statutory requirements are not complied with and more over, when they have no jurisdiction to extend the said time as no request was made before the expiry of two years period. It is in this context, the Apex Court in the aforesaid judgment has opined that mere making of law is not sufficient, if there is no enforcement of law. it is better to not to make law, otherwise, there is no meaning in Rule of law. it is a fit case where the Central Government should take note off these facts how the persons who are entrusted with the responsibility of implementing these Sugarcane Control Order, who have been vested with the discretionary power of exercising for enlarging the time for implementing the project have been exercising powers and in the interest of

sugarcane growers/manufacturers and the public at large. Appropriate action should be initiated against these violators of law. Similarly if the State Government is the believer in the rule of law, it should take appropriate action against all the authorities who have not taken action against the violators of the law. If no such action is taken, the only inference that could be drawn is that the State is also a party to these violation and they are aiding and abetting all these illegal activities because of the reasons mentioned in the writ petition at paragraph 11 which fully stands substantiated.

209. In fact, a reliance was placed on the judgment of *Kissan Sahkari Chini Mills Ltd. v. Union of India and Ors.* passed by the Allahabad High Court where a sugar factory which is established in violation of the aforesaid provisions, was allowed to continue to operate. As it is clear from the facts of that case, production of the sugar factory had commenced on 30.10.2005 before these amended provisions came into force. It is in that context, in view of the earlier judgment of the Allahabad High Court holding that the distance criteria is only directory, the Allahabad High Court extended the said benefit and the said judgment has been affirmed by the Apex Court. As the facts of the case are totally different, that judgment has no applicable on the facts of the case.
210. In that view of the matter, in the instant case, we are satisfied in the first place that all the petitions both in the PIL as well as in private litigation, cannot be characterized as a frivolous petition. The Petitioners have established the public wrong from the undisputed document and therefore, they are entitled to all the reliefs as set out in the writ petitions. Hence, we pass the following:

ORDER

1. All the writ petitions are allowed.
2. The IEM filed on 08.06.2006 has spent itself for non-compliance of the requirement as mentioned in Clause 6B of the Sugar Cane (Control) (Amendment) Order, 2006.
3. Even otherwise. IEM filed on 08.06.2006 stands de-recognized as no effective steps were taken within a period of two years from the date of its filing.
4. The order of extension granted by the Central Government which is dated 18.08.2010 and 01.12.2010 are one without jurisdiction, void, ab initio, non-est in the eye of law as they had no power in first place to grant extension as the IEM stood derecognized and also on the ground of the same being in excess of the authority as being in contravention of these statutory provisions.
5. The Deputy Commissioner, Belgaum, the Village Panchayath of Saudatti Village and Yadrav Village and the jurisdictional Inspector of Factories are hereby directed to take appropriate action in accordance with law for violating the provisions of Gram Panchayath Act, 1993, Factories Act, 1948 and the Karnataka Land Revenue Act, 1964 and also the provisions of the Karnataka Land Reforms Act, 1961.

6. The Central Government shall take appropriate action against the authorities for exercising the power of extension in derogation of the spirit of the amended clauses of the Sugar (Control) Order.

In W.P. No. 66920/2010 & 66972-990/2010 on 18.10.2010, an interim order was passed to the effect that all steps to be taken by Shivashakti Sugars will be subject to the ultimate result of the writ petition.

Now the writ petition is allowed. All actions taken from the date of the interim order till today by the Shivashakti Sugars are invalidated and they shall not proceed further in the matter.

Misc. Writ No. 12188/2010 In W.P.37143/2010 for impleading is dismissed as having become infructuous.

Misc. Writ No. 2607/2011 in W.P. No. 66920/2010 & 66972-990/2010 for stay is dismissed as having become infructuous.

Misc. Writ No. 2647/2011 in W.P. No. 66920/2010 & 66972-990/2010 for amendment of the writ petition is allowed. The Petitioners to amend the writ petition.

Ordered accordingly.

Equivalent Citation: 2012(2)KarLJ111

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. No. 28015/2004 (BDA)

Decided On: 09.09.2011

**Appellants: Nal Layout Residents' Association No. 15, Nal Layout East End Main Road
4th T Block, Jayanagar Bangalore - 560041 Rep by Secy Sri. C. Hemanth Kumar and
Nal Employees Co-Operative Housing Society Limited, A Society Registered Under
The Provisions of Co-Operative Societies Act, 1959, With Their Office at National
Aerospace Laboratories Kodihalli, Airport Road Bangalore-560017 and
Represented Herein by Secretary P.G. Vykuntavasan**

Vs.

**Respondent: Bangalore Development Authority Kumara Park West Bangalore - 560020 by
Commissioner and Kashmiri Hindu Cultural Welfare Trust (R) 83/2, 1st Floor
Good Luck Building J.C. Road. Bangalore - 560002 by Managing Trustee**

Hon'ble Judges/Coram:

Hon'ble Mrs. Justice B.V. Nagarathna

Counsels:

For Appellant/Petitioner/Plaintiff: Sri Kesthur. N. Chendra Shekher, Adv.

For Respondents/Defendant: Sri U. Abdul Khader, Adv. for R1 and Sri. K.S. Nagaraj Rao,
Adv. for R2

Subject: Civil

Acts/Rules/Orders:

Bangalore Development Authority Act, 1976 ; Karnataka Parks, Play - Fields, Karnataka Parks, Play - Open Spaces (Preservation, Karnataka Parks, Play - Regulation) Act, Karnataka Parks, Play - 1985; Bangalore Development Authority (Allotment of Civic Amenity Sites) Act, 1976 - Section 2, Bangalore Development Authority (Allotment of Civic Amenity Sites) Act, 1976 - Section 38, Bangalore Development Authority (Allotment of Civic Amenity Sites) Act, 1976 - Section 38A; Karnataka Societies Registration Act, 1960 ; Karnataka Co-operative Societies Act, 1960 ; Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 2, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(1), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(2), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(3), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules,

1989 - Rules 3(4), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(5), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(6), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(7), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(8), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(9), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 3(10), Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 4, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 5, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 6, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 7, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 8, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 9, Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Rules 10

Disposition:

Application dismissed

Case Note:

Civil - Allotment - Sections 38-A, 2(bb) of Bangalore Development Authority (Allotment of Civic Amenity Sites) Act, 1976; Rule 3 (3) of Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 - Petitioners had assailed allotment of school and playground area in lay out formed by Second Petitioner and they had sought a further direction to Respondents to remove illegal construction being put up by second Respondent by amendment of writ petition - Petitioners had also sought for handing over physical possession of said site (CA site) which had been allotted by first Respondent-authority and a direction was sought to first Respondent-society to maintain Civic Amenity Site after taking possession of same from second Respondent by demolishing construction put up by second Respondent - Held, under Section 38-A of Act, discretion was given to Respondent-authority to lease, sell or transfer in any other manner any area reserved for civic amenities for purpose for which said area was reserved. If authority disposed of area reserved for public parks and playgrounds, civic amenities or for any other purpose, then such an action would be null and void - Allotment of a civic amenity site by exercising discretion by BDA in terms of Section 38-A of Act, was distinct from allotment of sites to be made by BDA by following procedure prescribed in Rule- 3 read with other rules - Allotment made by 1st Respondent-BDA in favour of 2nd Respondent was on basis of exercise of discretion under Section 38-A of Act - Authority that was, B.D.A had power to lease, sell or otherwise transfer any area reserved for civic amenities for purpose for which such area was reserved - If such an area was reserved for public park, playground and civic amenities or any other purpose and any allotment contrary to said reservation would be null and void - Civic amenity site had been reserved for purpose of school, playground - 2nd Respondent was a Public Welfare Trust established for purpose of developing, promoting, running educational institutions for purpose of public in general and also for promoting Kashmiri culture and cultural activities throughout India - Civic amenity site in question had been reserved for purpose of school; and playground - Object of such construction was to run various activities as stated in Trust Deed, which also include educational institutions and various other objects which were civic amenities as per Section 2(bb) of Act - Even lease made by 1st Respondent authority in so far as site in question

was concerned, was for school and playground - In view of objects of 2nd Respondent - Trust, definition of Civic Amenity and purpose for which site had been reserved, allotment made was in accordance with Section 38-A, Rule 3 (3) of Rules - There was sufficient area which was left vacant apart from built-up area in total area that, had been leased by BDA to 2nd Respondent - Even if school or any educational institution was run by 2nd Respondent in constructed portion, vacant portion of leased area could be utilised for playground purpose - If there was any violation of conditions of lease, then it was always open to 1st Respondent to resume land by cancelling lease - Allotment in instant case was in accordance with law - Same would not call for any interference - Dismissal of present Writ Petition would not come in way of Petitioners seeking an allotment having regard to provisions of Act and Rules made there under - Petition dismissed.

Industry: Cooperative Societies

ORDER

Hon'ble Mrs. Justice B.V. Nagarathna

1. In this writ petition, the petitioners, who are an association of residents and a house building co-operative society have assailed the allotment of school and playground area in the layout formed by National Aero Space Laboratories Employees House Building Co-operative Society Ltd., i.e., the second petitioner herein in Sy.Nos.50, 51 and 52 of Tavarekere Village of Bangalore South Taluk (Annexure-E) and they have sought a further direction to the respondents to remove the illegal construction being put up by the second respondent by amendment of the writ petition. The petitioners have also sought for handing over the physical possession of the said site (CA site) which has been allotted by the first respondent-authority and a direction is sought to the first respondent-society to maintain the Civic Amenity Site after taking possession of the same from the second respondent by demolishing the construction put up by the second respondent.
2. The petitioners have contended that the second respondent-co-operative society after purchase of various parcels of land has formed the layout which is now part of BTM Extension, after obtaining necessary sanctions and approval from the first respondent authorities as well as from the other authorities. After the formation of the layout, in terms of the conditions of the sanctioned plan, the second respondent relinquished certain areas to the first respondent-authority by a relinquishment deed dated 11.9.1996, a copy of which is produced as Annexure-D. It also contains the layout plan showing the CA site, which is surrendered to the first respondent-authority and which is marked in red colour borderline. The said area is demarcated as school and playground area. When the matter stood thus, the members of the first and second respondent bodies found that there was construction coming up on the said area which has been relinquished by the second petitioner. On making enquiries, they realised that a portion of the area has been allotted to the second respondent. The petitioners, thereafter obtained copies of the allotment order made to the second respondent by the first respondent and have also produced photographs and other documents which are annexed to the writ petition.
3. The grievance of the petitioner is that the allotment made in favour of the second respondent is not in accordance with the provisions of the Bangalore Development Authority Act, 1976 (hereinafter referred to as the Act") and the relevant Rules. It is also contended that the allotment is contrary to the Karnataka Parks, Play-Fields and Open Spaces (Preservation and Regulation)

Act, 1985, the petitioners have also contended that, had they known about the impugned allotment, they would have also sought for allotment in their favour so that the petitioners could have utilised the said area for the object for which the said area has been earmarked. Under the circumstances, the petitioners have assailed the allotment made by the first respondent-authority in favour of the second respondent-authority and have sought various other incidental reliefs referred to above.

4. In response to the writ petition, both the respondents have filed statement of objections.
5. The first respondent has filed statement of objections contending that the relinquishment made by the second petitioner is in accordance with law. When once the relinquishment of the sites, roads and parks are made in favour of the first respondent authority, the same would stand vested with it and the petitioner has no locus standi to question the allotment made in favour of any other entity that there is delay and laches on the part of the petitioner in challenging the allotment in the instant case. That there has been no violation of any provision of the Act or the Rules in the allotment made in favour of the second respondent by exercising power under Section 38A of the Act. The first respondent has made allotment to the second respondent-Trust which is established for the purpose of running educational institutions for the benefit of the public in general and also to serve the Kashmiris who are resident in Bangalore and who have been displaced from their state and so also to preserve Kashmiri culture. It is also stated that the petitioner has no right over the Civic Amenity Site which stands vested with the first respondent authority and which has been allotted to the second respondent in terms of the relevant provisions of the Act as well as the Rules. Under the circumstances, the first respondent has sought dismissal of the writ petition.
6. The second respondent has also filed statement of objections contending that the civic amenity site has been leased by the first respondent to second respondent in July 2002. Subsequently, the sanction of plan as well as approval of licence has been obtained and construction work is in progress. That the petitioners have filed this writ petition after a delay of over two years. The activities of the second respondent are in pursuance of the objects of the trust. That the allotment has been made pursuant to the Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989 read with Section 38A of the BDA Act, 1976 the meaning of civic amenity is given in Section 2(bb) of the Act which also includes educational institutions and also social and cultural activities being run on the said site. The object of the second respondent-trust also includes running of educational institutions and also social and cultural activities which are being run on the said site. The object of the second respondent-trust has been explained and it is stated that there is no merit in the writ petition and hence, the same has to be dismissed.
7. Initially this writ petition was heard by a learned Single Judge of this Court and the writ petition was dismissed by order dated 1.2.2005 and the petitioners filed W.A.No.2067/2005 which confirmed the order of the learned single judge and the said writ appeal was also dismissed on 12.7.2005 by the Division Bench of this court. The said orders were assailed by the petitioners in a Special Leave Petition which was converted into Civil Appeal No.5057/2006, which was disposed of on 27/28.11.2006 by the following order.

We are not satisfied with the two grounds on which the Writ Petition was dismissed. Firstly, when there is alleged violation of building law by the authority or by the allottee, the residents of the locality or the citizens who are adversely affected thereby will be definitely entitled to raise a grievance. Secondly, the delay as explained by the counsel for the appellant was that the appellant was not aware of any allotment order dated 18.5.2001 passed by the authority and when they came to know that there was some activity of construction on the plot earmarked for football ground in the plan map they immediately preferred Writ Petition before the High Court. The contention of the appellant in our view is reasonably sufficient to condone the delay and examine the Writ Petition on merit.

In the result, both orders of the learned single Judge and Division Bench of the High Court are hereby set aside. The Writ Petition No.28015/2004 and 41554/2004 are now restored to file. Learned Single Judge shall hear the parties and decide the Writ Petition on merit Appeal is disposed of in the above terms.

Stay granted by this Court will continue till the disposal of the Writ Petition.

8. By the said order, the Apex Court set aside the order of the learned Single Judge as well as that of the Division Bench of this court. The matter has been remanded back to this court for the purpose of deciding the same on merits. It is under those circumstances, this writ petition has been heard by this bench. At this stage itself, it would be relevant to mention that all contentions with regard to locus standi of the petitioner to file the writ petition and also delay in filing the writ petition have been rejected by the Apex Court. Therefore, the question that really arises for consideration would be with regard to the validity of the allotment made by the first respondent in favour of the second respondent. It is in that context I have heard the learned counsel for the petitioners and the respondents.
9. It is contended on behalf of the petitioners that the second petitioner has relinquished the roads, parks and other areas which are reserved as civic amenity sites to the first respondent by a relinquishment deed dated 11.9.1996. No doubt, when once the said relinquishment deed is executed, the said areas stand vested with the first respondent. However, the first respondent-authority cannot deal with the said areas contrary to the provisions of the Act and the Rules which apply to such areas. He submitted that in the plan sanctioned by the first respondent with regard to the formation of the layout formed by the second petitioner, the area in question is earmarked as a civic amenity site and has been shown as school and playground. Therefore, the purpose for which the said area has to be utilised has to be maintained by the first respondent-authority while allotting the said area to any entity. The allotment made to any entity cannot be contrary to the object for which the said area has been earmarked i.e. for school and playground. He also submitted that when once the civic amenity area stands vested with the first respondent-authority, the same can be allotted only in terms of the provisions of the Act and also the relevant Rules Drawing my attention to Section 38 of the Act read with the Bangalore Development Authority (Allotment of Civic Amenities Sites) Rules (1989) (hereinafter referred to as 'the 1989 Rules'), he contended that the first respondent has no authority to allot the said site to the second respondent, without following the procedure prescribed under the said Rules. He also stated that the Karnataka Parks, Play-fields and Open Spaces (Preservation and

Regulation) Act. 1985 applies to the present case and any allotment of the open spaces has to be in accordance with the said provisions of law. That in the instant case, merely because the second respondent has represented the State Government, an order has been passed by the State Government on the basis of which allotment has been made by the BDA in favour of the second respondent without considering the merits of the eligibility of the second respondent to seek such an allotment. He therefore, concluded his arguments by saying that the purpose of surrendering the area in question by the second petitioner in favour of the first respondent has not been achieved. He also drew my attention to Rules 3 to 10 of the 1989 Rules and contended that the procedure prescribed under the said Rules have not been followed in the instant case. Therefore, the allotment in favour of the second respondent be quashed and all consequential prayers be granted.

10. Per contra, learned counsel for the first respondent-authority with reference to the original records has submitted that the second respondent had made application to the Commissioner of the first respondent-authority seeking allotment of a C.A. Site and a reminder letter was also sent on 11.3.2001. In response to the said letter, the first respondent informed the State Government about the request made by the second respondent. Thereafter, the State Government granted approval for the allotment of a C.A. site in favour of the second respondent and exercising power under Section 38-A of the Act, the first respondent has allotted the C.A. Site In question to the second respondent on the basis of a lease agreement. The order to that effect is dated 7.7.2001. Subsequently, lease agreement dated 16.7.2002 has been executed whereby the C.A. site has been leased for a period of 30 years subject to certain terms and conditions. He also submitted that the exercise of power by the first respondent pursuant to Rule 3 of the 1989 Rules read with Section 38-A of the Act is justified and legal and the petitioner cannot assail the same since the object and purpose for which the allotment is made comes well within the definition of civic amenities as stated under Section 2 (bb) of the Act. That the allotment is made for the purpose of an educational institution and for other allied activities of the second respondent-Trust. He, therefore, submitted that there is no illegality in the allotment and therefore, the order does not call for any interference.
11. Learned counsel for respondent No.2 justifying the allotment made in favour of the second respondent has stated that the second respondent -Trust has been established not only for the purpose of encouraging the Kashmiri culture, but also for the purpose of establishing educational institutions. That a request was made to the first respondent-authority for allotment of C.A. Site which is pursuant to the said site. That discretion has been exercised in favour of the second respondent and an allotment has been made and the same is in accordance with Act and Rules. The petitioner who has relinquished the civic amenity areas to the first respondent, cannot question the allotment made in favour of the second respondent since the said allotment is in accordance with the objects of the Trust as well as the objects stated in the Act as well as the Rules. Under the circumstances, he has stated that the writ petition is devoid of merits and the same has to be dismissed. In support of his contention, he has relied upon a decision reported in the case of Colonel G.K. Burli & others V/s. B.D.A. & others (1985 (2) KLJ 510) and the decision of the House of Lords in (1958) A.C. 736).

12. Having heard the learned counsel for the respective parties and on perusal of the material on record, the point that arises for my consideration is, as to whether the allotment of the C.A. site made by the first respondent in favour of the second respondent is in accordance with law or not.
13. From the material on record it is noticed that once the second petitioner formed the layout in terms of the conditions of the approval of layout plan, the second petitioner relinquished certain areas in favour of the first respondent by a relinquishment dated 11.9.1996. When once the relinquishment has been made in favour of the first respondent, the second petitioner would lose all right, title and interest in respect of the said area which is treated as a civic amenity area and the same would stand vested in the first respondent. The first respondent has to allot the said civic amenity site in accordance with the Act as well as the relevant rules. In this context, it would be relevant to state that the Act: and the Rules applicable would be the Bangalore Development Authority Act, 1976 and the 1989 rules. Reliance placed by the petitioner on the Karnataka Parks, Play-Fields and Open Spaces (preservation and Regulation) Act, 1985 is Incorrect since the said Act is a general enactment applicable to the entire State whereas insofar as the Metropolitan City of Bangalore is concerned, it is only the Bangalore Development Authority Act of 1976 and the Rules 1989 pertaining to the allotment of Civic Amenity Sites which are specifically applicable. Therefore, the validity of the allotment has to be considered under the said provision and not under the provisions of the Karnataka Parks. Play-Fields and Open Spaces (Preservation and Regulation) Act, 1985.
14. It is noticed that the second respondent had requested the first respondent for allotment of a site and a copy of the reminder letter dated 11.3.2001 is found at pages 27 and 28 of the original records. Pursuant to the various request made by the second respondent on 7.3.2001, the Commissioner of the first respondent-authority Trust a letter to the Prl. Secretary, Department of Urban Development on 4.7.2000 stating about similar request made by the second respondent to the then Chief Minister and seeking permission of the State Government to allot a site exercising power under the 1989 Rules read with Section 38A of the Act.
15. In response to the said request on 11/18.5.2001. the State Government acceded to the request made by the Commissioner of the 1st respondent authority. Pursuant to the said approval on 7.7.2001, the 1st respondent, exercising its authority under Section 38-A (1) of the Act made the allotment of 1253.82 sq mt at the rate of Rs.1193/- per sq.ft. These amounts as specified subject to certain terms conditions. A copy of the allotment order dated 7.7.2001 is found in page 33 of the records. Subsequently, the lease agreement was executed by the 1st respondent in favour of the 2nd respondent on 16.7.2002. It is stated that possession was handed over on 30.7.2002 and the 2nd respondent had obtained khata on 23.1.2003 and sanctioned plan on 10.4.2003 and has commenced construction.
16. Having regard to the objects of the Trust of the 2nd respondent, the question is as to whether the allotment is valid or not. The same has to be considered in the light of the relevant provisions of the Act as well as 1989 Rules. Section 2 (b) of the Act defines 'Amenity' as follows;

(b) 'Amenity' includes road, street, lighting, drainage, public works and such other conveniences as the Government may, by notification, specify to be an amenity for the purpose of this Act

(Section 2(bb) defines "Civic amenity" to mean;

- (i) a market, a post office, a telephone exchange, a bank a fair price shop, a milk booth, a school a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot;
- (ii) a recreation centre run by the Government or the Corporation;
- (iii) a centre for educational social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government;
- (iv) a centre for educational, religious, social or cultural activities or for philanthropic service run by a Cooperative Society Registered under the Karnataka Cooperative Societies Act, 1959 {Karnataka Act 11 of 1959} or a Society Registered under the Karnataka Societies Registration Act. 1960 (Karnataka Act 17 of 1960) or by a Trust Created wholly for Charitable Educational or Religious purposes;
- (v) a Police Station, an Area Office or a Service Station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board; and
- (vi) such other amenity as the Government may, by notification specify.

17. Section 38-A pertains to grant of area reserved for civil amenities by the authority by way of lease, sale or otherwise transfer the same for any purpose for which it has been reserved. Section 38-A reads as follows;

[38-A. Grant of area reserved for civic amenities etc:

- (1) The Authority shall have the power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved,
- (2) The Authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose and. any disposition so made shall be null and void:

Provided that where the allottee commits breach of any of the conditions of allotment the Authority shall have the right to resume such site after affording an opportunity of being heard to such allottee.]

1989 Rules pertains to the allotment of Civic Amenity Sites. Rule 2(b) defines civic amenity site as follows;

Civic Amenity Site" means a site earmarked for civic amenity in a layout formed by the Authority or a site earmarked for civic amenity in a private layout approved by the Authority and relinquished to it:

Rule 2(d) defines Institution as follows;

“Institution” means an institution. Society or an association registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or a Co-operative society registered under the Karnataka Co-operative Societies Act, 1960 (Karnataka Act 11 of 1959) or a trust created wholly for charitable, educational or religious purpose;

Rule 2(f) defines lessee as follows;

“Lessee” means in institution to which a civic amenity site is allotted and which has entered into an agreement with the Authority in that behalf.

Rule -3 deals with the offer of civic amenity site for allotment which reads as follows;

3. Offer of civic amenity sites for allotment: (1) The Authority may out of the Civic amenity sites available in any area reserve such number of sites for the purpose of providing civil amenity referred to in sub-clauses (1) and (iv) of clause (bb) of Section 2 by the Central Government, the State Government, Corporation or by a body established by the Central Government or the State Government
- (2) After making reservation under sub-rule (1) the Authority may subject to Section 38-A and general or special orders of the Government and having regard to the particular type of civic amenity required to be provided in any locality offer such of the remaining civic amenity sites for the purpose of allotment on lease basis to any institution:

Provided that the Authority shall while so offering the civic amenity sites reserve eighteen percent of such sites for being allotted to an institution established exclusively for the benefit of scheduled Castes, the majority of members of which consists of persons belonging to Scheduled Castes and three percent of such sites to an institution established exclusively for the benefit of Scheduled Tribes, the majority of members of which consists of persons belonging to Scheduled Tribes, and if at the time of making allotment sufficient number of such institutions are not available the remaining sites so reserved may be allotted to other institutions.

- (3) Due publicity shall be given in respect of civic amenity sites so offered for leasing to the institutions, specifying their location, number, dimension, purpose and last date for submission of application and such other particulars as the Commissioner may consider necessary, by affixing a notice on the notice board of the office of Authority and also by publishing in not less than two daily newspapers in English and Kannada having wide circulation in the City of Bangalore.

Rule -4 deals with the disposal of sites reserved which reads as follows;

4. Disposal of sites reserved: Notwithstanding anything in these rules, the sites reserved under sub-rule (1) of Rule 3 may be allotted to the categories specified therein on lease basis by the Authority for the purpose of providing civic amenity subject to such terms and conditions as may be specified by it.

Rule 5 deals with Registration, Rule -6 pertaining to eligibility, Rule-7 pertains to principles of selection of institution for leasing out civic amenity sites, Rule -8 deals with the lease amount of the site allotted to the institutions to be fixed by the Authority and Rule -10 deals with the conditions of allotment of civic amenity sites.

18. On a reading of the definition of 'Civic Amenity', it is noticed that the said definition is not an exhaustive definition, it mentions various civic amenities which also includes educational, religious, social or cultural activities pursued by the entities of various nature including a Trust such as a Religious and Charitable Trust, but also such other amenities which the Government may, by notification specify.
19. Under Section 38-A of the Act, discretion is given to (he respondent-authority to lease, sell or transfer in any other manner any area reserved for civic Amenities for the purpose for which said area is reserved. If the authority disposes of the area reserved for public parks and playgrounds, civic amenities or for any other purpose, then such an action would be null and void. Reference is made to Section 38-A of the Act in Rule 3 of 1989 Rules, which pertains to civic amenities sites for allotment. The definition of civic amenity site is in Rule 2(b) which is extracted above. Under sub rule (1) of Rule 3, the authority has power to reserve such number of civic amenity sites which are available in any area for the purpose mentioned in sub clauses (i) and (iv) of Clause (bb) of Section 2 of the Act for the Central Government, State Government, Corporation or for a body established by the State Government or the Central Government. Sub rule (2) of Rule 3 states that after making reservation under sub-rule 1, the Bangalore Development Authority, subject to exercise of power under Section 38-A of the Act and general or special orders of the Government and having regard to the particular type of civic amenity sites required to be provided in any locality offer such of the remaining civic amenity sites for the purpose of allotment on lease basis to any institution, institution' is defined in Clause (d) of Rule 2.
20. A reading of sub-rule 2 would make it clear that the authority is empowered to allot a site exercising power under Section 38-A of the Act. The authority can also allot sites on the basis of any general or special orders of the Government. However, having regard to the particular type of civic amenity required to be provided in any locality, after exercising discretion under Section 38-A of the Act or making allotment under any general or special orders of the Government, if there are any sites which are remaining in a particular locality, the same would have to be offered for allotment on lease basis to any institution as is referred to clause (d) of Section 2. Therefore, the priority of allotment to be made in respect of the civic amenity sites available in any locality is stated in Rule 3 itself. Therefore, the available civic amenity sites have to be first allotted in terms of sub rule (1) to Governmental authorities, then the BDA has discretion to allot any site under Section 38-A of the Act and if there are any general or special orders of the State Government, the same would have to be complied with by the BDA. If the BDA chooses not to exercise its discretion in favour of any institution and If there are civic amenity sites available in any locality, then in that case the same would have to be offered in terms of the procedure prescribed in sub rule (2) of Rule 3 read with Rules 4 to 10 of the sub rules. Therefore, the allotment of a civic amenity site by exercising discretion by the BDA in terms of Section 38-A is distinct from the allotment of sites to be made by the BDA by following the procedure prescribed in Rule- 3 read with other rules referred to above.

21. From the records it is noticed that in the instant case that the allotment made by the 1st respondent-BDA in favour of the 2nd respondent is on the basis of exercise of discretion under Section 38-A of the Act. Therefore, the contention of the learned counsel for the petitioners that the procedure prescribed for allotment of civic amenity sites in terms of sub rule (3J of Rule 3 read with Rules 4 to 10 has not been adhered to in the instant case cannot be accepted. If the BDA had not exercised discretion under Section 38-A of the Act to allot site in favour of the 2nd respondent, then in that case the site in question would have to be offered along with the remaining civic amenity sites in the locality in terms of the procedure stated in sub rule (3) of Rule 3 of Rules 4 to 10. However, that is not the position in the instant case. The civic amenity site in question has been allotted in terms of sub rule (2) of Rule 3 read with 38-A of the Act. Therefore, the question is as to whether the allotment is made in accordance with Section 38-A of the Act.
22. A reading of the said section would clearly indicate that the authority i.e. B.D.A has power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved. If such an area is reserved for public park, playground and civic amenities or any other purpose and any allotment contrary to the said reservation would be null and void. In the instant case, civic amenity site has been reserved for the purpose of school, playground. The lease deed dated 16.7.2002 states that the lease is for construction of 'Kashmir Bhavan for the specific purpose mentioned under Section 38-A of the Act under the Government Order dated 18.5.2001. Clause- 5 of the lease deed also states the purpose of construction of a building for 'Kashmir Bhavan' and not for any other purpose and no residential and commercial building can be constructed on the allotted C.A. site. The lease is for a period of 30 years. Copy of the Trust deed of 2nd respondent has also been produced as Annexure- R2. The 2nd respondent is a Public Welfare Trust established for the purpose of developing, promoting, running educational institutions for the purpose of public in general and also for promoting Kashmiri culture and cultural activities through out India and particularly the objects of the Trust has stated in paragraph -4 of the Trust Deed which reads as follows;

4. OBJECTS OF THE TRUST:

- a) The objects of the Trust is to serve the public in general and to promote the Ancient culture of Kashmir and patriotism towards our country and also to promote educational Institutions to Public in large.
- b) To promote ancient culture & cultural activities of India and in particular to Kashmir and its civilization, culture, religions harmony and upliftment of Kashmiri Migrants and displaced persons.
- c) To create peace committees to uplift the sufferers in Kashmir due to militant terrorist activities, riots etc.
- d) To establish, administer, run and assist Educational Institutions including nursery, primary, secondary schools, colleges, technical, medical, diploma and vocational institutions and courses like Tutorial, post graduation, research institutions and the like.

- e) To establish and maintain and administer tutorials and any distance education programs.
- J) To establish and run hostels, libraries, reading rooms for students.
- g) To promote Rural Education and Education among women folk in Kashmiri.
- h) To give loans, stipend, scholarship and such other assistance to economically backward students and in all ways to serve the Education,
- i) To foster and encourage education among Kashmiri folk in general and to establish institutions for women and children and to provide social welfare works for women and children.
- g) To publish books, literatures, all aspects and curricular, journals, pamphlets, periodicals and news papers to spread and for the advancement of education and culture

23. The beneficiaries of the Trust are public at large as stated in Clause - 5 of the Trust Deed. In the instant case, it is noticed that the civic amenity site in question has been reserved for the purpose of school; and playground. Having regard to the broad objects of the Trust which also includes educational and cultural activities, the lease deed states that the allotment has been made for the purpose of construction of Kashmir Bhavan. The object of such construction is to run various activities as stated in the Trust Deed, which also includes educational institutions and various other objects which are civic amenities as per Clause (bb) of Section 2. Even the lease made by the 1st respondent authority in so far as the site in question is concerned, is for school and playground.

24. On a conspectus reading of the objects of the 2nd respondent - Trust, the definition of Civic Amenity and the purpose for which the site has been reserved, in my view, the allotment made is in accordance with Section 38-A, sub rule (2) of Rule 3 of 1989 Rules. In fact, during the course of submission, learned counsel for the 2nd respondent has filed a memo stating the extent of area which has been allotted to the 2nd respondent i.e. the total area leased by the BDA to the 2nd respondent which is 13,488.30 sq ft., the built up area is 4,376.85 sq ft and the vacant space left around the built up area is 9,101.16 sq ft. Therefore, there is sufficient area which is left vacant apart from built-up area in the total area that has been leased by the BDA to the 2nd respondent. In fact, the entire site measures 41,737.50 sq ft. The remaining extent of the civic amenity site is 28,241.38 sq ft after the allotment of 13,496.12 sq ft. which has been made in favour of the 2nd respondent. Even if the school or any educational institution is run by 2nd respondent in the constructed portion, the vacant portion of the leased area can be utilised for playground purpose. If there is any violation of the conditions of the lease, then it is always open to the 1st respondent to resume the land by cancelling the lease. That is not the question which can be considered at this point of time. However, having regard to the objects of the 2nd respondent-Trust, the definition of civic amenity and the exercise of power by the 1st respondent under Section 38A of the Act read with Rule 3 of 1989 Rules, I am of the view that the allotment in the instant case is in accordance with. law. The same would not call for any interference. There Is no merit in the writ petition.

25. In the result, the writ petition is dismissed. However, the dismissal of this writ petition would not come in the way of the petitioners seeking an allotment having regard to the provisions of the Act and the Rules made thereunder. If such an application is made by the petitioners, the same shall be considered by the 1st respondent in accordance with law.

Parties to bear their own costs.

26. At this stage, learned counsel for the petitioners has filed an application seeking stay for a period of 3 months.

27. Learned counsel for the respondent/ have however objected to the said application.

28. It is noticed that the interim order granted on 17.11.2006 by the Apex Court has to continue only till the disposal of the writ petition. Under the circumstances, any continuation of interim order or grant of stay after the disposal of the writ petition would be contrary to the order of the Apex Court.

Hence, the application is rejected.

Equivalent Citation: 2014(1) AKR 1, ILR 2014 KARNATAKA 132, 2013(6)KarLJ395, 2014(1)KCCR356

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. No. 39206/2013 (CS-RES)

Decided On: 01.10.2013

Appellants: **A. Shambandhan**

Vs.

Respondent: **The Mysore Merchants Co-operative Bank Limited Represented by its General Manager and The Deputy Registrar of Co-operative Societies**

Hon'ble Judges/Coram:

B.S. Patil, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sri Bhaskar K. Adv.

For Respondents/Defendant: Sri N. Ramachandra, Adv. for R1 Sri K.A. Ariga, AGA for R2

Subject: Constitution

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - Section 70

Disposition:

Petition allowed

Case Note:

Civil - Single Member - Power of - Section 6(2) of Karnataka Appellate Tribunal Act, 1976 and Regulation 34 of KAT Regulations, 1979 - Single Member of Tribunal had dismissed appeal as not maintainable - Whether Single Member of Tribunal could dismiss appeal as not maintainable - Held, As per Act and Regulation, Single Member of Tribunal is not clothed with power to dismiss appeal holding that same was not maintainable - Single Member can reject defective appeals presented - Defective appeals presented cannot be interpreted to include dismissal of appeal holding that they were not maintainable - Therefore, Single Member of Tribunal could not dismiss appeal holding that it was not maintainable - Petition allowed.

ORDER

B.S. Patil, J.

1. Petitioner is calling in question the order dated 10.05.2013 passed by the Karnataka Appellate

Tribunal (for short, 'the Tribunal') dismissing the appeal filed by him in Appeal No. 101/2013 produced at Annexure-A. Petitioner borrowed loan from the 1st respondent. As he was a defaulter, a dispute was raised by the 1st respondent-bank under Section 70 of the Karnataka Cooperative Societies Act, 1959. An award was passed by the Arbitrator on 15.06.2001. Aggrieved by the same, petitioner filed an appeal before the Tribunal, which was allowed on 16.06.2008 and the matter was remanded for fresh consideration to the arbitrator. In the meanwhile, the bank initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), and the property was brought for sale. The sale of the mortgaged property was conducted on 26.03.2005.

2. Petitioner challenged the sale in W.P. No. 11075/2006 before this Court, which came to be dismissed on 24.04.2005. Petitioner has lost before the Debts Recovery Tribunal also. After remand, the Deputy Registrar of Cooperative Societies disposed of the proceedings vide his order dated 22.01.2013 recording the fact that the loan amount had been fully recovered and the dispute did not survive for consideration. This order was again challenged before the Tribunal by filing the present appeal No. 101/2013. This appeal came up for consideration before the Single Member of the Tribunal on 10.05.2013. The Single Member of the Tribunal has dismissed the appeal as not maintainable on the ground that the amount payable to the bank had been fully realized by sale of the mortgaged property in terms of the provisions of the Act and therefore, it was wholly unnecessary to entertain the appeal. Aggrieved by this order, the present writ petition is filed.
3. The main contention urged by the learned Counsel for the petitioner is, that as per Section 6(2) of the of the Karnataka Appellate Tribunal Act, 1976, read with Regulation 34 of the Karnataka Appellate Tribunal Regulations, 1979, the question regarding maintainability of appeal before the Tribunal was required to be examined by a bench of two members of whom one shall be a District Judge and that a single member of the Tribunal cannot dismiss the appeal presented before him on the ground that it was not maintainable.
4. Learned Additional Government Advocate makes available the order issued by the Chairman of the Tribunal on 10.05.2002, to contend that in exercise of the powers conferred under Section 6(2) of the Karnataka Appellate Tribunal Act, 1976, the Chairman has issued an order making it clear that a Single Member of the Tribunal can reject the defective appeals presented.
5. On careful perusal of the provisions contained under Section 6(2) of the KAT Act, it is clear that a Single Member of the Tribunal can exercise the powers of the Tribunal in respect of the following matters:
 - (i) admission of an appeal or revision petition;
 - (ii) admission of an appeal or revision petition presented after the expiry of the period allowed by law;
 - (iii) stay orders pending disposal of an appeal, revision, reference or other proceedings;
 - (iv) any matter of an interlocutory character in appeals, revisions, references or other proceedings;
 - (v) such other matters and subject to such conditions as may be prescribed.

6. Sub-section (1) of Section 6 of the KAT Act makes it clear that the powers of the Tribunal in all matters relating to appeals, revisions and other proceedings shall subject to the provisions of sub-sections (2) & (3) be exercised by a Bench of two members, of whom, one shall be a District Judge. In sub-section (3) of Section (6), it is made clear that the Bench hearing any matter relating to the Department of Cooperation, shall consist of District Judge and a Co-operation member. Sub-section (2) of Section 6 is made subject to any special or general orders that may be issued in this behalf by the Chairman, which may authorize a single member to exercise the powers of the Tribunal. In exercise of his power, the Chairman has issued an order dated 10.05.2002 clothing the Single Member with the power to reject the appeal or a proceeding filed with defects.
7. Regulation 34 of the KAT Regulations, 1979, read as under:
 34. The hearing of an appeal or petition shall generally be on the entire case. However the Bench may direct the parties to address arguments in regard to limitation, maintainability or such other grounds when it considers that the matter can be disposed of on such grounds only.
8. A conjoint reading of the provisions under Section 6(2) of the KAT Act and Regulation 34 of the KAT Regulations and the order dated 10.05.2002 of the Chairman makes it clear that a Single Member of the Tribunal is not clothed with the power to dismiss the appeal holding that the same was not maintainable. The order issued by the Chairman on 10.05.2002 makes it clear that a Single Member can reject defective appeals presented. The defective appeals presented cannot be interpreted to include dismissal of the appeal holding that they were not maintainable. The question whether an appeal is not maintainable or not, depends on several facts including in certain cases interpretation of certain legal provisions.
9. In the instant case, it is apparent that the appeal is filed before the Tribunal challenging the order passed by the Deputy Registrar of Co-operative Societies. The same is maintainable. The question whether the appeal could be entertained because of parallel proceedings which had been initiated by the bank invoking the provisions of the Securitisation Act resulting in the sale of mortgaged property does not lie in the realm of maintainability of the appeal. It is, rather, in the realm of the usefulness of consideration of such appeal. The question would be whether the appeal had been rendered infructuous or that what would be the effect of the judgment to be rendered by the Tribunal, in case the appellant succeeds. In other words whether any effective relief could be granted to the appellant-petitioner herein. The said question is a larger question which has to be considered while examining the merits of the matter.
10. As per the order issued by the Chairman of the Tribunal, the Single Member is not clothed with the power to decide such question. Section 6(2) of the Appellate Tribunal Act does not enable him to examine such aspect of the matter. Therefore, the Counsel for the petitioner is right and justified in contending that the dismissal of the present appeal by the Single Member is not in accordance with the provisions of the Act. Therefore, the order passed by the Single Member of the Tribunal deserves to be set aside. Accordingly, this writ petition is allowed. The impugned order is set aside. The matter is remanded to the Tribunal with a direction to hear afresh by a bench consisting of two members.

Equivalent Citation: 2014(1) AKR 799, 2014(1)KCCR660

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 44328/2012 (BDA)

Decided On: 09.12.2013

Appellants: **MICO Employees' House Building Co-operative Society Limited**

Vs.

Respondent: **Bangalore Development Authority, By Commissioner, Public Library Department, By Chief Librarian, Indian Water Works Association, By Secretary and Bruhat Bangalore Mahanagara Palike, By Commissioner**

Hon'ble Judges/Coram:

A.N. Venugopala Gowda, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sri Kesthur N. Chendra Shekher, Adv.

For Respondents/Defendant: Sri G.S. Kannur, Adv. for R1, Sri S. Lakshminarayana, AGA for R2, Sri H.N. Shashidhara, Adv. for Kesvy & Co. for R3 and Sri G. Nagarajulu Naidu, Adv. for R4

Subject: Trusts and Societies

Acts/Rules/Orders:

Constitution Of India - Article 226

Disposition:

Petition dismissed

Industry: Cooperative Societies

Case Note:

Trusts and societies - Allotment of site - Present petition filed to challenge allotment of site - Whether allotment of site valid - Held, site in question was leased for benefit and use of site for construction of office building - Material on record to show that 3rd Respondent had violated lease agreement - Inordinate delay in matter of challenge to order of allotment of portion of site in question - Such inordinate delay in challenging order defeated equity - Petition dismissed.

ORDER

A.N. Venugopala Gowda, J.

1. The petitioner, a House Building Co-operative Society, registered under the provisions of Karnataka Cooperative Societies Act, 1959, having formed layout of residential sites in the area popularly known as 'BTM Layout', filed this writ petition, on 30.10.2012, to hold the allotment of C.A. Site No. 10, situated in MICO II Stage Layout, by the Bangalore Development Authority, in favour of Public Library Department, Government of Karnataka and Indian Water Works Association, i.e., respondent Nos. 2 & 3 respectively and for directing the BDA to take possession by demolishing the Convention Hall built by the 3rd respondent and for granting of consequential reliefs. Material facts of the case are that;

The petitioner executed a deed of relinquishment dated 11.04.2001 in favour of the BDA, in respect of the civic amenity sites in its MICO Layout II Stage at Tavarekere Village, Begur Hobli, Bangalore South Taluk, which includes C.A. Site No. 10. On 17.01.2003, Indian Water Works Association, represented to the Chief Minister, Government of Karnataka, for allotment of a C.A. site for locating its Office. The Hon'ble Chief Minister having directed the Commissioner of the BDA, to allot a site, a portion of C.A. Site No. 10, BTM Layout II Stage, MICO HBCS I Stage, Bangalore, measuring east-west-36.90 meters, north-south-15.10 meters, in all measuring 557.19 sq. meters was allotted and the possession was delivered on 24.06.2003.

The Chief Librarian, Public Library Department, Government of Karnataka, made an application dated 24.12.2002 to the Commissioner of BDA, seeking allotment of a site in BTM Layout for locating Southern Zone library of City Central Library. The remaining portion of the said C.A. Site No. 10 was allotted on 05.12.2003. Lease amount of ' 24,54,229/- was remitted on 02.08.2003. Administrative approval for construction was accorded by the Government on 10.03.2006 by sanctioning ' 3,25,000/- for construction. The foundation stone for construction of the library building having been laid on 24.08.2012, the work was taken up by the Public Works Department.

2. On 03.12.2013, Sri Kesthur N. Chendra Shekher, learned advocate for the petitioner, presented a memo, signed by the President of the petitioner Society, giving up the challenge in this petition to the portion of C.A. Site No. 10 made in favour of the 2nd respondent and restricting the challenge to the allotment made in favour of the 3rd respondent. Memo was read and recorded.
3. Sri. Kesthur N. Chendra Shekher vehemently contended that;
 - (a) when the petitioner society surrendered the civic amenity site, there is a statutory obligation for the BDA to maintain the same as a civic amenity site only and for converting the C.A. site into any other purpose, BDA should have taken steps in accordance with provisions of the Karnataka Town and Country Planning Act, 1961, by giving due publication about the change of use, which was not done.
 - (b) The site in question, before bifurcation and allotment being made, public notice ought to have been issued and after consideration of the objections, the bifurcation, if any, could have been resorted to, which was not done.

- (c) The allotment of C.A. sites being governed by the BDA (Allotment of Civic Amenity Sites) Rules, 1999 (for short 'Rules'), without issuance of a notification regarding availability and allotment of the site and without inviting applications from interested persons/organizations, for securing allotment by getting registered, the allotment was illegally made in favour of respondent No. 3 i.e., by giving complete go bye to the Rules.
- (d) Respondent No. 3 being ineligible for allotment of site in question, the allotment made in its favour is ab initio void.
- (e) The 3rd respondent is not making use of the building for the purpose for which the allotment was obtained. The 3rd respondent having constructed a convention hall in the building, is exploiting the property by hiring out to various programmes and has even let out portions of the building in favour of different tenants and though the BDA is aware of the misuse of the building by the 3rd respondent, on account of collusion, has turned a blind eye. He submitted that the building having been put to commercial exploitation, the BDA should take immediate action for cancellation of the lease and resume possession of the property for being dealt with in accordance with law.
- (f) The petitioner was under liquidation from 26.12.2001 till 22.10.2011 and in view of the order of revival passed, an elected Committee having come into existence on 22.10.2011, the petitioner being in need of a C.A. site for the purpose of its activities, such as establishment of cultural center, Indoor Stadium, library etc, submitted representations dated 30.07.2012 and 02.08.2012, bringing to the notice of BDA, the violation of the conditions of the allotment by the 3rd respondent and sought allotment in its favour.
- (g) Though the petitioner sought the initiation of appropriate action, there being inaction or only a make believe action, before and after filing of this petition, appropriate direction is required to be issued.
- (h) Learned counsel submitted that since the petitioner was under liquidation, it could not challenge the illegal allotment made in favour of respondent No. 3. He sought the condonation of delay in filing of this petition.
4. The 1st respondent filed counter contending that the petition is liable to be dismissed in limine, on the ground of inordinate delay of more than 10 years in questioning the allotment made in favour of respondent No. 3, which is a reputed association, actively engaged in management of water and in fact assisting the Union and State Governments, in their activities with respect to the management of water and the allotment having been made in public interest. It stated that the allotment made in favour of respondent No. 3 is within the power conferred under S. 38-A of the BDA Act, 1976. It further stated that, if there were to be any misuse or violation by the allottee, necessary action would be taken.
5. Respondent No. 3 filed counter and contended that the writ petition is highly belated and is liable to be rejected in limine. It stated that after obtaining approval of the plan, the building was constructed and was inaugurated on 28.03.2004 and having obtained a trade licence from the BBMP, the building is being made use of for conducting International Summits etc. It

stated that the building constructed is mainly utilized for achieving its objects and serving the society at large and that it has not rented out the hall or any other portion of the building, on regular rental basis i.e., to exploit commercially. It stated that the premises is being used as regular office and the income received is accounted and audited.

6. Learned advocates appearing for the respondents contended that the writ petition suffers from inordinate delay and the petitioner having no legal right, the writ petition is liable to be rejected in limine. By referring to counters filed and the documents produced along with the counters, they submitted that the members of the petitioner, who are residing in the same layout, had the knowledge of the allotment, the building construction, its inauguration by the WIPs and the activities being carried therein for more than 10 years. They submitted that the petitioner has no case for condonation of delay on the guise of having been under an order of liquidation.
7. Perused the writ record. A preliminary point raised by the learned advocates for the respondents, with regard to the delay in filing of this writ petition, particularly on account of the building constructed by the respondent No. 3, is required to be decided first.
8. Petitioner surrendered the site in question on 11.04.2001. C.A. Site No. 10 was bifurcated and allotted by the 1st respondent, in favour of the respondents 2 and 3. Allotment in favour of the 3rd respondent was made on 30.04.2003 and lease-cum-sale agreement was executed and registered on 13.06.2003. The possession having been delivered on 28.03.2004, the 3rd respondent obtained approval for construction of building on 27.08.2003 and constructed the building, which was inaugurated on 28.03.2004. The members of the petitioner had the knowledge of the building constructed by the 3rd respondent and the purpose for which it was used for past 10 years. Merely because the petitioner was under liquidation, it cannot maintain the writ petition after lapse of nearly 10 years. Nothing prevented the members of the petitioner, who are the residents in the area wherein the site in question is situated, from questioning the allotment made in favour of the 3rd respondent, which has been making use of the property from 20.03.2004 onwards. There is a delay of about 10 years in questioning the allotment made in favour of the 3rd respondent.
9. Under Article 226 of the Constitution, the power to issue an appropriate writ is discretionary. One of the grounds to refuse relief in writ jurisdiction is unexplained delay and the laches. A writ petitioner should approach the court at the earliest point of time. Inordinate delay and unexplained laches in filing the writ petition is an adequate ground to dismiss the petition.
10. In the case of Chairman and M.D., BPL Ltd., VS. S.P. Gururaja, MANU/SC/0804/2003 : (2003) 8 SCC 567, the allotment of a plot was made in the year 1995 and a writ petition challenging the said allotment was filed after one year. By that time, the allottee having taken possession of the plot, made sufficient investment for development. In the writ petition, it was found, that without inviting applications and without notifying the availability of plot to the general public, by arbitrary exercise of the power, the allotment had been made. Opposition to the writ petition by the allottee, on multiple grounds, including delay and laches was not accepted and the writ petition was allowed. In the appeal filed by the allottee and while allowing the appeal, Apex Court has held that the delay of the nature being of vital importance, should have been considered by the writ court.

11. In the case of Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others, MANU/SC/0307/2004 : (2004) 4 SCC 460, a plot admeasuring 1 acre 20 guntas in BTM Layout was allotted. The allotment price having been deposited, a sale deed was executed by the BDA on 29.06.1985 and the allottee having been put in possession thereof, fenced the property by obtaining licence. In 1988, a writ petition was filed questioning the said alienation on the ground that it is against public policy and thus, illegal and void, having regard to the fact that neither any tender called therefore; nor was any public advertisement for sale of the land, issued. Writ petition having been allowed and the writ appeal filed having been dismissed, the allottee approached the Apex Court for relief and while allowing the appeal and dismissing the writ petition, on the question of delay and laches, it has been held as follows:
 25. Furthermore, the writ petition should not have been entertained keeping in view the fact that it was filed about three years after making of the allotment and execution of the deed of sale. The High Court should have dismissed the writ petition on the ground of delay and laches on the part of the first respondent. The Division Bench of the High Court also does not appear to have considered the plea taken by the appellant herein to the effect that the first respondent had been set up by certain interested persons. In a public interest litigation, the court should, when such a plea is raised, determine the same.
12. In the case of Amey Housing Society Ltd. Vs. Public Concern for Grievance Trust and Others, MANU/SC/7058/2007 : (2007) 4 SCC 635, the respondent filed a public interest litigation challenging the manner in which certain residential plots in the Navi Mumbai municipal area had been allotted by the City and Industrial Development Corporation, which was an Authority constituted by the State of Maharashtra under the Maharashtra Regional and Town Planning Act, 1966, for development of Navi Mumbai and other townships. The main ground of Challenge was to the allotment and disposal of six plots, to be in violation of the existing regulations which provided for allotment either by public auction or at a fixed price for co-operative housing societies or on individual applications. Allotments made having been found to be illegal, were quashed and direction was issued to stop the construction activities. When the said order was questioned before the Apex Court, while deciding the appeals, it was found that the writ petition had been filed at the stage when the construction on the allotted plots was already underway with the due sanction of the municipal authorities and had been raised upto several floors after incurring heavy expenditure. Finding that, in the writ petition, an alternate relief for re-valuation of the plots and grant of compensation to the Development Authority had been sought, it was held that, instead of forfeiture of the land and the construction, writ court ought to have adopted a more pragmatic approach and granted the alternate relief of compensation. The appeals were allowed with directions.
13. In the case of U.G. Hospitals Private Ltd. VS. State of Haryana and Others, MANU/SC/0508/2011 : (2011) 14 SCC 354, two hospital plots were offered for allotment. Even though application of respondent No. 5 for plot in Sector-51 for building a hospital was not in prescribed form, allotment was made and respondent No. 5 had constructed and was even running a hospital on the said plot. Appellant, who had also applied for the same plot, filed writ petition challenging the allotment made to respondent No. 5, nearly 1-1 1/2 years after the allotment. The writ petition having been dismissed on the ground that there was considerable delay in filing the

writ petition challenging the allotment, in the appeal filed. Apex Court has held that the writ court was justified in not interfering with the allotment that was made to the 5th respondent, whose application was not in the prescribed form. Though there was irregularity in allotment, there being delay and laches in challenging the same, the beneficiary of irregular allotment having acted to its prejudice in the meantime, an exercise of balancing of equities and moulding the reliefs was adopted.

14. The site in question was leased on 13.06.2003 for a period of 30 years for benefit and use of the site for the construction of “office building”. The 3rd respondent has undertaken to abide by the conditions and restrictions imposed under the Rules, as far as they are not inconsistent with the terms of C.A. site lease agreement. The 3rd respondent has undertaken that it shall not violate or infringe any of the terms and conditions mentioned in the agreement and, if there were to be any violation by it, the BDA has reserved to itself the right to resume the property with 30 days’ notice to the 3rd respondent and to re-enter the property, free from all encumbrances. The photographs as at Annexures-K to K5, show the building constructed, having also been put to use, other than “office building”. 3rd respondent in the affidavit filed on 28.11.2003 has stated that, it having agreed to provide the premises to general public on various dates till the end of January, 2014, has undertaken that the premises will not be utilised for any other purposes from February, 2014. The petitioner in the objections filed to the said affidavit of the 3rd respondent has stated that the 3rd respondent has illegally sublet a portion of the building to a software company by name “Suffix Treet Technologies (P) Ltd.” and that the building is also let out to general public for private and family functions. Sri G.S. Kannur submitted that a show cause notice dated 02.12.2013 was issued with regard to the violation of the terms of the lease agreement. He submitted that BDA would take further action in the matter. Submission of the learned counsel is recorded. It is for the BDA to decide as to the course of action to be taken for violation of the terms and conditions of the lease by the 3rd respondent. Be that as it may. Keeping in view the facts and circumstances noticed supra, the 3rd respondent having constructed the building in 2003-04, it is impermissible to ignore the long delay in the matter of challenge to the order of allotment of portion of the civic amenity site in question. Delay defeats equity. Consequently, the writ petition should fail on the preliminary point, as being hit by inordinate delay.

Accordingly writ petition is dismissed without going into the merit of the allotment made in favour of the 3rd respondent, with no order as to costs.

Equivalent Citation: ILR 2004 KARNATAKA 1892, 2004(3)KarLJ310, 2004(3)KCCRSN275

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition Nos. 23564 to 23575 of 2001

Decided On: 17.03.2003

Appellants: **Dattaprasad Co-operative Housing Society Limited and Ors.**

Vs.

Respondent: **State of Karnataka**

Hon'ble Judges/Coram:

V. Gopala Gowda, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.G. Bhat, Adv.

For Respondents/Defendant: Shobha Patil, High Court Government Pleader

Subject: Civil

Subject: Constitution

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - Section 38; Karnataka Co-operative Societies (Amendment) Act of 2001; Registration Act, 1908 - Section 17(1), Registration Act, 1908 - Section 17(2); Karnataka Stamp Act, 1957 - Section 68, Karnataka Stamp Act, 1957 - Schedule - Article 20(1), Karnataka Stamp Act, 1957 - Schedule - Article 20(2); Co-operative Societies Act, 1912 - Section 27; Constitution of India - Article 246, Constitution of India - Article 254

Cases Referred:

M. Karunanidhi v. Union of India, AIR 1979 SC 898, 1079 Cri. L.J. 773 (SC), (1979)3 SCC 431, 1979 SCC (Cri.) 691; Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu and Ors., AIR 1996 SC 2384, (1996)3 SCC 15; State of Andhra Pradesh and Anr. v. Nalla Raja Reddy and Ors., AIR 1967 SC 1458, (1967)2 SCJ 857; State of Maharashtra v. Manubhai Pragaji Vashi and Ors., AIR 1996 SC 1, (1995)5 SCC 730; Hanuman Vitamins Foods Private Limited and Ors. v. State of Maharashtra and Anr., 1991 Co-op. Cases 1 (Bom.); Usha Arvind Dongre v. Suresh Raghunath Kotwal., 1991 Co-op. Cases 549 (Bom.); Proposed Dharwad District Ex-servicemen's Co-operative Society Limited, Hubli v. State of Karnataka, 1992(3) Kar. L.J. 659, AIR 1993 Kant. 117; Mulshanker Kunverji Gor and Ors. v. Juvansinhji Shivubha Jadeja., AIR 1980 Guj. 62; Hanuman Vitamin Foods Private Limited and Ors. v. State of Maharashtra and Anr., AIR 2000 SC 2571, (2000)6 SCC 345; Life Insurance Corporation of India v. D.J. Bahadur, AIR 1980 SC 2181, 1980 Lab. I.C. 1218(SC); Uttar Pradesh State Electricity Board v. H.S. Jain, AIR 1979 SC

65, (1978)4 SCC 16, 1978-II-LLJ-399 (SC); Mary Seward v. Veera Cruz, (1884)10 AC 59; J.K. Cotton Spinning and Weaving Mills Company Limited v. State of Uttar Pradesh, AIR 1961 SC 1170; Ashoka Marketing Limited v. Punjab National Bank, AIR 1991 SC 855, (1990)4 SCC 406

Disposition:

Writ petition dismissed

Case Note:

(A) KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (KARNATAKA ACT 11 OF 1959) - SECTION 38 EXEMPTION FROM COMPULSORY REGISTRATION OF INSTRUMENT - PROVISIO - AS AMENDED BY KARNATAKA ACT 6 OF 2001 (w.e.f. 1.4.2001) - Whether the House Building Co-op. Societies are exempted from compulsory registration of instruments - Which intend to transfer or in effect transfers, right, title or interest in immovable property executed by or in favour of Societies registered under KCS Act. HELD: It is compulsorily registrable and attract stamp duty and Registration Fees.

(B) THE CO-OPERATIVE SOCIETIES ACT, 1912 (CENTRAL ACT II OF 1912) - SECTION 27 -Exemption from compulsory registration of instruments relating to shares and debentures of registered society. HELD: Is not repugnant to Section 32 of KCS Act, 1959.

(C) REGISTRATION ACT, 1908 (CENTRAL ACT XVI OF 1908) - SECTION 17(1) (b) (c) and SECTION 17(2) -Documents of which Registration is compulsory' - non-testamentary instruments which purport or operate to create, declare, limit or extinguish present or future. And acknowledge the receipt or payment of any consideration on account of creation, declaration assignment, limitation or extinction of such right, title or interest - Section 17(2) - Instruments to which Clause (b) and (C) of Sub-section (1) of Section 17 does not apply. HELD: The provisions of Section 17(a) and (b) are applicable to such instruments.

(D) KARNATAKA STAMP ACT, 1957 (KARNATAKA ACT NO. 34 OF 1957) - SCHEDULE - ARTICLE 20(1) & (2) - Stamp duty on Instrument of conveyance as defined under Section 2 (d) of the KS Act. HELD: Duty attracted, whenever, there is transfer of right, title or interest in immovable properties.

Held:

The above Acts, operate in different fields for different purposes, which enacted by the State Legislature and Parliament respectively in exercise of their respective power under the Constitution of India. Therefore, each statutory enactment referred to above is a self-contained one, The Karnataka Co-op. Societies Act, 1959 is a statutory enactment of establishing Co-op. Societies/banks for purpose of establishing co-operative movement, whereas, the Registration Act and Stamp Act operate in different fields by making instruments and deeds compulsorily registrable, whenever there is transfer of interest and title in respect of immovable property by means of written instrument where property is valued more than Rs. 100/- Stamp Act deals with payment of stamp duty. Therefore, the statutory enactments viz., Registration Act and Stamp Act are special enactments over the provisions of Co-op. Societies Act.

Proviso to Section 38 of KCS Act was inserted by way of amendment, explaining the provisions regarding the registration of the instrument of transfer of shares in favour of members of Housing co-op Societies by transferring interest and title upon the immovable properties and shall be compulsorily registrable, attracting stamp duty and registration fees upon such conveyance deeds either they are executing or executed the deeds by them in respect of the immovable properties in favour of its members or other persons.

(E) CONSTITUTION OF INDIA - ARTICLE 254 -SCHEDULE VII - LIST II - ENTRY 32 - Inconsistency between laws made by the parliament and laws made by the State legislature. HELD: There is no inconsistency between the law made by state and the law made by Parliament.

Section 27 of the (Central) Co-op. Societies Act is not made applicable to the State of Karnataka, as it is made applicable to Part 'B' States. The Karnataka State Co-op. Societies Act is enacted by it in exercise of State Legislative power from Entry 32, List II of Schedule VII. Therefore, the proviso to Section 38 (Karnataka Act 6 of 2001), will not create any repugnancy to Section 27 of Central Act II of 1912 in so far as the payment of the Stamp Duty and Registration Fee upon the instruments which are registrable under the provisions of Section 17(b) and (c) of Central Act 14 of 1908 and Article 20(1) (2) of Karnataka Act (34 of 1957).

Proviso to Section 38 of KCS Act has been inserted having regard to the alleged misuse of the said provision (un-amended Section 38) by the societies as there was heavy loss of revenue to the State Government.

Writ Petitions dismissed.

Industry: Cooperative Societies

ORDER

V. Gopala Gowda, J.

1. The petitioners are the registered Co-operative Housing Societies under the provisions of the Karnataka Co-operative Societies Act, 1959 and the Karnataka Co-operative Societies Rules, 1960 (for short, hereinafter called as 'KSC Act' and 'KCS Rules' respectively). They are aggrieved of the amendment to Section 38 by inserting proviso to the KCS Act by Act No. 6 of 2001. They have filed these petitions seeking for issuance of writ of certiorari to strike down Section 5 of the Karnataka Act No. 6 of 2001, by inserting the proviso to Section 38 of the KCS Act contending that the same is unconstitutional and further sought for such other directions or direction of this Court that it may deem fit to grant in the facts and circumstances of case.
2. Certain necessary and relevant facts and the legal contentions urged by the petitioners are adverted to in this judgment for the purpose of considering and answering the points that would arise in these petitions by this Court.
3. It is the case of the petitioners that unamended provision of Section 38 of the KCS Act has exempted the Co-operative Societies from the application of provisions of Section 17(1)(b) and (c) of the Indian Registration Act, 1908 (hereinafter referred to as the 'Registration Act') for compulsory registration of the documents and payment of stamp duty and registration fee

as provided under the provisions of the Karnataka Stamp Act, 1957 and Registration Rules (in short, called as 'Stamp Act and Rules'). The provisions of unamended Section 38 of the KCS Act verbatim incorporated from Section 27 of the Central Co-operative Societies Act, 1912 (hereinafter referred to as the 'Central Act'). The provisions exempts applicability of the aforesaid provisions of the Registration Act, Stamp Act and Rules. It is further stated by them that the aforesaid provisions of the Registration Act and Stamp Act are exempted in all the States throughout the Country with regard to the registration and payment of stamp duty and registration fee upon the deeds to be executed by either Societies or on their behalf. Further, stated that Section 17(2)(iii) of the Registration Act itself gives such exemption to joint stock companies registered under the Indian Companies Act, 1956 from registering and payment of the stamp duty and registration fee to the conveyance deeds.

4. The aforesaid relevant provisions of the Registration Act and Stamp Act are exempted its applicability to the Co-operative Societies by virtue of Section 38 of the KCS Act to the Co-operative Housing Societies in metropolitan cities, where acute housing problem is being faced. Further, it is stated that as early as in the year 1940, several housing Co-operative Societies were formed in Mumbai, Ahmedabad etc. Large number of people with limited means were able to have flats for their residences. Subsequently, the movement attracted the people of other cities living in flats owned by Co-operative Housing Societies by becoming their members is a common feature in cities and metropolitan areas. In recent years, Co-operative Movement has extended to Banking, Farming Industries, Sugar Industries, Milk Ferations, Consumer products.
5. Petitioners have stated that the Co-operative Housing Societies are mainly two types:
 - (1) Societies which acquire the lands, forms the layouts and sell the sites. The activities of these Societies are analogous to Bangalore Development Authority or Urban Development Authority. The members become the owners of the property and their rights, title and interest are transferable and the Society does not come into picture.
 - (2) Second category of Societies are described by Judicial pronouncements as 'Tenant Co-partnership Societies'. In these Societies, land is owned by the Society, upon which houses are constructed by the Society for the benefit of its members. The Society allots the shares to members and the incident of allotment or transfer of shares is enjoying the privilege of occupation of the apartment/flat. There is no transfer of any part of immovable properties which vests in the Society. However, transfer of shares creates interest in the apartment attached to the shares. Such transfer is exempt from registration under Section 38 of the Act. Similar provisions under the Maharashtra Co-operative Societies Act (Section 41 and Gujarath Co-operative Societies Act (Section 42) are construed to be covered by the exemption to registration under Section 17(1)(b) or (c) of the Registration Act.
6. The petitioners claim that they are all of both the categories. The lands and buildings vest in the Society only, at all times and therefore they need not register the conveyance deeds by paying stamp duty and registration fee upon such documents when they execute the same in favour of its members or any other persons.

7. It is further stated that the proviso to Section 38 of the KCS Act, by way of amendment to the Act, leads to a deviation for the first time in respect of the Housing Co-operative Societies from withdrawing the exemption of the application of the provisions of the Registration Act and Stamp Act to the said Societies. Statement of objects and reasons for introduction of the Bill before the State Legislature does not throw any light on the amended proviso with regard to its intentment and objects in inserting the impugned proviso. It reads as follows:
- ‘To give effect to the proposals made in the Budget Speech, it is considered necessary to amend the Karnataka Stamp Act, 1957 and the Karnataka Co-operative Societies Act, 1959’.
8. It is further stated by the learned Counsel Mr. S.G. Bhat that there was certain procedural irregularities in inserting the proviso to Section 38 by way of amendment by the State as it has circumvented the legislative procedure and the State Legislature has targeted only the Housing Co-operative Societies in the State which amounts to hostile discrimination and further stated that the amendment to Section 38 introduced a new classification of Co-operative Societies by excluding the petitioners-Societies from the exemption granted earlier under the unamended provisions of Section 38 of the Act with regard to application of the provision of the Registration Act and Stamp Act and Rules, which action of State Legislature amounts to step motherly treatment to these petitioners. It is further urged that there is no rational basis for the classification of the Co-operative Housing Societies as distinct and separate from other Co-operative Societies. All Co-operative Societies own immovable properties and they are entitled to own the same as they being corporate bodies. Therefore, it is stated that allotment of shares or transfer of shares in favour of its members necessarily create interest upon them in the immovable properties. When exemption for registration and payment of stamp duty on the conveyance deeds and registration fee under the relevant Rules framed under the Stamp Act for registration of the conveyance deeds either in favour of its members, the question of abusing the said provisions of the Act or evading to pay the stamp duty and registration fee by them do not arise. Further, it is stated that joint stock Company in tenant co-partnership Co-operative Societies, its immovable properties vests with them, but nonetheless every member of such Society necessarily has right over such property.
9. It is farther stated that amendment to Section 38 to the KCS Act is repugnant to Section 27 of the Central Act. In support of this submission, the learned Counsel for the petitioners, Sri S.G. Bhat has placed reliance upon the judgment of the Supreme Court in case of *M. Karunanidhi v. Union of India*, MANU/SC/0159/1979 : 1979CriLJ773 and also further urged that the impugned amended proviso is arbitrary, discriminatory which is violative of Article 14 of the Constitution of India as the petitioners-Societies have been differently classified and treated as they are not eligible for exemption for payment of stamp duty and registration fee in transferring their immovable property in favour of its members by executing conveyance deeds, in support of this contention he has placed reliance upon the following decision in *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu and Ors.*, MANU/SC/0601/1996 : [1996]2SCR422 Therefore, it is urged that the withdrawal of exemption granted earlier in favour of petitioners-Societies under unamended proviso of Section 38 is a benefit conferred upon them, though it is not a right even in respect of granting benefit, the State shall not make any discrimination between one kind of shareholders

to another. Therefore, there is absolutely no rational nexus in classification of petitioners-Housing Co-operative Societies and other Societies by the State by inserting the impugned proviso to the above said section of the Act as the same is opposed to intendment of incorporating the Co-operative Societies under Section 2(c) of the KCS Act. In support of the aforesaid submission, learned Counsel for the petitioners has placed reliance upon the judgments of the Supreme Court in case of State of Andhra Pradesh and Anr. v. Nalla Raja Reddy and Ors., MANU/SC/0041/1967 : [1967]3SCR28 and State of Maharashtra v. Manubhai Pragaji Vashi and Ors., MANU/SC/0001/1996 : AIR1996SC1 and he has also placed reliance upon the two judgments of the Bombay High Court in cases of Hanuman Vitamins Foods Private Limited and Ors. v. State of Maharashtra and Anr. 1991 Comp. Cas 1 Bom and Usha Arvind Dongre v. Suresh Raghunath Kotwal., 1991 Co-op. Cases 549 (Bom.) He has also placed reliance upon the judgment of this Court in case of Proposed Dharwad District Ex-servicemen's Co-operative Society Limited, Hubli v. State of Karnataka, MANU/KA/0022/1993 : AIR1993Kant117 and Gujarath High Court in case of Mulshanker Kunverji Gor and Ors. v. Juvansinhji Shivubha Jadeja., MANU/GJ/0144/1980 : AIR1980Guj62 In support of the proposition that, under Section 9 of the KCS Act, the petitioners are the bodies of corporation have got a right to hold property and therefore, there is no legal statutory obligation for them to transfer its property either in favour of its members or other persons.

10. The State Government has filed its detail statement of counter along with certain documents and also filed memo dated 31-1-2003 by producing Xerox copies of possession certificate, transfer agreement and also filed Xerox copy of the statement of objections filed on behalf of the respondents in W.P. No. 39921 of 2001 and document produced as Annexure-R1, wherein it contains news bulletin and also extracts of advertisements made by some of the petitioners in the Deccan Herald daily newspaper under the Deccan Herald classifieds, dated 28-1-2001 and Times of India dated 31-5-2001 and the Xerox copies of the deeds of transfer executed by some of the members of the petitioners. In the statement of objections, the State Government has stated that Section 38 of the KCS Act is exactly on the lines of Section 27 of the Central Act. It has been specifically stated at para 2 of the counter-statement to that effect. The above said provision of Section 38 was incorporated to encourage co-operative activities in the State by giving exemption to them for registration of documents, transfer of shares creating title and interest in immovable property in favour of the transferees. Further, it is stated that the provision of Section 27 of the Central Act on which basis proviso to Section 38 was incorporated to the KCS Act would not prevent the State Legislature to have re-look to the provision in question and amend it, if, the situation demands. Further, it is stated that proviso to aforesaid provision was incorporated in the Karnataka Stamp Act and Certain Other Law (Amendment) Act, 2001 with a view to give effect to the proposal made in the Budget Speech by the Chief Minister for the year 2001-02. The synopsis of the Chief Minister extracted from para 213 of the Budget Speech is stated as hereunder:

“Para 213 of the Budget Speech of the Chief Minister dated 26th March, 2001 presented before the State Legislature explains clearly the object of amendment made to Section 38 by inserting proviso”.

11. It is further stated that benefit of exemption granted in favour of the petitioners-Societies and other similarly placed Societies under Section 38 of the KCS Act were being misused by some of the House Building Co-operative Societies by making a person buying the immovable property from the House Building Co-operative Societies as shareholders of the Society, but not registering the conveyance deeds by paying stamp duty and registration fees as required in law, thus there was a huge loss of revenue to the State Government as a result of which the earlier grant of such exemption under the provision of section has been explained inserting the proviso. Therefore, it was considered necessary by the State Government to amend Section 38 by inserting impugned proviso by clarifying the exemptions in respect of the instruments, which intended to transfer the right, title or interest in respect of the immovable properties executed by them or in favour of the House Building Societies. Further, it is asserted by the State that there was no irregularity in the procedure in presenting the Bill and passing the same by the State Legislature. The said contention is in view of Clause (1) of Article 212 of the Constitution of India which provides that the validity of any proceedings in the Legislature of a State shall not be called in question in the Court of Law on the ground of alleged irregularity of procedure followed by it.
12. Further, it is contended by learned Government Pleader Smt. Shobha Patil that in view of Clauses (b) and (c) of Section 17(1) and Section 17(2) of the Registration Act granting exemption in favour of the Co-operative Societies under the Act, in respect of certain documents from compulsory registration as specified in Sub-section (1) under the above said provision and Section 38 of the KCS Act adds three more exemptions by granting such exemptions. Therefore, the provision of Section 38 of the Act has become inconsistent with the provision of Section 17 of the Registration Act. Therefore, the impugned proviso was incorporated to Section v of the KCS Act by the State, which is consistent with the provision of Section 17 of the Registration Act, which inconsistency of the provision of Section 38 of the KCS Act was removed by way of amendment in respect of execution and registration of certain documents by or on behalf of the Housing Co-operative Societies as the above said provision created repugnancy. But, on the other hand, the existing inconsistency between the Registration Act, Stamp Act, 1957, to that of Section 38 of the KCS Act are removed. Therefore, it is stated by the respondent-State that there is no merit in the legal contentions urged in the writ petitions by their learned Counsels.
13. It is further stated that the transfer of property and registration of documents falls under the Entry 6 of List II of the Seventh Schedule of the Constitution, Rates of stamp duty payable in respect of documents other than those specified in List I falls under Entry 63 of List II and incorporation of Co-operative Societies falls under Entry 32 of List II of the Seventh Schedule. Therefore, it is stated by the respondents that the State Legislature is competent to amend the provision of Section 38 of the KCS Act by inserting the impugned proviso. Further, it is stated that the provisions contained in Section 27 of the Central Act are relatable to Entry 6 of List III relating to registration of documents. Hence, it is stated that the amendment of Section 38, by incorporating the proviso has not created any fresh repugnancy as contended by the petitioners. But, on the other hand, it has removed the existing repugnancy between the provisions of the Registration Act, Stamp Act, 1957 as that of Section 38 of the KCS Act. Therefore, there is no need for the State Legislature to reserve the Bill for the assent of the President under Article 254 of the Constitution of India as contended by the learned Counsel for the petitioners.

14. The Learned Government Pleader Smt. Shobha Patil with reference to the amended proviso to Section 38 of the KCS Act has submitted that the amended proviso is only explanatory in nature, it applies to all Societies. In view of the misinterpretation of the unamended provision under Section 38 of the KCS Act the impugned proviso was incorporated by way of an amendment to the said section. It has been further clarified in the impugned proviso in respect of transfer of immovable property either in favour of its members or by or on behalf of the petitioners-Societies and farther submitted that, the power for registration of the instruments which cover under Section 17(1)(a) and (b) of the Registration is the legislative power of both the Parliament and State Legislature under Entry 6 of List III of Seventh Schedule. The payment of stamp duty and registration fee in respect of the documents which are compulsorily registerable in law is from Entry 63 of List II for which the State Legislature has got the power to enact law, under the said entry State Legislature has enacted the Karnataka Stamp Act, 1957 and State Government has framed the Karnataka Registration fee Rules in exercise of its power under Section 78 of the Registration Act prescribing the amount for payment of stamp duty and registration fees upon the documents which are compulsorily registerable in law. Insofar as the payment of stamp duty under the provisions of the Karnataka Stamp Act, 1957 is the State enactment which has received the assent of the President and therefore, the provisions the Stamp Act shall prevail over the unamended and amended provision of Section 38 of the KCS Act, as the unamended provision is inconsistent with the provisions Stamp Act, as it is the special enactment over the proviso Section 38 of the KCS Act regarding payment of stamp duty and registration fee upon the instruments as they are compulsorily registerable under the provisions of the Registration Act. Therefore, it is contended by the learned Government Pleader that either the impugned proviso is repugnant to Section 27 of the Central Act or suffers arbitrariness on account of classification made between the Co-operative Societies as alleged by the petitioners and therefore she submits that there is no invidious discrimination between the petitioners and other Societies as contended by them.
15. The learned Government Pleader in support of her above submissions has placed reliance upon the judgment of the Supreme Court in case of Hanuman Vitamin Foods Private Limited and Ors. v. State of Maharashtra and Anr., MANU/SC/0439/2000 : AIR2000SC2571 , with reference to the Xerox copies of the sale deed and possession certificates of the immovable properties transferred in favour of the shareholders of one of the petitioner-Society produced along with memo to show that the same would satisfy the requirement of the sale deed and therefore, the provisions of Section 17(1)(b) and (c) of the Registration Act and the provisions of the Karnataka Stamp Act, 1957, are attracted to the above said documents for their registration and payment of stamp duty and registration fees upon such conveyance deeds despite the unamended provision of Section 38 and amended proviso under Section 38 of the KCS Act. Therefore, she has prayed for dismissal of the writ petitions.
16. After hearing the learned Counsels for the parties, the following points would arise for my consideration and answer the same by this Court:
- (1) Whether the impugned proviso to Section 38 of the KCS Act is repugnant to Section 27 of the Central Act?

- (2) Whether unamended provision of Section 38 and amended proviso to Section 38 would prevail over the statutory provisions of Section 17(1)(b) and (c) and Article 20(1) and (2) of the Karnataka Stamp Act, 1957 and relevant Rule framed under the said Act for payment of registration fees on the conveyance deeds?
- (3) Whether the amended proviso to Section 38 of the Act No. 6 of 2001 is violative of Article 14 of the Constitution of India?
- (4) What order?

17. Point No. (1): Section 27 of the Central Co-operative Societies Act grants exemption of compulsory registration of the instruments relating to shares and debentures of registered societies notwithstanding the provision Section 17(1)(b) and (c) of the Registration Act. The case of the State Government as stated in its statement of counter is to encourage co-operative activities in the State by giving exemption for them for registration of the conveyance deeds, namely transfer of shares creating title and interest upon the immovable property of the Co-operative Societies and therefore, the provisions contained in the Central Act was incorporated to the KCS Act by incorporating the provisions of Section 38 and further it is rightly stated by the respondents that having regard to the alleged misuse of the said provision of the Act by the Societies, there was heavy loss of revenue to the State Government and therefore, it has considered it necessary to incorporate the proviso to Section 38 of the KCS Act and it has incorporated the same by way of amendment. The learned Government Pleader Smt. Shobha Patil, has rightly pointed out that the provision of Section 27 of the Central Act is concerned, it is not made applicable to the State of Karnataka as it is applicable to the Part B States. The Karnataka State Co-operative Societies Act is enacted by it in exercise of the State Legislative power under Entry 32 of List II of Seventh Schedule and it has received the assent of the President on 11-8-1959 and the said Act is enacted on the basis of the recommendation made by the Committee constituted by the Government of India with a view to bring uniformity in the legislation governing the Co-operative Societies as much as possible throughout the country. Therefore, the proviso to Section 38 by way of an amendment will not create any repugnancy to the provision of Section 27 of the Central Act insofar as the payment of the stamp duty and registration fee upon the instruments which are compulsorily registerable under the provisions of Section 17(1)(b) and (c) of the Registration Act and Article 20(1) and (2) of the Stamp Act, as it would amount to contravention of the above provisions of the Act and also for the reasons stated above by the learned Government Pleader. Therefore, the legal submissions made by the learned Counsel for the petitioners placing reliance upon the provision of Section 27 of the Central Act is unfounded as the same has no application to the impugned amended proviso in view of Article 254 of the Constitution of India and further Central Act specifically mentions the applicability of the said provision to the Part 'B' States. Therefore, the submission made on behalf of the State respondents by the learned Government Pleader is well-founded and the same must be accepted by this Court. As there is no repugnancy between the provision of the Central Act and proviso of Section 38 of the KCS Act, and accordingly Point (1) is answered against the petitioners.

18. Answer to the Points. (2) and (3): The answer these points, it would be necessary for this Court to incorporate the provision of Section 17(1)(b) and (c), 17(2) of the Registration Act and Article 20(1) and (2) of the Karnataka Stamp Act.

Section 17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely.—

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property,

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.

17(2) Nothing in Clauses (b) and (c) of Sub-section (1) applies to:-

- (i) any composition-deed; or
- (ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish, any such right, title or interest; or
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings; or
- (vii) any grant of immovable property by the Government; or
- (viii) any instrument of partition made by a Revenue Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or

- (x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or
- (x-a) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer”.

Article 20 of the Karnataka Stamp Act:

Description of instrument	Proper Stamp Duty
20(1) For conveyance, as defined by clause (d) of Section 2, not being a transfer charged or exempted under Article 52, on the market value of the property which is the subject-matter of conveyance, if the property is situated within the limits of. —	
(i) Bangalore Metropolitan Regional Development Authority	10% of the value
(ii) City Corporation or City or Town Municipal Council or any Town Panchayats other than the areas specified in item (i)	9% of the value
(iii) Any area other than areas specified in items (i) and (ii)	8% of the value:
(2) Where it relates to first instrument of conveyance executed by a promoter, a landowner, or a developer by whatever name called, pertaining to premises of ‘Flat’ as defined in clause (a) of Section 2 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (Karnataka Act 16 of 1973) or ‘Apartment’ as defined in clause (a) of Section 3 of the Karnataka Apartment Ownership Act, 1972 (Karnataka Act 17 of 1973) or transfer of share by or in favour of Co-operative Society or	xx xx : Provided further that in any case where a lease-cum-sale agreement is executed and is stamped with the ad valorem stamp required for such agreement under item (d) of Article 5 and in furtherance of such agreement a conveyance is subsequently executed, the duty on such conveyance shall not exceed rupees ten or the difference of the duty payable on such conveyance and the duty already collected on the security deposit under item (d) of Article

Company pertaining to premises or unit and the market value of the property which is the subject-matter of conveyance.

Explanation. — (a) ‘Premises’ means and includes undivided interest in the land, building and proportionate share in the common areas;

(b) ‘Unit’ includes flat, apartment, tenement, block or any other unit by whatever name called, constructed or under construction in accordance with the sanctioned plan by the authority competent to sanction a building plan under any law for the time being in force;

(c) ‘Promoter’ means a promoter as defined in clause(c) of Section 2 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (Karnataka Act 16 of 1973).

5, which is greater Where the market value.
—

(i) where the market value does not exceed Rs. 3,00,000/- — 2% of the value.

(ii) exceeds Rs. 3,00,000/- hut does not exceed Rs. 5,00,000/— Rs. 6,000/- + 3% of the value exceeding Rs. 3,00,000/-

(iii) exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/— Rs. 12,000/- + 6% of the value exceeding Rs. 5,00,000/-

(iv) exceeds Rs. 10,00,000/-.—

(a) if situated within the limits of Bangalore Metropolitan Regional Development Authority — Rs. 42,000/- + 8% of the value exceeding Rs. 10,00,000/-.

(b) if situated in areas other than the limits of Bangalore Metropolitan Regional Development Authority — Rs. 42,000/- + 7% of the value exceeding Rs. 10,00,000/-.

19. The Registration Act, 1908, though it is a pre-constitutional law, the same is passed on the test under Article 13 of the Constitution of India and therefore, it is made applicable with regard to the registration of conveyance deeds in the State for the reason that the legislative power of both the Parliament as well as State Legislature to enact such law is traceable from the Entry 6 of List III of Seventh Schedule of the Constitution of India. Further, the payment of stamp duty and registration fees for compulsorily registerable documents under the above provisions of the Registration Act, the State Legislature in exercise of its legislative power under sic [Entry 32] of List II of Seventh Schedule of the Constitution, has enacted the Karnataka Stamp Act, which has received the assent of the President on 28-1-1957. The aforesaid provisions of both the enactments exclusively deal with the matter in relation to compulsorily registerable conveyance deeds with regard to transfer of right upon the immovable property and collection of stamp duty and registration fees on such deeds. Therefore, the above said enactments occupy the field of registration of the conveyance deeds and payment of stamp duty and registration fees on such documents, which are compulsorily registerable, as the transfer of interest and title upon the immovable property by the petitioners-Societies under the guise of transfer of their shares to either its members or any persons fall under the provisions of Section 17(1)(b) and (c) of the Act of 1908 and therefore, the petitioners-Societies or any person are required in law to register such instruments, pay stamp duty and the registration fee as prescribed in law. Contrary to the above said provisions of both the enactments referred to supra, if any provision is incorporated in the Karnataka Co-operative Societies Act by the State Legislature, to that

extent, the provisions of unamended Section 38 of the KCS Act will be repugnant and the provisions of the Registration Act, 1908 and Stamp Act, 1957 are applicable to the instruments to be compulsorily registerable and payment of registration fee by the petitioners-Societies as the said enactments are special enactments in law over the unamended and amended provision of Section 38 of the KCS Act. This position of law is well-settled by the Supreme Court in case of *Life Insurance Corporation of India v. D.J. Bahadur*, MANU/SC/0305/1980 : (1981)ILLJ1SC. The Supreme Court with reference to the provisions of the Industrial Disputes Act, Life Insurance Corporation Act, has held that between both the above enactments, the Industrial Disputes Act is held to be a special Act, and laid down the law succinctly after interpretation of the provisions of both the Acts with reference to Article 254 of the Constitution of India at paras 51, 52 and 53, which read thus:

“51. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolutes - so too in life. The Industrial Disputes Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the Industrial Disputes Act has one special mission — the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the Industrial Disputes Act is a special statute, and the Life Insurance Corporation Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the Life Insurance Corporation Act. And whenever there was a dispute between workmen and management the Industrial Disputes Act mechanism was resorted to.

52. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is ‘an industrial dispute between the Corporation and its workmen’ qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis ‘industrial disputes’ at the termination of the settlement as between the workmen and the Corporation the Industrial Disputes Act is a special legislation and the Life Insurance Corporation Act a general legislation. Likewise when compensation on nationalisation is the question, the Life Insurance Corporation Act is the special statute, An application of the generalia maxim as expounded, by English

textbooks and decisions leaves us in no doubt that the Industrial Disputes Act being special law, prevails over the Life Insurance Corporation Act which is but general law.

53. I am satisfied in this conclusion by citations but I content myself with a recent case where this Court tackling a closely allied question came to the identical conclusion. [Uttar Pradesh State Electricity Board v. H.S. Jain MANU/SC/0289/1987. The problem that arose there was as to whether the standing orders under the Industrial Employment (Standing Orders) Act, 1946, prevailed as against Regulations regarding the age of superannuation made by the electricity board under the specific power vested by Section 79(c) of the Electricity (Supply) Act, 1948, which was contended to be a special law as against the Industrial Employment (Standing Orders) Act. This Court (a bench of three Judges) speaking through Chinnappa Reddy, J., observed:

The maxim “Generalia specialibus non derogant” is quite well-known. The rule flowing from the maxim has been explained in *Mary Seward v. Veera Cruz* (1884) 10 AC 59 as follows:

“Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so”.

In *J.K. Cotton Spinning and Weaving Mills Company Limited v. State of Uttar Pradesh*, MANU/SC/0287/1960 : (1961)ILLJ540SC this Court observed (at page 1174):

“The rule that general provisions should yield to specific provisions is not an arbitrary principle made by Lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect”.

We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, or workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro t repealed by Section 79(c) of the Electricity (Supply) Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity (Supply) Act, in regard to matters to which the Standing Orders Act applies.

I respectfully agree and apply the reasoning and the conclusion to the near identical situation before me and hold that the Industrial Disputes Act relates specially and specifically to industrial disputes between workmen and employers and the Life Insurance Corporation Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take-over of private insurance business”.

20. The above said judgment is subsequently approved by the Constitutional Bench of the Apex Court in the case of *Ashoka Marketing Limited v. Punjab National Bank*, MANU/SC/0198/1991 : [1990]3SCR649 wherein the Apex Court dealing with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971) and the Bombay Rent Control Act, Delhi Rent Control Act, 1959 and also examining the provisions under Article 246(1) and (4) of the Constitution of India and Entries 32, 95 and 97 of List I of Seventh Schedule and Entries 6, 7 and 13 of List III of Seventh Schedule, at paragraph 54, it has clearly held that the Public Premises Eviction Act is deemed to be a special enactment and the ratio laid down by the Supreme Court in the aforesaid case and other cases are referred to in the case of *Ashoka Marketing Limited*, supra, the same are approved and therefore, this Court has to hold that the provisions of the Registration Act, 1908 and Karnataka Stamp Act, 1957, shall be the special enactments over the unamended provision of Section 38 of the KCS Act.
21. The Karnataka Co-operative Societies Act deal with the incorporation and registration of Co-operative Societies, persons who can become members of the Co-operative Societies, disqualification for membership, management of Co-operative Societies, privileges of Co-operative Societies, election of members of the committees of Co-operative Societies, State aid to Co-operative Societies, properties and funds of Co-operative Societies, audit, inquiry, inspection and surcharge, settlement of disputes between the members of Co-operative Societies, past members, winding up and dissolution of Co-operative Societies, agriculture and rural development Banks, execution of awards, decree, orders and decisions, appeals, revision and review. Whereas, the Indian Registration Act, 1908, deals with the registration of compulsorily registrable documents, the time of presentation, the place of registration, preserving documents for registration, enforcing the appearance of executants and witnesses, presenting Wills and authorities to adopt, the deposit of Wills, the effects of registration and non-registration the duties and powers of registering officers, refusal to register, the fees for registration, searches and copies, penalties etc., and the Karnataka Stamp Act, 1957, provides for the liability of instruments to duty, of stamps and the mode of using them at the time of stamping instruments of valuation for duty, duty by whom payable, adjudication as to stamps, instruments not only stamped, allowances for stamps in certain cases, reference and revision, criminal offences and procedure and other supplemental provisions.
22. In view of the above clear statement and objects of the above said Acts, which would operate in different fields for different purposes, which are enacted by the State Legislature and Parliament respectively in exercise of their respective legislative power under the Constitution of India from different entries of the State and concurrent list of Seventh Schedule respectively. Therefore, each statutory enactment referred to above is a self-contained one, which exclusively

operates in its respective fields for which purpose they are enacted. The Karnataka Co-operative Societies Act is a statutory enactment of establishing Co-operative Societies/banks for the purpose of establishing co-operative movement in the State, whereas, the Registration Act and Stamp Act operate in different fields by making the instruments and deeds compulsorily registrable, if, there is transfer of interest and title in respect of immovable property by means of written instrument which property is valued more than Rs. 100/- and the Stamp Act deals with the payment of stamp duty upon instruments and to frame rules in exercise of its power under Section 68 of the Stamp Act prescribing rules, regarding payment of registration fees at the time of registration of the compulsorily registrable instruments with the registering authority. Therefore, the statutory enactments viz., Registration Act and Stamp Act are special enactments over the provisions of Karnataka Co-operative Societies Act.

23. For the reasons stated supra Point (2) has to be answered in favour of the State and merely unamended provision Section 38 was incorporated into the KCS Act and subsequently, the proviso was inserted by way of amendment by the impugned Act 6 of 2001 explaining the provision regarding the registration of the conveyance deeds of transfer of shares in favour of the members of the Housing Co-operative Societies by transferring interest and title upon the immovable properties and shall be compulsorily registerable payment of stamp duty and registration fee upon such conveyance deeds either they are executing or executed the deeds by them in respect of the immovable properties in favour of its members or other persons. The provisions of the Registration Act and Stamp Act are applicable to them for Registration of the conveyance deeds and therefore contention urged on their behalf that their so-called rights are affected by virtue of the impugned proviso cannot be accepted by this Court as the said contention is wholly untenable in law as held by the Apex Court in the cases referred to supra. But on the other hand, despite the provisions of unamended and amended proviso to Section 38 of the KCS Act, the provisions of the above said Acts are applicable to the conveyance deeds which are executed in favour of either the members of the Societies or any other person. Therefore, this Court has to hold that the amended proviso to Section 38 of the KCS Act is not inconsistent with the provisions of the aforesaid enactments. Both the above said enactments in view of the law laid down by the Supreme Court in the case of Life Insurance Corporation of India, supra, which case is extensively referred to in the Ashok Marketing Limited's case, supra, which is decided by the Constitutional Bench which has approved the Life Insurance Corporation's case, supra, and therefore the provisions of the said Acts are applicable to the conveyance deeds which are executed by the petitioners in favour of either its members or any person are compulsorily registerable, payment of stamp duty and registration fee is very much required, as such documents confer interest and title upon them in respect of such immovable properties, which would exceed its value more than one hundred rupees.
24. In view of the foregoing reasons the reliance placed by the learned Counsel for the petitioners upon the judgment of Supreme Court in M. Karunanidhi's case, supra, with regard to the repugnancy of the amended proviso to Section 38 of the KCS Act to the provisions of Section 27 of the Central Act is only untenable in law and also in view of the finding recorded by this Court on the Point (1) holding that there is no repugnancy between the provisions of the KCS

Act and Central Act. The reliance placed upon the judgment of Supreme Court in Thirumuruga, Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust's case, supra, is also not applicable to the fact situation and the reliance placed upon the judgment of Bombay High Court Hanuman Vitamin Foods Private Limited, referred to supra, contending that Maharashtra Co-operative Societies Act, 1960, the provisions of Sections 29 and 30 of the Bombay Stamp Act, 1958, Section 2(1), 2(g) and Schedule 1, Article 25(b)(i) (as amended in 1985) transfer of shares by the Co-operative Societies, document of transfer, transferee getting right of allotment and occupancy of office premises previously occupied by the transferor though the title is transferred by transferring the shares, it is conveyance of a right upon its member to occupy immovable property and was chargeable with under duty under Article 25(b)(i) of the Act and cannot be, exempted from payment of stamp duty, and therefore it has held that levy of the stamp duty upon conveyance deeds and therefore it cannot be said the powers of the State Legislature are ultra virus to the constitutional provisions- The above said judgment is against the petitioners and further the reliance placed on Usha Arvind Dongre referred to supra in which case it is held that, transfer of the interest upon the flat belonging to tenant, co-partnership housing Society by an award of arbitrators. Section 41 of the MCS Act exempts registration of such document which is essential under Section 17(1)(b) of the Registration Act, and such award does not require any registration. The said judgment cannot be applied to the fact situation of the cases on hand having regard to the finding recorded by this Court on Point (2) holding that the provisions of the Registration Act and Stamp Act are held to be special enactments over the provision under Section 38 of the Karnataka Co-operative Societies Act with regard to compulsorily registrable conveyance deeds executed by the societies and payment of stamp duty and registration fee is also required in law.

25. In fact in the above said case, the Bombay High Court has not examined the legality of provision under Section 41 of the MCS Act with reference to the law laid down by the Apex Court in the cases referred to supra. This Court by relying upon the said judgments has already answered the Point (2) against the petitioners holding that the unamended proviso to Section 38 cannot prevail over the provisions of the above said enactments and amended proviso to the said section does not affect their statutory rights as alleged by them. Hence, the reliance placed upon the said case by the learned Counsel for the petitioners has no application to the facts of the present cases. Further, the reliance placed on the judgment of Gujarath High Court Mulshanker Kunverji Gor's case, supra and other cases referred to supra in the earlier paragraph of this judgment where the contentions of the learned Counsel for the petitioners are noted also do not apply to the fact situation and also in view of the law laid down by the Apex Court in the case of Hanuman Vitamin Foods Private Limited, interpreted the provisions of Bombay Stamp Act, 1958 and also considered its earlier cases referred to in the above case.
26. Further the learned Government Pleader has rightly placed reliance upon the judgment of the Supreme Court in Hanuman Vitamin Foods Private Limited's case, supra, paras 6 and 7, wherein it has held if the transfer of share of Co-operative Society in favour of a member who will have right to occupy premises as incident of his membership and therefore it amounts to conveyance of property in his favour and therefore the provisions of Stamp Act attracts the liability of the

stamp duty on such conveyance deeds is required as the same are compulsorily registrable documents with the registering authorities. The ratio laid down in the said case also applies to the facts of the present cases and in view of the same the proviso to Section 88 of the KCS Act is in conformity with the law laid down by the Apex Court and Registration Act and Stamp Act.

27. For the aforesaid reasons, the legal submissions made by the learned Counsel for the petitioners that there is invidious discrimination between the petitioners-Societies and other Societies under the amended proviso to Section 38 of the KCS Act need not be considered by this Court as the same does not arise in these cases. Further there is no merit in this contention and also for the reasons that this Court has answered the relevant point holding that the provisions of Registration Act and the Karnataka Stamp Act would prevail over either the unamended provision or amended provisions of Section 38 of the KCS Act, therefore, the Point (3) does not arise for consideration to answer the same by this Court.
28. For the reasons stated supra, there is no merit in these petitions and these petitions are liable to be dismissed.
29. Accordingly, I pass the following order.
Writ petitions are dismissed.

Equivalent Citation: ILR 1985 KARNATAKA 50

IN THE HIGH COURT OF KARNATAKA

W.A. No. 880 of 1983

Decided On: 09.08.1983

Appellants: **Sri Padmamba Large Sized Co-operative Society**

Vs.

Respondent: **Labour Court and Anr.**

Hon'ble Judges/Coram:

Malimath, A.C.J. and Venkatachala, J.

Counsels:

For Appellant/Petitioner/Plaintiff: B. Veerabhadrappe, Adv.

For Respondents/Defendant: R.N. Narasimha Murthy, Adv. General for Respondant-1

Subject: Labour and Industrial

Subject: Civil

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Industrial Disputes Act, 1947 - Section 10; Constitution of India - Article 254(2)

Cases Referred:

Co-operative Central Bank Ltd. and Ors. v. Additional Industrial Tribunal, Andhra Pradesh, R. 1970 S.C. 245; Chairman, Dharwar District Government Employees Cooperative Bank Ltd. v. Marthand Bhimabai Hanagal and Anr., 1976(1) K.L.J. 102; Kunnimellihalli Dodda Pramanada Prathami Pattin Vyavasaya Sahakari Sangh Ltd. v. Shivappa Guddappa Surad, 1972(2) Ms. L.J. 327; D.N. Banerji v. P.R. Mukherjee and Ors., A.I.R. 1953 S.C. 58

Case Note:

(A) KARNATAKA COOPERATIVE SOCIETIES ACT, 1959 (Karnataka Act No. 11 of 1959) - Section 70(2)(d) — Enactment of Section 70(2)(d) does not entail provisions of Industrial Disputes Act ultra vires or inapplicable — Jurisdiction of Labour Court to adjudicate dispute not ousted — Reference to Labour Court valid.

Dispute relating to dismissal of employee of Co-operative Society referred to Labour Court, which made an award directing reinstatement-Appellant's Writ Petition was allowed in part, quashing the Award and remanding the matter to Labour Court for fresh consideration. The jurisdiction of the

Labour Court to adjudicate the dispute notwithstanding enactment of Section 70(2)(d) was upheld. In appeal, contentions raised were that on and from coming into force of Section 70 (2) (d), Arbitrator alone had exclusive jurisdiction and Industrial Disputes Act had no application, that the State Amendment was within the competence of State Legislature and that Labour Court had no jurisdiction to entertain the dispute referred.

Held:

The relevant provisions of the Industrial Disputes Act cannot either be regarded as ultra vires or inapplicable, merely because the State Legislature has enacted Clause (d) of Sub-section (2) of Section 70 empowering the Registrar or his nominee to decide the dispute between a Society and its employees. Invoking the provisions of the Industrial Disputes Act in this case was, therefore, clearly permissible. The reference to the Labour Court under Section 10 was legal and valid.

(B) INDUSTRIAL DISPUTES ACT, 1947 (Central Act No. 14 of 1947) - Section 10 - Notwithstanding Section 70 (2) (d) of Karnataka Cooperative Societies Act, reference of dispute permissible, legal and valid.

(C) CONSTITUTION OF INDIA - Article 254(2) - Not applicable since both Industrial Disputes Act and Karnataka Cooperative Societies Act do not fall under concurrent list Amendment enacting Clause (d) of Sub-section (2) of Section 70 within competence of State Legislature falling under Entry 32 of List II of VII Schedule.

The provisions of Clause (2) of Article 254 cannot at all be invoked as both the sets of laws do not fall under the concurrent list. The Industrial Disputes Act is an existing law in respect of the matters enumerated in the concurrent list. It is not disputed that it falls under Entries 22 and 24 of List III (concurrent list) of Schedule VII of the Constitution. The Karnataka Co-operative Societies Act, 1959 has been enacted by the State Legislature under Entry 32 of List II (State list) of VII Schedule of the Constitution. Clause (d) of Sub-section (2) of Section 70 of that Act, Which has been added by Karnataka Act 19 of 1976, confers jurisdiction on the Registrar or his nominee to decide disputes regarding wrongful termination of service between a Co-operative Society and its employee. As the pith and substance falls under Entry 32 of List II of the VII Schedule, the amendment was well within the competence of the State Legislature.

ORDER

Malimath, A.C.J.

1. The appellant is a Cooperative Society registered under the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as the Act). The 3rd respondent was a salesman working under the Appellant Society. The 3rd respondent was dismissed from service with effect from 5-11-1973 by the appellant. The dispute raised by the 3rd respondent was referred by the State Government to the Labour Court to decide as to whether the management was justified in dismissing the workman and as to the relief which the workman is entitled to. The Labour Court made an Award on the 11th of January 1980 holding that the dismissal was not justified and directing reinstatement of the 3rd respondent workman in service with effect from 6th November 1978 with continuity of service and back wages.

2. The appellant challenged the said Award before this Court in W.P. No 8011 of 1980. On the 11th of November 1980 Justice Bopanna, before whom the Writ Petition came up for consideration, allowed the Writ Petition in part quashed the Award and remitted the matter to the Labour Court for fresh consideration after giving opportunity to the appellant to lead evidence in support of its case. The learned Single Judge repelled the contention of the appellant that the Labour Court had no jurisdiction to adjudicate the dispute referred to it by the State Government under Section 10 of the Industrial Disputes Act. The learned Single Judge held that notwithstanding the amendment of Section 70 of the Act and inclusion of Clause (d) in subsection (2), the jurisdiction of the Labour Court under the Industrial Disputes Act is not ousted. It is the said order of the learned Single Judge that is challenged in this appeal.
3. Sri Veerabhadrappa, learned Counsel for the appellant contended that after Section 70 of the Act was amended and Clause (d) was added to subsection (2) of Section 70, the Arbitrator is entitled to entertain a dispute between the Cooperative Society and its employee in regard to the terms of employment, working conditions and disciplinary action taken by the Cooperative Society. He submitted that Section 70(1) of the Act provides that notwithstanding anything contained in any law for the time being in force, if any dispute touching the Constitution, management or the business of a cooperative society arises, such dispute shall be referred to the Registrar for decision and no Courts shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. Subsection (2) provides that for the purposes of subsection (1), the disputes enumerated in the said Clause shall be deemed to be disputes touching the Constitution, management or the business of a Cooperative Society. Clause (d) was added to subsection (2) by the Karnataka Act 19 of 1976, which reads as follows :

“(d) Any dispute between a cooperative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a Cooperative Society.”

The amendment came into force with effect from the 20th of January 1976. It is not disputed that Karnataka Act 19 of 1976 received the assent of the Governor on the 7th of March 1976 and was first published in the Gazette (extraordinary) on the 10th of March 1976. It is also not disputed that Karnataka Act 19 of 1976 was not reserved for the assent of the President and that the assent of the President was in fact, not taken in respect of the said amendment. It is also not disputed that so far as the Act is concerned, it has received the assent of the President on the 11th day of August 1959. It is in this background that it was contended by Sri Veerabhadrappa that with effect from 20th January 1976, the date on which Clause (d) to subsection (2) of Section 70 of the Act came into force, the Arbitrator has exclusive jurisdiction under Section 70 of the Act to deal with any dispute between a Cooperative Society and its employee or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a Cooperative Society. He further contended that with effect from the 20th of January 1976 the provisions of the Industrial Disputes Act in this behalf will not be applicable for deciding disputes of the nature covered by Section 70(2)(d) of the Act.

4. It cannot be disputed that before Clause (d) to subsection (2) of Section 70 was added by Karnataka Act 19 of 1976, the Arbitrator under Section 70 of the Act could not have entertained the dispute falling under Clause (d) of subsection (2) of Section 70 of the Act. That is also clear from the pronouncement of the Supreme Court in Cooperative Central Bank Limited & Others etc -v.- Additional Industrial Tribunal, Andhra Pradesh, Hyderabad & Others MANU/SC/0611/1969. Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 was similar to Section 70 of the Act as it stood before this amendment by Karnataka Act 19 of 1976. After examining the provisions of the Andhra Pradesh Act, their Lordships of the Supreme Court have held that the dispute between a Cooperative Society and its employees in regard to wrongful termination could not be entertained under Section 61 of the Andhra Pradesh, Cooperative Societies Act and that the provisions of the Industrial Dispute Act, for the adjudication of such a dispute can be invoked. In Chairman, Dharwar Dt. Government Employees Cooperative Bank Ltd. -v.- Marthand Bhimabai Hangal & Another 1976 (1) KarLJ 102 this Court has held that a dispute regarding gratuity does not fall under Section 70(1) of the Act and the Labour Court has jurisdiction to entertain an application regarding such dispute under Section 33C(2) of the Industrial Disputes Act. A Division Bench of this Court in Kunnimellihalli Dodda Pramanada Prathami Pattin Vyavasaya Sahakari Sangh Ltd.-v.- Shivappa Guddappa Surad MANU/TN/0576/1972 has held that a dispute raised by a Secretary of Society who has been dismissed, in relation to the dismissal is not a matter touching the business of the Society and the dispute does not fall within the scope of Section 70 of the Act. It is clear from these decisions that before the Act was amended by Karnataka Act 19 of 1976, a dispute of the nature falling under Clause (d) of subsection (2) of Section 70 of the Act could not have been entertained under Section 70 of the Act and that the workman should have invoked the relevant provisions of the Industrial Dispute Act for adjudication of the dispute. It is therefore, clear that the Karnataka State Legislature amended the Act and introduced Clause (d) to subsection (2) of Section 70 to confer jurisdiction for the first time on the Registrar or his nominee under Section 70 to deal with the dispute of the type mentioned in Clause (d) of subsection (2) of Section 70 of the Act,
5. Sri Veerabhadrappe, Learned Counsel for the appellant, submitted that the State Legislature had the necessary competence to enact law regarding Cooperative Societies under Entry 32 of List II of the VII Schedule of the Constitution. He contended that provision for adjudication of the dispute between the employees and the Society is one of the incidental provisions which could be incorporated in the Act, as the pith and substance of the same falls under Entry 32 of List II of the VII Schedule. It is not the stand of the Learned Advocate General that Clause (d) of subsection (2) of Section 70, which has been introduced by Karnataka Act 19 of 1976 is ultra vires on the ground that it has been enacted beyond the competence of the State Legislature. So we shall assume for the sake of argument that the amendment introduced by Karnataka Act 19 of 1976 is within the competence of the State Legislature. As there are two sets of laws, one made by the Legislature of the State well within its competence and another law made by the Parliament well within its competence, the question for consideration is as to which law would prevail.
6. Article 254(2) of the Constitution provides that where the law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provisions repugnant to the provisions of an earlier law made by Parliament or any existing law in respect

of that matter, then the law made by the Legislature of the State which has been reserved for the consideration of the President and has received his assent, would prevail in that State. Karnataka Act 19 of 1976 was not reserved for the consideration of the President and has not received his assent. The provisions of Clause (2) of Article 254 cannot at all be invoked as both the sets of law do not fall under the concurrent list.

7. The Industrial Disputes Act is an existing law in respect of the matters enumerated in the concurrent list. It is not disputed that it falls under Entries 22 and 24 of List III (concurrent list) of Schedule VII of the Constitution. The Karnataka Cooperative Societies Act, 1959 has been enacted by the State Legislature under Entry 32 of List II (State List) of VII Schedule of the Constitution. Clause (d) of subsection (2) of Section 70 of that Act, which has been added by Karnataka Act 19 of 1976, confers jurisdiction on the Registrar or his nominee to decide disputes regarding wrongful termination of, service between a Cooperative Society and its employee. As the pith and substance falls under Entry 32 of List II of the VII Schedule, the amendment was well within the competence of the State Legislature. As the provisions of the Industrial Disputes Act conferring jurisdiction on the Labour Court to decide industrial dispute are not ultra vires, it is not possible to agree with the contention that the jurisdiction of the Labour Court under the Industrial Disputes Act gets curtailed by the State enacting Section 70(2)(d) of the Karnataka Cooperative Societies Act. A similar question arose for consideration before the Supreme Court in *D. N. Banerji -v.- P. R. Mukherjee and others* MANU/SC/0053/1952 : [1953]4SCR302 . That was a case in which the employees of the Budge Municipality were dismissed from service. The Municipal Workers' Union raised a dispute which, was referred by the State of West Bengal to the Industrial Tribunal for adjudication under the Industrial Disputes Act. The Tribunal made an award declaring the termination as illegal and directed their reinstatement in service. The Municipality then took up the matter to the High Court at Calcutta under Articles 226 and 227 of the Constitution. The Writ Petitions having been dismissed, the matter was taken up before the Supreme Court. It was contended that the Industrial Disputes Act was not applicable to disputes with municipalities and that even if it did, it is ultra vires. It was contended that if the Industrial Disputes Act applies to the Municipality and their employees, the power to reinstate the dismissed employees will trench on the power to appoint and dismiss conferred on the Chairman and Commissioners of Municipalities under Sections 66 and 67 of the Bengal Municipalities Act. The Supreme Court negated the contention and held that the invasion of the provincial field. of legislation does not however, rendered the Industrial Disputes Act of the Central Legislature invalid having regard to the pith and substance of that Act. It was pointed out that the Industrial and Labour disputes are within the competence of the Central legislature, and do not deal with the local government. Following the decision of the Supreme Court, we have no hesitation in holding that the relevant provisions Of the Industrial Disputes Act cannot either be regarded as ultra vires or inapplicable, merely because the State Legislature has enacted Clause (d) of subsection (2) of Section 70 empowering the Registrar or his nominee to decide the dispute between a Society and its employees. Invoking of the provisions of the Industrial Disputes Act in this case was, therefore, clearly permissible. The reference to

the Labour Court under Section 10 was legal and valid. That being the position, it is not possible to agree with the contention of Sri Veerabhadrapa that the Labour Court had no jurisdiction to entertain the dispute referred to it under Section 10 of the Act.

8. It was lastly contended by Sri Veerabhadrapa that the Learned Single Judge was not right in issuing a direction that certain amount of subsistence allowance should be paid to the workman pending disposal of the dispute by the Labour Court. We are inclined to accept the contention of Sri Veerabhadrapa as, in our opinion, this matter should have been left open to the Labour Court to make appropriate directions in this behalf.

For the reasons stated above, while affirming the decision of the Learned Single Judge that the Labour Court has jurisdiction to entertain the dispute, we set aside the direction issued by the Learned Single Judge for payment of subsistence allowance during the pendency of the dispute before the Labour Court.

Equivalent Citation: ILR 2005 KARNATAKA 1349, 2005(2)KCCR804

IN THE HIGH COURT OF KARNATAKA

W.P. Nos. 38041-42/2004

Decided On: 09.02.2005

Appellants: **Krishna and Anr.**

Vs.

Respondent: **Sirsi Urban Co-operative Bank Ltd. Rep., by its President**

Hon'ble Judges/Coram:

Mohan Shantanagoudar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: G.B. Shastry, Adv.

For Respondents/Defendant: C.K. Subramanya, Adv.

Subject: Labour and Industrial

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Karnataka Co - operative Societies (Amendment) Act, Karnataka Co - operative 2000

Cases Referred:

Karnataka Sugar Workers Federation (R), Rep. by its President, Bangalore v. State of Karnataka, Rep. by Secretary, Department of Co-operation, Bangalore and Ors., ILR 2003 Kar 2531; Shamrao v. District Magistrate, Thane, AIR 1952 SC 324; Sha Chunilal Sohanraj v. T. Gurushantappa, 1972 (1) M.L.J. 327

Case Note:

KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 -SECTIONS 70 AND 118 - JURISDICTION OF THE LABOUR COURT UNDER - DISPUTES TOUCHING THE MANAGEMENT OR THE BUSINESS OF THE COOPERATIVE SOCIETY -HELD - In view of the amendment to Section 70 and Section 118 of the Act, omitting the words " No Court" and substituting the words " No Court, or Labour or Revenue Court or Industrial Tribunal, the Labour Court has no jurisdiction to decide the disputes touching the management or the business of the Co-operative Society.

Directing transfer of proceedings from the Labour Court to the Registrar of Co-operative Societies, the Court,

Held:

The substitution of certain words in Section 70 and Section 118 of the Kamataka Co-operative Societies Act, is by Section 3 of Amending Act No. 2/2000, which came into force on 20th June 2000. It is clear from the amended provisions that the legislature has by omitting the words “no Court”, substituted the words “no court, or labour or revenue court or Industrial Tribunal” in the new Section 70 and Section 118 of the Kamataka Co-operative Societies Act. That shows that the bar was there prior to amendment on the Courts to entertain the disputes falling within Section 70 of the Act will also apply to the Labour Court, Revenue Court and Industrial Tribunals.

Industry: Banks

ORDER

Mohan Shantanagoudar, J.

1. By the impugned orders dated 27.9.2003 passed in Reference Nos. 276/85 and 18/86, the I Addl. Labour Court, Bangalore, held that it has no jurisdiction to entertain the disputes and consequently, closed the proceedings. While passing the impugned orders, the Labour Court relied upon the judgment of the Full Bench of this Court in the case of KARNATAKA SUGAR WORKERS FEDERATION (R), REP. BY ITS PRESIDENT, BANGALORE V. STATE OF KARNATAKA, REP. BY SECRETARY, DEPARTMENT OF CO-OPERATION, BANGALORE AND ORS. MANU/KA/0222/2003 : (2003)IILLJ502Kant .
2. The records disclose that the petitioners herein who were the employees of the Respondent - Bank were terminated on 15th March 1983 and 27th May 1983. The conciliation proceedings were failed. The appropriate Government referred the disputes for adjudication to the Labour Court. The disputes were pending before the Labour Court, Hubli since 1984 to February 1985. Thereafter, the disputes were transferred to 1 Addl. Labour Court, Bangalore vide Government order dated 2.2.1985. Since then the matters are pending before the Labour Court, Bangalore. During the pendency of the disputes Section 70 and Section 118 of the Karnataka Cooperative Societies Act, 1959 (‘the Act’ for short) are amended to exclude the jurisdiction of Civil, Labour, Revenue Courts and Industrial Tribunal in the disputes touching the management or the business of the Co-operative Society. The said amendment was brought by virtue of Act No. 2 of 2000 by substituting the words “no Court or Labour or Revenue or Industrial Tribunal” for the words “no Court. In view of the aforesaid amendment, the Labour Court held that it has got no jurisdiction and consequently closed the proceedings.
3. Sri Balakrishna Shastry, learned Counsel appearing on behalf of the petitioners vehemently submitted that the proceedings before the Labour Court should be allowed to be proceeded with before the Labour Court only, inasmuch as, they are pending since 1984 and that the proceedings are almost nearing completion. He further submitted that in view of the provisions of Section 6 of the General Clauses Act, pending proceedings before the Court are saved and that therefore, they should be continued in the Labour Court. Per contra, learned Counsel appearing on behalf of the respondent contended that in view of the aforesaid amendment, the

Labour Court has no jurisdiction to proceed further and the matters have to be dealt with by the Registrar under Section 70 of the Karnataka Co-operative Societies Act.

4. The Full Bench of this Court in the case of KARNATAKA SUGAR WORKERS FEDERATION v. STATE OF KARNATAKA (CITED SUPRA) while considering the constitutional validity of amended Section 70 of the act, has observed thus:

“Para 30:- It is seen that a Co-operative Society is constituted and registered under the statute and such registered body has to follow the mandatory provisions of Rules and Regulations. The employees of the co-operative Society may also be governed by the contract of personal service, but whenever dispute touching the constitution, management or business of a co-operative society arises between a society and another co-operative society and so also the disputes arising regarding the terms of employment, working, conditions and disciplinary action taken by the cooperative society, such disputes may be adjudicated by the Registrar of the Co-operative Societies as stated.”

5. The relevant portion of Sections 70 of the Karnataka Cooperative Societies Act prior to the amendment reads thus:

‘Section 70: Disputes which may be referred to Registrar for decision :- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises—

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) xxx xxx

such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.”

After the amendment, the relevant portion of the said Section 70 reads thus:

‘Section 70:- Disputes which may be referred to Registrar for decision - (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises—

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) xxx xxx xxx

Such dispute shall be referred to the Registrar for decision and no Court or labour or revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.”

6. The relevant portion of Section 118 of the Karnataka Co-operative Societies Act before amendment reads thus:

“ Section 118 :- Bar of jurisdiction of Courts -_(1) Save as provided in this Act, no Civil or revenue Court shall have any jurisdiction in respect of ,—

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) any dispute required under Section 70 to be referred to the Registrar or the recovery of moneys under Section 100.

After the amendment, the relevant portion of Section 118 reads thus:

“Section 118 :- Bar of jurisdiction of Courts - (1) Save as provided in this Act, no civil, labour or revenue Court or Industrial Tribunal shall have any jurisdiction in respect of ,

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) any dispute required under Section 70 to be referred to the Registrar or the recovery of moneys under Section 100;

7. As could be seen from the aforesaid amendment, it is clear that the words “ no Court are substituted by the words “no court or labour or revenue court or Industrial Tribunal”. The substitution of the existing provision by a new provision does not attract Section 6 of the General Clauses Act, 1987. When the amending Act substitutes certain word existing in the old Act, the inference is that the legislature intended that the substituted words should be deemed to have been the part of the Act from the very inception. Where a Section of a statute is amended, the original ceases to exist and the new Section supersedes it and becomes part of the law just as if the amendment is always been there.

My aforesaid view is fortified by the judgment of the Apex Court in the case of Shamrao v. District Magistrate, Thane, MANU/SC/0017/1952 : 1952CriLJ1503 and the judgment of the Division Bench of this Court in the case of SHA CHUNILAL SOHANRAJ V. T. GURUSHANTAPPA 1972 (1) M.L.J. 327. In the case of SHAMRAO v. DISTRICT MAGISTRATE (cited supra), the Apex Court has observed thus:

“The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper cannons of construction. 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, then the earlier Act must thereafter by 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 old words scored out so that thereafter there is no need to refer to the amending Act at all’.

No repugnancy or inconsistency between the old and the new sub-sections have been pointed out to us. When the amending Act has stated that the old sub-section, has been substituted by the new sub-section, the inference is that the Legislature intended that the substituted provision should be deemed to have been part of the Act from the very inception.

When the proceedings were pending, the amended provision came into force, it is the amended provision that has to be applied and not the old provision which has ceased to exist.”

In the case of SHA CHUNILAL SOHANRAJ v. T. GURUSHANTAPPA (cited supra), the Division Bench of this Court has observed thus:

“ The matter pertains to rules of construction of statutes and the effect of amendment made to an Act. In the instant case, Sub-section (2) of Section 21 provides for the circumstances under which relief against eviction can be granted in proceedings under the Act. The said sub-section was amended by substitution of a new provision set out in the earlier part of this order. Where a section of a statute is amended, the original ceases to exist and the new section supersedes it and becomes part of the law just as if the amendment has always been there. (Vide Crawford, Statutory Construction - Interpretation of Laws pages 110-111).

An amending Act is not regarded as an independent statute. The statute in its old form is superseded by the statute in its amended form, the amended section of the statute taking the place of the original section, for all intents and purposes as if the amendment had always been there. The amendment should be considered as if embodied in the whole statute of which it has become a part. Unless a contrary intent is clearly indicated, the amended statute is regarded as if the original statute had been repealed and the whole statute re-enacted with the amendment.”

In my considered view, the same construction has to be applied to the case on hand. The substitution of certain words in Section 70 and Section 118 of the Karnataka Co-operative Societies Act, is by Section 3 of Amending Act No. 2/2000, which came into force on 20th June 2000. It is clear from the amended provisions that the legislature has by omitting the words “no Court”, substituted the words “ no court , or labour or revenue court or Industrial Tribunal” in the new Section 70 and Section 118 of the Karnataka Co-operative Societies Act. That shows that the bar that was there prior to amendment on the Courts to entertain the disputes falling within Section 70 of the Act will also apply to the Labour Court, Revenue Court and Industrial Tribunals.

In view of the aforesaid amendment to Section 70 and Section 118 of the Act and in view of the observations of the Full Bench of this Court, the Labour Court has got no jurisdiction to proceed with the matter. The only alternative remedy available for the petitioners is to approach the appropriate authority under Section 70 of the Act.

8. Looking to the fact that the petitioners have been fighting their litigation before the Labour Court since 1984 and major portion of the trial is over, in my considered opinion, it is not desirable to direct the petitioners to start the proceedings, afresh before the appropriate forum under Section 70 of the Act. In this view of the matter, I deem it just and proper to transfer the proceedings from the Labour Court to the file of Registrar of Cooperative Societies to proceed further in accordance with law. Hence, the following order is made:

The proceedings in Reference No. 276/85 and Reference No. 18/86 are restored to file and shall stand transferred to the file of Registrar of Co-operative Societies to be proceeded with under Section 70 of the Act. The I Addl. Labour Court, Bangalore, is directed to transmit all the records to the Registrar of Co-operative Societies.

The Registrar of Co-operative Societies is directed to proceed with the matters in accordance with law from the stage at which the proceedings were closed. The Registrar is further directed to dispose of the matters as early as possible, but not later than the outer limit of four months from the date of receipt of this order and records, after due notice to the parties. Both parties are at liberty to lead further evidence, if need be.

Writ Petitions are disposed of accordingly.

Equivalent Citation: ILR 1985 KARNATAKA 260

IN THE HIGH COURT OF KARNATAKA

W.P. No. 2844 of 1984

Decided On: 09.08.1984

Appellants: **Bore Gowda**

Vs.

Respondent: **Asst. Registrar of Co-operative Societies**

Hon'ble Judges/Coram:

K.A. Swami, J.

Counsels:

For Appellant/Petitioner/Plaintiff: C.M. Desai, Adv.

For Respondents/Defendant: Somayaji, G.P. for R-1 and 2, Shivaraj Patil, Adv. for R-3 and H.K. Vasudeva Reddy, Adv. for R-5

Subject: Civil

Acts/Rules/Orders:

Karnataka Co - Operative Societies Act, Karnataka Co - Operative 1959

Cases Referred:

Govindappa v. Somashekhar Ishwarappa and Ors., 1979(1) K.L.J. 124; Dattatraya Narhar Pitale v. Prabhakar Dinkar Gokhale and Anr., A.I.R. 1975 Bombay 205; Joint Registrar of Cooperative Societies v. B.C. Venkataswamy, W.A. No. 1274 of 1979

Disposition:

Petition allowed

Case Note:

- (A) **KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (Karnataka Act No 11 of 1959)**
- **Section 29C — Removal from directorship of Primary Society leads to cessation of Directorship in Union of Societies having wider territorial jurisdiction — Such consequence not determining factor for exercise of jurisdiction by Assistant Registrar of Co-operative Societies — Section applies only to post-election disqualification — Disqualification existing before or at the time of election could only be raised in a dispute under Section 70 — Removal of disqualification subsequent to initiation of proceedings does not affect the proceedings.**

At the time of election of Petitioner as Director of Society, his son was employed as Secretary of the Society. After election, the son tendered resignation on 19-9-1983 as accepted on 24-9-1983. Prior thereto, on 12-9-1983 complaint having been filed under Section 29C (1)(f) alleging disqualification of Petitioner to hold office on the ground of son's employment, the Assistant Registrar concluded that the election of Petitioner was void, not curable by subsequent resignation by the son and removed Petitioner from Directorship. The order was confirmed in appeal. Meanwhile election was held and the vacancy filled up.

Held:

- (i) The 1st Respondent was competent to exercise power under Section 29C read with Section 126A of the Act to disqualify and to remove the Directors of Society. The further disqualification and removal from the Board of Management of the Union was only consequential to the primary disqualification suffered by the Petitioner in the SocietyOnce the Petitioner was removed from Directorship of the Primary Co-operative Society, the Directorship of the Petitioner in the Union which was dependant on the first one had to cease automatically. As such it was only a consequence and not the cause by itself so as to form a basis for the exercise of power. Therefore, the consequence cannot be made the determining factor for the exercise of jurisdiction under Section 29C read with Section 126A of the Act by the Assistant Registrar of Co-operative Societies in respect of the Co-operative Societies whose area of operation do not extend beyond a Taluk.
 - (ii) Section 29C provides that it shall apply to a member of a committee who was or has become subject to any disqualification. A person becomes a member only after he is any elected. As such, sub-section (7) of Section 29C of the Act applies only to a post-election disqualification. The disqualification alleged against the Petitioner existed before and at the time of election. Hence, it could have been raised only in a dispute raised under Section 70 of the Act.
 - (iii) The proceeding was initiated before the resignation was accepted. Once a person suffers a disqualification and a proceeding is initiated, the fact that the said disqualification ceases to exist subsequently does not, and it cannot be held to affect the proceeding. If a person has suffered a disqualification at the relevant point of time, the consequences flowing out of such a disqualification shall have to be determined if it is raised in an appropriate proceeding irrespective of the fact as to whether such a disqualification has, subsequent to the relevant point of time ceased to exist or not.....Even when a member of a committee becomes subject to a disqualification, he is disqualified to continue as a member of the Committee and the subsequent development such as payment of arrears near relative ceasing to be in service, cannot be held to have the effect of taking away the consequences that have to follow out of a disqualification suffered by a member of a Co-operative society or a member of a committee. Merely because a disqualification ceases to continue, the penalty he has to pay for the disqualification suffered by him cannot be made inapplicable.
- (B) KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (Karnataka Act No. 11 of 1959) - Section 126A — Not applicable to disqualification suffered before becoming a member of the Committee.**

Section 126A, is not applicable to a disqualification which a member of a Co-operative Society suffered before he became a member of the Committee of management. It applies to a disqualification to which a member of the Committee becomes subject to it and not to a disqualification which existed before a member of a Society became a member of a Committee of management. This is apparent from the very opening words of the Section itself. It opens with the words “if any member of a Committee of Co-operative Society during the term of his office.” The “Committee” means the governing body of a Co-operative Society by whatever name called, to which the management of the affairs of the Society is entrusted.

ORDER

K.A. Swami, J.

1. In this Petition under Articles 226 and 227 of the Constitution, the Petitioner has sought for quashing the order dated 28th January, 1984, bearing No. AR32 C. MKT. 208/83-84 (Annexure-B), passed by the Assistant Registrar of Co-operative Societies, Tumkur (first respondent) and also the order dated 7th February 1984, passed in Appeal No. 43/83-84, by the Deputy Registrar of Cooperative Societies Tumkur (respondent No. 2) (Annexure-C).
2. The Petitioner was elected as a Director of the fourth respondent Society on 18-9-1983. Pursuant to his election as a Director, he was also elected as the President of the 4th Respondent Society. In addition to this the Petitioner on the basis that he was a Director and the President of the 4th Respondent Society, was also elected as a Director and the President of the 3rd Respondent. The Tumkur Cooperative Milk Producers Societies Union Ltd, Tumkur. In the 4th Respondent-Society, at the time when the Petitioner was elected as a Director the son of the Petitioner was working as the Secretary. In view of the election of the Petitioner as the Director of the Society, the son of the Petitioner tendered his resignation on 19-9-1983 and it was accepted on 24-9-1983 ; but before he tendered his resignation, a Petition was filed before the first Respondent on 12-9-1983 under Section 29C(l)(f) of the Karnataka Cooperative Societies Act 1959 (hereinafter referred to as the ‘Act’) stating that the son of the Petitioner was working as the Secretary of the fourth Respondent society, therefore the Petitioner was and is disqualified to hold the office of Directorship in the same Society. On that complaint, notice was issued on 22-9-1983. The Petitioner appeared in person and put forth his contentions orally.
3. The first Respondent came to the conclusion that the son being the near relation of the Petitioner and he being in the service of the fourth Respondent-Society at the time when the Petitioner was elected as a Director the Petitioner was disqualified to be elected as a Director as such the election of the Petitioner as a Director was abinitio void being opposed to Section 29C(l)(f) of the Act; that acceptance of the resignation of the son of the Petitioner on 24-9-1983 to the post of the Secretary of the 4th Respondent. Society could not cure disqualification of the Petitioner as he was elected to the Board of Management earlier to the date, the resignation was tendered and further the resignation was accepted subsequent to issue of notice under Section 29C of the Act. Accordingly, 1st Respondent, by the impugned order dated 28-1-1984 (Annexure B) under Section 126A(l)(a)and(d) read with Section 29C(l)(f) of the Act Removed the Petitioner from

the Presidentship and Director-ship of the 4th Respondent Society and disqualified him from being elected or continued as a Director of the fourth Respondent-Society for a period of 2 years. As a consequence thereof it was further held that he was also not entitled to be elected, nominated and continued in the management of any of the Cooperative Institutions during the aforesaid period. This order has been confirmed in the Appeal preferred before the second Respondent.

4. It is also necessary to mention on the further development that has taken place in the case subsequent to the filing of the Writ Petition, Even though an interim order was passed On 14-2-1984 staying the holding of election to the vacancy caused in the office of the President of the 3rd Respondent-Union as a result of removing the Petitioner from the Directorship and Presidentship of the 3rd Respondent-union by the impugned orders ; the election had taken place and the 5th Respondent had been elected as the President of the 3rd Respondent Union in place of the Petitioner. Similarly an election to the office of the Presidentship of the fourth Respondent-Society also had taken place on 14-2-1984 itself, and the 6th Respondent had been elected as the Presidentship of the fourth Respondent-Society in place of the Petitioner. Consequently the Petitioner has been allowed to amend the Petition by the order dated 16-3-1984. Thus, the elections of Respondents 5 & 6 as Presidents of Respondents 3 and 4 Union and Society respectively are sought to be quashed.
5. Sri C.M. Desai, Learned Counsel appearing for the Petitioner has put forth 5 contentions, which are as follows :
 1. The first Respondent had no jurisdiction to disqualify the Petitioner from the Directorship of the third Respondent-union as the area of operation of the 3rd Respondent-union extended beyond a Taluk whereas the jurisdiction of the 1st Respondent was confined to the societies whose areas of operation did not extend a beyond a Taluk.
 2. The disqualification alleged against the Petitioner was subsisting at the time when he filed, the nomination paper and was elected as a Director of the 4th Respondent-Society; and his election was not challenged under Section 70 of the Act. As such the disqualification in question being the one that existed at the time of the election it was not open to the first Respondent to consider the same in a proceeding under Section 29C read with Section 126A of the Act.
 3. That at any rate on the date when the show cause notice was served on the Petitioner i.e. on 25-9-1983, the son of the Petitioner had already resigned from the post of the Secretary of the 4th Respondent Society as his resignation had been accepted on 24-9-1983, itself, therefore, there was no disqualification subsisting either on the date of service of the notice or on the date the order was passed by the first Respondent, therefore the order was illegal.
 4. That the son of the Petitioner was divided, therefore, he being in service did not attract Clause (f) of sub-section (1) of Section 29C of the Act. In other wards the contention is that it is only when the undivided son is in service as per the explanation thereof Section

29C(1)(f) is attracted as it is only the undivided son who is considered to be a near relation and not the divided son.

5. That the elections of Respondent Nos. 5 and 6 as residents of Respondents 3 and 4 Union & Society respectively have taken place in the vacancy caused due to the removal of the Petitioner from those offices pursuant to the impugned orders ; therefore , if the Petitioner succeeds in the Petition it is necessary to quash these elections of Respondents 5 and 6.

Contention No. 1 :

6. It is not in dispute that the area of operation of the fourth Respondent Society does not extend beyond the territorial limits of Kunigal Taluk. The Petitioner has been removed from the Presidentship and Directorship of the 4th Respondent-Society and he has also been disqualified from being elected, continued and nominated to the management of the 4th Respondent-Society, and other cooperative institutions for a period of two years. The jurisdiction enjoyed by the first Respondent, it is also not in dispute, is in respect of the co-operative societies whose areas of operation do not extend beyond the limits of a taluka. Thus, it is clear that the 1st Respondent was competent to exercise power under Section 29C read with Section 126A of the Act. to disqualify and to remove the Directors of the 4th respondent-Society. The further disqualification and removal from the Board of Management of the 3rd Respondent union-in the instant case-was only consequential to the primary disqualification suffered by the Petitioner in the 4th Respondent-society. It was only on the election of the Petitioner as a Director and the President of the 4th Respondent-society, he had been elected as a Director and the President of the 3rd Respondent union. Therefore, once the petitioner was removed from Directorship of the Primary Co-operative Society i.e., 4th Respondent-society, the Directorship of the Petitioner the 3rd Respondent-union which was dependant on the first one had to cease automatically. As such, it was only a consequence and not the cause by itself so as to form a basis for the exercise of power. Therefore, the consequence cannot be made the determining factor for the exercise of jurisdiction under Section 29C read with Section 126A of the Act, by the Assistant Registrar of Co-operative Societies in respect of the co-operative societies whose areas of operation do not extend beyond a Taluk. Hence, the first contention cannot be accepted. It is accordingly answered in the negative and against the Petitioner.

Contention No. 2 :

7. It is not in dispute that the son of the Petitioner was serving as a Secretary of the 4th Respondent-society even on the date the Petitioner filed his nomination paper to contest the election to the office of the Director of the 4th Respondent-society; and was elected as such. No objection was raised with regard to the disqualification with which he was alleged to be suffering. No dispute was also filed under Section 70 of the Act, challenging the validity of the election of the Petitioner as a Director of the 4th Respondent-society. On these undisputed facts, the point that arises for consideration is as to whether the disqualification that existed at the time of the election, can it be made a ground for a proceeding under Section 29C of the Act or it can be gone into only in a dispute raised under Section 70 of the Act. This point is no more Res

Integra. A Division Bench of this Court, in the case of Govindappa -v.- Somashekhar Ishwarappa & Ors 1979(1) K. L. J. 124 while considering a case involving similar facts, has held that in respect of the disqualification which existed at the time of the election, the only remedy is to challenge the election in a dispute raised under Section 70 of the Act, and Section 29C(7) of the Act which empowers the Registrar to decide as to whether a member of the Committee was or has become subject to any of the disqualifications mentioned in Section 29C of the Act, applies only to cases where a member has incurred a disqualification subsequent to the election. It has also been further held therein that the language of sub-section(7) of Section 29C of the Act, also suggests that it cannot refer to the disqualification of a candidate before the election. It provides that it shall apply 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. As such, sub-section (7) of Section 29C of the Act applies only to a post election disqualification. In the instant case also, the disqualification alleged against the petitioner existed before, and at the time of the election. Hence, it could have been raised only in a dispute raised under Section 70 of the Act. There is still one more aspect to be considered. In the instant case, power under Section 126A of the Act, is also exercised. Apparently it is a wrong exercise of power. Section 126A of the Act, is not applicable to a disqualification which a member of a cooperative society suffered before he became a member of the committee of management. It applies to a disqualification to which a member of a committee becomes subject to it and not to a disqualification which existed before a member of a society became a member of a committee of management. This is apparent from the very opening words of the Section itself. It opens with the words "If any member of a committee of cooperative society during the term of his office." The "committee" means, the governing body of a Cooperative Society by whatever name called, to which the management of the affairs of the society is entrusted (See : Section 2(b)). So, Section 126A of the Act, is also not applicable to the present case. Thus neither Section 29C(1)(f) and (7) nor Section 126A of the Act, is attracted to the present case. The only remedy available was to raise a dispute under Section 70 of the Act, which had not been done. The authority entitled to exercise jurisdiction under Section 70 of the Act, is different. A dispute raised under Section 70 of the Act, no doubt may be decided by the Assistant Registrar of Co-operative Societies, exercising the powers of the Registrar or he may refer it to an Arbitrator or transfer it for disposal to any person who has been invested by the State Government with powers in that behalf. In the instant case, though the case is filed within thirty days and it is decided by the Assistant Registrar of Co-operative Societies; still it is neither possible nor permissible to treat it as a dispute raised under Section 70 of the Act, because, the appellate forum differs. As against the award passed in a dispute raised under Section 70 of the Act, an appeal lies to the Tribunal under Section 105 of the Act. Sri Somayaji, Learned Government Pleader, has placed reliance on a Full Bench decision of the High Court of Bombay, reported in Dattatraya Narhar Pitale-v.-Prabhakar Dinkar Gokhale & another. MANU/MH/0147/1975 : AIR1975Bom205 This decision is not applicable to the present case, having regard to the wordings contained in Sections 29C and 126A of the Act. For the reasons stated above, the 2nd contention is answered in favour of the Petitioner and it is held that the impugned orders - Annexures 'B' and 'C' are without jurisdiction.

Contention No.3 :

8. The 3rd contention of the Petitioner is that as on the date of service of the show-cause notice, the son of the Petitioner had resigned; therefore Respondent No. 1 had no jurisdiction to proceed further in the matter inasmuch as on the acceptance of the resignation of the son of the Petitioner. the disqualification ceased to exist. In support of this contention, Sri C.M. Desai, Learned Counsel for the Petitioner, has relied upon a Division Bench decision of this Court, in Joint Registrar of Cooperative Societies -v.- B.C. Venkataswamy. W.A. No. 1274 of-1979 In that case, even before the initiation of the proceeding, the arrears were paid and on the date the proceeding was initiated, there were no arrears and no disqualification was subsisting This Court, came to the conclusion that in such a case the proceeding ought not to have been initiated under Section 29C(1)(a) and Section 126A of the Act, because there was no disqualification subsisting. It is not possible to apply the said decision to the facts of the present case. In the instant Case, as it is already pointed out, the Petition was filed on 12-9-1983 and even the show-cause notice was issued on 22-9-1983 before the resignation of the son of the Petitioner was accepted. Thus, the proceeding was initiated before the resignation was accepted. It is also pertinent to note that once a person suffers a disqualification and a proceeding is initiated, the fact that the said disqualification ceases to exist subsequently does not, and it cannot be held to, affect the proceeding. If it is held that by reason of that, the pending proceeding gets affected, in that event the very object of the law will be defeated. If a person has suffered a disqualification at the relevant point of time, the consequences flowing out of such a disqualification shall have to be determined if it is raised in an appropriate proceeding irrespective of the fact as to whether such a disqualification has, subsequent to the relevant point of time ceased to exist or not to illustrate the point - suppose, 'A' was a candidate at the election to the membership of a committee. He, being a defaulter to a cooperative society, was suffering from a disqualification falling under Section 29C(1)(a) of the Act. Inspire of this, A's nomination paper was accepted and he was elected. On being elected, he paid up the arrears the very next day of his election and ceased to be a defaulter ; but a dispute was raised in time under Section 70 of the Act, challenging A's election on the ground that he was a defaulter at the relevant point of time ; therefore, he was disqualified for being chosen a member of the committee. Can the dispute be dismissed on the ground that before the dispute was raised, 'A' had ceased to be a defaulter having cleared off the arrears? I do not think it is possible to do so. Similarly, even when a member of a committee becomes subject to a disqualification, he is disqualified to continue as a member of the committee, and the subsequent development such as payment of arrears, near relative ceasing to be in service, cannot be held to have the effect of taking away the consequences that have to follow out of a disqualification suffered by a member of a co-operative society or a member of a committee. Merely because a disqualification ceases to continue, the penalty he has to pay for the disqualification suffered by him cannot be made inapplicable. Any other view will defeat the very object and the efficacy of law. This aspect of the matter was also not required to be considered in the aforesaid case by the Division Bench, because it did not arise there. Hence, in my view, the decision of the Division Bench in the aforesaid case must; be held to confine to the facts of that case. Accordingly, the 3rd contention is answered in the negative and against the Petitioner.

Contention No. 4 :

9. The Petitioner has neither filed an objection before the 1st Respondent in writing nor it is apparent from the order of the 4th Respondent that the son of the Petitioner had ceased to be a member of the joint family. It is clear that no such contention had been urged before any of the authorities below. However, it is submitted that in the Memorandum of Appeal preferred before the 2nd Respondent, such a contention was raised; but from the order of the 2nd Respondent, it is apparent that no such contention had been advanced. However, in the Writ Petition, the Petitioner has stated that this contention was urged before both the authorities. The Petitioner being a Hindu, he is governed by Hindu Law. The normal state of every Hindu family is joint. Under Hindu Law, the legal presumption is that every such family is joint in food, worship and estate and it continues to be joint unless the contrary is proved. Such presumption of union is the greatest in the case of father and sons. Therefore, unless the Petitioner produces evidence to show that there is a division between him and his son, it is not possible to hold on the basis of a mere self-serving assertion that the son of the Petitioner at the relevant point of time was divided. Therefore, the contention of the Petitioner that his son who was the Secretary of the 4th Respondent-society at the relevant point of time was divided, cannot be accepted. Accordingly, the 4th contention is held against the Petitioner.

Contention No. 5 :

10. The last contention relates to the relief to which the Petitioner is entitled to, if the impugned orders are quashed. Having regard to the conclusion reached by me on the 2nd contention, the Petitioner is entitled to succeed. The impugned orders are liable to be quashed. It is during the pendency of the Writ Petition the elections to the vacancies caused due to the removal of the Petitioner from the offices of the Directorship and Presidentship of the 4th Respondent-society and also the Presidentship of the 3rd Respondent-union, as a result of the impugned orders, have taken place and Respondents 5 and 6 have been elected to fill in those vacancies as Presidents of Respondents 3 and 4. They are required to yield up their offices to the Petitioner on the quashing of the impugned orders; because as a result thereof, the Petitioner stands relegated to the positions which he was enjoying on the date of passing of the impugned order -Annexure 'B', consequently, those offices stand restored to the Petitioner and as such, Respondents 5 and 6 cease to have authority to continue to hold those offices. They were elected in the vacancies. The continuation, or the period, of those vacancies dependent on, and till, the existence of the impugned orders and not beyond that. However, Learned Counsel for the 5th Respondent, submits that the Petitioner having failed to challenge the election of the 5th Respondent under Section 70 of the Act, he is not entitled to seek the relief in this proceeding. The contention cannot be accepted. As it is pointed out above, Respondents 5 and 6 were elected to the vacancies caused under the circumstances stated above. Hence, they are not entitled to continue once the impugned orders are quashed. It was not necessary to challenge their elections under Section 70 of the Act, as they were elected to fill in the vacancies which were to continue as long as the impugned orders held the field or the term of their offices expired, whichever was earlier. Thus, Contention No. 5 is answered in favour of the Petitioner.

11. For the reasons stated above, this Writ Petition is allowed. The impugned order dated 28th January, 1984, bearing No. AR 32. C.M.K.T. 208/83-84 (Annexure-B) passed by the Assistant Registrar of Cooperative Societies, Tumkur (1st Respondent) and also the order dated 7th February, 1984 passed in Appeal No. 43/83-84 by the Deputy Registrar of Cooperative Societies, Tumkur(2nd Respondent) (Annexure-C), are hereby quashed. The election of the 5th Respondent to the office of the Presidentship of the 3rd Respondent-union and that of the 6th Respondent, as President of the 4th Respondent-society as per Annexure-E and F, are hereby quashed, and the Respondents 5 and 6 are not entitled to continue in those offices. It is further held that the Petitioner is entitled to continue as a Director and the President of the 4th Respondent-society and as the President of the 3rd Respondent-union, which positions he held on the date of passing the impugned order-Annexure 'B' till the expiry of the term of those offices or till such time as the law permits and subject to the provisions of the Act and the Rules and Bye-laws governing those offices.

Equivalent Citation: AIR2007Kant136, 2008(1)KarLJ672, 2007(3)KCCRSN203

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 7408/2006

Decided On: 30.03.2007

Appellants: **Poornaprajna House Building Cooperative Society Ltd., A Cooperative Society registered Under the provisions of the Karnataka Cooperative Societies Act, 1959 reptd. by its President, Sri H. Hayagreevachar**

Vs.

Respondent: **Karnataka Information Commission, Sri S.R. Narayana Murthy, S/o late Sri S. Rama Rao and The Assistant Registrar of Cooperative Societies**

Hon'ble Judges/Coram:

S. Abdul Nazeer, J.

Counsels:

For Appellant/Petitioner/Plaintiff: N.N. Harish, Adv. for Aaren A/S

For Respondents/Defendant: B. Veerappa, AGA for R1 and 3 and Puttige R. Ramesh, Adv. for R2

Subject: Right to Information

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 ;Right to Information Act, 2005 - Section 2, Right to Information Act, 2005 - Section 4, Right to Information Act, 2005 - Section 6(1), Right to Information Act, 2005 - Section 7(1), Right to Information Act, 2005 - Section 15, Right to Information Act, 2005 - Section 18, Right to Information Act, 2005 - Section 19, Right to Information Act, 2005 - Section 19(1), Right to Information Act, 2005 - Section 19(3), Right to Information Act, 2005 - Section 19(4), Right to Information Act, 2005 - Section 19(5), Right to Information Act, 2005 - Section 19(6), Right to Information Act, 2005 - Section 19(7), Right to Information Act, 2005 - Section 19(8), Right to Information Act, 2005 - Section 19(9), Right to Information Act, 2005 - Section 19(10); Constitution of India - Article 226, Constitution of India - Article 227; Code of Civil Procedure (CPC)

Cases Referred:

Associated Cements Companies Ltd. v. B.N. Sharma and Anr. AIR 1965 SC 1595; Ahmedalli Abdulhusein Kaka and Anr. v. M.D. Lalkaka and Ors. AIR 1954 Bombay 33; Udit Narain Singh, Malpaharia v. Additional Member, Board of Revenue, Bihar and Anr. AIR 1963 SC 786; Savitri Devi v. District Judge, Gorakhpur AIR 1999 SC 976

Disposition:

Petition dismissed

Case Note :

A. CONSTITUTION OF INDIA-Article 226-Writ of Certiorari-Whether the Authority, which passed the impugned order is a necessary party to the writ petition?

B. RIGHT TO INFORMATION ACT, 2005-Karnataka Information Commission-nature of office of this Authority considered.

Respondent 2, a member of Petitioner-Co-operative Society, sought certain information. Society refused it. Respondent-2 filed appeal to President of Petitioner-Society presuming him to be appellate authority. Appeal was rejected on the ground that the society is not a public authority as per RTI Act. Member filed second appeal to State Information Commission under Section 19(3) of RTI Act. The State Information Commission had passed certain order which the petitioner-society, being aggrieved, challenged it by filing writ petition to High Court. When writ came up for orders, Government Advocate reported that he had no instruction to appear for the State Commission. High Court issued notice to State Commission. Commission wrote to High Court Registrar stating that Commission being judicial authority who passed the order should not be shown as respondent in writ petition because it is not a necessary party. It requested to delete its name. Whether the petitioner is justified in making the 'Commission' as a party-respondent to the writ petition? This question had been considered by High Court and held that the Authority whose order is questioned by writ of certiorari is a necessary party.

Held :

1. State Information Commission is a tribunal entrusted with the task of adjudicating upon special matters and disputes between the parties. The Commission is provided with judicial powers when it exercises its power under Section 19(3) of RTI Act. The basic and fundamental feature, which is common to both Courts and Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.
2. It is settled that any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting rights of a subject and enjoined with a duty to act judicially or quasi judicially is amenable to the certiorari jurisdiction of the High Court. Orders of State Information Commission are amenable to the jurisdiction of the High Court.
3. Necessary party is one without whom no order can be made effectively. A party whose interests are directly affected is a necessary party. A proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceedings.
4. Certiorari lies only in respect of judicial or quasi-judicial act as distinguished from an administrative act.
5. In an appeal against decree of a Court, the Court making order is directly subordinate to the appellate Court and the proceedings of appeal are regulated by the C.P.C. But in writ of certiorari, it is issued to quash the order of the tribunal, which is ordinarily outside the appellate or revisional

jurisdiction of the Court. In Certiorari, the order impugned would be set aside if the Authority or Tribunal acted without or in excess of its jurisdiction. If such tribunal or authority is not made a party to the writ, it can easily ignore the order of the High Court quashing its order, for not being a party, it will not be liable to contempt. AIR 1954 Bom 33 and AIR 1963 SC 786 are applied and followed by the High Court to hold that the tribunal or authority whose order is sought to be quashed is necessary party.

- 6. Commission cannot be equated to a Civil Court. Commission is not even under the administrative control of the High Court. Commission is not directly subordinate to the High Court. Commission is a necessary party to the writ proceedings because in its absence, an effective order cannot be made. Presence of Commission is necessary for a complete and final decision on the question involved in the proceedings.**

Industry: Cooperative Societies

ORDER

S. Abdul Nazeer, J.

1. In this case, petitioner has assailed the validity and correctness of the order passed by the first respondent - the Karnataka Information Commission (for short 'the Commission') dated 10.05.2006 in Appeal No. KIC 16 APL 2006 (Annexure 'O') and for certain other reliefs.
2. Petitioner is a Cooperative Society registered under the provisions of the Karnataka Cooperative Societies Act, 1959. The second respondent is a member of the petitioner - Society. He had filed two applications dated 07.11.2005 and 17.11.2005 in Form A under Section 6(1) and 7(1) of the Right to Information Act, 2005 (for short 'RTI Act') seeking certain information and documents pertaining to the functioning of the Society including personal details of its members. The Society rejected the said application by the order dated 06.12.2005. Feeling aggrieved by the said order, the second respondent filed an appeal before the President of the petitioner - Society presuming that he is an appellate authority under Section 19(1) of the RTI Act. The appeal was rejected on the ground that the Society is not a public authority under Section 2(h) of the RTI Act. The 2nd respondent filed a second appeal to the Commission under Section 19(3) of the RTI Act. The Commission has issued notice to the Society and the Society has filed its objections. After hearing the parties, the Commission has passed the impugned order.
3. When the matter came up for orders on 09.06.2005, the learned Additional Government Advocate accepted notice on behalf of respondent Nos. 1 and 3 and emergent notice was issued to respondent No. 2. On 19.07.2006 when the matter was posted again for orders, the learned Additional Government Advocate made a submission that he has no instruction to appear for respondent No. 1 the Commission. Therefore, emergent notice was issued to respondent No. 1. In response to the notice, the Commission has sent a letter addressed to the Registrar of this Court on 07.08.2006 stating that the Commission should not be made a party to the writ petition filed against its orders on the ground that it is not an interested party. The Commission has requested this Court to drop its name from the list of the respondents.

4. Having heard the learned Counsel for the parties, the question that arises for consideration is whether the petitioner is justified in making the 'Commission' as a party (respondent) to this writ petition?
5. Right to Information Act, 2005 is an Act to provide for setting out the practical regime of right to information for the citizens to secure access to information under the Control of Public Authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. Section 15 of the RTI Act provides for constitution of State Information Commission. It consists of State Chief Information Commissioner and such number of State Information Commissioners, not exceeding ten as may be deemed necessary.
6. Powers and functions of the Information Commission are enumerated in Section 18 of the RTI Act Sub-section (3) of Section 18 of the RTI Act states that the Central Information Commission or the State Information Commission while inquiring into the matter under that Section have the same power as are vested in the Civil Court while trying the suit under the Code of Civil Procedure. The said provision is as under:
 - (3) The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
 - (b) requiring the discovery and inspection of documents;
 - (c) receiving evidence on affidavit;
 - (d) requisitioning any public record or copies thereof from any court or office
 - (e) issuing summons for examination of witnesses or documents; and
 - (f) any other matter, which may be prescribed.
7. A second appeal under Sub-section (3) of Section 19 of the RTI Act lies to the 'Commission' against the decision of the Information Commission passed under Sub-section (1) of Section 19 of the Act. It is as under:
 - (3) A second appeal against the decision under Sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission.

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

8. Sub-section (4) of Section 19 of the RTI Act states that if the appeal preferred relates to information of a third party, the Commission shall give a reasonable opportunity of being heard to the third party. Sub-section (5) of Section 19 of the RTI Act states that in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the State Public Information Officer, who denied the request. Sub-section (6) of Section 19 of the RTI Act prescribes the time limit within which the appeal should be disposed of by the Commission. Sub-section (7) of Section 19 of the RTI Act states that the decision of the Commission shall be binding. Sub-section (8) of Section 19 of the RTI Act states that the Commission has the following powers, namely.
- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including.-
 - (i) by providing access to information, if so requested, in a particular form;
 - (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - (iii) by publishing certain information or categories of information;
 - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - (v) by enhancing the provision of training on the right to information for its officials;
 - (vi) by providing it with an annual report in compliance with Clause (b) of Sub-section (1) of Section 4;
 - (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
 - (c) impose any of the penalties provided under this Act;
 - (d) reject the application.

Similarly, Sub-section (9) of Section 19 of the RTI Act states that the commission shall give notice of its decision including any right of appeal to the complainant and the public authority. Sub-section (10) of Section 19 of the RTI Act states that Commission shall decide the appeal in accordance with the procedure as may be prescribed.

9. Thus, it is clear that the Commission while exercising the power under Section 19(3) of the RTI Act is provided with the judicial powers to deal with the dispute between the parties and determine them on merits fairly and objectively. Judicial power is defined as the power to examine questions submitted for determination with a view to the pronouncement of an authoritative decision as to the rights and liabilities of one or more parties. The Commission is a Tribunal entrusted with the task of adjudicating upon special matters and disputes between the parties. It is clear from the various provisions of RTI Act that the Commission is a tribunal vested with appellate power to decide the appeals. An appeal in legal parlance is held to mean the removal of cause from an inferior subordinate to a superior tribunal or forum in order to test and scrutinise the correctness of the impugned decision.

10. In *Associated Cements Companies Ltd. v. B.N. Sharma and Anr.* MANU/SC/0215/1964 : (1965)ILLJ433SC , the Apex Court has held that judicial functions and judicial powers are one of the essential attributes of a sovereign state, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures to transfer a part of the judicial powers and functions to the tribunals by entrusting to them the task of adjudicating upon special matters and disputes between the parties. The basic and the fundamental feature, which is common to both the Courts and Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign state.
11. It is settled that any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi judicially is amenable to the certiorari jurisdiction of the High Court Similarly, Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to armed forces. Thus, the orders of the Commission are amenable to the jurisdiction of the High Court. But, the question is, whether in a writ in the nature of certiorari filed under Article 226 of the Constitution, the tribunal or authority which had made an order should be impleaded as a party?
12. It is well established that a necessary party is one without whom no order can be made effectively. A party whose interests are directly affected, is a necessary party. A proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceedings.
13. Certiorari lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. Certiorari lies only in respect of judicial or quasi-judicial act as distinguished from an administrative act. A writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts. It follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. In such proceedings, the Tribunal or the authority, which is permitted to transmit the records must be a party, because without giving notice to it, the record of the proceedings cannot be brought to the High Court. It is true that in an appeal against a decree of a subordinate court, the court that passed the decree need not be made a party. But, there is a distinction between an appeal against a decree of a subordinate court or a writ of certiorari to quash the order of a tribunal or authority. In the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds. In the case of a writ petition, a writ of certiorari is issued to quash the order of the tribunal, which is ordinarily outside the appellate or the revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made a party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt.

14. In *Ahmedalli Abdulhusein Kaka and Anr. v. M.D. Lalkaka and Ors.* MANU/MH/0002/1954 : AIR1954Bom33 , a Division Bench of Bombay High Court has held that as a rule of practice, whenever a writ is sought challenging the order of the Tribunal, the Tribunal must always be a necessary party to the petition. It has been held as under:

The question that has been raised at the bar is, what is the proper attitude that a Tribunal which is served with a rule in a petition filed should adopt, and what is the proper order for costs that the Court should make. I think we should lay down the rule of practice, that whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is difficult to understand how under any circumstances the Tribunal would not be a necessary party when the petitioner wants me order of the Tribunal to be quashed or to be called in question. It is equally clear that all parties affected by that order should also be necessary parties to the petition.

(emphasis supplied)

15. In *Udit Narain Singh, Malpaharia v. Additional Member, Board of Revenue, Bihar and Anr.* MANU/SC/0045/1962 : AIR1963SC786 , the Apex Court has held as under:

As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceedings. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ or certiorari to quash the order of a tribunal or authority; in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in the case of the latter, writ or certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances, whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceedings. In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition.

In Paragraph 12 of the judgment, the Apex Court has categorically held that the tribunal or authority whose order is sought to be quashed is a necessary party. It is held as under:

To summarise, in a writ of certiorari, not only the tribunal or authority whose order is sought to be quashed, but also parties in whose favour the said order is issued are necessary parties.

(emphasis supplied)

16. It is no doubt true that the Apex Court in the case of *Savitri Devi v. District Judge, Gorakhpur* AIR 1999 SC 976 has held that there was no necessity for impleading the Judicial Offices who disposed of the matter in a civil proceedings when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave Petition and describing them as contesting respondents.
17. The Commission cannot be equated to a civil court. The Commission is neither directly subordinate to the High Court nor its orders are subject to appellate or revisional jurisdiction of the High Court. The Commission is not even under the administrative control of the High Court. Therefore, I am of the view that the Commission is a necessary party to the proceedings because in its absence, an effective order cannot be made. The presence of the Commission is necessary for a complete and final decision on the question involved in the proceedings.
18. In the result, letter of the Commission dated 7.8.2006 seeking deletion of its name from the array of the parties in this writ petition is hereby rejected. I direct the registry to send a copy of this order to the Karnataka Information Commission the first respondent herein forthwith.

Equivalent Citation: ILR 1987 KARNATAKA 825

IN THE HIGH COURT OF KARNATAKA

W.P. No. 15552 of 1986

Decided On: 08.09.1986

Appellants: **Seetharama Rao**

Vs.

Respondent: **Karnataka Appellate Tribunal**

Hon'ble Judges/Coram:

Chandrakantaraj Urs, J.

Counsels:

For Appellant/Petitioner/Plaintiff: B.G. Sridharan, Adv.

For Respondents/Defendant: B.G. Somayaji, HCGP

Subject: Service

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co - Operative Societies Act, Karnataka Co - Operative 1959

Disposition:

Writ petition allowed

Case Note:

KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 (Karnataka Act No. 11 of 1959) - Section 107 — Proceeding visiting the delinquent official of society with civil consequence is quasi judicial proceeding — Assistant Registrar cannot decline to I sue certified copy on order sheet failing to exercise jurisdiction vested — Such order revisable — Revision — Object is to do justice.

Held:

A proceeding in which an application for grant of certified copy of the order-sheet and other documents if any is made which visits the delinquent official of the co-operative society with civil consequences would be a quasi-judicial proceeding and in such quasi-judicial proceeding, the Assistant Registrar cannot, on the ground that the matter is pending, decline to grant certified copy of the order-sheet. Every party in civil or criminal Courts is entitled to the copies of the order-sheet maintained by the Court at all stages of the case with which the Court is seized. Therefore, declining to grant certified

copy amounts to failure to exercise jurisdiction vested in the Assistant Registrar, the second respondent herein. Such an order was clearly an order which can be revised under the Act. The Tribunal shall not fail to exercise jurisdiction on the ground that refusing to grant certified copy is an administrative order. The object of revisional jurisdiction is to see that justice is done to the parties and not to refuse to exercise on some legal theories which really have no proper basis for propounding such legal theories. In these days of highly complicated modern administration and the growth of administrative law, it is very difficult to draw a clear line as to what constitutes a judicial order and what constitutes a quasi-judicial order. It is more appropriate to err on the safer side by holding in favour of the administrative order being a quasi-judicial order which invariably does justice than to shut out parties from getting benefit of a fair procedure where certified copies of documents on which the entire charge rests are refused.

ORDER

Chandrakantaraj Urs, J.

1. This matter was heard at the stage of preliminary hearing on 21-8-1986. Learned Government Pleader Shri Somayaji was directed to seek instructions and submit. He was also furnished with a copy of the Writ Petition.
2. Petitioner is an employee of the third respondent-Chitradurga House Building Co-operative Society Ltd, Surcharge proceedings under Section 69 of the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as the Act) have been initiated against him and they are pending before the Assistant Registrar of Co-operative Societies, Chitradurga Sub-Division, Chitradurga. By an order dated 5th May 1984, the second respondent dismissed a dispute raised by the third respondent directing the third respondent to make appropriate application to initiate surcharge proceedings as a result of which the Society as now initiated surcharge proceedings through the Registrar. In that circumstance the petitioner applied to the Assistant Registrar, the second respondent herein, to grant him certified copies of the order-sheet of the surcharge proceedings. That came to be rejected for the reason that the matter was pending before the second respondent and therefore his request for grant of certified copy of the order-sheet could not be considered. Aggrieved by the said order, a true copy of which is enclosed as per Annexure-B to the Writ Petition, the petitioner preferred a revision petition to the Karnataka Appellate Tribunal, Bangalore under Section 107 of the Act, The Tribunal-first respondent herein, without going into the merits of the case, rejected the revision on the ground that a revision was not maintainable. Aggrieved by the same, the present Petition has been filed under Articles 226 & 227 of the Constitution praying for quashing the order of the Tribunal and for a Writ of mandamus to direct the second respondent-the Assistant Registrar of Co-operative Societies to supply certified copies of the audit report, ledger extract, bye-laws and the order-sheet of the surcharge proceedings so as to enable him to file his objections and then proceed with the case on merits.
3. Shri Sridharan, learned Counsel for the petitioner contends that the order passed by any Assistant Registrar or other officers subordinate to the Tribunal is subject to the revisional jurisdiction of the Tribunal if such an order is not an appealable order. There is some force in the contention. A proceeding, in which an application for grant of certified copy of the order-sheet and other

documents if any is made, which visits the delinquent official of the co-operative Society with Civil consequences would be a quasi-judicial proceeding and in such quasi-judicial proceeding, the Assistant Registrar cannot, on the ground that the matter is pending, decline to grant certified copy of the order-sheet. Every party in civil or criminal Courts is entitled to the copies of the order-sheet maintained by the Court at all stages of the case with which the Court is seized. Therefore, declining to grant certified copy amounts to failure to exercise jurisdiction vested in the Assistant Registrar, the second respondent herein. Such an order was clearly an order which can be revised under the Act. The Tribunal shall not fail to exercise jurisdiction on the ground that refusing to grant certified copy is an administrative order. The object of revisional jurisdiction is to see that justice is done to the parties and not to refuse to exercise on some legal theories which really have no proper basis for propounding such legal theories. In these days of highly complicated modern administration and the growth of administrative law, it is very difficult to draw a clear line as to what constitutes a judicial order and what constitutes a quasi-judicial order. It is more appropriate on the safer side by holding in favour of the administrative order being a quasi-judicial order which invariably does justice than to shut out parties from getting benefit of a fair procedure where certified copies of documents on which the entire charge rests are refused. Therefore, the Tribunal ought to have taken a very liberal view of the matter and entertained the revision. Not having done that, the order is liable to be quashed.

4. Accordingly, the order of the Assistant Registrar of Co-operative Societies and that of the Appellate Tribunal which are at Annexures B and C are quashed as being without any authority of law and contrary to law. A Writ of mandamus shall also issue to the second respondent to grant such documents which would enable the petitioner to offer proper defence in the surcharge proceedings against him, on an application made by him. This order is made without notice to the second and third respondents having regard to the fact that the Learned Government Pleader had been directed to take notice earlier. I do not consider that the third respondent the Co-operative Society is in any way adversely affected by the order made. Therefore, notice to third respondent is dispensed with in the interests of justice. Writ Petition is therefore allowed. Rule is accordingly issued and made absolute.

Equivalent Citation: 2006(3)KarLJ113

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 40225 of 1999

Decided On: 28.02.2006

Appellants: **The Workmen of Chikmagalur, District Central Cooperative Bank Limited represented by its General Secretary of Chikmagalur District Central Cooperative Bank Employees' Union and Ramachandra T.G.**

Vs.

Respondent: **The Registrar of Cooperative Societies in the State of Karnataka and Ors.**

Hon'ble Judges/Coram:

R. Gururajan, J.

Counsels:

For Appellant/Petitioner/Plaintiff: M.C. Narasimhan, Adv.

For Respondents/Defendant: S.Z.A. Khureshi, AGA for Respondents 1, 2 and 4, Krishna S. Dixit, CGSC for R-5 and Jayakumar S. Patil Associates for R-3

Subject: Labour and Industrial

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 70, **Karnataka** Cooperative Societies Act, 1959 - Section 70(1), **Karnataka** Cooperative Societies Act, 1959 - Section 70 (2), **Karnataka** Cooperative Societies Act, 1959 - Section 70(3); Industrial Disputes Act, 1947 - Section 12, Industrial Disputes Act, 1947 - Section 12(3), Industrial Disputes Act, 1947 - Section 18, Industrial Disputes Act, 1947 - Section 18(1), Industrial Disputes Act, 1947 - Section 18(3), Industrial Disputes Act, 1947 - Section 33; Industrial Employment (Standing Orders) Act, 1946 - Section 13B; Cooperative Societies Act, 1983 - Section 153; Karnataka Cooperative Societies Rules, 1997 - Rules 17, Karnataka Cooperative Societies Rules, 1997 - Rules 18; Karnataka Cooperative Societies Rules, 1960 - Rule 17

Cases Referred:

The Automobile Products of India and Ors. v. Rukmaji Bala and Ors. AIR 1955 SC 258; Tiruchipalli Hirudayapuram Cooperative Bank Employees Union, Etc., Etc., v. Joint Registrar of Cooperative Societies, Tiruchirapalli, Etc., Etc. (1992)1 LLJ 747; Roshanand Ors. v. State of Karnataka and Ors. 1991(3) KLJ 159; Rajasthan State Road Transport Corporation and Anr. Etc., Etc. v. Krishna Kant, Etc., Etc. AIR 1995 SC 1715

Case Note:

Labour and Industrial - Settlement - Section 12(3) of the Industrial Disputes Act, 1947 and Rule 17 of the Karnataka Cooperative Operative Rules 1997 - Managing Director of Third Respondent's Bank by an order sought to reduce pay scale and threatened to recover amount due to Petitioner in terms of communication - Hence, this Petition - Whether, Respondents could be restrained from interfering with terms of settlement - Held, settlement in conciliation under Section 12(3) of the Act was entered into in course of conciliation proceedings between Petitioner and Respondents - However, the Act was Special Act as compared to Cooperative Societies Act in so far as industrial disputes were concerned - Therefore, conciliation settlement could not be subject to powers of Registrar of Cooperative Societies as he had no jurisdiction or power to impose his own conditions in terms of his power - Hence, Rule 17 of the Rules in such case could not be invoked - Therefore, various endorsements issued against settlements were declared as unsustainable in law and impugned endorsements running contrary to settlement were set aside - Petition allowed.

Ratio Decidendi

“A settlement under the Special Act would prevail over the General Act.”

Disposition:

Petition allowed

Industry: Banks

ORDER**R. Gururajan, J.**

1. The Workmen of Chikmagalur District Central Cooperative Bank Limited, represented by its General Secretary of Chikmagalur District Central Cooperative Bank Employees' Union and Ramachandra T.G are before me challenging the orders dated 25.10.1999 issued by the Managing Director in terms of Annexure-A, the order dated 16.10.1999 issued by the Joint Registrar of Cooperative Societies in terms of Annexure-B/ order dated 25.10.1999 issued by the State Government in terms of Annexure-C, letter dated 27.10.1999 issued by the Deputy Registrar of Cooperative Societies, Chikmagalur in terms of Annexure-D in the case on hand. A direction is sought against the respondents from interfering with the terms of settlement dated 19.5.1999. The Union also wants this Court to declare Rule 17 of Karnataka Cooperative Societies Rules 1997 and Amendments to Sections 70(1), 70(2) and 70(3) of the Karnataka Cooperative Societies Act as unconstitutional, invalid and inoperative on the facts of the case.
2. Third respondent is Chikmagalur District Central Cooperative Bank Limited. Such Cooperative Banks are set up in the districts of the State. It is a Central Cooperative Bank at the district level with different types of societies affiliated to the said District Cooperative Central Bank. It is registered under the provisions of the Karnataka Cooperative Societies Act, 1959. Workmen of the Bank are members of the Trade Union. The bye-laws of the District Cooperative Central Bank enables the management or administration to deal with the conditions of service of employees to a certain extent. Petitioner association has been taking up the cause of the workmen and making representations from time to time. Several settlements have been entered into the matter of service conditions of the workmen of the bank in terms of settlement at Annexure-EI,

E2 and E-3. In the matter of scales of pay/ disputes have arisen and they have been resolved by way of settlements.

3. Petitioner Union made a demand on 1.5.1999 in the matter of certain service conditions to its members. After discussion and negotiations, the Management in its Board Meeting approved the proposal for revision of pay scales with certain terms and conditions. Same was unanimously adopted in the General Body Meeting of the Bank. Matter thereafter was taken up before the Conciliation Officer under Section 12(3) of the Industrial Disputes Act ('ID Act' for short). Notice was issued. Meetings were held. Ultimately, a settlement in conciliation under Section 12(3) of the Industrial Disputes Act was entered into in course of conciliation proceedings.
4. Petitioners refer to Rule 17 of the Karnataka Cooperative Operative Rules ("the Rules", for short). They also refer to the amendments made to Section 70 of the Karnataka Cooperative Societies Act ('KCS Act' for short). According to the petitioners, Rule 17 of the Rules and the subsequent amendment to Section 70 of the KCS Act could not come in the way of effective settlement in terms of the ID Act.
5. Petitioners state in para-13 of the petition that a resolution was passed by the General Body approving the settlement dated 20.5.1999. Bank appears to have sent approval to the Registrar of Cooperative Societies. In the meanwhile, petitioner Union took up the matter for implementation of the terms of settlement. There was correspondence in the matter. Bank obtained legal opinion in terms of the Annexure Q-1 and Q-2. Bank wrote letters to the Deputy Registrar on 13.10.1999 to the Labour Commissioner on 22.10.1999 and to the Assistant Labour Commissioner on 26.10.1999. Bank thereafter agreed to implement the settlement of 19.5.1999 before the Labour Department. Arrears were made over on 8.9,1999 in terms of the settlement with effect from 1.5.1999. Pay Scales and Dearness Allowance were revised as per the terms of the Agreement from 1.5.1999. Thereafter, Managing Director of the Bank has issued an order dated 25. 10.-1999 in terms of Annexure-A informing to reduce the pay scale and dearness allowance from what was agreed to under the settlement. Settlement provided for revision of pay scales with effect from 1.5.1999. However, in terms of Annexure-C, the date of implementation was stated to be effective from the date of the order dated 25.10.1999. Managing Director of the third respondent's Bank is now seeking to reduce the pay scale and also threatened to recover the amount due to the petitioner in terms of the communication. Petitioners with these facts are before this Court seeking for various prayers as referred to in the earlier paragraphs.
6. State Government has chosen to enter appearance and opposed the petition. State would say that the Cooperative Societies Act and Rules are complete in its nature. There is no ambiguity existed whatsoever in the KCS Act. The KCS Act is a self-contained code providing for consideration of disputes between the cooperative societies and their employees. Fixation or revision of pay scale of the employees of cooperative societies is one of the terms of the employment. Settlement between the management and the employees of the cooperative institution was to be entered into subject to the provisions of the KCS Act and Rules, more particularly Rule 17 of the Rules. They therefore say that they are right with regard to the impugned communications which are challenged in this petition. They further say that the object of the Rules is to improve the administrative and financial position as well as development

of the cooperative institution and to render effective banking services to its members and public at large. They want the petition to be dismissed.

7. Respondent No. 3 bank has filed an affidavit. Bank would say that in all cases/ unless scales are approved under Rule 17 of the Rules/ even if there is a settlement, the same will not be given effect to. Acceptance of settlement by the General Body in no way improve the situation so as to make the settlement binding and enforceable. The respondent Bank further says that the very existence of the Bank is at stake and is classified as Category-D as per the audit report, and that it is with great difficulty that the employees are still continued in service, and that as per the present situation it is very difficult to meet the establishment cost. The third respondent wants the petition,, to be dismissed. Petitioner has filed a rejoinder to the objections filed by the third respondent and has produced various reports.
8. Heard the learned Counsel for the petitioner Sri M.C. Narasimhan, learned Senior Counsel. He would argue that the impugned endorsements are required to be set aside on the peculiar facts of this case. He would invite my attention to the scope of Industrial Disputes Act vis-a-vis the Cooperative Societies Act. He would say that a settlement entered in conciliation is a statutory settlement and is binding on all parties. Such a statutory settlement cannot be subjected to further approval in terms of the endorsements. He would rely on several judgments in this regard in support of his submissions. Per contra, learned Government Advocate would argue that in terms of the Cooperative Societies Rules settlements are required to be approved, as otherwise, settlements have no force in law. He would also argue that the financial position of the bank is affected on account of the existing settlement. He wants the petition to be dismissed.
9. After hearing, I have carefully perused the material on record.
10. Section 70 of the Cooperative Societies Act reads as under:
 70. Disputes which may be referred to Registrar for decision.
 - (1) XXX XXX XXX
 - (2) For the purpose of Sub-section (1) , the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely-
 - (a) xxx
 - (b) xxx
 - (c) xxx
 - (d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terras of employment, working conditions and disciplinary action taken by a cooperative society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
 - (e) xxx

The said provision has been subsequently amended in terms of the amended provisions.

Rule 17 of the Karnataka Cooperative Societies Rules, 1960 reads as under:

17. Officers and employees of Cooperative Societies, qualification, etc.,(1) Subject to the budget allotment sanctioned by the general body, the managing committee shall prescribe from time to time the strength of the establishment of the society and the scale of pay and other allowances admissible to each member thereof with the prior approval of the Government:

Provided that no post which is to be filled by deputation or otherwise of a Government Servant shall be created except with the prior approval of the Government.

2. No person shall be eligible for appointment to the posts mentioned below unless he possesses the qualification specified against them.

11. In the light of the said statutory provisions, let me see as to whether the impugned endorsements are in violation of the statutory provisions. Annexure-A is issued by the Managing Director of the Chikmagalur District Cooperative Central Bank Limited, Chikmagalur in the light of the Government Order dated 25.10.1999. The order dated 25.10.1999 is filed at Annexure-C. In the said order, the Government has stated, that in terms of powers under Rule 17 of the Rules a settlement has to be with certain conditions. The specific terms have been mentioned in Annexure-C. Annexure-B is a letter addressed by the Joint Director to the Managing Director with regard to settlement. Annexure-J is a settlement between the parties in terms of the settlement dated 19.5.1999.
12. Employees Union placed a charter of demands to the management of Chikmagalur District Central Cooperative Bank Limited on 1.5.1999 regarding the demands for revision of pay scales/ dearness allowance, house rent allowances, etc. to be effective from 1.7.1998 and the arrears of salary to be drawn from 1.5.1999. Bilateral agreement had been entered into before the Labour Commissioner on 17.6.1976 regarding revision of pay scales. It expired on 30.8.1985. Representatives of the Board of Management of the Bank and of the Union constituted a sub-committee to look into the matter relating to the improvements of service conditions of the bank employees. Recommendations were placed before the Board of Management. The Board approved the same and entered into a bilateral agreement with the employees' union. Management thereafter placed the demands made by the workmen on 1.5.1999 before the Board of Directors. After prolonged discussion, certain terms were emerged between the parties. Thereafter, in the absence of any amicable settlement between the parties, they approached the Assistant Labour Commissioner and the, Conciliation Officer to intervene in the matter, and with his assistance and interference, they have entered into a settlement in conciliation. Parties have signed before the Assistant Labour Commissioner, and the settlement is in conciliation.
13. Industrial Disputes Act provides for resolution of disputes by way of arbitration, adjudication, settlement, etc. Section 18 deals with settlement in terms of the I.D. Act. Section 18(1) binds the parties to the agreement whereas Section 18(3) provide for a conciliation settlement. Conciliation proceedings are available in terms of Section 12 of the ID Act. Settlements entered into in conciliation, as held by the apex court, has statutory protection in terms of the ID Act.

Any settlement entered in conciliation certainly is -binding not only on the signatories to the settlement but also is binding on all the workmen - past, present and future.

14. Industrial Disputes Act is a Central Legislation. It is a Special Act dealing with the industrial units. Cooperative Societies Act is a general Act as compared with the I.D. Act. Cooperative Societies Act deals with various aspects of the cooperative societies in the matter. Therefore, it can be safely presumed that the I.D. Act is a Special Act as compared to the Cooperative Societies Act in so far as industrial disputes are concerned. Law is well settled that a settlement under the Special Act would prevail over the General Act. In fact, there are several litigations with regard to the power of the Registrar in the light of Rule 17 of the Rules. A Full Bench of this Court in Writ Petition No. 11380 of 1988 disposed of on 25.2.1992 (reported in MANU/KA/0471/1992 : ILR1996KAR2069 } has considered the scope of the Karnataka Cooperative Societies Act, 1959 vis-a-vis the Industrial Employment (Standing Orders) Act, 1946, After noticing various aspects of the matter, the Full Bench has ruled that a rule made under the provisions of Cooperative Societies Act is a rule of general application and that it does not consider the individual cases, and that therefore, there was no scope for the rule to provide for the rule to provide for the circumstances prevailing in a particular industry, like a sugar industry. The Court ultimately holds that Rule 18 of the Cooperative Societies Rules was not specifically notified with reference to Section 13B of the Standing Orders Act, and that the said rules would not exclude the operation of the Standing Orders Act in respect of matters covered by the said Rule 18 in the said judgment.
18. The Supreme Court in *The Automobile Products of India and Ors. v. Rukmaji Bala and Ors.* MANU/SC/0055/1955 : (1955)ILLJ346SC , has ruled that the Labour Appellate Tribunal was error in holding that it had jurisdiction to impose conditions as a prerequisite for granting permission to the employer company to retrench its workmen while exercising its power under Section 22 of the 1950 Act read with Section 33 of the 1947 Act.
19. A Division Bench of the High Court of Judicature, Madras in *Tiruchipalli Hirudayapuram Cooperative Bank Employees Union, Etc., Etc., v. Joint Registrar of Cooperative Societies, Tiruchirapalli, Etc., Etc.* (1992)I LLJ 747, has ruled that ‘what the Registrar of Cooperative Societies has done was not only unorthodox but also not fitting with any precept of law’ and that further ruled that ‘by the impugned circular, the respondent cannot adjudicate over the settlements and unilaterally set at naught the settlements apparently fitting in with the provisions of the Industrial Disputes Act and that there is lack of jurisdiction and competency in law in this regard’. The said Division Bench has further held that Section 153 of the Cooperative Societies Act, 1983 could be availed of at all to review of or revise settlements “arrived at under the Industrial Disputes Act and that such a settlement does not at all fall within the ambit of Section 153 of the Cooperative Societies Act, 1983.
20. This Court in *Roshanand Ors. v. State of Karnataka and Ors.* 1991(3) KarLJ 159, has ruled that a Special Provision is not controlled by the General Provision; that the general provision does not make a dent in the special provision so long as it holds sway; and that only where the special provision cannot be invoked, the general provision takes over.

21. The Supreme Court in Rajasthan State Road Transport Corporation and Anr. Etc., Etc., v. Krishna Kant, Etc., Etc. MANU/SC/0786/1995 : (1995)IILLJ728SC , has ruled reading as follows:

The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts. Indeed the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.
22. In the light of the above referred judgments, this Court has to hold that a statutory” settlement in terms of the Industrial Disputes Act has to be respected, regarded and acted upon, since it has taken its birth from the statute, with the aid of conciliation, and, such a settlement cannot be subjected to further conditions by the Registrar of Cooperative Societies in exercise of Section 70 of the Karnataka Cooperative Societies Act. If any such power is conceded in favour of the Registrar, then, such concession would be running counter to the object of the special law’ in bringing parties together by way of conciliation in a conciliation-settlement, and the supremacy of the conciliation settlement would be . diluted and in some cases it would be destroyed. Therefore, this Court has to strike a balance between Rule 18 and, the conciliation settlement in terms of the provisions of the Industrial Disputes Act. A conciliation settlement could not be subject to powers of the Registrar of Cooperative Societies as he has no jurisdictions power to impose his own conditions in terms of his power. Rule 17 in such case cannot be invoked at all. In the circumstances, I have no hesitation in accepting the argument of Sri Narasimhan that the various endorsements issued against the settlements have to be declared as unsustainable in law. I accept his arguments.
23. Coming to the prayer of striking down Rule 17, this Court has to take the said Rule 17 as being inapplicable to conciliation settlements. If so read, the object of both the Acts are achieved. In the circumstances, I would rather read down Rule 17 as being inapplicable to any of the conciliation settlement and therefore it is necessary for this Court to strike down the said rule.
24. This Court however has to notice certain factual position of the matter, including various settlements, in terms of the materials placed on record. If the management has any difficulty with regard to settlements there are avenues and methods are available in terms of the Industrial Disputes Act. Instead of availing that remedy, management cannot nullify a conciliation settlement by way of several endorsements.
25. In the circumstances, this petition is accepted. Impugned endorsements running contrary to the settlement are set aside. Ordered accordingly. No costs.

Equivalent Citation: 2006(3)KarLJ548, 2006(2)KCCR1025

IN THE HIGH COURT OF KARNATAKA

Writ Petition No. 47077/2001

Decided On: 23.03.2006

Appellants: **A. Hanumantha Reddy and Ors.**

Vs.

Respondent: **The Additional Registrar of Cooperative Societies (I and M) and Ors.**

Hon'ble Judges/Coram:

Nagamohan Das, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Somashekar, Adv. for S.N. Murthy Adv.

For Respondents/Defendant: A.N. Venugopala Gowda, Adv. for R-2 and A.R. Sharadamba, HCGP for R-1

Subject: Service

Acts/Rules/Orders:

Karnataka Cooperative Societies Act, 1959 - Section 17; Gratuity Act, 1972

Cases Referred:

The Chairman, Dharwar District Government Employees Cooperative Bank Limited, Dharwar v. Marthand Bhimabai Han Gal and Anr. ILR 1976 KAR. 111; Union of India and Anr. v. Shyama Pada Sidhanta and Ors. 1991(1)LLJ 357; Sundar Lal Jain and Ors. v. State of Haryana and Ors. 1995(1) SLR 215; State Bank of India and Ors. v. K.P. Subbaiah and Ors. AIR 2003 SC 3016; Chairman, Dharwar District Government Employees Cooperative Bank Limited, Dharwar v. Marthand Bhimabai Hangal and Anr. ILR 1976 Kar. 111

Disposition:

Petition allowed

Case Note:

SERVICE - PETITIONERS EMPLOYEES OF KARNATAKA STATE CO-OPERATIVE AGRICULTURE AND RURAL DEVELOPMENT BANK LTD-Appointed as Law Officers-Fixing of pay scale-exclusion of personal pay while fixing pay scales in the cadre of law officers-Dispute Before the additional registrar-rejected-appealed against-Appeal dismissed pleaded-against in writ petition-HELD-The Bank shall merge both pay and personal pay while fixing the

pay scale of petitioners as law officers-There is No Justification for the bank to exclude the personal pay while fixing the pay scale of petitioners as law officers-Impugned Orders are set aside.

Writ Petition Allowed.

ORDER

Nagamohan Das, J.

1. The petitioners have prayed for a writ in the nature of certiorari to quash the award dated 21.07.1999 passed by the first respondent-the Additional Registrar of Cooperative Societies, Bangalore, and also, the order dated 27.04.2001 passed by the third respondent-the Karnataka Appellate Tribunal, Bangalore and for other reliefs.
2. Petitioners are the employees working in the second respondent the Karnataka State Cooperative Agriculture and Rural Development Bank Limited (for short 'the Bank'). The Bank by notification dated 03.09.1992 invited application from internal candidates possessing the qualification of Law Degree of any recognised University to fill up the posts of Law Officers. Accordingly, the petitioners applied for the post of Law Officers. The Bank by order dated 28.01.1993 appointed these six petitioners as Law Officers. On 05.04.1993 the Bank fixed the pay scale of the petitioners in the cadre of Law Officers by excluding the personal pay that the petitioners were drawing before their appointment as Law Officers. Aggrieved by this exclusion of personal pay while fixing their pay scales in the cadre of Law Officers, petitioners approached the first respondent-the Additional Register of Cooperative Societies by raising a dispute under Section 70 of the Karnataka Cooperative Societies Act, 1959, in dispute No. DDS D2/1110/97-98. The first respondent, by his award dated 21.07.1999 rejected the claim of the petitioners. Aggrieved by this, the petitioners filed an appeal before the third respondent-the Karnataka Appellate Tribunal, Bangalore (for short the 'the Tribunal') in appeal No. 506/1999 and the same came to be rejected vide order dated 27.04.2001. Hence, this petition.
3. Sri. Somashekhar, Learned Counsel for petitioners contend, that the petitioners were drawing basic pay plus personal pay before their appointment as Law Officers. The second respondent-Bank in its notification dated 03.09.1992 inviting applications to fill the post of Law Officers stated, that they will to protect the pay of petitioners. Now the Bank excluded the personal pay at the time of fixation of pay scale of petitioners as Law Officers. The first respondent under the impugned award and the Tribunal in its order wrongly proceeded on the assumption that the petitioners are demanding for payment of personal pay in addition to their pay as Law Officers. On the other hand the demand of the petitioners was to include the personal pay in the basic pay of the petitioners while fixing the new pay scale in the cadre of Law Officers. He contends, that pay includes personal pay. The petitioners were drawing more salary before their recruitment as Law Officers. The petitioners are now drawing a less salary in a higher post/cadre. He further contends, that contrary to the notification dated 03.09.1992, the pay scale of petitioners is fixed by excluding the personal pay. He contends, that the definitions of the words 'pay', 'personal pay' and 'substantive pay' defined in the Subsidiary Rules of the Bank are to be read harmoniously and not in isolation. Reliance is placed on the following decisions.

1. The Chairman, Dharwar District Government Employees Cooperative Bank Limited Dharwar, v. Marthand Bhimabai Han Gal and Anr. ILR 1976 KAR. 111
 2. Union of India and Anr. v. Shyama Pada Sidhanta and Ors. MANU/SC/0662/1991
 3. Sundar Lal Jain and Ors. v. State of Haryana and Ors. 1995(1) SLR 215
 4. State Bank of India and Ors. v. K.P. Subbaiah and Ors. MANU/SC/0465/2003 : (2003)IILLJ743SC
4. Per contra Sri. K. Ananda, Learned Counsel for the Bank contends, that as on the date of the petitioners' appointment as Law Officers they were not drawing any personal pay. Therefore the question is including the personal pay of petitioners in their basic pay at the time of fixation of their pay scale in the cadre of Law Officers will not arise. He contends, that at the time of appointment of petitioners as Law Officers it was specifically stated in the order of appointment dated 28.01.1993 that the petitioners are not entitled for protection of their personal pay. He contends, that the pay do not include personal pay in view of the definitions in the Subsidiary Rules of the Bank. He justifies the impugned award and order.
5. Heard arguments on both sides and perused the entire writ papers.
6. It is not in dispute that prior to 28.01.1993 the petitioners were working as Superintendent, Technical Supervisor, Land Development Officers, Accounts Assistant, Console Operator etc. The second respondent -Bank by its order dated 28.01.1993 selected the petitioners for the post of Law Officers. The post of Law Officer is a higher cadre than the one the petitioners were holding before 28.01.1993. Whenever a person is promoted/selected/recruited upgraded to a higher cadre it is quite but natural to expect a better place both in status and also in the pay. The Supreme Court in the case of State Bank of India and Ors. v. K.P. Subbaiah and Ors. MANU/SC/0465/2003 : (2003)IILLJ743SC held:

... A pay scale has different stages starting with initial pay and ending with ceiling pay. Each stage in the scale is commonly referred to as basic pay. The emolument which an employee gets is not only the basic pay at a particular stage, but also the additional amounts to which he is entitled as allowances e.g. DA etc. Therefore, when question of pay protection comes, the basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that the total emoluments are not reduced.

(Under lining is by me)

In Sundar Lal Jain and Ors. v. State of Haryana and Ors. 1995 (1) SLR 215 a Division Bench of Punjab and Haryana High Court held as under:

... If there is no increase in the emoluments of a citizen on his promotion, no one would ever work with zeal and dedication nor would be ever like to acquire better experience and more qualification. This would result into complete stagnation. The action of the respondents in equating the promotional posts with that of inferior, posts in the matter of pay scale would obviously result in restricting the natural aspiration of human being to go higher and higher in his service graph and would, thus, be wholly arbitrary.

7. Admittedly the petitioners were drawing Monthly pay plus personal pay before their appointment as Law Officers. After the appointment of petitioners as Law Officers the Bank vide order dated 05.04.1993 fixed the pay scale of petitioners by excluding the personal pay that was drawn by the petitioners. As a consequence the petitioners on being appointed as Law Officers were made to draw lesser pay scale than they were drawing before their recruitment as Law Officers. Therefore, the impugned order of the second respondent-Bank dated 05.04.1993 fixing the pay scale of petitioners by excluding their personal pay frustrated the legitimate aspiration of the petitioners. The impugned order of the Bank fixing the lower pay scale is therefore opposed to public policy and wholly arbitrary.
8. The Bank in its notification dated 03.09.1992 invited application by way of internal recruitment from its employees possessing Law Degree to fill the post of Law Officers, In this notification dated 03.09.1992 it was specifically stated, that the 'present pay scale' of an employee will be protected being appointed as "Law Officer", Contrary to this, the Bank in the order of appointment dated 28.01.1993. stated, that they will only protect the 'basic pay' of the selected candidates. Taking advantage of the word 'basic pay' in the order of appointment dated 28.01.1993, the Bank while fixing the pay scale of petitioners excluded to merge the personal pay with the basic pay. At the first instance the Bank in its notification dated 03.09.1992 assured the petitioners that their present pay will be protected. But in the order of appointment they deviated and only mentioned as basic pay. This situation resulted in fixing the pay scale of the petitioners at a lower stage than they were drawing. Therefore, the impugned order fixing the pay scale of petitioners by excluding the personal pay is contrary to the notification dated 03.09.1992. On this ground also the impugned order is liable to be quashed.
9. The contention of the Learned Counsel for the Bank that pay do not include personal pay is unacceptable to me. This Court in the case of the Chairman, Dharwar District Government Employees Cooperative Bank Limited, Dharwar v. Marthand Bhimabai Hangal and Anr. ILR 1976 Kar. 111 held as under:
7. The word "pay" has been explained to mean "the average monthly salary drawn during the last year of the employee's active service". If the word "pay" has to be understood with a limited meaning as being only basic wage, the above explanation perhaps would become unnecessary because, the basic wage of an employee in any year ordinarily remains the same in the pay scale admissible to his post with the annual increment. When the rule refers to "average monthly salary" it should be inclusive of the allowance which may be varying depending upon the different allowances granted to the employee. This is also the scheme of payment of gratuity provided under the payment of Gratuity Act, 1972 whereunder the word "wage" has been defined to mean "all emoluments which are earned by an employee while on duty including dearness allowances.
10. The Subsidiary Rules of the second respondent-Bank defines the word 'pay' to mean 'monthly substantive pay'.

The word 'personal pay' means 'additional pay granted to an employee to save himself from loss of substantive pay in respect of a permanent post due to a revision of pay or to any reduction

of such substantive pay otherwise than a disciplinary measure or in exceptional circumstances on other personal consideration.

‘Substantive pay’ means, ‘pay other than personal pay or other allowances sanctioned for the specific purposes to which the employee is entitled on account of a post to which he has been appointed substantially or by reasons of his substantive position in a cadre’.

11. A harmonious reading of the words ‘pay’, ‘personal pay’ and ‘substantive pay’ makes it clear that the average monthly salary of an employee is the monthly pay. When the petitioners entered the service their pay scale was in two stages, that is, initial pay and ending with a ceiling pay. By virtue of increments and revision of pay scale the petitioners pay exceeded the ceiling limit. In that event, in order to save the loss to the petitioners the substantive pay in excess of ceiling limit was treated as personal pay. Therefore the personal pay is a part of substantive pay. The Bank shall merge both pay and personal pay while fixing the pay scale of petitioners as Law Officers. There is no justification for the Bank to exclude the personal pay while fixing the pay scale of petitioners as Law Officers.
12. The reasoning of the first respondent in the impugned award and in the order of the Tribunal is based on the presumption that the petitioners are seeking personal pay in addition to the basic pay as Law Officers is unfounded and factually incorrect. It is the specific case of the petitioners that their basic pay is to be merged with personal pay at the time of fixing of their pay scale as Law Officers. Petitioners are not seeking personal pay in addition to basic pay: Therefore, the entire approach of the first respondent and the Tribunal is baseless and unfounded.
13. For the reasons stated above, the following;

ORDER

- I. Writ Petition is allowed.
- II. The impugned award dated 21.07.1999 in dispute No. DDS/ D2/1110/97-98 passed by the first respondent and the order dated 27.04.2001 in appeal No. 506/1999 passed by the Karnataka Appellate Tribunal are hereby quashed.
- III. The second respondent is directed to fix the pay scale of petitioners in the higher post of Law Officers by merging the basic pay and personal pay drawn by the petitioners before their recruitment as Law Officers and to extend all consequential benefits to the petitioners.
- IV. Ordered accordingly with no order as to costs.

H.N. Nagamohan Das WP. No. 47077/2001 (S-RES)

ORDER ON BEING SPOKEN TO

Heard on Memo dated 04.04.2006 filed by the petitioner.

The Memo is allowed. The order dated 23.3.2006 is modified by removing the word “scale” wherever the word “pay scale” is there in terms of the memo.

Equivalent Citation: ILR 2010 KARNATAKA 837

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. Nos. 11469/2008, 11305, 11385, 11386, 11470, 11540 and 14160 and 2631/2009

Decided On: 10.09.2009

Appellants: **Sri Narayana S/o Karigowda Co-operative Milk Producers Societies Union Limited and Ors. etc. etc.**

Vs.

Respondent: **The State of Karnataka Department of Co-operation, Registrar of Co-operative Societies Department of Co-operation and Mysore-Chamarajanagar District Co-operative milk Producers Societies Union Limited and Ors. etc. etc.**

Hon'ble Judges/Coram:

S. Abdul Nazeer, J.

Counsels:

For Appellant/Petitioner/Plaintiff: D.N. Nanjunda Reddy, Sr. Adv. in W.P. Nos. 11469, 11470, 11540 and 14160 of 2008 for T.P. Rajendra Kumar Sungay, Adv. in W.P. Nos. 11469, 11470, 11540 and 14160 of 2008, B.K. Nagaraja, Adv. in W.P. No. 11305 of 2008, A.C. Balaraj, Adv. in W.P. Nos. 11385 and 11386 of 2008, Jayakumar S. Patil, Sr. Adv. in W.P. No. 2631 of 2009 and Jayakumar S. Patel, A/S in W.P. No. 2631 of 2009

For Respondents/Defendant: N.D. Jayadevappa, HCGP for R1 to R2 in W.P. Nos. 11305, 11385, 11386, 11469, 11470, 11540 and 14160 of 2008 and 2631 of 2009, S.S. Ramdas, Sr. Adv. in W.P. Nos. 11469, 11470 and 11540 of 2008, Sundaraswamy, Adv. in W.P. Nos. 11469, 11470 and 11540 of 2008, Ramdas, Adv. in in W.P. Nos. 11469, 11470 and 11540 of 2008, G.R. Prakash, Adv. for R2 in W.P. No. 11305 of 2008, Sampath, Adv. in W.P. Nos. 11385 and 11386 of 2008 and 2631 of 2009, Vatsala Law A/S for R4 in W.P. Nos. 11385 and 11386 of 2008 and 2631 of 2009 and H.C. Shivaramu, Adv. for R2 W.P. No. 14160 of 2008

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co - operative Societies Act, Karnataka Co - operative 1959; Karnataka Co-operative Societies (Amendment) Act, 1998 ; Preventive Detention Act, 1950 ; Karnataka Cooperative Societies Rules, 1960 - Rule 18, Karnataka Cooperative Societies Rules, 1960 - Rule 18(2); Karnataka Cooperative Societies Rules, 1952 - Rule 50; Karnataka Cooperative Societies (Second Amendment) Rules, 2008 Karnataka Cooperative Societies Regulations

Cases Referred:

Shamrao V. Parulekar and Ors. v. District Magistrate Than a Bombay and Ors. AIR 1952 SC 324; Shri Ram Narain v. The Simla Banking and Industrial Co. Ltd. AIR 1956 SC 614; Bhagat Ram Sharma v. Union of India and Ors. AIR 1988 SC 740; Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama AIR 1990 SC 981; K.S. Paripoornan v. State of Kerala and Ors. AIR 1995 SC 1012

Citing Reference:

Shamrao V. Parulekar and Ors. v. District Magistrate Than a Bombay and Ors. MANU/SC/0017/1952 - Relied On

Shri Ram Narain v. The Simla Banking and Industrial Co. Ltd. MANU/SC/0003/1956 - Relied On

Bhagat Ram Sharma v. Union of India and Ors. MANU/SC/0611/1987 - Relied On

Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama - Relied On

K.S. Paripoornan v. State of Kerala and Ors. MANU/SC/0200/1995 - Relied On

Disposition:

Petition dismissed

Case Note:

Trusts and Societies- Extension of Retirement Age - Section 129 of the Karnataka Cooperative Societies Act, 1959, Karnataka Co-operative Societies Rules(-Petition filed seeking direction to Respondent to extend the age of superannuation from 58 years to 60 years in terms of the Government Order and amendment and to declare the notification issued amending Rule 18(2) of the Rules as illegal-Held, in exercise of its power under Section 129 of the Act by the State Government a draft notification was issued for amendment of Rule 18 by providing the age of retirement at 60 years instead of 58 years but the said amendment came into force after its non-publication and notification in the official gazette required under Section 129 of Act and as per legislative intent the notification was not retrospective in nature therefore since the Petitioners had retired before 1.9.2008, they were not entitled for the benefit of the amendment- Impugned notification upheld-Petition dismissed

Industry: Cooperative Societies

ORDER

S. Abdul Nazeer, J.

1. In these writ petitions, the petitioners are seeking a writ of mandamus directing the respondents to extend their age of superannuation from 58 years to 60 years in terms of the Government Order dated 28.7.2008. They have further sought for a declaration that the amendment to Rule 18(2) of the Karnataka Cooperative Societies Rules dated 17.9.2008 is illegal and contrary to Government Order dated 28.7.2008 and to direct the respondents to extend the benefit of amended Rule 18(2) w.e.f. 17.7.2008 as per the Government Order dated 28.7.2008.
2. The petitioners are the officers and employees of different Cooperative Societies in the State of Karnataka. The Co-operative Societies had adopted the age of retirement of its employees on

par with the employees of the State Government. The State Government took a policy decision to extend the age of retirement of its employees from 58 to 60 years with effect from 17.7.2008 as per the notification dated 28.7.2008. The said notification was made applicable to the employees of the local bodies and aided educational institutions. The employees association of the Cooperative societies made a representation to the competent authority to enhance the age of superannuation of the officers and employers of Co-operative Societies to 60 years as per the representation dated 4.8.2008 (Annexure 'C in W.P. No. 11469/2008). A draft notification was issued by the State Government dated 28.8.2008 for amendment of Rule 18(2) of the Karnataka Co-operative Societies Rules (for short 'Rules') enhancing the age of retirement of the officers and employees of the Cooperative Societies to 60 years. Thereafter, a notification was issued on 17.9.2008 amending Rule 18(2) by substituting the words "60 years" in place of "58 years". The said notification came into force from the date of its publication. The petitioners have completed 58 years between 17.7.2008 to 1.9.2008. Therefore, they have filed these writ petitions contending that the amended Rule should have been brought into force with effect from 17.7.2009 as per the Government Order dated 28.7.2008.

3. The respondents have filed their statement of objections contending that the Government issued an order on 28.7.2008 enhancing the age of retirement from 58 years to 60 years with effect from 17.7.2008 applicable to the employees of the State Government, local bodies and aided educational institutions. The said notification does not apply to the officers and employees of the Co-operative societies. Every co-operative society is obliged to apply for and obtain registration under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). The management of the Society vests in its General Body/Managing Committee. The Bye-laws, Rules and Regulations of a Co-operative Society shall be in accordance with the objects of the Society and shall not be contrary to the provisions of the Act or the Rules made there under. The Managing Committee has accordingly formulated Subsidiary Rules governing the service conditions of its employees. Section 129 enables the State Government to make Rules for the whole or any part of the State and for any class of Co-operative Societies after previous publication and by notification in the official gazette. Section 129(2)(o) provides for framing Rules regarding recruitment and conditions of service of employees of Co-operative Societies. Rule 18(2) states that the compulsory retirement of an Officer or employee of any Co-operative Society is the date on which he attains the age of 58 years. The State Government has issued a draft notification dated 28.8.2008 for amendment of Rule 18 by providing the age of retirement at 60 years instead of 58 years. The amendment will come into force only upon publication and notification in the official gazette as required under Section 129 of the Act. They have sought for dismissal of the writ petitions.
4. Learned Counsel for the petitioners would contend that the State Government has taken a policy decision to extend the age of retirement of the employees of the State Government, local bodies and aided educational institutions from 58 to 60 years w.e.f. 17.7.2008. Accordingly, the State Government has issued an Order dated 28.7.2008 enhancing the age of retirement w.e.f. 17.07.2008. The employees of the Co-operative Societies approached the competent authority seeking extension of their age of retirement to 60 years. It is further contended that during the pendency of the writ petitions, the State Government has taken steps to amend Rule

18(2) for enhancing the age of retirement of the officers and employees of Co-operative societies from 58 years to 60 years and a notification dated 28.8.2008 was issued proposing the age of retirement to 60 years. However, amendment to Rule 18(2) was given effect to from the date of publication of the notification dated 17.9.2008. The said amendment would deprive the policy decision of the State Government, which has been extended from 17.7.2008 to all the employees except the employees of the Co-operative Societies. There is absolutely no rationale behind giving effect to the said amendment from 17.9.2008. It is further argued that the words '58 years' has been substituted by the words '60 years' in Rule 18(2). Therefore, the amendment shall have retrospective effect from the date of framing of the Rules by the State Government in exercise of its Rule making power.

5. On the other hand, learned Advocates appearing for the respondents submit that Section 129 enables the State Government to make Rules for the whole or any part of the State and for any class of Co-operative Societies after previous publication and by notification in the Official Gazette. Section 129(2)(o) provides for making Rules regarding recruitment and conditions of service of employees of Co-operative Societies. Accordingly, Rule 18(2) has been amended, which provides that the compulsory retirement of an Officer or employee of any Co-operative society is the date on which he attains the age of 60 years. The said Rule was amended as per the notification dated 17.9.2008 gazetted on the same day. Therefore, amendment to Rule 18(2) has come into force from 17.9.2008. Since the petitioners have retired before 1.9.2008, they are not entitled for the benefit of the said amendment. It is further argued that the notification amending Rule 18(2) is read as a whole would indicate that it is prospective in nature. The legislative intent is also to give effect to the notification prospectively from the date of its publication.
6. I have carefully considered the arguments of the learned Counsel for the parties made at the Bar and perused the materials placed on record.
7. The undisputed facts are that the State Government enhanced the age of superannuation of Government Servants, employees of local bodies and aided educational institutions from 58 to 60 years w.e.f. 17.7.2008 as per the Government Order dated 28.7.2008. The association of the employees of Co-operative Societies made a representation to the competent authorities to enhance their age of retirement on par with the age of retirement of State Government employees. The State Government took a decision on 13.8.2008 to increase the age of retirement of the officers and employees of the Cooperative Societies, which is clear from the note at Annexure 'E' dated 13.8.2008 (in W.P. No. 1 1469/2008). A draft notification was issued on 28.8.2008 proposing to amend Rule 18(2) by providing the age of retirement at 60 years instead of 58 years. This was followed by a notification dated 17.9.2008 amending Rule 18(2) enhancing the age of retirement to 60 years.
8. The Karnataka Cooperative Societies Act, 1959. has been enacted to consolidate and amend the laws relating to Cooperative Societies in the State of Karnataka. A Cooperative Society has the status of a body corporate having perpetual succession and a common seal. Section 129 of the Act provides for making Rules to carry out the purpose of the Act. Sub-section (2)(o) of Section 129 as amended by Act No. 25/1998, which has come into effect from 15.8.1998,

provides for making of Rules for the recruitment, including qualification for recruitment and conditions of service of employees of Cooperative Society. The said provisions are as under:

129. Powers to make Rules:

- (1) The State Government may, for the whole or any part of the State and for any class of Cooperative Societies, after previous publication, by notification in the Official Gazette, make Rules to carry out the purpose of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such Rules may provide for all or any of the following matters, namely:
 - (o) The recruitment including qualification for recruitment and conditions of service of employees of cooperative societies.

Section 129(4) inserted by Act No. 40 of 1964, which has come into force w.e.f. 26.6.1965 authorises the State Government to make Rules under the Act with retrospective effect. The said section makes it clear that when a rule is made under the said provision, the reasons for making the rules shall be specified in a statement before both Houses of the State Legislature. The said provision is as under:

Section 129(4): A rule under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement laid before both Houses of the State Legislature, subject to any modification under Section 130 every rule made under this Act shall have effect as if enacted in this Act.

9. In exercise of the powers conferred under Section 129 of the Act, the Karnataka Cooperative Societies Rules, 1960 have been made on 18.2.1960 published in the Karnataka gazette on 22.2.1960. Rule 18(a) provides for the conditions of service of officers and employees of Cooperative Societies. Rule 18(2) provides for the age of retirement of an officer or an employee of a Co-operative Society. It states that the date of compulsory retirement of an Officer or employee of any Cooperative Society is the date on which he attains the age of 58 years. The proviso to the said Rule states that in respect of an Officer or an employee of any Cooperative Society to whom Rule 50 of the Karnataka Cooperative Societies Rules, 1952, was applicable, the date of compulsory retirement shall be the date on which he attains the age of 60 years. Sub-rule (2) of Rule 18 has been amended as per the notification No. CO.140.CLM.2008 dated 17.9.2008. In Sub-rule (2) of Rule 18 for the words “58 years”, the words “60 years” has been substituted. Rule 18(2) before its amendment is as under:

Rule 18(2): Age of Retirement: The date of compulsory retirement of an officer or employee of any cooperative society is the date on which he attains the age of fifty-eight years;

Provided further that in respect of an Officer or an employee of any cooperative society to whom Rule 50 of the Karnataka Cooperative Societies Rules, 1952, was applicable, the date of compulsory retirement shall be the date on which he attains the age of sixty years.

10. The notification dated 17.9.2008 amending Rule 18(2) is as under:

NOTIFICATION

**NO. CO.140.CLM.2008, Bangalore,
dated 17thSeptember, 2008**

Whereas the draft of the following rules further to amend the Karnataka Cooperative Societies Rules, 1960 which the Government of Karnataka proposes to make in exercise of the powers conferred by Section 129 of the Karnataka Cooperative Societies Act, 1959 (Karnataka Act 11 of 1959) was published as required by Sub-section (1) of the said section in Notification No. CO.140.CLM.2008, dated 28.8.2008 in part IV-A of the Karnataka Gazette extraordinary dated 28.8.2008 inviting objections and suggestions from all persons likely to be affected thereby within fifteen days from the date of its publication in the Official Gazette.

And whereas, the said Gazette was made available to the public on 28th August 2008.

And whereas, objections and suggestions have been received and considered by the State Government.

Now, therefore, in exercise of the powers conferred by Section 129 of the Karnataka Cooperative Societies Act, 1959 (Karnataka Act II of 1959), the Government of Karnataka hereby makes the following rules, namely:

RULES

1. **Title and Commencement:** (1) These Rules may be called the Karnataka Cooperative Societies (Second Amendment) Rules, 2008.
2. They shall come into force on the date of their publication in the official gazette.
3. **Amendment of Rule 18:** In the Karnataka Cooperative Societies Rules, 1960 in Rule 18, in sub-rule (2):
 - (i) for the words “fifty eight years”, the words “sixty years” shall be substituted.
 - (ii) Proviso shall be omitted.”

(underlining is by me)

11. It is clear from the aforesaid notification that the amendment has come into force from the date of its publication i.e. from 17.9.2008. However, learned Counsel appearing for the petitioners submit that the words '58 years' has been substituted by the words '60 years' in Rule 18(2). Therefore, amendment must be taken to have been in existence from the date on which the Government Order dated 28.7.2008 came into force. In this connection, learned Counsel strongly rely on the decision of the Apex Court in *Shamrao V. Parulekar and Ors. v. District Magistrate Than a Bombay and Ors.* MANU/SC/0017/1952 : AIR 1952 SC 324. Therefore, question for consideration is whether Rule 18(2) as amended by notification dated 17.9.2008 has retrospective effect?

12. A statute is a command of the legislature and the conventional way of interpreting or construing a Statute is to seek the 'intention' of its maker. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of the legislature, which is also referred to as the 'legal meaning' of the statutory provision. In this connection, it is profitable to quote a passage from the *Principles of Statutory Interpretation by Justice G.P. Singh* which is as under:

It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a Statute where its application may be called for. The function of the Courts is only to expound and not to legislate. The numerous rules of interpretation or construction formulated by Courts are expressed differently by different Judges and support may be found in these formulations for apparently contradictory propositions.

13. It is the cardinal principle of construction that every Statute prima facie prospective unless it is expressly or by necessary implication to have retrospective effect. Therefore, a close attention must be paid to the language of the statutory provisions for determining the scope of the retrospectivity intended by the Legislature. If there is an obvious anomaly in the application of the law, the Court could shape the law to remove the anomaly. If the liberal reading of the provision giving retrospectivity produces absurdity and anomalies, the Court could discard such interpretation and adopt an interpretation, which will give effect to the purpose of the legislation. The real issue in each case is as to the scope of particular enactment having regard to its language and the object discernible from the Statute read as a whole.
14. *In Shamrao V. Parulekar's* case (supra) the Apex Court was considering the effect of the amendment to the Preventive Detention Act, 1950. The Court held that when the subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter to be read and construed in such a way that there is no need to refer to the amending Act. It has been held thus:

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, then 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.

(underlining is by me)

It is clear that the Court has made an exception to the application of the aforesaid principle in certain circumstances. The Court has held that when Act is amended by a subsequent Act, the amended Act leads to repugnancy, inconsistency and absurdity, the principles stated therein have no application.

In *Shri Ram Narain v. The Simla Banking and Industrial Co. Ltd.* MANU/SC/0003/1956 : AIR 1956 SC 614 the Apex Court after considering *Shamrao v. Parulekar's* case (supra) has held as under:

Now there is no question about the correctness of this dictum. But it appears to us that it has no application to this case. It is perfectly true as stated therein that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part.

But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication.

(underlining is by me)

In *Bhagat Ram Sharma v. Union of India and Ors.* MANU/SC/0611/1987 : AIR 1988 SC 740 the Apex Court has held that an amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.

In *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama* AIR 1990 SC 981 the Apex Court has held that the paramount object in statutory interpretation is to discover what the Legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A Statute is neither a literary text nor a de vine revelation. It is further held that if there is obvious anomaly in the application of law, the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation, which will give effect to the purpose of legislation.

In *K.S. Paripoornan v. State of Kerala and Ors.* MANU/SC/0200/1995 : AIR 1995 SC 1012 the Hon'ble Supreme Court has held that a Statute dealing with substantive rights differs from a Statute which relates to procedure or evidence or is declaratory in nature in as much as while a Statute is prima facie prospective, unless it is, expressly or by necessary implication made to have retrospective effect, a Statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the Legislation.

15. As noticed above, Sub-rule (2) of Rule 18 of the notification dated 17.9.2008 makes it clear that the amendment comes into effect from the date of its publication in the gazette. The amendment does not state that it is retrospective nor can we infer from the language employed therein that it has retrospective application. It is no doubt true that the words '58 years' under Rule 18(2) has been substituted by the words '60 years'. Therefore, the question is since the words '58 years' has been substituted by the words '60 years', whether the said amendment has retrospective effect? In order to answer this question, we have to examine the intention of the Legislature while amending the Rule in question. Learned HCGP has produced the records relating to the amendment of Rule 18(2). Perusal of the records make it clear that pursuant to the Government order dated 28.7.2008 enhancing the age of retirement of the Government

servants, employees of local bodies and the employees of aided educational institutions from 58 to 60 years w.e.f. 17.7.2008, the officers and the employees of the Cooperatives Societies made a representation to enhance their age of retirement to 60 years. On the basis of the said representation, the State Government took steps to enhance the age of retirement from 58 years to 60 years. A draft notification dated 28.8.2008 was issued for amending Rule 18(2) followed by a notification dated 17.9.2008 issued under Section 129 of the Act amending Rule 18(2). There is absolutely no ambiguity in the notification. It clearly states that the amendment shall come into force on the date of its publication in the official gazette. Sub-section (4) of Section 129 of the Act authorises the State Government to make Rules retrospectively to carry out the purposes of the Act. However, when such a Rule is made, the reasons for making Rules shall be specified in the statement laid before both the Houses of State Legislature. The file produced by the learned HCGP contains the statement laid before the State Legislature. The said statement does not indicate that the amendment should be given retrospective effect nor does it assign any reason for its retrospective operation. Thus, it is futile to contend that the Rule has retrospective application.

16. The question may also be examined from a different angle. If the argument of the learned Counsel for the petitioners is to be accepted, then it should be held that the amendment has come into force from the date on which Rule 18(2) of the Karnataka Cooperative Societies Rules came into force. If that is so, all the employees, who have retired at the age of 58 years prior to the date of amendment to Rule 18(2) are entitled for the monetary benefits for a period of two years. This is not the legislative intent. This interpretation leads to inconsistency and absurdity. It is settled that if the liberal reading of the provision giving retrospectivity produces absurdity and anomalies, the Court can discard such an interpretation and adopt an interpretation, which will give effect to the purpose of legislation. In fact, the Apex Court in *Shamarao v. Parulekar's* case (supra) has made an exception to the application of the principles stated therein if the amended Act leads to repugnancy, inconsistency and absurdity.
17. There is no merit in these writ petitions and they are accordingly dismissed. No costs.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. 33425/2013 (CS-RES)

Decided On: 02.08.2013

**Appellants: Sri Harish Acharya Major, President, Sri K. Jayaram Major, General Manager
and Vishwakarma Sahakara Bank Ltd. by its General Manager**

Vs.

**Respondent: The Joint Registrar of Co-operative Societies,
Karnataka State Urban Banks Federation,
The Joint Registrar of Co-operative Societies Urban Bank Cell
and Sri Sadananda**

Hon'ble Judges/Coram:

A.N. Venugopala Gowda, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Mrs. Deepthi for Sri Arun Shyam M., Adv.

For Respondents/Defendant: Sri T.K. Vedamurthy, HCGP for R1 & R2 and Sri N. Ramachandra,
Adv. for R3

Subject: Service

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - 111(2), Karnataka Co-operative Societies Act,
1959 - 70

Case Note:

Civil - Stay application - Whether order passed by 1st Respondent and an application seeking stay of operation and execution of award having been made was valid or not - Held, instead, Tribunal has decided to hear appeal itself and has deferred consideration of LA. for stay - In circumstances, no fault could be found with Petitioners for not implementing award on relevant date - Petition disposed of.

Industry: Banks

ORDER**A.N. Venugopala Gowda, J.**

1. Petitioners 1 and 2 are the President and General Manager respectively of the 3rd petitioner - Vishwakarma Sahakara Bank Ltd., Mangalore -575 001. Based on an enquiry report dated 17.11.2008, the 3rd respondent was compulsorily retired from service, which was assailed in a dispute filed under Section 70 of the Karnataka Cooperative Societies Act, 1959 ("the Act" for short) before the 1st respondent. The dispute having been allowed, feeling aggrieved, the 3rd respondent has filed Appeal No. 476/2012, in the Karnataka Appellate Tribunal. Since the impugned award has not been stayed and was not been given effect to, 3rd respondent has filed a petition under S. 111(2) of the Act, before the 2nd respondent, to accord permission for prosecution of the petitioners, for not giving effect to the award dated 21.5.2012. A notice of the proceeding initiated under S. 111(2) of the Act, as at Annexure-A, having been issued, this writ petition has been filed to quash the said notice and direct the Karnataka Appellate Tribunal to hear and decide Appeal No. 476/2012 expeditiously. Learned counsel appearing for the petitioners contended that, since Appeal No. 476/2012 is pending before the Tribunal, 3rd respondent is unjustified in seeking permission for prosecution of petitioners alleging non-implementation of the award dated 21.5.2012, which has not attained finality and that the 2nd respondent has mechanically issued the notice as at Annexure-A. Learned counsel submitted that the Tribunal may be directed to decide the appeal expeditiously and that the appellant would render necessary co-operation for disposal of the appeal within the stipulated period.
2. Sri N. Ramachandra, learned counsel appearing for the 3rd respondent on the other hand submitted that time and again, appellant in Appeal No. 476/2012 has obtained adjournments and since 3rd respondent has been kept out of employment with effect from 17.11.2008, he being left with no other alternative, initiated proceeding under S. 111(2) of the Act. Learned counsel submitted that, but for the request/s made by the petitioners, Appeal No. 476/2012 would have been decided by the Tribunal. Learned counsel submitted that in the circumstances, petitioners are not entitled to any relief.
3. Perused the writ record. Appeal No. 476/2012 having been filed questioning the award dated 21.5.2012 passed by the 1st respondent and an application seeking stay of the operation and execution of the impugned award having been made, the Tribunal ought to have passed an order, on the application for stay of the impugned Award. Instead, the Tribunal has decided to hear the appeal itself and has deferred the consideration of the LA. for stay. In the circumstances, no fault can be found with the petitioners for not implementing the award dated 21.5.2012. Since Appeal No. 476/2012 is ready for hearing and the learned counsel appearing for the petitioners submitted that she would argue the matter on 13.8.2013, directing the petitioners to immediately file an application seeking pre-ponement of the appeal to 13.8.2013 and enable the Tribunal to decide the matter expeditiously, the writ petition can be disposed of.

In the result, writ petition is disposed of. The Tribunal is directed to decide Appeal No. 476/2012 before 30.9.2013. If an application seeking pre-ponement of the case is filed by the petitioners/appellants, the appeal be pre-poned to 13.8.2013 and taken up for immediate consideration. Sri N. Ramachandra, appearing for respondent No. 3 i.e., respondent in the appeal, submitted that he would co-operate in the matter of deciding of the appeal within the stipulated period.

In the circumstances, the 2nd respondent is directed to put of the consideration of Misc. Petition No. UBC.1/376/UMC/2012-13 till the hearing and disposal of Appeal No. 476/2012 i.e., on or before 30.9.2013. Depending upon the final outcome in Appeal No. 476/2012, the 2nd respondent to proceed in No. UBC.1/376/UMC/2012—2013, in accordance with law.

No costs.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition Nos. 58957-963/2013 (CS-RES)

Decided On: 26.12.2013

Appellants: **Basavalingaiah and Ors.**

Vs.

Respondent: **The Assistant Registrar of Co-operative Societies, Doddagangavadi Vyavasaya Seva Sahakara Sangha Niyamitha Doddagangavadi, The Deputy Registrar of Co-operative Societies and Doddagangavadi Vyavasaya Seva Sahakara Sangha Niyamitha Doddagangavadi**

Hon'ble Judges/Coram:

A.N. Venugopala Gowda, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Sri. Jai Prakash Reddy, Adv.

For Respondents/Defendant: Sri. I. Tharanath Poojary, AGA for R1 & R3 and Sri. D.K. Sriramappa, Adv. for R2

Subject: Trusts and Societies

Acts/Rules/Orders:

Karnataka Co-operative Societies Act, 1959 - Section 27(2)(a)

Disposition:

Disposed off

Industry: Cooperative Societies

ORDER

A.N. Venugopala Gowda, J.

1. Second respondent is a Co-operative Society registered under the provisions of Karnataka Cooperative Societies Act, 1959. It's Managing Committee having been superseded and the administrator having taken charge, kept Ramachandraiah s/o Chikkanna, the Secretary of the Society under suspension and placed on 07.12.2012, one Mukundaraj, in charge of the post of Secretary. A dispute having been filed by Ramachandraiah and an interim order having been passed, when questioned in Karnataka Appellate Tribunal by the Society, the order passed in the dispute was set aside on 28.08.2013. The petitioners were elected as members of Managing Committee of 2nd respondent-Society on 01.09.2013. A circular having been issued to all the Cooperative Societies to conduct their Annual General Body Meetings on or before 24.09.2013, the office bearers to the 2nd respondent having been elected on 04.09.2013 and the administrator

having been handed over charge to the Managing Committee on 10.09.2013, in the meeting held on 18.09.2013, the Managing Committee of the 2nd respondent resolved to cancel the suspension of Ramachandraiah and to call for emergent meeting to discuss about conducting of the Annual General Body Meeting. On 21.09.2013, the Managing Committee of the 2nd respondent resolved to seek permission of respondents 1 and 3 to conduct Annual General Body Meeting after 25.09.2013 as there would not be 15 clear days time before 25.09.2013. The 1st respondent having issued notice to show-cause as to why the Managing. Committee comprising of the petitioners should not be disqualified for not conducting Annual General Body Meeting and the petitioners having replied to the show cause notice dated 10.10.2013, the 1st respondent passed an order in exercise of powers under Section 27(2)(a) of the Act, disqualifying the petitioners for a period of five years. Respondent No. 4 was appointed as the Administrator of the 2nd respondent-Society on 14.11.2013.

2. The petitioners being aggrieved by the order of disqualification passed by the 1st respondent, have filed an appeal before the 3rd respondent. An interim order having been sought and the same having been refused on 20.12.2013 vide Annexure-N, these writ petitions have been filed for relief.
3. Heard Sri Jai Prakash Reddy, learned advocate for the petitioners and Sri. D.K. Sriramappa, learned advocate for 2nd respondent and learned AGA for respondents 1 and 3 and perused the writ petition papers.
4. After the petitioners were disqualified on 13.11.2013, respondent No. 4 was appointed as the Administrator of 2nd respondent-Society vide Annexure-K i.e., on 14.11.2013. The Administrator has passed a resolution dated 23.11.2013 and relieved Sri. Ramachandraiah from the post of Secretary of the 2nd respondent-Society and placed Sri. Mukundaraj in charge of the duties of the Secretary of the 2nd respondent-Society.
5. Since 4th respondent is acting as the Administrator of the 2nd respondent-Society, I do not find justification for the present, to interfere with the order as at Annexure-N passed by the 3rd respondent. The main relief and the interim relief sought being one and the same, 3rd respondent is justified in not granting interim order of stay of disqualification.
6. Since the petitioners were elected on 01.09.2013 and were disqualified on 13.11.2013, in my view, the 3rd respondent should decide the appeal pending before him expeditiously. Learned counsel on both sides submitted that the appeal pending before the 3rd respondent is now scheduled to be taken up on 28.12.2013. In the circumstances, the 3rd respondent is directed to take up the appeal for consideration on 28.12.2013 and decide the same expeditiously and with a period of two weeks there from.

Needless to observe that refusal of interim order would not come in the way of the 3rd respondent deciding the appeal on its merits and in accordance with law. In case, the appeal filed by the petitioners is allowed, necessarily the 4th respondent shall have to hand over the management of the 2nd respondent-Society to the petitioners.

Writ petitions are disposed of accordingly.

Equivalent Citation: ILR 2004 KARNATAKA 2181, 2003(4)KCCRSN302

IN THE HIGH COURT OF KARNATAKA

W.P. No. 19406/1996

Decided On: 04.08.2003

Appellants: **S. Seetharama Rao**

Vs.

Respondent: **The Secretary and Ors.**

Hon'ble Judges/Coram:

N.K. Patil, J.

Counsels:

For Appellant/Petitioner/Plaintiff: R.S. Ravi, Adv.

For Respondents/Defendant: M. Keshava Reddy, HCGP for R2 and R3 and Deshraj, Adv. for R-1

Subject: Trusts and Societies

Acts/Rules/Orders:

The Karnataka State Co - operative Societies Act, The Karnataka State Co - operative 1959; The Karnataka State Co - operative Societies (Amendment) Act, The Karnataka State Co - operative 1976

Cases Referred:

Laxmi Precision Screws Ltd. v. Ram Bahagat, AIR 2002 SC 2914; Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477

Disposition:

Petition dismissed

Case Note:

(A) THE KARNATAKA STATE CO-OPERATIVE SOCIETIES ACT, 1959 (KARNATAKA ACT 11 OF 1959) - SECTION 69 - SURCHARGE PROCEEDINGS - INITIATION OF PROCEEDINGS - COMPETENT AUTHORITY - HELD - It is evident from Section 69, that the Registrar may on his own motion or on an application of the Committee, Liquidator or a creditor, frame charges against such person or persons. The Secretary has brought to the notice of the concerned competent authority against mis-appropriation and that does not mean that the Secretary alone has referred the matter under Section 69 of the Act. The Competent authority viz. the Registrar on his own motion, on the basis of the information gathered can initiate proceedings.

(B) THE KARNATAKA STATE CO-OP SOCIETIES ACT, 1959 - SECTION 69, SECTION 111 AND SECTION 111A - Surcharge proceedings - Loan, disbursed in contravention of Act. Rules and Byelaws - Cognizance of offences as sole custodian of records and correct maintenance of records - Whether the Secretary is personally liable. HELD : The petitioner being a Secretary and a custodian of the records and accounts is duty bound to have followed the procedure prescribed and when he has failed in his duty, he cannot pass on his liability on other members and say that he alone is not responsible for misappropriation of the funds of the society.

ON FACTS :

The Secretary only on the basis of the endorsement made by the president, had released the loan to one of the Directors. It is the duty of the Secretary after the endorsement by the President, to place the matter before the Committee and until and unless the Committee clears/approves the loan by way of resolution, he cannot disburse the amounts of the Society as per the whims and fancies only of the basis of endorsement of the President. Therefore, it is sheer callousness on the part of the Secretary, that without following the procedure, and by taking risk, has released the loan in favour of one of the directors.

2. Section IIIA has been inserted by way of an amendment only in the year 1976 and the surcharge proceedings initiated for mis-appropriation of the funds of the Society pertains to Co-op year 1967-1968 and 1968-69 and that too, subsequently the same has been omitted in the year 1998. There can be no reliance placed on the said submission and ought to be rejected.

In view of the concurrent finding of facts also the Writ Petition was dismissed.

ORDER

Patil, J.

1. The petitioner, questioning the legality and validity of the order dated 18th February 1991 in Surcharge Case No. 5/84-85 on the file of the Assistant Registrar of Co-operative Societies - the second respondent herein, and the order passed by the Karnataka Appellate Tribunal ('Tribunal' for short) dated 25th March 1996 in Appeal No. 128/1991 vide Annexures A and B respectively, has presented this Writ Petition.
2. The petitioner was working as Secretary in the first respondent - Society. The first respondent Society raised the surcharge proceedings under Section 69 of the Karnataka Co-operative Societies Act ('Act' for short) before the second respondent for recovery of a sum of Rs. 45,433.44 with interest at the rate of 18% for the loss caused to the first respondent - Society as per the audit report for the years 1967-68 and 1968-69. During the relevant period, the petitioner was working as a Secretary of the first respondent Society. The second respondent, after considering the oral and documentary evidence and other materials available on file, exercising his power under Section 69 of the Act, has passed the order holding that the petitioner is liable to pay the said loss incurred by the said first respondent Society by its order dated 18th February 1991. Assailing the correctness of the said order passed by the second respondent, petitioner herein has filed an Appeal in No. 128/1991 on the file of the Karnataka Appellate Tribunal Bangalore. The Tribunal after going through the order passed by the second respondent, the

submissions of the respective counsel appearing for the parties, and after careful perusal of the lower Court records, held that it does not find any reasons to interfere with the order passed by the second respondent and also held that the impugned order passed by the second respondent is sustainable in law. In the result, the appeal filed by the petitioner stood dismissed by its order dated 25th March 1996. Feeling aggrieved by the impugned order passed by both the authorities below the petitioner has present this Writ Petition.

3. The principal submission canvassed by the learned Counsel appearing for the petitioner is that, the proceedings initiated by the second respondent on an application filed by the Secretary is one without jurisdiction. He contended that as per- Section 111 of the Act, the proceedings cannot be initiated against the petitioner he being an honorary secretary and when another secretary also was present. Further, he vehemently submitted that if at all there is any misappropriation of funds; the petitioner alone cannot be held responsible for the same. The entire committee members are responsible for disbursing the said loan to one of the Directors of the first respondent - Society. He further submitted that he has taken specific ground before the Appellate Tribunal that the Arbitrator has, inspite of a request made by the petitioner that the auditor should be examined, has not considered the said request nor examined the auditor. He further submitted that the said loan was disbursed by the petitioner in view of the endorsement and the memo issued by the then president of the Society. Therefore he alone should not be held liable or responsible for misappropriation of the funds as pointed out by the Audit Department at the time of auditing the Accounts of the first respondent - Society for the year 1967-68 and 1968-69. This specific grounds urged before the Tribunal have not been taken into consideration and the Tribunal has dismissed the appeal filed by the petitioner holding that the there are no good grounds calling for interference in the impugned order passed by the second respondent. He submitted that both the authorities have committed an error and dismissed the stand taken by the petitioner contrary to the mandatory provisions of the Act and Rules. Hence, both the impugned orders passed by both the authorities are liable to be set aside.
4. Per contra, the learned Counsel appearing for the first respondent Society, inter alia, contended and submitted that the impugned order passed by both the authorities are in consonance with the mandatory provisions of the Act and Rules. Further, he submitted that the petitioner while he was working as Secretary of the first respondent Society, at the request of one of the Directors has suo-motu sanctioned the loan without placing the matter before the Committee nor taking approval from the Committee by way of bringing a resolution. Even the submission of the learned Counsel appearing for the petitioner that the then President has issued an endorsement and memo, it was duty cast on the Secretary to have placed the matter before the Committee. But in the instant case he submits that neither of them is coming forth from the records. Hence, both the authorities have rightly held that he alone is responsible for misappropriation of the funds of the first respondent - Society. Further, to substantiate his submissions, he placed reliance on the submissions canvassed by the learned Counsel appearing for the petitioner that as per Section 111A of the Act, he has taken a specific ground before the Tribunal and the same was not considered. The said submission made by the petitioner has no substance since the date of proceedings of misappropriation committed by the petitioner pertains to Co-operative years 1967-68 and 1968-69. The said Section 111A has been inserted by way of an amendment only in the year 1976. Therefore, he is not entitled to take any benefit as contended by the learned

Counsel appearing for petitioner in view of the well settled law laid down by the Apex Court and this Court in series of matters. He submits that if both the authorities have recorded a concurrent finding of fact this Court cannot exercise its extra ordinary jurisdiction in a writ of certiorari, by sitting over the judgment and interfere in the well considered orders passed by the both the authorities based on oral and documentary evidence and the material available on the file, after appreciating and analyzing that they have recorded a concurrent finding of fact.

5. The learned Government Pleader appearing for the respondents 2 and 3, inter alia, contended and substantiated the well considered order passed by both the authorities. He was quick to point out that both the authorities have not committed any error or illegality as such. So far as the contention of the petitioner that the proceedings initiated under Section 69 is one without jurisdiction, he drew my attention to Section 69 of the Act, wherein the registrar has got power to initiate the proceedings of his own motion or on an application of the Committee, Liquidator or any creditor, by framing charges against such person or persons etc. Therefore, the submission of the learned Counsel appearing for the petitioner has no substance regarding initiation of the proceedings is concerned. Further, he submitted that in the instant case, both the authorities have concurrently recorded a finding of fact against the petitioner holding that he is the person solely responsible for the misappropriation of the funds of the first respondent - Society and being a custodian of the records and the accounts of the Society, it is his duty that if any body asks for loan by filing required applications upon receipt of the said applications, to place the matter before the Committee and only after approval by the Committee, he is supposed to release the loans to the applicants. But in the instant case, only on the basis of the endorsement made by the then President, the petitioner has released the loan in favour of one of the Directors. This aspect itself is suffice for this Court to hold that the petitioner has not at all followed the procedure prescribed under the relevant provisions of the Act and Rule and has committed an error. Therefore, he submits that both the authorities have rightly considered and recorded a concurrent finding of fact against the petitioner and the petitioner has not made out any case to interfere in the impugned orders passed by both the authorities below.
6. I have heard the learned Counsel appearing for the petitioner, the learned Counsel appearing for the first respondent - Society and the learned Government Pleader appearing for respondents 2 and 3 and re-evaluated the entire material, with the assistance of the learned Counsel appearing for the parties. After careful perusal of the impugned orders passed by both the authorities, it is manifest on the face of records that the authorities have recorded a concurrent finding of fact against the petitioner after appreciating and evaluating the oral and documentary evidence. Therefore, I find no error of law, as such committed by the authorities below as contended by the learned Counsel appearing for the petitioner that the proceedings initiated under Section 69 of the Act at the request of the Secretary is not permissible. After careful perusal of Section 69 of the Act, it is seen that the Registrar, may, of his own motion or on an application of the Committee. Liquidator or any creditor, frame charges against such person or persons. In the instant case, the Secretary has brought to the notice of the concerned competent authority against the misappropriation and that does not mean that the Secretary alone has referred the matter under Section 69 of the Act. The Competent authority, viz. the Registrar, on his own motion, on the basis of the information gathered can initiate proceedings. Therefore, the submission made by the learned Counsel appearing for the petitioner has neither any substance

nor any bearing on the facts and circumstances of the case. Further, it is the contention, of the petitioner that as per Section 111A of the Act, he has raised a specific ground before the appellate authority and the said defence placed on behalf of the petitioner has not at all been taken into consideration by the appellate Tribunal. The said submission made by the counsel is contrary to the relevant provisions of the Act due to the fact that the said Section has been inserted only in the year 1976 and the surcharge proceedings initiated for the misappropriation of the funds of the society pertains to Co-operative years 1967-68 and 1968-69 and that too, subsequently, the same has been omitted in the year 1998. Therefore, the reliance placed by the learned Counsel appearing for the petitioner has no base to stand and the same was rightly rejected by the Tribunal also. The Tribunal, after going through the order passed by the second respondent and after perusal of the lower court records, has held that the petitioner has failed to substantiate his case that he alone is not responsible for the misappropriation of the funds of the society in individual capacity. The Tribunal has held that he alone is responsible for the misappropriation of the funds as revealed from the submissions made by the respective counsel appearing for the parties during the course of their submission before the Tribunal. That the request of one of the Directors has been considered by the Secretary alone and he has sanctioned the loan without placing the same before the Committee and without getting the approval he has disbursed the loan in a sum of Rs. 45,000/-. Therefore, the petitioner being a secretary and a custodian of the records and the accounts is duty bound to have followed the procedure prescribed and when he has failed in his duty he cannot pass on his liability on other members and say that he alone is not responsible for misappropriation of the funds of the society. The said stand taken by the petitioner before both the authorities is contrary to the relevant provisions of the Act and Rules and there is no substance in the said submission. So far as the submission made by the learned Counsel appearing for the petitioner that the President has endorsed on the memo for sanctioning the loan to one of the Directors of the society. I am of the view that in the normal course it is seen that if an application or a request is made by any member of the society the Secretary has to place the memo/application before the President and he in turn endorses on the said applications. After endorsement by the President, the Secretary is duty cast to place the matter before the Committee and until and unless the committee clears/approves the loan by way of resolution, he cannot disburse the amounts of the society as per his whims and fancies only on the basis of the endorsement of the President. Therefore, it is sheer callousness on the part of the Secretary that without following the procedure, and by taking the risk, has released the loan in favour of one of the Directors. Therefore, in my considered view, I do not find any error or illegality in the impugned orders passed by both the authorities below. Further, it is significant to note here itself that in similar circumstances, the Hon'ble Apex Court in the case of LAXMI PRECISION SCREWS LTD. v. RAM BAHAGAT, MANU/SC/0672/2002 : (2002)III LLJ516SC relying on the decision in the case of SYED YAKOOB v. K.S. RADHAKRISHNAN, MANU/SC/0184/1963 : [1964]5SCR64 has categorically held that if concurrent finding of fact is recorded and if the parties fail to make out a case that there is an error of law, the writ of certiorari cannot be exercised by the High Court under Articles 226 and 227 of the Constitution of India. It is worthwhile to extract the observations made by the Hon'ble Supreme Court in the case of SYED YAKOOB v. KS. RADHAKRISHNAN, which reads as hereunder:-

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals:

“these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the disputes is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the fact of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said-points cannot be agitated before a Writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.”

Therefore, if the ratio of law laid down by the Apex Court is taken into consideration, I do not find any justification to interfere with the orders passed by both the authorities. Accordingly, the Writ Petition filed by the petitioner is liable to be rejected.

7. Having regard to the facts and circumstances of the case, as stated above, I do not find any good grounds to interfere with the impugned orders passed by both the authorities below. Accordingly, the Writ Petition filed by the petitioner is dismissed. However, the dismissal of the Writ Petition will not come in the way of the petitioner making necessary application before the first respondent regarding waiving of interest and in case the petitioner makes an application to the first respondent, the first respondent is directed to consider the same and decide the same in accordance with law, having regard to the facts and circumstances of the case and taking into consideration the service rendered by the petitioner to the said Society.
8. Sri. M. Keshava Reddy learned Government Pleader is given four weeks' time to file his memo of appearance.