KARNATAKA HIGH COURT
JUDGEMENTS

RELATED TO CO-OPERATIVE SECTOR

Volume 2

Collected, compiled and edited
By
C.N. Parashivamurthy*
and
Dr. C.P. Dayanandamurthy**

* C.N.Parashivamurthy is a Retired Additional Registrar of Co-operative Societies, Govt. of Karnataka
**Dr. C.P.Dayanandamurthy is an Associate Professor in Damodan Sanjeevaiah National Law College Vishaka Pattana, Andrapradesh.

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–: ಅಧ್ಯಕ್ಷರ ನುಡಿ :–

ಆತ್ಮೀಯ ಸಹಕಾರಿ ಬಂಧುಗಳೇ,

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಅಭಿವೃದ್ಧಿಗಾಗಿ, ಆರೋಗ್ಯಕರ ಬೆಳವಣಿಗೆಗಾಗಿ ಅನೇಕ ವಿಷಯಗಳ ಕುರಿತು ಪುಸ್ತಕಗಳನ್ನು, ಕೈಪಿಡಿಗಳನ್ನು ಹಾಗೂ ಪ್ರಕಟಣೆಗಳನ್ನು ಕಾಲಕಾಲಕ್ಕೆ ಪ್ರಕಟಿಸುತ್ತ ಬಂದಿದೆ. ಸಹಕಾರಿಗಳು ವ್ಯಾಜ್ಯಗಳನ್ನು ಬಗೆಹರಿಸಿಕೊಳ್ಳುವುದಕ್ಕಾಗಿ ನ್ಯಾಯಾಲಯಗಳ ನೆರವು ಪಡೆಯುವುದು ಸರ್ವೆಸಾಮಾನ್ಯ. ನೋಂದಣಿ, ಉಪವಿಧಿಗಳ ತಿದ್ದುಪಡಿ, ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳನ್ನು ಒಂದುಗೂಡಿಸುವುದು, ವಿಭಜಿಸುವುದು, ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದ ವಿಷಯಗಳು, ಆಡಳಿತ ಮಂಡಳಿ ರದ್ದುಪಡಿಸುವಿಕೆ, ಆಡಳಿತಾಧಿಕಾರಿಗಳ ನೇಮಕ, ವಿಚಾರಣೆ, ಅದಿಭಾರ ನಡುವಳಿಕೆಗಳು, ದಾವಾ ಪ್ರಕರಣಗಳು ಹಣ ದುರುಪಯೋಗ, ಆದೇಶ ಮತ್ತು ತೀರ್ಪುಗಳನ್ನು ಜಾರಿಮಾಡುವ ವಿಧಾನ ಹಾಗೂ ಸಮಾಪನೆ ಇತ್ಯಾದಿ ಇತರೆ ವಿಷಯಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಜ್ಯದ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಗೂ ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಲವಾರು ಮಹತ್ವದ ತೀರ್ಪುಗಳಾಗಿವೆ. ಇಷ್ಟೊಂದು ತೀರ್ಪುಗಳಿದ್ದಾಗ್ಯೂ ಸಹ, ಅನೇಕ ಬಾರಿ ಸಹಕಾರ ಸಂಸ್ಥೆಗಳು ಇವುಗಳ ಸರಿಯಾದ ಮಾಹಿತಿಗಳು ದೊರಕದೆ ಆತಂಕದಲ್ಲಿದ್ದು, ಅನಗತ್ಯವಾಗಿ ಕಾನೂನು ಸಲಹೆ ಪಡೆಯುವ ಹಾಗೂ ನ್ಯಾಯಾಲಯಗಳ ಮೊರೆಹೋಗುವುದನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಗಮನಿಸಿದೆ. ಈ ತೊಂದರೆಗಳನ್ನು ನಿವಾರಿಸುವುದಕ್ಕಾಗಿಯೇ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಸಹಕಾರ ಕಾಯಿದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ತೀರ್ಪುಗಳ ಕುರಿತ ಪುಸ್ತಕಗಳನ್ನು ಶ್ರೀ ಸಿ ಎನ್ ಪರಶಿವಮೂರ್ತಿಯವರಿಂದ ಪಡೆದು ಪ್ರಕಟಿಸುವ ಕಾರ್ಯವನ್ನು ಮಾಡುತ್ತಲಿದೆ.

ಸಹಕಾರ ಇಲಾಖೆಯು ನಿವೃತ್ತ ಹಿರಿಯ ಅಪರ ನಿಬಂಧಕರಾದ ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರು ಇವುಗಳನ್ನು ಸಂಪಾದಿಸಿ, ತೀರ್ಪುಗಳ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವನ್ನು ಸಿದ್ಧಪಡಿಸಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಮುದ್ರಿಸಲು ಅವಕಾಶ ಮಾಡಿಕೊಟ್ಟಿದ್ದಾರೆ. ಈ ಮಹತ್ವದ ಕಾರ್ಯವನ್ನು ಮಾಡಿಕೊಟ್ಟ ಅವರಿಗೆ ಕೃತಜ್ಞತೆಗಳು. ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ವಿಶ್ರಾಂತ ನ್ಯಾಯಮೂರ್ತಿಗಳಾದ ಮಾನ್ಯ ಶ್ರೀ ಜಸ್ಟೀಸ್ ಶಿವರಾಜ ವಿ ಪಾಟೀಲ್ ಇವರು ಈ ಪುಸ್ತಕವನ್ನು ಅಧ್ಯಯನ ಮಾಡಿ ಮುನ್ನುಡಿಯನ್ನು ಬರೆದುಕೊಟ್ಟಿದ್ದಾರೆ. ಅವರಿಗೂ ಕೂಡ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯಿಂದ ಕೃತಜ್ಞತೆಗಳು.

ಸಹಕಾರ ಕಾಯಿದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪಿನ ಸಾರಂಶಗಳ ಪುಸ್ತಿಕೆಯು ಸಹಕಾರಿಗಳಿಗೆ, ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳಿಗೆ ಅದರಲ್ಲೂ ಪ್ರಮುಖವಾಗಿ ಆಡಳಿತ ಮಂಡಲಿ ಸದಸ್ಯರಿಗೆ ಮಾರ್ಗದರ್ಶಿಯಂತೆ ಅಳವಡಿಸಿಕೊಳ್ಳಲು ಈ ಪುಸ್ತಕ ಅನುಕೂಲವಾಗುತ್ತದೆಂದು ಭಾವಿಸಿದೆ. ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ, ಸಹಕಾರಿ ನೇತಾರರಿಗೆ, ವಕೀಲರಿಗೆ, ಇಲಾಖಾಧಿಕಾರಿಗಳಿಗೆ ಅತ್ಯಂತ ಪ್ರಯೋಜನಕಾರಿಯಾಗಬಹುದೆಂದು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಭಾವಿಸಿದೆ. ತಾವುಗಳು ಈ ಸಂಗ್ರಹ ಪುಸ್ತಕವನ್ನು ಓದಿ ಪ್ರಯೋಜನ ಪಡೆದುಕೊಂಡರೆ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಈ ಪ್ರಯತ್ನ ಸಾರ್ಥಕ. ಈ ಪ್ರಕಟಣೆಯ ಬಗ್ಗೆ ತಮ್ಮ ಅನಿಸಿಕೆಗಳನ್ನು ಹಾಗೂ ಸಲಹೆಗಳನ್ನು ಸ್ವಾಗತಿಸುತ್ತೇವೆ.

ಬಿ. ಹೆಚ್. ಕೃಷ್ಣಾರೆಡ್ಡಿ
ಅಧ್ಯಕ್ಷರು

Justice Shivaraj V. Patil

Formerly Judge,
High Court of Karnataka,
High Court of Madras,
Chief Justice, High Court of Rajasthan,
Supreme Court of India and
Member, National Human Rights Commission

"Sparsh",
254, 18th Cross,
Sadashivanagar,
Bangalore - 560 080
Ph. : +91-80-2361 0334, 2361 6644
e-mail : jsvp1940@gmail.com

ಮುನ್ನುಡಿ

ದೀರ್ಘಕಾಲ ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಹಕಾರಿ ಇಲಾಖೆಯಲ್ಲಿ ದಕ್ಷ ಮತ್ತು ಉತ್ತಮ ಸೇವೆ ಸಲ್ಲಿಸಿ ಶ್ರೀ ಸಿ.ಎನ್. ಪರಶಿವಮೂರ್ತಿಯವರು ಅಪರ ನಿಭಂದಕರಾಗಿ ನಿವೃತ್ತರಾಗಿದ್ದಾರೆ. ತಮ್ಮ ಸೇವಾವಧಿಯಲ್ಲಿ ಸಹಕಾರಿ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ವಿಷಯಗಳ ಬಗ್ಗೆ ಸಹಕಾರ ಸಂಘಗಳ ಕಾಯ್ದೆ ಬಗ್ಗೆ ಚೆನ್ನಾಗಿ ತಿಳಿದುಕೊಂಡಿದ್ದಾರೆ. ಸಹಕಾರ ಕ್ಷೇತ್ರ ಬಹಳ ದೊಡ್ಡದಾಗಿ ಮತ್ತು ವಿಸ್ತಾರವಾಗಿ ಬೆಳೆದಿದೆ. ಕಾರಣ ಸಹಕಾರ ಕ್ಷೇತ್ರದಲ್ಲಿ ಮತ್ತು ಸಹಕಾರಿ ಸಂಘಗಳಿಗೆ ಸಂಬಂದಿಸಿದಂತೆ ಹಲವಾರು ಕಾನೂನುಗಳು, ನಿಯಮಗಳು, ಅಧಿನಿಯಮಗಳು ಮತ್ತು ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳು ಹೊರಬಂದಿವೆ. ಸರಳವಾದ ಕಾನೂನು ಅವಶ್ಯಕತೆ ಇದ್ದಂತೆ, ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳನ್ನು ಅರ್ಥ ಮಾಡಿಕೊಳ್ಳುವುದು, ಯಾವ ಯಾವ ಸಂದರ್ಭಗಳಲ್ಲಿ ಮತ್ತು ಯಾವ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನ್ಯಾಯಾಲಯ ತೀರ್ಪುಗಳಿವೆ ಎಂಬುದು ಈ ಕ್ಷೇತ್ರದಲ್ಲಿ ಸಂಬಂಧಪಟ್ಟ ಸರ್ವರಿಗೂ ಅರ್ಥವಾಗುವ ರೀತಿಯಲ್ಲಿ ಮತ್ತು ಅತ್ಯಂತ ಕಡಿಮೆ ಸಮಯದಲ್ಲಿ ಯಾವ ವಿಷಯದ ಮೇಲೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ ಹಾಗೂ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳು ಇವೆ ಎಂಬುದನ್ನು ತಿಳಿಸಿಕೊಡುವ ಅವಶ್ಯಕತೆ ಹೆಚ್ಚಾಗಿದೆ. ಅನೇಕರಿಗೆ ಇಂತಹ ತೀರ್ಪುಗಳನ್ನು ಅದರಲ್ಲೂ ದೀರ್ಘವಾದ ತೀರ್ಪುಗಳನ್ನು ಮತ್ತು ಕಾಯ್ದೆಗೆ ಸಂಬಂಧಪಟ್ಟ ಕ್ಲಿಷ್ಟವಾದ ವಿಷಯಗಳನ್ನು ತಿಳಿದುಕೊಳ್ಳುವುದು ಸಾಮಾನ್ಯವಾಗಿ ಕಷ್ಟಕರವಾಗುತ್ತದೆ.

ವಸ್ತುಸ್ಥಿತಿ ಹೀಗಿರುವಾಗ ಶ್ರೀಮಾನ್ ಪರಶಿವಮೂರ್ತಿರವರು ಪರಿಶ್ರಮ ವಹಿಸಿ ಅವರ ಅನುಭವದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ "ಸಹಕಾರ ಕಾಯಿದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಮಾಹಿತಿ ಹಕ್ಕು ಕಾಯ್ದೆಯಲ್ಲಿನ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪಿನ ಸಾರಾಂಶಗಳು" ಸಹಕಾರ ಕಾಯ್ದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಮಾಹಿತಿ ಹಕ್ಕು ನೀಡುವುದರ ಜೊತೆಗೆ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪಿನ ಸಾರಾಂಶಗಳನ್ನು ಸಾಂದರ್ಭಿಕವಾಗಿ ಮತ್ತು ಸಮಂಜಸವಾಗಿ ನೀಡಿದ್ದಾರೆ. ಇದರಿಂದ ಸಹಕಾರ ಕ್ಷೇತ್ರದಲ್ಲಿ ಕೆಲಸ ಮಾಡುವವರೆಲ್ಲರಿಗೂ ಅನುಕೂಲವಾಗುತ್ತದೆ. ಸಮಯ ಉಳಿತಾಯ ಜೊತೆಗೆ ಕಾಯ್ದೆಗೆ ಸಂಬಂಧಪಟ್ಟಂತ ಸಮಸ್ಯೆಗಳು ಎದುರಾದಾಗ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳಿಗೆ ಅನುಗುಣವಾಗಿ ನಿರ್ದಿಷ್ಟ ಮತ್ತು ನಿಶ್ಚಳವಾದ ನಿಲುವನ್ನು ತೆಗೆದುಕೊಳ್ಳುವಲ್ಲಿ ಸಹಕಾರವಾಗುತ್ತದೆ.

ಸರಿಯಾದ ತಿಳುವಳಿಕೆಯಾದಾಗ ಅನೇಕ ಸಂದರ್ಭಗಳಲ್ಲಿ ನ್ಯಾಯಾಲಯಗಳಿಗೆ ಹೋಗುವ ಅವಶ್ಯಕತೆ ಕಡಿಮೆಯಾಗಬಹುದು. ಆಗಸ್ಟ್ 2015 ರಲ್ಲಿ ಪ್ರಕಟವಾದ "Karnataka High Court Judgements - Related to Co-operation Sector" ನ ಮುಂದುವರೆದ ಭಾಗವಾಗಿ ಮತ್ತು ವಿಸ್ತೃತವಾಗಿ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ, ಬೇರೆ ರಾಜ್ಯಗಳ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ಮತ್ತು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳನ್ನು ಸಂಕ್ಷಿಪ್ತವಾಗಿ, ಸರಿಯಾಗಿ ಅರ್ಥವಾಗುವ ರೀತಿಯಲ್ಲಿ ಕೂಡ್ಡೀಕರಿಸಿ, ಸಂಪಾದಿಸಿ ಒಂದೆಡೆ

ಸಂಗ್ರಹ ಮಾಡಿ ಎರಡು ಸಂಪುಟಗಳಲ್ಲಿ ಶ್ರಮವಹಿಸಿ ಸಿದ್ಧಮಾಡಿದ್ದಾರೆ. ಈ ಕೃತಿಗಳು ಪ್ರಕಟವಾಗಿ ಲೋಕಾರ್ಪಣೆಯಾದಾಗ ಸಹಕಾರಿ ಕ್ಷೇತ್ರದಲ್ಲಿ ಮತ್ತು ಸಹಕಾರಿ ಸಂಘ ಸಂಸ್ಥೆಗಳಲ್ಲಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸುವವರಿಗೂ ಮತ್ತು ಜನಸಾಮಾನ್ಯರಿಗೂ ಉಪಯೋಗವಾಗುವುದರ ಜೊತೆಗೆ ವಕೀಲರುಗಳಿಗೆ, ನ್ಯಾಯಾಧೀಶರುಗಳಿಗೆ ಸಮಯ ಉಳಿಸಿ ವಿಷಯಗಳ ಬಗ್ಗೆ ಸ್ವಲ್ಪ ಮಟ್ಟಿಗೆ ಸಹಕಾರಿಯಾಗಬಹುದು.

ಶ್ರೀ ಪರಶಿವಮೂರ್ತಿಯವರ ಈ ಕಾರ್ಯಕ್ಕೆ ನನ್ನ ಮೆಚ್ಚುಗೆ ಇದೆ. ಇದೇ ರೀತಿಯಾಗಿ ಅವರ ಸೇವೆ ಜನರಿಗೆ ಉಪಯೋಗವಾಗಲಿ ಮತ್ತು ಈ ದಿಕ್ಕಿನಲ್ಲಿ ಮುಂದುವರೆಯಲೆಂದು ಹಾರೈಸುತ್ತೇನೆ.

ಜಸ್ಟೀಸ್ ಶಿವರಾಜ್ ವಿ ಪಾಟೀಲ್
ವಿಶ್ರಾಂತ ನ್ಯಾಯಮೂರ್ತಿ, ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ

–: ಮೊದಲ ಮಾತು :–

ಆತ್ಮೀಯ ಸಹಕಾರಿ ಬಂಧುಗಳೇ,

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿ, ಬೆಂಗಳೂರು ಇವರು 2015ರಲ್ಲಿ, ವಿವಿಧ ನ್ಯಾಯಾಲಯಗಳು ನೀಡಿದ ತೀರ್ಪುಗಳ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವನ್ನು ಮೊದಲ ಪುಸ್ತಕವಾಗಿ ಪ್ರಕಟಿಸಿದೆ. ಅದಕ್ಕಾಗಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಗೆ ನನ್ನ ವಂದನೆಗಳು. ಎರಡನೇ ಪ್ರಯತ್ನವಾಗಿ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯ ನೀಡಿದ ತೀರ್ಪುಗಳ, ಸಹಕಾರ ಕಾಯಿದೆ ಬಗ್ಗೆ, ಒಂದೇ ಕಡೆ ಸಿಗದೆ ಇರುವುದರಿಂದ, ಸಂಕ್ಷಿಪ್ತವಾಗಿಯಾದರೂ ಇದು ಲಭ್ಯವಾಗಲಿ ಎಂಬುದೇ ಈ ಪ್ರಯತ್ನ. ಆಂಗ್ಲಬಾಷೆಯಲ್ಲಿ ತೀರ್ಪುಗಳನ್ನು ಸಂಗ್ರಹಿಸಿ, ಸಂಪಾದಿಸಿದ ಪುಸ್ತಕಗಳನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿ ಪ್ರಕಟಿಸುತ್ತಿದೆ. ಆ ತೀರ್ಪುಗಳಲ್ಲಿನ ಸಾರಾಂಶವನ್ನು ಸಂಕ್ಷಿಪ್ತವಾಗಿ ಒಂದೇ ಕಡೆ ಲಭ್ಯವಾದರೆ ಸಹಕಾರಿಗಳಿಗೆ/ಸಹಕಾರ ಸಂಸ್ಥೆಗಳಿಗೆ/ನ್ಯಾಯಾವಾದಿಗಳಿಗೆ ಅನುಕೂಲವಾಗುತ್ತದೆಂದು ಭಾವಿಸಿ ಈ ಪ್ರಯತ್ನ.

ಮೊದಲ ಪುಸ್ತಕಕ್ಕೆ ಡಾ. ಎಂ. ರಾಮಾಜೊಯಿಸ್ ಅವರು ತಮ್ಮ ಅಭಿಪ್ರಾಯವನ್ನು ಮತ್ತು ಆ ಪುಸ್ತಕದ ಉಪಯುಕ್ತತೆ ಬಗ್ಗೆ ಉಲ್ಲೇಖಿಸಿರುವುದಕ್ಕೆ ನಾನು ಚಿರರುಣಿ. ಅದೇ ರೀತಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಹಿಂದಿನ ಅಧ್ಯಕ್ಷರಾಗಿದ್ದ ಶ್ರೀ ಗುರುನಾಥ್ ಜಾಂತೀಕರ್ ಅವರೂ ಸಹ ತಮ್ಮ ಅನಿಸಿಕೆ ದಾಖಲಿಸಿ ಪ್ರೋತ್ಸಾಹಿಸಿದ್ದಾರೆ,

ಪ್ರಸ್ತುತ ಈಗ ಬಿಡುಗಡೆಯಾಗುತ್ತಿರುವ ಪುಸ್ತಕಕ್ಕೆ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ವಿಶ್ರಾಂತ ನ್ಯಾಯಮೂರ್ತಿಗಳಾದ ಮಾನ್ಯ ಶ್ರೀ ಜಸ್ಟೀಸ್ ಶಿವರಾಜ ವಿ ಪಾಟೀಲ್ ಇವರು ಮುನ್ನುಡಿಯನ್ನು ಬರೆದು ಮೆಚ್ಚುಗೆ ವ್ಯಕ್ತಪಡಿಸಿದ್ದಾರೆ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಇಂದಿನ ಅಧ್ಯಕ್ಷರಾಗಿರುವ ಶ್ರೀ ಬಿ ಹೆಚ್ ಕೃಷ್ಣಾರೆಡ್ಡಿಯವರು ಈ ಪುಸ್ತಕಕ್ಕೆ ತಮ್ಮ ಮೊದಲ ಮಾತನ್ನು ದಾಖಲಿಸಿ ಪ್ರೋತ್ಸಾಹಿಸಿದ್ದಾರೆ, ಇವರೆಲ್ಲರಿಗೂ ನಾನು ಚಿರರುಣಿ.

ನಾನು ಈ ಪುಸ್ತಕವನ್ನು ತಯಾರಿಸಲು ಹಲವಾರು ತಿಂಗಳುಗಳ ಶ್ರಮದಲ್ಲಿ ನನ್ನ ಹೆಂಡತಿ ಶ್ರೀಮತಿ.ಸರೋಜ.ಪಿ.ಮೂರ್ತಿ ಇವರ ಸಹಕಾರ ಸ್ಮರಿಸಲೇಬೇಕು. ಅದೇ ರೀತಿ ನನ್ನ ಮಕ್ಕಳಾದ ಡಾ. ಸಿ.ಪಿ.ಕಾತ್ಯಾಯಿನಿ, ಡಾ. ಸಿ.ಪಿ.ದಯಾನಂದಮೂರ್ತಿ ಮತ್ತು ಡಾ. ಸಿ.ಪಿ.ನಂದಿನಿ ಇವರ ಕಳಕಳಿಗೆ ನನ್ನ ವಂದನೆ. ಅದೇ ರೀತಿ ಶ್ರೀ ಟಿ.ಪಿ.ಧರ್ಮೇಂದ್ರ, ಶ್ರೀಮತಿ.ಬಿ.ಸೋಮಾಮೂರ್ತಿ ಮತ್ತು ಶ್ರೀ ಜಗದೀಶ್‌ಚಂದ್ರ ಅಳಿಯಂದಿರು ಮತ್ತು ಸೊಸೆಯನ್ನು ನೆನೆಯಬೇಕು. ಮೊಮ್ಮಕ್ಕಳಾದ ಶ್ರೀ ಟಿ.ಡಿ.ಕುಶಲ್, ಶ್ರೀ ಟಿ.ಡಿ.ತೇಜೋವಂತ್ ಮತ್ತು ಶ್ರೀ ದಿವ್ಯಾಂಶರನ್ನು ನೆನೆಸುತ್ತೇನೆ.

ಈ ಪುಸ್ತಕ ಪ್ರಕಟಿಸಲು ಸಂಯುಕ್ತ ಸಹಕಾರಿ ತೆಗೆದುಕೊಂಡ ಕ್ರಮ ಮತ್ತು ಸಹಕಾರ ನೆನೆಯಲೇಬೇಕು. ಪ್ರಮುಖವಾಗಿ ಶ್ರೀ ಬಿ.ಎಚ್. ಕೃಷ್ಣಾರೆಡ್ಡಿ, ಅಧ್ಯಕ್ಷರು, ಶ್ರೀ ಜಗದೀಶ ಕವಟಗಿಮಠ, ಉಪಾಧ್ಯಕ್ಷರು, ಶ್ರೀ ಗುರುನಾಥ್ ಜಾಂತಿಕರ್, ನಿಕಟಪೂರ್ವ ಅಧ್ಯಕ್ಷರು, ಶ್ರೀ ಹೆಚ್.ವಿ.ರಾಜೀವ್, ನಿಕಟಪೂರ್ವ ಉಪಾಧ್ಯಕ್ಷರು ಮತ್ತು ಶ್ರೀ ಶರಣಗೌಡ. ಜಿ. ಪಾಟೀಲ್, ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು ಹಾಗೂ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಕಾನೂನು ವಿಭಾಗದ ಶ್ರೀ ಶ್ರೀಕಾಂತ್ ಬರುವೆ ಮತ್ತು ಹಿಂದಿನ ಅಧ್ಯಕ್ಷರಾಗಿದ್ದ ಶ್ರೀ ಸತೀಶ್‌ಚಂದ್ರ ಇವರ ಸಹಕಾರ ಇಲ್ಲದೇ ಈ ಪ್ರಕಟಣೆ ಸಾಧ್ಯವಾಗುತ್ತಿರಲಿಲ್ಲ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಹಿರಿಯ ಅಧಿಕಾರಿಗಳು ಮತ್ತು ಸಿಬ್ಬಂದಿಯನ್ನು ಈ ಸಂದರ್ಭದಲ್ಲಿ ನೆನೆಸುತ್ತೇನೆ. ಜೆಎಸ್‌ಎಸ್ ಹಿರಿಯ ವಿದ್ಯಾರ್ಥಿಗಳ ಗೃಹ ನಿರ್ಮಾಣ ಸಹಕಾರ ಸಂಘದ ಕುಮಾರಿ ಅನಿತ, ಬೆರಳಚ್ಚು ಮಾಡಿಕೊಟ್ಟಿದ್ದಕ್ಕೆ ನನ್ನ ವಂದನೆಗಳು. ಈ ಪುಸ್ತಕ ಪ್ರಕಟಣೆಯಿಂದ ಸಹಕಾರ ಇಲಾಖೆ ಅಧಿಕಾರಿಗಳಿಗೆ, ಅದರಲ್ಲಿ ದಾವಾ ಮತ್ತು ಅಧಿಭಾರ ಅರ್ಜಿ ತೀರ್ಮಾನ ಮಾಡುವಾಗ, ತುರ್ತಾಗಿ ತೀರ್ಪುಗಳ ಲಭ್ಯತೆ ಇಲ್ಲದೇ ಇದ್ದಾಗ, ಈ ಸಂಕ್ಷಿಪ್ತ ತೀರ್ಪುಗಳು ಸಹಕಾರಿಯಾಗಲೆಂದು, ಆಶಿಸುತ್ತೇನೆ.

–ಸಿ. ಎನ್. ಪರಶಿವಮೂರ್ತಿ

In Memory of Late. Smt.Parvathamma Nanjappa

and

Late. Patel Nanjappa

PART – I

8	201779-201780 of 2014	Mahesh Patil S/o Chandrashekar Patil v Joint Registrar of Co-operative Society, Gulbarga, Region at Raichur and others	L. NARAYANA SWAMY	2015 Indlaw KAR 757	9 - 10
9	970/2011	Kanakamma W/o Gokuldas v Mangalore Teacher's Credit Co-Operative Society Represented by its Chief Executive Umesh S/o Late Raghu	R. B. Budihal	2015 Indlaw KAR 436	11
10	102416-102420 of 2015 & 102428 of 2015	Andanappa S/o Pampanna Betageri and others v Karnataka State Co-Operative Election Commission, Bengaluru and others	B. Manohar	2015 Indlaw KAR 1741	12 - 13
11	63883 of 2009 (CS-RES)	Parameshwari alias Girija W/o Mahadev Achari v Assistant Registrar of Co-Operative Society and Recovery Officer Chamarajpeth, Bangalore and others	A. N. VENU GOPALA GOWDA	2015 Indlaw KAR 431	14
12	58336-58351/2013 and 58352-58354/2013	B. M. Rajashekara Murthy and others v State of Karnataka Department of Co-Operation Represented by Its Principal Secretary, Bangalore and others	A. N. VENU GOPALA GOWDA	2014 Indlaw KAR 1377	15
13	5394/2014	R. M. Manjunatha Gowda S/o Ramappa Gowda v State of Karnataka, Through Doddapete Police, Represented by the Special Public Prosecutor, Bangalore	R. B. Budihal	2014 Indlaw KAR 1646	16-17

20	65506/2012	Bankatlal Motilal Rathi and Company Grain and Cotton Merchants and Commission Agents, Represented by its Partner Srirangabai, Raichur v Chairman, Co-Operative Oils Limited, Gadag and another	A. S. BOPANNA	2014 Indlaw KAR 790	32
21	Writ Appeal No. 1517/ 2010 and Writ Appeal Nos. 1026-1037/2014, Misc. W. No. 7807/2010	Dhanvanthri Co-Operative Hospital and Medical Research Centre Represented by its President, Mysore v Senior Labour Inspector, Mysore and others	N. K. PATIL, Pradeep D. Waingankar	2014 Indlaw KAR 2069; 2014 (143) FLR 394	33 - 34
22	50029 of 2013 and 51586 of 2013 (CS-RES)	H. Raghavendra Rao S/o H. Venugopala Rao; (2) R. Lakshmi Rao W/o H. Raghavendra Rao v Deputy Registrar of Co-Operative Societies , Bangalore and others	B. S. PATIL	2014 Indlaw KAR 1268; AIR 2014 KAR 88; 2014 (6) KarLJ 593	35 - 36
23	5870 of 2014 (S-DIS)	M. Puttaramegowda S/o Marichannegowda v Horticulture Produce Co-operative Marketing and Processing Society Limited, (HOPCOMS) Represented by its Managing Director, Bangalore and others	A. N. VENU GOPALA GOWDA	2014 Indlaw KAR 1995; 2014 (5) KarLJ 430	37
24	7640/2014 (S-RES)	S. Rudrappa S/o Shambulingappa v Secretary, Mysore Merchants Co-op. Society Limited, Mysore and others	A. N. VENU GOPALA GOWDA	2014 Indlaw KAR 1844; 2014 (3) KarLJ 222	38 - 39

25	R.F.A. No. 1959/2011 (INJ)	ITI Employees Housing Co-operative Society, Dooravani Nagar, Bangalore, Represented by its President v Kaveramma W/o Venkatappa Since deceased by her Lrs., Lakshmaiah S/o Venkatappa, Munilakshmaiah S/o Venkatappa, Lakshmi Narayana S/o Venkatappa, Nagarathnamma D/o Venkatappa and another	Ashok B. Hinchigeri	2014 Indlaw KAR 1221	40
26	54852/2013 & W.P. Nos. 6319-22/2014 (CS-DAS)	R. N. Chikkegowda S/o Late Ningegowda and others v Karnataka State Co-Operative Marketing Federation Limited by Its General Manager, Bangalore and another	B. S. PATIL	2014 Indlaw KAR 1737; 2014 (3) KarLJ 641	41 - 42
27	Criminal Petition No. 794 of 2014	Vasu S/o Late Obulaiah and others v State of Karnataka, Represented by Sub-Inspector of Police, Mysore	S. N. Satyanarayana	2014 Indlaw KAR 1436; 2014 (4) KarLJ 242	43
28	6943/2014 (CS-EL/M) W.P. No. 83/ 2014 (CS-EL/ M), W.P. No. 10005/ 2014 (CS-EL/M), W.P. Nos. 10888/2014 & 12132-135/ 2014 (CS-ELE), W.P. Nos. 10963/ 2014 & 12125 -131/2014 (CS-EL/M) In W.P. No. 6943/2014	Raviraja Hegde S/o Late P. Shekara Hegde and others v State of Karnataka, Department of Co-operation and another	B. S. PATIL	2014 Indlaw KAR 1748; 2014 (4) KarLJ 115	44 - 45

34	37043 of 2013 (CS-RES)	Arecanut Processing and Sale Co-Operative Society Limited (APSCOS) by its Secretary, Shimoga District v State of Karnataka by its Secretary, Department of Co-Operation Bangalore and others	B. S. PATIL	2013 Indlaw KAR 2819; 2014 (1) KarLJ 442	54
35	58957-963/ 2013 (CS-RES)	Basavalingaiah S/o Kittappa @ Madaiah and others v Assistant Registrar of Co-operative Societies Ramanagaram Sub-Division and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 1736	55 - 56
36	58970/2013	Fayaza Ahmed S/o Late Anwar Pasha v Muslim Co-operative Bank Limited, Represented by its Manager, Mysore District	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 2598; 2014 (2) BC 625; 2014 (2) DRTC 243; 2014 (1) KarLJ 571	57 – 58
37	44328/2012 (BDA)	MICO Employees' House Building Co-operative Society Limited and another v Bangalore Development Authority, Kumara Park West, Bangalore and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 1812	59 - 60
38	7083/2013 (BDA)	A. N. Jayalakshmi W/o G. Nanjappa v Bangalore Development Authority, Bangalore, Represented by its Commissioner	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 1927	61 - 62
39	31170-31171/2013 (GM-WAKF)	M. Sirajulla Khan S/o Abdul Basith Khan and another v Karnataka State Board of Wakfs, represented by its CEO, Bangalore and others	A. S. BOPANNA	2013 Indlaw KAR 1588	63 - 64

40	46689-692/2013 (CS-RES) C/w W. P. Nos. 49158 -161/2013 (CS-EL/M) W. P. No. 49109/2013 (CS-EL/M) W. P. No. 49257/2013 (CS) W. P. Nos. 49266-49267/2013 (CS-EL/M)	N. Begur Primary Agricultural Credit Co-operative Society Limited and others v State of Karnataka, by its Special Officer and Ex. Officio Joint Secretary to the Government, Department of Co-operation, Bangalore and others	B. S. PATIL	2013 Indlaw KAR 1762; 2014 (2) KarLJ 361	65 - 67
41	39206/2013 (CS-RES)	A. Shambandhan S/o Armugam v Mysore Merchants Co-operative Bank Limited and another	B. S. PATIL	2013 Indlaw KAR 1780; 2013 (6) KarLJ 395	68
42	40892/2012 (GM-RES)	P. A. Mohan S/o Late N. P. Armugam v Deputy General Manager, HRM Division, HMT (W) Limited, Bangalore and others	A. S. BOPANNA	2013 Indlaw KAR 1295	69
43	795-796/2012 (CS-EL/M)	K T Nijalingappa S/o Thippeswamy and another v State of Karnataka and others	B. S. PATIL	2013 Indlaw KAR 1933	70 - 71
44	Cr.A. No. 2556 of 2008	Vasavi Credit Co-operative, Society Limited Represented by its Secretary Y. Dasharatram S/o Y. Govindappa v H. L. Manjunath S/o L. Mariyappa	Anand Byrareddy	2013 Indlaw KAR 2708; 2014 (1) KarLJ 722	72 - 73
45	37526/2013 and W. P. Nos. 38689-692/2013 (CS-EL/M)	D. V. Chanaveeraiah S/o Late Veeraiah and others v Election Officer Doddagangawadi, Ramnagar and others	B. S. PATIL	2013 Indlaw KAR 1197	74
46	38171/2013 (CS-RES)	D. V. Shivanna S/o Late Patel Yeerappa and others v Assistant Registrar of Co-Operative Society Mysore Sub Division, Mysore and others	B. S. PATIL	2013 Indlaw KAR 1181	75 - 76

54	17136/2013 (CS-BL)	Davanagere Harihara Central Co-op. Whole Sale Stores Limited By its Manager v State of Karnataka and another	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 1065	87 - 88
55	30050-30062/2013 (CS-RES)	Haramaghatta Milk Producers Co-Operative Society Limited and others v State of Karnataka and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 1050	89 - 90
56	30735/2013 (CS-RES)	Mundaje Co-Op. Agricultural Society Limited, Dakshina Kannada By its CEO S. M. Shivanna Gowda v State of Karnataka and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 1082	91 - 92
57	29671-29677/ 2013	Vyavasaya Seva Sahakara Sangha Niyamitha, Tumkur District, By its CEO P. M. Subramanayam and others v State of Karnataka and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 1081	93 - 94
58	22245/2013 (CS-RES)	Devoji Rao S/o late Narasimhaiah v Tumkur Co-operative Milk Producers Societies Union Limited and another	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 978	95 - 96
59	20854-20855/2013 (CS-RES)	Hanumanthappa S/o Hanumappa Kuri v Assistant Registrar of Co-operative Societies, Koppal and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 899	97
60	10814/2012 (CS-RES)	K.N. Ningappa S/o Nagappa v Joint Secretary, Department of Co-operation, Bangalore and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 981	98

61	19148-19149/2013 (CS-RES)	K. S. Ganesh S/o Late K. E. Subbachar and another v Karnataka Legislature Secretariat Employees Housing Co-operative Society Limited, Having its registered office at Vidharia Soudha, Bangalore and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 951	99
62	19928/2013 (CS-RES)	Ram Pejawar S/o Late S. R. Pejawar v Joint Registrar of Co-Operative Societies Department of Co-Operation, Bangalore and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 2636; 2013 (4) KarLJ 414	100
63	23878/2010 (CS-RES)	Shivananjappa S/o Late Madappa v Deputy Registrar of Co-operative Society, Chamarajanagara District and others	S. ABDUL NAZEER	2013 Indlaw KAR 1769; 2014 (1) KarLJ 329	101-102
64	10739/2013 (CS-RES)	Someshwara Farmers Co-operative Spinning Mill Limited, District - Gadag Represented by its Chairman P. G. Upanal S/o Late G. F. Upanal, Bangalore v State of Karnataka and another	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 2804; 2013 (5) KarLJ 107	103-104
65	16890 of 2013	M. Venkatesh Kumar S/o Late Mukundaiah v Millennium Credit Co-operative Society Limited and others	Ashok B. Hinchigeri	2013 Indlaw KAR 676	105
66	14977 of 2013	South Canara District Central Co-operative Bank Limited, Mangalore v State of Karnataka and others	Ashok B. Hinchigeri	2013 Indlaw KAR 2115	106-107
67	3019 of 2012	K. P. Karnth S/o Late K. V. Karanth v Registrar of Co-Operative Societies, Bangalore and others	RAVI MALIMATH, K. L. MANJUNATH	2013 Indlaw KAR 2351; 2013 (3) KarLJ 545	108

68	1938 of 2007 [LA-KIADB] A/W. Misc. W. No. 61103 of 2009, Misc. W. No. 61522 of 2009, Misc. W. No. 60219 of 2009, C/W W.A. No. 1935 of 2007 [LA-KIADB] A/W. Misc. W. No. 60215 of 2009, Misc. W. No. 61104 of 2009, Misc. W. No. 61521 of 2009, Misc. W No. 60217 of 2009	Haribhau Siddapa Patil and others v State of Karnataka and others	D. V. SHYLENDRA KUMAR, B. V. Pinto	2013 Indlaw KAR 2800; 2013 (4) KarLJ 353	109
69	41717 of 2011 (BDA) Connected with W.P. Nos. 6452-6453 of 2011 (BDA)	Aleyamma Korah W/o K. P. Korah and others v State of Karnataka, Department of Urban Development, By its Principal Secretary, Bangalore and others	Anand Byrareddy	2013 Indlaw KAR 799; 2013 (6) KarLJ 25	110-113
70	596 of 2005	D. N. Nanjundaiah S/o D. Narayana Sastry v L. S. Ramalingaiah S/o Late Patel Siddagowda and others	SUBHASH B. ADI	2013 Indlaw KAR 205	114-115
71	46061/20l2	M. H. Mahabaleshwar S/o Mailarappa v Joint Registrar of Co-operative Societies Limited, Bangalore and others	A. N. VENU GOPALA GOWDA	2013 Indlaw KAR 44; 2013 (2) KarLJ 505	116-117
72	1306/2007	Nerpu Guddappa Poojary S/o Late Venkappa Poojary v State of Karnataka and others	B. S. PATIL	2012 Indlaw KAR 793	118-120
73	885/2008, 2062-2106/ 2008 C/w, 870/2008 and 2479-2538/ 2011 (GM-ST/RN)	Digambar Warty S/o Madhavan Warty and another v District Registrar, Bangalore and another	N. KUMAR, B. V. Pinto	2012 Indlaw KAR 2831; 2013 (4) KarLJ 247	121-126

74	10513/2012	S. Neela W/o S. V. Kishore v Vani Vilas House Building Co-Operative Society Limited and another	H. BILLAPPA	2012 Indlaw KAR 2194	127
75	21013/2012	Gopal S/o Late Puttaswamaiah and others v State of Karnataka Co-Operative Department Multistore Building and others	Dilip B. Bhosale	2012 Indlaw KAR 2183	128
76	38293 of 2012	Shimoga District Co-Operative Central Bank Limited, Represented by its Managing Director v State of Karnataka, Department of Co-Operation by its Secretary, Bangalore and another	B. Subhash Adi	2012 Indlaw KAR 2271	129
77	5253 of 2007 (GM-KLA) C/w, 5821 of 2007 (GM-ST/RN) C/w, 11520 of 2006 (GM-KLA) C/w, 2621 of 2007 (GM-KLA)	Spartacus Flat Owners Co-operative Society Limited and others v Government of Karnataka, Bangalore, By its Secretary Revenue Department and others	Anand Byrareddy	2012 Indlaw KAR 2875; 2013 (1) KarLJ 320	130-131
78	835/2010	Principal Chief Post Master General Karnataka Circle, General Post Office, Bangalore and others v Karnataka State Co-operative Apex Bank Limited, Bangalore	A. S. BOPANNA	2012 Indlaw KAR 2818	132-134
79	6283 of 2008	Bangalore City Co-operative Housing Society Limited v State of Karnataka and others	Anand Byrareddy	2012 Indlaw KAR 1669	135-136

80	38106 of 2012	Puttegowda S/o Kenchegowda v Additional Registrar of Co-Operative Societies and others	J. Ajit Gunjal	2012 Indlaw KAR 1510	137-138
81	1750/2012	B. Manjunath v Krishnarajendra Co-operative Bank Limited, Mysore	S. ABDUL NAZEER	2012 Indlaw KAR 1028	139-140
82	1749/ 2012	S. Balachandar S/o Late K. Sethuraman v Krisbnarajendra Co-operative Bank Limited	S. ABDUL NAZEER	2012 Indlaw KAR 1153	141
83	48179/2011 (CS-DAS)	Annegowda S/o Late Sannappa v Additional Registrar of Co-operative Societies (I & M), Bangalore and others	Ajjikurttira Somaiah Bopanna	2012 Indlaw KAR 3031	142
84	45889/2011 C/W. W.P. No. 7398/ 2012 (S-RES)	Tumkur District Central Cooperative Bank Limited and another v State of Karnataka Department of Cooperation, Bangalore, represented by its Secretary and another	H. N. NAGA MOHAN DAS	2012 Indlaw KAR 2864; 2013 (1) KarLJ 651	143-144
85	167/2009	C. Lakshminarayana S/o M. N. Chikkanna v N. Vishwanath S/o Late V. Nageswaracharya	SUBHASH B. ADI	2012 Indlaw KAR 474	145
86	1944-1946/2011 (LA-BDA) C/W W. A. Nos. 444-447/2012, (LA-RES)	M. K. Thyagaraja Gupta S/o Late Krsshnaiah Setty and another v State of Karnataka, By its Secretary, Department of Revenue and others	B. V. Nagarathna, Vikramajit Sen	2012 Indlaw KAR 1061	146-148
87	1517/2012	Narayanagowda S/o Late Puttegowda v State of Karnataka and others	Dr. K. Bhaktha vatsala, K. Govindarajulu	2012 Indlaw KAR 1086	149

88	2382 of 2007 (GM-RES) C/w, 506, 545, 588. 589, 642 of 2008 Writ Appeal No. 5182 of 2009 W.P. No. 19128 of 2007, W.P. Nos. 7485. 9638 of 2008 W.P. No. 2755 of 2008, 22127 of 2005 W.P. Nos 11259, 15184, 16544, 19992 of 2007 W.P. Nos. 235, 1056, 1110, 1326, 3225, 3527, 3808. 5030. 5033, 5050. 6881, 8165, 9810. 11226 and 12746 of 2008	Karnataka Rajya Kaigarika Sahakara Bank Niyamita, Bangalore by its Secretary/ Managing Director and others v V. Krishnaswamy S/o Venkatesh Iyer and others	N. KUMAR, Aravind Shiwagouda Pachhapure	2011 Indlaw KAR 537	150-152

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1	529 of 2000, Regular First Appeal No. 530 of 2000	Krishnoji Rao S/o late Lakshman Rao v Agarbathi Workers House Building Co-operative Society Limited and others	N. KUMAR, A. N. VENU GOPALA GOWDA	2011 Indlaw KAR 534	155-156
2	16763 of 07 C/w W. P. No. 16919 of 07	Vishwanath v Deputy Registrar of Co-operative Societies and others	N. KUMAR, B. S. PATIL, S. N. Satyanarayana	2011 Indlaw KAR 539	157-158
3	838/2005	State of Karnataka By Honnavar Police v Dayanand Ramakrishna Shet and another	SUBHASH B. ADI, K. N. Keshavanara yana	2011 Indlaw KAR 384	169-160
4	10231 of 2012 (CS-RES)	Dattaprasad Co-Operative Housing Society Limited and another v Joint Registrar of Co-Operative Societies Bangalore Division Chamarajapet Bangalore and another	AJIT J. GUNJAL	2012 Indlaw KAR 2852; 2013 (1) KarLJ 37	161-162
5	8768 of 2010	Bangalore Urban and Rural District Co-Operative Milk Producers' Societies Union Limited (Bamul), Bangalore v H. Hanumanthappa and another	S. ABDUL NAZEER	2010 Indlaw KAR 580; 2011 (2) KarLJ 333	163-164
6	60804 and 60805 of 2010 (CS-RES)	Vyavasaya Seva Sahakari Bank Limited, Hirekoppa and another v State of Karnataka and others	SUBHASH B. ADI	2010 Indlaw KAR 686; 2011 (4) KarLJ 99	165-166

7	2905 of 2009 (CS-DAS)	Benaka Souradha Credit Co-Operative Society Limited, Bangalore v Assistant Garrison Engineer, Bangalore and another	A. N. VENU GOPALA GOWDA, MANJULA CHELLUR, MANJULA CHELLUR	2010 Indlaw KAR 309; 2010 (4) KarLJ 516	167-169
8	25816 to 25818 of 2010	S. Prakash and others v State of Karnataka and others	S. ABDUL NAZEER	2010 Indlaw KAR 589; 2011 (2) KarLJ 181	170-171
9	18276 of 2009	Mahila Meenugarara Sahakara Sangha Limited, Mysore Taluk v State of Karnataka and others	MOHAN SHANTANA GOUDAR	2010 Indlaw KAR 596; 2011 (2) KarLJ 346	172
10	14160 of 2010 (GM-CPC)	M. Sadananda v Chief Executive Officer/The General Manager, Kadaba Co-Operative Agricultural Bank Limited, Kadaba, Puttur Taluk, Dakshina Kannada District	Aravind Kumar	2010 Indlaw KAR 390; 2010 (5) KarLJ 574	173
11	1801, 1806 and 1807 of 2010 (CS-RES)	Chokka Basavanna Gowda v State of Karnataka and others	MANJULA CHELLUR, Aravind Kumar	2010 Indlaw KAR 330; 2010 (5) KarLJ 1	174-175
12	35163 and 35164 of 2009 connected with W.P. Nos. 34813 and 28148 to 28156 of 2009	P. C. Mohan and another v State of Karnataka and others	K. SREEDHAR RAO, B. V. Pinto	2010 Indlaw KAR 421; 2010 (6) KarLJ 126	176-177
13	11571 and 11572 of 2010	Vyavasaya Seva Sahakara Bank Limited, Channapatna Taluk, Ramanagaram District and another v Managing Director, Central Co-Operative Bank, Bangalore and another	H. G. RAMESH	2010 Indlaw KAR 533; 2011 (2) KarLJ 82	178

14	1483 of 2006 in C. P. No. 82 of 2000	Karnataka District Central Co-Operative Bank Limited v Murudeshwar Foods and Exports Limited (In Liquidation) and others	Anand Byrareddy	2010 Indlaw KAR 124; [2010] 155 Comp Cas 385; 2011 (2) KarLJ 478	179-180
15	13299 of 2009 (GM-RES)	P. Paramashivaiah v Secretary, Department of Co-Operation, Bangalore and Others	MOHAN SHANTANA GOUDAR	2010 Indlaw KAR 12; 2010 (2) KarLJ 379	181
16	29260 of 2009 (CS-DAS)	Benaka Souradha Credit Co-Operative Society Limited, Bangalore v State of Karnataka and others	H. N. NAGA MOHAN DAS	2009 Indlaw KAR 400; 2010 (1) KarLJ 379	182
17	18112 and 18129 of 2009 (CS-Res)	Hassan Town Women's Consumers Co-Operative Society Limited, Hassan and Another v State of Karnataka and Another	AJIT J. GUNJAL	2009 Indlaw KAR 103; 2009 (4) KarLJ 728	183
18	10268 of 2009 in W.P. No. 22610 of 2009 (S-PRO)	Common Cadre Committee of Hassan District Primary Agricultural Co-Operative Societies, Hassan v Joint Registrar of Co-Operative Societies, Mysore Region, Mysore and Others	RAM MOHAN REDDY	2009 Indlaw KAR 346; 2010 (1) KarLJ 100	184
19	2009 Indlaw KAR 346; 2010 (1) KarLJ 100	Karnataka Milk Federation, Bangalore v State of Karnataka and Others	D. V. SHYLENDRA KUMAR	2009 Indlaw KAR 137; 2009 (5) KarLJ 522	185-187
20	22271 and 22344 of 2009 (CS-El/M)	Gulbarga Central Co-Operative Wholesale Store (Janata Bazaar), Supermarket, Gulbarga v Returning Officer/ The Deputy Registrar of Co-Operative Societies, Bangalore and Others	RAM MOHAN REDDY	2009 Indlaw KAR 170; 2009 (5) KLJ 595	188

21	454 of 2008 (S)	N. B. Swami v Primary Co-Operative Agriculture and Rural Development Bank Limited, Bangalore and others	V. GOPALA GOWDA, L. NARAYANA SWAMY	2009 Indlaw KAR 617; 2011 (3) KarLJ 69	189-191
22	2062 of 2009 (S-R) Connected With Writ Appeal No. 2063 of 2009 (S-R)	Elasappa M v Kolar District Co-Operative Central Bank, Kolar	N. KUMAR, B. Srinivasa Gowda	2009 Indlaw KAR 153; 2009 (5) KarLJ 441	192
23	15857 of 2008 (GM-RES)	Berya Fishermen Co-Operative Society Limited, Mysore v Senior Assistant Director of Fisheries, Mysore and Others	N. K. PATIL	2009 Indlaw KAR 66; 2009 (4) KarLJ 259	193-195
24	5598 of 2009 (CS-EL/M) Connected With W.P. Nos. 5743, 5809 to 5812, 5817, 5818, 5835, 5836, 5846, 5660, 5662, 5878, 5900, 5947, 6074 to 6076, 5738 to 5742, 6188, 6234, 6323 of 2009 (CS-EL/M)	Prashant P. D v State of Karnataka and Others	D. V. SHYLENDRA KUMAR	2009 Indlaw KAR 144; 2009 (5) KarLJ 280	196-198
25	14661 of 2008 (CS-RES)	Altaf Hussain and Another v State of Karnataka and Others	D. V. SHYLENDRA KUMAR	2009 Indlaw KAR 73; 2009 (4) KarLJ 343	199-201
26	12299 of 2008 (CS-EL/M)	S. R. Narayana Murthy v Joint Registrar of Co-Operative Society, Bangalore Region, Bangalore and Others	D. V. SHYLENDRA KUMAR	2009 Indlaw KAR 71; 2009 (4) KarLJ 294	202-203
27	1953 of 2008 (Cs-Res)	Bazm-E-Niswan Charitable Trust, Bangalore and Another v Amanath Co-Operative Bank Limited, Bangalore and Others	P. D. Dinakaran (CJ), V. G. SABHAHIT	2009 Indlaw KAR 123; 2009 (4) KarLJ 633	204

28	8917 of 2007 (Cs-Res)	B. C. Reddy and Others v Additional Registrar of Co-Operative Societies (I and M), Bangalore and Others	N. K. PATIL	2009 Indlaw KAR 9; 2009 (2) KarLJ 561	205-206
29	525 of 2008 (Civil)	G. Basavaraju v Arundathi and Another	A. N. VENU GOPALA GOWDA, S. R. BANNUR MATH	2009 Indlaw KAR 5; 2010 (1) CLT 47; 2009 (2) KarLJ 465	207-208
30	1094 of 2008 (Cs-Res)	M. G. Siddaveerappa v Deputy Registrar of Co-operative Societies, Shimoga and Others	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 342; 2009 (1) KarLJ 458	209-211
31	6141 of 2006 (CS-RES)	Varijakshi Bhat v State of Karnataka and Others	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 489; 2009 (4) KarLJ 419	212-215
32	1215 of 2008 (S-El/M) Connected With Writ Appeal No. 1223 of 2008 (S-El/M)	Kumar and Others v State of Karnataka and Others	V. G. SABHAHIT, P. D. Dinakaran (CJ)	2008 Indlaw KAR 281; 2009 (2) KarLJ 438	216-217
33	1568 of 2005	Totgars Co-Operative Sale Society Limited v Income-Tax Officer	V. G. SABHAHIT, S. N. Satyanarayana	2008 Indlaw KAR 575; [2010] 322 ITR 272	218-219
34	5032 of 2008 (Cs-El/M)	Puttaraja and Others v State of Karnataka and Others	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 137; 2009 (1) KarLJ 121	220-221
35	1573 of 2006 (Cs-Res)	Y. Lalitha Holla and Others v Recovery Officer, Bangalore District and Bangalore Rural District Co-Operative Central Bank Limited, Bangalore and Others	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 345; 2009 (1) KarLJ 493	222-225

36	9217 of 2008 (Cs-El)	Shivanandaiah K.S v District Registrar of Co-Operative Societies and Others	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 143; 2009 (1) KarLJ 151	226
37	3106 of 2008 (Cs-El/M)	Vyavasaya Seva Sahakar Bank Niyamit, Hale-Hubballi Taluk, Dharwad District v State of Karnataka and Others	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 410; 2009 (3) KarLJ 380	227-228
38	81 of 2005	Subray Krishnaiah Hegde v Manager, Siddapur Taluk Vakkalutana Huttuvali Maratha Sahakari Sangh Niyamit, Uttara Kannada District	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 212; 2008 (6) KarLJ 643	229-230
39	165 of 2008	Belgaum District Central Co-Operative Bank Limited, Belgaum v Mahantesh Co-Operative Credit Society Limited, Belgaum and Another	S. R. BANNU RMATH, Jawad Rahim	2008 Indlaw KAR 13; 2008 (5) KarLJ 81; 2008 (3) KarLJ 608	231-232
40	423 of 2008 (Civil)	T. Srinivasa v J. J. Prakash	A. N. VENU GOPALA GOWDA, S. R. BANNUR MATH	2008 Indlaw KAR 282; 2009 (2) KarLJ 444	233-234
41	1837 of 2008 (Cs)	State of Karnataka and Others v Karnataka Milk Federation, Bangalore	P. D. Dinakaran (CJ), V. G. SABHAHIT	2008 Indlaw KAR 312; 2009 (2) KarLJ 709	235-236
42	19213 of 2007 (Cs)	G. Veranna v Joint Registrar of Co-Operative Societies, Bangalore City District, Bangalore and Others	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 436; 2009 (3) KarLJ 555	237-239
43	30319 of 2008 (Cs-Res)	Gurusiddappa Moolagi and Others v Deputy Registrar of Co-Operative Societies, Dharwad and Another	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 388; 2009 (3) KarLJ 144	240-241

44	8366 of 2008 Connected With W.P. Nos. 4198 and 6224 of 2008 (La)	Surabhi Seva Sangha (Reg.), Bangalore and Others v State of Karnataka and Others	HULUVADI G. RAMESH	2008 Indlaw KAR 364; 2009 (1) KarLJ 712	242-253
45	113 of 2004 Connected With Review Petition Nos. 320 of 2007 and 94 of 2004	K.N. Kamalamma v Bangalore Development Authority	Deepak Verma (ACJ), A. Somaiah Bopanna	2008 Indlaw KAR 360; 2009 (1) KarLJ 658	244-245
46	11713 of 2006 (Gm-Res)	Bidar District Central Co-Operative Bank Limited, Bidar v Karnataka Information Commission, and Another	K. BHAKTHA VATSALA	2008 Indlaw KAR 160; 2009 (1) KarLJ 231	246-247
47	313 of 2008	K.G. Rajashekar v State of Karnataka and Others	K. L. MANJUNATH, B. V. Nagarathna	2008 Indlaw KAR 173; 2009 (1) KarLJ 36	248-249
48	7190 of 2008 (S-Dis)	V. Eshwaran v Karnataka Rajya Kaigarika Sahakara Bank Niyamitha, Bangalore	B. V. Nagarathna	2008 Indlaw KAR 221; 2008 (6) KarLJ 696	250-251
49	14231 of 2005 Connected With W.P. Nos. 11678 of 2005, 50597, 19385, 23474 and 33759 of 2004; 16838 and 14464 of 2005 (Gm-St/ Rn)	Residents of Shri Chitrapur Co-Operative Housing Society Limited, Bangalore v District Registrar, Bangalore Urban District, Bangalore and Another	A. Somaiah Bopanna	2008 Indlaw KAR 12; 2008 (3) KarLJ 377	252-254
50	20081 of 2007 Connected With W.P. Nos. 19053 and 19054 of 2007 (Cs-Res)	C. Shivalingaiah and Others v State of Karnataka and Others	H. N. NAGA MOHAN DAS	2008 Indlaw KAR 156; 2009 (1) KarLJ 201	255-258
51	479 of 2002	Suresh v Managing Director, Karnataka Milk Federation, Bijapur and Another	D. V. SHYLENDRA KUMAR	2008 Indlaw KAR 205; 2008 (6) KarLJ 530	259-261

59	7408 of 2006 (Gm-Res)	Poornaprajna House Building Co-Operative Society Limited, Bangalore v Karnataka Information Commission, Bangalore and Others	S. ABDUL NAZEER	2007 Indlaw KAR 312; AIR 2007 KAR 136; 2008 (1) KarLJ 672	278-279
60	12086 of 2006 (La-Bda)	Sharadamma and Others v State of Karnataka and Others	AJIT J. GUNJAL	2007 Indlaw KAR 81; 2007 (5) KarLJ 200	280-282
61	20033 of 2005 (Cs-Res)	Manager, Raibag Taluk Primary Co-Operative Agricultural and Rural Development Bank Limited, Raibag, Belgaum District v Deputy Registrar of Co-Operative Societies, Belgaum 1 and Others	M. M. Shanthana goudar	2006 Indlaw KAR 337; 2007 (1) KarLJ 211	283-284

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2	24626 of 2002 (Cs-Res)	Ananth v State of Karnataka and Others	M. M. Shanthana goudar	2006 Indlaw KAR 130; 2006 (3) KarLJ 428	289-290
3	1480 of 2006 (Cs-Res).	G. Bharthi and Another v Assistant Registrar of Co-Operative Society, Chitradurga Sub-Division, Chitradurga and Another	V. G. SABHAHIT	2006 Indlaw KAR 47; 2006 (2) KarLJ 303	291
4	3883 of 2003 (Cs) (Writ Appeal Nos. 3883 to 3886 of 2003)	Dattaprasad Co-Operative Housing Society Limited, Bangalore and Others v State of Karnataka	H. L. DATTU, H. N. NAGA MOHAN DAS	2005 Indlaw KAR 333; 2007 (4) KarLJ 645	292
5	9207 of 2006	K.H. Nallappa v Secretary, Department of Co-Operation, Bangalore and Others	AJIT J. GUNJAL	2006 Indlaw KAR 404; 2007 (2) KarLJ 126	293-296
6	13560 of 2006 (Cs-Res)	Neelakanthappa v State of Karnataka and Others	M. M. Shanthana goudar	2006 Indlaw KAR 340; 2007 (1) KarLJ 235	297
7	36577 of 2001 (L-Ter)	Rangappa and Others v Management of Co-Operative Spinning Mills Limited, Yermarus, Raichur	Anand Byrareddy	2006 Indlaw KAR 210; 2006 (4) KarLJ 538	298
8	9200 of 2005 (La-Res)	Shantinagar House Building Co-Operative Society Limited, Bangalore v State of Karnataka and Others	Anand Byrareddy	2006 Indlaw KAR 167; 2006 (4) KarLJ 234; 2007 (3) KarLJ 517	299

9	47077 of 2001 (S-Res).	A. Hanumantha Reddy and Others v Additional Registrar of Co-Operative Societies (I and M), Bangalore and Others	H. N. NAGA MOHAN DAS	2006 Indlaw KAR 113; 2006 (3) KarLJ 548	300-301
10	323 of 2006 (Cs-Eivm)	T.S. Patil v Joint Registrar of Co-Operative Societies, Belgaum Sub-Division, Belgaum and Others	Cyriac Joseph (CJ), K. SREEDHAR RAO	2006 Indlaw KAR 616; 2008 (1) KarLJ 227	302-304
11	40914 of 2003 (Cs-Res) Connected With W.P. No. 47671 of 2003.	Scheduled Caste (Harijan) House Building Co-Operative Society Limited, Bangalore and Another v State of Karnataka and Others	N. KUMAR	2006 Indlaw KAR 43; 2006 (2) KarLJ 267	305-307
12	27504 of 2005 (Cs-Res).	G.V. Revanna and Another v Arbitrator (Co-Operative Development Officer), Tumkur and Another	N. K. PATIL	2006 Indlaw KAR 37; 2006 (2) KarLJ 227	308-309
13	27590 of 2002 (Cs-Res)	Ga. Wahid Khan v Gruha Nirmana Sahakara Sangha, K.R. Nagara, Mysore District and Others	N. K. PATIL	2005 Indlaw KAR 217; 2006 (4) KarLJ 655	310-311
14	20769 of 2005 (Cs-Res)	N. Chinnaraju and Another v General Manager, Malleshwaram Co-Operative Bank Limited, Bangalore and Others	N. K. PATIL	2005 Indlaw KAR 142; 2006 (3) KarLJ 300	312
15	1485 of 2005	Malini V. Pai W/o Late K. Vasudev Pai v State of Karnataka Dept of Co-Operation, Bangalore and others	N. K. PATIL	2005 Indlaw KAR 535; 2005 (5) KarLJ 462	313-314

16	6717 of 1997; W.P. Nos. 32623 of 1997; 3371, 20189, 22897 to 22899 and 36040 of 1998; 22925, 24945, 37914, 39020, 45731 and 44802 of 1999; 13826, 21040, 28946, 31466 and 33528 of 2000; 18025 and 25812 of 1997; 18191, 29650, 30229 and 30562 of 1998; 2542, 7112, 13813, 16780, 22928, 29657, 32148, 35275, 36461 and 38729 of 1999; 113 and 6304 of 2000 and 47510 of 2001	Management of Hukkeri Taluka Co-Operative Rural Electricity Society Limited, Hukkeri v S.R. Vastrad and Another	N. KUMAR	2005 Indlaw KAR 259; 2006 (5) KarLJ 528	315-320
17	5369-5372 of 2004; W. A. Nos. 5327-5328, 5244, 5375, 5444, 5446 of 2004, 25, 191, 1501, 1518 of 2005 and 1856 of 2005 (Cs-Res) Etc.	Banahatti Co-Operative Mills Limited, and Others v State of Karnataka and Others	H. L. DATTU, H. N. NAGA MOHAN DAS	2005 Indlaw KAR 196; AIR 2005 KAR 307; 2005 (4) KarLJ 5	321-322
18	27441 of 2004 (L-RES)	K. M. F. Employees Federation and others v Commissioner of Labour in Karnataka, Bangalore and others	R. GURURAJAN	2005 Indlaw KAR 399; 2005 (6) KarLJ 610	323

19	1501 of 2004 (CS-RES)	Tumkur Grain Merchants Co-Operative Bank Limited v K. B. Lingaraju S/o K. S. Basappa and others	H. L. DATTU, H. N. NAGA MOHAN DAS	2005 Indlaw KAR 465; 2005 (6) KarLJ 481	324
20	7068 of 2003 (CS-RES)	Arecanut Processing and Sale Cooperative Society Limited, Shimoga by its Secretary v Abida Ali W/o Mohammed Kasim and others	H. L. DATTU, H. N. NAGA MOHAN DAS	2005 Indlaw KAR 484; 2005 (6) KarLJ 500	325-326
21	2532 of 2004 Connected With W.A. Nos. 2086, 2300 and 2531 of 2004	B. Anjanappa and Others v State of Karnataka and Others	S. R. NAYAKAND, C. R. KUMARA SWAMY	2005 Indlaw KAR 83; 2006 (1) KarLJ 233	327-330
22	35078 of 2003 (Bda)	Bhavani Housing Co-Operative Society Limited (Registered), Bangalore v Bangalore Development Authority and Another	M. M. Shanthana goudar	2005 Indlaw KAR 214; 2006 (4) KarLJ 598	331-332
23	R.F.A. No. 167 of 2005	Krishna v Kedarnath and Others	V. GOPALA GOWDA, A. B. Hinchigeri	2005 Indlaw KAR 306; AIR 2006 KAR 21; 2006 (3) BC 9; 2006 (1) DRTC 356; 2005 (6) KarLJ 337	333
24	15628 of 2005	Sunil Venkatesh Hegde S/o Venkatesh and another v Assistant Registrar of Cooperative Societies, Karwar and another	N. K. PATIL	2005 Indlaw KAR 454; 2005 (5) KarLJ 356	334-335

25	3576 of 2002 (L-RES) Connected with W.P. No. 424 of 2002 W.P. No. 1327 of 2002 W.P. No. 2212 of 2002 W.P. No. 2180 of 2002 W.P. No. 3786 of 2002 W.P. No. 3787 of 2002 W.P. No. 3789 of 2002 W.P. No. 5275 of 2002 W.P. No. 5276 of 2002 W.P. No. 5287 of 2002 W.P. No. 5307 of 2002 W.P. No. 7543 of 2002 W.P. No. 17130 of 2002 W.P. No. 24238 of 2002 W.P. No. 48467 of 2001 W.P. No. 48206 of 2001	Karnataka Co-Operative Milk Producers Federation, Bangalore and others v Government of Karnataka Department of Labour Represented by its Commissioner and Principal Secretary Dr. Ambedkar Veedhi, Bangalore and another	R. GURURAJAN	2005 Indlaw KAR 561; 2005 (6) KarLJ 596	336-337
26	18534 of 2005 (CS - ELE)	N. R. Suresh S/o Ramaiah v H. R. Ramegowda S/o H. D. Rangappa Gowda and others	N. K. PATIL	2005 Indlaw KAR 461; 2005 (6) KarLJ 133	338-339
27	32857 of 2002	K. S. Ramachandra Rao S/o K. S. Sreekantaiah v Karnataka Appellate Tribunal and others	N. K. PATIL	2005 Indlaw KAR 455; 2005 (5) KarLJ 42	340-342
28	10768 of 2005 (Cs-El/M)	C. Basavegowda v Karnataka State Co-Operative Apex Bank Limited, Bangalore and Others	K. SREEDHAR RAO	2005 Indlaw KAR 166; 2006 (3) KarLJ 410	343-344

29	38041-42/2004 (L-TER)	Krishna S/o Hari Shanbhag and others v Sirsi Urban Co-operative Bank Limited Now Sirsi Urban Souharda Co-operative Bank Limited Represented by its President	MOHAN SHANTANA GOUDAR	2005 Indlaw KAR 509; 2005 (3) KarLJ 300	345-347
30	48616 to 48687/2004 (KLR-RR/SUR)	Bangalore District and Bangalore Rural District Central Co-op. Bank Limited Represented by its Managing Director, Bangalore v State of Karnataka by its Principal Secretary, Revenue Department, Bangalore and others	K. BHAKTHA VATSALA	2005 Indlaw KAR 372; 2005 (2) KarLJ 81	348-349
31	54087-88/2003, W.P. Nos. 22715/2001, 16740, 44988/2002, 51662, 43423, 37264-66, 36508-21, 36843, 45554-55/03, 49815/03, 48461/2003, 4122, 4426, 4428, 5683, 5812, 7043, 8380, 8381, 8383, 9196. 10237, 10026, 9005, 12330, 9953, 14878, 12722, 12127, 9908, 10868,12219, 12050, 15478, 9066, 21177, 20117, 21872/2004	Ankola Urban Co. Operative Bank Limited, by Its General Manager and others v State of Karnataka, by Its Secretary, Bangalore and others	V. GOPALA GOWDA	2004 Indlaw KAR 321; 2005 (2) KarLJ 251	350-352

32	2802/1999	Mandya District Central Co-Operative Bank Limited v N. Srinivasaiah	KUMAR RAJA RATNAM, K. BHAKTHA VATSALA	2003 Indlaw KAR 286; 2004 (2) LLJ 720	353-355
33	7398 of 1999 (Cs)	S. R. Hanumanthaiah v State of Karnataka and Others	SALDANHA, M. F. SALDANHA, M. S. RAJENDRA PRASAD, JJ	2003 Indlaw KAR 120; AIR 2003 KAR 364; 2003 (6) KarLJ 503	356-357
34	4892-4900 of 2001	N. S. Srinivasamurthy v Registrar of Co-Operative Societies	N. K. JAIN, H Q RAMESH, V. G. SABHAHIT	2003 Indlaw KAR 359; 2004 (1) CLR 688; 2004 (1) KarLJ 179	358-359
35	2953 of 2003 (Cs-Res).	S. A. Mukund v Sri Ganapathi Urban Co-Operative Bank Ltd. and Another	N. K. PATIL J	2003 Indlaw KAR 171; 2004 (4) BC 595; [2004] 121 Comp Cas 447; 2003 (6) KarLJ 60	360-361
36	5876 and 6165 of 2001.	Vijayendra Shenoy v South Canara District Central Co-Op. Bank Ltd. and Another	N. K. PATIL	2003 Indlaw KAR 147; AIR 2003 KAR 484; 2005 (1) BC 74	362-363
37	8795/2001 (Csres)	Malaprabha Co-Operative Sugar Factory Limited v C.R. Shigehalli and Others	N. K. PATIL	2003 Indlaw KAR 222; 2003 ILR(Kar) 2779	364-365

38	36625/2000 (L-Res) Etc	Karnataka Sugar Workers Federation (R), Represented By Its President, Bangalore v State of Karnataka, Represented By The Secretary, Department of Co-Operation, Bangalore and Others	N. K. JAIN, H. RANGA VITTALA CHAR, N. KUMAR	2003 Indlaw KAR 211; 2003 ILR(Kar) 2531; 2003 (4) KarLJ 453; 2003 (3) LLJ 502	366-369
39	13524/1999	Chitradurga District Mazdoor Sangh v Bhadra Sahakari Sakkare Karkhane Niyamita and Others	S. R. NAYAK, K. RAMANNA	2003 Indlaw KAR 385; 2003 (3) LLJ 300A	370-372
40	3474/1999 and 4844-52/1999	Bijapur Mahalaxmi Urban Co-Operative Credit Bank Limited v Mohan Kamalakar and Others	S. R. NAYAK, K. RAMANNA	2003 Indlaw KAR 369; 2003 (6) KarLJ 15; 2003 (2) LLJ 595	373-374
41	137 of 2002	Commissioner of Income Tax Andanr v Sri Ram Sahakari Bank Limited	G. C. BHARUKA, S. B. MAJAGE	2002 Indlaw KAR 122; 2004 (186) CTR 734; [2004] 266 ITR 632; 181 TAXATION 235; [2004] 138 TAXMAN 45	375-376
42	5612 of 2000 C/W. Writ Appeal Nos. 5583 and 6451 of 2000	Kota Co-Operative Agricultural Bank Ltd. and Etc. v The State of Karnataka and Another Etc.	G. C. BHARUKA, H. RANGAVITTA LACHAR, JJ	2002 Indlaw KAR 155; AIR 2003 KAR 30; 2002 (5) KarLJ 321; 2003 (1) RCR(Civil) 584	377-379

43	3 of 2001, Dt. 28 March 2002.	M. C. Gangadharappa v State	M. P. CHINNAPPA	2002 Indlaw KAR 74; 2002 CRLJ 2755; 2002 (5) KarLJ 237	380-382
44	30981-83 of 2001 (Gm-St/Tn).	Sri Manjunatha Co-Operative Housing Society Ltd., Dharwad and Others v State of Karnataka and Others	TIRATH S. THAKUR	2002 Indlaw KAR 208; AIR 2002 KAR 237; 2002 (3) KarLJ 74	383-385
45	5770 of 1998	Rajajinagar Co-Operative Bank Limited, Bangalore v Presiding Officer, Bangalore and Another	G. C. BHARUKA, A. V. SREENIVASA REDDY	2001 Indlaw KAR 127; 2002 (18) CLR 721; 2001 (6) KarLJ 36; 2001 (34) LabIC 3578; 2002 (1) LLJ 684	386-387
46	2228 of 1999(L), Dt. 27 June 2001	Devanur Grama Seva Sahakari Sangh Limited v Virupaxayya and Others	Ashok Bhan, CHIDA NANDA ULLAL	2001 Indlaw KAR 78; 2002 (2) KarLJ 6; 2001 (34) LabIC 2889	388-389
47	14792, 14804 connected with 14095/1998, Dt. 9 March 2000	Veerashiva Co-Operative Bank Limited v Presiding Officer, Labour Court, Bangalore and Others	BHASKARA V RAO, MANJULA CHELLUR	2000 Indlaw KAR 135; 2001 (34) LabIC 269; 2001 (1) LLJ 980	390-391

48	5084/1998, Dt. 26 September 2000	Naganath and Others v Common Cadre Committee, Bidar and Others	G. C. BHARUKA, K. R. PRASADA RAO	2000 Indlaw KAR 117; 2001 (1) CLR 964; 2000 (8) KarLJ 422; 2000 (33) LabIC 3714; 2001 (1) LLJ 655	392-393
49	24832 of 1996 C/w 27576 of 1996 (1), Dt. 12 September 2000	Management, Shree Doodhganga Krishna Sahakari Sakkare Karkhana v T. P. Pudale and Others	T. N. VALLI NAYAGAM	2000 Indlaw KAR 120; 2000 (8) KarLJ 252; 2001 (34) LabIC 165	394
50	5522-23 of 1999	Kota Co-Op. Agricultural Bank Ltd. and Another v State of Karnataka and Others.	CHIDA NANDA ULLAL	2000 Indlaw KAR 270; AIR 2001 KAR 36; 2001 (2) KarLJ 188	395-397
51	23512 of 1999	S. K. Rama Reddy v Assistant Registrar of Co-Operative Societies, Harapanahalli and Others	G. PATRI BASAVANA GOUD	2000 Indlaw KAR 344; AIR 2000 KAR 330; 2000 (5) KarLJ 271	398-399
52	21461/99	D. L. Nagaraja v Kolar District Co-Operative Societies Union Limited and Others	CHIDA NANDA ULLAL	1999 Indlaw KAR 355; AIR 2000 KAR 190; 2000 (3) KarLJ 259	400
53	27609 of 1999 C/W W.P. Nos. 23084 and 32665 of 1999	Basanagouda and Etc v State of Karnataka and Others Etc	CHIDA NANDA ULLAL	1999 Indlaw KAR 357; AIR 2000 KAR 224; 2000 (1) KarLJ 499; 2001 (2) KarLJ 527	401-403

54	16558 of 1999	Kaniyanahundi Milk Producers Co-Operative Society Limited v Co-Operation Dept. By Its Secretary Bangalore and Others	CHIDA NANDA ULLAL	1999 Indlaw KAR 352; AIR 2000 KAR 113; 2000 (1) KarLJ 14	404-406
55	15677/1996, 15988 to 15996/1996, Dt. 10 March 1999	Mohan Kamalkar Sindgikar and Others v Joshi Metal Industries and Others	G. PATRI BASAVANA GOUD	1999 Indlaw KAR 232; 1999 (6) KarLJ 347; 2000 (1) LLJ 859	407-408

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Belthangadi Taluk Rubber Belegar Marat and Samskarn Sahakar Sangat Niyamit Ujre, Dhakshina Kannada, represented by its President, Shridar G Bhide and others v State of Karnataka, represented by its Chief Secretary and others

Bench	H. G. RAMESH
Where Reported	2015 Indlaw KAR 560

Case No : W.P. No. 9274 of 2015 (CS-EL/M)

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

1. The contention that continuance of the existing Board is violative of cl. (2) of Article 243ZJ of the Constitution cannot be accepted on the facts of the case. In my opinion, a conjoint reading of the three Articles namely, 243ZJ, 243ZK & 243ZL will show that the term of the Board is five years from the date the members of the Board assume office. However, if the State law does not conform to Article 243ZK of the Constitution and does not provide for holding of election before expiry of the term of the Board, the term of the existing Board shall have to be continued till the newly elected Board assumes office.

   Any view to the contrary will defeat the purpose and object of Part IXB of the Constitution. This Court is duty bound to uphold the provisions of the Constitution. I may add that Article 243ZL(1)(v) will not come into play in the absence of State law conforming to Article 243ZK of the Constitution.

2. As the provisions of the State Act do not conform to Article 243ZK of the Constitution, inasmuch as they do not actually provide for holding of elections to the Boards of Secondary, Federal & Apex Societies, before expiry of the term of the existing Boards, the existing Boards shall have to be continued, till the newly elected Boards assume office.

3. Default on the part of the State in not enacting law to hold election to the Board before expiry of the term of the existing Board cannot be allowed to result in the State or its Officers interfering with the management of the Society.

   As stated above, non-holding of election to the Board before expiry of the term of the existing Board is not due to any default of the petitioner-Society.

4. All the observations made above are only for the purpose of considering the interim prayer and shall not be construed as expressing any opinion finally on the merits of the matter.

5. The existing Board of Directors of petitioner no.1- Society shall continue in office till the newly elected members of the Board assume office.

Order accordingly

Belakodu Vyvasaya Seva Sahakari Sangh, Belgaum v Basavanni S/o Shivamurthy Arabhavi and others

Bench	B. Manohar
Where Reported	2015 Indlaw KAR 281

Case No : W.P. No. 65451 of 2010

The Order of the Court was as follows :

1. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the order impugned and other relevant records.
2. The records clearly disclose that the 3rd respondent transferred the 1st respondent from the petitioner - Society to Mangavathi V.S.S.S.N. Athani. The said Society refused to accept the duty report of the first respondent. Though the request is made by the 1st respondent, modification order has not been issued either by the Common Cadre Authority or the petitioner- Society. In view of that, the 1st respondent was out of employment. Without following the procedure prescribed, he was dismissed from service. Being aggrieved by the same, the 1st respondent preferred the appeal and raised a dispute before the Joint Registrar of Co-operative Societies. The Joint Registrar dismissed the appeal. The dismissal order has been set aside by this Court in W.P.No.1002/2005 and directed the Joint Registrar to reconsider the matter. The Joint Registrar, after reconsidering the matter in detail and considering the arguments of the advocates appearing for both the parties, held that, several documents have been produced before the authorities concerned to show that the said Mangavathi V.S.S.S.N. has not accepted the duty report of 1st respondent; the procedure followed by the petitioner - Society in dismissing the 1st respondent from service is not in accordance with law and accordingly allowed the application and directed the petitioner to reinstate the services of 1st respondent with other benefits.
3. I think there is no infirmity or illegality in the said order. Admittedly the 1st respondent was working as the Secretary of the petitioner - Society. He was transferred by the Common Cadre Authority without following the procedure prescribed under law. Whether the Society for which the 1st respondent was transferred is under the control by the Common Cadre Authority or not is not examined. The Society to which the 1st respondent was transferred has refused to accept him for duty. The Common Cadre Authority has not modified the transfer order. There is no allegation against the first respondent with regard to misappropriation of funds of Society. Only for unauthorised absence the 1st respondent was dismissed from the service. The authorities below ought to have given some minor penalties instead of dismissing him from service.
4. The Joint Registrar has taken into consideration all these aspects of the matter and set aside the order of dismissal directing the petitioner-Society to reinstate his service with certain benefits. I do not find any illegality or irregularity in the said order. The petitioner has not made out any ground to interfere with the order passed by the Joint Registrar of Co-operative Societies.
5. Accordingly, the writ petition is dismissed.

Petition dismissed

H. K. Ramesh S/o H. M. Krishnappa and others v State of Karnataka, Bangalore and others

Bench	H. G. RAMESH
Where Reported	2015 Indlaw KAR 1271

Case No : W.P. Nos. 59412-59414 of 2014 C/W W.P. Nos. 1429-1432 of 2015

Bench : H. G. RAMESH

Citation : 2015 Indlaw KAR 1271

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

1. Learned counsel on both sides, after arguing for some time, submit that the writ petitions may be disposed of by directing the Chief Executive/Managing Director of respondent No.2-Society to furnish all the lists as contemplated under sub rule(5) of Rule 13-D of the Karnataka Co-operative Societies Rules, 1960 ('the Rules'), to the jurisdictional District Election Officer on or before 15th June 2015, and by further directing the Co-operative Election Authority to take steps to hold the election to the Board of respondent No.2 expeditiously.

2. In view of the above, I make the following order:

   (i) The Chief Executive/Managing Director of respondent No.2-Society shall send all the lists referred to in Rule 13D(5) of the Rules, to the jurisdictional District Election Officer on or before 15th June 2015 and on receipt of the said lists, the Co-operative Election Commission shall take all necessary steps to hold the election to the Board of Directors of respondent No.2-Society, expeditiously and in any event before 24th August 2015. It is clarified that, under no circumstance, extension of time will be granted.

   (ii) The Administrator of respondent No.2-Society who is present in Court, is directed to ensure that all the lists referred to in Rule 13-D(5) of the Rules are sent by the Chief Executive/Managing Director of respondent No.2-Society to the jurisdictional District Election Officer on or before 15.06.2015.

Alvekodi Meenugarika Sahakari Sangha Niyamitha and others v State of Karnataka

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2015 Indlaw KAR 397

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

The Order of the Court was as follows:

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

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

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

Petition disposed of

B. P. Kumaraswamy S/o P. N. Papanna and others v Bangalore, Bangalore Rural & Ramanagara District Co-Op. Central Bank Limited and others

Bench	B. V. Nagarathna
Where Reported	2015 Indlaw KAR 294

Case No : W.P. Nos. 2313-2340/2015 (S-RES)

The Order of the Court was as follows :

1. The 1st respondent is a Co-operative Bank, which has been established under the provisions of the Karnataka Co-operative Societies Act, 1959 and the Rules made thereunder. It has its area of operation in Bengaluru, Bengaluru rural District and Ramanagara District. By virtue of the policy in the form of the impugned order dated 05.09.2012, the eligibility criteria for appointment to various posts, promotions, salary benefits and other aspects have been enunciated. Petitioners herein have impugned the eligibility criteria prescribed under the said order for the promotion to the post of Middle Management, Junior Bank Manager / Cashier and other equivalent posts.

2. It is the contention of the petitioners that when they entered service in the 1st respondent - Bank they did so with qualification of S.S.L.C. or P.U.C., and at any rate, they do not have a graduate degree. But now, by the impugned eligibility criteria, which has been prescribed, to be promoted to a post in middle management cadre, graduate degree is a requisite qualification. As a result, petitioners, who are not graduates cannot meet that criterion and therefore, would not be promoted at all. It is in these circumstances, that they have assailed clause - 44A of the said Government order in so far as it concerns promotion to the posts in the middle management cadre.

3. Having heard learned counsel for the parties and on perusal of the material on record, at the outset, it is stated that since the petitioners have contended that the eligibility criteria prescribed by the respondent- authorities is arbitrary and in violation of Art. 14 of the Constitution, they are entitled in law to approach this Court. This is because they could not have sought for striking down of the eligibility criteria before the statutory authority as that authority can only decide or adjudicate on the existing criteria, but would not have the jurisdiction to strike down the criteria as being arbitrary or in violation of the Constitution. Therefore, writ petitions cannot be dismissed on the ground of there being an alternative remedy.

4. In that view of the matter, it cannot be held that the prescription of a degree from a University does not have a bearing on the posts to which promotions have to be made or as to the nature of duties that have to be discharged. Consequently, a person who occupies the position in the middle management cadre must be sufficiently educated and therefore, the 1st respondent - Bank has thought that a degree from a recognized University is a basic qualification. This Court cannot sit in judgment over what has been prescribed by the 1st respondent - Bank in its wisdom.

In fact, there are innumerable decisions of the Hon'ble Supreme Court, wherein it has been held that in matters of prescription of eligibility criteria and educational qualifications for a particular post, they must ultimately rest with the wisdom of the recruiting agency or employer and not the Court which can sit in judgment over such matters in a petition filed u/art. 226 of the Constitution. In this context, reliance could be placed on a decision of the Hon'ble Supreme Court in (2011) 9 SCC 645 (Chandigarh Administration through The Director, Public Instructions (Colleges), Chandigarh v. Usha Kheterpal Waie and Others 2011 Indlaw SC 617), wherein it has been held as follows:-

"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. [J. Ranga Swamy v. Govt. of A.P. - (1990) 1 SCC 288 1989 Indlaw SC 352 *and P.U. Joshi v. Accountant General - (2003) 2 SCC 632* 2002 Indlaw SC 1524*]. In the absence of any rules, u/art. 309 or Statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable."*

Therefore, even if a person has a graduate degree in any discipline apart from Commerce, Accountancy or Statistics, it does not matter when it is to do with discharge of duties as Branch Manager. After all such person would have acquired experience by working in the Bank for several years prior to promotion, but when it comes to handling of duties as in the middle management cadre respondent-Bank has prescribed graduate degree from a recognized University, which cannot be termed as an over prescription or a criterion which cannot be met by the petitioner - employees.

5. In that view of the matter, educational qualification prescribed by 1st respondent cannot be found fault with. I do not find any infirmity in clause 44A of the policy order or Rules dated 05.09.2012. There is no merit in these writ petitions.

Gangappa S/o Bheemappa Barchi v Co-Operative Election Commission, Karnataka State Co-Operative Federation, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2015 Indlaw KAR 356

Case No : W.P. No. 101374 of 2015

The Order of the Court was as follows :

1. The petitioner is a member of respondent-7, a Co-operative Society registered under Karnataka Cooperative Societies Registration Act, 1959. Respondent-6 is the Returning Officer appointed to conduct election to the Managing Committee of respondent-7. The impugned voters' list was prepared and published by respondent 7. The omissions and commissions, if any, in the matter of the impugned voters' list can be the subject matter of consideration, in a dispute u/s. 70 of the Act before the jurisdictional Registrar of Co-operative Societies. As there are disputed questions with regard to the inclusion and non-inclusion of names in the impugned voters' list, petitioner can substantiate the illegality in the matter of preparing impugned voters' list before the fact finding authority/Registrar of Co-operative Societies having jurisdiction over respondent-7. Hence, writ petition as against annexures H and J being untenable cannot be entertained.

2. Since petitioner has not approached the court immediately after annexure-D was published or when the alleged defective voters' list was published on 23.1.2015, there is no justification to interfere with the election process pursuant to annexure-D. If election conducted based on the impugned voters' list, if found to be illegal, the Registrar can set at knot the whole process undertaken by respondent-6 pursuant to annexure-D. In the said view of the matter, there being no justification to interfere with the election process at this stage, petition challenging annexure-D is liable to be rejected.

3. In the result, writ petition is dismissed reserving liberty to petitioner to question annexures H and J, in a dispute u/s. 70 of the Act, and if the election conducted by respondent-6 suffers from any illegality including with regard to invalidity of voters' list, it is open to the petitioner to question the same in an election dispute u/s. 70 of the Act.

Basavanneppa S/o Ganeshappa Hadimani and others v Assistant Register of Co-Operative Societies, Savanur Sub Division, Haveri and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2015 Indlaw KAR 348

Case No : W.P. Nos. 101152-101159 of 2015 [CS/ELE/M]

The Order of the Court was as follows :

1. Petitioners are the members of the respondent-3, a Co-operative Society registered under the Karnataka Cooperative Societies Act, 1959. They were erstwhile Directors in the Managing Committee of the 3rd respondent. Their grievance in these writ petitions is, that respondents are treating them as defaulters and have made them ineligible to contest in the ensuing election as the petitioners have been shown in the defaulters' list, as at annexure-E. Seeking quashing of Annexure-A or to direct the respondents to treat petitioners as not defaulters and to include the petitioners in the voters' list, these writ petitions were filed.
2. Perused the writ record and considered rival contentions.
3. Annexure-B is an order passed by respondent- 1. It shows that the petitioners had appeared before respondent-1 and participated in the search proceedings. Respondent 1 has held that there is deficiency caused in the assets of the society and recovery has been directed to be effected, firstly, from the employee of the Society, namely, Viraktamath, and in case of default, from the petitioners. Indusputably, the order as at annexure-B has not been assailed by the petitioners.
4. On 29.1.2015 these petitions were adjourned to enable the petitioners to examine the feasibility or otherwise of the assailing the order as at annesxure-B. Sri.Vivekmehta, submitted that the petitioners have not taken recourse to law to assail the order as at annexure-B. In the face of the findings recorded in the order as at annexure-B and there being no dispute that the amount determined therein has not been remitted to the Society, non-inclusion of the petitioners in the list of valid voters cannot be found fault with. In the result, petitions being devoid of merit stand rejected with no order as to costs.

Mahesh Patil S/o Chandrashekar Patil v Joint Registrar of Co-operative Society, Gulbarga, Region at Raichur and others

Bench	L. NARAYANA SWAMY
Where Reported	2015 Indlaw KAR 757

Case No : W.Ps. No. 201779-201780 of 2014

The Order of the Court was as follows :

1. The learned counsel appearing for the petitioner submits that while the petitioner was functioning as President of TAPCMS, Sedam, the respondents found some financial irregularities and a complaint was made under Section 29C of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act' for short). Notice was issued and was served on the petitioner on 30th September 2013. On the same date, he made an application to provide him an opportunity and that was objected by the complainant and on considering the objections, the case of the petitioner for adjournment was rejected and the matter was posted for orders on 7th October 2013. The respondent, by invoking provisions of Sections 29C(1)(l) and 29C(b)(c) and (d) of the Act, has disqualified the petitioner for five years from the post and also not to contest for any co-operative proceedings for full term. This was challenged before the Appellate authority u/s. 106 of the Act and the Appellate Authority also confirmed the order passed by the Deputy Registrar of Co-operative Societies. The petitioner challenged the order on the ground of contravention Section 29C(7) of the Act before the first respondent-Joint Director of Co-operative Societies and submitted that the impugned order results in denial of principles of natural justice and also contrary to provisions of the Act rejected the appeal thereby confirming the order of the second respondent-Deputy Registrar of Co- operative Societies. Hence, the learned counsel for the petitioner seeks quashing of Orders Annexure-F dated 27th January 2014 and Annexure-D dated 7th October 2013 passed respectively by the first and second respondents.

2. The original authority has deprived the reasonable opportunity and the petitioner was permitted to prefer an appeal. Accordingly, he preferred an appeal. The Appellate Authority has considered his case, and again rejected it. The appellate authority, in his order, has devoted much of his time only in considering the case of the complainant about the irregularity and financial misconduct said to have been committed by the petitioner. There may be a prima facie case for the respondents. But, that itself is insufficient to rope-in a person for the offence. Reasonable opportunity is to be provided by the original authority and the appellate authority has to look as to whether the original authority has provided such an opportunity of being heard. When it is to be held that the original authority's order itself is arbitrary and is in violation of provisions of Section 29C (7) and (8) of the Act and also is in violation of principles of natural justice, consequently, the order of the Appellate Authority also results to come to the same conclusion. Hence, I pass the following:

Order

3. The Division Bench of this Court in the case of K.P. Arvind vs. Government of Karnataka reported in ILR 1992 Kar 307 has elaborately dealt with the effect of non-issuance of statutory notice prior to presenting a suit. While discussing the provisions of S. 80 of CPC and S. 64 of the Bangalore Development Authority Act, the Division Bench of this Court has held as follows:

"Admittedly, the reliefs sought for by the plaintiffs related to the action taken by the Bangalore Development Authority and the State Government in exercise of their power under the Act... As the suit was filed without issuing the notice as required by S. 64 of the Act and S. 80 of the CPC*, it was bad in law, because service of notice as per S. 64 of the Act on the BDA and as per S. 80 of the* CPC *on the State Government, having regard to the reliefs sought for in the plaint was a condition precedent for instituting a suit of the nature in question... In the absence of such a notice, plaint cannot at all be entertained by a Court. Therefore, on the face of it, the plaint was barred by S. 64 of the Act and S. 80 of the* CPC*. Hence, the trial Court ought to have rejected the plaint under Order 7 Rule 11(d) of the C.P. Code. In that event, it would have been open to the plaintiffs to file a fresh suit on the same cause of action on complying with S. 64 of the Act and S. 80 of the* CPC*, whereas the trial Court has dismissed the suit which is not permissible in law."*

4. The approach adopted by the learned Judge insofar as it relates to the return of the entire plaint under Order 7 Rule 10 of CPC is not sustainable either in law or on facts. It was incumbent upon the Trial Court to have discussed about the ultimate decision that could be taken in the absence of the 2nd defendant.

15. Therefore, the order dated 03.04.2010 passed by the learned XI Additional City Civil Judge in O.S.No.1515/2006 can only be considered only as insofar as it relates to the rejection of plaint relating to 2nd defendant only and the suit will have to proceed in accordance with law against defendant Nos.1, 3 and 4.

Hence, the following:

ORDER:

Appeal is allowed in part. Rejection of the plaint insofar as 2nd defendant - Society is concerned is upheld. Rejection of plaint in respect of other defendants is held to be invalid and improper.

Kanakamma W/o Gokuldas v Mangalore Teacher's Credit Co-Operative Society Represented by its Chief Executive Umesh S/o Late Raghu

Bench	R. B. Budihal
Where Reported	2015 Indlaw KAR 436

Case No : Criminal Revision Petition No. 970/2011

The Order of the Court was as follows :

1. Learned counsel for the revision petitioner contended that the complainant who filed the complaint has not at all produced any documents to show that he was authorized to lodge the complaint. Even there is no power of attorney executed by the said society in favour of the complainant. Unless the authorization is produced authorizing the complainant to file the complaint, complaint itself is not maintainable. It is also his submission that even the bye-laws of the society are not produced. In spite of such contention raised by the accused before the trial Court the same were not considered and the trial Court has wrongly convicted the accused, which is confirmed by the first appellate Court. Hence, the judgment and orders of the Courts below are illegal and the matter requires consideration by this Court.

2. Per-contra, learned counsel for the respondent-complainant submitted that the complaint has been filed by the Chief Executive Officer of the Society and as per the provisions of Section 29-G sub-cl. 4 and 5 of the Karnataka Co-operative Societies Act, he is authorized to file such complaint and no further document is necessary and that has been rightly considered by the trial Court. Hence, it is submitted that the revision petition has no merits and the same may be rejected.

3. In paragraph No.6 of its order, the trial Court has discussed in detail that the Chief Executive of the Society has filed the complaint and has given evidence in this matter and he has authority to give evidence as per S. 29(g) (4) and (5) of the Karnataka Co-operative Societies Act. The trial Court has also considered the decisions relied upon by the accused. Perusing the said judgments so also the provisions of the Act, the trial Court has come to the conclusion that by the statute itself, the Chief Executive Officer of the Society is authorized to institute case on behalf of the Society and has held that there is no merit in the contention of the accused and accordingly, convicted the accused by imposing penalty. When the said judgment has been challenged before the first appellate Court, it has also after re-appreciating the matter, concurred with the findings of the trial Court and dismissed the appeal.

4. Perusing the materials on record, so also the legal aspect involved in the case, it is seen that both the Courts below have decided the case in accordance with the provisions of law and no illegally has been committed by the Courts below. There is no merit in this revision petition. Accordingly, it is rejected.

Andanappa S/o Pampanna Betageri and others v Karnataka State Co-Operative Election Commission, Bengaluru and others

Bench	B. Manohar
Where Reported	2015 Indlaw KAR 1741

Case No : W.P. Nos. 102416-102420 of 2015 & W. P. No. 102428 of 2015

The Order of the Court was as follows :

1. The petitioners, in these writ petitions, have sought for quashing the order dated 20.02.2015 passed by the 1st respondent and also a writ of mandamus directing respondent Nos.1 and 3 to hold fresh elections to the Board of Management of Sri Gavisiddeshwar Pattan Shahakar Bank Niyamith, Koppal (hereinafter referred to as 'the Bank', for short), and also for other reliefs.

2. In pursuance of the calendar of events issued by the 3rd respondent, election to the Board of Management of the Bank was held on 14.02.2015. At 5.15 p.m. on the same day, counting started. While countering the ballot box of Booth No.2, one Kotrappa Kori and his brother started creating problem and interfering with the process of counting. There was chaos in the counting room. In that process, 16 ballot papers were missing. On re-counting the ballot box of Booth No.2, the Returning Officer found that 16 ballot papers were missing. While searching, the Returning Officer found the said ballot papers in the toilet and they were completely torn and further counting process of counting was stopped and a complaint was lodged before the jurisdictional police in Crime No.35/2015 and brought to the notice of the District Election Officer. The incident was also brought to the notice of the Co-operative Election Commission on 15.02.2015 by both the Returning Officer as well as the District Election Officer. The District Election Officer recommended for the re-poll in respect of Booth No.2. The Cooperative Election Commission, after considering the report submitted by the Returning Officer and also District Election Officer, was satisfied that there was interference with the counting of the ballots and 16 ballot papers were missing, and also taking into consideration the recommendation made by the District Election Officer and the particulars furnished by the authorities, the Co-operative Election Commission by exercising its powers under Rules 14-I of the Rules, by its order dated 20.02.2015 directed to hold re-poll in respect of Booth No.2.

   A reading of the above Rule makes it clear that the Co-operative Election Commission, after taking into consideration the material circumstances, declare the poll at a particular polling station or a place be void and order for re-poll for a particular polling station. The Co-operative Election Commission in exercise of its powers under Rule 14-I(2)(i) and (ii) directed the Returning Officer to hold re-poll in respect of Booth No.2. There is no allegation with regard to the conduct of election to the Board of Management of the Bank. Hence, the question of holding fresh poll does not arise. I do not find any infirmity or irregularity in the impugned order directing conducting of re-poll in respect of Booth No.2.

However, it is to be noticed that the Secretary of the Co-operative Election Commission has signed the impugned order. Since, as per Section 39-AA of the Act, Co-operative Election Commission consists of Co-operative Election Commissioner and Secretary and any one of the Officers can sign the order, the order impugned has to be treated as one passed by the Co-operative Election Commission. The impugned order cannot be said to have been passed by an incompetent person. Therefore, the contention of the learned advocate appearing for the petition that the order impugned is passed by an incompetent person cannot be accepted.

3. A reading of Rule 14-I(2)(i)(ii) referred to above makes it clear that the Co-operative Election Commission, if it is satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the error or irregularity in procedure is not material, it can a take decision and issue such directions to the Returning Officer as it may deem proper for the further conduct and completion of the election. The Rule nowhere contemplates providing an opportunity of being heard to the petitioner and the violation of principles of natural justice does not arise. On the basis of the report submitted by the Returning Officer, the Election Commission, being satisfied that in view of missing of 16 ballot papers would not affect the result of the entire election, ordered for re-poll only in respect of Booth No.2. Hence, the question of giving opportunity of hearing in making a decision does not arise. The judgment relied upon by the advocate for the petitioner does not contemplate a personal hearing in the matter.

4. I find no infirmity or irregularity in the procedure adopted by the Election Commission. The petitioners have not made out a case to interfere with the impugned order. The democratic process has to be continued and the elected body has to come to power. Accordingly, I pass the following

ORDER:

The writ petitions are dismissed with a direction to the respondents to count the ballot papers and declare the results of the elections conducted on 14.02.2015 and 01.03.2015, in accordance with law.

Petitions dismissed

Parameshwari alias Girija W/o Mahadev Achari v Assistant Registrar of Co-Operative Society and Recovery Officer Chamarajpeth, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2015 Indlaw KAR 431

Case No : W.P. No. 63883 of 2009 (CS-RES)

The Order of the Court was as follows :

1. The Recovery Officer having passed the order, as at Annexure-J, and the mortgaged property having been notified for sale in public auction vide Annexure-K, this writ petition was filed to quash Annexure-K and direct the respondent not to proceed with the sale, till disposal of O.S. No.185/2009 pending on the file of Civil Judge, Sirsi.

2. After the Recovery Officer passed an order in Application No.13/2004-05 dated 31.01.2009 vide Annexure-J, petitioner has filed O.S. No.185/2009 on the file of the then Civil Judge (Jr. Dn.), Sirsi. The suit was instituted to pass a decree of declaration and perpetual injunction in respect of the property over which the petitioner is claiming right and has been mortgaged in favour of respondent No.3, by respondent No.4, who had availed loan and became defaulter and suffered the award, which having not been satisfied, the mortgaged property was attached and was sought to be sold in public auction for realization of the award amount.

3. Since the suit has been instituted and Annexure-J is also not under challenge, this writ petition is not maintainable. Petitioner shall have to seek relief, if any, by prosecuting the said suit. Interim relief, if any, required, shall have to be sought and obtained in the suit only. Multiplicity of litigation is impermissible.

4. With regard to Annexure-K, relief ought to have been sought in the suit itself and the negative relief sought in this writ petition i.e., a direction to the respondents not to proceed with the sale, till disposal of O.S.No.185/2009 by Civil Judge, Sirsi, is wholly untenable. Respondents being parties to the said suit, the interim and final reliefs, if any, should be sought in the suit and this writ petition filed for the aforesaid reliefs is not maintainable. In the aforesaid view of the matter, reserving liberty to the petitioner to prosecute the said suit, and by leaving open all the contentions of both parties, this petition is disposed of. No costs.

Petition disposed of

B. M. Rajashekara Murthy and others v State of Karnataka Department of Co-Operation Represented by Its Principal Secretary, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2014 Indlaw KAR 1377
Case Digest	**Subject:** Banking & Finance **Keywords:** Payment of Gratuity Act, 1972, Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960 **Summary:** Service - Payment of Gratuity Act,1972, s.4(5) - Karnataka Co-operative Societies Rules,1960, r.18(4) - Payment of gratuity - Entitlement of - Applicability of Rule - Petitioners retired from service of Bank - Bank had paid gratuity to petitioners as per provisions of the Act - Hence, instant Petition - Whether petitioner was entitled for payment of gratuity in terms of regn.16 of Service Conditions of Employees of Bank(Regulation) and r.18(4) of the Rules - Held, s.4(5) of the Act gave right to contesting employees to claim for better terms of gratuity, if they were entitled to pursuant to award by agreement or contract with employer - On perusal of service conditions of employees, it was clear that employees of bank were entitled to claim gratuity u/r.18(4) of the Rules - Thus, Bank was directed to calculate and pay petitioners, difference of gratuity amount in terms of r.18(4) of the Rules - However, there was delay and laches on part of petitioners in filing petitions - Delay was attributable to petitioners - Hence, petitioners were not entitled to payment of interest - Petitions partly allowed.

Case No : W.P. Nos. 58336-58351/2013 and W. P. Nos. 58352-58354/2013

1. The order as at Annexure-E having been confirmed by the judgment as at Annexure-F is certainly binding on me, the rationale of the Rule being consistency, certainty and predictability in the administration of the justice. I do not find any substantial question of law having been raised by the Bank in the counter filed by it, even to make a reference to the Division Bench for consideration and decision.

2. However, there is delay and laches on the part of the petitioners in filing these writ petitions. The order as at Annexure-E having been passed on 16.08.2011 and even writ appeals filed by the Bank having been dismissed on 06.06.2012, these writ petitions have been filed on 03.02.2014. The delay is attributable to the petitioners. Hence, the petitioners are not entitled to payment of interest.

In the result, the writ petitions are allowed in part. The respondent - Bank shall calculate and pay the petitioners, difference of gratuity amount in terms of the Sub Rule(4) of Rule 18 of the Rules. Time for compliance is three months. No costs.

R. M. Manjunatha Gowda S/o Ramappa Gowda v State of Karnataka, Through Doddapete Police, Represented by the Special Public Prosecutor, Bangalore

Bench	R. B. Budihal
Where Reported	2014 Indlaw KAR 1646
Case Digest	**Subject:** Criminal; Practice & Procedure **Keywords:** Cheating, Bail, Entitled to, Investigating Officer **Summary:** Criminal - Practice &Procedure - Indian Penal Code, 1860, ss. 120B, 34, 406, 408, 409, 420 - Cheating - Bail - Entitled to - Case was registered against petitioner/accused no. 15 and co-accused u/ss. 406, 408, 409, 420, 120B r/w s. 34 of IPC - Petitioner filed application before Trial Court for bail and same was dismissed - Hence instant petition - Whether petitioner was entitled to be enlarged on bail - Held, when complaint was filed there is an allegation that misappropriation to extent of Rs. 1,79,20,235.58 in City Branch and FIR was registered against accused no. 1 and 2. During course of investigation many other accused were arrayed as accused persons in case and petitioner is arrayed as accused no. 15. Alleged misappropriation is also stated to be to tune of Rs. 63 Crores, up till now and matter is still under investigation. It is not only on voluntary statement of other accused, petitioner has been arrested, but there are statements of independent witnesses also recorded by I.O. during investigation. It is contention of prosecution that it is only after completing investigation, exact amount, which is said to be misappropriated will be ascertained and not at this stage and I.O has to ascertain involvement of any other persons in alleged offences. When prosecution materials are to effect that many of employees of said bank are appointed during tenure of petitioner and petitioner is in dominating position over the will of other accused and also employees of the bank, at this stage, it may not be proper for HC to allow petition and to release petitioner on bail. However, after completing investigation and filing of charge sheet petitioner can renew his request for his release on bail. Petition disposed of.

Case No : Criminal Petition No. 5394/2014

1. The materials establish that during investigation, it is transpired that there is a misappropriation to the extent of 63 Crores, wherein the petitioner alleged to be directly involved in the said misappropriation and investigation is still going on in the case.

2. It is no doubt true, when the complaint was filed there is an allegation that misappropriation to the extent of Rs.1,79,20,235.58 in the City Branch at Shimoga and the FIR was registered

against accused Nos.1 and 2. During the course of investigation many other accused were arrayed as accused persons in the case and the petitioner is arrayed as accused No.15. The alleged misappropriation is also stated to be to the tune of Rs.63 Crores, uptill now and the matter is still under investigation.

3. It is the contention of the prosecution that it is only after completing the investigation, the exact amount, which is said to be misappropriated will be ascertained and not at this stage. It is also the contention of the prosecution that Investigating Officer has to ascertain the involvement of any other persons in the alleged offences. When the prosecution materials are to the effect that many of the employees of the said bank are appointed during the tenure of the petitioner and the petitioner is in a dominating position over the will of the other accused and also the employees of the bank, at this stage, it may not be proper for this Court to allow the petition and to release the petitioner on bail. However, after completing the investigation and filing of the charge sheet the petitioner can renew his request for his release on bail.

Fisheries Co-Operative Society, Mysore v Director of Fisheries Podium Block, V. V. Towers Dr. Ambedkar Veedhi, Bangalore and others

Bench	Ashok Bangreppa Hinchigeri
Where Reported	2014 Indlaw KAR 1672
Case Digest	**Subject:** Trusts & Associations **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** Trust & Associations - Karnataka Co-operative Societies Act, 1959 - Sharing fish catch - Condition - Validity - Petitioner was Fisheries Co-operative Society - Govt. by G.O prescribed condition for sharing fish catch between petitioner Society and concerned fisherman - Petitioner was aggrieved by prescribing of condition that local fishermen were entitled to 50% of fish caught - Hence, instant petition. Held, validity of the condition in question has to be examined in the context of the scheme in question. Admittedly, the petitioner Society can have no interests of its own independently of the interests of its members, namely, the local fishermen. Disputes arise in the course of adhering to the condition in question; the same can always be resolved by K.R.S, Reservoir Development Committee, which is already in existence to oversee the activities pertaining to the fishing and the activities posterior to the catching of the fish. If the petitioner Society has any grievance over the working of the said Committee, it is also open to the petitioner to submit appropriate representations to the Govt. Ultimately; it is for the Govt to take calls on such issues. Petitioner ought to have disclosed the conducting and submitting of the enquiry report in the memorandum of the writ petition. It ought to have made atleast a cross-section of the fishermen as the parties. Ends of justice would be met by my upholding the impugned condition, but by reserving the liberty to the petitioner to give appropriate representation for the varying or modifying of any condition. Petition disposed of.

Case No : W. P. No. 5934 of 2014 TGM. REST

The Order of the Court was as follows :

1. He also complains of the non-joinder of necessary parties. He submits that there are four Co-operative Societies including the petitioner recognised for granting the fishing rights in the K.R.S. reservoir. He submits that the other three Societies have not raised any challenge to the condition in question. He submits that the impugned condition is introduced to safeguard the interests of the fisherman.

2. Admittedly, the petitioner Society can have no interests of its own independently of the interests of its members, namely, the local fishermen. If the fishermen are complaining that they are not

getting 50% of the value of fish-catch and if the Government has come out with a change in the mode of distributing the benefit of fish-catch, it cannot be held to be at fault for doing so.

3. Should the disputes arise in the course of adhering to the condition in question, the same can always be resolved by K.R.S, Reservoir Development Committee, which is already in existence to oversee the activities pertaining to the fishing and the activities posterior to the catching of the fish. If the petitioner-Society has any grievance over the working of the said Committee, it is also open to the petitioner to submit appropriate representations to the Government. Ultimately, it is for the Government to take calls on such issues. It is trite that in the formation of the policy or scheme or the modification therein, the Government may resort to trial and error method. It is open to the Government to the experimentation based on its perceptions.

4. The ends of justice would be met by my upholding the impugned condition, but by reserving the liberty to the petitioner to give appropriate representation for the varying or modifying of any condition. On the ipse dixit of a party that the impugned condition is not practicable, this Court's interference is not warranted. If better conditions are to be created, it is for the Government, the fishermen, their associations and all the concerned parties to contribute in the evolution of a better fishing regime.

Yallappa S/o Basappa Dasankoppa and others v State of Karnataka and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2014 Indlaw KAR 534; 2014 (4) KarLJ 449
Case Digest	**Subject:** Trusts & Associations **Keywords:** Bye-Laws, Legality, Strike down **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act, 1959, ss. 106, 28A - Bye-laws - Strike down - Legality - Instant petition was filed by petitioners/directors of Dharwad Milk Union against bye-law of 14.2(c), 14.2(d), 14.2(e) and 14.2(f) of respondent no. 5 providing for representation in Board - Petitioners contended that though statute provides for an appeal as against amended bye-law, these petitions were filed on account of grave urgency, as election was scheduled to be held on 6-6-2014 to post of president of 5th society, he further contended that matter involves question of vital importance and hence writ petitions might be entertained and appropriate orders passed - Held, petitioners were given liberty to question impugned amendments effected to bye-law of respondent no. 5 society, in an appeal u/s. 106 of the Act - If appeal was filed on 6-6-2014, accompanied by an application seeking interim orders, statutory authority-Registrar of Co-operative Societies in Karnataka was directed to hear application for grant of interim relief and pass orders on same day i.e., on date appeal accompanied by application for stay was filed or on following day at any event, on or before 7-6-2014 - Petitions disposed of.

Case No : W.P. Nos. 105475-105481/2014 (CS-EL/M)

The Order of the Court was as follows :

1. Petitioners are the directors of Dharwad, Haveri, Gadag, Uttar Kannada districts Milk Union, Dharwad. Their grievance in these writ petitions is against bye-law of 14.2(c), 14.2(d), 14.2(e) and 14.2(f) of the 5th respondent union, providing for representation in the Board, to the Joint Registrar of Co-operative Societies, Belgaum Division, Karnataka Milk Federation, Department of Animal Husbandry and the National Dairy Development Board. Petitioners have sought for a declaration to strike down the said bye-laws on the ground that the same ate ultra-vires of Section 28-A of the Karnataka Co-operative Societies Act, 1959 ('the Act' for short) and also Article 243-ZH of the Constitution of India. Petitioners have sought quashing of Annexure-A to the extent of including the names of the aforesaid representatives i.e., respondents 6 to 9 herein, as directors of 5th respondent union, enabling them to cast their votes in the election of the president of the 5th respondent, scheduled to be held on 6.6.2014.
2. At the threshold, learned Advocates appearing for the respondents raised a preliminary objection

with regard to maintainability of these writ petitions, on the ground that in view of remedy of appeal u/s. 106 of the Act being available, without exhausting the same, the petitioners cannot maintain the writ petitions, i.e., as against the impugned bye-law and the consequential action.

3. Since the impugned bye-laws can be questioned in an appeal before the Statutory Authority as provided u/s. 106 of the Act, I decline to entertain these writ petitions and direct the petitioners to avail the said statutory remedy, by leaving open all contentions raised in these writ petitions for consideration and decision by the Statutory Authority in the first instance or at a later point of time, by this Court, if necessary.

Aladangadi Vyavasaya Seva Sahakara Bank Limited Aladangodi Belthangady Taluk D. K. District by its Secretary v Government of Karnataka Dept. of Co-Operation, Bangalore by its Principcal Secretary and others

Bench	RAM MOHAN REDDY
Where Reported	2014 Indlaw KAR 541
Case Digest	**Subject:** Trusts & Associations **Keywords:** Karnataka Co-operative Societies Act, 1959, Irregularities, Legality, Supersede society **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act, 1959, s. 108 - Supersede society - Irregularities - Legality - Respondent no. 5 filed a complaint against management of petitioner/society, alleging certain irregularities and sought for direction to supersede society - Deputy Registrar of cooperative Societies by order accepted report of Asst. Registrar of Cooperative Societies and declined to supersede the society - A petition was filed before Single Judge - Single Judge passed order and fixed six months' time for compliance - Hence instant petition - Respondent contended that being a member of Society was in law entitled to bring to fore irregularities and illegalities committed by Committee of management and that neither the Act nor Rules disentitles member to question irregularities, according to respondent order impugned was against direction to reconsider respondent no. 5's representation after affording opportunity of hearing to Committee and to pass orders in accordance with law on lines narrated in order - Held, if regard was had to findings of Prl. Secretary in order, more appropriately over allegations held to be administrative in nature requiring rectification by society, no exception could be taken to direction to reconsider respondent's no. 5's representation after affording an opportunity of hearing to Committee of petitioner/society and pass orders in accordance with law - If rectification of mistakes as noticed by Prl. Secretary was not complied with, then society was answerable - Petition dismissed.

Case No : W.P. No. 3730 of 2012 (CS-RES)

The Order of the Court was as follows :

1. Nevertheless after an enquiry the Deputy Registrar of cooperative Societies by order dt. 6.8.2010 accepted the report dt. 6.3.2010 of the Asst. Registrar of Cooperative Societies and declined to supersede the society. According to the learned counsel that order was called in question in W.P.40553/2010 dt. 25.1.2011 whence a learned Single Judge recorded the submission of the

learned AGA that the 5th respondent's representation would be considered invoking S. 108 of the Karnataka Cooperative Societies Act, 1959 and orders passed thereon after extending reasonable opportunity of hearing to the parties and fixed six months time for compliance. Learned counsel further asserts that the Principal Secretary to Government, Cooperative Department by order dt. 17.12.2011 in Revision Petition No.CO/19/CAP/2011 having considered the 5th respondent's representation and extended reasonable opportunity of hearing to the petitioner, recorded findings of fact that; petitioner-society achieved progress in various activities, earned profits consecutively for a period of three years; the accounts of the society were audited upto 2009-10; a General Body meeting was held during the year 2010-11, and; that it was the duty and responsibility of the Committee to rectify the defects noticed in the audit inspection report; in addition to a finding that some of the irregularities in the petitioner- society are administrative in nature in not complying with instructions which ought to be rectified by the office of the society and accordingly directed the Deputy Registrar of Cooperative Societies to consider the 5th respondent's petition after affording opportunity of hearing to the committee of the Society and to pass appropriate orders in accordance with law. Learned counsel submits that the direction to reconsider 5th respondent's representation is unnecessary since the allegations are found to be mere administrative lapses which could be rectified by the Society. Learned counsel further submits that the 5th respondent has no locus standi to maintain a legal proceeding as he is a facilitator.

2. Learned counsel for the 5th respondent submits that being a member of the Society is in law entitled to bring to fore the irregularities and illegalities committed by the Committee of the management and that neither the Karnataka Cooperative Societies Act nor Rules disentitles a member to question the irregularities. According to the learned counsel the order impugned is against the direction to reconsider the 5th respondent's representation after affording opportunity of hearing to the Committee and to pass orders in accordance with law on the lines narrated in the order.

Ramachandra S. Bhagavat and another v State of Karnataka and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2014 Indlaw KAR 578; 2014 (6) KarLJ 28

Case No : W.P. N0. 85771/2013 (CS-RES)

The Order of the Court was as follows :

1. Petitioner is a member of respondent No.4- Co-operative Bank. He was elected as a director of the bank. He had lodged a complaint on 28.11.2008 before respondent no.2 alleging acts of misappropriation and thereby causing deficiency in the funds and assets of respondent no.4. Based on the said complaint respondent no.2 issued a direction on 20.12.2008 to respondent no.3 to initiate an enquiry into the affairs of the respondent no.4. An Enquiry Officer having been appointed, conducted enquiry u/s. 64 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act' for short) and submitted report which revealed the causing of deficiency in the funds and assets of the society. In furtherance of the said report the respondent no.3 issued an order on 24.3.2010 u/s. 68(1) of the Act, directing the respondent no.4 to initiate further action and submit compliance report within 45 days. Respondent no.2 sent a communication dated 19.1.2012 to respondent no.3 to submit explanation and the Action taken report insofar as the aforesaid aspects are concerned. Alleging inaction on the part of the authorities concerned, W.P.No.66974/2012 was filed and the same was disposed of on 19.2.2013 with a direction to the 3rd respondent to consider a notice, which the petitioner had caused on 11.7.2012. Respondent no 3 having issued an endorsement in compliance of the order passed in W.P.No.66974/2012, this writ petition was filed, to quash the endorsement dated 17.6.2013, vide Annexure-H and direct the respondent no.3 to comply with the order passed on 19.2.2013 in W.P.No.66974/2012, vide Annexure-G.

2. W.P.No.66974/2012 was filed to direct the Joint Registrar of Co-operative Societies, Belgaum Division, Belgaum, to consider the notice dated 11.7.2012 of the petitioner. The writ petition was disposed of on 19.2.2013 directing the respondent no.3 to consider the said notice. Respondent no.3 having examined the record relating to the holding of enquiry u/s. 64 of the Act and the order passed u/s. 68 of the Act as well as the compliance reports submitted by the Managing Director of the bank, has informed the petitioner itemwise/issuewise, the Action taken. The claim of the petitioner that there ought to have surcharge proceedings u/s. 69 of the Act, suo-motu by the Registrar, in my opinion, at this stage, is unwarranted. The respondent no.3 after receipt of the final compliance report from respondent no.4 in respect of the matters pointed out in the order passed u/s. 68 of the Act should examine as to whether there is a need for proceeding u/s. 69 of the Act. It is also open to the petitioner to raise a dispute u/s. 70 of the Act against the members/past members and the persons claiming through the members or the managing committee members as well as the employees past or present and if such a dispute is instituted,

the jurisdictional Registrar shall decide the same in accordance with law. In such a dispute the petitioner can place reliance on the enquiry report as well as the consequential order passed u/s. 68 of the Act. If there is non compliance of any aspects pointed out in the enquiry report and the statutory order passed u/s. 68 of the Act, the same is required to be examined and the case be decided by the Registrar.

Case No : W.P. No. 36564 of 2012 (LA-RES)

The Order of the Court was as follows :

1. It is stated that the fifth respondent, namely, the Ex- Servicemen House Building Co-operative Society Ltd. (Hereinafter referred to as 'the Society', for brevity) is registered under the Karnataka Co-operative Societies Act, 1959, in the year 1973. It is stated that the Society had passed a resolution dated 23.12.1983, to enter into an agreement with the sixth respondent and to pay an advance amount of money, to enable him to expedite the proposed acquisition proceedings in respect of lands which were identified by the Society and in respect of which the sixth respondent was again enabled to negotiate on behalf of the Society with the land owners. The petitioner's father was one such land owner who had unwittingly affixed his signature to a purported agreement of sale in respect of the petitioner's land in question. The petitioner has alleged that the Society did not consist of genuine ex-service men and that it was only a front to acquire land in the name of a public purpose and to later deal with the same as real estate for the benefit of a few. And that the sixth respondent was an agent whose engagement in the process as a go between for the Society and the State government was illegal and a fraud on power.

2. The State Government having woken up to the large scale illegalities committed by several such House Building Societies, such as the Society herein, had on 18.6.1985 issued directions that acquisition of land for any Housing Society could only be pursuant to a housing scheme and could be acquired only through the Bangalore Development Authority.

   Since the above measure did not discourage the Housing Societies and their agents to refrain from illegal activity, the State Government had constituted a Three-Man Committee, to address the genuineness of the membership of Housing Societies and to determine the extent of land required by such societies. It was found by the said Committee that the present respondent Society had only 179 members as on 30.6.1984. It was also found that the Society had entered into an agreement with the sixth respondent which was not legal. This and other irregularities unearthed in respect of innumerable societies, warranted the conduct of an inquiry by the GVK Rao Committee which was said to have been constituted on 10.3.1988, by the State Government.

   In the light of the GVK Rao report, an order dated 30.3.1990 was passed by the seventh respondent directing all House Building Societies including the respondent society not to allot any sites to its members in view of the Rao report. Inspite of the same, it is alleged by the petitioner that certain documents were fabricated by the respondent no.6 to make it seem that the lands in question had been handed over to him on 23.1.1991. The said respondent is also said to have withdrawn the compensation amount in respect of the land on that basis. This modus operandi had been adopted in respect of several items of land sought to be acquired for the respondent Society. It transpires that the mutation entry in respect of the lands in question stood changed in the name of the Society by an order dated 25.1.1993, without the knowledge of the petitioner.

3. Anil Kumar Gupta vs. State of Bihar and others (2012) 12 SCC 443 2012 Indlaw SCO 1410

   It is sought to be emphasized that notwithstanding the claim on behalf of the Society that physical

possession had been delivered of the land in question, it is claimed that the petitioner has retained possession of the land to this day and it is hence contended that it cannot be construed that the land vested with the State Government and that the land is liable to be restored to the owner. This is especially so when the State has not chosen to file any pleadings to refute the claim of the petitioner. Reliance is placed on the following authorities in this regard.

4. Though the learned Senior Advocate has strongly urged the above contentions drawing sustenance from the observations and opinions expressed in the above authorities, the grounds sought to be urged are merely an enlarged and stronger version of the very grounds urged on behalf of the petitioner in earlier petitions, the seeming nuances sought to be highlighted to demonstrate that the petitioner is not precluded from urging the said grounds for consideration anew, especially with regard to circumstances that are alleged to have been glossed over earlier or maybe not presented in the right perspective, in the opinion of this court is no justification to entertain the present petition. The petitioner is precluded from bringing this petition in the face of his earlier challenge, on more than one occasion, on similar grounds.

The petition is accordingly dismissed.

Hassan Co-Operative Milk Producers Societies Union Limited and others v State of Karnataka, Department of Co-Operative Societies and another

Bench	Dilip B. Bhosale, D. N. Waghela, B. V. Nagarathna
Where Reported	2014 Indlaw KAR 1301; AIR 2014 KAR 120
Case Digest	**Subject:** Election **Keywords:** Karnataka Co-operative Societies Act, 1959, Preventive Detention Act, 1950, Preventive Detention (Amendment) Act, 1952, Constitution (Ninety-seventh Amendment) Act, 2011, Haryana Municipal (Amendment) Act, 1994 **Summary:** Trusts & Associations - Practice & Procedure - Karnataka Co-operative Societies Act, 1959, s.28 - Nature of provision - Continuation to hold office - Appellant-Hassan Co-operative Milk Producers Societies Union Ltd., which was 'Federal Society' - Single Judge held that if amendment expressly state that substituted provision should come into force from date of amendment coming into force, said provision was prospective in nature - Refused to grant interim order as prayed for in petition holding that their (Committee/Board) term came to end - Hence, instant Appeals - Whether s.28-A(4) of the Act, as substituted by amended Act dt.11-02-2013, was prospective or retrospective in nature - Held, s.28-A of the Act clear that term of office of elected members of board and its office bearers was prescribed as five years from date of election and term of office bearers was co-terminus with term of board - By amendment brought about in year 2004, term of office was prescribed as five co-operative years - Election as members of board, was not substantive right of members and it was only right of being member of Managing Committee for term specified under the Act - Found that all substituted provision introduced by way of Amending Act No.3 of 2013, had retrospective operation - Thus, rule against retrospectivity was not applicable when amendment was made to provision by way of substitution - Therefore, considering that elected members of Managing Committee did not have any substantive/vested right and their term was governed by provision, amended s.28-A (4) of the Act, should continue till expiry of period of five years from date of their election - Thus, s.28-A(4) of the Act was retrospective in nature and administrator could not be appointed u/s. 28-A(5) of the Act, till expiry of period of five years from date of their election as contemplated by of s.28-A(4) of the Act - Hence, members of existing boards should continue to hold office till expiry of period of five years from date of their election and directed Registry to place all appeals before appropriate Bench for their disposal - Appeals disposed of.

Case No : W. A. No. 734/2014 C/W W. A. Nos. 780-784/2014, W. A. Nos.792-796/2014, W. A. Nos. 797-806/2014, W. A. Nos. 808-815/2014, W. A. No. 851/2014, W. A. No. 866/2014 (CS-EL/M)

The Judgment was delivered by : 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:

2. 1. Article 243ZJ speaks of the number and term of members of board and its office bearers. 'Board' is defined u/cl. (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; Cl. (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 co-operative 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."

   2.2. 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 co-operative 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."*

3. 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.

4. 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 abinitio. In other words, an amendment by way of substitution has retrospective operation.

5. The Board of Hassan Milk Union was elected on 1st July 2009 and their term as per the amended provisions contained in Sub-s. (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-s. (4) of Section 28-A viz., of five years from the date of election. Since none of the appeliants/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.

6. We shall finally conclude thus:

   i) Sub-s. (4) of Section 28-A of the Act has retrospective operation.

   ii) 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.

7. 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.

Appeals disposed of

P. Lakshmana Moolya S/o Moodara Moolya v Deputy Registrar Co-operative Society Mangalore and others

Bench	B. S. PATIL
Where Reported	2014 Indlaw KAR 1960; 2014 (5) KarLJ 11

Case No : W.P.No. 51392/2013 (CS-EL/M)

The Order of the Court was as follows :

1. Petitioner and the 4th respondent contested the election to the Managing Committee of the 2nd respondent - Bank for the period 2010-11 to 2014-15. Election was held on 20.03.2010 from the borrowers constituency. 4th respondent was declared as Director of the 2nd respondent - Bank Election of the 4th respondent was challenged by the petitioner by raising a dispute u/s. 70 of the Co-operative Societies Act.

2. The Deputy Registrar of Co-operative Societies, Mangalore, set aside the election holding that on his own admission 4th respondent was not a borrower and that there was no document to show that he had any property in his name based on which he could have availed the loan. This order dated 25.03.2011 was challenged before the Tribunal in Appeal No.290/2011.

3. Therefore, findings recorded by the Tribunal which are based on appreciation of evidence cannot be interfered with by this Court as they are not shown to be perverse or illegal. In addition, as rightly contended by the learned counsel for the petitioner though there was delay of 70 days in raising the dispute challenging the election of the 4th respondent, the Deputy Registrar has not condoned the delay either by passing a separate order or in the course of the order impugned before the Tribunal. Thus, it is clear that without condoning the delay, the Deputy Register has embarked upon examination of the merits of the matter that too in an election dispute raised belatedly before him by the defeated candidate. On this ground also, the Tribunal was right and justified in setting aside the order passed by the Deputy Registrar.

Bankatlal Motilal Rathi and Company Grain and Cotton Merchants and Commission Agents, Represented by its Partner Srirangabai, Raichur v Chairman, Co-Operative Oils Limited, Gadag and another

Bench	A. S. BOPANNA
Where Reported	2014 Indlaw KAR 790

Case No : W.P. No. 65506/2012

The Order of the Court was as follows :

1. The petitioner-firm is the decree-holder in Ex. Case No.128/2000. In the said proceedings when it was brought to the notice of the Court below that the judgment-debtor-Society is under liquidation, the Executing Court by its order dated 26.04.2006 directed the decree holder to proceed with the execution only after obtaining appropriate orders from the Registrar of Co- operative Society as provided u/s. 118(2) of the Karnataka Co-operative Societies Act. Subsequently, no such approval was obtained and the execution petition was not prosecuted diligently. Hence, the Executing Court dismissed the execution petition for non-prosecution. The petitioner herein filed a petition under Order IX Rule 9 of the Civil Procedure Code seeking restoration of Ex. Case No.128/2000. The said petition was dismissed by the order dated 10.03.2010. The petitioner, therefore, filed a miscellaneous appeal in M.A.No.9/2010 which also came to be dismissed on 19.04.2010. It is in these circumstances, the petitioner-firm is before this Court.

2. From the sequence noticed above, the fact that the judgment-debtor is under liquidation is not in dispute. If this aspect of the matter is kept in view, the Court below by its order dated 26.04.2006 had directed that appropriate leave be obtained from the Registrar and thereafter the execution petition be prosecuted against the said order. The petitioner had filed a petition in W.P.No.20234/2007 before this Court which was dismissed on 09.01.2013. Despite dismissal of the said writ petition nor after the subsequent lapse of time, the petitioner-firm has obtained the leave from the Registrar even as on today. If this aspect of the matter is kept in view, the Executing Court was justified in dismissing the execution petition for default and thereafter dismissing the petition seeking restoration of the execution petition. For the same reasons, dismissal of the miscellaneous appeal is also justified. Therefore, I see no reason to interfere with the orders impugned herein.

Dhanvanthri Co-Operative Hospital and Medical Research Centre Represented by its President, Mysore v Senior Labour Inspector, Mysore and others

Bench	N. K. PATIL, Pradeep D. Waingankar
Where Reported	2014 Indlaw KAR 2069; 2014 (143) FLR 394

Case No : Writ Appeal No. 1517/2010 and Writ Appeal Nos. 1026-1037/2014, Misc. W. No. 7807/2010

The Judgment was delivered by : N. K. Patil, J.

1. Brief facts of the case are as under:

The appellant/petitioner-Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 owns and manages a Hospital-cum-Medical Research Centre and has engaged respondent Nos.4 to 16 in different posts such as Lab Technicians, Ambulance driver, Receptionist, Ayah, Nursing orderly, Staff nurse, Ward boy and Sanitary worker. The respondents, alleging short payment in monthly wage, less than the minimum wage prescribed by notification of the year 1996 under Minimum Wages Act, 1948 (for short 'the Act'), filed application invoking sub-s. (2) of S. 20 of the Act for determination of the difference in minimum wage and penalty. In the application, the appellant had contended that they have filed detailed objections and opposed the claim. Inspite of that, the authority has not considered the same.

Therefore, application filed by the appellant/petitioner was rejected by the Minimum Wages Authority. The same has been questioned in W.P.No.5137/2005. The learned Single Judge, by order dated 21.02.2005 rejected the petition, permitting the petitioner to urge the point of jurisdiction and to cross-examine the applicants/respondent Nos.4 to 16. Consequent, thereto, the appellant/petitioner cross-examined the applicants/respondent Nos.4 to 16 and thereafter did not lead evidence in support of its case. The respondent No.2-authority under the Act, having regard to the material on record and more appropriately the admission of the appellant on 11.12.2002 and 21.08.2003 that, the applicants would be paid the difference of minimum wage, if granted a month's time, by order dated 07.10.2005, allowed the applications, directed the payment of Rs.42,101/- as the difference in wage, Rs.2,10,505/- as the penalty (five times the difference in wage), totaling Rs.2,52,606/- in respect of 13 respondents. Being dissatisfied with the order passed by the respondent No.2, the appellant filed writ petition before the learned Single Judge.

As per the amendment to S. 70 and S. 118 of the Karnataka Co-operative Societies Act, the authorities do not have the jurisdiction to entertain the application. Respondent Nos.4 to 16 are working sincerely under the appellant/Society to meet the day today necessities. Taking these factors into consideration and taking into consideration the essential requirements and the standard of living, we are of the considered view that interference by this Court so far as the payment of difference of wages of Rs.42,401/- to the respondent Nos.4 to 16 does not call for. The Society is being run on philanthropic approach to render medical aid to the public at Mysore and not a commercial vehicle should not have been saddled with such penalty. Therefore, we are of the considered view that, such penalty of Rs.2,10,505/- levying five times penalty is not justifiable. Therefore, the appeal is liable to be allowed in part and direction issued to pay five times penalty is liable to be set aside.

2. Having regard to the facts and circumstances, the writ appeals filed by the appellant are allowed in part. The impugned order passed by the learned Single Judge dated 03.11.2009 passed in W.P.No.26345/2005 (L-MW) so far as it relates to imposing five times penalty of Rs.2,10,505/- is hereby set aside. However, the direction of respondent No.2- Minimum Wages Claim Authority to pay difference in wage of Rs.42,101/- remains undisturbed. In view of disposal of the appeal, the relief sought in Misc.w.7807/2010 for stay does not survive for consideration. Hence, Misc.w.7807/2010 stands disposed of as having become infructuous.

Appeal disposed of

H. Raghavendra Rao S/o H. Venugopala Rao; (2) R. Lakshmi Rao W/o H. Raghavendra Rao v Deputy Registrar of Co-Operative Societies , Bangalore and others

Bench	B. S. PATIL
Where Reported	2014 Indlaw KAR 1268; AIR 2014 KAR 88; 2014 (6) KarLJ 593
Case Digest	**Subject:** Trusts & Associations **Keywords:** Carriers Act, 1865, Karnataka Co-operative Societies Act, 1959, Mysore Co-operative Societies Act **Summary:** Trusts & Associations - Civil Procedure - Code of Civil Procedure, 1908, s. 34 - Karnataka Co-operative Societies Act, 1959, s. 70 - Recovery of loan - Rate of interest - Legality - Respondent no.2 raised dispute against petitioner no.1 alleging that petitioner no.1 availed loan from respondent no. 2 - Respondent no.1 passed award allowing dispute and directing petitioners to pay sum with interest - On appeal, Tribunal upheld award with certain modifications with regard to interest - Hence, instant petition - Whether provisions of s. 34 of CPC could be invoked to award interest at reduced rate than agreed one in proceeding instituted u/s. 70 of the Act - Held, issue referred to arbitrator with regard to recovery of loan amount along with interest as agreed under contract entered into between Society and its member - In such circumstance, question of application of s. 34 of CPC to reduce interest exercising discretion of Arbitrator did not arise - Such was not scope of dispute referred before Arbitrator - Therefore, it had to be held that on analogy of s. 34 of CPC petitioner could not claim levy of interest at lesser rate during pendency of proceedings and also subsequently thereafter till realization - Petition dismissed.

Case No : W. P. Nos.50029 of 2013 and 51586 of 2013 (CS-RES)

The Order of the Court was as follows :

1. 1st petitioner has availed loan from the 2nd respondent- Credit Co-operative Society. A sum of Rs.15 lakhs was sanctioned. As the amount was not repaid, a dispute was raised by the respondent-Society u/s. 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'). Guarantor was also made a party respondent. Proceedings were resisted by the petitioner. After enquiry, 1st respondent has passed an award on 24.07.2009 allowing the dispute and directing the petitioners to pay the sum of Rs.14,85,762/- with interest at 18.5% along with 2% penal interest with effect from 01.02.2002 till the loan was discharged, failing which, ordering recovery of the same by selling the mortgaged property.

2. This award was challenged before the Karnataka Appellate Tribunal (for short, 'the Tribunal'). The Tribunal upheld the award with certain modifications with regard to interest. It has held that appellants before it were liable to pay an amount of Rs.17,97,100/- jointly and severally with interest at 18.5% per annum from 01.03.2001. Aggrieved by the same, this writ petition is filed.

3. In the instant case, the issue referred to the arbitrator is not with regard to the liability to pay interest or damages in lieu of interest, but the dispute is with regard to recovery of loan amount along with interest as agreed under the contract entered into between the Society and its member. In such circumstance, question of application of S. 34 CPC to reduce interest exercising the discretion of the Arbitrator does not arise. This is not the scope of the dispute referred before the Arbitrator. Therefore, the Arbitrator has no such power or jurisdiction to exercise his discretion by taking recourse to principles contained in S. 34 CPC.

4. In the instant case, the parties have expressly agreed regarding the rate of interest to be charged on the loan advanced. Therefore, observations made in paragraph 6 of the judgment referred to above, have no application to the facts of the present case.

5. Therefore, I am of the view that for a dispute raised u/s. 70 of the Karnataka Co-operative Societies Act, 1959, regarding recovery of loan amount advanced, wherein parties have agreed and stipulated the rate of interest payable in the contract entered into between them, S. 34 CPC is not applicable.

M. Puttaramegowda S/o Marichannegowda v Horticulture Produce Co-operative Marketing and Processing Society Limited, (HOPCOMS) Represented by its Managing Director, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2014 Indlaw KAR 1995; 2014 (5) KarLJ 430

Case No : W.P. No. 5870 of 2014 (S-DIS)

The Order of the Court was as follows :

1. Petitioner, an employee of the 1st respondent, filed this writ petition to quash enquiry officer's report vide Annexure-L and an order of dismissal from service dated 22.01.2014 vide Annexure-M.

2. The 1st respondent served on the petitioner, memorandum of charges dated 29.03.2013 and appointed an enquiry officer to conduct disciplinary enquiry into the charged misconduct. Enquiry Officer having submitted a report dated 11.10.2013, copy was furnished to the petitioner on 05.11.2013 and in view of the resolutions of the managing committee dated 03.12.2013 and 09.01.2014, an order dated 22.01.2014 was passed, dismissing the petitioner from service.

3. S.70 of the Act provides a forum, to an aggrieved person against whom the Society and its authorities under the Act have passed the order. the Act provides the mechanism for seeking of redressal of the grievance before the Registrar and Appellate Tribunal. Though, Sri. A.N. Gangadharaiah contended that the impugned order has been passed in violation of principles of natural justice, there being no dispute, that prior to the passing of the order dated 22.01.2014, petitioner was furnished with the copy of the enquiry report on 05.11.2013, with an opportunity to show-cause, whether the cause shown by the petitioner has been considered by the disciplinary authority is a matter to be gone into in detail by the Registrar of Co-operative Societies. The question whether the impugned order is bad for violation of principles of natural justice even while holding enquiry by the enquiry officer or by the respondent is a matter which the Registrar also can go into. Consequently, it is not appropriate to entertain this writ petition in view of the availability of the alternative and efficacious remedy by way of raising a dispute under S.70 of the Act before the Registrar of Co-operative Societies, wherein, an enquiry into all aspects can be held and findings recorded. In view of the foregoing, the writ petition is rejected, reserving the liberty to the petitioner to raise a dispute as against the impugned order before the Registrar of Cooperative Societies, who shall decide the dispute on merit and in accordance with law, without being influenced by any of the observations made in this order. All contentions raised in the writ petition are left open for consideration and decision by the Registrar of Cooperative Societies.

Petition dismissed

S. Rudrappa S/o Shambulingappa v Secretary, Mysore Merchants Co-op. Society Limited, Mysore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2014 Indlaw KAR 1844; 2014 (3) KarLJ 222

Case No : W.P. No. 7640/2014 (S-RES)

The Order of the Court was as follows :

1. An order of compulsory retirement passed against the petitioner on 16.09.1986 by the respondents, when questioned in a dispute filed under S.70 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act') having not been interfered with by the learned Departmental Arbitrator, Karnataka Appellate Tribunal (for short 'the Tribunal') and the learned Single Judge, W.A.No.2470/1997 filed by the petitioner was allowed by a Judgment dated 23.06.2000(reported in ILR 2001 Karnataka 14).

   The case having been remanded to the Departmental Arbitrator and a compromise petition having been filed and the respondents having handed over to the petitioner a pay order for Rs.2,30,000/-, the compromise was accepted and the dispute was dismissed on 30.12.2006. Appeal No.237/2007 filed by the petitioner against the said award having been dismissed by the Tribunal on 21.09.2013, this writ petition was filed, to quash the said Award and the Judgment vide Annexures-B and C.

   "Case called. The petitioner is present, the respondent and President of the Bank present, files a compromise petition, and pay order No.000231 dated 30.12.2006 for Rs.2,30,000/- has been handed over to the petitioner, in lien of the compromise petition, jointly signed by both the parties. The compromise petition is accepted, and the case is dismissed without cost. The order pronounced in the open Court."

2. Questioning the said award, an appeal under S.105 of the Act was filed, inter alia contending that in view of the judgment passed in writ appeal, the petitioner being entitled for all the service benefits, the acceptance of the compromise petition is not correct. The Tribunal having found that the petitioner has compromised the matter with the respondents and that there is no evidence brought on record to the effect that the compromise dated 30.12.2006 was made under duress and there being no evidence with regard to fraud played in the matter of entering into the compromise, has held that the appeal is not maintainable. Further, by noticing that there being consent and the sum agreed has been received, Tribunal has held that no interference in appeal is warranted.

3. With regard to binding nature of a consent decree, in Shankar Sitaram Sontakke VS. Balkrishna Sitarama sontakke, AIR 1954 SC 352 1954 Indlaw SC 67, Apex Court has held as follows:

   "9 The obvious effect of this finding is that the plaintiff is barred by the principle of 'res judicata' from reagitating the question in the present suit. It is well settled that a consent decree is as

binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of 'res judicata'."

(emphasis supplied)

4. The petitioner having received the agreed sum of Rs.2,30,000/- from the respondent - Bank, towards full and final satisfaction of the amount payable to him and having declared that he is not entitled to any further payment and having also further declared that he is not entitled to any other relief from the respondents, is not entitled to question the consent award by filing the appeal. Thus, no appeal can be maintained against a consent Award.

5. In view of the above, the Tribunal has not committed any error or illegality in dismissing the appeal filed by the petitioner as against the consent award passed by the Arbitrator. There being no ground to issue Rule Nisi, the writ petition being devoid of merit is rejected.

Order accordingly

ITI Employees Housing Co-operative Society, Dooravani Nagar, Bangalore, Represented by its President v Kaveramma W/o Venkatappa Since deceased by her Lrs., Lakshmaiah S/o Venkatappa, Munilakshmaiah S/o Venkatappa, Lakshmi Narayana S/o Venkatappa, Nagarathnamma D/o Venkatappa and another

Bench	Ashok B. Hinchigeri
Where Reported	2014 Indlaw KAR 1221

Case No : R.F.A. No. 1959/2011 (INJ)

The Order of the Court was as follows :

1. The facts of the case in brief are that the first respondent claims to be the absolute owner in possession of the suit schedule property measuring 8 guntas at Survey No.18/11 of Yellukunte Grama, Begur Hobli, Bangalore South Taluk. She claims that the mutation, etc. stand in her favour in respect of the suit schedule property.

   On the northern, eastern and western side of the suit schedule property, the property belonging to the appellant is situated. On the southern side of the suit schedule property, the property belonging to the second respondent is situated. As the appellant and the respondent No.2 have attempted to encroach the plaintiff's suit schedule property, she filed the police complaint and thereafter filed the suit seeking the relief of permanent injunction.

2. The appellant (first defendant in the suit proceedings) filed the written statement contending that the suit is not maintainable. As the appellant is a Co-operative Society, the suit cannot be filed without issuing the notice in compliance with the requirement contained in S. 125 of the Karnataka Cooperative Societies Act, 1959. It was contended that the appellant is the absolute owner in possession of the land bearing Survey Nos.18/5, 18/6 and 18/10. The appellant denied that it was trying to encroach the suit schedule property.

3. Thus, even when the evidence placed on record is reappreciated, it is difficult to come to any other conclusion than the one arrived at by the Trial Court. In the result, this appeal fails. I dismiss the appeal and also I.A.1/2012. No order as to costs.

4. However, if the appellant's property is being encroached by the first respondent, it is always open to the appellant to file a duly constituted suit. Similarly, liberty is also reserved to the first respondent to challenge the sale deed, dated 23.08.2006 by filing a duly constituted suit.

Order accordingly.

R. N. Chikkegowda S/o Late Ningegowda and others v Karnataka State Co-Operative Marketing Federation Limited by Its General Manager, Bangalore and another

Bench	B. S. PATIL
Where Reported	2014 Indlaw KAR 1737; 2014 (3) KarLJ 641

Case No : W.P. No. 54852/2013 & W.P. Nos. 6319-22/2014 (CS-DAS)

The Order of the Court was as follows :

1. A short question that falls for consideration in these petitions, is:-

   "whether an appeal lies to the Karnataka Appellate Tribunal, against order of attachment of property before passing of the award u/s. 103 of the Karnataka Co-operative Societies Act, 1959*, as provided u/s. 105(1)(e) of* the Act*?"*

2. The controversy has arisen, as the Karnataka Appellate Tribunal (for short, 'the Tribunal') has held that only against orders of attachment passed by the Registrar u/s. 103 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'), in execution proceedings for execution of an award or order passed u/ss. 69 or 71 of the Act, appeal to the Tribunal would lie, and in respect of all other orders of attachment made u/s. 103 of the Act, appeal would lie to the superior officer as provided u/s. 106(1)(m) of the Act.

3. There is yet another provision u/s. 106 of the Act, which provides for appeals to other authorities, whereunder also, as per S. 106(1)(m) of the Act, an order of attachment made by the Registrar u/s. 103 is appealable, provided it is not an order referred to in S. 105(1)(e) of the Act.

4. Thus, what emerges is, against the orders of attachment passed before passing an award/order, two appellate forums are provided. One is the Tribunal, and the other is the Superior Authority to the one who has passed the order of attachment. Appeal to the Tribunal lies, if an order of attachment is passed in a proceeding u/ss. 69 & 71 with a view to prevent any delay or obstruction in the execution of any order, decision or award that may be made there. In respect of other orders of attachment passed under Section 103, not covered u/s. 105(1)(e), appeal lies to the immediate superior.

5. The Tribunal has misconstrued the provision in holding that appeal u/s. 105(1)(e) lies, where the execution proceedings for enforcement or implementation of the award passed by the Registrar or Arbitrator have initiated and in such proceedings attachment of the property has been ordered. Whereas, in other cases, where attachment has been ordered under Section 103, appeal lies to the superior authority. On this analogy, the Tribunal has held that a simple order of attachment of property before passing award cannot be challenged before the Tribunal by way of appeal u/s. 105(1)(e) of the Act.

6. As already adverted to above, orders of attachment that are passed u/s. 103 are orders passed during the pendency of the proceedings and before passing of the award/order. S. 103 does not refer to orders of attachment passed during the course of execution proceedings. On the other hand, such attachments are dealt with by Ss. 101 to 102. Therefore, there is no justification to hold that S. 105(1)(e) refers to orders of attachment passed in execution proceedings and not the one passed during the pendency of the award proceedings.

7. The language of the statute has to be understood as it is by referring to the words used without adding or deleting anything from it. It cannot also be presumed that the legislature has omitted to say something when there is nothing to indicate such omission. If this is kept in mind, a plain reading of Sections 103, 105(1)(e) & 106(1)(m) of the Act, would make it clear that wherever an order of attachment before award or order is passed by the authority in a proceeding u/ss. 69 & 71, then appeal lies to the Tribunal. If an order of attachment before passing an order or award is made in any other proceeding, then an appeal would lie to the superior authority and not to the Tribunal.

8. Therefore, in my view, the impugned order passed by the Tribunal does not lay proper construction on the aforementioned provisions of the Act. The understanding of the provision by the Tribunal is not consistent with the intention of the legislature in enacting the above provisions. Therefore, the order passed by the Tribunal deserves to be set aside.

These writ petitions are allowed. Impugned order is set aside. The matter is remitted to the Tribunal for consideration on merits, in accordance with law.

Petitions allowed

Vasu S/o Late Obulaiah and others v State of Karnataka, Represented by Sub-Inspector of Police, Mysore

Bench	S. N. Satyanarayana
Where Reported	2014 Indlaw KAR 1436; 2014 (4) KarLJ 242

Case No : Criminal Petition No. 794 of 2014

The Order of the Court was as follows :

"111(2) No prosecution shall be instituted under this Act without the previous sanction of,-

(a) The Director of Co-operative Audit in respect of matters arising out of audit other than matters relating to cooperative credit structure society;

(b) the Registrar in respect of other matters including matters relating to audit in respect of co-operative credit structure society;

Provided that no sanction of the Registrar or the Director of Co-operative Audit shall be necessary for filing criminal complaint against the delinquents for alleged misappropriation or embezzlement of funds of a cooperative society detected during the course of audit, inquiry or inspection or in the normal course of business of a cooperative society.

2. On going through the aforesaid provision of law, it is clearly seen that, in the event of any offence alleged against any of the Directors or Officers of the society, if it is with reference to alleged misappropriation or embezzlement of funds of the society or if it is in the matter relating to audit in respect of the cooperative credit structure of the society and other matters, then sanction is required. In the present case, the offence alleged is with reference to appointment of accused Nos. 11 and 22 in the aforesaid proceeding to the society without following the procedure that was required to be followed for the appointment of said persons. The offence alleged basically is an offence punishable under the provisions of India Penal Code and not an offence the cognizance of which cane be taken under the Karnataka Cooperative Societies Act,. 1959 as envisaged in the aforesaid Section. In that view of the matter, this Court is of the opinion that this petition filed seeking quashing of proceeding pending in CO.No.842/2013 is misconception and the same cannot be entertained in this proceeding.

3. Accordingly, this criminal petition is dismissed. However, it is made clear that in the proceeding to be decided before the learned Magistrate, he shall assess the material available on record independently without being influenced by any of the observations made in this order.

Petition dismissed

Raviraja Hegde S/o Late P. Shekara Hegde and others v State of Karnataka, Department of Co-operation and another

Bench	B. S. PATIL
Where Reported	2014 Indlaw KAR 1748; 2014 (4) KarLJ 115

Case No : W.P. No. 6943/2014 (CS-EL/M) W.P. No. 83/2014 (CS-EL/M), W.P. No. 10005/2014 (CS-EL/M), W.P. Nos. 10888/2014 & 12132-135/2014 (CS-ELE), W.P. Nos. 10963/2014 & 12125-131/2014 (CS-EL/M) In W.P. No. 6943/2014

The Order of the Court was as follows :

1. 1st Petitioner-Milk Producers Societies Union Limited and other petitioners who are the elected Directors of the 1st Petitioner-Union are challenging Annexure-H - communication dated 29.01.2014 of the State Government addressed to the Karnataka State Co-operative Election Commission informing that in respect of such of the Managing Committees of the Societies whose term comes to an end by 31.03.2014, elections could be held to elect the new Managing Committee after the expiry of the present term 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.

2. The second relief sought in the writ petition is, for a writ of mandamus directing the respondents to hold that the term of the Board of the 1st petitioner-Union would expire only on 30.06.2014 or in the alternative, direct the respondents to conduct election to the 1st petitioner-Union on or before 31.03.2014. An interim relief is sought to stay the communication - Annexure-H and to prevent the respondents from appointing a Special Officer/Administrator to the 1st petitioner-Union.

3. Undisputed facts are that election to the Managing Committee of the 1st petitioner-Union was required to be held on or before 31.03.2009. But, the State Government in exercise of its power u/s. 121 of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act") issued a notification as per Annexure-N, postponing the elections taking note of the impending Lok/Sabha Elections scheduled during April/May 2009. The Government Order stated that in exercise of the power under Section 39-A(4) and 121 of the Act, and by relaxing the provisions contained in Sections 28-A(4), 28-A(5) and 28-B(2), 29-F(4) and 39-A(2) of the Act, elections scheduled to the petitioner-Union and other similarly placed societies were postponed and re-scheduled to be held in accordance with the time schedule notified in the very Government Order. As per the said time schedule, elections to the 1st petitioner-Union which is a federal society was held on 01.07.2009.

4. In the light of the view taken by the Division Bench, though several contentions are urged, question of examining these contentions does not arise Consideration of the contention with regard to the mandate of law and the democratic member control that is introduced by way of

97th amendment to the Constitution and also the effect of Articles 243ZL and 243ZT would become an academic exercise.

5. In so far as the alternative relief sought seeking a direction to the respondents to conduct elections to the 1st petitioner-Union on or before 31.03.2014, learned Counsel for the respondents submits that as per the provisions contained in S. 21(2) of the Act, elections to elect a new Board to the secondary co-operative societies is under progress and it is the representative of the secondary co-operative society who will participate in the election to elect the member of the Board of federal society. Therefore, only after the election to the secondary society, elections to the new Board of the petitioner-Union will be held. It is also necessary to notice here the provision contained under Section 39-A(2) of the Act, which provides that the electoral process for holding ejection to the federal society shall commence thirty Hay's after the completion of the elections of the secondary societies.

6. In the light of Article 243ZK of the Constitution of India and in view of the amendments now brought about by the State Legislature which is in tune with the intention of the 97th Amendment to the Constitution of India, the merit of this stand requires serious consideration.

7. However, having regard to the decision of the Division Bench referred to supra and in the light of the fact that election to the secondary societies is not yet completed, mandamus as sought by the petitioners cannot be granted. Hence, these writ petitions are, dismissed.

Petitions dismissed

Abhaykumar Dhanpal Janaj S/o Dhanpal Janaj and others v State of Karnataka, Represented by its Principal Secretary, Department of Co-Operation, Bangalore and others

Bench	B. S. PATIL
Where Reported	2014 Indlaw KAR 1722; 2014 (3) KarLJ 457

Case No : W.P.Nos. 45822-826/2013 & W.P.Nos. 45827-836/2013, W.P.No. 51303/2013

The Order of the Court was as follows :

1. In W.P.Nos.45822-45836/2013, petitioners are challenging the order dated 23.09.2013 passed by the 2nd respondent - Commissioner, Co-operative Election Commission vide Annexure-C thereby appointing a returning officer to conduct election to the 5th respondent - Raibag Sahakari Sakkare Karkhane Niyamitha (for short 'the Society').

2. Petitioners in W.P.Nos.45822-45836/2013 claim to be members of the 5th respondent - Society which is registered under the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). The said Society has established a sugar factory at Bavachi Village of Raibag Taluk in Belgaum District. It is engaged in the manufacture of sugar and its by-products. As per the petition averments, there are in all 8903 members out of whom 7709 are sugar cane growers. It is alleged that due to grave mismanagement of the affairs of the 5th respondent - Society, the factory stopped crushing operation during 2003-04. It was unable to clear the dues of the farmers, workers and the banks. Steps were indeed taken towards winding up of the factory. However, due to intervention of the State Government, action was taken to revive the factory.

3. Having heard the learned counsel for all the parties, the only question that falls for consideration is

   "Whether the Action of the Commissioner, Co-operative Election Commission in appointing a returning officer to conduct election to the 5th respondent - Society is legally tenable?"

4. It is not in dispute that petitioners in W.P.Nos.45822-45836/13 are the members of the 5th respondent - Society. The 5th respondent - Society is governed by the provisions of the Act. By the Constitution (Ninety-seventh Amendment) Act, 2011, Part-IXB has been introduced in the Constitution which pertains to Co-operative Societies. Article 243ZH to Article 243ZT are inserted by this amendment. Sub-cl. (1) of Article 243ZK mandates that election of a Board (Board of a Co-operative Society) shall be conducted before the expiry of the term of the Board. As per sub-cl. (2) of Article 243ZK, power shall be vested in an authority or a body to be provided for by the Legislature of a State to conduct elections to a Co-operative Society. Article 243ZT provides that the existing laws in force relating to Co-operative Societies which are inconsistent with the provisions of Part-IXB shall continue to operate and be in force until amended or repealed by the competent Legislature or other competent authority or until the expiration of one year from such commencement whichever is less. The intention is clear that the Legislature of the State

may make amendments in tune with the mandate of the Constitutional provisions contained in Part-IXB by amending or repealing the existing laws within a period of one year or else upon the expiry of one year, the said laws, to the extent they are inconsistent with Part-IXB shall cease to have any effect.

5. In addition, it has to be stated that petitioners in W.P.Nos.45822-45836/2013 are the members of the 5th respondent- Society. By conducting election, their rights are not going to be affected. In fact, they will be permitted to participate in the democratic process and elect their representative. Merely because the Board is elected to manage the affairs of the society, it will not have any right to interfere with the terms of the lease. The lessee who has taken possession of the factory and is managing the crushing activity and business transaction has not come to the Court. It is not aggrieved by the appointment of the returning officer to conduct elections. Therefore, it is ununderstandable how the petitioners can make any grievance with regard to the appointment of the returning officer or for the proposed elections to be conducted. Hence, I am of the view that these writ petitions do not have any merit and the same are liable to be dismissed.

6. It is the lessee who has challenged the appointment of the returning officer and the proposed action to hold elections in this case. In all other respects, the facts and circumstances of this case are similar to the facts and circumstances of the case in W.P.Nos.45822-836/2013. Therefore, the reasons assigned above are applicable to this case also. In fact, there is no such government order issued by the State Government extending the term of the special officer as is done in the facts of W.P.Nos.45822-836/2013. Therefore, to that extent the arguments available to the writ petitioners in W.P.Nos.45822-836/2013 are not available to the writ petitioner in W.P.No.51303/2013. Therefore, there is no merit in these writ petitions also.

7. In the result and for the foregoing, these writ petitions, being devoid of merits, are dismissed.

Petitions dismissed

Managing Director, Regional Oilseeds Growers Co-operative Societies Union Limited v Additional Registrar of Co-operative Societies (C and M), Bangalore and others

Bench	B. S. PATIL
Where Reported	2014 Indlaw KAR 1769; 2014 (4) KarLJ 35

Case No : W. P. No. 33071-72 of 2010 (CS-RES)

The Order of the Court was as follows :

1. The facts, in brief, are that the petitioner is a Society registered under the provisions of the Karnataka Cooperative Societies Act, 1959 (for short, 'the Act'). Respondent No.3 was working as Office Assistant under the petitioner. On allegations of misconduct, a Disciplinary Enquiry was ordered against respondent No.3 along with certain other employees.

2. Petitioner - Union did not lead any evidence during the course of enquiry. Respondent No.3 and certain others who were charged with the allegations of misconduct admitted their guilt. Based on the evidence on record, the Enquiry Officer submitted his report stating that the charges were proved. He further opined that the charges were simple in nature. The Managing Director of the petitioner - Union issued a show-cause notice. He accepted the charges and imposed major penalty of dismissal from service vide order dated 14.07.2000.

3. Based on the evidence on record, the Deputy Registrar found that order passed by the Disciplinary Authority was erroneous and was liable to be set aside. He also recorded a finding that the charges were simple in nature and major penalty of dismissal was wholly unwarranted. Hence, while setting aside the order of dismissal, a direction was issued to the petitioner - Union for reinstatement of the 3rd respondent without backwages. This order was passed on 18.06.2004. It is also seen that respondent No.3 has been denied backwages for the entire period during which he was out of service.

   This version of respondent No.3 has remained unchallenged. The Deputy Registrar has provided a fair and reasonable opportunity to the petitioner to lead evidence and also to cross-examine the 3rd respondent. Petitioner has not availed the opportunity. No other witness is examined in support of the case of the petitioner either before the Enquiry Officer or before the Deputy Registrar. In such circumstances, the Deputy Registrar has rightly come to the conclusion that order passed by the Disciplinary Authority dismissing the 3rd respondent was illegal. He has also taken note of the fact that charges were simple in nature and such an extreme step of dismissal was totally unwarranted. These findings are affirmed by the Tribunal by holding that despite opportunity provided before the Deputy Registrar, petitioner - Society has not availed the same.

4. A perusal of the records and the findings disclose that petitioner - Union was indeed provided a fair and reasonable opportunity before the Deputy Registrar, but has failed to avail the same. The charges framed also reveal that they were simple in nature. The fact that petitioner failed to

cross-examine the 3rd respondent before the Deputy Registrar and failed to lead any evidence to substantiate its stand also makes it clear that there was absolutely no evidence except the statement of the 3rd respondent who allegedly admitted his guilt. He has stated before the Deputy Registrar that he did not voluntarily make such a statement. His evidence has gone unquestioned. Effect of the same has been appreciated by both the authorities to come to a conclusion that order of dismissal based on such material was unsustainable.

In exercise of the writ jurisdiction, this Court cannot reappreciate the evidence and come to a different conclusion. The approach adopted by the authorities and the impugned orders passed cannot be termed as one suffering from error of jurisdiction. The Tribunal has recorded a finding that petitioner -Union has failed to establish that the Union was closed and that they were not in a position to reinstate respondent No.3. In such circumstances, contentions urged by the learned counsel for the petitioner - Union cannot be accepted.

5. As I do not find any merit in these writ petitions, the same are dismissed.

Petitions dismissed

S. V. Narasimhaiah S/o Late Venkojaiah v Karnataka Co-Operative Milk Producers Federation Limited, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2014 Indlaw KAR 1836; 2014 (3) KarLJ 134

Case No : W.P. No. 59160/2013 (S-DIS)

The Order of the Court was as follows :

1. The petitioner having been issued with memorandum of charges dated 03.01.2013, submitted his explanation on 16.01.2013. Enquiry Officer appointed has submitted report dated 11.07.2013 along with the findings. Copy of said report was furnished to the petitioner along with a notice dated 22.07.2013.

   The petitioner having submitted a representation dated 01.08.2013, seeking dropping of the proceedings, the 2nd respondent having considered the record of the enquiry and having found that the charges leveled against the petitioner as proved, by accepting the findings of the Enquiry Officer and holding the petitioner guilty of the charges of misconduct has imposed major punishment of dismissal from the service of the 1st respondent-Federation, by an order dated 28.10.2013. Assailing the said order, as at Annexure-A, this writ petition was filed on 26.12.2013.

2. A writ petition u/art. 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out. Whether there is violation of principles of natural justice in the matter of passing the impugned order is a fact which can be established in the enquiry, which can take place, if a dispute under S.70 of the Act is raised before the Registrar Co-operative Societies.

3. In U.P. State Bridge Corporation Ltd., vs. U.P. Rajya Selton Nigam S. Karmachari Sangha, (2004) 4 SCC 268 2004 Indlaw SC 179, Apex Court has held that the dispute relates to enforcement of a right or obligation under the statute and the specific remedy is, therefore, provided in the statute and hence, High Court should not deviate from general view and interference under Article 226, except when a very strong case is made out for making a departure.

4. Keeping in view the provisions of the Act, there being alternative remedy, which is efficacious, this writ petition cannot be entertained.

   In the result, the writ petition is rejected by reserving liberty to the petitioner to question the order, as at Annexure-A, in a dispute under S.70 of the Act.

No costs.

Petition dismissed

Mangalore Catholic, Co-operative Bank Limited Represented by its Manager, Mangalore v State of Karnataka by its Secretary to Government, Department of Co-operation, Bangalore and others

Bench	B. S. PATIL
Where Reported	2014 Indlaw KAR 1869; 2014 (3) KarLJ 327

Case No : W.P. No. 9180/2014
Bench : B. S. PATIL

Citation : 2014 Indlaw KAR 1869, 2014 (3) KarLJ 327

The Order of the Court was as follows :

1. Learned Additional Government Advocate takes notice for respondents 1 to 3.

2. Challenge in this writ petition is to the notice dated 29.08.2013 issued by the 2nd respondent - the Joint Registrar of Co-operative Societies, Karnataka State Urban Co-operative Banks Federation.

3. By the impugned notice, petitioner - Bank is communicated with the proceedings initiated by the 4th respondent u/s. 70 of the Karnataka Co-operative Societies Act, 1959 against the Bank and of the interim stay granted for recovery of the land pursuant to the notice issued by the Bank on 20.05.2013. Petitioner is also informed that the matter would be taken up on 27.09.2013.

4. Hence, it is not appropriate for this Court to interfere in the matter at this stage. It is open for the petitioner to address arguments on the next date of hearing or on the date on which the case may be posted so as to enable the 2nd respondent to pass orders expeditiously. At any rate, as the petitioner pleads urgency, the 2nd respondent is directed to consider the matter and pass orders expeditiously but before the expiry of two months from the date of receipt of a copy of this order.

Shankarappa S/o Mallappa Kelageri and others v Cooperative Election Commission, Karnataka State Cooperative Election Commission, Represented by its Secretary, Bangalore and others

Bench	N. KUMAR, K. N. Phaneendra
Where Reported	2014 Indlaw KAR 1601
Case Digest	**Subject:** Trusts & Associations **Keywords:** Legality, Election process, Term of office members **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act, 1959, s. 28A(4) - Term of office members - Election process - Legality - Appellants were Board of members of respondent no.4 society - Respondent no. 1 appointed respondent no. 3 as returning officer to conduct elections to the Board of respondent no. 4 - Respondent no. 2 fixed date of election - Aggrieved appellants filed petition before Single Judge and the same was dismissed - Hence instant appeals - Whether impugned order passed by Single Judge was justified - Held, the latest amendment is brought in making it very clear that five years tenure is to be computed from the day be is elected and not from the commencement of the cooperative year. It is clear the object is to give a definite tenure of 5 years to an elected person. Legislature consciously did not expressly state that the amendment is retrospective, because they were aware that the term of office of an elected body cannot be extended retrospectively. It would have affected the vires of the amendment. It is also contrary to democratic principles and would have gone against the wishes of the voter. What the legislature did not do as it was improper, there is no obligation on the part of the Courts to do by interpretative process of the provision, the very thing which the legislature did not want to do. Therefore, when the ballot was exercised, the tenure of the members was definite and the tenure had to come to an end on 31-3-2014. The person who gave them the mandate wanted him to continue in office till 31-3-2004. It is to be respected. Therefore, they should go before the voter and seek for a mandate for five years from the day they are elected. This in substance is the object behind the Act. Appellants knew when their term would come to an end. Therefore, they cannot take advantage of the amendment, and seek extension. That right was not there on the day they entered the office. Therefore, they are not the aggrieved persons and they have no locus standi to challenge the Action of the authorities which is in accordance with law. Therefore, HC cannot find fault with approach of Single Judge in declining to entertain the petition. Appeals dismissed.

Case No : Writ Appeal Nos. 100076-80 and 100081-33/2014 (CS-EL/M)

The Order of the Court was as follows :

1. On the day the appellants contested the elections and were elected, this was not the law. Therefore, when they were voted to power, it was clear that their tenure would come to an end on 31.3.2014. It was definite. The voter who voted them had no intention of giving them any extended term as sought to be made by way of an amendment today. The power to hold the post does not flow from the statutory provision. It flows from the ballot. The ballot is to be respected. Now, that the law has been changed, rules of the game has been changed, that has to be necessarily prospective in nature. The Legislature consciously did not expressly state that the amendment is retrospective, because they were aware that the term of office of an elected body cannot be extended retrospectively. Otherwise, it would have effected the vires of the amendment. It is also contrary to the democratic principles and would have gone against the wishes of the voter. What the legislature did not do as it was improper, there is no obligation on the part of the Courts to do by interpretative process of the provision, the very thing which the legislature did not want to do. Therefore, when the ballot was exercised, the tenure of the members was definite and the tenure had to come to an end on 31.3.2014. The person who gave them the mandate wanted him to continue in office till 31-03-2004. It is to be respected. Therefore, they should go before the voter and seek for a mandate for five years from the day they are elected. This in substance is the object behind the Act.

2. As the law stood then, these appellants knew when their term would come to an end. Therefore, they cannot take advantage of the amendment, and seek extension. That right was not there on the day they entered the office. Therefore, they are not the aggrieved persons and they have no locus standi to challenge the Action of the authorities which is in accordance with law. Therefore, we cannot find fault with the approach of the learned single Judge in declining to entertain the Writ Petition. Accordingly, the Writ Appeals are dismissed.

Appeals dismissed

Arecanut Processing and Sale Co-Operative Society Limited (APSCOS) by its Secretary, Shimoga District v State of Karnataka by its Secretary, Department of Co-Operation Bangalore and others

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 2819; 2014 (1) KarLJ 442

Case No : W. P. No. 37043 of 2013 (CS-RES)

Bench : B. S. PATIL

Citation : 2013 Indlaw KAR 2819, 2014 (1) KarLJ 442

The Order of the Court was as follows :

1. The grievance made by the petitioner-Society in this writ petition is, against the provisions contained in S. 27(4) of the Karnataka Co-operative Societies Act, 1959, as amended by Karnataka Act No.3 of 2013 and also Rules 14AJ(5) & 14AJ(8) of the Karnataka Co-operative Societies Rules, 1960, as amended by Karnataka Co-operative Societies (Amendment) Rules, 2013, in so far as it provides for quorum for the meetings which shall not be less than 20% of the members eligible to vote at the meeting.

2. Learned Additional Government Advocate makes available the Government Order dated 13.09.2013 issued in exercise of the powers conferred u/s. 54 of the Karnataka Co-operative Societies (Amendment) Act, 2012, and S. 132 of the Karnataka Co-operative Societies Act, 1959, which reads as under:

   "Notwithstanding anything contained in the Karnataka Co-operative Societies Act, 1959 *and* Karnataka Co-operative Societies Rules, 1960*, for the annual general meetings of the co-operative society during 2013, the quorum shall be as specified in the bye-laws."*

3. It is thus clear front the Government Order extracted above, that the requirement of having 20% of the members eligible to vote at the meeting to form quorum for conducting a meeting is exempted for the year 2013. Therefore, the grievance made by the petitioner for the present does not Survive for Consideration. If and when need arises, petitioner is at liberty to approach this Court seeking the same relief. Reserving such liberty, this writ petition is disposed of, as having become unnecessary for the present.

Petition disposed of

Basavalingaiah S/o Kittappa @ Madaiah and others v Assistant Registrar of Co-operative Societies Ramanagaram Sub-Division and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1736

Case No : W.P. Nos. 58957-963/2013 (CS-RES)

The Order of the Court was as follows :

1. The petitioners were elected as members of Managing Committee of 2rd respondent-Society on 01.09.2013. A circular having been issued to all the Co-operative 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 u/s. 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. 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.

3. Since 4 th 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.

4. 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.

5. Learned counsel on both sides submitted that the appeal pending before the 3rd respondent is now scheduled to be taken up on 23.12.2013. 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.

Petitions disposed of

Fayaza Ahmed S/o Late Anwar Pasha v Muslim Co-operative Bank Limited, Represented by its Manager, Mysore District

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 2598; 2014 (2) BC 625; 2014 (2) DRTC 243; 2014 (1) KarLJ 571
Case Digest	**Subject:** Banking & Finance **Keywords:** Karnataka Co-operative Societies Act, 1959, Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002, Karnataka **Summary:** Banking & Finance - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ss.13(2), 17, 2(1)(c)(iv) - Co-operative bank - Invoking of provisions of 2002 Act - Validity - Petitioner was overdue Rs.97,239 out of full due balance to respondent, Co-operative Bank - Respondent issued 7days notice to petitioner for payment of due amount and notified that his name will be published in newspaper after 28-12-2013 and possession of secured property would be taken and dealt with in accordance with law - Hence instant petition - Whether a Co-operative bank could invoke provisions of 2002 Act, to realize its loan dues. Held, United Bank of India vs. Satyawati Tondon, 2010 Indlaw SC 594 is followed. Petitioner should have approached the respondent with a request to give reasonable time for payment of the overdue balance amount with an assurance to pay the future installments regularly or ought to have approached the DRT for relief. Availability of statutory remedy which is alternative and efficacious, writ petition cannot be entertained. Petition dismissed. Ratio - Where a statute provides efficacious and adequate remedy, the HC will do well in not entertaining a writ petition u/art. 226 and on misplaced considerations, the statutory procedure cannot be allowed to be circumvented.

Case No : W.P. No. 58970/2013

The Order of the Court was as follows :

1. Petitioner availed loan of Rs.8,00,000/- from the respondent. Since there is default in the matter of payment of the loan instalments, the respondent having issued a notice dated 07.10.2013, the petitioner submitted a reply dated 15.10.2013. A further notice having been served by the respondent on 07.11.2013 and petitioner having remitted Rs.10,000/- on 21.11.2013, this writ petition was filed on 23.12.2013, questioning the 7 days' notice dated 21.12.2013 issued by the respondent, notifying the petitioner that his name will be published in the newspaper after 28.12.2013 and possession of the secured property would be taken and dealt with in accordance

with law. As per the impugned notice, the petitioner is overdue Rs.97,239/-, out of the full due balance of Rs.8,23,913/-.

2. In view of the availability of statutory remedy which is alternative and efficacious, the writ petition cannot be entertained. In the result, the writ petition is rejected. However, if the petitioner were to approach the respondent with a representation, to grant reasonable time to clear the overdue balance amount, with an assurance that he would honour the future installments without default, the respondent shall consider the prayer of the petitioner sympathetically and permit him to discharge the loan obligation, since the respondent is only interested in recovery of its dues and not otherwise. Ordered accordingly.

Order accordingly

MICO Employees' House Building Co-operative Society Limited and another v Bangalore Development Authority, Kumara Park West, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1812

Case No : W.P. No. 44328/2012 (BDA)

The Order of the Court was as follows :

1. 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.

2. 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.

3. 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.

4. 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.

Petition dismissed

A. N. Jayalakshmi W/o G. Nanjappa v Bangalore Development Authority, Bangalore, Represented by its Commissioner

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1927

Case No : W.P. No. 7083/2013 (BDA)

The Order of the Court was as follows :

1. Petitioner made an application in the prescribed Form-II for allotment of a site as a person belonging to the Economically Weaker Section falling under General Public Category, as per the BDA (Allotment of Sites) Rules, 1984 (for short 'the Rules'). In response thereto, Bangalore Development Authority allotted site No. 1680, situated at VII Block, FE of SMV Nagara, Bangalore and sent an Allotment Intimation dated 06.02.2004. Petitioner deposited the balance sital value of Rs.49,900/- on 15.04.2004. After issue of a show cause notice dated 19.10.2005, a site cancellation order dated 18.02.2006, vide Annexure-E having been sent, this writ petition was filed on 08.02.2013, to quash Annexure-E and for directing the respondent to execute a registered sale deed and convey the allotted site or allot and convey an alternate site.

   (3) who or any dependent member of whose family, owns a site or a house or has been allotted a site or a house by the Bangalore Development Authority or a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or any such other Authority within the Bangalore Metropolitan Area or has been allotted a site or a house in any part in the State by any other Urban Development Authority or the Karnataka Housing Board or such other Agency of the Government; shall be eligible to apply for allotment of a site."

2. In the order dated 09.12.2009 passed in W.P.No.34586/2009, on which reliance was placed by the learned advocate for the petitioner, a learned Single Judge has held as follows:

   "From the above, it is clear that the income of a person concerned has to be taken into consideration for placing him/her under Economically Weaker Section Category. While considering the status of the applicant, the income of both husband and wife are not required to be clubbed together. There is nothing on record to show that the Government has issued a notification to the effect that the income of both the husband and wife should be taken into consideration for the purpose of determining the economical status of a person. The respondent Authority has not issued any endorsement to the effect that the sale deed cannot be executed, since the income of the petitioner exceeds Rs.11,800/- per year. Thus the BDA is not justified in cancelling the allotment of site made in favour of petitioner on the ground that the combined income of petitioner and her husband exceeds Rs.11,800/-. Similar is the view taken by this Court in number of decisions including the one dated 15.12.2008 passed in W.P.No.6120/07 (BDA)."

3. When reliance was placed on the order, noticed in para 14 supra, in W.P.No.6932/2012 by the petitioner therein, similarly situated like the petitioner in the instant case, in the order dated 25.09.2012 passed by another learned Single Judge, it has been held as follows:

"5. Notwithstanding the amendment to the relevant Rule, which indicates that the eligibility shall be as notified by the State Government from time to time. In the absence of any such Notification, and the fact that the petitioner's husband's income was far above the minimum prescribed as on the relevant date, the petitioner has not made out a case for allotment. It cannot be said that in the absence of a Notification by the State Government it can be presumed that the income of the spouse was irrelevant. If admittedly the petitioner's husband had an income - which took the family out of the bracket of the economically weaker section - it would be a mockery of the object sought to be achieved. Accordingly, the cancellation cannot be found fault with."

4. The sites reserved for allotment to persons falling under the Economically Weaker Sections, cannot be allotted to those person/s, whose and whose family's income is more than the prescribed amount. Merely because the applicant is not an employee or his / her own annual income is less than Rs.11,800/-, the separate income of the spouse cannot be ignored. Such an approach would defeat the very purpose of the Rules and reservation made to Economically Weaker Sections.

In the result, the writ petition being devoid of merit is dismissed. However, BDA is directed to refund the sital value deposited, to the petitioner, upon she submitting the refund voucher in duplicate, accompanied by all the records relating to the allotment of site.

M. Sirajulla Khan S/o Abdul Basith Khan and another v Karnataka State Board of Wakfs, represented by its CEO, Bangalore and others

Bench	A. S. BOPANNA
Where Reported	2013 Indlaw KAR 1588

Case No : W.P. Nos. 31170-31171/2013 (GM-WAKF)

The Order of the Court was as follows :

1. The brief facts are that the petitioners claim to be life members of the Muslim Orphanage which is a Wakf Institution. The said Orphanage is guided by the scheme of management (Constitution of the Orphanage) which is the bye-law for governing its affairs. After the expiry of term of its earlier elected executive committee, the first respondent by the order dated 13.10.2010 invoking S. 65(1) of the Wakf Act, 1995, has assumed direct management of the institution and the affairs were being discharged by the Administrator who had been appointed by the said order. Subsequently, the Administrator was replaced. When elections were to be held to elect the Executive Committee by appointment of an Election Officer as ordered by this Court in W.P.No.3425/2013 and W.P.No.5806/2013 disposed of on 30.05.2013, the issue relating to the membership list that was to be operated for the said election has become the bone of contention.

2. In the above cited decisions, the provisions contained in the Karnataka Co-operative Societies Act, 1959, Kerala Co-operative Societies Act and the Karnataka Societies Registration Act, 1960, had arisen for consideration. While examining the provisions contained therein, the ratio laid down by the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court is that when the elected governing body/ committee of management is superseded and an Administrator is in-charge of the affairs of the Society and when the election to form a new governing body is to be held, the Administrator/Election Officer or Special Officer has no power to enroll new members and conduct the election by including them, but would have to conduct the election with the members as on the existing Rolls.

3. Having noticed the rival contentions, the attempt made by the learned counsel for the first respondent-Board to draw a distinction between the power u/s. 30 and 30A of the Karnataka Co-operative Societies Act and import the same for the present consideration is a futile one as I am unable to persuade myself to accept such contention. That is due to the reason that even though the Hon'ble Division Bench in the case of K. Shantharaj 1997 Indlaw SC 2314 (supra) had drawn such distinction, the Hon'ble Supreme Court while upholding the decision of the Hon'ble Division Bench has once again extracted both the said provisions in S. 30 and 30A of that Act in para-4 of its order and concluded in para-5 as follows:

   ''1. It would be clear from the language of these provisions that the Administrator or Special Officer, subject to control of any of the functions of the society and in the interest of the society

can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with power to enroll new members of the society."

i) The result of the election held shall be declared and the Executive Committee shall be constituted.

N. Begur Primary Agricultural Credit Co-operative Society Limited and others v State of Karnataka, by its Special Officer and Ex. Officio Joint Secretary to the Government, Department of Co-operation, Bangalore and others

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 1762; 2014 (2) KarLJ 361

Case No : W. P. Nos. 46689-692/2013 (CS-RES) C/w W. P. Nos. 49158-161/2013 (CS-EL/M) W. P. No. 49109/2013 (CS-EL/M) W. P. No. 49257/2013 (CS) W. P. Nos. 49266-49267/2013 (CS-EL/M)

The Order of the Court was as follows :

1. W.P.No.46689-692/2013 is filed by four Primary Agricultural Credit Co-operative Societies of Mysore District, challenging the notification dated 27.09.2013 issued by the State Government in exercise of the powers conferred u/s. 121 of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act") exempting all the Primary Agricultural Credit Co-operative Societies (for short, 'Primary Societies') in Karnataka from the rigor contained u/s. 20 (2) (b) (iv) (a) & (b) of the Act, till 31.12.2013. The case of the petitioners is that this action is contrary to Section 98-Y of the Act, apart from being arbitrary and unreasonable.

2. In all these writ petitions, common questions of law fall for consideration. Hence, they are heard together and are disposed of by this common order.

3. The notification issued by the Government is assailed on the ground that power u/s. 121 of the Act cannot be used to remove the legislative criteria laid down u/s. 20 (2) (b) (iv) (a) & (b) of the Act to enable the defaulter to participate or cast his/its vote in the election. Learned Senior Counsel Mr. Jayakumar S.Patil appearing for some of the petitioner-Primary Societies in W.P.No.46689-692/2013 contends that the object behind the provisions contained u/s. 20 (2) (b) (iv) (a) & (b) of the Act, is to bar a defaulter from voting, therefore, any blanket exemption to allow all the defaulters to vote, would render the very provision nugatory. It is in this background Mr. Patil is critical of the impugned notification characterizing it as arbitrary and unreasonable.

4. Taking me through the impugned notification, particularly the preamble to the notification and the reasons stated in the notification itself for giving exemption, he points out that the main reason for extending the exemption as spelt out in the notification is the loan waiver scheme that was introduced, because of which certain loans availed by the farmers had been waived, thereby making it impossible for the Societies to recover the same and therefore the failure on the part of the Primary Societies to recover such loan and account for it by remitting the same to the concerned District Central Banks, had persuaded the Government to issue the notification granting exemption to such Societies from the rigor of S. 20 (2) (b) (iv) (a) & (b) of the Act. If that is so, Counsel contends, exemption ought to have been extended in favour of such of the Societies which had failed to recover the money from the farmers on account of the loan

waiver scheme and to that extent only and there was no justification whatsoever for extending the relaxation to cover other transactions.

5. The purport and intent of the above clause contained in S. 20 (2) (b) (iv) (a) & (b) of the Act is that, if a cooperative society which is engaged in advancing loans has failed to recover atleast 50% of the total demand for the co-operative year immediately preceding the co-operative year during which the meeting is held for election and has failed to pass on to the financing bank (DCC Bank) to which it is indebted the said amount within the prescribed period of 15 days of the close of the said co-operative year, then such society shall not have the right to vote at a general meeting or at an election of the members of the board of the cooperative society in which they are members.

6. S. 121 of the Act, clothes the State Government with the power to extend exemption to certain societies by issuing general or special orders from the operation of any of the provisions of the Act. It reads as under:

7. It is thus clear from S. 121 of the Act, that the State Government indeed has the power to exempt any cooperative society or any class of co-operative societies from any of the provisions of the Act or may direct that such provisions shall apply with such modification as it may specify in the order. It is in exercise of this power u/s. 121 of the Act that the impugned notification is issued exempting all the co-operative societies from the operation of S. 20 (2) (b) (iv) (a) & (b) of the Act.

8. The contention, therefore, urged by the Counsel for the petitioners that S. 121 of the Act cannot be used to remove the legislative criteria laid down in S. 20 (2) (b) (iv) (a) & (b) of the Act, is unacceptable. When the language of S. 121 of the Act is very clear and enables the Government to exempt the societies from the operation of any of the provisions of the Act, this Court cannot restrict its interpretation to hold that the power u/s. 121 of the Act cannot be used to remove legislative criteria laid down u/s. 20 of the Act. But, this will not answer the grievance made by the writ petitioners in these writ petitions. The important point raised pertains to the effect of Section 98-Y of the Act, which finds a place in Chapter XI-A.

9. In terms of Section 98-0 of the Act, the provisions of S. 20 of the Act are made applicable for election of new board of a society in co-operative credit structure. Therefore, the provisions of S. 20 of the Act, are to be invoked for elections to be held for Primary Societies or to any other cooperative society under the co-operative credit structure. If the State Government intends to exercise its power u/s. 121 of the Act, to extend any exemption to any such co-operative societies falling under the co-operative credit structure, then it has to necessarily follow the mandatory requirement prescribed under Section 98-Y of the Act, by consulting the Reserve Bank of India or the National Bank.

   Hence, it has to be held that exercise of power u/s. 121 of the Act by the State Government in issuing the impugned notification is contrary to the provisions contained under Section 98-Y of the Act.

10. However, it is further made clear that in so far as the societies which have the benefit of the loan waiver scheme and are in a position to show that except for the amount of loan which has been waived by the State Government, the recovery made by them conforms to the requirement

mentioned u/s. 20 (2) (b) (iv) (a) & (b)of the Act, the State Government is right in contending that these societies cannot be termed as defaulters for no fault on their part as it is the Government which delayed the process of reimbursing the loan amount which has been waived and it is because of this reason their recovery was found to be less than 50%. In fact, when these class of societies cannot be strictly termed as defaulters, question of extending any exemption in their favour by exercising power u/s. 121 of the Act would not arise.

Hence, it is made clear that such of the societies who satisfy that they have recovered the required percentage of demand by including the loan amount waived by the State Government they shall be permitted to go ahead with the process of election and participate in the process by preparing a fresh voters list. If the election process is already re-done following the interim order passed, then it is needles to observe that such process will not get affected by this order.

11. Hence, W.P.No.46689-692/2013 and W.P.No.49109/2013 are allowed. The impugned notification dated 27.09.2013 is quashed. It is made clear that the Government is at liberty to re-visit this issue and take appropriate legal action in accordance with law including by way of issuance of any fresh notification. W.P.No.49158-161/2013, W.P.No.49257/2013 and W.P.No.49266-267/2013 are dismissed.

Petitions disposed of

A. Shambandhan S/o Armugam v Mysore Merchants Co-operative Bank Limited and another

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 1780; 2013 (6) KarLJ 395

Case No : W. P. No. 39206/2013 (CS-RES)

The Order of the Court was as follows :

1. Petitioner borrowed loan from the 1st respondent. As he was a defaulter, a dispute was raised by the 1st respondent-bank u/s. 70 of the Karnataka Co-operative 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 Co-operative 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 S. 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.

   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.

4. 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.

Petition allowed

P. A. Mohan S/o Late N. P. Armugam v Deputy General Manager, HRM Division, HMT (W) Limited, Bangalore and others

Bench	A. S. BOPANNA
Where Reported	2013 Indlaw KAR 1295

Case No : W.P. No. 40892/2012 (GM-RES)

The Order of the Court was as follows :

1. The case of the petitioner is that one Sri Jagadish, had availed loan of Rs.50,000/- from Sree Thyagaraja Co-operative Bank, Narasimharaja Colony, Bangalore. In respect of the same, the petitioner along with one another had signed as guarantors for the said loan. At an earlier instance, when there was claim with regard to the amount, the matter was considered by the Karnataka Appellate Tribunal ('KAT' for short) in Appeal No.748/2008. In the said proceedings, there was certain interim order against disbursement of the amount to the petitioner. Subsequently, the appeal was disposed of and the matter has been remitted for reconsideration by the Joint Registrar of the Cooperative Societies. The case of the petitioner is that despite the appeal being disposed of, the respondents have without authority withheld a sum of Rs.1,07,000/- which the petitioner is entitled, as the said amount is to be paid to the petitioner as voluntary retirement benefits. It is also the case of the petitioner that the attachment of such benefits is contrary to the provision contained in S. 60 of CPC. It is in that regard, the petitioner is before this Court seeking for issue of mandamus to the respondents to pay the said amount.

2. When a duty is cast on the respondents to obey the orders passed under the provisions of the Act and when the said Act also indicates the consequences that would flow if the order is not adhered, certsinly, the respondents were justified in withholding the amount in view of the order passed by the Joint Registrar of Co-operative Societies on 15.09.2011. If at all, the petitioner is aggrieved by the said order passed by the Competent Authority under the Act, it is for the petitioner to appear before the Authority, seek modification of the same and thereafter, approach the respondents with regard to the payment, if any orders are passed by the Competent Authority. In the absence of such order, certainly the respondents cannot be directed to disburse the amount when they are bound by the orders of the Competent Authority. In that view, I see no reason to issue mandamus as sought for by the petitioner. However, liberty is reserved to the petitioner to avail all the appropriate legal remedies in accordance with law and thereafter approach the respondents.

K T Nijalingappa S/o Thippeswamy and another v State of Karnataka and others

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 1933

Case No : W.P. Nos. 795-796/2012 (CS-EL/M)

The Order of the Court was as follows :

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.

2. Respondent No.4 is a Taluka Agriculture Produce Co-operative 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.

3. 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 Co-operative 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.

4. 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.

   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 Gurudevdatta Vksss Maryadit vs. State of Maharashtra - AIR 2001 SC 1980 2001 Indlaw SC 19874 and in the case of Harshad S. Mehta vs. State of Maharashtra - (2001) 8 SCC 257 2001 Indlaw SC 60, in that regard.

5. 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.

6. 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.

Petitions allowed

Vasavi Credit Co-operative, Society Limited Represented by its Secretary Y. Dasharatram S/o Y. Govindappa v H. L. Manjunath S/o L. Mariyappa

Bench	Anand Byrareddy
Where Reported	2013 Indlaw KAR 2708; 2014 (1) KarLJ 722

Case No : Cr.A. No. 2556 of 2008

The Order of the Court was as follows :

1. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The appellant was the complainant before the Court below alleging of an offence punishable u/s. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I.Act', for brevity). The complainant is a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959. The accused-respondent is said to have issued a cheque to the complainant Society dated 31.10.2006 for a sum of Rs.59,970/- drawn on State Bank of Mysore, in discharge of a legal liability. When the cheque was presented for encashment, it was returned with an endorsement that, funds were insufficient. Therefore, the Society had issued a legal notice as required u/s. 138 of the N.I.Act and followed up with the complaint. On process being issued, the accused had entered appearance and contested the case. The complainant had tendered evidence through P.W.1 and marked documents at Exs.P1 to P8. On completion of the evidence, the statement of the accused was recorded u/s. 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to 'Cr.P.C.', for brevity). The accused had examined himself as D.W.1 and also produced documents at Exs.D1 to D5. After hearing the arguments on both sides, the Court below had framed the following points for consideration:

   However, the Court below has been misdirected by referring to Exs.D1 to D4 pertaining to the arbitration award, which was passed in respect of the loan transaction and the award sought to be executed in the execution petition No.31/2004 having been dismissed for non-prosecution and criminal case filed in C.C.No.407/2004 having been withdrawn as not pressed on account of accused No.1 having absconded and not being traced and the prosecution of that case having become redundant was withdrawn as not pressed, has resulted in the Court below incorrectly presuming that the criminal case was withdrawn and the matter was settled before the Lok Adalath and hence, there was no outstanding liability in respect of which, the cheque could have been issued by the respondent. The Court below further presumed that the cheque which may have been obtained as security for the due discharge of the loan, in the first instance was sought to be misused, notwithstanding the repayment of the money by virtue of the settlement. It is this, which is sought to be highlighted by the learned counsel for the appellant by producing the memo Ex.D4, by drawing attention to the contents of the Ex.D4, which was a memo filed before the criminal Court to withdraw the criminal case as not pressed and that there are no documents to indicate that there was any settlement before the Lok Adalath in discharge of the loan transaction. Hence, the presumption of which, the Court below has proceeded erroneously, has resulted in a

miscarriage of justice. The cheque having been issued on the account of the accused-respondent and the signature on the same is not disputed. Due to the dishonour of the cheque, the cause of action for the complaint arose and hence, the Court below having held that the offence punishable u/s. 138 of N.I.Act not having been proved, is only on the erroneous presumption as aforesaid, and without reference to the actual facts and circumstances.

The sequence of events and material that is placed on record, notwithstanding the vehement contention on the part of the counsel for the appellant that there has been mis-interpretation of the circumstances by the Court below that the matter was never settled as claimed, but according to the ledger extract, the amount was outstanding etc., cannot be readily accepted. In view of independent recording by the Lok Adalath that the matter was settled, it cannot be presumed otherwise on the assertions of the appellant. Therefore, the appeal lacks merit, and is dismissed.

Appeal dismissed

D. V. Chanaveeraiah S/o Late Veeraiah and others v Election Officer Doddagangawadi, Ramnagar and others

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 1197

Case No : W. P. No. 37526/2013 and W. P. Nos. 38689-692/2013 (CS-EL/M)

The Order of the Court was as follows :

1. The grievance made in the writ petitions is that the 4th respondent who was earlier working as a Secretary was placed under suspension by the 2nd respondent-Society. Subsequently, he was reinstated because of the interim order of stay obtained by him in the proceedings initiated by him before the Deputy Registrar of Co-operative Societies, Ramanagar District. After he was reinstated, he has created documents showing that agricultural loan had been sanctioned by manipulating and forging documents thereby causing serious loss to the Society.

2. It is also urged by the petitioners that in order to wreck vengeance against the petitioners and certain others who had made allegations against him, he has not included the names of the petitioners in the voters list. It is urged that the notice dated 30.07.2013 issued to the petitioners as per Annexure-A and other similar notice informing them that they were defaulters and were required to discharge the loan within 15 days, failing which they would not be eligible to either vote in the election or contest to the post of Director was indeed dispatched on 13.08.2013 and were received by the members on 14.08.2013. 15.08.2013 being a holiday, the petitioners had discharged their dues on the next date itself. Thus, it is urged that though there was no default on the part of the petitioners, they have been treated as defaulters and are excluded from the voters list, thereby depriving them of an opportunity to contest the election or to vote in the election.

3. Having heard the learned counsel for the petitioners and the learned High Court Government Pleader, I find that the calendar of events has been published as per Annexure-C on 08.08.2013. This writ petition is filed on 20.08.2013. Election is scheduled to be held on 01.09.2013. Allegations made in the writ petitions are required to be proved by leading evidence. Petitioners have alternative statutory remedy u/s. 70 of the Karnataka Co-operative Societies Act to seek redressal. Therefore, the writ petition cannot be entertained.

Hence, reserving liberty to the petitioners to avail the alternative remedy, petitions are dismissed.

D. V. Shivanna S/o Late Patel Yeerappa and others v Assistant Registrar of Co-Operative Society Mysore Sub Division, Mysore and others

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 1181
Case Digest	**Subject:** Service; Trusts & Associations **Keywords:** Locus Standi, Resignation, Karnataka Co-operative Societies Act, 1959 **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act, 1959, ss. 29C, 70 - In instant W.P., petitioners were calling in question order passed by Karnataka Appellate Tribunal posting the appeal by holding that the locus standi of petitioners who were appellants before Tribunal to maintain appeal had to be examined after other parties were served and that it was not appropriate to grant interim order of stay of the order impugned therein at that stage - Petitioners were President and Directors of the Milk Producers Co-operative Society and aggrieved by the refusal by Tribunal to grant an interim order of stay staying the order passed by the Registrar of Co-operative Societies, by which, Registrar of Co-operative Societies allowed dispute raised u/s. 70 of the 1959 Act - Respondent 2 thereby directing his reinstatement as Secretary of Society along with back wages - Whether, impugned order was entitled to be quashed - Held, after considering the averments made by the parties instant court was of the view that the impugned order passed by the KAT did not disclose that application filed by the petitioner seeking interim stay had been rejected - If KAT was of the view that the application had to be considered only after service of notice on the otherside, it was not necessary for the KAT to express its views holding that grant of stay would tantamount to writing an order on the main matter and that the locus standi of the petitioners herein - And instant court was of the view that, opinion expressed by KAT that consideration of the prayer to stay would tantamount to writing an order on the main matter was incorrect - At stage of grant of interim stay, what all was required to be examined was the prima facie case made out - For that purpose, the merits have to be examined only to express a prima facie view and that would not affect the disposal of the main matter when the case came up for hearing - If KAT were to find that the petitioners herein - Appellants before it had no locus standi, a positive finding in said regard could have been recorded after hearing both the parties, so that the petitioners would know the further course of action they have to take - In the said view order passed by KAT was set aside - And KAT was directed to consider the application filed for grant of interim stay within a time frame - Petition disposed of.

Case No : W. P. No. 38171/2013 (CS-RES)

The Order of the Court was as follows :

1. In this writ petition, petitioners are calling in question the order dated 14.08.2013 passed by the Karnataka Appellate Tribunal (for short, 'the KAT') posting the appeal to 12.11.2013 by holding that the locus standi of the petitioners who are appellants before the KAT to maintain the appeal had to be examined after the other parties were served and that it was not appropriate to grant interim order of stay of the order impugned therein at that stage.

2. Brief facts necessary for the disposal of this writ petition stated in nutshell are that admittedly, respondent No.2 was working as a Secretary of the Society. He submitted his resignation on 15.09.2011. As asserted by the petitioners, the Managing Committee of the Society accepted the same on 16.09.2011 and the acceptance was communicated to the 2nd respondent. However, respondent No.2 sought to withdraw his resignation on 21.09.2011 by submitting a representation. The said representation was rejected by the Managing Committee on 22.09.2011. As a result, the 2nd respondent raised a dispute u/s. 70 of the Act before the 1st respondent.

3. After holding enquiry, the 1st respondent - Registrar of the Co-operative Societies passed an order on 27.06.2013 holding that the resignation given by the 2nd respondent was not voluntary and that the same had been obtained by exerting pressure on him. Consequently, the Society was directed to reinstate the 2nd respondent with all consequential benefits.

4. As a result of the order now passed by the KAT which has virtually declined to grant an interim order of stay, petitioners have been now proceeded against under Section 29C of the Act, for their disqualification alleging that they have violated the order passed by the Registrar. As rightly pointed out by the counsel for the petitioners, such proceeding initiated while the application for stay is yet to be considered would result in serious injury to their rights.

5. In the result and for the foregoing, in my considered view, the appropriate course is to set aside the order passed by the KAT and direct the KAT to consider the application filed for grant of interim stay within a time frame. Though the matter is now listed on 12.11.2013, having regard to the urgency involved, parties are directed to appear before the KAT on 05.09.2013, on which day the KAT shall consider the application for stay and pass orders in accordance with law uninfluenced by the observations made by this Court as regards the merits of the case. Writ Petition is accordingly disposed of.

Raghur Nagaraja Naidu S/o Guruswamy Naidu v Railwaymen's House Building Co-Operative Society Limited, by its Secretary, Bangalore and others

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 1180

Case No : W. P. No. 37512/2013 (CS-EL/M)

The Order of the Court was as follows :

1. Petitioner claims to have joined the 1st respondent- Society as a primary member during the year 2008. Every five years, Directors are elected from amongst the members of the 1st respondent-Society by secret ballot. Out of the elected Directors, office bearers such as President, Vine-President and Treasurer are chosen. The term of the Directors elected during March 2008 has expired in March 2013. Calendar of events have been published on 16.08.2013 for the purpose of holding elections. As per the said calendar of events which is produced at Annexure-L, the last date for filing nominations is 30.08.2013. The date of election is scheduled on 07.09.2013. Though the petitioner intends to contest the election, as his membership is cancelled, his name is not found in the voters list. Having learnt that his name is not found in the voters list published, he has approached this Court seeking a writ of mandamus against the 1st respondent-Society to restore his membership to the Society ana to include his name in the voters list. He has also sought for a direction to respondents 1 to 4 to accept his nomination for the election to the post of Director to the 1st respondent-Society scheduled to be held on 07.09.2013.

2. Having carefully considered the respective contentions of the parties, I find from Annexure-R1 - resolution of the 1st respondent-Society produced along with the statement of objections that the petitioner has been removed from the membership of the society by a resolution passed by the General Body on 22.09.2012. What is sought to be challenged in the writ petition is this action of removal. The other reliefs sought seeking inclusion of the name of the petitioner in the voters list and also to accept the nomination of the petitioner are consequential reliefs which can be granted only after the petitioner succeeds in getting his membership restored. As rightly contended by the learned Counsel for the 1st respondent, the Apex Court in the case of S.S.Rana vs Registrar, Co-Operative Societies & anr. - 2006 AIR SCW 3723, has after referring to several previous decisions of the Apex Court, held as under in paragraph 12:

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

3. In the instant case, no such material is placed before the Court to show that such deep and pervasive control is exercised by the State over the 1st respondent-Society or that it is funded and financed in a major way by the State. Therefore, there are no attributes of the instrumentality of the State or the State present in the 1st respondent-Society to make it amenable to the writ jurisdiction.

4. What is challenged in the writ petition is the Action of the 1st respondent in removing the petitioner from the membership of the Society. This is essentially a dispute between the member/ ex-member of the society and the Society. The redressal of such dispute has to be as per the statutory provisions provided under the Act A writ petition cannot be maintained. As I have held that the 1st respondent is not amenable to writ jurisdiction, as it is not a State under Art. 12 of the Constitution of India, it is unnecessary to refer to the other contentions urged by the learned Counsel for the parties.

5. The decisions relied on by the learned Senior Counsel for the petitioner are of no assistance at this stage, as the same cannot be examined under writ jurisdiction. Hence, without expressing any opinion on the merits of the contentions urged, this writ petition is dismissed reserving liberty to the petitioner to avail the alternative remedy.

Order accordingly

A. Chaithanya S/o Late S. Anjinappa v Additional Registrar of Co-operative Societies (H & M), Bangalore and others

Bench	B. S. PATIL
Where Reported	2013 Indlaw KAR 1151; 2013 (6) KarLJ 399

Case No : W. P. No. 37940/2013 (CS-RES)

The Order of the Court was as follows :

1. This writ petition is filed challenging the order dated 26.04.2013 passed by the 2nd respondent - Joint Registrar of Co-operative Societies vide Annexure-G disqualifying the petitioner from the post of Director of the Managing Committee of the 3rd respondent - Co-operative Society under Section 29-C of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'). This order is passed based on the findings recorded in the enquiry conducted u/s. 64 of the Act and the order passed u/s. 68 of the Act. Aggrieved by this order, the petitioner has preferred an appeal before the Additional Registrar of Co-operative Societies, Bangalore, in Appeal No.5/2013-14. The said appeal has come up before the Additional Registrar on several occasions. Though both the parties have been served and although the petitioner has pressed for an interim order, the Additional Registrar has not passed any order on the application filed seeking interim stay of the order passed by the Joint Registrar of Co-operative Societies disqualifying the petitioner from the post held by him. It is in this background, the petitioner has rushed to this Court, particularly because of the meeting notice dated 16.08.2013 issued by the Secretary of the 3rd respondent - Society vide Annexure-L convening the meeting of the Board of Directors of the 3rd respondent - Society, wherein one of the important subjects for discussion is mentioned as filling up of the vacant post of the Director of the Society by co-option.

2. In the light of the above, the only appropriate order that can be passed in this case is to direct the Additional Registrar to dispose of the application for stay filed in Appeal No.5/2013- 14 by the petitioner challenging the order dated 26.04.2013 passed by the Joint Registrar of Co-operative Societies as expeditiously as possible, at any rate, on the next date of hearing scheduled on 31.08.2013. If, for any reason, on the next date of hearing i.e. 31.08.2013, the application cannot be considered, the same shall be disposed of within a period of two weeks from today. Till the disposal of the appeal, the vacancy that has arisen on account of disqualification of the petitioner shall not be filled up. Writ Petition is accordingly disposed of.

Revannasiddaiah S/o Siddalingaiah v Joint Registrar of Co-operative Societies, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 2712; 2014 (1) KarLJ 85

Case No : W.P. No. 35652 of 2013 (CS-RES)

The Order of the Court was as follows :

1. Alleging commission of misconduct by the petitioner, the 2nd respondent initiated disciplinary proceedings vide Annexure-A, on 04.03.2013. Petitioner filed statement of objections vide Annexure-B, on 15.04.2013. 2nd respondent appointed the 3rd respondent on 16.04.2013, as the Enquiry Officer. Petitioner filed objections and an application on 17.04.2013, stating that he has no confidence in the 3rd respondent and requested him not to proceed with the enquiry.

2. 3rd respondent having rejected the request petitioner filed a dispute vide Annexure-D, under S. 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'), before the 1st respondent. On 24.06.2013, the 2nd respondent flied an application in the dispute, to raise preliminary issue regarding maintainability of the dispute. Petitioner filed an application on 29.07.2013, vide Annexure-F and sought permission to amend the dispute. The 1st respondent by an Order dated 29.07.2013, as at Annexure-G, having dismissed the dispute on the bar of jurisdiction, this writ petition has been filed.

3. The 1st respondent having found that he has no jurisdiction to entertain and decide the dispute, has fallen in error in dismissing the dispute, instead of returning the dispute petition to the petitioner for presentation to-the proper forum, on the analogy of the provision in Order VII Rule 10 of CPC, which is clear and specific.

   The Court or Tribunal, at any stage of the proceeding can return the plaint/petition, to be presented to the Court or Tribunal in which it should have been instituted, subject to the provision of Rule 10-A of Order VII of CPC. In the circumstances, the view taken by the 1st respondent, to dismiss the petition, being arbitrary and illegal, the impugned order is liable to be quashed.

4. In the result, writ petition is allowed and the order as at Annexure-G is quashed. The 1st respondent is directed to return the dispute as at Annexure-D and the application as at Annexure-F, to the petitioner, for its presentation to the Joint Registrar of Co-operative Societies attached to the Karnataka State Co-operative Urban Banks Federation Ltd., Bengaluru, within a period of one week from the date of receipt of a copy of this Order.

5. The dispute when presented, the Joint Registrar of Co-operative Societies attached to the Karnataka State Co-operative Urban Banks Federation Ltd., Bengaluru, shall issue notice to both parties and decide the case in accordance with law.

Prathamik Krishi Pathina Sahakara Sangha, Koppal By its Secretary Pranesh v State of Karnataka and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1254

Case No : W.P. No. 30777/2013 (CS-RES)

The Order of the Court was as follows :

1. Main prayer in this writ petition is for a declaration that the second proviso to sub-s. (1) of S.63 of the Karnataka Co-operative Act, 1959 (for short, 'the Act'), as amended by S.34 of Karnataka Act No.3 of 2013, as unconstitutional and void and for quashing of the consequential communication - panel of Auditors, sent by the Director of Co-operative Audit and for grant of consequential reliefs.

   (i) Whether restricting the choice of a Co-operative Society to a panel of auditors and auditing firms, not exceeding ten. by the second proviso to sub-s. (1) of S. 63 of the Act is arbitrary and violative of the proviso to cl. (3) of Article 243ZM of the Constitution? Whether the restriction is also violative of Art. 19(1)(c) & (g) of the Constitution?

   Upon consideration of the rival contentions and while allowing the writ petitions on 05.07.2013, it has been held as follows:

   "1. In my opinion, the restriction imposed by the second proviso to sub-s. (1) of S. 63 of the Act *restricting the choice of a Co-operative Society to choose an Auditor or an Auditing firm from a panel of auditors & auditing firms, not exceeding ten, is arbitrary and violative of Art. 14 of the* Constitution. *It is also violative of the proviso to cl. (3) of Article 243ZM of the* Constitution *as the said constitutional proviso provides for a panel for the State i.e. one panel for the State and also gives a choice to every co-operative Society to choose any of the eligible auditors or auditing firms from the said panel. Hence, providing separate panels of a few names to every Co-operative Society in the State as per the impugned proviso is violative of the Constitutional proviso. Though u/s. 13(2) of the* General Clauses Act, 1897*, words in the singular shall include the plural, and vice versa, the context does not admit of such a interpretation of the Constitutional proviso i.e permitting plurality of panels, like giving separate panels of a few names to every Co-operative Society in the State as is done now. Any law which contravenes the Constitutional provisions is unconstitutional and void. Therefore, the second proviso to sub-s. (1) of S. 63 of* the Act *which restricts the choice of a Co-operative Society to choose an auditor or an auditing firm from a panel, not exceeding ten, is unconstitutional and void being violative of Art. 14 and the proviso to cl. (3) of Article 243ZM of the* Constitution. *Consequently, the communication sent to each of the petitioners giving a panel of only three names of auditors & auditing firms to select any one of them from the said panel to audit the accounts of their respective Co-operative Societies is also illegal. In the view I have taken, it is unnecessary to examine the contention re.*

violation of the fundamental rights u/arts. 19(1)(c) & (g) of the Constitution*. F or the reasons stated above, I make the following order:*

The second proviso to sub-s. (1) of S. 63 of the Karnataka Co-operative Societies Act, 1959 *is declared as unconstitutional and void and shall not be given effect to. Consequently, impugned communications are also set aside."*

Following the Order, noticed supra, this writ petition is allowed. Since sub-s. (1) of S.63 of the Act, as amended by S.34 of Karnataka Act No.3 of 2013 having already been declared as unconstitutional, void and be not given effect to, it is unnecessary to grant the main declaratory relief prayed in this petition. However, in view of the Order, noticed supra, the impugned panel of auditors vide Annexure-C being arbitrary is quashed. Consequently, the petitioner shall get its accounts audited, in accordance with law.

A. M. Bhaskar S/o A. L. Mahadevegowda and others v State of Karnataka, Department of Education (Universities), Bangalore and others

Bench	Ashok B. Hinchigeri
Where Reported	2013 Indlaw KAR 1066; 2013 (5) KarLJ 519

Case No : W.P. Nos. 25964-25967 of 2013 (EDN-RES) C/W W.P. No. 25612/2013 and W.P. Nos. 26170-26171/2013 W.P. Nos. 25964-25967/2013

The Order of the Court was as follows :

1. The learned Advocate General has also relied on this Court's decision in the case of Premalatha v. The State of Karnataka and another reported in 2002(1) KCCR 424 wherein it is held that the pleasure appointment can always be cancelled without notice to the nominees. There is no question of observing the principles of natural justice in the case of the pleasure appointments. He submits that the Premalatha's case (supra) was in the context of S. 29(3) of the Karnataka Co-operative Societies Act, 1959 ('KCS Act' for short). He submits that the provision contained in S. 39(1) of the Karnataka State Universities Act, 2000 are similar to the provisions contained in S. 29(3) of the KCS Act. He submits that pleasure and displeasure are the two faces of the same coin. The petitioners cannot accept one face and refuse to accept the other face. The petitioners' nominations by their very nature are vulnerable to the exercise of pleasure doctrine.

2. The provisions contained in S. 29(3) of the Karnataka Co-operative Societies Act, 1959 and the provisions contained in S. 39(1) of the Karnataka State Universities Act, 2000 are almost similar:

THE Karnataka State Universities Act, 2000	THE Karnataka Co-Operative Societies Act, 1955?
39. Restriction of holding the membership of the authorities: (1) Any member nominated of any of the authorities under this Act shall hold office during the pleasure of the nominating authority concerned."	29. Nominees of Government on the committee of an assisted co-operative society. -
	(1) xxxxxxxxxx
	(2) xxxxxxxxxx
	(3) The persons nominated as a member of co-operative society under sub-s. (1) shall hold office as such member during the pleasure of the State Government.

3. For all the aforesaid reasons, I answer question No.(ii) in the negative. The impugned orders cannot be assailed with any rate of success on the ground that no reasons exist for the removal of the petitioners.

4. W.P.Nos. 25964-25967/2013 are liable to be dismissed for an additional reason too. The said petitioners have accepted the Mysore University's notification, dated 23.4.2012 (Annexurc-B1), which states that they are nominated for a period of three years or until further orders, whichever is earlier. Having accepted such an order or notification with their eyes wide open, they cannot turn around and say that they have a fixed term of office for three years.

Bagepalli Town Co-Op. Society Limited, Chikkaballapura by its Secretary S. Satyanarayana Rao v State of Karnataka and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1083

Case No : W.P. No. 30736/2013 (CS-RES)

The Order of the Court was as follows :

1. Main prayer in :his writ petition is for a declaration that the second proviso to sub-s. (1) of S.63 of the Karnataka Co-operative Act, 1959 (for short, the Act), as amended by S.34 of Karnataka Act No.3 of 2013, as unconstitutional and void and for quashing of the consequential communication - panel of Auditors, sent by the Director of Co-operative Audit and for grant of consequential reliefs.

   "9. In my opinion, the restriction imposed by the second proviso to sub-s. (1) of S. 63 of the Act *restricting the choice of a Co-operative Society to choose an Auditor or an Auditing firm from a pane! of auditors & auditing firms, not exceeding ten, is arbitrary and violative of Art. 14 of the* Constitution. *It is also violative of the proviso to cl. (3) of Article 243ZM of the* Constitution *as the said constitutional proviso provides for a panel for the State i.e. one panel for the State and also gives a choice to every co-operative Society to choose any of the eligible auditors or auditing firms from the said panel. Hence, providing separate panels of a few names to every Co-operative Society in the State as per the impugned proviso is violative of the Constitutional proviso. Though u/s. 13(2) of the* General Clauses Act, 1897, *words in the singular shall include the plural, and vice versa, the context does not admit of such a interpretation of the Constitutional proviso i.e. permitting plurality of panels, like giving separate panels of a few names to every Co-operative Society in the State as is done now. Any law which contravenes the Constitutional provisions is unconstitutional and void. Therefore, the second proviso to sub-s. (1) of S. 63 of* the Act *which restricts the choice of a Co-operative Society to choose an auditor or an auditing firm from a panel, not exceeding ten, is unconstitutional and void being violative of Art. 14 and the proviso to cl. (3) of Article 243ZM of the* Constitution. *Consequently, the communication sent to each of the petitioners giving a panel of only three names of auditors & auditing firms to select any one of them from the said panel to audit the accounts of their respective Co-operative Societies is also illegal. In the view I have taken, it is unnecessary to examine the contention re. violation of the fundamental rights u/arts. 19(1)(c) & (g) of the* Constitution. *For the reasons stated above, I make the following order:*

   "The second prov;so to sub-s. (1) of S. 63 of the Karnataka Co-operative Societies Act, 1959 *is declared as unconstitutional and void and shall not be given effect to. Consequently, impugned communications are also set aside."*

Following the Order, noticed supra, this writ petition is allowed. Since sub-s. (1) of S.63 of the Act, as amended by S.34 of Karnataka Act No.3 of 2013 having already been declared as unconstitutional, void and be not given effect to, it is unnecessary to grant the main declaratory relief prayed in this petition. However, in view of the Order, noticed supra, the impugned panel of auditors vide Annexure-C is quashed. Consequently, the petitioner shall get its accounts audited, in accordance with law.

Chandrakanth S/o Subramanya v Manager Urban Co-Operative Bank Limited, Shimoga and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1067

Case No : W.P. No. 2738/2012 (CS-RES)

The Order of the Court was as follows :

1. This petition was filed on 23.01.2012, to quash an arbitration award, as at Annexure-E and the judgment of the Karnataka Appellate Tribunal, as at Annexure-H. The petitioner was directed to pay the determined amount with interest as per the aforesaid award, which has been affirmed by the Karnataka Appellate Tribunal in an appeal filed u/s. 105 of the Karnataka Co-operative Societies Act, 1959.
2. On 10.02.2012, a submission having been made on behalf of the petitioner that, if notice is issued to the respondent - Bank, there is possibility of settlement between the parties and that the petitioner in order to show his bonafides is prepared to deposit 50% of the amount in this Court within one week, accepting the statement made, notice was ordered to be issued to the respondents and it was made clear that if the petitioner fails to deposit the amount as undertaken before the next date, the petition shall stand dismissed for non-prosecution without reference to the Court.
3. The said order having not been complied with, on 10.06.2013, Sri. Mahabaleshwara Rao, learned Advocate appearing for the petitioner submitted that the petitioner is ready to deposit Rs.4,00,000/- towards full and final settlement of the claim made by the first respondent - Bank. In view of the said submission, the petitioner was directed to deposit Rs.2,00,000/- in the first instance, in the Registry, within two weeks and further sum of Rs.2,00,000/- within four weeks.
4. On 24.06.2013, one more opportunity was granted to the petitioner to comply with the undertaking/ statement made before this Court on 10.02.2012. The petitioner was put on notice that, if the deposit is not made on or before 12.07.2013, the writ petition would be dismissed in limine.
5. The petitioner cannot play fast and loose with the Court. His word to the Court is as good as his bond and hence, I must negative his case.

In view of the petitioner's failure to adhere to the undertaking given to this Court on 10.02.2012 and the statement made on 10.06.2013, I do not find any justification to entertain this petition. Hence the writ petition is rejected.

Davanagere Harihara Central Co-op. Whole Sale Stores Limited By its Manager v State of Karnataka and another

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1065

Case No : W.P. No. 17136/2013(CS-BL)

The Order of the Court was as follows :

1. Main prayer in this writ petition is for a declaration that the second proviso to sub-s. (1) of S.63 of the Karnataka Co-operative Act, 1959 (for short, 'the Act'), as amended by S.34 of Karnataka Act No.3 of 2013, as unconstitutional and void and for quashing of the consequential communication - panel of Auditors, sent by the Director of Co-operative Audit and for grant of consequential reliefs.

   (i) Whether restricting the choice of a Co-operative Society to a panel of auditors and auditing firms, not exceeding ten, by the second proviso to sub-s. (1) of S. 63 of the Act is arbitrary and violative of the proviso to cl. (3) of Article 243ZM of the Constitution? Whether the restriction is also violative of Art. 19(1)(c) & (g) of theConstitution?

   "9. In my opinion, the restriction imposed by the second proviso to sub-s. (1) of S. 63 of the Act *restricting the choice of a Co-operative Society to choose an Auditor or an Auditing firm from a panel of auditors & auditing firms, not exceeding ten, is arbitrary and violative of Art. 14 of the*Constitution*. It is also violative of the proviso to cl. (3) of Article 243ZM of the*Constitution *as the said constitutional proviso provides for a panel for the State i.e. one panel for the State and also gives a choice to every co-operative Society to choose any of the eligible auditors or auditing firms from the said panel. Hence, providing separate panels of a few names to every Co-operative Society in the State as per the impugned proviso is violative of the Constitutional proviso. Though u/s. 13(2) of the* General Clauses Act, 1897*, words in the singular shall include the plural, and vice versa, the context does not admit of such a interpretation of the Constitutional proviso i.e. permitting plurality of panels, like giving separate panels of a few names to every Co-operative Society in the State as is done now. Any law which contravenes the Constitutional provisions is unconstitutional and void. Therefore, the second proviso to sub-s. (1) of S. 63 of* the Act *which restricts the choice of a Co-operative Society to choose an auditor or an auditing firm from a panel, not exceeding ten, is unconstitutional and void being violative of Art. 14 and the proviso to cl. (3) of Article 243ZM of the*Constitution*. Consequently, the communication sent to each of the petitioners giving a panel of only three names of auditors & auditing firms to select any one of them from the said panel to audit the accounts of their respective Co-operative Societies is also illegal. In the view I have taken, it is unnecessary to examine the contention re. violation of the fundamental rights u/arts. 19(1)(c) & (g) of the*Constitution*. For the reasons stated above, I make the following order:*

Following the Order, noticed supra, this writ petition is allowed. Since sub-s. (1) of S.63 of the Act, as amended by S.34 of Karnataka Act No.3 of 2013 having already been declared as unconstitutional, void and be not given effect to, it is unnecessary to grant the main declaratory relief prayed in this petition. However, in view of the Order, noticed supra, the impugned panel of auditors vide Annexure-C is quashed. Consequently, the petitioner shall get its accounts audited, in accordance with law.

Haramaghatta Milk Producers Co-Operative Society Limited and others v State of Karnataka and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1050

Case No : W.P. Nos. 30050-30062/2013 (CS-RES)

The Order of the Court was as follows :

1. Main prayer in these writ petitions is for a declaration that the second proviso to sub-s. (1) of S.63 of the Karnataka Co-operative Act, 1959 (for short, the Act), as amended by s. 34 of Karnataka Act No.3 of 2013, as unconstitutional and void and for quashing of the consequential communications - panels of Auditors, sent by the Director of Co-operative Audit and for grant of consequential reliefs.

   (i) Whether restricting the choice of a Co-operative Society to a panel of auditors and auditing firms, not exceeding ten by the second proviso to sub-s. (1) of S. 63 of the Act is arbitrary and violative of the proviso to cl. (3) of Article 243ZM of theConstitution? Whether the restriction is also violative of Art. 19(1)(c) & (g) of theConstitution?

   "9. In my opinion, the restriction imposed by the second proviso to sub-s. (1) of S. 63 of the Act *restricting the choice of a Co-operative Society to choose an Auditor or an Auditing firm from a panel of auditors & auditing firms, not exceeding ten, is arbitrary and violative of Art. 14 of the*Constitution*. It is also violative of the proviso to cl. (3) of Article 243ZM of the*Constitution *as the said constitutional proviso provides for a panel for the State i.e. one panel for the State and also gives a choice to every co-operative Society to choose any of the eligible auditors or auditing firms from the said panel. Hence, providing separate panels of a few names to every Co-operative Society in the State as per the impugned proviso is violative of the Constitutional proviso. Though u/s. 13(2) of the* General Clauses Act, 1897*, words in the singular snail include the plural, and vice versa, the context does not admit of such a interpretation of the Constitutional proviso i.e permitting plurality of panels, like giving separate panels of a few names to every Co-operative Society in the State as is done now. Any law which contravenes the*Constitutional *provisions is unconstitutional and void. Therefore, the second proviso to sub-s. (1) of S. 63 of* the Act *which restricts the choice of a Co-operative Society to choose an auditor or an auditing firm from a panel, not exceeding ten, is unconstitutional and void being violative of Art. 14 and the proviso to cl. (3) of Article 243ZM of the*Constitution*. Consequently, the communication sent to each of the petitioners giving a panel of only three names of auditors & auditing firms to select any one of them from the said panel to audit the accounts of their respective Co-operative Societies is also illegal. In the view I have taken, it is unnecessary to examine the contention re. violation of the fundamental rights u/arts. 19(1)(c) & (g) of the*Constitution*. For the reasons stated above, I make the following order:*

The second proviso to sub-s. (1) of S. 63 of the Karnataka Co-operative Societies Act, 1959 *is declared as unconstitutional and void and shall not be given effect to. Consequently, impugned communications are also set aside."*

Following the Order, noticed supra, these writ petitions are allowed. Since sub-s. (1) of S.63 of the Act, as amended by S.34 of Karnataka Act No.3 of 2013 having already been declared as unconstitutional, void and be not given effect to, it is unnecessary to grant the declaratory relief prayed in these petitions. However, in view of the Order, noticed supra, the impugned panels of auditors vide Annexures-C1 to C13 are quashed. Consequently, the petitioners shall get their respective accounts audited, in accordance with law.

Mundaje Co-Op. Agricultural Society Limited, Dakshina Kannada By its CEO S. M. Shivanna Gowda v State of Karnataka and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1082

Case No : W.P. No. 30735/2013 (CS-RES)

The Order of the Court was as follows :

1. Main prayer in his writ petition is for a declaration that the second proviso to sub-s. (1) of S.63 of the Karnataka Co-operative Act, 1959 (for short, the Act), as amended by S.34 of Karnataka Act No.3 of 2013, as unconstitutional and void and for quashing of the consequential communication - panel of Auditors, sent by the Director of Co-operative Audit and for grant of consequential reliefs.

2. Heard the learned advocates on both the sides.

3. Seeking identical reliefs, certain co-operative societies, registered under the provisions of the Act, had filed W.P.Nos.79003-79014/2013. After hearing, the following questions were raised therein, for determination:

   (i) Whether restricting the choice of a Co-operative Society to a panel of auditors and auditing firms, not exceeding ten, by the second proviso to sub-s. (1) of S. 63 of the Act is arbitrary and violative of the proviso to cl. (3) of Article 243ZM of the Constitution? Whether the restriction is also violative of Art. 19(1)(c) & (g) of the Constitution?

   "9. In my opinion, the restriction imposed by the second proviso to sub-s. (1) of S. 63 of the Act *restricting the choice of a Co-operative Society to choose an Auditor or an Auditing firm from a pane! of auditors & auditing firms, not exceeding ten, is arbitrary and violative of Art. 14 of the* Constitution*. It is also violative of the proviso to cl. (3) of Article 243ZM of the* Constitution *as the said constitutional proviso provides for a panel for the State i.e. one panel for the State and also gives a choice to every co-operative Society to choose any of the eligible auditors or auditing firms from the said panel. Hence, providing separate panels of a few names to every Co-operative Society in the State as per the impugned proviso is violative of the Constitutional proviso. Though u/s. 13(2) of the* General Clauses Act, 1897*, words in the singular shall include the plural, and vice versa, the context does not admit of such a interpretation of the Constitutional proviso i.e. permitting plurality of panels, like giving separate panels of a few names to every Co-operative Society in the State as is done now. Any law which contravenes the Constitutional provisions is unconstitutional and void. Therefore, the second proviso to sub-s. (1) of S. 63 of* the Act *which restricts the choice of a. Co-operative Society to choose an auditor or an auditing firm from a panel, not exceeding ten, is unconstitutional and void being violative of Art. 14 and the proviso to cl. (3) of Article 243ZM of the*Constitution*. Consequently, the communication sent to each of the petitioners giving a panel of only three names of auditors & auditing firms to select any one*

*of them from the said panel to audit the accounts of their respective Co-operative Societies is also illegal. In the view I have taken, it is unnecessary to examine the contention re. violation of the fundamental rights u/arts. 19(1)(c) & (g) of the*Constitution*. For the reasons stated above, I make the following order:*

The second proviso to sub-s. (1) of S. 63 of the Karnataka Co-operative Societies Act, 1959 *is declared as unconstitutional and void and shall not be given effect to. Consequently, impugned communications are also set aside."*

Following the Order, noticed supra, this writ petition is allowed. Since sub-s. (1) of S.63 of the Act, as amended by S.34 of Karnataka Act No.3 of 2013 having already been declared as unconstitutional, void and be not given effect to, it is unnecessary to grant the main declaratory relief prayed in this petition. However, in view of the Order, noticed supra, the impugned panel of auditors vide Annexure-C is quashed. Consequently, the petitioner shall get its accounts audited, in accordance with law.

No costs.

Petition allowed

Vyavasaya Seva Sahakara Sangha Niyamitha, Tumkur District, By its CEO P. M. Subramanayam and others v State of Karnataka and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 1081

Case No : W.P. Nos. 29671-29677/2013

The Order of the Court was as follows :

1. Main prayer in these writ petitions is for a declaration that the second proviso to sub-s. (1) of S.63 of the Karnataka Co-operative Act, 1959 (for short, the Act), as amended by S.34 of Karnataka Act No.3 of 2013, as unconstitutional and void and for quashing of the consequential communications - panels of Auditors, sent by the Director of Co-operative Audit and for grant of consequential reliefs.

   (i) Whether restricting the choice of a Co-operative Society to a panel of auditors and auditing firms not exceeding ten, by the second proviso to sub-s. (1) of S. 63 of the Act is arbitrary and violative of the proviso to cl. (3) of Article 243ZM of theConstitution? Whether the restriction is also violative of Art. 19(1)(c) & (g) of theConstitution?

   "9. In my opinion, the restriction imposed by the second proviso to sub-s. (1) of S. 63 of the Act *restricting the choice of a Co-operative Society to choose an Auditor or an Auditing firm from a panel of auditors & auditing firms, not exceeding ten, is arbitrary and violative of Art. 14 of the*Constitution*. It is also violative of the proviso to cl. (3) of Article 243ZM of the*Constitution *as the said constitutional proviso provides for a panel for the State i.e. one panel for the State and also gives a choice to every co-operative Society to choose any of the eligible auditors or auditing firms from the said panel. Hence, providing separate panels of a few names to every Co-operative Society in the State as per the impugned proviso is violative of the Constitutional proviso. Though u/s. 13(2) of the* General Clauses Act, 1897*, words in the singular shall include the plural, and vice versa, the context does not admit of such a interpretation of the Constitutional proviso i.e. permitting plurality of panels, like giving separate panels of a few names to every Co-operative Society in the State as is done now. Any law which contravenes the Constitutional provisions is unconstitutional and void. Therefore, the second proviso to sub-s. (1) of S. 63 of* the Act *which restricts the choice of a Co-operative Society to choose an auditor or an auditing firm from a panel, not exceeding ten, is unconstitutional and void being violative of Art. 14 and the proviso to cl. (3) of Article 243ZM of the*Constitution*. Consequently, the communication sent to each of the petitioners giving a panel of only three names of auditors & auditing firms to select any one of them from the said panel to audit the accounts of their respective Co-operative Societies is also illegal. In the view I have taken, it is unnecessary to examine the contention re. violation of the fundamental rights u/arts. 19(1)(c) & (g) of the* Constitution*. For the reasons stated above, I make the following order:*

The second proviso to sub-s. (1) of S. 63 of the Karnataka Co-operative Societies Act, 1959 *is declared as unconstitutional and void and shall not be given effect to. Consequently, impugned communications are also set aside."*

Following the Order, noticed supra, these writ petitions are allowed. Since sub-s. (1) of S.63 of the Act, as amended by S.34 of Karnataka Act No.3 of 2013 having already been declared as unconstitutional, void and be not given effect to, it is unnecessary to grant the declaratory relief prayed in these petitions. However, in view of the Order, noticed supra, the impugned panels of auditors vide Annexures - C to J are quashed. Consequently, the petitioners shall get their respective accounts audited, in accordance with law.

No costs.

Petitions allowed

Devoji Rao S/o late Narasimhaiah v Tumkur Co-operative Milk Producers Societies Union Limited and another

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 978
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Karnataka Co-operative Societies Act, 1959, Industrial Disputes (Karnataka Amendment) Act 1946 **Summary:** Labour & Industrial Law - Industrial Disputes (Karnataka Amendment) Act 1946, s. 10(4A) - Karnataka Co-operative Societies Act, 1959, ss. 70A(2), 70 - Dismissal from service - Legality - Petitioner joined service of respondent no. 1 as a Helper - Petitioner was dismissed from service - Petitioner instituted Industrial Dispute against order of dismissal before Labour Court and same was withdrawn - Accordingly a dispute was filed before respondent no. 2 u/s. 70 of 1959 Act - An application was filed seeking condonation of delay of 508 days in filing dispute and same was allowed - Aggrieved by said order respondent no. 1 filed revision before Tribunal - Tribunal allowed the same and set aside order passed by respondent no. 2 - Hence instant petition - Whether order passed by Tribunal and order passed by respondent no. 2 warrant any interference - Held, cause of action for dispute was order of dismissal and closure of dispute by Labour Court on account of availability of remedy under provisions of Act - Application filed by petitioner was allowed by Arbitrator without conducting any enquiry - When statement of objections was filed to application, respondent no. 2 ought to have granted opportunity to both parties to adduce evidence in support of their respective pleadings - By not doing so and in allowing application, respondent no. 2 had committed an arbitrary act - Tribunal was justified in interfering with said order - However, Tribunal ought to have remanded matter to respondent no. 2 for reconsideration by directing parties to adduce evidence - Same was not been done, order passed by Tribunal being vitiated was unsustainable - Impugned order was quashed - Order passed by respondent no. 2 was set aside by Tribunal, matter was remanded to respondent no. 2 for consideration - Respondent no. 2 was directed to grant an opportunity to both parties to adduce evidence and then decide the application filed for condonation of delay - Petition allowed.

Case No : W.P. No. 22245/2013 (CS-RES)

The Order of the Court was as follows :

1. Petitioner had joined service of the 1st respondent as a Helper. He was dismissed from the service on 26.12.1996. The order of dismissal become the subject matter in I.D.No.11/1997 on the file of the Labour Court, Bangalore. On 30.10.2003 a Memo having been filed for withdrawal of the dispute and to approach the competent forum for the relief, the dispute was closed.

2. Petitioner filed a dispute on 23.03.2011, before the 2nd respondent, under S.70 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). An application was filed seeking condonation of delay of 508 days in filing the dispute. The 1st respondent having filed objections to the said application, the 2nd respondent passed an order on 30.01.2012 and allowed the application seeking condonation of delay. The 1st respondent assailed the said order in R.P.No.43/2012 before the Karnataka Appellate Tribunal (for short 'the Tribunal). The Tribunal by an order dated 05.03.2013 allowed the revision petition and set aside the order passed by the 2nd respondent on 30.01.2012. Assailing the said order, this writ petition has been filed.

   When statement of objections has been filed to the application, the 2nd respondent ought to have granted opportunity to both the parties to adduce evidence in support of their respective pleadings. By not doing so and in allowing the application on 30.01.2012, the 2nd respondent has committed an arbitrary act. Thus, the Tribunal is justified in interfering with the said order. However, the Tribunal ought to have remanded the matter to the 2nd respondent for reconsideration by directing the parties to adduce evidence. The same having not been done, the order passed by the Tribunal on 29.05.2013 being vitiated is unsustainable.

   In the result, writ petition is allowed and the impugned order is quashed. The order passed by the 2nd respondent having been set aside by the Tribunal on 30.01.2012, the matter is remanded to the 2nd respondent for consideration and decision by keeping in view the observations made supra. The 2nd respondent is directed to grant an opportunity to both the parties to adduce evidence and then decide the application filed for condonation of delay. Both the parties are directed to appear before the 2nd respondent on 29.07.2013 and receive further orders. The 2nd respondent is directed to decide the application before 31.10.2013.

Hanumanthappa S/o Hanumappa Kuri v Assistant Registrar of Co-operative Societies, Koppal and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 899

Case No : W.P. Nos. 20854-20855/2013 (CS-RES)

The Order of the Court was as follows :

1. In Surcharge Case No.3/2011-2012 filed by the 2nd respondent against the petitioner, an order dated 31.08.2012 as at Annexure-A having been passed by the 1st respondent and the petitioner having been directed to pay Rs3,39,198/- with interest at 12% p.a., the petitioner las filed Appeal No.658/2012 before the Karnataka Appellate Tribunal at Bangalore. Appellant - petitioner laving been directed to comply with the requirement of S. 105(2) of Karnataka Co-operative Societies Act, 1959 (for short, the Act), these writ petitions have been filed to:

   (a) strike down S. 105(2) of the Act inserted by Karnataka Co-operative Societies (Amendment) Act, 2010, in sc far as directing deposit of money in cases of order for recovery of money under S.69 of the Act;

   (b) quash the proceedings in Surcharge Case No. 3/2011-2012 on the file of the Asst. Registrar of Co-operative Societies, Koppal and (c) quash the order dated 31.08.2011 passed in Surcharge Case No.3/2011-2012 on the file of Asst. Registrar of Co- operative Societies., Koppal.

2. In W.P.No.32097/2010 filed by Badami Sugars Limited, it was contended that S. 105(2) of the Act, insisting deposit of 25% of the Award amount at the time of filing the appeal is unconstitutional. By an order dated 15.09.2011, it was held that insisting deposit of 25% of the Award amount vide S. 105 of the Act is not violative of the Constitution.

3. In W.P.No.25784/2010, filed by Sm1-. Nirmalo P. Kini, questioning the Constitutional validity of S.105(2) of the Act on the ground that it is violative of Art. 14 of the Constitution of India and that it is also arbitrary and unreasonable, it was held that the provision cannot be termed as onerous and the contention that the provision is unconstitutional was rejected by an order dated 28.02.2012.

   In the result, writ petitions being devoid of merit, are rejected. However, the petitioner is granted six weeks' time to deposit 25% of the amount as ordered by the Assistant Registrar of Co-operative Societies, Koppal, in Surcharge Case No.3/2.011-2012, with the Karnataka State Government Employees House Building Co-operative Societies Ltd., Yellaburga.

   The said Society shall immediately invest the deposited sum in Fixed Deposit in any nationalized Bank for a period of one year and renew the deposit till he Appeal No.658/2012 is decided by the Karnataka Appellate Tribunal. The deposit shall be subject to the final outcome in Appeal No.656/2012 on the file of the Karnataka Appellate Tribunal.

K.N. Ningappa S/o Nagappa v Joint Secretary, Department of Co-operation, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 981

Case No : W.P. No. 10814/2012(CS-RES)

The Order of the Court was as follows:

1. Dispute filed by the petitioner before Joint Registrar of Co-operative Societies, Bangalore Region, Bangalore, was allowed and an Award dated 11.02.2008 vide Annexure-A was passed against the Managing Director & Member Secretary, DCC Bank, Davanagere and the Managing Director, DCC Bank, Chitradurga. W.P.No. 13295/2009 filed by the petitioner was disposed of on 23.09.2011, recording the submission of the learned counsel for the petitioner and by reserving liberty to the petitioner to seek relief for realization of the benefit of the said Award by having recourse to the proceedings under S.101 of the Karnataka Co-operative Societies Act, 1959 (for short, the Act) in the first instance and thereafter by having recourse to a proceeding under S.109 of the Act. Petitioner having issued a notice to the Managing Director and Member Secretary, Common Cadre Committee, Davanagare District Co-operative Central Bank, vide Annexure-C, filed an Execution Case vide Annexure-D before the Assistant Registrar of Co-operative Societies, Davanagere Sub-Division. The 2nd respondent has issued an endorsement dated 21.03.2012 as at Annexure-E. Assailing the said endorsement, this writ petition has been filed.

2. An Award under S.71 of the Act vide Annexure-A has been passed in favour of the petitioner and the said Award has become final. The petitioner filed Execution Case under S.101(1) of the Act before the 2nd respondent. The 2nd respondent ought to have executed the said Award in terms of S.101(1)(b) of the Act. Instead, the endorsement issued as at Annexure-E is arbitrary and illegal.

   In the result, writ petition is allowed and the impugned endorsement is quashed. Consequently, the 2nd respondent is directed to proceed further with the Execution Case vide Annexure-D keeping in view the observation made supra and in accordance with law.

   The petitioner and the 4th respondent are directed to appear before the 2nd respondent on 12.07.2013 and receive further orders. The 2nd respondent is directed to complete the process of execution expeditiously and within a period of four months from the date of first appearance of the petitioner and the 4th respondent.

Petition allowed

K. S. Ganesh S/o Late K. E. Subbachar and another v Karnataka Legislature Secretariat Employees Housing Co-operative Society Limited, Having its registered office at Vidharia Soudha, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 951

Case No : W.P. Nos. 19148-19149/2013 (CS-RES)

The Order of the Court was as follows :

1. W.P.Nos.36617-18/2011 filed by the petitioners were disposed of on 03.04.2012, directing the 3rd respondent to complete the enquiry under S.64 of the Karnataka Co-operative Societies Act, 1959 (for short, the Act), within a period of five months and till the conclusion of the enquiry and until appropriate decision is taken based on the enquiry report, the 1st respondent - Society was directed to scrupulously follow the directions issued by the Registrar of Co-operative Societies, vide Annexure-A to the said writ petitions and reserve sites formed in BDA approved layouts belonging to the 1st respondent - Society for the purpose of allotment in favour of the petitioners, as per their seniority.
2. These writ petitions were filed alleging that the 1st respondent failed to submit an explanation to the 2nd respondent and that there is total inaction on the part of the 2nd respondent subsequent to the passing of the order as at Annexure-C and hence, for issue of appropriate direction to respondent No.2 to take necessary action against the Committee of Management of the 1st respondent - Society.
3. 1st respondent has filed statement of objections to these writ petitions, with which Annexures-R1(1) & R1(2) have been produced. Annexure-R1(1) shows that the 1st respondent submitted compliance report to the 2nd respondent in response to the order as at Annexure-C. The 2nd respondent has passed an order as at Annexure-R1(2), on 24.04.2013, wherein, he has issued directions to the Managing Committee of the 1st respondent - Society. The Managing Committee of the Society has been directed to act in the interest of the Society and its Members and take responsible action.
4. In view of Annexures-R1(1) & R1(2) and the stand taken by the 1st respondent in the statement of objections filed to these writ petitions on 19.06.2013, Sri K.R. Lakshminarayana Rao, learned advocate appearing for the petitioners seeks permission to withdraw the writ petitions and avail relief in accordance with law.
5. Submission of the learned counsel is recorded.

Writ petitions are disposed of as withdrawn. It is open to the petitioners to avail relief in accordance with law, in view the order passed by the 2nd respondent as at Annexure-C and the direction issued vide Annexure-R1(2), on the compliance report submitted by the 1st respondent - Society vide Annexure-R1(1).

Ram Pejawar S/o Late S. R. Pejawar v Joint Registrar of Co-Operative Societies Department of Co-Operation, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 2636; 2013 (4) KarLJ 414

Case No : W.P. No. 19928/2013 (CS-RES)

The Order of the Court was as follows :

1. Petitioner is the member of Dattaprasad Co-operative Society Limited. Respondents 2 and 3 have filed a dispute u/s. 70 of the Karnataka Co-operative Societies Act, 1959 against the petitioner and the Society, before the first respondent.

   In response to the notice issued by the first respondent, the petitioner appeared in the dispute and filed statement of objections, raising the issue of maintainability of the dispute and also the bar of limitation.

2. Having heard Sri. Sreevatsa, learned Senior Counsel for the petitioner, in my opinion, the petitioner should first file an application before the first respondent to decide the preliminary point with regard to maintainability of the dispute and if the finding is not in favour of the petitioner, he can avail the remedy of revision u/s. 107 of the Karnataka Co-operative Societies Act, 1959.

3. In view of the availability of alternative statutory remedy, I decline to entertain the writ petition.

   However, liberty is reserved to the petitioner to approach the first respondent, in the first instance to decide the question of maintainability of dispute as a preliminary point and thereafter seek relief, if any, if necessary before the Tribunal.

Shivananjappa S/o Late Madappa v Deputy Registrar of Co-operative Society, Chamarajanagara District and others

Bench	S. ABDUL NAZEER
Where Reported	2013 Indlaw KAR 1769; 2014 (1) KarLJ 329

Case No : W.P. No. 23878/2010 (CS-RES)

The Order of the Court was as follows :

1. In this case, the petitioner has called in question the validity of the order at Annexure 'D' dated 9.2.2010 whereby the first respondent has granted sanction to prosecute the petitioner under sub-s. (2) of S. 111 of the Karnatata Co-operative Societies Act, 1959.

2. The petitioner was the Secretary of the Taluk Agricultural Produce Co-operative Marketing Society Limited, Chamarajanagar Taluk from the year 1991-1992 till 31.12.2000. He was originally appointed as an Inspector of Co-operative Societies. He was promoted as Senior Inspector. Thereafter, he was further promoted as Co-operative Development Officer. He retired from service on 31.8.2006 on attaining the age of superannuation.

3. An enquiry was initiated u/s. 64 of the Karnataka Co-operative Societies Act, 1959 (for short "the Act") into the affairs of the third respondent Society. During the course of enquiry, it was found that the petitioner had committed various irregularities and his liability was determined at Rs. 24,13,932.13 ps. On submission of the report under Section 64, an order was passed u/s. 68 on the basis of which third respondent initiated surcharge proceedings under Section 69, which is pending before the first respondent. The third respondent sought permission to prosecute the petitioner by his communication dated 12.10.2009. On the basis of the said communication, a show cause notice was issued by the first respondent dated 20.10.2009 calling upon the petitioner as to why the sanction should not be granted. The petitioner has sent the reply dated 19.12.2009 opposing the grant of sanction. As stated above, the first respondent has given sanction to prosecute the petitioner as per Annexure 'D', which is under challenge in this writ petition.

4. A conjoint reading of S. 69(1) and (2) makes it clear that proceedings u/s. 69(1) can be initiated notwithstanding that the Act is one for which a person concerned may be criminally liable. In other words, even if a person is criminally liable for misappropriation of the money belonging to a co-operative society, there is no bar for initiating surcharge proceedings against him u/s. 69(1).

5. There is no merit in the contention that pending disposal of surcharge proceedings u/s. 69(1), the person concerned cannot be prosecuted by the Co-operative Society. Breaches of law is injurious to the society. A crime is an act punishable by law as forbidden by statute or injurious to public welfare. It is a threat to every member of the Society, even though it may be in reality an offence against only one specific person. The dominant purpose of criminal proceedings is to achieve the protection of the society.

6. The object of surcharge proceedings is entirely different. It is to recover the loss sustained by the co-operative society on account of misappropriation or retention of any money or other property belonging to the co-operative society. There is no bar to proceed against a person u/s. 69(1) and to prosecute him before the competent Court simultaneously.

7. It is clear that no prosecution can be instituted under the Act without the previous sanction of the authorities mentioned in sub-ss. (2)(a) and (2)(b) of S. 111. The proviso to this Section makes an exception in relation to previous sanction for prosecution. In certain cases such as alleged misappropriation or embezzlement of funds of a co-operative society detected during the course of audit, enquiry or inspection or in the normal course of business of a co-operative society, it is not necessary to obtain a sanction for filing of criminal cases against the delinquents. Previous sanction is necessary only in other cases. In cases where sanction is necessary, it cannot be granted without giving to the person concerned an opportunity to represent his case.

   Therefore, the authority concerned has to issue show cause notice to the delinquent as to why sanction should not be given for his prosecution. After considering the reply, if the authority is satisfied that the person concerned has acted in good faith, the request for sanction to prosecute should be rejected.

8. In the present case, the first respondent has issued the show cause notice calling upon the petitioner as to why sanction should not be given for his prosecution. He has not decided as to whether sanction is necessary having regard to the nature of allegations made against the petitioner. If he is of the opinion that sanction is necessary, he has to record his opinion as to whether petitioner has acted in good faith or not. The order impugned has been passed without following the procedure prescribed in proviso to sub-s. (2) and sub-s. (3) of S. 111 of the Act. I am of the view that the first respondent has to reconsider the matter.

9. The writ petition is allowed in part and the order at Annexure 'D' dated 9.2.2010 passed by the first respondent is hereby quashed. The matter is remitted back to the first respondent for fresh disposal in accordance with law and in the light of the observations made above. No costs.

Petition partly allowed

Someshwara Farmers Co-operative Spinning Mill Limited, District - Gadag Represented by its Chairman P. G. Upanal S/o Late G. F. Upanal, Bangalore v State of Karnataka and another

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 2804; 2013 (5) KarLJ 107

Case No : W.P. No. 10739/2013 (CS-RES)

The Order of the Court was as follows :

1. The petitioner was established in the year 1981, as a Co-operative Society under the provisions of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act') The primary object of the petitioner is to encourage cotton growers and help them by purchasing their cotton at remunerative price for the Mill. The petitioner has the bye-laws. A resolution was passed in the Annual General Body Meeting of the petitioner held on 24.09.2012 and an amendment proposed to bye-law No. 12 was approved. S. 12 of the Act deals with the amendment of bye-laws of a Co-operative Society.

   The said provision enables the amendment of bye-laws by a society, in conformity with the provisions of the Act. The approved amendment was submitted on 07.11.2012 in the prescribed format to the 2nd respondent - The Joint Registrar of Co-operative Societies (Textiles). The 2nd respondent issued an endorsement dated 04.02,2013, whereby he has rejected the proposal for amendment of the bye-laws of the petitioner, only on account of a note sent by Sri R. Varthur Prakash, Hon'ble Minister for Textiles. The said endorsement being material, is extracted hereunder.

2. The controversy in this writ petition relates to the legality and propriety of the 2nd respondent in rejecting the proposal for amendment of bye-laws of the petitioner, by succumbing to the instruction issued by the Minister for Textiles. The impugned endorsement makes it clear that the 2nd respondent rejected the proposal for amendment of bye-laws of the petitioner, only on account of a note sent by the Minister for Textiles. In the factual background, the questions which fall for determination are:-

3. In this case, the 2nd respondent has issued the impugned endorsement. But a perusal of the endorsement as at Annexure-D shows that the same has been issued on the instruction of the Minister for Textiles. If an appeal would be filed to the Additional Registrar of Co-operative Societies, the Appellate Authority, no purpose would be served, since the Appellate Authority also functions under the Minister. Hence, the contention of learned HCGP has no merit.

4. The impugned endorsement makes it apparent that there is non-application of mind to the facts of the case and the relevant law. The manner in which the power under S. 12 has been exercised by the 2nd respondent shows that he has mechanically issued endorsement by succumbing to the instructions of the Minister for Textiles.

5. In the case of Anirudhsinhji Karansinhji Jadeja 1995 Indlaw SC 1354 (supra), the Apex Court has held that 'if a statutory authority has been vested with jurisdiction, he has to exercise it according

to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether.

6. In the present case, it is clear that the impugned endorsement was issued on the basis of a note of the Minister for Textiles. The 2nd respondent has not exercised the jurisdiction vested with him by the statute and has not considered the proposal for amendment of the bye-law

7. It is appropriate to note the ratio of the decision in the case of Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others Vs. Director General of Civil Aviation and others, (2011) 5 SCC 435 2011 Indlaw SC 302, wherein it has been held as follows:-

"26. The contention was raised before the, High Court that the Circular dated 29.5.2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the Statutory Authority. In a democratic set up like ours, persons occupying key positions are hot supposed to mortgage their discretion, volition and decision making authority and be prepared to give way to carry out command having no sanctity in law.

Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide: The Purtabpore Co., Ltd. v. Cane Commissioner of Bihar & amp; Ors., AIR 1970 SC 1896 1968 Indlaw SC 353*; Chandrika Jha v. State of Bihar, AIR 1984 SC 322* 1983 Indlaw SC 156*; Tarlochan Dev Sharma v. State of Punjab, AIR 2001 SC 2524* 2001 Indlaw SC 20099*; and Manohar Lal v. Ugrasen AIR 2010 SC 2210* 2010 Indlaw SC 423*).*

8. Similar view has been reiterated by this Court in Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16 1951 Indlaw SC 58*; Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia, AIR 2004 SC 1159* 2003 Indlaw SC 1158 *and Pancham Chand v. State of Himachal Pradesh, AIR 2008 SC 1888* 2008 Indlaw SC 339*, observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.*

9. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner."

(Emphasis supplied by me)

10. Since the 2nd respondent has failed to exercise the jurisdiction vested with him and has failed to consider the proposal in accordance with law, the impugned endorsement being vitiated, the same is unsustainable.

11. In the result, the writ petition is allowed and the impugned endorsement is quashed 2nd respondent is directed to consider the proposal for amendment of bye-laws submitted Dy the petitioner by keeping in view the provisions under S. 12(2) of the Act and the observations made supra and take decision within a period of one month from the date a copy of this order becomes available and communicate the outcome to the petitioner without any delay.

I.A. No. 1/2013 does not survive for consideration. Hence, stands disposed of as such.

Petition allowed.

M. Venkatesh Kumar S/o Late Mukundaiah v Millennium Credit Co-operative Society Limited and others

Bench	Ashok B. Hinchigeri
Where Reported	2013 Indlaw KAR 676

Case No : W.P. No. 16890 of 2013

The Order of the Court was as follows :

1. The petitioner has called into question, the auction notification, dated 07.04.2013 (Annexure-A).

2. The facts of the case in brief are that the petitioner had availed of the financial assistance from the first respondent Bank. On his committing the default in repayment of the amounts, the first respondent raised the dispute u/s. 70 of the Karnataka Co-operative Societies Act, 1959 before the third respondent.

3. Sri C.M.Nagabhushan, the learned counsel for the petitioner submits that the petitioner has already paid Rs.8,20,000/- which is also acknowledged by Sri V.F.Kumbar, the learned counsel for the respondents Nos. 1 and 2. He submits that the petitioner does not dispute his liability to satisfy the award; that is why he has not even challenged the award. All thai the petitioner wants is little more time to pay the amounts as per the award. Today, a memo duly signed by the petitioner and his learned advocate is filed. In the memo he has sought one year's time to pay the outstanding amount in four equal quarterly installments.

4. On hearing the learned advocates, I allow this petition by quashing the impugned notification and by directing the petitioner to pay the entire outstanding amount in one year's time in four equal quarterly installments. Should the petitioner commit two defaults in adhering to this time schedule, liberty is reserved to the respondent Nos. 1 and 2 to enforce the award in accordance with law.

South Canara District Central Co-operative Bank Limited, Mangalore v State of Karnataka and others

Bench	Ashok B. Hinchigeri
Where Reported	2013 Indlaw KAR 2115

Case No : W.P. No. 14977 of 2013

The Order of the Court was as follows :

1. The petitioner has called into question the third respondent's order, dated 25.2.2013 (Annexure-K) rejecting the report of the Enquiry Officer, namely, Sri K.S.Himavantha Gopal, the retired Joint Registrar of Co-operative Society. It is not in dispute that the said K.S.Himavantha Gopal was appointed to enquire into 13 charges in exercise of the power conferred by S. 64 of the Karnataka Co-operative Societies Act, 1959 ('the said Act' for short).

2. The submissions of the learned counsel have received my thoughtful consideration. On the ground that the said Shetty is a total stranger to the Bank, the third respondent's rejection of the enquiry report cannot be held to be bad. The said Shetty may be a whistle-blower.

3. As held by the Division Bench in the case of The Vyavasaya Seva Sahakari Bank Limited v. The State of Karnataka and Others reported in 2006 (1) KCCR 77, the suo-motu exercise of power by the Registrar of Cooperative Society in appointing the enquiry officer under S. 64 of the said Act can be on the basis of the information received by him from external sources too. The said Division Bench judgment itself is following the Full Bench decision of this Court in the case of Bangalore Grain Merchants Association v. The District Registrar for Societies and Another reported in ILR 2001 KAR 766 in which S. 25(1) of the Karnataka Societies Registration Act, 1960 fell for consideration. The provisions contained in S. 64 of the Karnataka Co-operative Societies Act are in pari materia with S. 25 of the Karnataka Societies Registration Act. The relevant portion of the said Full Bench decision is extracted hereinbelow:

"3.1. Now, we come to the more crucial and controversial question i.e. what is the meaning and import of the expression 'on his own motion' and what is its interrelation to the immediately following clauses of the same sub-section. There could be, not doubt, that the expression 'on his own motion' is synonymous to suomotu, which according to the dictionary means, "on one's own initiative". 'Own motion' obviously implies application of mind and formation of one's own opinion. It does not matter how and from what source he gets information. But, it does not mean that the authority conferred with such power should eschew from consideration information or material furnished by external sources and should look to the information collected by his own self-effort. The exercise of powers suo-motu or on one's own motion, cannot and ought not to be construed in a narrow sense and in a sense which defeats the salutary purpose of the provision. No fetters can be placed on the specified authority from the stand point of source material on which it should excursive the power. An authority exercising the suo-moto power is not debarred

from obtaining informations and materials from various sources. The only requirement is that on the basis of such informations and materials gathered either on its own initiative or received from other sources, the concerned authority has to come to the conclusion, on an active application of mind whether to take up the enquiry or not. Undoubtedly, the decision must be his own. He cannot mechanically act at the behest of some other person or authority without independent application of mind to arrive at a conclusion on the need and expediency of holding an enquiry. It is not argued before us nor can it be disputed that the suo-motu exercise of power does not cease to be such merely because a member of the public or someone in the know of the brings relevant facts to the notice of the prescribed authority, in this case, the Registrar. The Registrar, on a consideration of such facts has to decide whether it is a fit case warranting initiation of enquiry in the over-all interests of the society. The decision must be his and the decision must ofcourse be based on relevant factors, but there is no limitation as to the sources by which he should be prompted to action."

4. The charges levelled against the petitioner Bank are of serious nature. The matter cannot be closed on a technicality. The holding of the enquiry, the acceptance of the report, are all of remedial nature; they are not of punitive nature. The rejecting of the report acting on the inputs from a third party cannot be held to be bad, so long there is application of mind. The re7 production of or the borrowal of some words, sentences, uttered by the third party in the impugned order does not render it bad.

5. The order for holding the second enquiry does not put the petitioner to any prejudice. There is no legal impediment in holding the second enquiry for the purpose of ascertaining the irregularities and taking remedial action thereon. It is in the interest of the petitioner Bank and of the society at large.

K. P. Karnth S/o Late K. V. Karanth v Registrar of Co-Operative Societies, Bangalore and others

Bench	RAVI MALIMATH, K. L. MANJUNATH
Where Reported	2013 Indlaw KAR 2351; 2013 (3) KarLJ 545

Case No : Writ Appeal No. 3019 of 2012

The Judgment was delivered by : Ravi Malimath, J.

1. The case of the petitioner is that surcharge proceedings were initiated by the respondent before the Deputy Registrar under Section-69 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). The appellant sought for transfer of these proceedings from the Deputy Registrar of Co-operative Societies, Udupi to be heard and decided by another competent authority. The same was ordered.

2. Thereafter, the Registrar having taken note of the subsequent developments has ordered retransfer of the case from Joint Registrar to the Deputy Registrar. Aggrieved by the same, the present writ petition in W.P. No.17483/2011, was filed which came to be dismissed. Hence the present appeal.

3. The learned counsel for the appellant submits that the order of transfer of proceedings from the Joint Registrar to the Deputy Registrar is opposed to law.

4. However the learned counsel for the respondent placed on record, the notification issued by the Karnataka Government Secretariat, dated 17.02.2011, wherein specific powers have been granted to the officers mentioned therein. In terms of the notification the Deputy Registrar Cooperative Societies has powers to delegate the authority as mentioned in column no.3. Under these circumstances, the contention of the appellant runs contrary to the said notification.

5. Even otherwise, the Learned Single Judge while considering the writ petition on merits was of the view that there is no ground made out by the petitioner that calls for interference. Under these circumstances, we are of the considered view that, there is no error committed by the Learned Single Judge that calls for interference.

Haribhau Siddapa Patil and others v State of Karnataka and others

Bench	D. V. SHYLENDRA KUMAR, B. V. Pinto
Where Reported	2013 Indlaw KAR 2800; 2013 (4) KarLJ 353

Case No : W.A. No. 1938 of 2007 [LA-KIADB] A/W. Misc. W. No. 61103 of 2009, Misc. W. No. 61522 of 2009, Misc. W. No. 60219 of 2009, C/W W.A. No. 1935 of 2007 [LA-KIADB] A/W. Misc. W. No. 60215 of 2009, Misc. W. No. 61104 of 2009, Misc. W. No. 61521 of 2009, Misc. W No. 60217 of 2009

The Order of the Court was as follows :

1. Appellants are owners of some parcels of lands notified initially a/s 3 (1) of the Karnataka Industrial Area Development Act, 1966 (for short the Act) as per notification No.CI 565 SPQ 2006, Bangalore, dated 06.12.2006 (copy at Annexure-A) and published in the Karnataka Gazette dated 08.12.2006 declaring it as an industrial area for the purposes of the Act. Simultaneously, another notification of even date was issued u/s 1 (3) of the Act indicating that the provisions of Chapter 7 of this Act was made applicable and the statutory provisions provided for in this Chapter for acquisition and disposal of land so notified will be put into operation.
2. The third notification also came to be issued simultaneously on the very date u/s 28 (1) of the Act indicating that the very lands are required for the purpose of establishing industries by the 5th respondent - M/s. Parivarthana Alpasankhyatara Agricultural Co-operative Society, Betgaum, and the subject lands are required to be developed for such purpose and are therefore required to be so developed by the Karnataka Industrial Area Development Board (for short 'Board'). A notification was issued by the State Government indicating such purpose for acquiring the subject lands.
3. Our present further examination has only confirmed the apprehensions expressed, even while passing this interim order arid we have found the statutory power being virtually misused and abused for private purposes.
4. In the result, these writ appeals are allowed. The impugned notifications issued under sections 3[1], 1[3] and 28 of the Act and all proceeding in pursuance thereof are all quashed by issue of a writ of certiorari. Rule issued and made absolute.

Aleyamma Korah W/o K. P. Korah and others v State of Karnataka, Department of Urban Development, By its Principal Secretary, Bangalore and others

Bench	Anand Byrareddy
Where Reported	2013 Indlaw KAR 799; 2013 (6) KarLJ 25

Case No : W.P. No. 41717 of 2011 (BDA) Connected with W.P. Nos. 6452-6453 of 2011 (BDA)

The Order of the Court was as follows :

1. In WP 3292/2012, the petitioner claims that his father had acquired the land in Survey No.70/1B, measuring 14 guntas of Kodigehalli in the year 1968 and the petitioner claims to have inherited the same along with his brothers and sisters on his father's death in the year 2011, on the ground that the award is passed beyond time; that possession has been retained by the petitioner even as on date; that the acquisition is vitiated on account of the sale of land by the NTI Society in favour of the third-party middlemen and non-compliance in following the procedure prescribed in Part-VII of the LA Act.

   (i) That the NTI Society is found to have indulged in illegal practices, such as enrolling ineligible members enabling such persons to secure house sites in the lands acquired. This is said to be a finding recorded in the G.V.K.Rao Committee Report, which Committee was constituted for the specific purpose of examining the affairs of numerous house building societies, including the NTI Society.

   Further, the admitted involvement of middlemen to facilitate acquisition for a consideration is held to be a fraud on the power of the State. And hence the judgement of the apex court in HMT House Building Cooperative society vs. Syed Khadar, AIR 1995 SC 2244 1995 Indlaw SC 1559, is applicable to the present case.

   (i) That the Society had resorted to an illegal exercise of bringing a portion of the acquired land to sale in favour of a third party purportedly in order to raise funds to develop the layout in the rest of the acquired land and to meet its financial obligations.

   (iii) That the award is passed beyond time.

   (iv) That possession of the lands has remained with the land owners and that notwithstanding the purported acquisition proceedings , physical possession is said to have continued with the petitioners as on the date of the petitions.

   The NTI Society, being registered under the Karnataka Co-operative Societies Act, 1959, would come within the meaning of S. 3(e)(iv) of the LA Act and when the land in question is required for the Society for construction of houses, Part-VII of the LA Act would become applicable and more particularly, Sections 39, 40,41 and 44B of the LA Act. S. 39 of the LA Act prescribes that previous consent of the appropriate Government and execution of an agreement are necessary

before invoking the provisions of Ss. 6 to 16 and Ss. 18 to 37 of the LA Act. The previous consent of the appropriate Government is mandatory before invoking the provisions of S. 6 to 16 of the LA Act. S. 40 provides for a previous inquiry before granting any consent for acquisition in favour of a company or a Society.

It is pointed out that the Society has not placed any material before the court as to the nature of the housing scheme formulated by the Society, the total membership of the society and the nature of consent obtained by the Society before the issuance of notifications u/ss. 4(1) and 6(1) of the LA Act nor is there any evidence of an inquiry report submitted by the inquiry officer in respect of an inquiry conducted u/s. 40. The pleadings on behalf of the Society are silent on these aspects of the matter. Hence, it is evident that the acquisition proceedings were not preceded by the formulation of any housing Scheme and other mandatory requirements to be complied with. The acquisition proceedings, therefore, are invalid and without authority of law.

It is also contended that in view of the widespread malpractices and fraudulent acts committed by various house building co-operative societies in Bangalore, the State Government had thought it fit to appoint Shri G.V.K.Rao, Controller of Weights and Measures, as a One-man Committee to conduct an inquiry into the illegalities and malpractices apart from scrutinizing the bona fides of the various co-operative societies. The Committee had submitted its report and in the report, the NTI Society is at Serial No.25 under the head "Societies which have indulged in serious and grave irregularities".

Therefore, it cannot be said that the petitioners had no notice of the acquisition proceedings. In respect of several others, as for instance, Petitioners 1 to 5, 10, 12, 15, 16, 18 to 22, 28, 29, 32 and 35 in W.P.No.1998 to 2032/2010, are land owners in respect of a total extent of 32 acres of land and these lands were acquired on the basis of the consent of the said petitioners and the notified kathedars have been paid compensation. Therefore, the allegation of the petitioners having had no notice of the acquisition is misleading and cannot be an explanation for the inordinate delay in filing the petitions.

The Society has developed the property with the approval of the BDA and sites have been allotted to 1781 members and sale deeds have been executed in their favour. Several petitions filed challenging the very same acquisition proceedings, have been dismissed by this Court on the ground that the Society is in possession and it has developed the layout and also has allotted sites to its members.

This identical contention also having been raised in yet another writ petition in WP 37086/1995 and connected cases, has been negatived by an order dated 16. 7.1996. The same having been carried in appeal in WA 8181/1996, the bench has observed that "as the plea regarding commission of fraud appears to be an after-thought and carved out only to file a petition after the pronouncement of the judgment by the Supreme Court in HMT House Building Co-operative Society vs. Syed Khader and others, AIR 1995 SC 2244 1995 Indlaw SC 1559. The learned Single Judge also held that as third-party rights about 5000 persons are likely to be affected by interference at the belated stage,the petition was not maintainable.

Insofar as the membership of the society being nebulous, the Registrar of Co-operative Societies had issued directions as per his letter dated 22.2.1994, directing that the membership be cleared by a Screening Committee and the said Committee was constituted on 15.12.1993, which proceeded

to scrutinize over 2000 files of individual members. The Additional Registrar, in his letter dated 21.12.1995, had informed the Society that 94 persons could not be confirmed in view of the fact that they were residing outside the jurisdiction of the Society and the names of yet another six persons could not be confirmed as they were not residing at the same address. Excluding 100 persons, all others were found eligible. Therefore, there is no substance in the contention that there was large scale fraud in impleading non- members on the rolls of the Society.

It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers u/art. 226 of the Constitution to quash the notification u/s. 4(1) and declaration u/s. 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power u/art. 226. The fact that no third-party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge, dismissing the writ petition on the ground of laches. "

"Purchasers coming in possession land more than 10 years after finalization of acquisition proceedings . Appellant purchasers cannot plead equity and seek Court's intervention for protection of unauthorised constructions raised by them. Purchasers cannot demand withdrawal from acquisition. Transferee of acquired land can at best, step into shoes of land owner and lodge claim for compensation."

Further in a judgment reported in 1996(3) SCC 124 in the case U.P. Jal Nigam V/S Kalva Properties (P) LTD 1996 Indlaw SC 1099., Hon'ble Supreme Court held that:

"It is well settled law that after the Notification u/s. 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property ".

As noted above, there are several other orders passed by learned Single Judges as well Division Benches of this court dismissing various writ petitions and writ appeals filed by the land owners challenging the acquisition proceedings on the same grounds, except that the same are sought to be embellished with seeming angularities in these petitions to overcome the same. These petitions are not in any manner distinct from those filed earlier by other land owners and even by some of the present petitioners.

A division bench of this court in the case of M.K.Thyagaraja Gupta & others v. the State of Karnataka 2012 Indlaw KAR 1061, WA 1944-1946 /2011 & connected cases, dated 18.6.2012 has expressed thus, on the finality of litigation :

"In this context, it would be of relevance to cite what the Apex Court has stated when an issue regarding fraud is raised in a proceeding before a Court of law in the case of Meghmala And Others vs. G.Narsimha Reddy And Others [2010 (8) SCC 383 2010 Indlaw SC 663*].*

"Judicial pronouncements unlike sand dunes are known for their finality. However, in this case inspite of the completion of several rounds of litigation up to the High Court, and one round of litigation before the Supreme Court, the respondents claim a right to abuse the process of the

Court with the perception that whatever may be the orders of the High Court of the Supreme Court, inter se parties the dispute shall be protracted and will never come to an end. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the Court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution."

2. The aforesaid observations are clearly applicable to the present case in as much even if the petitioners herein were not parties to the earlier proceedings, they cannot by subsequent proceedings seek to challenge the judgments or orders rendered in earlier proceedings particularly on the very issues by challenging the acquisition proceeding on the ground of fraud. In Meghamala's case, it was held that although fraud vitiates all proceedings, when same grounds of fraud had been adjudicated upon in earlier round of litigation, raising those grounds in subsequent proceedings, would tantamount to malicious prosecution.

3. In the light of the above circumstances and the settled legal position, these writ petitions do no merit consideration and are hereby dismissed.

Petitions dismissed

D. N. Nanjundaiah S/o D. Narayana Sastry v L. S. Ramalingaiah S/o Late Patel Siddagowda and others

Bench	SUBHASH B. ADI
Where Reported	2013 Indlaw KAR 205
Case Digest	**Subject:** Land & Property **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** Land & Property - Karnataka Co-operative Societies Act, u/s. 125 - Declaration of title - Decreed - Challenged - Defendant No. 1 sold schedule property to plaintiff and also delivered possession to plaintiff - Defendant No. 2/Co-Operative Society demanded layout charges from plaintiff and collected Rs. 500/- from plaintiff - Defendant Nos. 1 and 2 attempted to claim suit as belonging to Defendant No.2 - Plaintiff filed suit against defendants - Trial Court passed decree order in favor of defendants - Hence instant appeal - Whether order passed by Trial Court was just and proper - Held, plaintiff and defendant No.2 had purchased property from defendant No.1 - Sale deeds of defendant No.2 were dated 4-6-1969 and 17-6-1969 much before plaintiff purchased property - Plaintiff ought to had proved that he purchased site and also ought to had proved existence of site - Plaintiff had failed to prove identity of lands - Considering evidence and also that, in plaint there was no mention as to date of cause of action accruing to plaintiff, Trial Court held that plaintiff utterly failed to prove his title to suit schedule property - Regard to findings and even on re- appreciation of entire evidence on record, there was no ground to interfere with judgment and decree of Trial Court - Appeal dismissed.

Case No : Regular First Appeal No. 596 of 2005

The Order of the Court was as follows :

1. The plaintiff's case is that, the suit schedule property originally belonged to the 1st defendant L.S.Ramalingaiah. He sold the site to the plaintiff for a valuable consideration under the registered sale deed dated 29.32.1969 and also delivered possession to the plaintiff. The 2nd defendant, by letter dated 20.8.1970, demanded layout charges from the plaintiff without mentioning any detail as to how the 2nd defendant is interested in the property and how it is collecting the layout charges from the plaintiff. However, the plaintiff paid Rs.500/- towards layout charges under receipt dated 28.6.1971. The 2nd defendant has no right, title and interest on the suit schedule property. The 2nd defendant attempted to make the measurement of the suit sites along with other sites. When the plaintiff enquired, they gave evasive reply. Defendant Nos.1 and 2, colluding with each other, got some false documents, making an attempt to claim suit site as belonging to defendant No.2. As such, plaintiff was constrained to file the suit.

2. It is not in dispute that the plaintiff is claiming his title under a registered sale deed dated 29.12.1969. However, it is also not in dispute that the defendant No.1 is the owner of the land bearing Sy.No.467/1 (old No.209/4). Both plaintiff and defendant No.2 have purchased the property from defendant No.1. However, the sale deeds of defendant No.2 are dated 4.6.1969 and 17.6.1969 i.e. much before the plaintiff purchased the property. What was sold to the defendant No.2 was 32 guntas and 31 guntas, in all 1 acre 23 guntas.

   However, to prove that the sites of the plaintiff is outside the land sold to the defendant No.2, the plaintiff has not produced any material nor produced any corresponding material to identify his site. Inturn, the plaintiff himself states that the defendants have formed a layout in 1972 and when the plaintiff purchased the site, it was an agricultural land. No documents are produced to show that the khata was changed in favour of the plaintiff in pursuance of Ex.P2 sale deed. There is no evidence to show that he had paid any tax. Inturn, DW-1 admits that the Society has sold site No.108 in favour of Mahadevappa and the said Mahadevappa sold the same to defendant No.2. What is alleged is that a private layout was formed by Ramalingaiah. If that is so, the plaintiff ought to have proved that he purchased the site and also ought to have proved the existence of the site. The plaintiff has failed to prove the identity of the lands. Defendants are claiming their title under registered sale deeds which were executed on 4.6.1969 and 17.6.1969 which is prior in time of the sale deed of the plaintiff. Considering this evidence and also that, in the plaint, there is no mention as to the date of cause of action accruing to the plaintiff, the Trial Court held that the plaintiff utterly failed to prove his title to the suit schedule property.

3. Having regard to the findings and even on re- appreciation of the entire evidence on record, I find no ground to interfere with the judgment and decree of the Trial Court. Hence, the appeal fails and is dismissed accordingly. However, no order as to the cost.

Appeal dismissed

M. H. Mahabaleshwar S/o Mailarappa v Joint Registrar of Co-operative Societies Limited, Bangalore and others

Bench	A. N. VENUGOPALA GOWDA
Where Reported	2013 Indlaw KAR 44; 2013 (2) KarLJ 505

Case No : W.P. No. 46061/20l2

The Order of the Court was as follows :

1. Facts in brief are:

   The petitioner was an employee of the 3rd respondent - The Davangere Urban Co-operative Bank Ltd., Davanagere - 577 002. Petitioner was dismissed from service by the 3rd respondent on 02.05 2008. Petitioner raised a dispute under S.70(2)(d) the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'), before the Arbitrator. The 3rd respondent filed counter and contested the dispute. In the course of enquiry by the Arbitrator, petitioner got himself examined as PW-1 and marked Exs.P1 to P13. For the 3rd respondent, its General Manager deposed as RW-1 and Exs.R1 to R27 were marked. The Arbitrator, by an Order/Award dated 06.10.2010, allowed the dispute and set aside the impugned order of dismissal from service dated 02.05.2008 and directed the 3rd respondent to reinstate the petitioner into service and pay all consequential benefits. Feeling aggrieved, the 3rd respondent filed an appeal under S.105 of the Act, i the Tribunal. The appeal having been contested, after securing the record of the dispute from the Arbitrator and hearing the learned advocates who appeared for the parties, the Tribunal by its Judgment dated 28.09.2012, allowed the appeal and remanded the case back to the Arbitrator for reconsideration. Assailing the said Judgment, this writ petition has been filed.

   The Tribunal held that the Arbitrator as not scrutinized the voluminous evidence readily available before him and that the appreciation of the oraI and documentary evidence available on record is very much pivotal to come to a fair conclusion. It further held that the Award passed by the Arbitrator is wishy-washy

2. To remand the case to the Arbitrator the Tribunal has reasoned out as follows;

   "It is the bounden duty of the Trial Court to appreciate the entire oral and documentary evidence available before it and if th same is not done by the Trial Court, the leading of voluminous evidence before it becomes infructuous. It is needless to say that the appeal is to be disposed off on merits only when there is an appreciation of the entire oral and documentary evidence by the Trial Court and it is the duty of the appellate Court to remand the case to the Trial Court with a direction to dispose off the matter after appreciating the entire, oral and documentary evidence available before if such appreciation is missing in the impugned order for the reason that only when the entire oral and documentary evidence on record is well appreciated by the trial court, then only the appellate court will be in a better position to judge as to whether the judgment of the trial court is in accordance with law or as to where exactly the trial court has slipped."

3. The appellate power of remand ought not to be exercised lightly, It shall not be exercised when there is sufficient evidence to decide the case. Order 41 Rule 24 of Civil Procedure Code. 1908 being relevant, the same reads as follows:

"Where evidence on record sufficient, Appellate Court may determine case finally. - Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce Judgment, the Appellate Court may, after resetting the issues, if necessary, finally determine the suit, notwithstanding that the Judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

4. In the case of Uma Vs. N. V. Rajachari, ILR 2010 KAR 3078, considering the provisions under Order 41. Rules 23 to 25, it was held as follows:

"1.... If the plaintiffs have not produced relevant evidence or the Trial Court has not correctly appreciated the evidence, it is for the Appellate Court to do its duties, keeping in view the provisions under Rules 25, 27, 29 and 31 of Order 41 CPC*."* (emphasis supplied)

5. The remand of a case leads to necessary delay and causes prejudice to the parties to the lis. It is trite that an unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided. When the evidence is available, the Tribunal should decide the appeal one way or the other. The Tribunal having noticed that the Arbitrator has not appreciated the voluminous evidence readily available before him, the record of the case from the Arbitrator having been received, the Tribunal could have considered all the aspects of the case put forth by the parties and, considered whether the Order/Award passed by the Arbitrator ought to be confirmed or reversed or modified.

6. The Tribunal could have easily considered the oral and documentary evidence of the parties and finally decided the controversy between the parties. I am, therefore, of the view, that the remand of the case by the Tribunal is totally unjustified and unwarranted. The impugned Judgment of the Tribunal is tainted with serious legal infirmities and is founded on a legal construction which is wholly wrong.

7. In the result, the writ petition is allowed and the impugned Judgment is quashed. The appeal is restored. The Tribunal is directed to decide the appeal expeditiously and within a period of four months from the date of appearance of the parties. The parties are directed to appear before the Tribunal on 23.01.2013 and receive further orders.

Nerpu Guddappa Poojary S/o Late Venkappa Poojary v State of Karnataka and others

Bench	B. S. PATIL
Where Reported	2012 Indlaw KAR 793
Case Digest	**Subject:** Civil Procedure; Land & Property **Keywords:** Karnataka Co-operative Societies Rules, 1960 **Summary:** Civil Procedure - Land & Property - Karnataka Land Reforms Act, 1961, s. 48A - Karnataka Co-operative Societies Rules, 1960 - Suit property - Loan - Implementation of award - Sale - Challenged - Petitioner claimed to be owner of suit properties, which were in fact tenanted lands in favor of petitioner's mother, for which on failure of repayment of loan availed, respondent No. 5 filed a dispute, wherein award was passed in favor of Bank and it was deemed final because it was not challenged - For implementation of said award and realization of amount, suit properties were sold - Petitioner filed a claim contending that said sale was in violation of Rules, but when said claim was rejected, petitioner preferred an appeal before Deputy Registrar of Co-operative Societies, which was dismissed, but an interim stay was granted subject to petitioner depositing entire sale consideration - Aggrieved, petitioner filed Revision before State Govt., wherein State Govt. modified order passed by Deputy Registrar and made it clear that petitioner had to deposit 50% of sale consideration, subject whereof auction sale conducted would stand stayed - Hence, instant petition - Whether order passed by State Govt. was justified - Held, it was petitioner's mother who had any right over suit properties and not petitioner, and since she had kept quiet and not raised any objection during sale of said properties, claim at instance of petitioner, when his mother was still alive was not maintainable - Moreover, court took into account conduct of petitioner, who had not paid any portion of amount despite interim orders and interests of third party, who had purchased suit properties in public auction almost a decade ago, and concluded that case was not fit for interference - Petition dismissed.

Case No : W.P. No. 1306/2007

The Order of the Court was as follows :

1. In this writ petition, petitioner is challenging the order dated 07.12.2006 passed by the Government dismissing the revision petition filed challenging the orders passed by the Authorities below. The Deputy Registrar of Co-operative Societies vide his order dated 26.11.2005 has affirmed the order dated 15.07.2002 passed by the Assistant Registrar of Co-operative Societies and the Recovery Officer, SCDCC Bank, Mangalore, Dakshina Kannada District. Petitioner is also challenging

the auction proceedings dated 30.05.2002 conducted by the Sale Officer of the SCDCC Bank, Panja Region, Dakshina Kannada District.

2. Petitioner claims to be the owner of land bearing Sy. Nos. 13/2B, 13/3 and 13/4 situated in Balpa Village, Sullia Taluk, Dakshina Kannada District. According to the petition averments, these lands were tenanted lands in favour of the mother of the petitioner. She had filed a claim in Form No.7 under Section 48-A of the Karnataka Land Reforms Act, 1961 and the land Tribunal by its order dated 20.03.1976 conferred occupancy rights in her favour. It is further urged that the petitioner and his mother had got constructed a farmhouse in the land.

3. The main contention urged by the petitioner is that the State Government and the Authorities below failed to examine the contentions urged by the petitioner that there was violation of Rule 38(2)(d) and Rule 36(n) of the Rules while bring the properties for sale. His submission is that thirty days notice was not given regarding the auction sale inasmuch as the paper publication fixing the auction sale on 30.05.2002 was published on 24.05.2002 and the sale was conducted on 30.05.2002 itself. He, therefore, contends that very valuable properties of the petitioner have been sold for a meager sum of Rs.5,85,000/- which includes the residential house therein. It is further contended that though the mother of the petitioner had filed an application before the Deputy Registrar on 13.06.2005 to come on record as an applicant, the Deputy Registrar has not passed any order on the said application. It is urged that the Authorities below erroneously proceeded on the basis of a document which is in the nature of a letter dated 02.09.2002 stated to have been written by the mother of the petitioner and filed before the Court in the proceedings initiated by the purchaser in Misc. Case No.6/2002 on the file of the Civil Judge (Jr. Dn.) Sullia, stating that she had no objection for handing over possession to the purchaser. This document is produced by the 6th respondent as Annexure-R2 along with the objections filed.

4. Having beard the learned counsel for the parties and on careful perusal of the materials on record, it is clear that the petitioner had made a grievance about the sale conducted of the properties belonging to his mother. Admittedly, these properties were tenanted lands of the mother. In Paragraph 2 of the writ petition, petitioner has contended as under:

"The said lands were originally tenanted lands of the mother of the petitioner. Upon filing declaration in Form No.7 under Section 48-A of the Karnataka Land Reforms Act, 1961 *by the mother of the petitioner Smt. Poovamma Poojarthi, the Land Tribunal, Sullia by its order dated 20.03.1976 (wrongly mentioned as 2006 in the petition) in Case No.LRY.1652/1974-75 conferred the occupancy rights in her favour".*

5. It is thus clear that during the life time of the mother of the petitioner, admittedly, the petitioner did not have any right in these properties and it was for the mother to raise any objection or prefer any claim when the properties were brought for sale for realising the award amount. As adverted to above, awards have been passed during the year ranging from 1994 to 2001. These awards have attained finality. Neither the petitioner nor his mother has paid any portion of the award amount. Despite Interim orders passed by the Deputy Registrar affirmed by the revisional Court with modification directing the petitioner to pay atleast 50% of the sale consideration, the petitioner has not chosen to pay any portion of the amount. The mother of the petitioner was not aggrieved by the awards or by the auction sale conducted. In fact, in the proceedings initiated by the purchaser-6th respondent before the Civil Court in the Miscellaneous case seeking possession

of the property, the mother had expressed her consent for delivery of possession of the property in favour of the purchaser. Though the validity and authenticity of this document is denied, suffice to observe that at no point of time, the mother of the petitioner had raised objection for the auction conducted.

6. In the instant case, the claim is not made by the decree holder nor by any person entitled for share in the assets or by a person whose interests can be said to have been affected by the same, inasmuch as the only person, in the facts and circumstances of the case who had absolute right to the property being the mother of the petitioner had kept quite without raising any objection to the sale conducted. Hence, the claim itself at the instance of the petitioner when his mother was alive was not maintainable.

7. Therefore, looking into the entire facts and circumstances, the conduct of the petitioner in not paying any portion of the amount despite the interim orders passed and the all important circumstances that the third party interest has crept in right from 2002 and that almost a decade has passed after the third party paid the entire sale consideration having purchased the properties in public auction, I do not find that this is a fit case for interference in exercise of the writ jurisdiction. Hence, the writ petition is dismissed.

Digambar Warty S/o Madhavan Warty and another v District Registrar, Bangalore and another

Bench	N. KUMAR, B. V. Pinto
Where Reported	2012 Indlaw KAR 2831; 2013 (4) KarLJ 247

Case No : Writ Appeal No. 885/2008 and Writ Appeal Nos. 2062-2106/2008 C/w Writ Appeal No. 870/2008 and Writ Appeal Nos. 2479-2538/2011 (GM-ST/RN)

The Order of the Court was as follows :

1. In W.P.No. 14231/2005 and other connected matters, the petitioners are all members of Sri Chitrapur Co- operative Housing Society Limited [for short hereinafter referred to as 'Society']. The Society was registered in the year 1980 under the provisions of the Karnataka Co- operative Societies Act, 1959. The Society is a tenant Co- partnership society. The Society took on long lease for 99 years, the land belonging to Chitrapur Mutt. After taking the lease, they built 96 flats. The lease-hold rights and the ownership of the building vests in the Society. Each tenant member is allotted apartment on the basis of holding distinctive shares and loan stock subscribed by the member. The members jointly hold the property through the Society during the lease period. The land together with the buildings will revert back to the lessor on expiry of the lease period. The Society has not executed any conveyance, instrument of transfer or lease deed in favour of its members. It has issued share certificates, loan stock certificates and possession certificates. Possession Certificates were issued to facilitate the members in the matter of filing IT return and other such benefits.

   Therefore, the Society is not the owner of the land. Society is only a lessee. The Society has constructed 96 apartments on the land leased. The building constructed also vests with the Society. The writ petitioners are all members of the society. They hold shares in the Society as evidenced by the Share Certificates. They have invested money for construction which is evidenced by the loan stock certificates. After constructions, they were put in possession of the apartments under the possession certificates. None of these documents effect transfer of immovable property and therefore it does not fall within the definition of the word "Conveyance" used in the Stamp Act. The condition precedent for application of S. 20 is that there should be a conveyance of movable or immovable property. In other words, there should be transfer of an immovable property. Mere transfer of possession of immovable property would not constitute conveyance of immovable property. Therefore the proceedings initiated and the adjudication made and the demands raised are all illegal, without the authority of law and is liable to be struck down.

2. Secondly, he contended that S. 46(A) of the Stamp Act prescribed a time limit within which the Actions have to be taken. In the absence of fraud, collusion, the period prescribed is 12 years. Admittedly, the proceedings were not initiated within 5 years from the date of possession certificate. Therefore, the authorities have no right to recover the stamp duty as determined by them.

3. Thirdly, he contended that the adjudication of stamp duty payable should be on the basis of prevailing market rate on the day the possession certificate was issued. In fact, accepting their contentions, the learned Single Judge has set aside the determination and remanded the matter back to the authorities for re-determination. But as the transaction in question do not constitute a conveyance and the very proceedings are initiated beyond the period of limitation prescribed under Section 46-A of the Stamp Act, the entire proceedings are one without jurisdiction and requires to be set aside.

4. In the light of the aforesaid facts and rival contentions, the points that arise for our consideration are:-

(1) Whether the transactions in the nature of handing over possession in pursuance of a "Possession Certificate" would constitute 'Conveyance' as defined u/s. 20(2) of the Stamp Act, and as such it attracts stamp duty and registration?

(2) Whether the bar of limitation prescribed under Section 46-A is attracted to the facts of the case?

5. All the writ petitioners have been issued "shares" in the Society. They are also issued a "loan stock certificate" showing the amount invested by each member in the said project. Thereafter "Possession Certificates" were also issued, wherein it is recited that the Society has constructed an apartment building complex on the said land for co- operative living and the Society has issued shares and loan stock certificates equivalent to the value of the contributions made by each member as a form of acknowledgement of debt. Then there is a reference to the number of shares held by such a member, the amount which is invested by such a member and the apartment number, which is allotted to him with the parking space. Finally, it is stated that the Society hands over the possession of the apartment and parking space to such members, their successors, legal heirs, etc., who are free to enjoy peaceful undisturbed occupancy of the apartment subject however, to the terms and conditions mentioned therein. The first condition is that the member continues to hold in his name the shares and loan stocks mentioned therein; abides by the Rules and Regulations as laid out in the bye-laws of the Society in force from time to time; and abides by the terms and conditions of the agreement entered into between the member and the Society. The Possession Certificate shall be surrendered to the Society at the time of transfer of loan-stocks and the shares mentioned therein.

6. As is clear from the bye-laws, the right of a member under the aforesaid documents conferred is, the right of possession, right to transfer and right to let-out the flats allotted to him. As per the terms and conditions indicated in the Possession Certificate, tenancy agreement and bye-laws of the Society, confer a right to transfer, mortgage, lease, sub-let or hire his interest and or possession and his flat and or parking space allotted to him by the Society. He could also give possession of any flat or parking space to others. The only condition is that, before exercising the said right, he shall obtain a written permission of the Society with due procedure.

7. A combined reading of these documents makes it clear that the ownership of the land vests with Sri.Chitrapur math. The Society has constructed the apartments and the ownership of the apartment vests with the Society. But, by virtue of the aforesaid documents, the members have a right to be in possession of the apartment.

8. A combined reading of these provisions makes it clear, that every instrument by which whether movable or immovable property is transferred which does not amount to 'conveyance of sale' and which is not otherwise specifically provided for by the schedule, constitutes a conveyance'. In view of the definition of immovable property prior to amendment included land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth, which necessarily means immovable property, cannot be narrowly construed as a land or a building. Even the benefits arising out of land falls within the definition of immovable property, which is inclusive in nature. All those words find a place now in the definition of 'immovable property' under the Act and in addition to the same, 'immovable property' includes buildings, right to ways, air rights, development rights whether transferable or not.

Therefore, the definition of 'immovable property' is also exhaustive. The definition of immovable property was inserted by Act 24/1999. The object of the said amendment was, for more effective implementation of the provisions of the Act and therefore, they have defined 'immovable property' and it is by way of insertion. Therefore, from the scheme of the Act and the object behind this amendment, it is clear that the said amendment is clarificatory in nature. All the rights which are now expressly defined under the word 'immovable property' always was included in the word immovable property' as mentioned in the definition clause.

Therefore, in order to ascertain whether a particular transaction is either before this amendment or subsequent to amendment, the tests prescribed under the law is the same. It makes no difference. In the wider sense, property includes all personal legal rights of whatever description. A man's property is all that is his in law. The law of property is the law of proprietary rights and in rem, such as freehold and lease hold estate in land. In the narrowest use of the term, it includes nothing more than a corporeal property i.e., to say, the right of ownership in material object or that object itself. The owner of a material object is, he who owns a right to the aggregate of its uses. Ownership is the right of general use, not that of absolute or limited use. He is the owner of a thing, who is entitled to all those uses of it, which are not specially excepted and cut-off by the law. No such right as that of absolute and unlimited use is known to the law. The limits that are imposed upon an owner's right of use are of two kinds. The first are the various limits imposed upon ownership by the general law. The second class of restrictions upon a owner's right of use consists of those which flow from the existence of encumbrances vested in other persons.

Therefore, in the context of Stamp Act and chargeability of an instrument under the Act, what is to be seen is, whether it is an instrument under which a person claims a right and whether that right can be construed as an immovable property. Having regard to the definition of the immovable property in the General Clauses Act and after amendment under the Stamp Act and in particular the said definition being an inclusive one, it not only includes the land and buildings, but includes the benefits that arise out of land and things attached to the earth. Therefore, though a person may not be the owner of a land or a building and the said land or building may not vest with him, if a person is entitled to have the benefit of that property like possession, right to transfer possession, right to lease, then that right constitutes 'immovable property'. It falls within the definition of 'conveyance' and it is chargeable to duty under S. 3 of the Act.

Therefore, the contention that a mere right to possession and right to transfer or let-out such possession do not constitute 'immovable property', has no substance, in view of the said definition contained, both in the General Clauses Act as well as under the Stamp Act 1899.

9. In the instant case, as is clear from the aforesaid documents and the byelaws of the Society, the members are entitled to possession of the apartment which they can enjoy. Cls. 10 of the byelaws confers to such members not only the right of possession, they are also conferred right to transfer and let out the flats allotted to them. In the instant case in exercise of that right, number of members executed sale deeds transferring the apartments in favour of third persons and all those sale deeds are duly stamped and registered. It is settled law that a person cannot confer better title than what he has. If the members had no right to 'immovable property' and if they are conveying that right to third parties and if the said transaction does not constitute 'conveyance', there was no need to pay stamp duty and get it registered. It is only because the right, which they were conveying is the right arising out of an immovable property and the benefits arising out of the land and the building, which constitutes 'immovable property' and at best, transfer of such right constitutes 'conveyance' and the stamp duty and registration fees was payable.

10. All these three documents are executed contemporiously. What is conveyed is the enjoyment of an immovable property as the Society itself did not have ownership right and therefore could not have transferred the ownership rights in the land. However, constructions are put up with the money of the members. In terms of the bye-laws, the building vests with the Society. In turn it vests with the members. When we look at these documents, the nature of transaction, the payments made, the nature of property, the way the property is enjoyed and the way the property is dealt with, there leaves no room for doubt that it constitutes a conveyance as defined under S. 2(d) of the Stamp Act. This is an ingenious method adopted by the members to avoid payment of stamp duty and registration fees.

11. In the light of the aforesaid discussion, we are satisfied, that the learned Single Judge, on proper appreciation of the entire material on record, rightly held that the transaction in question falls within the definition of 'conveyance' and therefore the instrument evidencing such conveyance is chargeable to duty in terms of S. 3 of the Act read with the appropriate schedule under the Act.

12. The reason is obvious. Generally, it is the Civil Court which receives the instrument in evidence. Admission of instrument in evidence is not proof of the said instrument. If the execution of the instrument is denied by the executant or the opposite party, burden is cast on the person producing the said instrument to prove that the instrument was executed in accordance with law. He may have to examine the attesting witnesses if there is any, or he may request the Court to compare the signature found on the said instrument with the admitted signatures in the case or he may request for sending the said instrument containing the signature for the opinion of the handwriting expert.

    Therefore the original document, after it being impounded and the party paying the duty and penalty cannot be sent to the Deputy Commissioner, the law provides for a authenticated copy of such an instrument being sent to the Deputy Commissioner. However, in all other cases, it is the original of the document impounded which is to be sent to the Deputy Commissioner. The object being, the said provision should not come in the way of speedy disposal of cases before the Court.

13. S. 38 of the Act deals with the power of the Deputy Commissioner to refund the penalty paid under Sub- s. (1) of S. 37. When a copy of an instrument is sent to the Deputy Commissioner

under Sub-s. (1) of Section 37, he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. The reason being, when a person receiving the evidence impounds the document and collects the duty under S. 34 of the Act, which in most of the cases, is the Civil Court, the time of the Court should not be wasted in deciding, whether it is a fit case where penalty of ten times the duty is to be levied or a case is made out for imposition of lesser penalty.

14. Before amount of duty payable is sought to be recovered, an obligation is cast on the authority to serve notice on the person by whom the duty is payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him. It is here a period of five years is prescribed for initiation of proceedings for collection of duty. In cases where the nonpayment by reason of fraud, collusion or any willful mistake or suppression of facts or contravention for any other provisions of the Act or the Rules made there under, the period prescribed is 10 years. The proviso to Section makes it clear that this provision shall not apply to instrument executed prior to first day of April 1972. Therefore, Section 46-A comes into effect from the day the stamp duty was payable on an instrument. Whether the document is impounded u/s. 33 or it comes into possession of the authority in any other manner, he is under an obligation to adjudicate the stamp duty payable. Before adjudicating, there is an obligation to hear the person, who is liable to pay the stamp duty. The bar of limitation is for initiation of proceedings for recovery of stamp duty payable on the instrument. It is five years from the date of execution of the document. In the case of fraud, collusion, misrepresentation, it is 10 years. Therefore, the contention of the revenue that no limitation is prescribed for documents which are impounded u/s. 33 has no substance.

15. In the instant case, all the documents under which the immovable property was transferred in favour of the writ petitioners came to be executed in the year 1987. Five years is the period prescribed for recovery of the deficit stamp duty from the date of execution. The proceedings should have been initiated on or before 1992. Admittedly, the proceedings are initiated in the year 2004. Therefore the bar of limitation prescribed under Section 46-A is applicable. The proceedings under Section 46-A to recover the stamp duty is clearly barred by limitation.

16. In the instant case, even though the authorities cannot recover the duty payable, the aforesaid documents, in the absence of being duly stamped and registered, do not confer any title on the writ petitioners in respect of an immovable property. If they have already sold their interest in the property under the registered Sale Deed, the purchaser gets no title because the seller acquired no title. Therefore, as a duty is cast on the seller to make good the title of the purchaser, even in the absence of the authority enforcing the right to recover the stamp duty, if proper stamp duty and penalty is paid, along with registration fee, it could be registered. That is the object behind this legislation.

17. Insofar as the determination of market value, payment of duty is concerned, the learned Single Judge has set aside the impugned notice and orders and remanded the matter back to the concerned authority for fresh adjudication.

18. Under the circumstances, we pass the following order:-

(b) The finding of the learned Single Judge and the authorities that the documents in question constitute 'conveyance' as defined under S. 2(d) of the Act, is affirmed.

(c) In view of the fact that the proceedings are initiated beyond the period of limitation though the said documents are not stamped, authorities cannot recover the stamp duty payable on the said instruments;

It is submitted that in the case of WA No.870/2008, after remand, the stamp duty payable with penalty is already determined, if it is so, it is open to the appellants, if they chose to challenge the same or to pay the duty within six months. It is open to them either to approach the very same authority seeking review or to challenge it in the manner known to law or to pay the duty and penalty payable and get the documents registered within six months from the date of receipt of the copy of this order.

Appeals partly allowed

S. Neela W/o S. V. Kishore v Vani Vilas House Building Co-Operative Society Limited and another

Bench	H. BILLAPPA
Where Reported	2012 Indlaw KAR 2194

Case No : W. P. No. 10513/2012

The Order of the Court was as follows :

1. By the impugned order, the Trial Court has allowed the application filed by the respondent and has rejected the plaint for non-compliance of s. 125 of the Karnataka Co-operative Societies Act, 1959.

2. The petitioner filed suit in O.S.No.411/2011 for declaration and permanent, injunction. In the said suit, the respondent filed an application under Order VII Rule 11(d) r/w s. 151 of CPC praying to dismiss the suit for non-compliance of s. 125 of the Karnataka Co-operative Societies Act. The Trial Court has allowed the application and rejected the plaint. Therefore, this writ petition.

3. I and considerable force in the submission of the learned counsel for the petitioner. This Court in Mahadevaiah vs. Sales Officer reported in ILR 1990 Karnataka page 151 has held, if there is non-compliance of s. 125 of the Karnataka Co-operative Societies Act 1959, the plaint has to be returned as it is still open to plaintiff to issue notice and file the suit. Therefore, the Trial Court was not justified in rejecting the plaint. Therefore, the impugned order cannot be sustained in law.

4. Accordingly, the writ petition is allowed and the impugned order passed by the Trial Court rejecting plaint is hereby set-aside. The Trial Court is directed return the plaint. It is for the plaintiff to issue notice and file the suit if she so wants.

Petition allowed

Gopal S/o Late Puttaswamaiah and others v State of Karnataka Co-Operative Department Multistore Building and others

Bench	Dilip B. Bhosale
Where Reported	2012 Indlaw KAR 2183

Case No : W. P. No. 21013/2012

The Order of the Court was as follows :

1. The challenge in this writ petition is two fold. Firstly, the petitioners have taken exception to the order dated 12.04.2012 issued by the 3rd respondent, informing the petitioners that the Bangalore Co-operative Milk Union Limited shall not collect the milk from their Society namely, Vijayapura Milk Producers Co-operative Society Limited and secondly, the petitioners seeks implementation of the letter dated 07.05.2012 issued by the 4th respondent, that is, the Assistant Registrar, Ramanagar Sub-Division, Ramanager. By this letter, according to the petitioners directions were issued to the Milk union to collect milk from its members.
2. He submits that accordingly they have been collecting milk from the members of the 7th petiiioner Society through Chamundipura Milk Producers Co-operative Society Limited. Thus, he submits,, the interest of the members of the 7th petitioner-Society has been taken care of. Though, the principal grievance before this Court is that the right and interest of members of the petitioner-Society has been adversely affected by order dated 12.042012, the arrangement made vide order/direction dated 13.06.2012, is not acceptable to the petitioners.

2. I am satisfied that the interest of the members of the 7th petitioner-Society is taken care of by the respondents. Petitioners have not chosen to file an appeal against the order dated 12.04.2012 u/s. 70 of the Karnataka Co- operative Societies Act nor have they challenged Annexure- R12 by which the 4th respondent issued directions to collect milk from the members of the 7th petitioner-Society. through the society in the adjoining village. In the circumstances, I find no merit in the petition.

3. Petition is disposed of. However, disposal of the petition shall not preclude the petitioners from challenging the order dated 12.04.2012 in appeal or Annexure-R12 dated 13.06.2012in the appropriate proceedings.

Shimoga District Co-Operative Central Bank Limited, Represented by its Managing Director v State of Karnataka, Department of Co-Operation by its Secretary, Bangalore and another

Bench	B. Subhash Adi
Where Reported	2012 Indlaw KAR 2271

Case No : W.P. No. 38293 of 2012

The Order of the Court was as follows :

1. The petitioner Shimoga District Co-operative Central Bank Ltd. has called in question the Government Order dated 13.6.2011 prescribing guidelines in the matter of recruitment in relation to various Co-operative Societies including the Co-operative Banks in exercise of its power under Section 30B(1) of the Karnataka Co-operative Societies Act (hereinafter referred to as 'the Act' for short).

2. This Court has considered as to the applicability of the Recruitment Rules / Scheme framed by the Government dated 13.6.2011 in exercise of its power under Section 30B(1) of the Act and has held that, under the Act there are co-operative societies other than the one specified u/s. 2(b)(2) of the Act, for which the Government may, by exercising power under Section 30B, issue directions in public interest to such co-operative societies i.e., other than the co- operative societies referred to u/s. 2(b)(2) of the Act. Impugned notification of the Government specifying guidelines in the matter of recruitment are held to be not applicable to the co-operative societies / co-operative banks defined as the co-operative credit structure u/s. 2(b)(2) of the Act.

Spartacus Flat Owners Co-operative Society Limited and others v Government of Karnataka, Bangalore, By its Secretary Revenue Department and others

Bench	Anand Byrareddy
Where Reported	2012 Indlaw KAR 2875; 2013 (1) KarLJ 320
Case Digest	**Subject:** Constitution **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** Constitution - Retrospective effect - Certain petitions were listed before Court by virtue of judgment of DB who has taken view that contention of writ petitioners before Court as to amendment by Act which excluded application of certain section was not considered by its order - Hence, instant Petition - Whether order of Court is prospective or retrospective, because issue is settled before DB. Held, having taken a stand before a DB in appeal wherein a decision of Single Judge of this Court holding that the said amendment was with retrospective effect, had been carried in appeal, State Govt. had filed a memo to declare that having regard to the objects and reasons to introduce the amendment, the amendment would take effect only from the date of amendment and it is with prospective effect. The writ appeal had been allowed after recording the memo. Therefore it is answered in favor of petitioners in petitions before this Court, while referring to the memo that was recorded by DB. However, the said order having been challenged in the above appeals. It is true that this Court has not entered upon the question as to that it was prospective or retrospective, because the issue was settled before DB. If DB which has now remanded matter is of opinion that this Bench was required to go into question and failed to do so, it is clarified that it is willful, as in the opinion of this Bench, it is not necessary. Petitions allowed. Ratio - DB has all the right to give its decision in whatsoever manner they wish to. It is there responsibility to do the same.

Case No : W.P. No. 5253 of 2007 (GM-KLA) C/w W.P. No. 5821 of 2007 (GM-ST/RN) C/w W.P. No. 11520 of 2006 (GM-KLA) C/w W.P. No. 2621 of 2007 (GM-KLA)

Ratio - DB has all the right to give its decision in whatsoever manner they wish to. It is there responsibility to do the same.

The Order of the Court was as follows :

1. These petitions are listed before this Court by virtue of a judgment of a Division Bench in Writ Appeal No.2483/2010 and Writ Appeal Nos.2167-2169/2011, dated 25.6.2012. The Division

Bench has taken a view that the contention of the writ petitioners before this Court as to whether the amendment by Act 6 of 2001 to S. 38 of the Karnataka Co-operative Societies Act, 1959, which excluded the application of S. 17 (1)(b) and (c) of the Indian Registration Act, 1908, was not considered by its order.

2. This Bench had on the face of it opined that having regard to the State Government, having taken a stand before a Division Bench in Writ Appeal No.3883/2003, wherein a decision of a learned Single Judge of this Court holding that the said amendment was with retrospective effect, had been carried in appeal, the State Government had filed a memo to declare that having regard to the objects and reasons to introduce the amendment, the amendment would take effect only from the date of amendment and it is with prospective effect. The writ appeal had been allowed after recording the memo. Therefore the question was answered in favour of the petitioners in the writ petitions before this Court, while referring to the memo that was recorded by a Division Bench. However, the said order having been challenged in the above appeals, the Division Bench has taken a view that this Court had not entered upon the real question as to whether the amendment was with prospective or retrospective effect and therefore, the order did not disclose the reasoning on which it was held to be prospective.

3. It is true that this Court has not entered upon the question as to whether it was prospective or retrospective, because the issue was settled before the Division Bench. If the Division Bench which has now remanded the matter is of the opinion that this Bench was required to go into the question and failed to do so, it is clarified that it is wilful, as in the opinion of this Bench, it is not necessary.

4. It is further submitted that the order in favour of the petitioners was not at all in challenge before the Division Bench in some of the connected writ petitions. Notwithstanding that, the Division Bench has thought it fit to remand the entire order, merely, because, the said writ petitions were connected with the petitions in which a challenge was made. In any event, this is immaterial. The petitions are allowed in terms of the earlier order of this Court dated 16.6.2009.

Petitions allowed

Principal Chief Post Master General Karnataka Circle, General Post Office, Bangalore and others v Karnataka State Co-operative Apex Bank Limited, Bangalore

Bench	A. S. BOPANNA
Where Reported	2012 Indlaw KAR 2818
Case Digest	**Subject:** Banking & Finance **Keywords:** Suit For Recovery, Entitled to, Justifiability **Summary:** (A) Civil Procedure - Suit for recovery - Entitled to - Plaintiff-cooperative bank purchased certificates all amounting to sum of Rs.66,700/- from defendants - Plaintiff on maturity had approached defendant for payment of matured amount - Defendants replied to plaintiff stating that maturity value could not be paid nor could any interest be paid on said amount - Plaintiff filed suit for recovery of amount - Defendants contested suit - Trial Court decreed suit - Hence instant appeal - Whether plaintiff was entitled for entire maturity value of NSCs from defendants - Held, if party had approached Court seeking for direction to respondents to issue NSCs contrary to guidelines of society, party seeking direction being institution and if direction was issued, the same would be contrary to law - However, in instant case, defendants had received amount from plaintiff and had issued certificates and throughout validity of certificates they had not intimated plaintiff with regard to existence of Rules - It was only when plaintiff sought for payment of amount, defendants sought to urge contention - When amount had been received and had been utilised by defendants naturally while maturity period was over, said amount was to be paid to plaintiff since it was their money which had been retained by defendants and had been utilised by them - Therefore, Trial directed defendants to pay sum of Rs 67,700.50 to plaintiff, and it should not be found fault with - Appeal dismissed. (B) Civil procedure - Suit for recovery - Justifiability - Whether order passed by Trial Court was justified in granting interest at 6% - Held, it was to be noticed that in position where defendants had received amount, retained and had not refunded amount with maturity value - Dispute relating to maturity amount had continued and during said period, amount was available with defendants - Hence, when Court concluded that plaintiff was entitled to said amount, Court was justified in holding that plaintiff was entitled to interest on said amount at 6% which was minimum interest which was granted by Court - Appeal dismissed.

Case No : Regular First Appeal No. 835/2010

The Order of the Court was as follows :

1. The case of the plaintiff is that it is a Cooperative Bank registered under the provisions of the Karnataka Cooperative Societies Act. The plaintiff had undertaken construction of its building and in that regard, while obtaining the approved plan from Bangalore Mahanagara Palike, they were required to submit National Saving Certificate ('NSC' for short). Accordingly, the plaintiff approached the third defendant on 26.03.1993 and purchased 11 certificates in all amounting to a sum of Rs.66,700/-. The details of the certificates have been mentioned in the plaint. As per the same, the maturity value of the said certificates when they were to mature on 26.03.2004 would be in a sum of Rs. 1,34,400.50. It is in that context, the plaintiff on maturity had approached the third defendant for payment of the matured amount. The Senior Superintendent of Post Offices is said to have addressed a letter to the plaintiff on 11.01.2005, wherein it has been stated that as per the Rules, there was no provision for issuing NSCs to the institutions. Hence, in that context, the defendants replied to the plaintiff stating that the maturity value cannot be paid nor can any interest be paid on the said amount. In that context, after further correspondences between the parties, the plaintiff has filed the suit claiming the said amount.

2. The defendants on being served with the suit summons appeared and filed their detailed written statement. The case of the defendants is that the NSCs issued to the plaintiff on 26.03.1998 is contrary to the National Savings Guidelines issued on 01.04.1995 as per which, the NSCs cannot be issued in favour of the institutions. In that context, it is contended by them that since the transaction under which the certificates were issued to the plaintiff was contrary to the Rules, the payment of maturity value or interest would not arise and the plaintiffs are entitled only for refund of the amount which had been deposited and no further amount was liable to be paid by the defendants. Hence, the sheet-anchor of the case of the defendants is the circular dated 01.04.1995 which referred to the guidelines which had been notified indicating that the NSC could not have been issued to the institutions. Based on the said defence and the other contentions which were raised in the written statement, the defendants sought for dismissal of the suit.

   The Officer of the defendants was examined as D.W.1 and the document at Ex.D1 was relied upon. The Court below on considering the evidence available before it has arrived at the conclusion that the material issues are to be held in the affirmative in favour of the plaintiff. As such, the Court below decreed the suit, in favour of the plaintiff by directing the defendants to pay the maturity value excluding principal amount with 6% interest.

   It is his contention that at best, the plaintiff would have been entitled only to the amount which they had invested with the defendants and that amount in any event had been repaid by the defendants and therefore, no further claim could have been made by filing the suit. It is therefore contended that the Court below was not justified in decreeing the suit for the maturity value along with the interest. Hence, it is contended that the spirit of judgment and decree would be to the effect that a direction is issued to the defendants to act in contravention to the Regulations which has been in force and therefore, such decree cannot be enforced.

3. In the instant case, if the party had approached the Court seeking for a direction to the respondents to issue NSCs contrary to the guidelines of the society, the party seeking such direction being an institution and if a direction was issued, the same would be contrary to law and would have

been guided by the decision referred to above. However, in the instant case, as already noticed, the defendants had received the amount from the plaintiff as far back as in the year 1998 and had issued certificates and throughout the validity of the certificates they had not intimated the plaintiff with regard to existence of the Rules. It is only when the plaintiff sought for payment of the amount, the defendants sought to urge such contention. When the amount had been received and has been utilised by the defendants naturally while the maturity period was over, the said amount was to be paid to the plaintiff since it is their money which had been retained by the defendants and had been utilised by them. Therefore, to the extent of the Court below directing the defendants to pay a sum of Rs 67,700.50 to the plaintiff, the same cannot be found fault with.

4. The next question which would also arise for consideration is as to whether the Court below was justified in granting interest at 6% p.a. On this aspect also, it is to be noticed that in a position where the defendants had received the amount, retained the same and had not refunded the amount with maturity value on 26.03.2004, the dispute relating to the maturity amount had continued and during the said period, the said amount was available with the defendants. Hence, ultimately, when the Court below has arrived at the conclusion that the plaintiff is entitled to the said amount, the Court below was also justified in holding that the plaintiff is entitled to interest on the said amount at 6% which is the minimum interest which has been granted by the Court below. Therefore, even that aspect of the matter does not call for interference.

5. Hence, having considered these aspects of the matter and having noticed the reasoning adopted by the Court below, I am of the considered opinion that the same does not call for interference and the point which has been raised for consideration herein is to be answered against the appellants-defendants.

Accordingly, the appeal is dismissed. Parties to bear their own costs.

Appeal dismissed

Bangalore City Co-operative Housing Society Limited v State of Karnataka and others

Bench	Anand Byrareddy
Where Reported	2012 Indlaw KAR 1669

Case No : W.P. No. 6283 of 2008

The Order of the Court was as follows :

1. The facts of the case are as follows: The petitioner is a society registered under the Karnataka Co-operative Societies Act, 1959 (Hereinafter referred to as 'the Act' for brevity). With an intention to form a residential layout for the benefit of its members, it is said to have approached the Government of Karnataka with a request to acquire an extent of 238 acres and 27 guntas of land located in Vajarahalli and Raghuvanahalli villages, Uttarahalli Hobli, Bangalore South Taluk.

   The State Government is said to have examined the proposal through an official Committee constituted by it and accorded prior approval for acquisition of the said extent of land.

   Accordingly, a preliminary notification u/s. 4 (1) of the Land Acquisition Act, 1894 (Hereinafter referred to as ' the LA Act' for brevity) was issued on 23-8-1988 notifying its intention to acquire 201.27 acres of land identified in the aforesaid villages. It is contended that one Muniswamappa , who is no more and is now represented by respondents 5 (a) to (e), had filed objections to the notification. An enquiry had been conducted thereon and the objections were overruled. Thereafter, a Declaration u/s. 6(1) of the LA Act was issued on 25-9- 1989 acquiring a total extent of 189.23 acres of the notified land. An Award is said to have been passed in respect of the lands on 23-6-1990, duly approved by the government on 11-3-1991. Possession of the lands is said to have been taken by the respondents on 10-4-1991, 19-12-1991 and other dates. The petitioner claims to have been put in possession of 161.21 acres of land on 14-10-1992 and 25-1-1995. Muniswamappa is said to have challenged the acquisition proceedings before this court in a writ petition in WP 4944/1990, the same was allowed by an order dated 18-11-1996 - on the ground that he had not been afforded a hearing by the Land acquisition officer.

   The said order was challenged in an appeal in WA 1871/1997, the same was allowed by an order dated 29-1-1998. The petitioner was again put in possession under a mahazar dated 7-4-1999 and a notification was also issued in this regard as on 9-4-1999. As Munis wamappa was dead by then, his legal representatives are said to have made a representation to the government through its revenue minister, seeking denotification of their lands. The minister is said to have directed the first respondent to denotify the land. Pursuant to which the respondents 1 to 3 had jointly issued a notification, denotifying the lands in question. In the meanwhile the said legal representatives of Muniswamappa had also filed a Special Leave Petition before the Supreme Court of India.

Looking to the entire records relating to the withdrawal of the acquisition proceedings, it is not the case of the State Government that the possession of the land from the contesting respondents has not been taken.

From the proceedings I find that the Government has taken possession from the land owners under a mahazar on 7.4.1999. The fact of taking possession was also ordered to be notified as per the Government Order dated 9.4.1999." It is contended that this can only lead to an inference that the relevant documents have been deliberately concealed or destroyed to facilitate the impugned order to be passed relying on that very shortcoming. It is contended that the petitioner has deposited substantially huge amounts of money towards the cost of acquisition. The land in question claimed by the respondents is in the middle of the layout that is formed and this loads to a serious impediment in the orderly development of the layout.

2. The learned Senior Advocate. Shri Udaya Holla, appearing for the counsel for respondent no.5 (a) to (e) , would submit that the writ petition is rendered infructuous in the light of the entire acquisition proceedings having been set at naught by this court at the instance of other land owners and the same having been affirmed by the apex court in the case of Bangalore City Co-operative Housing Society Limited v. State of Karnataka & others (2012) 3 SCC 727. He would hence submit that the alleged illegality of the impugned order pales into insignificance.

3. From a reading of the above decision of the apex court, there is no doubt that the validity of the entire acquisition proceedings in favour of the petitioner was addressed. The court has considered the mandatory nature of the twin requirements of the framing of a housing scheme by a society and the prior approval of the same by the State government in terms of S. 3 (f) (vi) of the LA Act. The apex court has found that the petitioner society had not framed any such housing scheme, which is the sine qua non for treating acquisition of land for a co- operative housing society as being acquisition for a "public purpose" within the meaning of S. 3(f) (vi) of the LA Act.

The apex court has also found that a contract entered into by the society with a real estate agent who was to act as a "go-between" to facilitate the speedy and smooth acquisition of land within a time frame and payment of crores of rupees by the society to the agent, in consideration thereof , clearly implied the agent was in a position to manipulate the State apparatus to facilitate acquisition of land and was hence an unlawful contract, hit by S. 23 of the Indian Contract Act, 1872. The only course available to the society to salvage the situation is also stated by the apex court, having regard to the circumstance that some of the members of the society may have built their houses on the sites allotted to them, liberty has been granted to the society to negotiate with the land owners for purchase of their land at the prevailing market rate ,while hoping that the land owners would agree. At the same time it has been made clear that the society shall return the vacant land to the land owners irrespective of the fact that it may have carved out sites and had allotted the same to its members.

Puttegowda S/o Kenchegowda v Additional Registrar of Co-Operative Societies and others

Bench	J. Ajit Gunjal
Where Reported	2012 Indlaw KAR 1510

Case No : W.P. No. 38106 of 2012

The Order of the Court was as follows :

1. The respondent No.4 was elected as a Director of Committee of Management of the respondent No. 3- Rank. The respondent No. 2 on the basis of the complaint lodged by respondent No.3-Bank under Section 29-C of the Karnataka Co-operative Societies Act, 1959 seeking to disqualify respondent No.4 from the Directorship of Committee of Management of respondent No.3 for misappropriation and misconduct committed by him has disqualified him for a period of one year. The petitioner was co-opted as a Director to the vacancy caused owing to the disqualification of respondent No.4. This was on 19.8.2011.

2. The respondent No.3 questioned the disqualification of respondent No.4 only to an extent of one year inasmuch as according to it the disqualification ought to have been much more. The respondents 3 and 4 preferred appeals before the Appellate Authority. The respondent No.3 sought for enhancement of the period of disqualification, whereas respondent No.4 sought for setting aside the order of disqualification.

3. Mr.M.R.Rajagopal, learned counsel appearing for the petitioner has pressed into service a ruling of the Apex Court in the case of Ghulam Qadir vs. Special Tribunal & Others reported in (2002) 1 SCC 33 2001 Indlaw SC 28.

4. Indeed, the Apex Court has observed thus:

   "There is no dispute regarding the legal proposition that the rights u/art. 226 of the Constitution of India *can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article.*

   The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

5. I am of the view that the petitioner squarely does not fall in any of these categories of persons mentioned in the decision. In the fist instance, he does not have a legal right. The only exception is in a writ of Habeas Corpus or Writ of Quo-warranto or it must be a writ petiton in public interest.

6. I am of the view that the petitioner does not qualify to be a person who can claim to be an aggrieved person and file this writ petition. The only person if at all who is aggrieved by the order passed by the Appellate Authority is either respondent No. 3 or respondent No.4. With this observation, petition stands rejected. Mr.K.A.Ariga, learned Additional Government Advocate appearing for respondents 1 and 2 is permitted to file memo of appearance within four weeks.

Petition dismissed.

B. Manjunath v Krishnarajendra Co-operative Bank Limited, Mysore

Bench	S. ABDUL NAZEER
Where Reported	2012 Indlaw KAR 1028

Case No : Regular Second Appeal No. 1750/2012

The Order of the Court was as follows :

1. The plaintiff is a Co-operative Society and is licensed by the Reserve Bank of India to carry on banking activities. The plaintiff is the owner of the suit schedule property. It filed the above suit for possession of the said property from the defendant. The suit was resisted by the defendant by contending that it is not maintainable as he is a member of the plaintiff-society and that his remedy is u/s. 70 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act'). It is further contended that the defendant is a tenant by holding over of the suit schedule property and that his tenancy is continued periodically and as such, the same cannot be determined. On the basis of the pleadings of the parties, the trial Court has framed relevant issues. The parties have let in evidence and documents have also been produced in support of their respective contentions. The trial Court on appreciation of the materials on record has decreed the suit, which has been confirmed by the lower appellate Court.

2. In Deccan Merchants Cooperative Bank Ltd., VS. M/S Dalichand Jugraj Jain & Others AIR 1969 SC 1320 - AIR 1969 SC 1340 1968 Indlaw SC 309, the Apex Court while considering the scope of S. 91(1) of the Maharashtra Co-operative Societies Act, which is in pari materia with S. 70 of the Act has held as under:

   "The question arises whether the dispute touching the assets of a society would be dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy nouses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant and a member of the bank in a building which has subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Bank and the appeal would fail on this short ground."

3. It is not the case of the appellant that the respondent-Co-operative Society owns building and does the business of letting out the parts of the building. Therefore, it cannot be said that the business of the society is to construct the building and letting out the same to its members. The respondent is carrying on only banking activities. The concern of the respondent is not to hold properties and letting out of the suit schedule property is an incidental matter and does not relate to the business of the Society. If that is so. question of invoking S. 70 of the Act for the purpose

of seeking possession of the suit schedule property from the defendant does not arise. The dispute between the plaintiff and the defendant cannot be a dispute touching the business of the plaintiff.

4. In so far as the second contention is concerned, the rental agreement has already been marked as Ex.P6 without any objection. In Javer Chand And Others VS. Pukhraj Surana AIR 1961 SC 1655 1961 Indlaw SC 373, the Apex Court has held that once the document has been admitted in evidence, it is not open either to the trial Court or to the Court of appeal or revision to go beyond that order. Therefore the validity of the marking of the document by the trial Court cannot be considered at this stage when it has been marked without any objection. No other contentions are urged by the learned Counsel for the appellant. The appeal does not involve any substantial question of law. It is accordingly dismissed.

5. Having regard to the facts and circumstances of the case, I am of the view that the appellant/ defendant has to be granted reasonable time to vacate the suit schedule property. Time is granted till 31.3.2013 to the appellant to vacate and deliver vacant possession of the suit schedule property subject to his filing an affidavit undertaking to voluntarily vacate the premises in question on or before the aforesaid date. The affidavit as above shall be filed within a period of four weeks from today.

6. In view of the dismissal of the appeal as above, I.A.No.1/2012 docs not survive for consideration. It is accordingly dismissed. No costs.

Appeal dismissed

S. Balachandar S/o Late K. Sethuraman v Krisbnarajendra Co-operative Bank Limited

Bench	S. ABDUL NAZEER
Where Reported	2012 Indlaw KAR 1153

Case No : Regular Second Appeal No. 1749/ 2012

The Order of the Court was as follows :

1. The plaintiff is a Co-operative Society and is licensed by the Reserve Bank of India to carry on banking activities. The plaintiff is the owner of the suit schedule property. It filed the above suit for possession of the said property from the defendant.

   The. suit was resisted by the defendant by contending that it is not maintainable as he is a member of the plaintiff-society and that his remedy is u/s. 70 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act').

   It is further contended that the defendant is a tenant by holding over of the suit schedule property and that his tenancy is continued periodically and as such, the same cannot be determined. On the basis of the plcadings of the parties, the trial Court has framed relevant issues. The parties have let in evidence and documents have also been produced in support of their respective contentions. The trial Court on appreciation of the materials on record has decreed the suit, which has been confirmed by the lower appellate Court.

2. In so far as the second contention is concerned, the rental agreement has already been marked as Ex.P6 without any objection. In Javer Chand And Others Vs. Pukhraj Surana - AIR 1961 SC 1655 1961 Indlaw SC 373, the Apex Court has held that once the document has been admitted in evidence, it is not open either to the trial Court or to the Court of appeal or revision to go beyond that order.

   Therefore the validity of the marking of the document by the trial Court cannot be considered at this stage when it has been marked without any objection. No other contentions are urged by the learned Counsel for the appellant. The appeal docs not involve any substantial question of law.

   It is accordingly dismissed.

3. Having regard to the facts and circumstances of the case, I am of the view that the appellant/ defendant has to be granted reasonable time to vacate the suit schedule property. Time is granted till 31.3.2013 to the appellant to vacate and deliver vacant possession of the suit schedule property subject to his filing an affidavit undertaking to voluntarily vacate the premises in question on or before the aforesaid date.

Annegowda S/o Late Sannappa v Additional Registrar of Co-operative Societies (I & M), Bangalore and others

Bench	Ajjikurttira Somaiah Bopanna
Where Reported	2012 Indlaw KAR 3031

Case No : W.P. No. 48179/2011 (CS-DAS)

The Order of the Court was as follows :

1. The short question which arises for consideration in the instant petition is with regard to the conditional deposit which has been ordered by the Karnataka Appellate Tribunal in KAT No.98/2009 while considering IA-II which was filed by the petitioner herein. The Karnataka Appellate Tribunal has directed to deposit 40% of the award amount as a condition for grant of stay. The petitioner is therefore before this Court.

2. Learned senior counsel appearing for the respondents would refer to Sub-s. (2) of S. 105 of the Karnataka Cooperative Societies Act, 1959 to contend that the deposit of 25% of the award amount has been made compulsory for filing the appeal. The learned counsel for the petitioner would point out that the amendment has been inserted on 30.03.2010, while the instant appeal before the Karnataka Appellate Tribunal has been filed in the year 2009. At this juncture, I do not find it necessary to advert to the fact as to whether the condition imposed therein should be made applicable to the instant facts.

3. Accordingly, the order dated 16.12.2011 is modified. The operation and execution of the award is stayed subject to the petitioner depositing 20% of the principal of award amount. The said amount shall be deposited by the petitioner with the respondents within a period of six weeks from today. The petitioner is also directed not to alienate or create third party right over the property which is indicated in the sale notice till the matter is disposed of. On compliance, the Karnataka Appellate Tribunal shall also endeavour to consider and dispose of the appeal as expeditiously as possible and in that regard, the request to be made by the parties before the Karnataka Appellate Tribunal shall be considered by the Karnataka Appellate Tribunal. Liberty is reserved to the parties to move the Karnataka Appellate Tribunal.

Tumkur District Central Cooperative Bank Limited and another v State of Karnataka Department of Cooperation, Bangalore, represented by its Secretary and another

Bench	H. N. NAGAMOHAN DAS
Where Reported	2012 Indlaw KAR 2864; 2013 (1) KarLJ 651
Case Digest	**Subject:** Banking & Finance; Practice & Procedure **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** Banking & Finance - Karnataka Cooperative Societies Act,1959,ss. 2(b)(2),30-B,98-E - Changes in method of recruitment - Validity of notification - Petitioner-banks were registered under the Act were engaged in banking business - Financial assistance to petitioners were funded by National Bank for Agricultural and Rural Development-NABARD through Apex Banks at State level - Respondent no.1-State Govt. by exercising power u/s.30-B of the Act issued impugned notification imposing certain conditions on co-operative societies in matter of fixing cadre strength and recruitment which specifies method of conducting examinations, awarding marks, qualification to posts, roster etc - Hence, instant Petition - Whether notification issued by respondent no.1 is proper. Held, petitioners are following the Rules relating to recruitment and also following reservation policy of State Govt. When petitioners are following one set of Rules in matter of recruitment then there is no need and necessity for respondent Govt. to prescribe another set of guidelines in matter of recruitment. It is not case of respondent Govt. that Rules adopted by petitioners are arbitrary, lacks transparency and professionalism. It is also not case of respondent Govt. that petitioners are not following reservation policy of State. Perusal of recruitment notification issued by petitioners inviting applications from eligible candidates to fill certain vacancies specifies number of posts reserved for various categories. Perusal of conditions specified in impugned Govt. notification makes it clear that it is nothing but interference with freedom and autonomy guaranteed to the petitioners u/s.98-E of the Act. Govt. by exercising power u/s.30-B of the Act may issue directions in public interest to cooperative societies other than the cooperative societies referred to u/s.2(b)(2) of the Act. Thus, impugned notification is not applicable to petitioners and similarly situated cooperative societies covered under cooperative credit structure as defined u/s.2(b)(2) of the Act. Petitions partly allowed.

Case No : W.P. No. 45889/2011 C/W. W.P. No. 7398/2012 (S-RES)

The Order of the Court was as follows :

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.

2. 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.

3. 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 co-operative 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.

4. Learned Government Pleader contends that in order to bring transparency and professionalisation 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.

5. Under the Karnataka Cooperative Societies Act there are cooperative societies other than the one specified under S. 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 S. 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 S. 2(b)(2) of the Act.

   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 u/s. 2 (b)(2) of the Act.

C. Lakshminarayana S/o M. N. Chikkanna v N. Vishwanath S/o Late V. Nageswaracharya

Bench	SUBHASH B. ADI
Where Reported	2012 Indlaw KAR 474

Case No : Cr. P No. 167/2009

The Order of the Court was as follows :

The principal allegation of the complainant - respondent was that the complainant had secured an interim order in an arbitration proceedings and the said interim order was issued to the Society for compliance by a legal notice dated 15.09.2006. Deliberately, the Society did not implement this interim order. Thereby, it committed an offence punishable u/s. 109 cl. (11) of the Act. To prosecute, the complainant had obtained permission as required u/s. 111(2) of the Act and in pursuance of the sanction, he had filed a private compaint. On the basis of the complaint, sworn statement and the documents produced along with the complaint, the learned Magistrate, has token cognizance of the offence u/s. 109(11) of the Act against the accused and has ordered for registration of the complaint and also has ordered for issue of summons. At this stage, the petition is filed.

Admittedly, the Secretary of the Society is sought to be prosecuted in his personal capacity. Offence u/s. 109 cl. (11) of the Act is punishable with imprisonment for a term, which may extend to one year or with fine, which may extend to three thousand rupees. If conviction by imprisonment is to be ordered, the Secretary has to serve the sentence. If Secretary is to be prosecuted, naturally, he should have been served with a notice and he should also have been served with the interim order. In the instant case, since the notice is served on the President and complaint is filed against the Secretary that too in-charge Secretary, offence is not made out u/s. 109 Cl. (11) of the Act. Criminal prosecution is entirely different from the proceedings in a civil suit. Since there is no material as to whether the interim order was served on the Secretary, the President against whom the notice was served is not sought to be prosecuted but, the incharge Secretary is sought to be prosecuted, the complaint lacks the requirement to prosecute for the offence under Section 109 of the Act. As such, in my opinion, the proceedings are required to be quashed. Liberty could be reserved to the respondent, if he is so advised, to take a appropriate steps.

Accordingly, the proceedings in PCR No.8322/2008, now pending in C.C. No.22465/2008 on the file of the VIII Addl. Chief Metropolitan Magistrate, Bangalore, stand quashed. Liberty is reserved to the respondent to take appropriate steps in accordance with law.

M. K. Thyagaraja Gupta S/o Late Krsshnaiah Setty and another v State of Karnataka, By its Secretary, Department of Revenue and others

Bench	B. V. Nagarathna, Vikramajit Sen
Where Reported	2012 Indlaw KAR 1061

Case No : W. A. Nos. 1944-1946/2011 (LA-BDA) C/W W. A. Nos. 444-447/2012, (LA-RES)

The Judgment was delivered by : B. V. Nagarathna, J.

1. Since the writ petitioners in both the cases assailed the acquisition of land made for the benefit of Karnataka House Building Co-operative Society, also known as Karnataka Gruha Nirmana Sahakara Sangha (hereinafter, referred to as the "Society", for the sake of convenience), these appeals have been heard together.

2. Interestingly, while W.P.No.10843/2008 was dismissed on 23/06/2010, on the ground of delay and laches, W.P.Nc-9412/2007 was allowed by an order dated 22/02/2011 and the entire acquisition has been quashed.

3. The petitioners in W.P.No.10843/2008 claimed to be the owners of 39 guntas of land each in Sy.No.136 of Laggere Village, Yeshwanthpura Hobli, Bangalore North Taluk, in the writ petition filed by them, they sought a direction to the respondents to submit the Action taken on the finding given on recommendations of the G.V.K.Rao's Report made u/s. 64 of the Karnataka Co-Operative Societies Act, 1959. In fact, the petitioners did not challenge the acquisition.

   Subsequently, notice u/s. 12(2) of the Act were issued and possession of the lands were taken and Notification u/s. 16(2) of the Act was issued on 23/10/1992, 19/01/1993, 11/06/1998 and 01/03/2005, possession of the lands have been handed over to the society on several dates in respect of the lands in question.

4. Before answering the point for consideration, it would be apposite to note that certain other land owners had assailed the acquisition in question before this Court and a learned Single Judge by judgment dated 06/09/1996 had quashed the Preliminary Notification u/s. 4(1) of the Act, on the ground that the requirement of S. 3 (f) (vi) of the Act, had not been fulfilled.

   The said judgment was successfully assailed in several writ appeals and the Division Bench of this Court set aside the order of the learned Single Judge and upheld the acquisition. The said judgment is reported as Karnataka Gruha Nirmana Sahakara Sangha Limited, Peenya, Bangalore v. Karithimmaiah and Others [2002(1) Kar.L.J. 469 (DB)]. The relevant portion of the said judgment reads as follows:-

   The question then arises as to whether once again, the very same issues could be reagitated by the petitioners herein on the premise that there had been fraud in the acquisition of the lands for the benefit of the Society and thereby, the Doctrine of delay and laches ought to be exempted from application in these cases.

5. In this context, it would be of relevance to cite what the Apex Court has stated when an issue regarding fraud is raised in a proceeding before a Court of law in the case of Meghmala and others v G. Narasimha Reddy and others [2010 (8) SCC 383 2010 Indlaw SC 663].

"Judicial pronouncements unlike sand dunes are known for their finality. However, in this case inspite of the completion of several rounds of litigation up to the High Court, and one round of litigation before the Supreme Court, the respondents claim a right to abuse the process of the Court with the perception that whatever may be the orders of the High Court of the Supreme Court, inter se parties the dispute shall be protracted and will never come to an end. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the Court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution."

6. At this stage, the decisions of the Apex Court on principles of constructive res judicate could be cited.

(a) The recent decision of the Apex Court in M. Nagabhushana vs. State Of Karnataka [2011 (3) SCC 408 2011 Indlaw SC 75], on the principles of constructive res judicata and principles analogous to the same it is observed as follows;

"In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to S. 11 CPC, are also applicable to Writ Petitions."

(b) The Apex Court in Shankar Co-Op Housing Society Ltd., vs. M. Prabhakar & Others [2011 AIR SCW 3033], held that a second writ petition on the same cause of action cannot be filed and an issue which had attained finality cannot be entertained. In the said case, the Apex Court held that the High Courts ought not to entertain and grant relief to a writ petitioner, when there is inordinate delay and unexplained delay in approaching the Court and that subsequent writ petition is not maintainable in respect of an issue concluded between the parties in the earlier writ petitions.

(c) In fact, the Apex Court has also held that decisions rendered in a public interest litigation has a binding effect vide State of Karnataka vs. All India Manufacturers Organisation [AIR 2005 SC 1846 2006 Indlaw SC 554], as long as the litigant acts bonafide, as a judgment in such a case binds the public at large and bars any member of the public from coming all the way to the Court and raising any connected issue or an issue which has been raised or should have been raised on an earlier occasion by way of public interest litigation.

7. Therefore, the learned Single Judge was not right in going into the merits of the matter when there was enormous delay in filing the writ petition by holding that possession of the lands in questions were not taken in accordance with law.

8. In the instant case, the Division Bench of this Court as well as the Apex Court have upheld the acquisition which were filed by various land owners and the said orders would bind the petitioners herein.

Therefore the petitioner's contention that there has been fraud in the acquisition proceedings and the earlier round of litigation did not take into consideration the said aspects and therefore, the present litigation has to be considered on merits cannot be accepted. The petitioners have

nowhere stated as to when they became aware of any fraud in the acquisition and as to why they remained silent for over two decades before assailing the acquisition proceedings at this point of time. On the other hand, it is noted that the Division Bench of this Court has also taken in to consideration the original records and has given its findings upholding the acquisition.

9. We are therefore, of the view that the learned Single Judge in W.P.No.9412/2007 was not right in holding that there was no delay in assailing the acquisition proceedings and thereby,, considering the writ petition on merits.

10. In the result, W.A.Nos.1944-46/2011 are dismissed while W.A.Nos.444-447/2012 are allowed.

The order of the learned Single Judge is set aside and W.P.No.9412/2007 is dismissed in limine, on the ground of delay and laches.

Parties to bear their own costs.

Petitions disposed of

Narayanagowda S/o Late Puttegowda v State of Karnataka and others

Bench	Dr. K. Bhakthavatsala, K. Govindarajulu
Where Reported	2012 Indlaw KAR 1086

Case No : W. A No. 1517/2012

The Judgment was delivered by : Dr. K. Bhakthavatsala, J.

1. The appellant who is the petitioner in W. P.33652/ 2010 is before this court praying to set aside the order dated:09,03 2012 made in W.P.33652/2010.

2. The bone contention of the learned, counsel for appellant is that the appellant filed writ petition to declare and atrike down the s. 98(N) (i) (iii) (c) and (f) of Karnataka Co-operative Societies Act, 1959 as inserted by Karnataka Act No.6/2010. as unconstitutional, 'void, unenforceable which in teralia, to Arts. 13 and 4 of the constitution of India, and also sought for consequential relief for mandamus to the respondent no s, 1 & 2 forbear from giving effect to and enforcing the above said provisions against the procedure and also sought for interim relief of stay, Leaned single judge on 27,10,2010 granted an interim stay of s. 98(N) (i) (iii) (c) -and (f) of Karnataka Co-operative, Societies 1959 as amended by Karnataka Act No.6/2010 only in so far as the petitioner is concerned.

3. Admittedly, there was no application by the respondents for vacating interim order granted in favour of the petitioner on 27.10.2010. the impugned order came to be passed sub -motto and vacated interim order granted in favour of the petitioner. the same is not sustainable in law.

4. In view of the above, the writ appeal is allowed and the Impugned order dated:09.03.2012 is set aside..

   It is made clear that if an application is made by the respondents for vacating interim order granted on 27.10.2010, the same may be considered and disposed off in accordance with law,

Karnataka Rajya Kaigarika Sahakara Bank Niyamita, Bangalore by its Secretary/Managing Director and others v V. Krishnaswamy S/o Venkatesh Iyer and others

Bench	N. KUMAR, Aravind Shiwagouda Pachhapure
Where Reported	2011 Indlaw KAR 537

Case No : Writ Appeal No. 2382 of 2007 (GM-RES) C/w WA No. 506, 545, 588. 589, 642 of 2008 Writ Appeal No. 5182 of 2009 W.P. No. 19128 of 2007, W.P. Nos. 7485. 9638 of 2008 W.P. No. 2755 of 2008, 22127 of 2005 W.P. Nos 11259, 15184, 16544, 19992 of 2007 W.P. Nos. 235, 1056, 1110, 1326, 3225, 3527, 3808. 5030. 5033, 5050. 6881, 8165, 9810. 11226 and 12746 of 2008

The Order of the Court was as follows :

1. the Constitutional validity of item (v) of cl. (c) of Sub-S. (1) of S. 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, for short, hereinafter referred to as 'the Act' is the subject matter of W.P. No. 2755/08. Further the petitioners in the said writ petition are also seeking for quashing of the notification bearing No. S.O.105(E) issued by the Central Government, Ministry of Finance and Company Affairs (Department of Economic Affairs) (Banking Division) dated 28th January 2003, where under, the Central Government specifies 'Co-operative Bank' as defined in clause (cci) of S. 5 of Banking Regulation Act, 1949, as 'Bank' for the purpose of the Act.

2. The very same petitioners challenged the Action of the authorised officer in issuing notice u/s. 13(2) of the Act, on the ground that the Act is not applicable to the loans advanced by Co-operative Banks in W.P. No. 23813/05. The learned Single Judge of this Court allowed the writ petition by his order dated 12.07.2007 following the judgment of the Apex Court in Greater Bombay Co-Operative Bank Ltd Vs. M/s United Yarn Tex Pvt Ltd., Si ORS, reported in AIR 2007 SC 1584 2007 Indlaw SC 295 and held that the banking company as defined u/s. 5(c) of the Banking Regulation Act, 1949 does not include or encompass the co-operative bank.

3. The learned Single Judge, who heard the writ petition filed by the petitioners, held that the definition of "Bank" under the Act, cannot be termed as Banking Company. Banking Company as defined u/s. 5(c) of the Banking Regulation Act, 1949 does not include or encompass the Co-operative Bank. Therefore, no proceedings could have been initialed by the Co-operative Bank against the petitioners under the Act. The dues of Co-operative Bank and recovery proceedings thereof are self regulated, inasmuch as, under the Karnataka Co-operative Societies Act, any amount due by a borrower to the Co-operative Bank, a dispute can be raised u/s. 70 of the Co-operative Societies Act for recovery of the said amount. The meaning of 'Banking Company' must necessarily be strictly confined to the words used-in S. 56 of the Banking Regulation Act, 1949. It was easy for the Parliament to say that Banking Company shall mean 'Banking Company' as defined in S. 56 and shall include Co-operative Bank as defined in S. 5(cci) and primary Co-

operative Bank as defined in S. 5(ccv). This would necessarily lead to a logical conclusion that there was a conscious exclusion of the Co-operative Bank from the purview of the Act.

The reason for excluding Co-operative Banks seems to be that Co-operative Banks have comprehensive, self-contained and less expensive remedies available to them under the Co-operative Societies Act, while other banks and financial institutions did not have such speedy remedies and they have to file suits in Civil Courts. The Apex Court in the aforesaid judgment has held that the Co-operative Banks performing functions for the public with a limited commercial function as opposed to corporate banks cannot be covered by Entry 45 of List I dealing with "banking". The subject of Co-operative societies is not included in the Union List, rather it is covered under Entry 32 of List II of Seventh Schedule appended to the Constitution, Therefore, he held that the Act is not applicable to the loans advanced by Co-operative Banks and quashed all proceedings initiated by the Co-operative Societies under the Act against the petitioners. The correctness of the said order is in appeal.

4. Eleven Judges Bench of the Apex Court in the case of Rustom Cavasjee Cooper Vs. Union Of India, reported in AIR 1970 SC 564 1970 Indlaw SC 575 dealing with these entries and the word 'banking' has held as under:-

"The expression "banking" is not defined in any Indian statute except the Banking Regulation Act, 1949. *It may be recalled that by S. 5(b) of that Act "banking"" means "the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise". The definition did not include other commercial activities which a banking institution may engage in.*

5. Therefore, from the aforesaid judgment of the Apex Court, it is clear that when the provisions of the Act is to be applied to a Co-operative Bank, first It has to be ascertained whether such a Co-operative Bank is performing functions for the- public with a limited commercial functions or function performing by such Co-operative Banks is the function of banking for the public. If the Co-operative Banks are carrying on only the business of banking, for the public, then, notwithstanding the fact that it is Co-operative Bank, it is a bank as defined under the Act and the law made by the Parliament in view of Entry 45 of List I of Schedule VII applies to such Bank. It is only when a Co-operative Society is carrying on several activities and once such activity is a banking activity, then the case falls under Entry 32 of List II and the Act is not applicable to such Co-operative Society which are carrying on banking activity to a limited extent. Therefore, in view of the aforesaid discussion/reasoning of the Apex Court in the case of Greater Bombay Co-Operative Bank Ltd, the law laid down in that case is not applicable to a Co-operative Bank, whose only business is banking.

Therefore; by virtue of the power conferred, the Parliament has enacted this Act as banking tails within List I of Schedule VII. Once the Constitutional validity of the enactment is upheld by the Apex Court in Mardia Chemicals Ltd case, when the said enactment provides for an application of the said provisions to such other banks which the Central Government may by notification specify for the purposes of this Act, when the pith and substance of the enactment is to empower these banks to take possession of the securities and sell them, the power so conferred under the Act on Co-operative banks is intra vires of the Act. The requirement of law is, a notification has to be issued by the Central Government under S. 2(1)(c)(v). It is not in dispute that such a

notification has been issued. As aforesaid, the validity of the notification has already been up held by this Court.

Answer

6. In the light of the aforesaid discussion, we answer the points for consideration as under:

(1) Item (v) of cl. (c) of sub-s. (1) of S. 2 of the Act, is intra vires of the Constitution and accordingly we uphold the Constitutional validity of the said provision.

(2) All the provisions of the Act and in particular, ion 13, 14, 17, 18 and 19 of the Act are applicable to Co-operative Banks, constituted under the Karnataka Co-operative Societies Act, 1959.

(3) The impugned notification dated 28.01.2003 bearing No. S.O 105(E) issued under item (v) of cl. (c) of sub-s. (1) of S. 2 of the Act is valid and legal.

37 In that view of the matter, we do not see any merit in any of the contentions urged in this writ petition. Accordingly, we pass the following order:

(b) Writ Appeal No. 2382/07 challenging the order passed by the learned Single Judge holding that the Act, is not applicable to the Co-operative Banks is hereby allowed, setting aside the impugned order in appeal

(c) Consequently, all the connected writ petitions filed by the borrowers are dismissed.

Vol. II

L. Krishnoji Rao S/o late Lakshman Rao v Agarbathi Workers House Building Co-operative Society Limited and others

Bench	N. KUMAR, A. N. VENUGOPALA GOWDA
Where Reported	2011 Indlaw KAR 534

Case No : Regular First Appeal No. 529 of 2000, Regular First Appeal No. 530 of 2000

The Judgment was delivered by : N. Kumar, J.

1. Shri C.H. Subboji Rao, in collusion with the 10th defendant and certain other persons, has formulated a scheme in the name and style of "Land Links" to form sites and to sell the same. They called for applications from prospective buyers. The plaintiff got issued a legal notice dated 28.10.1994 to the said 'Land Links'. The sequence of events are clear that Shri C.H. Subboji Rao and the 10th defendant have fabricated the document to deprive the right of the plaintiff. The plaintiff also reliably learnt that Mr. Subboji Rao has made the 10th defendant to enter into an agreement with one Smt. Uma Belagavi, wife of Shri Belagavi, who is working in Secretariat and deputed to Karnataka Appellate Tribunal, Bangalore, and has also received a huge amount. In view of the same, the sale deed dated 10.3.1992 executed in favour of the 10th defendant is bad in law and not binding on the plaintiff.

2. The trial Court on appreciation of the oral and documentary evidence on record held that the plaintiff has proved due execution of the agreement of sale in its favour as contended by them. Syed Mohideen has received the advance sale consideration as averred in the plaint and shown in Ex. P5. It also held the society has passed a resolution on 28.2.1390 authorizing PW1 to approach the lawyer and proceed to initiate legal proceedings in respect of the suit properties on behalf of the society. He is duly authorised to sign the papers on behalf of the society as per Ex. P1 and therefore it held PW1 is the competent person who has duly signed the pleadings and therefore the suit filed by him is legal and valid. It held the cause of action for the suit in O.S. No. 5167/1987 is for restraining the defendants from alienating the properties whereas in O.S. No. 5540/1990 the cause of action for the suit is to prevent the defendants from interfering with their possession and enjoyment of the suit schedule properties, as such the cause of action in both the suits are not one and the same. As the defendant's counsel did not press the issue regarding maintainability of the suit as having been hit by Ss. 69 and 70 of the Karnataka Cooperative Societies Act. it was not gone into and the said issue was held against the defendants. On the question of readiness and willingness to perform the contract it held as the plaintiff has paid the sums in terms of the agreement of sale not only on the date of the agreement but also subsequently and the total amount so paid is roughly about 3/4th of the sale consideration, the other material on record clearly establishes they are capable of if raising the balance sale consideration at the time of registration of the sale deed and pay the same.

   The schedule property is in the possession of the plaintiffs. The plaintiff is in possession of all the original documents in respect of the schedule property. Agreement of sale is in their favour.

Application for conversion is also made. Earlier O.S. No. 5540/1990 was filed and a temporary injunction was granted restraining Sri Mohideen from alienating the property. Paper publication was also issued. The conversion notice came into existence only on 11.6.1991 which would show that it is the plaintiffs who are prosecuting the matter. The said 10th defendant has not entered the witness box. His Power of Attorney Holder cannot speak about the personal knowledge in respect of the 10th defendant. Therefore, in the absence of 10th defendant entering the witness box, in the light of the legal proceedings referred to supra and the fact that plaintiffs are in possession of the property and neither Mohideen or his widow and children were in possession of the property on the date of the sale deed, it cannot be said 10th defendant is a bona fide purchaser for valuable consideration without notice of agreement of sale. The evidence of his power of attorney holder is hearsay and is not admissible in evidence. Therefore, the said plea has remained a plea and is not proved by any acceptable evidence. On the contrary, the plaintiff has disproved the case of the 10th defendant. Therefore, there is no merit in the said contention also.

Vishwanath v Deputy Registrar of Co-operative Societies and others

Bench	N. KUMAR, B. S. PATIL, S. N. Satyanarayana
Where Reported	2011 Indlaw KAR 539

Case No : W. P. No. 16763 of 07 C/w W. P. No. 16919 of 07

The Order of the Court was as follows :

1. The question of law which is referred to this Full Bench for decision reads as under:

   "When the Government, in exercise of the powers conferred by sub-s. (5) of Section 2A of the Karnataka Co-operative Societies Act, 1959 *(hereinafter referred to as* the Act *for short) by a notification confers on the category of officers subordinate to the Registrar of Co-operative societies, the powers conferred on the Registrar of Co-operative Societies under* the Act*, and in exercise of such powers the officers subordinate to the Registrar pass an order, whether an appeal lies to the next immediate superior officer as provided under* the Act*, or to the Government."*

2. Brief facts, which gave rise to this reference is as under: The Deputy Registrar of Co-operative Societies, Bangalore, has passed an award u/s. 71 of the Act directing the 3rd respondent-Bapuji House Building Co-operative Society Ltd., to allot a vacant, sac measuring 30" x 40' to Sri B. Muni Maregowda within 30 days from the date of the award. The said award was passed on 20.04.2001. When, the award, was not. complied with, the decree holder preferred Execution Petition. No. 1519/2001-02 under Rule 34(2) of the Karnataka Co-operative Societies Rules, 1960 read with S. 101 of the Act, on 18.10.2001 before the Assistant Registrar of Co-operative Societies, who is the Recovery Officer conferred with the power of the Executing Court, seeking a site as per the award. The Assistant Registrar dismissed the said execution petition by order dated 17.05.2005. Aggrieved by the same, the decree holder preferred an appeal u/s. 106 of the Act before the Deputy Registrar of Co-operative Societies challenging the order of dismissal of the execution, petition, In the meanwhile, as the subject matter of the said award had been sold in. public auction, an application was filed to implead the auction purchaser, which was allowed. The appellate Authority after considering the contentions oil all the part nee by order dated. 3.10.2007 allowed the appeal setting aside the public auction. The sale deed registered in favour of the auction purchaser was cancelled with a direction execute the sale deed in favour of the appellate-decree holder. Challenging the said order of the Appellate Authority, both the auction purchaser as well as the Society preferred these two writ petitions before this Court.

3. When the matters were heard, by the learned. Single judge, both the parties relied on several judgments of this Court as well as the judgment of the Apex Court. It was contended that the order passed by the Deputy Registrar of Co-operative Societies as one Without jurisdiction. As against the order passed by the Assistant Registrar, appeal should have been filed to the Government. It was urged by the writ petitioners that the Asst. Registrar having exercised the powers of the Registrar, as his delegate, has virtually acted as the Registrar and if so, appeal ties only to the Government as per S. 16(2)(a) of the Act and therefore, the order passed by the

Appellate Authority i.e., the Deputy Registrar was one without jurisdiction. It is in this context the aforesaid reference is made to the Full Bench.

4. Those are the two decisions where the Apex Court has laid down that when a power conferred under a statute on the Principal is delegated to a delegate, if such delegation is duly authorized under the statute, then the delegate can exercise all the powers under the statute as are conferred on the Principal. Though, in reality, it is the delegate who passes the order, by a legal fiction, it is deemed to be an order passed by the principal. After the said order is passed, the Principal will have no power of review of the said order. Even if the statute provides for review, such power of review is to be exercised by the delegate only. Ai the same time, if the person to .whom, power is delegated is subordinate to the Principal; even then against the order of the delegate, no appeal lies to the Principal, as it is deemed to be the order passed by the Principal only.

5. In this case, there is no such delegation. The distinction between authorisation and delegation has to be kept in mind. A delegation is an authorization. But all authorisation are not delegation. The order is made under a statutory power, It is the statute, which creates that power. The power can therefore, be exercised only in terms of the statute and not otherwise. There can be no orders except as authorised by the statute. The said power is to be exercised by the authority named in the statute, which is vested with the said power. When such an authority if the law provides for the same, instead of exercising the power by itself, authorises its sub ordinate authority to exercise the said, statutory power, then it. amounts to delegation of power. The authority authorising the said power becomes the 'principal' and the authority authorised to exercise the power becomes the 'agent'. When the delegate/agent.exercises the power he does so, for the principal. The agent-delegate exercises the power his own, but only the power of the principal. By such authorisation, no independent power in the officer is created. The principal, after such authorisation, cannot sit in judgement over the legality of the order passed by the agent and revise the same, as the order passed by the agent is the order passed by the principal. The said order is not reviewable also, because it was not the principal who passed the said order.

6. In fact, it is brought to our notice that the learned Single Judge of this Court in the case of C.S. Mohan Vs. State Of Karnataka & Ors. - 1979(2) KLJ 50, has held that in eases whereunder sub-s. (5) of Section 2-A of the Act Government confers power of the Registrar under Section 29C on the Additional Registrar, the power exercised by the Additional Registrar is as a delegate and therefore an appeal to the State a Government u/s. 106 is competent. This is not a correct proposition of law. As we have already pointed out, it is not a ease of delegation. If it is a case of delegation, then appeal does not the to the Principal. However, as already held above it is a case of conferring power of the Registrar on the subordinate officer by virtue of the power conferred by the statute. The power of appeal is also to be worked out under the statute where-an appeal is provided to the immediate superior officer. Therefore, the said judgment does not, lay down the law correctly. Accordingly, the same is over-ruled.

7. It is therefore, clear that this amendment is only clarificatory. That was the position of law on the date of reference even prior to the amendment. In that view of the matter, the contention that the Deputy Registrar of Co-operative Societies had no jurisdiction to entertain the appeal against the order passed, by the Assistant Registrar of Co-operative Societies and the order setting aside the said order is one without jurisdiction, is untenable. We answer the reference accordingly.

Status: Positive or Neutral Judicial Treatment

State of Karnataka By Honnavar Police v Dayanand Ramakrishna Shet and another

Bench	SUBHASH B. ADI, K. N. Keshavanarayana
Where Reported	2011 Indlaw KAR 384

Case No : Cr.A. No. 838/2005

The Judgment was delivered by : Subhash B. Adi, J.

1. Periodically the bank accounts were audited by the Department of Audit and Accounts of the Co-operative Society, Karwar. For the period from 01.04.1997 to 31.03.1998, PW.26 - Balakrishna Subraya Naik audited the accounts of the said Co-operative Society and found that an amount to the tune of Rs.5,76,000/- has been misappropriated by the accused Nos.1 and 2.

2. The trial Court on appreciation of the entire evidence found that the prosecution has proved that there was an entrustment in favour of the accused. The prosecution has proved that accused Nos. 1 and 2 were jointly entrusted with the property and have created false documents to misappropriate the funds of the Society to the tune of Rs.5,76,000/-.

   However, in this case, Rs.43,500/- for the period between 03.03.1995 to 03.11.1995. Having so held, the trial Court acquitted both the accused only on the ground that the sanction as required under the provisions of S. 111 (2) of the Karnataka Co-operative Society Act ('the Act' for short) has not been obtained and as such, the prosecution cannot prosecute the employees of the Society. The trial Court relied on the judgment of the Division Bench of this Court reported in 2002 (4) K.L.J 409 and accordingly, acquitted the accused. As against the judgment of the acquittal, the State has preferred this appeal.

3. On the other hand, the learned Counsel for the accused did not dispute that the decision of the Division Bench of this Court reported in 2002 (4) K.L.R 409 requiring the sanction before prosecuting the employees of the Society is overruled and also did not dispute that no sanction is necessary to prosecute the employees of the Society for the offence committed in their individual capacity.

ORDER.-

1. Accordingly, the appeal is allowed. The judgment of acquittal in C.C.No 135/2001 is set aside. Both the accused Nos. 1 and 2 are convicted for offence punishable u/ss. 467 and 409 read with S. 34 of IPC.

2. Each of the accused are sentenced to undergo one year Simple Imprisonment with fine of Rs.10,000/-, in default to undergo sentence of three months Simple Imprisonment for the offence punishable u/s. 467 read with S. 34 of IPC.

3. Further, each of the accused are sentenced to undergo one year Simple Imprisonment with fine of

Rs.10,000/-, in default to undergo three months Simple Imprisonment for the offence punishable u/s. 409 read with S. 34 IPC. Both the sentences to run concurrently.

4. Accused shall surrender before the learned Magistrate forthwith, if the accused fails to surrender the learned Magistrate to take steps to secure the custody of the accused and confine them to the prison to serve the sentence. If the accused were in pre-trial detention, the period of pre- detention be given set of.

Dattaprasad Co-Operative Housing Society Limited and another v Joint Registrar of Co-Operative Societies Bangalore Division Chamarajapet Bangalore and another

Bench	AJIT J. GUNJAL
Where Reported	2012 Indlaw KAR 2852; 2013 (1) KarLJ 37

Case No : W.P. No. 10231 of 2012 (CS-RES)

The Order of the Court was as follows :

1. The first petitioner-Society is the absolute owner and in lawful possession of 9 multi tenement buildings consisting of totally 66 residential flats equaling to the members of the Society. The second respondent is one such member of the first petitioner-Society. Suffice to note that S. 64 proceedings have been initiated as against the members of the society. The grievances of the petitioners then was that they were not permitted to engage the services of a counsel and the Enquiry Officer was biased, etc. The petitioners were before this Court in W.P.No.11963/2007 and W.P.No.7286/2007 with a request to direct the first respondent therein to permit the members of the Society to engage an advocate in the enquiry initiated under S. 64 of the Act and also contended that the inquiry Officer was biased. This Court disposed of the said writ petitions with the certain directions.

2. It is not in dispute that enquiry under S. 64 of the Act is concluded and certain charges levelled against the office bearers of the Society are proved. Consequenlty, proceedings were initiated u/s. 68 of the Act which culminated in Annexure-E, directing the Society to comply with the directions issued in the report under S. 64 and also to rectify the defects.

3. It is no doubt true that a contention is raised by the learned counsel for the petitioners that the compliance report has already been filed. Incidentally, it is also to be noticed that the Society appears to be perpetually facing an enquiry under S. 64 of the Act and so also u/s. 68 of the Act. Nevertheless, in the present enquiry, we are concerned with Annexure-E dated 20.11.2010, According to the petitioners, since the compliance report having been already filed, the question of issuing another notice u/s. 30(1) of the Act so as to appoint an Administrator does not arise.

4. It may prima facie indicate that some of the charges, which are levelled against the "petitioners have been dealt earlier in an enquiry under S. 64 of the Act but nevertheless, whether there is a proper compliance or not as directed u/s. 68 of the Act is a matter, which is required to be considered by the competent authority. This Court sitting u/arts. 226 and 227 of the Constitution of India cannot be a fact finding authority.

5. Indeed the Division Bench, referring to a ruling of the Apex Court has observed thus :

   "The practice of the High Courts entertaining writ petitions, questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties is deprecated. Unless, the High Court

is satisfied that the show-cause notice was totally honest in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not he entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably he directed to respond to the show-cause notice and take all stands highlighted in the writ petition Whether the show- cause notice was founded on any legal premises is a jurisdictional issue which can even he urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court."

6. Insofar as the decision reported in case of M.Srinivasa Reddy and others V/s. Registrar of Co-operative Societies for Karnataka and others reported in ILR 2000 KAR 2341 is concerned, nowhere does the decision rule that a show cause notice can be interfered.

7. Having said so, I am of the view that the question of interfering with the said show cause notice does not arise. Whatever contentions which are sought to be raised or urged before me, are left to be urged before the Competent Authority, who certainly shall bestow his attention having regard to the serious antecedents of the parties to the lis.

Bangalore Urban and Rural District Co-Operative Milk Producers' Societies Union Limited (Bamul), Bangalore v H. Hanumanthappa and another

Bench	S. ABDUL NAZEER
Where Reported	2010 Indlaw KAR 580; 2011 (2) KarLJ 333
Case Digest	**Subject:** Trusts & Associations **Keywords:** Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960 **Summary:** Trusts & Associations - Karnataka Co-operative Societies Rules, 1960, r. 31(4)(b) - Award - Set aside of - Permissibility - Whether the Joint Registrar was competent to entertain a miscellaneous application u/r. 31(4)(b) of the Rules to set aside an ex parte decision or award after thirty days from the date of such decision or award was made when such decision or award had been duly served in the dispute or in other cases after thirty days from the date of knowledge of such decision or award having been made - Held, Legislature in its wisdom had limited the application of the provisions of the Limitation Act to filing of an appeal or application for revision under the Act - Award was appealable u/s. 105 of the Act - Even if there was a delay in filing the appeal, the provisions of the Limitation Act were made applicable for seeking Condonation of delay in filing the appeal - Right of appeal was a substantive right - When the Act did not provide for application of s. 5 of the Limitation Act, question of entertaining a miscellaneous case filed beyond 30 days from the date of the decision or award or from the date of knowledge of such decision or award having been made by condoning the delay in filing was not justified - Petition allowed.

Case No: W.P. No. 8768 of 2010

The Order of the Court was as follows :

In this case, the short question falls for determination is whether the Joint Registrar is competent to entertain a miscellaneous application under Rule 31(4)(b) of the Karnataka Co-operative Societies Rules, 1960 (for short, 'the Rules') to set aside an ex parte decision or award after thirty (30) days from the date of such decision or award was made when such decision or award had been duly served in the dispute or in other cases after thirty (30) days from the date of knowledge of such decision or award having been made?'

It is to be noted here that the object of the Act is to consofidate and amend the laws relating to Co-operative Societies in the State of Karnataka. It is evident from Section 4 of the Act that the very object of every Co-operative Society registered there under is the promotion of economic interest of its members

or of the public in accordance with co-operative principles or a Co-operative Society established with the object of facilitating the operations of such society. A summary procedure is provided for disposal of the disputes under Section 71 of the Act and the relevant Rules made for the said purpose. The Legislature in its wisdom has limited the application of the provisions of the Limitation Act to filing of an appeal or application for revision under the Act. The award is appealable under Section 105 of the Act. Even if there is a delay in filing the appeal, the provisions of the Limitation Act are made applicable for seeking condonation of delay in filing the appeal. The right of appeal is a substantive right. I am of the view that when the Act does not provide for application of Section 5 of the Limitation Act, question of entertaining a miscellaneous case filed beyond 30 days from the date of the decision or award or from the date of knowledge of such decision or award having been made by condoning the delay in fifing is not justified.

ORDER

(i) The order passed by the second respondent dated 1-6-2009 at Annexure-J and the order passed by the Karnataka Appellate Tribunal, Bangalore, dated 19-2-2010 at Annexure-K are hereby quashed. Consequently, the miscellaneous case filed by the petitioner for setting aside the award as per Annexure-E is hereby dismissed.

Vyavasaya Seva Sahakari Bank Limited, Hirekoppa and another v State of Karnataka and others

Bench	SUBHASH B. ADI
Where Reported	2010 Indlaw KAR 686; 2011 (4) KarLJ 99
Case Digest	**Subject:** Administrative **Keywords:** Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960 **Summary:** Administrative - Karnataka Co-operative Societies Act, 1959, ss.121, 29C(5) - Notification - Election - Minimum qualification - Petitioner/Co-operative Society had committee of management consisting of 12 members - 7 members were elected from 'A' Class category, 2 members were elected from 'B' Class category and 3 members were ex officio members - Period of elected members was five years - Notification dt.16-12-2006 was issued by State Govt./ respondent No.1 fixed minimum qualification relating to transaction of 'A' class members to extent of 1 lakh year at least for period of 3 years - State Govt. issued another notification dt.8-2-2010 exempting primary level co-operative societies namely 'A' category members from minimum qualification - Whether Govt. has power to issue notification to exempt society from minimum qualification u/s.29-C (5) of 1959 Act. Held, s.29-C (5) of 1959 Act confers power on State Govt. to fix eligibility qualification for being appointed or elected as member of Committee of such Co-operative Society. Issue of notification dt.16-12-2006 is not in dispute even power to issue notification fixing eligibility qualification is also not in dispute. Fact that Govt. has power to prescribe qualification, it includes power to not prescribe minimum qualification. S.29-C (5) of 1959 Act is not mandatory but it is directory in nature. Under said provision Govt. may prescribe qualification may also means may not. If there is a power to prescribe minimum qualification under provisions of s.29-C (5) of 1959 Act, it has also power not to prescribe. No doubt r.5 prescribes that every society registered under provisions of 1959, Act requires framing bye-laws. R.5 deals with nature of bye-laws to be framed. When a field as regard to qualification of member eligible to be appointed or elected is concerned s.29-C (5) of 1959 Act, no bye-law for said purpose could be framed. If legislation requires State Govt. to do certain things and that power having been delegated to it, it is for State to prescribe and not for society to frame bye-law for said purpose. Hence, bye-law if any prescribing qualification which is covered s.29-C (5) of 1959 Act is unenforceable. It does not give any right to society to restrict any 'A' Class member from contesting the election by means of any bye-law. It is clear that, State Govt. has exempted societies from minimum qualification has not prescribed minimum qualification and same is in consonance with power conferred on it u/s.29-C (5) of 1959 Act. Petition dismissed.

Case No : W.P. Nos. 60804 and 60805 of 2010 (CS-RES)

He further submitted neither Section 29-C(5) nor Section 121 confers power on the State Government to exempt from the requirement of minimum qualification and in view of the same, if the Government does not want to prescribe any qualification, the qualification prescribed under the bye-laws would prevail and only subject to the bye-law member can be qualified to contest. He submitted that in view of the provisions of Section 29-C(5) of the Act, the notification is not sustainable.

On the contrary, learned Counsel appearing for the State submitted that, the State Government has power under Section 121 of the Act to exempt a Co-operative Society from the application of any provisions of the Act. In consonance with the provisions of Section 121 read with Section 29-C(5), the Government has exempted the Societies from the requirement of minimum qualification. In this regard, he further submitted that this notification is issued in view of the fact that most of the Co-operative Societies on account of the flood situation in most of the area have not transacted much business to qualify to contest the election. It is in these circumstances and in the larger interest of the farmers the notification has been issued.

Provisions of Section 29-C(5) of the Act is not mandatory power to be exercised by the Government, this provision is directory in nature, Government may issue or may not issue notification. Further, in view of the provisions of Section 21 of the General Clauses Act, the power to issue includes power to not to issue i.e., to exempt also.

From Annexure-E, it is clear that, the State Government has exempted the societies from minimum qualification vis-a-vis has not prescribed the minimum qualification and same is in consonance with the power conferred on it under Section 29-C(5). I do not find that there is any error in exercise of power by the State Government nor there is any violation of provisions of Section 29-C(5). However, insofar as Section 121 is concerned, it may not directly apply to the facts of the present case.

Hence, I do not find any error in exercise of power by the State Government in issuing the impugned Annexure-E. In the circumstances, petition is devoid of merits and liable to be dismissed. Accordingly, it is dismissed.

Benaka Souradha Credit Co-Operative Society Limited, Bangalore v Assistant Garrison Engineer, Bangalore and another

Bench	A. N. VENUGOPALA GOWDA, MANJULA CHELLUR, MANJULA CHELLUR
Where Reported	2010 Indlaw KAR 309; 2010 (4) KarLJ 516
Case Digest	**Subject:** Banking & Finance; Trusts & Associations **Keywords:** Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960 **Summary:** Banking & Finance -Trusts & Associations - Karnataka Co-operative Societies Act, 1959, ss. 34(2), 70, 71, 101 and 109(4) - Karnataka Co-operative Societies Rules, 1960, r. 37(1) - Recovery of Loan - Attachment of Salary - Discharge of duty - Appellant was Co-operative Society and it availed loan to 'G' with sureties of respondent no.2 - Appellant filed petition u/s.70 of 1959 Act against loanee and sureties for recover loan amount - Award was passed u/s.71 of 1959 Act and filed E.P u/s.101 of 1959 Act for recovery - Executing authority issued warrant of attachment of salary u/r.37(1) of 1960 Rules and directed respondent no.1 to withhold Rs. 2,000/- per month from salary of respondent no.2 and remit to society - Appellant filed Writ petition on ground that respondent no.1 did not give effect to salary attachment warrant and discharge statutory duty u/s.34 (2) of 1959 Act was rejected by Writ Court - Appellant filed appeal and challenged order of Writ Court - Hence instant appeal. Held, u/s.109(4) of 1959 Act is with regard to offence by employer who without sufficient cause fails to make deduction u/s.34(2) of 1959 Act or fails to pay to cooperative society amount deducted, within period of fourteen days from date on which such deduction is made. Appellant had obtained salary attachment warrant and u/s.109 (4) of 1959 Act society to prosecute defaulter for offence committed u/s.34 (2) of 1959 Act. Respondent no.1 had failed to deduct from salary of respondent no.2 for amount of attachment warrant without sufficient cause and he could prosecuted before jurisdictional Court and penalized for offence u/s.109(4) of 1959 Act. Writ petition could not entertain to direct respondent no.1 to give effect to attachment warrant passed by Recovery Officer. Appellant could secure enforcement of salary attachment warrant by initiating penalty proceedings. Writ Court did not committed any error in rejecting writ petition on ground that appellant could not convert Writ Court into Executing Court to execute salary attachment warrant issued by Recovery Officer. Writ petition was not maintainable and Writ Court was justified in rejecting Writ petition. Appellant had remedy u/s.109 of 1959 Act and he could not get alternate remedy u/art. 226 of Constitution. Appeal dismissed.

Case No : Writ Appeal No. 2905 of 2009 (CS-DAS)

Briefly stated, the facts which have led to the filing of the writ petition are as follows:

The appellant is a Co-operative Society, registered under the Karnataka Co-operative Societies Act, 1959 (for short, " the Act'). It had advanced loan to one Smt. Geetha. The 2nd respondent was one of the sureties to the said loan. To realise the loan amount, appellant filed a petition under Section 70 of the Act against the loanee and the sureties. An award was passed under Section 71, which was put into execution by filing a recovery petition under Section 101 of the Act, wherein, the executing authority issued a warrant of attachment of salary in exercise of the power under Rule 37(1) of the Karnataka Co-operative Societies Rules, 1960 (for short, ' the Rules'), directing the 1st respondent to withhold Rs. 2,000/- per month from the salary of the 2nd respondent and remit to the society. Alleging that the 1st respondent did not give effect to the salary attachment warrant and discharge the statutory duty under sub-section (2) of Section 34 of the Act, the writ petition was filed seeking the said reliefs.

Sri B.S. Nagaraj, learned Advocate appearing for the appellant contended that the 2nd respondent has executed the agreement under Section 34 of the Act and hence the 1st respondent had a duty to give effect to the salary attachment warrant issued by the Recovery Officer. Since the 1st respondent failed in its duties, the writ petition was filed to direct the 1st respondent to act in accordance with Section 34 (1) and (2) of the Act, which was not correctly considered by the learned Single Judge and as a result, on a wholly erroneous view of the matter, the writ petition was rejected and hence interference is called for. Learned Counsel placed reliance on the decision in the case of K. G. Rajashekar v State of Karnataka and Others 2009(1) Kar. L.J. 36 (DB): ILR 2008 Kar. 4048 2008 Indlaw KAR 173 (DB).

Thus, it is clear that the statute itself provides for a just procedure as a remedy in case of failure to give effect to an award or a decision or order made under the Act and the Rules. It is well-settled position of law that, if the Act provides for a thing to be done in a particular manner, then, it has to be done is that manner alone and not otherwise. Sub-section (4) of Section 109 of the Act enables the society to prosecute the defaulter for the offence committed. Such power has been conferred by the Legislature with an object that the orders passed under the Act and Rules are obeyed and if breached, should be dealt with in the manner provided under the Act itself.

It is appropriate in this connection to notice the decision in the case of K. Jagdish Ponraj and Others v A. Muniraju and Others 2009(2) Kar. L.J. 391 (DB) : 2009 (1) KCCR 521 2008 Indlaw KAR 279 (DB) where in it has been held as follows.-

"9. The provision under Order 39, Rule 2-A (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".

(emphasis supplied)

In the case of Thansingh Nathmal and Others v The Superintendent of Taxes, Dhubri and Others (1950-2004)1 SCST 189 : AIR 1964 SC 1419 : (1964)15 STC 468 1964 Indlaw SC 115 (SC), the Constitutional Bench of the Hon'ble Supreme Court, with regard to the impressibility of by passing of statutory remedy, has held as follows.-

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and

the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a Court of appeal against the decision of a Court or Tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another Tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek report to the machinery so set up".

Since we do not find any exceptional case having made out by the appellant pointing out that, the statutory remedy provided under sub-section (4) of Section 109 of the Act is not efficacious to deal with the situation, we do not find any error having been committed by the learned Single Judge in rejecting the petition on the ground that, the appellant cannot convert the Writ Court into an Executing Court to execute the salary attachment warrant issued by the Recovery Officer. Appellant cannot bye-pass the alternate remedy prescribed in the Act. Hence, the learned Single Judge is justified in rejecting the writ petition.

S. Prakash and others v State of Karnataka and others

Bench	S. ABDUL NAZEER
Where Reported	2010 Indlaw KAR 589; 2011 (2) KarLJ 181
Case Digest	**Subject:** Election; Trusts & Associations **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** Trusts & Associations - Election - Karnataka Co-operative Societies Act, 1959, ss. 2(A-1), 29(1) - Election to Managing Committee of Co-operative Society - Nomination by State Government - Validity - Election to the Managing Committee of 3rd respondent Society was held wherein Chief Executive Officer issued notification for election of President and Vice President - 1st respondent Government nominated respondent nos. 4 to 6 to the Managing Committee - Joint Registrar at the instance of a defeated candidate restrained 3rd petitioner from participating in the election of President and Vice President - 13 members of the Managing Committee including the 3 nominated members and 3 ex-officio members elected respondent nos. 7 and 8 as the President and the Vice President - Hence, petitioner members of the 3rd respondent Society filed the instant petition assailing the nomination of respondent nos. 4 to 6 by the 1st respondent Government and consequent election of respondent nos. 7 and 8 as President and Vice President - Petitioners contended that Government had not financially assisted the 3rd respondent at any point of time - Whether 1st respondent Government was entitled to nominate members to the Managing Committee - Held, 3rd respondent Society was not an assisted Society and hence, State Government had no power to nominate its representatives to the Society - In the instant case, the Zilla Panchayat had given the grant to 3rd respondent in the years 1994 and 1996 - However, during the period, the word 'State' was not a part of the definition of the expression 'Assisted Society' - It was not the case of the respondents that the 3rd respondent had received the assistance from the Zilla Panchayat after the amendment of s. 2 (A-1) - Assistance received by the Society sometime in the past should not be taken into account for treating it as an assisted society - Nomination u/s. 29 (1) of the Act should have been made within a reasonable period from the date of receipt of the assistance - Since time was not stipulated in the statute, the power to nominate the members should be exercised within a reasonable time from the date of rendering assistance - Further, while defining the expression 'assisted society, present perfect tense had been used, which clearly indicated that the assistance should have been received in the immediate past and not at any time in the past - Hence, nomination made by the State Government was without authority of law and therefore, nomination order was quashed - Petitions allowed.

Case No : W.P. Nos. 25816 to 25818 of 2010

The Order of the Court was as follows :

The 1st respondent has filed the objections contending that the 3rd respondent is an assisted society. The Zilla Panchayat, Kolar, had granted a sum of Rs. 1,00,000/- to the 3rd respondent for the construction of the Sahakari Bhavana. During the year 1996, the Zilla Panchayat had again granted a sum of Rs. 3,00,000/- to the 3rd respondent for completion of the construction of the Sahakari Bhavana. Thus, the Zilla Panchayat had granted a total sum of Rs. 4,00,000/- to the 3rd respondent. It is further contended that as per Article 12 of the Constitution of India, the State includes Government and Legislature of each State and all the local or other authorities. The expression local authority includes a panchayath or other bodies coming within the definition of local authority. Thus, the 3rd respondent is an assisted society as defined under Section 2 (A-1) of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'). The nomination made by the Government to the 3rd respondent is just and proper.

A Division Bench of this Court in Ganapathy Seetharam Bhat v State of Karnataka and Others, 1993 (3) Kar. L.J. 208 (DB): ILR 1993 Kar. 2413 (DB) has taken a similar view, which is as under :

"Admittedly, in the instant case, the State Government ceased to be a shareholder because the subscription made to the share capital has been returned. It cannot be considered that the State Government continues to be a member or it can be deemed to be a member only because at some time past the State Government had subscribed to the share capital"

(Emphasis supplied)

1. In the light of the above discussion, I am of the view that the nomination made by the State Government as per the order at Annexure-D, dated 11-8-2010 is without authority of law. The writ petitions are accordingly allowed and the order at Annexure-D, dated 11-8-2010 is hereby quashed. Liberty is reserved to the petitioners to challenge the validity of the election of respondents 7 and 8 as the Adhyaksha and the Upadhyaksha of the 3rd respondent before the Competent Authority in accordance with law. No costs.

Mahila Meenugarara Sahakara Sangha Limited, Mysore Taluk v State of Karnataka and others

Bench	MOHAN SHANTANAGOUDAR
Where Reported	2010 Indlaw KAR 596; 2011 (2) KarLJ 346

Case No : W.P. No. 18276 of 2009

The Order of the Court was as follows :

Thus, it is clear that the objector society is exercising fishing rights on tanks which totally measure 85 hectares. The tank in question is situated in Jayapura Hobli of Mysore Taluk. It is not in dispute that the petitioner-Society has jurisdiction over entire Mysore Taluk which includes Jayapura Hobli also. It is also not disputed that petitioner is also the member of the Federation. After considering all the materials on record, the concerned authority has granted fishing rights in favour of the petitioner-Society.

As aforementioned, the petitioner-Society is fully managed and controlled by ladies who are from fishing community itself. The petitioner-Society has got no authorisation in respect of any other Tank till this day except the tank in question, whereas, the objector society is already having authorisation in respect of two tanks measuring 85 hectares. At the time of granting authorisation, the concerned authority has exercised his discretion appropriately in order to follow 'five and let live' policy. In case, if the authorisation granted to the petitioner is restricted to one year abruptly, the same may create hardship. Moreover, the impugned order is passed behind the back of the petitioner. In view of the above, this Court is of the considered opinion that interest of justice will be met if the impugned order is set aside. The State Government should not have restricted the lease period to one year particularly when the concerned officer has legally authorised the petitioner-Society and granted fishing rights for five years. In view of the same the impugned order is liable to be quashed.

The impugned order, in fact, does not disclose anything against the petitioner. On the other hand, the contents of the impugned order are in favour of the petitioner. In the impugned order, the concerned authority has observed that the authorisation granted in favour of the petitioner-society in respect of the fishing rights is valid and that the reservation granted in favour of the petitioner-society is also constitutional. However, in one sentence, the authority concerned, has reduced the authorization to one year from five years without assigning any reason, much less valid reason. Probably, the said sentence is inserted in view of the direction issued by the State Government. The impugned order is not a speaking order. Hence, the impugned order is not only illegal, but arbitrary.

M. Sadananda v Chief Executive Officer/The General Manager, Kadaba Co-Operative Agricultural Bank Limited, Kadaba, Puttur Taluk, Dakshina Kannada District

Bench	Aravind Kumar
Where Reported	2010 Indlaw KAR 390; 2010 (5) KarLJ 574

Case No : W.P. No. 14160 of 2010 (GM-CPC)

The Order of the Court was as follows :

This order came to be challenged by the respondent-Bank before the Karnataka Appellate Tribunal at Bangalore in Appeal No. 1040 of 2001 which resulted in dismissal, by order dated 18-6-2004 which came to be confirmed by this Court in W.P. No. 33126 of 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.

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 of 2006 before the Civil Judge (Senior Division) and Additional 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.

A certificate issued by the Registrar or any person authorised by him under 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.

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.

Chokka Basavanna Gowda v State of Karnataka and others

Bench	MANJULA CHELLUR, Aravind Kumar
Where Reported	2010 Indlaw KAR 330; 2010 (5) KarLJ 1

Case No : Writ Appeal Nos. 1801, 1806 and 1807 of 2010 (CS-RES)

The Judgment was delivered by : Hon'ble Justice Manjula Chellur

According to the learned Senior Counsel Mr. Nanjunda Reddy appearing for the appellant, the 9th respondent-T.M. Chandrashekariah ceased to be the Director of VSSBN Kududarahalu Co-operative Society as new body was elected to the said society on 19-3-2010 as he did not contest the elections. Having lost his position as elected director of the primary society, he could not continue to be a representative of that society at TAPCMS, Siruguppa. Therefore, he was disqualified to participate in the election proceedings of Bellary DCC Bank, Hospet, by virtue of Section 29-C(1)(o)(i) and (ii) of the Karnataka Co-operative Societies Act, 1959 (for short, ' the Act').

So far as the preliminary objection raised by the learned Senior Counsel Mr. Ravivarma Kumar that the learned Single Judge had reserved liberty to the appellant to seek modification or alteration of the interim order of stay, we are of the opinion that such liberty does not take away the right of the appellant to challenge the interim order itself before the Division Bench. Therefore, the said preliminary objection is overruled.

There are other undisputed facts as well in the present cases. Though the impugned order of stay was granted on 22-4-2010 restraining the appellant from representing the 6th respondent in the proposed election to the post of President of the State Co-operative Apex Bank, by 12-4-2010 he was elected to the post of delegate/representative to the 6th respondent-Bank. Whether disqualification proceedings of the 9th and 10th respondents were justified or not and whether there was high handedness or arbitrary act on the part of the 3rd respondent herein-Joint Registrar of Co-operative Society, are matters to be decided in the writ petitions. So also the election of the appellant to the post of delegate or representative of the 6th respondent to represent before the Apex Bank-7th respondent, he was apparently elected on 12-4-2010 having 6 votes as against 5 votes of 11th respondent-Sri Ravindra. The so-called modus operandi and the circumstances in which the appellant alleged to have been elected against the interest of the 11th respondent for not having the support of the respondents 9 and 10 are all part of subject-matter of election petition. Such factual issues can be decided in an election petition. As already stated above, disqualification proceedings is also the subject-matter of other two writ petitions which are still pending for adjudication.

We have to see whether the 9th and 10th respondents were otherwise entitled to participate in the elections conducted on 12-4-2010 irrespective of disqualification order. 17. Apparently the elections to the Committee of primary society of which 9th and 10 respondents members at Kududarahalu Co-operative Society and Bellaiy Kendia SSM Sangha, Hospet, were held on 19th and 20th March, 2010, 9th respondent did not participate in the proceedings and 10th respondent though participated in the election lost the election. Therefore, both 9th respondent and the 10th respondent ceased to be

Directors of their respective societies by 19th and 20th. Sub-section (4) of Section 28-A which reads as under refers to the term of office of a Member of the Committee for a period of 5 years:

Apparently, 9th respondent was deputed as a representative of the primary society of Kududarahalu to the TAPCMS Siraguppa i.e., secondary society, in the year 2008. Whether his representative status at the secondary society would still continue as on 12-4-2010 when the very directorship of primary society came to an end on 19-3-2010 when new body was elected to the primary society? A representative of primary society could be deputed only if he is a Director of the primary society. When once he ceases to be the Director of the Primary society, he remains only as an ordinary member of the society, 9th respondent would automatically cease to be the Committee Member or deputed representative of TAPCMS Siraguppa secondary society on 19-3-2010 when new body of Directors were elected to the primary society. He would enjoy his office as representative of the primary society at secondary society level as long as he continued to be the director of the primary society. Therefore, irrespective of the disqualification proceedings he could not have participated as a Committee Member of secondary Society. If at all any one from his primary society could represent at secondary society, it has to be from the newly elected body.

So far as 10th respondent is concerned, to the new body of Bellary Kendra Sahakari Sagatu Marata Sangha elections were held on 20-3-2010 and he lost the elections. Therefore, he ceased to be the Director of the primary society.

Interim order issued now would come in the way of the process of election to the post of President of the Apex body which commenced long back. It is well-settled by a catena of decisions of the Apex Court right from the decision in N.P. Ponnuswami v Returning Officer, Namakkal Constituency, Namakkal, Salem District and Others, AIR 1952 SC 64 1952 Indlaw SC 117 that when once election process is set into motion, it cannot be stalled and all the disputes concerning the said election have to be decided by filing an election petition - a post election litigation as envisaged under Section 70 of the Act.

In the result therefore, the appeal is allowed in part setting aside the last portion of the interim order restraining the 7th and 8th respondents allowing the 9th respondent to represent the Federal Bank viz., BDCC Bank, Hospet, as a delegate to the proposed election for the post of President of the State Co-operative Apex Bank to be held on 30-4-2010.

P. C. Mohan and another v State of Karnataka and others

Bench	K. SREEDHAR RAO, B. V. Pinto
Where Reported	2010 Indlaw KAR 421; 2010 (6) KarLJ 126
Case Digest	**Subject:** Administrative; Banking & Finance **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** Banking & Finance - Banking Regulation Act, 1949, ss. 35, 36AA - Karnataka Co-operative Societies Act, 1959, ss.29, 30(1), 30(5) - Inspection - Supersession - Respondent no.1 Reserve Bank of India conducted periodical inspection of petitioners banks for period ending - Respondent sent copy of inspection report granting four months time to petitioners to rectify defects and to offer explanation - Respondent no.1 before petitioners sent their compliance report directed respondent no.2 registrar to remove managing committees of petitioners u/s.30(5) of 1959 Act - Respondent no.2 declared that petitioners were disqualified to contest election for period of 4 years - Petitioners filed writ petitions - Whether it was incumbent on respondent no.1 to provide an opportunity of hearing before recommending supersession u/s.30(5) of 1959 Act - Held, respondent no.2 was obligated to hear petitioners before order of supersession was made - Respondent no.1 recommended supersession 4 months prior to expiry of tenure - On thorough consideration of analogous provisions relating to supersession of petitioners u/s.30(1) of 1959 Act and ss.35 and 36-AA of 1949 Act pre-decisional hearing was mandatory - Order passed by respondents u/s.30(5) of 1959 Act disqualifying petitioners to contest elections for period of four years was bad in law - Respondents empowered to conduct separate enquiry u/s.29 of 1959 Act and pass appropriate order - Petition disposed of.

Case No : W.P. Nos. 35163 and 35164 of 2009 connected with W.P. Nos. 34813 and 28148 to 28156 of 2009

The Reserve Bank of India (RBI) conducted periodical inspection of Grain Merchants Co-operative Bank and Kannika Parameshwari Co-operative Bank for the period ending with March 31, 2009. In the course of inspection, serious financial irregularities like grant of (1) loan to the relatives of the directors; (2) loan without proper securities; (3) loan to the fictitious persons; and (4) misapplications of one time settlement scheme to the loan accounts not covered under the schemes.

The RBI sent a copy of the inspection report granting four months time to the above co-operative Banks to rectify the defects and to offer explanation for mis-fisiciance and mal-fisiciance. The RBI even before the above banks sent their compliance report, directed the Registrar to remove the Managing Committees of the above Banks under Section 30(5) of the Karnataka Co-operative Societies Act, 1959

(for short, 'Act'). The tenure of the elected committee of both the Banks was to expire by 31st March, 2010. The supersession was recommended by the RBI 4 months prior to the expiry of the tenure.

The Grain Merchants Co-operative Bank, after supersession but within the period of four months had submitted the Action taken report to the RBI. The Kannika Parameshwari Co-operative Bank has not submitted action taken report to the RBI so far. The Registrar of Co-operative Societies, pursuant to the directions of the RBI, passed order of supersession of both the Banks and in respect of members of Kannika Parameshwari Co-operative Bank. The Registrar further declared that the Committee members of Kannika Parameshwari Co-operative Bank are disqualified to contest the election for a period of 4 years. The members of the committee aggrieved by the order have filed the writ petitions.

The Banking companies stand out as a distinct and separate class of corporation. The RBI is the sole regulatory authority. The direction/order of RBI becomes inscrutable in the Court of law. In this regard, relied upon the decision of the Supreme Court in M. Hanumaiah's case, wherein the observations of the Supreme Court in Joseph Kuruvilla Vellukunnel v Reserve Bank of India and Others

On a thorough consideration of the analogous provisions relating to supersession of the Managing Committee under Section 30(1) of the Act, Sections 35 and 36-AA of the Banking Regulation Act, the pre- decisional hearing is mandatory. It cannot be gainsaid that an order of removal of the Managing Committee tinder Section 30(5) of the Act, visit with civil consequences to the affected members. Therefore, in the fitness of things, it cannot be said that the RBI can issue directions to the Registrar for removal of the members of the Managing Committee without providing an opportunity of hearing. More so, when there is no scope for affected members to avail the benefit of post-decisional hearing. It is incumbent upon the RBI while issuing directions under Section 30(5) of the Act, should adhere to the principles of natural justice. Otherwise, the affected members stand almost eternally condemned without an opportunity of hearing.

The unamended provisions of Section 30(5) of the Act, declared that "appointment of an administrator to manage the affairs of the Co- operative Bank for a period not exceeding 5 years in aggregate as may from time to time specified by the Reserve Bank". By Act 25 of 1998 with effect from 15-8-1998 the words "not exceeding 5 years" is omitted. A close reading of the provisions of Section 30(5) of the Act, discloses that the order of the removing committee should be co-terminus with the tenure of the committee, because after the expiry of the term, the committee would cease exist by operation of law, the tenure of the members of the committee comes to an end.

The conduct of elections is an inviolable democratic process in the scheme of the Act. The RBI has no right to continue appointment of an Administrator without elections contrary to the spirit and provisions of Sections 31 and 39-A of the Act. Therefore, the power of the RBI under Section 30(5) of the Act, for removal of the committee and appointment of an Administrator should be in consonance and consistent with the other allied provisions of the Act. The Administrator once appointed has the discretion of holding elections in accordance with the provisions of the Act and the postponement of election is necessary under Section 39- A(4) of the Act, and he can recommend accordingly.

Vyavasaya Seva Sahakara Bank Limited, Channapatna Taluk, Ramanagaram District and another v Managing Director, Central Co-Operative Bank, Bangalore and another

Bench	H. G. RAMESH
Where Reported	2010 Indlaw KAR 533; 2011 (2) KarLJ 82
Case Digest	**Subject:** Election; Trusts & Associations **Keywords:** Vote, Karnataka Co-operative Societies Act, 1959 **Summary:** Trusts & Associations - Election - Karnataka Co-operative Societies Act, 1959, s. 20 (2) - Failure to recover loan - Voting right of member Society - Determination - Petitioner Co-operative Bank filed instant petition aggrieved that their names had not been included in eligible voters' list published by 1st respondent apex Co-operative Bank for purpose of holding election to its management committee - 1st respondent contended that percentage of recovery of loans by petitioner was less than 75% of total demand and hence their case would fall within ambit of s. 20(2)(b)(iv) of Act and hence they were not entitled to vote in election scheduled - Held, recovery of loans by petitioner was below 75% of total demand during relevant co-operative year and such demand included loans pertaining to Seasonal Agricultural Offering also - If recovery of loans by a member Bank was less than 75% of its total demand during relevant co-operative year, s. 20(2) of Act would come into play and consequently, member-Bank should not have right to vote at meetings of Co-operative Society in which it is a member - Petitioner's case would clearly fall within ambit of s. 20(2)(b)(iv) of Act as their percentage of recovery of loans was less than 75% of total demand during relevant co-operative year and hence they were not entitled to vote in election to committee of management of 1st respondent Bank - Petition dismissed.

Case No : W.P. Nos. 11571 and 11572 of 2010

The Order of the Court was as follows :

The petitioner-Co-operative Banks are the members of respondent 1-DCC Bank. Their grievance is that their names have not been included in the eligible voters' list at Annexure-G published by respondent 1-Bank for the purpose of holding election to its committee of management scheduled on 10-4-2010.

Karnataka District Central Co-Operative Bank Limited v Murudeshwar Foods and Exports Limited (In Liquidation) and others

Bench	Anand Byrareddy
Where Reported	2010 Indlaw KAR 124; [2010] 155 Comp Cas 385; 2011 (2) KarLJ 478
Case Digest	**Subject:** Banking & Finance; Corporate **Keywords:** Satisfaction, Statement Of Affairs, Karnataka Co-operative Societies Act, 1959, Register Of Charges, Disposal of Records (in the office of the Registrar of Companies) Rules, 1984 **Summary:** Corporate - Practice & Procedure - Companies Act, 1956, s. 141 - Availment of loan - Creation of charge - Alleged charge satisfaction - Determination - Applicant was co-operative bank which had advanced term loan on security of plant, machinery and other property, for sum of Rs. 250 lakhs on January 16-1-1996, in favour of respondent no.1 and another loan of Rs. 50 lakhs on 8-3-1996, to enable it to acquire assets of other company - Charges were created in respect of borrowings which were registered with Registrar of Companies (ROC) - Further, respondent defaulted in payment of loan , hence, order of attachment dt. 7-12-1996 was passed against respondent - Respondent no.1 thereafter filed petition u/s. 433(a) and (f) of 1956 Act seeking voluntary winding up of company before HC which allowed as on 27-7-2000 - Applicant alleged that statement of affairs of respondent company did not disclose charge created in respect of assets offered as security for loan transactions with applicant and it was declared that all charges created had been satisfied - Further, ROC in its report stated that no records were available at point of time to ascertain whether notice was issued to applicant on filing of forms - Further, ROC held that it was difficult to hold that false particulars have been wilfully furnished in two sets of Forms filed - Further, with respect to false declarations made in statement of affairs, it was for Official Liquidator(OL) to initiate action - Further, forms filed were only to seek rectification of incorrect and invalid registration of invalid charge and did not evidence satisfaction of loan transactions - Whether it was justified to take action against respondent company and ROC - Held, there was no actual satisfaction of loan, however, respondent directors stated that charges created in first instance were itself invalid and hence rectification of same u/s. 141 of the Act did not arise - However, forms were filed which were duly acted upon by ROC and it was on that basis that statement of affairs had been filed - Further, from perusal of statement of affairs and unsecured creditors, it was held that there was false declaration - Further, loss of records and belated registration of alleged discharge on satisfaction of loans was also not explained by ROC - HC held that ROC was not competent to receive forms for purposes of purported rectification of charges duly registered and ROC in

	his report had down played gross irregularities - HC held that OL was obliged to proceed against concerned by initiating appropriate proceedings in respect of offences - Further, with respect to irregularity in conduct of concerned ROC, it was for Central Govt. to take any action as against said officer - Further, office of ROC was directed to delete entries made in Register of Charges on basis of two sets of Forms dt. 16-7-1996 and 2-8-1996 filed on behalf of respondent-company and registered on 29-10-2001 and 1-11-2001, as same had been entered contrary to s. 141 of Act - Application disposed of.

Case No : C. A. No. 1483 of 2006 in C. P. No. 82 of 2000

The applicant-bank had approached this court under an application in C. A. No. 1071 of 2002, seeking leave to prosecute the above proceedings before the Joint Registrar of Co-operative Societies, Belgaum against the company, it is at that point of time, that the applicant-bank claims to have learnt of the statement of affairs filed before the official liquidator, along with an affidavit of respondent No. 4 dated December 27, 2001 and that this has been supplemented by a Joint Affidavit of Concurrence, dated February 11, 2002, filed by respondents Nos. 4 to 9. It is the applicant's case that the above statement of affairs does not disclose the charge created in respect of the assets offered as security for the above said loan transactions with the applicant. On the other hand, it generally declared that all charges created had been satisfied. The applicant therefore sought a search of the records of the Registrar of Companies (hereinafter referred to as "the RoC" for brevity). It was found that the above loan transactions were shown as having been satisfied as on July 10,1996, in respect of Rs. 250 lakhs and on October 29, 2001, in respect of Rs. 50 lakhs.

In the light of the above, it would be seen that the present application is a reiteration of the application filed earlier by the very applicant in C. A. No. 366 of 2004 disposed of on July 28, 2005. From a perusal of the earlier order this court had prima facie opined that the two charges created on January 16, 1996 and March 18, 1996, respectively, in respect of the assets of the company were duly registered with the Registrar of Companies. However, on the question whether there was compliance with section 138 of the Act by the Registrar of Companies in having entered the discharge and satisfaction of the charges, could not be answered without the relevant material being placed before the court.

This court also took note of the fact that there was admittedly no discharge of the loans and the mere misuse of funds by the errant directors named above would not efface the charges recorded in terms of section 125 of the Act.

As the Registrar of Companies has now filed a report to state, in effect, that no further action is warranted-the question that would arise for consideration is whether the facts and circumstances warrant this court to issue directions as prayed for.

P. Paramashivaiah v Secretary, Department of Co-Operation, Bangalore and Others

Bench	MOHAN SHANTANAGOUDAR
Where Reported	2010 Indlaw KAR 12; 2010 (2) KarLJ 379

Case No : W.P. No. 13299 of 2009 (GM-RES)

The Order of the Court was as follows :

The petitioner has sought for a direction to respondents 2 and 3 not to attach the salary of the petitioner and to recover entire debt from the 4th respondent.

The petitioner is a guarantor for the loan raised by 4th respondent from respondent 3-Bank. Since the loan amount was not repaid, a dispute was raised by the Bank before the concerned authority under Section 70 of the Karnataka Co-operative Societies Act, 1959. Award was passed against the principal debtor as well as guarantor-petitioner herein. Questioning the same, the petitioner had filed Appeal No. 551 of 2008 before the Karnataka Appellate Tribunal under Section 105 of the Karnataka Co-operative Societies Act. Suppressing the same, he has approached this Court by filing this writ petition for the aforementioned reliefs. Since it is open for the petitioner herein to raise any ground as is available to him in law before the Appellate Authority, he should not be allowed to approach this Court directly under Article 226 of the Constitution of India. Moreover, the petitioner has suppressed the fact that he has approached the Appellate Authority by filing the appeal questioning the award made by the original authority. Hence, the writ petition is liable to be dismissed.

At this stage, learned Counsel for respondent 3 submits that the appeal filed by the petitioner herein before the Karnataka Appellate Tribunal is dismissed for default on 31-7-2009. If it is so, the grievance of the petitioner cannot be rectified unless any application is filed for restoration of the appeal. It is open for the petitioner to take appropriate steps in accordance with law, if he so chooses.

Petition stands dismissed accordingly.

Benaka Souradha Credit Co-Operative Society Limited, Bangalore v State of Karnataka and others

Bench	H. N. NAGAMOHAN DAS
Where Reported	2009 Indlaw KAR 400; 2010 (1) KarLJ 379

Case No : W.P. No. 29260 of 2009 (CS-DAS)

The Order of the Court was as follows :

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.

Hassan Town Women's Consumers Co-Operative Society Limited, Hassan and Another v State of Karnataka and Another

Bench	AJIT J. GUNJAL
Where Reported	2009 Indlaw KAR 103; 2009 (4) KarLJ 728

Case No : W.P. Nos. 18112 and 18129 of 2009 (CS-Res)

The Order of the Court was as follows :

1. 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".

Common Cadre Committee of Hassan District Primary Agricultural Co-Operative Societies, Hassan v Joint Registrar of Co-Operative Societies, Mysore Region, Mysore and Others

Bench	RAM MOHAN REDDY
Where Reported	2009 Indlaw KAR 346; 2010 (1) KarLJ 100

Case No : Miscellaneous Writ No. 10268 of 2009 in W.P. No. 22610 of 2009 (S-PRO)

The Order of the Court was as follows :

This application is by the 2nd respondent to vacate the interim order dated 31-8-2009, staying the operation of the order dated 15-6-2009, Annexure-A of the 1st respondent in Dispute No. 113/2008-09 under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act').

Prima facie it is pointed out that the 2nd respondent was appointed on temporary basis by order dated 19-7-1997 of Managing Director of the petitioner, though such power is not invested in him, under the bye-laws or the Karnataka Co-operative Societies Rules, 1960 and therefore, the 2nd respondent is not an employee, appointed in the normal course of recruitment in terms of the rules.

According to the petitioner, when the status of the 2nd respondent was under cloud, his promotion to a higher post does not arise. The 1st respondent/Joint Registrar of Co-operative Societies, exercising jurisdiction under Section 70 of the Act, without noticing the fact that the 2nd respondent was not appointed in a recruitment to a regular vacancy appears to have been carried away by the fact that the name of the 2nd respondent is found in the seniority list.

Be that as it may. That question has to be considered by this Court in this writ petition, the answer to which is the foundation for the claim of the 2nd respondent and justification for the order Annexure-A.

Though there is no representation for the applicant, nevertheless having perused the pleadings, in the circumstances, the application is accordingly rejected.

Karnataka Milk Federation, Bangalore v State of Karnataka and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2009 Indlaw KAR 137; 2009 (5) KarLJ 522
Case Digest	**Subject:** Trusts & Associations **Keywords:** Writ Petitions Dismissed, Co-Operative Societies, Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960, Past Member, Karnataka Civil Services Rules, 1959 **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act, 1959, ss. 2-AA, 2-AA(4), 63, 63(1) 63(10), 63(11) - Colourable exercise - Government directed Director of Co-operative Audit to pass Annexure-F and Annexure-G to re-look into transactions of Society including accounts - Petitioner was Co-operative Society, filed petition to quash orders on ground that orders passed by them were not available to them and it was in malafide manner - Respondents denied allegations made by petitioner - Hence instant petition. Held, the Government has not exercised its powers u/s. 63(10) of the Act, but has acted only to activate the Director of Co-operative Audit and in the wake of certain complaints that had been forwarded in the matter of appointments made to the Society and if in that context a re-look is required, then it cannot be said that the Government has exercised power not in a bona fide manner but in a mala fide manner. The power is exercised only to score political points over the petitioners. Political scores are settled only at the hustings by the votes polled by the people of the country and not in the Courts. Such scores can never be settled in Courts of law where examination is not based on political considerations or expediencies, but purely based on constitutional provisions and statutory provisions. Petition dismissed.

Case No : W.P. No. 14153 of 2008 (Cs-Res) Connected With W.P. No. 14183 of 2008 (Cs-Res)

The Order of the Court was as follows :

The common object of the petitioners is to prevent the proposed re-look into the transactions of the Society including the accounts which have undergone scrutiny as envisaged under the provisions of the Act and to have a second look at them and on the ground that the power exercised by the Government and the Director of Co-operative Audit for the purposes for which Annexures-G and F orders are passed are either not available to them under the provisions of the Act or has not been used for the purposes for which such powers are conferred on either of these respondents.

Of course, this power is circumscribed by the condition as indicated in the proviso. In the wake of this legal position, and the submission by the learned Advocate General is that the Government has not

exercised this power, it is not necessary to examine the scope of Section 63(10) of the Act in detail. But the power under Section 63(11) of the Act, the power conferred on the Director of Co-operative Audit is a power conferred on the Director for the purpose of re-examination to find out any lapses observed and for re-clarification or correction to be carried out later and to be so indicated in the next audit report. The statutory provision only indicates that if some errors had taken place earlier and had been overlooked in the normal auditing activity, there can be a second look and even the earlier lapses can be mentioned for correction in the subsequent audit report.

Ultimately, if the power is exercised for a correction to correct an earlier lapse while the Director of Co-operative Audit can act under this provision, on becoming aware of some past irregularity or impropriety or whatever it is, if the Government by a communication as at Annexure-G in Writ Petition No. 14153 of 2008 alerts the statutory authority to take action in exercise of the power under sub-section (11) of Section 63 of the Act, and if such power is exercised for such purpose neither any mala fide can be attributed to the statutory authority nor can it be said that the authority had acted in violation and at cross purposes to the provisions of sub-section (11) or even that the power is exercised without application of mind.

So far as the exercise of power by State Government is concerned, it is conceded by the learned Advocate General appearing for the State Government that the Government has not exercised its powers and sub-section (10) of Section 63 of the Act, but has acted only to activate the Director of Co-operative Audit and in the wake of certain complaints that had been forwarded in the matter of appointments made to the Society and if in that context a re-look is required, then it cannot be said that the Government has exercised power not in a bona fide manner but in a mala fide manner.

If such is the nature of power under the statutory provision and ultimately if the consequential act only lead to a re-look into the audited accounts of the Society and if that can reveal any lapses for correction, I am of the considered opinion that it does not amount to a mala fide exercise of power having such deleterious effect on the petitioner-Society to warrant any adverse inference about the manner of exercise of power, nor can be made a ground to invite interference by this Court in exercise of Article 226/227 jurisdiction.

A mere examination under Section 63(11) of the Act by itself is not an adverse circumstance and so also the order against the petitioner-Society or its office-bearers passed for initiation of action under this provision. If the petitioner-Society being an organisation financed and controlled by the State Government and having been equated to the State within the meaning of Article 12 and managing public funds apart from its own affairs then its functioning, management whether this management or any other management should be transparent and should be open to public scrutiny at any point of time. If under the impugned order what at all is achieved is only to initiate a re-look into the manner of functioning of such a Society that in itself cannot be characterised as an action so adverse either to the Society or to the interest of the persons in the management of the affairs of the Society.

The exercise of power cannot be characterised as a mala fide exercise, as the Government on some materials whether it is adequate or otherwise acts for effectuating some statutory powers and functions, then no case is made for the Court to examine at this stage when the Government has only activated the audit and is otherwise also has such power. Therefore, the Government in reality has not exercised any of its power not referable to statute but independent of it. As such no mala fide can be attributed when once no violation or deviation to the statutory provisions is found, the argument of mala fide

exercise of power cannot succeed.

Ultimately, if the impugned action can only lead to a scrutiny into the affairs of an institution like the petitioner, a large Co-operative Society which is akin to State within the meaning of Article 12 and has vast control of finance and other powers. It is always in the larger public interest to have second look into the affairs of such an institution of importance and magnitude. If at all public interest is sub-served by such a scrutiny and it cannot be said public interest is in any way affected assuming there are some political persons are involved! it is well-settled that private interest always yields to public interest. If the whole object and consequence of the impugned action can only lead to a scrutiny and possible corrective action. I do not find any need for interference and for issue of a writ of certiorari to quash such act at the threshold and even before it can be given. It is for this reason, the impugned orders are not interfered but the writ petitions are dismissed.

Gulbarga Central Co-Operative Wholesale Store (Janata Bazaar), Supermarket, Gulbarga v Returning Officer/The Deputy Registrar of Co-Operative Societies, Bangalore and Others

Bench	RAM MOHAN REDDY
Where Reported	2009 Indlaw KAR 170; 2009 (5) KLJ 595

Case No : W.P. Nos. 22271 and 22344 of 2009 (CS-El/M)

The Order of the Court was as follows :

1. Admittedly the elections to choose 12 Directors of the 2nd respondent is concluded, whence the petitioner, unsuccessfully contested the elections. Indisputedly the petitioner is entitled to call in question the election to the Directorship of the 2nd respondent by filing a dispute under Section 70 of the Act. The petitioner instead of raising a dispute, has called in question the inclusion of respondents 4 and 5 as eligible candidates to contest the elections already held and concluded. The notification to hold election to the post of President of 2nd respondent, admittedly is not issued as on today.

2. In the circumstances, the petitioner has an alternative and efficacious remedy to call in question the elections to the Directors of the 2nd respondent-Federation disentitling the petitioner to invoke the extraordinary writ jurisdiction. The contention that respondents 2 and 5 are ineligible to participate in the election to the post of President to be allegedly held on 31-7-2009, is without merit, in the absence of a notification and even otherwise the result of that election too could be questioned in a dispute under Section 70 of the Act.

N. B. Swami v Primary Co-Operative Agriculture and Rural Development Bank Limited, Bangalore and others

Bench	V. GOPALA GOWDA, L. NARAYANA SWAMY
Where Reported	2009 Indlaw KAR 617; 2011 (3) KarLJ 69
Case Digest	**Subject:** Service **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** Service - Practice & Procedure - Misconduct - Chargesheet - Compulsory retirement - Sustainability - Appellant was working as incharge Accountant in respondent-Bank, and show-cause notice was issued to him alleging certain misconduct (misappropriation of funds), for which he submitted his reply denying charges leveled against him and thereafter, disciplinary enquiry proceedings were initiated and based on report of enquiry officer, Disciplinary Authority passed an order imposing major penalty of compulsory retirement of appellant from service - Appellant challenged order, through writ petition which was dismissed by single Judge holding that charges were grave in nature, involving financial misappropriation in violation of regulations and guidelines and that penalty imposed on appellant was in accordance with law - Aggrieved instant writ appeal - Whether penalty of compulsory retirement from service imposed against appellant was sustainable - Held, entire enquiry proceedings from stage of issuing Articles of charges till order of compulsory retirement passed was vitiated in law and therefore same was liable to be quashed and therefore Court had to direct common cadre authority and other respondents to pay full back wages to appellants from date of order till his reinstatement therefore, it was a fit case for directing respondents i.e., Common Cadre Authority and employer Bank to pay back wages as per decision of the SC in Roop Singh Negi's case, wherein it was held that reinstatement of a peon with full back wages was justified when he was dismissed from service without proper enquiry as required under Conduct and Discipline Rules - Appeal allowed.

Case No : Writ Appeal No. 454 of 2008 (S)

The Judgment was delivered by : Hon'ble Justice V. Gopala Gowda

1. This writ appeal is directed against the order of the learned Single Judge dated 24-1-2008 passed in W.P. No. 13559 of 2003. The facts of the case in the nutshell is that the appellant was working as incharge Accountant in the 4th respondent-Bank at Gulbarga from the month of February 200 to May 2001; that a show-cause notice was issued to him on 30-5-2001 alleging certain misconduct (misappropriation of funds), for which he submitted his reply on 11-6-2001 denying the charges

levelled against him and thereafter, disciplinary enquiry proceedings were initiated and based on the report of the enquiry officer, the Disciplinary Authority passed an order on 29-10-2002 imposing major penalty of compulsory retirement of appellant from the service. Challenging the said order, the appellant preferred W.P. No. 13559 of 2003 and the learned Single Judge of this Court dismissed the writ petition holding that the charges are grave in nature, involving financial misappropriation in violation of the regulations and guidelines and that the penalty imposed on the appellant is in accordance with law. Being aggrieved by the order passed by the learned Single Judge, the appellant has preferred the present writ appeal.

Therefore, we are constrained to hold that the entire enquiry proceedings from the stage of issuance of the articles of charges till the order of compulsory retirement order passed are vitiated on account of non-compliance of the mandatory procedures contemplated under Regulation 58 and also in violation of principles of natural justice and consequently, the entire enquiry proceedings and the impugned order of compulsory retirement of the appellant also liable to be quashed as the same are vitiated both on facts and in law.

2. The learned Single Judge failed to consider the above narrated procedural irregularities and illegalities committed by the Disciplinary Authority and Enquiry Officer while conducting the inquiry as contemplated under Regulation 58 in proper perspective and failed to examine the aforesaid legal position and thereby he has erroneously recorded his findings in paragraph 5 of the impugned order that the report of the Enquiry Officer discloses that the "petitioner has not made any request before the Enquiry Officer to lead evidence and to produce documents, no other evidence is placed on record to show that petitioner offered to examine certain witnesses on his side and produced certain documents and that the same is not allowed by the Enquiry Officer". Further, the learned Single Judge without considering the important aspects narrated above, has wrongly come to the conclusion at para 7 that the charges levelled against the appellant are grave in nature involving financial misappropriation and the penalty levied by the disciplinary authority is in accordance with law. Since the learned Single Judge has not examined the case of the appellant with reference to the grounds urged in the writ petition and also not applying his mind to the facts of the case and correctness of the findings recorded by the Enquiry Officer to find out as to whether the charges levelled against the appellant was proved with reference to the positive and legal evidence on record and therefore, we are of the considered view that that the learned Single Judge is erred in holding that the penalty levied by the Disciplinary Authority is in accordance with law.

3. As per Constitution Bench judgment of the Apex Court in the case of Managing Director, ECIL, Hyderabad, non-furnishing of the report along with second show-cause notice is in violation of decision of Apex Court, which is binding upon the Disciplinary Authority under Article 141 of the Constitution of India. On this ground itself the order of compulsory retirement is liable to be quashed.

4. We have to order for reinstatement of the appellant with full back wages for the reason that Disciplinary Authority in blatant violation of regulations and rules and the decisions of Supreme Court and made the appellant and his family members to suffer as he could not be able to give education, livelihood and basic needs to his children for a period of 7 years, which must have adverse effect on the entire family of the appellant as held in celebrated case of A.K. Roy v

Union of India and Others, AIR 1982 SC 710 : (1982)1 SCC 271 : 1982 SCC (Cri.) 152 : 1982 Cri. L.J. 340 1981 Indlaw SC 381 (SC) where in it was held at relevant portion of paragraph 17, which reads as follows.-

"17. x x x x Article 21 as a fundamental right in order to afford protection to the life and liberty of the people against all executive powers and therefore the supremacy of the Legislature cannot be replaced by making the executive supreme by allowing it to promulgate ordinances which have the effect of depriving the people of their life liberty. The extent of protection afforded to the right conferred by Article 21 consists, according to Counsel, in the obligation imposed upon a democratic Legislature to devise a fair, just and reasonable procedure for attenuating the liberties of the people".

(i) The writ appeal is allowed. The impugned order dated 24-1-2008 passed by the learned Single Judge in W.P. No. 13559 of 2003 is set aside. The writ petition is allowed. The order dated 29-10-2002 bearing No. CCC/Sisthu/Gu/VI/27/ 01-02 and dated 25-2-2003 bearing No. CCC/Sisthu/ Gulbarga/Dandane/Himbara/5/02-03 passed by the respondent 1 produced as Annexures-E and F respectively to the writ petition are quashed. The respondents are directed to reinstate the appellant into service with full back wages with interest at 6% per annum and all other consequential benefits within four weeks from the date of receipt of this order. However, liberty is given to the Disciplinary Authority to redo the inquiry de novo strictly in accordance with the provisions of Service Rules Regulation 58 of the Regulations, if they are so advised.

Elasappa M v Kolar District Co-Operative Central Bank, Kolar

Bench	N. KUMAR, B. Srinivasa Gowda
Where Reported	2009 Indlaw KAR 153; 2009 (5) KarLJ 441

Case No : Writ Appeal No. 2062 of 2009 (S-R) Connected With Writ Appeal No. 2063 of 2009 (S-R)

1. From the material on record in W.A. No. 2062 of 2009 it is clear that, proceedings have been initiated under Section 64 of the Act. In the said proceedings the authorities want to find out who are all the persons on whom the liability could be fastened. It is in that contest they have issued an endorsement that till the enquiry is over and liability is fixed, it is not possible for them to make any payment towards the amount claimed by the appellant. The proceedings were initiated much prior to the appellant retiring. Appellant was permitted to retire subject to the aforesaid condition, namely subject to the proceedings initiated under Section 64. The question whether the appellant is involved in any misfeasance for which proceedings are already initiated, whether the monies which are legitimately due to the appellant could be withheld in the manner it is done, are all matters which can be gone into after recording of evidence. It is in that context, the learned Single Judge held when alternate remedy is available under the Act, it is not proper to entertain the writ petition. We do not see any error committed by the learned Single Judge in passing the impugned order.

2. The appellant in W.A. No. 2063 of 2009 is one Chandrashekar. He has retired from service with effect from 30-6-2007. Before his retirement a show-cause notice had been issued to him calling upon him to show cause why disciplinary proceedings should not be initiated against him for misappropriation of the funds of the Bank and in respect of other misconduct alleged. Appellant gave a reply denying all the allegations. Therefore, his retirement benefits were not settled. To that effect an endorsement is issued. Challenging the correctness of the said endorsement the appellant preferred the writ petition. Learned Single Judge dismissed the writ petition on the ground that the appellant has an alternate and efficacious remedy by way of Section 70 of the Karnataka Co-operative Societies Act, 1959In fact the Bank has made it very clear that once he is exonerated of the charges levelled against him, depending on the same the retirement benefits would be settled. In these circumstances, we do not see any infirmity in the order passed by the learned Single Judge dismissing the writ petition filed by the appellant. Accordingly, both the writ appeals are dismissed.

Berya Fishermen Co-Operative Society Limited, Mysore v Senior Assistant Director of Fisheries, Mysore and Others

Bench	N. K. PATIL
Where Reported	2009 Indlaw KAR 66; 2009 (4) KarLJ 259
Case Digest	**Subject:** Land & Property **Keywords:** Writ Petition dismissed, Karnataka Co-operative Societies Act, 1959 **Summary:** Land & Property - Lease for Fishery - Notification issued by Authorised Officer of Respon-dents - Applications presented by both Petitioner and Respondent no. 3 - Sought for grant of lease for fishery - Petitioner alleged that Respondent nos. 1 and 2 failed to consider applications in strict compliance of terms and conditions of notification - Respondents proceeded to grant lease in favour of Respondent no. 3 only on basis of recommendations forwarded by local Member of Legislative Assembly - Hence, instant petition - Whether Petitioner entitled to be granted with lease for fishery. Held, Petitioner had no jurisdiction over the area where the tank in question was situated and which has been notified. Secondly, Petitioner has not produced any iota of evidence or doc-uments to show that he took "No Objection Certificate" from the Competent Authority of the Federation, which was the condition precedent. Thirdly, it was fact that, Petitioner was due to pay a sum of Rs. 1, 25, 551/- to the Federation and he had not produced any documents to show that Petitioner was not liable to pay the same. The question of considering the request of the Petitioner therefore does not arise. In fact, the Secretary and President of the Petitioner's so-ciety had given "No Objection" letter for granting lease in favour of Respondent no. 3 and even though they took a decision to withdrawn the same, they had communicated the same to the Respondents after the lapse of four days and therefore, there was no occasion for the Compe-tent Authority of the Respondents to look into the same before granting the leasing right in favour of Respondent no. 3. No grounds to interfere in the impugned order and communication issued by the Respondent no. 2. Nor the Petitioner made out any good grounds to entertain the relief sought in writ petition. Petition dismissed.

Case No : W.P. No. 15857 of 2008 (GM-RES)

The Order of the Court was as follows :

The undisputed facts of the case are that, in pursuance of the notification issued by the Authorised Officer of the respondents dated 7-6-2008 vide Annexure-A, petitioner and third respondent have filed their applications seeking grant of lease right for harvesting fishes at Hosagrahara Tank, Hosagrahara

Taluk, K.R. Nagar, Mysore District. It is the further case of the petitioner that, respondents 1 and 2 have not considered the applications filed by the petitioner and third respondent in strict compliance of the terms and conditions of the notification. The respondents have proceeded to include the proceedings granting lease in favour of third respondent only on the basis of the recommendations forwarded by the local Member of Legislative Assembly and placing reliance, specifically, on the "No Objection" communication sent by the Secretary and the President of the petitioner-society. Further, it is the specific case of the petitioner that, if there are two applications are available, the respondents 1 and 2 have to thoroughly verify the same before granting lease. But said aspect of the matter has not been looked or verified or considered by the respondents 1 and 2. Therefore, petitioner was constrained to redress his grievance before this Court, by way of presenting this writ petition, questioning the correctness of the impugned orders and communications issued by the second respondent as referred above.

After having heard the learned Counsel appearing for petitioner, learned Government Pleader appearing for respondents, after careful valuation of the relevant material available on record, the grounds urged by the petitioner and the stand taken by the respondents in their objections, it emerges that, in fact, as per the bye-law of the petitioner's society they have got the jurisdiction over 18 villages. The said bye-law of the petitioner's society is produced at Annexure-R1 by the third respondent and after perusing the same, it is crystal clear that, in respect of the tank in question, which has been leased out in favour of third respondent, petitioner has no right over the said area. As per the relevant provisions of the Karnataka Co-operative Societies Act, 1959 , the society which has the jurisdiction over the area for which the notification has been issued only, is entitled to redress its grievance.

Further, it emerges as rightly pointed out by the learned Counsel appearing for respondents that, in fact, petitioner has not produced any "No Objection Certificate" from the Federation, which is the condition precedent for participating in the auction. Further, after careful perusal of the impugned order, it emerges that, the said order has been passed after verifying the eligibility of the both the parties and in pursuance of the undertaking letter given by the Secretary and President of the petitioner's society stating that, they have no objection to grant lease in favour of third respondent which has been produced at Annexure-E, dated 14-10-2008. This fact has not been disputed by the learned Counsel appearing for petitioner. But, it is the case of the petitioner that, immediately after issuing the said communication and after realising the mistake, the matter has been placed before the Committee of Management of the petitioner's society on 16-10-2008 and resolved to withdraw the said communication-cum-undertaking given by the Secretary and President and resolved to make their claim for leasing rights and requested to grant the same. It is significant to note as rightly pointed out by the learned Government Pleader appearing for respondents 1 and 2 that, the resolution has been passed by the petitioner's society on 16-10-2008 and on the same day, the impugned order has been passed by the Competent Authority and the said resolution is not available to the respondents for consideration at the time of passing the order, since the said resolution has been received by them only on 20-10-2008. Therefore, taking all these relevant factors into consideration, I am of the considered view that, petitioner has no jurisdiction over the area where the tank in question is situated and which has been notified. Secondly, petitioner has not produced any iota of evidence or documents to show that he has taken "No Objection Certificate" from the Competent Authority of the Federation, which is the condition precedent. Thirdly, it is fact that, petitioner is due to pay a sum of Rs. 1, 25, 551/- to the Federation and he has not produced any documents to show that petitioner is not liable to pay the same. Therefore, the question of considering the request of the petitioner does not arise. In fact, the Secretary and President of the petitioner's

society have given "No Objection" letter for granting lease in favour of third respondent and even though they have taken a decision to withdrawn the same, they have communicated the same to the respondents after the lapse of four days and therefore, there is no occasion for the Competent Authority of the respondents to look into the same before granting the leasing right in favour of third respondent.

Having regard to the facts and circumstances of the case as stated above, I do not find any good grounds to interfere in the impugned order and communication issued by the second respondent. Nor the petitioner has made out any good grounds to entertain the relief sought in this writ petition.

For the foregoing reasons, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Ordered accordingly.

Prashant P. D v State of Karnataka and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2009 Indlaw KAR 144; 2009 (5) KarLJ 280
Case Digest	**Subject:** Constitution **Keywords:** Election Tribunal, Writ petitions disposed of, Election Commission, Elections, Karnataka Co-operative Societies Act, 1959 **Summary:** Administrative - Karnataka Co-operative Societies Act, 1959 - Election - Co-operative society - Instant writ petitions were filed assailing notification dt.4-3-2009 issued by State Govt. whereby elections to committee of management in various co-operative societies in State had been postponed till completion of elections to Parliament - Whether impugned notification was liable to be quashed - Held, State Govt. had power to postpone election to co-operative societies because of coincidence of two election programmes and not for annulling election or set at naught election process - Further, upon coincidence ending, election process which had been intervened and put on hold, should resume - Hence, directions were passed to effect that in all co-operative societies where calendar of events had been issued and election results had not been announced as on date, calendar of events were taken to be put on hold as from 4-3-2009 and to be continued from stage upto which election process had reached as on 4-3-2009, once ban was lifted under notification dt.4-3-2009 - Further, State Govt. was directed to issue notification publishing date on and after which notification dt.4-3-2009 would cease to operate - Petitions disposed of.

Case No : W.P. No. 5598 of 2009 (CS-EL/M) Connected With W.P. Nos. 5743, 5809 to 5812, 5817, 5818, 5835, 5836, 5846, 5660, 5662, 5878, 5900, 5947, 6074 to 6076, 5738 to 5742, 6188, 6234, 6323 of 2009 (CS-EL/M)

The Order of the Court was as follows :

Writ petitioners are all aggrieved that election process for electing office-bearers who constitute the committee of management in the societies while in progress and which was required to be completed in terms of the statutory provision fifteen days before the end of the co-operative year for each year which coincides with the financial year and ending by the 31st of March each year has been interfered by the State Government by issue of a notification dated 4-3-2009, copy of which is produced as one of the annexures in all these writ petitions; that the interference is unnecessary, was not warranted; that though the notification recites that the Government has such power to postpone the election process which had already commenced and was in progress till the completion of elections to the Parliament and tracing the power for issue of the notification to Section 39-A(4) of the Act read with Section 121

of the Act and incidentally quotes the provisions of Sections 28-A(4), 28-A(5), 28-B(2), 29-F(4) and 39-A(2) of the Act which are provisions quoted in the context of the references made in the earlier Government notification, particularly, for issue of two earlier notifications dated 17-1-2009 and 2-2-2009 and also to relieve the societies and their management from the rigor of operation of some of the penal or adverse provisions referred to above; that the power in fact has not been properly utilised, that the order has been issued mechanically without showing awareness to the actual situation prevailing, without even being satisfied as to whether such postponement was necessary or otherwise and the power having been exercised in a mechanical manner akin to exercise of power in an arbitrary manner and therefore the notification suffers from such legal defects and it has to be quashed.

However, during the course of the arguments, the State Government having realised that to the extent of there being no interference or no additional responsibility or liability placed on the State Government by the coincidence of the programme of elections to the Parliament with the programme of elections to the societies which was already in progress has indicated that if there was no real interference with the election process that had already commenced in respect of some of the petitioners-societies and if it had by now completed with the declaration of results as on today also the State Government is not keen on enforcing the notification and to that extent the State Government is prepared to relent on the enforcement of the notification and in this regard has also placed a memo to this effect on record.

However, it is submitted by Sri Ashok Haranahalli, learned Additional Advocate General appearing on behalf of the State that insofar as elections to the societies whose election results has not already been declared by today, in view of the intervening notification and with the date for the Parliamentary elections drawing closer, it may not be possible to adopt the same stand in respect of such other societies and the notification will have to operate till the completion of the election to the Parliament and thereafter the Returning Officers may cause issue of fresh calendar of events and the election process may begin afresh for other societies.

In the present case, as even the petitioners are not suggesting mala fide exercise of power for ulterior purposes, but are content with challenging the notification on the parameters of the proper exercise of the power within the limits of the statutory provision, those questions do not arise and therefore the notification cannot be found fault with on such premise.

It is made clear that on examination of the merits of these petitions and on examining the legality of the Government notification and in the light of the stand taken by the Government, notwithstanding the notification dated 4-3-2009. in respect of societies wherein the calendar of events had been issued and pursuant therewith the elections were conducted and results are announced by today, such results stand without being affected. In respect of all other co-operative societies where calendar of events had been issued and election results had not been announced by today inclusive of today, the calendar of events are taken to be put on hold as from 4-3-2009 and should be continued from the stage upto which the election process had reached as on 4-3-2009, once the embargo is lifted under the notification dated 4-3-2009.

In this context, as the notification dated 4-3-2009 has not indicated the outer limit of the operation of the notification and which generally indicates that the notification will be in operation till the code of conduct is in place in the context of the election to the 15th Lok Sabha, it will be necessary for the State Government to make it more precise and for the purposes of clarity and removing confusion as

to from what date the notification ceases to have effect, significance being from that day onwards, the election process will be resumed in respect of all societies from the stage calendar of events had come to a halt with the issue of the notification dated 4-3-2009. The State Government is directed to issue a notification publishing the date on and after which the notification dated 4-3-2009 ceases to operate. It is expected the State Government will publish a notification of this nature at least two weeks before so that the aspirants will be knowing as to when they can pursue their aspirations.

It is made clear that the above directions operate notwithstanding interim order granted by this Court in some of the cases earlier where the societies and its members had approached this Court and also in all other cases of the rest of the societies who had not approached this Court i.e., the directions operate in rem.

Altaf Hussain and Another v State of Karnataka and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2009 Indlaw KAR 73; 2009 (4) KarLJ 343
Case Digest	**Subject:** Banking & Finance; Trusts & Associations **Keywords:** Writ Petition dismissed, Karnataka Co-operative Societies Act, 1959 **Summary:** Banking & Finance - Trusts & Associations - Karnataka Co-operative Societies Act, 1959, s. 64 - Mismanagement - Appointment of inquiry officer - Quashing of order - Petitioners were Chairman and Director of respondent no.3/Private Co-operative Bank - Management of Bank was superseded and management of affairs of Bank was entrusted to respondent no.2/Joint Registrar of Co-operative Societies - Bank itself was ordered to be wound up and liquidator was also appointed - In such situation respondent no.2 appointed successive Inquiry Officers to go into affairs of management of Bank for earlier period - Petitioners alleged that appointing successive Inquiry Officers was abuse of power u/s.64 of 1959,Act - Hence instant petition. Held, bank might have incurred losses due to mismanagement of erstwhile management. Inquiry is for purpose of ascertaining as to any mismanagement on part of erstwhile Directors. It is only at a preliminary stage to fix responsibility if any losses had been caused to Bank and as to in what manner it can be got over. Unless an inquiry is held into affairs of bank while it was under erstwhile management there is no way of fixing responsibility on any person or recovering any losses to Bank. None of Inquiry Officers concluded inquiry and submitted a report and therefore it had become necessary to appoint an Inquiry Officer. It is fresh appointment and provisions of s. 64(2-A) of1959, Act is not attracted. Present Inquiry Officer also has substantially completed inquiry and he is likely to complete it within short time. Just because some Inquiry Officers were either indolent, lethargic or deliberately slept over matter, it cannot give rights in favour of petitioners to seek for quashing of orders appointing Inquiry Officer itself. Unless such inquiry is conducted in a proper manner and completed, purpose and object of s.64 of 1959, Act is not served. Petition dismissed.

Case No : W.P. No. 14661 of 2008 (CS-RES)

The Order of the Court was as follows :

The present writ petition is in the wake of the order dated 11-7-2008 (copy at Annexure-F) passed by the second respondent-Joint Registrar of Co-operative Societies purporting to be an order in exercise of the powers of the Registrar under Section 64 of the Karnataka Co-Operative Societies Act, 1959 (for

short, 'the Act') and for the purpose of inquiring into the manner of management of the Bank earlier, particularly, when it was in the management of the elected representatives of the shareholders of the Bank and in the context appointing one K.B. Chennegowda, retired Assistant Registrar of Cooperative Societies as Inquiry Officer and fixing his remuneration for conducting inquiry at rupees one lakh.

This order itself had come to be passed superceding the earlier like order which was in vogue ever since 19-10-2005 whereunder one M.S. Rudraiah also a retired official of the Co-operative Department who retired as Joint Registrar of Co-operative Societies who it appears had not even commenced his inquiry under Section 64 of the Act as per the report of the liquidator who was in charge of the affairs of the society even in terms of communication dated 5-9-2007. Said Rudraiah himself was successor to one Syed Asif, another retired Assistant Registrar who was incharge of the inquiry as per earlier order dated 13-5-2005 and on finding that there was need to replace him.

It is in the wake of such series of appointments of Inquiry Officers to conduct the inquiry under Section 64 of the Act, the present writ petition complaining that issuing such orders and appointing successive Inquiry Officers is not only an abuse of the power under Section 64 of the Act but also is at cross purposes to the mandate of completing an inquiry of this nature within the normal duration of twelve months and which can be at the maximum extended to an outer limit of another six months but not beyond as stipulated under Section 64(2-A) of the Act which reads as under:

In my view, Section 64(2-A) of the Act cannot be construed as a provision in favour of persons who perhaps were responsible for any irregularities in the management of Co-operative Bank and where there is a need for identifying such persons and their role for remedying the irregularities, that cannot be taken advantage of by such persons who claim that just because the inquiry is not completed within eighteen months, they get immunity from such situations.

It may be true that prolongation of the inquiry or even subjecting persons to be inquired on more than one occasion may result in some hardship to persons against whom inquiry is being held, but that by itself cannot be a cause for quashing an order of the nature under Annexure-F which is one to conduct an inquiry and to ascertain as to whether any mismanagement had occasioned any loss to the society when prevailed earlier.

This apart, a perusal of the earlier developments indicate that none of the Inquiry Officers had earlier completed the inquiry or submitted a report. The inquiry is not completed till the outcome of the inquiry is reported in the proper manner and to the authority causing inquiry. Just because some Inquiry Officers were either indolent, lethargic or deliberately slept over the matter, that in my opinion, cannot give rights in favour of the petitioners to seek for quashing of orders appointing the Inquiry Officer itself.

In the present case, none of the earlier officers having submitted a report and exonerating the petitioners of their role or management of their functioning while in the management of the third respondent-Bank, it cannot be said that some right had accrued in favour of the petitioners and that is sought to be denied or an additional burden sought to be placed on the petitioners.

With the Reserve Bank of India having given a report noticing several irregularities of the manner in which the affairs of the third respondent-Bank had been conducted and in that background if an inquiry was required to be held, unless such inquiry is held in a proper manner and completed, the purpose and object of Section 64 of the Act is not served. Unless the situation is a clear case of gross abuse of

the power under Section 64 of the Act and for victimising persons, there cannot be any interference by this Court under Article 226/227 of the Constitution of India, 1950 to quash orders of the nature at Annexure-F appointing fresh Inquiry Officer for holding and completing the inquiry. The matter does not deserve further examination in writ jurisdiction.

Accordingly, this writ petition is dismissed.

S. R. Narayana Murthy v Joint Registrar of Co-Operative Society, Bangalore Region, Bangalore and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2009 Indlaw KAR 71; 2009 (4) KarLJ 294

Case No : W.P. No. 12299 of 2008 (CS-EL/M)

The Order of the Court was as follows :

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.

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.

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.

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.

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.

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, 1976Writ petition is allowed. Rule issued and made absolute.

Bazm-E-Niswan Charitable Trust, Bangalore and Another v Amanath Co-Operative Bank Limited, Bangalore and Others

Bench	P. D. Dinakaran (CJ), V. G. SABHAHIT
Where Reported	2009 Indlaw KAR 123; 2009 (4) KarLJ 633

Case No : Writ Appeal No. 1953 of 2008 (Cs-Res)

Brief facts of the case leading to this writ appeal are:

That petitioner 1 represented by its President purchased the property belonging to the respondent 1-Bank through its officers viz., respondents 14 and 15 during the period when the husband of the petitioner 2 namely respondent 3 was the President of 1st respondent-Bank through registered sale deed on 24-12-2004; the 1st respondent-Bank had raised a dispute before the 2nd respondent in dispute. No. 627 of 2007 in which, the appellants herein have been arrayed as respondents 15 and 16; that in the said dispute, the appellants herein have filed interlocutory application under Section 70(3) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act' for short) contending that the 1st appellant-Trust has purchased the property in question for valuable consideration through registered sale deed dated 24-12-2004; that the relief sought in the said dispute does not fall within the ambit of Section 70 of the Act; that as the relief sought in the said dispute pertains to the right, title, interest and possession of the respondent 15 (appellant herein), the same is purely of civil in nature and therefore, only a Civil Court has the jurisdiction to deal with such matter.

On a careful consideration of the entire facts and circumstances of the case, it is clear that the property of the first respondent-Bank was purchased by the first appellant-trust represented by the second appellant who is none else than the wife of erstwhile President of the first respondent-Bank. The said transaction squarely attracts Section 70(2)(e) of the Act, which has caused deficiency in the assets of the first respondent-Bank.

Under these circumstances, we do not find any illegality or error in the impugned order and there is no good grounds to interfere with such well-reasoned order and consequently, the writ appeal is liable to be dismissed. Accordingly, the writ appeal is dismissed.

B. C. Reddy and Others v Additional Registrar of Co-Operative Societies (I and M), Bangalore and Others

Bench	N. K. PATIL
Where Reported	2009 Indlaw KAR 9; 2009 (2) KarLJ 561
Case Digest	**Subject:** Constitution; Practice & Procedure **Keywords:** Framing of charges, Limitation Act, 1963, Seniority list, Challenged, Petition disposed of, Karnataka Co-operative Societies Act, 1959 **Summary:** Civil Procedure - Constitution of India, 1950, art. 226 - Karnataka Co-operative societies Act, 1959, ss. 70 and 119 - Limitation Act, 1963, s. 5 - Appeal before Appellate Tribunal along with the application u/s. 5 of the Limitation Act, 1963 - Matter remitted back to Registrar of Co-Operative Societies - Order of Tribunal of condoning delay challenged - Court held, Appellate Tribunal, after being satisfied that sufficient cause is shown for condoning the delay, has considered the relevant material available on record and after affording sufficient opportunity to the Counsel who represented the parties, has recorded the finding of fact on the basis of the material available on file - Therefore does not require interference by this Court - Petition disposed of.

Case No : W.P. No. 8917 of 2007 (Cs-Res)

The Order of the Court was as follows :

The deceased Sri M.G. Jagadish represented by his legal representatives in this petition as respondents 3 to 5 herein had filed the Appeal No. 588 of 1999 on the file of the Karnataka Appellate Tribunal at Bangalore along with the application under Section 5 of the Limitation Act, 1963 for condoning the delay and assailed the order passed by first respondent dated 27th July, 1999 passed on application filed under Section 5 of the Limitation Act, 1963 in Dispute No. D.D.S./D.2/1106/1997-98 on the file of the Karnataka Appellate Tribunal at Bangalore. The said appeal had come up for consideration before the Appellate Tribunal on 12th January, 2007 and the Tribunal, after hearing both parties and after considering the material available on records, following the judgment of the Apex Court and this Court, has allowed the appeal filed by respondents 3 to 5 and set aside the order passed by the first respondent and condoned the delay in filing the dispute before the first respondent. Thereafter, the first respondent was directed to dispose of the appeal on merits, in accordance with law, after affording opportunity to the petitioners herein and respondents 3 to 5. Aggrieved by the order impugned passed by the Karnataka Appellate Tribunal at Bangalore, dated 12th January, 2007 passed in Appeal No. 588 of 1999, petitioners herein felt necessitated to present the instant writ petition, seeking appropriate reliefs, as stated supra.

After careful perusal of the order impugned, it is apparent on the face of the said order that, there is no error or material irregularity as such committed by the Appellate Tribunal in allowing the appeal

filed by deceased M.G. Jagadish represented by his legal representatives-respondents 3 to 5 and condoning the delay in filing the dispute before the first respondent inasmuch as the said exercise has been done by assigning valid and cogent reasons for condoning the delay in filing and after following the judgment of this Court and the Apex Court as referred at paragraphs 17 and 18 of the order, after considering all the specific grounds taken by the petitioners before the Tribunal. The petitioners have raised the specific ground that as per Section 119 of the Karnataka Co-operative Societies Act, 1959, it is applicable to only filing of any appeal or application for revision under this Act and not for the original dispute and since the respondents had shown sufficient cause for condoning the delay of one year and eleven months, has allowed the appeal filed by respondents and set aside the order passed by first respondent and condoned the delay in filing the dispute before the first respondent. It is pertinent to note that, the Tribunal, after critical evaluation of the entire material available on record threadbare and placing reliance of the judgment of this Court in the case of Ramesh Govind Kulkarni and Others v Karnataka Appellate Tribunal, Bangalore and Others, 1995(5) Kar. L.J. 202, when it is held that, even if an appeal is ex facie found to be barred by limitation, no formal application necessary for condonation of delay - if separate application need, reasonable opportunity to be given to appellant for filing the same. Therefore, the Tribunal has opined that, in the instant case of appellants-respondents 3 to 5, there was no delay in filing the dispute before the first respondent and even if there was any delay, as raised by petitioners of one year and eleven months, it is due to filing the dispute first before the wrong forum and also due to bona fide belief that, the dispute is within time and therefore, the appellants-respondents 3 to 5 have not filed the delay condonation application along with main dispute before the first respondent. Therefore, the Appellate Tribunal was of the view that, in view of the principles laid down by the Hon'ble Apex Court and this Court, the appellant-respondents 3 to 5 herein have shown sufficient cause for condoning the delay. Therefore, I am of the view that, the Appellate Tribunal, after being satisfied that sufficient cause is shown for condoning the delay, has considered the relevant material available on record and after affording sufficient opportunity to the Counsel who represented the parties, has recorded the finding of fact on the basis of the material available on file. Therefore, interference by this Court, exercising the power under Article 226 of the Constitution Of India, 1950 is not at all justifiable in view of the well-settled law laid down by the Apex Court and this Court in host of judgments, nor I find any justification or good grounds to entertain the relief sought for by petitioners. Hence, I decline to entertain the prayer sought for by petitioners for the reason that, this Court never entertains the writ petition against the remand orders except in rarest to rare cases only when it is found that, there is mala fide or fraud committed. Now, since the matter is pending adjudication before the first respondent for consideration on merits, it is open for the petitioners and respondents 3 to 5 to substantiate their respective grievance before the first respondent. Therefore, interference by this Court is uncalled for.

G. Basavaraju v Arundathi and Another

Bench	A. N. VENUGOPALA GOWDA, S. R. BANNURMATH
Where Reported	2009 Indlaw KAR 5; 2010 (1) CLT 47; 2009 (2) KarLJ 465
Case Digest	**Summary:** Civil Procedure - Contempt Of Courts Act, 1971, ss. 11 and 12 - Right to Information Act, 2005, ss. 18, 19 and 20 - Right to Information - Application u/ RTI Act - Information not provided - Complaint to Commission - Commission directed to provide information sought - Willful disobedience - Whether, for disobedience of the order passed by the Information Commission, in exercise of the powers and functions u/ss. 18 and 19 of the RTI Act, 2005, the contempt petition under the Contempt of Courts Act, 1971, is maintainable? - Held, no, powers conferred upon the Commission u/s. 20 of the RTI Act, the complainant has to seek relief there under and consequently, this contempt petition is not maintainable - Complaint dismissed.

Case No : Contempt of Court Case No. 525 of 2008 (Civil)

Complainant was a member of Ananda Co-operative Bank Limited, Basaveshwaranagar, Havanur Circle, Bangalore-79. Accused are the President and Secretary of the said Bank. Complainant had filed an application dated 17-7-2007 to the second accused under Sections 5(1), 5(2) and 19(1) of the Right to Information Act, 2005 CRTI Act' for short) requesting to furnish, a copy of the letter dated 23-12-2006 addressed to the Bangalore Water Supply and Sanitary Board and copies of documents such as, T.A., D.A. and log book extract and payments made to the first accused. Subsequently, he filed a complaint before the Commission against the second accused under Section 18(1) of the Right to Information Act, 2005 for a direction to furnish copies of the aforenoticed records. The Commission after inquiry in respect thereof, has passed an order dated 5-12-2007 directing the respondent (accused 2 herein) to furnish the relevant information on item 1 and the information available on the record in respect of item 2 to the complainant, free of cost, within 15 days. Complainant submitted a copy of the said order to the accused, along with his representation dated 20-12-2007, seeking compliance. In response thereto, the second accused sent a communication dated 20-12-2007 to the effect that, it has been decided to present appeal before the Appellate Authority. Complainant submitted a further representation dated 3-1-2008 seeking compliance, which having not been done, alleging wilful disobedience of the order dated 5-12-2007 passed by the Commission and contending that, to protect the status, dignity, prestige and majesty of the Court, this petition has been filed.

In the case of T. Srinivasa, the grievance put forth was that, an award passed by Departmental Arbitrator under the Karnataka Co-operative Societies Act, 1959, was not complied with and that there is wilful disobedience by the accused, against whom the contempt petition was filed. Considering the question of maintainability of the contempt petition, in view of the availability of the remedy under Section 109(13) of the said Act and also taking into consideration an order passed by this Court in the case of K. Jagdish Ponraj and Others v A. Muniraju and Others, 2009(2) KarLJ 391 (DB), it was held as follows.-

"9. The provision under Order 39, Rule 2-A(l) relates to the consequence of disobedience for 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".

(emphasis supplied)

In view of the powers conferred upon the Commission under Section 20 of the RTI Act, the complainant has to seek relief there under and consequently, this contempt petition is not maintainable. Point No. (i) is answered accordingly.

M. G. Siddaveerappa v
Deputy Registrar of Co-operative Societies, Shimoga and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 342; 2009 (1) KarLJ 458
Case Digest	**Subject:** Trusts & Associations **Keywords:** Petition allowed, Challenged, Cooperative Bank, Co-Operative Societies, Deputy Registrar, Karnataka Co-operative Societies Act, 1959, Mysore General Clauses Act, 1899 **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act,1959, s.70-A- Mysore General Clauses Act,1899,ss.9,10 - Dispute relating to election of office-bearer - Dispute not raised within prescribed time period - Held, no impediment nor bar for applying provisions of Mysore General Clauses Act, particularly in matters where Act itself not indicating as to what should be done in a particular situation - S. 70-A(2) provides for condonation of delay and to entertain a dispute raised even after 30 days - Writ petition allowed and endorsement dated 31-12-2007 quashed by issue of a writ of certiorari.

Case No : W.P. No. 1094 of 2008 (Cs-Res)

The Order of the Court was as follows :

It appears, on 28-9-2007, the Returning Officer had declared the third respondent to this writ petition as elected unopposed on the premises that the petitioner had withdrawn his nomination. The petitioner contested this position claiming that he had not withdrawn from the contest and even sought for furnishing of a copy of the letter of withdrawal etc., but as the Returning Officer having issued an endorsement at Annexure-C indicating that it is not available in the record etc., the petitioner wanted to raise a dispute and filed an election petition before the Registrar on 29-10-2007.

The dispute raised by the petitioner on 29-10-2007 having been referred to the Deputy Registrar by the Joint Registrar for adjudication and the same having been numbered as GRB/Dispute 42/07-08, the Deputy Registrar, instead of looking into the matter, had issued a further endorsement on 31-12-2007 indicating that the dispute was barred by limitation in terms of Section 70-A(1) of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act') and refused to entertain the matter. It is aggrieved by this endorsement issued by the Deputy Registrar, the present writ petition is filed.

I find in the present case, the plea of equitable consideration is not even available to the fifth respondent, when one looks at the manner in which the fourth respondent put the fifth respondent in possession of the property and the desperate haste with which he has achieved it. It is a tell-tell story that the fourth respondent was acting in collusion with the fifth respondent and to favour the fifth respondent. Such biased favoured action vitiate the exercise of the statuary powers and at the same time does not leave scope for the erring party to plead equity at a later stage when things have worked adverse to the interest

of such a person. I find that the plea of equitable consideration is only to be rejected.

The other ground urged on behalf of the fifth respondent was delay etc., which again fails for the reason that when the challenge is only to the recovery proceedings, particularly of auction sale and the auction sale on after the stage of the Rule 38(2)(i) and (j) of the Rules, is found to be null and void in law, the delay question does not arise and at any rate cannot come in the way of this Court granting relief as a consequence of the declaration of the legal position. Courts are institutions meant to enforce rule of law and to correct the erring party particularly an erring statutory functionary when this Court exercises power of judicial review. Whether this Court exercises jurisdiction under Article 226 or under Article 227 of the Constitution Of India, 1950, when glaring statutory violations are brought to the notice of the Court in a proceeding which is brought to this Court in the normal course of events, it is but inevitable the consequences are visited upon the erring persons and relief provided to the offended person or persons who are victims of statutory violations. As observed in the beginning of this order, examination in this writ petition is only about the legality of the recovery proceedings and nothing more. A setting aside of a sale transaction and the subsequent proceedings taken by the respondent is on the premise that it is not a sale in the eye of law, and such setting aside of the sale transaction does not touch upon or affect the liability of the judgment-debtors. It is made clear that so long as an undischarged decree or an unsatisfied award is there, it is open to the decree-holder or persons in whose favour the award is made to realise the award in the manner provided in law. That course of action while is still open to the Bank, but the present auction sale conducted on 16-2-2004 is set aside and all subsequent actions fall to the ground.

On the question of relief to the petitioners while in the prayer a request is made for restitution of possession of the property in question, and normally in Code Of Civil Procedure, 1908 an application is contemplated under Section 144 seeking restitution etc., I find in the present situation, the prayer made in the writ petition is sufficient for that purpose and therefore the first respondent-Recovery Officer is directed to restore possession of the property in question to the petitioners forthwith, as a consequence of this order. The first respondent-Recovery Officer may allow two weeks' time from today to the fifth respondent to clear his articles and things on the premises before implementing this order. This direction is issued to the first respondent-Recovery Officer as it was the first respondent-Recovery Officer who had dispossessed the petitioners and their tenants from the property and had put the fifth respondent in possession and as that action is found to be bad in law.

That still leaves the question of damages sought for by the petitioners as compensation for the illegal demolition of the structure that was there in the property on the day when the first respondent-Recovery Officer sought to take possession and handed over possession to the auction purchaser. The initial deposit of Rs. 6, 15, 600/- which had been deposited by the auction purchaser on the day of auction, which could have been forfeited on non-depositing of the balance sale price within the stipulated forty-five days of an order to this effect, by the first respondent-Recovery Officer, instead is awarded as costs in favour of the petitioners payable by the fifth respondents to the petitioners. From out of the balance sale price, the expenditure incurred for the auction sale and likely to be incurred for re-auction can be deducted and the balance amount be returned to the fifth respondent by the first respondent-Recovery Officer out of the funds of the first respondent-Bank. It is open to the bank to realise the awarded amount in the manner known to law and following due procedure.

The conduct of the first respondent-Recovery Officer while is totally unbecoming of a Government

servant and being are betraying a partisan attitude calls for proper scrutiny and commensurate action by the Disciplinary Authority. The manner in which the second respondent-Joint Registrar of Co-operative Societies has functioned and the manner in which the second respondent has discarded the direction of this Court and the manner in which records are sought to be placed before this Court without any seriousness or concern to adhering to the basic requirement of placing true and original records before the Court is only to be deprecated and the disapproval of such conduct by this Court may be placed in the service record of the second respondent-Joint Registrar also.

Varijakshi Bhat v State of Karnataka and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 489; 2009 (4) KarLJ 419
Case Digest	**Subject:** Civil Procedure; Constitution **Keywords:** Attachment Of Immovable Property, Distribution Of Assets, Execution Proceeding, Sale Of Property, Attachment Of Movable Property, Set Off, Demand Notice, Writ Petition allowed, Stay, Application To Set Aside, Purchase Money, Re-Examination, Sub-Registrar, Sale Certificate, Application For Execution, Sale Of Immovable Property, Judgment-Debtor, Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960, Proclamation, Proclamation Of Sale, Revisional Order, Ground For Setting Aside, Revisional Authority, Resale Of Immovable Property, Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 **Summary:** Civil Procedure - Code of Civil Procedure, 1908, O. 21 r. 89 - Karnataka Co-operative Societies Act, 1959, ss. 108, 129, 70 - Award - Public Auction - Judgement debtor's property was brought to public auction sale in execution of award u/s.70 of Act - Judgement debtor filed applications for setting aside sale made - Revisional Authorities had dismissed application on ground that application was belated and due to material irregularity in all four rounds u/s.108 of Act - Judgement debtor's legal heirs had come on record after his death and filed application against orders of revisional authorities challenging legality of auction sale - Hence instant petition. Held, Recovery Officer records a finding that everything is alright on a perusal of the record but affirmed this finding on a second look at the record. Revisional Authority affirmed this finding on a second look at the record. The application for setting aside the sale u/r. 38(5) of the Rules was made on 1993. Assistant Registrar appears to have acted with an uncharacteristic degree of efficiency for the realisation of the decretal amount in favour of the decree-holder, whereas the normal conduct of such public authority in such matters is carelessness, but not completed the sale of the property within such a very short span of time. The application can be ordered even in exercise of jurisdiction u/art.227 before this Court as a litigation of this nature cannot be protracted indefinitely and to the agony of the persons seeking relief. Mere fact that it can affect the interest of an auction purchaser and that he has further developed the property, by itself cannot come in the way of the consequences of an application u/r. 38(5) of the Rules. Petitioner is knocking the doors of this Court and before the

	authority ever since the auction sale was conducted on 23-7-1993 and by making application u/r. 38(5) of the Rules. It cannot be held to the disadvantage of such an applicant that mere lapse of time due to the pendency of the proceedings can be a ground to deny relief to the writ petitioner. Petition allowed. Ratio - Object of filing application u/r. 38(5) of the Rules, designed to help or provide relief to judgment-debtor-applicant to invoke the provision in a situation where his/her interest is adversely affected by the proceedings in an auction sale.

Case No : W.P. No. 6141 of 2006 (CS-RES)

The Order of the Court was as follows :

This writ petition by the legal heir of a judgment-debtor whose property was brought to public auction sale in execution of an award that the judgment-debtor had suffered under Section 70 of the Karnataka Co-Operative Societies Act, 1959 (for short, 'the Act'), in Award No. 596 of 1992-93 for a sum of Rs. 98, 000/- with interest which though has become final, the auction sale for execution of the said award is nevertheless being questioned and seeking for setting aside the sale held on 23-7-1993 by filing an application under Rule 38(5) of the Karnataka Co-Operative Societies Rules, 1960 (for short, 'the Rules') and having failed in such an attempt not only before the authority which examined the application under Rule 38(5) of the Rules but also before the Revisional Authority-the State Government in exercise of its power under Section 108 of the Act who has dismissed the revision in terms of order dated 20-4-2005 passed in Revision Petition No. CMW 15 CAP 2001 (copy at Annexure-B) this writ petition.

2. The present writ petition which is the fifth round of writ litigation before this Court is for questioning the legality of the auction sale within the parameters of an application under Rule 38(5) of the Rules and for scrutiny before this Court in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India, 1950 and the order reaching this Court through the Revisional Authority who has confirmed the order of rejection of the application under Rule 38(5) of the Rules filed by the petitioner.

3. The brief facts not much in controversy leading to the above writ petition in the fifth round is by the writ petitioner claiming as one of the legal heirs of the original petitioner and original claiming under the original writ petitioner-the judgment-debtor has its genesis in one Sri Gopalakrishna Bhat borrowing certain amount from the fifth respondent-Mahalakshmi Co-operative Bank Limited, Udupi and the Bank having raised a dispute under Section 70 of the Act before the Joint Registrar of Co-operative Societies having acted as an Arbitrator and which had resulted in an award dated 23-2-1993 passed in Case No. 596 of 1992-93.

4. The record does not disclose the actual service of demand notice or of the attachment or of the proclamation of sale and the notice for sale on the judgment-debtor. It is not served at all on the judgment-debtor in any of the three stages referred to above. It is after such procedure rather violation of procedure, the property is actually sold on 23-7-1993 in favour of the auction purchaser - a neighbour - for a sum of Rs. 3.95 lakhs, within a span of two months, starting from the stage of the decree-holder applying for execution of the award to the date of actual sale taking place, which have all been completed and the property sold in favour of a neighbour of the judgment-debtor describing the property as an agricultural land measuring 5 cents, whereas

it is actually a house property having municipal number and located in the heart of the Udupi Town. The judgment-debtor claims that the property is worth more than Rs. 10.00 lakhs.

5. Material irregularity leading to illegality and failure of discharge duties is writ large on the face of the record. The Recovery Officer records a finding that everything is alright on a perusal of the record. The Revisional Authority affirmed this finding on a second look at the record. It is such orders, which are sought for judicial review before this Court. The application for setting aside the sale under Rule 38(5) of the Rules was made even as on 23/24-8-1993. It is the order passed on such application which is the subject-matter in this writ petition.

6. It is obvious that the Assistant Registrar appears to have acted with an uncharacteristic degree of efficiency in this case for the realisation of the decretal amount in favour of the decree-holder, whereas the normal conduct of such public authority in such matters is the proverbial letharginess and even, carelessness, but not completing the sale of the property within such a very short span of time as indicated above.

7. In the result, it is declared that the impugned orders at Annexures-A and B are not sustainable and can be examined on the touchstone of the requirement and examination needed for an application under Rule 38(5) of the Rules and the orders are set aside.

8. The manner in which the proceedings have been conducted and coupled with the overwriting in the records, while does not inspire confidence of the Court to remand the matter yet again to the Recovery Officer for a fresh examination, I am also of the view that it is not warranted for the reason that a remand should serve a purpose and if there is further need for examination by authorities concerned, and for a decision thereafter. In the present case, on the available records and pleadings, the petitioner and her predecessor in title - the judgment-debtor having made out a case for allowing the application under Rule 38(5)' of the Rules. The application can be ordered even in exercise of jurisdiction under Article 227 of the Constitution of India, 1950 before this Court as a litigation of this nature cannot be protracted indefinitely and to the agony of the persons seeking relief. Mere fact that it can affect the interest of an auction purchaser and that the auction purchaser has further improved or developed the property, by itself cannot come in the way of the consequences of an application under Rule 38(5) of the Rules. When once an application under Rule 38(5) has to be allowed on merits, the sale has to be set aside, which is the very purpose and object of Rule 38(5) of the Rules (See Nani Gopal Paul v T. Prasad Singh and Others, AIR 1995 SC 1971 : (1995)3 SCC 579).

9. If such argument is to be accepted, then the action on an application under Rule 38(5) of the Rules can be rendered nugatory by the auction purchaser developing the property to their advantage and plead either subsequent development or equities as a ground for interference. That will virtually defeat the very purpose and object of the application under Rule 38(5) of the Rules, which, as discussed earlier, designed to help or provide relief to a judgment-debtor-applicant to invoke the provision in a situation where his/her interest is adversely affected by the proceedings in an auction sale. The subsequent development while will constitute a ground for declining relief, that by itself cannot come in the way of the grant of relief in a justifiable case.

10. That the subsequent development also cannot be a ground for denying the relief to the writ petitioner for the simple reason that the petitioner is knocking the doors of this Court and before the authority ever since the auction sale was conducted on 23-7-1993 and by making application

under Rule 38(5) of the Rules. It cannot be held to the disadvantage of such an applicant that mere lapse of time due to the pendency of the proceedings can be a ground to deny relief to the writ petitioner.

11. It is for this reason, this writ petition is allowed and the impugned orders at Annexures-A and B to the writ petition are set aside, by issue of writ of certiorari. Rule made absolute. Auction sale conducted on 23-7-1993 is also set aside." It is open to the Bank to recover the amount due from the petitioner in any manner as permitted in law and after giving credit to the amounts that the judgment-debtor or his legal heirs have already remitted to the Bank. While the security in favour of the Bank remains, it is for the Bank to take recourse as per law for realisation of the amount due to it. However, it is for the Bank to refund the purchase price to the auction purchaser as of now and claim reimbursement from the judgment-debtor, if the judgment-debtor seeks to avoid coercive recovery of the award amount yet again.

Kumar and Others v State of Karnataka and Others

Bench	V. G. SABHAHIT, P. D. Dinakaran (CJ)
Where Reported	2008 Indlaw KAR 281; 2009 (2) KarLJ 438
Case Digest	**Subject:** Trusts & Associations **Keywords:** Appeals Dismissed, Co-Operative Societies, Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960 **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act,1959, ss. 28, 39 - Election - Whether postponing elections indefinitely on oral advice given by Police Officer was justified?- Held, yes - Learned Single Judge was justified in directing that third respondent shall hold elections as per calendar of events published from stage at which it had been postponed, except that interval of time and schedule should be adhered to as in earlier calendar of events notified on 13-2-2008 - Petition dismissed.

Case No : Writ Appeal No. 1215 of 2008 (S-El/M) Connected With Writ Appeal No. 1223 of 2008 (S-El/M)

The essential facts of the case leading upto these appeals with reference to the rank of the parties in the writ petition are as follows.-

W.P. No. 5032 of 2008, dated 23-7-2008 (Puttaraja and Others v State of Karnataka, 2009(1) Kar. L.J. 121) was filed seeking for quashing of the order passed by respondents 3 and 4 in writ petition and consequent calendar of events published as per Annexure-A to the writ petition. It is the case of the writ petitioners that writ petitioners are the residents of Yarehalli Village and members of the second respondent-Yarehalli Milk Producers Co-operative Society. The calendar of events dated 13-2-2008 was notified for election to the committee of management of the society. However, by order dated 21-3-2008, the said election was postponed indefinitely by the same Election Officer on the apprehension that there was law and order situation and likelihood of breach of peace in the area and therefore the elections were stalled.

It is the contention of the petitioners that when once the calendar of events had been published, the Election Officer ought to have completed the election as per the calendar of events and was not justified in postponing the elections indefinitely and wherefore sought for direction that elections be held as per the calendar of events published from the stage of publication of calendar of events by the Election Officer. In the said writ petition, an application was filed for impleading by persons alleging that the voters list had not been properly prepared and their names had been omitted from the list of members and voters. They were impleaded as respondents 6 to 10. Respondents 3 and 4 resisted the petition contending that the postponement of elections was inevitable as the developments at the office of the society and in the surrounding locality led to the apprehension that there could be breach of peace, particularly, as there was some scuffle between the rival factions contesting for the election and in the wake of some members complaining that their names do not figure in the voters list and on the advice

of the local Police Officers, the elections were postponed indefinitely.

The learned Single Judge further held that postponement of election on the oral advice of a Police Officer was not sustainable in law and accordingly quashed the order dated 20-3-2008 postponing the elections indefinitely and directed the third respondent to continue the election process from the state at which it had been stopped and to complete the calendar of events except that the interval of time and the schedule should be adhered to as in the earlier calendar of events notified on 13-2-2008 and the third respondent-Election Officer was directed to perform the function in an objective manner and to conclude the elections as per the calendar of events which is his duty and not to give scope for further complaints. Accordingly, the writ petition was allowed.

We have given careful consideration to the contention of the learned Counsel appearing for the parties and scrutinised the material on record. It is clear from the perusal of the material on record that the third respondent in the writ petition had published calendar of events on 13-2-2008 for holding elections to the Managing Committee of the second respondent-society and only on the basis of oral advice of the Police Officer, apprehending that there would be law and order problem, he postponed the elections indefinitely by order dated 20-3-2008 and apart from the said oral advice given by the Police Officer, there was no ground whatever for postponing the elections when the calendar of events had been published on 13-2-2008. It is well-settled that when once the calendar of events had been published the election process should not be postponed and elections cannot be postponed on the ground that there would be law and order problem as per the oral advice by the police.

It is well-settled as per the principles laid down by the Hon'ble Supreme Court that when an election has been stalled without authority of law after issue of calendar of events, it should be continued from the stage at which it had been stalled. In this behalf reliance is placed on the following judgments by the learned Counsel for the petitioners before the learned Single Judge:

(1) H.T. Dhananjaya and Others v State of Karnataka, 1999(6) Kar. L.J. .307 : ILR 1999 Kar. 4114;

(2) B.D. Manjunath v State of Karnataka and Others, 2005(3) Kar. L.J. 483 : ILR 2005 Kar. 927;

(3) S.T. Muthusami v K. Natarajan and Others, AIR 1988 SC 616 : (1988)1 SCC 572; and

(4) Anugrah Narain Singh and Another v State of Uttar Pradesh and Others, (1996)6 SCC 303.

The learned Single Judge had rightly held that apart from oral advice of the local Police Officer apprehending that there could be law and order problem, there was no other ground whatever to postpone the calendar of events for postponing the elections indefinitely, when the calendar of events had been published on 13-2-2008 and therefore, the order dated 20-3-2008 postponing the election by the third respondent in the writ appeal and the writ petition cannot at all be sustained. The learned Single Judge was justified in directing that the third respondent shall hold elections as per the calendar of events published from the stage at which it had been postponed, except that the interval of time and the schedule should be adhered to as in the earlier calendar of events notified on 13-2-2008. The direction given by the learned Single Judge to the Returning Officer, the third respondent, that he shall perform his functions in an objective manner and to conclude the elections as per the calendar of events, is justified. If there is any illegality is conducting the elections or in preparation of the voters list, it is always open to the objectors to challenge the elections and in the absence of any grounds made out for postponing the elections except the oral advice of the Police Officer, which is unsustainable in law.

We are of the view that the order passed by the learned Single Judge is justified and does not suffer from any error or illegality so as to call for interference in these appeals. Accordingly, both the appeals are dismissed.

Totgars Co-Operative Sale Society Limited v Income-Tax Officer

Bench	V. G. SABHAHIT, S. N. Satyanarayana
Where Reported	2008 Indlaw KAR 575; [2010] 322 ITR 272

Case No : I.T.A. No. 1568 of 2005

The essential facts of this case leading up to the filing of this appeal are as follows :

The assessee is a co-operative society registered under the Co-operative Societies Act. The assessee filed returns for the assessment years 1991-92 to 1999-2000. The return of the income for the assessment year 1991-92 was filed on September 27, 1991 disclosing the income of Rs. 1,25,94,454 under the head of "Income from business" and claiming exemption for the same under section 80P(2)(a)(i) of the Act and the total income returned was "nil". The return of income was processed under section 143(1)(a) of the Act on September 9, 1992, accepting the return, statement of income, audit report under section 44AB of the Act, printed trading and profit and loss account and balance-sheet which were filed along with the return of income. The business carried on by the assessee was marketing of agricultural produce of the members of the society. The business activity other than marketing of the agricultural produce resulted in net loss. The assessment was reopened with issue of notice under section 148 of the Act dated May 31, 2001. The assessee filed a letter dated June 7, 2001 requesting to treat the return filed under section 139(1) of the Act as the return in response to the notice under section 148 of the Act.

It is clear from the perusal of the material available on record that the appellant does not claim to be a banking company though a vague reference is made by the learned counsel for the appellant and that reference is made by the learned counsel with reference to rule 28 of the Karnataka Co-operative Societies Rules, 1960.

"28. Maintenance of fluid resources.-Every co-operative society accepting deposits and granting cash credits should maintain fluid resources in such form and according to such standards as may be fixed by the Registrar, from time to time, by general or special order."

It is clear from the perusal of the said rule that every co-operative society accepting deposits and granting cash credits should maintain fluid resources in such form and according to such standard as may be fixed by the Registrar, from time to time, by general or special order.

The abovesaid contention has not been taken before the assessing authority or the Income-tax Appellate Tribunal and no material whatever is produced to show that the appellant-society is authorised to accept deposits and the perusal of the said provision would show that the issuance of fluid resources has to be done where the society is doing banking business, i.e., accepting deposits and granting cash credits and, therefore, there is no merit in the contention of the learned counsel for the appellant that the interest is earned out of the statutory deposits. The assessee is admittedly not doing any banking business. What is invested in security and term deposits with the bank is the surplus funds in the possession of the assessee and as the assessee is not doing any banking business, interest accrued from

securities and deposits in banks other than co-operative societies were taken as relatable to profits and gains of the society as the said investment does not in any way affect the working capital is not a part of the circulating capital, but only out of the surplus funds available to the society and the assessee has not proved that there is no obligation on the part of the assessee to hold any securities as the part of the business and what is invested in securities and deposits is the surplus funds available with the assessee and it would not in any way affect the circulating capital of the society and, therefore, it is clear that the finding arrived at by the Income- tax Appellate Tribunal that the interest received from securities and deposit except deposits with the banks other than co-operative banks is not relatable to the business of the assessee in the present case and consequently, it is not qualified for deduction and consequently cannot qualify for computation of exemption under section 80P of the Act is justified.

The Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal on verification of the original records found that there was no merit in the contention of the assessee as the original records reveal that the previous permission of the Additional Commissioner of Income- tax has been obtained before issuing notice to the assessee and only the communication of the said approval was received on June 8, 2001. There is concurrent finding by both the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal on the said contention and on verification of the original records, we also find that the permission of the Additional Commissioner of Income-tax on May 31, 2001 and the same was communicated on June 8, 2001 and therefore, issuance of notice was only after obtaining approval of the Assistant Commissioner of Income-tax and the contends of the original records would clearly belie the issuance of the assessee with the notice under section 148 of the Act was issued without obtaining permission of the Additional Commissioner of Income-tax cannot be accepted and the same is liable to be rejected and therefore, the finding of the Tribunal in this behalf is also justified and does not warrant interference in this appeal and accordingly, we answer substantial question of law No. 2.

In view of our answer to substantial questions of law Nos. 1 and 2, we hold that there is no merit in this appeal, and accordingly, we dismiss this appeal and the order passed by the Income-tax Appellate Tribunal, Bangalore Bench "A" in I. T. A. No. 1460/Bang/2003 dated November 9, 2004 is confirmed.

Puttaraja and Others v State of Karnataka and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 137; 2009 (1) KarLJ 121
Case Digest	**Subject:** Election; Practice & Procedure **Keywords:** Elections, Karnataka Co-operative Societies Rules, 1960, Kamataka Co-operative Societies Act, 1959 **Summary:** Election - Practice & Procedure - Karnataka Co-operative Societies Rules, 1960,r.14 - Postpone election - Legality of - Jurisdiction - Petitioner were members of respondent no.2 Milk Producers Co-operative Societies - Respondent no.3- Election Officer and Co-operative Development Officer, Milk Producers Co-operative Societies passed order to postpone election - Hence, instant Petition - Whether respondent no.3-Election Officer has Jurisdiction to postpone election date. Held, provisions of r.14 of the Rules provides for appointment of Returning Officer by Registrar and also provides for manner in which elections are to be conducted, there is no enabling power in favour of Returning Officer to postpone election. Returning Officer is creature of statute, that too under delegated powers under the Rules appointed by Registrar. Such officer cannot assume to himself any powers either for deviating from election process in terms of calendar of events or for stalling or postponing elections. Law and order situation cannot be pleaded for him to contravene the statutory provision and if there is law and order situation it is for him to bring it before higher authorities and to seek for suitable security measures. Order of respondent no.3-Election Officer in postponing election, that too on oral advise of the Police Officers is action not sustainable in law. Respondent no.3-Returning Officer is directed to to date from which election process will be resumed from stage at which it had been stopped earlier. Petition allowed. Ratio - Statutory provisions do not empower State Govt. to postpone elections which are already notified by issue of calendar of events.

Case No : W.P. No. 5032 of 2008 (Cs-El/M)

The Order of the Court was as follows :

This writ petition by residents of Yarehalli Village who also happen to be the members of the second respondent-Yarehalli Milk Producers Co-operative Societies, Yarehalli is for issue of a writ of mandamus to compel the third respondent-Election Officer and Co-operative Development Officer, Yarehalli Milk Producers Co-operative Societies to continue and to complete the elections for electing the committee of Management to the Society which had been notified in terms of the calendar of events dated 13-

2-2008 and which had been postponed indefinitely by the very Election Officer in terms of his order dated 21-3-2008 on the premise that there was a law and order situation, likelihood of breach of peace in the area and therefore the elections were stalled.

The observations made by the Supreme Court in S.T. Muthusami's case, particularly, as contained in the paragraph 17 of this judgment wherein the Supreme Court noticed that interference by the High Court with the conduct of the elections to the Panchayat Union i.e., the post of Chairman to the Panchayat Union under the provisions of Tamil Nadu Panchayats Act, 1958 was again bad in law and directed the Returning Officer to proceed with the elections in accordance with law and from the stage at which it had been interrupted by the order passed by the High Court in writ jurisdiction.

In Anugrah Narain Singh's case, the Supreme Court again reiterated the constitutional bar on interference with the conduct of elections in a petition under Article 226 of the Constitution Of India, 1950 , particularly, when the election process is on in the light of Article 243-ZG of the Constitution Of India, 1950 and Article 329 of the Constitution Of India, 1950 which had come in for interpretation time and again the Supreme Court starting from N.P. Ponnuswami v The Returning Officer, Namakkal Constituency, Namakkal, Salem District and Others, AIR 1952 SC 64 : 1952 SCR 218, to hold that the High Court should not interfere with the conduct of elections once calendar of events had been issued.

While the provisions of Rule 14 of the Karnataka Co-operative Societies Rules, 1960 provides for appointment of a Returning Officer by the Registrar and also provides for the manner in which the elections are to be conducted, there is no enabling power in favour of a Returning Officer to postpone the election. The Returning Officer is a creature of the statute, that too under the delegated powers under the rules appointed by the Registrar. Such officer cannot assume to himself any powers either for deviating from the election process in terms of the calendar of events or for stalling or postponing the elections. A law and order situation cannot be pleaded for him to contravene the statutory provision and if there is law and order situation it is for him to bring it before the higher authorities and to seek for suitable security measures.

The order dated 20-3-2008 (copy at Annexure-B) of the third respondent-Election Officer in postponing the election, that too on an oral advise of the Police Officers is an action not sustainable in law and is accordingly quashed by issue of a writ of certiorari.

The third respondent is directed to continue the election process from the stage at which it had been stopped and to complete within the time as had been notified in the calendar of events dated 13-2-2008 except that the interval of time and the schedule should be adhered to as in the earlier calendar of events notified on 13-2-2008.

The third respondent-Returning Officer to notify the date from which the election process will be resumed from the stage at which it had been stopped earlier and such date should be notified to be not later than fifteen days from the date of receipt of a copy of this order. The fresh date shall be duly published at the office of second respondent-society and in any other manner prescribed by rules.

The third respondent-Election Officer is impressed to perform his functions in an objective manner and to conclude the election as per the calendar of events which is his duty and not to give scope for further complaints.

Writ petition allowed. Rule made absolute.

Y. Lalitha Holla and Others v Recovery Officer, Bangalore District and Bangalore Rural District Co-Operative Central Bank Limited, Bangalore and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 345; 2009 (1) KarLJ 493
Case Digest	**Summary:** Practice & Procedure - Karnataka Co-operative Societies Act,1959,s.101 - Karnataka Co-operative Societies Rules, 1960, r.38(2)(i) and (j) - Award in favour of the Bank - Auction sale - Follow up action - Auction sale of immovable property of judgment-debtor in execution - Time stipulation for deposit of purchase amount and even time stipulation for depositing of stamp duty amount - Mandatory - Sale officer of Bank has no authority to enlarge period for auction purchaser to pay up amount - If amount not deposited within permitted time - Recovery Officer bound to set aside sale and put up property for re-auction in terms of provisions of Rules - Rule made absolute. Practice & Procedure - Karnataka Co-operative Societies Act,1959,s.101 - Karnataka Co-operative Societies Rules, 1960, r. 38 - Execution proceedings - Procedural safeguards - Provisions provided to safeguard interest of judgment-debtor who cannot question legality of decree passed against him - Sale of dwelling house or other life sustaining immovable property providing income and sustenance to judgment-debtor should be last resort and not first choice - At every stage, opportunity is contemplated to be given to judgment-debtors to satisfy decree and to avoid sale of property - Safeguard meant to be followed - Non-adherence to statutory provisions voids sale transaction - Where sale has been vitiated and become unsustainable in law due to non-compliance with statutory requirement - Sale has to be cancelled irrespective of whether party interested has sought its cancellation or not - Held, provisions of r.38 of rules operate on their own with or without an application, as that is a legal position - Rule made absolute.

Case No : W.P. No. 1573 of 2006 (Cs-Res)

The Order of the Court was as follows :

Petitioners in this writ petition are persons who had stood as guarantors, guaranteeing repayment of a loan borrowed by M/s. Mushti Designs Private Limited, represented by its Managing Director, M. Arunkumar, who had borrowed certain sums from the first respondent-Bangalore District and Bangalore Rural District Co-operative Central Bank Limited, Chamarajapet, Bangalore.

The borrower having failed to repay the amount with interest etc., the Bank had raised a dispute, the matter went before Arbitrator and resulted in passing an award in favour of the Bank, jointly against the borrower and the petitioners-guarantors.

Let me firstly deal with record placed before the Court by the learned Government Pleader. As observed above, the file before the Court does not appear to be a record maintained in the normal course of official transaction, particularly for holding an enquiry and disposal of the applications of the petitioners in terms of the directions issued by this Court in the order dated 7-12-2005 in W.P. No. 11984 of 2005. This file does contain the order dated 3-3-2006 (Annexure-K), which is also sought to be quashed by seeking amendment of the petition pleading and prayer, particularly as this order has come into existence during the pendency of this writ petition. The order, on a perusal, while is clearly a non-compliance with the directions issued by this Court, is also not tenable on merits, for the simple reason that the applications filed by the petitioners-judgment-debtors for setting aside the sale transaction, are conspicuous by their absence in the file and which were required to be dealt with under the provisions of Rule 38(5) of the Rules and on consideration if had resulted in an order, perhaps could have been subject-matter of further appeal etc. There being no disposal of the applications in the eye of law, the order is not an order in the eye of law; that the reasoning is nothing but one of overlooking the statutory provisions of Rule 38(4) and (5) of the Rules and therefore the order obviously cannot be sustained and deserves to be quashed.

More important question is as to the legality of the execution proceedings, particularly of the sale transaction, confirmation of sale, taking of possession, putting the auction purchaser in possession etc. Insofar as these proceedings are concerned, it started on 16-2-2004. I do not propose to examine the developments prior to this auction sale, for the reason that what can be examined in a writ petition of this nature is only the legality of the statutory procedure and as to whether the statutory authorities or functionaries have adhered to the statutory provisions contemplated in law. The statutory provisions in the present situation is one in the context of execution of an award and for realising the amount due to the decree-holder payable by the judgment-debtors. The execution proceedings, even in terms of the Rule 38, a procedure more or less akin to the procedure under Order 21 of the Code Of Civil Procedure, 1908, though is for a like purpose and on like terms, to the extent the proceeding as provided in the rules varies from the procedure under the Code Of Civil Procedure, 1908, it is only the procedure envisaged under the Rules that will have to be followed and therefore a scrutiny in respect of a complained action on the part of the respondent-authorities has to be decided only on the touchstone of the provisions of Rule 38 of the Rules read with Section 101 of the Act and not necessarily with reference to the provisions of Order 21 of the Code Of Civil Procedure, 1908 per se.

Let me now examine the legal contentions urged by Sri C.B. Srinivasan, learned Counsel for the petitioners that the action on the part of the first respondent-Recovery Officer in proceeding against the property of the petitioners who were sureties and whose property has been secured guaranteeing repayment of the loan of the principal debtor has been contrary to the provisions of Section 134 read with Section 141 of the Contract, I find that it is not necessary for this Court to examine the merits of this contention for the simple reason that the present writ proceedings are not a proceeding for examining the legality of the award suffered by the petitioners. When once it is not in dispute that there was a joint award against the principal debtor and also the petitioners-sureties, the petitioners become judgment-debtors in their own capacity and it is little difference they were surety earlier. Discharge of a surety or otherwise due to the conduct on the part of the creditor is an aspect touching upon the liability of the surety and could be urged only in a proceeding determining the liability of the surety, which has resulted in an award. When once there is an award against the surety, the legality of the award cannot be questioned in execution proceedings before the Recovery Officer or any other authority

other than the authority which has competence and jurisdiction to look into the legality of the award as an Appellate Authority or a Revisional Authority etc. So long as there is a joint award as against the petitioners herein also and so long as the award or any part of the award is not satisfied for the awarded amount or balance awarded amount, action can definitely be pursued against the petitioners, as there is an undischarged award outstanding against the petitioners also.

The argument of Sri Purushothama Rao, learned Counsel for the fifth respondent, based on the principles of Order 2, Rule 2 of the Code Of Civil Procedure, 1908, while requires to be negatived for like reason, that argument also falls to the ground, as this Court had remanded the matter and not concluded any aspect against the petitioners in the earlier round of litigation. The present order is one arising in the proceedings which had taken place pursuant to the remand and direction issued by this Court and therefore the principles of Order 2, Rule 2 of the Code Of Civil Procedure, 1908 do not apply, as the said principle is attracted only in a situation when an earlier proceeding had been concluded and what was subject-matter or what could have been the subject-matter and in respect of which relief had not been obtained, cannot be agitated by fresh litigation.

That leaves the question of legality of the proceedings taken up by the first respondent-Recovery Officer for conducting auction sale and follow up action. In this Gontext, learned Counsel for the petitioners has placed reliance on the reported Single Bench decision of our High Court in the case of Abbubakar Beary v Assistant Registrar of Co-operative Societies and Others, 1986 (1) KarLJ 316. This Court while interpreting the provisions of Rule 38(2)(i), (j) and 38(5) of the Rules had categorically ruled that time stipulation for deposit of the purchase amount and even time stipulation for depositing of stamp duty amount were mandatory; that while the Sale Officer had been given a discretion to extend the time only for the deposit of the stamp paper or value upto 30 days, no such discretion was available in respect of the bid amount and if the amount was not deposited within the permitted time, the Recovery Officer was bound to set aside the sale and put up the property for re-auction in terms of the provisions of the Rules. The provisions as of now while provide an outer time-limit of 45 days for deposit of balance purchase price i.e., 85% of the bid amount and also of the stamp duty, there is no scope under the present Rule for extending any time-limit nor any power conferred on any authority in its discretion to extend time for deposit of the amount.

If the proceedings of the first respondent-Recovery Officer are voided even at the stage of Rule 38(2) (i) of the Rules, while further examination of the violation of the subsequent statutory provisions may only be an academic exercise, this Court cannot help but notice the arbitrary manner in which the first respondent-Recovery Officer has exercised the power and the desperate haste with which the property was sought to be taken possession of on the very day when the application of the auction purchaser had come to be allowed etc.

I find in the present case, the plea of equitable consideration is not even available to the fifth respondent, when one looks at the manner in which the fourth respondent put the fifth respondent in possession of the property and the desperate haste with which he has achieved it. It is a tell-tell story that the fourth respondent was acting in collusion with the fifth respondent and to favour the fifth respondent. Such biased favoured action vitiate the exercise of the statuary powers and at the same time does not leave scope for the erring party to plead equity at a later stage when things have worked adverse to the interest of such a person. I find that the plea of equitable consideration is only to be rejected.

On the question of relief to the petitioners while in the prayer a request is made for restitution of possession of the property in question, and normally in Code Of Civil Procedure, 1908 an application is contemplated under Section 144 seeking restitution etc., I find in the present situation, the prayer made in the writ petition is sufficient for that purpose and therefore the first respondent-Recovery Officer is directed to restore possession of the property in question to the petitioners forthwith, as a consequence of this order. The first respondent-Recovery Officer may allow two weeks' time from today to the fifth respondent to clear his articles and things on the premises before implementing this order. This direction is issued to the first respondent-Recovery Officer as it was the first respondent-Recovery Officer who had dispossessed the petitioners and their tenants from the property and had put the fifth respondent in possession and as that action is found to be bad in law.

That still leaves the question of damages sought for by the petitioners as compensation for the illegal demolition of the structure that was there in the property on the day when the first respondent-Recovery Officer sought to take possession and handed over possession to the auction purchaser. The initial deposit of Rs. 6, 15, 600/- which had been deposited by the auction purchaser on the day of auction, which could have been forfeited on non-depositing of the balance sale price within the stipulated forty-five days of an order to this effect, by the first respondent-Recovery Officer, instead is awarded as costs in favour of the petitioners payable by the fifth respondents to the petitioners. From out of the balance sale price, the expenditure incurred for the auction sale and likely to be incurred for re-auction can be deducted and the balance amount be returned to the fifth respondent by the first respondent-Recovery Officer out of the funds of the first respondent-Bank. It is open to the bank to realise the awarded amount in the manner known to law and following due procedure.

The conduct of the first respondent-Recovery Officer while is totally unbecoming of a Government servant and being are betraying a partisan attitude calls for proper scrutiny and commensurate action by the Disciplinary Authority. The manner in which the second respondent-Joint Registrar of Co-operative Societies has functioned and the manner in which the second respondent has discarded the direction of this Court and the manner in which records are sought to be placed before this Court without any seriousness or concern to adhering to the basic requirement of placing true and original records before the Court is only to be deprecated and the disapproval of such conduct by this Court may be placed in the service record of the second respondent-Joint Registrar also.

Shivanandaiah K.S v
District Registrar of Co-Operative Societies and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 143; 2009 (1) KarLJ 151

Case No: W.P. No. 9217 of 2008 (Cs-El)

The Order of the Court was as follows:

Writ petition by a person who had been elected as President of the fourth respondent-Co-operative Society in a special meeting of the Executive Committee fixed for such purpose on the expiry of the term of the previous President, but whose election has been nullified by the second respondent-Assistant Registrar of Co-operative Societies on the premise that the meeting did not have the sufficient quorum at the time of conducting the election and that order is affirmed in appeal by the first respondent-District Registrar of Co-operative Societies.

It is aggrieved by such adverse orders, though the petitioner claims to have been declared elected by the support of all the three Directors who attended the meeting held on 10-12-2006, the petitioner has approached this Court for quashing the orders declaring the election to be invalid and to prevent the conduct of fresh elections to be held on 15-7-2008.

“Rule 14-D. General meetings.-...

(3) The quorum for the general meeting shall be the attendance of fifty per cent or one-fifth of the total number of members whichever is less. If there is no quorum at the time of transacting any business in any general meeting, such business shall not be transacted”.

and submits that even if the effective membership of the Executive Committee is taken to be seven out of the total number of nine Directors, as two Directors having suffered disqualification, the requisite number to constitute the quorum is four or five. In the present meeting, only three Directors have attended, which is definitely without quorum.

This position is very obvious as it is not in dispute that including the petitioner, the total number of Directors who had attended the meeting for electing the President were only three, and if so, it falls short of the quorum and orders passed by the authorities do not suffer from any infirmity and there is no need to interfere with such orders.

Vyavasaya Seva Sahakar Bank Niyamit, Hale-Hubballi Taluk, Dharwad District v State of Karnataka and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 410; 2009 (3) KarLJ 380

Case No : W.P. No. 3106 of 2008 (Cs-El/M)

Summary : Trusts & Associations - Karnataka Co-Operative Societies Act,1959, ss.30,39-A(2),121; Karnataka Co-operative Societies Rules,1960, r.14 - Returning Officer was appointed for conducting elections - Notice sent to RO by department of Co-operative societies - Appointment of Returning Officer to hold election to constitute new committee for - Authorities were in dereliction of duty to ensure holding of elections in time to elect Managing Committee - Held, Not conducting elections for a management for electing a Managing Committee to look after affairs of Bank when erstwhile elected management was superseded more than seven years earlier is undoubtedly a gross inaction on part of authorities who had responsibility to ensure such elections are conducted in time - Authorities to ensure that elections are conducted promptly and an elected body is put in place at the earliest - Writ petition disposed of.

The Order of the Court was as follows :

This writ petition is filed by Taluk Level Co-operative Society. The Vyavasaya Seva Sahakar Bank Niyamit, Akkipet, Hale Hubballi, which also happens to be a member of Karnataka Central Co-operative Bank Limited, Dharwad. The Taluk Level Co-operative Bank is complaining that elections for electing the members of the Managing Committee of the 4th respondent-District Level Co-operative Bank has not been conducted for a long period, that though a Returning Officer has been appointed for such purpose, relevant calendar of events have not been published; that an Administrator who had been appointed to manage the affairs of the 4th respondent has remained in control of the Bank for several years to the detriment of the Bank and the petitioner-Bank is in a dire state of affairs not able to put in place an elected representative of the choice of the members of the Co-operative Bank to the management of the District Co-operative Bank.

In this context, petitioner has prayed for issue of a writ of mandamus to the 5th respondent-Returning Officer appointed so by the 2nd respondent-Registrar, Co-operative Societies to commence the process of elections in terms of Rule 14(2) of the Karnataka Cooperative Societies Rules, 1960. Pursuant to the appointment of the 5th respondent as the Returning Officer for conducting the elections of the 4th respondent-Bank in terms of an order dated 6-2-2008 passed by the Registrar (Joint Registrar of Co-operative Societies). Copy produced as Annexure-C to the writ petition.

The present case has demonstrated that appointing a Returning Officer even before fixing the date of election is really of no use. As has happened on earlier occasions if there is an unwilling Managing Committee not ready to fix the date of elections or with a busy Administrator like the present Deputy

Commissioner who may not find time to attend to this function and in the absence of fixing the date of election, the Returning Officer will be rendered jobless. The election process already delayed gets further delayed if such practical difficulties crop up.

As the Registrar is the Statutory Officer who has the overall responsibility of ensuring that the functioning of the Co-operative Societies and Banks in the State is in order and confirming to the statutory provisions has also the responsibility to ensure that elections are conducted promptly on time to elect the Managing Committees of such Societies. Ensuring fixing of a date for holding elections promptly is a part of these responsibilities of the Registrar. Merely appointing a Returning Officer in itself is not the end. The Registrar should also ensure that the Returning Officer will be able to discharge his responsibility by ensuring that the date for the holding of elections is also fixed. In fact the proper procedure is that the Managing Committee or the Administrator first fixes the date of election and then the Registrar steps in appointing a Returning Officer. If the date of election has not been fixed, the Registrar should first ensures that the Managing Committee or the Administrator fixes the date of election so that the Returning Officer can publish the calender of events and ensure that the election process is successfully completed.

It is accordingly impressed upon the statutory authorities that it is their responsibility to ensure firstly to fix the date of election unless, Managing Committee or the Administrator voluntarily fixes the election within the time as is envisaged under the Act. It is thereafter that the further proceedings would have to be taken.

Subray Krishnaiah Hegde v Manager, Siddapur Taluk Vakkalutana Huttuvali Maratha Sahakari Sangh Niyamit, Uttara Kannada District

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 212; 2008 (6) KarLJ 643
Case Digest	**Summary:** Trusts & Associations - Karnataka Co-operative Societies Act, 1959, s.100 - Code of Civil Procedure, 1908, s.115 - Karnataka Land Revenue Act, 1964, s.188 - Karnataka Co-operative Societies Rules, 1960 - Civil revision petition - Petitioners are legal heirs of original judgment debtor - Money was borrowed by judgment debtor from Co-operative society, which he failed to pay - Later society raised dispute over this which was referred for arbitration - Award passed was challenged by judgment debtor - Tribunal dismissed appeal raised - Through certificate under s.101(1), Society sought for execution of award through civil court - Execution case was filed after 20 years of passing of Award - Judgment debtor contended execution to be dismissed as it has not been filed within 12 years of passing of award and is barred by limitation - Civil Court passed orders in favour of society i.e. decree holder - Revision petition by judgment-debtor - Is petition barred by limitation? - Reading s.100 with proviso of s.101 shows that Act does not put an embargo on a decree-holder to adhere to only one mode of execution of award - Issue of fresh certificate for executing award is permissible - Held, if an application for executing award is not productive, it cannot be said to be barred by limitation - Execution was sought within a year or so of issue of certificate and there is no question of award being denied as barred by limitation - Decree holder did not allow matter to set at rest but carried it through appeal - Court is executing on basis of certificate and certificate if at all cannot be executed by a Civil Court, only if more than 12 years has elapsed, from date of issue of certificate as certificate is treated as decree of Civil Court, such is not situation in present case - Revision petition dismissed.

Case No : Civil Revision Petition No. 81 of 2005

The Order of the Court was as follows :

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908, is to get over the adverse order the legal heirs of judgment-debtor suffered at the hands of the Executing Court in their effort to avoid execution of award passed by the Arbitrator under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'), as the learned Judge of the Executing Court under the impugned order held that the execution petition was not barred by limitation as contended by the judgment-debtor.

The petitioners, who are legal heirs of the original judgment-debtor, who was a member of the decree-holder-Society and it appears had borrowed some amount for agricultural operations, having failed to pay the amount, the society raised a dispute and the matter being referred to Arbitrator by the registrar, got an award in its favour in CEP No. 2/1974-75, dated 31-8-1974.

Belgaum District Central Co-Operative Bank Limited, Belgaum v Mahantesh Co-Operative Credit Society Limited, Belgaum and Another

Bench	S. R. BANNURMATH, Jawad Rahim
Where Reported	2008 Indlaw KAR 13; 2008 (5) KarLJ 81; 2008 (3) KarLJ 608
Case Digest	**Summary:** Excise - Central Excise Act, 1944, ss. 11, 12 - CPC, 1908, s. 73(3) - Customs Act, 1962, s. 142 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) - Arrears of Central excise duty, interest and penalty - Recovery of - Priority over right of recovery of Bank - Applicability of doctrine of 'priority or precedence of State debts over private debts' - Held, basic justification for the claim of priority of State debts to make the state able to function as sovereign Govt. - In order to discharge the primary function, the govt. has priority in respect of tax dues - However, such priority confined to ordinary or unsecured creditors - No specific provision either under the Central Excise Act or the Customs Act, to enable the Central Excise Department to claim a precedence over the claim of a secured creditor such as the respondent-Banks - But the claim of the Bank on the basis of provisions of the SARFAESI Act would clearly claim precedence insofar as enforcing its right is concerned - Therefore, the Department cannot claim the priority right over the Bank in recovering the dues from assessee - Appeal dismissed.

Case No : Regular First Appeal No. 165 of 2008

The appellant-the Belgaum District Central Co-operative Bank Limited, which is not a party in the Execution Proceeding's No. 67 of 2007, has challenged the order dated 5-1-2008 passed by the Executing Court/I Additional Civil Judge (Senior Division), Belgaum, on the application filed by the decree-holder-first respondent herein under the provisions of Order 21, Rule 46 of the Code of Civil Procedure, 1908.

The judgment-debtor, is a Co-operative Society. As per the provisions of Section 57 of the Karnataka Co-operative Societies Act, 1959, it is required to deposit 25% of the net profit as reserve fund. Accordingly, the judgment-debtor has deposited the amount with the appellant herein.

The decree-holder - Society has obtained an award dated 27-10-2006 for recovery of a sum of Rs. 27, 00, 000/- with interest from the judgment-debtor. In this regard the decree-holder had filed an application for attachment and prohibitory order for disbursement of the amount in RFD Account No. 8 of the judgment-debtor maintained by the appellant-Bank. There is no much dispute, the said application was allowed and the attachment and prohibitory order was passed by the Joint Registrar of Co-operative Societies. In this regard the decree-holder has filed the present execution petition.

Order 21, Rule 46-A of the CPC provides that the Courts may in case of a debt, which has been attached under Rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due so as to satisfy the decree in question. The appellant is a garnishee of the judgment-debtor is not in dispute. In our view the Executing Court was justified in passing the impugned order. It is to be noted that mere prohibition under the Karnataka Co-operative Societies Act, 1959 as pointed out as per the provisions of Rule 23(3) cannot prohibit the Court from exercising the jurisdiction as contemplated under the CPC.

The condition imposed under Rule 23 of the Rules is in respect of the operation of the account by the depositor and does not prohibit any debtor from obtaining the orders under Order 21, Rule 46-A of the CPC. It is to be noticed that under Section 101(1)((a) of the Co-operative Societies Act itself, any award passed under the provisions of the Co-operative Societies Act is deemed to be a decree of a Civil Court and can be executed in the same manner as a decree of the Court. Once the award is deemed as a decree and it is sought to be executed it is the Civil Court which has competence/jurisdiction to deal with the same as provided under the CPC.

In view of the same we find there is absolutely no illegality in the impugned order by the Trial Court in exercising the jurisdiction under Order 21, Rule 46-A of the CPC. We find no merit in the appeal. Hence, the same is rejected.

T. Srinivasa v J. J. Prakash

Bench	A. N. VENUGOPALA GOWDA, S. R. BANNURMATH
Where Reported	2008 Indlaw KAR 282; 2009 (2) KarLJ 444
Case Digest	**Subject:** Advocates & Judges; Civil Procedure; Practice & Procedure **Keywords:** Contempt Of Court, Temporary Injunction, Breach Of Injunction, Appellate Authority, Order Accordingly, Partition, Bonafide requirement, Framing of charges, Challenged, Subordinate Court, Contempt of Courts Act, 1971, Disobedience, Karnataka Co-operative Societies Act, 1959 **Summary:** Civil Procedure - Arbitration & ADR - Co-operative Society - Membership - Arbitration Award - Admit the complainant as a regular member from the date of the award - Award not complied - Whether, for the disobedience of the award passed by an Arbitrator in exercise of power u/s. 71 of the Karnataka Co-operative Societies Act, 1959, contempt petition u/s. 10 r/w. s. 12 of the Contempt Act is maintainable? - Court held, 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 - S. 109(13) 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 u/s. 71 - Therefore the contempt petition u/s. 12 of the Act is not maintainable - Petition dismissed.

Case No : Contempt of Court Case No. 423 of 2008 (Civil)

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 Limited, Bangalore-53 ('Society', for short) in the year 1991. He represented to the Society on 15-10-2003 for regular membership, on which no action was taken. Consequently he filed a dispute under Section 70 of the Karnataka Co-operative 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.

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.

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 supersede 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.

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.

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.

State of Karnataka and Others v Karnataka Milk Federation, Bangalore

Bench	P. D. Dinakaran (CJ), V. G. SABHAHIT
Where Reported	2008 Indlaw KAR 312; 2009 (2) KarLJ 709
Case Digest	**Summary:** Trusts & Associations- Karnataka Co-operative Societies Act,1959, s.2-AA - Constitution Of India,1950, art.226 - Appeal directed against interim order for re-audit of accounts - Petitioner being a society - Allegations of fraud against society - Interim order for staying re-examination, pending disposal of writ petition, challenged - Whether stay Order issued by Single Judge against all further proceedings intended for re-examining/re-verifying audited accounts liable to be vacated? Held, that an order for a re-audit shall be issued only where a prima facie case of fraud or or embezzlement of funds is not detected or properly examined by auditor during regular audit - Court not to interfere unless power exercised by lower Court suffers from illegality - Object of re-examination/re-verification of audit intended for a laudable purpose to earth-out alleged fraud, misappropriation/embezzlement of funds - Stay order held vacated - Appeal disposed of.

Case No : Writ Appeal No. 1837 of 2008 (Cs)

The above appeal is directed against the interim order dated 13-11-2008 made in Writ Petition No. 14153 of 2008 staying all further proceedings impugned in the above writ petition dated 5-11-2008 initiated under Section 63(11) of the Karnataka Co-operative Societies Act, 1959 (for short hereinafter referred to as the "Act") on the ground that the same cannot be resorted to, in view of Section 63(10) of the Act, particularly with reference to Section 2-AA of the Act which are referred to as hereunder:

2. Appreciating the contentions of the learned Counsel for the respondent/writ petitioner, the learned Single Judge stayed all further proceedings which are intended for re-examining/re-verifying the audited accounts and the object being to earth-out the alleged fraud, misappropriation or embezzlement of funds, as the case may be, which are not deducted or properly examined by the auditor during the regular audit or misclassification of the accounts of the society in question.

3. In our considered opinion, when the object of re-examination/re-verification of the audit is intended for a laudable purpose to earth-out the alleged fraud, misappropriation/embezzlement of funds, it may not be proper for this Court to stay such proceedings initiated under the statutory power unless such powers provided under the said provision is held ultra vires or the power exercised is held to suffer from erroneous or illegal exercise of such power.

4. Therefore, in order to meet the ends of justice, the order dated 13-11-2008 under appeal is modified as hereunder:

"The appellant 1 is at liberty to proceed with the re-examining/re-verification of the audited accounts of the Co-operative Society in question strictly in accordance with law. However, the

result of such re-examination/re-verification of the audited accounts shall be given effect to, only after the disposal of the writ petition. It is also further made clear that it shall not be given effect to unless and until the writ petition is heard and finally disposed of and both the parties are at liberty to request the learned Single Judge concerned for early disposal of the case".

5. The writ appeal is disposed of, accordingly.

G. Veranna v Joint Registrar of Co-Operative Societies, Bangalore City District, Bangalore and Others

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 436; 2009 (3) KarLJ 555
Case Digest	**Subject:** Land & Property **Keywords:** Public Document, Karnataka Co-operative Societies Act, 1959 **Summary:** Land & Property - Entitlement - Possession - Property in Dispute - Trial court directed society to put sale deed in favour of appellant / respondent no. 3 with no objection certificate in his favour, within a period of one week - Hence, this petition - Whether, petitioner is entitled to possession of the property in dispute. Held, examination of order along with pleadings and documents as placed by writ petitioner, society and third respondent, indicates that there is something radically wrong with affairs of society. Whether writ petitioner was a party to such manipulative and overreaching action on part of society, writ petitioner cannot claim any benefit from such illegal acts on part of society to sustain any benefit. Property that has already been transferred in favour of respondent no. 3 does not revert only because of such offer, but more importantly respondent no. 3 is not ready or willing to accept such an offer of society. Petition Dismissed.

Case No : W.P. No. 19213 of 2007 (Cs)

The Order of the Court was as follows :

Writ petition by a person who claims to be the member of second respondent-Co-operative Society Limited who is aggrieved by the order passed by the Karnataka Appellate Tribunal, Bangalore in Appeal No. 670 of 2004 in terms of order dated 13-11-2007 allowing appeal at the instance of the third respondent another member of the very society and in the context of the Tribunal having allowed the appeal of the third respondent against the order passed by the Deputy Registrar of Co-operative Societies to get over the order passed by the Deputy Registrar on 30-4-2004 in No. JRB/MD/138/1999-2000. The entire controversy being in context of allotment of a site bearing No. A-1893 measuring 60' x 40' that the society having executed one sale deed dated 19-1-1996 registered on 20-1-1996 in respect of the very site in favour of third respondent and later the very society having executed another sale deed dated 15-5-1996, in respect which writ petitioner claims to be the owner in respect of the very site registered on 19-7-1997.

The Tribunal in the appeal filed by the third respondent before it found that site No. A1893 had been allotted in favour of the appellant before it i.e., present third respondent in this writ petition, whereas a site bearing No. A1900 had been allotted in favour of the writ petitioner-Veeranna (it appears to have been subsequently scored of and instead written the number 1893) and the said allotment of site No.

1900 was in favour of the writ petitioner on 5-3-1995/22-3-1995 that while respect of site No. A1893 sale deed has in fact been executed by the society earlier in favour of the appellant before it i.e., present writ petitioner. Subsequent sale deed dated 15-5-1996 though his claim is in respect of the same site is one after scoring off the number 1900 and writing 1893.

The Tribunal on examining the defence of the society that the allotment in favour of the appellant before it was by over sight; that the appellant did not have any right to claim any allotment particularly for the reason that there was no deposit to the credit of appellant's account towards the sital value between 6-12-1995 and 23-12-1995 on the premise that during the relevant period, the appellant himself had requested the society to transfer this amount to the credit of the account of another member by name Achyutha.

While the Tribunal disbelieving this version of the society also declined to permit the society to place additional evidence to this effect towards the end of the hearing of the appeal and rejected the I.A. for the same. Examining the legal position also found that the society which had already registered the site in favour of the appellant before it, could not have either conveyed the very site yet again another site in favour of present writ petitioner subsequent to 15-5-1996 nor had competence to cancel the sale deed in its favour. Therefore allowed the dispute raised by the appellant before the Deputy Registrar declaring the appellant to be the owner of the site on the strength of the sale deed that had been executed by the society in favour of the appellant and directed the society to take steps to cancel the subsequent sale deed dated 15-5-1996 which had been executed in favour of the present writ petitioner. A further direction is issued to the society to issue sale deed and put the appellant first member in whose favour the site had already been transferred, in possession with no objection certificate in his favour etc., within a period of one week. It is this order which has been questioned by the writ petitioner who is figured as second respondent before the Tribunal.

Be that as it may, I find that the writ petition is wholly without merit and also lacking in bona fides. The society though had offered that it is ready and willing to provide an alternative site in favour of the third respondent to sustain the order of the Tribunal, such a course of action could be in favour of the writ petitioner than to submit that it can be done in favour of third respondent, as such the offer cannot change the legal position and the property that has already been transferred in favour of the third respondent does not revert only because of such offer, but more importantly the third respondent is not ready or willing to accept such an offer of the society and has contended that the society has indulged in such misconduct and to the disadvantage of many members.

In the circumstance, while this writ petition is dismissed, the Tribunal is directed to examine the possibility of second respondent-society having committed perjury or having sought to place manipulated or distorted documents before the Tribunal and also as to whether the society had tried to create false evidence before the Tribunal, Particularly with reference to the evidence it had already placed before the Deputy Registrar of Co-operative Societies in the dispute raised by the third respondent. The Tribunal to initiate appropriate action against the office-bearers of the society under the appropriate provisions of Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 , if any such action warrants initiation of such proceedings and by filing a criminal complaint in this regard before the jurisdictional Magistrate.

Apart from this, the Registrar of Co-operative Societies in Karnataka, on whose behalf the first respondent has acted, is hereby directed to hold a detailed enquiry into the affairs of the society, particularly in

the matter of allotment of sites in favour of its members, manner in which amounts collected and the manner in which such sites have been allotted in favour of members and if any manipulations of the records of the society in respect of such allotment of sites and to ensure that proper remedial measures are taken under the provisions of the Act by issue of a notice to such persons and by identifying the responsible and guilty persons for action.

The registry is directed to send copies of this order to the Karnataka Appellate Tribunal, Bangalore and the Registrar of Cooperative Societies in Karnataka.

Writ petition is dismissed levying cost of Rs. 5, 000/- (Rupees five thousand only) on the petitioner payable to the third respondent. The cost to be paid within four weeks from today to the third respondent or to be deposited within that time before this Court, failing which the registry is directed to issue a certificate in favour of the third respondent in this regard enabling the third respondent to recover the cost as if a decree of the Civil Court. It is for the society to ensure compliance with the order passed by the Tribunal, which is affirmed herein.

Gurusiddappa Moolagi and Others v Deputy Registrar of Co-Operative Societies, Dharwad and Another

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 388; 2009 (3) KarLJ 144
Case Digest	**Subject:** Constitution **Keywords:** Natural Justice, Principles Of Natural Justice, Seniority list, Challenged, Petition disposed of, Karnataka Co-operative Societies Act, 1959 **Summary:** Trusts & Associations - Karnataka Co-Operative Societies Act,1959, ss.29-C(8),31,106 - Constitution of India, 1950, arts. 226 and 227 - Writ petition - Members of Society's Committee disqualified - Violation of principles of natural justice - Without waiting for petitioners to file their objections, Assistant Registrar concluded enquiry and passed impugned orders - Court directed four weeks' time to petitioners to file their objections - Order passed is one denying very opportunity granted as part of observations while disposing of earlier round of writ petition - Authority, in disregard of direction, passing final order disqualify all members and appointing Special Officer - Order of authority is liable to be quashed for disregarding specific direction issued to it - Assistant Registrar has to examine their objections, hear them on a day fixed and pass orders on merits - Appointment of Special Officer being consequential to disqualification, does not sustain independently and quashed - Order accordingly.

Case No : W.P. No. 30319 of 2008 (Cs-Res)

The Order of the Court was as follows :

Writ petition by persons who were Directors of the Hubli Taluk Agricultural Produce Marketing Society Limited, Hubli and who have suffered an order of disqualification under the provisions of Section 29-C(8) of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act'), in terms of the orders at Annexures-A1 to A7 to the writ petition.

While it is true that normally an appellate remedy should be exhausted and persons approaching this Court invoking writ jurisdiction not availing the statutory remedy are not entertained, in the present case, I find that the petitioners had been specifically directed to be given four weeks' time to file objections and thereafter the Assistant Registrar to consider that objection and to pass orders. A perusal of the records indicates that the petitioners did not have such an opportunity, particularly as the order itself has come to be passed on 29-7-2008, whereas, this Court disposed of the writ petition only on 24-7-2008. Even when the earlier writ petition had been dismissed by this Court, this Court had directed four weeks' time to be given to the petitioners to file their objections.

It may be true that the other two Directors have filed appeals, but insofar as the petitioners herein are

concerned, the order passed is one denying the very opportunity granted as part of the observations while disposing of the earlier round of writ petition filed by the very petitioners. That opportunity cannot be allowed to go ineffective or meaningless. It is only for this reason, this matter warrants interference.

The impugned orders at Annexures-A1 to A7 are quashed for the purpose of remanding the matter to the Assistant Registrar with a specific direction that the petitioners are permitted four weeks from today to file their objections before the Assistant Registrar who has to examine their objections, hear them on a day fixed by the Assistant Registrar and then to pass orders on the merits. The appointment of Special Officer under Annexure-J being consequential to the disqualification, does not sustain independently and is also quashed.

Surabhi Seva Sangha (Reg.), Bangalore and Others v State of Karnataka and Others

Bench	HULUVADI G. RAMESH
Where Reported	2008 Indlaw KAR 364; 2009 (1) KarLJ 712
Case Digest	**Subject:** Municipalities & Local Governments; Trusts & Associations **Keywords:** Land Acquisition, Co-Operative Societies, Application For Registration, Karnataka Co-operative Societies Act, 1959, Bangalore Development Authority (Allotment of Sites) Rules, 1984, Bangalore Development Authority (Bulk Allotment) Rules, 1995 **Summary:** Land & Property - Bangalore Development Authority Act, 1976, ss. 38-B, 65 & 69 - Bangalore Development Authority (Bulk Allotment) Rules, 1995, rr. 3 and 7 - Bulk allotment of acquired land - whether the bulk allotment are valid in law? - Held , No - Direction issued by Government is within its power, and cannot be said to be illegal - In exercise of power under Section 38-B if bulk allotment is to be made for more than 5 acres, it is the power of the Government- there is no illegality in the order passed by the Government directing the BDA to make bulk allotment of 10 acres - Petitions dismissed.

Case No : W.P. No. 8366 of 2008 Connected With W.P. Nos. 4198 and 6224 of 2008 (La)

The Order of the Court was as follows :

Apart from that, it is contended the respondent-Kanakashri House Building Co-operative Society who had no right as such, in whose favour there was bulk allotment made by the BDA to the extent of 10 acres of land under the Bangalore Development Authority (Bulk Allotment) Rules, 1995. The same has been challenged in these petitions on the ground that they have not been allotted sites pursuant to the representation given by them and also the bulk allotment made in favour of the respondent-Housing Society, stating that it is in violation of the BDA Rules. Hence, these petitions.

According to the petitioners there was a bulk allotment made in favour of Kanakashri House Building Co-operative Society in violation of Section 65 and also under Section 38-B of the Bangalore Development Authority Act, 1976 read with the Rules for Bulk Allotment. There is no land as such available. In fact, the petitioner-Society has formed sites and many of the members of the Society have already built the houses. The allotment made in favour of the respondent-Society is in violation of the Rules. Petitioner is seeking to make available the land already developed by them by re-notifying the land which comes under the Green Belt. The Society had filed W.P. No. 2376 of 2006 and as it was not maintainable, the said writ petition was withdrawn and as per the endorsement issued by the BDA, no work order is issued nor there is approval of the plan. Accordingly, they have sought for allowing the petitions.

Section 38-B. Power of authority to make bulk allotment.-Notwithstanding anything contained in this Act or development scheme sanctioned under this Act, the authority may, subject to any restriction, condition and limitation as may be prescribed, make bulk allotment by way of sale, lease or otherwise of any land which belongs to it or is vested in it or acquired by it for the purpose of any development scheme.-

(iv) to any Housing Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959; or

As per the BDA (Bulk Allotment) Rules, 1995, the power of the BDA is only to make bulk allotment of 5 acres. In exercise of power under Section 38-B if bulk allotment is to be made for more than 5 acres, it is the power of the Government. Since exercising power under Section 38-B the Government has directed the BDA to allot 10 acres in favour of the respondent-Society as is provided under the rules framed under the Act, the allotment so made by the BDA on the direction of the Government cannot be held to be illegal. Moreover, the respondent-Society is said to have made an application to the Government and the Government in turn having considered the application of the Society, has ordered for making allotment.

However, a reading of Sections 65 and 38-B of the Act and the Bulk Allotment Rules of the BDA makes it clear that there is no illegality in the order passed by the Government directing the BDA to make bulk allotment of 10 acres. That apart, the ground raised by the petitioners that the allotment made in favour of the respondent-Society is illegal cannot be accepted.

K.N. Kamalamma v Bangalore Development Authority

Bench	Deepak Verma (ACJ), A. Somaiah Bopanna
Where Reported	2008 Indlaw KAR 360; 2009 (1) KarLJ 658

Case No : Review Petition No. 113 of 2004 Connected With Review Petition Nos. 320 of 2007 and 94 of 2004

As common questions of law on similar facts are involved in the aforesaid matters, the same are heard together and disposed of by this common order. These petitioners had filed three connected writ petitions in this Court under Articles 226 and 227 of the Constitution of India, 1950 , with a prayer to quash the notices dated 6-12-1997 and 12-12-1997 marked as Annexures-B and D respectively issued by the respondent-Bangalore Development Authority ('the BDA' for short). The further prayer was made for issuance of writ of mandamus for considering the case of the petitioners for reallotment/reconveyance of sites. The aforesaid petitions were consolidated for hearing and by a common order the matter came to be disposed of by a Division Bench on 12-6-2002. For the reasons recorded therein, the petitions were dismissed. On account of the dismissal of the said petition, petitioner-A.N. Kamalamma who had filed W.P. No. 36417 of 1997 and the petitioner in W.P. No. 36418 of 1997 had approached the Hon'ble Supreme Court by filing a special leave petition which was registered as Special Leave to Appeal (Civil) Nos. 19038 of 2002 and 716 of 2003 respectively. It came up for hearing before the Hon'ble Supreme Court on 23-1-2004.

On the other hand, learned Counsel for the petitioner submitted before us that the ratio of the aforesaid case in the matter of Poornaprajna House Building Co-operative Society, would not be applicable to the facts of this case. To put the point across, learned Counsel for the petitioner has taken us through the full text of the judgment in Shivkumar Bhargava which was referred in Poornaprajna case. He submitted that the said case dealt with a situation where it was only on account of the policy of the Government that persons whose lands were sought to be acquired were directed to be given one site out of the lands acquired. But this benefit was not extended to those who were the purchasers of the land from the original owners after the issuance of notification under Section 4(1) of the Land Acquisition Act, 1894.

In the light of this, it has been argued by the learned Counsel for the petitioner that once the regrant is made in favour of the vendor, then the automatic effect thereby would be that the purchaser's title would get perfected. In view of this, it was contended that Section 38-C of the Act is clear which contemplates reconveyance of the title of the site to the landowner if the conditions mentioned therein has been fulfilled by him. Therefore, we are of the view that in the instant case if the said principle is applied, the resolution for reconveyance had already enured to the benefit of the vendor in view of the statutory provision and even though the actual reconveyance was not made by BDA, the purchase of the site by the petitioner though before the benefit of actual reconveyance would fructify in favour of the petitioner when reconveyance is made, in view of the pre-existing resolution.

(i) a centre for educational, religious, social or cultural activities or for philanthropic service run by a

Co-operative Society registered under the Karnataka Co-operative 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;

It may be recalled that in the Resolution No. 629, certain lands including the lands of the petitioner was resolved to be left from the layout plan as it was already built up and was for reallotment and regularisation, meaning thereby that they were kept for being reconveyed. If the said sites were kept for reconveyance, in the subsequent development plan the very same site could not have been earmarked by the respondent for civic amenities and on that basis the benefit cannot be denied. In this view of the matter, the third plea is also answered in favour of the petitioner and against the respondent.

For the above said reasons we are of the considered opinion that in view of the pleas raised being held in favour of the petitioners the earlier order dated 12-6-2002 dismissing the petitions is liable to be reviewed and modified. Accordingly, the following:

ORDER

(I) The respondent-BDA is directed to consider the case of the petitioners to reconvey the respective sites in question subject to the petitioners complying with the other regular conditions to effect reconveyance.

Bidar District Central Co-Operative Bank Limited, Bidar v Karnataka Information Commission, and Another

Bench	K. BHAKTHAVATSALA
Where Reported	2008 Indlaw KAR 160; 2009 (1) KarLJ 231

Case No : W.P. No. 11713 of 2006 (Gm-Res)

The Order of the Court was as follows :

The petitioner-Bank filed objections to the complaint stating that the complainant is neither a Director nor a Member of the petitioner-Bank and the Bank is not a "Public Authority" and there was no obligation on the petitioner-Bank to give the information as sought for by respondent 2. It is also stated that the Bank had not appointed 160 employees as alleged in the complaint. Notwithstanding the objections filed, the respondent 1 directed the petitioner-Co-operative Bank by the impugned order, to furnish the information as sought for by respondent 2. Therefore, the petitioner is before this Court praying for quashing the impugned order.

The petitioner-Co-operative Bank has produced a memo along with a copy of remittance challan dated 27-5-1993 to the effect that the Government's share capital amount of Rs. 71, 00, 000/- was remitted back in favour of the Government and thus the petitioner-Bank is not substantially financed by the Government. It is contended that the notification dated 22-9-2005 issued by the registrar of Co-operative Societies at Annexure-C is not applicable to the petitioner-Society. It is further submitted that merely because the Registrar of Co-operative Societies has supervisory control over the Co-operative Bank, it cannot be said that the petitioner-Co-operative Bank is an authority within the scope Section 2(h) (d) of the Act.

Learned Counsel for respondent 2 submits that since the Registrar of Co-operative Societies has got control over the Co-operative Bank, though it is not substantially financed, it is an authority within scope of Section 2(h) of the Act. It is further submitted that the petitioner has not challenged the notification of the Registrar dated 22-9-2005 at Annexure-C and there is no illegality or infirmity in the impugned order made by the respondent 1.

Learned Government Pleader has not disputed the remittance of share capital amount of Rs. 71, 00, 000/- on 27-5-1993 by the petitioner-Bank in favour of the Government.

Even before the Act came into force, the petitioner-Society has remitted back the share capital received from the Government. Section 2(h) of the Act defines "public authority". According to Section 2(h) (d> of the Act, the appropriate Government may include any body owned, controlled or substantially financed by it by issuing notification. The notification dated 22-9-2005 issued by the Registrar of Societies can be said to be one issued under sub-sections (1) and (2) of Section 5 and not under Section 2(h)(d) of the Act. In other words, by issuing the notification, the Registrar of Co-operative Societies has named Public Information Officers and the authority to which appeal shall lie under Section 19(1) of the Act. Consequently, directed the CEO and the Presidents of all Co-operative Institutions in the

State to take immediate action to carry out such duties and responsibilities and perform such functions assigned to them under the Act in their designated capacities as per the notification at Annexure-C. As the notification dated 22-9-2005 (Annexure-C) has not been issued under Section 2(h)(d) of the Act, the petitioner is justified in not challenging the notification. The supervisory control over the Co-operative Societies by the Registrar under the Karnataka Co-operative Societies Act, 1959 , cannot be construed as a control of such nature, so that the petitioner-Co-operative Bank can be brought within the definition of Section 2(h)(d)(i) of the Act. The respondent 1-Commission has mechanically accepted the complaint and erred in directing the petitioner-Co-operative Bank to furnish the details by respondent 2 who is just a citizen and he is noting to do with the petitioner-Bank. Therefore, the impugned order is not sustainable in law.

For the reasons stated above, the petition is allowed and the impugned order dated 18-7-2006 on the file of respondent 1 at Annexure-D is quashed no order as to costs.

K.G. Rajashekar v State of Karnataka and Others

Bench	K. L. MANJUNATH, B. V. Nagarathna
Where Reported	2008 Indlaw KAR 173; 2009 (1) KarLJ 36

Case No : Writ Appeal No. 313 of 2008

According to the writ petitioner, it is a Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (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 KR. 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 Co-operative 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 KCS Act, 1959Since 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 respondents 2 and 3 herein to deduct the amount from out of the salary of the appellant in terms of Section 34 of theKCS ActThe 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 KCS 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 KCS Act , allowed the writ petition. Being aggrieved by the same, the present appeal is filed.

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 KCS 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.

"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 Co-operative 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 amounts so deducted to the society within fourteen days from the date of the deduction".

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 KCS Act , that there is no prohibition for a creditor to invoke Section 34(1) and (2) of the Act even 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.

V. Eshwaran v Karnataka Rajya Kaigarika Sahakara Bank Niyamitha, Bangalore

Bench	B. V. Nagarathna
Where Reported	2008 Indlaw KAR 221; 2008 (6) KarLJ 696

Case No : W.P. No. 7190 of 2008 (S-Dis)

The Order of the Court was as follows :

According to petitioner, while he was working as In-charge of Superintendent of Accounts and Finance Section at Head Office, a show-cause notice dated 16-4-2005 was issued to him and the Manager, Accountant and Clerk of the Mangalore Branch as per Annexure-F, which was replied by the petitioner vide Annexure-G. Thereafter, respondent-Bank had issued charge-sheet against the petitioner by keeping him under suspension for a period of three months and then reinstated him subject to the result of the enquiry. The petitioner has also replied to the charge-sheet as per Annexure-J. Subsequently, the respondent appointed one Sri C.S. Bhadrinath, Retired Additional Registrar of Co-operative Societies as Enquiry Officer to conduct a domestic enquiry against the petitioner as per Annexure-K, who then held an enquiry against the petitioner and submitted his Enquiry report as per Annexure-L. On receipt of the second show-cause notice by the petitioner from the respondent-Bank, after receipt of the enquiry report, the petitioner replied to the same vide Annexures-M and N.

When things stood thus, the petitioner raised a dispute before the Joint Registrar of Co-operative Societies, Bangalore in Dispute No. 2085/2006-07 and sought for stay of further proceedings and by an interim order produced as Annexure-S, further proceedings in the enquiry was stayed pending disposal of the dispute. Aggrieved by the said interim order, the petitioner preferred Revision Petition No. 51 of 2007 before the Tribunal which, by order dated 29-2-2008 (Annexure-T), set aside the interim order dated 13-2-2007 and directed the respondent-Bank to take necessary action in the matter. Being aggrieved by the order of the Tribunal, the petitioner has filed this writ petition while at the same time, challenging the enquiry report also.

In fact even after the conclusion of an enquiry and a punishment being imposed, the power of the High Court to interfere would be exercised where the authorities have held the proceedings against the delinquent in a manner inconsistent with the rules prescribing the mode of enquiry or when the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could have arrived at that conclusion on similar grounds. Apart from this, if the enquiry is otherwise properly held, the departmental authorities are the Judges of facts, and if there be some legal evidence on which their findings are based the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before a High Court in a proceeding under Article 226, much less at an intermediate stage, prior to the consideration of the enquiry report by the authorities concerned.

It is pertinent to note that in the instant case, the petitioner has replied to the show-cause notice and the charge-sheet issued to him and has participated in the enquiry proceeding and has also given his reply to the enquiry report and second show-cause notice. It is only with a view to stymie the enquiry proceedings from being concluded by the respondent-Bank that the petitioner raised a dispute before the Joint Registrar. The Joint Registrar was therefore not right in going into the merits of the enquiry as well as the enquiry report and the Tribunal was right in setting aside the interim order of the Joint Registrar.

For the aforesaid reasons, the writ petition is devoid of merits and is dismissed at the stage of preliminary hearing leaving open all other contentions available to the parties.

Residents of Shri Chitrapur Co-Operative Housing Society Limited, Bangalore v District Registrar, Bangalore Urban District, Bangalore and Another

Bench	A. Somaiah Bopanna
Where Reported	2008 Indlaw KAR 12; 2008 (3) KarLJ 377

Case No : W.P. No. 14231 of 2005 Connected With W.P. Nos. 11678 of 2005, 50597, 19385, 23474 and 33759 of 2004; 16838 and 14464 of 2005 (Gm-St/Rn)

The Order of the Court was as follows :

The petitioners in W.P. Nos. 14231, 14464 and 16838 of 2005 are residents of the flats of Sri Chitrapur Co-operative Housing Society Limited, Malleswaram, Bangalore, while the petitioners in W.P. Nos. 19385, 23474, 33759, 50597 of 2004 and 11678 of 2005 are residents of the flats of Dattaprasad Co-operative Housing Society Limited, Malleswaram, Bangalore. The petitioners are questioning the order passed by the Deputy Commissioner for Stamps and District Registrar, whereunder the possession certificate issued by the Co-operative Housing Society in favour of each of the petitioners is interpreted as a conveyance and has imposed the stamp duty and penalty in respect of the flats which are in the occupation of the petitioners. The petitioners contend that they are not liable to pay the same and as such have sought for quashing the orders.

The case put forth by the petitioners is that the Society which has given them the possession of the flats is a tenant Co-partnership Society. Insofar as the Chitrapur Society, it has taken the land on long lease of 99 years and built the flats. In the case of Dattaprasad Society, the Society purchased the land in its own name and constructed the apartments. The Chitrapur Society has 96 flats while Dattaprasad Society has 66 flats. It is contended that the respective lease hold rights and ownership vests with the Society and each tenant member is allotted the flat on the basis of holding distinctive shares and loan stock subscribed by the members. The members jointly hold the property through the Society. In the case of Chitrapur Society, it is stated that the land held on lease by the society would revert back to the lessor on expiry of the lease period. The said societies are said to have registered in 1980 and 1970 respectively, under the provisions of the Karnataka Co-operative Societies Act, 1959 (the 'KCS Act' for short). It is contended that Section 38 of the KCS Act provides exemption from compulsory registration of instruments stated therein under Section 17(1)(a) and (b) of the Registration Act, 1908. No doubt, by introduction of a proviso, the said exemption in respect of House Building Co-operative Society is removed with effect from 1-4-2001. The contention of the petitioners is that in any event, since there is no transfer of title and only possession is handed over to the tenant/members and the only documents executed being possession certificate, share certificate and loan stock certificate, the same does not require registration and in any event, since Section 38 of the KCS Act provided for exemption prior to 1-4-2001, the registration and payment of stamp duty did not arise in respect of transaction prior to amendment. The petitioners have not derived any title and as such the said documents cannot

be classified as 'conveyance' to attract stamp duty in terms of Article 20(2) of the Karnataka Stamp Act, 1957 ('Stamp Act' for short). That being so, the said document could not be impounded under Section 33 nor could the duty and penalty be imposed under Section 39 of the Stamp Act. In any event, the transactions are beyond the period as contemplated under Section 46-A of the Stamp Act and as such the amount is not recoverable. Therefore, according to the petitioners, the orders impugned in these petitions are not sustainable.

However, noticing the misinterpretation of the said exemption to their advantage by certain Housing Co-operative Societies, a proviso was inserted by Act No. 6 of 2001, with effect from 1-4-2001 making it compulsory to register the instruments which intended to transfer or in effect transfer the right, title or interest in the immovable property executed by or in favour of House Building Co-operative Societies which reads as follows.-

"Provided that the exemption from compulsory registration of instrument shall not apply to any instrument which is intended to transfer or in effect transfers the right, title or interest in immovable property executed by or in favour of House Building Co-operative Societies registered under this Act".

The compulsory registration with effect from 1-4-2001 insofar as House Building Co-operative Societies does not call for detailed discussion since this is concluded in view of the order dated 17-11-2005 passed in Dattaprasad Co-operative Housing Society Limited, Bangalore and Others v State of Karnataka 2005 Indlaw KAR 334 (DB)), accepting the memo filed by the parties and for the transaction after the said date, there is no scope for interpretation of Section 38 of the KCS Act inter se between the parties. Therefore, the question is with regard to the period prior to 1-4-2001 to consider whether, in the present facts, and in respect of the nature of documents in the present case, registration was a requirement notwithstanding the provisions contained in Section 38 of the KCS Act in view of the fact that physical possession was transferred and an additional document of possession certificate being issued specifying the portion of the property over which physical possession and right was created even for succession.

In the background of the said provisions, if the documents in question are analysed, the fact that there is a transfer of immovable property cannot be in doubt, since apart from being a shareholder, the flat is put in possession of the member by way of possession certificate and the arrangement regarding holding and enjoying the property is well-defined in the bye-laws and the so-called tenancy agreement. However, for the said documents to constitute an 'instrument' as defined in Section 2(1)(j) of the Stamp Act, the right or liability created or purported to be created by such document is to be further examined. The loan stock certificate indicates the value of such property to which the member is entitled and commensurate to the same, the flat is put in possession. The possession would be to the entitlement of the member, successors, legal heirs, assignees and nominees.

Therefore to sum up, the position would be that for the reasons stated above, the respondent was justified in treating the instruments involved in the present cases as conveyance and impounding the same under Section 33 of the Stamp Act for the purpose of recovering the stamp duty vide the orders dated 17-4-2004, 22-7-2004, 20-9-2004, 24-9-2004, 16-10-2004, 24-1-2005, 27-1-2005 and 31-3-2005 respectively but the method of determination of the market value, stamp duty and the penalty are not sustainable and to that extent, the same requires reconsideration.

In the result the following:

ORDER

(i) The respective impugned orders at Annexures-H to H46 in W.P. No. 14231 of 2005; Annexures-A to A7 in W.P. No. 11678 of 2005; Annexures-D1 to D 13 in W.P. No. 50597 of 2004; Annexures-A1 to A8 in W.P. No. 19385 of 2004; Annexures-A1 and A2 in W.P. No. 23474 of 2004; Annexures-Dl to D15 in W.P. No. 33759 of 2004; Annexures-H to H6 in W.P. No. 16838 of 2005 and Annexures-H to H10 in W.P. No. 14464 of 2005 to the extent of holding the documents in question as conveyance and impounding the same under Section 33 of the Karnataka Stamp Act are affirmed;

(ii) The respective impugned orders to the extent of determining the market value, stamp duty and penalty under Section 39(1)(b) are quashed only to that extent and the matter is remanded to the first respondent to reconsider the same to that extent and redetermine the stamp duty and penalty, if any payable;

C. Shivalingaiah and Others v State of Karnataka and Others

Bench	H. N. NAGAMOHAN DAS
Where Reported	2008 Indlaw KAR 156; 2009 (1) KarLJ 201
Case Digest	**Subject:** Trusts & Associations **Keywords:** Prosecuted And Punished, Karnataka Co-operative Societies Act, 1959 **Summary:** (A) Trusts & Associations - Karnataka Co-operative Societies Act,1959, ss.30(1),106 - Framing of charges - Order of supersession - Respondent no.3 issued show-cause notice against respondent no.5-society u/s.30(1) of the Act framing 16 charges and to show cause as to why committee of management of society should not be superseded - Respondent no.3 passed order superseding committee of management of society and appointed respondent no.4 as administrator to society - Some of directors of society filed appeal before Secretary to Govt. who dismissed appeal as not maintainable whereas others filed appeal before Registrar of Co-operative Societies who dismissed appeal and sustained order of supersession - Hence, instant Appeal - Whether HC can interfere with impugned orders of supersession u/s.30(1) of the Act and order of Appellate Authority u/s.106 of the Act. Held, u/s.30(1) of the Act, Registrar is empowered to supersede the Committee of Management of a Co-operative Society which persistently makes default or is negligent in the performance of the duties or any act which is prejudicial to the interest of the society or its members. If the original order passed u/s.30(1) of the Act or the order passed by the Appellate Authority u/s.106 of the Act are found to be against the object and spirit of supersession of a society or where it is found that the authority exceeded in his jurisdiction, committed error of law apparent on the face of record or when the findings are perverse in relation to the fact situation, undoubtedly such an order is always subject to judicial review. It is not the duty of Court to substitute its opinion for the orders passed by an authority while deciding the matter. Therefore, HC can interfere with the orders of the authorities passed u/s.30(1) of the Act and the order passed by the Appellate Authority u/s.106 of the Act. Petitions allowed. (B) Trusts & Associations - Karnataka Co-operative Societies Act, 1959, s. 30(1) - -Want of hearing - Whether impugned order u/s.30(1) of the Act is bad in law for want of oral or personal hearing. Held, proviso to s.30(1) of the Act specifies that the Registrar may, after giving the committee an opportunity to State its objections, if any, order in writing

	remove the said committee, and appoint an administrator to manage the affairs of the society for such period. Committee of management in reply to the show-cause notice has not sought for any oral hearing. There is no other material on record to prove and establish that the petitioners had made a request for personal hearing. Even otherwise as a matter of right the petitioners are not entitled for an oral or personal hearing. Therefore, the impugned order passed by the respondent no.3 would not be vitiated for want of personal hearing. Petitions allowed. (C) Trust & Association - Karnataka Co-operative Societies Act,1959, s.30(1) - Requirement of provision - Whether impugned order of supersession is in conformity with requirement u/s.30(1) of the Act. Held, powers conferred u/s.30(1) of the Act to the Registrar is not absolute power and the same is conditional. The condition precedent for exercising the power of supersession against an elected committee of management of the society is that there must be persistent default in the performance of its duties. Therefore, the supersession of the present managing committee for the irregularity committed by the previous managing committee is bad in law. There is no evidence on record to show what are the directions or warnings issued by the Govt. or Registrar which are disobeyed or violated persistently by the present committee of management of the society. Therefore, essential requirement for exercising the power of supersession, that is, the elements of persistent default on the part of the society is absent in the instant case. Hence, impugned order of supersession and the order of Appellate Authority are liable to be quashed. Petitions allowed. Ratio - If conclusion of authorities is not supported by evidence on record, then HC has power to interfere with orders passed by authorities under the Act.

Case No : W.P. No. 20081 of 2007 Connected With W.P. Nos. 19053 and 19054 of 2007 (Cs-Res)

The Karnataka State Judicial Department Employees House Building Co-operative Society Limited-the 5th respondent herein is a Co-operative Society (for short, 'Society") registered under Karnataka Co-operative Societies Act, 1959 (for short, 'Act'). The society is managed by a committee of management elected by its members for a term of five years. On 27-3-2005 elections were held to the committee of management of society and 15 Directors that is the petitioners in these three writ petitions were elected for a term of five years. On 14-6-2007 the 3rd respondent issued a show-cause notice under Section 30(1) of the Act framing 16 charges and to show cause as to why committee of management of the society shall not be superseded. The second respondent in the impugned order in the appeal before him summarises the charges as under:

The society submitted its reply on 18-7-2007 inter alia contending that the charges are untrue, baseless and requested to drop further proceedings. In reply to the charges the society also produced number of documents. The 3rd respondent by considering reply submitted by the society passed an order on 8-8-2007 superseding the committee of management of the society and appointed the 4th respondent as administrator to the society. Aggrieved by this order of supersession some of the Directors of the

society i.e., the petitioners in W.P. No. 20081 of 2007 filed an appeal before the Secretary to Government in No. Appeal/CMW 10/CAP/2007 under Section 106 of the Act. The Secretary to Government vide endorsement dated 31-10-2007 dismissed the appeal as not maintainable on the ground that the Registrar of Co-operative Societies is the Appellate Authority and not the Government. Some of the Directors filed an appeal against the order of supersession before the Registrar of Co-operative Societies in Appeal No. RCS/DAP/D1/23/2007-08 i.e., the petitioners in W.P. Nos. 19053 and 19054 of 2007. The 2nd respondent-Registrar of Co-operative Societies vide order dated 29-11-2007 dismissed the appeal and sustained the order of supersession. Hence these writ petition questioning the order of supersession dated 8-8-2007, order of Appellate Authority dated 29-11-2007 and the endorsement dated 31-10-2007 and for other reliefs.

Keeping in view the law laid down by the Apex Court in the decisions referred to supra, the fact situation in the instant case is to be examined. Judicial review has become an integral part of our constitutional system. The purpose of judicial review is to ensure that an individual is given fair treatment by the authority to whom he has been subjected to. Under Section 30(1) of the Act. the Registrar is empowered to supersede the Committee of Management of a Co-operative Society which persistently makes default or is negligent in the performance of the duties or any act which is prejudicial to the interest of the society or its members.

Keeping in mind the object and spirit of Section 30(1) of the Act, it is required to examine the fact situation in the instant case. In the show-cause notice dated 14-6-2007 as many as 16 charges are levelled against the society. The 3rd respondent in the order of supersession dated 8-8-2007 dropped Charge Nos. 2, 3, 4, 8 and 16 and held the remaining charges as proved. In appeal, the 2nd respondent in his order dated 29-11-2007 held Charge Nos. 9, 10, 11 and 12 as proved and the remaining charges as not proved. The order of supersession dated 8-8-2007 is merged with the order of Appellate Authority dated 29-11-2007. Therefore the Charge Nos. 9 to 12 are the only charges required to be considered for the purpose of this case.

Further it is noticed from the record that the respondents vide order dated 5-6-2007 initiated enquiry proceedings under Section 64 of the Act in respect of the charges pertaining to 9, 10 and 12. When the enquiry proceedings under Section 64 were pending against the society relating to purchase of land, its development and allotment of sites, the same cannot be made as a charge by the respondents in the impugned order of supersession. Now it is brought to my notice by the learned Government Advocate that the proceedings initiated against the society under Section 64 of the Act are concluded by submitting a report on 29-11-2007 by the Additional Registrar of Co-operative Societies and further suggested to take action under Section 68 of the Act. On one hand the respondents have taken action under Section 64 of the Act and on the other hand under Section 30(1) of the Act against the society in respect of the very same charges. This act on the part of the respondents is opposed to the common law doctrine of "Nemo Debet Bis Vexari" which means no person shall be prosecuted and punished for the same offence more than once. This is very important safeguard available to a citizen against the State under Article 20(2) of the Constitution Of India, 1950On this ground the impugned order of supersession is liable to be quashed.

Again this finding of the 3rd respondent is contrary to the evidence on record. The alleged Charge Nos. 9, 10 and 12 will not amount to persistent default by the society. Therefore, the impugned order of supersession is liable to be quashed.

The reasoning of the Appellate Authority that some of the elected members of the present committee of management were also members in the previous committee of management and they are responsible for the charges levelled in the show-cause notice and therefore present committee of management is to be superseded is bad in law. If some of the members of the committee of management are responsible for default or negligent in performance of the duties imposed under the Act or the Rules, then the Registrar is empowered to proceed against them under Section 29-C(8) of the Act or under Section 64 of the Act or under Section 69 of the Act. Merely because some of the members of the previous committee of management who are responsible for the charges are continuing in the present committee of management shall not be a ground for supersession of the present committee of management of the society. Further it is important to notice that no material is placed on record to prove and establish that there is persistent default on the part of the society and its members. There is no evidence on record to show what are the directions or warnings issued by the Government or Registrar which are disobeyed or violated persistently by the present committee of management of the society. Therefore the essential requirement for exercising the power of supersession, that is, the elements of persistent default on the part of the society is absent in the instant case. For these reasons the impugned order of supersession and the order of Appellate Authority are liable to be quashed.

Suresh v Managing Director, Karnataka Milk Federation, Bijapur and Another

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2008 Indlaw KAR 205; 2008 (6) KarLJ 530
Case Digest	**Subject:** Corporate; Labour & Industrial Law **Keywords:** Co-Operative Society, Appeal dismissed, Challenged, Agent, Industrial Disputes Act, 1947, Activity, Industrial Dispute, Disciplinary Action, Industrial Tribunal, Co-Operative, Industrial Disputes, Karnataka Co-operative Societies Act, 1959 **Summary:** Trusts & Associations - Karnataka Co-operative Societies Act, 1959, s.125 - Industrial Disputes Act, 1947 - Suit for recovery of deposit amount at time of award of agency - Whether suit filed by appellant is barred u/s.70 of the Karnataka Co-operative Societies Act? - Held, yes, dispute shall be referred to Registrar for decision, and no Court or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding- Principal and agent relationship between defendant-society and plaintiff - Business relationship between principal and agent - Agent employed only for business of society - Section 70(1)(c) of Act not only includes current agent but also past agent- Suit not maintainable - Dismissed.

Case No : Regular Second Appeal No. 479 of 2002

The Order of the Court was as follows :

This second appeal involves a short but interesting question viz., whether the plaintiff, who was admittedly an agent of the respondents-defendants, a society, and whose agency had been terminated, could maintain a suit for recovery of the deposit amount of Rs. 2, 000/-, which had been deposited at the time of award of agency in favour of plaintiff and can be recovered with interest on the termination of the agency and on the assumption that the termination was bad in law, notwithstanding the provisions of Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act').

The Trial Court as well as the First Appellate Court having nonsuited the plaintiff only on the ground that such a suit was not tenable in the light of the provisions of Section 70 of the Act, to get over such judgments and to get a decree for this amount, the present second appeal. At the time of admission the following substantial question of law had formulated as arising for determination in this second appeal:

The material facts leading to this second appeal are not in dispute viz., that the plaintiff had been appointed an agent of the defendants-milk federation, a co-operative society, to market/supply its products of milk under Nandini brand to consumers on commission basis. It appears the defendants terminated the agency being of the view that the plaintiff had violated the terms of the agency, as according to the defendant-society, the plaintiff was found to be marketing milk other than Nandini

brand also. Though the justification for termination of the agency on this ground has been found against the defendant-society, the Courts below, nevertheless, dismissed the suit only on the premise that a civil suit of the nature as filed by the plaintiff was not maintainable,

The question is as to whether the bar operates or not? There is no dispute that the relationship at the beginning was one of principal and agent as between the defendant-society and the plaintiff. That is necessarily a business connection. The amount sought to be recovered was a security deposit or some other deposit which was made in the context of award of agency is definitely a deposit in the context of the business relationship between the principal and the agent. Though the relationship of principal and the agent in itself may also not be termed as a business relationship basically, it is an activity touching upon the business of the society as the agent is employed only for the business of the society. The agent comes into picture in the context of the business of the principal. Clause (c) of sub-section (1) of Section 70 of the Act not only includes current agent but also past agent and therefore it makes little difference as to whether the agency had been terminated or not. There cannot be any two opinion that independent of sub-section (2) by operation of sub-section (1) of Section 70 of the Act, a suit of the present nature was not maintainable.

In the light of the arguments addressed by the learned Counsel for the appellant-plaintiff, the next question as to whether the provisions of sub-section (2) of Section 70 can take out the situation other than those contemplated in sub-section (2) from out of the scope of operation of the bar as provided for under sub-section (1) of Section 70 of the Act. A perusal of the contents of sub-section (2) indicates that the situations covered by clauses (a) to (e) of this sub-section which are all situations arising in the context of a claim put forth by the society, particularly for recovery (of amount) etc., are all deemed by fiction to be a dispute for the purpose of sub-section (1) of the Act. That means, the situations figure in clauses (a) to (e) of sub-section (2) are all fiction of law taken to be situations automatically covered by the bar indicated in sub-section (1). It is so achieved by fiction.

It is a common practice and well-understood in legal parlance that a fiction is employed to rope in a situation not otherwise within the contemplation of a particular provision, also to be brought within a particular provision or situation and some times even to take out a situation beyond the scope of any controversy or ambiguity. A proper reading of sub-sections (1) and (2) together would actually indicate that the fiction employed in sub-section (2) in respect of five situations covered under clauses (a) to (e) is only for the purpose of ensuring that these situations necessarily and inevitably come within the scope of the bar enumerated in sub-section (1) of Section 70 and not that a situation not covered under clauses (a) to (e) or to be taken out of the bar which operates under sub-section (1). It should be noticed that the bar under sub-section (1) regarding Civil Court not having jurisdiction to entertain a suit in respect of a dispute touching upon the aspects and amongst the persons figure in clauses (a) to (d) to sub-section (1) is complete and achieved within sub-section (1) of Section 70 itself and if the object of sub-section (2) was to restrict the scope of operation, the Legislature would not have employed any deemed provision to indicate as to what are the disputes touching upon the constitutional management or business of a co-operative society by employing a fiction, it could have simple said that the following alone shall be disputes contemplated under the bar for the purpose of sub-section (1). Such is not the language employed. Therefore, the fiction employed in sub-section (2) should be taken to be one to rope in a situation covered under clauses (a) to (e) in sub-section (2) of Section 70 within the bar provided under sub-section (1) of Section 70 of the Act and not to leave any ambiguity about it later to exclude as not contemplated in clauses (a) to (e) to sub-section (2) of Section 70 of the Act.

The Courts below are right in answering the question that the suit for recovery of amount deposited by the plaintiff while he was an agent of the defendant-society is a claim arising in the context of a dispute between the agent and the society and touching upon the business activities of the society and therefore it is clearly hit by the bar provided under sub-section (1) of Section 70 of the Act.

The suit claim though perhaps could have succeeded if the suit was maintainable, the suit itself having been held to be not maintainable, there is no way of the Civil Court decreeing such a suit for the claim of some amount, however justifiable the claim would have been and only for want of jurisdiction, the suit has to be dismissed and has been rightly done so by the Courts below. No scope for interference in second appeal. Appeal is accordingly dismissed.

Asstt. Commissioner Of Central Excise & Customs, Hubli v Nandi Rerolling Mills Pvt. Ltd

Bench	Anand Byrareddy
Where Reported	2008 Indlaw KAR 45; AIR 2008 KAR 70; 2008 (2) DRTC 219; 2008 (226) E.L.T. 325; 2008 (12) S.T.R. 671
Case Digest	**Subject:** Banking & Finance; Customs; Exchange Control & FDI; Excise; Income Tax & Direct Taxes; Indirect Tax; Land & Property; Sales Tax **Keywords:** Equitable Mortgage, Co-Operative Bank, Auction Sale, Financial Institution, Letter Of Credit, Adjudication Order, Collector Of Customs, Transfer Of Property, Proper Officer, Co-Operative Societies, Any Person, Adjudication Proceedings, Without Prejudice, Recovery Of Sums Due To Government, Factory Building, Attachment Order, Stay, Notice Of Demand, Recovery Proceedings, Default In Payment, Official Gazette, Attachment And Sale, Recovery Of Arrears, Legal Basis, Karnataka Co-operative Societies Act, 1959, Secured Debt, Rival Claims, Mortgage By Deposit Of Title Deeds, Procedure For Recovery, Karnataka Co-operative Societies Act, 1951 **Summary:** Indirect Tax - Central Excise Act,1944, s.11 - Customs Act,1962, s.142 - Recovery of dues - Doctrine of priority or precedence - Sale of assets belonging to defaulting company in recovery of amounts by respondent - Priority of debts between petitioner and respondent - Whether petitioner can claim a priority in seeking to recover dues as against respondent-Company over claims of respondent-Banks as amount sought to be recovered being arrears of central excise duty and penalty with interest dues? - Held, State's preferential right over other creditors is confined to ordinary or unsecured creditors, only where State's right and that of subject meet at same time, that State is preferred, but where right of subject is complete and perfect, before that of State commences, rule does not apply, as rights are not at conflict - There is no specific provision either under Central Excise Act or Customs Act, to enable Central Excise Dept. to claim a precedence over claim of a secured creditor such as respondent-Bank - WP dismissed.

Case No : W.P. No. 1299 of 2007 (GM-RES) C/w W.P. No. 11371 of 2007 (GM-TENDER)

The Order of the Court is as follows :-

1. The brief facts as are necessary for consideration of the present writ petition are, that the first respondent is an assessee within the jurisdiction of the petitioner. It transpires that the first respondent is due to the petitioner in a sum of Rs. 7,83,23,235/- by way of central excise duty and penalty along with interest in terms of an Adjudication Order no. 2/2006, dated1-3-2006. Pursuant

to proceedings initiated for clandestine removal of the manufactured goods, it transpires that there was a Detention Order issued by the Authorised Officer as on9-11-2006for recovery of the said arrears and a Notice of Demand followed by a proclaimed Order of Attachment was issued on9-1-2007in respect of the properties of the first respondent, namely, its factory building and other buildings situate at plot no. 2D, 2E and 2F of Block no. 89. The further order of attachment has been proclaimed on the very date in respect of land situate in plot no. 1/14, Block no. 96A belonging to respondent no. 1(a), who is the Executive Director of the first respondent-Company, as well as in respect of land in Block no. 675, measuring about 3 acres and 27 guntas belonging to one of the directors of the Company.

2. It further transpires that when these adjudication proceedings were in progress, the second respondent (hereinafter referred to as the Co-op bank) who had extended certain loans to the assessee-Company, on the mortgage of assets, had initiated proceedings against the assessee-Company and had taken possession of the same, by virtue of an attachment order pursuant to an Award by the Joint Registrar of Co-operative Societies as an Arbitrator in terms of Section 103 of the Karnataka Co-operative Societies Act, 1959. While other properties have been taken possession of by the third respondent namely, the State Bank of Mysore, (hereinafter referred to as 'SBM' for brevity) Hubli, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') in lieu of default in payment of the loan availed as per its Public Notice dated5-10-2004, published in the News paper on 17-10-2004. The Co-op Bank had issued a Public Auction Sale Notice dated 26-11-2006, which has been published in a local Newspaper on8-1-2007, proposing to hold auction sale of the properties belonging to the first respondent on 25-1-2007 and 31-1-2007. The petitioner apprehending that apart from the Co-op bank proceeding in terms of the above Public Notices, that the SBM was also likely to adopt similar measures, had preferred the above writ petition seeking to quash the said recovery proceedings before the Co-op bank, on the footing that such action was contrary to the judgment of the Supreme Court in the case ofDena Bankv.Bhikhabhai Prabhudas Parekh and Company and Others,AIR2000 SC 3654 and further reliefs against the proposed public auction pursuant to the notice under the SARFAESI Act issued by SBM.

3. The Counsel also would acknowledge that the Co-op bank, namely, Hirekerur Urban Co-operative Bank has a similar claim for recovery in respect of a loan of Rs. 6.50 Crore to the first respondent and of proceedings under the Karnataka Co-operative Societies Act, 1951 resulting in an Award and Attachment preceding a public auction sale proposed. In the light of these rival claims, the recovery proceedings have come to a stand-still. In any event, the Counsel would submit that the petitioner's contention as to the petitioner having a priority over the assets belonging to the borrower-Company is incorrect.

4. Similarly, insofar as the Co-operative Bank is concerned, in proceedings initiated under the Karnataka Co-operative Societies Act,1951, there was an Attachment Order by the Arbitration Court on3-9-2005, a public notice was published in the Newspapers on 17-10-2004, a Public Auction Sale Notice was published on8-1-2007and a public auction was proposed to be held on 25-1-2007 and 31-1-2007. These admitted events would also indicate that even the Co-operative Bank has initiated proceedings subsequent to the charge and proceedings that are initiated by SBM. The respondent-Bank bring a secured creditor, who had no prior notice of any claim, either

by the petitioner or by the Co-operative Bank, they are estopped in law from seeking to claim a right of priority over the assets of the first respondent-Company.

5. Thus, from a reading of the provision under which, the petitioner claims primacy over the debts doe to it as against the respondent-Banks, it is clear that there is no specific provision either under the Central Excise Act or the Customs Act, to enable the Central Excise Department to claim a precedence over the claim of a secured creditor such as the respondent-Banks. On the other hand under the provisions of the SARFAESI Act, the State Bank ofMysorehaving initiated proceedings thereunder, would clearly claim precedence insofar as enforcing its right is concerned. The precedence, vis-a-vis the State Bank of Mysore and the Hirekerur Urban Co-operative Bank is not the subject matter of this writ petition and is a matter to be resolved as between the said respondents as the same would involve questions of fact which are purely matters concerning the said respondents. The question insofar as the petitioner is concerned, would clearly have to be answered against the petitioner.

D. Veeranna v
Assistant Registrar of Co-Operative Societies, Madhugiri and Another

Bench	N. K. PATIL
Where Reported	2007 Indlaw KAR 364; 2008 (2) KarLJ 126
Case Digest	**Subject:** Constitution **Keywords:** Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960 **Summary:** Service - Karnataka Co-operative Societies Act, 1959, s. 65 - Constitution of India, 1950, art. 226 - Karnataka Co-operative Societies Rules, 1960, r. 17(1) - Competent Authority initiated the surcharge proceedings against petitioner in Surcharge Proceedings for recovery of excess amount of salary drawn - Appellate Tribunal dismissed appeal preferred by petitioner upholding order passed by first respondent - Petition filed seeking quashing of orders passed by Appellate Tribunal and directions to Respondent for payment of arrears of salary - Both authorities have not committed any error or illegality or material irregularity - Infact second respondent has passed resolution for enhancement of pay scale of petitioner and same was forwarded for approval - But no approval has been accorded by Competent Authority - Nor petitioner has produced any document as such to show that, permission has been accorded in respect of enhanced pay scale drawn by petitioner, as envisaged under r. 17 - Petitioner has drawn salary over and above his pay scale and recovery of excess amount upheld - Petition dismissed.

Case No : W.P. No. 25522 of 2001 (S-Res)

The Order of the Court was as follows :

In the instant case, petitioner has sought for quashing the impugned order passed in Surcharge Case No. 22/92-93, dated 29th August, 1998 passed by first respondent and the order passed by the Karnataka Appellate Tribunal, Bangalore in Appeal No. 517 of 1998, dated 13th March, 2001, marked as Annexures-E and F, respectively. Further, petitioner has sought for a writ of mandamus, directing the second respondent to pay the arrears of salary to the petitioner for the remaining unpaid period.

The grievance of petitioner in the instant writ petition is that, petitioner joined as 'Secretary' of the Halenahalli Service Co-operative Society Limited, Sira Taluk during 1973. In the year 1976, the said Halenahalli Service Co-operative Society Limited came to be amalgamated with the second respondent-Chikkanahalli Vyavasaya Seva Sahakara Sangha Niyamitha under the Re-organisation Scheme and on amalgamation of both the above said Societies, a new Society under the name and style of Chikkanahalli Vyavasaya Seva Sahakara Sangha Niyamitha, Chikkanahalli came into existence. The petitioner who was working as 'Secretary1 in the Halenahalli Service Co-operative Society before amalgamation,

came to be designated and continued in service of the new amalgamated Society as 'Secretary1 from 1976 to 1991. Thereafter, petitioner was transferred to V.S.S.S.N., Doddabanagere, and there, petitioner was not permitted to report for duty.

After careful perusal of the order passed by first respondent, the order passed by the Appellate Tribunal and after careful evaluation of the entire material on record, it is manifest on the face of the said orders that, both the authorities have not committed any error or illegality or material irregularity. The Karnataka Appellate Tribunal, after affording sufficient opportunity to the petitioner as well as second respondent-Society, and after considering the grounds urged by the petitioner in the memorandum of appeal, has recorded a finding holding that, the Inspecting Officer has observed that, petitioner has drawn excess salary to an extent of Rs. 44, 001.10 from the second respondent-Society and during the period from December 1987 to December 1999 and further observed that, the order passed by first respondent in surcharge proceedings was on the basis of the relevant material available on file and after affording opportunity to petitioner. Further, it is specifically observed that, the second respondent-Society has passed the resolution for enhancement of the pay scale of the petitioner in the pay scale at Rs. 1190 to 2200 and the same was forwarded for approval to the first respondent-Competent Authority and no approval as such has been accorded by the Competent Authority nor the petitioner has produced any document as such to show that, permission has been accorded in respect of the pay scale drawn by petitioner, as envisaged under Rule 17 of the Rules.

mandatory Rule 17(1) of the Rules. Unless, approval is granted by the Competent Authority, the enhanced salary cannot be drawn and disbursed to the petitioner. In fact, the petitioner has drawn the enhanced salary without the approval from the Competent Authority nor there is any material forthcoming to the effect that, the proposal as required was sent to the Competent Authority for approval.

Therefore, the Appellate Tribunal opined that, the Inspecting Authority has come to the conclusion that, petitioner has drawn excess salary over and above the approved pay scale of Rs. 410-700/- and observed that, petitioner has taken false contention and there are no documentary evidence in support of his contention. Therefore, the impugned order passed by first respondent is in accordance with the provisions of the Karnataka Co-operative Societies Act, 1959 and accordingly, held that, petitioner has failed to make out good grounds for interference nor the Tribunal finds any infirmity or illegality in the order passed by first respondent and accordingly, dismissed the appeal filed by petitioner. The said valid reasons assigned by the Appellate Tribunal, are after critical evaluation of the oral and documentary evidence available on file. Hence, in view of the concurrent finding of fact recorded by both the authorities, after careful evaluation of the oral and documentary evidence and other material available on file, interference by this Court by invoking the extraordinary jurisdiction as envisaged under Articles 226 and 227 of the Constitution Of India, 1950, is not justifiable nor it is permissible in view of the well-settled principles of law laid down by the Apex Court in host of judgments. Therefore, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

Ronald Jerome D'Souza v State of Karnataka and Others

Bench	N. K. PATIL
Where Reported	2007 Indlaw KAR 384; 2008 (2) KarLJ 271
Case Digest	**Subject:** Constitution **Keywords:** Karnataka Co-operative Societies Act, 1959, Karnataka Co-operative Societies Rules, 1960 **Summary:** Service - Karnataka Co-operative Societies Act, 1959, s. 29C - Constitution Of India, 1950, art. 226 - Karnataka Co-operative Societies Rules, 1960 - Principles of natural justice - Show cause notice - Petitioner questioning jurisdiction and legality of dismissal orders issued against him - No opportunity given for hearing - Held petition not maintainable and petitioner to redress his grievance before competent authority - Petitioner a defaulter in payment of loan - Show cause notice issued but no reply by petitioner - Instead approached court against show cause notice - Disqualification question is yet to be taken by Competent Authority after reply, if any, filed by petitioner - Petitioner cannot maintain the writ petition against show-cause notice issued calling upon him to show cause as to why he should not be disqualified - Liberty to petitioner to redress his grievance before appropriate Competent Authority - Petition dismissed.

Case No : W.P. No. 16060 of 2007 (Cs-Res)

The Order of the Court was as follows :

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.

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 Co-operative 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 extraordinary jurisdiction of this Court as envisaged under Articles 226 and 227 of the Constitution Of India, 1950. 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. Any way, 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.

Rudrappa and Another v Basawaraj

Bench	D. V. SHYLENDRA KUMAR
Where Reported	2007 Indlaw KAR 345; 2008 (2) KarLJ 505
Case Digest	**Subject:** Administrative; Civil Procedure; Corporate; Labour & Industrial Law; Practice & Procedure; Service **Keywords:** Administrative Tribunals, Co-Operative Society, Jurisdiction, Petition dismissed, Partition, Bonafide requirement, Framing of charges, Agent, Industrial Disputes Act, 1947, Industrial Dispute, Disciplinary Action, Industrial Tribunal, Co-Operative, Industrial Disputes, Legal Representatives, Revenue Court, Administrative Tribunals Act, 1985, Karnataka Co-operative Societies Act, 1959, Central Act 14 of 1947 **Summary:** Civil Procedure - Karnataka Co-operative Societies Act, 1959, s. 70 - Code Of Civil Procedure, 1908, s. 115 - Industrial Disputes Act, 1947 - Administrative Tribunals Act, 1985, s. 14 - Revision - Deprived of rightful enhanced salary - Jurisdiction of Civil Court - Whether the suit is maintainable in view of s. 70 of 1957 Act which clearly bars the jurisdiction of civil courts? - Held, Yes -The suit is essentially in the nature of a suit for damages filed against the defendants in their personal capacity and not in respect of any of their official function - The Supreme Court had occasion to examine the maintainability of a suit of such nature before the Civil Court and had opined that a suit filed against a Superior Officer by an inferior official, both being officials of the Government and in respect of service disputes, then such a matter need not go before the Administrative Tribunal, in view of S. 14 of the 1985 Act - Such suits are not barred as a suit for damages against a Superior Officer in his personal capacity cannot be subject-matter for decision by an Administrative Tribunal - Further held, even if the petitioners are taken to be officers of the society being secretary and the president of the society, the provisions of S. 70 does not act as a bar for Civil Court to entertain a suit of present nature, as such a situation is not contemplated in any one of the clauses mentioned in S. 70 of the 1959 Act - Further, in matters of ousting jurisdiction of Civil Courts, it is settled principle that the ouster provision should be strictly construed and there is no scope for expansion of the ouster clause by way of interpretation - The rule and principle is always to presume the jurisdiction of Civil Court in terms of S. 9 of the CPC until and unless it is expressly and precisely mentioned in any other statutory provision that the jurisdiction is ousted - Petition dismissed.

Case No : Civil Revision Petition No. 218 of 2007

The Order of the Court was as follows :

The suit filed by the respondent-plaintiff is for award of damages to the tune of Rs. 15, 000/- as against the petitioners herein, who happen to be the secretary and the president respectively of the Vyavasaya Seva Sahakara Sangha, Sulepeth, Chincholi Taluk, wherein the respondent is working as attender.

It appears, the suit is filed on the premise that the petitioners have come in the way of the respondent-employee getting his due and proper salary; that it is because of the inaction or mischievous action on the part of the petitioners herein the respondent-plaintiff is deprived of his rightful enhanced salary.

Petitioners had entered appearance in the suit and have filed their written statement and raised a preliminary objection regarding maintainability of the suit. It had been pleaded that the suit is not maintainable in the light of the provisions of Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'the Act') and therefore was liable to be rejected outright as not maintainable.

Learned Trial Judge has discussed that the suit is essentially in the nature of a suit for damages filed against the defendants in their personal capacity and not in respect of any of their official function; that the Supreme Court had occasion to examine the maintainability of a suit of such nature before the Civil Court and had opined that a suit filed against a Superior Officer by an inferior official, both being officials of the Government and in respect of service disputes, then such a matter need not go before the Administrative Tribunal, in view of Section 14 of the Administrative Tribunals Act, 1985, and having held that such suits are not barred, as a suit for damages against a Superior Officer in his personal capacity cannot be subject-matter for decision by an Administrative Tribunal and therefore the suit having been held to be maintainable, has applied the ratio of this judgment to answer the preliminary issue 4 regarding the maintainability and therefore rejected the contention raised on behalf of the defendants.

While the line of reasoning indicated in the impugned order by the learned Trial Judge is sound and applying the ratio laid down by the Supreme Court to the facts of the case is also very appropriate, I find that even if the petitioners are taken to be officers of the society being secretary and the president of the society, the provisions of Section 70 does not act as a bar for Civil Court to entertain a suit of present nature, as such a situation is not contemplated in any one of the clauses mentioned in Section 70 of the Act.

The plea in para 25 of the written statement does not bring the dispute between the respondents and the petitioner within the scope of any one of the clauses mentioned in Section 70, though Sri Basavaraj Kareddy, learned Counsel for the petitioners, would submit that the officials of the society, particularly the office-bearers should be treated on par with the society and it should be construed that the suit is virtually against the society, such a submission cannot be accepted for the simple reason that the suit, in the first instance, is not against the society and secondly, on the ratio of the decision rendered by the Supreme Court in the case referred to above and relied upon by the Trial Court, such a submission cannot be accepted. In matters of ousting jurisdiction of Civil Courts, it is settled principle that the ouster provision should be strictly construed and there is no scope for expansion of the ouster clause by way of interpretation. Submission of learned Counsel for the petitioners being to extend the bar on the jurisdiction of Civil Court by way of interpretation by treating the officers or office-bearers of the society to be on par with the society, such a submission cannot be accepted on the principle of strict interpretation of an ouster clause. The rule and principle is always to presume the jurisdiction of Civil Court in terms of Section 9 of the Code Of Civil Procedure, 1908, until and unless it is expressly and precisely mentioned in any other statutory provision that the jurisdiction is ousted. Such is not the case either under Section 70 of the Act or on the facts as pleaded by the defendants.

In the result, there is no scope for interference with the impugned order passed by the learned Trial Judge. The civil petition is accordingly dismissed.

Karnataka State Co-Operative Marketing Federation Limited, Bangalore v Dharwad District Employees' Association, Hubli and Another

Bench	Anand Byrareddy
Where Reported	2007 Indlaw KAR 247; 2008 (1) KarLJ 187

Case No : W.P. No. 5485 of 2004 (L-Res) Connected With W.P. No. 15304 of 2005 (L-Id)

The Order of the Court was as follows :

The petitioner-Karnataka State Co-operative Marketing Federation Limited, is a Co-operative Society registered under the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as the 'Societies Act', for brevity). The Government of Karnataka holds 90% of the share capital in the said society. A ginning and pressing factory at Hubli, is a unit run by the petitioner. Respondent 1-the Dharwad District Employees' Association, is said to represent workmen engaged by the petitioner at the said unit.

The ginning factory, established in the year 1976, was intended to support cotton growers and traders in the area. The operation of the unit was seasonal, as it could operate only during the season when cotton was made available. Hence, there was no need to employ a large contingent of permanent employees. When the unit was operational during the season, workmen were employed on daily wages and were paid once a week, for the number of day's of engagement.

Owing to adverse conditions, such as lack of raw material, increasing costs, labour unrest and adverse marketing conditions - the petitioner took a decision to close down the unit. Accordingly, the petitioner is said to have issued a notice of closure in terms of Section 25-FFA of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act'), declaring its intention to close down the unit with effect from 13-2-2002 as per notice dated 13-12-2001. According to the petitioner, at the relevant point of time, it had employed 17 permanent employees. And the total number of persons engaged by it during the preceding year, including daily wagers was 73 in number. It is the petitioner's case that all those 73 workmen were paid closure compensation along with other benefits in accordance with Section 25-FFF of the ID Act. In this regard the petitioner had produced all the relevant material before the Competent Authority for verification of satisfactory compliance with the requirements under the above provisions of law.

By way of a petition dated 29-1-2002 and a further representation dated 14-2-2002, the first respondent is said to have raised an industrial dispute, espousing the cause of the daily wage workers engaged by the petitioner as narrated above. In conciliation proceedings, before the Assistant Labour Commissioner and Conciliation Officer, the representatives of the workmen and the petitioner were able to resolve the dispute and entered into a settlement dated 28-5-2002, under Section 12(3) read with Section 18(3) of the ID Act in the presence of the Conciliation Officer. The petitioner states that though it was legally obliged to address the demand of only the 73 workmen, engaged by it during the relevant time, the petitioner had also considered the claim of 159 other persons who had been engaged by it at a point of time even prior to the one year preceding closure of the unit. The petitioner had accordingly paid

an additional sum of Rs. 5.40 lakh to be distributed amongst those 159 other persons. This Act of the petitioner was only in order to give a quietus to the dispute.

It transpires that the first respondent had filed applications dated 21-10-2002 and 13-11-2002 claiming a sum of Rs. 9.02 lakh towards wages of 52 workmen for the period 11-1-2002 to 11-10-2002 and a sum of Rs. 7.80 lakh as wages in respect of 45 workmen for the same period as above, respectively. Upon receipt of notice from the second respondent in this regard the petitioner had opposed the applications while referring to the settlement entered into earlier. The second respondent has however, allowed the applications by orders dated 11-11-2003. The petitioner has approached this Court when the said amounts were sought to be recovered as arrears of land revenue, pursuant to the above orders.

Notwithstanding the above legal position the argument canvassed by the respondent is that when there was breach of a mandatory requirement of compliance with Chapter V-B of the ID Act, Section 25-0(6) would operate and a right is created in the aggrieved workmen upon such breach. Such a right is a pre-existing one as on the date of application under Section 33-C(l). The sum of money payable is merely subject to verification. There is no determination warranted, either of the right or the sum of money claimed.

But as rightly contended by the Counsel for the petitioner, there is a breach only if the provisions of Chapter V-B are made applicable. Since on facts it is borne out by material on record that the petitioner had not employed more than 100 workmen at any time in the one year preceding the date of proposed closure, Chapter V-B was not attracted. In any event, if this was a disputed question, it was not capable of being adjudicated before the second respondent. Whether such a dispute can be resolved before the Registrar of Co-operative Societies in terms of Section 70 of the Karnataka Co-operative Societies Act, 1959 or by recourse to an industrial dispute under the provisions of the ID Act, 1947, is kept open.

V. Krishnaswamy and Another Etc v Karnataka Rajya Kajgarika Sahakara Bank Niyamitha, Bangalore and Another Etc

Bench	AJIT J. GUNJAL
Where Reported	2007 Indlaw KAR 512; AIR 2008 KAR 20
Case Digest	**Summary:** Banking & Finance - Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002, s. 13 - Banking Regulation Act, 1949, s. 5(cc) - Karnataka Co-operative Societies Act, 1959, s. 70 - Recovery proceeding under Security transaction - Whether Securitisation Act applicable to loans advanced by Co-operative Banks? - Contended that recovery proceedings cannot be initiated by the co-operative bank under the Securitisation Act - Proceedings for possessing property under the Securitisation Act void ab initio - Co-operative Bank required to return property possessed to the borrower - WP allowed.

Case No : W. P. Nos. 23813 of 2005 and 7659 of 2007

The Order of the Court was as follows :

The facts in W.P. 23813/05 are that one M/s. Hi-tech Industries is a registered partnership firm. It is stated to have borrowed monies from first respondent Karnataka Rajya Kajgarika Sahakari Bank Niyamitha, Bull Temple Road, Basava-nagudi, Bangalore (for short 'Co-operative Bank'). The case of the first respondent bank is that the said firm has committed default in payment of loan amount and consequently a notice u/s. 13(2) of the Act dated 1-1-2004 was issued. Suffice it to say that an order u/s. 13(4) of the Act was passed, a copy of which is produced at Annexure-B, which was the subject-matter of W.P. No. 6537/04. This Court allowed the writ petition and has quashed the order u/s. 13(4) of the Act and directed the bank to consider the reply/objections filed by one of the partners of M/s. Hi Tech Industries to the notice issued u/s. 13(2) of the Act. It appears, thereafter the property belonging to the petitioner was brought to sale pursuant to an auction notice dated 22-9-2005. Incidentally it is the specific case of the petitioner that he is not a partner of the firm and in no way concerned with the firm. It appears, Annexure-F is issued by the bank calling upon the petitioner to hand over possession of the property. The said notice is the subject-matter of the writ petition.

In W. P. No. 7659/07, it is the case of the petitioner that he is a doctor by profession having acquired a Post Graduate Diploma in Gynaecology from Kasturba Medical College. He submits that he had availed loan from respondent No. 1 Sirai Urban Co-operative Bank (for short 'the Co-operative Bank') for establishing a hospital. The initial loan advanced was Rs. 20 lakhs. Since the loan availed by the petitioner was not paid, proceedings were initiated for recovery of the same, both under Securitisation Act as well as u/s. 70 of the Karnataka Co-operative Societies Act. It is not in dispute that the petitioner has suffered an award u/s. 70 of the Co-operative Societies Act, which is the subject-matter of an appeal in Appeal No. 769/05 before the Karnataka Appellate Tribunal.

During this interregnum, after conclusion of the proceedings u/s. 13(4) of the Act, an order is passed u/s. 14 of the Act directing the competent authority to take possession of the property and hand it over to the bank. The said order of the 2nd respondent Deputy Commissioner is questioned in this petition.

In both these petitions respective learned counsel would contend that the Securitisation Act is not applicable to a loan obtained from the Co-operative Bank.

The question is whether a Co-operative Bank as defined under the Banking Regulation Act vis-a-vis Securities Act is applicable when proceedings are sought to be initiated by Co-operative Bank for recovery of the amount. While dealing with this question, the Apex Court in the case of Greater Bombay Co-op. Bank Ltd. v. M/s. United Yarn Tex. Pvt. Ltd. 2997 (5) Scale 366 : (2007 (3) AIR Kar R 406) has observed thus :

The observation made by the Apex Court would make it abundantly clear that the definition of bank under the Securitisation Act which adopts Banking Regulation Act, the co-operative banks cannot be termed as banking company. Indeed it is no doubt true that what fell for consideration before the Apex Court is the applicability of Securitisation Act to Co-operative Bank when the proceedings are initiated before the Debt Recovery Tribunal. While dealing with the said question, the Apex Court has also dealt with the scope of Securitisation Act and the applicability thereof to a loan advanced by the Co-operative Bank. Apparently once it is held that the banking company as defined under S. 5(cc) of the Banking Regulation Act does not include or encompass the co-operative bank, I am of the view that the proceedings could not have been initiated by the Co-operative Bank in both these petitions under the Securitisation Act. The Apex Court while dealing with the said question has further observed that the dues of co-operative bank and recovery proceedings thereof are self regulated, in as much as, under the Karnataka Co-operative Societies Act any amount due by a borrower to the Co-operative Bank, a dispute can be raised u/s. 70 of the Co-operative Societies Act for recovery of the said amount. It is also to be noticed that even the co-operative societies involved in the activities of banking which involves lending and borrowing which are incidental to their main co-operative activity which is a function in public domain. The meaning of 'banking company' must, therefore, necessarily be strictly confined to the words used in S. 5(c) of the BR Act. Indeed, it would have been the easiest thing for Parliament to say that 'banking company' shall mean 'banking company' as defined in S. 5(c) and shall include 'co-operative bank' as defined in S. 5(cci) and 'primary co-operative bank' as defined in S. 5(ccv). This would necessarily lead to a logical conclusion that there was a conscious exclusion of the co-operative bank from the purview of the Securitisation Act. Indeed, the reason for excluding co-operative banks seems to be that co-operative banks have comprehensive, self-contained and less expensive remedies available to them under the Co-operative Societies Act, while other banks and financial institutions did not have such speedy remedies and they have to file suits in civil Courts. The Apex Court has summarised as to the functions of the co-operative bank and applicability of the Securitisation Act in the following terms :

"Hence, the co-operative banks performing functions for the public with a limited commercial function as opposed to corporate banks cannot be covered by Entry 45 of List I dealing with "banking". The subject of co-operative societies is not included in the Union List rather it covers under Entry 32 of List II of Seventh Schedule appended to the Constitution."

Having regard to the fact that the Securitisation Act is not applicable to the loans advanced by Co-operative Banks, I am of the view that W.P. No. 23813/05 is liable to succeed. Consequently, the

communication/notice at Annexure-E stands quashed. So also Annexure-D. Indeed, it is also brought to my notice that the Bank has raised a dispute u/s. 70 of the Co-operative Societies Act for recovery of the amount and the Co-operative Bank shall pursue the remedy available to them under the Act. Indeed, Mr. Kothawale, learned counsel appearing for the petitioner has raised several other contentions regarding merits, in as much as, the petitioner is not partner of the firm and he is not liable to satisfy the claim. But, however, a finding on that contention cannot be recorded in this writ petition. Ultimately it is always open for the petitioner to place such material before the competent authority to buttress his contention that indeed he is not a partner of the firm and is not answerable to the claim of the Bank. All contentions urged by the petitioner as well as the bank are left open to be agitated in the dispute raised.

Indeed the entire proceedings culminating in possessing the property pursuant to an order u/s. 14 of the Act is void ab initio, the property possessed by the respondent Bank is required to be returned to the petitioner. But however that will have to be on certain terms; notwithstanding the fact that it has been held that the possessing of the property by the bank u/s. 14 of the act is void ab initio. It is also not in dispute that the petitioner has suffered two awards and both the awards are the subject-matter of appeals pending before the Karnataka Appellate Tribunal in appeal Nos. 712/05 and 769/05. The amount due under the awards is around Rs. 98 lakhs with interest. Indeed, the co-operative bank is also required to survive. The petitioner will have to be put on terms if he wants to reposses the property. Having regard to the fact that the amount is due to the bank, I am of the considered view that the possession of the property shall be handed over by the respondent bank to the petitioner on his depositing a sum of Rs. 25 lakhs.

Binny Mill Labour Welfare House Building Co-Operative Society Limited, Bangalore v D. R. Mruthyun Jaya Aradhya

Bench	N. KUMAR
Where Reported	2007 Indlaw KAR 545; 2009 (2) KarLJ 291
Case Digest	**Subject:** Civil Procedure; Land & Property **Keywords:** Ultra Vires, Legal Proceedings, Court fee, Forbidden By Law, Co-Operative Society, Voidable Contract, General Meeting, Transfer of Property Act, Immovable, Co-Operative Societies, Registered Society, Payment Of Interest, Ex Parte, Specific Relief, Building Sites, Non-Registration, Bye-Laws, Constructive Notice, Common Seal, Karnataka Co-operative Societies Act, 1959, House Site, Predecessor In Title, Void Agreement **Summary:** Land & Property - Civil Procedure - Karnataka Co-operative Societies Act, 1959, ss. 125, 18, 2(a-2) - Registration Act, 1908 - Transfer of Property Act, 1882, s. 54 - Possession - Cancellation of Deed - Validity of Registration - Defendant/society was originally owner of suit property - Plaintiff purchased suit property from one 'N'/predecessor under registered sale deed dt.22-11-1980 and he was put in possession of same - Defendant has cancelled sale deed dt.11-3-1974 which was executed in favour of one 'J' - Plaintiff filed suit for relief of declaration - Trial Court based on evidence on record ordered that plaintiff has proved that he is absolute owner of suit property and decreed suit of plaintiff - Hence instant appeal. Held, sale deed executed in favour of 'J' by society was unilaterally cancelled without notice to him without due authority of law. On date of cancellation plaintiff was in possession of suit property and society did not take possession from plaintiff or from 'J'. After execution of cancellation deed unilaterally defendant tried to interfere with plaintiff's lawful possession over suit property. On appreciation of oral and documentary evidence plaintiff has established his title and lawful possession to property. Unilateral cancellation deed has no legal effect and suit is not barred by time. Suit is not hit by s. 125 of 1959 Act. Court fee paid is sufficient and cancellation deed dt.5-6-1981 brought into existence by defendant unilaterally purported to cancel sale deed dt.11-3-1974 executed by it in favour of 'J' is illegal and not binding on plaintiff. Order of injunction restraining defendant from interfering with plaintiff's possession and enjoyment of suit property is justified. Appeal dismissed.

Case No : Regular First Appeal No. 809 of 1997

The Order of the Court was as follows :

This is a defendant's regular first appeal.

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.

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.

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 Co-operative Societies Act, 1959Court 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 plaintiffs 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.

Poornaprajna House Building Co-Operative Society Limited, Bangalore v Karnataka Information Commission, Bangalore and Others

Bench	S. ABDUL NAZEER
Where Reported	2007 Indlaw KAR 312; AIR 2007 KAR 136; 2008 (1) KarLJ 672
Case Digest	**Subject:** Civil Procedure; Constitution; Practice & Procedure **Keywords:** Writ Of Certiorari, Examination Of Witness, Sufficient Cause, Subordinate Court, Certiorari, Reasonable Opportunity Of Being Heard, Inspection Of Documents, Karnataka Co-operative Societies Act, 1959, Time-Limit **Summary:** Practice & Procedure - Right To Information Act, 2005, s. 15 - Constitution Of India, 1950, art. 226 - Code Of Civil Procedure, 1908, O. 1, r. 10 - Karnataka Co-operative Societies Act, 1959 - Petitioner filed application under RTI Act against the respondent - Respondent did not provide petitioner with information asked for - Petitioner filed a second appeal with the commissioner of information technology - Commissioner after listening to both the parties passed the order which is now challenged by the petitioner in this writ petition - Whether petitioner is justified in making the 'Commission' as a party (respondent) to this writ petition? - 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 - Certiorari lies only in respect of judicial or quasi-judicial act as distinguished from an administrative Act - In 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, not being a party, it will not be liable to contempt - Commission is neither directly subordinate to High Court nor its orders are subject to appellate or revisional jurisdiction of the High Court - Commission is a necessary party to proceedings because in its absence, an effective order cannot be made - Presence of Commission is necessary for a complete and final decision on question involved in the proceedings - Letter of the Commission seeking deletion of its name from the array of the parties in writ petition is hereby rejected.

Case No : W.P. No. 7408 of 2006 (Gm-Res)

It is no doubt true that the Apex Court in the case of Savitri Devi v District Judge, Gorakhpur and Others 1998 Indlaw SC 1957 : 1999 Indlaw SC 963, has held that there was no necessity for impleading the Judicial Offices who disposed of the matter in a civil proceeding 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.

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.

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 Kamataka Information Commission-the first respondent herein forthwith.

Sharadamma and Others v State of Karnataka and Others

Bench	AJIT J. GUNJAL
Where Reported	2007 Indlaw KAR 81; 2007 (5) KarLJ 200

Case No : W.P. No. 12086 of 2006 (La-Bda)

The Order of the Court was as follows :

1. The undisputed facts are that the lands in question along with some other lands was notified for acquisition for a public purpose, for formation of Byrasandra Thavarekere Madivala (BTM) Layout (for short, 'BTM Layout') pursuant to preliminary notification dated 19-9-1977. The said notifications were issued under sub-section (1) of Section 17 of the Bangalore Development Authority Act, 1976 (for short, 'the Act'). Suffice it to say that notices of the acquisition were served on the original kathedar, i.e., S.K Venkateshappa. Objections were invited, filed and rejected and a final notification was issued. It is not in dispute that an award was passed on 13-10-1981 in respect of Sy. No. 12/5B. The notice of the said award was duly served on S.K Venkateshappa, the original kathedar. But however, he did not file any objections, nor did he seek a reference, seeking enhancement. Incidentally it is to be noticed that no Malkies or structures were found in the lands in question, when the Special Land Acquisition Officer inspected on 29-11-1979. Suffice it to say that the possession of the land was taken on 11-12-1981. Mahazir was also drawn. A notification under Section 16(2) of the Land Acquisition Act, 1894 (for short, 'the LA Act') was issued on 19-4-1982 and possession of Sy. No. 12/5B was taken on 11-12-1981. Sy. No. 14/6B did not substantially stand on a different footing and an award was passed on 26-3-1980. The notice of the said award was served on the original. Kathedar S.K Venkateshappa on 15-11-1978 but he did not lodge any claim for enhancement. Incidentally there were no structures or malkies on the lands in question and the possession was taken on 26-7-1989. Notification under Section 16(2) of the LA Act was issued on 4-2-1982. Possession was taken and handed over to the concerned department of the authority.

2. The order passed by the learned Single Judge in the aforesaid writ petition was the subject-master of writ appeal in W.A. No. 724 of 1993. The writ appeal was dismissed by the Division 3ench observing that:

   "The reasoning assigned by the learned Single Judge to vacate the interim order was that the petitioners are the claimants before the Civil Judge in LAC No. 126 of 1992 for higher compensation and therefore the interim order of stay could not be justified, thus holding, he vacated the interim order of stay".

   The Division Bench did not find fault with the reasoning given by the learned Single Judge while vacating the interim order. The said writ petition was subsequently withdrawn by the petitioners herein and it was dismissed as withdrawn without seeking liberty to file a fresh petition. In the meantime, the first respondent issued denotification of the lands in question under Section

48(1) of the Act. The said denotification proceeding was questioned by the third respondent in W.P. No. 27729 of 1994. The learned Single Judge rejected the said writ petition confirming the denotification. Respondent 3, aggrieved by the said order preferred W.A. No. 289 of 1997 (Bank Officers' Co-operative Housing Society Limited, Bangalore v State of Karnataka and Others 2003 (2) KarLJ 501 (DB))). The Division Bench of this Court, having regard to the circumstances prevailing, during the course of the proceedings, was of the opinion that the notification, denotifying the lands in question is liable to be set aside and has accordingly quashed the said notifications.

(i) The bulk allotment in favour of the petitioner which is to the extent of 33 acres cannot be considered to be bulk allotment as contemplated under Section 38-B of the Act and since there is a bulk allotment in favour of the third respondent by the authority in the absence of any prior approval by the State, the same is hit by proviso to Section 38-B of the Act;

Apparently, the insertion of Section 38-B has been given retrospective effect inasmuch as it is deemed to have been on the statute from 20th December, 1975. The lease-cum-sale to the extent of 30 and odd acres was executed in favour of respondent 3 by respondent 2 on 13-1-1983. Annexure-R5 is a document which would disclose that the possession of the land in question was handed over to the third respondent on 22-1-1983. The claim of the petitioners that they continue to be still in possession of the lands in question cannot be accepted in view of Annexure-R5. In the lease-cum-sale executed by respondent 2 in favour of respondent 3, schedule would disclose that Sy. Nos. 12 and 14 of Thavarekere, Bangalore South Taluk measuring 30 acres to the extent of 1, 21, 407 sq. mtrs. has been handed over. Possession certificate would also disclose that an extent of 30 acres has been handed over. What is relevant is Annexure-R5B produced by respondent 2. Annexure-R5B is a statement of lands allotted to respondent 3 Society in Sy. Nos. 12 and 14 of Thavarekere Village out of the BTM Scheme. The lands in question are Sy. Nos. 14/6B and 12/5B. Apparently, under Annexure-R5, the area from Sy. Nos. 14/6A to 14/6Z and 12/5B has been handed over to the third respondent. This would conclusively prove that even before Section 38-B of the Act was put on statute book, an extent of 30 acres was granted in favour of respondent 3. Section 5 of the Amending Act would clearly disclose that it is with retrospective effect, which would necessarily mean that the said provision is on statute from 20-12-1975. In the circumstances, the allotment in favour of respondent 3 is deemed to have been validated. Consequently, the said contention that in the absence of any prior approval of the State Government the bulk allotment could not have been done, cannot be accepted.

3. Insofar as the second contention regarding the non-implementation of the scheme under Section 27 of the Act is concerned, it is to be noticed that pursuant to the sale deed executed in respect of the remaining land excluding the lands in question, the respondent 3 has substantially put the scheme in execution inasmuch as constructions have come about. Even the entire are a for which the vast extent of land was acquired, i.e., BTM Layout, the scheme has already been executed. In fact, the execution of a scheme under Section 27 of the Act and what is substantial execution of the scheme, had fallen for consideration in three decisions.

4. In fact, the petitioners are repeatedly coning to this Court in one form or the other questioning the acquisition. It appears the petitioners want to cling on to the property at any cost. The decisions which are sought to be relied upon by the petitioners are not applicable to the case on hand.

5. The explanation offered by the petitioners that the right accrued to them to institute the present proceedings only after the sale deed was executed in favour of the third respondent cannot be accepted. In fact, these contentions questioning the acquisition on the ground of applicability of Sections 38-B and 27 of the Act were always available to them at an earliest point of time and having not availed them is deemed to have been waived. This Court would certainly insist that the objections regarding acquisition on these two grounds should have been taken as soon as the parties were prejudiced which would entitle him to object. That has not been done. If the petitioners know of the acquisition and they let the proceedings to continue without protest, they are held to have waived the questioning of the acquisition and the said acquisition cannot be challenged at a later point of time. This rule will have to be strictly applied to writ of certiorari unless it is specifically shown that the petitioners had no knowledge of the acquisition. They have not chosen to question the same at the earliest point of time which would necessarily mean that the petitioners have waived their right to question the acquisition on the ground that the respondents have not obtained prior sanction from the Government and also non-implementation of the scheme within the stipulated period.

6. Consequently, I am of the view that the petitioners are not entitled for any of the reliefs which are sought. Writ petition stands rejected. Interim order granted, if any, stands vacated.

Manager, Raibag Taluk Primary Co-Operative Agricultural and Rural Development Bank Limited, Raibag, Belgaum District v Deputy Registrar of Co-Operative Societies, Belgaum 1 and Others

Bench	M. M. Shanthanagoudar
Where Reported	2006 Indlaw KAR 337; 2007 (1) KarLJ 211

Case No : W.P. No. 20033 of 2005 (Cs-Res)

Respondent 3 was working as Secretary in petitioner-Bank during the period 1-1-1961 to 18-10-1976. While he was working as Secretary, he misappropriated certain sums of money belonging to the society. Then the petitioner-Society instituted proceedings under Section 69 of the Karnataka Co-operative Societies Act,1959 before the Deputy Registrar of Co-operative Societies against the petitioner. The Deputy Registrar of Co-operative Societies passed the order dated 30-1-1988 directing the petitioner to pay a sum of Rs. 14, 969.69 paise with future interest on principle amount. The said order is confirmed by the Karnataka Appellate Tribunal on 29-12-1989 in Appeal No. 353 of 1988. The order of Karnataka Appellate Tribunal was confirmed by this Court in W.P. No. 20476 of 1991 (disposed of on 26th May, 1997). In pursuance to the order passed by this Court, the petitioner-Bank filed execution petition in E.P. No. 646 of 1991 for recovery of Rs. 14, 969.69 and interest. The same is pending before concerned authority.

In view of the misappropriation of the amount, the third respondent was kept under suspension on 27-8-1976 and after holding enquiry, he was dismissed from service on 29-1-1977. The order of dismissal was approved by the Joint Registrar of Co-operative Societies on 20-7-1979. Accordingly, the order dated 16-8-1979 was issued by the petitioner-Bank. In the meanwhile, the Common Cadre Authority was established on 1-10-1978. It seems the third respondent approached Common Cadre Authority for redressal and the Common Cadre Authority withheld the order of dismissal passed by the petitioner-Bank as approved by Joint Registrar of Co-operative Societies. The petitioner filed W.P. No. 42580 of 1982 (Raibag Taluk Co-operative Primary Land Development Bank Limited v J.G. Suryavanshi and Others 1986 (1) KarLJ 381 (DB)] before this Court challenging the order passed by the Common Cadre Authority. This Court allowed the writ petition on 8-4-1986 and consequently the order of Common Cadre Authority was set aside. The third respondent challenged the order passed by this Court in W.P. No. 42580 of 1982 before Hon'ble Supreme Court of India in S.L.P. No. 5748 of 1986, which was ultimately numbered as Civil Appeal No. 2582 of 1986. The appeal came to be dismissed on 18-2-1991, as could be seen from Annexure-C. Thus the order of dismissal of third respondent was approved by Hon'ble Apex Court also.

It is relevant to note that as per the provisions under Rule 18(4) of the Karnataka Co-operative Societies Rules, the respondent 3 being the employee of Co-operative Society is entitled to gratuity from the Co-operative Society, subject to certain conditions. The Full Bench of this Court in the case of N.S. Srinivasamurthy and Others v Registrar of Co-operative Societies in Karnataka, Bangalore and Others 2003 Indlaw KAR 359 (FB): ILR2003 Kar. 4858 (FB): 2004 (1) LLJ 1085 (Kar).(FB)] has ruled out

that a Co-operative Society is not exempt from the application of Payment of Gratuity Act. In the said judgment, the Full Bench has overruled the Division Bench judgment of this Court in the case of The Malleshwaram Co-operative Society Limited v Senior Labour Inspector [1999 ILR(Kar) 650 (DB): 1998 Indlaw KAR 269 (Kar.) (DB)] by observing thus:

"Under the circumstances, the finding of the Division Bench in Malleswaram Co-operative Society Limited v Senior Labour Inspector, 1999 ILR(Kar) 650 (DB), that the provisions of the Karnataka Shops and Commercial Establishments Act, 1961, are not inconsistent with the provisions under the Mysore Shops and Establishments Act, 1948, is unsustainable. The Division Bench has failed to take into account the provisions of the repealing and the re-enacted Acts and has overlooked the fact as stated above that there is no provision for general exemption as contained in Section 6 of the 1948 Act and in the 1961 Act, and hence, a Co-operative Society is not exempt from the application of P.G. Act.

Thus it is clear from the aforesaid observations of the Full Bench of this Court that a Co-operative Society is not exempt from application of Payment of Gratuity Act.

On meticulous perusal of Payment of Gratuity Act, it would be clear that the said enactment is a complete code by itself which contains detailed provisions covering all the essential features of the scheme for payment of gratuity. Rule 18(4) of Karnataka Co-operative Societies Rules does not contain detailed provisions covering all the essential features of the scheme for payment of gratuity. The said Rule merely reiterates the right conferred on the employee of a society under the provisions of Payment of Gratuity Act. It merely says that the employee of a Co-operative Society has got right of payment of gratuity, but does not lay down the provisions relating to procedure for quantification of gratuity. On the other hand, the provisions of Payment of Gratuity Act covers all the essential features of the scheme for payment of gratuity. It creates the right of payment of gratuity, indicates when the right will accrue and lays down the provisions for quantification of gratuity. It provides further for recovery of the amount and contains provisions relating to interest at 9% p.a. to be paid by the Society on delayed payment. For the enforcement of its provisions, Payment of Gratuity Act, 1972 provided for appointment of a Controlling Authority under Section 3 of the said Act, which is entrusted with the task of administering the Act. The fulfillment of the rights and obligations of the parties are made his responsibility and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Authority particularly constituted under the provisions of Section 7(7) of the Payment of Gratuity Act. Section 14 of the said Act clearly discloses that the provisions of Payment of Gratuity Act (which is a subsequent enactment) have over-riding effect on other enactments. Thus in my considered opinion, the petitioner will have to approach the Controlling Authority under the provisions of Payment of Gratuity Act, 1972 and he cannot raise a dispute under Section 70 of the Karnataka Co-operative Societies Act for getting gratuity.

In view of the above, I conclude that wherever there is a serious dispute existing with regard to claim for payment of gratuity, in a Co-operative Society the proceedings will have to be initiated under the provisions of Payment of Gratuity Act and not under Section 70 of the Karnataka Co-operative Societies Act, as the essential features relating to payment of gratuity and scheme etc., are not forthcoming under Karnataka Co-operative Societies Act. In view of the same, the impugned orders are liable to be quashed and accordingly the same are quashed.

Vol. III

K. Devadas Kumar v A. Umesh and Others

Bench	V. GOPALA GOWDA, C. R. KUMARASWAMY
Where Reported	2006 Indlaw KAR 222; 2006 (5) KarLJ 233

Case No : Writ Appeal No. 251 of 2006 (Cs-Das).

The Judgment was delivered by : V. GOPALA GOWDA

This writ appeal is filed by the purchaser questioning the correctness of the order passed by the learned Single Judge in W.P. No. 23536 of 2005, dated 12-1-2006 in quashing the order of confirmation of sale of the property in question and sale certificate dated 11-8-2005 issued in favour of appellant, urging various grounds.

The learned Senior Counsel Mr. Jayakumar S. Patil appearing on behalf of the appellant submits that the first respondent herein has not availed alternative remedy provided to him under Section 106 of the Karnataka Co-operative Societies Act, 1959 (in short, 'the Act') as the order that would be passed under Section 101-A of the Act is an order passed under Section 101 of the Act, an appeal under Section 106 of the Act is provided i.e., to other authority is maintainable. Therefore, the learned Single Judge ought not have exercised his extraordinary jurisdiction to quash the impugned order of confirmation of sale and certificate of sale. The learned Senior Counsel in support of the above legal contention has relied upon the Division Bench decision of this Court in 1999 ILR(Kar) 1425 (sic). Hence, he had urged that the order passed by the learned Single Judge is liable to be set aside.

The above said mandatory requirement of law has not been done in the present case by the Sale Officer the fifth respondent herein. Therefore, there is statutory violation of Rules 34(3) and 38(2)(a) and (d) of the Rules. The first respondent has clearly averred in the writ petition that there is no notice affixed either in the office of the Recovery Officer or in the Taluk Office or on conspicuous part of the immovable property about to be attached and sold. Notice of demand was not served upon him as required urider sub-rule (3) of Rule 34 allowing him to make payment of in the case of non-payment of particulars of immovable property, if any to be attached and sold or to be sold without attachment, as the case may be, after specified by the Recovery Officer. The same shall be notified to be published by affixing the notice of proclamation as required under Rule 38(2)(g) of the Rules which prescribes that the sale shall be made after the expiry of not less than 30 days calculated from the date on which notice of the proclamation was affixed in the office of the Recovery Officer and Tahsildar of Taluk.

The time and place of sale of the immovable property shall be fixed by the Recovery Officer and the place of sale shall be in the village where the property to be sold is situated or such adjoining prominent place of public resort as may be fixed by the said Recovery Officer. The said mandatory provision has not been complied with by the fifth respondent. Therefore, the learned Single Judge has exercised his jurisdiction invoking judicial review power and recorded a finding of fact after considering the pleadings and record holding that the statutory provisions of Rules referred to supra are not complied with by the fifth respondent in conducting public auction of sale of the immovable property of the first respondent. Therefore, the impugned order in this appeal need not be interfered with by this Court.

The second contention urged by him that finding recorded by the learned Single Judge holding that there is no notice of 30 days by publishing the same in the newspaper as contemplated under Rule 38(2)(d) of the Rules is not the legal requirement on the part of fifth respondent, what is contemplated under the said rule is proclamation of sale be published by affixing a notice in the office of the Recovery Officer and in the Taluk Office at least thirty days before the date fixed for the sale.

We have carefully examined the reasons and legal contentions with regard to acquisition of property by the appellant. The learned Single Judge has recorded a finding on fact holding that property is sold in a public auction by the Recovery Officer for a sum of Rs. 12 lakhs though its value at Rs. 30 lakhs according to the first respondent which measurers 10 cents in Mangalore city. The submission made on behalf of appellant and first and second respondent-Bank is with regard to valuation ofj>roperty is that there is inconsistent plea taken by the first respondent and further the market value of the property as claimed by the first respondent is an exaggeration and the same is without factual foundation and therefore the learned Single Judge could not have accepted the said ground urged by the first respondent and therefore the finding recorded in this regard is erroneous in law, hence the same is liable to be set aside.

The learned Single Judge after quashing the confirmation order and issuance of the sale certificate issued in Form 10, dated 11-8-2005, remitted back the matter to the Competent Authority viz., respondent 3 to redo it and to take appropriate decision in accordance with law. While directing so, he has also clarified in the operative portion of the order that if the first respondent herein is willing to pay the entire award amount with interest and other expenses, it is open for the second respondent-Bank to consider his request and settle the matter in full and final settlement of the claim. In this regard, the learned Counsel jVlr. Xeshav Bhat appearing on behalf of first respondent submitted that during pendency of the writ petition first respondent wanted to deposit the awarded amount with the Bank but the same was not received by it. Now the first respondent is willing to deposit the same before the Bank. In th : view of the matter and also for the reason that learned Single Judg. Isr recording a finding of fact on the basis of facts pleaded and records produced he has held that the sale in the public auction is not in conformity with the provisions of the Act and the Rules. Therefore, the question of remanding the matter to the Competent Authority viz., respc.39nt 3 to take a decision in that regard afresh does not arise and therefore the portion of the remand order is set aside as the same is v-holly unnecessary. Since the first respondent has come forward to deposit the amount with the second respondent, if it is deposited within four weeks from the date of receipt of this order the same may be accepted with interest payable on the awarded amount. Otherwise, it is open to the second respondent to recover the same in accordance with the provisions of the Act and the Rules by executing the award against the first respondent.

For the reasons stated supra, the writ appeal is dismissed.

Ananth v State of Karnataka and Others

Bench	M. M. Shanthanagoudar
Where Reported	2006 Indlaw KAR 130; 2006 (3) KarLJ 428
Case Digest	**Subject:** Practice & Procedure; Trusts & Associations **Keywords:** Co-Operative Bank, Co-Operative Society, Co-Operative Movement **Summary:** Practice & Procedure - Trusts & Associations - Karnataka Co-operative Societies Act,1959, ss.28-A,29-F - Act No., s.29-G(4-A) - Right to vote - Ultra vires provision -Struck down - S.29-G(4-A) was inserted by the Act No. 24 of 2001 which relates to pro-viding right for Chief Executive of Society to vote - Hence, instant Petition - Whether s.29-G(4-A) of Act 24 of 2001 is ultra vires of s.28-A and 29-F of 1959 Act which em-powers Chief Executive to vote in Managing Committee meetings is bad in eye of law and same is liable to be struck down. Held, it is clear that Chief Executive being paid employee of Society cannot cast his vote while passing resolution or in electing office-bearers of Society. The Chief Executive is required to execute or implement resolutions passed by Managing Committee, but himself cannot pass resolutions. The duty of Chief Executive is to conduct Committee or Board proceedings and to conduct election. His powers and duties are also specifically provided in s.29-G(4) of Act 24 of 2001. The provision of s.29-G(4-A) of Act 24 of 2001 insofar as it relates to providing right to the Chief Executive to vote is opposed to the provisions of ss.28-A, 29-C, 29-F and the entire scheme of 1959 Act. Thus, the same is ultra vires of the provisions of ss.29-F, 28-A, 29-C of 1959 Act and the same shall have to be declared illegal. Therefore, provision of s.29-G(4-A) as introduced by Act No.24 of 2001 insofar as it relates to empowering Chief Executive of Society to vote in Managing Committee meeting is ultra vires of ss.28-A, 29-C,29-F and scheme of 1959 Act and same is struck down. Petition disposed of. Ratio - If management vests in committee as per s.28-A of 1959 Act whereas s.29-G(4A) of Act 24 of 2001 practically treats Chief Executive as Managing Committee member inasmuch as he is given right to vote in committee, which is highly illegal.

Case No : W.P. No. 24626 of 2002 (Cs-Res)

Ratio - If management vests in committee as per s.28-A of 1959 Act whereas s.29-G(4A) of Act 24 of 2001 practically treats Chief Executive as Managing Committee member inasmuch as he is given right to vote in committee, which is highly illegal.

In other words, the Chief Executive Officer cannot be elevated to the status of the Managing Committee member of the Society. If it is so, the impugned provision which accords right to the Chief Executive to vote in the Managing Committee clearly runs contrary to Section 29-G(4) of the Act. If right to vote, which is exclusive right of Managing Committee members, is granted to the Chief Executive, practically he is elevated to the position of Managing Committee.

It is also relevant to note at this stage the provision of Section 29-C(l)(e) of the Act which clarifies that no person shall be eligible for being elected or appointed or continued as a member of any Cooperative Society if he is a paid employee of such Co-operative Society or of its financing bank. As afore noted, the Chief Executive is a paid employee of the Society. If it is so, he is not eligible for being appointed or continued as member of committee of a Co-operative Society. In other words, he is disqualified to be appointed as a Managing Committee member. As Section 29-G(4-A) practically elevates and equates the Chief Executive to the position of the Managing Committee member, the said provision runs contrary to Section 29-C of the Act also.

Looking to the Scheme of the Act, it is clear that the Chief Executive being a paid employee of the Society cannot cast his vote while passing the resolution or in electing the office-bearers of Society. If he is allowed to vote, then he will be entitled to take policy decisions which is entirely within the realm or domain of the Managing Committee and General Body of the Society. The Chief Executive/ Administrative Officer is required to execute or implement the resolutions passed by the Managing Committee, but himself cannot pass the resolutions. The duty of the Chief Executive is to conduct the Committee or Board proceedings and to conduct election. His powers and duties are also specifically provided in Section 29-G(4) of the Act. As a Chief Executive, he is answerable to the Managing Committee. Under such a situation, if he is allowed to vote in Committee Meetings, it will totally affect the democratic system of Co-operative Society. He may even involve in politics relating to Society affairs, which is clearly prohibited. Thus the impugned amendment by which right to vote is accorded to the Chief Executive, is opposed to Co-operative movement and scheme of main Act.

In view of the aforesaid discussion, it is clear that the provision of Section 29-G(4-A) of the Act insofar as it relates to providing right to the Chief Executive to vote is opposed to the provisions of Sections 28-A, 29-C and 29-F and the entire scheme of the Act. Thus the same is ultra vires of the provisions of Sections 29-F, 28-A and 29-C of the Act and consequently the same shall have to be declared illegal.

In view of the above, this Court is of the opinion that the newly inserted provision of Section 29-G(4-A) insofar as it relates to empowering the Chief Executive to vote in Managing Committee meetings is bad in the eye of law and the same is liable to be struck down. Hence, the following order is made:

ORDER

The provision of sub-section (4-A) of Section 29-G as introduced by Act No. 24 of 2001 insofar as it relates to empowering the Chief Executive of the Society to vote in Managing Committee meeting is ultra vires of Sections 29-C, 28-A and 29-F and the scheme of Co-operative Societies Act and that therefore the same is struck down.

G. Bharthi and Another v Assistant Registrar of Co-Operative Society, Chitradurga Sub-Division, Chitradurga and Another

Bench	V. G. SABHAHIT
Where Reported	2006 Indlaw KAR 47; 2006 (2) KarLJ 303

Case No : W.P. No. 1480 of 2006 (Cs-Res).

The Order of the Court was as follows :

This writ petition filed u/arts. 226 and 227 of the Constitution of India is directed against the order passed by the second respondent as per Annexures-E and F, dated 23-1-2006, rejecting the application filed by the petitioners seeking for engaging the service of the legal practitioner under Rule 55 of the Karnataka Co-operative Societies Rules, 1960.

I have heard the learned Counsel appearing for the petitioners.

Learned Counsel appearing for the petitioners submitted that in view of the provisions of S. 64 of the Karnataka Co-operative Societies Act, 1959 (hereinafter called as the 'Act'), since the Inquiry Officer can record the statement of any person while inspecting the accounts and hold enquiry, the application seeking for engaging the service of legal practitioner ought to have been allowed. Learned Counsel further submitted that no opportunity was given to the petitioners to substantiate the contention and the 2nd respondent has rejected the said application by making an endorsement on the copy of the application to the effect that permission to engage the service of legal practitioner cannot be granted as it is only a fact finding inquiry.

It is clear from the provisions of S. 64 of the Act that the Registrar is empowered to hold inquiry into the constitution, working and financial condition of a Co-operative Society and S. 64(4) of the Act requires that after the enquiry is held, the inquiry report shall be communicated to the Society and thereafter, if the Society feels that there is any misappropriation, the necessary proceedings can be initiated including the surcharge proceedings u/s. 69 of the Act and it is only when the proceedings are initiated for taking action on the basis of the report under S. 64 of the Act, the question of giving an opportunity to the petitioners by framing charges and holding inquiry as required, would arise. It is clear from the provisions of S. 69 of the Act that before imposing surcharge and recovery of the amount, charge has to be framed and opportunity has to be given to the concerned to substantiate his contention and inquiry will be held. So far as the inquiry by the Registrar held under S. 64 of the Act is concerned, it is only a fact finding inquiry and the question of the petitioners being assisted by the legal practitioner would not arise at all and the impugned order passed by the second respondent as per Annexures-E and F, cannot be said to be suffering from any error apparent on the face of the order and does not call for interference in this writ petition in exercise of the power u/arts. 226 and 227 of the Constitution of India.

Dattaprasad Co-Operative Housing Society Limited, Bangalore and Others v State of Karnataka

Bench	H. L. DATTU, H. N. NAGAMOHAN DAS
Where Reported	2005 Indlaw KAR 333; 2007 (4) KarLJ 645

Case No : Writ Appeal No. 3883 of 2003 (Cs) (Writ Appeal Nos. 3883 to 3886 of 2003)

The Judgment was delivered by : H. L. DATTU

1. The appellants before us are all House Building Co-operative Societies and they are registered under the provisions of the Karnataka Co-operative Societies Act, 1959, read with Karnataka Co-operative Societies Rules, 1960. They are calling in question the. correctness or otherwise of the order passed by the learned Single Judge in W.P. Nos. 23564 to 23567 of 2001, dated 17-3-2003 (Dattaprasad Co-operative Housing Society Limited, Bangalore and Others v State of Karnataka(20()4(3) Kar. L.J. 310)).

   (a) In view of the submission made by the respondent, appellant-societies may kindly be permitted to withdraw both the writ appeals and so also writ petitions setting aside the order of the learned Single Judge dated 17-3-2003 in the interest of justice".

2. In view of the memos so filed by the parties to the Us, in our opinion, it may not be necessary to go into the correctness or otherwise of the impugned order passed by the learned Single Judge in W.P. Nos. 23564 to 23567 of 2001, dated 17-3-2003. Accordingly, the following.-

ORDER

I. Memos filed by the learned Counsels for the parties to the Us are placed on record.

II. The writ appeal is disposed off as withdrawn.

III. As requested by the appellants, they are permitted to withdraw the writ petitions.

IV. Consequently, the order passed by the learned Single Judge in W.P. Nos. 23564 to 23567 of 2001, dated 17-3-2003

K.H. Nallappa v
Secretary, Department of Co-Operation, Bangalore and Others

Bench	AJIT J. GUNJAL
Where Reported	2006 Indlaw KAR 404; 2007 (2) KarLJ 126
Case Digest	Held, a reading of s.29-C(1)(1) of the Act would disclose that if any person who is liable to pay certain amount to Society which is determined and it is retained by him in contravention of bye-laws or Act, such person is disqualified from becoming member of any other Society. Indeed, as on date when misappropriation was noticed, he was not member of Society. But, he was working as a clerk in respondent no.4 society. Further, in surcharge proceedings u/s.69 of the Act, Assistant Registrar has determined amount due to respondent no.4. The nomenclature 'he' in said provision does not necessarily mean that he should be member of erstwhile Society. It is enough if any amount is due to Society and if it is retained by him notwithstanding order passed u/s.69 of the Act. Thus, it would appear that said amount was retained by petitioner in contravention of provisions of the Act. Since one of ingredients of s.29-C(1) of the Act having been satisfied. Therefore, order passed by respondents nos.2,3 namely, original authority as well as Appellate Authority cannot be found fault with. Petition dismissed. Ratio - When matter is pending adjudication before Criminal Court then order passed on surcharge proceedings u/s.69 of the Act would indicate that amount to be recovered from person.

Case No : W.P. No. 9207 of 2006

Ratio - When matter is pending adjudication before Criminal Court then order passed on surcharge proceedings u/s.69 of the Act would indicate that amount to be recovered from person.

To appreciate the controversy in question, few facts are required to be noticed.

The petitioner was working as a Sales Clerk at Kotthannur Sericulturist-cum-Farmers Services Co-operative Bank. During the relevant period i.e., in the year 1988-89, a case was registered against the petitioner for the offences punishable under Sections 408 and 409 of the Indian Penal Code, 1860 in C.C. No. 246 of 1993. The amount of misappropriation was Rs. 51, 511.15 paise. The defence taken by the petitioner in the said proceedings was that he was not an employee of the said Society and further the evidence on record does not disclose that the offence is committed under Sections 408 and 409 of the Indian Penal Code, 1860. After trial, the learned Magistrate, pursuant to his judgment dated 20-9-2003, acquitted the petitioner on the ground that the prosecution has failed to prove beyond all reasonable doubt that the petitioner has misappropriated the amount of Rs. 51, 511.15 paise. A copy of the said judgment is produced at Armexure-A. During the interregnum, the petitioner became

a member of the 6th respondent-Society, contested elections and eventually became the President of the said Society. But, however, proceedings were initiated against him on the ground that in a parallel proceedings initiated by the 4th respondent before the Assistant Registrar of Co-operative Societies under Section 69 of the Karnataka Co-operative Societies Act, 1959 to the effect that there is misappropriation to the tune of Rs. 51, 511.15 paise, the Assistant Registrar has recorded a finding that indeed the petitioner has misappropriated the said amount. The said order was questioned by the petitioner before the Karnataka Appellate Tribunal and the appeal was dismissed confirming the order of surcharge under Section 69 of the Act. A copy of the order passed by the Assistant Registrar is produced at Annexure-R4 along with the statement of objections filed by respondent 5. Annexure-R3 is the order passed by the Karnataka Appellate Tribunal. In the meantime as stated earlier since the petitioner was elected as President of the 6th respondent-Society, proceedings were initiated under Section 29-C of the Act for disqualification on the ground that the petitioner owed the Society namely the 4th respondent-Society a sum of Rs. 51, 511.15 paise. The said complaint was lodged by the 6th respondent. The 3rd respondent pursuant to his order at Annexure-B, notified the petitioner of the said disqualification proceedings. Pursuant to the said show-cause notice dated 8-4-2005, the petitioner entered appearance and contested the proceedings inter alia contending that for the same offence the Criminal Court had acquitted him, consequently, the proceedings initiated at the behest of respondent 5 cannot be sustained. This contention did not find favour with the 3rd respondent and disqualified the petitioner. The copy of the same is produced at Annexure-B. The said order of disqualification was questioned by the petitioner before the Appellate Authority-2nd respondent. The respondent 2 having reconsidered the material as well as the contentions urged regarding the acquittal of the petitioner in the criminal proceedings was of the opinion that the order passed by the 3rd respondent cannot be found fault with and has dismissed the appeal. The said order passed by the original authority as well as the Appellate Authority are questioned in this writ petition.

The question whether notwithstanding the acquittal of the criminal proceedings initiated against a delinquent person, whether parallel proceedings could be initiated for the same alleged offence is concerned is set at rest by the two judgments of the Apex Court in the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and Another v Ramchandra G. Modak and Others 1981 Indlaw SC 216 : 1981 Indlaw SC 216 : 1981 Indlaw SC 216 (SC)] wherein the Apex Court has observed thus:

"Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However, where, as in the present case, quite some time has elapsed since the departmental inquiry had stated the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so".

In Management of Krishnakali Tea Estate v Akhil Bharatiya Chah Mazdoor Sangh and Another 2004 (3) LLJ 772 (SC): 2004 Indlaw SC 890 it is observed thus:

It is to be noticed that the approach and the objective in the criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the question is

whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act, 1988 (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

In view of the authoritative pronouncement of the Apex Court on the question whether parallel proceedings could be initiated for the same offence, I am of the opinion that indeed, there was no impediment for respondents 2 and 3 to embark upon an enquiry regarding disqualification of petitioner on the ground that in an earlier proceedings he had suffered an order of misappropriation. It is also to be noticed that for the said misappropriation, the 4th respondent had sought to initiate an enquiry under Section 69 of the Act. The said proceedings were initiated in the year 1994-95, when the matter was pending adjudication before the Criminal Court. A perusal of Annexure-R4, the order passed on surcharge proceedings under Section 69 of the Act would indicate that the amount to be recovered from the petitioner after giving deduction to the opening stock and the stock received was Rs. 51, 511.15 paise. Its order on surcharge proceedings reads as under:

"An order is passed against the respondent and he shall pay an amount of Rs. 51, 511.15 paise along with 18% interest from the date of misappropriation till its realisation. In the event of default, the petitioner-Society is at liberty to sell the movable and immovable properties belonging to the respondent".

This order is passed on 12-2-1996. The petitioner questioned this order before the Appellate Tribunal, which has affirmed the said order. It is not in dispute that the said proceedings have attained finality inasmuch as the finding recorded by the Assistant Registrar under Section 69 of the Act proceedings determining the amount due has remained unchallenged. This would take us to Section 29-C. Section 29-C would relate to the disqualification for membership of the Committee. A reading of the said provisions would indicate that any person is precluded and is not eligible for being elected, appointed or continued as a member of any Committee or Co-operative Society. There are several categories under which a person cannot be a member of the Society where if he is a defaulter; if he has an interest directly or indirectly in any of the business of the society; or if any of his kith and kin member carries on the business with the Society etc. What is, relevant for our purpose is Section 29-C(1)(1), which reads as under:

"(1) he has failed to remit to any Co-operative Society any amount (other than a loan) retained by him in contravention of the provisions of this Act, rules or bye-laws".

A reading of the said provision would disclose that if any person who is liable to pay certain amount to the Society which is determined and it is retained by him in contravention of the bye-laws or the Act, such person is disqualified from becoming a member of any other Society. Indeed, as on the date when the misappropriation was noticed, he was not a member of the Society. But he was working as a clerk in the 4th respondent-Society. But, however, in the surcharge proceedings under Section 69 of the Act, the Assistant Registrar has determined the amount due to the 4th respondent-Society. The nomenclature "he" in the said provision does not necessarily mean that he should be a member of the erstwhile Society. It is enough if any amount is due to the Society and if it is retained by him notwithstanding the order passed under Section 69 of the Act. To my mind, it would appear that the

said amount was retained by the petitioner in contravention of the provisions of the Act. Since one of the ingredients of Section 29-C(1) having been satisfied, I am of the view that the order passed by the respondents 2 and 3 namely, the original authority as well as the Appellate Authority cannot be found fault with.

Petition is dismissed.

Sri A.G. Shivanna, learned Additional Government Advocate is permitted to file memo of appearance.

Neelakanthappa v State of Karnataka and Others

Bench	M. M. Shanthanagoudar
Where Reported	2006 Indlaw KAR 340; 2007 (1) KarLJ 235

Case No : W.P. No. 13560 of 2006 (Cs-Res)

The petitioner has sought for quashing the election notice dated 20-9-2006 vide Annexure-C issued by the respondent 2 and also for striking down Section 2(d-1) of the Kamataka Co-operative Societies Act, 1959 (hereinafter referred to as 'Act' for short) on the ground that the same violates Article 14 of the Constitution of India.

The petitioner herein was elected as President to the Dharwad Cooperative Milk Union (Union' for short), Dharwad for a period of two and half (21/2) years on 14-10-2004. According to petitioner, his term of 21/2 years comes to an end by 13-4-2007 as per English Calendar. Hence, he has filed the present writ petition seeking quashing of the election notice issued by the respondent 2 vide Annexure-C, by which, the election are scheduled to be held on 29-9-2006.

As has been held by this Court in the case of Ravindra v Assistant Registrar of Co-operative Societies, Pandavapura and Another 2004 ILR(Kar) 2362 where election to the committee has been held in the middle of a co-operative year, for the purpose of computing the term of office of the Committee, the remaining part of the co-operative year shall be deemed to be a co-operative year. I respectfully agree with the said ruling. It is abundantly clear from the said judgment that even if the petitioner is elected as President to the 2nd respondent on 14-10-2004, the first year or co-operative year is deemed to have been ended on 31-3-2005. If it is so, the term of 21/2 years of the petitioner would end by 30-9-2006. In view of the same, the authorities concerned are justified in issuing the impugned election notice to elect the President of the 2nd respondent-Society and consequently, the first prayer made by the petitioner cannot be granted.

British Calendar, i.e., 12 months. The said Act is also a Karnataka Enactment. As the Karnataka Co-operative Societies Act is a special and subsequent enactment which deals exclusively with the co-operative matters, the provisions contained in the Co-operative Societies Act prevail over the definition clause of the 'year' contained in the Mysore General Clauses Act, 1899. Section 3 of Mysore General Clauses Act reads thus:

Hence Section 3 of the Mysore General Clauses Act, 1899 itself makes amply clear that the same is applicable unless there is anything repugnant in the subject or context in Karnataka Co-operative Societies Act. As the definition of the word 'year' found in Section 2(d-1) of the Karnataka Co-operative Societies Act is repugnant to the definition of 'year' found in the Mysore General Clauses Act, 1899, the definition as found in the Mysore General Clauses Act cannot be made applicable to the co-operative matters. In view of the same, the second prayer made in the writ petition also fails and consequently, the writ petition is liable to be dismissed.

Rangappa and Others v Management of Co-Operative Spinning Mills Limited, Yermarus, Raichur

Bench	Anand Byrareddy
Where Reported	2006 Indlaw KAR 210; 2006 (4) KarLJ 538

Case No : W.P. No. 36577 of 2001 (L-Ter)

A dispute had arisen as between the workmen and the management, the same had been referred to the Industrial Tribunal. During the pendency of the dispute, namely I.D. No. 15 of 1983, the management had sought approval of orders of dismissal of several workmen, including the petitioners herein. The management had also raised a contention that in view of Section 70 of the Karnataka Co-operative Societies Act, 1959 CKCS Act'), the reference was not maintainable and that the dispute was not an industrial dispute. The Labour Court had rejected the application of the management seeking approval of the orders of dismissal by an order dated 19-1-1991 and had answered the reference in favour of workmen. The management having challenged the Award before this Court in writ proceedings the same was dismissed as on 4-3-1998.

The petitioners however, were denied backwages and other benefits due to them and it is in this background that an application under Section 33-C(2) of the industrial Disputes Act came to be filed before the Labour Court by the petitioners. The Labour Court having summarily rejected the application on the ground that the management is a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 and in terms of the decision in Veerashaiva Co-operative Bank Limited, Bangalore v Presiding Officer, Labour Court, Bangalore and Others 2000 Kar 3743 (DB): ILR 2001 (3) KarLJ 519 (DB): 2000 Indlaw KAR 135 (Kar.) (DB) : 2001 (98) FJR 657 (Kar.) (DB)], the Labour Court would have no jurisdiction to entertain the claim of the applicants. This is under challenge.

Reliance was also placed on Sarwan Kumar and Another v Madan Lai Aggarwal1, wherein an objection as to jurisdiction raised at the stage of execution of a decree was upheld by the Supreme Court. It was held that when the Court lacked inherent jurisdiction to take cognizance of the cause and to pass a decree - Such a decree could be challenged at any later stage, including execution proceedings.

The proceedings in respect of an application under Section 33-C(2) being in the nature of execution proceedings, as the award was indeed a nullity, the same could not be enforced in the light of the law laid down in Sarwan Kumar's case, and the Labour Court has not committed any error in rejecting the application of the petitioners.

Shantinagar House Building Co-Operative Society Limited, Bangalore v State of Karnataka and Others

Bench	Anand Byrareddy
Where Reported	2006 Indlaw KAR 167; 2006 (4) KarLJ 234; 2007 (3) KarLJ 517
Case Digest	Held, 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. Further, s.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. Petition dismissed. Ratio - The value of land in areas notified for acquisition tends to increase, and advantage is taken by many unscrupulous landholders then acquisition of said land is illegal.

Case No : W.P. No. 9200 of 2005 (La-Res)

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 cf 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.

(1).Unauthorised sale of sites 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.

The writ petition is accordingly dismissed.

A. Hanumantha Reddy and Others v Additional Registrar of Co-Operative Societies (I and M), Bangalore and Others

Bench	H. N. NAGAMOHAN DAS
Where Reported	2006 Indlaw KAR 113; 2006 (3) KarLJ 548

Case No : W.P. No. 47077 of 2001 (S-Res).

1. Petitioners are the employees working in the second respondent-the Karnataka State Co-operative Agriculture and Rural Development Bank Limited (for short, 'the Bank'). The Bank by notification dated 3-9-1992 invited applications 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 28-1-1993 appointed these six petitioners as Law Officers. On 5-4-1993, 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 Registrar of Co-operative Societies by raising a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959, in dispute No. DDS/ D2/1110/97-98. The first respondent, by his award dated 21-7-1999 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 Tribunal'), in Appeal No. 506 of 1999 and the same came to be rejected vide order dated 27-4-2001. Hence this petition.

2. 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 5-4-1993 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 5-4-1993 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.

3. The Bank in its notification dated 3-9-1992 invited applications by way of internal recruitment from its employees possessing Law Degree to fill the post of Law Officers. In this notification dated 3-9-1992 it was specifically stated, that the 'present pay' of an employee will be protected on being appointed as "Law Officer". Contrary to this, the Bank in the order of appointment dated 28-1-1993 stated, that they will only protect the "basic pay" of the selected candidates. Taking advantage of the words "basic pay' in the order of appointment dated 28-1-1993, 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 3-9-1992 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 of the petitioners at a lower stage than they were drawing. Therefore, the impugned award fixing the pay scale of petitioners by excluding the personal pay is contrary to the notification dated 3-9-1992. On this ground also the impugned order is liable to be quashed

4. 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.

I. The impugned award dated 21-7-1999 in dispute No. DDS/D2/1110/97-98 passed by the first respondent and the order dated 27-4-2001 in Appeal No. 506 of 1999 passed by the Karnataka Appellate Tribunal are hereby quashed;

II. 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;

T.S. Patil v Joint Registrar of Co-Operative Societies, Belgaum Sub-Division, Belgaum and Others

BANGALORE (DIVISION BENCH)

Bench	Cyriac Joseph (CJ), K. SREEDHAR RAO
Where Reported	2006 Indlaw KAR 616; 2008 (1) KarLJ 227
Case Digest	**Subject:** Election; Practice & Procedure **Keywords:** Representation Of People Act, 1951, Karnataka Co-operative Societies Act, 1959 **Summary:** (A) Election - Practice & Procedure - Representation of the People Act,1951 - Karnataka Co-operative Societies Act,1959 - Declaration of elected candidate - Jurisdiction - Appellant, respondent nos.5 and 6 were candidates in election of Member of Committee of District Central Co-operative Union - In election, respondent no.6 was declared elected - Election of respondent no.6 was challenged by appellant - Deputy Registrar set aside election and also declared that petitioner was elected as member of the Committee - Tribunal upheld decision that respondent no.6 was disqualified to be elected as member of Committee, but set aside order, declaring appellant elected as member of Committee - Single Judge dismissed petition of appellant - Hence, instant Appeal - Whether Arbitrator under 1959 Act was competent to declare any of candidates elected. Held, there are no statutory provisions corresponding to ss.100 and 101 of 1951 Act, setting out grounds on which election to Co-operative Society can be set aside. It is open to Arbitrator to rely to rely as far as possible upon large volume of judicial precedents under election law and to decide disputes relating to election on basis of principles of justice, equity and good conscience. However, while doing so, Arbitrator should steer clear of principles which are contrary to or not warranted by 1959 Act. Therefore, it cannot be said that Arbitrator has only power to set aside election and that under no circumstances, he can declare' the petitioner or another candidate elected. Arbitrator is competent to declare petitioner or another candidate elected. Appeal dismissed, (B) Election - Elected candidate - Declaration of - Validity of - Whether Tribunal erred in taking view that there was no justification for declaring petitioner elected Held, under 1951 Act, candidate can be declared to have been duly elected if candidate received a majority of valid votes and for votes obtained by returned candidate by corrupt practices, candidate would have obtained majority of valid

	votes. There is no case for appellant that he had received majority of valid votes and respondent no.6 obtained votes by corrupt practices. Therefore, question of discarding those votes for deciding returned candidate does not arise. Merely because election of respondent no.6 was set aside, it need not necessarily follow that appellant is entitled to be declared to have been elected. Therefore, Tribunal was justified in setting aside order of Arbitrator declaring appellant as elected and directing fresh election. Appeal dismissed.

Case No : Writ Appeal No. 323 of 2006 (Cs-Eivm)

1. The appellant is the petitioner in Writ Petition No. 2029 of 2006 which was dismissed by the learned Single Judge as per the impugned order dated 13-2-2006. The respondents are the respondents in the said writ petition. The appellant, the 5th respondent and the 6th respondent were candidates in the election of the Member of the Committee of Bagalkot District Central Co-operative Union Limited (4th respondent herein) from the constituency of Milk Producers' Co-operative Society and Oil Seed Growers' Co-operative Society. In the said election, the 6th respondent-M.S. Nalthwad was declared elected as he got 5 votes, the appellant got 2 votes and the 5th respondent did not get any vote. The election of the 6th respondent was challenged by the appellant in an election petition filed under Section 70 of the Karnataka Co-operative Societies Act, 1959. The election petition was numbered as 4 of 2003-04 and was decided by the Deputy Registrar of Co-operative Societies, Bagalkot. The main contention raised in the election petition was that the 6th respondent was disqualified to be elected as a member of the 4th respondent-Co-operative Union and even though the petitioner had objected to the nomination paper filed by the 6th respondent-the Returning Officer overruled the objection and allowed, the 6th respondent to contest the election. Apart from praying to set aside the election of the 6th respondent, the petitioner (appellant herein) had also prayed to declare him as elected. While deciding the election dispute, the Deputy Registrar held that the 6th respondent was disqualified to be elected and set aside the election of the 6th respondent and also declared that the petitioner was elected as member of the Committee of the 4th respondent-Co-operative Union from the constituency of Milk Producers' Co-operative Society and Oil Seed Growers' Co-operative Society. Though the 6th respondent did not question the decision of the Deputy Registrar, the 5th respondent-Basappa filed an appeal against the decision of the Deputy Registrar before the Karnataka Appellate Tribunal. The appeal was registered as Appeal No. 669 of 2004 and it was disposed of on 6-1-2006. Though the Appellate Tribunal upheld the decision that the 6th respondent was disqualified to be elected as a member of the Committee of the 4th respondent-Co-operative Union, the Tribunal set aside the order of the Deputy Registrar declaring the appellant elected as member of the Committee of the Co-operative Union from the constituency of the Milk Producers' Co-operative Society and Oil Seed Growers' Co-operative Society. Aggrieved by the order of the Appellate Tribunal, the appellant filed the writ petition praying to quash the order dated 6-1-2006 of the Karnataka Appellate Tribunal. However, the writ petition was dismissed at the admission stage by the learned Single Judge. Challenging the order of the learned Single Judge, the writ petitioner has filed this appeal.

2. In the impugned order, the learned Single Judge held that the relief of declaring the petitioner elected can be granted only under limited circumstances and that in the present case, having

regard to the facts and circumstances of the case, the order of the Tribunal directing to hold fresh election was justified. The learned Single Judge observed that merely because the election of the 6th respondent was set aside, the Deputy Registrar could not have declared the petitioner elected.

3. Therefore, it cannot be said that the Arbitrator has only the power to set aside an election and that under no circumstances, he can declare' the petitioner or another candidate elected. In our view, in appropriate cases, the Arbitrator is competent to declare the petitioner or another candidate elected. In taking a decision as to whether the petitioner or another candidate should be declared elected, the Arbitrator should be guided by the general principles under Section 101 of the Representation Of People Act, 1951. In view of the above legal position and in view of the fact that the appellant-petitioner in this case had prayed for declaring him elected, we hold that the Arbitrator was competent to declare the appellant-petitioner or any other candidate elected.

Secondly, the High Court should be of opinion that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes. In the present case, there is no case for the appellant that he had received a majority of the valid votes. The valid votes were 7 and the appellant had got only 2 votes. The present case is not a case where the returned candidate obtained votes by corrupt practices and therefore, the question of discarding those votes for deciding the returned candidate does not arise.

In this case, there were more than two candidates in the field for a single seat and only one was disqualified. The voters were not aware of the disqualification of the 6th respondent. If the voters were aware of the disqualification of the 6th respondent, it cannot be assumed that they would have voted for the appellant or that they would not have voted for the 5th respondent. If they had voted for the 5th respondent, then he would have got more votes than the appellant. In such circumstances, merely because the election of the 6th respondent was set aside, it need not necessarily follow that the appellant is entitled to be declared to have been elected. The Karnataka Appellate Tribunal was therefore justified in setting aside the order of the Arbitrator declaring the appellant as elected and directing fresh election.

Scheduled Caste (Harijan) House Building Co-Operative Society Limited, Bangalore and Another v State of Karnataka and Others

Bench	N. KUMAR
Where Reported	2006 Indlaw KAR 43; 2006 (2) KarLJ 267
Case Digest	**Summary:** Banking & Finance - Karnataka Co-operative Societies Act, 1959, ss.12(5), 70 - Bye laws - Amendment - Nature of dispute - Petitioner/Society had exclusively registered for members of scheduled caste - Amendment to byelaws admitted persons belonged to other community as members of Society - Dispute was raised u/s.70 of 1959 Act challenged right of elected members in election to hold office of members of committee of management - Name of Society was restored as Scheduled Caste (Harijan) House Building Co-operative Society Limited - Registrar passed order that existing members of Society, irrespective of caste should continue to enjoy all rights/privileges available as such members of Society under provisions of Act - Hence instant petitions - Whether dispute raised by petitioner itself u/s.70 of 1959 Act is maintainable. Held, material on record disclosed that till 1988, there was no dispute in regard to office bearers of Society. Original bye-laws showed that membership of Society confined only to persons belonged to scheduled caste. Admittedly persons belonged to other communities were enrolled as members. Main reason for amendment was that 80% of members belonged to non-Scheduled Caste and Scheduled Tribe and therefore there was a necessity to change name of Society. By virtue of power conferred on Registrar u/s.12(5) of Act, he directed Society to restore name of Society to its original name and also limit members only to Scheduled Caste persons. In interregnum period, members belonged to other communities were enrolled as well as sale deeds have executed in their favour and therefore he found it inequitable to pass any orders affected their interest. Membership right itself was to be adjudicated upon in an appropriate forum and till such time in interest of Society and its members, they should be kept away from affairs of Society. There are no two societies, Society was only one. Petitioner No.2 & respondent no.4 were trying to claim Society functioned at address mentioned by them was legally functioning Society and not other one. In view of language employed in s.70 of Act, dispute of nature, which was raised fell outside scope of s.70 of Act and dispute itself was not maintainable. Petition disposed of. Ratio - Condition precedent for application of s.70 of Act is that there must be two societies which are independent legal entities and a dispute between them is to be agitated u/s.70 of Act.

Case No : W.P. No. 40914 of 2003 (Cs-Res) Connected With W.P. No. 47671 of 2003.

The Order of the Court was as follows :

W.P. No. 40914 of 2003 is filed by Scheduled Caste (Harijan) House Building Co-operative Society Limited, represented by one Sri E. Nagalingam who claims to be the President of the said Society and also in his personal capacity. The address of the said Society is given as No. 24, Kota Complex, J.C. Road, Bangalore 2.

W.P. No. 47671 of 2003 is filed by Scheduled Caste (Harijan) House Building Co-operative Society Limited, represented by one S. Pushparaj, who claims to be the Secretary of the said Society. The address of the Society is given as Dodda Bylakhana, No. 15, 25th Main Road, Annaiah Reddy Layout, J.P. Nagar, VI Phase, Bangalore-78.

In both these writ petitions what is challenged is the order passed by the Karnataka Appellate Tribunal made in respect of Appeal Nos. 482 and 614 of 2001 dismissing the same and affirming the order passed by the Assistant Registrar of Co-operative Societies, Bangalore in Dispute No. ARB/45/ ABN/40/99-2000, dated 12-4-2001. As the questions involved in both these writ petitions as well as the impugned order is one and the same, they are taken up for consideration together and disposed of by this common order.

It is also not a case between two societies which fall within the ambit of S. 70 of the Act. What S. 70(l) (d) provides is, any dispute by which the constitution management or the business of a co operative Society arising between the Society and any other co-operative Society or a credit agency, they it falls within S. 70 of the Act. The condition precedent for application of this provision is, that there must be two societies which are independent legal entities and a dispute between them is to be agitated u/s. 70 of the Act. As pointed out earlier, in the instant case, there are no two societies, the Society is only one. It is the second petitioner and the 4th respondent who are trying to claim the said Society functioning at the address mentioned by them is the legally functioning Society and not the other one. Therefore, in view of the language employed in S. 70 of the Act, the dispute of the nature which is raised falls outside the scope of S. 70 and the dispute itself is not maintainable.

In view of the aforesaid discussion when the dispute filed u/s. 70 of the Act was not maintainable at all, the finding recorded by both the authorities is one without jurisdiction. Therefore, the ultimate finding recorded by these two authorities that the Society represented by Sri T.C. Ramakrishnaiah is a genuine Society and that he was duly elected and was validly exercising his power as an office-bearer of the Society and his actions as such office-bearer is valid and legal is also a finding without jurisdiction and is liable to be set aside. Accordingly, it is set aside.

Therefore, it was made clear that those members who do not belong to Scheduled Caste and Scheduled Tribe shall continue to enjoy all rights/privileges available to such members of the Society under the provisions of the Act, Rules and bye-laws as they existed then. This order of the Registrar dated 2-1-1997 was challenged before this Court by the 5th respondent in W.P. No. 1822 of 1997 which upheld the said order by its order dated 5-6-1998. The appeal filed against the said order was later withdrawn, thus the said proceedings have reached a finality.

In utter disregard to the statutory provisions, depending upon whims and fancies of the members, Returning Officers were appointed to hold elections. At the request of these two persons elections have been held without knowledge to the other person. Inspite of all these irregularities, complaints,

and even the matter is being discussed in the Assembly no corrective step is taken by the authorities. By the acts of these two persons the interest of the members is being affected. That is why an attempt was made to set right things by filing a public interest litigation which came to be rejected reserving liberty to the parties to approach the competent forum. Though they raised a dispute, for reasons best known to them, they have withdrawn the same and therefore the said dispute is yet to be resolved.

the best way of resolving the dispute would be, by resorting to democratic way, by holding a fresh election, giving an opportunity to all the members of the Society to select their representative and handover the Society to such a duly elected body, so that the Society could be saved from the clutches of these two individuals viz.,

Therefore, during the interregnum period, the affairs of the Society has to be entrusted to the custody of a neutral person, an Administrator. The said Administrator shall hold the election to the Society on the basis of the membership, which is upheld and accepted in W.P. No. 1822 of 1997 and handover the management of the Society to such newly elected body. Hence, I pass the following.-

ORDER

(1) Writ Petition No. 40914 of 2003 is allowed. Rule made absolute;

(3) The dispute raised by the fourth respondent u/s. 70 of the Act is not maintainable and accordingly the dispute is rejected; All the findings recorded by respondents 2 and 3, in the proceedings before them are hereby quashed;

(4) The Registrar of Co-operative Society, Karnataka, is directed to appoint an Administrator to the Society, within two weeks from the date of receipt of the copy of this order, with a direction to hold the election to the Society in accordance with law, within six months from the date of such appointment;
(5) Till the membership dispute between the second petitioner and the fourth respondent is resolved in an appropriate forum, they should be kept out of the election process. In other words election process could go on excluding them;
(6) All the cancellation deeds executed by the second petitioner are hereby cancelled and the Sub-Registrar is directed to delete those cancellation deeds in the Register;
(7) It is open to the new Managing Committee to review and take appropriate action in respect of all the acts, omissions, of the fourth respondent and second petitioner, after they assumed the office of Secretary and President of the Society respectively from 1999 till the appointment of Administrator, in accordance with law;

G.V. Revanna and Another v Arbitrator (Co-Operative Development Officer), Tumkur and Another

Bench	N. K. PATIL
Where Reported	2006 Indlaw KAR 37; 2006 (2) KarLJ 227
Case Digest	Held, in pursuance of the notice issued by the Departmental Arbitrator, petitioner no.1 has filed his objections. The same was taken on record and the petitioner no.2 was also present personally and he has also stated in unequivocal terms that, they have availed the loan with interest and penal interest and they are ready to pay the said amount. The said specific admission made by petitioners has been recorded in the order sheet main-tained by the Departmental Arbitrator. According to Tribunal, obtaining of loan by peti-tioners is admitted interest and penal interest and the Departmental Arbitrator has rec-orded the deposition of the respondent no.2-Society. Further, Departmental Arbitrator has verified the loan documents and after perusing the deposition of the representative of respondent no.2 and after verification of loan documents produced by the representative of respondent no.2 passed the award for recovery of the amount with interest as per the contract. The Tribunal opined that, the Departmental Arbitrator has passed a well-considered order and as such there is no need for them to interfere with the same. The said reasoning given by the Tribunal, after appreciation of oral and documentary evi-dence, available on file and after appreciation of credible documentary evidence is just and proper. Hence, no illegality as such committed by the Departmental Arbitrator or the Tribunal inasmuch as both the authorities after proper verification of the entire original records available on file have passed the impugned orders. Petition dismissed. Ratio - Authorities cannot be said to suffer from errors apparent on the face of record and for not affording opportunity to person.

Case No : W.P. No. 27504 of 2005 (Cs-Res).

Ratio - Authorities cannot be said to suffer from errors apparent on the face of record and for not affording opportunity to person.

The Order of the Court was as follows :

The petitioners, questioning the legality and validity of the impugned award dated 11th November, 2003 in Dispute No. 126 of 2003-04 on the file of the Assistant Registrar of Co-operative Societies, Tumkur Sub-Division, Tumkur and also the order dated 25th November, 2005 in Appeal No. 974 of 2004 on the file of the Karnataka Appellate Tribunal at Bangalore vide Annexures-C and E respectively, have presented the instant writ petition.

The first petitioner is the principal borrower and second petitioner is the surety for the loan availed

by the first petitioner from the second respondent-Sacred Heart Credit Co-operative Society Limited (hereinafter called 'Society') for a sum of Rs. 2,75,000/- (Rupees Two Lakhs Seventy-five Thousand Only) for the purpose of improvement of his business. When petitioners committed default in payment of instalments as agreed upon in the agreement executed by petitioners in favour of second respondent-Society, the second respondent-Society was constrained to raise a dispute before the Competent Authority as envisaged u/s. 70(1) of the Karnataka Co-operative Societies Act, 1959 ('Act' for short). The Competent Authority, in turn has referred the matter to the Departmental Arbitrator-first respondent herein and the first respondent hereinafter conducting enquiry and after affording an opportunity to both parties and in view of the admission made by second petitioner that, they availed the loan for a sum of Rs. 2,75,000/- with interest at 18% and penal interest at 2% and after considering the documentary evidence made available by second respondent-Society, has passed the impugned award dated 11th November, 2003 in Dispute No. 126 of 2003-04 vide Annexure-C. Assailing the correctness of the said award passed by the first respondent, petitioners herein have filed an appeal in Appeal No. 974 of 2004 on the file of the Karnataka Appellate Tribunal at Bangalore (hereinafter called Tribunal') and the said appeal filed by the petitioners had come up for consideration on 25th November, 2005. The Tribunal, after hearing both sides and after thorough evaluation of the original records made available by State representative, has given a specific finding in para 9 of its order, holding that, they do not find any error or illegality as such in the award passed by the Departmental Arbitrator. The said award is a well-considered order and as such, there is no need to conduct an enquiry in the same and the appeal filed by petitioners was dismissed. Being aggrieved by the said award passed by the Departmental Arbitrator and the order passed by the Tribunal, referred above, vide Annexures-C and E, petitioners herein felt necessitated to present the instant writ petition.

Hence, I do not find any illegality as such committed by the Departmental Arbitrator or the Tribunal inasmuch as both the authorities after proper verification of the entire original records available on file have passed the impugned orders. Both the authorities, after critical evaluation of the oral and documentary evidence, have recorded concurrent finding of fact against the petitioners. Hence, interference by this Court in the well-considered orders passed by both authorities is not justifiable u/arts. 226 and 227 of the Constitution of India, as held by Apex Court and this Court in catena of judgments nor petitioners have made out any good grounds to entertain the instant writ petition.

Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioners is dismissed as devoid of any merits.

Ga. Wahid Khan v Gruha Nirmana Sahakara Sangha, K.R. Nagara, Mysore District and Others

Bench	N. K. PATIL
Where Reported	2005 Indlaw KAR 217; 2006 (4) KarLJ 655

Case No : W.P. No. 27590 of 2002 (Cs-Res)

The grievance of the petitioner in the instant writ petition is that, he was the former Director and former Honorary Secretary of the first respondent-Gruha Nirmana Sahakara Sangha (hereinafter called 'Sangha'). The first respondent-Sangha has passed the resolution dated 8th February, 2004 authorising the petitioner to purchase the land referred to in the original proceedings as the suit schedule land. Further, an agreement to purchase the said land has been executed by petitioner on 11th August, 1994 in favour of the President of the Sangha and the agreement was for getting the land in question converted into non-agricultural land and thereafter wards to transfer the same in the name of the Sangha. After the said land was converted into non-agricultural land, the petitioner purchased the said land in his own name and did not transfer the said property to the Sangha, first respondent.

Therefore, the Sangha was constrained to raise a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, 'Act') and requested the Competent Authority to refer the matter for adjudication. The Competent Authority, in turn, has referred the matter to the Arbitrator, the second respondent herein and the said dispute has been numbered as Miscellaneous Dispute No. 4 of 1997-98. The second respondent, after careful evaluation of the oral and documentary evidence available on file, after affording an opportunity to both parties, has passed the award dated 2nd September, 1998 vide Annexure-A. Being aggrieved by the order passed by the second respondent, petitioner herein has filed the appeal on the file of the Karnataka Appellate Tribunal, Bangalore ("Tribunal" for brevity) in Appeal No. 509 of 1998. The appeal filed by the petitioner has been dismissed confirming the award passed by the Arbitrator. Assailing the correctness of the impugned orders passed by the respondents 2 and 3 vide Annexures-A and C respectively, referred above, petitioner felt necessitated to present the instant writ petition.

It can be seen that, both the authorities have recorded concurrent finding of fact against the petitioner. Once the Competent Authority and the Appellate Authority have recorded concurrent finding of fact against the petitioner, interference by this Court is not justifiable in view of the well-settled law laid down by the Apex Court and this Court in catena of judgments. Therefore, I do not find any infirmity or illegality as such committed by respondents 2 and 3 in allowing the dispute raised by first respondent-Sangha and rejecting the contention taken by petitioner, by assigning reasons and by giving specific finding after considering all the grounds urged by petitioner. Therefore, interference by this Court at this stage, is not justifiable.

"A complaint by two members of a Housing Society against the Society and another member that the houses which should have been allotted to them had been wrongly allotted to the other member, is a dispute falling within Section 70 of the Act. It will suffice if it is observed that the ratio laid down in

the said case applies on all force to the facts of this case".

He did not even enter the box and open his mouth to support his contention of benami transaction, for the reasons best known to him. Had this appellant adduced evidence in support of his contention, the second respondent would have taken the responsibility}' of rebutting such contention. In the absence of trial on the question of "benami transaction", it appears, it would not be fair on our part to proceed to resort to conjectures and surmises. Hence, this ground of appeal is of no help to the appellant. In my considered view, the said reasoning given by the Tribunal, in the impugned order, is just and reasonable. As a matter of fact, the petitioner has not taken any objections in the earlier proceeding and for the first time, he has taken the said ground before the Tribunal and the Tribunal has rightly considered and rejected by giving specific finding. Therefore, I do not find any infirmity or illegality as such committed by the authorities nor the petitioner has made out any good grounds for interference in the writ petition.

N. Chinnaraju and Another v General Manager, Malleshwaram Co-Operative Bank Limited, Bangalore and Others

Bench	N. K. PATIL
Where Reported	2005 Indlaw KAR 142; 2006 (3) KarLJ 300
Case Digest	Held, both authorities, after appreciation of oral and documentary evidence and after giving opportunity to petitioners have recorded concurrent finding of fact against petitioners and held that, they are liable to pay balance amount as per award. Inspite of giving sufficient opportunity to petitioners, they have failed to comply with award passed by Arbitrator. Even when matter was pending adjudication before Tribunal, petitioners have failed to make sincere efforts to pay necessary amount as mentioned in the award. Therefore, there is no any error or illegality as such committed by both the authorities in passing the orders. Inspite of confirmation of judgment and award passed by Arbitrator, by Appellate Authority, petitioners have failed to satisfy award. Thus, it is crystal clear that, once the Tribunal/Appellate Authority and the Competent Authority have recorded concurrent finding of fact against a party, on the basis of oral and documentary evidence, interference by HC, in exercise of the extraordinary jurisdiction u/arts.226 and 227 of the Constitution is not justifiable except in rarest of rare cases. Petition dismissed. Ratio - Persons who has not made any sincere efforts to show any bona fide whatsoever or at least before Court, are not entitled to seek for any relief by invoking extraordinary jurisdiction.

Case No : W.P. No. 20769 of 2005 (Cs-Res)

The petitioners, assailing the correctness of the order dated 19th August, 2002 in dispute bearing No. DRBI/DIS/2613/2001-02 and the order dated 1st July, 2004 in Appeal No. 542 of 2003 on the file of the Karnataka Appellate Tribunal, Bangalore and also the public auction notices issued dated 25th July, 2005 in Forms VIII and IX both issued under Rule 38(2)(d) of the Karnataka Co-operative Societies Rules, 1960 on the file of second respondent, vide Annexures-A, B, D and E respectively, have presented the instant writ petition. Further, they have sought for a direction, directing the first respondent to act on Annexures-C and Cl and to grant concession on OTS basis as per RBI guidelines for One Time Settlement.

Therefore, having regard to the facts and circumstances of the case, I do not find any good grounds or justification to interfere in the impugned orders passed by both the authorities, namely Arbitrator and the Tribunal. Both the authorities, after critical evaluation of oral and documentary evidence have recorded concurrent finding of fact against the petitioners. In view of the well-settled law laid down by the Apex Court in host of judgments, it is crystal clear that, once the Tribunal/Appellate Authority and the Competent Authority have recorded concurrent finding of fact against a party, on the basis of oral and documentary evidence, interference by this Court, in exercise of the extraordinary jurisdiction u/arts. 226 and 227 of the Constitution of India is not justifiable except in rarest of rare cases.

Malini V. Pai W/o Late K. Vasudev Pai v State of Karnataka Dept of Co-Operation, Bangalore and others

Bench	N. K. PATIL
Where Reported	2005 Indlaw KAR 535; 2005 (5) KarLJ 462

Case No : W.P. No. 1485 of 2005

The Order of the Court was as follows :

1. The grievance of the petitioner in the instant case is that, petitioner is the widow of late Sri. K. Vasudev Pai, who died in the year 1992. It is her strong case that, she is neither a member of third respondent - Abhyudaya Credit Co-operative Society Limited ('Society' for short) nor has she mortgaged any property in favour of third respondent. But, inspite of the same, petitioner and fifth respondent are shown as guarantors to loan availed by fourth respondent. The fourth respondent is the principal borrower who availed the loan from the third respondent Society. When the fourth respondent has committed default in payment of necessary instalments, the third respondent was constrained to raise a dispute u/s. 70 of the Karnataka Co-operative Societies Act ('the Act' for short) before the competent authority and the competent authority in turn has referred the mater to the Arbitrator and the Arbitrator in turn on evaluation of the oral and documentary evidence,

2. The principal submission canvassed by learned counsel for petitioner is three fold. Firstly, the dispute raised by third respondent against the petitioner is not maintainable on the ground that, she is not a member of third respondent - Society; Secondly, petitioner has filed the application and requested to permit her to avail the services of an Advocate and the said request has not at all been considered by both authorities nor any finding as such has been recorded by both authorities with regard to the said aspect; Thirdly, the competent authority, has referred the matter to the Honorary Arbitrator instead of Official Arbitrator and the same is one without jurisdiction. In the instant case, he submitted that, the dispute has been referred to the Honorary Arbitrator even though the amount in dispute is more than Rs.50,000/-. Further, he submitted that, he has taken specific ground before both the authorities below stating that, the petitioner intends to avail the services of an Advocate on the ground that, respondents 3 and 4 have colluded with each other in committing the fraud and have stated that, petitioner has mortgaged the property as guarantor for availing the loan by fourth respondent from the third respondent - Society, in view of the same, the services of an Advocate is a must to substantiate her case and to that effect, appropriate proceedings have already been initiated and the same is pending adjudication. Therefore, he submitted that, these vital points raised by petitioner are neither considered nor any finding is recorded on these aspects by both the authorities. Therefore, he submitted the impugned orders are liable to vitiate.

3. Therefore, he submitted that, in view of non denial of signature by the petitioner before the Arbitrator, the Arbitrator has rightly proceeded and passed the impugned award after evaluation of

the oral and documentary evidence available before the said authority and no error or illegality as such has been committed by the said authority. Therefore, he submitted that, both the authorities have not committed any error of law nor petitioner has made out any good grounds to interfere in the instant writ petition.

Observed by the Arbitrator prove beyond all reasonable doubts that, the Arbitrator himself was not satisfied or sure regarding the stand taken by petitioner and has not given any specific finding with regard to the signature of petitioner with cogent reasons. He has not critically examined the disputed signatures in the documents. He has stated that, 'the signatures tally at one sight' i.e. However, it is duty cast on the concerned authority that, whenever there is ambiguity or controversy, the competent authority has to go into the matter in detail and give specific finding along with cogent reasons and thereafter pass a speaking order. In the instant case, the Arbitrator has not given any finding as to why he has not accepted the defence taken by petitioner. After careful perusal of the circular made available to the Court and the relevant provisions of the Act and Rules, it is a fact that, the competent authority has committed a grave error in referring the matter to the Honorary Arbitrator for deciding the dispute which involved more than Rs.50,O00/- and both the authorities have referred regarding the stand taken by petitioner. Therefore, without considering all these aspects, both the authorities have proceeded to pass the impugned orders. In my considered view, both the orders cannot be sustained and the same are liable to be set aside and the matter requires reconsideration afresh and to take appropriate decision in accordance with law, after affording an opportunity to petitioner and respondents 3, 4 and 5.

4. Having regard to the facts and circumstances of the case, as stated above and taking into consideration the totality of the case on hand, the impugned orders passed by both the authorities cannot be sustained.

(i) The impugned order dated 28th September 2004 on the file of the Karnataka Appellate Tribunal in Appeal No.171/2002 and the order dated 28th November 2001 in Dispute No.436/2001-02 on the file of the second respondent vide Annexures A and F respectively are hereby set aside and the matter stands remitted back to second respondent for reconsideration afresh in accordance with law and to take appropriate decision in accordance with the mandatory provisions of the Act and Rules, affording an opportunity to petitioner and respondents 3, 4 and 5;

(ii) Further, the second respondent herein is directed to refer the matter to tie Official Arbitrator as envisaged under the mandatory provisions of the Act and Rules as well as the circular issued by Government in that regard and to proceed with the matter in accordance with law and dispose of the same, as expeditiously as possible, within an outer limit of six months from the date of receipt of a copy of this order.

Management of Hukkeri Taluka Co-Operative Rural Electricity Society Limited, Hukkeri v S.R. Vastrad and Another

Bench	N. KUMAR
Where Reported	2005 Indlaw KAR 259; 2006 (5) KarLJ 528

Case No : W.P. No. 6717 of 1997; W.P. Nos. 32623 of 1997; 3371, 20189, 22897 to 22899 and 36040 of 1998; 22925, 24945, 37914, 39020, 45731 and 44802 of 1999; 13826, 21040, 28946, 31466 and 33528 of 2000; 18025 and 25812 of 1997; 18191, 29650, 30229 and 30562 of 1998; 2542, 7112, 13813, 16780, 22928, 29657, 32148, 35275, 36461 and 38729 of 1999; 113 and 6304 of 2000 and 47510 of 2001

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.

1. The petitioners in W.P. Nos. 6717 and 32623 of 1997; 3371, 20189, 22897 to 22899 and 36040 of 1998; 22925, 24945, 37914, 39020, 45731 arid 44802 of 1999; 13826, 21040, 28946, 31466, 33528 and 36407 of '.'000 are all co-operative societies/banks registered under the Karnataka Co-operative Societies Act, 1959 and are governed by the provisions of the said Act. The petitioners in W.P. Nos. 18025 and 25812 of 1997; 18191, 29650, 30229 and 30562 of 19, 98; 2542, 7112, 13813, 16780, 22928, 29657, 32148, 35275, 36461 and 38729 of 1999; 113 and 6304 of 2000 and 3997 and 47510 of 2001 are all employees of a Co-operative 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.

   "(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 terms of employment, working conditions and disciplinary action taken by a Co-operative Society".

2. 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.

   "All these factors clearly indicate that the Industrial Disputes Act is a Special Act and, therefore, the employees of Co-operative Societies who come within the definition of the word workman' under Section 2(s) of the Industrial Disputes Act, have a right to have their disputes adjudicated by the appropriate authorities under the Industrial Disputes Act and their right has not been taken away by the provisions of Section 70(l)(c) read with Section 70(2)(d) of the Karnataka Co-operative Societies Act ".

3. A Division Bench of this Court in the case of Mis. Veerashaiva Co-operative Bank Limited, Bangalore v Presiding Officer, Labour Court, Bangalore and Others 2001 (3) KarLJ 519 (DB): 2000 ILR(Kar) 3743 (DB): 2000 Indlaw KAR 135 (Kar.) (DB)], 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 Co-operative Societies Act, 1959, after referring to the judgments of the Supreme Court in the cases of R.C. Tiwari v Madhya Pradesh State Co-operative Marketing federation Limited and Others 1997 Indlaw SC 950 : 1997 Indlaw SC 950 : 1997 Indlaw SC 950 (SO : 1997 SCC (L and S) 1128] Co-operative Central Bank Limited v Additional Industrial Tribunal, Andhra Pradesh, Hyderabad; Sagarmal v District Sahakari Kendriya Bank Limited, Mandsaur and Another[1996 Indlaw SC 2085 : 1997 SCC (L and S) 1203] and The Krishna District Co-operative Marketing Society Limited, Vijayaivada v N.V. Purnachandra Rao and Others 1987 Indlaw SC 28165 : 1987 Indlaw SC 28165 : 1987-H-LLJ-365 (SC): 1987 SCC (L and S) 366], held as under:

"By reading the above provisions, it is manifest that power is vested in the Registrar to deal with disciplinary matters relating i; 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. Rule 15 of the Karnataka Co-operative Societies Rules, 1960 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(a)(9) deals with punishment. Rule 18(aX12) 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 Co-operative 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 Co-operative 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".

"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 Societies Act and no dispute in relation to such matters can be raised, referred to and decided under the provisions of the Industrial Disputes Act ".

4. Yet another Division Bench of this Court in the case of Devanur Grama Seva Sahakari Sangh Limited, Devanur, Dharwad v Virupaxayya and Others 2001 Indlaw KAR 78 (DB): ILR2001 Kar. 4839 !DB)] though after noticing the judgment in Veerashaiva Co-operative 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 Veerashaiva Co-operative 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), Bangalore v State of Karnataka and Others 2003 Indlaw KAR 211 (FB): ILR2003 Kar. 2531 (FB): 2003-IU-LLJ-502 (Kar.) (FB)], held that the law laid down in Veerashaiva Co-operative Bank'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(l)(d) and 70(2)(d) by Act 2 of 2000 which came into effect from 20-6-2000 where expressly the jurisdiction of the Labour Courts or Industrial Tribunal is excluded.

5. 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 Padmamba Large Sized Co-operative Society's case till the declaration of law by this Court in Veerashaiva Co-operative Bank's case, which was affirmed by the Full Bench of this Court in the Karnataka Sugar Workers Federation's case could be saved by the application of doctrine of stare decisis and prospective dverruling?"

6. 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.

7. It is important to further fair and expeditious adjudication by eliminating the need to re-litigate 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.

8. 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: State of Bombay v United Motors (India) Limited 1953 Indlaw SC 97 : 1953 Indlaw SC 97; Dwarkadas Shrinivas v The Sholapur Spinning and Weaving Company Limited 1953 Indlaw SC 543 : 1953 Indlaw SC 543; Bengal Immunity Company Limited v State of Bihar 1954 Indlaw SC 7; Waman Rao and. Others v Union of India and Others 1980 Indlaw SC 300 : 1981 (2) SCC 362; United States v International Boxing Club 1980 Indlaw SC 300; (1946)362 US 572; State of Washington v W.C. Dawson and Company[(1 924)264 US 21 9 : 68 Law Ed 646]).

9. 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"".

10. 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.

11. 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.

"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.

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 evaluation 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 and 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".

12. 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.

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.

13. 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.

14. Therefore, rightly the Full Bench when it declared the law upholding the law laid down in the Veerashaiva Co-operative 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 Veerashaiva Co-operative 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.

15. 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 Co-operative Societies or such other appropriate forum for challenging the orders passed by the Co-operative 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;

Banahatti Co-Operative Mills Limited, and Others v State of Karnataka and Others

Bench	H. L. DATTU, H. N. NAGAMOHAN DAS
Where Reported	2005 Indlaw KAR 196; AIR 2005 KAR 307; 2005 (4) KarLJ 5

Case No : W. A. Nos. 5369-5372 of 2004; W. A. Nos. 5327-5328, 5244, 5375, 5444, 5446 of 2004, 25, 191, 1501, 1518 of 2005 and 1856 of 2005 (Cs-Res) Etc.

The Order of the Court was as follows :

Appellants are the Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act'). The appellants-societies are engaged in different activities like, banking, marketing spinning, etc. The Director of Co-operative Audit by his notification dated 17-2-2001 bearing No. CMW 823 CLM 96, increased the audit fee from 15 paise to 20 paise for every Rs.100/- on the working capital or business turn over of the Societies. Pursuant to this notification, the audit of some of the societies was conducted and demand notices were issued. The appellants societies being aggrieved by the impugned notification dated 17-2-2001 and the demand notices have questioned the same before this court by filing writ petitions. The main contention of the appellants -societies before the learned single Judge in the writ petitions was that the impugned notification is arbitrary, illegal, without jurisdiction and contrary to Rule 30 of the Karnataka Co-operative Societies Rules (hereinafter referred to as 'Rules'). The appellants societies further contended that the levy of revised audit fee has no co-relation to the actual service rendered by the co-operative Audit Department. The levy of revised audit fee on the basis of working capital or turn over of the society is arbitrary, illegal, and discriminatory. The respondents filed their statement of objections in the writ petitions inter alia contending that earlier, the Government vide notification dated 27-10-1986 revised the audit fee from 10 paise to 15 paise on every Rs.100/- working capital or turn over of the society. Nearly after fifteen years, it is found that the audit fee collected under the earlier Government notification of 1986 was totally insufficient to meet the expenditure of the Co-operative Audit Department which is exclusively meant for auditing the accounting of societies in the State of Karnataka. Therefore, the revision of audit fee under the impugned notification dated 17-2-2001 by enhancing the same from 15 paise to 20 paise on every Rs.100/- working capital or business turn over of societies is just and proper. It is further contended that under the impugned notification, the audit fee is completely exempted for certain deserving categories of Co-operative Societies like Student Co-operative Societies, SC/ST, Co-operative Societies, Women co-operative Societies, Medical Aid Co-operative Societies, Sports Promotion Societies, Ex. servicemen Co-operative Societies, Leather Workmen, Pottery makers, Basket Makers Co-operative Societies, etc. and levied only 50% in respect of Co-operative Societies serving the Agricultural Sector. This classification of Societies is well within the power of Legislature and the same is not discriminatory. Therefore, the element of quid pro quo is not always a sine qua non for the levy of audit fee.

On the basis of the pleadings and on the submissions made at the Bar, the learned single Judge framed the following points for consideration:

"(a) Whether the audit fee as revised by the State Government is without jurisdiction?

(b) Whether levy and collection of audit fee on the basis of Working Capital or Turn-over is illegal, arbitrary and contrary to rule 30 of the Rules?

(c) Whether the audit fee fixed in the impugned Government order should be co-related to the actual service rendered by the Audit Department?

(d) Whether the impugned action amounts to sub-delegation of power to the Director of Co-operative Audit by the State Government?"

The learned single Judge by a detailed order and on consideration of the rival contentions and material on record held all the points in favour of the respondents and against the writ petitioners and dismissed all the writ petitions by a common order. Hence, these appeals.

The learned single Judge rejected the contention of the appellants that the notification issued by the Director of Audit amounts to sub-delegation of power. Section 129 of the Act, empowers the State Govt. to frame the Rules and to amend the Rules, to carry out the purpose of the Act. The State Govt. framed Rule 30 of the Rules empowering the Director of Audit to fix the scale of audit fee with the prior approval of the State Govt. It is not the case of appellants that the impugned notification revising the audit fee is issued by the Director of Audit without the prior approval from the Govt. On the other hand the impugned notification is issued after approval from the Govt. We respectfully agree with the reasoning of the learned single Judge in concluding that therefore there is no sub-delegation of power to the Director of Audit.

The contention of the learned counsel for some of the appellants that the Director of Audit passed an order posting the audit staff on deputation on whole time basis for concurrent audit of accounts on day-to-day basis as well as final audit of the accounts. The Audit Department instead of posting whole time audit staff have only conducted the final audit at the end of the year and issued demand notices to pay the audit fee on per centage basis as per the impugned notification. This action of the respondents/ Audit Department resulted in serious financial burden on some of the appellant Societies and therefore the appellants contend that the demand notices issued by respondents are bad in law. A reading of the orders passed by the Director of Audit to post whole time audit staff is conditional and subject to availability of Audit Staff. Due to non-availability of audit staff the co-operative Audit Department has not posted the whole time audit staff to the appellant Societies. At the end of the Co-operative year the Audit Department conducted annual audit of the respective co-operative societies and issued demand notices as per the impugned notification and they are in accordance with law. No right is accrued in favour of appellants under the orders passed by the Director of Audit to post a whole time audit staff. In the event of appellant societies are provided with whole time audit staff then only they are liable to pay as per the provisions of Rule 441 of the Karnataka Civil Services Rules as audit charges. On the other hand the audit of appellant societies are conducted at the closure of the year by the co-operative Audit Department and therefore they are liable to pay the audit fee on per centage basis under the impugned notification. For the reasons stated above, we reject the contention of learned counsels for appellants that the demand notices are bad in law.

The learned single Judge by well reasoned order rejected the contentions of appellants and dismissed the writ petitions. We are in respectful agreement with the reasoning of the learned single Judge. The appellants have not shown to us any infirmity in the orders passed by the learned single Judge. There are no justifiable grounds to interfere with the order of the learned single Judge and to take different view. Hence, the writ appeals are liable to be dismissed.

K. M. F. Employees Federation and others v Commissioner of Labour in Karnataka, Bangalore and others

Bench	R. GURURAJAN
Where Reported	2005 Indlaw KAR 399; 2005 (6) KarLJ 610

Case No : W.P. No. 27441 of 2004 (L-RES)

The Order of the Court was as follows :

1. WP. No. 27441/2004 is filed by Karantaka Milk Federation Employees Federation and three others seeking for a writ of certiorari to quash the endorsement dtd 24-6-2004 issued by the labour commissioner. In addition petitioners are also seeking for a direction directing the third respondent to refer the dispute to the industrial tribunal for adjudication. Alternatively, petitioners states that a direction be issued to the Registrar of co-operative societies to adjudicate the dispute in terms of the averments. Petitioners in these circumstances are before me.

2. Thereafter there is a specific exclusion of ID Act in terms of Act 2/2000. This very issue was considered by this court on an earlier occasion in WP No. 14792-804/1998 dtd. 9-3-2000 and a direction was issued to the management to approach the Registrar under Sec. 70 of the Karnataka Co-operative Societies Act. This judgment was subsequently considered in a reference by a Full Bench in a judgment reported in ILR 2003 KAR 2531 2003 Indlaw KAR 211. A Full Bench after noticing the various case laws ultimately would say in para 30 reading as under;

   "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 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 co-operative society, such disputes may be adjudicated by the Registrar of the Co-operative Societies as stated. A reference can be made to the decision taken by the Supreme Court in Ram Sahan Rai vs Sachiv Samanya Prabandhak* 2001 Indlaw SC 20275*, wherein it was observed that the mere fact that there may be occasions where the Union or the Federation of the societies may raise certain demands which may not fall within the ambit of Sec. 70 of the* KCS Act *and cannot be decided by the Registrar or his nominee and that such disputes can be referred to the Industrial Tribunal or Labour Court, would not render the provisions of the Amendment Act unconstitutional as the Amendment Act incorporates the provisions ousting the jurisdiction of Industrial tribunal or labour court only in respect of matters which can be decided by the Registrar or his a nominee in respect of a dispute under sec. 70 of the* KCS Act*."*

   In respect of all matters which are not covered under Sec. 70, the ID Act. applies. Since the present dispute is not covered under Sec. 70 of the Co-operative Societies Act, the Industrial Disputes Act alone is applicable in terms of the Full Bench judgment and in terms of Sec. 70 itself. In these circumstances, the endorsement issued by the Commissioner has to be set aside and the matter is to be reconsidered by him in accordance with law.

Tumkur Grain Merchants Co-Operative Bank Limited v K. B. Lingaraju S/o K. S. Basappa and others

Bench	H. L. DATTU, H. N. NAGAMOHAN DAS
Where Reported	2005 Indlaw KAR 465; 2005 (6) KarLJ 481

Case No : Writ Appeal No. 1501 of 2004 (CS-RES)

The Order of the Court was as follows :

1. The appellant before us is a society registered under the provisions of the Karnataka Cooperative Societies Act, 1959 (hereinafter for the of brevity and clarity referred to as "Act, 1959") The 1st respondent before us is a member of the appellant bank. While he was the member of the 1st appellant bank, he also became a member of the 3rd respondent bank.

2. The appellant bank had approached the Joint Registrar of Cooperative Societies, Bangalore, to invoke the provisions of S. 17 of the Act and to disqualify the 1st respondent herein as a member of the appellant bank. By an order made on 13.3.2003, the Joint Registrar of Cooperative Societies-2nd respondent herein had accepted the request of the appellant bank and had disqualified the 1st respondent as a member of the appellant bank. Aggrieved by this action of the 2nd respondent was before this Court in WP No.35194/2003.

3. A reading of the aforesaid provisions would indicate that, a person is ineligible for admission as a member of a cooperative society, it he has incurred any disqualification as envisaged u/cls. (a) to (d) of sub-s. (1) of S. 17 of die Act. For our purpose, cl. (d) of sub-s. (1) of Sec. 17 of the Act is relevant It says, that if a person is already a member of a cooperative society carrying on business of the game kind as itself; then that person is ineligible for admission as a member of a cooperative society, carrying on business of the same kind as itself, then that person is ineligible for admission as a member of a cooperative society.

   The legislature knowingly has used the expression "deemed" to deem that, a person who has acquired the disqualifications, which are contemned u/cls. (a) to (d) of sub-s. (1) of S. 17 of the Act, is ineligible to be a member of the other society. This is all that we see in S. 17 of the Act.

4. At the first blush, the submission of the learned Counsel for the appellant looks attractive, but on a deeper consideration of the matter, in our opinion, it has no merit whatsoever. In our opinion, since under S. 17 of the Act, the legislature has put an embargo to suggest that, no person is eligible for admission, if he is already a member of the cooperative society carrying on the business of the same kind as the appellant bank.

   In that view of the matter, in our opinion, the learned Single Judge is justified in coming to the conclusion that, in the present case, the 1st respondent is disqualified not as a member of the appellant bank, but as a number of the 3rd respondent bank.

5. In view of fee above, we do not see any good grounds in the appeal and therefore, the appeal is rejected. Ordered accordingly.

Appeal dismissed

Arecanut Processing and Sale Cooperative Society Limited, Shimoga by its Secretary v Abida Ali W/o Mohammed Kasim and others

Bench	H. L. DATTU, H. N. NAGAMOHAN DAS
Where Reported	2005 Indlaw KAR 484; 2005 (6) KarLJ 500

Case No : Writ Appeal No. 7068 of 2003 (CS-RES)

The Order of the Court was as follows :

1. The appellant before us is a Cooperative Society registered under the provisions of the Karnataka Cooperative Societies Act, 1959 (hereinafter tor the sake of brevity referred to as "the Act"). The capital of the Society is primarily contributed by the members those, who have interest in the capital funds of the Society We have reason to say so, which will be borne out as the judgment proceeds.

2. The learned Single Judge should have allowed the parties to agitate the matter before an appropriate forum. In the name of helping the poor agriculturists, this Court is not expected to cross the limits laid down by the Apex Court while exercising its powers u/art. 227 of the Constitution. At this stage, we intend to notice the pertinent observations made by the Apex Court in the case of Kerala Solvent Extractions Limited Vs. A. Unnikrishnan & Another 1993 Indlaw SC 1791. In the said decision, the Court has observed:

   "in recent times, there is an increasing evidence of this, perhaps well meant, but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The relies granted by the Courts must be seen to be logical and tenable within fee framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate info misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of its "conclusions. Expansive judicial mood of mistaken and misplaced compassion at the expense of legitimacy of the process will eventually lead to mutually irreconcilable .u tuitions and denude the juridical process of its dignity, authority, predictability and responsibility."

3. The capital funds of the Society primarily belongs to all the members of the Society. All the members are interested in growth of the Society. A borrower of the funds of the Society has a legal obligation to discharge the loans borrowed and when it is not done, the Society has to take steps to recover the same to safeguard the interest of the members of the Society, who have invested in the capital funds of the Society. When steps have been taken to recover the dues from me borrower and has culminated in the award passed by the competent authority and that award is confirmed by a superior forum under the Act, this Court in the name of extending its helping hand, cannot deprive the members of the Society, the capital funds invested by them to the capital fund of the Society.

This, in our opinion, is again impermissible, in view of the above, we find it extremely difficult to sustain a sympathetic order passed by the learned Single Judge. Therefore, the order requires to be set aside.

I. Liberty is reserved to the legal representatives of respondent No. 1 and respondent No. 2 to produce such material which is available to them, if and when an execution petition is filed by the appellant-Society for executing the award pissed by the competent authority in Dispute No. 429/90-91.

II. Liberty is also reserved to the legal representatives of respondent No. 1 and respondent No. 2 to take up all such contentions, which are available to them including some of the contentions raked in the writ petition.

B. Anjanappa and Others v State of Karnataka and Others

Bench	S. R. NAYAKAND, C. R. KUMARASWAMY
Where Reported	2005 Indlaw KAR 83; 2006 (1) KarLJ 233
Case Digest	**Subject:** Constitution; Land & Property **Keywords:** Society **Summary:** (A) Land & Property - Land Acquisition Act,1894, ss.4(1),6(1) - Cabinet decision - Misreading of - Validity - State Govt. had taken possession of land - Landowners filed petitions challenging acquisition proceedings - HC quashed notification to extent of subject land - Govt. accorded approval for acquisition of subject land - Notification u/s.4(1) of the Act was issued to acquire subject land - Landowners filed writ petitions which were dismissed as premature - On appeal, DB upheld order of Single Judge - Land Acquisition Officer(LAO) recommended State Govt. for issuance of final notification u/s.6(1) of the Act - Revenue Minister passed order to issue final notification whereby order was issued to withdraw notification passed u/s.4(1) of the Act - Society preferred petition wherein Single Judge quashed order - Hence, instant Appeals - Whether Single Judge is justified in observing that there is no decision by Cabinet to effect that State Govt. has taken policy decision not to acquire lands for benefit of Society. Held, Single Judge is absolutely justified in observing that 'there is no decision by the Cabinet to effect that State Govt. has taken a policy decision not to acquire lands for benefit of Society. Decision taken by Cabinet only directs that House Building Co-operative Societies should be asked to directly negotiate with farmers/landlords for purchase of lands required by them. Cabinet note also states that if landowners refuse to sell land to the Societies, then, Societies could approach Govt. for acquisition of lands required by them under the Act. Thus, it is quite clear from Cabinet note and Cabinet decision that there was no embargo to acquire the land required by the House Building Co-operative Societies for formation of layouts. If there is no such Cabinet decision, then, it follows, as a necessary corollary that circular is obviously based on misreading or misunderstanding of Cabinet decision and without any basis. Appeals dismissed. (B) Land & Property - Land Acquisition Act,1894, ss.4(1),6(1) - Presentation of scheme - Whether Society had submitted a scheme for scrutiny before Three Men Committee or State Level Co-ordination Committee. Held, entire acquisition of land in earlier s.4(1) notification and final notification u/s.6(1) was scrutinized by Three Men Committee, State Level Co-ordination Committee and prior ap-proval was accorded as required u/s.3(f)(vi) of the

Act for initiation of acquisition proceedings of the land under above noted two earlier notifications which necessarily included subject land also which are notified for reacquisition in present acquisition notification. It would be relevant to note that even though earlier acquisition notifications were quashed by HC in var-ious writ petitions, quashing was confined to lands of only those writ petitioners. Further, So-ciety had requested Govt. in its letter to reacquire subject land in favour of Society under the Act. This action on the part of the State Govt. itself could be construed as a scheme, if at all second acquisition of very same lands under earlier scheme required any such fresh scheme to be submitted. Thus, it cannot be said that no scheme has been submitted by Society for present acquisition for scrutiny before Three Men Committee or State Level Co-ordination Committee. Appeals dismissed.

(C) Land & Property - Land Acquisition Act,1894, ss.4(1),6 - Karnataka Government (Transaction of Business) Rules,1977, r.66 - Acquisition proceedings - Quashing of - Whether acquisition proceedings has lapsed because no final declaration u/s.6(1) of the Act was issued within period of one year from date of preliminary notification u/s.4(1) of the Act.

Held, in terms of r.66 of the Rules all administrative decisions connected with land acquisition shall be taken in the Administrative Department concerned in the Secretariat under orders of the Minister-in-charge. It is evident that it is Revenue Minister alone who is competent to issue direction and as rightly held by Single Judge that when once Revenue Minister issued such a direction, it would not be open for any authority in State Govt. to take any different decision which is inconsistent with decision already taken. Further, when Revenue Minister directed issuance of a declaration as contemplated u/s.6(1) of the Act it was well-within a period of one year from the date of publication of the preliminary notification made u/s.4(1) of the Act in the official gazette, what remains is the procedural aspect of publishing the said declaration in Official Gazette as contemplated u/s.6(2) of the Act. Thus, acquisition proceedings initiated by issuing notification u/s.4(1) of the Act cannot be lapsed because no final declaration u/s.6(1) of the Act was issued within a period of one year from the date of preliminary notification u/s.4(1) of the Act. Appeals dismissed.

(D) Land & Property - Land Acquisition Act,1894, ss.4(1),6(2) - Want of parties - Whether writ petition was liable to be dismissed in limine as the affected landlords were not made parties to the writ petition.

Held, right to oppose the acquisition of subject land will accrue to landowners only when declaration u/s.6(1) of the Act is issued. In this case, the formal declaration in the form of the final notification u/s.6(1) of the Act is not yet issued. Secondly, the owners of the acquired lands have not challenged the order of the Revenue Minister dt.20-11-1999 directing the concerned authorities to issue notification u/s.6(1) of the Act. Be that as it may, though we cannot say that the landlords are not proper and necessary parties to the writ petition filed by the Society the endorsement at Annexure-M, since the aggrieved landowners

	have preferred the writ appeals and the matter was heard threadbare on merit, and since the impugned en-dorsement could not be sustained in law. Thus, there is no justification for to dismiss writ petition filed by the Society in limine for appellant solely on the ground that the owners of the subject land were not made parties to the writ petition. Appeals dismissed. Ratio - Notification issued u/s.6 of the Act is final in nature and it is a conclusive proof if evidence.

Case No : Writ Appeal No. 2532 of 2004 Connected With W.A. Nos. 2086, 2300 and 2531 of 2004

Even the Cabinet note states that the House Building Co-operative Societies should be encouraged to purchase the lands required by them from the landowners directly for forming layouts.

Thus, it is quite clear from the Cabinet note and the Cabinet decision that there was no embargo to acquire the land required by the House Building Co-operative Societies for formation of layouts. If there is no such Cabinet decision, then, it follows, as a necessary corollary that the circular dated 21-3-1998 is obviously based on a misreading or misunderstanding of the Cabinet decision dated 20-12-1997 and without any basis.

Therefore, the contention of the learned Government Advocate that no scheme has been submitted by the Society for the present acquisition is totally misconceived and against the record.

In fact, this letter Annexure-E, if we may say so, clinches the issue and is a direct answer to the argument advanced by Sri G.S. Visweswara that the Society is a bogus society having committed illegalities and irregularities including that of admitting bogus or ineligible members etc In this regard reference could be made to paragraphs 2 to 4 of the letter of the Registrar of Co-operative Societies, Annexure-E, dated 23-6-1999. They read as follows.-

Their Lordships of the Supreme Court held as under:

"22. In the present case there has been contravention of S. 3(f)(vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said section before steps for acquisition of the lands were taken. The report of Shri G.V.K Rao points out as to how the appellant-Society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for 'public purpose', to outsiders as part of commercial venture, undertaken by the office-bearer of the appellant-Society. We are in agreement with the finding of the High Court that the statutory notifications issued u/ss. 4(1) and 6(1) of the Act have been issued due to the role played by M/s. S.R. Constructions, respondent 11. On the materials on record, High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.

The appeals are accordingly dismissed. But in the circumstances of the case there shall be no orders as to costs.

"... But according to us, the facts of the present case are similar to the case of HMT House Building Co-operative Society, and there is no scope to interfere with the order of the High Court, quashing the notifications u/ss. 4(1) and 6(1). Accordingly the special leave petitions filed on behalf of the petitioner-Society are dismissed. No costs.

Thus, it is evident that the basis upon which the Supreme Court upheld the judgment of this Court in Narayana Reddy's case and quashed the entire acquisition notifications and also ordered restoration of possession of the lands concerned to the landowners therein, because, there was no prior approval of the scheme relating to acquisition of those lands at Bangalore South Taluk u/s. 3(f)(vi) of the Act. Whereas, in the instant case, as stated above, there is prior approval u/s. 3(f)(vi) for the Nagavara project. Thus, the claim of the landowners that they are in possession of the subject land on the basis of the judgment of the Supreme Court in HMT HBCS case is not acceptable to us.

The other contention of Sri G.S. Visweswara that the observation made by the learned Single Judge in the impugned order that the Society continued in possession of the subject land was contrary to the finding of the very same learned Single Judge in the earlier writ petitions, is untenable. over possession of the lands acquired under the earlier acquisition notifications and handed over to the Society. The learned Single Judge, therefore, according to us, rightly clarified the actual factual position that the Society in fact was put in possession of the property after the Government took over possession. There is absolutely no evidence to show that after the Society was put in possession of the subject land by the State Government, the State Government again took back the possession of the subject land from the Society and handed over the same to the owners of the subject land.

Before parting with this case, a submission made by Sri Udaya Holla, learned Senior Counsel appearing for the impleaded respondent 22 in W.A. No. 2531 of 2004, Karnataka State Muslim Federation, might to be noted. Sri Udaya Holla would submit that the Federation having purchased 17 acres 3 guntas of land from the original owners has put up construction to house Engineering College run by it and if acquisition of the subject land is allowed for the benefit of the Society, it would result in great prejudice to his client. First of all, the Federation has not produced sale deeds for having purchased the land claimed by it from the original owners; secondly, Sri CM. Ibrahim, the President of the Federation, had challenged the preliminary notification earlier along with other landowners and his writ petition and writ appeal were dismissed. If the Federation, despite issuance of the acquisition notification, has put up construction, it has done so at its peril. However, it is stated by the learned Counsel for the Society that the above claim made on behalf of the Federation is factually incorrect. The Federation having stepped into the shoes of the original owners, it should sail or sink with its vendor/s and it cannot have any better right or interest than what its vendor/s had.

In the result and for the foregoing reasons, we dismiss all the writ appeals, however, with no order as to costs.

Bhavani Housing Co-Operative Society Limited (Registered), Bangalore v Bangalore Development Authority and Another

Bench	M. M. Shanthanagoudar
Where Reported	2005 Indlaw KAR 214; 2006 (4) KarLJ 598

Case No : W.P. No. 35078 of 2003 (Bda)

The petitioner has sought for writ of certiorari for quashing the decision of the 1st respondent dated 3-10-2002 by which, the 1st respondent-BDA decided to execute the Civic Amenity Site Lease Agreement in favour of the 2nd respondent-Trust and also for quashing the Civic Amenity Site Lease Agreement dated 27-2-2003 executed by the 1st respondent-Bangalore Development Authority CBDA' for short), in favour of the 2nd respond en t-M/s. Appalo Educational Trust (Regd.) ('Trust' for short) registered before the Sub-Registrar, Bangalore Urban District.

The words 'open spaces' is not defined in 'BDA' Act. However, the words 'Civic Amenity' is defined under Section 2(bb) of the ' BDA Act '. The words 'Civic Amenity' as per the said definition means various things viz., 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 of a bus depot, a centre for educational, religious, social and cultural activities or for philanthropic service run by a Co-operative Society Registered under the Karnataka Co-operative Societies Act, 1959 etc. Thus, it is clear that "school" comes within the definition of 'civic amenity'.

"2(f) "Open space" means any land on which there are no buildings or of which not more than one twentieth part is covered with buildings and the whole or the remainder of which is used or meant for purposes of recreation, air or light or set apart for civic amenity purposes".

To decide the said question as to whether the BDA can deal with the 'CAS' in any manner, even without the same being relinquished, it is relevant to note the following provisions of Rule 2(b) of the BDA (Allotment of Civic Amenity Sites) Rules, 1989 and Section 32(5) of the BDA Act once again which read thus:

"Despite agreement and the provisions of Section 32(5) of the BDA Act, the property was not transferred in favour of the 2nd respondent. In the absence of the transfer of said 'CAS' in favour of the T3DA, the 'BDA' had not authority under law to allot the site 1st respondent. The learned Single Judge erred in law by holding that no deed for the purpose of transfer was needed. The transfer contemplated under Section 32(5) of the BDA Act is a mandatory provision which when completed authorises the authority to deal with such transferred property in any manner it likes".

Consequently, the Division Bench in the aforesaid judgment has set aside the judgment of learned Single Judge in the case of Residents of MICO Layout, II Stage, Bangalore. Thus, the law laid down by the learned Single Judge in the decision cited supra is no longer a good law in view of the judgment passed in W.P. No. 6869 of 1996.

In view of the above, the contention of the learned Counsel for the BDA that it has suo motu taken possession of the 'CAS' in question under the Mahazar dated 3-12-2001 cannot be accepted. Admittedly, in this case, there is no relinquishment of 'CAS' in question by the petitioner in favour the 1st respondent-BDA. In this view of the matter, the petitioner's contention that as it has not relinquished the 'Civic Amenity Site' in question in favour of the 1st respondent-authority, the 1st respondent cannot claim right over the same and consequently cannot deal with the said 'CAS', is to be accepted. Thus, the lease agreement entered into between first and second respondents is liable to be set aside.

(a) The decision taken by the BDA dated 3-10-2002 to execute the lease deed in respect of Civic Amenity Site situated in Bhavani House Building Co-operative Society, Banashankari III Stage, Bangalore in favour of the 2nd respondent is quashed;

(b) The petitioner is directed to relinquish the Civic Amenity Site situated in Bhavani House Building Co-operative Society Layout, Banashankari III Stage, Bangalore as per the terms of the sale deed dated 24-10-1998 (vide Annexure-C) within two months from today in favour of BDA;

(c) The 1st respondent-BDA shall thereafter lease the said schedule 'CAS' in favour of the 2nd respondent-Trust by executing fresh lease deed without any delay, on the same terms and conditions as contained in the lease deed dated 27-2-2003 vide

Krishna v Kedarnath and Others

Bench	V. GOPALA GOWDA, A. B. Hinchigeri
Where Reported	2005 Indlaw KAR 306; AIR 2006 KAR 21; 2006 (3) BC 9; 2006 (1) DRTC 356; 2005 (6) KarLJ 337

Case No : R.F.A. No. 167 of 2005.

1. The brief facts leading to these appeals are that, UCO Bank has given loan by mortgaging some properties. Since default was committed by the borrowers in the matter of repayment, the Bank approached the Debt Recovery Tribunal and steps had been taken to sell the mortgaged properties in public auction. At that juncture, the plaintiffs filed the suits for partition for the joint family properties, which also includes the properties mortgaged to the Bank, and obtained status quo order. In those circumstances, the Bank filed I.As. II under O. VII, R. 11(d), C.P.C. requesting to reject the plaints on the ground that suits are barred under S. 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act'). The trial Court allowed the applications and consequently rejected the plaints. Aggrieved by the same these two appeals are filed.

   31. Admittedly, in our case, the petitioners have filed the suit for partition including the item, in respect of which, the 3rd respondent has taken out proceedings to bring the same for sale without the intervention of the Court and till the rights of the parties are determined by the Civil Court, and the Civil Court alone could decide and determine the rights of the parties in respect of their respective claims in the suit for partition, the 3rd defendant, though a secured creditor, cannot bring the property for sale by invoking the bar under S. 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or the bar under S. 13 of the Act. The Court below has not taken into consideration of these aspects and as a matter of fact, these silent features were not brought to the notice of the Court below, which resulted in passing of an erroneous order, which is liable to be set aside."

   It is stated that all the suit schedule properties are not mortgaged to the Bank and, therefore, Ss. 13 and 19 of the Act are not applicable to the case. The counsel submits that right of the parties have to be determined by the Civil Court on the basis of the documentary and oral evidence that will be brought on record. Therefore, he seeks to set aside the orders/judgements under appeal.

   8. For the reasons stated above, these appeals are allowed. The orders/judgements and decrees under appeals are set aside. The status quo order passed in the suits shall stand dissolved as there is express bar under S. 34 of the Act. The Bank is at liberty to proceed for the recovery of its amount by taking necessary steps in respect of the mortgaged properties by the debtors under the provisions of the Act, as the same are mortgaged for collateral security of the loan amount borrowed by them.

Sunil Venkatesh Hegde S/o Venkatesh and another v Assistant Registrar of Cooperative Societies, Karwar and another

Bench	N. K. PATIL
Where Reported	2005 Indlaw KAR 454; 2005 (5) KarLJ 356

Case No : W.P. No. 15628 of 2005

The Order of the Court was as follows :

1. The grievance of the petitioners in this writ petition is that, they are the Ex-directors of the second respondent-bank. When they were the directors of the second respondent-bank, the first respondent and other authorities have not initiated any proceedings regarding the mis-management or mis-administration of the second respondent-bank. It appears that, behind the back of the petitioners, a proceeding has been initiated u/s. 64 of the Co-operative Societies Act (hereinafter called as " the Act") and appointed an Officer to submit the report. On the basis of the alleged report submitted by the Officer, the matter was referred to the concerned authority, as envisaged u/s. 68 of the Act. Being aggrieved by the order passed u/s. 68 of the Act, petitioners have filed an appeal on the file of the Deputy Registrar of Co-operative Societies, Karwar and the same is pending adjudication. Be that as it may, the first respondent herein has issued a show-cause notice vide Annexure-B dated 18.3.2005 to the petitioners, as to why action should not be taken against them for initiating criminal proceedings on the basis of the office order dated 21.5.2004 and the report submitted by the Officer on 31.7.2004.

   Therefore, in view of non functioning of these petitioners as per the bye-law, there is no other option for the first respondent, except to give sanction for initiating a criminal proceedings against them. Further regarding the specific submission made by the learned counsel for the petitioners that the appeal filed by them is pending adjudication before the competent authority, the learned AGA submitted that, no interim order has been granted by the Deputy Registrar of Co-operative Societies- being the appellate authority and therefore there is no prohibition for the first respondent to take necessary steps, as envisaged under the Act. Therefore, he submitted that the impugned order passed by the first respondent is in accordance with law and the interference by this Court may not be justifiable. Nor the petitioners have made out any good grounds to interfere with the same.

   "where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of the parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment." In the instant case, the impugned order passed by the first respondent is of civil consequences and it will be a permanent stigma for the persons against whom sanction has been accorded to prosecute a criminal proceedings, that too, without affording an opportunity to the concerned persons. Sub Cl. (i) of Sub Sec. 3 of S. 111 specifically states that, "without giving to the person concerned

an opportunity to represent his case". In the instant case, in pursuance of the show-cause notice, these petitioners have filed their detailed objections and there is no whisper regarding the stand taken by them in the impugned order passed by the first respondent nor it is the case of the respondent that an opportunity has been provided to the petitioners. Learned AGA after going through the impugned order has rightly submitted that no opportunity as such has been given and after considering their objections and materials available on file, the first respondent has passed the impugned order. Therefore, I am of the considered view that the impugned order passed by the first respondent is liable to be set aside, in view of non compliance of principles of natural justice and not conducting the proper enquiry and non affording an opportunity to the petitioners.

(i) The matter stands remitted back to the first respondent for reconsideration afresh in accordance with law, and to take appropriate decision after affording an opportunity to the petitioners and after conducting enquiry in strict compliance of the mandatory provisions of the Co-operative Societies Act and Rules, as expeditiously as possible, within an outer limit of four months from the date of receipt of the copy of this order.

Karnataka Co-Operative Milk Producers Federation, Bangalore and others v Government of Karnataka Department of Labour Represented by its Commissioner and Principal Secretary Dr. Ambedkar Veedhi, Bangalore and another

Bench	R. GURURAJAN
Where Reported	2005 Indlaw KAR 561; 2005 (6) KarLJ 596

Case No : W.P. No. 3576 of 2002 (L-RES) Connected with W.P. No. 424 of 2002 W.P. No. 1327 of 2002 W.P. No. 2212 of 2002 W.P. No. 2180 of 2002 W.P. No. 3786 of 2002 W.P. No. 3787 of 2002 W.P. No. 3789 of 2002 W.P. No. 5275 of 2002 W.P. No. 5276 of 2002 W.P. No. 5287 of 2002 W.P. No. 5307 of 2002 W.P. No. 7543 of 2002 W.P. No. 17130 of 2002 W.P. No. 24238 of 2002 W.P. No. 48467 of 2001 W.P. No. 48206 of 2001

The Order of the Court was as follows :

1. WP No. 3576 of 2002:

   Petitioner Karnataka Cooperative Milk Producers Federation Limited, Bangalore is formed on the pattern of Anand Cooperative Society (Amul) in the State of Gujarat. It Works in three line system i.e. Petitioner Society as an apex body, District Cooperative Milk Producers Union at District level and primary dairy cooperatives at village levels. Petitioner society and the district milk unions are administered independently having its own Board of Directors and having separately registered under the Karnataka Cooperative Societies Act, 1959. Milk producers supply milk at society level, both in the morning and in the evening shifts, and the society is managed by a committee and the primary society staff. District milk-Unions organise milk routes and by mean of hired vehicles the milk is collected from village dairy cooperatives. It is the responsibility of the transport contractor to produce deliver milk at chilling centers/dairies in a specified time. If the milk is not lifted or if there were to be delay in arrival, of - the truck, the. contractor would be held , for losses. Milk is .procured on all 365 days, even if it is rainy day or summer. The milk received at the chilling centre in milk. cans is unloaded, chilled, tested, empty cans. are .cleaned and are loaded into the trucks. Milk received at dairy is processed, packed and stored in cold storage.

2. In the light of this order, Government has chosen to abolish contract labour in the light of the recommendations of the Board in terms of the material available on record. In the light of the order of this Court, petitioner cannot complain any discrimination in the matter. Abolition has been done in the light of the order of this Court and that therefore, petitioner cannot plead discrimination in the matter, of abolition of contract labour. This contention requires rejection.

   "If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predisposition and the process of education, formal and informal, create attitudes which precede reasoning in particular Instances

and which, therefor, by definition, are prejudices." (Per Frank, J. in Linahan, RE.(1943) 138 F 2d 650, 652)

3. *It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest -- whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred."*

4. Petitioners also has rely on a judgment of the Supreme Court in Ranjit Thakur v. Union of India and others, AIR 1987 SC 2386 1987 Indlaw SC 28438 in support of his submission with regard to bias. In para-7 the apex court has ruled as under:

"As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge Is not to look at his own mind and ask himself/ however, honestly, "am I biased?" but to look at the time of the party before him .... Thus tested the conclusion becomes inescapable that, having regard to the antecedent events, the participation of respondent 4 in the 'Court-Martial rendered the proceedings quorum non judice."

1986(I) LLJ 412 1985 Indlaw SC 400. In the said judgment, the Supreme Court inparagraph-3 has ruled reading as under:

"It is net necessary that the person appointed on the Committee to represent the employers in a scheduled employment should be engaged for profit in the particular employment. It is enough if a nexus exists between the person so appointed to represent the employers in the particular employment and the particular employment concerned. It is enough if such members are intimately connected and if they are aware of the particular scheduled employments."

They say that contract workers are engaged in the job of loading and unloading of milk cans, dumping of cans, etc., etc. Unfortunately, the Committee while recommending abolition of contract labour with regard to unloading of milk and feeding of milk into milk processing plant within the factory premises, etc., has not chosen to consider the test in terms of S. 10(2) of the Act, except saying that they can be clustered and they have not. gone into details with regard to requirement of S. 10(2) notwithstanding the objections made by the petitioners. In fact, they say that it is not necessary to traverse all the submissions made by the Dairy management since they are not germane to decide the issue u/s. 10(2) (a), (b), (c) and (d) of the Act.

5. In the circumstances, I am view that the abolition of contract only in so far as (1) Unloading of milk and feeding of raw milk into the milk processing plant within the factory premises, (2) Milk and milk products processing, (3) Packing of milk and milk products and dispatching these products for retailing and (4). Cleaning of the work areas, in dairy industries, is concerned, require my interference in these petitions.

However, State Government is directed to examine the matter afresh in the light of the Steel Authority of India Limited and others, Etc, Etc, v. National Union Water Front Workers And Others, Etc., AIR 2001 SC 3527 2001 Indlaw SC 20484, if they so desire, in accordance with law. Ordered accordingly. No costs.

Petitions partly allowed

N. R. Suresh S/o Ramaiah v
H. R. Ramegowda S/o H. D. Rangappa Gowda and others

Bench	N. K. PATIL
Where Reported	2005 Indlaw KAR 461; 2005 (6) KarLJ 133

Case No : W.P. No. 18534 of 2005 (CS - ELE)

The Order of the Court was as follows :

1. The petitioner, being aggrieved by the order dated 20th May 2005 bearing No. JRB/ APPEAL/04/2004-05 on the file of the fourth respondent only in so far as it relates to permitting the first respondent to contest in the election to the Committee of Management of the third respondent -Co-operative Society and the declaration of result of election that, the first respondent as having been duly elected to the Committee of Management of the third respondent on the the of the second respondent dated 3rd July 2005 vide Annexures C and D respectively, has presented the instant writ petition. Further, petitioner, has assailed the correctness of the order dated 21st July 2005 in dispute No. 5/2005-06 on the file of the 5th respondent vide Annexure E and sought for a declaration, to declare that, first respondent is not eligible to contest in the election to the Committee of Management for a period of four years from 5th July 2004 in view of S. 30 of the Karnataka Co-op. Societies Act.

2. The grievance of the petitioner in the instant case is that, petitioner is one of the elected members to the Committee of third respondent - Co-operative Society in the election dated 3rd July 2005. On the basis of the report submitted by fifth respondent, regarding mis management and misappropriation of the fund of the third respondent - Co-operative Society, for the co -operative years 1999-2004, the sixth respondent - Deputy Registrar of Co-operative of Societies, Tumkur District, Tumkur, has passed the impugned order dated 5th July 2004 vide Annexura A, invoking S. 30 (1) of the Karnateka Co-operative Societies Act ('Act' for brevity), appointing the Administrator for a period of six months and superseding the Committee headed by first respondent and other ten elected members, holding that, the first respondent and other ten members are not eligible to contest for election to become members of the Committee of third respondent - Co-operative Society for a period of four years from the date of order. Being aggrieved by the said order dated 5th July 2004 vide Annexure A, the first respondent and other members filed the appeal on the file of the fourth respondent.

3. The fourth respondent in turn, after evaluation of the oral and documentary evidence, has passed the impugned order dated 20th May 2005 vide Annexure C, dismissing the appeal filed by first respondent and others on the ground that, the order passed by Deputy Registrar of Co-operative Societies vide Annexure A, appointing the Administrator for a period of six months has already elapsed and therefore it is appropriate to direct the concerned authority to conduct election within 45 days and directed to permit the first respondent and other members of the Committee to participate in the election. Accordingly, the competent authority has appointed the Returning Officer to conduct election to the third respondent - Co-operative Society and pursuant to the

calendar of events issued by the Returning Officer, election was conducted and the Returning Officer has declared the result on 3rd July 2005, wherein the first respondent is declared as elected including the petitioner herein. However, with regard to declaration of result of first respondent, the petitioner has raised a dispute on the file of the fifth respondent in dispute No. 5/2005-06.

The grievance of petitioner is that, the said rejection of the application seeking interim order of stay is contrary to the mandatory provisions of the Act and Rules and the order passed by fourth respondent is also contrary to S. 30 (3) of the Act. Therefore, petitioner felt necessitated to present the instant writ petition.

4. I have heard learned counsel appearing for petitioner for considerable length of time. After careful evaluation of the impugned order at Annexure C, declaration of result by the Returning Officer dated 3rd July 2005 vide Annexure D and the order dated 21st July 2005 passed by the fifth respondent vide Annexure E, rejecting the interim order sought for by petitioner, I do not find any justification or good grounds to entertain the instant petition, at this stage, in view of the fact that, the competent authority is seized of the matter in the dispute raised by petitioner and the competent authority, exercising discretionary power, has rejected the interim order sought for by petitioner giving valid reasons stating that, in pursuance of the order passed by fourth respondent dated 20th May 2005, permitting the first respondent to participate in the election, granting stay of the said order is not justifiable. The said reasoning given by the competent authority is just and proper. Therefore, I do not find any good grounds to interfere in the instant writ petition. Therefore, interference at this stage in the discretionary order passed by fifth respondent is not justifiable invoking the extra-ordinary jurisdiction as envisaged u/arts. 228 and 227 of the Constitution of India, especially when the petitioner has not made out a prima facie case for interference in the case.

5. So far as assailing the impugned order dated 20th May 2005 vide Annexure C is concerned, petitioner has got an alternative, efficacious remedy of redressing his grievance before the competent authority as envisaged under the statue. Without exhausting the alternative, efficacious and effective remedy of filing the appeal, petitioner has approached this Court. When petitioner has a speedy, inexpensive and effective forum for redressing his grievance, he cannot redress his grievance before this Court u/arts. 226 and 227 of the Constitution of India. Further, the Hon'ble Supreme Court in a recent decision, in the case of U.P. State Bridge Corporation Ltd. and others vs. U.P. Rajya Setu Nigam S. Karamchari Sangh (2005 AIR SCW 3149 2004 Indlaw SC 179) has held as follows:-

"12. Although these observations were made in the context of the jurisdiction of the Civil Court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the Court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner"

6. Having regard to the facts and circumstances of the case, as stated above, I do not find any good grounds to interfere in the impugned orders at this stage. Accordingly, for the foregoing reasons, the writ petition filed by petitioner is liable to be dismissed. Accordingly, it is dismissed. However, the dismissal of the writ petition will not preclude the fifth respondent to dispose of the dispute filed by petitioner, as expeditiously as possible, having regard to the nature of dispute and take appropriate decision, in accordance with law.

K. S. Ramachandra Rao S/o K. S. Sreekantaiah v Karnataka Appellate Tribunal and others

Bench	N. K. PATIL
Where Reported	2005 Indlaw KAR 455; 2005 (5) KarLJ 42

Case No : W.P. No. 32857 of 2002

The Order of the Court was as follows :

1. The petitioner, questioning the legality and validity of the order dated 30th July 2002 in Appeal No. 522/2000 on the file of the first respondent - Karnataka Appellate Tribunal, Bangalore and also the award dated 27th May 2000 in Dispute No.D.R.D.820/88-89 on the file of the third respondent - Assistant Registrar of Co-operative Societies vide Annexures A and F respectively, has presented the instant petition. Further, he has sought for a direction, directing the respondent - Bank to release the goods pledged by the petitioner including the missing goods and direct the fourth respondent - Bank to account for the remittance of Rs.10,720/- made by petitioner under Exhibits P.21 to P30 and also dis-allow the interest and penal interest calculated by Bank on the principal amount up to date.

2. The undisputed facts of the case are that, the petitioner had availed a loan of Rs.35,000/- on 29th September 1975 from the fourth respondent - industrial Co-operative Bank, Hassan, (hereinafter called 'Bank') by pledging his automobile goods. In view of non payment of necessary instaiments within the stipulated time fixed by the Bank authority, at the time of releasing the loan to the petitioner, the Bank was constrained to raise a dispute u/s. 70 of the Karnataka Co-operative Societies Act (hereinafter called " the Act") before the competent authority. The competent authority, in turn, has referred the matter to the Arbitrator, who conducted the enquiry and after evaluation of the oral and documentary evidence, has passed the award dated 15th March 1982 in Dispute No. RCS.Disp.No. 102/78-79. Aggrieved by the said award passed by the Arbitrator, the petitioner herein has filed-the Appeal in No.749/1982 on the file of the Karnataka Appellate Tribunal, Bangalore (hereinafter called 'appellate Tribunal') and fourth respondent also filed Appeal No.918/1982. Both the appeals were disposed of by a common order, setting aside the award passed by the Arbitrator dated 15th March 1982 and the matter was remitted back to the Arbitrator for fresh disposal in accordance with law. Being aggrieved by the order passed by the appellate authority remanding the matter for reconsideration, the petitioner had filed the writ petition before this Court and the writ petition filed by the petitioner was dismissed.

3. After hearing the learned counsel for petitioner and learned counsel for respondents, after careful evaluation of the material available on record, after perusal of the order passed by the Arbitrator dated 27th May 2000 vide Annexure F and the order passed by appellate Tribunal dated 30th July 2002 vide Annexure A, it is manifest on the face of both the orders that, both the authorities have not committed any error of law much less material irregularity. Both the authorities have

recorded concurrent finding of fact against the petitioner holding that, petitioner has failed to make out a case and also to prove that, the pledged goods are missing. Further it is observed in the order passed by the appellate Tribunal that, this Court in earlier round of litigation, had directed the Arbitrator to consider and allow the petitioner to adduce secondary evidence to establish his plea of discharge of part of the claim and to afford reasonable opportunity to both the parties to adduce any further evidence. This fact has been considered by the Arbitrator in detail and he has given a finding that, the secondary evidence placed by the petitioner is not acceptable in evidence after thorough verification with the exhibits, the xerox copies of the original vouchers with the register maintained by fourth respondent - Bank. The original records pertaining to the same are very much available on the file of the Arbitrator.

Further, the appellate Tribunal has specifically observed that, "It is also seen that the lower court has examined the connected documents with reference to the concerned dates of the said xerox copies and found that, no such payments or deposits made by petitioner with R-2 Bank on the concerned dates." Further, the appellate Tribunal has observed that, the Arbitrator has considered the secondary evidence in detail with reference to the Bankers Book Evidence Act and the xerox copies produced by petitioner. As per the provisions of Indian Evidence Act and Bankers Book Evidence Act, the uncertified xerox copies produced by petitioner as secondary evidence do not fit in to the meaning of secondary evidence. The appellate Tribunal, after appreciation of the oral and documentary evidence has dismissed the appeal holding that, the order passed by Arbitrator is just, lawful and sustainable and they do not find any merits in the case. The said reasoning given by the appellate Tribunal is in strict compliance of the material available on record and is in accordance with law. Therefore, I do not find any justification to interfere in the well considered orders passed by both authorities, when the said authorities have recorded concurrent finding of fact after thorough evaluation of the oral and documentary evidence.

4. Yet another reason as to why the instant writ petition is liable to be dismissed as rightly pointed out by learned counsel for fourth respondent - Bank is, in view of the well settled law laid down by the Apex Court in the case of M/S. Estralla Rubber VS. Dass Estate (PVT.) LTD reported m AIR 2001 SC P.3295 2001 Indlaw SC 21392. It is worthwhile to extract the reference made by Apex Court regarding the ambit and scope of Art. 227 of the Constitution of India, which reads thus;

"7. The scope and ambit of exercise of power and jurisdiction by a High Court under Art. 227 of the Constitution of India *is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior Courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the Courts subordinate or tribunals. Exercise of this power and interfering with the orders of the Courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate Court or substitute its own judgment in place of that*

of the subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior Court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or Tribunal has come to."

5. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is dismissed.

Petition dismissed

C. Basavegowda v Karnataka State Co-Operative Apex Bank Limited, Bangalore and Others

Bench	K. SREEDHAR RAO
Where Reported	2005 Indlaw KAR 166; 2006 (3) KarLJ 410

Case No : W.P. No. 10768 of 2005 (Cs-El/M).

The Judgment was delivered by : K SREEDHAR RAO

The petitioner is one of the Directors of the 3rd respondent-Bank, so also the 5th respondent. The provision of Section 21 of the Karnataka Co-operative Societies Act, 1959, relevant for consideration is extracted hereunder:

The 2nd respondent in view of the order at Annexure-D made an order at Annexure -E, dated 9-3-2005 declaring that the nomination of the petitioner filed for election of the Committee of the Management of the 1st respondent is kept in abeyance subject to the result of the final order in the proceedings at Annexure-D.

The petitioner aggrieved by the impugned order at Annexure-D has filed this petition for quashing the order at Annexure-D.

It is the contention of the petitioner that the 4th respondent is not the competent adjudicatory authority and has no jurisdiction to decide the dispute relating to the first respondent. Since the order at Annexure-D has effect of affecting the affairs of the 1st respondent, therefore the impugned order is bad in law, made in excess of the jurisdiction.

Per contra Sri Jayakumar S. Patil argued that Section 21(2)(a) contemplates two consequences. Firstly, the committee of the third respondent should elect its representative to participate in the affairs of the first respondent. The representative once so appointed will have power of representing the third respondent in the affairs of the first respondent. Therefore, the legality and propriety to the extent of electing/appointing a representative by the election Society is a matter within the scope of the word "management" of the affairs of the Society i.e., 3rd respondent.

After carefully going through the submissions and the propositions of law the contention that the legality and propriety of the election of a representative by the Society under Section 21(2)(a), pertains to the management and affairs of the electing Society is sound and proper. The purpose of electing a representative is altogether a different and a distinct issue. The manner and procedure of electing a representative by the Society, is an issue, which pertains to the management of the affairs of the electing Society. Therefore, the contention that election of a representative by the Society does not pertain to the management of the affairs of the electing Society is untenable.

The submission that the Registrar under Section 70(3) is the statutory authority to rule on its jurisdiction is sound and proper. Without exhausting the remedy under Section 70(3). the writ petition is premature.

The contention of the Counsel for the 5th respondent that the election of the petitioner should be

set-aside in this proceeding is untenable. Since such a course would lead to a state of vacuum. It is not proper that the third respondent-Society should remain unrepresented in the affairs of the first respondent. Therefore, it is made clear that the election of the petitioner vide Annexure-R5A is subject to the result of the proceedings in Case No. 3779 of 2004-05.

Some serious allegations are made against 4th respondent. I do not propose to go into the allegations but suffice to say that in view of the facts and submissions made at the bar, it is directed that the Registrar shall try and dispose of the case by himself in accordance with law by end of June 2005. Accordingly, the writ petition is disposed of.

Krishna S/o Hari Shanbhag and others v Sirsi Urban Co-operative Bank Limited Now Sirsi Urban Souharda Co-operative Bank Limited Represented by its President

Bench	MOHAN SHANTANAGOUDAR
Where Reported	2005 Indlaw KAR 509; 2005 (3) KarLJ 300

Case No : W.P. Nos. 38041-42/2004 (L-TER)

The Order of the Court was as follows :

1. By the impugned orders dated 27.9.2003 passed in Reference Nos. 276/85 & 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 vs. State of Karnataka, Rep. by Secretary, Deparment OF Co-Operation, Bangalore & Others (ILR 2003 KAR 2531 2003 Indlaw KAR 211).

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 I 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, S. 70 & S. 118 of the Karnatata Co-operative 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. The Full Bench of this Court in the case of Karnataka Sugar Workers Federation vs. State of Karnataka2003 Indlaw KAR 211 (cited supra), while considering the constitutional validity of amended S. 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 constitutions, 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 co-operative society, such disputes may be adjudicated by the Registrar of the Co-operative Societies as stated."

4. 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 S. 6 of the General Clauses Act, 1987. When the amending Act substitutes certain words 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 judgement of the Apex Court in the case of Shamrao vs. District Magistrate, Thane (AIR 1952 SC 324 1952 Indlaw SC 64) and the judgment of the Division Bench of this Court in the case of Sha Chunilal Sohanraj vs. T.Gurushantappa (1972 (1) Mysore Law Journal 327). In the case of Shamrao vs. District Magistrate 1952 Indlaw SC 64 (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 the 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 subsection, has been substituted by the new sub-section, the inference is that the Legislature intended that th- 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."

"The matter pertains to rules of construction of statutes and the effect of amendment made to an Act. In the instant case, sub-sec.(2) of S. 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 S. 70 and S. 118 of the Karnataka Co-operative Societies Act, is

by S. 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 S. 70 and S. 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 S. 70 of the Act will also apply to the Labour Court, Revenue Court and Industrial Tribunals.

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 S. 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.

Bangalore District and Bangalore Rural District Central Co-op. Bank Limited Represented by its Managing Director, Bangalore v State of Karnataka by its Principal Secretary, Revenue Department, Bangalore and others

Bench	K. BHAKTHAVATSALA
Where Reported	2005 Indlaw KAR 372; 2005 (2) KarLJ 81

Case No : W.P. Nos. 48616 to 48687/2004 (KLR-RR/SUR)

The Order of the Court was as follows :

1. In this batch of Writ Petitions, the Petitioner/C-operative Bank seeks direction to Respondent No. 4 to effect entries as to charge in the revenue records in respect of the properties mentioned in the schedule as per Ss. 127 to 129 of the Karnataka Land Revenue Act, 1964.

2. The brief facts of the case leading to the filing of the batch of Writ Petitions may be stated as under:-

   The Petitioner/Co-operative Bank raised a dispute in No. JRB. DIS/912/93-94 against the 5th Respondent viz., Vyalikaval House Building Co-operative Society, (in short, 'the Society') as the Society did not repay loan of Rs. 15.50 crores, before the Joint Registrar of Co-operative Societies, Bangalore Division, and also obtained orders dated 27-10-1994, 23.11.1999, 23.11.2002 and 5.2.2003 as per Annexures-A, A1, A2 and A3, respectively, for attachment of the immovable properties of the Society. The Petitioner/Bank has given public notice in Deccan Herald Daily Newspaper dated 26.2.2004 bringing to the notice of the general public and the third parties regarding hen/charge of the Bank over the lands in question and cautioning the general public not to enter into any negotiation with 'reference to the schedule properties. Further, the Petitioner/ Bank requested the Respondent No. 4/Tahsildar to effect entries as to charge over the lands in the revenue records based on the orders of attachment of the properties of the Society passed by the Joint Registrar of Co-operative Societies as per Annexures-C and D dated 6.2.2003 and 30.9.2004, respectively. It is averred in the Writ Petitions that the lands in question were notified the acquisition of lands by the State Government by issuing preliminary notification under Sec.4(1) of the Land Acquisition Act, 1894 dated 22.12.1984 published in the Gazette on 3.1.1985 and after preliminary hearing and complying with the legal formalities, the Land Acquisition Officer has handed over the lands in question to the beneficiary viz., the Society herein on 6.8.1988 and thus, the Society is in possession of the schedule properties over which the Petitioner/Bank has got hen and charge. But, the 4th Respondent has failed to record the order of attachment, in the revenue record in the/name of the Petitioner/Bank. Therefore, the Petitioner/Bank is before this Court seeking direction to the Respondent No.4/Tahsildar to effect entries as to charge in the revenue record in the name of the Petitioner/Bank in respect of the schedule lands.

"20. On a consideration of the conflicting decisions that we have referred to above, we do not think that we shall be justified in holding that the charge created by a decree is one that comes within the scope of S. 100, Transfer of Property Act*. In our view, it cannot be a charge created either by act of parties or by operation of law. It is altogether a different category not contemplated by S.100,* Transfer of Property Act*, and, the respondent, therefore, cannot take advantage of his purchase of the property sold in enforcement of the charge created by the decree to the detriment of the other charge created by the same decree but which is still subsisting and which is yet to be enforced by the party in whose favour it was created.*

I respectfully agree with the above decision, which is applicable on all the fours to the case on hand. Therefore, I am of the opinion that the orders of attachment made by the Joint Registrar of Co-operative Societies cannot be held as 'charge by operation of law within the scope of Sec, 100 of Transfer of Property Act*. Therefore, the Petitioner/Bank does not get any such right under Ss. 127 to 129 of the* Karnataka Land Revenue Act, 1964*. The decision cited by the learned Counsel for the Petitioner reported in 2000(4) Kar. L.J. 449 with reference to Sec. 128 of the* Karnataka Land Revenue Act, 1964*, on the point that the Revenue Authorities cannot refuse the vardhi is not applicable to the case on hand."*

Ankola Urban Co. Operative Bank Limited, by Its General Manager and others v State of Karnataka, by Its Secretary, Bangalore and others

Bench	V. GOPALA GOWDA
Where Reported	2004 Indlaw KAR 321; 2005 (2) KarLJ 251

Case No : W.P. Nos. 54087-88/2003, W.P. Nos. 22715/2001, 16740, 44988/2002, 51662, 43423, 37264-66, 36508-21, 36843, 45554-55/03, 49815/03, 48461/2003, 4122, 4426, 4428, 5683, 5812, 7043, 8380, 8381, 8383, 9196.10237,10026, 9005, 12330, 9953, 14878, 12722, 12127, 9908, 10868,12219, 12050, 15478, 9066, 21177, 20117, 21872/2004

The Order of the Court was as follows :

1. The petitioners are aggrieved by the Government Order No. CMW 283 CLM 96 dated 17-2-2001 by which audit fee is revised by the State Government. It is the case of the petitioners that the levy and collection of audit fee on the basis of Working Capital or Turn-over is arbitrary, illegal, without jurisdiction and contrary to Rule 30 of the Karnataka Co-operative Societies Rules (herein after called as 'Rules'). According to the petitioners, the revised audit lee has no co-relation to the actual service rendered by the Auditors and other staff of the Audit Department in auditing. Since the impugned Government Order is issued on the basis of the proposal sent by the Director of Co-operative Audit, the learned counsel who have appeared for some of the petitioners have contended that it amounts to sub-delegation of the power of the State Government which is not permissible in law. Hence, the impugned Government Order is a nullity in the eye of law and the same is liable to be quashed. In support, of the contentions urged, large number of decisions have been relied upon by them. Consequently, petitioners have prayed for quashing the impugned Government Order and also the consequential Demand Notices issued to them by the concerned respondents in their respective petitions.

   "7.7.4 Highlights. Owing to non-revision of audit fees commensurate with the expenditure thereon, the excess of expenditure over the demands for the audit fees including audit cost during the years 1992-93 to 1996-97 ranged from Rs. 156.78 lakh to Rs. 248.82 lakh.

   XXXXXX

   There was short levy of audit fees of Rs 13.67 lakh in 14 cases due to incorrect adoption of turnover for the years 1992-93 to 1996-97.

   "Audit fees (1) Every Cooperative society shall pay to the State Government (or at a rate equal to the average cost incurred for appointment of auditors under Rule 441 of the Karnataka Civil Services Rules, 1959*) a fee for the audit of its accounts for each cooperative year in accordance with the scale fixed by the Director of cooperative Audit, with the previous approval of the State Government in respect of the class of societies to which it belongs.*

   (underlining supplied)

The words "in accordance with the scale fixed by the Director of Co-operative Audit" assumes much importance. It is in accordance with this, the Director of Co-operative Audit sent the proposal to the State Government for its approval and the Government accorded approval. Therefore, the impugned order is in accordance with Rule 30 of the Rules. Hence, the contention that it is without jurisdiction, does not hold water and the same is rejected.

"----The only contention of the appellants is that there is no nexus between the services rendered and the fees levied. It is to be kept in mind that audit fee is prescribed as long back as in the year 1952 and keeping in mind the inflation and the increase of work, the audit fee underwent revision in 1976 and the 1986 and he present revision in the year 1996. The present revision shows that the audit fee is to be fixed following the scale mentioned therein. A fee of 15 praise for Rs. 100/- on the working capital or business turnover of the society with a minimum audit fee of Rs. 50/- is fixed. So far as the Primary Cooperative Agricultural and Rural Development Banks and the Primary Agricultural Credit Cooperative Societies are concerned, the fee fixed is at 50% of the audit fee calculated on the working capital or the working turnover. About 15 cooperative societies like Students Cooperative Societies, Medical Aid Cooperative Societies. Sports Promotion Cooperative Societies etc. are exempted from payment of audit fee.

2. POINT (c):- According to the petitioners, the audit fee payable shall be co-related to the services rendered. Mr. K.M. Nataraj, learned counsel appearing for some of the petitioners relied upon the following decisions in support of the contention AIR 1954 SC 282 1954 Indlaw SC 33, 1955(1) SCC 655, 1997(2) SCC 715 1997 Indlaw SC 2288 and AIR 197S SC 2307. This contention of the petitioners cannot be accepted. The Division Bench in the aforementioned decision has not favored with the same contention. The element of QUID PRO-QUO is not always a SINE QUA NON. The element of QUID PRO-QUO is not necessarily to be established with arithmetic exactitude is the ratio laid down by the Apex Court in catena of cases. Mr. Keshava Reddy, earned HCGP has rightly relied upon the following decisions:

   AIR 1963 SC 966 1962 Indlaw SC 298,

   AIR 1971 SC 344 1969 Indlaw SC 92 para 6,

   AIR 1980 SC 1 1979 Indlaw SC 317,

   AIR 1983 SC 617 1983 Indlaw SC 92,

   AIR 1984(4) SCC 353,

   AIR 1993(4) SCC 461,

   ILR 2001 KAR 2524 paras 95 & 96.

3. The auditing of the co-operative Banks and societies are conducted by the Audit Department Entrustment of audit work to Chartered Accountants was found with red signal. The high-lights of the same are reflected in the brochure called "An argument in favour of retaining the present system of State Audit of the Co-operative Institutions and not to entrust the audit of these Co-operatives to the Chartered Accountants" published by the Department of Co-operation.

4. The cost of auditing of the above Societies and Banks shall be borne by the Department and for that purpose it cannot levy and collect the audit fee from the other cooperative Banks and Societies, including petitioners Societies and Banks as per the mathematical calculations.

"Though the responsibility of promotion of the co. operative movement rests with the State Government the services of the Co-operative Audit Department cannot entirely be taken as a social service.

It may not be possible to completely bridge the gap between revenue and expenditure of this department, but there are sufficient grounds justifying the narrowing of this bridge.

The principle underlying the provision of the audit service to the co-operatives is that the audit should subsist on its own without being a burden to the State exchequer.

The excess of expenditure over the demands for audit fees (including audit, cost) raised during the years 1992-93 to 1996-97 ranged from Rs. 156.78 lakh to Rs. 248.821akh.

A system of periodical review of the rate structure of audit tees was not in vogue in the department as a result even after revisions of pay spates of staff in 1987 and 1994, the revision of rates of fees has not even been considered by the Government after 1986".

Again, at page 107 observation is made to the following effect;-

(iv) Short levy of audit fees:

Audit fee recoverable from societies is a fixed percentage of their turnover or working capital whichever is higher. It was noticed that there was short levy of audit fees of Rs. 13.67 lakh in respect of 14 societies on account of incorrect computation of turnover for the years 1992-93 to 1996-97. The Director of Co. operative Audit stated (August 1998) that action would be taken to verify the levy of audit fees and omissions rectified".

The straight answer to the contention is in the negative. The reasons assigned to Point (a) holds good as the impugned action is in accordance with S. 129 of Karnataka Co-operative Societies Act, 1959 read with Rule 30 of the Rules. Under S. 129(2)(y) of Karnataka Co-operative Societies Act, 1959 the State Government has got power to make Rules for fixing Audit fee to the Cooperative Banks arid Societies in the State for doing Audit work by the Department Rule 30(1) of the Rules franked by the State Government empowers the Director of Co-operative Audit to fix the scale of audit fee with the prior approval of the State Government. That is what precisely done. Hence, the impugned action will not amount to sub-delegation of power. The power is exercised by the Director of Co-operative Audit by collecting the relevant material and data with relating to the volume of audit work involved in the Banks and Societies. Based on such material proposal was sent to the State Government for approval. The State Government in exercising the cowers vested with it by applying its mind to the relevant material and data collected by the Director granted approval. Therefore, it cannot be said that there is sub-delegation of power. In view of the fact that there is no sub-delegation of power, the decisions relied upon on by both sides have no relevance to the case.

5. For the reasons stated above, the various decisions pressed into service by the learned counsel for the petitioners will not render any insistence to the petitioners and the contentions urged does not hold water. Petitioners must be content with non-revision of audit fee for more than a decade. They had the benefit of such non-revision all these years and the burden of such expenditure is borne by the State Government by spending public money for this purpose.

6. Writ Petitions are dismissed.

Mandya District Central Co-Operative Bank Limited v N. Srinivasaiah

Bench	KUMAR RAJARATNAM, K. BHAKTHAVATSALA
Where Reported	2003 Indlaw KAR 286; 2004 (2) LLJ 720

Case No : W.A. No. 2802/1999

The facts briefly are :

The Workman raised an industrial dispute u/s. 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act") challenging his termination as Secretary with effect from December 24, 1974 in the Mandya District Co-operative Union Ltd. (hereinafter referred to as "the Union"). The case of the workman was that he was appointed by the Union on August 22, 1969 as paid Secretary and posted to Thattakere and Sukadore Service Co-operative Society. On July 15, 1974, the Union transferred the workman to Muthegere and Hunaganahally Societies. Since the first set of Societies did not relieve the workman, he requested the Union to continue his service in the first set of societies. The Union did not respond to his request. Finally he was forced to hand over the charge on December 5, 1974 and went to report to the second set of societies, viz., Muthegere and Hunaganahally Societies. By that time, he went there, the Union had posted some other persons to those societies. The Union did not provide him an alternative place and his services were abruptly terminated on February 22, 1975 without any notice. This action on the part of the Union was challenged by the Workman in the Reference.

The Labour Court came to the conclusion that it was the Union, who is the Master of the workman and it was the Union that is liable to reinstate the workman and pay back wages. The Labour Court, on the basis of the pleadings, held that the Union itself admitted that the workman was employed only by the Union. The Labour Court held :

"At the cost of repetition, I would like to observe that in view of the clear admission made in the counter-statement earlier and the evidence of their own Secretary before this Court the Co-operative Union had appointed the first party as paid Secretary and after giving training he was posted as paid Secretary to two service co-operative societies. He was working as paid Secretary in those Societies from 1969-74. Thereafter, it was the Co-operative Union which has transferred the first party to some other Society. Therefore, it is clearly proved that the Co-operative Union was the employer of the first party"

There is a clear finding by the Labour Court that it was the Union, who was the employer and it was the Union which ultimately terminated the services of the workman. The Labour Court further held that Rule 17(c) of the Rules was subsequently introduced. By this Rule, a Common Cadre Committee was constituted. But the Common Cadre Committee ceased to exist in part by virtue of Section 128-A of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the Act). Section 128-A of the said Act reads as follows :

"Notwithstanding anything contained in this Act, the Rules or the bye-laws, where the Registrar, in the interest of the Co-operative movement, considers that the creation of a common cadre of employees for any class of co-operative societies is necessary, he shall authorise one such case of co-operative societies is affiliated to exercise the disciplinary action in respect of such categories of employees of that class of co-operative societies and make such regulations as may be necessary for carrying out the said purpose. Where such federal society is so authorised by the Registrar, the affiliated co-operative societies shall not have power to deal with such categories of employees except to the extent the regulations may permit.

The Registrar shall have power to require the affiliated co-operative societies to make contribution of such sum every year towards expenditure, as the federal society is likely to incur or has incurred for the purpose. If any co-operative society fails to pay the sum to such Committee as may be specified by the Registrar and within the time fixed by him the Registrar may on the application of the Committee and after such enquiry as he may consider necessary, make an order requiring the co-operative society to pay the amount, and every such order shall be enforceable against the co-operative society as if it were an award under Section 71"

The appellant Bank was not made a party in the original writ petition before the learned single Judge. The Common Cadre Committee was also not made a party. The writ petition was filed on October 28, 1991 without impleading the Bank. After a lapse of exactly seven years, I.A.-1 for impleading the Bank was filed on October 28, 1998. No show-cause notice was issued as to why the Bank should be impleaded. Ultimately, the learned single Judge allowed I.A.-1 on November 4, 1998 and impleaded the Bank and the Bank though heard was not able to file its objections.

It is not known how the Bank could be made liable for the wrongful termination of the workman when it is clearly admitted before the Labour Court that it was the Union that appointed and terminated the workman. The learned single Judge did not appreciate that there were no averments in the writ petition against the Bank on this aspect of the matter. The Common Cadre Committee was not even impleaded in the writ petition although it was a party before the Labour Court at the instance of the Union. We are of the view that the finding of the learned single Judge that the appellant Bank is liable to reinstate the workman cannot be sustained.

The Supreme Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union 2000 Indlaw SC 511 : 2000 Indlaw SC 511 : 2000-I-LLJ-1618 has held that the finding of fact recorded by the Labour Court cannot be interfered with unless such findings of fact are based on a "case of no evidence". The Supreme Court pronounced that if on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon no evidence, there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. Admittedly, the learned single Judge has taken upon himself to hold that the Bank is liable to reinstate the workman without materials on record. The learned single Judge also failed to take note of the fact that the Common Cadre Committee, who was a party before the Labour Court, was not even impleaded before the High Court although the Common Cadre Committee still exists. The learned single Judge also failed to note that the Bank has no control over the workman since it was the Union that employed the workman and the Union continued to exist. It is submitted from the Bar that the Union has paid 50 per cent of the back wages to the workman from February 22, 1975 to March 9, 1979.

Since 50 per cent of back wages had already been paid by the Union-Respondent No. 3 from February

22, 1975 to March 9, 1979 to the Workman, we do not find it necessary to direct the Union to pay any further back wages. However, the Union will reinstate the workman. We direct the Mandya District Central Co-operative Bank Ltd., Mandya, respondent No. 3 the employer of the workman to reinstate Sri N. Srinivasaiah-respondent No. 1 with continuity of service without any further payment of back wages. Respondent No. 3-Union if so desires may transfer the workman to the Common Cadre Committee or to the Bank with their consent.

Accordingly, this writ appeal is allowed. The order of the learned single Judge is set aside and the order of the Labour Court is modified accordingly.

No order as to costs.

S. R. Hanumanthaiah v State of Karnataka and Others

Bench	SALDANHA, M. F. SALDANHA, M. S. RAJENDRA PRASAD, JJ
Where Reported	2003 Indlaw KAR 120; AIR 2003 KAR 364; 2003 (6) KarLJ 503
Case Digest	Election - Whether candidate contesting from reserved category can claim to be shifted to general category and declared elected? - Held, no - It would mean that a candidate is getting a dual advantage - Also such an unfair procedure would deprive another candidate from general category - And it is not open to a court to graft on provisions from some other statute - While deciding a case under Co-operative Societies Act - Where no provision has been made for such procedure - Appeal dismissed.

Case No : W.A. No. 7398 of 1999 (Cs).

Summary : Trusts & Associations - Karnataka Co-Operative Societies Act 1959, s.129 - Karnataka Co-Operative Societies Rules (1960), r.14(34)(2) - Election - Whether candidate contesting from reserved category can claim to be shifted to general category and declared elected? - Held, no - It would mean that a candidate is getting a dual advantage - Also such an unfair procedure would deprive another candidate from general category - And it is not open to a court to graft on provisions from some other statute - While deciding a case under Co-operative Societies Act - Where no provision has been made for such procedure - Appeal dismissed.

We need to amplify that where the law makes special provision for reservations that it is because the law envisages a situation whereby persons who qualify for those reservations are entitled to file nominations in respect of those seats and for all intents and purposes, in situations such as the present one those will be treated as separate constituencies. Where a person opts to contest for one of those seats and if for any reason that candidate is unsuccessful and it is then not permissible to seek to shift or change over to the general category because if the law were to permit such a procedure it would mean that a candidate is getting a dual advantage, once for the reserved seat or reserved constituency and secondly, by then switching over to the general category. The end result of this would be that through such an unfair procedure after having opted to contest in a particular capacity for a particular seat if the candidate seeks to switch over to the general category, that would possibly deprive another candidate from the general category. In order to prevent this from happening, as far as the Co-operative Societies Act is concerned no such provision has been made and it would not be open to a Court to graft on the provisions from some other statute while deciding a case under the Co-operative Societies Act. Moreover, the Co-operative Societies Act is a self contained Code and such a procedure would not have any legal sanction. On the contrary, it would be doing violence to the provisions of this statute and the rules by seeking to import provisions from other branches of the law.

Another submission that was canvassed by the appellant's learned Counsel was that Ss. 28(2) of the General Clauses Act does make provision for parallel provisions in different laws to be construed, particularly in a situation where there is no express prohibition in the statute in question. His strongest

argument is that, as far as the present rules are concerned that there is no express provision whereby the Returning Officer is required to exclude the candidates belonging to the special category while upholding the overall results merely because they had contested in an other capacity. On the basis of the parallel provisions in other statutes referred to by us, his submission is that where the rules are silent that the provisions of those statutes which prescribe that the general evaluation of candidates has to be done, must apply. What we need to take careful note of is the fact that the Parliament and the Legislatures have enacted tailor made and special differing provisions in order to suit different situations and in a given instance where the rules are silent, it is not to be construed as being accidental but the Court will have to take it that the legislature did not intend that any such procedure should be followed as far as the elections under the Co-operative Societies Act are concerned. Having regard to this position in law, we are unable to uphold the argument in question.

Having reconsidered the legal position we have no ground on which interference is called for as far as the decision of the learned single Judge is concerned. The appeal accordingly fails on merits and stands dismissed. No order as costs.

N. S. Srinivasamurthy v Registrar of Co-Operative Societies

Bench	N. K. JAIN, H Q RAMESH, V. G. SABHAHIT
Where Reported	2003 Indlaw KAR 359; 2004 (1) CLR 688; 2004 (1) KarLJ 179

Case No : W.P. Nos. 4892-4900 of 2001

The necessary facts in brief are :

The writ petitioners were in the employment of the second respondent, Shimoga District Co-operative Bank (hereinafter called the 'Society') registered under the Karnataka Co-operative Societies Act, 1959 (for short the C.S. Act). They retired from service on attaining the age of superannuation after 24-9-1997. Their terminal benefits were settled and gratuity was paid as per the Karnataka Co-operative Society Rules (for short the C.S. Rules). The petitioners submitted a representation before the Society for payment of more amount of gratuity as per the Payment of Gratuity Act, 1972 (hereinafter called the P.G. Act) as amended by Act 11 of 1998 Act. The same was rejected as per Endorsement dated 28-11-2000 (Annexure 'J'). Aggrieved, the petitioners filed the writ petitions to quash the said endorsement and to issue mandamus to the respondents to pay gratuity as per provisions of s. 4 of the P.G. Act.

The learned Single Judge on consideration found that in view of the notification issued under the Mysore Shops and Establishments Act, 1948 (for short 1948 Act), which has continued even after the Karnataka Shops and Commercial Establishments Act, 1961 (for short 1961 Act), the P.G. Act is not applicable to the Society. Hence the learned Single Judge felt that the decision of the Division Bench in Mallesh-waram Co-operative Society Ltd. v. Senior Labour Inspector ILR 1999 Kar 650 required reconsideration and referred the matter to a larger Bench by order dated 3-1-2002. Thereafter, matters were placed before another Division Bench, which also felt that the decision of the Division Bench required reconsideration as notification had been issued under the 1948 Act which was repealed, and the 1961 Act has been re-enacted and its provisions are inconsistent with those of the 1948 Act. Accordingly, it referred the matter to a larger Bench, by order dated 16-9-2002, to consider the question as to whether the decision of the

Division Bench of this Court in Mallesh-waram Co-operative Society's case requires reconsideration as stated.

Sri Ranganath S. Jois, learned counsel appearing for the petitioners submitted that the second respondent is not exempt from the provisions of the P.G. Act and the notification issued under the 1948 Act, which was repealed, would not survive but would become inoperative as the provisions of the 1961 Act are inconsistent with those of the 1948 Act and hence, the decision of the Division Bench does not lay down the correct law and a co-operative society is also governed by the P.G. Act.

Sri G. Chandrashekaraiah, learned counsel appearing for the second respondent-society submitted that the decision of the Division Bench does not require reconsideration as it has correctly laid down the law and a Co-operative Society is not governed by the provisions of the P.G. Act.

Admittedly, the new Act came into force from 24-9-1997 repealing the old Act. Under the circumstances, the notification also has no force unless the same is continued under the new Act or is not inconsistent with its provisions.

It is also seen that in earlier Act there was a provision for exemption, whereas under the new Act repealing the old Act, there is no provision for exemption as contained in s. 6 of the repealed Act, 1948.

It is well-settled that, repeal lexically means "to revoke or annul". A Constitution Bench of the Supreme Court has held that the normal effect of a repealing statute is to obliterate it as if it had never been passed and the statute must be considered as a law that never existed in Kolhapur Cane Sugar Works v. Union of India 2000 Indlaw SC 39. The subordinate legislation and notifications issued under the repealed law would also meet the same fate unless they are continued under the re-enacted law or continue to be operative in view of s. 24 of the General Clauses Act. Under this section, whether the earlier notification issued under the repealed Act would continue in force or not would depend essentially on its compatibility with the amended provisions. If the earlier notification is inconsistent with reenacted provision the notification cannot be kept alive by enforcing it as held by a Full Bench of this court in Shaw Wallace & Co. Ltd. v. State of Karnataka ILR 1992 Kar 1994.

Under the circumstances, the finding of the Division Bench in Malleshwaram Cooperative Society's case that the provisions of the 1961 Act, are not inconsistent with the provisions under the 1948 Act, is unsustainable. The Division Bench has failed to take into account the provisions of the repealing and the reenacted Acts and has overlooked the fact as stated above that there is no provision for general exemption as contained in s. 6 of the 1948 Act in the 1961 Act, and hence, a co-operative society is not exempt from the application of the P.G. Act.

In view of the above discussion, we hold that the decision of the Division Bench in Malleshwaram Co-operative Society's case (supra) does not correctly lay down the law and overruling the said decision, we hold that the notification dated 17-5-1952 issued under 1948 Act, would not continue to operate under 1961 Act for the reasons stated above. As discussed above, the reference made by the Division Bench is answered accordingly.

S. A. Mukund v
Sri Ganapathi Urban Co-Operative Bank Ltd. and Another

Bench	N. K. PATIL J
Where Reported	2003 Indlaw KAR 171; 2004 (4) BC 595; [2004] 121 Comp Cas 447; 2003 (6) KarLJ 60

Case No : W.P. No. 2953 of 2003 (Cs-Res).

N. K. PAUL J. -In this writ petition, the petitioner has assailed the order dated August 31, 2002, passed by the Karnataka Appellate Tribunal in Appeal No. 70 of 2002 vide annexure B and also the judgment and award passed by the second respondent in Dispute No. 102/96-97 dated December 28, 1996, vide annexure A.

It is not in dispute that the petitioner availed of a loan from the first respondent-bank on August 14, 1990, payable in 48 instalments. The last instalment expired on August 30, 1994. As the petitioner failed to pay the instalments as agreed by him even after the expiry of the last instalment, the first respondent raised a dispute u/s. 70 of the Karnataka Co-operative Societies Act, 1959, before the second respondent. The second respondent, after considering the oral and documentary evidence on record and other materials placed before him, has passed the impugned judgment and award on December 28, 1996. Assailing the said judgment and award, the petitioner filed an appeal before the Karnataka Appellate Tribunal in Appeal No. 70 of 2002. The Tribunal, after hearing both the parties and after considering the oral and documentary evidence on record, dismissed the appeal by its order dated August 31, 2002. Feeling aggrieved by the orders passed by both the authorities, the petitioner has presented this writ petition.

The only submission canvassed by learned counsel for the petitioner is that, the rate of interest awarded by the second respondent and confirmed by the Tribunal, is contrary to the well-settled law laid down by the Division Bench of this court in the case of Life

After careful perusal of the impugned orders, on the face of record, I do not find any error of law as such committed by the authorities. As a matter of fact, both the authorities have recorded a concurrent finding of fact against the petitioner on the basis of oral and documentary evidence on record. The specific contention taken by learned counsel for the petitioner before this court has already been considered and negatived by the Tribunal at para. 9 of its order as follows :

"The mortgage deed, which is at pages Nos. 17 to 24 of the lower court record, has a interest recital on page No. 17 wherein it is stated that the present appellant has agreed to repay the loan in instalments with interest at 17 per cent, per annum and further states that if there is any default in payment cf instalments he has agreed to pay 3 per cent. per annum as penal interest. The said mortgage documents also go to show that if any instalments have fallen due, respondent No. 1-bank will be at liberty to recall the loan and proceed for recovery of entire amount due."

But, in the instant case, as rightly pointed out by learned counsel appearing for the first respondent,

after expiry of the last instalment in the year 1994 and again after giving sufficient opportunity to the petitioner to repay the loan, the first respondent, was constrained to refer the matter for dispute on May 15, 1996. Therefore, the contention of learned counsel for the petitioner that the interest is awarded contrary to the agreement, has got no substance and it is liable to be rejected. So far as the reliance placed by learned counsel for the petitioner on the case of Life Insurance Corporation of India v. R. Bettegowda [19911 ILR Karn 3186 ; 1992 (1) BC 331 is concerned, the said decision has no bearing to the facts and circumstances of the instant case. In the said case, immediately after default of one instalment, the authorities have filed a suit for recovery of the amount along with IIV; per cent, interest with 2Vz per cent, penal interest and the court held as follows :

In the instant case, as rightly pointed out by learned counsel for the first respondent-bank, the first respondent, waited till the expiry of all the instalments, i.e., on August 30, 1994, and thereafter also, it has given sufficient opportunity to the petitioner to pay the loan. As he failed to pay the same, it raised the dispute on May 15,1996, after lapse of nearly two years. Therefore, the reliance placed by learned counsel for the petitioner has no bearing to the facts and circumstances of the instant case.

Further, the writ petition is liable to be dismissed at the threshold in view of the lav/ laid down by the apex court in the case of Lakshmi Precision Screws Ltd. v. Ram Bahagat, 2002 Indlaw SC 1760, wherein it is held that a finding of fact recorded by the Tribunal cannot be challenged in proceedings under 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 ratio laid down by the apex court is clearly applicable to the facts and circumstances of the instant case and hence the writ petition is liable to be dismissed on this ground also.

Having regard to the facts and circumstances of the case as stated above, I do not find any good ground to interfere with the impugned orders. Accordingly, the writ petition is dismissed. However, the first respondent-bank is directed to give deductions of the amount already deposited by the petitioner in pursuance of the interim directions issued by the Tribunal and this court.

The learned Government pleader is permitted to file his memo of appearance within four weeks from today.

Vijayendra Shenoy v South Canara District Central Co-Op. Bank Ltd. and Another

Bench	N. K. PATIL
Where Reported	2003 Indlaw KAR 147; AIR 2003 KAR 484; 2005 (1) BC 74
Case Digest	**Subject:** Constitution; Trusts & Associations **Keywords:** Co-Operative Bank, Co-Operative Society **Summary:** Trusts & Associations - Constitution of India, 1950, art.226 - Karnataka Co-Operative Societies Act 1959, s.70(2) Bank loan for purchasing vehicles - Failure to pay installments - Whether Bank has seized vehicles without any authority of law? - Held, no - Party had hypothecated vehicles in favour of Bank and executed agreement to that effect - Once agreement is executed agreeing for terms and conditions thereto - Bank was entitled to seize vehicle - No need for bank to raise a dispute u/s.70(2) - Petition dismissed.

Case No : Writ Petns. Nos. 5876 and 6165 of 2001.

The Order of the Court was as follows :

In these petitions, the petitioner has sought for a declaration, declaring that the seizure of vehicles bearing No. KA-20/9036 and KA-20/C/9036, is illegal and also further sought for a direction, directing the respondents to deliver the vehicle bearing No. KA-20/9036 and KA-20/C/9036 to the petitioner forthwith. He has further sought for a direction, directing the respondents to re-schedule the loan by receiving Rs. Two lakhs and to waive the interest for the period during which the vehicles were in illegal custody of the respondent-Bank.

It is not in dispute that the petitioner has obtained loan from the first respondent - The South Canara District Central Co-operative Bank Ltd. Mangalore (hereinafter referred to as the 'Bank'), for purchasing the two vehicles bearing No. KA-20/9036 and KA-20/C/9036 and hypothecated both the vehicles in favour of the Bank authorities and executed an agreement to that effect. But due to financial constrains, he could not maintain the payment of instalments. When the petitioner defaulted for payment of regular instalment, the Bank has seized the vehicles as per the terms and conditions of the agreement. Feeling aggrieved by the seizure of vehicles, as stated above, and other relief as stated supra, the petitioner has presented these petitions.

When the petitioner has entered into an agreement with the Bank, agreeing for the terms and conditions thereto and when the petitioner has failed to make payment of instalments, as per the clauses in the agreement, the Bank authorities are entitled to seize the vehicle. Once the said terms and conditions have been agreed to and executed, it is not open for him to contend before this Court that seizure is contrary to the well settled law laid down by this Court and that too, placing reliance on the judgment of the learned single Judge which has been subsequently reversed by the Division Bench of this Court. Therefore, the petitioner has neither approached this Court with clean hands nor stated the true facts

before the Court. In my considered view, the writ petition filed by the petitioner is a misconceived one, having regard to the well settled law laid down by the Division Bench of this Court.

Having regard to the facts and circumstances, as stated above, and taking into consideration the grounds urged by the petitioner and the submission of the learned counsel appearing for the Bank, I do not find any good ground to entertain the writ petitions and consider the prayer sought for by the petitioner in the instant writ petitions. Therefore, interference in the action taken by the first respondent-Bank is uncalled for.

Malaprabha Co-Operative Sugar Factory Limited v C.R. Shigehalli and Others

Bench	N. K. PATIL
Where Reported	2003 Indlaw KAR 222; 2003 ILR(Kar) 2779
Case Digest	**Subject:** Administrative; Practice & Procedure; Service **Summary:** Service - there was misappropriation/mismanagement committed by respondents 1 to 3 during the years 1972 to 1977 and petitioner -factory has suffered loss - Director of Sugar ordered enquiry in 1981 - First Appellate Authority held that the said dispute referred to him is well within the time from the date of order passed by the Director of Sugar in the year 1989 - Karnataka Administrative Tribunal allowed the revision and set aside the order passed without taking into consideration the material facts available on the records - finding that the dispute was barred by limitation - clearly erroneous and set aside

Case No : W.P. No. 8795/2001 (Csres)

1. The petitioner is a co-operative society registered under the provisions of Karnataka Co-operative Societies Act, 1959. Respondent Nos.1 to 3 were the employees of the petitioner at the relevant period Respondent No.1 was the Cane Accountant, respondent No. 2 was the Accountant of the State Accounts working on deputation and respondent No.3 was performing the duties of collecting cash, cheques/drafts etc. given in favour of the factory. Be that as it may Respondents 1 to 3, at the relevant period, had delivered sugar in violation of the conditions after accepting cheques and thereafter delayed in presenting the same to the Bank for encashment. Thus, the factory has suffered loss. That under such circumstances, the Director of Sugar/Additional Registrar of Cooperative Societies, on 29.5.1981, ordered for enquiry u/s. 64 of the Karnataka Co-operative Societies Act.

2. **After careful perusal of the order passed by 4th respondent, I do not find any error of law or illegality. In the instant case, there was misappropriation/mismanagement committed by respondents 1 to 3 during the years 1972 to 1977 and in view of the same, the petitioner -factory has suffered loss. The Director of Sugar ordered enquiry u/s. 64 of the Act on 29.5.1981 and in pursuance of the said order, the Joint Registrar of Co-operative Societies, Belgaum, after conducting enquiry as envisaged under the relevant provisions of the Act, has submitted the report holding that the petitioner - factory has suffered loss to the tune of Rs. 2, 03, 108.08. The said report was accepted by the Director of Sugar and accordingly, on 31.3.1989, he passed an order u/s. 68 of the Act. In pursuance of the said order, the petitioner raised a dispute before the Director of Sugar for recovery of Rs. 2, 03, 108.08 from respondents 1 to 3. The Director of Sugar entertained the same and referred to it 4th respondent for disposal. When the matter was pending adjudication before the 4th respondent, after receipt of notice, respondents 1 to 3 raised preliminary objection**

regarding the maintainability of the dispute. The 4th respondent, after considering their objections and after taking into consideration the relevant provisions of the Act, has held that the said dispute referred to him is well within the time from the date of order passed by the Director of Sugar in the year 1989. Feeling aggrieved by the said order, respondents 1 to 3 filed a revision before the KAT. The Tribunal allowed the revision and set aside the order passed by 4th respondent contrary to the relevant provisions of the Act and without taking into consideration the material facts available on the records. The Tribunal has over sighted regarding the enquiry initiated against respondents 1 to 3. If this aspects of the matter is taken into consideration, the **Tribunal ought not to have held that the dispute raised u/s. 70 of the** Co-operative Societies Act **is barred by time.** The said reasoning/finding given by the Tribunal without reference to the order passed by the Director of Sugar is not sustainable in law. In my considered view, the **Tribunal has committed an error in holding that in the instant case cause of action arose in the year 1977 and the dispute ought to have been raised within six years from that date and not from the date of the order passed by the Director of Sugar.**

3. Having regard to the facts and circumstances of the case as stated above, the impugned order passed by the KAT cannot be sustained and it is liable to be set aside.

4. For the foregoing reasons, the Writ Petition stands disposed of with the following directions:

1. Writ Petition is allowed. The impugned order passed by the KAT dated 29.11.2000 in Revision Petition No. 29/ 2000 is hereby set aside. The matter stands remitted back to the 4th respondent for fresh consideration.

2. The 4th respondent is directed to decide the dispute in strict compliance of the mandatory provisions of Karnataka Co-operative Societies Act **and Rules after affording opportunity to the petitioner and respondents 1 to 3, as expeditiously as possible.**

5. The learned Government Pleader is permitted to file his memo of appearance within four weeks from today.

Karnataka Sugar Workers Federation (R), Represented By Its President, Bangalore v State of Karnataka, Represented By The Secretary, Department of Co-Operation, Bangalore and Others

Bench	N. K. JAIN, H. RANGAVITTALACHAR, N. KUMAR
Where Reported	2003 Indlaw KAR 211; 2003 ILR(Kar) 2531; 2003 (4) KarLJ 453; 2003 (3) LLJ 502
Case Digest	**Summary:** Industrial Disputes Act, 1947 and Karnataka State Cooperative Socities Act, 1959, s. 70 (as amended) - in view of the Entry 32 in List 2 of VII Schedule to the Constitution, the legislative competence of the Legislature cannot be disputed - Amendment Act received the assent of the President and is saved even though it is repugnant to some of the provisions of the Industrial Disputes Act in matters stated under s. 70(2)(d) of the Karnataka Cooperative Societies Act. - workman can raise an industrial dispute in cases of an employer discharging, dismissing, retrenching or otherwise terminating the services of an individual workman - union is not deprived of the opportunity to raise a dispute is in no way attracted and on that basis, the amendment cannot be quashed - it was within the competence of the State to make an amendment. - dispute can also be resolved by the Authority appointed under the Cooperative Societies Act - when the State Act expressly excludes the jurisdiction of the Labour Court and the Industrial Tribunal in respect of matters covered under s.70 of the State Act the provisions of the Central Act stand excluded to that extent only - in respect of all matters, which are not covered under Section 70, the Industrial Disputes Act applies

Case No : W.Ps. Nos. 36625/2000 (L-Res) Etc

A learned Single Judge of this Court has made this Reference vide Order dated 7.12.2000, passed in W.P.No. 36625/2000 to a larger Bench, for reconsideration of the law as enunciated in the Division Bench judgment reported in W.P.No. 14792 - 804/1998 c/w 14095/1998 dated 9.3.2000 (M/s. Veerashaiva Co-op. Bank Ltd. vs Presiding Officer, Labour Court and others) on the ground that amendment brought to S. 70 of the Co-operative Societies Act ousts the jurisdiction of Labour Court by conferring the jurisdiction on the Registrar of the Co-operative Societies. This Reference was placed before us on 9.4.2003 as per the order of the Hon'ble Chief Justice dated 1.4.2003.

Brief facts leading to the Order of Reference, as alleged, are:

The Karnataka Sugar Workers Federation (R) represented by its President has filed W.P.No. 36625/2000 challenging the validity of amendments made to the Co-operative Societies Act by the Karnataka Co-operative 2nd Amendment Act, 1997 as published in the Karnataka Gazette dated 27.3.2000, in so far as it relates to amendment made to S. 70(1)(d) and S. 70(2)(d) of the Karnataka Co-operative Societies Act, 1959 ('KCS Act' for short).

It is alleged that the petitioner is a Federation of Trade Union registered under the Indian Trade Unions Act, 1926 functioning in Sugar Factories. The petitioner Federation representing 45, 000 workers being recognised as a collective bargaining agent for the purpose of negotiation and settlement of wages and service conditions of workers in the Sugar Factories, has signed settlement with the Managements. It is alleged that Industrial Tribunals appointed by the State Government under the Industrial Disputes Act, 1947 nearly after 50 years of working would adversely affect the workmen and the employees in the Co-operative sugar factories. Thus the amendment to S. 70 of the KCS Act is contrary to law and violative of Arts. 14 and 21 of the Constitution and is liable to be quashed. It is prayed that the amendment to S. 70 of the KCS Act be quashed and to hold that the entire provisions of Industrial Disputes Act and other relevant labour laws would continue to apply to the employees in co-operative societies.

So far as the argument regarding legislative competence is concerned, as stated, the **State is also given the power to legislate along with the Parliament in respect of matter pertaining to industrial disputes under Item 22 to VII Schedule as occurring in concurrent list.** It is also equally well known that where the legislative competence of a legislature to enact a law is impugned, the law can be justified as falling within one or more entries of the relevant legislative lists, so also parts of it may be justified falling under one Entry and parts under another. A reference can be made to the decision of the Supreme Court in STATE OF BOMBAY vs NAROTHAM DAS 1959 AIR(SC) 69 -) and STATE OF BOMBAY vs BALSARA 1951 Indlaw SC 63). **Therefore, it is futile to contend that the State has no legislative competence to amend S. 70(2)(d) of the** KCS Act **by ousting the jurisdiction of the Labour Court or Industrial Tribunal, as it can do so in exercise of powers under both Entries referred to above. Under the circumstances, the amendment cannot be said to have no competence.**

In view of the said entry 32 in List 2 of VII Schedule to the Constitution, the legislative competence of the Legislature cannot be disputed. **The amendment Act received the assent of the President on 18.3.2000 and therefore, the amendment is saved even though, as argued, it is repugnant to some of the provisions of the Central Act i.e.,** Industrial Disputes Act **in matters stated under S. 70(2)(d) of the** KCS Act**.**

So far as the argument pertaining to the question of right of workers to be represented by the Union is concerned, it is not tenable. **It is seen from the definition under Section 2-A of the** ID Act**, that a workman can raise an industrial dispute in cases of an employer discharging, dismissing, retrenching or otherwise terminating the services of an individual workman and such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or union of workmen is a party to the dispute. At the same time, it is also seen that the workman cannot make a dispute of a general nature. In other words, the dispute pertaining to charter of general demands can be espoused collectively by the union only and not by an individual. Therefore, the argument that the union is deprived of the opportunity to raise a dispute is in no way attracted and on that basis, the amendment cannot be quashed. That apart, nothing can be added to the clear intention of the amendment and on this ground also the amendment cannot be held to be invalid.** No doubt, the term 'ultra vires' means "beyond the power or legal authority". In the instant case, as discussed, it was within the competence of the State to make an amendment. The amendment so made received assent of the President of India. The

argument of Mr. Kasturi, learned Senior Counsel that even if the assent has been given by the President on the State Act, the same is not binding, cannot be accepted, in view of the above discussion. More so, no material has been placed to substantiate the argument. Therefore, the said amendment cannot be held to be ultra vires.

Now we take up the cases cited before us.

It is pertinent to note that the effect of the provisions of S. 70(2)(d) of the KCS Act regarding ouster of jurisdiction came up for consideration before this Court in Harugeri Urban Cooperative Bank Vs State Of Karnataka 1981 (1) Kar(Lj) 136) And Government Employees Co-Operative Bank Ltd. Vs Marthanda Bhima Hangal(Ilr 1976 (1) Kar 111) This Court Held That After the amended provisions of the Societies Act came into force, both the Registrar of Societies and the Industrial Tribunal/Labour Court, under the Industrial Disputes Act had concurrent jurisdiction to decide the disputes. The choice was given to the aggrieved person to choose either of the Forums i.e, under the ID Act or the KCS Act with a restriction that once the Forum was chosen, the same should be pursued to the logical end and had the effect of exhausting the remedy. This view continued to hold the field till the decision rendered by the Division Bench in M/S. Veerashaiva Co-Operative Bank Ltd. Vs Presiding Officer, Labour Court And Others (Ilr 2000 Kar 3743) Decided On 9.3.2000, And Rajajinagar Co-Operative Bank Ltd. Vs Presiding Officer 2001 Indlaw KAR 127) decided on 27.8.2001. As stated, we are agreeing with the reasoning of Veerashaiva's case.

A Division Bench of this Court in M/s. VEERASHAIVA COOPERATIVE BANK LIMITED vs PRESIDING OFFICER, LABOUR COURT(supra) following the decision in R.C. TIWARI vs M.P. STATE CO-OPERATIVE MARKETING FEDERATION LIMITED (supra), and after referring to the other decision of the Supreme Court has held that the remedy provided u/s. 10 of I.D. Act is clearly excluded in view of the provisions of the K.C.S. Act and therefore the reference to the Labour Court u/s. 10 of the I.D. Act was not maintainable. As the said decision is based upon the provisions of the Act and the decision of the Supreme Court, the law declared by the Apex Court is binding and has to be followed. Otherwise also we do not find any reason to disagree with the said judgment of this Court as stated.

It is also relevant to point out that all those judgments were rendered prior to the amendment of S. 70 by Karnataka No. 2 of 2000 where there was no express exclusion of the jurisdiction of the Labour Courts or Industrial Tribunals to deal with the disputes arising u/s. 70. Probably, because of the conflicting judgments, the Legislature thought it fit to make its intention clear by amending S. 70 by which they expressly excluded the jurisdiction of Labour and Industrial Tribunals to deal with disputes arising u/s. 70.

Once the validity of the amendment is upheld as discussed, and when the law expressly bars the jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes arising under Section 70, the aforesaid judgments rendered by the Division Bench of this Court would stand vindicated.

In view of what we have discussed above, we hold that the provisions of S. 70 of Karnataka Co-operative Societies (Amendment) Act, 1997 **which has come into effect from 20.6.2000 are valid with**

the legislative competence and constitutional. Therefore, no reconsideration is required as stated.

No other point was argued before us.

As discussed and for the reasons stated above, the **decision of this Court in M/s. VEERASHAIVA CO-OPERATIVE BANK LIMITED vs PRESIDING OFFICER, LABOUR COURT AND OTHERS (supra) does not require any reconsideration. The matters are referred to learned Single Judge for deciding the cases accordingly. The Writ Petitions shall be listed before the learned Single Judge for disposal on merits, in accordance with law.**

Chitradurga District Mazdoor Sangh v Bhadra Sahakari Sakkare Karkhane Niyamita and Others

Bench	S. R. NAYAK, K. RAMANNA
Where Reported	2003 Indlaw KAR 385; 2003 (3) LLJ 300A
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Condition Precedent **Summary:** Labour & Industrial Law - Constitution of India, 1950, art.14 - Industrial Disputes Act, 1947 - Termination - Settlement - Reasonableness Action - Petitioner while serving as daily-wagers, seasonal and regular employees in establishment of respondent no.1/Factory were terminated by management - Petitioner instituted industrial disputes before Labour Court - While matter was pending management in response to several representations made by union negotiated with amicable settlement - Terms of settlement management asked union to withdrawn industrial dispute with regard to all workmen - Whether management is justified and acted legally in placing that kind of rider as a condition precedent to implement the terms of settlement. Held, management that in order to implement the settlement, the union should withdraw all the industrial disputes pending before the Labour Court. Management demanded that the union should withdraw all the disputes. It is not a settlement in the course of conciliation under 1947 Act but it is only a settlement arrived at between parties in exercise of executive power of respondent No.1 its action is required to be tested on touchstone of the postulates of art. 14 of Constitution and if it is so tested, the inaction of the management should be condemned as one tainted with irrationality and is totally unfair. Management must be rigorously, held to the promise made by it, and it must scrupulously perform its promise on pain of invalidation of an action in violation of it. Every activity of a state has a public element in it and must, therefore, be informed with reason and fairness, if the management promises to do certain thing as a responsible person but fails or refuses to do so its action is liable to be tested for its validity on the touchstone of reasonableness and fairness. Petition allowed.

Case No : W.P. No. 13524/1999

This writ petition is preferred by Chitradurga District Mazdoor Sangh, trade union represented by its president calling in question the inaction of the management of Bhadra Sahakari Sakkere Karkhane Niyamita represented by its managing director, first respondent in the writ petition, in implementing the settlement produced as annexure A, dated May 14, 1998, and for a consequent direction to the management to implement the aforementioned settlement.

The events leading to the filing of the writ petition be noted briefly as under :

The services of members of the petitioner-sangha, while serving as daily-wagers, seasonal and regular employees in the establishment of the first respondent-factory, were terminated by the management. The concerned workmen instituted industrial disputes before the Labour Court, Hubli, assailing the above action of the management. When those disputes were pending before the Labour Court, the management in response to several representations made by the union and its members negotiated with the office-bearers of the union for an amicable settlement of the industrial dispute and that has ultimately resulted in a settlement dated May 14, 1998, which is sought to be implemented in present writ proceedings. According to the union, in terms of the settlement, the management ought to have absorbed the services of 53 workmen named in the settlement. Opposing the writ petition, the management has filed statement of objections.

Admittedly, in terms of the settlement, the dispute instituted with regard to 51 workmen was withdrawn and the two others, it is stated, in the meanwhile, died. When surviving 51 workmen made necessary applications pursuant to the settlement before the Labour Court, Hubli, seeking withdrawal of the disputes, the management chose to oppose that move of the Union by contending that in terms of the settlement, the Union was required to withdraw the industrial dispute with regard to all 124 workmen. Despite this opposition of the management, set out in the statement of objection filed before the Labour Court, the Labour Court impliedly overruled that objection and permitted the Union to withdraw industrial dispute with regard to 51 workmen only. The management did not assail the order of the Labour Court permitting the Union to withdraw industrial disputes only with regard to 51 workmen and rejecting the claim of the management in any appropriate legal proceeding.

Perhaps realising the seriousness of the violation of the terms of settlement committed by the management, Sri Murthy would contend that the settlement Annexure A is not a settlement entered into between the parties under any statute and therefore, such a settlement could not be enforced u/ art. 226 of the Constitution of India. This contention of Sri Murthy is required to be noticed only to be rejected. Art. 14 postulates pervade entire state actions and inactions and wherever the Court finds that these postulates are breached, it would step in and correct the wrongs done.

In our considered opinion, this is a fit case where the Court should apply the doctrine of promissory estoppel. We find all ingredients to apply doctrine of promissory estoppel. Admittedly, under annexure A the management has made the promise to workmen. On the basis of that promise, the workmen acted and altered their position to their peril. Therefore, the management cannot be permitted to approbate and reprobate in order to thwart legitimate rights of workmen flowing from the solemn promise made by the management, which has been reduced into writing before the Minister of Sugar. There is no necessity for us to go into the question whether the settlement Annexure A could be regarded as a settlement arrived between the parties in the process of conciliation envisaged under the Industrial Disputes Act, 1947, or any other statute in view of our finding that the first respondent is a "State". We, however, also find some force in the contention of Sri Jayakumar Patil that in the premise of important powers conferred on the Government by Sections 29, 29-G, 53-A and 54, the power to conciliate between the management of the sugar factory and its employees could not be denied to the Minister of Sugar. Be that as it may, even assuming that it is not a settlement in the course of conciliation under the Industrial Disputes Act but it is only a settlement arrived at between the parties in exercise of the executive power of the first respondent sugar factory, nevertheless, its action is required to be tested on

touchstone of the postulates of Art. 14 and if it is so tested, the inaction of the management of the sugar factory should be condemned as one tainted with irrationality and is totally unfair. The management must be rigorously, held to the promise made by it, and it must scrupulously perform its promise on pain of invalidation of an action in violation of it. Every activity of a state has a public element in it and must, therefore, be informed with reason and fairness, if the management promises to do certain thing as a responsible person but fails or refuses to do so, its action is liable to be tested for its validity on the touchstone of reasonableness and fairness.

By virtue of an interim order passed by the Court on September 27, 1999, it is stated that 51 workmen concerned have been reinstated into service, but 40 per cent. of back-wages is not paid. During the pendency of the writ petition, there was a dispute between the parties with regard to the meaning to be given to the term "current wage", and that has been explained by the learned single judge by his order dated March 16, 2001. We have perused the opinion of the learned single judge and we are in respectful agreement with his opinion.

In the result and for the foregoing reasons, we allow the writ petition with costs quantified at Rs. 3, 000 payable by the first respondent to the petitioner's counsel within two weeks. A writ of mandamus shall be issued to the management of the first respondent sugar factory to implement the settlement Annexure A dated May 14, 1998 and continue 51 workmen already reinstated into service and pay 40 per cent of back wages, if not already paid within a period of one month from today.

Bijapur Mahalaxmi Urban Co-Operative Credit Bank Limited v Mohan Kamalakar and Others

Bench	S. R. NAYAK, K. RAMANNA
Where Reported	2003 Indlaw KAR 369; 2003 (6) KarLJ 15; 2003 (2) LLJ 595
Case Digest	**Subject:** Corporate; Labour & Industrial Law **Keywords:** Legal Heir

Case No : W.A. Nos. 3474/1999 and 4844-52/1999

The above writ petitions were filed by respondents Nos. 1 to 10 herein, praying for a declaration that the petitioners' claim in regard to their wages and other emoluments as awarded by the Labour Court, Bijapur, by order dated January 31, 1996, in Application No. 37 of 1995 will have precedence and priority over the claims put forward by the appellant-bank and for consequential direction to the appellant-bank and the Assistant Registrar of the Co-operative Societies and Recovery Officer, Bijapur, the 12th respondent herein not to appropriate the properties and assets of Joshi Metal Bijapur, the 11th respondent herein. The learned judge, placing reliance on the judgment of the Apex Court in Workmen of Rohtas Industries Ltd. v. Rohtas Industries Ltd. 1987 Indlaw SC 28750 : 1987-II-LLJ-1, allowed the writ petitions and directed that out of the sale proceeds, the amounts due to the petitioners and the remaining 24 workmen concerned should be paid first and that the balance, if any, should be adjusted towards the amount due to the appellant-bank.

Before learned single judge, on behalf of the petitioners, it was contended that since the amount awarded by the Labour Court, Bijapur, on an application made under Section 33-C(2) of the Act has priority in terms of enforcing the liability against the sums of money, that may be recovered by sale of the assets of the 11th respondent-industries. The learned Judge though opined that the appellant-bank being assured creditor certainly has the priority over the other creditors, however, placing reliance on the judgment cited (supra), allowed the writ petitions and issued directions noticed above.

We have heard learned counsel appearing for the parties. Learned counsel for the appellant-bank contended that the learned judge has erred in law in applying the judgment of the Apex Court cited above and that the said judgment is not applicable at all to the facts of the case. Learned counsel would highlight that it is nobody's case that the appellant-bank in the course of execution of the award passed by the arbitrator u/s. 70 of the Karnataka Co-operative Societies Act, sought to sell commodities or goods manufactured by the 11th respondent-industries. Learned counsel contended that it is an admitted case that what was sought to be sold in execution of the award are nothing but plant and machinery of the industries and not any manufactured goods. On the other hand, learned counsel appearing for the workmen-writ petitioners, would contend that in terms of the provisions of sub-s. (2) of Section 33-C of the Act, the claims of the workmen have first priority on the sums of money that may be realised out of the sale of the assets of the 11th respondent-industry. Learned counsel for workmen would also draw our attention to the provisions of sub-s. (1) of S. 32 of the Karnataka Co-operative Societies Act, 1959, which falls within Chapter V and which deals with privileges of the co-operative societies

and maintain that in terms of the above provisions, the claims of the workmen have priority over the claim of the appellant-bank.

Having heard learned counsel for the parties, the only question that arises for decision is whether the claim of the workmen should have priority over the claim of the bank. We are of the considered opinion that the judgment of the Supreme Court in the case of Workmen of Rohtas Industries Ltd. v. Rohtas Industries Ltd. (supra) has no application at all to the facts of these cases. We say this because, the Supreme Court in the said judgment has opined that even in respect of the product which was sought to be sold in execution, the bank being the secured creditor, its claim has a priority in law. Having said it, the Apex Court was however, pleased to observe that in the manufacture of the products in stock which were admittedly manufactured by the industry concerned, there was contribution of Labour by the workmen. In that view of the matter, the Apex Court opined that it could not be said that the wages and emoluments for the period up to closure would not rank in priority. As pointed out (supra), the assets which are sought to be sold by way of public auction or otherwise in this case are not the manufactured goods, but they are lands, plant and machinery of the industry. In that view of the matter and having regard to what the Apex Court itself has stated in the beginning of para. 3 of the judgment, it should be held that the bank being the secured creditor, its claim has priority over the claims put forward by workmen.

Sub-s. (1) of S. 32 of the Act essentially deals with the rights of the co-operative societies and not the rights of employees of co-operative societies. No doubt sub-s. (1) impliedly provides that debts due to the co-operative societies shall be a first charge in the matter of money recoverable by it. Since we are not called upon to decide competing claims of the co-operative society and the appellant-bank, there is no scope for applying the provisions of sub-s. (1) of S. 32 of the Co-operative Societies Act to the facts of this case.

In conclusion we cannot sustain the order of learned single judge. In the result, the writ appeals are allowed and the order of the learned single judge is set aside and Writ Petitions Nos. 15677, 15988 to 15996 of 1996 are dismissed with no order as to costs.

Commissioner of Income Tax Andanr v Sri Ram Sahakari Bank Limited

Bench	G. C. BHARUKA, S. B. MAJAGE
Where Reported	2002 Indlaw KAR 122; 2004 (186) CTR 734; [2004] 266 ITR 632; 181 TAXATION 235; [2004] 138 TAXMAN 45

Case No : It Appeal No. 137 of 2002

The only question involved herein is whether the Tribunal isjustified in holding that the respondent-assessee is entitled todeduction under s. 80P(2)(a){iJ of the Act in respect of the interestand dividend income of Rs. 2, 50, 664 derived out of investment inNational Saving Certificate, Indira Vikas Patra, Kisan Vikas Patra, short-term fixed deposits in banks and shares of Maharashtra StateFinance Corporation of India.

The assessee is a co-operative bank within the meaning of s.2(b-I) of the Karnataka Co-operative Societies Act, 1959, and isregistered as such under the provisions of the said Act. It is aregional rural bank within the meaning of Regional Rural Banks Act, 1976. As per s. 22 of the latter Act it is to be deemed to be aco-operative society for the purpose of the Act. It appears that theabove investments were made by the assessee-bank out of its surplusfunds. The AO disallowed the deduction claimed by the assessee unders. 80P(2)(a)(i). On appeal, CIT(A) took the view that the deductionclaimed by the assessee is admissible only against the income frombanking business and according to him since the income derived out ofthe investments referred to above was not a part of ordinary bankingbusiness of the assessee.-bank, the deduction as claimed was notadmissible. The assessee guestioned the order of the CIT(A) beforethe Tribunal. The Tribunal, on consideration of the entire facts andcircumstances, held that the assessee has rightly claimed thededuction and directed the AO to redo the assessment by granting suchdeduction.

In the present case, none of the authorities have come to theconclusion that the assessee had not utilised its surplus orvoluntary reserve funds in the course of its ordinary bankingbusiness. But the view taken by the CIT(A) was that (on) thedetermination of the nature claimed herein could be granted only in acase where investments are made out of statutory reserve funds. Thereasoning on its very face is contrary to the law laid down by theSupreme Court in the case of Bihar State Co-operative Bank Ltd. (supra). In this case the Supreme Court has held that : "....Aswe have pointed out above, it is a normal mode of carrying on bankingbusiness to invest moneys in a manner that they are readily availableand that is just as much a part of the mode of conducting a bank'sbusiness as receiving deposits or lending moneys or discountinghundies or issuing demand drafts. That is how the circulating capitalis employed and that is the normal course of business of a bank. Themoneys laid out, in the form of deposits as in the instant case wouldnot cease to be a part of the circulating capital of the appellantnor would they cease to form part of its banking business. Thereturns flowing from - them would form part of its profits from itsbusiness. In a commercial sense the directors of the company owe itto the bank to

make investments which earn them interest instead ofletting moneys lie idle. It cannot be said that the funds of the bankwhich were not lent to borrowers but were laid out in the form of deposits in another bank to add to the profit instead of lying idlenecessarily ceased to be a part of the stock-in-trade of the bank, orthat the interest arising therefrom did not form part of its businessprofits."

In the above view of the matter, we hold that the viewultimately taken by the Tribunal, though not on a very soundreasoning, has to be upheld as correct. The appeal is accordingly dismissed.

Kota Co-Operative Agricultural Bank Ltd. and Etc. v The State of Karnataka and Another Etc.

Bench	G. C. BHARUKA, H. RANGAVITTALACHAR, JJ
Where Reported	2002 Indlaw KAR 155; AIR 2003 KAR 30; 2002 (5) KarLJ 321; 2003 (1) RCR(Civil) 584
Case Digest	**Summary:** Advocates & Judges - Constitution of India,1950, art.19(1)(g) - Advocates Act,1961, s.16(3) - Karnataka HC Rules,1959, r.3(2) - Bar Council of India Rules,1975 Part VI, Chap.I, Cls.(a) and (b) - Civil Procedure Code,1908, s.119, o.3, r.4(6) - Advocate - Freedom of trade - Whether advocate who has not filed Vakalatnama for party in case can appear, plead and argue for him without presenting memo of appearance and obtaining express permission from Court in terms of r.3 of Chap. Vof 1959 Rules? - Right of person to practice in any Court or before any authority flows from s.29 r/w s.33 of 1971 Act and therefore is statutory right which can be exercised only subject to terms and conditions envisaged under enabling provisions - Competent legislature can enact laws regulating right to practice any profession which will certainly include legal profession - ss.16(3),29,33,34 are relevant for ascertaining right of advocates to appear and practice before HCs and Courts subordinate thereto - Perusal of these provisions makes it clear that right of person to practice in any Court or before any authority flows from s.29 r/w s.33 of 1971 Act - Held, there is statutory right which can be exercised only subject to terms and conditions envisaged under enabling provisions - HC has been empowered to make rules, laying down conditions subject to which advocate shall be permitted to practice in HC and Courts subordinate thereto - If dispute arises as to whether advocate who had appeared and argued case had authority to do so there will be documentary evidence available on record to resolve any such controversy forthwith - Memorandum of appearance in form of written document will merely subscribe to such arrangement between two advocates - In case advocate is engaged for pleading i.e. appearing and arguing case of party on instructions of advocate on record then he can do so only if advocate on record files memorandum of appearance evidencing fact that he has engaged other counsel for purpose of pleading i.e. to appear and argue his client's case - Appeal dismissed.

Case No : Writ Appeal No. 5612 of 2000 C/W. Writ Appeal Nos. 5583 and 6451 of 2000

The Judgment was delivered by :

The legal issue involved herein is of great relevance for day to day functioning of our judicial system and the right of the advocates to plead and argue the cases coming before the Courts; Because of certain controversy before the learned single Judge as to whether an advocate who has not filed Vakalatnama

for a party in a case can appear,plead and argue for him without presenting a memo of appearance and obtaining express permission from the Court in terms of Rule 3 of Chapter V of the High Court of Karnataka Rule 1959 (in short the 'HC Rules').

The learned Single Judge by his impugned order has taken the view that "when an Advocate who had filed Vakalatnama engaged the services of another Advocate to plead and argue his clients' case has to obtain the permission of the Court as contemplated under Rule 3(1) and (2) of Chapter V of the High Court Rules and unless and until 'Kant32 such a permission had been obtained, he as a matter of right cannot engage the services of another Advocate to appear and argue for and on his behalf. That again he has to do by making out a reasonable cause thereto as contemplated under Rule 3(1) of the said rules."

The present writ appeals have been preferred by the writ petitioners as well as the Karnataka State Bar Council. According to them, the view taken by the learned single Judge strikes at the fundamental right of the advocates to practice their profession as guaranteed u/art. 19(1)(g) of the Constitution of India. Their contention is that such a constitutional right cannot be made dependent on the discretion of the Court and therefore the concerned statutory provisions should be construed and interpreted in a manner which completely dilutes the discretion of the Court conferred under the HC Rules.

Answer to the controversy raised herein depends on careful and harmonious reading and construction of S. 16 of the Advocates Act, (in short the 'Act'), Chapter-I of Part VI of the Bar Council of India Rules (in short the "BCI" Rules), Rules containing in Chapter III of the HC rules, S. 119 and Order III, Rule 4 of the Code of Civil Procedure, 1908 (in short "CPC"). Interpretation in a case of any ambiguity or inconsistency in application of these provisions has to be resolved by keeping in view cls. 1(g) and (6) of Art. 19 of the Constitution of India.

S. 119. Unauthorised persons not to address Court. - Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

Having so traced the power of the High Court to make rules concerning appearance of the advocates to practice law in legal proceedings before the Court, now we can refer to Chapter V of the HC rules, which is entitled as "Practitioners of the Court". Rule 3 of HC Rules only appears to be relevant for resolving controversy at hand. This rule reads as under.-

Rules 3. (1). When an Advocate retained to appear for any party on a vakalatnama in an appeal or other matter in the High Court is prevented by sickness or engagement in another Court or by other reasonable cause from appearing and conducting the case of his client, he may appoint another Advocate to appear for him. In such a case the Court if it sees no reason to the contrary, may permit the case to proceed in the absence of the Advocate originally engaged and permit his nominee to appear for him without a vakalatnama.

The High Court has framed another set of Rules for regulating the proceedings u/arts. 226 and 227 of the Constitution of India. These rules are known as Writ Proceedings Rules 1977. Rule 39 of the Writ Proceedings Rules reads as under.-

R. 39. Application of the High Court of Karnataka Rules etc. - The provisions of the High Court of Karnataka Rules, 1959, the rules made by the High Court of Karnataka under the Karnataka Court

Fees and Suits Valuation Act, 1958 and the provisions of the Code of Civil Procedure, 1908 shall apply as far as may be, to proceedings u/art. 226 and /or Art. 227 and writ appeals in respect of matters for which no specific provision is made in these rules.

Careful reading of the two sub-rules of Rule 3 of the HC rules reflects the situations under which these will operate. Sub-rule (1) speaks about the situation when an advocate who is retained by a party to appear for him by executing vakalatnama in his favour but is prevented to do so because of some exceptional situation constituted reasonable cause for him not to appear then subject to the permission of the Court some other counsel may appear for him without furnishing any vakalatnama. While examining this sub-rule, one has to bear in mind that this sub-rule merely authorises the instructed advocate having no Vakalatnama only to appear and not to do anything further in the case of substantial in nature, like acting, pleading or arguing. Such a situation very often arises when the cases are listed before the Court for some formal orders or where adjournments are required to be prayed for. But, certainly, under this rule a counsel who does not hold vakalatnama for a party cannot claim as a matter of right to appear for the advocate on record and this will be always subject to the permission accorded by the Court which is normally never refuses unless there are good reasons for doing so. This power of the Court has to be preserved to avoid chances of fraud or even otherwise to protect the rights of litigants.

Now we come to Rule 4 of the Order III of the CPC which provides for appointment of pleader. Pleader has been defined in cl. (xv) of S. 2 of CPC to mean any person entitled to appear and plead for another in court and includes an advocate, vakil and attorney of a High Court. This rule has been substituted by Karnataka Amendment w.e.f. 30-8-1967. rule 4(1) inter alia provides that no pleader shall act for any person in any court unless he has been appointed for that purpose by such person by a document subscribed with his signature in his own hand by such person or by his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment and the appointment has been accepted in writing by the pleader. Sub-rule (6) of Rule 4 of Order III has material bearing on the aspects which are under controversy. This sub-rule reads as under.-

From the proviso to sub-rule (6) of Rule 4 of Order III, CPC, it appears that if a pleader is engaged to plead i.e. argue on behalf of a party by advocate on record of such party, then the pleading advocate is not required to file memorandum of appearance. This may be the consequence of the proviso. But, still rule 3(2) of the HC Rules requires an advocate on record engaging another advocate to argue for his client to file memorandum of appearance. Therefore, construing the two provisions in a harmonious way, it follows that in case an advocate is engaged for pleading i.e. appearing and arguing the case of a party on the instructions of an advocate on record, then he can do so only if advocate on record files a memorandum of appearance evidencing the fact that he has engaged the other counsel for the purpose of pleading i.e. to appear and argue his client's case. Such a construction will be in consonance with the avowed object that the records always will bear evidence that counsel appearing and arguing had due authority for doing so.

For the aforesaid reasons and subject to the observations made above, we find no ground to interfere with the order passed by the learned single Judge. The writ appeals are accordingly dismissed.

M. C. Gangadharappa v State

Bench	M. P. CHINNAPPA
Where Reported	2002 Indlaw KAR 74; 2002 CRLJ 2755; 2002 (5) KarLJ 237
Case Digest	**Subject:** Criminal **Summary:** Criminal - Karnataka Co-operative Societies Act,1959, s.127A,2(g),2(e-3) - Indian Penal Code,1860, ss.409,21,406,161 - Co-operative Societies Act, s.162 - Probation of Offenders Act - Maharashtra Co-op. Societies Act - Prevention of Corruption Act,1947, ss.2,5 - Petitioner was employed as Secretary of a Society - Allegation that he had misappropriated certain amount - In statement u/s.313, Cr. P.C.., admitted that he was entrusted with work of maintaining accounts; looking after properties and attending to bank transaction, of society - Contended that he was not a public servant as defined u/s.409, IPC? - Whether petitioner is a public servant as defined u/s.21 IPC and also 127-A, Karnataka Co-op. Societies Act? - Accused in full charge of properties - Has committed breach of trust on two occasions - Not by mistake that these irregularities had occurred - Had intentionally misappropriated funds of society and also he has committed other irregularities - Held that he is a public servant and offence committed by him comes u/s.409, IPC - Petitioner is also not entitled for benefit of P.O. Act as it is not in dispute that he was aged more than 21 years at time of commission of offence - He has misappropriated large sums of money and only because of audit report, misappropriation was brought to light - Thereafter, he paid amount and it is virtually admitting guilt - Argument that he is only bread-earner in family and a lapse of 15 years would be a ground for lenient view, is unsustainable - Conviction confirmed - Petition dismissed.

Case No : Cr. R.P. No. 3 of 2001, Dt. 28 March 2002.

The Order of the Court was as follows :

Therefore, the offence as alleged has been established in this case and the petitioner being employee of the co-op. society is punishable under S. 409, I.P.C. The P.O. Act is not applicable and no material is left out without being considered by the Courts below. This Petition is filed against concurrent findings of both the Courts and no ground is made out for this Court to interfere. Therefore, the petitioner is liable to be dismissed.The brief facts of the case are that the petitioner was employed as Secretary of the Vyavasaya Seva Sahakara Sangha Nyayamitha, Lingadahalli from 23-4-83 to 29-2-88. As far as this is concerned, there is absolutely no dispute. Even for that matter Ex.P-4(a) the entry in the resolution book Ex.P-4 at page 76 clearly discloses that the petitioner was appointed as Secretary. P.W. 2 Basavaraju was working as Sr. Auditor of the Co-op. Societies and he conducted audits of the said society for the year 1987-88. Ex.P-5 is the credit bill No. 1168 dt. 20-8-87 under which 50 quintals

and 60 Kgs. of rice was purchased the value of which is Rs. 9, 740.50. However, it was not taken to the stock register and the value was not entered in the cash book. Ex.P-6 is a similar credit bill No. 878 dt. 5-1-88 under which 40 quintals of rice was purchased on 5-1-88 the value of which is Rs. 7, 700/-. This also was not taken into account and thereby he has misappropriated the amount. The Sr. Auditor has submitted his report as per Ex.P-3 and the petitioner has sent a letter as per Ex.P-9 admitting the audit report and also the amount involved in the case. P.W. 1 D. Sathyanarayana Rao was authorised by the Asst. Registrar of Co-op. Societies by his letter Ex.P-2 to file a complaint against the petitioner and accordingly, P.W. 1 filed a report at the Lingadahalli Police Station which came to be registered in Cr. No. 70/90 by the P.S.I. C.W. 8. Therefore, from these documents, it is abundantly clear that the Courts have rightly held that the petitioner was working as Secretary and he had misappropriated the amount. When his statement was recorded under S. 313, Cr. P.C.., he admitted that he was entrusted with the work of maintaining accounts; looking after the properties and attending to bank transaction, of the society etc. Therefore, it is not in dispute that he was the Secretary of the Society and he had misappropriated the amount.For the first time before this Court the learned counsel submitted that he is not a public servant as defined under S. 409, IPC. Therefore, he has not committed the offence punishable under S. 409.

It is common knowledge that the co-op. society is meant for the members and it is also a social piece of legislation. But unfortunately, the officers are involved in embezzlement and also misappropriation of funds as a result of which the very object of forming a co-op, society is defeated. The members who are beneficiaries are put into disastrous position. It is also not out of place to mention that the Secretaries and office bearers become enraged by their illegal acts. This case is one such example. He has misappropriated large sums of money and only because of audit report, the misappropriation was brought to light. Thereafter, he paid the amount and it is virtually admitting the guilt as stated above. Therefore, the argument of the learned counsel for the petitioner that he is the only bread-earner in the family and a lapse of 15 years would be a ground for lenient view, etc. is unsustainable.

Both Statutes have different objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one system. This being the position, even though the legislatures had incorporated the provisions of S. 21 of the Indian Penal Code into the Co-operative Societies Act, in order to define a "public servant" but those "public servants" cannot be prosecuted for having committed the offence under the Indian Penal Code. It is well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created. A legal fiction in terms enacted for the purposes of one Act is normally restricted to that Act and cannot be extended to cover another Act.Further following the principles enunciated in Ramesh Balkrishna Kulkarni v. State of Maharashtra, 1985 Indlaw SC 397 : 1985 Indlaw SC 397), Their Lordships have held that a Municipal Councillor can be held to be a "public servant" within the meaning of S. 21 of the Indian Penal Code and the Municipal Councillor was acquitted. In the light of this decision, it is for the Government to take appropriate action to amend S. 21 of the Indian Penal Code incorporating the person against whom the prosecution to be launched under the Indian Penal Code for the illegal act or violation of any of the provisions of law.

Send a copy of this judgment to the Law Department to take appropriate steps in the light of the observations made by the Supreme Court referred to above for amending S. 21, IPC, by incorporating the persons against whom prosecution to be launched under the Indian Penal Code.

With this observation, the petition is dismissed confirming the conviction and sentence imposed on the petitioner.

Sri Manjunatha Co-Operative Housing Society Ltd., Dharwad and Others v State of Karnataka and Others

Bench	TIRATH S. THAKUR
Where Reported	2002 Indlaw KAR 208; AIR 2002 KAR 237; 2002 (3) KarLJ 74
Case Digest	**Subject:** Constitution; Practice & Procedure; Trusts & Associations **Keywords:** Co-Operative Society **Summary:** Practice & Procedure - Constitution of India, 1950, art. 14 - Karnataka Stamp Act, 1957, art. 20 - Karnataka Co-Operative Societies Act 1959, s. 38 - (A) Stamp duty - Co-operative Societies - Concession - Whether withdrawal of concession in payment of stamp duty granted to co-operative society is within the power of legislature? - Held, Yes - Till omission of first proviso to art. 20 (1), concession enjoyed by instruments of transfers executed by societies in favour of their members yet same could not possibly mean that Legislature was denuded of its power to suitably amend provision of even delete same altogether - Deletion of proviso signifies that in opinion of Legislature, concession earlier enjoyed was no longer required to be continued - Legislature enjoys considerable latitude in enacting fiscal legislation - It is for Legislature to determine extent of burden that should fall on class or category of tax payers - It is also for Legislature to determine whether any classification need be made and if so, extent or nature of concession that need be given or preferential treatment extended on basis of such classification - So long as amending Act does not offend art. 14 of Constitution and so, long as Legislature did not lack requisite legislative competence to enact same, question of striking down amendment or restoring deleted provision to statute book does not arise - (B) Stamp duty - Co-operative Societies - Concession - Pre-deposit - Unconstitutionality - Whether provision of s. 45-A (5) of 1957 Act and r. 9 of 1977 Rules in so far as same prescribe pre-deposit of 50% for maintainability of an appeal suffer from any vice of unconstitutionality?- Held, No - Right of appeal is neither fundamental right nor unqualified legal right - It is enjoyable only in manner and to extent statute creates same - Not unusual in fiscal legislation to provide for right of appeal subject to appellant depositing part of amount demanded from him - Such pre-deposits qualify right of appeal and do not totally abrogate same - Even if one were to say that pre-deposit tantamount to, altogether denying right of appeal, no fault could be found with same having regard to fact that right of appeal is not inherent in party to any adjudicatory process - Nothing unconstitutional, arbitrary or discriminatory about provision prescribing pre-deposit for maintainability of appeal - Petitions dismissed.

Case No : Writ Petn. Nos. 30981-83 of 2001 (Gm-St/Tn).

The Order of the Court was as follows :

Constitutional validity of the Karnataka Stamp and Certain Other Law (Amendment) Act, 2001 (Act No. 6 of 2001) has been assailed in the present writ petitions in so far as the same has omitted proviso (1) to Art. 20 of the Karnataka Stamp Act 1957 and inserted a proviso at the end of S. 38 of the Karnataka Co-operative Societies Act, 1959. The vires of S. 45-A (5) of the said Act and Rule 9 of the Karnataka Stamp (Prevention of Undervaluation of Instruments) Rules 1977 has also been assailed in so far as and to the extent the same prescribe a pre-deposit of 50% of the stamp duty determined for filing of an appeal against any order made by the District Registrar or the Deputy Commissioner concerned.

In terms of the proviso to Art. 20 (1) of the Karnataka Stamp Act 1957, stamp duty is chargeable on the amount or value of consideration set forth in the conveyance executed by House Building Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959. In cases where the housing societies execute a lease-cum-sale agreement, a sum of Rs. 10 or difference of the duty payable on the conveyance and the agreement earlier executive whichever is greater alone was payable. By the impugned Act, the Legislature has deleted the first proviso to Art. 20. The net effect, therefore, is that the concession available to the instruments transferring buildings or sites in favour of members of co-operative societies stands withdrawn. In other words, such instruments would like others attract stamp duty in the manner and to the extent otherwise prescribed under Art. 20 (1) (i).

The solitary ground on which the deletion of the provision is assailed in the present writ petitions is that the benefit earlier enjoyed by the societies and their members could not have been withdrawn by the Legislature. There is, in my opinion, no merit in that contention. Whether or not any class or category of transfers should enjoy any concession in so far as payment of stamp duty is concerned is a matter which rests entirely with the Legislature. It is true that till the omission of the first proviso to Art. 20 (1), a concession was enjoyed by instruments of transfers executed by the societies in favour of their members yet the same could not possibly mean that the Legislature was denuded of its power to suitably amend the provision of even delete the same altogether. The deletion of the proviso signifies that in the opinion of the Legislature, the concession earlier enjoyed was no longer required to be continued. The Legislature enjoys considerable latitude in enacting fiscal legislation. It is for the Legislature to determine the extent of burden that should fall on a class or category of tax payers. It is also for the Legislature to determine whether any classification need be made and if so, the extent or nature of concession that need be given or preferential treatment extended on the basis of such a classification. Suffice it to say that so long as the amending Act does not offend Art. 14 of the Constitution and so, long as the Legislature did not lack the requisite legislative competence to enact the same, the question of striking down the amendment or restoring the deleted provision to the statute book does not arise.

The only other aspect that remains to be considered is whether the provision of Section 45-A (5) of the Karnataka Stamp Act, 1957 and Rule 9 of the Karnataka Stamp (Prevention of Undervaluation of Instruments) Rules 1977 in so far as the same prescribe a pre-deposit of 50% for the maintainability of an appeal suffer from any vice of unconstitutionality. The argument on behalf of the petitioner was that a pre-deposit would render the right of appeal nugatory and could not therefore be legally supported. There is, in my opinion, no merit in that contention either. A right of appeal is neither a fundamental right nor an unqualified legal right. It is enjoyable only in the manner and to the extent the statute creates the same. It is not unusual in fiscal legislation to provide for a right of appeal subject to the

appellant depositing a part of the amount demanded from him. Such pre-deposits qualify the right of appeal and do not totally abrogate the same. Even if one were to say that a pre-deposit tantamounts to, altogether denying the right of appeal, no fault could be found with the same having regard to the fact that a right of appeal is not inherent in a party to any adjudicatory process. There is, therefore, nothing unconstitutional, arbitrary or discriminatory about the provision prescribing a pre-deposit for the maintainability of an appeal.

This Court held that since on the date the District Registrar passed the order under challenge, a pre-deposit was not essential for filing of an appeal, such a pre-deposit could not be demanded merely because it had been subsequently prescribed. That is not however the position in the instant case.

Rajajinagar Co-Operative Bank Limited, Bangalore v Presiding Officer, Bangalore and Another

Bench	G. C. BHARUKA, A. V. SREENIVASA REDDY
Where Reported	2001 Indlaw KAR 127; 2002 (18) CLR 721; 2001 (6) KarLJ 36; 2001 (34) LabIC 3578; 2002 (1) LLJ 684
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Disciplinary Proceeding, Disciplinary Authority **Summary:** Labour & Industrial Law - Industrial Disputes Act, 1947, s. 2(oo) - Karnataka Co-operative Societies Rules, 1960, r. 17(3) - Retrenchment - Choice of forum - Respondent was given appointment by appellant-Society on post of accounts clerk in violation of eligibility criteria pertaining to age limit therefore, her service was terminated - Tribunal held, termination was made without compliance of s. 25-F of the I.D. Act and directed for reinstatement with full back wages - Single Bench also confirmed the findings of Tribunal - Hence, instant appeal - Whether, ter-mination of respondent can be said to be "retrenchment" within the meaning of s. 2(oo) of the I.D. Act and disputes arising between co-operative societies and its employees can be subjected to adjudicatory process under the I.D. Act. Held, she had already crossed maximum age limit prescribed for appointment. Admittedly managing committee of co-operative society had no authority to relax age limit. This could have been done only with previous permission in writing of registrar which was, admittedly not taken, though mandatorily required under Co-operative Rules. Hence, her appointment on post of accounts clerk was per se void and illegal as in law. Moreover she was given appointment in violation of r. 17(3) of the rules which mandatorily provided that no appointment by direct recruitment shall be made except by calling for application from eligible candidates by notifying the same. No valid contract of service between appellant and respondent came into existence because it was not permissible for managing committee of appellant to give appointment to respondent unless statutory conditions prescribed under Co-operative rules had been complied with. Since, respondent was never appointed in eye of law, therefore, question of her retrenchment u/s. 2(oo) of the I.D. Act cannot at all arise. I.D. Act had come into force on 1-4-1947 whereas the Co-operative Act was brought into force on 1-6-1960. State co-operative law having been made by State legislature subsequent to law made by parliament and having received assent of President, to the extent of inconsistencies between the two laws, the State law has to prevail. Since, it is the co-operative law which has to prevail and therefore the ref-erence of disputes between the employees and co-operative societies relating to their em-ployment can be referred to registrar only, and no dispute in relation to such matters can be raised, referred to and decided under the provisions of the I.D. Act. Appeal allowed.

Case No : Writ Appeal No. 5770 of 1998.

Per G. C. Bharuka, Actg. C.J. :-

The appellant is a Co-operative Bank within the meaning of cl. (b) of S. 2 of the Karnataka Co-operative Societies Act, 1959 (in short, "The Co-operative Act"). The power of the appellant to create the strength of its establishment, eligibility for appointments, the procedure to be followed for the same and the conditions of service of its officials and employees are governed by Rules 17 and 18 of the Karnataka Co-operative Societies Rules, 1960 (in short, "the Co-operative Rules "). It is not in serious dispute that the respondent-Smt. B. Shantha was given appointment by the appellant-Society on the post of Accounts Clerk in violation of eligibility criteria pertaining to age limit and therefore as being required by the authorities under the Act, after giving due notice and sufficient time, her service came to be terminated by a memo dated 14-1-1988.

The respondent questioned the validity of the above termination before the Labour Court by filing an application under sub-section (4-A) of S. 10 of the Industrial Disputes Act, 1947 (in short, "the I.D. Act") as inserted by the Karnataka Amendment Act 36 of 1964. The Tribunal, under its award dated 19-9-1994, took the view that since the termination was made without compliance of Section 25-F of the I.D. Act and accordingly directed for reinstatement with full back wages. The appellant-Bank questioned the said award by filing a writ petition. The learned Single Judge under his impugned judgment agreed with the reasoning and award of the Labour Court but with slight modification by restricting the entitlement of back wages only to the extent of 75%.

(ii) Whether the disputes arising between the Co-operative Societies and its employees can be subjected to the adjudicatory process under the I.D. Act ?

The Facts. - It is not in dispute that the date of birth of the respondent is 11-2-1941. The appellant-Bank appointed her as Accounts Clerk on daily wages on 3-12-1983. At that time her age was 42 years. With effect from 1-8-1985 her salary was fixed on a consolidated sum of Rs. 550/- p.m., which was increased to Rs. 700/- p.m. with effect from 1-8-1986.

It has come on record through evidence that in the month of July 1988, the Deputy Registrar of Co-operative Societies wrote a letter to the appellant-Cooperative Bank that several illegal appointments have been made by it and if appropriate corrective measures are not taken its management may be superseded. The appellant-Bank had produced the letters issued to the said effect by the Assistant Registrar and the Deputy Registrar of Co-operative Societies, which were marked as Exs. M. 1 and M. 2.

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court."

For the aforesaid reasons we hold that so far as the State of Karnataka is 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. For these reasons, we find it difficult to sustain the award of the Labour Court as also the judgment of the learned Single Judge. The same are accordingly set aside. The appeal is allowed. Parties to bear their own costs.

Devanur Grama Seva Sahakari Sangh Limited v Virupaxayya and Others

Bench	Ashok Bhan, CHIDANANDA ULLAL
Where Reported	2001 Indlaw KAR 78; 2002 (2) KarLJ 6; 2001 (34) LabIC 2889
Case Digest	**Subject:** Labour & Industrial Law

Case No : Writ Appeal No. 2228 of 1999(L), Dt. 27 June 2001.

Shortly stated the facts are :

Respondent workman (hereinafter referred to as 'the respondent') was appointed as a clerk with the appellant in the year 1981. By an order dated 11th of March 1991, the service of the respondent was terminated by giving one month's notice. Respondent raised an industrial dispute u/s. 10(4-A) of the Industrial Disputes Act (Karnataka Amendment), 1947 (for short, 'the I.D. Act') Service of the respondent was terminated on the ground that he was a chronic absentee and that he was irregular in the performance of his duty. It was done by passing a resolution. Respondent assailed the order terminating his service on the ground that the same was stigmatic in nature. On the charge of remaining absent from duty without sanctioned leave his service could not be terminated without issuance of a show-cause notice and holding an enquiry. That the order was passed in violation of the principles of natural justice. Another ground taken was that his service was terminated without payment of retrenchment compensation provided under Section 25F of the Act. It was further stated that the appellant-society had been merged with Shirur Grama Seva Sahakari Sangh, Shirur, and the said Sangha was impleaded as Respondent No. 2.

Appellant who was respondent No. 1 before the Labour Court filed his statement of objections denying the averments made in the claim application. It is pleaded that the averments made in the claim application were frivolous and vexatious; that the management had paid one month's salary in lieu of notice; that the management had conducted enquiry against the respondent and thereafter took the decision to terminate the service of the respondent as the charges levelled against him were found to be proved; that he was not serving to the satisfaction of the appellant; that the appellant had suffered due to his insincerity; that High Court of Karnataka had stayed the order of merger of the appellant society with respondent No. 2 and the appellant was functioning independently as previous; that the respondent had accepted the order of termination passed by the respondent and received all monetary benefits without protest or complaint; and that he had no legal ground to approach the Court. It was prayed that the claim petition be dismissed with costs.In spite of notice respondent No. 2 remained absent before the Labour Court. He was placed ex parte. On these pleadings the following issues were framed.

In this matter none of the contentions need deeper examination for reasons to be stated now. In this case appointments had been made as early as on April 28, 1980. Though the services were terminated the parties concerned invoked the jurisdiction of the Labour Court and the Labour Court directed their

reinstatement and they were reinstated from the date of the termination itself. In these circumstances they must be deemed to be in service for more than 20 years now and to disturb their service at this stage would be harsh and inhuman.The Rule laid down by the Supreme Court in the judgment referred to would be fully applicable to the facts of the present case. The point that the Labour Court did not have the jurisdiction to entertain the petition, was neither pleaded nor argued, either before the Labour Court or before the Single Judge. Respondent had invoked the jurisdiction of the Labour Court and the Labour Court directed his reinstatement from the date of termination itself. Respondent was appointed in the service of the appellant in the year 1981. He will be deemed to be in service over 20 years now and to disturb his service at this stage, in the words of the Supreme Court would be 'harsh and inhuman'. Otherwise also Supreme Court has clearly ruled that the doors of the Labour Court in dispute arising between a co-operative society and its employees cannot be shut.

Veerashiva Co-Operative Bank Limited v Presiding Officer, Labour Court, Bangalore and Others

Bench	BHASKARA V RAO, MANJULA CHELLUR
Where Reported	2000 Indlaw KAR 135; 2001 (34) LabIC 269; 2001 (1) LLJ 980

Case No: W.P. Nos. 14792, 14804 connected with 14095/1998, Dt. 9 March 2000.

The Order of the Court was as follows :

These writ petitions are filed by a Co-operative Bank assailing the order of the Labour Court, Bangalore dismissing the petition filed by it. Brief facts of the case are :

The petitioner is a registered Bank under the Karnataka Co-operative Societies Act ('Act' for short). The respondents claim to be the employees of the Bank. Their services were terminated by order dated September 13, 1996. Aggrieved by that order, respondents filed a dispute u/s. 10(4-A) of the Industrial Disputes Act before the Labour Court, Bangalore. The petitioner entered appearance and filed objections to dismiss the dispute on the ground that it is not maintainable as the petitioner is a Co-operative Bank registered under the provisions of the Karnataka Co-operative Societies Act. The respondents are past employees and ought to have raised a dispute u/s. 70(2)(d) of the Act. S. 70(2)(d) of the Act gives power to the Registrar to deal with disciplinary matters relating to employees in the Society or class of societies including the terms and conditions of employment of the employees, working conditions, and disciplinary action taken by the society. This is a special procedure provided under the Act and the dispute u/s. 10 of the Industrial Disputes Act stands excluded.

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.A similar question arose before the Madhya Pradesh High Court in R. C. Tiwari v. M. P. State Co-operative Marketing Federation Ltd., an employee of the M. P. Co-operative Society was dismissed from service for misconduct. He sought a reference under the M. P. Co-operative Societies Act and the same was dismissed and became final. He further sought for a reference under the Industrial Disputes Act. The Labour Court held that enquiry was vitiated by illegality and accordingly set aside the order of dismissal. The said order was challenged in the writ petition in the High Court. The High Court held that in view of the provisions contained in S. 55 of the M.P. Co-operative Societies Act, 1960, the Labour Court has no jurisdiction and therefore, the reference is bad. It further held that the finding recorded by the Deputy Registrar of Co-operative Societies against the petitioner in the award operates as res judicata. The said judgment was challenged in the Supreme Court. The question before the Supreme Court was whether the view taken by the High Court is correct in law and the Supreme Court, after referring to S. 55 of the M.P.Co-operative Societies Act, held that the dispute relating to management or business of the society is very comprehensive as repeatedly held by the Court. As a consequence, the special procedure has been provided under the Act and necessarily reference u/s. 11 of the Industrial Disputes Act stands excluded. The Supreme Court, distinguishing the judgment in Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad, 1969 Indlaw SC 341, held that the

jurisdiction of the Labour Court is excluded. S. 55 of the M.P.Co-operative Societies Act is similar to that of S. 70 of the Karnataka Co-operative Societies Act. The Supreme Court considered whether once a relief is provided under the Co-operative Societies Act, a dispute can be sought u/s. 10 of the Industrial Disputes Act and answered in the negative. The said judgment squarely applies to the facts of the present case.It is contended by the learned counsel for the respondents that in the case before the Supreme Court, the employee first approached the Registrar of Co-operative Societies, after he negatived, he approached the Labour Court. In those circumstances, the Supreme Court held that the reference is not maintainable in the Labour Court. We are not able to agree with that contention. The Supreme Court after referring to S. 64 of the M.P.Co-operative Societies Act has held that power under S. 64 is very wide. Therefore, the dispute relating to management or business of the society is very comprehensive and as a consequence, special procedure has been provided under the Act. Thus, the Supreme Court has specifically found that as special procedure is provided under the M.P.Co-operative Societies Act providing a settlement of dispute by the Registrar and such decision is binding on the society as well as the employee. The remedy u/s. 10 of the Industrial Disputes Act is excluded. It is a fact that the Supreme Court also negatived the contention of the petitioner on the ground of general principle of res judicata as the Society had earlier decided the matter. But, by that itself it cannot be said that the Supreme Court has not held that jurisdiction of the Labour Court is excluded when a special binding procedure is provided under the Co-operative Societies Act.

In Sagarmal v. District Sahkari Kendriya Bank Ltd., Mandsaur, 1996 Indlaw SC 2085 : 1998-III-LLJ (Suppl)-157 the Supreme Court held that the provisions of the Central Act did not apply to the employees of the Co-operative Bank. The facts of the case are that, the appellant was an employee of a co-operative bank. He was removed from service after a disciplinary inquiry on charges of grave misconduct. After removal, he sought a reference u/s. 10 of the Industrial Disputes Act before the Labour Court. The Labour Court granted the relief of reinstatement with back wages. The respondent-Bank challenged the same in writ petition before the High Court. The High Court quashed the award on the ground that it is a nullity being made in an incompetent reference. Against that order, the employee filed an appeal assailing that the Labour Court has got jurisdiction. It was contended before the Supreme Court by the appellants that by virtue of S. 93 of the M.P. Co-operative Societies Act, the reference made to Labour Court u/s. 10(1)(d) of the Industrial Disputes Act was competent and therefore, the award was valid. The appellant relied on the judgment of the M.P. High Court in Rashtriya Khadan Mazdoor Sahakari Samithi Ltd. v. Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, 1975 Lab IC 1409. Replying to the said contention the Supreme Court held that the judgment relied on by the learned counsel is not applicable to the facts of the case and there can be no doubt that the provisions of the Central Act namely, Industrial Disputes Act did not apply to the employees of the respondent Co-operative Bank and held that the view taken by the High Court i.e., reference u/s. 10 of the Industrial Disputes Act, 1947 was in competent and therefore, award is a nullity, does not suffer from any infirmity.The above two judgments specifically lay down that once a specific procedure and effective remedy is provided under the Co-operative Societies Act, settlement of dispute u/s. 10 of the Industrial Disputes Act 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 Co-operative 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.

Status: Negative Judicial Treatment

Naganath and Others v Common Cadre Committee, Bidar and Others

Bench	G. C. BHARUKA, K. R. PRASADA RAO
Where Reported	2000 Indlaw KAR 117; 2001 (1) CLR 964; 2000 (8) KarLJ 422; 2000 (33) LabIC 3714; 2001 (1) LLJ 655

Case No : W.A. No. 5084/1998, Dt. 26 September 2000.

The Judgment was delivered by :

The appellants have been working as Secretaries of the Primary Agricultural Credit Co-operative Societies (in short "the Primary Societies") of Bidar District. In 1994 they filed an application before the Labour Court Gulbarga under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short "the I.D. Act") seeking a direction against the respondent-1. "The Common Cadre Committee, Bidar District"(in short "the Committee") for payment of bonus at the rate of 33% from the date of their appointment in terms of Payment of Bonus Act, 1965 (in short "the Bonus Act"). The said application was numbered as Application No. 3/94. It was ultimately allowed by an award dated March 15, 1993 (Annexure-F) in the following terms :

"The application of 167 applicants is allowed. They are entitled for minimum bonus at the rate of 33% from the date of their appointment on the basis of annual wages from the respondent-Bank."

The validity of the above award was assailed by the District Central Co-operative Bank Limited, Bidar District, as also the Committee by filing three writ petitions before this Court which had been disposed of by the learned single Judge by the impugned order inter alia remanding the matter to the Labour Court to record a finding as to whether the appellants are workmen within the meaning of the I.D. Act. The appellants being aggrieved by the said order have preferred this appeal.

From the above provisions it is clear that a person who is employed mainly in a managerial or administrative capacity is not covered by the definition of "workman" for the purpose of I.D. Act. As we have already noticed above, the secretaries of all the co-operative Societies including the Primary Societies as also the Central Bank, are appointed to discharge managerial executive and administrative functions. Therefore clearly they are not "workmen" entitling them to maintain any petition before the Labour Court under Section 33-C(2) of the I.D. Act.In the present case the learned single Judge by referring to paragraphs 11 and 13 of the award of the Labour Court has rightly concluded that the respondent had specifically taken a contention before the Labour Court that the appellants-Secretaries are not workmen but the Labour Court declined to enter into the question by holding that "only pre-existing rights can be decided. But the Labour Court cannot investigate the matter to decide the status of the workmen or otherwise."

In our considered opinion the Labour Court has fallen in a grave error in not deciding the issue as to whether the appellants are workmen within the meaning of I.D. Act or not, since it was a jurisdictional issue and it was incumbent upon the Labour Court to record its finding on the same. Nonetheless since we have already found that the appellants are not workmen within the meaning of I.D. Act which was ascertainable from the very statutory provisions referred to above, in our considered opinion, it was not necessary for the learned single Judge to remand the matter to the Labour Court for the said purpose.

For the aforesaid reasons we set aside the order of the learned single Judge and quash the award of the Labour Court at Annexure-F. The appeal is thus finally disposed of but there will be no order as to costs.

Management, Shree Doodhganga Krishna Sahakari Sakkare Karkhana v T. P. Pudale and Others

Bench	T. N. VALLINAYAGAM
Where Reported	2000 Indlaw KAR 120; 2000 (8) KarLJ 252; 2001 (34) LabIC 165

Case No : W.P. No. 24832 of 1996 C/w 27576 of 1996 (1), Dt. 12 September 2000.

The Order of the Court was as follows :

The short facts are that the petitioner in W.P. No. 24832/96 is a Co-operative Sugar Factory registered under Karnataka Co-operative Societies Act, 1959. The appointment and the terms and conditions of the employees of the petitioner are governed by the provisions of the Karnataka Co-operative Societies Act and the Bye-laws of the Society. The sugar factory works seasonally once for six months and the exigency of work will be more only during its season. Apart from regular employees the petitioner engages some workers on daily wage basis during the above period. The daily wages employees will be discontinued after the completion of the work. It is further submitted that during 1986-87 season the first respondent was taken on daily wages from 12-11-86. He worked for 136 days during that season and he was discontinued from 11-4-87. Again the petitioner was taken on daily wages from 12-6-87 and worked there up to 14-10-87. Thereafter he was engaged on daily wages from 22-10-87 and discontinued from 19-5-88. The petition makes it clear that the first respondent was engaged in the employment for a specific period on daily wage basis. There was a circular issued by the petitioner on 19-5-88. It appears that the first respondent on 7-1-91 the first respondent was called upon to reinstate him with backwages. On refusal by the first respondent a dispute arose and the dispute was referred to Industrial Tribunal for adjudication. Two issues were framed for being considered.

This view was indirectly reiterated in 1999 Indlaw SC 1022 (Balwant Singh v. State of Haryana) wherein it was held that matter arising out of Co-operative Societies Act to an Arbitrator is proper. In that case the dispute was arisen between employees and Co-operative Societies and such dispute has been held to be within the purview of Co-operative Societies Act (indirectly not within the provisions of Industrial Disputes Act).

In the light of the above decisions, the writ petition is liable to be allowed. Following the view of the Division Bench liberty is granted to the first respondent to move an application to the Registrar of Co-operative Societies, within the period of six weeks from today. On filing such application the Registrar shall entertain and dispose of the same in accordance with law.

Kota Co-Op. Agricultural Bank Ltd. and Another v State of Karnataka and Others.

Bench	CHIDANANDA ULLAL
Where Reported	2000 Indlaw KAR 270; AIR 2001 KAR 36; 2001 (2) KarLJ 188
Case Digest	**Subject:** Civil Procedure; Practice & Procedure **Keywords:** Court fee, First Hearing, CPC **Summary:** Civil Procedure - Code of Civil Procedure, 1908, O. 3, r. 4, Karnataka HC Rules, 1959, ss. 33, 34 & 4(3)(7), r. 3, r. 1, Constitution, arts. 19(1)(g), 226 & 227, Co-operative Societies Act, ss. 29-G (6), 57(2a) - (A) Appearance and filing of vakalatnama by Advocate - Whether term 'may permit' in sub-rules (1) and (2) of r. 3 of Chap. Vof 1959 Rules has to be interpreted as 'shall permit' ? - Held, No - Word 'may permit' occurring in sub-Rules (1) and (2) of r. 3 of 1959 Rules have to be interpreted as 'shall permit' cannot be accepted - Such interpretation is not justified in view of provision in r. 1 thereof which provide that no Advocate or practitioner shall be entitled to appear and act in any civil matter before High Court, unless he filed vakalatnama in prescribed from duly executed by or on behalf of party for whom he appears - (B) Whether memo filed by advocate who had filed vakalathnama to engage another Advocate to appear in matter be allowed or not? - Held, No - When Advocate who had filed Vakalatnama engages services of another Advocate to plead and argue his client's case he has to obtain permission of Court as contemplated u/r. 3 (1) and (2) of Chap. V of 1959 Rules and unless and until such permission had been obtained, he as matter of right cannot engage services of another Advocate to appear and argue for and on his behalf - Petition disposed of.

Case No : W.P No. 5522-23 of 1999.

The Order of the Court was as follows :

In the above writ petitions and series of other Writ Petitions, the Co-operative Banks and Societies have challenged Sec. 57 (2a) and Sec. 29-G (6) of the Co-operative Societies Act on the ground that the same were arbitrary, illegal and unconstitutional.

'An Advocate who had filed Vakalath in a case in the High Court can engage any other Advocate to argue the case on his behalf without permission of the Court. In any event, Court cannot refuse permission if permission is sought for orally under such circumstances.'

"In other words, whenever a pleader who has been duly appointed to act in Court on behalf of a party engages any other pleader to plead on behalf of such party, such other pleader is not required to file memo of appearance. The Court in such circumstances cannot insist the other pleader to file memo of

appearance. An authority given by advocate who is duly appointed by a party to act and plead on his behalf to another advocate to plead on behalf of such party does not need memo of appearance to be filed by another advocate. It was expected of the trial Court to have kept the said provision in mind."

27A Alas, all the more, it is not a case where in a colleague-in-office of an advocate taking on himself to argue a case before Court for and on behalf of his senior-in-office on instructions by him, no matter that he has got no vakalathnama, or making representations or submissions by an advocate as a proxy counsel for seeking adjournments or things like that, we come across day-in and day-out as a matter of routine to keep going the proceedings before Court smooth without there being let or hindrance.

In the reported case in 1966 Indlaw SC 372, it was held in the matter of Rule of construction, the Court must construe a section unless it is impossible to do so to make it workable rather than make it unworkable. In yet another decision reported in 1977 AIR(SC) 1006 in the matter of interpretation of statutes in para 12 thereof, the Supreme Court held that, when there are two conflicting provisions, an act which cannot be reconciled with each other, they should be interpreted with if possible, to give effect to both and that is the essence of the rule of harmonious construction.

In the said decision, the Supreme Court held as hereunder :"

Interpretation of statutes - Harmonious construction.

When there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible effect should be given to both. That is the essence of the rule of "harmonious construction." The Courts have also to keep in mind that an interpretation which reduces one of the provisions as a " dead letter"or" useless lumber" is not harmonious construction. To harmonise is not to destroy any statutory provision or to render it construction. "40. In the instant case in hand, there is no conflicting provision in one and the same rules sought to be interpreted, for , as I have observed as above, the conflict is in the two sets of Rules i.e. Rule 4 (6) of Order 3 as amended in Karnataka and Rule 3 of the High Court Rules. In the matter of engaging the services of an Advocate not on record by another Advocate on record to argue without permission of the court is not contemplated in the former, whereas it is contemplated so in the latter.

To follow the decision of the Supreme Court reported in 1977 AIR(SC) 1006, it appears to me that a duty is cast on this Court to harmoniously interpret and reconcile the two sets of provisions one in the CPC and the High Court Rules, 1959. If one closely and carefully reads Rule 4 (6) of Order 3 of CPC, as amended in Karnataka together with the proviso there below, there is no bar for any Pleader or an Advocate engaged to plead on behalf of any party by any other Pleader who himself has filed power on behalf of his party, argue or plead. That in fact is what was contemplated in Rule 3 (1) and (2) to Chapter V of the High Court rules, in the matter of pleading or arguing the case of a party for and on behalf of an Advocate on record and all that what had been contemplated additionally in rule 3(1) and (2) is obtaining permission of the Court by an Advocate on record to engage the services of another Advocate and nothing beyond and by that small restraint, as against an Advocate not on record cannot in any way be pleaded as if a total restraint in violation of the fundamental right as enshrined in Art. 19 (1) (g) of the Constitution or in violation of S. 33 of the Advocates Act as it had been very vehemently argued by the learned counsel for the petitioner Sri. Holla in citing different authorities before me. As a matter of fact, such a situation did not arise before me at all in the instant case in hand.

It was argued with all force by the learned Senior Advocate Sri Acharya, the learned Advocate Sri. Holla

(as he then was) appearing for the Advocate for the petitioner Sri K.M. Nataraj and Sri. S.P. Shanker appearing as an amicus curiae that the word 'may permit' occurred in sub-rules (1) and (2) of Rule 3 of Chapter of the High Court Rules have to be interpreted as 'shall permit'. I do not think such an interpretation be justified in view of the provision in rule 1 thereof that no Advocate or practitioner shall be entitled to appear and act in any civil matter before the High Court, unless he filed a vakalatnama in prescribed from duly executed by or on behalf of a party for whom he appears. The said rule is made subject to the further rules framed thereunder in sub-rules (1) and (2) of Rule 3 therein in the matter of obtaining permission of the Court by an Advocate to engage the services of another Advocate to appear and argue on behalf of client's case of the former. Therefore, it appears to me that when an Advocate who had filed vakalatnama engaged the services of another Advocate to plead and argue his clients case has to obtain the permission of the Court as contemplated under Rule 3(1) and (2) of Chapter V of the High Court Rules and unless and until such a permission had been obtained, he as a matter of right cannot engage the services of another Advocate to appear and argue for the and on his behalf. **# That again he has to do by making a reasonable cause thereto as contemplated under Rule 3 (1) of the said rules.**

Therefore, while rejecting the argument in that regard advanced by all the learned Counsel before me, I hold that the term 'may be' in Rule 3 (1) and (2) of Chapter v of High Court Rules is a discretionary power vested in this Court and it has to be interpreted only as such and not as 'shall permit'. I do not contribute that view.

On a careful reading of the above memo, it appears to me that the memo has been filed as if a right is available to him to engage the services of another Advocate to argue his clients case on his behalf. I do not think it is available for him to do so, for, in my considered view, he has to make out a ground as set out in sub-rule (1) of Rule 3 of Chapter V of the High Court Rules and as long as that had not been done by him, I do not think he can resort to such a memo before this Court as a matter of course and event. It appears to me, in this context, that if I were to entertain the said memo, I would be doing that only in violation to Rule 3 of the High Court Rules which I cannot afford of doing. I add in this context that I am zealous to follow the same, I being one of the Presiding Judges of this Court.

Now the question is whether the memo can be rejected by me for engaging the services of A.G. Holla. With the change of circumstances that Sri. A.G. Holla had since been designated as a Senior Advocate under Sec. 16(2) of the Advocates Act, 1961 by the notification in No. RPS/69/99 dt. 25-10-1999, I do not think that course is available to this Court to do. Therefore, I just place the memo on record without there being any considered order thereon. Such an order in my considered view is redundant as Sri. A.G. Holla had since been designated as a Senior Advocate has a right to appear and even plead and act on behalf of the petitioners in the first set of petitions for whom the learned Counsel Sri. K.M. Nataraj is on record. I have since taken judicial note of the designation of Sri. A.G. Holla as Senior Advocate by the above notification of the High Court.

S. K. Rama Reddy v Assistant Registrar of Co-Operative Societies, Harapanahalli and Others

Bench	G. PATRI BASAVANA GOUD
Where Reported	2000 Indlaw KAR 344; AIR 2000 KAR 330; 2000 (5) KarLJ 271
Case Digest	**Subject:** Trusts & Associations **Keywords:** Co-Operative Society **Summary:** Trusts & Associations - Karnataka Co-Operative Societies Act 1959, s.29F(4)(8) - Election - Meeting - Quorum - Whether a meeting in pursuance of annexure H could be convened to elect President, Vice-President etc.? - Held, no - One elected member could not form quorum - The Ordinance lapsed, and u/s.29F(4)(8), for any meeting convened to elect President, Vice-President - It is only elected members of committee that can be called - Nominated and ex-officio members cannot be called for such a meeting - Petition disposed of accordingly.

Case No : Writ Petn. No. 23512 of 1999.

The Order of the Court was as follows :-

The petitioner, a member of the 2nd respondent-Society, calls in question Annexure 'H', by which, under sub-s. (8) of S. 29-F of the Karnataka Co-operative Societies Act, 1959 ('Act' for short), the 1st respondent has authorised the 3rd respondent to convene a meeting of the members of the committee of the 2nd respondent to elect the office bearers under sub-sec. (4) of S. 29-F of the Act.

In May 1999, elections were held for the committee of the 2nd respondent society for the period from 1999-2000 to 2003-2004. In the said election, in order to elect nine Directors, 13 candidates had filed nominations. Out of them, nine withdrew their nominations. After scrutiny, only four persons remained in the field. They were, therefore, declared as having been duly elected. They were available to function. That is how subsequently, three of them resigned and their resignations were accepted. That means that out of the four elected members of the committee, after three of them resigned, only one continued as a member of the committee. Three persons were nominated under S. 29(1) of the Act as per Annexure 'G'. The number of members of the committee, thus, came to four. In addition, it is submitted that two more were to be there as ex-officio members of the committee as per the Bye-laws. The total number of members of the committee thus came to six. Under Annexure 'H', therefore, directions were issued to convene the meeting of the committee for electing the office bearers.

Now, having found Annexure 'H' to be valid as on the date it was issued, the question is, whether as on today, it is still workable, and if this writ petition were to be dismissed on the ground that Annexure 'H' is valid, whether a meeting in pursuance of Annexure 'H; can be convened to elect President, Vice-President etc. It is not possible to do so for the following reasons. At the time Karnataka Ordinance No. 4/99 was holding the filed, all six members of the committee, i.e. # **one elected member, two**

ex-officio members and three nominated members, could have been called for the meeting convened for the purpose of electing President, Vice-President etc. as provided in sub-s. (4) of S. 29-F of the Act as it stood during the said period. In that event, there would have been quorum. But, the Ordinance has lapsed, and under sub-sec. (4) of S. 29-F of the Act as it stands, for any meeting convened to elect President, Vice-President etc. it is only now the elected members of the committee that can be called. **# Even though nominated and ex-officio members may be there as members of the committee even as on today, where a meeting is called specifically for the purpose of electing President, Vice-President etc. the said nominated and ex-officio members cannot be called for such a meeting, and it is only the elected members who have to be called for such a meeting. That means that, the only person that can be called for that meeting is the only elected member remaining. In that event, there would be no quorum.** The situation once against has been reached wherein the 2nd respondent Society must be said to be unable to function in accordance with the provisions of the Act, Rules and Bye-laws for the reason that, it is not possible at all to convene a meeting for the purpose of electing President. Vice-President, etc. It cannot be said that a society can function with merely six members, without it being possible at all for them to elect President, Vice-President etc., Annexure 'H', therefore, in the changed legal position, has become unworkable. **# The only course open, therefore, is for appointment of Special Officer under S. 31 of the Act.** The authorities concerned are therefore directed to immediately take steps in this regard.

D. L. Nagaraja v
Kolar District Co-Operative Societies Union Limited and Others

Bench	CHIDANANDA ULLAL
Where Reported	1999 Indlaw KAR 355; AIR 2000 KAR 190; 2000 (3) KarLJ 259
Case Digest	**Subject:** Trusts & Associations **Keywords:** Co-Operative Society **Summary:** Trusts & Associations - Karnataka Co-Operative Societies Act 1959, s.21(2)(a) - Member - Whether term 'member' referred to in s.21(2)(a) of Act is referable to ordinary member of a Society or a member of elected committee of management of a society? - Held, it is referable to only general member - As it had been defined in s.2(f) of Act and not to member of committee of management of Society - Petition dismissed.

Case No : W. P. No. 21461/99.

The Order of the Court was as follows :

:- The petitioner being the member in the respondent No.1 - Co-operative Union had filed the instant writ petition to quash the communication dated 6-8-1999 in No.RSR ; 106 ; XMC : 1998-99 issued by the respondent No.2 addressed to all the co-operative Divisions in the State, copy as at Annexure-B to writ petition, in issuance of which, the said Authority had clarified the provision in Sec.21(2) (a) of the Co-operative Societies Act (hereinafter referred to as the 'Act') to the effect that the elected committee members of the Society may nominate the members of the Society of the elected body of the committee of management of the society to represent another Society in the affairs of other Society.

The petitioner had further prayed for quashing of the consequential resolution dated 15-5-1999 passed by the respondent No.1- Co-operative Union, copy as at Annexure-A to writ petition, in passing whereof, the Committee of the respondent No.1 had nominated one of its ordinary members to represent it in the co-operative federation.

Therefore, it appears to me that it is in fitness of things that the Registrar of Co-operative Societies, the respondent No. 2 herein may better move the Government to get Sec. 21(2) (a) of the Act amended to give true meaning thereof to that intendment. This I feel a necessity as the provision in question is vulnerable to more than one interpretation which is in fact led for the Registrar of Co-operative Societies to issue the clarification in communication dated 6-8-1999, copy as at Annexure-B to writ petition. This decisions is not valid on this day as section 21 is amended to send only a member of the committee of management.

Basanagouda and Etc v State of Karnataka and Others Etc

Bench	CHIDANANDA ULLAL
Where Reported	1999 Indlaw KAR 357; AIR 2000 KAR 224; 2000 (1) KarLJ 499; 2001 (2) KarLJ 527
Case Digest	Held, yes - democratic principles were flouted because - There was inconsistency between two sets of provisions - In matter of participation of nominated members in election of office bearers - ss.28A(6),29F(4), (6) were amended accordingly - But s.29(A) providing that 3 nominated members have no right to vote not amended - Petitions disposed of.

Case No : W.P. Nos. 27609 of 1999 C/W W.P. Nos. 23084 and 32665 of 1999.

The Order of the Court was as follows :

In the first writ petition, the petitioner herein had sought for issue of writ in the nature or prohibition, prohibiting the respondents Nos. 3 to 5 from exercising their franchise in the election of the Chairman of the respondent No. 2-Bank schedule to be held on 7-8-1999 pursuant to the nomination dated 8-7-1999 made by the respondent No. 1 nominating the respondents Nos. 3 to 5 as Board of Directors u/s. 29 of the Karnataka Co-operative Societies Act (henceforth in brief as the 'ACT') as the Karnataka Ordinance No. 4 of 1999 conferring right to vote on the nominated members in the election had lapsed on 3-8-1999, whereas in the second writ petition, the petitioner-Director of the respondent No. 3-Bank had prayed for declaration of the above ordinance as unconstitutional, void and inoperative and further for quashing of the meeting notice dated 29-6-1999, copy as at Annexure C to that writ petition, issued by the respondent No. 2-Co-operative Development Officer, Hadagali, conveing the meeting of the Committee of Management of the respondent No. 3-Bank to hold the election of the office bearers of the Bank proposed to be held on 8-7-1999. The third writ petition was filed by the petitioner in the second writ petition to challenge the further election notice dated 1-9-1999 issued by his Society-respondent No. 2 in the third writ petition conveing the meeting to elect the President and Vice-President on 10-9-1999, copy as at Annexure C to the third writ petition.

2. Therefore, there is inconsistency between the two sets of provisions in the matter of participation of the nominated members in the election of the office of the office bearers of the Society. To be precise, such an inconsistency arises if one provision is given effect to resulting in giving ineffect to the other or others, for when S. 29(2) of the Act prohibits participation of the nominated members in the election to the office bearers of the Society, Sections 28A(6) and 29F(4)(6) provided for quite the contrary. Hence, we have got a glaring and unfortunate hiatus.

3. In almost in similar situation, when Uttar Pradesh Act 1 of 1933 whereby S. 71 of the Uttar Pradesh District Boards Act, 1922 came to be amended, the corresponding S. 90 of the said Act remained unamended, leading to inconsistency in the Act, the Supreme Court in the

case of Hiradevi v. District Board Shahjahanpur, reported in 1952 Indlaw SC 49 observed as follows :"

It was unfortunate that when the legislature came to amend the old S. 72 of the Act it forgot to amend S. 90 in conformity with the amendment of S. 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon. No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the legislature. But it is certainly not the duty of the Court to stretch the word used by the legislature to fill in gaps or omissions in the provisions of an Act. "

4. In my considered view the very same situation is now before me as the corresponding S. 29(2) of the Act remained unamended in conformity with the amended Sections 28A(6) and 29F(4) and (6) of the Act under the Ordinance hereunder impugned and as such the ratio of the above decision of the Apex Court has got total application to the case before me.

5. For the aforesaid reasons, I hold that the impugned Ordinance under challenge contravenes the provision in S. 29(2) of the Co-operative Societies Act and hence bad and cannot sustain in law.

6. By reading of the above provision of law, it is clear that the Registrar or any person authorised by him shall convene a meeting for the purpose specified in sub-section 29F shall be only when the Chief Executive fails to convene such a meeting in accordance with sub-ss. (4) and (6) of Section 29F of the Act. As I see in the instant case in hand, the Chief Executive of the petitioner-Society did convene such a meeting within 15 days of the election as contemplated under sub-s. (4) of Section 29F of the Act, but there was commotion and unruly situations to hold such a meeting in an orderly manner and there was intervention of the Police too and it is only thereafter the meeting thus convened earlier was adjourned. As I further see, in the said circumstances, the respondent No. 2-Co-operative Development Officer of the Department of Co-operation had issued impugned notices at Annexure C to convene the meeting of the committee of management firstly at 12 noon on 8-7-1999 and secondly at 10.00 p.m. on 10-9-1999 for the purpose of electing the office bearers of the Society. To quote the first notice the one issued by the respondent No. 2 on 29-6-1999, copy as at Annexure C to the second writ petition, the same reads as follows :

7. In that view of the matter, I find that the impugned notices issued by the respondent No. 2 dated 29-6-1999 and 1-9-1999, copies as at Annexure C to the second and the third writ petitions were totally in violation of Sub-S. (8) of Section 29F of the Act and as such, the same could not sustain in law. Therefore, I hold that the impugned notices dated 29-6-1999 and 1-9-1999 issued by the respondent No. 2-Co-operative Development Officer, copies as at Annexure C to second and third writ petitions, were bad in law but I should add here in this context that they are too late to be quashed, for they have spent by themselves without being acted upon.

(i) The impugned meeting notice dated 29-6-1999 in No. VSSN/Bank/AH/PH/99-2000 issued by the respondent No. 2-Co-operative Development Officer, copy at Annexure C to the second writ petition, and further the impugned meeting notice in No. VSSB/AA.HA/PA.CHU/1999-2000 dated 1-9-1999, copy also as at Annexure C to the third writ petition though bad in law also do not survive for consideration as the same had spent by itself.

(ii) The respondent No. 3-Bank in the second writ petition is hereby directed to convene a meeting of the Committee of Management of the Society for the purpose of election of its office bearers within a period of 15 days from the date of communication of this order.

To facilitates that, the Registry may as well forward a copy of the order herein passed to the Secretary of the respondent No. 3-Bank in the second and third writ petitions forthwith.

In the result, when the first and third writ petitions stand disposed of, the second writ petition stands allowed with the declaration of the impugned Ordinance No. 4/1999 as bad and unsustainable in law. No cost.

Kaniyanahundi Milk Producers Co-Operative Society Limited v Co-Operation Dept. By Its Secretary Bangalore and Others

Bench	CHIDANANDA ULLAL
Where Reported	1999 Indlaw KAR 352; AIR 2000 KAR 113; 2000 (1) KarLJ 14
Case Digest	**Subject:** Trusts & Associations **Keywords:** Co-Operative Society **Summary:** Trusts & Associations - Karnataka Co-Operative Societies Act 1959, ss.12(6),28A - Elections - Bye laws - Bifurcation of district - Whether election proposed to be held by returning officer could be held in pursuance of calendar of events issued as per old bye law? - Held, yes - There was bifurcation of original district into two districts - Bye laws of society were amended but their enforcement was stayed by HC - In circumstances election of society could not be held - On basis of territories as existed under unamended bye laws - Writ petition allowed.

Case No : W.P. No. 16558 of 1999.

The Order of the Court was as follows :

The petitioner herein being the Milk Producers' Co-operative Society, Heggadadevanakote had filed the instant writ petition with a prayer that this Court be pleased to issue a Writ of Certiorari or any other appropriate writ , order or direction to quash the calendar of events dated 6-5-1999 issued by the respondent No. 4 - the Returning Officer, copy at Annexure 'D' to writ petition and further for issue of Writ of Mandamus directing the second respondent to amend the bye law on disposal of an earlier writ petition filed by non-party Director of respondent No. 3 - Society and further to hold the election in accordance with Section 28-A of the Karnataka Co-operative Societies Act.

I feel it appropriate to advert to the facts of the case in brief. They are as here-under :

That, two of the Directors of the respondent No. 3 - Mysore District Co-operative Milk Producers' Union Ltd., had earlier filed W.P. No. 14037/99 with a prayer to quash the order dated 18-12-1998 passed by the Registrar of Co-operative Societies (respondent No. 2 in that writ petition), whereby the said co-operative authority had passed an order u/s. 12(6) of the Co-operative Societies Act to amend the bye law of the respondent No. 3 - Society. That, this Court while issuing Rule in the said writ petition stayed the said order of the non party Registrar of Co-operative Societies, amending the bye law u/s. 12(6) of the Co-operative Societies Act.

That, subsequently, the respondent No. 4 came to be appointed as the Returning Officer to hold the election to the respondent No. 3 District Co-operative Milk Producers' Union , and upon his appointment,

the respondent No. 4 had issued a calendar of events dated 6-5-1999, copy at Annexure 'D' to writ petition, by issuing whereof, he had moved the process of holding the election to the Committee of the respondent No. 3 and he further fixed the poll date as 27-5-1999. That the petitioner herein had challenged the said calendar of events on the ground that the said election could not be held by the Returning Officer since the co-operative sub-divisions came to be changed with the bifurcation of the original Mysore District into Mysore District and Chamrajnagar District and further more, the co-operative sub-division called Nanjangud sub-division came to be abolished.

In this context, I feel it appropriate to set out the sub-division as it stood when the Mysore District was a composite District. As I was given to understand, in the original Mysore District, there were three co-operative sub-divisions. They were Mysore sub-division, Hunsur sub-division and Nanjangud sub-division. Those sub-divisions in fact were referred to in bye law 19(1)(i) and further more in page (1) of the calendar of events at Annexure 'D' to writ petition.

Now with the re-organisation of the Districts, there came to be two divisions in Mysore District and one Division in Chamrajnagar District. The original co-operative sub-divisions in Mysore District are as follows :

(i) Mysore sub-division consisting of Mysore taluk, Kollegal taluk and T. Narasipur taluk.

(ii) Hunsur sub-division consisting of Hunsur taluk, K. R. Nagar taluk, Periyapatna taluk and H.D. Kote taluk.

(iii) Nanjangud sub-division consisting of Nanjangud taluk, Chamrajnagar taluk, Yelandur taluk and Gundlupet taluk.

Now if we correlate the original co-operative divisions as it stood in the composite Mysore District as above with reference to the new co-operative sub-divisions that came to be re-organised with the bifurcation of the two Districts in original Mysore District as above, it is clear therefrom that the co-operative sub-division called 'Nanjangud division' came to be abolished and the original taluks coming under that sub-division were bifurcated and added to the reorganised sub-divisions and more particularly, Nanjangud taluk came to be included in the Mysore sub-division.

If the above was the position in the matter of re-organisation of the co-operative sub-divisions and further in the matter of abolition of one of the sub-divisions i.e. Nanjangud sub-division, it was crystal clear that the Returning Officer could not hold the election to represent the four taluks in the Nanjangud sub-division in the original composite Mysore District.

That being so, it is difficult for me to accept the argument of Sri. Patil that under the original bye law, the respondent No. 3 could hold the election to elect the new body of committee of Management for the respondent No. 3-society and that there was every justification on the part of the respondent No. 4 Returning Officer in issuing the calendar of events, copy at Annexure 'D' to writ petition for holding the election.The further argument of Sri. Patil that under Rule 13 of the Co-operative Societies Rules, it was well within the authority of the respondent No. 3 Society to organise its area of operation could not be acceptable, for it was not the case that with reference to the re-organised co-operative divisions on the bifurcation of the original Mysore District, the proposed election was arranged to be held by the respondent No. 4; let apart, as I see, the co-operative divisions provided for in bye law 19(1)(i) was with reference to the original co-operative divisions as they stood in the composite Mysore District and if one could not overlook that circumstances, I was not left with any doubt that the respondent No. 4 -

Returning Officer could not hold the proposed election as it stood in bye-law 19(1)(i). As a matter of fact, as pointed out by the learned counsel for the petitioner, the respondent No. 4 - Returning Officer had raised that genuine doubt at the meeting held by the Managing Director of the respondent No. 3 Society, as per Annexure 'C' to writ petition, a meeting note to which Sri. Manjunath had also drawn my attention. Para (5) of Annexure 'C' reads as hereunder :

In that view of the matter, I pass the following :

The impugned calendar of events dt. 6-5-99, copy at Annexure 'D' to writ petition issued by the respondent No. 4 - Returning Officer to hold the election to the respondent No. 3 - Society is quashed.

The respondent No. 4 as well as the respondent No. 3 - Society are hereby directed to hold the General Body only on disposal of W.P. No. 14037/99, now on the file of this Court.

In view of the above conclusion I have reached, I.A. No. 1 filed by certain applicants to implead themselves as parties does not survive for consideration. Accordingly, the said application stands disposed of.

The Registry is directed to post the said writ petition for regular hearing in the second week of July, 1999, provided the pleadings in that are complete.

The other writ petition in No. 14037/99 tagged on to this writ petition stands delinked.

The writ petition succeeds and accordingly stands allowed. Rule issued made absolute. No costs.

Mohan Kamalkar Sindgikar and Others v Joshi Metal Industries and Others

Bench	G. PATRI BASAVANA GOUD
Where Reported	1999 Indlaw KAR 232; 1999 (6) KarLJ 347; 2000 (1) LLJ 859

Case No : W.P. Nos. 15677/1996, 15988 to 15996/1996, Dt. 10 March 1999.

34 workmen of the first respondent industrial establishment approached the Labour Court, Bijapur with a request under Section 33-C(2) of the Industrial Disputes Act, 1947 ('Act' for short) for computing the money due to each one of them in respect of the closure of the first respondent establishment. By its order dated January 31, 1996, the Labour Court quantified the amount payable to each of the said 34 workmen. In pursuance thereof, a certificate under Section 33-C(1) of the Act also is issued, providing for recovery of the amounts concerned as arrears of land revenue. In the meantime, second respondent Bank, in relation to the amounts that it had advanced to the first respondent on security of the assets of the first respondent that had been mortgaged, by way of deposit of title deeds, obtained awards u/s. 70 of the Karnataka Co-operative Societies Act, 1959, since the second respondent Bank is a Co-operative Credit Bank. In the course of realising the amounts under the said awards, second respondent Bank sought for a rid got the properties i.e., assets of the first respondent establishment attached, and also brought them for sale. In the meantime, 10 out of 34 workmen approached this Court contending that the amounts due to them as quantified in the above said proceeding under Section 33-C(2) of the Act, should have priority out of the sale proceedings. By an interim order of this Court, conducting of sale was prohibited. Properties are yet to be sold.

2. There is no disputing the fact that the claim of the second respondent-secured creditor certainly has a priority, and that it is only out of what remains after the secured debt cleared that other considerations would arise. But in a situation analogous to the present one, the Supreme Court has dealt with the matter in a particular perspective that lends support to the claim of the workmen that the amounts due to them should have priority. I am referring to the said decision as relating to a situation analogous to the present one because, in the matter before the Supreme Court, the property concerned was the finished goods that had been pledged to the financial institution concerned, whereas in the present case, it is the entire assets of the first respondent industrial establishment. Other than this, there is not much difference between the facts of the two cases.

3. The question that arose before the Supreme Court was whether the banks, as secured creditors, could claim priority in respect of the amounts due to them from the industrial establishment concerned vis-a-vis the arrears of wages due to the workmen. This is how the Supreme Court dealt with that aspect.

4. In somewhat similar circumstances, the High Court of Gujarat, in Textile Labour Association v. State of Gujarat and others 1994-II-LLJ-303), after referring to above said decision of the Supreme Court in Rohtas case, observed thus :

"22. Learned Counsel for the petitioner submitted that the secured creditor is exercising its right in accordance with law in staking the claim to the sale proceeds and in this view of the matter the High Court cannot give any direction contrary to law. It cannot be said that the directions sought by the petitioner would be contrary to law. The Constitutional law and fudamental rights are part of the law and even Within the Constitution, the fundamental rights have special importance and within the fundamental rights, right to life and liberty is the most fundamental of such rights. If for enforcement of such rights which is the fundamental law of the land, anything comes in conflict thereof, it has to give way to see that the fundamental rights guaranteed by the Constitution are not violated."

5. Viewed in the same perspective in which the Supreme Court and the Gujarat High Court viewed the matters respectively, I am of the opinion that the amount quantified to each of 34 workmen concerned herein, should have priority out of the sale proceeds, and it is only the remaining amount that can be adjusted towards the amounts due under the awards in favour of the second respondent Bank.

6. Though only 10 workmen have approached this Court by these writ petitions, I am of the opinion that the direction to be issued should ensure to the benefit of all the 34 workmen covered by the order of the Labour Court, Bijapur dated January 31, 1996 in Application No. 37 of 1995.

7. Petition allowed. Out of the sale proceeds realised from the sale of properties of the first respondent, the amounts due to each of 34 workmen concerned in the order dated January 31, 1996 of the Labour Court, Bijapur, in Application No. 37 of 1995 shall be paid first, and only the balance, if any, shall be adjusted towards the amount due to the second respondent Bank under the awards in favour of the said second respondent. The concerned property shall therefore be now brought to sale in accordance with the relevant provisions of law and the sale proceeds applied in terms stated above.