

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.12096 OF 2020 (CS-EL/M)

BETWEEN :

SRI. R.M. MANJUNATH GOWDA
S/O RAMAPPA GOWDA
AGED ABOUT 62 YEARS
DIRECTOR/PRESIDENT
DCC BANK, SHIMOGGA
R/O KARAKUCCHI
POST SHIRIGERE
TQ:SHIMOGGA
DIST: SHIMOGGA-577 211 ... PETITIONER

(BY SHRI. JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR
SHRI. A. MOHAMMED TAHIR, ADVOCATE)

AND :

1. THE STATE OF KARNATAKA
DEPARTMENT OF CO-OPERATION
VIDHANA SOUDHA
BENGALURU-560 001
REPRESENTED BY ITS
PRINCIPAL SECRETARY
2. THE REGISTRAR OF
CO-OPERATIVE SOCIETIES
NO.1, ALI ASKAR ROAD
BENGALURU-560 052

3. THE JOINT REGISTRAR
OF CO-OPERATIVE SOCIETIES
BANGALORE REGION
BENGALURU
MALLESWARAM SAHAKARA SOUDHA
MYSORE ROAD, 8TH CROSS
MALLESWARAM
BENGALURU-560 003
 4. THE JOINT REGISTRAR OF
CO-OPERATIVE SOCIETIES
AND MANAGING DIRECTOR
CHITRADURGA DCC BANK
CHITRADURGA DISTRICT
CHITRADURGA-577 501
 5. THE SHIMOGGA DISTRICT
CENTRAL CO-OPERATIVE
BANK LIMITED
BALRAJ URS ROAD
SHIMOGGA-577 201
REP. BY ITS MANAGING DIRECTOR/CEO
 6. RETURNING OFFICER
SRI. NAGESH HONNALLI
PROJECT DIRECTOR
URBAN DEVELOPMENT CELL
DEPUTY COMMISSIONER OFFICE
SHIMOGGA-577 201
 7. THE STATE CO-OPERATIVE
ELECTION AUTHORITY
3RD FLOOR, T.T.M.C., 'A' BLOCK
SHANTI NAGAR
BANGALORE-560 027
REPRESENTED BY ITS
SECRETARY
- ... RESPONDENTS

(BY SHRI. PRABHULING K. NAVADAGI, AG A/W
SHRI. R. SUBRAMANYA, AAG A/W
SHRI. M. VINOD KUMAR, AGA FOR R1 TO R4 & R6;
SHRI. ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SHRI. B. VINAYAKA, ADVOCATE FOR R5;
SHRI. T.L. KIRAN KUMAR, ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH ORDER OF DISQUALIFICATION VIDE ANNEXURE-V DATED 14.10.2020 PASSED BY RESPONDENT NO.4 CONSEQUENTLY, ISSUE NATURE OF CERTIORARI QUASHING ORDER VIDE ANNEXURE-W5 DATED 20.10.2020 PASSED BY RESPONDENT NO.7.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.10.2021, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

Petitioner is an elected Director and President of District Central Co-operative Bank Limited¹, Shimogga. The fourth respondent, vide order dated October 14, 2020, has disqualified him from continuing in any post in the Bank for five years. Petitioner has challenged the said order and the consequential order dated October 20, 2020 passed by the State Co-operative Election Authority².

2. Heard Shri Jayakumar S.Patil, learned Senior Advocate for the petitioner, Shri Prabhuling

¹ Respondent No.5

² Respondent No.7

K.Navadagi, learned Advocate General along with Shri R.Subramanya, learned Additional Advocate General & Shri M.Vinod Kumar, learned AGA for the State, Shri Ashok Haranahalli, learned Senior Advocate for respondent No.5 and Shri T.L.Kiran Kumar, learned Advocate for respondent No.7.

3. Brief facts of the case are, petitioner had approached this Court in W.P.No.8891/2020 challenging the earlier disqualification order dated July 14, 2020 passed by the JRCS³, Bengaluru. This Court, vide order dated August 14, 2020, remanded the matter for fresh consideration by the JRCS and MD of DCC Bank, Chithradurga⁴. Petitioner challenged the said order in Writ Appeal No.459/2020. A Division Bench of this Court modified Hon'ble Single Judge's order in part. However, fresh inquiry by fourth respondent remained undisturbed and the fourth

³ Joint Registrar of Co-operative Societies

⁴ Joint Registrar of Co-operative Societies and the Managing Director of DCC Bank, Chithraduraga (Mr.Iliyas Ulla Sharief)

respondent has completed fresh inquiry and passed the impugned order.

4. Shri Jayakumar Patil for the petitioner, mainly urged following contentions:

- that the Registrar is defined under Section 2(i) of the KCS Act⁵. The impugned order is not passed by the Registrar. Therefore, it cannot be construed as an order under Section 29-C of the KCS Act;
- that under Section 29-C(8)(d) of the KCS Act, the Registrar can pass an order of disqualification and in this case, the order is passed by an Officer not having jurisdiction;
- that the State Government vide Order No.CO 71 CLM 2016 dated 06.12.2016 have conferred jurisdiction on category of Officers specified in Column 2 of the Table with the

⁵ The Karnataka Co-operative Societies Act, 1959

powers of the Registrar of Co-operative Societies. The fourth respondent has not been conferred with such power;

- Chapter XI-A of KCS Act applies to Co-operative Societies in co-operative credit structure and as per Section 98-B, the provisions of the Chapter shall have over-riding effect. In the case of petitioner, the disqualification could be made only by invoking Section 98-N of the KCS Act; and
 - Therefore, the impugned order is one without jurisdiction and hence, petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India.
5. Thus, in substance, petitioner's case is, the order passed by the fourth respondent is *non est* in the eye of law for want of jurisdiction and therefore, no appeal can be filed under Section 106(1) (d-2) of the KCS Act.

6. In addition, Shri Patil also contended that the State Government are biased towards the petitioner because, State have entered caveat. He also submitted that in W.P.No.8891/2020, while remanding the matter, this Court did not examine as to whether the fourth respondent had jurisdiction to deal with the matter.

7. In reply, the learned Advocate General mainly contended that petitioner has an alternative and efficacious remedy by way of appeal before the Karnataka Appellate Tribunal under Section 106(1) (d-2) of the KCS Act. He contended that fourth respondent is also a Joint Registrar of Co-operative Societies. Hence, there is no lack of inherent jurisdiction because, as per Section 2-A(5) of the KCS Act, the State Government may confer jurisdiction to officiate and exercise all or any powers of the Registrar. He submitted that petitioner has not raised

the question of jurisdiction and fully participated in the proceedings before the fourth respondent. Adverting to Section 21 of the Code of Civil Procedure, 1908, he submitted that, petitioner is estopped from raising the said contention at this stage.

8. I have carefully considered rival submissions and perused the records.

9. The point that arises for consideration is, having regard to the facts and circumstances, whether this is a fit case to exercise discretionary jurisdiction under Article 226 of the Constitution of India?

10. Undisputed facts of the case are, petitioner is an elected Director and the President of fifth respondent-Co-operative Society since May, 2019. He was a President for two earlier terms prior to 2019. The JRCS, Bengaluru, had passed an order of disqualification dated December 8, 2016 and the same is subject matter in W.Ps. No.63355-59/2016.

11. The JRCS, Bengaluru, who subsequently became JRCS, Shimogga, passed another order of disqualification dated July 14, 2020. It was challenged in W.P.No.8891/2020. This Court disposed of the said writ petition with following directions:

"In the above circumstances, this writ petition is favoured in part; a Writ of Certiorari issues quashing the impugned order; matter is remanded for consideration afresh with the participation of all the stake holders; the third respondent shall make over the file to the Joint Registrar of Cooperative Societies & Managing Director of DCC Bank, Chitradurga (Mr. Illiyas Ulla Sharief), who shall accomplish the enquiry within an outer limit of six weeks, in accordance with law; all contentions of the parties are kept open.

Petition shall officiate as the President of respondent-Bank subject to outcome of the remand and the rider which the learned Co-ordinate Judge in the circumstances of the case in his wisdom had stipulated in the interim order referred to above; it is needless to mention that the other orders impugned in the writ petition at Annexures N & L1 shall not be construed to come in the way of this interim arrangement for the limited period.

The submission of the learned AG that the W.A (FR) No.436/2020 having become infructuous shall not be pressed, is placed on record.

The fairness and good gestures coming in abundance from the learned Advocate General Mr. Prabhuling K. Navadgi and the learned Sr. Advocate Mr. Jaykumar S. Patil are rarely seen nowadays.

Costs made easy. "

12. Petitioner challenged the above order in W.A.No.459/2020 and it has been disposed of in following terms:

"9. Accordingly, we dispose of the petition by passing the following order:

- (i) The impugned order dated 14th August 2020 is modified by deleting that portion of the impugned order by which restraints put on the appellant by interim order dated 30th July 2020, were directed to continue;*
- (ii) We direct the appellant to cooperate with the pending enquiry in terms of the solemn undertaking given by him;*
- (iii) It is made clear that in the event the appellant does not cooperate for the conclusion of the enquiry within the time stipulated by the learned Single*

Judge, it will be open for the first respondent to apply to this Court for recall of this order and for revival of the appeal;

- (iv) The appeal is accordingly partly allowed on the above terms.*
- (v) We make it clear that this order shall not be construed to mean that any adjudication has been made on the allegations made against the appellant and all contentions in the enquiry are expressly left open to be decided by the enquiry officer."*

13. Thereafter, fresh proceedings were conducted before the fourth respondent. Petitioner participated in the proceedings. He was permitted to engage an advocate.

14. Two charges were framed against the petitioner. The first charge is, contrary to normal convention, one Smt.Shobha was permitted to continue in the same place even after three promotions. During her tenure, gold loan was given contrary to the rules, permitting advance of more than 75% of the value of gold.

Certain other irregularities have also been included in the charge.

15. The second charge is, petitioner was the Chairman of all Advisory Committees in the Bank. The Advisory Committees are required to visit the branches, verify the account, the cash and the valuables and report to the Head office. Petitioner, who is responsible for carrying out the said acts had failed to do so.

16. It is recorded in the impugned order that between 2010 and 2014, there has been misappropriation of about Rs.62 Crores. Though promoted thrice, Smt. Shobha was continued in the same office. There has been irregularity in disbursement of loans without approval of the Head office. Following loans have been sanctioned and disbursed to Smt. Shobha's father and other relatives:

Sl. No	Year	Total no. of loan cases	Amount of loan obtained
1	2006-07	16	7,86,866-00
2	2007-08	17	5,09,700-00
3	2008-09 2008-09 (In the name of his father Shri. Basappa)	No details given 09	4,55,400-00
4	2009-10 2009-10 (In the name of his father Shri. Basappa)	10 06	5,25,700-00 4,93,000-00
5	2010-11 Gold loan	13 04	29,99,000-00 17,08,000-00
6	2011-12 In the name of 7 relatives	23 28	21,54,025-00 1,86,28,500-00
7	2012-13 Loan in the name of relatives without collateral	33	17,65,66,000-00
8	2013-14 Loan in the name of 31 relatives without collateral (gold)	613	52,16,39,000-00

17. It is further recorded that, petitioner, who was the President and Chairman of the Advisory Committee had not called for any meeting from 2004 to 2014. No audit has been conducted. No Report has been submitted to the Board of Management.

18. The main argument of Shri. Jayakumar Patil is, fourth respondent is working as Managing Director of Chitradurga DCC Bank and therefore, he has no jurisdiction to conduct the proceedings. He has argued that in the absence of express conferment of jurisdiction by the State Government, the impugned order is *non est* in the eye of law.

19. Placing reliance on paras No.57 and 87 in *A.R.Antulay Vs. R.S.Naik*⁶, Shri Patil has urged that jurisdiction cannot be conferred by consent. He also relied on para 10 in *Harpal Singh Vs. State of Punjab*⁷, para 6 in *CIT Vs. Pearl Mech. Engg. & Foundry Works(P) Ltd.*⁸ and para 20 in *Nusli Neville Wadia Vs. Ivory Property and others*⁹; and contended that any order passed by an authority without jurisdiction, is a nullity.

⁶ (1998) 2 SCC 602

⁷ (2007) 13 SCC 387

⁸ (2004) 4 SCC 597

⁹ (2020)6 SCC 557

20. In para 57 in *A.R. Antulay*, it is held that if there were to be inherent incompetence, then consent could not confer jurisdiction. It is relevant to note that in para 55 in *AR Antulay*, it is held that the following valuable rights of the appellant therein were affected.

The same reads as follows:

"...Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions:

"(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.

(ii) The right of revision to the High Court under Section 9 of the Criminal Law Amendment Act.

(iii) The right of first appeal to the High Court under the same section.

(iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary."

21. In contradistinction, in this case, the proceedings have been conducted by a JRCS. Petitioner's right of appeal to the KAT is not affected in any manner.

22. In support of his contention that Chapter XI-A has over-riding effect, Shri Patil has relied upon paras 38 and 39 in *Allahabad Bank Vs. Canara Bank & another*¹⁰.

23. With regard to alternative remedy, Shri Patil relied on paras 14 and 15 in *Whirlpool Corporation Vs Registrar of Trade Marks Mumbai and Others*¹¹ and paras 19 to 22 in *M/s. Magad Sugar and Energy Limited Vs. The State of Bihar and Others*¹².

24. Under Section 106(1)(d-2) of the KCS Act, an appeal shall lie against an order passed by the Registrar under Section 29-C of the KCS Act. Indubitably, the impugned order has been passed under Section 29-C(8)(b)(c) & (d) of the KCS Act. It is settled that High Court shall not normally exercise

¹⁰ (2000)4 SCC 406

¹¹ (1998) 8 SCC 1

¹² Civil Appeal No.5728/2021 disposed of on September 24, 2021.

the writ jurisdiction, if there exists an alternative and efficacious remedy, save as certain exceptions.

25. Shri Jayakumar Patil's main contention that the fourth respondent had no jurisdiction, is untenable because, according to him, as per Notification dated December 06, 2016, the jurisdiction vests with JRCS, Bengaluru. It is recorded in the order passed by this Court in W.P. No.8891/2020 that the learned Advocate General had no objection for the petitioner to choose any Officer of the rank of JRCS. But, the Petitioner did not choose any Officer. On the other hand, he left it to the discretion of this Court. This Court has directed that the inquiry be conducted by the fourth respondent. Petitioner challenged the said order in WA No.459/2020. It is relevant to record that petitioner did not raise the jurisdictional issue either before the Hon'ble Single Judge or the Division Bench. He has fully participated in the proceedings before the fourth respondent. He has not raised any objection

with regard to the jurisdiction either in his statement of objections or the written arguments filed before the fourth respondent.

26. In more or less a similar situation, a Division Bench of this Court in *M.Gangappa Vs. B.H.Aswathanarayana Singh and others*¹³ has stated the principle on which the discretion of the Court has to be exercised. This Court has noted the following passage from *Lord Halsbury's Laws of England*:

"Although the order is not of course, it will though discretionary nevertheless, be granted ex debito justitiae, to quash proceedings which the Court has power to quash where it is shown that the Court below has acted without jurisdiction or in excess of jurisdiction if the application is made by an aggrieved party and not merely by one of the public and if the conduct of the party applying has not been such as to disentitle him to relief; and this is the case even though certiorari is taken away by statute and although there is an alternative remedy."

¹³ AIR 1960 Mysore 281

27. The Division Bench was considering the matter in which the petitioner had taken part in the proceedings before Regional Transport Authority and did not contend that the said authority could not proceed with the hearing. After the Authority had given its decision, both parties had filed their respective appeals before the State Transport Authority and the said appeals were pending. Thereafter, petitioner had challenged the order of the State Transport Authority and the Revenue Appellate Tribunal before this Court. In view of such conduct of the petitioner, this Court has held as follows:

"The principle underlying these observations, in my opinion, apply with equal force to the present case. The facts narrated by me show clearly that the Petitioner was taking a chance Before the Regional Transport Authority and he was sitting on the fence and it is not open to him now to come and ask for a writ. His conduct, in my opinion disentitles him to the relief which he asked for in the present petition. I should, however mention that this decision will not in any way affect the appeals which are now pending before the State Transport Authority."

28. The facts of this case are similar as in the case of *M.Gangappa*.

29. Learned Advocate General, placing reliance on *Sneh Lata Goel Vs. Pushpalata and others*¹⁴ and *Surendra Naik Vs. A.M.Mohammed Shafi*¹⁵ has argued that any objection with regard to jurisdiction will have to be raised at the earliest point of time and no objection can be considered by the Appellate Court or the Writ Court.

30. Admittedly, petitioner has not raised any objection with regard to the jurisdiction in any other proceeding except in this writ petition. Thus, he was sitting on the fence and waiting for the outcome of the inquiry.

31. Hence, petitioner by his own conduct has disentitled himself to make grievance with regard to

¹⁴ (2019)3 SCC 594

¹⁵ 2016 SCC OnLine Kar 8345

jurisdiction in these proceedings. To raise the issue of jurisdiction after participating in the proceedings amounts to abuse of process for, the petitioner has chosen to remain silent about the matter which ought to have been litigated in the earlier proceedings.

32. So far as the contention with regard to entertaining a writ petition where there exists an alternative remedy, it is relevant to record that no special circumstances exist in this case to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India. In *Magadh Sugar*, the Apex Court has reiterated the principles with regard to entertaining a petition where an alternative remedy is available. In *Executive Engineer Vs. Seetharam Rice Mill*¹⁶ referred in *Magadh Sugar*, it is held as follows:

"81. Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat

¹⁶ (2012) 2 SCC 108

difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act."

(Emphasis Supplied)

33. As recorded hereinabove, fourth respondent is also a JRCS. The file has been made over to him by this Court based on the submissions made by the learned Senior Advocate for the petitioner and the learned Advocate General in W.P.No.8891/2020. This Court in *Surendra Naik* has held that judicial estoppel is said to be part and parcel of Doctrine of equitable estoppel. Judicial estoppel binds a party to his/her previous judicial declaration. The object of judicial estoppel is to preserve the integrity of Courts. This

Court, adverting to *New Hampshire Vs. Maine*¹⁷, has held as follows:

"13. According to the Supreme Court of United States, the doctrine of judicial estoppel can be applied if three conditions are satisfied: i) the party's later position must be clearly inconsistent with its earlier position; ii) whether the first Court had accepted the earlier positions; iii) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. [Ref. to New Hampshire v. Maine²]. However, the two crucial conditions are the first and the third. If they are met, even if the second condition is unsatisfied, even then the doctrine of Judicial estoppel would apply."

34. Indubitably, petitioner is challenging an order passed under Section 29-C(8)(b)(c) & (d) of the KCS Act passed by the fourth respondent. An order passed under the said provision is appealable under Section 106(1) (d-2) of the KCS Act. In view of the facts narrated hereinabove and the conduct of the petitioner, in the opinion of this Court, this is not a fit

¹⁷ 532 U.S. 472

case to exercise discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India.

35. Resultantly, this petition fails and it is accordingly **dismissed**. However, dismissal of this writ petition does not preclude the petitioner from invoking appellate remedy.

36. In view of disposal of this petition, all pending interlocutory applications do not survive and stand disposed of.

No costs.

**Sd/-
JUDGE**