



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S. VISHWAJITH SHETTY

W.A. No.1396 OF 2021 (CS-EL/M)

IN

W.P. 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.

... APPELLANT

(BY MR. JAYA KUMAR S. PATIL, SR. COUNSEL FOR
MR. MOHAMAD TAHIR A, ADV.,)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF CO-OPERATION
VIDHAN SOUDHA
BENGALURU -560001
REP. BY ITS PRINCIPAL SECRETARY.

2. REGISTRAR OF CO-OPERATIVE SOCIETIES
NO.1, ALI ASKAR ROAD
BENGALURU-560052.
3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, BANGALORE REGION
BENGALURU, MALLESWARAM
SAHAKARA SOUDHA, MYSORE ROAD
8TH CROSS, MALLESWARAM
BENGALURU-560003.
4. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES AND MANAGING DIRECTOR
CHITRADURGA DCC BANK
CHITRADURGA DISTRICT
CHITRADURGA-577501.
5. THE SHIMOGGA DISTRICT CENTRAL CO-
OPERATIVE BANK LIMITED
BALRAJ URS ROAD
SHIMOGGA -577201
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-560027
REPRESENTED BY ITS SECRETARY.

8. SRI. B.K. GURURAJ
S/O HARI BASAPPA
JAKKIAO KOPPA, SHIKARIPUR TALUK
SHIMOGA, KARNATAKA-577427
(AMENDED AS PER ORDER DTD:31.3.2022).

... RESPONDENTS

(BY MR. PRABHULING K. NAVADGI, AG A/W
MR. R. SUBRAMANYA, AAG &
MR. B. RAJENDRA PRASAD, HCGP FOR R4 & R6
MR. ASHOK HARANAHALLI, SR. COUNSEL FOR
MR. VINAYAKA B, ADV., FOR R5
MR. KIRAN KUMAR, ADV., FOR R7
MR. ADITYA DIWAKARA, ADV., FOR R8)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW
THIS APPEAL, BY SETTING ASIDE THE ORDER DATED
17/11/2021 IN WRIT PETITION NO.12096/2020 BY THE
LEARNED SINGLE JUDGE, AND ALLOW THE PRAYER
MADE IN WRIT PETITION NO.12096/2020.

THIS WRIT APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 07.02.2023, COMING
ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY,
ALOK ARADHE J., DELIVERED THE FOLLOWING:

JUDGMENT

This intra court appeal emanates from an order dated 17.11.2021 passed by Learned Single Judge by which writ petition preferred by the appellant has been dismissed and order dated 14.10.2020 passed by Joint Registrar, Co-operative Societies disqualifying the appellant from continuing in any post in District Central Co-operative Bank, Shimogga (hereinafter referred to as 'the DCC' for short) has been upheld.

2. Facts giving rise to filing of this appeal briefly stated are that appellant is an elected Director and President of DCC, Shimogga. The appellant was disqualified by an order dated 14.07.2020 passed by Joint Registrar, Cooperative Societies, Bengaluru. The said order was challenged by the appellant in a writ petition viz., W.P.No.8891/2020 inter alia on the ground that it is a product of unfair procedure

followed by Joint Registrar, Cooperative Societies, Bengaluru. At the time of hearing of the petition, learned Advocate General stated that the order of disqualification be set aside and the matter be remitted to any of the four joint registrars mentioned in the memo. Learned Senior Counsel for the appellant stated before the Learned Single Judge that the Learned Single Judge may in its discretion choose any one of the four joint registrar's and the matter be remitted. In the light of aforesaid submission, the Learned Single Judge by an order dated 14.08.2020 set aside the order of disqualification of the appellant dated 14.07.2020 and directed that an enquiry shall be conducted by the Joint Registrar, Cooperative Societies and Managing Director of DCC, Chitradurga within six weeks. All contentions of the parties were kept open.

3. The said order was challenged in an appeal by the appellant viz., W.A.No.459/2020, which was disposed of by an order 22.09.2020. However, the direction pertaining to fresh enquiry by Joint Registrar, Cooperative Societies, (hereinafter referred to as 'JRCS' for short) Chitradurga was upheld. After remand, the JRCS, Chitradurga by an order dated 14.10.2020 disqualified the appellant from continuing on any post in the DCC Bank for a period of five years. Pursuant to the aforesaid order, the State Cooperative Election Authority passed a consequential order on 20.10.2020.

4. The appellant challenged the aforesaid order in a writ petition before the Learned Single Judge. The Learned Single Judge by an order dated 17.11.2021 inter alia held that appellant did not raise the issue with regard to jurisdiction of JRCS, Chitradurga, either before the Learned Single Judge

or before the division bench in the earlier round of litigation. It was further held that the appellant was sitting on the fence and waiting for the outcome of the enquiry and by his conduct has disentitled himself to make grievance with regard to jurisdiction of JRCS, Chitradurga to pass an order of disqualification in this writ petition. It was also held that raising the issue of jurisdiction after having participated in the proceeding amounts to abuse of the process and judicial estoppel is a part of doctrine of equitable estoppel. The Learned Single Judge opined that the appellant has a remedy of an appeal under Section 106(1)(d-2) of the Karnataka Cooperative Societies Act, 1959 (hereinafter referred to as 'the Act' for short). Accordingly, the writ petition preferred by the appellant was dismissed. However, liberty was reserved to the appellant to avail of the alternate

remedy. In the aforesaid factual background, this appeal has been filed.

5. Learned Senior Counsel for the appellant while inviting the attention of this court to the orders dated 14.08.2020 and judgment dated 22.09.2020 passed in W.P.No.8891/2020 and W.A.No.459/2020 respectively submitted that the appellant had not given any consent for remanding the matter to JRCS, Chitradurga. It is further submitted that JRCS, Chitradurga is not a Joint Registrar for the purposes of the Act as no notification under Section 2-A(5) of the Act has been issued in his favour. It is also urged that merely because JRCS, Chitradurga holds the post of Joint Registrar, the same does not confer any jurisdiction on him to pass the order under Section 2-A(5) of the Act.

6. It is contended that court cannot confer jurisdiction on an authority and the expression "jurisdiction" connotes authority to act officially. It is further contended that the impugned order passed by the joint Registrar is per se without jurisdiction and therefore the appellant cannot be relegated to avail of the alternative remedy of appeal. It is also urged that appellant has been elected again as a director in the year 2019 and since, he was previously disqualified, again cannot be disqualified on the same grounds.

7. It is argued that action under section 29-C(8) of the Act can be taken against the appellant in respect of the acts "during the term of office". It is also argued that impleading applicant has no locus to intervene in the matter. In support of aforesaid submissions, reliance has been placed on decisions in '**WHIRPLOOL CORPORATION V/S. REGISTRAR OF TRADEMARKS MUMBAI AND OTHERS**', (1998) 8

SCC 1, 'RAM AND SHYAM COMPANY VS STATE OF HARYANA AND OTHERS', (1985) 3 SCC 267, 'A.R. ANTULAY VS R.S NAYAK AND ANOTHER', (1988) 2 SCC 602, 'NUSLI NEVILLE WADIA VS IVORY PROPERTIES AND OTHERS', (2020) 6 SCC 557, 'HARSHAD CHIMAN LAL MODI V. DLF UNIVERSAL LTD.', (2005) 7 SCC 791, CHIEFENGINEER, HYDEL PROJECT AND ORS V. RAVINDER NATH AND ORS (2008) 2 SCC 350, 'POONAM VS. STATE OF U.P.', (2016) 2 SCC 779, 'MAGADH SUGAR & ENERGY LTD., VS. STATE OF BIHAR AND OTHERS', (2021) SCC ONLINE SC 801, and decision of learned Single Judge of this Court in 'C.S. MOHAN VS. STATE OF KARNATAKA', ILR 1979 KAR 1757.

8. On the other hand learned Advocate General submitted that the appellant was disqualified for the first time on 08.12.2016. He challenged the aforesaid order in W.P. No.63355/2016 which was

decided by an order dated 17.11.2021, by the learned single Judge. It is point out that the appellant was relegated to avail of the remedy of appeal by learned single Judge. In pursuance of the order passed by learned single judge the appellant filed an appeal which was allowed by JRCS by an order dated 13.5.2022. Therefore on the same facts different view cannot be taken. It is contended that order in the writ petition was passed by the learned single judge with the consent of the appellant, and therefore the appellant cannot be permitted to turn around and contend that JRCS Chitradurga had no jurisdiction to adjudicate the issue pertaining to disqualification of the appellant. It is point out that in the proceeding before the JRCS Chitradurga, objection with regard to jurisdiction was not raised. It is also pointed out that section 2A(5) of the Act empowers the government to confer the powers of joint registrar of co-operative

societies. Therefore the statement made on behalf of the government before the learned single judge should be construed as authorising JRCS Chitradurga to decide the issue of disqualification.

9. It is argued that conduct of the appellant disentitles him to any reliefs in exercise of extraordinary jurisdiction of this court, as he is fence sitter. It is contended that the submission the previous and subsequent charges levelled against the appellant are the same, is factually incorrect. It is urged that instant case is not a case of inherent lack of jurisdiction and the decision in case of **A.R Antulay** supra has no application to the facts of the case. It is pointed out that Notification dated 06.12.2016 issued under Section 2-A(5) of the Act pertains to territorial jurisdiction and the JRCS Chitradurga falls within Bengaluru region. In support of the aforesaid submission reliance has been placed on decision of

Hon'ble Supreme Court in '**CHAIRMAN, STATE BANK OF INDIA VS. M.J. JAMES**', (2022) 2 SCC 301, '**SNEH LATA GOEL VS. PUSHPLATA AND OTHERS**', (2019) 3 SCC 594, AND DECISIONS OF LEARNED SINGLE JUDGE THIS COURT IN '**BEML EHBSC SITE DEPOSITORS & ANOTHER VS. THE ADDITIONAL REGISTRAR OF CO-OP SOCIETIES (H & M)**', DATED 24.02.2016 IN W.P.NOS.26772-73/2014 AND IN '**SHRI SURENDRA NAYAK VS. A.M. MOHAMMED SHAFI**', ILR 2016 KAR 4162.

10. Learned Senior Counsel for the Bank has supported the submission made by the learned Advocate General and has contended that the instant case is not the case of inherent lack of jurisdiction. It is also contended that no prejudice has been suffered by the appellant.

11. Learned Senior Counsel for the impleading applicant submitted that impleading applicant has been elected in place of the appellant. Learned Senior Counsel for the impleading applicant has supported the stand taken by learned Advocate General.

12. We have considered the rival submissions made on both sides. At this stage, it is apposite to take note of relevant statutory provisions. Section 2-A(5) and Section 29(1)-C(8) of the Act reads as under:

2A. Registrar, Additional Registrars, Joint Registrars, Deputy Registrars [,State Representatives] and Assistant Registrars.

(1) xxxx

(2) xxxx

(3) xxxx

(4) xxxx

(5) *The State Government may, by general or special order, confer on any person appointed as Additional Registrar of Co-operative Societies, Joint Registrar of Co-*

operative Societies, Deputy Registrar of Co-operative Societies or Assistant Registrar of Co-operative Societies, [either as officiating or otherwise] all or any of the powers of the Registrar under this Act.

29C. Disqualification for membership of the committee. - (1) *No person shall be eligible for being elected or appointed or continued as a member of the [committee of any co-operative society], if,-*

(8) If any member of a committee of a co-operative society during the term of his office,-

(a) becomes subject to any disqualifications specified in sub-sections (1), (2) and (5); or

(b) has acted or has been acting fraudulently or with gross negligence or in contravention of the provisions of this Act, the rules or the bye-laws of the co-operative society or without the sanction of the committee of the co-operative society where such sanction is necessary or contrary to the

resolution of the co-operative society or its committee or in any way prejudicial to the interest of the co-operative society; or

(c) has acted or has been acting persistently against the directions or orders issued under this Act, rules or bye-laws; or

(d) is not discharging his duties satisfactorily; the Registrar may either on a report made to him or otherwise, by order remove such member, and in cases falling under clauses (a), (b), (c) and (d) of this sub-section disqualify him from holding any office in the co-operative society for such period not exceeding five years, as may be specified in such order:

Provided that no order shall be made under this sub-section unless a reasonable opportunity of being heard, is given to the person against whom the order is to be made.

13. Before proceeding further, we may advert to the well settled legal principles. Judicial estoppel is a part of doctrine of equitable estoppel. The object of

judicial estoppel is to preserve the integrity of the courts. Under judicial estoppel, a party to litigation cannot be permitted to take contradictory stand and to change its position. [See: **SURENDRA NAYAK VS. A.M. MOAHMMED SHAFI, ILR 2016 KAR 4162**]. It is trite law that where a party despite knowledge of the defect in the jurisdiction of an Authority, participates In the proceedings without any kind of objection by its conduct it disentitles itself from raising such question in subsequent proceeding. [See: **'SBI VS. RAMDAS M', (2003) 12 SCC 474**]. The doctrine of acquiescence is an equitable doctrine which applies when a party having right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See: **'CHAIRMAN, STATE BANK OF INDIA AND ANOTHER VS. M.J.JAMES', (2022) 2**

SCC 301]. A writ court would be justified in declining to exercise its extraordinary discretionary jurisdiction at the instance of the party who has acquiesced in a given state of affairs or is responsible for its creation. A case of inherent lack of jurisdiction stands on a different footing than the cases pertaining to other jurisdictional errors. The competence of an authority to hear a case goes to the very root of jurisdiction and where it is lacking, it would be a case of inherent lack of jurisdiction. The aforesaid principle has been given a statutory recognition in Section 21 of the Code of Civil Procedure. [SEE: '**HIRALAL PATNI VS. KALINATH**', AIR 1962 SC 199]. It is equally well settled legal principle that when a case is tried by an authority / court on merits and judgment has been rendered it should not be reversed purely on technical grounds unless it has resulted in failure of justice. This aforesaid principle has been incorporated under

Section 21 and 99 of the Code of Civil Procedure. [See: **'SNEH LATA GOEL VS. PUSHPALATA AND OTHERS', (2019) 3 SCC 594**].

14. In the light of well settled legal principles, we may now advert to the facts of the case in hand. Admittedly, the appellant was disqualified for the first time on 08.12.2016. It is also not in dispute that the appellant challenged the validity of order of disqualification in a writ petition viz., W.P.No.63355/2016, which was dismissed by an order dated 17.11.2021 and the appellant was relegated to avail, alternative remedy of filing an appeal. It is pertinent to mention that the appellant in the aforesaid proceeding did not raise the issue with regard to jurisdiction of the joint registrar to pass an order of disqualification. In compliance of the liberty granted to the appellant by Learned Single Judge, the

appellant preferred an appeal, which was allowed by an order dated 13.05.2022 by the appellate authority.

15. The appellant thereafter was disqualified subsequently by an order dated 14.07.2020. The appellant challenged the aforesaid order in a writ petition viz., W.P.No.8891/2020, inter alia on the ground that the impugned order is product of unfair procedure followed by the Joint Registrar, Co-operative Societies. In view of stand taken by the appellant, learned Advocate General submitted that in view of allegations made against the Joint Registrar, Co-operative Societies, in all fairness he should have refrained from deciding the matter and therefore, the impugned order be set aside and matter be remitted for fresh consideration at the hands of any of the four joint registrar's mentioned in the memo filed before the Learned Single Judge. Learned Senior Counsel for the appellant agreed to the aforesaid submission and

stated that matter be remitted to any one of the Joint Registrar which may be chosen by Learned Single Judge of this court. In view of stand taken by Learned Senior Counsel for the appellant as well as learned Advocate General, the writ petition was disposed of by Learned Single Judge by an order dated 14.08.2020.

The relevant extract of the order reads as under:

5. Learned Advocate General appearing for the official respondents having stood tall at the Bar straightaway submitted that regardless of alleged illegalities that have arguably infected the impugned order, fair play which is an essential element of adjudication, requires that the 3rd respondent in all fitness of things could have refrained from deciding the matter; however, no aspersions can justifiably cast on him; therefore the impugned order be set at naught so that the matter is remanded for consideration afresh at the hands of any one of the four Joint

Registrars enlisted in the Memo, filed this day.

6. Learned Sr. Advocate Mr. Patil standing equally tall at the Bar declined the offer made by the learned AG to choose any of the four Joint Registrars for accomplishing fresh consideration of the remand stating that he has no reason to doubt any of them and that this Court in its discretion may choose one so that the matter after remand will have a fair treatment, with the participation of all the stake holders; however he points out that, for the said purpose, four weeks as suggested by the learned AG will not be sufficient, but six weeks might be.

7. In view of the fair and reasonable stand taken up by both the sides and the demonstrable error apparent on the face of the record namely, Respondent No.3 proceeding with the enquiry despite petitioner's objection thereto, there is no need for elaborate consideration of all the

contentions urged on behalf of the petitioner; fairness requires that justice should not only be done but should seem to have been done as rightly echoed by the learned AG.

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 stakeholders; the third respondent shall make over the file to the Joint Registrar of Cooperative Societies and 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.

Petitioner 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 & L shall not be construed to come in the way of this interim arrangement for the limited period.

16. Thus it is evident that Learned Senior Counsel for the appellant stated before Learned Single Judge that Learned Single Judge may itself choose any of the four Joint Registrar's to decide the matter afresh. Thereafter, the appellant challenged the aforesaid order in a writ appeal viz., W.A.No.459/2020. In the writ appeal also, the appellant did not raise the contention that the JRCS, Chitradurga has no jurisdiction to decide the issue pertaining to disqualification. The appellant furnished an undertaking before the division bench of this court that he shall co-operate with the enquiry officer and shall not seek any unnecessary adjournments and shall complete the enquiry on or before the time

stipulated in the order passed by Learned Single Judge. A division bench of this court vide judgment dated 22.09.2020 disposed of the writ appeal. The operative portion of the judgment reads as under:

"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 W.P No.12096/2020 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."

17. Thus, it is evident that the order passed by the Learned Single Judge was passed with the consent of the appellant, which was upheld by division bench of this court. Neither in the writ petition nor in the appeal, the appellant raised the issue with regard to jurisdiction of the JRCS, Chitradurga to adjudicate the dispute with regard to disqualification of the appellant. It is also noteworthy that the appellant did not raise any objection with regard to jurisdiction of the JRCS, Chitradurga even

in the proceeding before him. For the first time, the appellant raise such a contention in the writ petition, while challenging the order dated 14.10.2020 passed by the Joint Register, Cooperative Societies.

18. The appellant is precluded by his conduct to raise the issue of jurisdiction of JRCS, Chitradurga as he agreed to remand of the matter to any of the four joint registrars. The appellant has been sitting on the fence and has waited for the outcome of the proceeding initiated by JRCS, Chitradurga. His conduct therefore, disentitles him to any relief in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The writ court was justified in declining to exercise its extraordinary discretionary jurisdiction in favour of the appellant who had acquiesced in passing of the order dated 14.08.2022 by Learned Single Judge. The State Government is the competent authority to confer the

powers of Joint Registrar Cooperative Societies any additional registrar of the cooperative society. In any case, the from the stand taken by the government before the Learned Single Judge, it can safely be inferred that it had conferred the power on JRCS, Chitradurga to decide the dispute. The instant case is therefore, not a case of inherent lack of jurisdiction.

19. The contention made by Learned Senior Counsel for the appellant that the appellant did not give consent for passing of order dated 14.08.2020 by the Learned Single Judge does not deserve acceptance. The State Government is the competent authority to confer powers of joint registrar on any of assistant registrar and therefore, in the facts of the case, the memo filed on behalf of the State Government has to be construed as conferring power on the JRCS, Chitradurga to decide the dispute pertaining to disqualification of the appellant.

Therefore, the contention of the appellant that JRCS, Chitradurga was not competent to decide the dispute is negated.

20. Though many submissions have been made, however, it is not necessary for us to advert to the same in this intra court appeal, as the impugned order passed by JRCS, Chitradurga is an order appealable under Section 106 of the Act. We therefore, permit the appellants to raise all such contentions in an appeal, which may be preferred by them under Section 106 of the Act. In case, such an appeal is filed within a period of three weeks from today, the appellate authority shall decide the appeal expeditiously after hearing the parties within a period of six weeks from the date of filing of the appeal. It is clarified that we have not expressed any opinion on merits of the matter.

For the aforementioned reasons, we do not find any ground to differ with the conclusion arrived at by the Learned Single Judge. With the aforesaid directions, appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SS