



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 13892 OF 2020 (CS-RES)

BETWEEN:

1. SRI G NAGARAJU
S/O LATE GANGAVENKATAIAH
AGED ABOUT 56 YEARS
DIRECTOR
JANAGERE PRIMARY AGRICULTURAL
CREDIT CO-OPERATIVE SOCIETY LTD
JANAGERE, KUNIGAL TALUK
TUMKUR DISTRICT - 572 130

... PETITIONER

(BY SRI. P ANAND., ADVOCATE)

AND:

1. THE ASSISTANT REGISTRAR OF
CO-OP SOCIETIES
TUMKUR SUB DIVISION
TUMKUR DISTRICT - 572 101
2. THE DEPUTY REGISTRAR OF
CO-OP SOCIETIES
TUMKUR DISTRICT
TUMKUR - 572 101
3. PRIMARY CO-OPERATIVE
AGRICULTURE AND RURAL





DEVELOPMENT BANK LTD.,
KUNIGAL TALUK
TUMKUR DISTRICT - 572 130

4. PRIMARY AGRICULTURE CREDIT
CO-OPERATIVE SOCIETY LTD
JANAGERE VILLAGE
KUNIGAL TALUK
TUMKUR DISTRICT - 577 217

... RESPONDENTS

(BY SRI. SPOORTHY HEGDE, HCGP FOR R1 & R2;
R3 & R4 ARE SERVED)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 11.09.2020 PRODUCED AT ANNEXURE-G PASSED IN PROCEEDINGS BY THE R-1 AND QUASH THE ORDER DATED 25.11.2020 PASSED BY R-2 PRODUCED AT ANNEXURE-P AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 19.04.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The present petition has been filed by the Director of the Janagere Primary Agricultural Credit Co-operative Society Ltd., calling in question the correctness of the order dated 11.09.2020 at Annexure-'G' disqualifying the petitioner in exercise of power under Section 29-C(1)(a) of



the Karnataka Co-operative Societies Act, 1959 (for brevity 'the Act').

2. The facts relevant to the present adjudication is that the petitioner was elected as Director of the respondent No.4 Society on 16.02.2020. A complaint was stated to have been made by Ganga Rangaiah s/o late Ganga Boraiah on 19.05.2020 alleging that the petitioner was a defaulter not having cleared his loan dues to the Society as on the relevant date when he was elected as a Director and hence, ought to have been disqualified.

3. The details of the defaults as made out and extracted in the impugned order are extracted as hereinbelow:-

ಸಾಲದ ಉದ್ದೇಶ	ಸಾಲ ಪಡೆದ ದಿನಾಂಕ	ಸಾಲದ ಮೊತ್ತ	ಸಾಲದ ಅವಧಿ	ಸಾಲ ತೀರುವಳಿ ಮಾಡಬೇಕಾದ ದಿನಾಂಕ	ಸಾಲ ತೀರುವಳಿ ಮಾಡಿದ ದಿನಾಂಕ:	ಸುಸ್ತಿಯಾಗಿದ್ದರೆ ವಿವರ		
						ಸುಸ್ತಿಯಾದ ದಿನಾಂಕ	ಸುಸ್ತಿ ಸಾಲದ ಮೊತ್ತ	ಷರಾ
ಹಸು	20-02-2008	75600	5 ವರ್ಷ	31-03-2013	01-06-2020	31/03/2010	59021/-	-
ಭೂ ಅಭಿವೃದ್ಧಿ	28-12-2005	31800	5 ವರ್ಷ	31-03-2010	01-06-2020	01-04-2010	12933/-	-
ತಂತಿಬೇಲಿ	23-11-2006	20000	8 ವರ್ಷ	31-03-2016	01-06-2020	01-04-2010	24509/-	-



4. While notices were issued to the petitioner on 17.07.2020, 28.07.2020 and 10.08.2020, reply was made out by appearing on 28.08.2020 stating that he had cleared the dues and hence was not a defaulter and question of disqualification did not arise.

5. The Assistant Registrar of Co-operative Societies relying upon the report of the Bank had recorded a finding that the petitioner was in default for the period between 31.03.2010 and 01.06.2020 and accordingly, had disqualified him on the ground of being a defaulter.

6. The said order is in question and the grounds of attack as asserted by learned counsel Sri P. Anand on behalf of the petitioner are that the; show cause notice as regards the disqualification was issued on 17.07.2020 as on which date the dues were cleared and accordingly power under Section 29-C of the Act could not have been invoked, the power under Section 29-C of the Act could be invoked only as regards disqualification incurred after the



election while the default in the present case was a pre-election default which could be enquired into only by invoking power under Section 70 of the Act. It is submitted that such contention was not taken note of appropriately.

7. On the other hand, learned High Court Government Pleader Sri Spoorthy Hegde appearing on behalf of respondent Nos.1 and 2 has contended; that the default was cured by payment subsequent to the election which does not take away the cause of action to proceed for disqualification which subsisted post-election till dues were cleared, that the default gave rise to a continuing cause of action and as the said default was also post-election, Section 29-C of the Act could be invoked.

8. Heard both sides.

9. It is to be noticed that the default in repayment subsisted till 01.06.2020 as made out in the Table extracted hereinabove which facts are not disputed. As



the petitioner was elected on 16.02.2020, the default in repayment continued till the dues were repaid, which was subsequent to his election.

The provision providing for disqualification is Section 29-C(1)(a) of the Act, which reads as follows:-

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

(a) he is in default to that society or any other co-operative society in respect of any dues from him as borrower;

10. Clearly, the default extends to a person who owes "*any dues from him as borrower.*" The clearing of dues only on 01.06.2020 after the petitioner was elected makes out a case for disqualification.

11. As regards the contention that as on the date of show cause notice the dues had been cleared and accordingly no proceedings for disqualification under Section 29-C of the Act could be proceeded with, the said



contention is to be rejected. The petitioner was elected on 16.02.2020 and he has cleared the dues on 01.06.2020. In terms of Section 29-C of the Act, there was a ground for disqualification by virtue of being in default between 16.02.2020 and 01.06.2020. The mere initiation of action subsequently for an earlier default does not defeat the right accrued to initiate the proceedings for disqualification. The subsequent clearing of dues will not wipe out the disqualification that subsisted, from the date of election on 16.02.2020 till repayment on 01.06.2020.

12. The reasoning of the Co-ordinate Bench in the case of **Bore Gowda v. Asst. Registrar of Co-operative Societies**¹ contained in the observations extracted below requires endorsement -

"8. ...It is also pertinent to note that once a person suffers a disqualification and a proceeding is initiated, the fact that the said disqualification ceases to exist subsequently does not, and it cannot be held to, affect the proceeding. If it is held that by reason of that,

¹ ILR 1985 KAR 260 :: W.P.No.2844/1984 dated 09.08.1984



the pending proceeding gets affected, in that event the very object of the law will be defeated. If a person has suffered a disqualification at the relevant point of time, the consequences flowing out of such a disqualification shall have to be determined if it is raised in an appropriate proceeding irrespective of the fact as to whether such a disqualification has, subsequent to the relevant point of time ceased to exist or not to illustrate the point—suppose, 'A' was a candidate at the election to the membership of a committee. He, being a defaulter to a co-operative society, was suffering from a disqualification falling under Section 29C(1)(a) of the Act. In spite of this, A's nomination paper was accepted and he was elected. On being elected, he paid up the arrears the very next day of his election and ceased to be a defaulter; but a dispute was raised in time under Section 70 of the Act, challenging A's election on the ground that he was a defaulter at the relevant point of time; therefore, he was disqualified for being chosen a member of the committee. Can the dispute be dismissed on the ground that before the dispute was raised, 'A' had ceased to be a defaulter having cleared off the arrears? I do not think it is possible to do so. Similarly, even when a member of a committee becomes subject to a



disqualification, he is disqualified to continue as a member of the committee, and the subsequent development such as payment of arrears, near relative ceasing to be in service, cannot be held to have the effect of taking away the consequences that have to follow out of a disqualification suffered by a member of a co-operative society or a member of a committee. Merely because a disqualification ceases to continue, the penalty he has to pay for the disqualification suffered by him cannot be made inapplicable. Any other view will defeat the very object and the efficacy of law."

13. On same lines are the observations of Co-ordinate Bench in the case of **R.B.Lakshmegowda v. Joint Registrar of Co-operative Societies²** - at para-23 which is as follows

"23. I find acceptance of such an interpretation would lead to a situation where even members of the society may become lax, negligent, allow themselves to be defaulters and seek to purge of the nature disqualification by being not a defaulter as and when an enquiry is contemplated or a person is sought to be disqualified. It is for this

²(2008) SccOnline Kar 865



reason I prefer the submission made on behalf of the respondents by Sri Ashok Kumar, learned counsel, that if such an interpretation is put in place, it can lead to an anomalous situation where time and again a member of the committee can incur disqualification, but nevertheless get over the same by the time the enquiry is held and order is passed or even purging of such nature of disqualification one of default on the eve of passing of the order. It is for this reason, the learned counsel has submitted that a disqualification cannot be made contingent upon the member to act and not to act subsequently. Submission commands acceptance. The disqualification is because of the operation of the statutory provision and because of the factum of the member of the committee of management being in default. If the member of the committee was in default at some point of time after he became a member of the committee, disqualification is at that time and thereafter he cannot be continued as a member. The order that is being passed by the registrar subsequently in terms of Section 29-C(IXa) of the Act by giving opportunity to the member is a post facto affirmation of an happened event, which had already taken place and the registrar is only enquiring as to whether it had actually taken place



in terms of the provisions of the Act. The dispute can be as to whether the petitioner was a defaulter even at any point of time or not? If the petitioner was never a defaulter, definitely that could have been an instance of providing of an opportunity of very useful and purposeful, as otherwise, the petitioner may suffer disqualification even when he was not disqualified at any point of time, but in the present case, as it was not in dispute that the petitioner had defaulted after 31-3-2006 and the default was got over only later by making payment on 5-6-2006. If the petitioner had suffered disqualification in the interregnum, that disqualification is good enough to prevent the petitioner from continuing as a member of the committee of management of the society. The entire object of the penal provision as contemplated in terms of Section 29-C is to ensure a degree of transparency and accountability and model conduct and functioning on the part of the members of the managing committee. If such is the object of the statutory provision, there is no scope to interpret a provision of this nature to understand that the member of the committee who may keep incurring disqualification but may get over subsequently and avoid the consequence, is not a submission which can be accepted and not an



interpretation which is required to be placed on this provision. While it is true that a penal provision should be strictly construed, even within the scope of this construction, a person who has committed default, has incurred disqualification, is a person who has to be visited with consequences of that disqualification, and it matters little that the consequence are visited upon the person much later in terms of an order passed by the registrar after an enquiry. It is for this reason that I am not impressed upon with the arguments advanced on behalf of the petitioner necessitating interference with the impugned orders. If the petitioner had incurred a disqualification and the statutory consequences follow, assuming that there are slight procedural irregularities or order passed by the authorities is wanting in procedure or wanting in a total opportunity of hearing it is not a thing which calls for interference in the exercise of writ jurisdiction of judicial review of administrative action on the interpretation of Section 29-C(1)(a) of the Act as indicated above. This view is also supported by the decision of this Court in the case of Bore Gowda v. Asst. Registrar of Co-operative Societies (ILR 1985 Kar 260-para 8).



14. As regards the contention regarding applicability of Section 70 of the Act and not Section 29C, it must be noticed that the default as regards repayment of dues of a loan, the said default is a continuing default and every default gives rise to a cause of action. The default admittedly in repayment of the three loans respectively from 31.03.2013, 31.03.2010 and 31.03.2016 till the date of election, no doubt, may have given rise to a cause of action for initiating proceedings under Section 70 of the Act, however, as regards the period post his election till 01.06.2020, clearly the default during such period gives rise to cause of action to initiate proceedings under Section 29C of the Act as it relates to a disqualification that continues even after election till repayment.

15. The judgment in **Sri K. Eregowda v. The State of Karnataka, Department of Co-operative Societies and Others**³, relied upon by the petitioner is

³ ILR 2020 KAR 939



rendered in a completely different factual matrix where the nature of disqualification was not a continuing one as in the present case.

16. Accordingly, the impugned order passed is well reasoned and takes note of disqualification by virtue of default till the date of repayment from the date of election and invokes the power under Section 29C of the Act and such order cannot be faulted or interfered with in light of the discussion made hereinabove.

17. Accordingly, the petition is ***rejected***.

**Sd/-
JUDGE**

VGR