

(2009) 09 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No's. 4653 and 19958 of 2007

Arasikere Taluk Primary Co-operative Agricultural and Rural
Development Bank Ltd.

APPELLANT

Vs

Common Cadre Authority, District Manager, Karnataka State
Co-operative Agriculture and Rural Development Bank and
Venkataramu
 Sri Venkataramu Gowda Vs Member
Secretary, Common Cadre Committee, For PCA and RD Bank
Employees and District Manager, Karnataka State Agricultural
and Rural Development Bank, Hassan Branch

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 128 A

Citation : (2009) 09 KAR CK 0054

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : B. Rudragowda, in W.P. No. 4653/2007 and N. Sriram Reddy, in W.P. No. 19958/2007, for the Appellant; K.L. Srinivas, for R-1 and R-2 in W.P. No. 4653/2007, N. Srinivas Reddy, for R-3 in W.P. No. 4653/2007 and Gopalakrishna R. Hegde, for R-1 in W.P. No. 19958/2007, for the Respondent

Judgement

Aravind Kumar, J.—Both these petitions are filed seeking reliefs claiming interalia therein namely the petitioner in W.P.4653/2007 i.e., Arasikere Primary Co-operative Agricultural and Rural Development Bank limited (hereinafter referred to as the "bank" for the sake of brevity) calling in question the order dated 31-7-2006 which is at Annexure "Q" passed by the Common Cadre Committee (hereinafter referred to as the "CCC" for the sake of brevity) and the order dated 13-12-2006 which is at Annexure "S" passed by the CCC directing the Bank to pay salary to 3rd respondent for the period 23-4-1997 to 10-10-1997 and the order directing the bank to pay the said amount immediately.

2. W.P. No. 19958/2007 is filed by the employee against the CCC and the District Manager, Karnataka State Agricultural and Rural Development Bank (hereinafter

referred to as the "federal society" for the sake of brevity) seeking relief of a mandamus to the respondents to pay the arrears of salary in accordance with the endorsement dated 10-4-2007 which is at Annexure-E to the said writ petition and also the consequential direction to pay interest for the arrears of salary at 12% with effect from 10-10-1999 till the date of realisation on account of the delay caused in payment of the same. This Court by order dated 18-2-2008 had directed in W.P. No. 4653/2007 to be posted along with writ petition No. 19958/2007. Accordingly, the registry had posted both the writ petitions for being heard together as both the writ petitions are inter-linked.

3. Though the matter was listed in "B" group by consent of the learned Counsel appearing for the respective parties, the writ petitions were taken up for final hearing and the matter was heard in full on 14-9-2009 and for want of time matter was adjourned to today for dictating the judgment.

4. To-day by the leave of the Court, the learned Advocates have addressed further arguments both on maintainability of the writ petition as also the merits of the case. The undisputed facts in both the petitions can be summerised as follows:

5. The employee namely Sri.Venkataramu was transferred by the CCC on 7-8-1996 by posting him to the bank as per Annexure-"A". The employee pursuant to the said transfer order reported to duty at the bank on 23-4-1997 on which date the bank informed the CCC that there is no necessity of the third respondent's services as two supervisors were already working in the bank. However, the CCC did not agree with the said view of the bank and accordingly by communication dated 3-7-1997 directed the bank to take the employee on duty. Since he had not been taken on duty by the bank, on 16-8-1997 the CCC directed the bank to take the employee to duty as per the letter dated 16-8-1997 which is at Annexure-"E". Thereafterwards the bank is said to have informed the CCC on 18-10-1997 informing that the employee had not reported to duty in spite of direction of CCC and requested the CCC not to credit the expenses of said Venkatram to its account by the said communication which is at Annexure-"F". Since the employee had not reported to duty at the bank, the CCC issued a show-cause notice dated 16-1-1998 to the employee informing the employee therein as to why action should not be initiated against him for not reporting to duty as per its communications dated 24-7-1997, 16-8-1997 and 13-10-1997. Even thereafter wards the employee has not reported to duty and on 11-10-1999 the employee has reported to duty with the bank. The said reporting to duty by the employee is said to be on the basis of an order dated 16-9-1999 which admittedly has not been produced by either of the parties to these proceedings.

6. Subsequently the CCC has passed an order on 26-11-1999 holding that the employee is not entitled to the salary for the period 23-5-1997 to 10-10-1999 as per Annexure-J. Again on 15-11-2000 a provisional order which is at Annexure-"K" is said to have been passed by the CCC (as claimed by the

petitioner bank in W.P. No. 4653/2007) holding that the Special Officer of the bank- has already intimated to the employer bank that he is not entitled to the salary for the period 23-4-2007 and 10-10-1999 and accordingly treated the said period as leave without salary.

7. During the year 2001 the employee had approached this Court in W.P.20801/2001 seeking a direction to the bank to pay the salary for the period 23-4-1997 and 10-10-1999 along with interest at 18% per annum. However, for reasons best known the employee claims that, the said writ petition came to be withdrawn on the assurance handed out by the CCC to settle the matter amicably and accordingly the writ petition was withdrawn.

8. The petitioner claims to have persuaded to submit the representation to the authorities thereafter and on account of such persuasion yet another representation was submitted to CCC which is said to have yielded in a positive result namely an order came to be passed on 15-4-2004 by the respondent CCC which is at Annexure-"M" In the said order it has been held that the employee was entitled for salary for the period from 23-4-1997 to 9-7-1997 namely for 78 days only. This was followed by a communication from CCC to the bank calling upon them to deposit and/or pay the salary for this period of 78 days.

9. However, another order came to be passed on 28-6-2006 ordering therein that the employee was entitled for salary for 78 days and also entitled for two annual increments with effect from 12-10-1995. However this order came to be modified by an order dated 31-7-2006 by the CCC in exercise of its power under Regulation 64E of appointment of regulations regarding the appointment, transfer, Disciplinary action and other service conditions of the employees of the PC A and RD Bank in Karnataka whereunder it was ordered that the bank should pay the salary to the employee for the period 23-4-1997 to 10-10-1999. As also the two annual increments as already ordered in its earlier order dated 28-6-2006. Pursuant to the said order dated 31-7-2006 which is at Annexure-"Q" direction also came to be issued to the branch office of Karnataka State Co-operative Agricultural and Rural Development Bank, Hassan with a direction to debit the amount of salary payable to the employee in the account of the bank i.e., Arasikere PCARD bank which is at Annexure-"S". In the meanwhile the President Karnataka State Agricultural and Rural Development Bank, Bangalore which is the Federal Society issued a communication dated 10-4-2007 to its branch office at Hassan directing the said branch to credit it to the suspense account of the bank i.e., Arasikere PCARD bank and make the payment to the employee which is at Annexure-"E" in W.P. No. 19958/2007. Further the employee approached this Court yet again in W.A. No. 46/2007 seeking a direction to the respondents therein to direct them to pay the arrears of salary in accordance with the endorsement/order dated 31-7-2006 (Annexure-"Q" in W.P. No. 4653/2007). The said writ petition came to be again withdrawn by the writ petitioner by filing the memo dated 24-1-2007 stating that a communication dated 13-12-2006 which is at Annexure-"S" has been received by petitioner

employee received from CCC and as such the said writ petition is said to have been withdrawn. It is also to be noted that the petitioner was given liberty to redress his grievances before the competent authority by leaving open all the contentions urged by the employee. However no liberty was given as sought for in the memo dated 24-11-2007 except to the extent stated in the orders dated 24-1-2007.

10. Respondents 1 and 2 in W.P. No. 4653/2007 have filed affidavits which are identical in nature and contended that the writ petition was not maintainable in view of there being bar u/s 70 of the Karnataka Co-operative Societies Act, 1959 and that the petitioner being a co-operative society limited is not a citizen and as such the writ petition is not maintainable. It is also contended that the bank had not obeyed the order dated 28-6-2006 and order dated 31-7-2006 which are at Annexures "P" and "Q" respectively and this order has been passed by virtue of the power vested to the CCC under Regulation 64E and hence the said CCC had followed due procedure as provided in the Rules and Regulations while passing the order and said action is taken in good faith and accordingly prayed for dismissal of the writ petition. However, the third respondent has not filed any statement of objections in W.P. No. 4653/2007 and the learned Counsel Sri.M.Sriramareddy requests this Court that the grounds urged in W.P. No. 19958/2007 is a complete answer to the grounds urged in the writ petition by the Bank and same itself be treated as objection of 3rd respondent.

11. I have heard Sri.B.Rudragowda, learned Counsel for the petitioner and Sri.N.Sriramareddy for 3rd respondent in W.P. No. 4653/2007 and petitioner in W.P. No. 19958/2007 and Sri.K.L.Srinivas and Sri.Gopalakrishna Hegde, appearing for the respective parties and perused the records.

12. Respondent No. 1 in W.P. 19958/2007 i.e., CCC has filed the objections to the petition filed by the employee inter alia contending that the employee is not entitled for any relief much less the one claimed in the petition and the employee has got an alternate remedy available to him as per Regulation 71 of CCC Regulations and hence seeks for rejection of the claim of the employee. It is also contended by the respondent CCC that the petitioner employee had already approached this Court on two earlier occasions and the said writ petitions have been withdrawn at his own will and volition and thus the employee cannot now improve upon his claim. It is the further contention of the first respondent CCC that an order had been passed on 15-11-2000 whereunder the employee was put on notice about treating the period from 23-4-1997 to 10-10-1999 as leave without allowance which order was within the knowledge of the employee and the same having not been challenged, the employee cannot now seek the reliefs as claimed in the writ petition. On these grounds the first respondent CCC has sought for the dismissal of the writ petition.

13. It is urged by Sri.Rudragowda, learned Counsel appearing for the petitioner that the orders at Annexure-"Q" and "S" suffers from legal infirmity since the petitioner had not worked for the period 23-4-1997 to 10-10-1999 and the CCC

having taken note of this fact had passed an order on 15-11-2000 treating the said period as leave without pay and contrary to the said order and without setting aside the said order, annulling it or rectifying it an order now impugned in the writ petition i.e., 31-7-2006 which is at Annexure-"Q" has been passed. It is contended by Sri.Rudragowda, learned Counsel appearing for the petitioner that admittedly the petitioner was informed way back on 16-8-1997 through its controlling authority namely CCC as per the communication dated 16-8-1997 which is at Annexure-"E" informing the CCC that the employee can report to duty and in spite of the same and also in spite of the fact that the CCC having informed the employee to report to duty with the bank, the same having not been done and the employee having remained absent for this period 23-4-1997 to 10-10-1999 cannot now direct the bank to pay the salary for the period for which he has not worked and the said employee was not kept out of the work on account of any inaction on the part of the bank and accordingly prays that the order dated 31-7-2006 be set aside and the consequential direction dated 31-12-2006 issued also be quashed.

14. Per contra Sri.Srirama Reddy would raise a preliminary objection as to the maintainability of the writ petition by the bank on two grounds:

(i) that writ petition was not maintainable as the petitioner bank is a member of the federal group of society and it being subordinate to the CCC it cannot maintain a petition independently;

(ii) The person who has signed verified and filed the writ petition is the manager who cannot present the petition inasmuch as he himself being an employee of CCC and subordinate to the authority he cannot question the order passed by the CCC.

In support of his contention Sri.Sriramareddy, learned Counsel appearing for the respondent employee draws attention of this Court to Section 76(a), (b) & (c) as also Section 128A of the Karnataka Co-operative Societies Act, which read as follows:

76. Definitions: In this Chapter

(a) "Board" means the Board of Directors of the [State Agriculture and Rural Development Bank;]

(b) [Agriculture and Rural Development Bank] means a Co-operative [Agriculture and Rural Development Bank] registered or deemed to be registered under this Act and admitted as a member of the [State Agriculture and Rural Development Bank.] [and includes such class or classes of co-operative societies as may be notified by the Registrar and admitted as member of the [State Agriculture and Rural Development Banks]

(c) [State Agriculture and Rural Development Bank] means the Karnataka Central Cooperative [Agriculture and Rural Development Bank] Limited;

128A. Constitution of a common cadre (1) Notwithstanding anything contained in this Act, the rules or the bye-laws where the Registrar, in the interest of 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 or more federal societies to which such class of co-operative societies is affiliated to exercise the power of appointment, transfer and disciplinary action in respect of such categories of employees of that class of co-operative societies as may be specified by him 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 cooperative societies shall not have powers to deal with such categories of employees except to the extent the regulations may permit.

(2) 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 said sum to such authority as may be specified by the Registrar and within the time fixed by him, the Registrar may on the application of the authority, and after such enquiry as he may consider necessary make an order requiring the co-operative society to pay the amount, any every such order shall be enforceable against the co-operative society as if it were an award u/s 71.

and contends that CCC being the employer and Manager being an employee of the CCC cannot maintain a petition and the only alternative available to the bank is to accept and execute the order passed by the CCC without demur. Sri.K.L.Srinivas is in chorus on this proposition and submits that the petition is not maintainable as the petitioner is not a citizen and it cannot be aggrieved by the orders passed by the CCC and for invoking the writ jurisdiction of this court only natural persons can invoke and not juristic person like that of the present petitioner and in support of this proposition relies upon the decision of the Supreme Court in AIR 1963 SC 1811 particularly page 1812 which reads as follows:

The rights of citizenship envisaged in Article 19 are not wholly appropriate to a corporate body. In other words, the right of citizenship and the rights flowing from the nationality or domicile of a corporation are not conterminous. The makers of the Constitution had altogether left out of consideration juristic persons when they enacted Part II of the Constitution relating to "citizenship", and made a clear distinction between "persons" and "citizens" in Part III of the Constitution. Part III, which proclaims fundamental rights, was very accurately drafted, delimiting those rights like freedoms of speech and expression, the right to assemble peaceably, the right to practise any profession, etc., as belonging to "citizens" only and those more general rights like the right to equality before the law, as belonging to "all persons".

The word "citizen" in Article 19(1)(f) and (g) has no special meaning and refers to a natural person. The State Trading Corporation cannot be regarded either by

itself or by taking it as the aggregate of citizens, as a citizen for the purpose of enforcing rights under Article 19(1)(f) and (g). The nationality of a corporation is a different concept not to be confused with citizenship of natural persons. The State Trading Corporation is really a department of Government behind the corporate veil and it is not possible to pierce the veil of incorporation in India to determine the citizenship of the members and then to give the corporation the benefit of Article 19. The corporation cannot claim to enforce fundamental rights under Part III of the Constitution against the State as defined in Constitution against the State as defined in Article 12.

15. This issue having direct bearing and impact regarding maintainability is now taken up for consideration.

16. Sri.Rudragowda would contend that the petition is very much maintainable inasmuch as u/s 9 of the Karnataka Co-operative Societies Act, the petitioner bank itself is a body corporate having a separate and distinct legal entity by itself and as such the writ petition is maintainable. In so far as the second contention is concerned it is contended that the manager being the principal officer of the bank and he is empowered to sue and to be sued and as such the writ petition is maintainable.

17. Having heard the learned Counsel for the parties it is to be seen that the very provision of Section 128A was the subject matter for consideration namely the vires of Section 128A came to be challenged before this Court in the matter of Primary Co-operative Land Development Bank Ltd. Vs. State of Karnataka, . In the said judgment this Court had occasion to consider all the intricacies involved in interpretation of Section 128A and the relevant paragraphs in so far as appreciating the rival contentions in the present writ petition are as follows:

16. Section 128-A, replaced by the Ordinance and re-enacted by the 1984 Act transferred the power of constituting CCAs for any class of co-operative societies to the Registrar of Co-operative Societies on being satisfied with the necessity for the same subject to the limitations and conditions placed therein. This Section empowers the Registrar to authorise a federal society to act as a CCA in respect of those societies that are affiliated to such a federal society. On and after 9-1-1984 to-date the Registrar had not exercised the powers conferred on him by this new provision, was not disputed before us by any of the parties.

17. We do not find from these provisions or any other provision of the ordinance or the 1984 Act that the CCA constituted and functioning as on 9-1-1984 ceased to exist from that day as held by the learned Judge. At any rate the plain language of Section 128-A replaced by the ordinance and the 1984 Act had not brought about that result. The new Section by itself, does not abolish the old authority created and functioning then or establish a new authority in its place from the date and time of the said substitution. With respect to the Learned Judge, we are unable to discern any such consequence from the language of Section 128A earlier or later enacted. We have carefully examined every one of

the provisions of the Ordinance and the 1984 Act also and they do not lend themselves to any such conclusion as reached by the Learned Judge. Even otherwise, a mere substitution of an earlier provision by another provision by another provision from the very date of its substitution, without anything more, does not result in such a situation under any other statute law or common law. For all these reasons, we cannot but hold that the conclusion reached by the Learned Judge, with respect is not sound and correct. We cannot, therefore, subscribe to the views expressed by the Learned Judge.

18. We have earlier held that the CCA constituted by Government had not ceased to exist and a new CCA had not been constituted by the Registrar under the new provision. Unfortunately the Ordinance and the 1984 Act do not make specific provision to regulate the situation. As to how then the situation should be regulated, we must turn to the Rules of Construction incorporated in the Karnataka General Clauses Act, 1899 (General Clauses Act) corresponding to the General Clauses Act (Central Act No. 10 of 1897) both of them modelled on the Interpretation Act in force in the United Kingdom to which the attention of the Learned Judge somewhat regretfully was not drawn by the parties.

19. We are of the view that the situation arising by the substitution, without making a specific provision should be examined and decided with reference to the Rules of Construction incorporated in Section 24 of the General Clauses Act which reads thus:

24. Constitution of orders, etc., issued under enactments repealed and re-enacted-Where any enactment is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless, and until it is superseded by any appointment, notification, order, scheme, rate, form or bye-law made or issued under the provisions so reenacted.

In cases of repeals and re-enactments with or without modifications, unless the intention otherwise requires, the rule of construction incorporated in this section declares or provides that what had been done earlier under the repealed provision shall be deemed to be done and continued under the newly enacted provision. The object and purpose of this Section is to preserve continuity and eliminate vacuums and chaos in the administration of laws. In more than one case the Supreme Court has expressed the same view vide: *State of Nagaland v. Ratan Singh* and *Neel@Niranjan Majumdar v. The State of West Bengal* Section 128A enacted by the ordinance and the 1984 Act, does not manifest an intention for not invoking and applying the Rule of construction incorporated in Section 24 of the General Clauses Act. From this it follows that the CCA constituted or established by Government on 24-8-1978 legally and validly continued to function on and after 9-1-1984 as if constituted or established under the new

Section 128A of the Act and can exercise all the powers and functions entrusted to it till such time a new body is established by the Registrar.

20. What is true of the CCA established under the previous provision or the reasons on which we have held that authority can exercise its powers, apply with greater force to hold that Rule 17A and 17B and the Regulations framed by the CCA continue to be in force till they are amended, modified or repealed.

21. On the foregoing discussion, it is clear that the order of transfer made by the CCA on 18-6-1984 was a legal and valid order and it was competent to enforce the same. From this it follows that the order under appeal cannot be upheld.

22. On the conclusions reached by us, it follows that the CCA is free to enforce its order of transfer in accordance with the regulations. We are of the view that respondent-1/petitioner is only entitled for such a declaration and not for any other relief in his Writ Petition.

23. While the petitioners in Writ Petitions Nos. 11694, 19803 of 1979 and 21034 of 1981 have challenged chapter XI itself as beyond the legislative competence, the petitioners in Writ Petitions No. 3598, 11694 of 1981, 13336 and 30711 of 1981 have challenged Section 128A of the Act only on that very ground. According to the petitioners the ARD Banks were banks and all their activities can exclusively be legislated by the Union Parliament under Article 246(1) read with Entry 45 of List-1 (Union List) and not by the State Legislature. Sri Channabasappa made a valiant effort before us to uphold this contention of the petitioners.

25. Admittedly the ARD Banks owe their existence to Chapter XI of the Act and not to any legislation enacted by the Union Parliament. When this is so, this stand of the petitioners, to say the least, is self destructive. But, notwithstanding the same, we are bound to examine the merits which we now proceed to do.

26. Sri Channabasappa has laid great stress on Section 3(b) of the Banking Regulations Act of 1949 (Central Act No. 10 of 1949) (1949 Act) which exempted Land Mortgage Banks that were established by the original Act and not the PLD or ARD Banks.

27. Sri Channabasappa is right in maintaining that the 1949 Act exempted from its operation Mortgage Banks and not PLD or ARD Banks. But, that hardly makes any difference to decide on the true nature of the ARD Banks or the legislative competence of the State Legislature. Even otherwise, on the rules of construction incorporated in Section 8 of the General Clauses Act, we must read the term "mortgage Banks" referred to in Section 3(b) of the 1949 Act as ARD Banks of the Act.

28. The ARD Banks established under Chapter XI of the Act are not banks within the meaning of that term as defined in the ordinary dictionaries, Law Lexicons or the 1949 Act. The ARD Banks with the appellation of banks at their end are not banks or banking institutions. Both in form and substance they are only co-

operative societies and not banks.

29. When once ARD Banks are found to be co-operative societies it follows that the State Legislature under Article 246(3) read with Entry 32 of List-II-State List was competent to enact Section 128A of the Act. We are of the view that this question is concluded by the ruling of the Supreme Court in *Daman Singh and Ors. v. State of Punjab and Ors.* and the Full Bench ruling of this Court in *Puttappa H v. State of Karnataka and Ors.*

30. We are also of the view that the High Courts of Punjab and Bombay in *Sant Sadhu Singh and Ors. v. The State of Punjab and Anr.* and *Nagpur District Central Co-operative Bank Limited, Nagapur and Anr. v. Divisional Joint Registrar, Cooperative Societies, Nagpur and Anr.* on the very question have correctly laid down the principles and we are in respectful agreement with the views expressed by their Lordships in these cases on the question of legislative competence. On the ratio of these rulings also, this contention of the petitioners is liable to be rejected.

31. On the foregoing discussion, we hold that there is no merit in this contention of the petitioners and we reject the same.

32. The Petitioners have urged that Section 128-A was violative of Article 14 of the Constitution. Learned Counsel for the petitioners have contended that Section 128A suffers from the vice of impermissible classification, was arbitrary, irrational and was violative of Article 14 of the Constitution.

33. The true scope and ambit of Article 14 has been explained by the Supreme Court in a large number of cases. In *Ramkrishna Dalmia v. Justice S.R. Tendolkar and Ors.* and *The Special Courts Bill, 1978* the Supreme Court has reviewed all the earlier cases till then decided and re-stated the scope and ambit of Article 14 of the Constitution. In *E.P. Royappa v. State of Tamil Nadu and Anr.*; *Smt. Maneka Gandhi v. Union of India and Ors.* and other cases that followed, the Court has also explained the new dimension of Article 14 of the Constitution. Bearing the principles enunciated in these cases, it is necessary to examine the challenge based on Article 14 of the Constitution, however, briefly noticing the structure and the purposes of ARD Banks in the first instance.

34. Whatever be the origin and establishment of Land Mortgage Banks under the Act as originally enacted or the corresponding laws in the several areas of the State on any from 26-6-1965 from which day the Amendments made by Act No. 4 of 1964 came into force, ARD Banks are really established for each revenue Taluk by statute and not under the statute (vide Section 76B of the Act). On and from 26-6-1965 the formation and establishment of an ARD Bank has very much ceased to be a voluntary organisation as in the case of ordinary co operative societies established under Chapter-II of the Act. The object and purposes of establishing ARD Banks in each revenue taluk, with an apex bank thereto was to help the agriculturists with long term loans to discharge prior mortgages, improvement of lands, purchase of tractors and other sophisticated machinery,

permanent improvement of lands and others (vide: Section 76A of the Act). The apex bank which is at the helm of ARD Banks is empowered to issue debentures naturally to finance the ARD Banks subject to the terms and conditions set out in the Act. The debentures when issued are guaranteed by the State Government (vide: Section 81 of the Act). Almost all finances of ARD Banks utilised for lending to agriculturists through ARD Banks are State finances funded through one or the other programme evolved either by the Union Government or the State Government. The State Government has immense stakes in the finances and proper functioning of the Apex Bank and ARD Banks in the State. The Act makes special provisions for the recoveries of amounts advanced by ARD Banks. ARD Banks are treated as belonging to a special and distinct class.

35. The Societies that are in receipt of financial aid form a well defined separate group. The classification of such societies is based on real and substantial grounds. The object of conferring power to form a CCA for such societies has a rational nexus with the object of the legislation or the Act or the cooperation movement. We are of the view that the impugned provision satisfies the twin requirements of a valid classification explained by the Supreme Court in the Special Courts Bill's case.

36. An examination of the impugned provision shows that it does not confer arbitrary unguided and uncanalised power on Government or the CCA to suffer from the vice of excessive delegation. Apart from this we do not find anything arbitrary in the provision to attract the new dimension of Article 14 of the Constitution evolved in Royappa's case and elaborated in Menaka Gandhi's case.

37. On the foregoing discussion, we have no hesitation in holding that the impugned provision is not violative of Article 14 of the Constitution.

38. The Petitioners have challenged Section 128A as violative of Articles 19(1)(c) (f) and (g) of the Constitution. But, at the hearing, the petitioners confined their challenge only to Article 19(1)(g) of the Constitution.

39. According to the petitioners Section 128-A compelling them or their employees, in particular, who are also petitioners to change their masters without their consent, interferes with their freedom to practice or carry on their occupation or profession guaranteed to them by Article 19(1)(g) of the Constitution and the restrictions on such freedom are not saved by Article 19(6) of the Constitution.

40. The true scope and ambit of Article 19 and the tests to be applied in examining challenges based on Article 19 of the Constitution have been authoritatively explained by the Supreme Court in a large number of cases. In the State of Madras v. V.G. Row one of the earliest cases, considered to be a classic, a Constitution Bench of the Supreme Court speaking through Patanjali Sastri, C.J. has explained the true scope and ambit of Article 19. In Narendra Kumar and Ors. v. The Union of India and Ors. and Laxmi khandsari Etc. v. U.P. and Ors. the Supreme Court has summarised and re-stated the scope and ambit

of Article 19 of the Constitution. Bearing the principles stated in these and other cases, we must examine the challenge of the petitioners based on Article 19 of the Constitution.

41. The petitioner in Writ Petition No. 3598 of 1978 is the PLD Bank, Badami, The PLD Bank which is a juristic person and not a natural person cannot invoke Article 19 of the Constitution is well settled.

42. But, the petitioners in all other Writ Petitions who are individuals can undoubtedly invoke Article 19 of the Constitution. We, therefore, propose to examining the challenge of the petitioner in Writ Petition No. 3579 of 1979 also along with the other petitioners.

43. The challenges of the petitioners based on Articles 19(1)(c) and (f) that it interferes with their right to form associations or unions and their right to hold, acquire and dispose of property which Clause itself has been deleted by the 46th Amendment of the Constitution, which were not also rightly pursued at the hearing, have only to be stated to be rejected. We see no merit in this challenge of the petitioners and we reject the same.

44. Sriyuths Channabasappa, Veerabhadrappe and Rajkote have urged that Section 128-A empowering Government and CCA to effect transfers and thus destroy the relationship of master and servant without their consent, unreasonably interferes with their freedom to practice their profession, occupation, trade or business guaranteed by Article 19(1)(g) and the restrictions, if any were not saved by Article 19(6) of the Constitution. Learned Counsel for the petitioners have placed strong reliance on the ruling of the Supreme Court in The State of Mysore Vs. H. Papanna Gowda and Another etc., which affirmed a Division Bench ruling of this Court in Papanna Gowda v. State of Mysore.

45. We were told at the hearing that an expert committee constituted by Government and the employees union of the ARD Banks, had urged Government for the creation of CCA on matters of recruitment, pay scales and conditions of service of all the employees of the Banks and accepting those recommendations Government brought forward the proposal that ultimately became Section 128A of the Act.

18. Thus, when looked into with the statutory provisions namely 128A the purpose and intend with which the CCC came to be created to regulate the appointment, the transfer and disciplinary action in respect of such categories of employees of that class of cooperative society to which 128A would apply and the Section itself does not provide anything beyond this and it has observed in the judgment referred to supra, the said amendment came into being at the instance of the employees Union of ARD Bank which had urged the Government for creation of CCC on the matters of recruitment pay-scale and conditions of service, conditions of employees of the bank it is on acceptance of this condition the Government thought it fit and forwarded the proposal which ultimately resulted in the birth of Section 128A. Thus, viewed from this perspective, it

cannot be held that all orders are not susceptible to the writ jurisdiction of this Court. What is prohibited would be those governing the appointment, transfer and other disciplinary proceedings which was the intent with which Section 128A came into force. However, if the CCC passed an order which were to be adverse or otherwise to the member society or federal society and if the said federal society if aggrieved by such orders, it cannot be said that the said orders are required to be accepted even if it were to be contrary to the provisions of the Act and it also cannot be said that in such a situation the aggrieved bank primary banks would be without any remedy of redressing their grievance more particularly when all other alternate remedies are not available in respect of such of those orders which are not expressly provided u/s 128A. However, the said principle cannot be said to extend even in respect of a dispute between employee and the employer namely the appointing authority CCC. Admittedly the employee in the instant case has been transferred to primary rural development bank by the CCC and the CCC is the controlling authority in so far as the aspects enumerated in Section 128A and nothing beyond that. Hence, I am of the opinion that the writ petition filed by the bank is maintainable and accordingly it is held so.

19. In so far as the merits of the claim made by the bank is concerned, it is to be noted that after the bank informed the CCC its inability to take the employee to duty by its communication dated 23-4-1997, the bank was informed by the CCC by its communication dated 16-8-1997, Annexure-E calling upon the bank to take the employee on duty. However, there is no material available on record to show as to whether the bank informed the employee to approach it for reporting to duty. On the other hand there is a communication by the President of the Bank informing the Managing Director/Member Secretary of PICARD bank bringing it to its notice of the development in the case and informing the principal Secretary about the absentism of the employee. This was followed up by a show cause notice by the CCC issued by the employee on 16-1-1998 which is at Annexure-"G". In the said show-cause notice the employee has been put on notice to submit a reply as to why action should not be taken for absents from duty from 23-4-1997 to 10-10-1999. There is also a reference to several letters said to have been sent not only by the bank but also the CCC calling upon the employee to report to duty. The reference given in Annexure-"G" no doubt is disputed by the learned Counsel for the employee which does not merit consideration since there is no whisper by the employee either in the pleadings or in any of his communication to bank or CCC.

20. Be that as it may, the employee does not dispute the receipt of the show-cause notice dated 16-1-1998 in which a reference has been given to the communication dated 16-8-1997 at Annexure-"E" and that was the first available opportunity for the employee to contend about the non-receipt of communication referred to in Annexure-"G". Not having done so, the employee subsequently on 11-10-1999 claims that an order of transfer came to be issued to him on 16-9-1999 and in pursuance of which he reported to duty on 11-10-1999.

However, there is conspicuously no whisper as to why he has not reported for duty during this interregnum period i.e., from 23-4-1997 to 11-10-1999. This itself clearly goes to show that the employee for reasons best known has not reported for duty and also has not worked in any other bank but has remained absent. In fact it is not the case of the employee that he has worked elsewhere.

21. When this being the factual matrix as the employee remained continuously absent the CCC thought fit to proceed departmentally against the employee and as such had issued number of letters, reminders culminating in the show-cause notice which ultimately ended in a communication/provisional order dated 15-11-2000 whereunder the employee was informed that his period of absence referred to above would be treated as leave without salary and to file objections to the said communication/provisional order dated 15-11-2000 falling which it should be treated as a final order. Subsequently on 9-5-2001 the employee has been informed that the said period 23-4-1997 to 10-10-1999 has already been treated as leave without salary for which an endorsement has also been issued and called upon the employee to desist from giving any representation in this regard. However, the employee after pursuing redressal of his grievance before this Court yet again approached the first respondent who by their order have informed that the employee was not entitled for the salary for the period 10-7-1997 to 10-10-1999 by order dated 15-4-2004.

22. When these communications and orders were in force and when they were not annulled or set aside, curiously the first respondent CCC passed an order dated 28-6-2006 holding that employee is entitled for salary for the period 23-4-1997 to 9-7-1997 namely 78 days and also entitled for two increments. As seen from the order dated 28-6-2006 Annexure-"P" neither the bank has been heard nor has been called upon to offer its explanation. The said order came to be modified by communication/order, dated 31-7-2006 as per Annexure "Q" and in the modification order it is held that in respect of 78 days salary to which the employee would be entitled should be read as 23-4-1997 to 10-10-1999 and accordingly modified the said order, CCC has held therein the said order has been passed to exercise of the powers vested in it under Regulation 64E. When the orders passed by it on, earlier occasion namely 15-11-2001 and 15-4-2001 has been passed by the very, same authority without; either setting aside the same or annulling the same, this order could not have been passed but makes it illegal on the face of it and when the very same authority has held that, to give a check spelling to the Dispute particularly in the disciplinary proceedings it sought to initiate against the employee for absentism by holding that the said period of absentism would be treated as period without salary it could not have passed the order at Annexure-"P" and "Q" Hence the said order is liable to be set aside and accordingly it is set aside. Consequently the direction issued by the CCC which is dated 13-12-2006 at Annexure "S" is also hereby quashed to the extent of the Primary Agricultural Bank, Arasikere only. However, it is made clear that the order dated 15-4-2004 is in force and the petitioner and the employee would be entitled to the relief granted thereunder namely to claim the salary for 78 days

and which is now submitted by Sri.Rudragowda, learned Counsel for the bank that same has been paid to the employee. Submission is placed on record.

23. In so far as the second writ petition is concerned the petitioner had approached this Court in W.P. No. 4653/2007 and had withdrawn the same on the ground that an order dated 13-12-2006 had been passed by the CCC and accordingly the writ petition had been withdrawn. This communication dated 13-12-2006 has been issued by the first respondent. However, it is not made clear in the said communication as to the basis on which the said communication has been issued. The petitioner employee is seeking for a mandamus to pay the salary in accordance with the endorsement dated 10-4-2007 which is at Annexure-"E" and even the said communication dated 10-4-2007 also does not reflect as to the basis on which the said direction has been given. It is purported on the basis of the order which crystalised into a right for the petitioner to seek direction, the said endorsement has been issued. When the very basis on which the petitioner claim has been negated by this Court question of issuing any direction by way of mandamus does not arise and accordingly the said prayer is rejected. However, it is made clear that in the event the petitioner still has a grievance as to his claim not having been satisfactorily met by the authorities, the dismissal of this writ petitions does not preclude him from raising a dispute under Regulation 71 of the Regulations before the appropriate authorities. With these observations the following orders are passed:

(i) W.P. No. 4653/2007 is allowed and order dated 31-7-2006 at Annexure-"Q" and also the endorsement/communication dated 13-12-2006 which is at Annexure "S" are hereby quashed.

(ii) The prayer sought for in W.P. No. 19958/2007 for a mandamus is hereby rejected.

(iii) The third respondent in W.P. No. 4653/2007 who is the petitioner in W.P. No. 19958/2007 is given liberty to raise a dispute under Regulation 71 before the Registrar.

(iv) It is also made clear the respondent bank shall pay the salary for the period of 78 days if not already paid.

Parties are directed to bear respective costs.