HC-KAR

NC: 2026:KHC:56331
WP No. 2550 of 2024

CNR: KAHC010051162024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.2550 OF 2024 (GM-DRT)

BETWEEN:

1. SUNIL DUTH H
S/O PANDURANGA H
AGED ABOUT 48 YEARS
R/AT NO.10-171/18,
PARVATHI, NEAR POLICE QUARTERS,
SHAKTHINAGAR, MANGALORE,
DAKSHINA KANNADA DISTRICT-575 016.

...PETITIONER

(BY SRI. KETHAN KUMAR, ADVOCATE)

AND:

1. KARNATAKA BANK LTD.
ASSET RECOVERY MANAGEMENT BRANCH
KARNATAKA BANK LIMITED
3RD FLOOR, KARNATAKA BANK BUILDING
KODIALBAIL
MANGALORE-575 003
REP. BY ITS CHIEF MANAGER/AUTHORISED OFFICER
SHRI SHIVARAM BHAT E
S/O LATE E. VENKATESHWARA BHAT

RESPONDENT BANK REGISTERED UNDER THE
INDIAN COMPANIES ACT, 1913 AND
GOVERNED BY RESERVE BANK.

...RESPONDENT

(BY SRI. SUDESH KUMAR ACHARYA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

HC-KAR

CNR: KAHC010051162024

IMPUGNED ORDER DATED 15.12.2023 PASSED IN CRIMINAL MIS CASE NO.413/2023 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM., MANGALURU, D.K. VIDE ANNEXURE-A, ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL ORDER

1. The petitioner has filed the present petition impugning the order dated 15.12.2023 passed in Criminal Miscellaneous No.413 of 2023 on the file of the Principal Senior Civil Judge and CJM, Mangalore, D.K., wherein the application filed by the respondent-Bank under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 came to be allowed.

2. This Court, on 31.01.2024, has passed an interim order staying the impugned order, subject to the petitioner depositing 30% of the amount due to the respondent-Bank within nine weeks, in the manner described in the order dated 31.01.2024.

3. The learned counsel for the petitioner fairly submits that the interim order dated 31.01.2024 has not been complied with.

4. Learned counsel appearing for the respondent-Bank submits that this petition has been filed against the Karnataka Bank Limited, which is a private bank and the writ petition filed against a private bank is not maintainable. In support of his contention, he relies upon the decision of the Coordinate Bench of this Court in the case of ***Gowtham v. Karnataka Bank Limited*** in W.P.No.11869/2017 connected with W.P.No.27352/2016 dated 04.03.2020 wherein, the Coordinate Bench of this Court, considering the judgments of the Supreme Court in the case of ***M.P.Singh vs. Union of India and others***[1] and in the case of ***Federal Bank Ltd. vs. Sagar Thomas and Others***[2] and the judgment of the Division Bench of this Court in the case of ***Karnataka Bank Limited v. Smt. Rekha Rao and others*** in Writ Appeal Nos.8541 to 8549/1996, has held that the writ petition filed against a private bank is not maintainable, as no public duty or public function is involved. The relevant extract in ***Gowtham's*** case is as under:

> *"3. Learned counsel for the respondent would place reliance on the ruling of this court rendered in Karnataka Bank Limited Vs. Smt. Rekha Rao and Others in W.A.*

[1] *2013 AIR SCW 2545*

[2] *(2003)10 SCC 733*

Nos.8541 to 8549/1996 wherein, the Division Bench after considering the issue in total has held in paragraphs No.9 and 10 as follows:-

> *"9. The writ petitioners in filing the writ petitions, wrongly assumed that (a) the appellant is an authority; (b) that the suggested guidelines by Reserve Bank to private sector banks are binding statutory directions; and (c) that the fundamental rights guaranteed under Articles 14 to 16 of the Constitution Of India is available to them as against the appellant-Bank. The first two assumptions have been negatived by the learned Single Judge and they are not re-agitated in these appeals. The correctness of the third assumption was not specifically considered by the learned Single Judge. But he has recorded a finding that the appellant-Bank discharges a public duty in making recruitment, without any discussion. Thus we have to infer that he has also assumed, if we may say so with respect, wrongly, that the writ Petitioners can enforce the fundamental rights enshrined in Articles 14 to 16 against the appellant. The fundamental rights enshrined in the conditions are of two kinds. The first kind is the natural fundamental rights which are recognized in any civilized society (e.g., right to life, personal liberty and freedoms) which if infringed, can be enforced against the State in a writ proceedings, and against private persons, in the Civil Courts. The second kind is the special fundamental rights conferred by the Constitution which are available and enforceable only against the 'State' as defined in Article 12 (for e.g., rights in matters of public employment). The learned Single Judge has overlooked the fact that fundamental rights conferred by Articles 14 to 16 are not enforceable against a private person and body and discrimination is prohibited only in State action and not in actions of private citizens. Therefore, even if there is any irregularity in selection by the appellant, the remedy of writ Petitioners is not by a writ proceedings alleging discrimination, but by*

action in a Civil Court based on contract, statute or the principles of estoppel, if available.

10. As no public duty or public function is involved, in regard to selection of persons by the appellant to its clerical cadre, and as the appellant is not a 'State' under Article 12 of the Constitution Of India, the only inescapable conclusion is that the writ petitions filed by the private Respondents are not maintainable against the appellant-bank.

In view of our answer to the first and second questions, the third question does not survive for consideration. These appeals are allowed. The order dated 23.8.1996 in Writ Petition Nos. 23935-941 of 1995, 16490/1995 and 25386 of 1991 is set aside. The said petitions are dismissed as not maintainable. Parties to bear their respective costs."

4. Learned counsel would also place reliance on the ruling of the Hon'ble Apex Court in the case of Federal Bank Ltd. Vs. Sagar Thomas and Others, reported in (2003) 10 SCC 733 to further fortifies his contention that the writ petition against the private entity is not maintainable. The Hon'ble Apex Court in the citation stated supra has been pleased to observe and hold in paragraphs No.18 and 31 which reads as under:-

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

> *31. The other case which has been heavily relied upon is Andi Mukta. It is no doubt held that a mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The writ petition was held to be maintainable since the teacher whose services were terminated by the institution was affiliated to the university and was governed by the ordinances, casting certain obligations which it owed to that petitioner. But it is not the case here. Our attention has been drawn by the learned counsel for the appellant to paras 12, 13 and 21 of the decision (Andi Mukta) to indicate that even according to this case no writ would lie against the private body except where it has some obligation to discharge which is statutory or of public character."*

5. Learned counsel would further submit that the Hon'ble Apex Court in the case of M.P. Singh Vs. Union of India and Others and connected appeals reported in 2013 AIR SCW 2545, was pleased to reiterate the law laid down in the case of Federal Bank (stated supra). The Hon'ble Apex Court has been pleased to observe in paragraph Nos.47, 48 and 49 which are as follows:-

> *"47. Merely because TATA Communication Limited is performing the functions*
> *@page-SCW2558*
> *which were initially performed by OCS would not be sufficient to hold that it is performing a public function. It has been categorically held in the case of Ramana Dayaram Shetty (AIR 1979 SC 1628) (supra) if only the functions of the Corporation are of public importance and closely related to Government functions, it would be a relevant factor in classifying the Corporation as an instrumentality or agency of the Government.*
>
> *48. As noticed above, the functions performed by VSNL/TCL are not of such nature which could be said to be a public functions. Undoubtedly, these operators provide a service to the subscribers. The service is available upon payment of commercial*

charges. The learned counsel for the appellants had placed strong reliance on the judgment of this Court in Air India Statutory Corporation (AIR 1997 SC 645: 1997 AIR SCC 430) (Supra). However, the aforesaid judgment is of no assistance to the appellants as it was subsequently overruled by a Constitution Bench in Steel Authority of India Ltd. And Ors. V. v. National Union Waterfront Workers and Ors. Dr. K.S. Chauhan had also relied on the Human Rights Act, 1998 (Meaning of Public Function) Bill which sets out the factors to be taken into account in determining whether a particular function is a public function for the purpose of sub-section (3)(b) of Section 6 of the aforesaid Act. Section 1 enumerates the following factors which may be taken into account for determining the question as to whether a function is a function of public nature:

> *"(a) the extent to which the State has assumed responsibility for the function in question;*
>
> *(b) the role and responsibility of the State in relation to the subject-matter in question;*
>
> *(c) the nature and extent of the public interest in the function in question;*
>
> *(d) the nature and extent of any statutory power or duty in relation to the function in question;*
>
> *(e) the extent to which the State, directly or indirectly, regulates, supervises or inspects the performance of the function in question;*
>
> *(f) the extent to which the State makes payment for the function in question;*
>
> *(g) whether the function involves or may involve the use of statutory coercive powers;*

(h) the extent of the risk that improper performance of the function might violate an individual's convention right."

Performance of public function by private provider -18. (2001 (7) SCC 1): (AIR 2001 SC 3527 : 2001 AIR SCW 3574).

49. For the avoidance of doubt, for the purposes of Section 6(3)(b) of the Human Rights Act, 1998, a function of a public nature includes a function which is required or enabled to be performed wholly or partially at public expense, irrespective of -

"(a) the legal status of the person who performs the function, or

(b) whether the person performs the function by reason of a contractual or other agreement or arrangement."

Proceeded further in paragraph Nos.50 and 52 held as under:-

"50. In our opinion, the functions performed by VSNL/TCL examined on the touchstone of the aforesaid factors cannot be declared to be the performance of a public function. The State has divested its control by transferring the functions performed by OCS prior to 1986 on VSNL/TCL. Dr Chauhan had also relied on Binny Ltd.
@ page – SCW 2559
(supra) wherein this Court reiterated the observations made by this Court in Dwarkanath v. Incom-tax Officer, Spcial Circle, D-ward, Kanpur and Anr., it was observed that :
"It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to

do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.

52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so. In the present case, as noticed earlier, all telecom operators are providing commercial service for commercial considerations. Such an activity in substance is no different from the activities of a bookshop selling books. It would be no different from any other amenity which facilitates the dissemination of information or DATA through any medium. We are unable to appreciate the submission of the learned counsel for the appellants that the activities of TCL are in aid of enforcing the fundamental rights under Article 21(1)(a) of the Constitution. The recipients of the service of the telecom service voluntarily enter into a commercial agreement for receipt and transmission of information. The function performed by VSNL/TCL cannot be put on the same pedestal as the function performed by private institution in imparting education to children. It has been repeatedly held by this Court that private education service is in the nature of sovereign function which is required to be performed by the Union of India. Right to education is a fundamental right for children upto the age of 14 as provided in Article 21-A. Therefore, reliance placed by the learned counsel for the appellants on the judgment of this Court in Andi Mukta (AIR 1989 SC 1607) (supra) would be of no avail. In any event, in the aforesaid case, this Court was concerned with the non-payment of salary to the teachers by Andi Mukta Trust. In those circumstances, it was held that the Trust is duty-bound to make the payment and, therefore, a writ in the nature of mandamus was issued. Mr C.U. Singh, Senior Counsel relied on Binny Ltd. (AIR 2005 SC 3205 : 2005 AIR SCW

3774) (supra) in support of the submissions that VSNL/TCL is not performing a public function. In our opinion, the observations made by this Court in the aforesaid judgment are fully applicable in the facts and circumstances of this case."

6. xxx

7. In the light of the pronouncement of the Hon'ble Apex Court as stated above, since the respondent bank is similarly situated, the instant writ petition requires to be rejected as not being maintainable. Accordingly, the writ petition is rejected as not maintainable. The rejection of the writ petition will not prevent the petitioner from seeking remedy before the competent forum/authority/court.

The time spent in prosecuting this writ petition shall be considered for the purpose of calculating the limitation."

5. The Supreme Court in the case of ***S. Shobha vs Muthoot Finance Limited*** (2025 INSC 117) has held as under :

"*9. We may sum up thus:*

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

6. The Supreme Court held that a private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

7. In this case, the respondent is Karnataka Bank Limited and this court in ***Gowtham*** (supra) has held that writ petition filed against the bank is not maintainable.

8. In view of the above, the writ petition is not maintainable against the respondent-Bank. Accordingly, the writ petition is ***dismissed as not maintainable***. Liberty is reserved to the petitioner to seek appropriate remedy before the competent forum. Time spent before this Court shall be available to the petitioner under Section 14 of the Limitation, 1963.

Sd/-

JUSTICE K.S. HEMALEKHA

hkh.
List No.: 1 Sl No.: 10