



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 27<sup>TH</sup> DAY OF DECEMBER, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE C.M. POONACHA**

**WRIT PETITION NO. 35446 OF 2024 (CS-EL/M)**

**BETWEEN:**

1. SUBHASH I B  
S/O T.S.BASAVARAJ  
AGED ABOUT 38 YEARS  
INDAVARA VILLAGE AND POST,  
CHIKKMAGALURU TALUK AND DISTRICT-577 101
2. I.M SURESH  
S/O LATE I.S.MADEGOWDA  
AGED ABOUT 55 YEARS  
INDAVARA VILLAGE AND POST,  
CHIKKMAGALURU TALUK AND DISTRICT-577 101

...PETITIONERS

(BY SRI. DEVI PRASAD SHETTY.,ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
DEPARTMENT OF CO-OPERATION  
M.S BUILDING,  
DR. B.R. AMBEDKAR VEEDHI  
BENGALURU -560 001.  
REPRESENTED BY ITS PRINCIPAL SECRETARY.
2. THE STATE CO-OPERATIVE ELECTION AUTHORITY,  
3RD FLOOR, T.T.M.C.  
'A' BLOCK, SHANTHI NAGAR,  
BANGALORE-560 027,  
REPRESENTED BY ITS SECRETARY.
3. DEPUTY REGISTRAR/DISTRICT ELECTION OFFICER.  
SAHAKARA UNION JYOTHI NAGARA,  
CHIKAMAGALURU TOWN,  
CHIKAMAGALURU DIST- 563102

Digitally  
signed by  
BHARATHI S  
Location:  
HIGH  
COURT OF  
KARNATAKA



4. RETURNING OFFICER  
PRIMARY AGRICULTURAL CREDIT  
CO-OPERATIVE SOCIETY LTD,  
INDAVARA  
CHIKKAMANGALURU TALUK  
CHIKKMAGALURU DISTRICT-577113

5. PRIMARY AGRICULTURAL CREDIT  
CO-OPERATIVE SOCIETY LTD,  
INDAVARA  
CHIKKAMANGALURU TALUK  
CHIKKMAGALURU DISTRICT-577113  
BY ITS CHIEF EXECUTIVE OFFICER

...RESPONDENTS

(BY SRI.SANDEEP R., ADVOCATE FOR  
SRI. N K RAMESH., ADVOCATE FOR C/R5  
SMT. MAMATHA SHETTY, ADVOCATE FOR R1 TO R3)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE  
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD.  
09.12.2024 PASSED BY THE R-3 VIDE NO. /DRC/1(D)/ /2024-25  
PRODUCED AT ANNEX-F AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER  
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE C.M. POONACHA

**ORAL ORDER**

The present Writ Petition is filed seeking for the following  
relief/s and interim relief:

*"i. Issue a writ in the nature of certiorari quashing  
the order dated 09/12/2024 passed by the 3rd  
respondent vide no./DRC/1(D)//2024- 25 produced  
at Annexure-F.*

*ii. Issue a writ of mandamus directing the  
respondent no.2 to 5 to include the name of the  
petitioners in the eligible voters list and permit the*



*petitioners to contest and cast their votes in the elections to the respondent no.5 which is scheduled to be held on 29/12/2024 in the interest of justice and equity.*

*iii. Such other direction or order writ as may deem fit to this Hon'ble Court may kindly be issued.*

**INTERIM PRAYER**

*Pending disposal of the above writ petition petitioners respectfully prays that this Hon'ble court be pleased to stay the order dated 09/12/2024 passed by the 3rd respondent vide no./DRC/1(D)//2024-25 produced at Annexure-F and direct the Respondent No.2 to 5 to prepare and conduct the election to the respondent no.5 society by permitting the petitioners to contest and cast their votes in the elections scheduled to be held on 29/12/2024 in the interest of justice and equity."*

2. It is the case of the petitioners that out of the total 848 members, 635 have been notified as ineligible (Annexure-G to the Writ Petition) and 213 members have been notified as eligible (Annexure-H to the Writ Petition). It is further contended that the petitioners had filed their objections to they being notified as ineligible voters and vide order dated 19.12.2024 (Annexure-F to the Writ Petition) although the respondent No.3 – Deputy Registrar has recorded a finding that the petitioners have transacted with respondent No.5 – Society,



has erroneously rejected the request of the petitioners to contest and vote in the elections to be held to respondent No.5 – Society.

3. Per contra, learned counsel for the caveator – respondent No.5 submits that the rejection of objections by respondent No.3, vide order dated 09.12.2024 is just and proper having regard to the fact that respondent No.3 has noticed the petitioners have not produced any material to demonstrate that they have transacted with respondent No.5 – Society.

4. Learned counsel for respondent No.5 – Society further submits that petitioner No.1 is in the habit of filing such Writ Petitions and even on an earlier occasion, he had filed W.P.No.285/2020 as petitioner No.1 and pursuant to the interim order passed in the said Writ Petition, having participated in the elections, the said Writ Petition was disposed of. In the present case also, the petitioner No.1 has resorted to filing a similar Writ Petition.



5. The petitioners also allege violation of Rule 13D (2A) of the Karnataka Co-operative Societies Rules, 1960<sup>1</sup>.

6. It is forthcoming that pursuant to the petitioners being notified as ineligible voters, they filed objections to the same and respondent No.3 considering the case of the petitioners, vide order 09.12.2024 (Annexure – F to the Writ Petition) noticed that the assertion of the petitioners was that they have transacted with the Society, while it was the categorical case of the Society that the petitioners had not carried out any transaction.

7. Respondent No.3 noticing the case putforth by both the parties has, recorded a finding that the petitioners did not produce any document to demonstrate that they have availed the minimum service and has also held that the petitioners have not mentioned the value/amount of the transaction they have done with respondent No.5 – Society.

8. Although, it is the vehement contention of the learned counsel for the petitioners that all the records with respect to the transactions of the petitioners are with the

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<sup>1</sup> Hereinafter referred to as the 'Rules, 1960'



Society and that the Society was required to produce the said documents, it is clear and forthcoming that the Society having taken a specific contention that the petitioners had not transacted with it, the onus was on the petitioners to produce the relevant records and no fault could be found with the order dated 09.12.2024 passed by respondent No.3 in that regard.

9. The petitioners in the present Writ Petition are seeking permission to contest and vote in the elections scheduled to be held on 05.01.2025 pursuant to the calendar of events dated 18.12.2024 (Annexure-B to the Writ Petition). A Co-ordinate Bench of Court in the case of ***Sri B. Ganganna and Others Vs. The State of Karnataka, Department of Co-operation and Others***<sup>2</sup> has held as follows:

*"(a) Whether a writ petition under Article 226 of the Constitution India is maintainable (before the publication of the calendar of events 70 of under Rule 14) to redo the voters' list for violation of Rule 13-D(2-A) (of the Rules, 1960, in preparing the eligible and ineligible voters' list?*

*(b) Whether the authority acting under Section 70(2)(c) of the Act, 1959 can*

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<sup>2</sup> ILR 2024 KAR 1901



*decide the validity of the electoral roll vis-à-vis Rule 13-D(2-A) le of Rules, 1960?*

*(c) Whether the judgments of co-ordinate Bench of this Court **MOHAMMAD BEARY & OTHERS vs. THE STATE OF KARNATAKA & OTHERS**<sup>3</sup> and **H.S. RAJU AND OTHERS vs. STATE OF KARNATAKA AND OTHERS**<sup>4</sup> are per incurium and contrary to the law in **ELECTION COMMISSION OF INDIA THROUGH SECRETARY vs. ASHOK KUMAR AND OTHERS**<sup>5</sup>."*

9.1. This Court while answering the said questions has held as follows:

*"22. On a cursory reading of the above-mentioned provisions, it is evident that the role of the Co-Operative Election Authority under the scheme of the Act, 1959 and the Rules 1960, in conducting the election to the board of a co-operative society is all-pervasive. Right from the stage of preparing the eligible and ineligible voters' list till the announcement of results, the Co-Operative Election Authority has a predominant role to play in not only conducting the elections to the board of a co-operative society but also in finalising the electoral roll with reference to right to vote and disqualification to vote. This aspect is to be kept in mind while answering the questions raised in the petition.*

*26. Having considered the predominant role of the Co-Operative Election Authority right from the stage of preparing the electoral roll, finalising the same after hearing the objections, publication of calendar of events and conducting the elections, and having considered the nature of the vote of member in a co-operative society, before proceeding to answer the question whether there*

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<sup>3</sup> Writ petition No.29271/2023 & Connected matters)

<sup>4</sup> 2022 (4) AKR 775

<sup>5</sup> (2000)8 SCC 216



can be a challenge to the electoral roll in a petition under Article 226 of the Constitution of India, before the publication of the calendar of events on the premise that the said roll is published in violation of Rule 13-D(2-A), the Court has to consider if any, statutory remedy is available to question the violation of provisions of the Act, 1959 and the Rules, 1960 in preparing the eligible and ineligible voters' list.

28. The plain grammatical meaning of the expression "any dispute arising in connection with the election" itself makes abundantly clear that the Authority under Section 70(2)(c) of the Act, 1959 can decide any dispute in connection with the election of the members of the board of a co-operative society. In addition, as can be noticed from Section 70(2)(c), unlike the provisions in the enactments like The Karnataka Municipalities Act, 1964, Karnataka Gram Swaraj and Panchayat Raj Act, 1993, and even the Representation of People Act, 1951, which provide for election dispute on specific grounds enumerated in the provision, in Section 70(2)(c), the challenge to the election to the Board of a co-operative society is not restricted to certain specific grounds. Thus, there can be no room for any doubt whatsoever that the Section 70(2)(c) of Act, 1959 is wide enough to cover all questions in connection with Section 20 (a-iv) (a-v) and Rule 13-D (2-A) referred to above.

29. However, a word of caution is needed here. The right to vote and the disqualification to vote in the election to the board of the co-operative society is not just dependent on the procedure to be followed under Rule 13-D(2-A) of the Rules. The right to vote or ineligibility to vote depends on the members meeting, the eligibility criteria prescribed under Section 20(a-iv) and (a-v). Non-compliance with the mandatory procedures prescribed under Rule 13-D(2-A) for preparation of voters' list ipso facto will not make the ineligible voter, eligible to vote. Eligibility to vote is also required to be demonstrated. It is quite possible that even if Rule 13-D(2-A) is not followed, the list may conform to Section 20(a-iv) and (a-v) of the Act, 1959. Thus, apart from demonstrating that the Rule 13-D is not complied, the member has to demonstrate that the is eligible to vote but should also demonstrate that the



*faulty voters' list made and impact on the election results.*

30. It is also relevant to note that non-compliance of some part of Rule 13-D(2-A), may close the window provided to repay the dues within the time fixed under Rule 13-D(2-A). It will take away the opportunity to be an eligible voter or an opportunity to contest. Losing a chance to contest an election if the nomination paper is rejected on the premise that the candidate's name is not in the electoral roll can also be questioned under Section 70 of the Act, 1959.

33. Admittedly, Section 70(2)(c) does not specify the grounds on which an election to the board of a co-operative society can be set aside. Assuming that there is a vacuum as to what kind of relief can be granted under Section 70(2)(c), applying the principles contained in Section 100(1)(d-iv) of Act of 1951, and following the ratio in **T.S.PATIL vs. THE J.R.C.S. AND OTHERS<sup>6</sup>** and **CHANNE GOWDA AND ANOTHER vs. STATE OF KARNATAKA AND OTHERS<sup>7</sup>** and **HAYAT BEIG vs. MUNIVENKATE GOWDA AND OTHERS<sup>8</sup>**, the non-compliance of Rule 13-D(2-A) of Rules, 1960 can be read as a ground available under Section 70(2)(c) of Act, 1959 to challenge the election to the board of a co-operative society. Thus, the Authority under Section 70 of the Act, 1959 can also look into the violation of the provisions of the Act, 1959 and Rules, 1960, applicable to the election to the board of a co-operative society. If, it is established that the electoral roll is prepared in violation of the mandatory rules and that the result of the election is affected on account of faulty electoral roll, then, the Authority under the Act is competent to pass an appropriate order on the election by assessing the impact of faulty electoral roll on the outcome of the election. This being the position, this Court is of the view that the judgment rendered in **T S PATIL<sup>5</sup>** does not come to the aid of the petitioners. On the other hand, the principle laid down in the said judgment will enable the Authority under Section 70 to examine the violation of Rule 13-D(2-A) of Rules, 1960 as well.

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<sup>6</sup> ILR 2007 KAR 491

<sup>7</sup> 1975 (2) Kar.L.J.235

<sup>8</sup> (1972) 1 Mys.L.J.121



40. Whether the preparation of the electoral roll is part of an election is the question answered by the Apex Court in **SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DURGHU UTPADAK SANSTHA AND ANOTHER VS. STATE OF MAHARASHTRA AND OTHERS**<sup>9</sup>. The Apex Court has analyzed the scheme of the Maharashtra Co-operative Societies Rules concerning the preparation of the electoral roll and the process of filing objections to the ineligible voter's list. The Apex Court has taken the view that the preparation of the electoral roll is also an intermediate stage in the election.

41. The provisions of the Rules, 1960, in so far as the conduct of elections are complete code in itself. The said judgment is indeed rendered interpreting the provisions of the Maharashtra Co-Operative Societies Act and Rules. It is also true that the procedures under the said Act and Rules in preparing the electoral roll are different from the one provided in the Act, 1959 and Rules, 1960. However, the fact that both enactments provide an adjudicatory mechanism before finalizing the final electoral roll and also the fact that an independent authority other than the co-operative society is assigned with the role of preparing the electoral rolls and conducting elections, the underlying philosophy in both Rules in so far as conducting elections to the board of a co-operative society is by and large the same.

44. In the light of the reasons recorded above, this Court is of the view that as a general principle, the writ petition to challenge the electoral roll published for holding elections to the board of a co-operative society is not maintainable. However, this Court is not holding that the remedy under Article 226 of the Constitution of India is completely ruled out. There may be situations, in the facts and circumstances of a given case, the High Court in the exercise of plenary jurisdiction under Article 226 of the Constitution of India may have to step into avert a total miscarriage of justice in preparing the electoral roll. It is not desirable to spell out those circumstances in this petition. Suffice it to say that the facts obtained in this petition do not warrant such exercise.

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<sup>9</sup> (2001) 8 SCC 509



50. For the reasons recorded, this Court concludes as under:

- (a) *The preparation of electoral roll under Rule, 13-D(2-A) of the Karnataka Co-Operative Rules 1960 is an integral part of the election process in the context of a question whether the writ petition is maintainable when the challenge is laid to the procedure initiated for preparing electoral roll.*
- (b) *In a dispute under Section 70(2)(c) of the Karnataka Co-operative Societies Act, 1959, the Authority under Section 70 can decide the question on the validity of electoral roll prepared under the Rules, 1960 and its impact on the election.*
- (c) *The judgments in **MOHAMMAD BEARY**<sup>2</sup> and **H.S. RAJU**<sup>3</sup> are not per incurium*
- (d) *The writ petition under Article 226 of Constitution of India to challenge the electoral roll on the ground of non compliance of Rule 13-D(2-A) of Rules, may lie in exceptional cases.”*  
*(emphasis supplied)*

10. Having regard to the settled position of law as laid down by this Court as noticed above, the petitioners have failed in demonstrating any exceptional circumstance for grant of relief in exercise of the extraordinary discretionary jurisdiction of this Court under Article 226 of Constitution of India.



11. In view of the aforementioned, the Writ Petition is disposed of reserving liberty to the petitioners to avail remedy under Section 70 of the Karnataka Cooperative Societies Act, 1959.

**SD/-**  
**(C.M. POONACHA)**  
**JUDGE**

BS/ND  
List No.: 1 Sl No.: 8