



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

WRIT PETITION NO.17610 OF 2025 (CS-EL/M)

BETWEEN:

1. GALIGEKERE PRIMARY AGRICULTURE CREDIT
CO-OPERATIVE SOCIETY LTD.,
(*SOCIETY REGD. UNDER THE KARNATAKA
CO-OPERATIVE SOCIETIES ACT*)
GALIGEKERE VILLAGE,
K.R. NAGAR TALUK,
MYSURU DISTRICT - 571 601.
REP. BY ITS CHIEF EXECUTIVE OFFICER.
2. SRI. AMITH V. DEVARAHATTI
S/O H. VISHWANATH,
AGED ABOUT 46 YEARS,
PRESIDENT OF GALIGEKERE PRIMARY AGRICULTURE
CREDIT CO-OPERATIVE SOCIETY LTD.,
GALIGEKERE VILLAGE,
K.R. NAGAR TALUK,
MYSURU DISTRICT - 571 601.

...PETITIONERS

(BY SRI. M.R. RAJGOPAL, SENIOR COUNSEL FOR
SRI. ANAND P., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF CO-OPERATION,
M.S BUILDING,
DR. B.R. AMBEDKAR VEEDHI,
BENGALURU - 01.
REP. BY ITS PRINCIPAL SECRETARY.
2. THE CO-OPERATIVE ELECTION AUTHORITY
3RD FLOOR, SHANTHI NAGAR,



T.T.M.C. 'A' BLOCK, SHANTHI NAGAR,
BENGALURU - 560 027.
REP. BY ITS COMMISSIONER.

3. THE DEPUTY COMMISSIONER/
DISTRICT ELECTION OFFICER OF
FEDERAL CO-OPERATIVE SOCIETIES,
MYSURU DISTRICT,
MYSURU - 570 001.
4. THE RETURNING OFFICER
MYSURU AND CHAMARAJANAGAR DISTRICT
CENTRAL CO-OP BANK LTD. AND
ASSISTANT COMMISSIONER,
MYSURU SUB-DIVISION,
MYSURU - 570 001.
5. MYSORE AND CHAMARAJANAGAR DISTRICT
CENTRAL CO-OP BANK LTD.,
(REGD. UNDER THE KARNATAKA
CO-OPERATIVE SOCIETIES ACT)
MYSURU - 570 001.
REP. BY ITS CHIEF EXECUTIVE OFFICER.
6. BEML EMPLOYEES CO-OPERATIVE SOCIETY LTD.,
(REGD. UNDER KARNATAKA CO-OPERATIVE
SOCIETIES ACT)
C/O B.E.M.L. LTD.,
BENGALURU COMPLEX,
NEW THIPPASANDRA POST,
BENGALURU - 560 075.
REP. BY ITS SECRETARY.
7. SRI. DODDASWAMEGOWDA
S/O LATE HELAVEGOWDA,
AGE: MAJOR,
DIRECTOR, KESTHURU KOPPAL PRIMARY
AGRICULTURE CREDIT CO-OPERATIVE
SOCIETY LTD.,
R/AT KESTHURU KOPPAL VILLAGE AND POST,
K.R. NAGAR TALUK,
MYSURU DISTRICT - 571 601.



8. KESTHURU KOPPAL PRIMARY AGRICULTURE
CREDIT CO-OPERATIVE SOCIETY LTD.
(REGD. UNDER THE KARNATAKA CO-OPERATIVE
SOCIETIES ACT)
KESTHURU VILLAGE AND POST,
K.R. NAGAR TALUK,
MYSURU DISTRICT - 571 601.
REP. BY ITS CHIEF EXECUTIVE OFFICER.

...RESPONDENTS

(BY SMT. PRATHIMA HONNAPUR, AAG FOR
SRI. YOGESH D. NAIK, AGA FOR R1, R3 AND R4;
SRI. A. DEVARAJA, ADVOCATE FOR R2;
SRI. K. ANANDA, ADVOCATE FOR R5;
SRI. JEEVAN K. ADVOCATE FOR R6;
SRI. ASHOK HARANAHALLI, SENIOR COUNSEL FOR
SRI. ANOOP HARANAHALLI, ADVOCATE FOR R7
RESPONDENT NO.8-SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE FINAL ELIGIBLE VOTERS LIST DATED 10TH JUNE,
2025 PREPARED AND PUBLISHED BY THE RESPONDENT NO.5
FEDERAL SOCIETY WHICH IS APPROVED BY RESPONDENTS 2
TO 4 INDICATING THE NAMES OF DELEGATES FROM K.R.
NAGAR CONSTITUENCY OF RESPONDENT NO.5 FEDERAL
SOCIETY INsofar AS IT RELATES TO INCLUSION OF NAME OF
THE RESPONDENT NO.7 AS DELEGATE OF RESPONDENT NO.8-
SOCIETY IS CONCERNED VIDE ANNEXURE-J; AND ETC.

THIS WRIT PETITION HAVING BEEN RESERVED FOR
ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, **E.S.
INDIRESH J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV ORDER

In this petition, petitioners are challenging the final
eligible voters list dated 10th June, 2025 (Annexure-J) prepared



and published by the respondent No.5-Federal Society and approved by respondents 2 to 4 indicating the names of delegates from K.R. Nagar Constituency of respondent No.5-Federal Society in respect of inclusion of the respondent No.7 as delegate of the respondent No.8-Society

2. The relevant facts for adjudication of this petition are that the petitioner No.1 is a primary society constituted under the provisions of the Karnataka Co-operatives Societies Act, 1959 (for short, hereinafter referred to as '*KCS Act*') carrying on credit business amongst its members. The petitioner No.1-Society is having its own bye-laws. The petitioner No.2 is a member and president of the petitioner No.1-Society and is a delegate of the petitioner No.1-Society to vote and contest in the ensuing election of respondent No.5-Federal Society to be conducted on 26th June, 2025 as per the resolution dated 08th April, 2025 (Annexure-B). It is stated in the petition that the respondent No.5, being a Federal Co-operative Society having its jurisdiction across Mysuru and Chamarajanagar Districts. It is stated in the writ petition that, the Calendar of Events dated 10th June, 2025 (Annexure-C)



was issued by the respondent No.4-Returning Officer to conduct election to the Board of Management of the respondent No.5-Federal Society and the process of filing Nominations was between 11th June, 2025 and 18th June, 2025. It is also stated in the petition that the respondent No.6 is also a Co-operative Society registered under the KCS Act and the respondent No.7 is a member of the respondent No.6-Society. It is stated that the respondent No.7 was elected as the President of the respondent No.6-Society during the period of 2003-05, served as Vice President and Director during the period of 2010-12 and 2013-23. It is also pleaded that the respondent No.7 is the office bearer of the respondent No.8-Society.

3. It is averred in the petition that the respondent No.7 has committed certain misdeeds during his tenure as an office bearer of the respondent No.6-Society and as such, an enquiry under Section 64 of the KCS Act was initiated against him and in this regard, the Enquiry Officer submitted a report to the competent authority. In pursuance of same, respondent-Authorities have passed an order on 16th April, 2013 (Annexure-D) under Section 68 of the KCS Act. It is also



stated that the respondent-Authorities have initiated proceedings under Section 69 of the KCS Act against the respondent No.7. The competent authority, after conducting an enquiry, by order dated 10th December, 2015 (Annexures 'E' and 'E1') passed Surcharge order and same has reached finality.

4. It is the case of petitioners that, as the competent authority has passed an order against the respondent No.7, the respondent No.8-Society should not have nominated the respondent No.7 as a delegate to vote and contest in the ensuing election of the respondent No.5-Fedral Society. It is contended that, despite the aforementioned legal infirmity, the respondent No.5-Soceity published voters list consisting the names of delegates including the name of the respondent No.7 as per the impugned final eligible voter list produced at Annexure-J. Hence, petitioners have presented this writ petition.

5. Heard Sri. M.R. Rajgopal, learned Senior Counsel on behalf of Sri. Anand P., appearing for petitioners; Smt. Prathima Honnapur, learned Additional Advocate General on



behalf of learned Additional Government Advocate Sri. Yogesh D. Naik, appearing for respondents 1, 3 and 4; Sri. A. Devaraja, learned counsel appearing for the respondent No.2; Sri. K. Ananda, learned counsel appearing for the respondent No.5; Sri. Jeevan K., learned counsel appearing for the respondent No.6; and Sri. Ashok Haranahalli, learned Senior Counsel on behalf of Sri. Anoop Haranahalli, appearing for the respondent No.7.

6. Sri. M.R. Rajgopal, learned Senior Counsel appearing for petitioners referred to the provision contained under Section 29-C(8) and Chapter XI-A of KCS Act and contended that the provisions contained under Chapter XI-A of the KCS Act provides for Special provisions designed to provide relief to the members of the Societies as to take action against such members, who have contravened the provisions of the KCS Act and those provisions are applicable independently of regular provisions contained under Section 29-C of the KCS Act.

7. Learned Senior Counsel appearing for petitioners, by referring to Section 98-N(1)(iii)(e) of the KCS Act contended



that, as the respondent No.7 is disqualified by operation of law, the resolution passed by the respondent No.8-Society as to delegate the respondent No.7 is contrary to law. It is also argued by learned Senior Counsel appearing for petitioners that, as the surcharge proceedings initiated against the respondent No.7 is concluded holding the guilty of the respondent No.7 and same has reached finality, the impugned eligible voter list consisting the name of the respondent No.7 as a delegate of respondent No.8 is non-est. In this regard, learned Senior Counsel appearing for petitioners refers to the judgment of Hon'ble Supreme Court in the case of **POONAM vs. STATE OF UTTAR PRADESH AND OTHERS** reported in (2016) 2 SCC 779 and in the case of **SEEMA SARKAR vs. EXECUTIVE OFFICER AND OTHERS** reported in (2019) 6 SCC 559 and contended that, in the eventuality holding of guilty of surcharge proceedings by the competent authority, interference of this Court is required by this Court.

8. Per contra, Smt. Prathima Honnapur, learned Additional Advocate General appearing for the respondent-State refers to judgment of Hon'ble Supreme Court in the case



of **RAM CHANDRA CHOUDHARY AND OTHERS vs. ROOP NAGAR DUGDH UTPADAK SAHAKARI SAMITI LIMITED AND OTHERS** reported in 2026 SCC OnLine SC 583 and contended that the writ petition is not maintainable and the petitioners are having an efficacious remedy to raise the dispute under Section 70 of the KCS Act.

9. Sri. Ashok Haranahalli, learned Senior Counsel appearing for the respondent No.7, by referring to Rule 13-D(5) of the Karnataka Co-operative Societies Rules, 1960 (for short, hereinafter referred to as '*KCS Rules*') argued that the electoral rolls and Calendar of Events has been prepared by looking into the nature of enquiry initiated against the respondent No.7 and there is no particular order being passed against the respondent No.7 as required under the KCS Act. Therefore, learned Senior Counsel sought for dismissal of the petition.

10. By referring to Section 98-O read with Section 98-N(e) of the KCS Act, learned Senior Counsel appearing for the respondent No.7 contended that, the surcharge proceedings initiated against the respondent No.7 cannot be taken into consideration to penalize him from contesting in the election of



respondent No.5-Fedral Society. Learned Senior Counsel appearing for the respondent No.7 also refers to the judgment of this Court in the case of **GOLAPPA vs. THE STATE OF KARNATAKA AND OTHERS** made in *Writ Petition No.107724 of 2024 decided on 23rd October, 2025* particularly to paragraph 12.6 and contended that the methodology of disqualifying the respondent No.7 is only after issuing notice and opportunity of hearing has to be extended as required under Section 29-C(7) of the KCS Act. Accordingly, sought for dismissal of the petition.

11. It is also argued by Sri. Ashok Haranahalli, learned Senior Counsel appearing for the respondent No.7 that, since the order of surcharge passed by the competent authority against the respondent No.7 is void, and as such, the void order will continue till the said order is challenged before the competent appellate authority and it is successfully quashed. In this regard, learned Senior Counsel refers to judgment of the Chhattisgarh High Court in the case of **AGHAN SINGH vs. STATE OF CHHATTISGARH** reported in 2019 Supreme (Chh) 774 and the judgment of Hon'ble Supreme Court in the case of



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reported in 2009 AIR SCW 4141.

12. In reply to the same, learned Senior Counsel Sri. M.R. Rajgopal, appearing for petitioners submitted that the Chief Executive Officer of the respondent No.5-Society is having knowledge about the surcharge proceedings initiated against the respondent No.7. Accordingly, he referred to Rule 13D(2-A)(4) and (5) of the KCS Rules and submitted that the said aspect is only for Federal Society. Accordingly, sought for interference of this Court.

13. In the light of the submission made by learned counsel appearing for the parties, it is not in dispute that the petitioner No.2 is a delegate of the petitioner No.1-Society, which is a primary society of the respondent No.5-Federal Society. The respondent No.7 was a member of the respondent No.6-Society and also hold the post of President, Vice President and Director of the respondent No.6-Society during the period of 2003-05 and 2010-2023. It is the case of petitioners that, an enquiry was initiated against the respondent No.7 under Section 64 of the KCS Act during the aforementioned period in



the respondent No.6-Society and report of enquiry was submitted to the competent authority holding that the respondent No.7 involved in misappropriation of funds. Thereafter, an order dated 16th April, 2013 (Annexure-D) has been passed to direct the respondent No.6-Society to rectify the defects disclosed in the report of enquiry and to submit compliance report within thirty days from the date of order. In pursuance of the same, surcharge proceedings were initiated under Section 69 of the KCS Act in Surcharge Dispute:HSG-1:133:HHS:2014-15 against the office bearers of the respondent No.6-Society including the respondent No.7 herein. In the said proceedings, the competent authority passed an order dated 10th December, 2015 (Annexure-E1). The operative portion of the said order reads as under:

ಆದೇಶ

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಕಾರಣಗಳಿಂದಾಗಿ ಸ್ವಯಂ ಪ್ರೇರಿತವಾಗಿ ದಾಖಲಿಸಿಕೊಂಡಿದ್ದ ಈ ಅಧಿಬಾರ ಪ್ರಕರಣವನ್ನು ಭಗಷು: ಪುರಸ್ಕರಿಸಲಾಗಿದೆ. ಕಲಂ 69 ರ ನೋಟೀಸು ದಿನಾಂಕ 25.11.2014 ರಲ್ಲಿ ತಿಳಿಸಿರುವ ಆರೋಪದಲ್ಲಿ ವಸೂಲಾತಿಗೆ ಒಳಪಡಿಸಲು ಉದ್ದೇಶಿಸಿದ ಮೊತ್ತಕ್ಕಿಂತಲೂ ಅಧಿಕ ಮೌಲ್ಯದ ಸ್ಥಿರಾಸ್ತಿಯು ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದಿಂದ ಸಂಘಕ್ಕೆ ನೀಡುವಂತೆ ಸರ್ಕಾರವು ಈಗಾಗಲೇ ಆದೇಶಿಸಿರುವುದರಿಂದ ಹಾಗೂ ನಿರೀಕ್ಷಿತ ಅಭಿವೃದ್ಧಿಗೆ ಒಲಪಟ್ಟ ಜಮೀನು ಸಂಘಕ್ಕೆ ಬಂದ ಪಕ್ಷದಲ್ಲಿ ಅಧಿಕ ಮೌಲ್ಯದ ಅಭಿವೃದ್ಧಿಗೆ ಒಳಪಟ್ಟ ನಿವೇಶನಗಳು ಸಂಘಕ್ಕೆ ಲಭ್ಯವಾಗುವ ಸಾಧ್ಯತೆ ಇರುವುದರಿಂದ ಈ ಪ್ರಕರಣದಲ್ಲಿ ಪ್ರತಿವಾದಿಗಳನ್ನು ಆರೋಪದಲ್ಲಿ ತಿಳಿಸಿರುವ ಮೊತ್ತಕ್ಕೆ ಜವಾಬ್ದಾರರನ್ನಾಗಿ ಮಾಡದಲ್ಲಿ ನಿರೀಕ್ಷಿತ ಜಮೀನು ಪಡೆಯಲು ಕಾನೂನು ತೊಡಕುಗಳು ಉಂಟಾಗುವ ಸಾಧ್ಯತೆ ಗಳನ್ನು ಮನಗಂಡು ಈ ಅಧಿಬಾರ ಪ್ರಕರಣವನ್ನು ಕೈಬಿಡಲಾಗಿದೆ. ಆದರೆ ಭೂ ಅಭಿವೃದ್ಧಿದಾರರ ವಿರುದ್ಧ



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ಹೆಚ್ಚುವರಿ ಮೊಬಲಗು ವಸೂಲಾತಿಗೆ ದಾಖಲಾಗಿರುವ ದಾವಾ ಪ್ರಕರಣದಲ್ಲಿ ಈ ಪ್ರಕರಣದ ಎಲ್ಲಾ ಪ್ರತಿವಾದಿಗಳನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಲು 2ನೇ ವಾದಿ ಹಾಗೂ ಸದರಿ ಸಂಘದ ಆಡಳಿತ ಮಂಡಳಿಗೆ ಆದೇಶಿಸಲಾಗಿದೆ.

ಆದರೆ ಸಂಘದ ಪರವಾಗಿ 60 ಎಕರೆ 14.5 ಗುಂಟೆ ಜಮೀನನ್ನು ಸಂಘದ ಪದಾಧಿಕಾರಿಗಳಾದ ಶ್ರೀ.ಹೆಚ್.ಎಂ. ಕುಮಾರ್, ಶ್ರೀ.ಎಂ.ಹುಚ್ಚೇಗೌಡ, ಶ್ರೀ.ಜೆ.ಮುನ್ನಾಗಪ್ಪ, ಶ್ರೀ.ದೊಡ್ಡಸ್ವಾಮೀ ಗೌಡ ರವರುಗಳ ಹೆಸರಿನಲ್ಲಿ ಕರಾರು ಮಾಡಿಕೊಂಡಿರುವ ಬಗ್ಗೆ ಸಂಪೂರ್ಣ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಗೂ ಕರ್ನಾಟಕ ಮೇಲ್ಮನವಿ ನ್ಯಾಯಾಧಿಕಾರಣದಲ್ಲಿ ವಿಚಾರಣಾ ಹಂತದಲ್ಲಿರುವ ಪ್ರಕರಣಗಳಿಗೆ ಮಾಹಿತಿಯನ್ನು ಈ ಕಛೇರಿಗೆ ಸಲ್ಲಿಸಿ ಈ ಪ್ರಕರಣಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕಛೇರಿಯಿಂದ ಶಾಸನಾತ್ಮಕ ನಿರ್ದೇಶನವನ್ನು ಪಡೆದು ಸಂಘಕ್ಕೆ ಬರಬೇಕಾದ ಜಮೀನು ಮಾಲೀಕತ್ವದ ಸಂಬಂಧ ಕ್ರಮವಿಡಲು 2ನೇ ವಾದಿ ಹಾಗೂ ಸಂಘದ ಆಡಳಿತ ಮಂಡಳಿಗೆ ನಿರ್ದೇಶಿಸಲಾಗಿದೆ. ಹಾಗೂ ಮೇಲ್ಕಂಡ ಪ್ರತಿವಾದಿಗಳಿಗೆ ಸಂಘದ ಪರವಾಗಿ ತಮ್ಮ ಹೆಸರುಗಳಲ್ಲಿ ಖರೀದಿಸಲಾಗಿರುವ ಜಮೀನುಗಳನ್ನು 2ನೇ ವಾದಿ ಸಂಘಕ್ಕೆ ವರ್ಗಾಯಿಸಲು ಆದೇಶಿಸಿದೆ."

14. The aforementioned order passed by the competent authority has not been challenged by the respondent No.7 and same has reached finality. In the backdrop of these aspects, I have carefully considered the provision contained under Section 29-C of the KCS Act, which provides for Disqualification for membership of the Board. It is also to be noted that, Chapter XI-A of the KCS Act, provide for Special provisions applicable to Societies in Co-operative Credit Structure. Section 98-B of the Karnataka Co-operative Societies Act, 1959, Act provides for overriding effect of Chapter XI-A including Section 29-C of the KCS Act. Therefore, it may be concluded that Chapter XI-A of the KCS Act has been designed as to make Special provisions



applicable to Societies in Co-operative Credit Structure, independent of Section 29-C of the KCS Act to ensure the fairness of administration in the Society.

15. In respect of maintainability of the petition, learned Senior Counsel appearing for the respondent No.7 and learned Additional Advocate General appearing for the respondent-State argued that the writ petition is not maintainable and the petitioners are having efficacious remedy under the KCS Act. In this regard, though the learned Senior Counsel Sri. M.R. Rajgopal, appearing for petitioners contended that the respondent No.7 has been delegated erroneously by the respondent No.8-Society, however, the said aspect of the matter is to be considered based on the enquiry to be conducted by the competent authority. Therefore, I am of the view that the petitioners are having an efficacious remedy under the provisions of the KCS Act.

16. The Division Bench of this Court, in the case of **JAYAMUTHU vs. STATE ELECTION COMMISSION AND OTHERS** reported in AIR 2017 KAR 109 at paragraphs 24 to 33 held as under:



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"24. N.P. Ponnuswami's case in fact, has been followed by the Hon'ble Supreme Court in Nanhoo Mal v. Hira Mal [(1976) 2 SCC 819 : AIR 1976 SC 2140.] , which was a case of election to a Municipal Board, wherein it has been held that the election to the office of the president, could be challenged only according to the procedure prescribed by the Municipalities Act i.e., by means of an election petition presented in accordance with the provisions of that Act and in no other way. Thus, a post-election remedy by way of an election petition is in our view, an adequate remedy to give relief to an aggrieved party, as improper rejection or acceptance of the nomination of a candidate is always a ground to assail an election.

25. It is also well recognized that when a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by statute only must be availed of. In this regard, reliance could be placed on Wolverhampton New Water Works Co. v. Hawkesford [(1859) 6 CB (NS) 336, 356.] , wherein it has been observed as under;

"There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and a peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only



proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

26. *Further, in the case of an election dispute, the law does not contemplate two attacks; one, prior to the holding of the poll and, the second, thereafter. Although there is no constitutional bar to the exercise of power in a writ jurisdiction in respect of election to the local bodies such as Municipalities, Panchavaths etc, or to bodies constituted under a statute such as a co-operative society or a Union of Co-operative Societies, as in the instant case, nevertheless Courts are loathe to exercise discretion and interfere in such matters prior to the completion of election process. In Sangram Singh v. Election Tribunal, Kotah [AIR 1955 SC 425.] , the Hon'ble Supreme Court has held that no Legislature can impose limitations on the constitutional powers (under Article 226) but it is a sound exercise of discretion to bear in mind, the policy of the Legislature to have disputes about the special rights decided as speedily as may be. Therefore, it is necessary to resolve election disputes speedily through the machinery of election petition and the Court in exercise of its discretion should always decline to invoke its writ jurisdiction in an election dispute, if an alternative remedy of an election petition is available. The aforesaid observations laying down a salutary principle has been subsequently reiterated in a decision of the Supreme*



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Court in S.T. Muthus Amy v. Natarajan, in which, the judgment of the High Court was set-aside and the writ petition filed under Article 226 was dismissed.

27. *Therefore in the matter of an election dispute although the bar under Article 329(b) of the Constitution is expressed to only elections held to the Parliament or the State Legislature, nevertheless, the principle emanating from that Article has been applied in respect of all other elections including that of local bodies or authorities constituted by a statute or to bodies formed under a statute. Therefore, we find that the aforesaid decisions would clearly imply that even in the case of improper rejection of a nomination of a candidate, the aggrieved party cannot rush to the High Court to file a writ petition under Article 226 of the Constitution, but would have to avail of the remedy by way of election petition which is a statutory remedy. Hence, the Hon'ble Single Judge was right in dismissing the writ petition on the ground of availability of an alternative remedy. However, the controversy does not end in the instant case.*

28. *In so far as this case is concerned, a further question would have to be considered and answered. The question is with regard to this Court entertaining the writ petition out of which these appeals arise granting an interim order on May 22, 2014, the said interim order being given effect to, the petitioner being successful in the election held pursuant to the interim order dated May 22, 2014 and thereafter the question for consideration*



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being framed and rule nisi being issued in the writ petition and the dismissal of the writ petition on the ground of maintainability. The point is, as to whether, after the aforesaid actions being taken in the writ petition, Hon'ble Single Judge could have dismissed the same on the ground of maintainability. In this context, reliance has been placed on a decision of the Hon'ble Supreme Court in the case of Smt. Kanak referred to above to drive home the proposition that it is one thing to say that the High Court in exercise of its jurisdiction under Article 226 of the Constitution may not grant a relief inter alia on the ground of existence of an alternative remedy but another thing to say that the writ petition was not maintainable at all. That when the matter is to be argued on merits after being entertained, it would not be proper to dismiss the writ petition on the ground of availability of an alternative remedy. That in the instant case, the Hon'ble Single Judge could not have done the same, is the submission of the Learned Senior Counsel for the appellants.

29. *Learned Senior Counsel for the respondent has placed reliance on State of Uttar Pradesh v. Uttar Pradesh Rajya Khanija Vikas Nigama Sangarsh Samiti [(2008) 12 SCC 675.] to submit that it is neither a legal position nor is there a proposition that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. In the aforesaid decision, the Hon'ble Supreme Court has categorically held that issuance of rule nisi or passing of an interim order in a Writ Petition may be a relevant consideration for not dismissing a petition if it*



appears to the High Court that the matter could be decided by a writ court. That the said proposition has also been applied in several cases even if alternative remedy is available, but in the aforesaid case, the Hon'ble Supreme Court has categorically held that "in our judgment, however, it cannot be laid down as a proposition of law that when once a petition is admitted it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition and granted the relief to the petitioner."

30. *But, to buttress the contention that the writ petition was maintainable despite the availability of an alternative remedy L. Hirday Narain v. Income Tax Officer, Bareilly [(1970) 2 SCC 355.] , which arises under the Income Tax Act, 1922, has been pressed into service by the Learned Senior Counsel for the appellant. It was observed therein that even though a revision application could have been moved for an order correcting the order of the Income Tax Officer under Section 35 of the aforesaid Act, but was not availed of, the High Court could have entertained the writ petition on merits. In other words, it could not be held that the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on merits. But the*



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aforesaid observations now stand watered down in view of the judgment of the Hon'ble Supreme Court in State of Uttar Pradesh v. Uttar Pradesh Rajya Khanija Vikas Nigama (Supra), referred to above.

31. *Reliance has also been placed on Pundalik v. State of Maharashtra [(2005) 7 SCC 181.] , to contend that the Hon'ble Supreme Court had interfered in an election dispute pertaining to preparation list of voters, which is one of the stages of election. That in the instant case also, prior to the poll, this Court could have considered the issue of rejection of nomination of the petitioner on merits. However, in our view, the said decision cannot apply to the instant case as in the aforementioned decision, dealt with an election to a co-operative society under the relevant rules, the Collector was obliged to effect change in the name of the representative or delegate entitled to vote when the same was intimated to the Collector by a Co-operative society. The same not having been done, called for interference. The interference was at the stage of preparation of voters' list and not with regard to rejection of a nomination as in the instant case. In Nandhi Minerals v. State of Karnataka [2011 SCC Online Kar. 3174.] , a Division Bench of this Court was of the view that the writ petition cannot be dismissed on the ground of availability of an alternative remedy when rule nisi had been issued. Further, in S.N. Srinivas Murthy v. The Corporation of the City of Bangalore by its Commissioner [ILR 1998 Kar 101.] , Hon'ble Single Judge of this Court held that when an*



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appeal was admitted, it could not be rejected on the grounds of alternative remedy after lapse of six years. Similarly, when a writ petition is admitted for final hearing notwithstanding the existence of an alternative remedy of an appeal, the same cannot be dismissed years later on the ground that the petitioners ought to have exhausted the alternative remedy. Reference has also been made to Gowtham Tendulkar v. State of Karnataka [ILR 2000 Kar 1343.] , wherein it has been observed that once the writ petition is entertained by the High Court, it is not desirable to dismiss the same on the ground that the petitioner has an alternative remedy. Reliance has also been placed on L. Shivanna v. State of Karnataka [ILR 1988 Kar 2121.] , wherein, it has been held that preparation of electoral rolls is not a process of election. A challenge to inclusion of ineligible persons in electoral roll not open to adjudication after election, the only remedy to the aggrieved citizen is under Article 226. The aforesaid decisions, in our view, do not further the case of the appellants in view of the latest dictum of the Hon'ble Supreme Court in State of U.P. v. Uttar Pradesh Rajya Khanija Vikas Nigama.

32. *Further, reliance was also placed on the judgment of the Division Bench of this Court in L. Ramakrishnappa by the appellants' Senior Counsel to the effect that in that case, in the context of improper acceptance of a nomination paper of a candidate, the writ petition was held to be maintainable, as it stood on a different footing, and in an election petition, the relief*



which could be granted in a writ petition cannot be granted, if an election petition is filed on the conclusion of the electoral process. No doubt, in L. Ramakrishnappa's case while raising two precise questions, the Division Bench of this Court has held to the effect that under Article 226 of the Constitution, the High Court has the jurisdiction to interfere with the illegality committed in the course of holding election to the office of any authority/body which is regulated by statutory provisions (other than the election to the Parliament and State Legislature), notwithstanding the existence of an alternative remedy by way of Election Petition, if violation of law is established. In other words, such a writ petition is maintainable. At the same time, the Division Bench has also held that "However, the jurisdiction of this Court under Article 226 being an extraordinary one, this Court as a general rule will not and should not entertain a Petition in matters connected with such elections even if any illegality is shown to have been committed, if the law provides an effective alternative remedy and the illegality is such in respect of which adequate relief could be granted in an Election Petition. In other words, this Court will not and should not entertain Writ Petition lightly, as held by the Supreme Court in the case of Muthusamy." i.e. S.T. Muthuswamy v. K. Natarajan (Supra), cited above.

33. *The observation in L. Rama Krishnappa's case have been considered by the Full Bench of this Court in Nanjundaswamy v. Assistant Registrar of Co-Operative*



Societies (Supra) and it has been categorically held that the remedy of an Election Petition is the remedy that is normally available in election disputes. The principle of law is that, when once the election process has begun it should not be interfered with. In that case also, the dispute arose with regard to the filing of nomination paper for being elected to the Committee of Management of a Co-operative Society. It was held that the remedy of election dispute was available under Section 70 of the Karnataka Co-operative Societies Act, 1959 in order to assail the improper rejection of the nomination paper of a candidate. The Full bench considered the correctness of the judgments of this Court in Maruthi v. State of Karnataka [ILR 1990 KAR 1378.] , and B. Gurumallappa v. State of Karnataka [ILR 1991 KAR 577.] , and it opined that there is no divergence of opinion in the two judgments. According to the Full Bench, Maruthi's case lays down the law as set out therein and B. Gurumallappa's case is an illustration of the principle that the High Court could exercise power in election disputes only in the most extraordinary circumstances. The action of the Election Officer in that case to hold an election on the basis of a calendar of events issued seven years earlier although three candidates who had filed their nominations pursuant thereto, had died, was an extraordinary circumstance calling for interference. Therefore, in Gurumallappa's case, the interference was on the peculiar facts of that case, but the Full Bench found that in Nanjundaswamy's case no extraordinary circumstances arose to exercise discretion and interfere in



the matter pertaining to improper rejection of a nomination. Hence, the writ petition was dismissed. Therefore, reliance placed on L. Ramakrishnapra's case by the appellant is of no assistance in view of the decision of the Hon'ble Supreme Court in S.T. Muthuswa My as well as the opinion of the Full Bench in Nanjundaswamy's case.

34. *Therefore, on the second contention also, we hold that despite issuance of rule nisi, the Hon'ble Single Judge was justified in dismissing the writ petition on the ground of maintainability."*

17. Following the aforementioned judgment of Division Bench of this Court and Hon'ble Supreme Court in the case of **RAM CHANDRA CHOUDHARY** (supra), I am of the view that, it is open for the petitioners to approach the competent authority under the provisions of KCS Act for redressal of their grievance. It is well established principle in law that, this Court, while exercising the judicial review under Article 226 of the Constitution of India, is duty bound to review the decision making process and not the decision itself. This Court, cannot re-appreciate the primary or perceptive facts found by the fact finding authority under the statute. The said aspect was considered by the Hon'ble Supreme Court in the case of **H.B.**



GANDHI, EXCISE AND TAXATION OFFICER-CUM-ASSESSING AUTHORITY, KARNAL AND OTHERS vs. M/S. GOPI NATH & SONS AND OTHERS reported in 1992 Supp (2) SCC 312.

18. The Division Bench of this Court, in the case of **RAMANAGOUDA AND OTHERS vs. STATE OF KARNATAKA AND OTHERS** made in *Writ Appeal No.100619 of 2024* decided on 06th June, 2025, held that the grievance of the eligibility or otherwise, to cast vote in the election has to be challenged before the competent Authority/Tribunal. In that view of the matter, I am of the view that, though the learned Senior Counsel appearing for petitioners urged several grounds including Section 98-N of the KCS Act, this Court cannot appreciate the same at this juncture as the writ petition is not maintainable in view of fact that the petitioners are having an efficacious remedy under the provisions of KCS Act. Accordingly, writ petition is **dismissed**.

**SD/-
(E.S.INDIRESH)
JUDGE**

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