

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF FEBRUARY, 2025

BEFORE

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

WRIT PETITION No.658/2025 (CS-EL/M)

BETWEEN:

THE PRIMARY AGRICULTURAL CREDIT
CO-OPERATIVE SOCIETY LTD.,
ANTARSANTE H.D. KOTE,
MYSORE DISTRICT-571125
REPRESENTED BY ITS PRESIDENT
REGISTERED UNDER KARNATAKA
CO-OPERATIVE SOCIETIES ACT, 1959.

... PETITIONER

(BY SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR
SRI MAHAMAD TAHIR A. A/W SRI VARUN J. PATIL, ADVOCATE
FOR PETITIONER AND IMPLEADING APPLICANTS ON I.A.2/2025)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF CO-OPERATION
VIKAS SOUDHA, BANGALORE-560 001
REP. BY ITS SECRETARY.
2. THE REGISTRAR CO-OPERATIVE SOCIETIES
NO.1, ALI ASKER ROAD
BANGALORE-560052.
3. THE STATE CO-OPERATIVE ELECTION AUTHORITY,
3RD FLOOR, TTMC A BLOCK,
K.H.ROAD, SHANTINAGAR,
BANGALORE-560027
REPRESENTED BY ITS SECRETARY.

4. THE DISTRICT ELECTION OFFICER
AND ALSO DEPUTY REGISTRAR
CO-OPERATIVE SOCIETIES
MYSORE DISTRICT-571125.
5. THE RETURNING OFFICER
PRIMARY AGRICULTURAL CREDIT
CO-OPERATIVE SOCIETY LTD.,
ANTARSANTE H.D. KOTE,
MYSORE DIST-571125
REGISTERED UNDER KARNATAKA
CO-OPERATIVE SOCIETIES ACT, 1959.
6. THE VOTER LIST SCRUTINY OFFICER ALSO CDO
PRIMARY AGRICULTURAL CREDIT
CO-OPERATIVE SOCIETY LTD.,
ANTARSANTE H.D. KOTE,
MYSORE DISTRICT-571125.
REGISTERED UNDER KARNATAKA
CO-OPERATIVE SOCIETIES ACT, 1959.

... RESPONDENTS

(BY SMT. PRATHIMA HONNAPURA, AAG A/W
SRI SIDHARTH BABU RAO, AGA FOR R-1, R-2, R-4, R-5 & R-6;
SRI T.L. KIRAN KUMAR, ADVOCATE FOR R-3;
SRI T.P. RAJENDRA KUMAR SUNGAY, ADVOCATE FOR
IMPLEADING APPLICANT ON I.A.1/2025)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-4 TO 6 TO CONDUCT THE ELECTION BEFORE THE EXPIRY OF THE TERM OF PETITIONER SOCIETY; DIRECT THE RESPONDENTS TO CONTINUE THE PRESENT BOARD IN ACCORDANCE WITH THE NOTIFICATION DATED 05.06.2024 VIDE ANNEXURE-H1 TILL THE ELECTIONS ARE HELD.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28/01/2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

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

CAV O R D E R

The petitioner-society is seeking a writ of mandamus directing respondent Nos.4 to 6 to conduct the election from the stage, where it was halted before the expiry of the term of the Board of the society and further, a writ of mandamus directing the respondents to continue the present Board in accordance with the Government Notification dated 05.06.2024 vide Annexure-H1 till the elections are held.

2. Brief facts are that, petitioner a Primary Agricultural Credit Co-Operative Society (hereinafter referred to as 'the society' for short), is being managed by the Board of Directors, who were elected on 02.02.2020 and the term of the Board comes to an end on 02.02.2025. The case of the petitioner is that the new Board of Directors have to be elected on or before 02.02.2025 and the petitioner has made all arrangements to conduct the election, including sending of statutory notices under Rule 13-D of the Karnataka Co-

Operative Societies Rules, 1960 ('the Rules' for short), which notices were placed along with the letter to respondent No.4 stating that the notices for defaulters have been issued and the society has not received any objections pursuant to sending the statutory notices.

3. On the society submitting all the necessary documents for conduct of the election, the District Election Officer proceeded to appoint respondent No.5 as a Returning Officer to conduct the election of the petitioner-society and also appointed respondent No.6 as a Scrutiny Officer to scrutinize and finalize the list of voters in order to conduct the election. The election of the Board is not conducted which is required to be done as per Section 28B of the Karnataka Co-Operative Societies Act, 1959 ('the Act' for short).

4. Learned senior counsel Sri Jaykumar S. Patil appearing for the petitioner-society would urge the following grounds:

i. In regard to the impleading applicants, complaining about no notices have been received by them, the proposed impleading applicants are in the draft eligible voter list at Sl. Nos.59, 153, 383, 412, 473, 687 and 968 and hence, the question of issuance of notice under Rule 13-D (2-A) of the Rules will not arise.

ii. Despite the petitioner having submitted all the necessary documents, the respondents-authorities in the given situation it appears that they are doing this to see that an Administrator is appointed under Section 28A of the Act and they are not inclined to hold the election before the expiry of the term of the Board of the petitioner-society and also to deprive the right of the petitioner to contest in the Mysuru DCC election, which election is to be completed by 13.03.2025 as per the order in CCC No.155/2024.

iii. Taking this Court to Annexure-H-the representation dated 04.01.2025, learned senior counsel points out that the petitioner-society, in its letter addressed to the respondents, clearly stated that the respondents are

deliberately not taking steps to conduct the election to the petitioner-society before the expiry of the term of the present board.

iv. That the efforts made by the respondents, either by omission or commission, in such a way directly contravening the statutory provisions collectively by an officer and it has to be taken as *legal malice* and request to pass an order that the benefit of Annexure-H, condition No.5 should be extended to the petitioner-society as well and this is the only way the petitioner-society can participate in the election of Mysuru DCC Bank.

v. Stressing upon *legal malice*, it is submitted that the set of facts shows that for no reason, if something is not followed, which results in deprivation of the right of a third party, it amounts to a *legal malice* and the benefit of the order granted to a set of cooperatives needs to be accorded to the petitioner as well, in light of the peculiar facts. Reliance is placed on the decisions of the Apex Court in the case of ***Kishansing Tomar Vs. Municipal Corporation of***

the City of Ahmedabad and Others¹ (*Kishansing*) and in the case of ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others***² (*Kalabharati Advertising*).

5. Learned Additional Advocate General Smt. Prathima Honnapura appearing for the official respondents supporting the statement of objections submits that the action on part of the respondents is in line of the fact that the members of the petitioner-society have failed to make necessary arrangement and that the petitioner has failed to comply with the mandatory stipulations as contained under Rule 13-D (2-A) of Rules and hence, without the voters' list the election could not be completed in time. Further, the affidavit of the Deputy Registrar of Co-Operative Societies is filed to the effect that the minimum required number of days to complete the election process is 120 days, as contemplated under Rule 13-D, which is mandate for

¹ (2006) 8 SCC 352

² (2010) 9 SCC 437

completion of the entire election process. It is stated in the affidavit that he being the Election Officer, after due verification of eligible and ineligible voters list sent by the Co-Operative society, there has to be notices issued under Section 20 before 66 days by the Chief Executive Officer, who makes the defaulters to pay arrears atleast 120 days before the date of election. After that, in accordance with Rule 13-D (5), the publication of draft voters list on clear 50 days before the date of election by the Executive Officer and the Chief Executive Officer, the same to be scrutinized under Rule 13-D (3) (c) and the entire process would be done at least 20 days before the date of election and requests to grant 120 days to complete the entire election process.

6. Learned counsel Sri T.L. Kiran Kumar, for the election authority, submits that the society itself has created a situation where the voters list has not been prepared in accordance with the provisions of the Act and Rules, more particularly Rule 13-D(2-A) of the Rules.

7. Learned counsel appearing for the impleading applicants submits that the draft voters list that has been submitted by the society for the purpose of election to the Board contains the members who have not attended the General Body Meeting by forging the signatures to show that they have attended the meeting and made eligible the persons who are outside the territorial jurisdiction of the society, as such, the voters list has not been prepared properly, which is required to be corrected and hence, the election that is sought to be conducted is without the requisite voters being listed in the eligible voters list. Applicant No.1 is the present Director of the society and other applicants are members of the society who are interested in having the election done to its Board in a fair and transparent manner strictly in accordance with law and bye laws and provisions of the Act and Rules.

8. Several submissions have been made by learned counsel for the petitioner about the motive behind the non-

conducting of the election before the expiry of the term of the Board of the society.

9. I.A.No.2/2025 is filed by the petitioner seeking to implead the sitting Directors of the petitioner-society, as petitioners to this petition to contest and prosecute the petition. It is stated by the learned senior counsel that the term of the Board of Directors Expires on 02.02.2025 and the Director of the petitioner-society needs to prosecute the petition that affects their future prospects as continuing as a Director and even to contest in the election of the petitioner-society.

10. On hearing the learned counsel on both sides, the point that arises for consideration is:

"Whether respondent Nos.4 and 5 have failed to perform their statutory duties in conducting the election of the petitioner-society and the failure on the part of the respondents, would it enable the Court to extend the term of the society till the conducting of election for the

Board of the petitioner-society, in terms of the Act and Rules?"

11. The Karnataka Co-Operative Society was enacted by Act No.11 of 1959 in order to consolidate and amend the laws relating to the Co-Operative Societies in the State of Karnataka, an act to provide voluntary formation, autonomous functioning, democratic control and professional management of the cooperative society in the State of Karnataka.

12. Section 28A (4) of the Act stipulates that the term of the office of the Board shall be for five years from the date of the election and they shall be deemed to have vacated the office on completion of the said term.

13. Section 28B of the Act stipulates the Board to arrange for election, which reads as under:

"28-B. Board to arrange for election.-(1) *The election of a Board, be conducted before the expiry of the term of the Board.*

(2) The members of the board who have failed to make arrangements for election within the time limit specified in Section 39-A, shall be deemed to have vacated their office on the last day of the time limit so specified and such members shall not be eligible for election as members of the board for a period of five years from the date of expiry of their term.

(3) The Administrator who shall assume charge under sub-section (5) of Section 28-A, shall, as early as possible but within a period of six months arrange for the constitution of a new board of the society in accordance with the Act, rules and the bye-laws:

Provided that the Administrator so appointed shall not continue for a period beyond three months in respect of a society in co-operative credit structure."

(Emphasis supplied)

14. The opening sentence of Section 28B of the Act, stipulates that the election of a Board to be conducted before the expiry of the term of the Board, Sub-Clause (2) of Section 28B casts an obligation on the Board to make arrangement for the election and if there is a failure to make arrangement for the election, they shall be deemed to have vacated their office on the last day of term and further

disqualification is prescribed by virtue of Sub-Clause (2) of Section 28B of the Act disqualifying the members for election as members of the Board for a period of five years from the date of expiry of their term.

15. Section 39AA (15) of the Act reads as under:

"39AA. Co-operative Election Commission.-

x x x

(15) The board of every co-operative society shall.-

(a) inform the Co-operative Election Authority about the expiry of its term of office at least six months before the date of expiry of such term;

(b) furnish such books, records and information as the Authority may require as per the calendar prescribed by the Co-operative Election Authority; and

(c) provide all necessary help, assistance and co-operation for the smooth preparation of electoral rolls for and the conduct of elections."

16. Rule 13-D of the Rules prescribes the procedure to be followed in the election process. Rule 13-D (2-A) indicates the steps to be taken by the Election Officer.

17. Rules 13-D of the Rules reads as under:

"13-D. Preparation of electoral rolls and calendar of events.-(1) *Election Officer shall, after due verification, send a consolidated list of all co-operative societies in the district where elections are due at least 120 days before the date of expiry of the term of office of the boards to the Co-operative Election Authority indicating therein the following particulars.-*

- (a) *the name and address of the society;*
- (b) *number of elected directors of the board;*
- (c) *the date of expiry of the term of office of the board;*
- (d) *the proposed places where the elections are to be held or other particulars as required by the Co-operative Election Authority.*

(2) *The Co-operative Election Authority shall, on receipt of such reports from the Election Officer, containing the list of cooperative societies where elections are due, publish the calendar of events for the preparation of electoral rolls and the conduct of elections of the boards of the co-operative societies indicating the name and address of each society.*

(2-A) The election officer shall take steps for publication of voter list who are not eligible to vote in the following manner, namely.-

- (i) For publication of draft ineligible electoral list, the chief executive of every co-operative society shall prepare notice in respect of members not attending three out of the last five annual general body meetings and members not utilising such minimum services or facilities in a co-operative year as specified in the bye-laws for three consecutive co-operative years.
- (ii) The chief executive of every co-operative society shall send above prepared notice to all ineligible members, fifteen days prior to six months to the date of election of the board by registered post and an opportunity shall be given to such member to file their objections, if any within fifteen days from the date of notice.
- (iii) The chief executive of every co-operative society shall submit the list of ineligible voters to the election officer along with their objections and also produce the records pertaining to absence from general body meeting with attendance and

services utilised by members. He has to produce the records for having sent the notice along with acknowledgement to the election officer within thirty days from the date of notice as specified by the election officer.

(iv) The chief executive of every cooperative society shall state in his notice that the ineligible voter can appear before the election officer between thirty days to sixty days from the date of notice to get the remedy.

(v) The election officer has to hear and dispose the objections filed by the ineligible voters within sixty days from the days of submission of objections from such voters.

(vi) The final list of ineligible voters shall be published on or before fifteen clear days prior to the date of election.

(3) The Election Officer shall take steps for publication of voters list in the following manner, namely.-

(a) for publication of draft eligible electoral list of defaulters, a list of members whose

repayment falls due, before the election date clear fifty days;

(b) for calling objections, if any, calling upon the defaulter members to repay the amounts due to the co-operative societies on or before thirty clear days prior to the date of election;

(c) the scrutiny and verification of the voters list after payment by defaulters etc., clear twenty days before the date of election;

(d) for publication of final eligible voters list before fifteen clear days prior to the date of election.

(4) It shall be the duty of every society to furnish correct information required by the Election Officer to enable him to approve the electoral rolls as directed by the Co-operative Election Authority.

(5) The chief executive of every co-operative society, shall prepare (i) a draft list of the eligible members or representatives and delegates with right to vote, (ii) a list of members whose repayments will fall due before the date fixed for publication of final electoral roll, (iii) a list of defaulters, (iv) a list of other members or representatives and delegates who are not eligible to vote at a general election indicating the

reasons for ineligibility memberwise on the basis of entries in the updated membership register specifying,-

- (a) the name of the member or representative, the admission number, the name of the parent or husband and the address of such member or representative in the case of an individual member;
- (b) the admission number, the name of the society, the name of the delegate proposed to represent the society in the case of a member society,

and submit the said lists to the Election Officer along with the related books, records and documents and any other information as the Election Officer may require, at least sixty days before the date of election.

(6) The Co-operative Election Authority shall call upon the Chief Executive of the co-operative society to obtain from the member society, the name of an authorised member of the board of such society as a delegate, together with the resolution of the board of the said society and the specimen signature along with the photograph of the delegate duly attested and bearing the seal of the society and furnish all such information under sub-rule (5).

(7) The final electoral roll shall consist of the following,-

(a) all the individual members with right to vote in respect of a primary co-operative society; or

(b) all the individual members and the delegates of the members societies with right to vote in respect of a secondary co-operative society; or

(c) all the delegates of the member societies with right to vote in respect of a federal and an apex society.

(8) The copy of such electoral roll in respect of each society shall be kept open for inspection in the office of such society as also in the office of the Election Officer.

(9) The election calendar of events for general election of directors of the board shall provide for.-

(a) date of notification inviting nomination;

(b) last date for receipt of nomination;

(c) date and time for scrutiny of nomination;

(d) date and time for publication of list of validly nominated candidates;

(e) date and time for withdrawal of nomination papers;

(f) Date and time for publication list of contesting candidates;

- (g) Date and time for allotment of symbols and publication of contesting candidates with symbols;
- (h) Date and time of poll;
- (i) Date and time of counting and declaration of results.”

(Emphasis supplied)

18. Plain reading of the aforesaid provision, Rule 39-AA (15) stipulates that the obligation is cast on the Board of every Co-Operative society to inform the Co-Operative Election Authority about the expiry of its term of office atleast six months before the date of expiry of such term. Further, Rule 13-D (2-A) of the Rules clearly prescribes the steps to be taken by the Election Officer for publication of the ineligible voters list who are not eligible to vote and the steps to be taken with regard to finalizing the list of the eligible and ineligible voters.

19. Rule 13-D (2-A) (i) to (iv) further casts burden on the Chief Executive of every Co-Operative society to follow

the procedure prescribed and Rule 13-D (2-A) (v) and (vi) of Rules cast obligation on the Election Officer.

20. The Election Authority would complete the steps as contemplated under Sub-Rules (v) and (vi) of the Rule 13-D (2-A) only when the steps as contemplated under Sub-Rules (i) to (iv) of Rule 13-D (2-A) has been taken by the Chief Executive Officer of every society.

21. In the instant case, the Chief Executive Officer of the petitioner-society vide communication dated 08.07.2024 at Annexure-C informed respondent No.4-District Election Officer that the present Board has made all arrangements to conduct the election including, sending statutory notices under Rule 13-D of Rules, accompanied with the notices stating that the term of the petitioner's Board comes to an end on 02.02.2025 which information is sent six months before the date of expiry of the term of the petitioner's Board.

22. Another communication was addressed by the petitioner to respondent No.4-District Election Officer on 20.09.2024 indicating that the society has not received any objections pursuant to sending the statutory notices under Rule 13-D and that the petitioner-society has submitted all the necessary documents for conduct of the election. On receipt of the communication, the District Election Officer proceeded to appoint respondent No.5 as a Returning Officer to conduct the election of the petitioner-society by order dated 30.10.2024. The Returning Officer was appointed, the steps which was required to be taken by the petitioner-society as per Rule 13-D (2-A) (i) to (iv) being complied with and the same being intimated as required under Section 39AA (15) (a) of the Act, the respondents have not taken necessary steps to conduct the election of the petitioner-society.

23. The Board is required to conduct the election under Section 28B (1) of the Act before the expiry period of the term and under Section 39AA (15) (c) of the Act, the

Board of the society has to provide all necessary assistance and cooperation for the smooth preparation of the electoral rolls and for conduct of the elections. Though the learned AAG submits that the notices as contemplated under Rule 13-D of the Rules to all the ineligible members of the society were not issued, the petitioner-society has produced by way of a memo the notices sent to the ineligible voters and also about no objection received from any of the ineligible voters.

24. The appointment of the Returning Officer as stipulated in Rule 13-E of the Rules having been complied with and the petitioner-society having taken all the requisite steps as contemplated under Rule 13-D (2-A) (i) to (iv), the authority had to take steps for conducting the election of the petitioner-society before the expiry of the term of the Board as contemplated under Section 39-AA (15) (a) of the Act.

25. The District Election Officer appointed the Returning Officer on 30.10.2024 and also appointed respondent No.6 as a voters' list Scrutiny Officer to scrutinize

and finalize the list of voters in order to conduct the election. The Returning Officer-respondent No.5 had to conduct the election of the petitioner-society before the expiry of the Board.

26. Rule 14 of the Rules is in regard to conduct of elections which are solely in the realm of the Returning Officer. In ***Kishansing's*** case, the Constitution Bench of the Apex Court has considered the challenge made in respect of election for constituting the Municipal Corporation in the city of Ahmedabad and reiterating the propositions held that the elections are required to be held within the prescribed statute and there shall not be a delay in the constitution of any Municipality.

27. Regarding the *legal malice*, the Apex Court in ***Kishansing's*** case expressed that *the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to*

complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

28. The Apex Court, in the case of **Kalabharati Advertising** has observed that "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or

indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla , S.R.Venkataraman v. Union of India, State of A.P. v. Goverdhanlal Pitti, BPL Ltd. v. S.P. Gururaja and W.B. SEB v. Dilip Kumar Ray"

29. The Apex Court in the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others***³ (*Sant Sadguru*) has held at paragraph No.7 as under:

"7. In the light of the aforestated provisions of Chapter XI-A of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above show that Chapter XI-A was enacted and the Rules were framed specially to

³ (2001) 8 SCC 509

deal with the election of the specified societies under Section 73-G of the Act. Section 144-X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are a complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters' list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and the Rules, the preparation of voters' list must be held to be part of the election process for constituting the Managing Committee of a specified society. In Someshwar Sahakari Sakhar Karkhana Ltd. v. Shrinivas Patil, Collector it was held that in the scheme of the provisions of the Act and the Rules, the preparation of

the list of voters for election to the Managing Committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in Shivnarayan Amarchand Paliwal v. Vasant Rao Vithalrao Gurjar . However, in Karbhari Maruti Agawan v. State of Maharashtra although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court from entertaining a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XI-A of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XI-A and the Rules framed thereunder, is an intermediate stage in the process of election for constituting the Managing Committee of a specified society.”

30. The Co-Ordinate Bench of this Court in the case of **H.S. Raju Vs. State of Karnataka**⁴ (H.S. Raju) relying upon the decision of the Apex Court in the case of **Sant Sadguru** has held at paragraph No.12 as under:

"12. It follows from this decision that the adjudication of all questions must be as provided under Section 70(2) of the Co-operative Societies Act⁵. However, in the present case the respondents admit that there are deficiencies in finalization of Final Electoral List. The petitioners are admittedly not issued with individual notice as required under the provisions of Rule13-D (2-A) of the Co-operative

⁴ WP No.8502/2022 c/w 8477/2022 DD 07.06.2022

⁵ 70. **Disputes which may be referred to Registrar for decision.**- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises,—

(a) xxxxxxxxxxxx

(2). For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:—

(a). XXXXXXXXXXXXXXX

(b). XXXXXXXXXXXXXXX

(c). any dispute arising in connection with the election of a President, Vice-president, Chairman, Vice-chairman, Secretary, Treasurer or Member of Committee of the society.

Societies Rules; the petitioners have now cast their votes in the elections on 23.04.2022; the petitioners are not given the opportunity to show cause against the allegations that they have created documents. The respondents, despite admitting deficiencies in finalisation of the Final Electoral List, want to invoke the rule of alternative remedy. This Court is of the considered view that, in the peculiarities of this case, the writ petitions should be disposed of with directions to the concerned respondent to announce results counting even the votes cast by the petitioners and with liberty to all the concerned to avail remedy under Section 70(2) of the Act if aggrieved by the results. If such remedy is availed raising a dispute, exclusion of votes of those petitioners who are guilty of fraud can also be considered based on the material that will be placed on record.

Therefore, writ petitions are disposed of calling upon the Returning Officer [the fourth respondent/sixth respondent in the respective petitions] to announce the result forthwith including the votes cast by the petitioners in both the petitions. All the contentions are left open for consideration in appropriate proceedings, if commenced."

31. It is clear from the facts that the District Election Officer proceeded to appoint respondent No.5 as the Returning Officer to conduct the election of the petitioner-society vide order 30.10.2024, further, on 18.12.2024, respondent No.4 passed an order appointing respondent No.6 as the voters' list Scrutiny Officer to scrutinize and finalize the voter list in order to conduct the election, despite there being only 60 days left for the term of the present Board and the Board having taken all the necessary arrangements / steps, informing the Co-Operative Election Authority about the expiry of its term of office within six months before the date of expiry of the term of the Board, and providing the necessary help and assistance for preparation of electoral roll, the Election officer and Returning Officer, who are statutory authorities mandated under the law, have not discharged their duties, the non-taking of steps to complete the formalities as indicated under Rule 13-D (2-A) of the Rules due to the dereliction on part of respondent No.4-the Election Officer and respondent No.5-

Returning Officer, in light of the mandate provision of Section 28B of the Act, the stage is where the term of the Board expires and the administrator would be appointed. No explanation is put forward by the Election Officer or the Returning Officer for not completing the election process before the expiration of the duration of the Board of the petitioner. The election had to be conducted on the basis of the electoral rolls and the documents submitted by the petitioner-Board before the expiration of the period of five years and not yielding to the situation that may be created by the vested interest to postpone the election from being held within the stipulated time.

32. The *legal malice* rightly can be attributed in the present facts, as the State is under obligation to act fairly without ill-will or *malice* and the act done by respondent No.4-Election officer, and respondent No.5-Returning Officer, who was appointed on 30.10.2024, willfully without reasonable or probable cause, and not necessarily an act done from any ill feeling and spite, but by a deliberate act in

disregard to the rights of others and that is where the *malice* is attributed to the State with an oblique or indirect object.

33. The Apex Court in the case of ***West Bengal State Electricity Board Vs. Dilip Kumar Ray***⁶ (*Dilip Kumar Ray*) has held that *malice denotes that condition of mind which is manifested by the intentional doing of a wrongful act without just cause or excuse and it implies where one deliberately injures another in an unlawful manner.*

34. The petitioner-society having complied with Rule 13-D (2-A) (i) to (iv) of Rules, the duty is upon the Election Officer and the Returning Officer to take steps for publication of the voters list as envisaged under Rule 13-D (2-A) (v) and (vi) and conduct the entire proceedings within a period as stipulated under Rule 13-D (3) of the Rules.

35. The petitioner-Board intimated by communication on 08.07.2024 prior to six months of the expiry of the period of the Board as envisaged under Section 39AA (15) (a) of the

⁶ AIR 2007 SC 976

Act, along with the notice issued under Rule 13-D(2-A) as contemplated, as no objections were received from the ineligible voters list, the Board having performed his part of the obligation the ball rolled on to the Election Officer and the Returning Officer to process the election under Rule 13-D (3) onwards, the objections not been received by the Executive Officer was informed to the Election Officer, the duty was on the Election Officer to take steps for publication of voters list in the manner prescribed under Rule 13-D(3)(a) to (d), the failure of the Returning Officer, who was appointed to conduct the election before the expiry of the term of the present board, would clearly comes within the meaning of *legal malice* with an intention to ensure that the Administrator is appointed to manage the petitioner-society and it is a perfect case for dereliction of duty of the Election Officer and the Returning Officer, who was appointed on 30.10.2024, as the election of the petitioner-society could not be conducted, the circumstance would be that may

penalize the office bearers of the society by way of disqualification or any other mode.

36. Learned senior counsel for the petitioner taking to Annexure-H1 submits that the benefit extended by the Government to some cooperative societies, *as the election code of conduct was enforced due to the general Lok Sabha Election, 2024, the Government by notification ordered that the election of the Co-Operative societies be postponed and the tenure of the management-boards and office bearers of the Co-Operative societies and banks be extended* and the government in exercise of this power, can extend the tenure of the Board of the present Co-Operative society, as the election to the Board of the Co-Operative society was not conducted due to the fault of the members of the Board, but due to the dereliction of duties by respondent Nos.4 and 5.

37. Looking into the peculiar facts and circumstances of the case and there being no default on part of the Board to conduct the election, but the election of the Board was not

conducted due to the dereliction of duties of the Election Officer and the Returning Officer. As stated *supra*, Section 28B (2) puts a rider that if the members of the Board who fails to make arrangement for election within the time limit stipulated in Section 39A, shall be deemed to have vacated the office on the last day. Thus, the fault as stated *supra* is not on the part of the members and in the peculiar facts and circumstances, this Court holds that the tenure of the existing governing body and the office bearers will continue until the election process is completed as contemplated under Rule 13-D (3) and the point framed for consideration is answered accordingly.

38. Insofar as the case made out by the impleading applicants in I.A. No.1/2025, they seek to contend the breach of and non-compliance with the mandatory provision of the Rules during preparation of electoral roll, the Apex Court in the case of ***Sant Sadguru*** has clearly observed that preparation of electoral roll is an intermediate stage in the process of election of the managing committee of a specified

society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of electoral process, even though there may be some alleged illegality or breach of rules while preparing the electoral roll and it would be open for the aggrieved party after the declaration of the results to challenge the election of the returned candidate by means of an election petition before the Election Tribunal. Thus, in light of the settled proposition of law, the remedy for the impleading applicant is not in the present writ petition under Article 226 and the impleading applicants are at liberty to approach the Election Tribunal.

39. For the foregoing reasons, this Court pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. A writ of mandamus is issued to respondent No.5-the Returning Officer to continue the process of election from where it is halted and

the Election Officer to take steps for publication of the voters list in the manner prescribed under Rule 13-D (3) of Rules and Returning officer to complete the entire process in accordance with law.

iii. The non-conduct of the election is due to the dereliction of the duties by the Election Officer-respondent No.4 and the Returning Officer, who was appointed on 30.10.2024 and not due to the fault on part of the Board of the petitioner-society, in the peculiar facts and circumstances of the case, the term of the present Board members to be continued till the elections are conducted by the Election Officer and the Returning Officer as indicated at the operative portion of para No.ii of the order.

iv. The cost of Rs.50,000/- each is imposed on the Election Officer-respondent No.4 and the Returning Officer, who was appointed on

30.10.2024 to be paid from their pocket to the Karnataka Legal Services Authority within two weeks from today.

v. The application-I.A.No.2/2025 filed for impleading by the petitioner does not fall for consideration, as the term of the Board is extended until election is conducted as indicated at para No.ii of the operative portion.

vi. I.A.No.1/2025 for impleading is disposed of with liberty to avail the remedy as available under law.

Sd/-

JUSTICE K.S. HEMALEKHA