

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24th DAY OF JANUARY, 2024
BEFORE
THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE
WRIT PETITION NO. 29014 OF 2023 (CS-EL/M)**

BETWEEN:

- 1 . SRI. B GANGANNA,
S/O BORAIHAH,AGED ABOUT 60 YEARS,
RESIDENT OF OLD NO. 1072,
NEW NO. 01, LAKSHMI NIVAS,
15TH MAIN ROAD, SRINAGAR,
BENGALURU - 560 050.
- 2 . SRI HY.B JAYARAMA,
S/O N BORAIHAH,AGED ABOUT 68 YEARS,
RESIDENT OF NO. 1519/2,
10TH CROSS, B.S.K 1ST STAGE,
2ND BLOCK, ASHOK NAGAR,
BENGALURU - 560 050.
- 3 . SMT S ASHA,
C/O GANGADHARAMURTHY M.S,
AGED ABOUT 50 YEARS,
RESIDENT NO.1728
4TH H BLOCK, B.S.K 6TH STAGE,
FURTHER EXTENSION,
VRUSHABHAVATHI NAGAR, VTC,
THALAGHATTAPURA,
BENGALURU - 560 062.
- 4 . SRI GANGADHARAMURTHY M S,
S/O M SHANKARACHAR,
AGED ABOUT 63 YEARS,
RESIDENT NO. 1728
4TH H BLOCK, B.S.K 6TH STAGE,
FURTHER EXTENSION,
VRUSHABHAVATHI NAGAR, VTC,

THALAGHATTAPURA, BENGALURU - 560 062.

- 5 . SMT H V SATHYA SHREE,
W/O T.G UMESH,
AGED ABOUT 47 YEARS,
RESIDENT OF NO. 13/A,
SHAKUGOVINDA NIVASA,
6TH MAIN 8TH D CROSS,
JNANAJYOTHINAGAR, MALLATHAHALLI,
BENGALURU - 560056.
- 6 . SRI GANGADHARA
S/O CHIKKABOREGOWDA,
AGED ABOUT 60 YEARS,
RESIDENT OF NO.84
1ST MAIN ROAD, 5TH CROSS,
ITTAMADU EXTENSION,
BSK 3RD STAGE,BENGALURU - 560 085.
- 7 . SMT K N PADMAVATHI,
W/O A S SWAMY, AGED ABOUT 35 YEARS,
ABBUR VILLAGE,
ABBUR POST, CHANNAPATNA TALUK,
ABBUR, RAMANAGARA,
RAMANAGARA - 562108.
- 8 . SRI A S CHANDRASHEKARA,
S/O SHAMBHU GOWDA,
AGED ABOUT 55 YEARS,
RESIDENT OF NO. 457,
15TH D CROSS, WOC ROAD,
2ND STAGE, 2ND PHASE,
MAHALAKSHMIPURAM,
BENGALURU - 560 086.

...PETITIONERS

(BY SRI M R RAJAGOPAL, SR. COUNSEL A/W
SRI A C BALARAJ, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA,
REPRESENTED BY ITS

SECRETARY TO GOVERNMENT,
DEPARTMENT OF CO OPERATION,
M.S BUILDING, DR. B.R AMBEKDAR VEEDHI,
BENGALURU - 560 001.

- 2 . THE REGISTRAR OF CO-OPERATIVE SOCIETIES, NO.1 ALI ASKAR ROAD, BENGALURU - 560 052.
- 3 . THE STATE CO-OPERATIVE ELECTION AUTHORITY, 3RD FLOOR, TTMC A BLOCK, SHANTHINAGAR BUS STAND, DOUBLE ROAD, BENGALURU-560027, REPRESENTED BY ITS SECRETARY.
- 4 . THE REGISTRAR OF CO-OPERATIVE SOCIETIES AND ELECTION OFFICER, STATE CO-OPERATIVE ELECTION AUTHORITY, 3RD FLOOR, TTMC A BLOCK, K.H ROAD, SHANTINAGAR, BENGALURU - 560 027.
- 5 . THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES, ZONE - 3/RETURNING OFFICER, 8TH MAIN 3RD FLOOR, MALLESHWARAM, BENGALURU-560003.
- 6 . SRI THYAGARAJA CO-OPERATIVE BANK LIMITED, A SOCIETY REGISTERED UNDER THE PROVISIONS OF THE KARNATAKA CO-OPERATIVE SOCIETIES ACT 1959, NO. 5, 9TH CROSS,N.R COLONY, BENGALURU - 560019, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

...RESPONDENTS

(BY SRI SIDHARTH BABU RAO, AGA FOR R1, R2, R4 AND R5,
SRI T.L KIRAN KUMAR, ADVOCATE FOR R3,
SRI JAYKUMAR S PATIL, SENIOR COUNSEL A/W
SRI A MAHAMMED TAHIR, ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO i) DIRECTING THE R4 TO CONSIDER THE REPRESENTATION DT.26/10/2023 AND TO PASS ORDERS THEREON, VIDE ANNEXURE-O. ii) DIRECTING THE R6 FOR RE-DOING THE DRAFT VOTER LIST BY FOLLOWING THE

DUE PROCEDURE AS PRESCRIBED UNDER RULE 13-D(2-A) OF THE KARNATAKA CO-OPERATIVE SOCIETIES RULES, 1960 AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17TH JANUARY, 2024 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioners claim to be the members of the 6th respondent-bank (Hereinafter referred to as the 'Bank' for short). The petitioners have prayed to direct the Bank to redo the draft voters' list. Further prayer is to direct the 4th respondent-election officer to hold elections to the Board of the Bank after finalising the voters' list by complying with the requirements under Rule 13-D(2-A) of the Karnataka Co-operative Societies Rules, 1960. (For short 'Rules, 1960').

2. The other prayer to direct the 4th respondent to consider petitioners' representation to appoint an administrator to the Bank does not survive as the administrator is already appointed to the Bank.

3. This Court vide interim order dated 04.01.2024, permitted the Returning Officer (subject to the result of the petition) to publish the calendar of events for the election to

the Board of the Bank. The calendar of events was published on 04.01.2024. While reserving the matter for judgment on 17.01.2024, this Court has permitted voting to be held on 21.01.2024. However, counting of votes and the result are withheld.

4. The petition is filed on the premise that the process initiated by the Bank to prepare the eligible and ineligible voters' list for the election to the board of the Bank, is in total derogation of Rule 13-D(2-A) of the Rules, 1960. The validity of the voters' list cannot be adjudicated in a dispute under Section 70(2)(c) of the Karnataka Co-operative Societies Act, 1959 (For short 'Act, 1959') as the said dispute falls outside the scope of Section 70 of the Act, 1959.

5. The respondents contend that petitioners have a remedy under Section 70(2)(c) of the Act, 1959 to challenge the voters' list and writ petition is not maintainable.

6. The co-ordinate Bench of this Court in ***Mohammad Beary & Others vs The State Of Karnataka & Others*** (Writ Petition No.29271/2023 & Connected matters) relying on the

judgment of the Apex Court in ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another vs State of Maharashtra & Others***¹, has taken a view that the writ petition challenging ineligible voters' list after the publication of calendar of events is not maintainable and the aggrieved party has to approach the authority under Section 70 of the Act, 1959.

7. Another co-ordinate bench of this Court in ***H.S. Raju and Others vs State of Karnataka and Others***² in a slightly different context where *ex parte* interim order was granted permitting the petitioners to vote in the election, after service of notice and on an admission made by the Society that the Rule 13-D(2-A) of Rules, 1960 is not complied, permitted counting of votes cast by the petitioners and kept open all disputes to be decided under Section 70 of Act, 1959, if any raised.

8. The petitioners urge that this petition is filed even before the publication of the calendar of events whereas the

¹ (2001) 8 SCC 509

² 2022 (4) AKR 775

judgments referred to *supra* are rendered where the petitions are filed after publication of calendar of events. It is also urged that the Apex Court in ***Election Commission of India through Secretary vs Ashok Kumar and Others***³ has held that the writ petition is maintainable if the same is filed to ensure fair and smooth elections. On this premise, it is urged that the judgment in ***Mohammad Beary and H.S. Raju*** *supra* are per incurium.

9. In the light of the contentions raised, the following questions arise for consideration;

(a) Whether a writ petition under Article 226 of the Constitution of India is maintainable (before the publication of the calendar of events 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 decide the validity of the electoral roll vis-à-vis Rule 13-D(2-A) of Rules, 1960?

³ (2000)8 SCC 216

(c) Whether the judgments of co-ordinate Bench of this Court in ***Mohammad Beary and H.S. Raju supra*** are per incurium and contrary to the law in ***Election Commission of India through Secretary supra***.

Facts in brief:

10. The term of the board of the Bank ended on 27.10.2023. The Bank on 24.05.2023 requested the Co-Operative Election Authority to make preparations to hold the election to its board. On the same day, a list of members who are eligible to vote, a list of defaulters, and a list of ineligible voters were forwarded with a request to approve the same and to enable further course of action in conducting the election. On 24.08.2023, the Election Officer appointed the Returning Officer to hold the election. The Election Officer fixed 15.10.2023 as the date of election.

11. The Election Officer has noticed certain discrepancies in the voters' list and directed the Bank to follow the requirements under Rule 13-D(2-A) of the Rules, 1960 before finalising the voters' list. The Bank claims that fresh

notices were issued to the members of the Bank under Rule 13-D(2-A) of the Rules, 1960 inviting their objections to the ineligible voters' list, which claim is disputed by the petitioners. It appears, around 21 members filed objections to the ineligible voters' list and the Election Officer claims to have passed orders on the objections, and the final voters' list is prepared during the pendency of the petition.

12. The petition, as noticed above, is filed essentially on the premise that Rule 13-D (2-A) of Rules, 1960 is mandatory and the same is not followed while initiating the procedure for preparing eligible and ineligible voters' lists.

13. Learned Senior Counsel for the petitioners Sri. M.R. Rajgopal, raised the following contentions:

(i) The provisions of the Act, 1959 and the Rules, 1960 applicable to elections to the board of a Co-operative society are mandatory as held by the Division Bench in ***MYSORE AND CHAMARAJANAGAR DISTRICT CO-OPERATIVE BANK LTD. AND OTHERS Vs STATE OF KARNATAKA AND OTHERS*** (W.A. No. No.1333/2023). If said provisions are breached, then the

petition under Article 226 of the Constitution of India is the only remedy, and the election to the Board of the Bank cannot be held unless the mandatory requirements of Rule 13-D(2-A) of the Rules, 1960 are complied.

- (ii) Considering the definition of 'Board' in Act, 1959, and its role as provided under Sections 28-A and 28-B, the dispute relating to the electoral roll cannot be adjudicated under Section 70 of the Act, 1959 as the same is beyond the scope of Section 70(2)(c) of the Act, 1959.
- (iii) Under *proviso* to Section 18(1) of Act, 1959, the number of associate members cannot exceed more than 15% of the number of regular members. Around 18,000 persons are admitted as associate members whereas there are around 16,500 regular members. Under Bye-law No.36.6 read with Sections 16 and 18, unless the associate members are provided an option to be regular members, the election to the board cannot be held.
- (iv) In terms of the law in ***MYSORE AND CHAMARAJANAGAR DISTRICT CO-OPERATIVE BANK LTD. supra***, the election process commences only after

publication of the calendar of events. Thus, the writ petition filed before publication of the calendar of events is maintainable.

- (v) A writ petition is also maintainable if it is filed to ensure a smooth and fair election in compliance with the applicable provisions of law as held by the Apex Court.

Reliance is placed on the following judgments:-

- 1) *Sri. Kumar M vs The State of Karnataka and others (WP No.20333/2023).*
- 2) *Mysore and Chamarajanagar District Co-operative Bank Ltd and others vs The State of Karnataka and others (WP No.1333/2023).*
- 3) *Election Commissioner of India through Secretary vs Ashok Kumar and others, (2000) 8 SCC 216. (para 32)*
- 4) *Lakshmi Charan Sen and Others vs A.K.M. Hassan Uzzaman and others, (1985) 4 SCC 689.*
- 5) *T.S. Patil vs The J.R.C.S. and others, ILR 2007 KAR 491.*

14. The learned senior counsel Sri. Jaykumar S. Patil appearing for the contesting respondent No.6 raised the following contentions:

- (i) The Bank vide letter dated 24.05.2023 requested the Co-Operative Election Authority to make preparations to hold an election to its board. The Election Officer after considering the steps taken by the Bank in preparing the eligible and ineligible voters' list and noticing some discrepancies suggested a course correction. Consequently, remedial measures are taken to redo the voters' list. Thus, there cannot be any objection to eligible and ineligible voters' lists.
- (ii) Preparation of the electoral roll is an integral part of the election under the Scheme of Act, 1959 and Rules, 1960 as such the petition under Article 226 of the Constitution of India is not maintainable to seek a direction to redo the voters' list. If the petitioners are aggrieved by the election results on account of a 'faulty voters' list', then recourse is under Section 70 (2) (c) of the Act, 1959.

15. In support of his contention reliance is placed on the following judgments:

- (i) *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v. State of Maharashtra and Others (2001)8 SCC 509*
- (ii) *H. S. Raju and others vs State of Karnataka and Others 2022(4) AKR 775*

16. Learned Government Advocate Sri.Siddarth Baburao submitted that even if Rule 13-D(2-A) is held to be mandatory, the petitioners have a statutory remedy under Section 70 of the Act, 1959.

17. Learned counsel for the Co-Operative Election Authority Sri.T.L.Kiran Kumar urged that noticing non-compliance with Rule 13-D (2-A), the election scheduled on 15.10.2023 earlier, was postponed to 21.01.2024 and in the interregnum, the Bank and the Election Authority have taken corrective measures, and voters' list is finalised by following the procedure.

18. To answer the questions raised, the Court has to analyse the role of the Co-Operative Election Authority, the right to vote, grounds for disqualification to vote, the mechanism provided for conducting elections under the Act and Rules, and the remedy provided under the Act and Rules for breach of the provisions governing election to the board of a co-operative Society.

19. As provided in Sections 28-A and 28-B, the Board of a co-operative Society is to be constituted by holding an election. The Act, 1959 and the Rules, 1960 provide for a periodic election and a mechanism for conducting the election to the Board of a co-operative Society.

20. At this juncture, it is relevant to refer to Section 39-A of Act, 1959 and Rule 13-C and the relevant portion of Rule 13-D of Rules, 1960 dealing with elections.

Relevant portion of Section 39-A reads as under:

Conduct of election.-(1) Every general election of the members of the board and election of the office-bearers of a co-operative society including any casual vacancy to the extent applicable **shall be held under the Superintendence of Co-operative Election Authority.**

(2) The general elections of the members of the boards of the co-operative societies shall be held in four stages as under:

- (a) xxxx
- (b) xxxx
- (c) xxxx
- (d) xxxx

Provided that the (Co-operative Election Authority) may start the preparatory work for the preparation of the electoral rolls for and the conduct of the elections during the last six months prior to the expiry of the term of office of the board of a co-operative society”.

(Emphasis supplied)

21. Rule 13-C of Rules, 1960 which also corresponds to the power conferred under Section 39-A of the Act reads as under:

13-C. Conduct of general elections to the board.-

(1) The Government may advise the Election Authority on the suitability of dates for conducting elections as per sub-section (2) of Section 39-A of the Act for administrative reasons to be recorded in writing.

(2) **Subject to the general superintendence and directions of the Co-operative Election Authority,** the Chief Executive of the society shall prepare the electoral roll for election to the co-operative society. **The list so prepared by the Chief Executive shall be verified and approved by the Election Officer.**

(emphasis supplied)

The relevant portion of Rule 13-D reads as under:

13-D. Preparation of electoral rolls and calendar of events.-

(1) The 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) xxxx
- (b) xxxx
- (c) xxxx
- (d) xxxx.

(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) xxxx.
- (ii) xxxx.
- (iii) xxxx.
- (iv) xxxx.
- (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) Xxxx

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

(a)xxxx

(b)xxxx

(c) xxxx

(d)xxxx

(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.**

(Emphasis supplied)

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.

23. The 97th Constitution Amendment which amended Article 19(1)(c) and brought 'co-operative society' within the ambit of Article 19(1)(c) is struck down by the Apex Court in so far as it applies to the co-operative societies other than multi-state co-operative societies in ***The Union of India vs Rajendra N Shah***⁴. Even if the right to form an association which is a fundamental right under Article 19(1)(c), is applied to co-operative societies, such a fundamental right to form a co-operative society does not elevate the 'right to vote' in a co-operative society to the status of a fundamental right.

24. Section 20 of the said Act, 1959 in addition to classifying different categories of members eligible to vote, also deals with the disqualification to vote. Section 20(a-iv) and (a-v) of the Act, 1959, are relevant for discussion.

25. Under Section 20(a-iv), the member who fails to attend three of the last five general body meetings incurs

⁴ (2021) SCC ONLINE SC 474

disqualification to vote. Under Section 20(a-iv), the member incurs disqualification for not utilising the minimum services or facilities prescribed under the bye-law, for two co-operative years out of the last five co-operative years. In other words under the Act and Rules, the right to vote in an election to the board of a society is not automatic but is to be earned by fulfilling certain conditions and not fulfilling those conditions results in disqualification to vote. If disqualification is disputed, then the Election Officer has to decide the dispute in the first instance.

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 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.

27. Section 70 of the Act, 1959 provides for resolution of dispute in connection with matters covered under the provision. Relevant portion of Section 70(1) and (2) of the Act, 1959 reads as under:

Section 70. Disputes may be referred to the 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 cooperative society arises.-

(a)xxxx

(b)between a member, past member, or person claiming through a member, past member, or deceased member and the society, its (board) or any officer, agent, or employee of the society, or

(c)xxxx

(d)xxxx

Xxx

Section: **70(2)** For the purpose 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) xxxx

(b) xxxx

- (c) any dispute arising in connection with the election of a President, Vice-President, or any office-bearer or Member of the board of the Society;
- (d) XxXxxx
- (e) xxxx

(Emphasis supplied)

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 he is eligible to vote but should also demonstrate that the faulty voters' list made an 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.

31. Learned Senior Counsel for the petitioners referring to the judgment in **T.S. Patil** *supra*, and also the language employed in Section 70(2)(c) of the Act, 1959, urged that the person aggrieved by the election results can challenge the election only on the grounds available under the Representation of People Act, 1951 (hereinafter referred to as the 'Act of 1951' for short). Referring to Sections 100 and 101 of the said Act, it is urged that challenge to the election on the ground that the electoral roll was not prepared by following the mandatory rules is not recognised. It is further urged that Section 70(2)(c) also does not recognize the challenge to the election on the grounds of violation of rules prescribed for the preparation of the electoral roll.

32. In the case of **T.S.PATIL** *supra*, the Court was examining whether the authority under Section 70 of Act, 1959

deciding election dispute can declare the petitioner as an elected candidate by setting aside the election of a returned candidate as Section 70(2)(c) is silent on this aspect. This Court following the judgment of **CHANNE GOWDA AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS**⁵ which in turn followed the judgment of the Division Bench in **HAYAT BEIG VS. MUNIVENKATE GOWDA AND OTHERS**⁶ has taken a view that even in respect of the matters for which no specific provision is made in Section 70, the general principles of Sections 100 and 101 of the Act of 1951 and the law laid down under the said provisions can be applied and in deserving cases, the Authority is competent to pass an order declaring the petitioner as elected apart from setting-aside the election of a returned candidate. Now it is necessary to consider the relevant portion of Section 100 of the Act of 1951 which reads as under.

100. Grounds for declaring election to be void.-

(1)xxxx

(a)xxxx

(b)xxxx

(c)xxxx

⁵ 1975 (2) Kar.L.J. 235

⁶ (1972) 1 Mys.L.J. 121

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) to (iii) xx

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, shall declare the election of the returned candidate to be void.

(Emphasis supplied)

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** and **CHANNE GOWDA and HAYAT BEIG** supra, 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** supra 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.

34. Referring to Rules 13-D, Rule 14, and Form-XI and XII under Rule 14, it is urged that two different calendar of events i.e., one about the preparation of electoral rolls, and another about the conduct of election to the Board of Co-operative Society, are contemplated under the said rule. Thus, the preparation of the electoral roll is not an intermediate stage and part of the election process is the submission on behalf of the petitioners.

35. Learned Senior Counsel Sri. M.R. Rajgopal placed heavy reliance on the judgment of the Division Bench in **MYSORE AND CHAMARAJANAGAR DISTRICT**

CO-OPERATIVE BANK LTD *supra* to urge that the election process commences from the date of publication of the calendar of events under Form-XII. Since the preparation of the electoral roll is not an integral part of the election process, then the writ petition filed challenging the procedure initiated or adopted to prepare the electoral roll can be entertained as calendar of events was not published when the petition was filed.

36. The question decided in **MYSORE AND CHAMARAJANAGAR DISTRICT CO-OPERATIVE BANK LTD** *supra* is “whether the authority under the Rule, 1960 has the power to recall the notification issued under Rule 14(1) Form-XI of Rules, 1960?” by holding that the procedures contemplated under Rule 13-D(2-A) are mandatory, the Division Bench held that Notice under Form-XI can be withdrawn by the Election Authority if the procedure contemplated under Rule 13-D is not complied with.

37. In the aforementioned judgment, the Division Bench did not decide the question, “whether a writ petition can be filed under Article 226 of the Constitution of India to question

the eligible and ineligible voters' list on the premise that the requirement of Rule 13-D(2-A) is not followed?" Though, in the said judgment in paragraph(e), the Division Bench has taken a view that publication of notice under Form-XI cannot be construed as the commencement of the election process and the election process commences only after the publication of notice under Form-XII, the said observation of the Division Bench cannot be read to mean that as long as election process has not commenced, the writ petition is maintainable to challenge the electoral roll.

38. It is a well-settled principle of law that the judgment cannot be read like a statute, and has to be read in the context in which it is rendered. A judgment is an authority only on the matter which is decided by it, and not necessarily on what all logically flows from in interpreting the judgment.

39. The findings or observation on a question namely, whether the election process commences from the date of publication of notice under Form-XI or under Form-XII, in the context of the dispute where the Court was deciding a question

whether the Election Authority can recall the notice under Form-XI cannot be used to answer the questions;

(a) Whether the preparation of the electoral roll is an intermediate stage and part of the election process,

(b) Whether a writ petition would lie to challenge the electoral roll.

Thus, the judgment in ***MYSORE AND CHAMARAJANAGAR DISTRICT CO-OPERATIVE BANK LTD*** *supra* is not an answer to aforementioned questions.

40. Whether the preparation of the electoral roll is part of an election is the question answered by the Apex Court in ***Shri Sant Janardan*** *supra*. 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. Paragraph No.7 of the said judgment is relevant as extracted below:

"7. In the light of the aforesaid provisions of Chapter XI-A of the Act and the Rules, we will examine as to whether the 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 deal with the election of the specified societies under Section 73-G of the Act. Section 144-X provides that various stages of the election shall also include the 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 finalizing the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for the 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, finalization 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* [(1992) 1 Mah LJ 883] 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. Vasantrao Vithalrao Gurjar* [(1992) 2 Mah LJ 1052]. However, in *Karbhari Maruti Agawan v. State of Maharashtra* [(1994) 2 Mah LJ 1527] 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 the 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 the 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".

(Emphasis supplied)

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.

42. Though, the provisions of the Maharashtra Act specifically provide for challenging the election on the ground

of non-compliance with the provisions of the Act and Rules, and though the Act, 1959, does not specifically provide as to on what grounds the election to the board of a co-operative society can be set aside, for the reasons already supra, the challenge to an electoral roll is very much permissible under Section 70 of the Act, 1959, (subject to aggrieved party establishing that such errors impacted the outcome of the elections) as preparation of electoral roll is part of election process, in the context of questions raised in the petition.

43. This being the position, the contentions raised by the petitioners that two different calendar of events are envisaged under Rules, 1960 and the writ petition to challenge the electoral roll is maintainable if the writ petition is filed before publication of calendar of events, cannot be accepted.

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.

45. As far as the contention that the inaction on the part of the Bank in not following the mandate of Section 16 and Bye-law No.36.6 to reclassify the associate members to regular members is concerned, this Court is of the view that none of the associate members has come forward claiming the right to vote by becoming a regular member. The associate members under Section 20 of Act, 1959 have no right to vote. Hence, the petitioners cannot take it as a ground to challenge the electoral roll. If there is any lapse on the part of the Bank in not complying with the requirement of Section 16 and Bye-law No.36.6, the petitioners have to approach the Authority under the Act for appropriate remedy. Inaction to remove associate members or to change their status from associate

members to some other category of members cannot be a ground to urge that the electoral roll be redone either by removing or changing the status of associate members to some other category of members.

46. As of now, as the law stands associate members do not have the right to vote. Hence, those associate members continuing in the same status though contrary to the provisions of Sections 16 and 20 of Act, 1959 is not a ground to invoke Article 226 of the Constitution of India with a prayer to redo the voters' list.

47. The petitioners have placed reliance on the judgment of the Hon'ble Apex Court in **ASHOK KUMAR'S** case *supra*. Referring to paragraph No.32 of the judgment, it is urged that any step taken by filing a petition should not be construed as a petition calling an election if the step taken subserves the progress of the election and facilitates the completion of the election. It is also urged that the decisions taken by the election commission are open to the judicial review on the well-settled parameters which enable judicial review of decisions on statutory bodies such as on a case of

malafide or arbitrary exercise of power being made out or statutory body being shown to have acted in breach of law. In this petition, no case is made out to hold that the process has suffered on account of *malafides* and arbitrary exercise of power. Intervention in the election process in the facts and circumstances presented before this Court certainly does not enable the smooth progress of the election. Moreover, as already held, the statutory remedy is available to the petitioners to challenge the electoral roll.

48. Reliance is also placed on ***Lakshmi Charan Sen supra*** and it is urged that the preparation of the election roll and publication of the electoral roll are not part of the election process. It is relevant to note that in the said case, the Apex Court has not decided the question whether the expression 'election' in Article 329(b) of the Constitution includes the process of preparation of electoral roll. In this petition, the preparation of electoral roll under the Rules, 1960 is examined. Placing reliance on ***Shri Sant Janardan supra*** which is decided in the context of the rules governing election to a co-operative society, the co-ordinate Bench of this Court in

Mohammad Beary *supra* has taken a view that the dispute in connection with the election includes preparation of electoral rolls. Even in **H.S. RAJU** *supra*, the co-ordinate Bench of this Court by following the law in **Shri Sant Janardan** *supra*, and the peculiar facts of the said case has taken a view that the dispute relating to election to the board of a co-operative society is to be resolved under Section 70. The contention that judgments in **Mohammad Beary** and **H.S. Raju** *supra* are per incurium is not accepted.

49. It is relevant to note that under the scheme of the Act, 1959, the elections to the co-operative societies are to be held in phases. Section 39-A of the Act, 1959 provides for four stages for holding the election to the different categories of co-operative societies viz., a primary co-operative society, a secondary co-operative society, a federal co-operative society, and an Apex co-operative society. Because election to one category of co-operative society is dependent on another category of co-operative society and if, election to one category of society is stalled; it may have a cascading effect and may also affect the elections of the next categories of co-operative

societies. This is one of the peculiar features of elections to co-operative societies distinct from elections to local bodies, legislative assemblies, or even the parliament.

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** and **H.S. RAJU** 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.

51. Based on the conclusions arrived at in the facts and circumstances of the case, this Court is of the view that no exceptional case is made out in this petition to exercise Article 226 jurisdiction. This Court has not expressed any opinion on the eligible and ineligible voters' list prepared during the pendency of the petition. Hence, the following:

ORDER

Writ petition is disposed of on the following terms:

- (i) The returning officer shall count the votes cast in the election held on 21.01.2024, to the Board of the 6th respondent bank, and shall announce the results.
- (ii) The liberty is reserved to the petitioners or any aggrieved person to raise objections to the validity of the electoral roll in an election petition under Section 70(2)(c) of the Karnataka Co-operative Societies Act, 1959.
- (iii) If such a dispute is raised, the Authority under Section 70 of the Karnataka Co-operative Societies Act, 1959, shall examine all questions including the question relating to

validity of the eligible and ineligible voters' list and impact on the election to the Board of the 6th respondent – Bank.

- (iv) Nothing is expressed on the merits of the eligible and ineligible voters' list published during the pendency of the petition and said question kept open to be decided in the dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959, if raised.

**SD/-
JUDGE**

BRN/CHS