

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 9744 OF 2023 (CS-RES)

BETWEEN:

MS. ROOPA M,
D/O SRI MARIYAPPA,
AGED ABOUT 32 YEARS,
R/AT MADAPURA VILLAGE,
ATHAGUR HOBOLI, MADDUR TALUK,
MANDYA DISTRICT - 571 428.

...PETITIONER

(BY SRI ASHOK HORANAHALLI, SR. COUNSEL A/W
SRI NISCHAL DEV B R, ADVOCATE)

AND:

- 1 . THE JOINT REGISTRAR CO-OPERATIVE SOCIETIES,
MYSORE REGION, PUBLIC OFFICERS BUILDING,
NEW SAYYAJI RAO ROAD, MYSORE - 570 001.
- 2 . THE ADDITIONAL DEPUTY COMMISSIONER
AND RETURNING OFFICER OF MANDYA DISTRICT,
CO-OPERATIVE MILK PRODUCERS, UNION LTD,
GEJJALAGERE VILLAGE, MADDUR TALUK,
MANDYA DISTRICT - 571 428.
- 3 . THE MANDYA DISTRICT CO-OPERATIVE MILK PRODUCERS
SOCIETIES UNION LTD.,
GEJJALAGERE VILLAGE, MADDUR TALUK,
MANDYA DISTRICT-571428,
REP. BY ITS MANAGING DIRECTOR,
REG. UNDER CO-OPERATIVE SOCIETIES ACT, 1959.

- 4 . MILK PRODUCERS WOMEN CO-OPERATIVE SOCIETY LTD.,
MADAPURADODDI VILLAGE,ATHAGUR HOBLI,
MADDUR TALUK, MANDYA DISTRICT-571428.
REP. BY ITS SECRETARY,
REG. UNDER CO-OPERATIVE SOCIETIES ACT, 1959.
- 5 . SRI RAMAKRISHNA,
S/O LATE BILEGOWDA, AGED ABOUT 66 YEARS,
R/AT KADALUR VILLAGE, ATHAGUR HOBLI, MADDUR TALUK,
MANDYA DISTRICT - 571 428.
- 6 . KADLUR MILK PRODUCERS CO - OPERATIVE SOCIETY LTD.,
KADALUR VILLAGE, ATHAGUR HOBLI,
MADDUR TALUK, MANDYA DISTRICT - 571 428,
REP. BY ITS SECRETARY,
REG. UNDER CO-OPERATIVE SOCIETIES ACT, 1959.

...RESPONDENTS

(BY SRI SIDHARTH BABU RAO, AGA FOR R1 AND R2,
SRI B RAVINDRA PRASAD, ADVOCATE FOR R3,
SRI D R RAVISHANKAR, SR. COUNSEL A/W
SRI RAMESHA H E, ADVOCATE FOR R4,
SRI M R RAJAGOPAL, SR. COUNSEL A/W
SRI P ANAND, ADVOCATE FOR C/R5 AND R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 13.04.2023 PASSED IN APPEAL NO.212/2022 PASSED BY THE HON'BLE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU VIDE ANNEX-H AND CONSEQUENTLY CONFIRM THE DISMISSAL ORDER OF TH R-1 PASSED IN THE DISPUTE JRM/DDS/1562/2019-20 AGAINST R-5 ON 26.07.2022 VIDE ANNEX-F TO WP.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15TH FEBRUARY, 2024 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The election of the petitioner as a Director of the 3rd respondent Union is questioned by the 5th respondent who is one

of the contestants in the said election. The petitioner was declared as a returned candidate in the said election.

2. In a dispute raised under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short 'the Act of 1959'), the 5th respondent urged that the petitioner was not a member of the 4th respondent Society which she claimed to have represented when she contested the election. The Authority under Section 70 of the Act of 1959 rejected the plea of the 5th respondent. In an appeal filed by the 5th respondent, the Karnataka Appellate Tribunal has set aside the petitioner's election as a Director of the 3rd respondent Union. Hence the petitioner is before this Court.

3. The petition is filed primarily on three grounds.

a. The 5th respondent has no *locus* to question the petitioner's membership or eligibility to contest the election to the Board of the 3rd respondent Union.

b. No provision in the Act of 1959 enables the contestant in an election to the Board of a Federal Society, to raise an election dispute questioning the eligibility of the candidate in the election to the Board of Federal Society, on the ground that the

contestant is not a member of the primary Society which he claims to represent.

c. The primary Society which is a member of the 3rd respondent Union has not incurred any disqualification to represent and contest in the election to the Board of the 3rd respondent Union. Individual disqualification, if any of a contestant is not a ground to raise an election dispute.

4. Admittedly, the petitioner was a paid employee of the 4th respondent society from 2015 to 2019. The petitioner resigned from her employment in 2019. It is claimed that her membership in the primary Society which she had acquired before being employed under the 4th respondent Society, would revive and she is eligible to represent the primary Society. The 4th respondent primary Society nominated the petitioner as a nominee to represent it before the 3rd respondent Union in the election to the Board of a 3rd respondent Union.

5. In a dispute raised under Section 70 of the Act of 1959, the Authority concluded that the 5th respondent cannot question the eligibility of the petitioner when the 5th respondent did not object to the nomination filed by the petitioner. The

Authority also held that the petitioner was a member of the Society since 2006 and the Society has passed a resolution to nominate the petitioner and said nomination is valid.

6. The Tribunal in the appeal filed by the 5th respondent took a view that the petitioner resigned from her post as the Secretary on 18.03.2019 and even after the resignation, the petitioner signed the cheques on behalf of the Society even in the month of March to May 2019. The Tribunal held that the elections are held within 12 months from the date of resignation by the petitioner as such, the petitioner was not eligible to vote in view of Section 20(2)(a-iii) of the Act of 1959 as she had incurred disqualification. Hence the election was set aside.

7. Sri Ashok Haranahalli, the learned Senior counsel appearing for the petitioner, and Sri.D.R.Ravishakar, the learned Senior counsel appearing for the 4th respondent primary Society, supporting the petitioner urged that the dispute under Section 70 of the Act of 1959 by the 5th respondent questioning the eligibility of the petitioner to represent the 4th respondent primary Society is not tenable. It is also urged that the 3rd respondent primary Co-operative Society has not incurred any disqualification under

Section 20(2) of the Act of 1959. The Society has the power to nominate its member to represent the primary Society in the 3rd respondent Union and if at all there is any dispute relating to the membership of the petitioner in the 4th respondent primary Society, said dispute can be raised only by the members of the 4th respondent primary Society and not by an outsider. Since the 5th respondent is not a member of the 4th respondent primary Society, he has no locus to question the eligibility of the petitioner.

8. Sri. B.Ravindra Prasad, the learned counsel appearing for the 3rd respondent - Union supported the petitioner as well as the 4th respondent primary Society. It is further urged that the 5th respondent is now co-opted as one of the Directors of the 3rd respondent Union as such he cannot raise any grievance relating to the membership of the petitioner.

9. Sri. M.R. Rajagopal, the learned Senior counsel appearing for the 5th respondent urged that the 5th respondent being the contestant in the election to the Board of the 3rd respondent Union has every right to question the eligibility of the candidates who contested the election. He would further urge

that only the member of a Co-operative Society can become a Director of a Co-operative Society and only a Director of the Co-operative Society can be nominated to represent the Board of a Society in another Co-operative Society. He would further urge that the disqualification of the petitioner being automatic in view of the mandate under Section 17(1)(f) read with Section 17(2) of the Act of 1959, the petitioner could not have been appointed as a delegate of the 4th respondent primary Society.

10. It is also urged by Sri Rajgopal, that in view of bye-law No.38(10), which prohibits a member of the society to be a member of the Board if such member was employee of the society three years before the election. Since petitioner was employee from 2015 to 2019, the petitioner has a disqualification to be the member of the board of the 4th respondent Society.

11. Learned Senior counsel would also urge that Section 70(2)(c) of the Act of 1959 to be comprehensive enough to cover all disputes in connection with the election of a Board of a Society and the 5th respondent has the locus as he is one of the candidates in the said election.

12. It is also urged on behalf of the 5th respondent that the Bye-law of the 4th respondent primary Society mandates that to be eligible to get elected as a Director of the 4th respondent primary Society, a member should have completed 3 years. Since the petitioner ceased to be a member on being appointed as a paid employee in the year 2015, her membership ceases with effect from the date of appointment under Section 17(2). Assuming that fresh membership was conferred on the petitioner after her resignation in 2019, the petitioner has not completed three years as required under the Bye-law. Hence the petitioner is ineligible to contest in the election.

13. This Court has considered the contentions raised at the bar.

14. The membership in a Co-operative Society is governed by the provisions of the Act of 1959. Sections 16 and 17 of the Act of 1959 deal with the membership in the Co-operative Society. Section 16 deals with the eligibility to become a member and Section 17 deals with disqualification to become a member in a Co-operative Society. Section 20 deals with the right to vote in a Co-operative Society and it also

provides for the circumstances under which the member incurs disqualification to vote.

15. Membership in a Co-operative Society is the basic eligibility criteria to be eligible to contest in an election. In addition, the member has to fulfil additional eligibility criteria if any fixed under the Statute and Bye-law applicable.

16. Under Section 17(1)(f), a paid employee of the Society is disqualified from membership. Section 17(2) provides that in case a member incurs any disqualification specified in Section 17 (1), then the membership ceases. At this juncture, it is necessary to refer to Sections 17(1) (f), 17(2), and 17(3) of the Act of 1959.

Disqualification for membership.-(1) No person shall be eligible for admission as a member of a Co-operative Society if he,-

xxx

xxx

xxx

(f) is a paid employee of the society or of its financing bank; or

(2) If a member becomes subject to any of the disqualifications specified in sub-section 1, he shall be

deemed to have ceased to be a member from the date when the disqualification was incurred.

(2-A) xxxxx

(3) If any question arises as to whether a member is deemed to have ceased or has ceased to be a member under sub-section (2) or (2-A), the Registrar may either *suo motu* or on a report made to him and after giving an opportunity to the person concerned of being heard, decide the question.”

17. The language employed in 17 (2) is clear. If a member incurs any of the disqualifications specified in 17(1), he shall be deemed to have ceased to be a member from the date when the disqualification is incurred. The petitioner was a member in 2006 and was employed in the society from 2015 to 2019. Section 17(1)(f) gets triggered in 2015 when she was employed. Thus, from the date of appointment in 2015, the petitioner ceases to be a member.

18. Sri.D.R.Ravishankar, urged that the expression "*is a paid employee of the Society*" found in Section 17(1) (f) will make the provision applicable to an existing employee and not an employee like petitioner who has resigned. By the time the petitioner contested the election, the petitioner was not an

employee of the society and Section 17(1)(f) cannot have any application. However, respondent No.5 is contending that cessation of membership is automatic and membership does not revive automatically after the resignation of the employee. Thus, the Court is required to consider the question of whether the petitioner ceased to be a member with effect from 2015, and can claim revival of membership if the very substratum of disability ceases to exist.

19. As already noticed, the plain meaning of the expression "*shall be deemed to have ceased*" in Section 17(2) will make cessation of the membership automatic. There is nothing in the Act to indicate that membership revives after disability ceases. It is relevant to note that the legislature has not used the expression "suspension of membership" or anything synonymous, in which event, it is possible to hold that the membership revives after the 'reason' for disqualification ceases to exist.

20. The word 'cease' depending on the context in which it is used may have slightly different flavours and shades, and may mean 'put an end', 'discontinue', 'come to end', or 'stop', or 'terminate' and the like. However, it is not possible to attach the

meaning 'suspend' to the word 'cease' used in Section 17(2) of the Act of 1959. Thus, the petitioner who became paid employee in 2015, ceased to be a member of the 4th respondent society in 2015. The petitioner resigned in 2019.

21. The question is after resignation, does membership revive? The 'membership' in a co-operative society is a status created by the provisions of the Statute. If a provision of Statute takes away the status of 'membership in a Co-operative Society' conferred under the Statute, on incurring the disqualification prescribed, the said status of a 'member' can be restored or conferred only in the manner provided in the Statute. The Act of 1959 does not provide for the revival of the status as a member after the cause for disqualification ceases to exist. Admittedly, after resigning, the petitioner has not sought fresh membership. Thus, this Court has to hold that the petitioner was not a member when the petitioner was nominated to represent the 3rd respondent Society.

22. The expression "is a paid employee of the Society," found in Section 17(1)(f) of the Act of 1959, appears to refer to a disqualification of a member who is an employee and not past

employee. However, the consequence of disqualification incurred under Section 17(1)(f) has to be considered. Though, it is true that the petitioner did resign to her post by the time she was co-opted and contested the election, the disqualification incurred during employment from 2015-2019, will have a bearing on the petitioner's eligibility to contest or to be nominated/selected as a director of the 4th respondent-Society in view of the qualifications prescribed in Bye-law No.38 of the Society. Thus, though the petitioner had resigned from employment by the time she contested election, the Court has to consider the effect of disqualification incurred between 2015 to 2019.

23. Now the question is whether the 4th respondent Society could have nominated the petitioner as a 'delegate' to represent it before the 3rd respondent Union?

24. Sri. D.R.Ravishankar, the learned Senior counsel for the 4th respondent society urged that the disqualification to vote found in Section 20 of the Act of 1959, is to the individual and not to the Society. Since the right to vote in the election to the board of a Union is a right to vote conferred on the Society, the ineligibility of any of the nominees, or delegates of the Society

should not come in the way of 4th respondent Society nominating the petitioner as its delegate.

25. At this juncture, it is relevant to refer to the definition of the term 'Delegate', as defined in Section 2(e-1-a) of the Act of 1959.

2(e-1-a) "Delegate" means a member of the Board of a Co-operative society appointed by the Board to represent that Co-operative Society in other co-operative societies;

26. On reading the definition of the word ' Delegate,' the following can be noticed.

- (a) Only a Director of a Co-Operative society can be a delegate to represent the society which appoints him.
- (b) Appointment of delegate is by the Board of a Co-operative society in which he is a Director.
- (c) The delegate can be appointed to vote and participate in the general meeting and to vote or contest or second in the election of the co-operative society to which he is appointed.

27. The word 'Director' is defined in Section 2(e-2-1) as under:

2(e-2-1) **"Director"** means a member of the board duly elected or nominated or co-opted in accordance with this Act, the rule and the bye-laws made under this Act;

28. As per the definition, a "Director" has to be a member and has to be duly elected to the Board or must be co-opted as director as provided under the Act, Rules, and the Bye-law made under the Act of 1959. Admittedly, the petitioner was not elected as a Director of the 4th respondent Society but was co-opted as director. The clause No. 10 in Bye-law No. 38 of the society imposes a bar to be a member of the Board if such member was the employee of the society three years prior to the election. Sri. Ravishankar though argued that the said bar cannot apply for a director of the Board who is co-opted, said contention is not acceptable. The bye-law which prescribes qualification to be a Director does not carve out an exception for co-option of a member to the Board. Moreover, the word 'ಆಯ್ಕೆ' found in Bye-law No.38 is wide enough to include election and selection. Assuming that the co-opted director does not have to be elected, nevertheless the Board has to select him. And qualifications prescribed in Bye-law No.38 apply even when there is a bar for co-option by way of selection.

29. The word 'Member' as defined in Section 2(f) reads as under:

2(f) "**Member**" means a person joining in the application for the registration of a co-operative society and a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws and includes a nominal and an associate member;

30. The member can be either a person who joins in an application for registration of a Co-operative Society or one who is admitted as a member after incorporation of a Co-operative Society. Thus, the petitioner claims to have been admitted as a member in 2006. However, as already held the membership ceased in 2015 consequent to her employment in the same society, re-admission is not sought.

31. Thus, what emerges is the petitioner did not fulfil the eligibility criteria to be a director of the 4th respondent Society as the petitioner was not a member when she was co-opted as a director. Thus, petitioner could not have been appointed as a 'delegate' of the 4th respondent Society to represent the 3rd respondent Union.

32. Now the question is whether the 5th respondent can raise a dispute under Section 70 of the Act of 1959 questioning the delegation, or election of the petitioner as a director to the Board of the 3rd respondent Union.

33. Section 70(2)(c) of the Act of 1959 is extracted for reference.

(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 cooperative 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.

34. Section 70(2)(c) of the Act of 1959, provides for election disputes in connection with officer bearers or members of a board of the society. On what grounds, the election can be challenged are not specified. However, there cannot be any difficulty in holding that if a candidate is not fulfilling a basic requirement i.e., if the candidate is shown to be not a member,

and could not have been sent as a delegate to represent the society in the said election to the Board of a secondary society or a federal Society, the person who has contested the election has the locus to challenge the said election on the premise that the contested candidate is disqualified to contest the election. The contention that such a challenge is not contemplated under Section 70(2)(c) of the Act of 1959 has no merit. Since the membership is the basic eligibility prescribed to be a Director of a Co-operative Society, and directorship is the basic eligibility prescribed to be a delegate, the disqualification as a member strikes at the root. Participation of such ineligible candidate who is not a member is contrary to the provisions of the Act of 1959. The other candidates or the members of the Society for whose Board the election will have *locus* to raise an election dispute. Hence, the 5th respondent though not a member of the 4th respondent society has a locus to question the membership of the petitioner in the 4th respondent Society when the petitioner contested the election to the Board of a co-operative union to which the 5th respondent also contested.

35. Referring to Section 17 (3) of the Act of 1959 both Sri Ashok Haranahalli and Sri.D.R. Ravishankar, the learned

senior counsel urged that the only way to question the disqualification of membership is to raise a dispute under Section 17(3) of the Act of 1959 and said provision not being invoked, dispute under Section 70 of the Act of 1959, dispute raised by the 5th respondent is not maintainable.

36. No doubt Section 17(3) of the Act of 1959 provides an adjudicatory mechanism to resolve the dispute relating to the disqualification of a member. The dispute is to be adjudicated by the Registrar. However, it does not mean, that if a question as to the disqualification of a member has a bearing on the election of a candidate to the Board of a cooperative society, the party aggrieved by such candidate participating in an election has to raise two disputes, one under Section 17(3) and another under Section 70(2)(c) of the Act of 1959.

37. Section 17(3) does not enable the Registrar to set aside an election of a member on the ground that he has incurred disqualification. The Registrar under Section 70(2)(c) of the Act of 1959 has the jurisdiction to decide the dispute on the validity of the election of a candidate if the ground is raised that the candidate had incurred disqualification under Section 17(1)(f) of

Act of 1959, or ineligible to contest for not meeting the criteria prescribed under the Bye-law of a Society which he represents.

38. The Registrar acting under Section 70 erred in dismissing the Election Petition. The fact that the 5th respondent did not object to the nomination of the petitioner cannot be a ground to dismiss the Election Petition. Not filing an objection to the nomination papers submitted by a returned candidate does not constitute a bar or *estoppel* to raise an election dispute after the declaration of results.

39. The Appellate Tribunal is justified in setting aside the award dated 26.07.2022 passed by the Joint Registrar of Co-operative Societies in Dispute No.JRM/DDS/1562/2019-2010 and also the election result dated 08.09.2019 in so far as the petitioner's election to the board of 3rd respondent Union.

40. For the reasons recorded, the petition is ***dismissed***.

**Sd/-
JUDGE**

GVP