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**Lakshmidevi Vs. The State Of Karnataka**

**Lakshmidevi Vs. The State Of Karnataka**

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**Court** : Karnataka

**Decided On :** Dec-04-2023

**Judge** : C.M. Poonacha

**Appeal No.** : WP 20352/2023

**Appellant** : Lakshmidevi

**Respondent** : The State Of Karnataka

**Advocate for Pet/Ap.** : Sri. Jayakumar S.Patil, Sri. D.R.Ravishankar

**Judgement** :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE04H DAY OF DECEMBER, 2023 BEFORE THE HONBLE MR. JUSTICE C.M. POONACHA WRIT PETITION NO.20352 OF2023(CS-EL/M) C/W WRIT PETITION NO.20838 OF2023(CS-EL/M) IN WP NO.20352/2023 BETWEEN1. LAKSHMIDEVI W/O G NARASIMHAMURTHY, AGED ABOUT46YEARS, SAI LAYOUT, JIGALA ROAD, ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO:

2098. 2 . KOMALA MOHAN W/O MURALI MOHAN REDDY, AGED ABOUT38YEARS, TILAK NAGAR, SARJAPUR ROAD, ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO:

2321. 3 . MURALI MOHAN REDDY S/O MUNIREDDY, AGED ABOUT39YEARS, ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO:

2320. 2 4 . R GOPALAPPA S/O RAMAIAH, AGED ABOUT53YEARS, MAYASANDRA VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO:

873. 5 . M MUKUNDA S/O MUNIYAPPA, AGED ABOUT52YEARS, ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO:

2015. 6 . V ANAND LATE VENKATARAMANAPPA, AGED ABOUT40YEARS, ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO23327 . A Y SURESH S/O YELLAPPA, AGED ABOUT42YEARS, AMBEDKAR COLONY, ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO4018 . R CHANDRASHEKAR S/O RAMAIAH, AGED ABOUT47YEARS, PARVATHI NAGAR,ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO21303 9 . R MUNISWAMY S/O RAMAREDDY, AGED ABOUT52YEARS, ICCHANGURU VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO19010 N SHIVAKUMAR . S/O LATE NARAYANAREDDY, AGED ABOUT41YEARS, NBR LAYOUT, INDALEBELE ROAD, ATTIBELE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU56210 MEMBERSHIP NO663PEITTIONERS ARE MEMBERES OF SHRI JAYABHARATHI EDUCATIONAL CO OPERATIVE SOCIETIES LTD ATHIBELE ANEKAL TALUK BANGALORE56210 ...PETITIONERS (BY SRI D R RAVISHANKAR, SENIOR COUNSEL FOR SRI SARAVANA S, ADVOCATE) AND1. THE STATE OF KARNATAKA BY THE DEPT OF CO OPERATION, M S BUILDING, BENGALURU01 REP BY ITS PRINCIPAL SECRETARY2. KARNATAKA CO OPERATIVE ELECTION AUTORITY2D FLOOR, SHANTINAGAR BUS STOP, BENGALURU56002 BY ITS COMMISISONER43 . DEPUTY REGISTRAR OF CO OPERATIVE SOCIETIES BENGALURU CIRCLE3CUM DISTRICT ELECTION OFFICER, NO146

SAHAKARA SOUDHA, MARGOSA ROAD, MALLESHWARAM BENGALURU56000 4 . THE CO OPERATIVE DEVELOPMENT OFFICER CUM RETURNING OFFICER SHRI JAYABHARATHI EDUCATIONAL CO OPERATIVE SOCIETIES LTD ATHIBELE ANEKAL TALUK BANGALORE56210 5 . SHI JAYABHARATHI EDUCATIONAL CO OPERATIVE SOCIETIES LTD ATHIBELE ANEKAL TALUK BANGALORE56210, BY ITS CHIEF EXECUTIVE OFFICER, REGISTERED UNDER KARNATAKA CO OPERATIVE SOCIETIES ACT RESPONDENTS (BY SMT PRATHIMA HONNAPURA, AAG A/W SRI SIDHARTH BABURAO, AGA FOR R1, R3, R4 SRI T L KIRAN KUMAR, ADVOCATE FOR R2 SRI D K SRIRAMAPPA, ADVOCATE FOR R5 SRI K N PHANINDRA, SENIOR COUNSEL FOR SMT LEELA P DEVADIGA, ADVOCATE FOR IMPLEADING APPLICANTS ON IA32023) THIS WP IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO QUASH ANNEXURE- C IN NO.DRB-3 / CHUNAVANE / RE. AH-47/2023-24 DTD0809.2023 ISSUED BY THE R3 WITH DRAWING THE CALENDAR OF EVENTS DTD0307.2023 ISSUED AS PER ANNEXURE-A FIXING DATE OF ELECTION AS1509.2023 TO THE R5 SOCIETY AND ETC. 5 IN WP NO.20838/2023 BETWEEN1. SRI B G ANJINAPPA S/O GUNDAREDDY, AGED ABOUT59YEARS EX - PRESIDENT, BIDARAGUPPE VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. 2 . SRI. M MUKUNDA S/O MUNIYAPPA AGED ABOUT45YEARS, EX- VICE PRESIDENT, BHUVANESHWARI NAGAR MAHCNAHANAHALLI ROAD, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. 3 . SRI. V. VENKATESH S/O VENKATARAMANAPPA AGED ABOUT52YEARS, TREASURER RAGHAVENDRA COLONY ROAD CHIKKANAHALLI ROAD, ATTIBELE HOBLI, ANEKAL TALUK BENGALURU - 562107. 4 . SRI MANJUNATH REDDY S/O SHAMAIAH REDDY AGED ABOUT55YEARS, EX DIRECTOR, MAYURA BAKERY SARJAPURA ROAD, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. 5 . SMT. SHASHIKALA NARAYANASWAMY W/O NARAYANASWAMY AGED ABOUT53YEARS, EX DIRECTOR, BEHIND6MUNESHWARA TEMPLE ANEKAL ROAD, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. 6 . SRI Y NARAYANAYA REDDY S/O YELLA REDDY AGED ABOUT60YEARS, EX DIRECTOR, KAMBALIPURA VILLAGE,

MAYASANDRA POST, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. 7 . SRI B.G. ANIL KUMAR S/O GULLAREDDY AGED ABOUT40YEARS EX DIRECTOR, BALLURU VILLAGE, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. 8 . SRI. V. ANAND S/O LATE VENKATARAMANAPPA AGED ABOUT42YEARS EX DIRECTOR BIDARAGUPPE VILLAGE ATTIBELE HOBLI ANEKAL TALUK BENGALURU DISTRICT - 562107 9 . SRI GOVINDARAJ S/O JAYARAMAIAH AGED ABOUT45YEARS, EX DIRETOR, ANEKAL ROAD ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. 10 . SRI. B.K. RANGASWAMY S/O KADAPPA, AGED ABOUT41YEARS, EX DIRETOR, BALAGARANAHALLI VILLAGE, NERALURU POST, ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU - 562107. PETITIONERS (BY SRI JAYAKUMAR S PATIL, SENIOR COUNSEL FOR SRI VARUN JAYAKUMAR PATIL, ADVOCATE) 7 AND1. THE STATE OF KARNATAKA DEPARTMENT OF CO-OPERATION, M S BUILDING, BANGALORE - 560001 REPRESENTED BY ITS SECRETARY. 2 . THE REGISTRAR OF COOPERATIVE SOCIETIES NO.1, ALI ASKAR ROAD, BANGALORE - 560052. 3 . THE DEPUTY REGISTRAR CO-OPERATIVE SOCIETIES3D CIRCLE, BANGALORE DISTRICT NO.146, SAHAKARA SOUDHA2D FLOOR, 8TH CROSS, 3RD MAIN ROAD, MARGOSA ROAD MALLESHWARAM BANGALORE - 560003 4 . THE STATE CO-OPERATIVE ELECTION AUTHORITY3D FLOOR TTMC A BLOCK, SHANTHINAGAR, BANGALORE - 560027 REPRESENTED BY ITS SECRETARY. 5 . THE JAYABHARATHI EDUCATION CO-OPERATIVE SOCIETY LTD., ATTIBELE HOBLI, ANEKAL TALUK, BENGALURU DISTRICT - 562 107 REPRESENTED BY ITS SECRETARY REGISTERED UNDER KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959 6 . THE RETURNIN OFFICER/CO-OPERATIVE DEVELOPMENT OFFICER JAYABHRATHI EDUCATION CO-OPERATIVE SOCIETY LTD., ATTIBELE HOBLI, ANEKAL TALUK8BENGALURU DISTRICT - 562107 RESPONDENTS (BY SMT PRATHIMA HONNAPURA, AAG A/W SRI SIDHARTH BABURAO, AGA FOR R1, R2, R3 & R6 SRI T L KIRAN KUMAR, ADVOCATE FOR R4 SRI D K SRIRAMAPPA, ADVOCATE FOR R5) THIS WP IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED PROCEEDINGS /

ORDER

BEARING No.DRB-3 / CHUNAVANE / RI.A-47/2023-24 DATED0809/2023 PASSED BY R3 VIDE ANNEXURE-J AND ETC. THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR

ORDER
S ON2711.2023 COMING ON FOR 'PRONOUNCEMENT OF

ORDER
' THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER
The reliefs sought for by the petitioners in WP No.20352/2023 are as under: i) Issue a Writ of Certiorari quashing Annexure-C in No.DRB-3/Chunavane/Re. ah-47/2023-24 dated 08.09.2023 issued by the 3rd respondent with drawing the Calendar of Events dated 03.07.2023 issued as per Annexure-A fixing date of Election as 15.09.2023 to the 5th respondent society. ii) Issue a Writ of Mandamus to the respondents No.2 to 4 directing to conduct and complete the Elections to 5th respondent society in terms of scheduled Calendar of Events issued as per Annexure-A dated 03.07.2023 fixing date of 9 Election as 15.09.2023 to the 5th respondent society. iii) Issue any other incidental or consequential relief/s as deemed fit in the facts and circumstances of the case and in aid of the main relief sought for, in the interest of justice and equity.

2. The reliefs sought for by the petitioners in WP.No.20838/2023 are as under: a) To issue a writ of certiorari quashing the impugned proceedings/Order bearing No.DRB- 3/chunavane/RI.A-47/2023-24 dated 08.09.2023 passed by Respondent No.3 vide Annexure J in the interest of justice and equity. b) Issue a writ of mandamus directing the Respondent No.6 to conduct the election as per notification/calendar of events issued at Annexure- H from the stage at which it was interfered with or in the alternative direct the Respondent No.6 to reschedule the dates and conduct of election to Respondent No.5 society immediately before the expiry of the term of Petitioners in the interest of justice and equity. c) Issue a writ of mandamus directing the Respondents not to take any action against the petitioners till the elections to Respondent No.5 society are held for the term 2023 to 2028, in the interest of justice and equity. d) Issue such other order or direction

as this Honble Court deems fit under the circumstances of the case in the interest of justice and equity. 10 3. The relevant facts necessary for consideration of the present writ petitions are that the election to the fifth respondent - society was held on 15.9.2018. The CEO of the society vide letter dated 15.2.2023 submitted draft list of voters to the District Election Officer and vide letter dated 27.6.2023 requested the District Election Officer to appoint a Returning Officer. Vide communication dated 3.7.2023, the District Election Officer appoints the Returning Officer and a voter list Verification Officer. Vide order dated 11.8.2023 a Special Officer has been appointed under Section 31 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the Act). On 29.8.2023 the Verification Officer submits a verified voter list to the District Election Officer, which is approved by the District Election Officer on 30.8.2023. Thereafter, on 31.8.2023, the Returning Officer issued the calendar of events. Vide communication dated 8.9.2023, the District Election Officer directs the Returning Officer to postpone the election. Being aggrieved, the present petitions are filed. 11

4. Learned Senior Counsel Sri Jayakumar S.Patil and Sri D.R.Ravishankar, appearing for the petitioners in the writ petitions submit that once the calendar of events have been issued on 31.8.2023, it is not open to the authorities to postpone the election and more so, in the present case where the District Election Officer has directed the Returning Officer to postpone the same. It is further submitted that once the calendar of events is issued, the District Election Officer loses his jurisdiction to interfere with the election process and hence, the reliefs sought for in the present writ petitions are required to be granted. Learned Senior counsels also made submissions as to the motive and the reason behind postponing of the election alleging that there is interference by the State authorities at the instance of the persons inimical to the petitioners. In support of their contentions, the learned Senior Counsels rely on various judgments which shall be considered during the course of this order. 12

5. Learned Additional Advocate General, Smt.Prathima Honnapura appearing for the official respondents submits that the decision of the District Election Officer to postpone the election and a direction in that regard being made to the Returning Officer is justified having regard to the fact that the society has failed in complying

with the mandatory stipulations contained under Rule 13D(2-A) of the Karnataka Co- operative Societies Rules, 1960 (hereinafter referred to as the Rules) and the persons who are required to cast their votes in the elections to the fifth respondent - society have not been clearly identified in a manner known to law.

6. An impleading application is filed in IA.No.3/2023 and it is the contention of the impleading applicants that they are also the members of the society and they seek to justify the stand taken by the State authorities.

7. Learned Senior Counsel Sri K.N.Phanindra appearing for the impleading applicants justifying the 13 order for postponement of election submits that the draft voter list that has been submitted by the society does not contain the entire list of voters who are required to cast their votes in the election to the fifth respondent - society and the entire process that is sought to be undertaken is illegal and hence, deferment of the election is just and proper. Various allegations have also been made by the impleading applicants that the process of election to the society is riddled with political interference and hence, the election is sought to be held without the requisite voters being listed in the eligible voters list.

8. Learned Counsel for the Election Authority, Sri T.L.Kiran Kumar justifying the action of postponing the elections and referring to various provisions of the Act, submits that the society itself having created a situation where the voters list has not been prepared in accordance the provisions of the Act and Rules and more particularly Rule 13D(2-A) of the Rules, the petitioners being its Board members are not entitled to seek for the reliefs in the present petition. He further submits that out of a total of 2716 members, there are 883 14 eligible members and 1833 ineligible members. Hence, if the elections are conducted without notifying the ineligible members as contemplated under Rule 13D(2-A) of the Rules, the election that would be conducted would not be in the spirit of the democratic purpose and in the interest of the society.

9. Learned Additional Advocate General appearing for the official respondents and the learned Senior Counsel appearing for the impleading applicants have relied on various judgments, which shall be considered during the course of this order.

10. Although various submissions are made with regard to the merits of the process, a primary contention putforth by the petitioners is the jurisdiction of the District Election Officer in issuing the order dated 8.9.2023 directing the Returning Officer to postpone the elections. Hence, the said contention going to the root of the matter wherein, the authority of the District Election Officer to issue the order dated 8.9.2023 itself being questioned, the said aspect is first considered. 15

11. Before the contentions putforth by the learned counsel for the parties are considered, it is relevant to notice the relevant statutory provisions.

12. Section 28A(4) of the Act stipulates that the term of office of the board shall be 5 years from the date of election and they shall be deemed to have vacated the office on completion of the said term.

13. Section 28B of the Act reads as follows:

28. . 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 39A, 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 28A, 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 cooperative credit structure. 16 14. It is forthcoming that Section 28B of the Act casts an obligation on the Board of to make arrangements for the election and if there is failure to make arrangements, they shall be deemed to have vacated their office on the last date of the term and a further disqualification is prescribed by virtue of Section 28B(2) of the Act disqualifying the members from election as members of the Board for a period of 5 years from the expiry of their term.

15. Section 39AA(15) of the Act stipulates as follows: 39AA Co-operative Election Commission.- (15)The board of every cooperative society shall,- (a) inform the cooperative 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 Cooperative Election Commission; and (c) provide all necessary help, assistance and cooperation for the smooth preparation of electoral rolls for and the conduct of elections. 17 16. Rule 13D(2-A) of the Rules stipulates as follows: 13(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 cooperative society shall prepare notice in respect of members not attending three out of the last five annual general body meetings and members not utilizing such minimum services or facilities in a co-operative year as specified in the bye laws for three consecutive cooperative 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 cooperative 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 utilized 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. 18 (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.

17. Rule 13D(2), (3), (4) and (5) read as follows: 13D(2) The Co-operative Election Authority shall, on receipt of such reports from the Election Officer of the district, 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 cooperative societies indicating the name and address of each society. 13(D)(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, a list of defaulters, a list of members whose repayments will fall due, before the election date clear fifty days; (b) for calling objection, if any, calling upon the defaulter members to repay the amounts due to the Cooperative 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 on or before fifteen clear days prior to the date of election. 19 13D(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. 13D(5) The chief executive of every cooperative society shall prepare(i) a draft list of the eligible members or representatives and delegates with right to vote,(ii) the 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.

18. It is forthcoming from an overview of the aforementioned provisions that Section 39-AA(15)(a) of the Act casts an obligation on the Board of every Co- 20 operative Society to 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. Further, Rule 13-D(2-A) of the Rules prescribes the steps to be taken for publication of the voters list and specifically the steps to be taken with regard to the finalizing the list

of eligible and ineligible voters. In that regard, it is relevant to note that Rule 13-D(2-A)(i) to (iv) of the Rules casts the obligation on the Chief Executive Officer of every society and Rule 13-D(2-A)(v) and (vi) of the Rules casts the obligation on the Election Officer.

19. It is further pertinent to note that unless the steps as contemplated under Sub-Rules (i) to (iv) of Rule 13D(2-A) are taken, it is not possible for the Election Authority to complete the steps as contemplated under Sub-Rules (v) and (vi) of the said Rule 13D(2-A).

20. In the present case, the Chief Executive Officer of Respondent No.5 - Society vide communication bearing No.SJBECS:Mem/list/89/2022-23 dated 15.02.2023 21 intimated the third respondent that the term comes to an end in the month of September 2023.

21. Although the intimation as required under Section 39AA(15)(a) of the Act has been sent, there is nothing forthcoming with regard to the compliances by the society as contemplated under Rule 13D(2-A)(i) to (iv) of the Rules, which were required to be done prior to the intimation as contemplated under Section 39AA(15)(a) of the Act has been done.

22. It is relevant to note that under Section 28B(1) of the Act, the Board is required to conduct the elections before the expiry of the term and under Section 39-AA(15)(c) the Board of the society shall provide all necessary help, assistance and co-operation for the smooth preparation of the electoral rolls and conduct of the elections. Further, under Section 29G(4), the CEO of the society,subject to the control, general supervision and control of the Board is also a custodian of all the records and is required to perform such other duties and exercise powers under the Act and Rules. Hence, an obligation is 22 cast on the Board of the society to initiate the requisite steps to ensure the smooth and timely conduct of the elections.

23. Further, Rule 13-D(1) of the Rules stipulates that 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 Board to the Co- operative Election Authority and Rule 13-D(2) of the Rules stipulates that the Co-operative Election Authority on receipt of such reports from the Election Authority published the calendar of events for preparation of electoral Rolls as directed by the Co-operative Election Authority. The measures to be taken by the Chief Executive of every Co-operative Society is stipulated in sub Rule (5) of Rule 13-D of the Rules.

24. The appointment of the Returning Officer is stipulated in Rule 13-E of the Rules. Rule 14 of the Rules prescribes the notification of general elections which reads as follows:

23. 14. Notification of General Election. (1) The Election Officer shall with the approval of the CEA notify in Form XI the intended election referred to in Section 39AA. (2) The Election Officer shall in such notification specify.- (i) the last date for making nominations which shall be the seventh clear day before the date of election. (ii) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations. (iii) the last date for the withdrawal of candidatures, which shall be the fifth clear day before the date of election. (iv) the date on which the poll shall, if necessary, be taken and the hours during which the poll shall be taken; and (v) the date before which the election shall be completed. (3) (a) On the issue of the notification under sub- rule (1), the returning officer shall give a public notice of the intended election in Form XII by displaying it on the notice board in his office and in the office of the cooperative society and at such other places as he deems necessary, inviting nominations for such election.

25. Having regard to the statutory stipulation as noticed above, it is clear in the present case that the Society has not taken the requisite steps as contemplated under Rule 13D(2-A)(i) to (iv). It is also relevant to note 24 that when the intimation has been given by the Society to the Co-operative Election Authority as contemplated under Section 39AA(15)(a) of the Act, the said authority has not ascertained with the Society with regard to the compliance by it of the stipulations as required under Rule 13D(2-A)(i) to (iv) of the Rules.

26. It would be appropriate that in all cases, when an intimation is received from the Society regarding expiry of the term of the Board as contemplated under Section 39AA (15)(a) of the Act, the Election Authority calls upon the Society to ascertain as to whether the needful has been done by it as contemplated under Rule 13D(2-A)(i) to (iv) of the Rules which would then, at the earliest point of time enable the Election Authority to do the needful in the matter so as to avoid a situation of the present nature where action is being taken after the calendar of events has been notified.

27. It is relevant to note that in the present case, the District Election Officer appointed the Returning Officer and voters list Verification Officer on 03.07.2023. 25 On 29.08.2023, the Verification Officer submits that the verified voter list to the District Election Officer. On 30.08.2023, the District Election Officer approved the final voters list. Thereafter, on 31.8.2023, the Returning Officer issues the calendar of events. Subsequently, vide communication bearing No.DRB- 3/Ele/Ri-Aa-47/2023-24, dated 08.09.2023 the District Election Officer directs the Returning Officer to postpone the elections on the ground that Rule 13-D(2- A) has not been followed by preparing the voters list, which is impugned in the present writ petition.

28. In the present case, the Returning Officer has issued a communication dated 13.08.2023 which specifically stipulates that it is issued in Form XII in compliance of Rule 14(3) of the Rules. Hence, it is clear that vide the said communication dated 31.08.2023, the process of elections has already commenced. 26

29. It is also relevant to note the circumstances under which Rule 14 is required to operate, inasmuch as Rule14-A to Rule 14-Y contemplates various stages in the election process commencing from the presentation of nomination papers till the declaration of results. Thereafter, Rule 14-Z is with regard to grant of Certificate of Election to the elected candidates. The other provisions of Rule 14 also are with regard to conduct of the elections, which are solely in the realm of the Returning Officer.

30. Hence, it is clear from the aforementioned that by issuance of the Communication dated 31.8.2023 which is admittedly under Form XII as contemplated under Rule 14(3-A) of the Rules, the process of election has already

commenced. Once the process of election is commenced, the same is not required to be stopped in any manner. In that regard, it is relevant to notice the following judgments. 27 i) In the case of Kishansing Tomar v. Municipal Corpn. Of the City of Ahmedabad1, a Constitution Bench of the Hon'ble Supreme Court, considering a challenge made in respect of elections for constituting the Municipal Corporation in the City of Ahmedabad reiterating the proposition that the elections are required to be held within the period stipulated in the statute and there should not be any delay in the constitution of any municipality has held as follows: 20. It is true that the Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

21. . Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. . ii) In the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak 1 (2006) 8 SCC35228 Sanstha v. State of Maharashtra2 , the Hon'ble Supreme Court was considering a case wherein, elections to a society registered under the Maharashtra Co- operative Societies Act which was postponed. Dealing with the same, the Hon'ble Supreme Court has held as follows: 7. . 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. .

12. In view of our finding that preparation of the electoral roll being 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 the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result 2 (2001) 8 SCC50929 thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal. (emphasis supplied) iii) In the case of Gunjahalli Nagappa v. State of Karnataka3 a Division Bench of this Court was considering a challenge made pursuant to the State Government canceling the calendar of events published by the Returning Officer in respect of the elections to the Gangavathi Town Municipal Council conducted under the provisions of the Karnataka Municipalities Act, 1964. The Government order was issued under Rule 75 of the Karnataka Municipalities (Election of Councillors) Rules, 1965, which contained the power of superintendence and control. This Court considering the same, held as follows: 9. . The power of superintendence, direction and control conferred on the State Govt. by Rule 75 cannot, in our opinion, be construed as including the power to cancel a calendar of events validly issued by the Returning Officer or to issue direction to adjourn the date of poll. The impugned 3 (1975) 2 Kant LJ77- 1975 SCC OnLine Kar 19 30 order, to the extent it purports to cancel the calendar of events issued by the Returning Officer on 7-12-1974, has therefore, to be set aside. iii)(a) The said order of the Division Bench was challenged by the State Government before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of The State of Karnataka v. Gunjahalli Nagappa4 has held as follows: 5. . The power of superintendence, direction and control conferred on the State Govt. by Rule 75 cannot, in our opinion, be construed as including the power to cancel a calendar of events validly issued by the Returning Officer or to issue direction to adjourn the date of poll. The impugned order, to the extent it purports to cancel the calendar of events issued by the Returning Officer on 7-12-1974, has therefore, to be set aside. .

6. . To test its validity it is necessary to understand the nature of the defect from which, according to the finding of the Returning Officer, the divisional lists of voters suffered and see whether that defect brings the case within the scope and ambit of

Rule 75.

10. The only defect - if at all it can be called a defect - which the Returning Officer noticed on physical verification was that the voters shown in the electoral roll as residing in the territorial area of one division were in fact residing in another. But, as already pointed out above, that cannot be regarded as a defect in the division-wise 4 (1976) 1 SCC20431 lists of voters and it would not stamp them with the vice of not being in conformity with the requirements of the Act. The State Government was, therefore, in any view of the matter, not entitled to make the impugned order under Rule 75 on the ground that the divisional lists of voters were defective and the election held on the basis of such lists of voters would not be in accordance with the provisions of the Act. What the State Government did by making the impugned order was to interfere with the election process which was going on in accordance with law and that was clearly not permissible on any interpretation of Rule 75. (emphasis supplied) iv) A Division Bench of this Court in the case of Kumar & Ors., v. State of Karnataka & Ors., 5 was dealing with a fact situation wherein, the elections that were fixed and the calendar of events were issued by the Election Officer under the provisions of the Act were deferred apprehending that there was a law and order situation. A learned Single Judge of this Court had quashed the deferment and directed the elections to be held from the stage where it was stopped. The Division Bench upheld the said decision of the learned Single Judge. 5 2008 SCC OnLine KAR49632 v) A coordinate Bench of this Court in the case of B.D.Manjunath & ors., v. State of Karnataka & Ors.,6 dealing with the elections to be held under the provisions of the Act, has held as follows: 28. .. Time and again, the Apex Court and this Court have laid down a well settled principles of law that once the election process is commenced, the question of postponement of election is not permissible. In the instant case also, after taking into consideration the status of the respective parties, it shows beyond reasonable doubt that, in majority of the cases, already election process is set in motion, the voters list had published, nomination papers has been filed and at that stage, the respective Returning Officers, after taking into consideration the clarification issued by the Government, have issued endorsements postponing the election and the same is not at all permissible, in view of the settled position of Jaw, laid down by the Supreme Court and this court. There is no justification for

the Government to invoke Section 39A(4) r/w 121 of the Co-operative Societies Act, to postpone the election in respect of the Societies to which calendar of events had already issued. vi) A coordinate Bench of this Court in the case of The Agricultural Processing Industrial & Commercial Co-op Society LTd., & Ors., v. The State of Karnataka 6 ILR 2005 KAR92733 & Ors., 7 dealing with an election conducted under the provisions of the Act has held as follows: 11. . when process of election has been set into motion by the State Co-operative Election Authority, said authority alone has got jurisdiction to stop or stall the election that too, in the contingencies that may arise as indicated under Rule 14-H to 14-J.

Contingencies indicated under these rules would clearly disclose as to when there can be postponement or adjournment of a poll or whether fresh poll can be held including countermanding of a election. Contingencies so prescribed are clear and specific. If contingencies prescribed thereunder are absent, authority of the co-operative election authority to postpone election would also be unavailable. .

12. In a democratic process, when the process of election of a society is set in to motion, it cannot be interjected by the authorities to their whims and fancies and on grounds alien to the statutory power. As already observed herein supra, under Rules 14-H to 14-J of the Rules, Election Authority alone has power for postponement of election and none else. As such, exercise of jurisdiction by third respondent directing 7th respondent to postpone the election is without authority of law. When election to 9th respondent - society has been commenced by issuance of calendar of events, same has to be taken to its logical end. As such, appropriate directions deserves to be issued in this regard and same is issued herein below. (emphasis supplied) vii) A coordinate Bench of this Court in the case of H.S.Raju & Ors., v. State of Karnataka & Ors.,8 7 WP Nos.13938-941/2019 c/w 10867/879/2019, order dated 15.10.2019 8 WP No.8502/2022 c/w 8477/2022, order dated 7.6.2022 34 relying on the judgment of the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha2 has held as follows: 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 Act4.

470. 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) xxxxxxxxx (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). XXXXXXXXXX (b). XXXXXXXXXXXX (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. 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 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 35 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. viii) In the case of Channaiah & Ors., v. State of Karnataka9, a coordinate Bench of this Court considering the elections held under the provisions of the Act, noticing the judgments of the Division Bench of this Court in the case of Gunjahalli Nagappa3 and the Hon'ble Supreme Court in the case of State of Karnataka4 and various other judgments has held as follows: 46. All the pronouncements of Courts lead to one irresistable conclusion that when once the election process has commenced it must continue in accordance with the calender of events. If the election process is interrupted by an interim order of Court or by an Authority and ultimately if it is found that such interruption was not called for then the election process shall continue in accordance with the calender of events originally announced and shall take off from the time when the process was

interrupted. The third question is answered accordingly. (emphasis supplied) 9 ILR 2000 KAR257236 31. It is vehemently sought to be contended on behalf of the official respondents as well as the impleading applicants that even if the election process has commenced, having regard to the fact the electoral rolls have not been properly drawn up, the authorities are justified in deferring the elections. It is further sought to be contended that the bar contained under the Representation of People Act, 1950, is not applicable to the societies registered under the State enactments.

32. With regard to the contention of the petitioners that the Election Officer has no jurisdiction to issue the communication dated 8.9.2023 in directing the Returning Officer to postpone the elections, it is contended by the State that the power exercised by the Election Officer being an administrative one and having regard to Section 21 of the General Clauses Act, 1897, the authority who issued the notification i.e., the Electoral Officer was empowered to defer the holding of the elections. It is further contended that when the statute prescribes an act to be done in a particular way, it has to be done in the 37 said manner and in no other manner. It is further contended that this Court should not set aside an order which appears to be illegal since the holding of elections at present would not be in the best interest of the democratic process in which the society was required to function.

33. In support of the contention that the function discharged while deferring the election is administrative in nature, learned Additional Advocate General relies on the judgment of the Hon'ble Supreme Court in the case of Indian National Congress (1) v. Institute of Social Welfare & Ors.,10. Further reliance is placed on Section 21 of the General Clauses Act, 1897 and on the judgment of the Hon'ble Supreme Court in the case of Shree Sidhbali Steels Ltd., v. State of U.P.11 to contend that the power to rescind the notification is inherent in the power to issue notification without any limitations or conditions. 10 (2002) 5 SCC68511 (2011) 3 SCC19338 34. The said contention putforth on behalf of the State and reliance placed on Section 21 of the General Clauses Act, 1897, will not aid the case of the official respondents in view of the fact that the calendar of events has been issued by the Returning Officer in Form XII in view of Rule 14(3-A) of the Rules, which is

consequent to the notification issued by the Election Officer in accordance with Rule 14(1) of the Rules. Subsequently, vide the order dated 8.9.2023 the Election Officer directs the Returning Officer to postpone the calendar of events, which is impermissible in law. As noticed hereinabove, once calendar of events is issued by a Returning Officer, the process of elections having begun, the powers exercisable by the Returning Officer are as stipulated under Rules 14A to 14Z of the Rules and there is no scope for interference in the same by other authorities as has been done in the present case.

35. It is also relevant to notice the contentions putforth on behalf of the petitioners in response to the 39 reliance placed under Section 21 of the General Clauses Act, 1897 wherein, it is contended that the power under said Section 21 cannot be used to vary, modify or rescind an election programme. Reliance in support of the said contention is placed on the judgment of a coordinate Bench of the Punjab and Haryana High Court in the case of Maghar Singh & anr., v. State of Punjab12 .

36. Reliance placed by the State on the judgment of a coordinate Bench of this court in the case of Nagaramgere Grama Panchayath, Challakere & ors., v. The State of Karnataka & Ors., 13 will not aid its case since the said decision is rendered in the background of the Covid 19 pandemic wherein, the term of the elected body had ended and the elections under the Karnataka Grama Swaraj and Panchayat Raj Act, 1993 (hereinafter referred to as the Act of 1993) were required to be conducted and an Administrator was appointed to various 12 CWP No.5283/1984, order dated 16.1.1985 13 WP No.8451/2020, order dated 29.6.2020 40 panchayaths. The facts of the said case are wholly inapplicable to the facts of the present case.

37. Reliance placed by the State on the judgment of a coordinate Bench of the Kerala High Court in the case of B.Mohanachandran Nair v. The State Co-Operative Election Commission14 will also not aid its case in view of the fact that the said judgment arose in a fact situation wherein, elections to the Board of Directors of the Co- operative Bank was being conducted and Electoral Officer was appointed, consequent to which the voters list having been published, date was fixed for filing of the nominations. At that stage a writ petition was filed for

appointing an Advocate Commissioner to oversee the further proceedings in the elections apprehending interference by the State authorities. The Kerala High Court dismissed the writ petition holding, inter alia, that it was the duty of the Election Commission to take steps to conduct a fair election. 14 2013 SCC OnLine Ker 24275 41 38. The contention putforth by the impleading applicants and the judgments relied on by them with regard to the contention that when a statute provides that a thing to be done in a particular manner the same has to be done in the said manner, will not aid its case since the scope and effect of Rule 13D(2-A) of the Rules has been considered along with the powers of the Electoral Officer and the Returning Officer as stipulated under the Rules.

39. The judgment in the case of Mr.R.Karuppan, Advocate v. Mr.P.K.Rajagopal, Secretary Advocates Associaiton, High Court15 rendered by a coordinate Bench of the Madras High Court relied on by the impleading applicants to contend that the elections conducted under the Societies Registration Act and the Rules framed thereunder are governed by the said Act and Rules and elections governed under the Representation of People Act, 1950, cannot be extended to the same, will not aid its case since the judgments 15 2001 (3) CTC48642 rendered by this Court are specifically with regard to the provisions of the Act and have been considered in this order.

40. The reliance placed by the impleading applicants on the judgment of a coordinate Bench of this Court in the case of C.M.Nagaraju & ors., v. The Karnataka State Election Commission & Ors.,16 will not also aid its case since in the said case a finding was recorded that in the matter of elections being conducted under the Act of 1993 with respect to Chikkajala Grama Panchayath was declared invalid by the State Election Commission (SEC) wherein, it was noticed that the Village Accountant got prepared and printed the entire electoral roll different from the approved electoral roll and hence, a finding was recorded that free and fair election was vitiated. Hence, this Court did not interfere with the power exercised by the State Election Commission in the facts of the said case. The said judgment will not aid the case of the impleading applicants as the fact situation is 16 WP No.14847/2020, order dated 15.3.2021 43 entirely different from the fact situation arising in the present case.

41. The judgments in the cases of Chandra Singh & ors., v. State of Rajasthan & Anr.,17 and Bharatiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel & Anr.,18 are relied on by the impleading applicants to contend that the Courts should not set aside an order, which appears to be illegal or its effect is to revive other illegal orders. The scope and effect of the orders passed by the Electoral officer and the Returning Officer have been considered having regard to the provisions of the Act and Rules. Hence, the said judgments arising from completely different fact situations will not aid the case of the impleading applicants.

42. The contention putforth by the official respondents as well as the impleading applicants is that a coordinate Bench of this Court in the case of Kumar M. State of Karnataka19, considering a similar fact situation 17 2003(6) SCC54518 2012 (9) SCC31019 WP No.20333/2023 & c/w matters, Order dated 10.10.2023. 44 did not grant the relief sought for by the petitioners and hence, a similar view is required to be taken in the present writ petitions also.

43. In response to the said submission, learned Senior Counsels for the petitioners would draw a distinction between the fact situation arising in the case of Kumar M1 and contend that in the said case the calendar of events in Form XII as per Rule 14(3)(a) had not been issued and what was issued was a notification in Form XI as per Rule 14(1) and hence, occasion did not arise for consideration as to whether the Election Officer could direct the Returning Officer to interfere with the election process.

44. It is further submitted by the official respondents that the order passed in the case of Kumar M1 is a subject matter in WA No.1348/2023 and the said writ appeal having been heard and judgment is awaited, it is just and proper to wait for the decision in the said writ appeal. 45

45. However, learned Senior Counsels appearing for the petitioners contest the said submission and submit that the fact situation in the present cases being entirely different from the matter pending before the Division Bench, the question of awaiting the decision in the writ appeal does not arise.

46. The distinction drawn by the petitioners from the case of Kumar M19 is required to be accepted in view of the fact that in the said case the calendar of events in Form XII in accordance with Rule 3(a) had not been issued and what had been issued in the said case was in Form XI in accordance with Rule 14(1) by the Election Officer. Hence, awaiting the decision of the Division Bench in WA No.1348/2023 also does not arise.

47. In view of the aforementioned, the process of election having been commenced with the issuance of the communication dated 31.8.2023 in Form No.XII in compliance of Rule 14(3) of the Rules by the Returning Officer, the same cannot be deferred/postponed by the Returning Officer acting in compliance of the direction 46 issued by the Electoral officer vide communication dated 8.9.2023. Hence, the issuance of the said communication dated 8.9.2023 is liable to be interfered with. In the event any ineligible voter/s is aggrieved, as held in the case of H.S.Raju8, it is open for him/to them to take recourse to Section 70 of the Act.

48. The process of elections having been commenced, it is just and proper that the said process be completed in the manner stipulated under the communication dated 31.8.2023 wherein, the calendar of events have been issued and the same is required to be continued from the stage where it was stopped. In view of the fact that in the calendar of events, the nomination papers were required to be filed between 1.9.2023 and 8.9.2023 and the order postponing the elections having been passed on 8.9.2023, it is just and expedient that another day be granted for filing of the nomination papers as stipulated at Sl.No.1 of the calendar of events.

49. In view of the aforementioned, the following order is passed:

47.

ORDER

i) The writ petition is allowed; ii) The order bearing No.DRB-3/Chunavane/RI.A-47/2023-24 dated 8.9.2023 issued by the third respondent is quashed; iii) A writ of mandamus is issued to the sixth respondent -Returning Officer to continue with the process of elections in terms of the calendar of events that was published on 31.8.2023 from the stage it was stopped and issue fresh calendar of events

indicating another day for filing of nominations. The Returning Officer shall complete rest of the stages in the election process shall be in accordance with Sl.Nos.2 to 9 of the calendar of events as per the communication dated 31.8.2023, and complete the election process to the fifth respondent - society in accordance with law; iv) The calendar of events to be issued as ordered herein by the Returning Officer within 5 days of receipt of a copy of this order; 48 v) The Election Authority shall do the needful with regard to the observations made at para No.26 hereinabove in respect of all future cases where the elections are required to be scheduled; vi) In view of the writ petition being allowed, all interim applications stand disposed off. Sd/- JUDGE nd/BS

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