

Uday Kumar vs the State of Karnataka

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Court : Karnataka Orders

Decided On : Feb-03-2025

Judge : K.S. Hemalekha

Appeal No. : WP/1725/2025

Appellant : Uday Kumar

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF FEBRUARY, 2025 BEFORE THE
HON'BLE MRS JUSTICE K.S. HEMALEKHA WRIT PETITION NO. 1725
OF 2025 (CS-EL/M) BETWEEN:

1. UDAY KUMAR S/O DHARMARAJA, AGED ABOUT 52 YEARS
MEMBER NO.976
2. HEMAVATHI W/O GANGADHARA GOWDA, AGED ABOUT 61
YEARS MEMBER NO. 1040
3. E. RAMANNA POOJARI

S/O ANNI POOJARY, AGED ABOUT 57 YEARS MEMBER NO.1166 Digitally signed by MAHALAKSHMI B M Location: HIGH 4. ABDUL KHADRI COURT OF KARNATAKA S/O ISMAIL, AGED ABOUT 70 YEARS MEMBER NO.1407

5. CHEENKRA GOWDA S/O AMUNI GOWDA, AGED ABOUT 47 YEARS MEMBER NO. 1417

6. HAMEED BYARI S/O ABDUL RAHIMAN, -2- AGED ABOUT 71 YEARS MEMBER NO. 1483

7. SEETHA W/O SANJEEVA POOJARY, AGED ABOUT 52 YEARS MEMBER NO. 1516

8. KUSUMA W/O DEVARAJA GOWDA AGED ABOUT 48 YEARS MEMBER NO. 1760

9. THOMAS SM S/O MATHAYIS AGED ABOUT 56 YEARS MEMBER NO. 1764

10. SURESH S/O JATTI POOJARY AGED ABOUT 48 YEARS MEMBER NO.1771

11. BABU MESTHRI S/O. MARAPPA AGED ABOUT 58 YEARS MEMBER NO.1791

12. DOOJA S/O THABURA AGED ABOUT 67 YEARS MEMBER NO. 1912

13. SHRI. BIPATHUMA W/O MAHAMMAD AGED ABOUT 82 YEARS -3- MEMBER NO. 1917

14. NARAYANA GOWDA S/O KUNJAA GOWDA AGE 67 YEARS MEMBER NO. 1647

15. SHRIMATHI SAKINA W/O ISUBU BYARI AGED ABOUT 48 YEARS MEMBER NO. 1998

16. TERESA YANE P.U GRISA W/O C.J JOSEPH AGED ABOUT 52 YEARS MEMBER NO.2151

17. SHRIMATHI. YAMUNA W/O BALAKRISHNA AGED ABOUT 46 YEARS
MEMBER NO.2186
18. PADMANABHA POOJARY S/O JATHI POOJARY AGED ABOUT 50 YEARS
MEMBER NO. 2191
19. JOHARA W/O UMARABBA AGED ABOUT 53 YEARS MEMBER NO.2295
20. RUKIYA W/O ISUBU DARKHASU AGED ABOUT 55 YEARS MEMBER NO.
2308 -4-
21. SHRI. RAJANI S/O SHRIDHARA POOJARY AGED ABOUT 50 YEARS
MEMBER NO.2342
22. SANATH KUMAR D/O PADMARAJA POOVANI, AGED ABOUT 48 YEARS
MEMBER NO. 2363
23. AVVAMMA S/O MAHAMMAD MAIKE AGED ABOUT 66 YEARS MEMBER
NO.2370
24. SHRI. JALAJA W/O BABU GOWDA AGED ABOUT 55 YEARS MEMBER NO.
2372
25. SAVITHA D/O KRISHNAPPA GOWDA AGED ABOUT 32 YEARS MEMBER
NO. 2375
26. JORGE JAN S/O AITH JAN AGED ABOUT 55 YEARS MEMBER NO.2396
27. MOHANA NAIKA S/O SESAPPA NAIKA AGED ABOUT 43 YEARS MEMBER
NO. 2430 -5-
28. ABDUL KHADAR S/O ISUBU BYARI AGED ABOUT 47 YEARS, MEMBER
NO. 2463
29. ABDUL KHADAR S/O HASANABBA BYARI AGED ABOUT 53 YEARS
MEMBER NO. 2467

30. PHILOMINA LOBO W/O GABRIYAL MORASA AGED ABOUT 52 YEARS
MEMBER NO. 2557
31. STANI LOBO W/O. JERNI LOBO AGE- 49 YEARS MEMBER NO. 2535
32. ANJALIN W/O MORAS AGED ABOUT 42 YEARS MEMBER NO.2599
33. ABDUL RASHEED S/O SULAIMAN AGE 30 YEARS MEMBER NO.2633
34. SADANANDA S/O SANJEEVA GOWDA AGED ABOUT 32 YEARS MEMBER
NO.2660 -6-
35. SHRI. HARINAKSHI W/O MOHANANDA AGED ABOUT 38 YEARS MEMBER
NO.2695
36. VINUTHA SILVIYA PINTO S/O ISIDAR LEO PINTO AGED ABOUT 38 YEARS
MEMBER NO. 2728
37. BIPATHUMA W/O M YAKOOB AGED ABOUT 62 YEARS MEMBER NO.2733
38. REVATHI W/O KRISHNAPPA POOJARY AGED ABOUT 51 YEARS
MEMBER NO.2742
39. MALLIKA W/O PRASANTH AGE- 37 YEARS MEMBER NO.2745
40. SHUBHA LATHA W/O SANJEEVA M. D AGED ABOUT YEARS MEMBER
NO.2772
41. BIPATHUMA W/O MOHIDEEN KUNJI AGED ABOUT 42 YEARS MEMBER
NO.2812 -7-
42. MERI W/O FANCIS PT AGED ABOUT 48 YEARS MEMBER NO.2821
43. HABEEB W/O MAHAMMAD AGED ABOUT 42 YEARS MEMBER NO. 2588
44. DIVAKARA ACHARYA S/O SANJEEVA ACHARYA AGE 36 YEARS MEMBER
NO. 3738
45. NONNAYYA S/O RUMANI AGE 45 YEARS MEMBER NO. 2453

46. RAVI POOJARY S/O NAGAMMA KOYYUR AGE 53 YEARS MEMBER NO. 1864
47. GANGADARA S/O PAKEERA HARPALA AGE 50 YEARS MEMBER NO. 3443
48. VARISENA S/O CHANDRA RAJ HEDGE KALENJA HOUSE MEMBER NO. 1765 -8-
49. SHEELAVATHI W/O RAVIRAJ MALLA ANTHARA KALENJA MEMBER NO. 842
50. MALATHI W/O PADMARAJ JAIN AGED ABOUT 60 YEARS MEMBER NO. 1188
51. KRISHNAPPA POOJARY S/O THUMUNI POOJARY AGED ABOUT 58 YEARS MEMBER NO. 1573
52. MARIYAMMA W/O ABBAS BYARI AGED ABOUT 60 YEARS MEMBER NO. 1520
53. BIPATHUMA W/O ABDUL AGE 65 YEARS
54. SADASHIVA S/O. T.F. KARTHIKEYA AGED ABOUT 64 YEARS. MEMBER NO. 1677
55. VISHWANATHA M.U S/O SOMA GOWDA U AGED ABOUT 50 YEARS MEMBER NO.1752
56. ISMAIL S/O. ABDUL KHADAR -9- AGED ABOUT 57 YEARS MEMBER NO. 1762
57. KESHAHA GOWDA S/O SHIVAPPA AGED ABOUT 52 YEARS MEMBER NO. 1873
58. INTHIYAZ S/O ABBAS AGE- 42 YEARS MEMBER NO. 2087

59. SHASHIDHARA S/O MAHABALA POOJARY AGE 32 YEARS MEMBER NO.2212
60. SMT. SARAMMA S/O. K.P. ABDUL KADRI AGED ABOUT 60 YEARS MEMBER NO. 2239
61. SHRI DUGGAMMA W/O THANIYAPPA AGED ABOUT 58 YEARS MEMBER NO.2244
62. ABDUL SATTAR S/O MAHAMMAD AGED ABOUT 45 YEARS MEMBER NO. 2261
63. SHAMMI BEGUM W/O ABBAS AGED ABOUT 46 YEARS - 10 - MEMBER NO.2378
64. BIPATHUMA W/O HASANABBA AGED ABOUT 38 YEARS MEMBER NO.2426
65. JANSI W/O BINO AGE 38 YEARS MEMBER NO. 2629
66. SHEKHARA S/O CHENNAPPA AGE 45 YEARS MEMBER NO.2674
67. SHRI. ARUNI K W/O SHEKHARA AGED ABOUT 38 YEARS MEMBER NO. 2685
68. SRI. UMAVATHI W/O LOKAYYA GOWDA AGED ABOUT 52 YEARS MEMBER NO. 2700
69. VANAJA W/O ANANTHA AGED ABOUT 50 YEARS. MEMBER NO.2724
70. LALITHA W/O SUNDARA AGED ABOUT 55 YEARS MEMBER NO.2725 - 11 -
71. RONALD PINTO S/O JOHN PINTO AGED ABOUT 48 YEARS MEMBER NO.2731
72. SHIVAPPA S/O. MADA AGED ABOUT 53 YEARS MEMBER NO. 2760

ALL ARE MEMBERS OF KOYYURU PRIMARY AGRICULTURAL CREDIT COOPERATIVE SOCIETY LTD., A SOCIETY REGISTERED UNDER KARNATAKA CO-OPERATIVE SOCIETIES ACT 1959. KOYYURU POST, BELTHANGADY TALUK DAKSHINA KANNADA DISTRICT - 574 214. PETITIONERS (BY SRI. RAKSHITH KUMAR, ADVOCATE) AND:

1. THE STATE OF KARNATAKA DEPARTMENT OF CO-OPERATION, MS BUILDING, BANGALORE - 560 001, REPRESENTED BY ITS PRINCIPAL SECRETARY.

2. THE STATE CO-OPERATIVE ELECTION AUTHORITY, 3RD FLOOR, TTMC A BLOCK, K.H. ROAD, SHANTHINAGAR, BANGALORE - 560 027, REPRESENTED BY ITS SECRETARY.

3. KOYYURU PRIMARY AGRICULTURAL CREDIT COOPERATIVE SOCIETY LTD., A SOCIETY REGISTERED UNDER KARNATAKA CO-OPERATIVE SOCIETIES ACT 1959. - 12 - KOYYURU POST, BELTHANGADY TALUK DAKSHINA KANNADA DISTRICT - 574 214, REPRESENTED BY ITS CEO.

4. THE RETURNING OFFICER KOYYURU PRIMARY AGRICULTURAL CREDIT COOPERATIVE SOCIETY LTD., KOYYURU POST, BELTHANGADY TALUK, DAKSHINA KANNADA DISTRICT - 574 214

RESPONDENTS (BY SRI. YOGESH D. NAIK, AGA FOR R1 AND R4; SRI. T.L. KIRAN KUMAR, ADVOCATE FOR R2) THIS W.P. IS FILED UNDER ARTICLES 226 ND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO INCLUDE THE NAMES OF THESE PETITIONERS IN THE FINAL ELIGIBLE VOTERS LIST AND PERMIT THE PETITIONERS TO CAST THEIR VOTES IN THE UPCOMING ELECTIONS OF THE R-3 SOCIETY WHICH IS SCHEDULED TO BE HELD ON 25.01.2025 AND ETC. THIS PETITION, COMING ON FOR ORDERS, THIS DAY,

ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE K.S. HEMALEKHA - 13 -

ORAL ORDER

Petitioners are seeking to direct respondents to include the names of petitioners in the eligible voters list and permit the petitioners to cast their votes in the election of respondent No.3-Society, which was scheduled to be held on 25.01.2025.

2. This Court, by way of interim arrangement on

24.01.2025, permitted the petitioners to cast their votes in the ensuing elections scheduled to be held on 25.01.2025 to the Board of Directors of respondent No.3-Society subject to the final outcome of this writ petition.

3. The challenge in this writ petition is on the premise that notice under Rule 13 of the Karnataka Co- Operative Societies Rules, 1960 (the KCS Rules, 1960 for short) is not issued.

4. Rule 13-D of the KCS Rules, 1960 reads as under: - 14 - 13-D. Preparation of electoral rolls and

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

(a) the name and address of the society;

(b) number of elected directors of the board;

(c) the date of expiry of the term of office of the board;

(d) the proposed places where the elections are to be held or other particulars as required by the Co-operative Election Authority.

(2) The Co-operative Election Authority

shall, on receipt of such reports from the Election Officer, containing the list of cooperative societies where elections are due, publish the calendar of events for

the preparation of electoral rolls and the conduct of elections of the boards of the cooperative 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.- - 15 -

(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 utilising such minimum services or facilities in a co-operative year as specified in the bye-laws for three consecutive co- operative years.

(ii) The chief executive of every co-operative

society shall send above prepared notice to all ineligible members, fifteen days prior to six months to the date of election of the board by registered post and an opportunity shall be given to such member to file their objections, if any within fifteen days from the date of notice.

(iii) The chief executive of every co-operative

society shall submit the list of ineligible voters to the election officer along with their objections and also produce the records pertaining to absence from general body meeting with attendance and services utilised by members. He has to produce the records for having sent the notice along with acknowledgement to the election officer within thirty days from the date of notice as specified by the election officer. - 16 -

(iv) The chief executive of every cooperative

society shall state in his notice that the ineligible voter can appear before the election officer between thirty days to sixty days from the date of notice to get the remedy. v) The election officer has to hear and dispose the objections filed by the ineligible voters within sixty days from the days of submission of objections from such voters.

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

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

(a) for publication of draft eligible list, a list of defaulters, a list of members whose repayment falls due, before the election date clear fifty days;

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

(c) the scrutiny and verification of the voters list after payment by defaulters etc., clear twenty days before the date of election; - 17 -

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

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

(5) The chief executive of every cooperative society shall prepare (i) a draft list of the

eligible members or representatives and delegates with right to vote, (ii) a list of members whose repayments will fall due before the date fixed for publication of final electoral roll, (iii) a list of defaulters, (iv) a list of other members or representatives and delegates who are not eligible to vote at a general election indicating the reasons for ineligibility memberwise on the basis of entries in the updated membership register specifying,-

(a) the name of the member or representative, the admission number, the name of the parent or husband and the address of such member or representative in the case of an individual member;

(b) the admission number, the name of the society, the name of the delegate proposed to - 18 - represent the society in the case of a member society,

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

(6) The Co-operative Election Authority shall call upon the Chief Executive of the co-operative

society to obtain from the member society, the name of an authorised member of the board of such society as a delegate, together with the resolution of the board of the said society and the specimen signature along with the photograph of the delegate duly attested and bearing the seal of the society and furnish all such information under sub-rule (5).

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

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

(b) all the individual members and the delegates of the members societies with right to vote in respect of a secondary co-operative society; or - 19 -

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

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

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

(a) date of notification inviting nomination;

(b) last date for receipt of nomination;

(c) date and time for scrutiny of nomination;

- (d) date and time for publication of list of validly nominated candidates;
- (e) date and time for withdrawal of nomination papers;
- (f) Date and time for publication list of contesting candidates;
- (g) Date and time for allotment of symbols and publication of contesting candidates with symbols;
- (h) Date and time of poll;
- (i) Date and time of counting and declaration of results. - 20 -

5. The case of the petitioners is that the

petitioners have paid all membership/shareholders due to respondent No.3-Society and attended the annual general body meetings whenever they have received notice from respondent No.3-Society, in spite of which respondent No.3-Society has dropped the petitioners from the eligible voters list and the provisions of Rule 13-D of KCS Rules, 1960 is overlooked by respondent No.3-Society.

6. The Co-Ordinate Bench of this Court in the case

of Sri. B Ganganna and others Vs. The State of Karnataka, Department of Co Operation and others¹ (B Ganganna) had given deliberate consideration to the provisions of Rule 13-D of the KCS Rules, 1960 and adjudication of dispute under Section 70 of the Karnataka Co-Operative Societies Act, 1959 (KCS Act, 1959 for short). The Co-Ordinate Bench of this Court framed the following points for consideration at paragraph No.9, which reads as under: ILR 2024 KAR 1901 - 21 - 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--vis Rule 13-D(2-A) of Rules, 1960?

(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. (Emphasis supplied)

7. The Co-Ordinate Bench after giving deliberate consideration to various judgments has held at paragraph Nos.50 and 51 as under: 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 - 22 -

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: - 23 -

(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.

8. Section 70 of the KCS Act, 1959 reads as under: 70. Disputes which may be referred to Registrar for decision.-(1) Notwithstanding - 24 -

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) among members, past members and persons claiming through members, past members and deceased members, or

(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) between the society or its board and any past

board, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, or a credit agency. such dispute shall be referred to the Registrar for decision and no civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. - 25 -

(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) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal

debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of a President, Vice-president or any office-bearer or Member of board of the society.

(d) any dispute between a co-operative society

and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society notwithstanding anything contrary - 26 - contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947);

(e) a claim by a co-operative society for any

deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its board, past or present whether such loss be admitted or not.

(3) If any question arises whether a dispute

referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

(4) xxxxx

(5) x x x x x

9. The plain reading of Section 70 makes it clear

that an extensive and exhaustive mechanism is provided under the aforesaid Section and the authority under Section 70 can decide the question on the validity of electoral roll prepared under the Rules, 1960 and its - 27 - impact on the elections, whether the petitioners are the eligible voters and have paid membership dues, or annual general body meetings are attended or availed the minimum services are all questions of fact, which have to be decided under Section 70 of the KCS Act, 1959 and the writ petition under Article 226 of the Constitution of India to challenge the electoral roll, the petitioners have not made out any exceptional case in this petition to be entertained and the decision of the Co-Ordinate Bench of this Court in the case of B. Ganganna as stated supra is squarely applicable to the present facts and the present petition needs to be disposed of in similar terms and hence, the following:

ORDER

i. The Returning Officer shall count the votes cast in the elections held on 25.01.2025 to the Board of Directors of respondent No.3-Society and shall

announce the results. ii. Liberty is reserved to the petitioners or any aggrieved party to raise objections to the validity - 28 - of the electoral by filing a Election Petition under Section 70(2) of the KCS Act, 1959. iii. If any dispute is raised under the provisions of KCS Act, 1959 the authority under Section 70 of the KCS Act, 1959 shall examine all questions including the questions relating to the validity of the eligible and ineligible voters list and impact of the election to the Board of respondent No.3- Society. iv. All contentions of the parties are kept open. v. This Court has not expressed merits and demerits on eligibility or ineligibility of the voters list. vi. With the said observations, the writ petition stands disposed of. Sd/- JUSTICE K.S. HEMALEKHA AT List No.: 1 SI No.: 38 CT: BHK

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