



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 708 OF 2024 (CS-EL/M)

BETWEEN:

1. T. NAGARAJ,
SON OF TIPPANNA,
AGED ABOUT 58 YEARS,
SHARE NO.46.
2. KADIRAPPA,
SON OF SEETHAPPA,
AGED ABOUT 59 YEARS,
SHARE NO.62.
3. NEELAMMA,
WIFE OF KESHAPPA,
AGED ABOUT 50 YEARS,
SHARE NO.158.
4. B RAGHUNATH REDDY,
SON OF BACHIREDDY,
AGED ABOUT 28 YEARS,
SHARE NO.165.
5. SUMAN,
SON OF NARAYANASWAMY,
AGED ABOUT 30 YEARS,
SHARE NO.175.
6. C Y MANJUNATH,
SON OF YERRAPPA,
AGED ABOUT 26 YEARS,
SHARE NO.177.





7. MANJUNATH,
SON OF DODDANARASIMHAPPA,
AGED ABOUT 46 YEARS,
SHARE NO.178.

ALL ARE MEMBERS OF CHOWDADENAHALLI MILK
PRODUCES CO-OPERATIVE SOCIETIES UNION LTD.,
CHOWDADENAHALLI VILLAGE, CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT 563125.

...PETITIONERS

(BY SRI AKKI MANJUNATH GOWDA K, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY ITS SECRETARY,
DEPARTMENT OF CO-OPERATION,
VIDHANA SOUDHA, BENGALURU - 560001.
2. THE STATE CO-OPERATIVE ELECTION AUTHORITY
3RD FLOOR, SHANTHINAGARA TTMC,
A BLOCK K H ROAD, SHANTHINAGAR,
BENGALUURU - 560 027,
REPRESENTED BY FIRST CHIEF EX- OFFICER.
3. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETY
UNION LTD., CHIKKABALLAPURA DISTRICT,
CHIKKABALLAPURA - 563125.
4. CHOWDADENAHALLI MILK PRODUCERS
CO-OPERATIVE SOCIETIES UNION LTD.,
CHOWDADENAHALLI VILLAGE, CHINTAMANI TALUK,
CHIKKABALLAPURA DISTRICT - 563125,
BY ITS CHIEF EXECUTIVE OFFICER,
REG. UNDER KARNATAKA CO-OPERATIVE
SOCIETIES ACT 1959.



5. THE RETURNING OFFICER/ASSISTANT COMMISSIONER OF ALL ARE THE MEMBER OF CHOWDADENAHALLI MILK PRODUCES CO-OPERATIVE SOCIETIES UNION LTD., CHOWDADENAHALLI VILLAGE, CHINTAMANI TALUK, CHIKKABALLAPURA DISTRICT - 563125.

...RESPONDENTS

(BY SRI SIDHARTH BABU RAO, AGA FOR R1, R3 AND R5, SRI T L KIRAN KUMAR, ADVOCATE FOR R2, SRI YADUNANDAN N, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONDUCT THE ELECTIONS TO THE R4 SOCIETY BY INCLUDING THE NAME OF THE PETITIONERS IN THE ELIGIBLE VOTERS LIST OF R4 SOCIETY AS PER CALENDAR OF EVENTS DTD 27.12.2023 VIDE ANNEXURE-C ISSUED BY R5 AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent-State as well as the respondent-Society.

2. This Writ Petition is essentially filed seeking a Writ of Mandamus to include the names of the petitioners in the final eligible voters' list and permit the petitioners to vote and contest in the election to the Board of respondent No.4 - Society which was scheduled on 19.01.2024.



3. This Court by way of interim order permitted the petitioners to cast vote and permitted to file nomination paper to contest in the said election. However, the result of the election was withheld.

4. The learned counsel for the petitioners would contend that the mandatory requirements of Rule 13-D(2-A) of the Karnataka Co-operative Societies Rules, 1960 have not been followed while preparing the eligible and ineligible voters' list. Thus, it is urged that the petitioners should be treated as eligible voters' and their votes need to be counted as valid votes.

5. Learned counsel for the 4th respondent - Society would fairly submit that the Society has not followed the mandatory requirements of the aforementioned Rule. No specific objection is raised relating to the eligibility of the petitioners to contest in the election.

6. At this juncture, it is brought to the notice of this Court that in similar circumstances, this Court in the case of ***H S RAJU AND OTHERS vs STATE OF KARNATAKA AND***



OTHERS (2022(4) AKR 775) has permitted the votes to be counted and the election results to be announced keeping open all other contentions to be adjudicated in appropriate forum under Section 70(2) of the Karnataka Co-operative Societies Act, 1959.

7. It is relevant to note that merely because the petitioners were permitted to vote and contest in the election to the board of the respondent-Society, it does not mean that all the petitioners had the eligibility to vote and contest in the election. It is quite possible that all or some had the eligibility to vote and contest or may have incurred disqualification to vote and contest. Merely because procedures contemplated under Rule 13-D(2-A) of Karnataka Co-operative Societies Rules, 1960 are not followed, it does not mean that the disqualification if any incurred, is cured. Whether the petitioners did incur the disqualification to vote and contest or not, is a question of fact. Same is to be decided in a proceeding under Section 70(2)(c) of the Karnataka Co-operative Societies Act, 1959.

8. Hence, the following:

**ORDER**

- (i) The Writ Petition is ***allowed-in-part***.
- (ii) Returning Officer shall announce the results of the election to the Board of 4th respondent - Society held on 19.01.2024 by counting the votes of the petitioners.
- (iii) If any person entitled to raise a dispute under Section 70(2)(c) of the Karnataka Co-operative Societies Act, 1959, raises a dispute under the said provision questioning the eligibility of the petitioners to vote and contest in the election to the board of respondent-society, the said dispute shall be decided without being influenced by the interim order granted by this Court permitting the petitioners to vote and contest in the election to the board of respondent-society. It is made clear that this Court while granting interim order in favour of the petitioners, did not give any finding on the eligibility of the petitioners to vote and contest in the election to the board of the respondent-society.
- (iv) The question as to the eligibility of the petitioners to vote and contest in the election is kept open to be decided in a dispute if any, raised in this regard.



- (v) If any such dispute relating to the eligibility of the petitioners to vote and contest in the election to the board of respondent-Society is raised, the effect of holding the petitioners ineligible to vote and excluding such votes and excluding ineligible candidates on the final outcome of the election results shall also be taken into account before passing final orders.
- (vi) The ballot papers containing the votes cast by the petitioners shall be kept in a separate sealed box after counting.
- (vii) While counting the votes cast by the petitioners, a separate list shall be prepared disclosing the number of votes cast by the petitioners in favour of the candidates. Said list shall be separately maintained and be furnished to the authority, if summoned, while hearing election dispute in case such dispute is raised.

SD/-
JUDGE

GVP
List No.: 1 Sl No.: 33