



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

R

DATED THIS THE 6TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 1805 OF 2024 (CS-EL/M)

BETWEEN:

SMT CHINNAMMAYYA

...PETITIONER

(BY SRI SEENAPPA K. ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF CO-OPERATION,
MULTI STORIED BUILDING,
DR B R AMBEDKAR VEEDHI,
BENGALURU-560001.
2. THE STATE CO-OPERATIVE ELECTION AUTHORITY,
3RD FLOOR, A BLOCK, SHANTHI NAGAR,
TTMC BUILDING, KHB ROAD,
BENGALURU - 560 027,
REP BY ITS COMMISSIONER.
3. THE DEPUTY REGISTRAR OF CO-OPERATIVE
SOCIETIES, 8TH CROSS, MALLESWARAM,
BENGALURU-560003.





4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, CHAMRAJPET, BENGALURU-560018.
5. THE RETURNING OFFICER,
BEGIHALLI MILK PRODUCERS CO-OPERATIVE SOCIETIES LTD., BEGIHALLI VILLAGE,
JIGANI HOBLI, ANEKAL TALUK,
BENGALURU URBAN DISTRICT-560105.
6. BEGIHALLI MILK PRODUCERS CO-OPERATIVE SOCIETIES LTD., BEGIHALLI VILLAGE,
JIGANI HOBLI, ANEKAL TALUK,
BENGALURU URBAN DISTRICT-560105,
REPRESENTED BY ITS SECRETARY.
(SOCIETY REGISTERED UNDER THE KARNATAKA CO-OPERATIVE SOCIETIES ACT - 1959).

...RESPONDENTS

(BY SRI SIDHARTH BABU RAO, AGA FOR R1, R3-R5,
SRI T L KIRAN KUMAR, ADVOCATE FOR R2,
STI N RAMACHANDRA, ADV. FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO i) QUASH THE DISQUALIFIED/ IN-ELIGIBLE VOTERS LIST, VIDE ANNEXURE-A DATED NIL, PUBLISHED BY THE SECRETARY, BEGIHALLI MILK PRODUCERS CO-OPERATIVE SOCIETIES LTD., BEGIHALLI VILLAGE, JIGANI HOBLI, ANEKAL TALUK/R6, IN SO FAR AS THE PETITIONER IS CONCERNED AND PERMIT THE PETITIONER TO CONTEST, IN THE ELECTIONS TO BE CONDUCTED TO THE R6 / SOCIETY, ON 28/01/2024, VIDE ANNEXURE-B AND ETC.

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



ORDER

1. Heard Sri. Seenappa K., the learned counsel appearing for the petitioner, Sri.Sidharth Baburao, the learned Government Advocate for respondents No.1, 3 to 5, Sri.T.L.Kiran Kumar, the learned counsel for respondent No.2 and Sri.N.Ramachandra, the learned counsel for respondent No.6.

2. The petitioner makes a claim to vote and contest in the election to the Board of 6th respondent Society ('Society' for short). The Society has included the petitioner in the ineligible voter's list. This Court vide interim order dated 18.01.2024, permitted the petitioner to vote and contest in the said election. The petitioner has contested and voted in the election held on 28.01.2024. However, the results were withheld in terms of the interim order.

3. The Society admits that the petitioner is a member. However, contends that though the petitioner is admitted as a member, upon the death of her husband who was a member of the Society, the petitioner is yet to



complete one year as a member after being admitted as a member. Thus, she is ineligible to vote and contest in the election.

4. Learned counsel for the petitioner submits that the petitioner is the wife of late Ramaiah, the past member of the Society. The petitioner inherited the membership of the Society upon the death of her husband, under Section 24 of the Karnataka Co-Operative Societies Act, 1959 (for short 'the Act of 1959'). Thus, the petitioner inherits all the rights of the deceased member. By the time Ramaiah died, he had completed a year as a member of the Society, and had acquired the right to vote and contest in the election. Thus, the wife who inherited shares held by late Ramaiah, under Section 24 of the Act of 1959, is also entitled to vote and contest in the election is the contention.

5. Learned counsel for the respondent Society would submit that the petitioner's husband died on 19.09.2022. However, the petitioner did not seek the transfer of shares held by her husband for a considerably long period and



recently requested to transfer the shares in her name and the Society on 25.02.2023, '*admitted*' the petitioner as a member. Since the petitioner has not completed 12 months after being '*admitted*' as a member, there is disqualification under Section 20(2)(a-iii) of the Act, 1959 to vote and contest in the election as the member must have completed 12 months as a member to be eligible to vote after being admitted as a member.

6. The question before this Court is,

Whether a nominee or a legal representative of a member of a Co-operative Society, who is admitted as a member under Section 24 of the Act of 1959, after the death of a member, can vote and contest in the election to the Board of a Co-operative Society or a general meeting, if he has not completed one year after being admitted as a member.

To put it differently, whether the eligibility acquired by the deceased member to vote in the general meeting or the election to the Board of the Society would accrue to the legal



representative even if the legal representative has not completed one year after being admitted as a member under Section 24 of Act of 1959.

7. Section 24 of Act, 1959 which deals with a transfer of interest after the death of a member reads as under:

24. Transfer of interest on death of member - (1) On the death of a member of a co-operative society, the **society shall transfer the share or interest of the deceased member-**

- (a) *to the person or persons nominated in accordance with the rules and if the nomination subsists; or*
- (b) *if no person has been so nominated or the nomination does not subsist,*
 - (i) *where the share or interest of the deceased member does not exceed [one lakh rupees], to such persons as may appear to the [board] to be the heirs or legal representatives of the deceased member, on the execution by such persons of an indemnity bond with such sureties as it may require;*
 - (ii) *where the share or interest of the deceased member exceeds [one lakh rupees], to such person or persons as produce a succession certificate or other*



legal authority granted by a Competent Court of law:

Provided that such nominee, heir, or legal representative as the case may be, is admitted as a member of the society.

(Emphasis supplied)

8. The expressions, “*society shall transfer the share or interest of the deceased member*” and “*provided that such nominee, heir or legal representative as the case may be, is admitted as a member of the society*” appearing in Section 24 of the Act 1959, will mean ‘*a decision*’ on admission as a member is required to be taken. Thus, every legal representative or nominee does not automatically become a member of the society, though he may be entitled to share or interest in the capital of Society.

9. It is also relevant to note that the membership in a co-operative society is governed by the provisions of Act of 1959 which prescribe certain qualifications. To be a member upon the death of a member either as his nominee or legal representative, the nominee or legal representative should fulfill the eligibility criteria prescribed to be a member and



more importantly should not have any disqualification prescribed under the Act. Thus, the Co-operative Society will have a say in the matter as to whether the nominee or the legal representative fulfils the eligibility criteria or has any disqualification.

10. Thus, under the scheme of the Act of 1959, the membership to a Co-operative Society to a nominee or a legal representative of a deceased member is not automatic, but is subject to the decision to be taken by the co-operative Society, which of course has to be as per the eligibility criteria prescribed under the Act of 1959. Thus, only after conferment of membership, the legal representative acquires membership in a co-operative society. Till then, he does not inherit the membership though he inherits the value share and the interest in the share capital. In case, membership is refused, for not fulfilling the eligibility criteria, the legal representative has to encash the value of the share or interest in it and nothing more.



11. It is also relevant to refer to the relevant portion of Rule 11 of the Karnataka Co-operative Societies Rules, 1960 (for short 'Rules, 1960).

Appointment of nominees.-

(1) *A member of a Co-operative Society may nominate a person or persons to whom, in the event of his death, his share or interest in the capital of the society shall be transferred of the value thereof or any other moneys due to him from the society shall be paid. Such member, may, from time to time, revoke or vary such nomination.*

(2) *When a member nominates more than one person in respect of any shares held by him, he shall, as far as practicable, specify the amount to be paid or transferred to each nominee in terms of a whole share.*

(3) *xxxx*

(a) *xxxx*

(b) *xxxxx*

12. On a reading of the said Rule, particularly the expression "*in the event of his death, his share or interest in*



the capital of the Society shall be transferred or the value thereof or any other moneys due to him from the Society shall be paid”, it is apparent that the nomination provides for the transfer of share or interest in the capital of the Society. Rule 11 of Rules, 1960 does not speak about transmission of membership. As already noticed, *proviso* to Section 24 of the Act, 1959 mandates transmission of share and interest ‘*provided*’ the nominee or the legal representative is admitted as a member of the Society. Thus, the transmission of membership is not automatic.

13. Section 24 of the Act, 1959, and Rule 11 of the Rules, 1960, if read together, do not support the contention that membership in a co-operative society is automatic on the nominee or the legal representative upon the death of a member.

14. It is also relevant to note that under the scheme of the Act of 1959, membership by itself does not confer a right to vote or contest in the election. The member’s right to vote and contest in the election is statutorily governed



under Section 20 of the Act, 1959. Section 20(2)(a-iii) of the Act, 1959 prescribes a minimum period of one year as a member of the Society to be eligible to vote and contest in the election. The document reveals that the petitioner is admitted as a member on 25.02.2023. If the contention of the petitioner is accepted that a legal representative of a deceased member automatically acquires all the rights of a deceased member, then Section 20(2)(a-iii) of the Act, 1959 referred to above becomes inapplicable in a claim for membership under Section 24 of the Act, 1959. The language employed in Sections 20, 24 of the Act, 1959, and Rule 11 of Rules, 1960 do not support such contention.

15. It is also relevant to note that Section 20(2)(a-iii) of the Act, 1959 has a purpose to achieve. Section 20(2)(a-iii) does not confer an automatic right to vote and contest in the election on becoming a member of the society. The provision prescribes a minimum period of 12 months to be eligible to vote. The law seeks to confer the right to vote and contest in an election only to those persons who have completed 12 months to ensure that the person who seeks



to vote and contest in the election is familiar with the affairs of the society. That seems to be the object behind Section 20(2)(a-iii). This being the position, this Court is of the view that Section 24 has to be read along with Section 20(2)(a-iii) and it cannot be read in isolation. If Section 24 read along with Section 20(2)(a-iii), the inevitable conclusion is right to vote and contest available to a member does not pass on to the legal representative under Section 24 of Act of 1959. It has to be earned by the legal representative by completing 12 months as a member after being admitted as a member.

16. It is relevant to note that no application is produced before this Court to hold that the petitioner has applied for membership immediately after the death of her husband. If the application was filed immediately and if there was unreasonable delay by the respondent society in taking a decision, then the Court could have examined whether the provision relating to deemed membership could be applied. Hence, this Court is of the view that no case is made out to hold that the petitioner acquired the membership one year prior to the date of election.



17. Hence, the following:

ORDER

- (i) The Writ Petition is ***dismissed***.
- (ii) The vote cast by the petitioner has to be excluded before counting.
- (iii) The petitioner cannot be considered as a candidate in the fray.
- (iv) The Returning Officer shall announce the result without counting the vote of the petitioner and without considering the petitioner as a candidate.

**Sd/-
JUDGE**