

5 SPECIAL OFFICER
 PRIMARY AGRICULTURAL CREDIT
 CO OPERATIVE SOCIETY LTD
 KUDHUVALLI VILLAGE
 CHIKKAMAGALORE TALUK
 CHIKKAMGALORE DISTRICT – 577101

...RESPONDENTS

(BY SRI SIDDHARTH BABURAO, AGA FOR R1 TO R3
 SRI H B RUDRESH, ADVOCATE FOR C/R4 & R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE R3 ON 04.09.2023 IN NO.AR.26/C.06/PAXQ/SECTION 31(1)CR-44/2023-24 AT ANNEXURE-B IN SO FAR AS THE PETITIONERS ARE CONCERNED AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.12.2023 COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE THE FOLLOWING:-

COMMON ORDER

Since common questions arise for consideration in the present writ petitions they are taken up together for consideration.

2. W.P. No.22398/2023 is filed seeking for the following reliefs:

"i. Issue a writ of certiorari quashing the impugned order bearing No. SA.NI47/Vishesadhikari Nemakati/06/2023-24 dated 19.09.2023 passed by Respondent No.5 vide Annexure G.

ii. Issue a writ of mandamus or any other appropriate writ or direction, directing the Respondent No.2 to 5 to call for the any Election to the vacant posts of board of Directors for the term of 2023-2028 of Respondent No.3 Society as per Section 29-E of the Karnataka Co-operative Societies Act, 1980 forthwith.

iii. Pass such other orders as may be appropriate in the facts and circumstances of the case, in the ends of justice and equity."

3. W.P.23943/2023 is filed seeking for the following reliefs:

(a) Issue a writ of certiorari or any other appropriate writ or order or direction quashing the order passed by the 3rd respondent on 22.09.2023 in No.SaNi-43/Administrative/XSN/CR-09/2023-24 at Annexure-C in so far as the petitioners are concerned; and

(b) Issue any appropriate writ or order or direction declaring that the order passed by the 3rd respondent on 22.09.2023 at Annexure-D, shall not have any effect on the petitioners and the place of the petitioners in the Board of the Respondent No.4 society have not become vacant, notwithstanding the passing of the order dated 22.09.2023 at Annexure-C by the Respondent No.3 herein; and

(c) consequently, issue any other appropriate writ or order or direction directing the respondents herein not to take any action to fill the place of the petitioners in the Board of the Respondent No.4 society, till the completion of their term, notwithstanding the order dated 22.09.2023 at Annexure-C passed by the Respondent No.3; and

(d) to issue appropriate writ or order or direction directing the respondents herein to fill up only those place of Directors which have become vacant in the Board of the Respondent No.4 society, owing to the resignations, either by conducting election or by co-option; and

(e) Grant any other reliefs as deemed fit by this Hon'ble Court in the facts and circumstances of the case including awarding

of the cost, in the interest of justice and equity.

4. W.P. No.23318/2023 is filed seeking for the following reliefs:

"a) Issue a writ of certiorari or any other appropriate writ or order or direction quashing the order passed by the 3rd respondent on 04.09.2023 in No.AR-26/C-06/PAXQ/Section 31(1)CR-44/2023-24 at Annexure-B in so far as the petitioners are concerned; and

(b) Issue any appropriate writ or order or direction declaring that the order passed by the 3rd respondent on 04.09.2023 at Annexure-B, shall not have any effect on the petitioners and the place of the petitioners in the Board of the Respondent No.4 society have not become vacant, notwithstanding the passing of the order dated 04.09.2023 at Annexure-B by the Respondent No.3 herein; and

(c) consequently, issue any other appropriate writ or order or direction directing the respondents herein not to take any action to fill the place of the petitioners in the Board of the Respondent No.4 society, till the completion of their term, notwithstanding the order dated 04.09.2023 at Annexure-B passed by the Respondent No.3; and

(d) to issue appropriate writ or order or direction directing the respondents herein to fill up only those place of Directors which have become vacant in the Board of the Respondent No.4 society, owing to the resignations, either by conducting election or by co-option; and

e) Grant any other reliefs as deemed fit by this Hon'ble Court in the facts and circumstances of the case including awarding of the cost, in the interest of justice and equity.

5. The relevant facts in W.P. No.22398/2023 are that the petitioners were elected as Directors of Respondent No.3 – Society for the term 2023 to 2028 in the elections held on 26.07.2023, wherein a total of 12 Directors were elected. The first meeting for electing President and Vice-President of Respondent No.3 – Society was scheduled on 12.08.2023. However, on that date, only six Directors were present and hence, for want of quorum, the meeting was adjourned. Thereafter, the next meeting was held on 01.09.2023 and all 12 Directors were present and Petitioner Nos.1 and 2 were elected as the President and Vice President of Respondent No.3 – Society respectively. On the said date, after the election of Petitioner Nos.1 and 2, six Directors tendered their resignations without any valid reasons and on 19.09.2023, a Special Officer was appointed to Respondent No.3 - Society. Being aggrieved, the above writ petition is filed.

6. The relevant facts in W.P. No.23318/2023 are that 12 members including the Petitioners were elected as the Directors of Respondent No.4 – Society on 09.11.2020 and the term of office was five years. That on 04.09.2023, seven elected Directors, due to various reasons, tendered their resignations to their Directorship of Respondent No.4 – Society by the order dated 04.09.2023, a Special Officer was appointed. Being aggrieved, the writ petition is filed.

7. The relevant facts in W.P. No.23943/2023 are that the Petitioners were elected as Directors of Respondent No.4- Society on 28.02.2020 and in the said election, 12 Directors were elected to the Board of Respondent No.4- Society and the term of the Board was up to 27.02.2025. That on 02.09.2023, nine Directors tendered their resignations. Hence, by order dated 22.09.2023, a Special Officer has been appointed. Being aggrieved, the writ petition is filed.

8. It is forthcoming from all the aforementioned writ petitions that since majority of the Directors who constituted the Board of the Society resigned, a Special Officer was appointed to conduct the elections. The Directors who did not tender their resignations have filed the writ petitions contending *inter alia* that elections to only those posts of Directors who have tendered their resignations were required to be held and not for entire Board of the Society, since the Petitioners in these Writ Petitions have not tendered their resignations.

9. It is the contention of the Petitioners that since the term for which they have been elected still remains, elections to the posts held by them are not required to be held. In support of their contentions they have relied on various judgments and various provisions of the Karnataka Co-operative Societies Act (hereinafter referred to as the 'Act') and the Karnataka Co-operative Societies Rules (hereinafter

referred to as the 'Rules') which shall be referred to during the course of the order.

10. Learned Additional Advocate General representing the State opposing the reliefs sought for in the Writ Petitions referring to various provisions of the Act contends that having regard to the deeming provision contained in Section 31(3) of the Act, all the Directors who constitute the Board are deemed to have vacated their offices upon the appointment of the Special Officer for conducting of elections and submits that holding of elections to the entire Board of the Society is just and proper.

11. In view of the contentions put forth by both the learned counsels, the question that arise for consideration of these writ petitions are *'whether upon the resignation of few of the members of the Board of a Society, whether elections are required to be held to the posts of all the Directors including the posts of Directors who have not tendered their resignations?'*

12. In order to consider the said question, it is necessary to note the relevant statutory provisions which are contained in the Act.

i) Section 18-A of the Act stipulates as follows:

18-A. Cessation of membership.- A person shall cease to be a member of a co-operative society,-
 (a) in the case of an individual, on his or her,-
 (i) death;
 (ii) resignation;

- (iii) *disqualification and cessation;*
- (iv) *.....*

ii) Section 28-A(4) of the Act stipulates as follows:

Subject to the provisions of Sections 29-A and 39-A, the term of office of the members of [the board shall save as otherwise] [five years from the date of election] and they shall be deemed to have vacated office as such members of the [board] on the date of completion of the said term.

iii) Section 29-A of the Act stipulates as follows:

29-A. Commencement of term of office. (1)[*The term of office of the members of the [board]] shall commence on the date on which the majority of the elected members of the [board] assume office or the term of the outgoing [board] expires, whichever is later.*]

*[(2) Notwithstanding anything contained in this Act or the rules or the bye-laws of a co-operative society, the [board] shall be deemed to be duly constituted when [the majority of the elected members of the [board] are available to function as members of the [board] after the [*****] election.*

[29-E. Filling up of casual vacancy in the office of members of the [Board].-*Any vacancy in the office of members of the [board] of a co-operative society by reason of death, resignation, removal or otherwise, shall be filled up in such manner as may be specified in the bye-laws of such society:*

[Provided that the co-operative election commission shall conduct the election to fill up any vacancy in the office of the director of the board if the remaining term of office of the board is more than half of its original term:

Provided further that the board may fill up a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the remaining term of office of the board is less than half of its original term]:

[Provided also that, if the board fails to fill up such casual vacancy within three months of the date of occurrence, the Registrar shall fill up through nomination.]

iv) Section 31(1), (2) and (3) of the Act stipulates as follows:

31. Appointment of Special Officer [by the Registrar].-*(1) Where the Registrar is of the opinion that a co-operative society is not functioning in accordance with the provisions of the Act, rules or bye-laws on account of the number of members of the [Board] falling short of the required number to form a quorum due to disqualification, resignation or death or removal of a member [***], the Registrar may, notwithstanding anything contained in this Act, rules or bye-laws, by order appoint a Special Officer for such co-operative society, for such period not exceeding six months.[The Registrar may, [*****] for the reasons to be recorded in writing extend the period of such appointment for a further period of six months at a time, and in any case such extension shall not exceed one year in the aggregate]:*

[Provided that the Special Officer so appointed shall not continue for a period beyond three months in respect of a society in co-operative credit structure.]

(2) Before making an order under sub-section (1), it shall not be necessary for the Registrar to give any co-operative society or person likely to be affected by such order, an opportunity to state its or his objection, if any.

(3) On the issue of the order under sub-section (1),-

(a) the members of the [board] of the co-operative society, if any, shall vacate and shall be deemed to have vacated their offices; and

(b) the Special Officer shall be deemed to have assumed charge of the affairs of the co-operative society.

v) Rule 14-AK(4) of the Rules stipulates as follows:

(4) The number next to fifty per cent of the strength of the board as specified in the bye-laws shall form the quorum for a meeting of the board [the members who are all attending the meeting shall sign in the book kept for the purpose before commencement of the board meeting]. If there is no quorum at the time of transacting any business in any meeting of the board, no such business shall be transacted.

13. It is relevant to note that Section 18-A of the Act provides for cessation of membership and Section 18-A(a) of the Act contemplates the four situations where an individual member ceases to be a member of the Society.

14. Section 28-A(4) of the Act stipulates the term of office of the members of the Board as five years from the date of election. Section 29-A of the Act stipulates commencement of term of office.

15. Section 29-E of the Act stipulates that a casual vacancy in the office of members of the Board shall be filled up by an election to be conducted by the Cooperative Election Commission if the remaining term of office of the Board is more than half of the original term and the Board may fill up a casual vacancy on the Board by nomination out of the same class of members if the remaining term of office of the Board is less than half of its original term. Section 29A(1) of the Act

stipulates that the term of office of the members of the Board shall commence on the date on which majority of the Board are available to function.

16. Section 31(1) of the Act empowers the Registrar to appoint a Special Officer if the Society is not functioning on account of the number of members of the Board falling short of the required number to form a quorum. It is relevant to note that in Section 31(1) of the Act there is a specific non obstinate clause which specifically stipulates that the Registrar may '*notwithstanding anything contained in this Act, Rules or bye-laws*' by order appoint a Special Officer. Section 31(3) of the Act stipulates on the issue of the order under sub Section (1) the members of the Board '*shall vacate*' and "*shall be deemed to have vacated offices*' and Special Officer shall be deemed to have assumed the charge of the affairs of the Co-operative Society.

17. Rule 14-AK(4) of the Rules stipulates that fifty per cent of the strength of the board shall form the quorum for a meeting of the Board.

18. A Co-ordinate Bench of this Court in the case of ***K.T.Nijalingappa and another Vs The State of Karnataka***¹ on which reliance is placed by the learned counsel for the petitioners was considering a fact situation where elections to the Society was held on

¹ ILR 2014 KAR 2329

21.03.2011 to elect seven members from class 'A' and two members from class 'B'. The nomination of all the members who had filed their nominations for class 'A' were rejected and the two members of class 'B' were elected to the posts. Since majority of the elected members were not available to function as members of the Committee an Administrator was appointed which was impugned in the writ petition, insofar as the elections that was scheduled to be held to the two members of Class 'B' who were elected. This Court upon considering the relevant statutory provisions held as follows:

16.A conjoint reading of these two provisions makes it clear that the Board of the Co-operative Society has got a fixed term and the term of office of the members of the Board will commence on the date on which the majority of the elected members of the Board assume office or the term of the outgoing board expires, whichever is later. If the Board is not constituted on the date of expiry of the term of office of the Board and if elections are not held within the time specified in Section 29-A, the Registrar shall be deemed to have assumed charge as Administrator and he shall discharge the functions of the Board of Management. Nowhere in these provisions it is stated that once such Administrator assumes office on account of the failure to elect majority of the members of the Board, the already elected members will be deemed to have vacated their office. Such a consequence is not contemplated under the provisions of the Act. The same cannot be inferred nor such an inference is warranted. No such inference also can be drawn by reading these provisions. It is well established that when the WP 795-796/2012 words of a statute are clear, plain or unambiguous and are reasonably susceptible of only one meaning, the Courts are bound to give effect to that meaning....

17. There is no ambiguity in the language used in the aforesaid provisions. Therefore, it cannot be inferred that if majority of the members are not elected for any reason, on the Administrator assuming the charge, the other elected members shall be deemed to have vacated their office and fresh election shall be held to all the posts in the Board. For no fault on the part of the elected candidates/petitioners, they cannot be saddled with such consequence. It is also not in public interest to hold election yet again for these posts, when their election has not been in any manner cancelled or nullified. Therefore, the contention urged by the learned counsel for the petitioner deserves to be accepted.

(emphasis supplied)

19. A Co-ordinate Bench of this Court in the case of ***Sharanabasappa V/s. The State of Karnataka***² was considering a fact situation wherein members of the Board of the Society were elected on 23.05.2017 of the term of office was for a period of five years. Thereafter, six members were resigned and having regard to the vacancy that arose, a Special Officer was appointed and elections were proposed to be held. The same was impugned in the said writ petitions and the contention putforth was that elections were to be held only to those posts where the vacancy arose on account of the resignation of the members and the proceedings directing holding elections to all the seats of the Board afresh is required to be interfered with. This Court considering the various statutory provisions has held as follows:

² ILR 2018 KAR 238

22.If the definition of word 'casual' is read in conjunction with reference to the provisions of Sub-rule 4 of Rule 14-AK and Sub-section (2) of Section 28(A) of the Act, then it must be held to mean that the elections or nominations are impermissible under the provisions of Section 29(E), when the total sum of members to be elected/nominated is less than the strength stipulated under Sub-rule (4) of Rule 14-AK. If the number of vacancies are more than the percentage of strength as provided in the said Rule, then the provisions of Section 31 of the Act would not be attracted.

23.The provisions of Section 30 (6) of the Act clearly mandates that notwithstanding anything contained in this Act, the Registrar by an order shall appoint a Special Officer. The provision is in the nature of non-obstante clause. The provision does not vest the authority in the circumstances enumerated with any option. In the event of occurrences of the circumstances enumerated in the provision, the provision does not vest any discretion to the authority in respect of implementation of the provisions of Section 31 of the Act. Hence, it cannot be gainfully argued that the Act vests a discretion in the authority either to invoke the provision of Section 29(E) or Section 31 of the Act. This conclusion by the Court is further fortified by the provisions of Sub-section (3) of Section 31 of the Act.

24. The deeming provisions not only provides for vacation of seats but also provides for assumption of the charge i.e., nominating the person to act and discharge the functions of the Special Officer as envisaged under the provisions. The appointment of a Special Officer is mandated by operation of law and does not require any executive act except to implement the act in letter and spirit. Hence, the contention on behalf of the petitioner that the authority has erred in choosing to exercise the powers vested under Section 31 of the Act is without substance and requires to be rejected and is accordingly rejected.

(emphasis supplied)

20. A Co-ordinate Bench of this Court in the case of **S.Shivanna Vs. The State of Karnataka and others**³ was considering a fact situation where the election to the Society was held on 07.03.2021 and 13 members were elected. Thereafter, six directors submitted their resignations on 30.09.2021 and in view of the vacancy created consequent to the said resignations an Administrator was appointed and fresh elections were sought to be held which was challenged by the Directors who had not submitted their resignations. This Court noticing the relevant statutory provisions and placing reliance on the judgment in the case of **K.T.Nijalingappa**¹ held that the election was required to be held only for the vacancy that arose on account of the resignations of six Directors. Although, the judgment in the case of **Sharanabasappa**² was cited, this Court held that the same was not applicable to the facts of the said case.

21. It is clear from a perusal of the said judgments and as rightly contended by the learned Additional Advocate General, who seeking to distinguish the judgments in the case of **K.T.Nijalingappa**¹ and **Shivanna**³ that in the said cases the deeming provisions as contemplated under Section 31(3) of the Act has not been considered which has been considered in the case of **Sharanabasappa**².

³ WP No.20859/2021 – DD No.10.11.2022

22. Learned counsel for the petitioners vehemently contend that the situation that is arising in the present cases are a deliberate attempt by a few persons to hold elections to the entire Board although the Petitioners have already been elected and an interpretation is to be adopted which does not create an anomalous situation of holding of repeated elections merely due to exigencies created out of political or other compulsion/s. Hence, learned counsel for the petitioners seeks for upholding the view as held in the case of ***K.T.Nijalingappa***¹ and ***Shivanna***³.

23. It is relevant to notice from the aforementioned that in the cases of ***K.T. Nijalingappa***¹ and ***Shivanna***³, the interpretation of Section 31(1) and (3) of the Act having not been noticed whereas in the case of ***Sharanabasappa***², the same has been adequately appreciated.

24. Having regard to the wording of the respective provisions, it is clear that if upon occurrence of an eventuality as contemplated under Section 31(1) of the Act, the resultant situation as contemplated under Section 31(3) which specifically stipulates that members "*shall vacate and shall be deemed to have vacated their offices*" would automatically occur. It is clear that consequent to a situation occurring as contemplated in Section 31(1) of the Act and a special officer being appointed, having regard to the specific wordings contained in Section 31(3) of the Act, the said situation would automatically occur and the

question of exercising any discretion as sought to be contended by the Petitioners does not arise.

25. In view of the aforementioned, the interpretation of this Court as made in the case of ***Sharanapasappa***² is required to be followed and hence, the question framed for consideration is answered in the Affirmative.

26. In view of the aforementioned, writ petitions are dismissed as being devoid of merit.

**SD/-
JUDGE**

BS