

**(2019) 11 KAR CK 0045**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 101015, 101016 Of 2019 (CS-EL/M)

Basavaraj Kallappa Kugati

APPELLANT

Vs

Joint Registrar And Ors

RESPONDENT

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**Date of Decision :** 22-11-2019

**Acts Referred:**

Karnataka Co Operative Societies Act 1959 — Section 2, 4, 7, 16, 16(1), 16(3), 17(1) (d), 17(1)(c), 28, 28A, 29A, 105A, 106, 106(3), 106(4), 108  
Karnataka Cooperative Societies Rule, 1960 — Rule 3, 3(5)  
Constitution Of India, 1950 — Article 226

**Citation :** (2019) 11 KAR CK 0045

**Hon'ble Judges :** R Devdas, J

**Bench :** Single Bench

**Advocate :** F.V.Patil, K. Vidyavathi, Hemanthkumar L. Havaragi, Shivaklumar S. Badawadagi

**Final Decision :** Allowed

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## **Judgement**

1. The petitioners in these petitions are aggrieved by a portion of the impugned order dated 18.12.2018 at Annexure-E wherein it is directed that if respondents Nos.6 to 16 and other eligible farmers make an application for enrollment as new members to the 2nd respondent-Co-operative society, they should be enrolled as members and they should be included in the voters list and thereafter election was directed to be held. A subsequent order of even date passed by the 1st respondent acting as Election Officer, is also called in question, insofar as it relates to clause No.5 of the Order.

2. A brief background leading to the present writ petitions is required to be narrated. By a notification dated 15.03.2013 issued by the State Government, a new taluk known as Kittur came into existence after bifurcation of the earlier Bailhongal taluk. In the undivided Bailhongal taluk there was a Co-operative society known as Bailhongal Taluka Prathamika Sahakari Krishi Mattu Grameena Abhivrudhi Bank. After the establishment of the new taluk, the 1st petitioner herein moved an application before the Deputy Registrar of Co-operative

Societies seeking permission to establish a new Co-operative Bank in the name of Kittur Taluka Prathamika Sahakari Krishi Mattu Grameena Abhivrudhi Bank. Under the provisions of the Karnataka Co-operative Societies Act (for short 'the Act'), the primary co-operative Banks are called 'Primary co-operative Agricultural Rural Development Bank', which in common parlance are known as PCARD Banks. For the sake of convenience the 2nd respondent Bank shall be hereinafter referred to as 'Kittur PCARD Bank' or 'Society' while the Bank at Bailhongal shall be referred to as 'Bailhongal PCARD Bank'. The application made by the 1st petitioner was rejected by the Deputy Registrar of Co-operative Societies. The same was challenged before this Court in W.P.No.101884/2016. The said writ petition was disposed of directing the 1st petitioner to prefer an appeal under Section 106 of the Act before the Joint Registrar of Co-operative Societies. On an appeal being preferred before the Joint Registrar, the same was allowed while setting aside the order of rejection passed by the Deputy Registrar. Consequently, the Registering Authority was directed to reconsider the application and complete the registration formalities.

3. In terms of Rule 3 of the Karnataka Co-operative Societies Rule, 1960 (for short 'Rules') the 1st petitioner was appointed as Chief Promoter granting permission to collect Shares from persons who are desirous of promoting the Bank. The law requires submission of application for registration along with the list of promoters. The application filed by the 1st petitioner was finally allowed and the 2nd respondent-Bank was registered on 14.08.2018, in terms of Section 7 of the Act. Section 17(1)(c) of the Act disqualifies a person who is already a member of a PCARD Bank from becoming a member of another PCARD Bank. The registering authority who issued the registration certificate has also approved the list of 325 persons as pre-registration members. The second proviso to sub-Section 4 of Section 28A requires that the first General Meeting of a society after registration shall be held within one month from the date of its registration to elect the first Board to manage the affairs of the society. Therefore, the petitioners requested the Joint Registrar to appoint a Returning Officer to complete the process of the first election by appointing Returning Officer to hold the Elections.

4. In the meanwhile, respondent Nos.6 to 16 challenged the registration of Kittur PCARD Bank by filing an appeal under Section 106 of the Act before the Joint Registrar. By order dated 18.12.2018, at Annexure-E, though the Appellate Authority did not interfere in the registration of the Society, however, directed the 2nd respondent Kittur PCARD Bank to consider the application of respondent Nos.6 to 16 along with all other eligible persons for enrollment as members and further include such members in the voters list and thereafter conduct elections. Pursuant to the said orders, on the very same day another order is passed by the 1st respondent acting as Election Officer directing the Returning Officer to conduct the elections keeping in view the order dated 18.12.2018 and thereafter conduct the elections. It is in this background that the impugned orders dated 18.12.2018 at Annexures-E & F are challenged in these writ petitions.

5. This Court while considering the interim prayer made by the petitioners, passed an order on 09.09.2019 directed the Returning Officer - respondent No.4 to have a re-look at the voters list and ensure that the proposed list does not contain members who are not qualified as per Section 17(1)(d) of the Act. The contesting respondent Nos.6 to 16 and all other persons whose names were included in the voters list were directed to co-operate with the 4th respondent-Returning Officer and furnish necessary information to verify the fact that they were not members of Bailhongal PCARD Bank. The Returning Officer was further directed to obtain necessary information from Bailhongal PCARD Bank, re-do the voters list and thereafter proceed with the elections. However it was directed that results should not be declared without obtaining orders from this Court. Consequently, the Returning Officer prepared a fresh voters list on 29.09.2019 in terms of the directions issued by this Court. The said list is produced at Annexure-R16 along with impleading application filed on 29.09.2019. In the said voters list names of 1535 persons are found.

6. Sri. F.V.Patil learned counsel for the petitioners would submit that Section 17(1)(c) of the Act, disqualifies a person who is already a member of a PCARD Bank from becoming a member of another PCARD Bank. He further submits that, unless a person overcomes the embargo by giving up the membership of the other PCARD Bank, he cannot be enrolled as a member in another Bank/Society. The learned counsel submits that the cessation of membership of a Bank would not be possible unless the member obtains a clearance certificate that he has no due to be paid to the said Bank. The learned counsel submits that these stringent laws are put in place since it is found that persons, obtain loan from a Co-operative Society or a Bank and do not repay the loans. Such persons, if they are permitted to enroll themselves as members of another Co-operative Society or Bank, the loans will remain unpaid and the very spirit of co-operative movement will be lost. In this regard, the learned counsel draws the attention of this Court to one of the conditions imposed in the order dated 14.08.2018 passed by the registering authority wherein, at Clause No.3 it is provided that only such members shall be enrolled in Kittur PCARD Bank who are not members of Bailhongal PCARD Bank. The learned counsel submits that respondent Nos.6 to 16 are members of Bailhongal PCARD Bank. Similarly the directions issued by the Joint Registrar directing the 2nd respondent Bank to enroll all other persons will run counter to the provisions of law and the conditions imposed while registering the Bank. Consequently, the Election Officer has passed an order preparing the voters list on 31.08.2019 showing the name of 1621 persons. This list is prepared by the Election Officer pursuant to the impugned orders dated 18.12.2018. The learned counsel further submits that, consequent to the interim order dated 09.09.2019 issued by this Court the Returning Officer has prepared a revised voters list wherein names of 1535 are found and elections have been held by the Returning Officer. It is submitted that, though the Returning Officer has stated that the revised voters list consists of names of persons who are not members of Bailhongal PCARD Bank, the same is questionable. Moreover, it is

submitted that law does not provide for enrollment of a member after the Registering Authority has put a seal of approval on the promoters list and the first General Meeting was required to be held within a period of 30 days in terms of the second proviso to sub-Section 4 of Section 28A. It is therefore, submitted that, unless and until the first Board is elected to manage the affairs of the society, application for enrollment of members cannot be received. It is not permissible for the authorities under the provisions of the Act to enroll members or direct the Society to enroll members to the society. The ultimate authority to decide enrollment of members is the Board alone.

7. Per contra, the learned Addl. Advocate General Smt. K.Vidyavathi submits that the petitioners cannot resist enrollment of members. It is submitted that, in terms of the directions issued by this Court on 09.09.2019, the Returning officer has in fact scrutinized the applications made by respondent Nos.6 to 16 and all other persons who sought enrollment as members of the 2nd respondent-Bank and found that 1535 persons are eligible to be enrolled as members. This means that 1535 members are eligible in accordance with law and it is found that they are not members of Bailhongal PCARD Bank. The learned Addl. Advocate General, while placing reliance on an interim order dated 15.05.2019 passed by a co-ordinate Bench in W.P.No.108034/2019 submits that once the elections have been held pursuant to an interim order and all eligible persons were permitted to cast their vote, it would become incumbent upon this Court to direct the Returning Officer to declare the results.

8. Sri. Hemantkumar, learned counsel appearing for respondent No.4-Returning Officer, while drawing the attention of this Court to sub-Section 4 of Section 106 of the Act would submit that the Appellate Authority is empowered to pass such order as it may deem fit, while disposing of an appeal, in order to prevent the ends of justice being defeated. It is further submitted that all the affected parties are required to be heard and since all the affected parties are not before this Court, the petition is required to be dismissed.

9. The learned counsel submits that an efficacious alternative remedy is provided under Section 108 of the Act and therefore the petitioners should be relegated to avail the remedy provided under the Act. The learned counsel submits that under Rule 3(5), the Registering Authority has power to modify the list of promoters. It is therefore contended that when the Appellate Authority has passed an order under Section 106 and modified the order passed by the Registering Authority, the same shall be construed as a direction to modify the list of promoters, as provided under Rule 3(5), and the same is well within the Powers of the appellate authority while deciding an appeal filed under Section 106(4).

10. Heard Sri. F.V.Patil, learned counsel for the petitioners, Smt. K.Vidyavathi, learned Addl. Advocate General for respondent No.1 to 3, Sri. Hemantkumar learned counsel for respondent No.4-Returning Officer and Sri. Shivakumar S. Badawadagi for the respondent No.5-Bailhongal PCARD Bank.

11. Two questions arise for consideration, primarily, whether it would be permissible for the Chief Promoter and the other promoters to enroll any person as member of the Co-operative Bank after the list of promoters/ list of pre-registration members have been approved by the Registering Authority and before the first General Meeting is held for election of the Board? And whether, it is within the powers of the Appellate Authority, while dealing with an appeal under Section 106 to direct enrollment of members before the first General Meeting?

12. Chapter II of the Act deals with registration of Co-operative Societies. Section 7 provides that if the Registrar is satisfied that the application complies with the provisions of the Act, rules and the provisions of any other law for the time being in force, he shall, within a period of three months from the date of receipt of the application, register the Co-operative Society and its bye-laws. Consequent to the registration, the Certificate of Registration and the original registered bye-laws are required to be sent by registered post to the Chief Promoter. Chapter III of the Act deals with members of Co-operative Societies and their rights and liabilities. Sub-Section 2 of Section 16 provides that no Co-operative Society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of the Act, Rules and Bye-laws. Chapter IV deals with management of Co-operative Societies. Section 28A provides that the management of Co-operative Societies shall vest in the Board. The Board shall exercise such powers, discharge such duties and perform such functions as may be conferred or imposed upon it by the Act, the Rules and the Bye-laws. Sub-Section 4 of Section 28A provides that subject to the provisions of Sections 29A and 39A, the term of office of the members of the Board shall be five years from the date of election. However, the second proviso to sub-Section 4 of Section 28A provides that the first General Meeting of a society after registration shall be held within one month from the date of its registration to elect the first Board to manage the affairs of the society and the term of office of such Board shall also be five years from the date of election.

13. A plain reading of the above provisions would make it clear that the management of the co-operative society vests in the Board and the Board alone has the power to discharge its duties and perform such functions, including enrollment of members to the society. No doubt sub-Section 2 of Section 16 provides that no co-operative society shall, without sufficient cause, refuse admission to the membership to any person duly qualified therefor under the provisions of the Act, Rules and Bye-laws. However, an application for membership to the society can only be made to the Board. For that purpose, the first Board was required to be elected by the promoters, as per the list of pre-registration members approved by the Registering Authority. On a conjoint reading of the provisions mentioned above, it is clear that even if applications are made by persons seeking membership of the society, after the list of pre-registration members is approved by the Registering Authority, the applications could only be considered by the first Board after it is duly elected.

14. The other aspect of the matter is whether the Appellate Authority, while dealing with an appeal under Section 106 of the Act could direct enrollment of members to the Society. The appeal was basically a challenge to the registration of the 2nd respondent-Society. Incidentally, there was also a prayer made by the appellants therein to permit 3545 persons to become members of the newly formed Kittur PCARD Bank and permit them to participate in the first General Meeting for election of the first Board. The prayer of the appellants therein to cancel the registration of Kittur PCARD Bank has not been granted by the Appellate Authority. However, it was directed that the applications of all such persons seeking membership shall be considered by the 2nd respondent-Society. It was further directed that, the newly enrolled members should also be permitted to participate in the election. In the considered opinion of this Court, the Appellate Authority had no such powers to direct enrollment of new members or to allow them to participate them in the elections. The submission of the respondents that sub-Sections 3 & 4 of Section 106 would empower the Appellate Authority to pass any order as the authority deems fit, to prevent the ends of justice being defeated, and therefore, such a direction was within the powers of the Appellate Authority, is an argument too far fetched.

15. It was submitted by one of the counsels for the respondents that sub-rule(5) of Rule 3 empowers the Registering Authority to modify the promoters list and therefore, an appeal under Section 106 being a continuation of registration proceedings, the directions issued by the Appellate Authority should be construed as a modification made by the Registering Authority. This argument, though attractive, cannot be sustained. Sub-rule(5) of Rule 3 provides that after collecting the share capital to the extent permitted by the Registrar from the specified number of persons, the Chief promoters shall convene a meeting of the promoters of the proposed society and place the details of the particulars of receipts and expenditure incurred and the names of the proposed members from whom share capital is collected. It further provides that after getting a resolution passed in the promoters meeting, he shall submit a proposal to the Registrar for the registration of the society in the prescribed application along with the bye laws of proposed society and the list of proposed members with their names and addresses. The next sentence assumes significance. It says, "If there is any change in the promoters list, it can be ratified by the Registering Authority." The word used is ratify, not modify.

16. Sub-rule(1) of Rule 3 provides that a group of persons not less than 10, intending to form a Co-operative Society may join together and elect a Chief promoter amongst themselves, authorizing him to take further steps for registration of the Society. Sub-rule (2) enables the Chief promoter to approach the Registrar along with a list of persons who have joined together to form the proposed society. Sub-rule(3) provides that if the Registrar is satisfied that the proposed society has reasonable chances of success and is going to be economically viable, he may permit the Chief promoter to collect such amount of share capital from such number of persons intending to become members of the

proposed society, within a specified period. Sub-rule (5) is the last step, wherein the Chief Promoter shall convene a meeting of the "promoters" and place the details of the particulars of receipts and expenditure incurred and "the names of the proposed members" from whom share capital is collected. After getting a resolution passed in the "promoters meeting" he shall submit a proposal to the Registrar for registration of the Society along with the list of proposed members with their names and addresses. If there is any change in the promoters list, it can be ratified by the registering authority.

17. It would be relevant to notice that in sub-rule(5) the words "promoters" and "list of proposed members" are used. Whereas, under Sub-Rule(2), the list of promoters is already submitted along with the application seeking registration. Thereafter, under sub-rule(3), the Registering Authority permits the Chief Promoter to collect share capital from persons intending to become members. There may be several persons who contribute share capital, but, as per sub-rule(5), in the meeting of promoters, a resolution is required to be passed approving the list of proposed members. It is for the promoters to decide whether any of such contributors should be included in the list of promoters or list of proposed members. If the promoters resolve to add any of such persons to the list of promoters, only then can the Registering Authority ratify the same. Therefore, even the Registering Authority has no power to direct enlisting a proposed member as promoter. This is in keeping with the objective of the enactment which endeavours to promote voluntary formation, autonomous functioning, democratic control and professional management of Co-operative Societies.

What follows is that the Registering Authority prepares a list of pre-registration members, as per the resolution of the Promoters. The first General Meeting is required to be held from amongst the pre-registration members to elect the first Board. Therefore, it is to be held that neither the Registering Authority nor the Appellate Authority, while dealing with an appeal under Section 106, where the act of registering a Society is called in question, is empowered to direct the Society to admit a person as member. For that matter, once the pre-registration members list is approved by the Registering Authority, even the promoters cannot seek addition or modification to the list. In the considered opinion of this court, when once the Registering Authority issues a certificate of registration in terms of Section 8, the next mandated action is to hold the first General Meeting to elect a Board in place. There is no provision to enroll members to the Society in the interregnum, unless and until the first Board is duly elected.

18. More-over, on facts, it is to be noticed that respondents No.6 to 19 challenged the registration of the Society. Respondents No.6 to 19 have neither contributed towards the share capital nor have they made applications seeking membership of the Society. The Appellate Authority, while dealing with an appeal under Section 106, was dealing with the order passed by the Registering Authority in registering the new Society. In such a proceeding, the Appellate

Authority could not have entertained a plea regarding membership. On the other hand, where any person seeking admission as a member of any Co-operative Society makes an application in writing under sub-section (3) of Section 16 and if admission is refused, remedy by way of an appeal under Section 105A is provided. However, an appeal under Section 105A lies before the Registrar and not before the Joint Registrar. Therefore, the Joint Registrar could not have directed the Society to consider the application of respondents No.6 to 16 or any other persons to be enrolled as members, let alone permitting them to participate in the election.

19. Coming to the next limb of argument, the words "as it deems fit" does not invest the Appellate Authority with unbridled powers. Such provisions are provided only to ensure play in the joints. Such powers can only be used with circumspection and only to avoid miscarriage of justice. At any rate, no orders could be passed contrary to the specific provisions of the Act. Therefore, when powers are vested only with the Board to consider applications of membership and when the first Board itself was yet to be constituted by holding an election from amongst the pre-registration members, question of enrollment of new members does not arise. Such power to consider applications for new membership is neither vested with the initial promoters nor with the Appellate Authority or any other authority under the provisions of the Act. Law does not provide for making an application for membership before Registration of Society, except by contribution of share capital in the hands of the Chief Promoter, as provided under sub-rule (3) of Rule 3.

20. Lastly, the contention regarding maintainability of the writ petition raised by one of the respondents that since an alternative remedy by way of revision is available to the petitioners under Section 108 of the Act, is required to be dealt with. This Court and the Hon'ble Supreme Court have held that availability of alternative remedy is not an absolute bar for entertaining a writ petition. In the case of *Kuntesh Gupta /vs./ Management of Hindu Kanya Mahavidyalaya*, reported in (1987) 4 SCC 525, it was held that when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. Similarly, in *Harbanslal Sahnia and another/vs./ Indian Oil Corporation Ltd.*, reported in (2003) 2 SCC 107, the Apex Court has held that the Rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. It has also been held that writ jurisdiction can be exercised in at least three contingencies and one of them is where the orders or proceedings are wholly without jurisdiction. As noted above, this Court has held that the directions issued by the Appellate Authority to induct members and permit them to participate in the elections is wholly without jurisdiction and not within the powers of the Appellate Authority while dealing with an appeal under Section 106, where registration of the Society was in question. Therefore, the argument regarding maintainability of writ petition is answered in favour of the petitioners.

21. Another facet of the question of maintainability of the writ petition was raised on the ground that all the affected parties are not impleaded in the petition and therefore the petition is not maintainable. In this regard it is suffice to notice that the Hon'ble Apex Court, in the case of B.Prabhakar Rao and others /vs./ The state of Andhra Pradesh and Others, reported in AIR 1986 SC 210, has held that even if some of the affected parties have not been impleaded and their interest are identical with those impleaded and are sufficiently represented, impleadment of some would satisfy the affected parties and non-impleadment of some would not be fatal to the maintainability of the petition. Therefore, even on that ground the instant writ petition is maintainable.

22. Finally, coming to the last contention raised by the respondents that since this court, by its interim order permitted the Returning Officer to hold elections and the elections having been held, the results are required to be announced, is an argument in desperation. The very fact that this Court, while passing the interim order on 09.09.2019 directed the Returning Officer to proceed with the elections, but specifically directed not to announce the results, it would only mean and signify that if this Court were to dismiss the writ petition, then the membership of 1535 persons would be validated and their right to vote would be upheld. On the contrary, if the petition were to be allowed, then the votes cast by respondents No. 6 to 16 and such other persons would become invalid and consequently fresh election is required to be held.

23. For the reasons stated above, this Court proceeds to pass the following:

#### ORDER

1. The writ petitions are allowed.
2. The directions issued by the Appellate Authority and the Election Officer in their orders dated 18.12.2018 at Annexures-E & F directing enrollment of new members and permitting them to participate in the election, are hereby quashed and set aside.
3. Consequently, the voters list prepared by the Election Officer on 31.08.2019 and voters list prepared by the Returning Officer following the interim order dated 09.09.2019 stand quashed and set aside.
4. The 4th respondent - Returning Officer is hereby directed to conduct the first General Meeting of the 2nd respondent Society, as expeditiously as possible and announce the results of election of the first Board of the Society, on or before 25th of December, 2019. The voters list shall be the list of pre-registration members approved by the Registering Authority annexed to the Certificate of Registration dated 14.08.2018.
5. Needless to observe that Respondents No.6 to 16 and all others who wish to enroll themselves as members of the 2nd Respondent Society are free to make applications in accordance with law and the first Board of the Society, after duly being elected, shall consider such application in accordance with law.

It is ordered accordingly.