IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 4TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104898 OF 2023 (CS-EL/M)

BETWEEN

1. DYAVAPPA S/O. KARIYAPPA BUDIHAL,
   AGE- 58, OCC: AGRICULTURE
   SL.NO. 2., MEMBARSHIP NO. 5.

2. HUCHAPPA S/O. HANAMAPPA GADDI,
   AGE- 40, OCC: AGRICULTURE
   SL.NO. 3., MEMBARSHIP NO.7.

3. SHARANAPPA S/O. RUDRAPPA MADIVALAR,
   AGE- 54, OCC: AGRICULTURE
   SL.NO. 4., MEMBARSHIP NO.13.

4. YALLAPPA S/O. SIDDAPPA CHALAVANNAVAR,
   AGE- 52, OCC: AGRICULTURE
   SL.NO. 5., MEMBARSHIP NO.16.

MOHANKUMAR B SHELAR
Digitally signed by MOHANKUMAR B SHELAR
Location: HIGH COURT OF KARNATAKA DHARWAD
Date: 2023.09.05 13:28:14 -0700

5. NEELAWWA S/O. KOYOGAPPA YAVGAL,
   AGE- 48, OCC: AGRICULTURE
   SL.NO. 7., MEMBARSHIP NO.20.

6. BHIMAPPA S/O. IRAPPA KARAMADI,
   AGE- 51, OCC: AGRICULTURE
   SL.NO. 8., MEMBARSHIP NO.54.

7. RUDRAPPA S/O. IRAPPA CHAKRASALI,
   AGE- 60, OCC: AGRICULTURE
   SL.NO. 9., MEMBARSHIP NO.41.

8. SHEKAYYA S/O. RUDRAYYA SALIMATH,
AGE- 49, OCC: AGRICULTURE
SL.NO. 10., MEMBARSHIP NO.46.

9. SHIVANGOUDA S/O. SHEKAGOUDA KOPPANGOUDRA,
AGE- 45, OCC: AGRICULTURE
SL.NO. 11., MEMBARSHIP NO.50.

10. MAHANTESH S/O. MALLAPPA MADAGUNAKI,
AGE- 40, OCC: AGRICULTURE
SL.NO. 12., MEMBARSHIP NO.53.

11. KALLAPPA S/O. RAMAPPA CHALAVANNAVAR,
AGE- 58, OCC: AGRICULTURE
SL.NO. 13., MEMBARSHIP NO.54.

12. BASAPPA S/O. BHIMAPPA HUGAR,
AGE- 50, OCC: AGRICULTURE
SL.NO. 14., MEMBARSHIP NO.55.

13. SHANKRAPPA S/O. VEERAPPA CHAKRASALI,
AGE- 56, OCC: AGRICULTURE
SL.NO. 15., MEMBARSHIP NO.60.

14. LAXAMAVVA W/O. AJJAPPA KUMBAR,
AGE- 54, OCC: AGRICULTURE
SL.NO. 16., MEMBARSHIP NO.61.

15. MARITAMAPPA S/O. BASAPPA HADAPAD,
AGE- 65, OCC: AGRICULTURE
SL.NO. 18., MEMBARSHIP NO.67.

16. NINGANGOUDA S/O. KALLANGOUDA PATIL,
AGE- 56, OCC: AGRICULTURE
SL.NO. 19., MEMBARSHIP NO.70.

17. BASAVARAJ S/O. YALLAPPA TALAWAR,
AGE- 46, OCC: AGRICULTURE
SL.NO. 20., MEMBARSHIP NO.74.

18. RUDRAGOUDA S/O. NINGANGOUDA PATIL,
AGE- 65, OCC: AGRICULTURE
SL.NO. 22., MEMBARSHIP NO.82.

19. MALLAPPA S/O. SAKRAPPA HUSEKERI,
AGE- 56, OCC: AGRICULTURE
SL.NO. 23., MEMBARSHIP NO.83.

20. KARAVEERAPPA S/O. SHIVAPPA KALLAPUR,
AGE- 68, OCC: AGRICULTURE
SL.NO. 24., MEMBARSHIP NO.85.

21. GANGAMMA W/O. VEERUPAXAPPA BYAHATTI,
AGE- 42, OCC: AGRICULTURE
SL.NO. 26., MEMBARSHIP NO.93.

22. BASAPPA S/O. SANNARUDRAPPA BYAHATTI,
AGE- 56, OCC: AGRICULTURE
SL.NO. 27., MEMBARSHIP NO.94.

23. SHANKRAPPA S/O. VEERAPPA BYAHATTI,
AGE- 45, OCC: AGRICULTURE
SL.NO. 28., MEMBARSHIP NO.96.

24. ARUNA W/O. SHANKRAPPA NAVALUR,
AGE- 54, OCC: AGRICULTURE
SL.NO. 29., MEMBARSHIP NO.100.

25. SANGANGOUDA S/O. SHANKARGOUDA PATIL,
AGE- 48, OCC: AGRICULTURE
SL.NO. 32., MEMBARSHIP NO.107.

26. BHIMAPPA FAKIRAPPA ARAHATTI,
AGE- 59, OCC: AGRICULTURE
SL.NO. 34., MEMBARSHIP NO.111.

27. HANAMANTGOUDA S/O. VEERANGOUD PATIL,
AGE- 50, OCC: AGRICULTURE
SL.NO. 35., MEMBARSHIP NO.112.

28. MALLAPPA S/O. RUDRAPPA BYAHATTI,
AGE- 58, OCC: AGRICULTURE
SL.NO. 36., MEMBARSHIP NO.114.

29. VEERABHADRAPPA S/O. DYAVAPPA NAIKAR,
AGE- 65, OCC: AGRICULTURE
SL.NO. 37., MEMBARSHIP NO.115.

30. SHANKRAPPA S/O. NINGAPPA GULAGANJI,
AGE- 52, OCC: AGRICULTURE
SL.NO. 38., MEMBARSHIP NO.117.

31. NEELAPPA S/O. MALLAPPA ARAHATTI,
AGE- 63, OCC: AGRICULTURE
SL.NO. 39., MEMBARSHIP NO.119.

32. SHANKRAPPA S/O. DYAVAPPA YATNALLI,
AGE- 60, OCC: AGRICULTURE
SL.NO. 40., MEMBARSHIP NO.120.

33. ASHOK S/O. CHANDRAPPA YATNALLI,
AGE- 38, OCC: AGRICULTURE
SL.NO. 41., MEMBARSHIP NO.121.

34. MANJULA W/O. BASAVARAJ BYAHATTI,
AGE- 52, OCC: AGRICULTURE
SL.NO. 42., MEMBARSHIP NO.127.

35. RAMAPPA S/O. IRAPPA KARAMADI,
AGE- 58, OCC: AGRICULTURE
SL.NO. 43., MEMBARSHIP NO.131.

36. PRAKASH S/O. HANAMAPPA GULAGANJI,
AGE- 40, OCC: AGRICULTURE
SL.NO. 44., MEMBARSHIP NO.133.

37. YALLAPPAGOUDA S/O. MUDIGOUDA PATIL,
AGE- 55, OCC: AGRICULTURE
SL.NO. 45., MEMBARSHIP NO.134.

38. MALLIKARJUN S/O. MALLAPPA GULAGANJI,
AGE- 54, OCC: AGRICULTURE
SL.NO. 46., MEMBARSHIP NO.136.

39. BASAVVA W/O. KOYALLAPPA GULAGANJI,
AGE- 52, OCC: AGRICULTURE
SL.NO. 47., MEMBARSHIP NO.137.

40. PALAKSHAGOUDA S/O. ANDANGOUDA PATIL,
AGE- 42, OCC: AGRICULTURE
SL.NO. 48., MEMBARSHIP NO.140.

41. SIDDANGOUDA S/O. ANDANGOUDA PATIL,
AGE- 43, OCC: AGRICULTURE
SL.NO. 49., MEMBARSHIP NO.141.

42. BASAVARAJ S/O. DODDARUDRAPPA BYAHATTI,
AGE- 65, OCC: AGRICULTURE
SL.NO. 50., MEMBARSHIP NO.147.

43. RAVINDRAGOUDA S/O. MUDIGOUDA PATIL,
AGE- 48, OCC: AGRICULTURE
SL.NO. 51., MEMBARSHIP NO.1/69.

44. ISHWARGOUDA S/SHANKARGOUDA PATIL,
AGE- 50, OCC: AGRICULTURE
SL.NO. 52., MEMBARSHIP NO.215.

45. KEERTI W/O. MELIGERGOUDA PATIL,
AGE- 25, OCC: AGRICULTURE
SL.NO. 53., MEMBARSHIP NO.203.

46. MANTESHGOUDA S/O. VEERANGOUDA PATIL,
AGE- 42, OCC: AGRICULTURE
SL.NO. 54., MEMBARSHIP NO.499.

47. SIDDANGOUDA S/O. VEERANGOUDA PATIL,
AGE- 48, OCC: AGRICULTURE
SL.NO. 55., MEMBARSHIP NO.250.

48. RUDRAPPA S/O. YALLAPPA YAVGAL,
AGE- 55, OCC: AGRICULTURE
SL.NO. 56., MEMBARSHIP NO.266.

49. DODDAYALLAPPA S/O. DEVAPPA BARKER,
AGE- 56, OCC: AGRICULTURE
SL.NO. 57., MEMBARSHIP NO.501.

50. FAKIRAPPA S/O. MALLAPPA ITI,
AGE- 48, OCC: AGRICULTURE
SL.NO. 58., MEMBARSHIP NO.500.

51. KUSHALKUMAR S/O. DYAVAPPA MUDAGUNAKI,
AGE- 52, OCC: AGRICULTURE
SL.NO. 59., MEMBARSHIP NO.234.

52. SHARANAPPA S/O. YALLAPPA KALLAPUR,
AGE- 42, OCC: AGRICULTURE
SL.NO. 60., MEMBARSHIP NO.4/42.

53. CHANNABASAPPA S/O. YALLAPPA KALLAPUR,
AGE- 44, OCC: AGRICULTURE
SL.NO. 62., MEMBARSHIP NO.4/41.

54. IRANGOUDA S/O. NINGANGOUDA PATIL,
AGE- 45, OCC: AGRICULTURE
SL.NO. 63., MEMBARSHIP NO.358.

55. AJJAPPA S/O. SIDDAPPA CHALAVANNAVAR,
AGE- 45, OCC: AGRICULTURE
SL.NO. 67., MEMBARSHIP NO.356.

56. BASAPPA S/O. BHIMAPPA BUDIHAL,
AGE- 40, OCC: AGRICULTURE
SL.NO. 66., MEMBARSHIP NO.357.

57. BASAPPA S/O. VEERABHADRAPPA NAIKAR,
AGE- 43, OCC: AGRICULTURE
SL.NO. 72., MEMBARSHIP NO.366.

58. SHIVAPPA S/O. BASAPPA KABBALGERI,
AGE- 24, OCC: AGRICULTURE
SL.NO. 73., MEMBARSHIP NO.120.

59. SUNANDA W/O. SUBHAS GULAGANJI,
AGE- 54, OCC: AGRICULTURE
SL.NO. 75., MEMBARSHIP NO.2/158.

60. MUTTANGOUDA S/O. BALANGOUDA PATIL,
AGE- 50, OCC: AGRICULTURE
SL.NO. 76., MEMBARSHIP NO.3/14.

61. YALLAVVA W/O. RAMAPPA KARAMADI,
AGE- 65, OCC: AGRICULTURE
SL.NO. 79., MEMBARSHIP NO.368.

62. SHIVANAND S/O. IRAPPA KUMBAR,
AGE- 29, OCC: AGRICULTURE
SL.NO. 80., MEMBARSHIP NO.3/135.

63. MADIVALAPPA S/O. BASAPPA AGASAR,
AGE- 53, OCC: AGRICULTURE
SL.NO. 83., MEMBARSHIP NO.24.

64. ANDANGOUDA S/O. PAVRATGOUDA PATIL,
AGE- 68, OCC: AGRICULTURE
SL.NO. 86., MEMBARSHIP NO.80.

65. SHARANAPPAGOUDA S/O. ANDANGOUDA PATIL,
AGE- 42, OCC: AGRICULTURE
SL.NO. 87., MEMBARSHIP NO.143.

ALL ARE R/O: KURLAGERI, TQ: NARGUND,
DIST: GADAG-582207.

...PETITIONERS

(BY SRI S.M. KALWAD, ADVOCATES)

AND

1. THE STATE OF KARNATAKA,

REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF CO-OPERATION,
6TH FLOOR, M.S. BUILDING,
AMBEDKAR VEEDHI, BENGALURU-560 001.

2. THE STATE CO-OPERATIVE ELECTION AUTHORITY,
REPRESENTED BY ITS COMMISSIONER,
3RD FLOOR, SHANTI NAGAR,
TTMC 'A' BLOCK, BENGALURU-560 027.

3. THE DISTRICT ELECTION OFFICER AND
DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETY,
TQ & DIST: GADAG- 582207.

4. SRI S.H. MARANABASARI,
THE RETURNING OFFICER,
PRATHAMIKA KRUSHI PATTIN
SAHAKARA SANGH NIYAMIT,
KURLAGERI, TQ: NARGUND, DIST: GADAG,
EXAMINER CUM GOVT. SOCIETIES
SENIOR INSTRUCTOR,
GADAG- 582207.

5. PRATHAMIKA KRUSHI PATTIN
SAHAKARA SANGH NIYAMIT,
KURLAGERI, TQ: NARGUND, DIST: GADAG,
TQ: NARGUND, DIST: GADAG-582207.
REP. BY ITS CHIEF EXECUTIVE OFFICER.

....RESPONDENTS

(BY SRI SHIVAPRABHU S. HIREMATH, AGA FOR R1 AND R3; SRI ARAVIND D. KULKARNI, ADV. FOR R5; NOTICE TO R2 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED FINAL LIST OF ELIGIBLE VOTERS FOR THE BORROWERS CONSTITUENCY OF THE 5TH RESPONDENT SOCIETY DATED 04.08.2023 ISSUED BY THE RESPONDENT NO.4 AND 5 VIDE ANNEXURE-B AND IMPUGNED FINAL LIST OF INELIGIBLE VOTERS FOR THE BORROWERS CONSTITUENCY OF THE 5TH RESPONDENT SOCIETY DATED 04.08.2023 ISSUED BY

THE RESPONDENT NO.4 AND 5 VIDE ANNEXURE-C, IN THE INTEREST OF JUSTICE AND EQUITY; CONSEQUENTLY, ISSUE WRIT IN THE NATURE OF MANDAMUS TO DIRECT THE RESPONDENTS TO PREPARE FRESH VOTERS LIST BY INCLUDING THE PETITIONERS IN THE LIST OF ELIGIBLE VOTERS FOR THE BORROWERS CONSTITUENCY OF THE 5TH RESPONDENT SOCIETY AND TO PERMIT THE PETITIONERS HEREIN TO PARTICIPATE, CONTEST AND CAST THEIR VOTES IN THE ELECTION TO THE 5TH RESPONDENT SOCIETY TO BE HELD ON 26.08.2023 AS PER THE CALENDAR OF EVENTS ISSUED BY THE 4TH RESPONDENT VIDE ANNEXURE-A, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The learned counsel appearing for the petitioners and the learned AGA would fairly submit before the Court that the relief sought in the instant petition does not survive for consideration and is squarely covered by the judgment rendered by the Co-ordinate Bench of this Court in W.P.No.8502/2022 C/W W.P.No.8477/2022.

2. The Co-ordinate Bench of this Court while disposing of WP No.8502/2022 along with WP No.8477/2022 at paragraph 10 and 12 has observed as follows:

> *"10. These provisions do not leave any room for doubt that an excluded member, with the publication of the Draft Eligible Electoral List, must*

have an opportunity by way of an individual notice to file objections on exclusion from the Electoral List. It must be shown that the concerned Chief Executive has prepared and sent notice to the affected members. The Public Notice dated 8.11.2021 does not meet these requirements. In fact, it is admitted on behalf of the respondents that there are deficiencies in the preparation of the Final Electoral Roll after the publication of the Draft Eligible Electoral List, and the petitioners have not been issued with individual notices.

12. It follows from this decision that the adjudication of all questions must be as provided under Section 70(2) of the Co-operative Societies Act. However, in the present case the respondents admit that there are deficiencies in finalization of Final Electoral List. The petitioners are admittedly not issued with individual notice as required under the provisions of Rule 13-D (2-A) of the Co-operative Societies Rules; the petitioners have now cast their votes in the elections on 23.04.2022; the petitioners are not given the opportunity to show cause against the allegations that they have created documents. The respondents, despite admitting deficiencies in finalisation of the Final Electoral List, want to invoke the rule of alternative remedy. This Court is of the considered view that,

in the pecularities of this case, the writ petitions should be disposed of with directions to the concerned respondent to announce results counting even the votes cast by the petitioners and with liberty to all the concerned to avail remedy under Section 70(2) of the Act if aggrieved by the results. If such remedy is availed raising a dispute, exclusion of votes of those petitioners who are guilty of fraud can also be considered based on the material that will be placed on record."

3. Since the petition is identically placed and the relief sought by the petitioners is identical, I am of the view that the writ petition deserves to be disposed of in terms of the order passed by the Co-ordinate Bench of this Court in WP No.8502/2022 along with WP No.8477/2022 disposed of on 07.06.2022 and accordingly the following:

ORDER

i) *Writ petition is disposed of in terms of the order passed by the Coordinate Bench of this Court in WP No.8502/2022 along with WP No.8477/2022 disposed of on 07.06.2022 and the returning officer is directed to announce the results of the elections that were held to the post of Board of members of the respondent-Society forthwith,*

including the votes casted by the petitioners in the petition.

ii) *The petitioners as well as the concerned who are aggrieved by the results so announced are at liberty to avail the remedy under Section 70(2) of the Act of 1959. All contentions urged in these writ petitions by the parties concerned are left open for consideration in the appropriate proceedings if commenced.*

iii) *In view of disposal of the writ petition, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.*

Sd/-
JUDGE

AM
List No.: 1 Sl No.: 102