



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2023



BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 6419 OF 2023 (CS-RES)

BETWEEN:

1. T N SHIVARAJU
.....
2. T S NAGARAJA
3. H B JAGADISH
4. T N SHIVAKUMAR
.....
5. T H GURUDATH
6. R RADHA
7. SHANTAMMA
8. VIDYAKRISHNA

Digitally signed
by POORNIMA
SHIVANNA
Location: High
Court of
Karnataka



...PETITIONERS

(BY SRI. DEVI PRASAD SHETTY.,ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT URBAN DEVELOPMENT
M S BUILDING,
BANGALORE-560001.
REPRESENTED BY ITS PRINCIPAL SECRETARY.
2. THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
TIPTUR SUB DIVISION,
TIPUTR-572201.
3. THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
ROOM NO 305, 2ND FLOOR,
MINI VIDHAN SOUDHA,
TUMKURU DISTRICT,
TUMKURU-572101.
4. THE TOWN COOPERATIVE SOCIETY LTD
DABBEGATTA ROAD,
TURUVEKERE 572227.
TUMKUR DISTRICT,
BY ITS CHIEF EXECUTIVE OFFICER (CEO)
(RESPONDENT NO.3 SOCIETY IS A REGISTERED
UNDER THE KARNATAKA CO-OPERATIVE SOCIETIES
ACT, 1959)

...RESPONDENTS

(BY SMT. A.R. SHARDAMBA, AGA FOR R1 TO R3)

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 QUASHING THE ORDER PASSED BY THE R-3 DTD 06/03/2023 IN NO. SANI-34. CHUNAVANE/VISHESHADIKARI/31/2022-23 IS PRODUCED AT ANNEXURE-C AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

1. The petitioner is before this Court seeking for the following reliefs:
 - i. *Issue a writ in the nature of certiorari quashing the order passed by the respondent no.3 dated 06.03.2022 in No. SANI-34. CHUNAVANE/VISHESHADIKARI/31/2022-23 is produced at Annexure-C.*
 - ii. *To pass such other writ, order or direction as this Hon'ble Court deems fit under the circumstances of the case.*
2. The grievance of the petitioner is that a Special Officer has been appointed in respect of respondent No.4-Society without waiting for 15 days period prescribed under Section 29(B) of the Karnataka Co-operative societies ACT, 1959 (for short 'KCS ACT').
3. Sri. Devi Prasad Shetty., learned counsel for the petitioner, submits that on 6.3.2023, five directors had submitted their resignation, and there being no quorum, respondent No.2 exercised powers Under subsection (1) of Section 31 and appointed a Special Officer. He submits that the power to appoint a Special Officer under subsection (1) of Section 31



has to be made only if the requirement under Section 29(B) is fulfilled. Without such fulfilment, no power under sub-section (1) of Section 31 can be exercised. Out of the five directors who had submitted their resignation, he submits that on 8.3.2023, petitioners No. 7 and 8 had withdrawn their resignations; thereby, the quorum was available for the holding of the next meeting. This fact, having occurred on 8.3.2023 within a period of 15 days, respondent No.3 has acted in haste under sub-section (1) of Section 31 and in that background, he submits that the reliefs sought are required to be granted.

4. Learned AGA would, however submit that in terms of sub-section (1) of Section 31, a non-obstante clause is present where the Registrar has been provided with powers to appoint a Special Officer notwithstanding anything contained in the Act, Rules and bye-laws for a period not exceeding six months. It is in that basis she submits that the appointment of a Special Officer cannot be circumscribed by the



requirement under Section 29B, and as such, the appointment is proper and correct. She further submits that an order passed under sub-section (1) of Section 31 is an appealable order in terms of Section 106 (1)(e)(1), and as such, the petitioner may be relegated to the alternative remedy of an appeal under the said Section 106.

5. Heard Sri. Devi Prasad Shetty., learned counsel for the petitioner and Smt. A.R.Sharadamba., learned AGA for respondents No.1 to 3. Pursued papers.
6. The short question that would arise for consideration of this Court in the present matter is whether the non-obstante clause in subsection (1) of Section 31 can confer power on respondent No.3 to be exercised de hors the requirement under Section 29B of the KCS Act?
7. Section 29B of the KCS Act is reproduced hereunder for easy reference;

29B. Resignation of member of a board or office-bearer of a Co-operative Society.- A member of the board of a Co-operative Society or an office-bearer of a



Co-operative Society, may resign his membership of the board or as an office-bearer of a society, as the case may be, in writing under his hand addressed to the Chief Executive and it shall become vacant on the expiry of fifteen days from the date of such communication unless within the said period of fifteen days such member of the board or office bearer withdraws such resignation in writing under his hand and addressed to the Chief Executive. The Chief Executive shall place the letter of resignation before the meeting of the board convened next after the communication of such letter. If the member who has resigned, is a nominated member of the society, the chief executive shall inform the nominating society immediately on receipt of the resignation letter.

8. A perusal of the above provision would indicate that any member of the Board of a Co-operative Society or office bearer may resign his membership in writing in his hand addressed to Chief Executive but further provides that the said post shall become vacant on the expiry of 15 days from the date of such communication unless within the said period of 15 days, such member of the Board or Office Bearer withdraws such resignation in writing under his hand addressed to Chief Executive.
9. It is, therefore, clear that even though a resignation may be submitted, the person who has submitted the resignation is given a period of 15 days to withdraw



the resignation. It is further clear that the resignation does not come into effect or become effectual on submission of the resignation but will become effectual only if, within a period of 15 days, it is not withdrawn. To put it in other words, if the said resignation is withdrawn within the said period of 15 days, then in law and fact, there is no resignation which can be said to be in place from and on the date of withdrawal, consequentially, the post would not become vacant.

10. Section 31(1) of KCS Act is reproduced hereunder for easy reference.

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 ⁴[XXX]⁴ 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. ²[The Registrar may ³[XXX]³ 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 cooperative credit structure.]

11. A Special Officer can be appointed if in the opinion of the Registrar of the Co-operative Society, the Co-operative Society is not functioning in accordance with the provision of Acts, Rules and Byelaws, on account of the number of members in the Board falling short of the required number to form a quorum due to disqualification, resignation or death or removal of a member.
12. In the present case, what is of relevance is resignation and not a disqualification, death or removal. The resignation as held above would come into effect if it is not withdrawn within 15 days, in the present case the resignation having been submitted on 6.3.2023 has been withdrawn by petitioners No.7 and 8 on 8.3.2023. Therefore, the said resignation is ineffectual; when it is ineffectual, the question of exercise of power under sub-section (1) of Section 31 will not arise since the required number to form a



quorum continues to exist on account of the withdrawal of the resignation.

13. The contention of learned AGA by relying upon the non-obstante clause in subsection (1) of Section 31 that the Registrar may appoint a Special Officer notwithstanding anything contained in the Act, Rules or Byelaws for a period not exceeding six months is a power vested with a Registrar of Co-operative Societies to be exercised judiciously by applying his mind and if circumstance so demand, the said power cannot be exercised arbitrarily at the whims and fancies of the Registrar.

14. Be that as it may, any order passed by exercising the powers under the non-obstante clause would necessarily have to be coupled with reasons as to why a Special Officer is appointed to a Co-operative Society. In the present matter, it can be clearly seen from Annexure-C that the Special Officer has been appointed only on account of there being a resignation submitted by some of the members and



not for any other reasons. Thus, the exercise of powers under sub-section (1) of Section 31 made by respondent No.3 is under the first portion of the sub-section (1) of Section 31 and not under the non-obstante clause. Having held that the resignation had not become effectual, Respondent No.3 would not have the power to exercise on 6.3.2023 to appoint a Special Officer, since respondent No.3 would derive such power to exercise only after the expiry of 15 days of the resignation being submitted in terms of Section 29B of the KCS Act.

15. The resignation having been submitted on 6.3.2021, the resignation would have come into effect on 21.3.2023 if not withdrawn before that date. The moment resignation is withdrawn the powers under sub-section (1) of Section 31 cannot be exercised.

16. The last contention of the learned AGA is that there is an alternative and efficacious remedy in terms of Clause (e1) of sub-Section (1) of Section 106. An alternative and efficacious remedy needs to be



efficacious in nature, and the order which is challenged should have been passed by the authority having jurisdiction to do so. In view of my above finding that there was no power which could be exercised under sub-Section (1) of Section 31 by respondent No.3 the said order being without jurisdiction, I am of the considered opinion the said alternative remedy is not an efficacious one. In view of the above I pass the following;

ORDER

- i. The writ petition is ***allowed***.
- ii. A certiorari is issued, the order passed by respondent No.3 dated 6.3.2023 bearing No.SANI-34:CHUNAVANE/VISHESHADIKARI/31/2022-23 at Annexure-C is hereby quashed.

**Sd/-
JUDGE**

SR
List No.: 1 Sl No.: 34