
(2014) 08 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 947 Of 2013 and CMA No. 1309 Of 2013

Kirpal Singh and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Citation : (2015) 1 JKJ 508

Hon'ble Judges : Tashi Rabstan, J.

Bench : Single Bench

Advocate : S.C. Mansotra, Advocate, for the Appellant; H.A. Siddiqui, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Tashi Rabstan, J.â?"The petitioners through the medium of petition-in-hand are seeking quashment of Order No. 02-SS of 2013 dated

10.05.2013, by virtue of which Registrar, Co-operative Societies, Jammu and Kashmir has registered amendment 5(a)(i) in the Membership

clause of the registered Bye Laws of the Sainik Co-operative House Building Society Ltd., Jammu (hereinafter called as ""Society""), and with a

further direction to respondents 3 and 4 to delete the names of the civilians from the Electoral List, on the grounds set out in the writ petition. The

case of the petitioners, in brief, is that they being the Ex-servicemen and Defence personnel and having their residential houses at Sainik Colony,

Jammu are duly enrolled members of the Sainik Co-operative House Building Societies Ltd. (respondent No. 4 herein). They have assailed the

validity of Order No. 02-SS of 2013 dated 10.05.2013 whereby respondent No. 3 has directed amendment of clause 5(a)(i) of the Bye Laws of

the Sainik Co-operative House Building Society Ltd., which deals with the eligibility to become the member(s) of the Society. The primary ground

of challenge to the impugned order passed by respondent No. 3, is that it is not in consonance with the judgment passed by a Division Bench of

this Hon'ble High Court in LPA (OW) No. 35/2008, upholding the order of learned Single Judge dated 28.02.2008 passed in OWP No.

410/2005. The petitioners also seek direction to respondents 3 and 4 to delete the names of the civilians as the members from the Electoral rolls of

the Society.

2. Although, the petitioners have not been able to substantiate their contention with regard to the violation of the directions issued by this Court in

writ petition and LPA aforementioned, yet apprehension voiced by them appears to be against the civilian members, who are not serving or ex-

servicemen with regard to their participation in the election process for electing Management Committee of the Society.

3. The official respondents have filed their objections to the maintainability of the writ petition contending therein that there is an equally efficacious

remedy available by way of filing revision petition before Jammu and Kashmir Special Tribunal against the impugned order and therefore, writ

petition is not maintainable as the petitioners cannot be allowed to by pass the statutory right available to them. It is further contended that order

impugned has been passed by respondent No. 3 pursuant to order dated 03.04.2013 passed by this Court in OWP No. 584 of 2008, titled

Devinder Nath Sharma v. State and others, as such, the same is not open to challenge through the medium of the instant petition.

4. It is also contended that order passed by the respondent No. 3 way back in the year 2005 registering an amendment in the Bye Laws of the

Society, opening the membership to all the residents of Sainik Society, was called-in-question before the Jammu and Kashmir Special Tribunal and

before this Court simultaneously by way of writ petition. Before the writ petition could be disposed of and legality of the amendment could be

adjudicated upon, the learned Tribunal in exercise of the revisional jurisdiction set aside the said order, as a result thereof, writ petition pending

before this Court was rendered infructuous. This is so apparent from the order passed by the Jammu and Kashmir Special Tribunal dated

26.10.2007 appended with the writ petition as Annexure-A and the order passed by this Court in OWP No. 410/2005 dated 28.02.2008. It is

also contended that LPA against the order of learned Single Judge dated 28.02.2008 was also dismissed by the Division Bench of this Hon'ble

High Court vide Order dated 29.05.2008.

5. By referring to the aforesaid judgments of this Court, respondents have contended that it is wrong to submit that the order passed by Jammu

and Kashmir Special Tribunal has been upheld by this Court. Further plea of the respondents is that impugned order has been passed by

respondent No. 3 in compliance to the judgment dated 03.04.2013 passed in OWP No. 584/2008 titled Davinder Nath Sharma v. State and

others.

6. For facility of reference, judgment dated 03.04.2013 is reproduced herein as under:-

The learned counsel for the parties agreed for disposal of the writ petition in the following manner.

The Registrar-respondent No. 2 to re-consider the decision taken on 04.04.2008 which is impugned in this petition, in light of the amendment

made on 23.12.1983 which amendment is stated to have been approved by the Registrar. The Registrar-respondent No. 2 to reconsider the issue

on the touch stone of the amendment of 1983 and pass fresh order in accordance with law. While re-considering the matter Registrar shall also

afford an opportunity of hearing to the interest parties including petitioners and respondent-Society. Registrar-respondent No. 2 to take decision

within four week from the date copy of this order is served. Registrar-respondent No. 2 will also take steps to reconsider the matter in accordance

with law before the election scheduled for the Society is published.

Disposed of along with connected CMA(s).

7. It was lastly contended that otherwise also order impugned does not suffer from any illegality and is fully in consonance with co-operative

principles as envisaged under the Jammu and Kashmir Co-operative Societies Act, 1989. Order impugned is speaking one, and spells out detailed

reasons for effecting impugned amendment in the Bye Laws of the Society.

8. Other respondents have also filed their objections and reiterated the stand taken by the official respondents.

9. Heard learned counsel for the parties and perused the record.

10. Challenge in this petition by the writ petitioner is to the impugned Order dated 10.05.2013 passed by respondent No. 3 whereby amendment

has been effected to clause 5(a)(i) of the Bye Laws of the Jammu and Kashmir Co-operative Societies Act, 1989, which is not sustainable for the

following reasons:-

(a) Order impugned is passed in pursuance of the directions issued by this Court vide order dated 03.04.2013 passed in OWP No. 584/2008

titled Davinder Nath Sharma and others v. State of J & K and others. This judgment has attained finality.

(b) From the perusal of the order impugned, it transpires beyond any reasonable doubt that the Membership of the Society has been restricted

only to those individuals, (i) who have served or still serving in the Armed Forces or widows of such in-service or Ex-servicemen members; (ii) to

legal heirs of deceased members who are residing in the residential house/plot allotted to the deceased members; and (iii) the persons other than

legal heirs in whose favour a member has transferred his/her residential plot/house/shop site/built up shop along with share of the interest provided

such member is also an Armed Forces personnel serving or retired and actually residing in the Housing Colony developed by the Society.

11. The petitioners are, however, overlooking the provisions of 24(i) of the Bye Laws of the Society which provides that the Managing Committee

will be constituted out of the Ex-servicemen of the defence forces. In terms of Bye Laws 24(i), no civilian whosoever he may be is eligible to

contest the election and can be the member of the Managing Committee. All the apprehensions of the petitioners are, therefore, totally

misconceived, and impugned order only sub serves the object for which the Society-in-question was registered.

12. For facility of reference, Section 24(i) of the Act is reproduced here as under:-

24.(i) The Managing Committee will be constituted only of the Ex-Servicemen of Defence Forces. The Managing Committee shall not have more

than 7 (seven) members and not less than 5 (five) members of Ex-servicemen of the society over the age of 21 years including a Chairman, a Joint

Chairman and a Vice Chairman.

13. Next contention of respondents is that in pursuance of Notice dated

08.04.2013 issued by the Registrar, Co-operative Societies which was issued in compliance to the directions of this Hon'ble High Court dated 03.04.2013 passed in OWP No. 584/2008, objections were invited from the interested persons, particularly, the petitioners/respondents by way of publication in newspapers having wide circulation in the area, and only after dealing with the objections so filed, order impugned has been issued.

14. In terms of order impugned, respondent No. 3 has kept the basic character of Society into consideration and has permitted the membership and voting right only to the sons, daughters and spouses of the Ex-servicemen. The voting right has not been given to any civilian as contended by the petitioners, who is not falling within the aforesaid category. This amendment was approved in view of the decision taken by the Society as back as in 1983 and reiterated in 2005. The amendment proposed and effective in the Bye Laws by respondent No. 3 in 2013 is materially different from the amendment, which was subject matter of revision petition before the learned Tribunal or before this Court in OWP No. 410/2055 titled *Lt. Col. Sukhdev Singh Chib v. State and others*. The amendment of clause 5(a)(i) of the Bye Laws of the Society has been incorporated in the Bye Laws of the Society with respect to the members of the Society and is totally silent whether a person acquires nominal or an associate membership of the Society under amended clause 5(a)(i). Therefore, it is necessary to peruse Sections 2(n) and 18 of the Jammu and Kashmir Co-operative Societies Act, 1989.

15. For facility of reference, Section 2(n) and 18 of the Jammu and Kashmir Co-operative Societies Act, 1989 are reproduced here as under:-

2(n). "Member" means a person joining in the application for the registration of a Co-operative Society and a person admitted to membership after such registration in accordance with this Act, rules and bye-laws, and includes a nominal and an associate member.

18. Nominal or associate members.

(1) A co-operative Society may admit any person as nominal or associate member in accordance with its bye-laws.

(2) A nominal member shall not be, entitled to any share, in any form whatsoever in the assets or profit of the Society.

(3) Save as provided in this section a nominal or associate member shall have

such privileges and rights of a member and be subject to such liabilities of a member as may be specified in the bye-laws of the Society.

16. Section 2(n) talks of associate and nominal member. Section 18 defines the rights and liabilities of the nominal and associate members.

However, Bye Laws 24(i) stipulates that only defence personnel can be members of the Management Committee meaning thereby that no civilian

whosoever he/she may be as per the Bye Laws No. 24(i) is eligible to contest elections for the Management Committee of the Society. The

amendment, by which, clause 5(a)(i) has been incorporated in the Bye Laws of the Society thereby granting membership to certain class of

persons in the Sainik Co-operative House Building Society Ltd., Jammu, even if allowed to sustain, will not in any way help those members, who

are not defence personnel to contest the elections to the Management Committee of the Society because clause 24(i) of the Bye Laws puts a clear

bar on such civilians or even legal heirs of the defence personnel, who are not or have not served in the defence forces at any point of time. Bye

Laws 24(i) of the Society have not been amended till date and situation even after incorporating the clause 5(a)(i) to the Bye Laws does not come

to the rescue of private respondents thereby not in any manner empowering them to contest elections of the Management Committee. This

apprehension of the petitioners to the extent of civilians contesting elections or becoming part of the Management Committee of the Society is

remedial under clause 24(i) of the Bye Laws of the Society.

17. The impugned amendment has been carried out strictly in compliance to the directions passed by this Hon'ble High Court, which order has

attained finality, therefore, petitioners cannot now question the impugned order.

18. Reliance placed by the petitioners on the judgment of the learned Single Judge of this Court dated 28.02.2008 is totally misplaced for the

reasons that in terms of the aforesaid judgment, learned Single Judge has only held that the writ petition has been rendered infructuous in view of

the order dated 26.10.2007 passed by the learned Tribunal striking down order dated 30.06.2005 being ultra vires to the Bye Laws of the

Society. Appeal preferred against judgment dated 28.02.2008 was also dismissed in limini by the Division Bench of this Hon'ble High Court vide

order dated 29.05.2008. A perusal of the order dated 28.02.2008 passed by the

learned Single Judge aforesaid clearly reveals that writ petition was dismissed only as having been rendered infructuous, as such, the same cannot be construed to have upheld the order passed by the Jammu and Kashmir Special Tribunal. To the contrary judgment passed in OWP No. 584/2008 dated 03.04.2013 has also attained finality thereby directing the learned Registrar Co-operative Society to reconsider the issue and pass appropriate orders within four weeks. It is in compliance of the aforesaid directions, the whole issue appears to have been reconsidered by the Registrar Co-operative Society, who after dealing with all aspects has passed order impugned thereby making amendment to the clause 5(a)(i) of the Bye Laws of the Society. The order impugned besides being in consonance with the judgment of this Court dated 03.04.2013 is otherwise in consonance with the provisions of Jammu and Kashmir Co-operative Society Act and the rules framed thereunder. Order impugned is speaking one and spells out the reasons for effecting amendment. Nothing legally and logically has been pointed out by the petitioners to assail the order impugned on merits.

19. Learned counsel for the petitioners has, however, relied upon the judgment of the Apex Court titled Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, which is quite distinguishable on facts and does not advance the cause of the petitioners in any manner. The judgment relied upon by the learned counsel for the petitioners deals with the issue as to whether Bye Laws of the Society can restrict the membership to the members of one community unless Act and the Rules prohibit. Such is not the case set up by the petitioners in the instant petition.

20. Viewed thus, I do not find it a case of any interference by this Court. Consequently, this writ petition is dismissed along with connected CMA(s). Interim direction, if any subsisting, shall stand vacated forthwith. No order as to costs.