

(2012) 10 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1175 of 2012 and OWP 949 of 2011

K.S. Padwal and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Jammu and Kashmir Co-operative Societies Act, 1989 — Section 29, 4

Citation : AIR 2013 J&K 1

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : B.S. Manhas, for the Appellant; Inderjeet Gupta, GA Mr. Virender Bhat, for the Respondent

Judgement

Muzaffar Hussain Attar, Judge

OWP 1175/2012 CMA (D-1717/2012)

CMA (1632/2012), CMA (1696/2012),

c/w

CMA (2/2012) APOWP 16/2012

Caveat 918/2012

OWP 949/2011 CMA (1286/2011)

(Oral)

Caveat No. 918/2012

Caveat stands discharged.

APOWP 16/2012

For the reasons mentioned and grounds stated in the application coupled with the submissions made at the bar, same is allowed. The requirement

for placing on record copy of order dated 14.08.2012 is dispensed with.

APOWP No. 16/2012 is disposed of.

OWP No. 1175/2012 and OWP No. 949/2011

1. Petitioners in OWP No. 949/2011, prayed that by issuance of Certiorari, order No. DRAJ/701-05 dated 07.07.2011 passed by respondent

no. 4 be quashed. It is also prayed that the by issuance of writ of Mandamus, respondent no. 5 be directed to complete the election process

initiated vide notification No. SCHBS/01 dated 23rd April 2011. No interim order was passed in these writ petitions, when same were considered

by the court on 24.09.2012. During the pendency of the 1st writ petition, the Registrar, Co-operative Societies J&K Srinagar passed Order No.

45-SS of 2012 dated 14.08.2012, whereunder in terms of Sub Section 4 of the Section 29 of J&K Co-operative Societies Act, 1989 (for short

'the Act of 1989') appointed the Administrator for looking after the affairs of Sainik Co-operative House Building Society (for short the Society)

till such time the managing body of the society was elected.

2. Admitted and undisputed position in respect of the petitioners is that they were elected as managing committee of the Society on 24.07.2008.

Petitioners were to hold the office for a period of three years. The period of three years has expired on 24.07.2011.

3. Petitioner's managing committee initiated process for election of new committee, ninety days before the expiry of its term. Notification dated

23.04.2011 was issued and in terms of said notification, one Ghulam Nabi Malik, former Tehsildar, was appointed as Returning Officer. Returning

Officer issued another notification dated 24.06.2011, whereunder he issued schedule of time table for the election of the management committee,

which was to be held on 24.07.2011. Communication dated 07.07.2011 was issued by the Deputy Registrar, Coop. Societies (Agri) Jammu and

addressed to the Returning Officer, Society, Jammu, wherein he was advised to postpone the election schedule at least by 15 days, so that the

genuine objections of the members would be invited and disposed of to their satisfaction, which would result in conducting elections in a free and

fair manner.

4. OWP No. 983/2011 was filed by one Ram Saroop Sharma and ors., wherein they prayed for quashment of appointment of Ghulam Nabi

Malik as Returning Officer as also for quashment of Notification dated 24.06.2011 issued by the said respondent, wherein he had fixed schedule

for conducting the elections. In the said writ petition, the court on 21.07.2011, while issuing notice directed for maintenance of status quo till next

date of hearing before the Bench. The said order was modified on 03.08.2012 and it was provided that the respondents shall not proceed with the

elections under notification impugned in the petition till next date of hearing before the Bench. Another writ petition bearing OWP No. 996/2011

was filed by Dev Raj Choudhary and ors., wherein again it was prayed that the notification appointing Returning Officer be quashed and

notification whereby election Schedule was fixed be also quashed. It was also prayed that the respondents 1 to 4 be directed to include the names

of petitioners in the Electoral Roll and permit them along with sons and wards of Ex-service man to participate in the election process including

right to contest the election to the managing committee of the Society. The said writ petition has been disposed of by the court on 23.08.2012 by

directing the respondents to accord consideration to the petitioners case having regard to amendment made in the byelaws of the Society. It was

further directed that the duly elected Committee shall deal with and dispose of the matter within four week's of the date the petitioner approach the

Committee.

5. Learned counsel for the petitioners submitted that the petitioners had initiated process of election for appointing the members of new

Management Committee, which was stalled by the court by issuance of status quo order. Learned counsel submitted that petitioners, in law, will be

deemed to be the members of the management committee and they will continue to be in office until such time the election to the new management

committee is held. Learned counsel, in support of his contention referred to and relied upon the judgment of Gujrat High Court in case titled

Jayantibhai Dahyabhai Patel v. state of Gujrat reported in (2007) 2 GLH 300 and submitted that the petitioners, in view of the law laid down in the

said judgment, have a right to continue in office till new management committee is elected. Learned counsel also referred to and relied upon

Division Bench of this Court in case titled Sh. Parkash Singh v. Lt. Col. Shiv Dev reported in 2000 KLJ 266 and submitted that the said case had

also arisen out of the same Society and the Hon'ble Division Bench directed the Society to continue with the election process from the date it was

stayed by the writ court. Learned counsel, accordingly, prayed for allowing of both the writ petitions.

6. In order to appreciate the issue raised in these petitions, Section 29 of the Act of 1989 is taken note of:

29. Election and nomination of members of Committee:

(1) The members of the Committee of a Cooperative Society shall be elected in such a manner as may be prescribed and no person shall be

elected unless he is a share holder of the society.

(2) The term of the office of the Committee shall be three years.

(3) Each committee shall within 90 days before the expiry of its terms, make arrangements for the constitution of a new committee in accordance

with the provisions of this Act and rules and bye-laws made thereunder.

(4) Where any committee has ceased to hold office and no Committee has been constituted in accordance with the provisions of this Act and rules

and bye-laws made thereunder, the Registrar, may, by an order in writing, appoint an Administrator for such period as may from time to time, be

specified in the order and an Administrator shall before the expiry of the period of his appointment, arrange for the constitution of a new

Committee in accordance with the provisions of this Act and rules and bye-laws made thereunder.

["."]

(5) Notwithstanding anything contained in this section where the bye-laws of the society so provide the first committee may be nominated by the

authority mentioned in those bye-laws.

6. Where the Government have subscribed to the share capital of a Co-operative Society or has guaranteed the repayment of the Principal and the

payment of interest on debentures issued for loans raised by a Cooperative Society, the Government or any person authorized by it in this behalf

shall have the right to nominate on the Committee such number of persons not exceeding three or one third of the total number of members thereof,

whichever is less, as the Government may determine:

Provided that in addition to members so appointed two seats shall be reserved

for members belonging to Scheduled Castes and other Back ward

Classes and one seat shall be reserved for women, which shall be filled by the Government in such manner as may be prescribed.

(7). In the case of societies which give loans for purchase of machinery, implements, equipments, commodities or other goods, no member, whose near relation is a dealer in such goods or is a Director of the Company or a partner of a firm carrying on business in such goods, shall be eligible for being elected or appointed as a member of the Committee of such society.

7. Sub Section 1 of the Section 29 of the Act of 1989 provides that the members of the Committee of a Cooperative Society shall be elected in

such a manner as may be prescribed and no person shall be elected unless he is a share holder of the society. Sub Section 2 of the Section 29 of

the Act of 1989 provides the term of the office of the Committee shall be three years. Sub Section 3 of the Section 29 of the Act of 1989 provides

that each committee shall within 90 days before the expiry of its terms, make arrangements for the constitution of a new committee in accordance

with the provisions of this Act and rules and bye-laws made thereunder. Sub Section 4 of the Section 29 of the Act of 1989 provides that where

any committee has ceased to hold office and no Committee has been constituted in accordance with the provisions of this Act and rules and

byelaws made thereunder, the Registrar, may, by an order in writing, appoint an Administrator for such period as may from time to time, be

specified in the order and an Administrator shall before the expiry of the period of his appointment, arrange for the constitution of a new

Committee in accordance with the provisions of this Act and rules and bye-laws made thereunder.

8. Admitted fact position of these cases is that in terms of Sub Section 2 of section 29 of Act of 1989, petitioners have ceased to be the members

of management Committee on 24.07.2011. In essence, under the guise of relief sought for in these writ petitions, petitioners are seeking declaration

that the Management Committee to which they were elected on 24.07.2008 and which has ceased to be functional by operation of Statute, shall

be declared to be still in existence. Petitioners effort to seek such a declaration, under the guise of prayer clause of these writ petitions, has but to

be rejected, in view of the mandate contained in Sub section 2 of the Section 29

of the Act of 1989. By operation of statute, the management Committee, of which petitioners were members, has ceased to be functional, consequently, petitioners have ceased to be members of that management committee. Petitioners have no locus in the facts and circumstances of these cases to challenge the order impugned in these petitions. The interim orders of status quo passed in two writ petitions have to be read in the backdrop and context of relief sought for in those writ petitions. The notification, whereunder returning officer was appointed by the petitioners committee, has been called in question in those writ petitions. The ex-parte order of status quo issued by the court would have reference only to the appointment of the returning officer and conducting of the elections. In the facts of these cases, when management committee ceased to be functional by the operation of the statute itself, it cannot be said that ex-parte interim order passed by the court would breathe new life into a non existing management committee. In one of the petitions, as already stated, even the status quo order was modified and it was specifically provided that the order would have reference to the conducting of elections. The other writ petition, in which status quo order was passed, has been disposed of. Registrar, in view of the mandate contained in Sub-section 4 of Section 29 of the Act of 1989, was duty bound to appoint the Administrator for the Society as the earlier appointed committee had ceased to hold the office.

9. Reference made to Jayantibhai Dahyabhai Patel's case is of no help to the petitioner, inasmuch as, in that case in terms of Section 74-C (2) of the relevant Act, on which reliance was placed before the said Court, it was provided that the members elected on the Committee shall hold office for a period of three years from the date on which first meeting was held and will continue in office until immediately before the first meeting of the members of the new committee is held. The Act of 1989 does not have any such provision, which would allow the management committee and its members to stay in office until such time, the newly elected members would convene first meeting of the new Management Committee. In Sh. Parkash Singh's case, Registrar, and, not earlier management Committee had issued notice for conducting of elections. Since the Registrar had issued the notification which was stayed by the writ court, the Division Bench of

this court directed for continuing with the election process from where it was left. On facts, this case is different from the facts of these two petitions and the said judgment also does not help the petitioners. For the above stated reasons, these petitions, being meritless, are dismissed along with connected CMA(s). Petitioners are saddled with costs of Rs. 50,000/- (rupees fifty thousand only) and same shall be deposited in the Advocate's Welfare Fund within four week's from today. Registrar shall take steps for holding elections of the Society within reasonable time.

COA (OW) No. 84/2012

Record of this contempt petition was send for.

Since the main writ petition has been disposed of, contempt petition does not survive.

COA (OW) no. 84/2012 stands disposed of.