

(2014) 06 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 949 Of 2013

K.S. Padwal

APPELLANT

Vs

State of JandK

RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Citation : (2014) 3 JKJ 396

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : B.S. Manhas, Advocate for the Appellant; H.A Siddiqui, AAG and Meenakshi Bhatyal, GA, Advocate for the Respondent

Judgement

Tashi Rabstan, J.—The challenge in this writ petition is to order dated 06-07-2013 issued by the Returning Officer, the Sainik Cooperative

House Building Society Ltd, respondent No. 4 herein, rejecting the nomination papers of petitioner for election to the Managing Committee of the

Society. The facts, as averred in the writ petition, are that for conducting election to the Sainik Cooperative House Building Society Ltd, Jammu

(hereinafter, for short, the Society), Registrar Cooperative Societies, respondent No. 2 herein, set in motion the electoral process and fixed the

date for election as 15-07-2013, while respondent No. 4 was appointed as Returning Officer for conducting the said election. It is averred that as

the petitioner being a share holder and founder member of the society was also eligible to contest the election, he also filed his nomination papers,

but were rejected by respondent No. 4 vide order impugned in terms of Rules 18(ff) and 25(1) of Jammu and Kashmir Co-operative Societies

Rules, 2001 (hereinafter, for short, Rules of 2001).

2. Objections have been filed on behalf of respondents. Respondents while maintaining their stand contended that the candidature of petitioner was rejected on two counts. The first one was in terms of Rule 18(ff) read with Rule 25(i)(e) of the Rules of 2001, which provides that a person who has held the office of any Society for three years shall not be eligible for being re-elected or re-appointed as an office bearer until a period of three years has elapsed from the date of vacating his office as such officer. It is contended that the petitioner earlier had served as a Chairman of the Society, therefore, his nomination papers have rightly been rejected. Further, it is contended that the election to the Society is now being conducted as per the amended Election Rules under SRO 236 of 2013 [Refer 2013 (17) JKS JK-261].

3. The second ground of rejection of the candidature of petitioner was in terms of Rule 25(1)(b) of the Rules of 2001, which provides that no person shall be eligible for appointment/election as a member of the committee of Co-operative Society, if he has directly or indirectly any interest in any subsisting contract made with the Society or in any property sold or purchased by the society or in any other transaction of the society, except in an investment made or in any loan taken from the society. Relying on this rule position, it is contended that the petitioner is debarred from contesting the election of the Society as he had directly purchased a shop from the Society against payment.

4. Heard the learned counsel and perused the writ record.

5. So far as disqualification of petitioner in terms of Rule 18(ff) read with Rule 25(i)(e) of the Rules of 2001 is concerned, the said issue has already been dealt with by this Court in OWP No. 950/2013 decided on 09-04-2014. This Court while allowing the said writ petition has held that rejection of nomination papers of the petitioner therein was dehors the rules in view of insertion of sub-rule (1)(c) of rule 25 in place of sub-rule (1)(e) of rule 25 in Rule 18(ff) of the Rules of 2001 vide SRO 236, thus rendering the bar of three years of not contesting the election from the date of vacating the office as such officer inapplicable/insignificant. Therefore, the said Judgement squarely covers the present issue in so far as rejection of nomination papers of the petitioner in term of Rule 18(ff) of the Rules of 2001 is concerned.

6. Now comes the second ground of rejection of nomination papers of the petitioner in terms of Rule 25(1)(b) of the Rules of 2001.

7. The contention of learned counsel for respondents is that in view of Rule 25(1)(b) of the Rules 2001, the petitioner is not eligible to contest the

election of the Society as he had directly purchased a shop from the Society, wherein the Society was a seller and petitioner was a purchaser. It is

contended that if the property is purchased by any member from the Society, then it attracts the provisions of sub-rule 25(1)(b). However, it is

contended that if the shop-in-question had been leased out by the Society to the petitioner, then the situation would have been different, but that is

not the case herein.

8. While controverting the stand taken by the respondent, learned counsel appearing for petitioner argued that the respondents have deliberately

mis-interpreted Rule 25(1)(b) of the Rules of 2001 so as to render the petitioner ineligible to contest election of the Society. To strengthen his

argument, he has relied upon Bye-Laws 39 of the Society. It is contended that a thorough interpretation of Rule 25(1)(b) would only emerge if it is

read with Bye-Law 39 of the Society. It is pleaded that primary business of the Society is to develop and lease out housing plots and shop sites.

And if the provisions of Rule 25(1)(b) are stretched to such an extent that any member who acquires a plot or shop, leased out or sold out by the

Society, would not be entitled to contest election of the Society, then no member would be eligible to contest its election.

9. A perusal of Bye-Law 39 reveals that the Society shall not allot or transfer by sale or otherwise any property including plots/houses and shops

to any person except to its own members; meaning thereby that the Society under this bye-law can allot or transfer by sale any property to its

members. In such a situation I find merit in the plea of petitioner that he has wrongly been disqualified by the respondents from contesting election

of the Society taking the shelter of Rule 25(1)(b) of the Rules of 2001. Rule 25(1)(b) has to be read conjointly with Bye-Law 39 of the Society.

10. Respondents have also alleged that during his tenure as a Chairman of the Society, the petitioner illegally withdrew honorarium to the tune of

Rs. 4,00,850/- and recovery proceedings have been initiated against him, which too renders him ineligible to contest election of the Society.

11. Learned counsel appearing for petitioner while referring to the list of defaulter members, ineligible to contest the election on account of

misappropriation of fund, issued by respondent No. 5. has pleaded that nomination papers of two members named in the list, i.e., Ex Havildar

Amar Sing and Hony. Capt. Gandharb Singh, were not only accepted by the Returning Officer, respondent No. 4 herein, but they also allowed to

contest election of the Society held on 15.07.2013.

12. I have gone through the objections filed by the respondents and the documents annexed therewith. It is not forthcoming how the nomination

papers of said two members were accepted by respondent No. 4 and how were they allowed to contest election of the Society when their names

too were figuring in the list of defaulter members on account of misappropriation of funds. Even during arguments respondents have not said

anything on this aspect of the matter. Therefore, in absence of any clarification from the respondents, I am not inclined to accept this plea of the

respondents. Otherwise too, it is not the case of respondents that since the petitioner had allegedly misappropriated the amount of the Society,

therefore he was disqualified from contesting its election

13. In view of what has been observed and discussed hereinabove, it seems that the impugned order is arbitrary and issued without application of

mind. In the given circumstances, the writ petition deserves to be allowed. Accordingly, the same is allowed and the order dated 06-07-2013

issued by the Returning Officer, the Sainik Cooperative House Building Society Ltd. is quashed, with a direction to the respondents to allow the

petitioner to contest election of the Society, if he is not otherwise ineligible.

14. This Court vide order dated 12-07-2013 while allowing the respondents to hold the election on 15.07.2013 had directed for deferring the

counting and declaration of the result till further orders. Thus, in view of this order, neither the counting could commence nor could the result be

declared till date. Now, since the petitioner has been held eligible to contest election of the Managing Committee of the Society, the election of the

Society held on 15-07-2013 is set aside with a direction to the Deputy Commissioner of the District to issue fresh notification for holding fresh

election of the Managing Committee of the Society. Disposed of along with connected CMA(s), if any.