
(2016) 10 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1368 of 2013, Others Writ Petition (OWP) No. 1116 of 2013, Others Writ Petition (OWP) No. 1166 of 2015, Others Writ Petition (OWP) No. 114 of 2015, Others Writ Petition (OWP) No. 276 of 2015, Others Writ Petition (OWP) No. 14

Ladies Cooperative House Building Society
Vs

APPELLANT

State

RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Section 103
Cooperative Societies Rules, 2001 — Rule 16

Citation : (2017) AIR(J&K) 44 : (2016) 4 JKJ 267

Hon'ble Judges : Mr. Alok Aradhe, J.

Bench : Single Bench

Advocate : Mr. B. S. Salathia, Sr. Advocate with Ms. Meenakshi Salathia, Advocate, Mr. B. S. Manhas, Sr. Advocate with Mr. Ankush Manhas, Advocate, Mr. SK Shukla, Advocate, Mr. Abhinav Sharma, Advocate, Mr. K. Nirmal Kotwal, Advocate, for the Appellant\Petitioner; M

Final Decision : Disposed off

Judgement

Mr. Alok Aradhe, J. - OWP NO.1368/2013, OWP No.1116/2013, OWP No.1166/2015, OWP No.114/2015, OWP No.276/2015, OWP No.1411/2014, OWP No.523/2014.

In this bunch of writ petitions preferred under Article 226 of the Constitution of India read with Section 103 of the Constitution of the State of

Jammu and Kashmir, the petitioners have assailed the validity of SRO 236 of 2013 dated 25.04.2013 by which Rule 16 of Jammu and Kashmir

Co-operative Societies Rules has been amended. For the facility of reference, facts from OWP No.1368/2013 are being referred to.

2. The petitioner is the Secretary of Multipurpose Cooperative Society Jakh, Tehsil and District Jammu. It is the case of the petitioners that Jammu

And Kashmir Cooperative Societies Act 1989(hereinafter referred to as the 'Act') was enacted with an object to give complete internal autonomy.

Under Section 176 of the Act, the state Government has power to frame Rules. The State Government under the Act has framed Rules namely

Jammu and Kashmir Cooperative Societies Rules 2001. It is averred in the writ petition that under Rule 16 of Rules, elections of members of the

committee i.e. Board of Society other than Agricultural Credit Society shall be held on such date as may be specified by the Registrar and shall be

conducted under the control of Assistant Commissioner (Revenue). It is further averred that since there was direct interference of the State

Government and autonomous character of society was being jeopardized, therefore, SRO 1 of 2005 dated 04.01.2005 was promulgated and

amendment was made in Rule 16 (1) & (2) which reads as under:-

16 (1) The election of the Members of the Committee/Board of any Society having jurisdiction in a District shall be held on such date as may be

specified by the Governing Body of the Society within three months of expiry of its term. The notices to this effect shall be circulated by the

Managing Committee/Board to all Members. Copies of the notices shall be sent to the Dy. Registrar and Registrar Cooperatives Societies for

reference and record.

(2) The Returning Officer shall be appointed by the Managing Committee/Board. He shall be of social standing, known for his honesty and integrity

and acceptable to majority of the Members.

However, subsequently SRO 236 of 2013 dated 25.04.2013 was enacted by which SRO 1 of 2005 was amended and in particular Rule 16 of

the Rules was amended which reads as under:

Rule 16:

(1) The election of the Members of the committee/Board of any Cooperative Society having jurisdiction within a District, shall be held on such date

as may be specified by the Registrar and shall be conducted under the control of Assistant Commissioner (Revenue) within whose jurisdiction

registered office of the Cooperative Society is situated, by such Returning Officer and other officers as may be appointed by him/her in this behalf.

(2) The election of Members of a Committee/Board of any Cooperative Society having jurisdiction in two or more districts, shall be held on such

dates as may be specified by the Registrar and shall be conducted under the control of Dy. Commissioner of the District in which the registered

office of the Cooperative Society is situated by such Returning Officer and other officers as may be appointed by him/her in this behalf.

In the aforesaid background, the petitioner has challenged the vires of Rule 16 of the Rules incorporated vide SRO 236 of 2013 dated

25.04.2013.

3. Learned Senior Counsel for the petitioners in OWP No.1368/2013, OWP NO.114/2015, OWP No.276/2015 and OWP No.1141/2014

while inviting attention of this Court submitted that learned Single Judge while deciding OWP No.1380/2014 which was decided on 30.11.2015

has decided the writ petition without affording any opportunity of hearing to the petitioners. It is further submitted that the aforesaid order was

upheld in the appeal, by the Division Bench. It is also pointed out that with the leave of the Division Bench, the petitioners have preferred an appeal

against the order dated 30.11.2015 passed in OWP No.1380/2014 at Srinagar Wing. It is also stated by learned senior counsel that being

aggrieved by the order passed by the Division Bench in Letters Patent Appeal, the petitioners are contemplating to file special leave petition.

4. It is also argued that amendment in Rule 16 of the Jammu and Kashmir Co-operative Societies Rules (hereinafter called 'the rules') was not

mandated by the Supreme Court and the impugned amendment would destroy the autonomous character of the society. It is further submitted that

the management of the Society has been made subservient to the Registrar and other officers of the Co-operative Department of the State

Government. It is also pointed that objections in OWP No.1368/2013 have not been filed on behalf of respondents. It was fairly submitted by

learned senior counsel that controversy involved in this bunch of writ petitions is squarely covered by Division Bench Judgement of this Court in

LPA(OW) No.4/2016 dated 20.05.2016. However, it was submitted that the aforesaid judgment of the Division Bench is per incuriam.

5. Learned counsel for the petitioner in OWP No.1116/2013 has invited the attention of this court to statement of objects dated 07.12.1988 and

has pointed out that under Section 29(3) of the Act, the Registrar has not been conferred with the power to hold the elections and the committee

has to make arrangement for holding the elections. It is also pointed out that under the Act, the Registrar has the authority to deal with the dispute

under Section 70(2)(c) of the Act and therefore, Registrar cannot either initiate process of election or conduct the election. It is further submitted

that there is Rule 18(2)(p) of the Rules is in contravention of Section 70 of the Act as Rule 18(2)(p) contemplates that the dispute shall be referred

to Deputy Commissioner. It is further submitted that in the entire country except in the State of Jammu and Kashmir, even in multi state cooperative

societies, the power of intervention has been granted to State Government only after expiry of the period of the elected committee of management.

It is also prayed that the matter be referred for consideration before the Division Bench.

6. Learned counsel for the petitioners in OWP No.1166/2015 has submitted that even in cases where the administrators have been appointed

under amended Rule 16 of SRO 236 of 2013, the administrators have not held the elections and are managing the affairs of the societies. While

inviting the attention of this Court to Section 26 of the Act, it is submitted that final authority in the society vests in the General Body of the

members and the election of the society has to be regulated in terms of the bye-laws and not as per rules. It is further submitted that Registrar

controls the societies in administrative capacity as well as in quasi-judicial capacity. The Registrar can be empowered to intervene in the affairs of

the Societies only when the elections are not held in accordance with the rules. It is further submitted that the amended rule 16 is in contravention

of Section 26 of the Act and is against the basic structure of the cooperative movement and this aspect has not been considered by the learned

Single Judge while disposing OWP NO.1380/2014 as well as by the Division Bench. It is further submitted that the judgment rendered by learned

Single Judge as well as by the Division Bench is per incuriam.

7. On the other hand, learned Dy. AG has submitted that the controversy so far as the issue of validity of SRO 236 of 2013 is concerned, is

squarely covered by the Division Bench judgment rendered at Srinagar Bench in LPA(OW) No.04/2016 dated 20.05.2016.

8. At this stage in rebuttal, learned senior counsel submits that in OWP No.1368/2013 only statement of facts has been filed. The aforesaid

statement is again controverted by learned Dy. AG who states that supplementary affidavit has also been filed.

9. I have considered the submissions made by learned counsel for the parties and have perused the record. The Jammu and Kashmir Cooperative

Societies Act 1989 is an Act to consolidate and amend the law relating the Cooperative societies in the State, with a view to providing for the

orderly development of the cooperative movement in the State in accordance with the directive principles of the State policy enunciated in the

Constitution of Jammu and Kashmir. Section 26 of the Act mandates that the final authority in cooperative society shall vest in the general body of

members. Section 29 of the Act which is relevant for the purpose of the controversy involved in this bunch of writ petitions reads as under:

29. Election and nomination of members of Committees - (1) The members of the Committee of a Co-operative Society shall be elected in

such manner as may be prescribed and no person shall be elected unless he is a share-holder of the Society.

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

(3) Each Committee shall within 90 days before expiry of its term, make arrangement for the constitution of a new Committee in accordance with

the provisions of the 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 Government or the Registrar,] may, by an order in writing, appoint a [Board of Management or Administrator]

for such period as may, from time to time, be specified in the order and the [Board of Management or] 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:

[Provided that the Board of Management or the Administrator may be appointed for a period not exceeding [three months and, in circumstances

beyond its control, six months] and the elections shall be held within such period for the reconstitution of the Committee or the Board, as the case

may be;

Provided further that the Board of Management may be appointed by the Government for the Apex Level Institutions and the Administrator may

be appointed by the Registrar for the Primary Agricultural Co-operative Societies and the Secondary Level Co-operative Societies]

Thus from perusal of Section 29 of the Act, it is evident that the term of office of the Committee is three years and before expiry of its term, the

committee has to make arrangement for constitution of new committee in accordance with the provisions of the Act, Rules and Bye-laws made

thereunder. After expiry of the term of office, the Registrar is entitled to appoint the Board of Management or Administrator for such period as

may from time to time be specified in the order. Section 70 of the Act provides that the dispute pertaining to constitutional management or the

business of a cooperative society may be referred to the arbitration. Section 176 empowers the State Government to frame rules. Section 176(2)

(xi) reads as under:

176. Power to make rules:

(1)

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules to carry out for all or any of the following matters,

namely:-

(i)

(ii)

.....

.....

(xi) the election of members of Committee by the general body of Co-operative Society;

10. Admittedly against the order passed by Srinagar Wing in OWP No.1380/2014, the petitioners with the leave of the Division have already filed

Letters Patent Appeal. From close scrutiny of Section 29(3) of the Act, it is evident that the committee has to hold elections in accordance with the

provisions of the Act, and the rules and the bye-laws made thereunder. Therefore, the contention of the petitioners that the elections of the society

have to be held in accordance with the bye-laws and not in accordance with the

rules cannot be accepted. Section 176 of the Act confers the power on the government to frame rules. Section 176(2)(xi) on which reliance has been placed by the petitioners only provides that the state government make rules with regard to elections of the members of the Committee by the general body of the cooperative society. Section 176(2) is widely worded and provides that the rules can even be framed in respect of matters expressly required or allowed by the Act to be prescribed which is evident from Section 176(2)(xlii). Rule 16 of the rules only empowers the Registrar to hold the elections on such date as may be specified by the Registrar and the elections are to be held under the control of Assistant Commissioner (Revenue). The aforesaid Rule 16 by no stretch of imagination can be said to be beyond the purview of Section 176 of the Act, as the Section empowers the State government to frame rules with regard to the elections of members of the committee by the general body of the Cooperative Society whereas rule 16 only empowers the Registrars to hold elections on the date which may be specified by the Registrar. The aforesaid rule has been inserted by way of regulatory measure which is aimed to regulate the conduct of elections to the general body of the cooperative society and does not in any manner impair the autonomy of cooperative societies. The amendment has been made with a view to ensure that elections of the governing body of the society in the State are held as per schedule after completion of the tenure of the elected bodies of the cooperative societies. Therefore, the contention of the petitioners that Rule 16 is ultra vires Section 176(2)(xi) cannot be accepted. Similarly the contention of the petitioners that the impugned amendment would destroy the autonomous character of the society cannot be accepted as the same only seeks to regulate the periodical elections to the society.

The aforesaid finding of this Court is fortified by the Division Bench decision of this Court in LPA(OW) No.4/2016. The contention of the petitioners that the decision rendered by Division Bench of this Court is per incuriam cannot be accepted as this Court cannot record a finding that the order passed by the Division Bench is per incuriam. The contention that Rule 18(2)(p) of the Rules is in contravention of Section 70 of the Act is misconceived as Section 70 of the Act provides that the dispute touching the

constitution management or the business of the cooperative society shall be referred to for adjudication to the Registrar whereas Rule 18(2)(p) provides that the ballot papers and other records relating to elections shall be destroyed after a period of three months if no dispute relating to or in connection with these is referred to the Deputy Commissioner of the District. Thus Section 70 and Rule 18(2)(p) of the rules operate in different area and it cannot be said that rule 18(2)(p) is in contravention of Section 70 of the Act.

11. In view of the preceding analysis, the writ petitions are disposed of with the direction that since the elections have not been conducted as notified earlier, the Registrar Cooperative Societies is directed to take steps to conduct elections in respect of the management/committees boards whose terms have expired in terms of Section 29 of the Act within one month and complete the process of election within a period of two months from the date of receipt of the certified copy of the order passed today. Accordingly, the writ petitions are disposed of, along with connected MPs.

OWP NO.1860/2014:

For the reasons assigned by this Court in the detailed order passed in OWP No.1368/2013, the writ petition is disposed of on same terms and with similar directions.