
(2014) 04 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 950 Of 2013

Mohan Singh Jamwal

APPELLANT

Vs

State of J. and K.

RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Citation : (2014) 2 JKJ 425

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : K.S. Johal, Sr. Advocate and Arsh K. Johal, Advocate for the Appellant; Meenakshi Bhutyal, G.A. and Rohit Verma, Advocate for the Respondent

Final Decision : Allowed

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. 2 herein, rejecting the nomination paper 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 Rule 18(ff) of Jammu & 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 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. Since the petitioner had served as joint Chairman of the Society from 2008 to 2012, his nomination papers have rightly been rejected. Further, it is contended that the election to the Society are now being conducted as per the amended Election Rules under SRO 236 of 2013 [Refer 2013 (17) JKS JK-261].

3. Heard the learned Counsel and perused the writ record.

4. It would be relevant to reproduce Rule 18(ff) and relevant extract of Rule 25(1)(e) of the Rules of 2001:

18. (ff) The committee nor the Administrators in office shall furnish to the returning officer who are ineligible for being re-elected or re-appointed as officers of the society under sub-rule (1)(e) of rule 25 at least ten days before the date fixed for election.

25(1)(e) subject to the provisions of this rule no person shall be or shall continue to be an officer bearer of any society for a consecutive period of

more than 3 years:

Provided that a person who has held the office of any society for 3 years shall not be eligible for being re-elected or re-appointed as an office

bearer until a period of 3 years has elapsed from the date of vacating his office as such officer

5. Learned counsel for petitioner produced a copy of SRO 236 dated 25.04.2013, whereby amendments in Jammu and Kashmir Cooperative

Societies Rules, 2001 have been carried out. In the said SRO amendment has been made to Rule 18(ff) of the Rules of 2001 to the effect that in

place of sub-rule (1)(e) of rule 25, sub-rule (1)(c) of rule 25 has been inserted. The said amendment is reproduced hereunder:

(iii) In clause (ff) after the words 'society under' and before the words 'at least' the words letters and signs ""the words letter and signs"" 'sub rule (1)

(c) of rule 25' shall be inserted.

6. On perusing the said amendment, one could find that in place of sub-rule (1) (e) of rule 25, sub-rule (1)(c) of rule 25 has been inserted in Rule

18(ff) of the Rules of 2001 which is reproduced hereunder:

25(1) (c) no person other than the State Government should be member of the committee of more than two apex central societies.

7. Therefore, sub-rule (1)(e) of rule 25 automatically loses its significance after insertion of sub-rule (1)(c) of rule 25 in its place in Rule 18(ff) of

the Rules of 2001 vide SRO 236. Therefore, now there does not arise any question that no person, who has held the office of any society for three

years, shall 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, after removal of said sub-rule from Rule 18(ff) of the Rules of 2001.

8. Sub-rule (1)(c) of rule 25 inserted in place of sub-rule (1)(e) of rule 25 in Rule 18(ff) of the Rules of 2001 only pertains to the members of the

Committee who are to report to the Returning Officer regarding the ineligibility of the persons being re-elected or re-appointed as officers of the

Society. Therefore, rejection of nomination papers of petitioner in terms of Rule 18(ff) of the Rules of 2001 in my view is dehors the rules which

has prejudiced the rights of petitioner and the same has resulted in violation of his fundamental rights as enshrined in Part III of the Constitution of

India.

9. In view of the above discussion, I am of the considered view that the impugned order has been issued without application of mind and, thus is

arbitrary. In the given situation, the writ petition merits to be allowed as the impugned order does not stand the scrutiny of law. Accordingly, the

writ petition 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 the election of the Society, if he is not otherwise ineligible. Disposed

of along with connected CMA (s), if any.