

(2018) 09 CHH CK 0299
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1516 Of 2018

Suyash Sharma And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 20-09-2018

Acts Referred:

Cooperative Societies Act, 1960 — Section 2(r), 19, 19A, 19AA, 19B, 48(7)(b), 50A
Contract Act, 1872 — Section 11
Constitution Of India, 1950 — Article 14, 19(1)(c), 243ZO

Citation : (2018) 09 CHH CK 0299

Hon'ble Judges : Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Prateek Sharma, Prafull N. Bharat, Rajeev Shrivastava

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, CJ

1. Heard counsel for the parties.
2. The Petitioners have challenged the constitutional validity of Section 48(7)(b) of the Cooperative Societies Act, 1960 (hereinafter referred to as 'the Act, 1960') which makes a Registrar of the Cooperative Society as the final repository to prescribe minimum level of service required to be availed by a member of the Society to entitle him to either contest an election of a Board as a delegate or representative to a Cooperative Society or even to vote. The amendment so made in the Act, 1960 has been extracted and brought on record as Annexure P/1. As also the follow-up notification dated 02.11.2017, Annexure P/5.
3. Since the entire thrust of argument has been focused on the provision in question which is under attack is Section 48(7)(b) of the Act, 1960, the

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Â 6. The argument on behalf of the Petitioners is that in the garb of obtaining so-called minimum level of service from a Society, the constitutional and

statutory right for participation in a democratic exercise in any Cooperative Society has been taken away, if not curtailed. In fact, the notification

contained in Annexure P/5 including the amendment which is subject matter of challenge is not only hit by the constitutional scheme of things as

amended and brought about by the Parliament which is Article 243ZO of the Constitution of India read with the various other sections of the Act,

1960.

7. Article 243ZO of the Constitution of India reads as under:-

243ZO. Right of a member to get information. - (1) The legislature of a State may, by law, provide for access to every member of a co-operative

society to the books, information and accounts of the co-operative society kept in regular transaction of its business with such member.

(2) The Legislature of a State may, by law, make provision to ensure the participation of the members in the management of the co-operative society

providing minimum requirement of attending meetings by the members and utilising the minimum level of services as may be provided in such law.

(3) The Legislature of a State may, by law, provide for a co- operative education and training for its members.

8. The submission is that by misreading sub-Article (2) of Article 243ZO of the Constitution, the State Government is trying to control and kill the cooperative movement in the State of Chhattisgarh. No statutory or administrative authority can have the powers to curtail the right of a member of a Cooperative Society either to participate in an election or to vote in an election unless he is otherwise disqualified under Sections 19A, 19AA, 19B and 50A of the Act, 1960.

9. Section 2(r) of the Act, 1960 gives the meaning or definition of a "Member". A "Member" has been defined as under:-

2. Definitions. - In this Act, unless the context otherwise requires -

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(r) "Member" means a person joining in the application for the registration of a society or a person admitted to membership after registration in

accordance with this Act, the rules and the bye-laws applicable to such society and includes the State Government when it subscribes to the share

capital of a society;

10. Sections 19, 19A, 19AA, 19B and 50A of the Act, 1960 reads as under:

19. Persons who may become members.-(1) No person shall be admitted as a member of a society except the following, namely:

(a) an individual competent to contract under section 11 of the Indian Contract Act, 1872 (No.IX of 1872);

(b) any other society;

(c) a public trust registered under the Chhattisgarh Public Trusts Act, 1951 (No.30 of 1951);

(d) a firm, company or any other body corporate, not having minors as partners or directors, registered established or constituted, as the case may be

under any law for the time being in force.

(e) a society registered under the Chhattisgarh Societies Registration Act, 1959 (No.1 of 1960), as may be approved by the State Government in this

behalf by general or special order;

(f) the State Government:

Provided that the provisions of clause (a) shall not apply to-

(i) an individual seeking admission to a society exclusively formed for the benefit of students;

(ii) a minor acting through a guardian appointed by the Court.

(2) Notwithstanding anything to the contrary in this Act or rules or in the byelaws of a society, where the State Government has contributed to the

share capital of a society, the liability of the State Government shall be limited to the face value of the shares held by it.

(2-A) Notwithstanding anything contained in this Act or rules made thereunder or in the byelaws of a resource Society or consumers society, as the

case may be, if any person duly qualified for admission as a member under the provisions of this Act and the byelaws of that Society makes an

application for membership of such Society he shall be deemed to have been admitted as a member of such Society from the date of receipt of the

application in the office thereof:

Provided that the Registrar may, either on his own motion at any time or on an application by the society or any aggrieved person made within fifteen

days from the aforesaid date and after giving reasonable opportunity to the society or person concerned by order, declare such person as not eligible

for membership of such society for the reasons mentioned therein, within forty five days from the date of receipt of application by the Registrar.

(3) Where a student, who is not competent to contract under section 11 of the Indian Contract Act, 1872 (IX of 1872), desires to become a member of

a society formed exclusively for the benefit of students, his application for the registration of a society or his application for membership shall be

accompanied by a written undertaking from his guardian or other person competent to contract under section 11 of the said Act in the prescribed

form, in respect of the liability of the student as a member.

(4) Where a person is refused admission as a member in a society, the decision refusing admission shall be communicated by the society to that

person within (thirty days) of the date of such decision.

(5) No society shall, without sufficient cause, refuse admission to membership to any person, duly qualified therefor under the provisions of this Act

and the byelaws of the society.

(6) Any person aggrieved under sub-section (4) or sub- section (5) may appeal to the Registrar within ninety days of the date of rejection.

(7) The decision of the Registrar in appeal shall be final and the Registrar shall communicate his decision to the parties within (thirty) days from the

date thereof.

19-A. Disqualifications of member.- No person shall be eligible for admission as member and any member shall cease to be a member of a society, if-

(a) he is an applicant to be adjudicated or is an undischarged insolvent;

(b) he has been sentenced for an offence involving moral turpitude and a period of five years has not elapsed from the date of expiry of sentence;

(bb) he has been sentenced for an offence under the provisions of the Protection of Civil Rights Act, 1955 (No.22 of 1955) and a period of six years

has not elapsed from the date of expiry of sentence.

(c) he or any member of his family, having common interest with him, carries on business similar to one carried on by the society:

Provided that the provisions of clause (b) shall not apply to a person seeking admission as member of a society exclusively formed or to be formed for

the reclamation of Vimukta Jatis.

(d) If he is disqualified under section 48-A of the Act;

(e) If he is a person who has been dismissed from the service of any co-operative institution or Government service.

(f) In case of a Primary Agriculture Credit Co-operative Society, he is not a Bhumiswami, occupancy tenant or a Government lessee holding

agricultural land:

Provided that a member of such society on the 26 th day of April, 1990 who is not a Bhumiswami, occupancy tenant or a Government lessee shall as

from such date be a nominal member of such society.

Explanation.- For the purposes of this section-

(i) ""Vimukta Jatis"" means such tribes as the State Government may, from time to time, by general or special order, declare as Vimukta Jatis for the

purpose of this sub-section;

(ii) the business carried on by a trader including that of money lending shall be deemed to be similar to the business carried on by a marketing society.

[(2) * * *] 19-AA. Disqualification for membership of Board and for representation.- No person shall be eligible for election as a member of the

Board of a society, and shall cease to hold his office as such, if he suffers from such disqualification as may be prescribed. No society shall elect any

member as its representative to the Board of any other society or to represent

the society in other society, if he suffers from such disqualification as may be prescribed :

Provided that, if a member suffers from any of the disqualifications prescribed under this section,-

(i) it shall be lawful for the Board of the society to disqualify such member where he is elected as a Director, being a member of that society, after

giving him a reasonable opportunity of being heard, within two months from the date of coming to the notice of the society, from holding the post.

(ii) if, the member incurs a disqualification in the higher level society, for his actions as a representative, such higher level society shall take action to

disqualify him for holding the post in the higher level society, If the society fails to take action, the Registrar shall disqualify such member from holding

such post by an order in writing, after giving him reasonable opportunity of being heard.

19-B. Effect of subsequent disabilities.-If any person having been admitted as a member of a society subsequently becomes subject to any of the

disqualifications specified in section 19-A, such person shall cease to be a member of the society and the Registrar shall declare his seat to be vacant.

50-A. Disqualification for being candidate or voter for election to Board or representative or delegate of society.-(1) No person shall be qualified to be

a candidate for election as member of the Board, representative or delegate, if he is in default for a period exceeding 12 months to the society or any

other society for any loan or advance taken by him as a member of such society.

(2) No person shall be entitled to vote at any election of the Board, representatives or delegates of the society, if he is in default for a period exceeding

12 months to the society or any other society for any loan or advance taken by him as a member of such society.

11. Chapter III of the Act, 1960 provide for the rights of members and liabilities of members coupled with privileges. Relevant section in this regard is

Section 19 of the Act, 1960. The ground for disqualification has already been noticed earlier and it is the stand of the Petitioners that beyond the ambit

of statutory provision which create rights and liabilities including grounds of disqualification, no other disqualification can be provided for by any kind of

administrative notification under the so-called exercise of power under the newly

amended Section 48(7)(b) of the Act, 1960. The right of a member of a Cooperative Society to vote in an election is guaranteed under Section 22 of the Act, 1960 and the only impediment which seems to have been created is Section 29 of the Act, 1960 where a member is debarred to exercise his right to vote if there are outstanding dues of the Society against him. Every member have one vote.

12. In terms of Chapter V dealing with management of Society. Section 48 lays down that final authority in a Society shall vest in the general body of members. This has significance for the reason that every member who has a valid membership of a Cooperative Society has a right to participate and decide the governance of the Society and the general body is the paramount body in which the authority of the Society vests. Section 48 of the Act, 1960 does provide for constitution of a smaller body which could be constituted to manage the day to day affairs of the Society and the Board of Directors could be elected or constituted but the predominant status of the general body has not been diluted in the Act, 1960.

13. Keeping in mind the totality of the provisions coupled with object and purpose for which the Cooperative Society Act, 1960 was legislated i.e. the Preamble of the Act, the spirit behind the legislation emerges which reads as under:

An act to organize and develop co-operatives as democratic instruments and people's institution based on the principle of voluntary formation, autonomous functioning, democratic member-control, member-economic participation and autonomous functioning.

14. The basic essence behind all the statutory provision read with the Preamble is that a Cooperative Society has to be a democratic body where members have a significant status and role to play, in its functioning, as well as decision making. If any right of a member is curtailed by any other means of legislation without bringing any corresponding amendment or changes to the Act then such amendment as contemplated under Section 48(7) (b) of the Act, 1960 will have to be either read down or struck down.

15. It is also the stand of the Petitioners that such provision or amendment has been brought about by kind of misreading the constitutional amendment with an object to exercise control over a Cooperative Society. Therefore, a limb or authority of the Government can disallow the members of a

Society from having a right to free decision making and participation in the functioning of a Cooperative Society despite having valid membership.

16. The predominant object of legislation is to allow a voluntary kind of formation of a Cooperative Society with autonomous functioning and

democratic member control and participation in a Cooperative Society. Even the constitutional amendment which has been used as the basis for

inserting Section 48(7)(b) of the Act, 1960 talks of ensuring participation of members in management of a cooperative society and minimum

requirement of attending meetings.

17. Sub-section (1) of Article 243ZO indicates that the legislature of a State may, by law, provide for access to every member of a Cooperative

Society to the books, information and accounts of the Cooperative Society kept in regular transaction of its business. Sub-section (2) of Article 243ZO

further indicates that by making a law, provision have to be made to ensure the participation of members in the management of the Cooperative

Society providing minimum requirement of attending meetings by the members and utilizing the minimum level of services as may be provided in such

law.

18. The object behind the amendment brought about the Parliament by incorporation of Part-IXB in the Constitution of India as the 97 th amendment

is that the democratic equality and functioning of a Cooperative Society be maintained. That object and purpose cannot be diluted or robbed by

providing for something which was never the object and purpose behind the words ""utilizing the minimum level of service as may be provided in such

law"".

19. Here, the State authority have read the said provision in the manner as if a member of a Cooperative Society is like a member of a club where he

has to utilize the services so provided by the club or incur minimum amount of expenses per month to keep his membership alive and valid.

20. The notification, which is Annexure P/5, is focused towards the Housing Cooperative Society. It lays down that only such members who have had

the privilege of having an allotment either of plot of land or a house and for which he has made full payment can stand in election or vote. The

notification also indicates that the said allotment of the house or plot of land should be duly registered and transferred in the name of a member. The

third category is where a person has bought a plot of land from yet another member of a Cooperative Society, but he has constructed the house within five years for the said transaction.

21. The stand of the counsel for the Petitioners is that by creating a class amongst the class of members, on the basis of they being lucky to have been allotted a plot of land or house, they become a superior member than the rest of the members. It is his case that since in any Cooperative Society of such kind, the number of plots or number of houses so constructed generally do not match the strength of membership of that Cooperative Society, therefore, there are always certain privileged members who have the fortune of having a plot of land or house allotted at the cost of those who have silently waited for the plot of land or house to come their way. If Annexure P/5 is allowed to stand, the right of participation in election and participation in voting will be confined to a privileged few members. The rest of the members, who do not have allotment in their favour, will be treated as a second class citizens despite all statutory provisions which have conferred right vested in them, not only to participate but also effectively vote in any election or stand for any election, unless they stand disqualified in terms of the statute which talks of the disqualification under Act of 1960.

22. The stand of the Additional Advocate General representing the State is that the object behind the amendment and the notification is to weed out, if not ensure that bogus members or non-serious members who have been enrolled in a Cooperative Society and who tilt the balance at the time of election despite having no serious interest in the Cooperative Society, is the primary reason behind the legislation. Since the constitutional scheme of things under Article 243ZO does talk in terms of the utilization of minimum level of service as may be provided in law, therefore, Section 48(7)(b) of the Act, 1960 was amended and the consequential notification dated 02.11.2017 was notified to make the amendment operational and functional.

23. The State, however, by bringing such condition which has been notified in terms of Annexure P/5 to the writ application has overreached the statutory provision and has the effect of not only diluting, if not making the provisions which confer powers on the members of the Cooperative Society to be in-operational and deadwood. The right of a member to stand for an election or to vote in an election unless otherwise statutorily

disqualified, cannot be curtailed by the notification dated 02.11.2017 in the garb of a compulsion of a member to avail 'minimum level of service' on which he has no control or freedom.

24. The Court also notices that the constitutional amendment under Article 243ZO of the Constitution applies to one and all Cooperative Societies and the minimum level of service can be available component but that cannot be used as a ploy to take away the right which is guaranteed and conferred on a member by virtue of holding valid membership of a Cooperative Society, to either stand in an election or to vote in an election.

25. The Court, therefore, is of the opinion that the notification dated 02.11.2017 is a case of overreach and violates not only Article 14 of the Constitution but also Article 19(1)(c) of the Constitution. It is also in conflict with, if not in derogation of various statutory provisions of the Act, 1960, which confers powers and rights upon members, unless otherwise disqualified within the Act.

26. In view of the above, the notification dated 02.11.2017 is struck down as being ultra vires. The writ stands allowed.