

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

- 1. OWP No.983-S/2010
CMP Nos. 953/2011, 310/2011 & 1627-S/2010
- 2. OWP No.1553/2010 CMP Nos.552/2011 & 2063/2011
- 3. OWP No.1558/2010 CMP Nos.554/2011 & 2073/2011
- 4. OWP No.2/2011 CMP No.2/2011
- 5. OWP No.391/2011 CMP No.539/2011
- 6. OWP No.394/2011 CMP No.543/2011
- 7. OWP No.405/2011 CMP No.560/2011
- 8. OWP No.406/2011 CMP No.561/2011

Date of Decision: 29.08.2011

1.	Lake View Cooperative House Building Society Ltd and ors.	v.	State & ors.
2.	The Bahu Co-op. House Building Society Ltd.	v.	State & ors.
3.	Chenani House Building Society Ltd.	v.	State & ors.
4.	The Jammu Co-op. Rural Housing Building Society Ltd.	v.	State & ors.
5.	Kandoli Nagrota CHBS Ltd.	v.	State & ors.
6.	Utter Behani Co-op. Housing Building Society Ltd.	v.	State & ors.
7.	Advit Swaroop Cooperative Housing Building Society Ltd.	v.	State & ors.
8.	Vikas Co-operative Housing Building Society Ltd.	v.	State & ors.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

- For the Petitioner(s)

: Mr. Sunil Sethi, Sr. Advocate with
Mr. Sumit Singh, Advocate.
M/s. B. S. Salathia, V. K. Magoo,
Virender Bhat, Jatinder Choudhary &
Shalu Mishra, Advocates.
- For the Respondent(s)

: M/s. Surinder Singh, Nirmal Kotwal
and Abhinav Sharma, Advocates.
Ms. Mandeep Reen, Advocate.

i)	Whether approved for reporting in Press/Journal/Media	:	Yes
ii)	Whether to be reported in Digest	:	Yes

The Jammu and Kashmir Cooperative Housing Corporation Limited, “Corporation”, for short, initially registered as The Jammu and Kashmir State Cooperative Housing Federation Limited, an apex level

Housing Society, decided to hold election to its Board of Directors on 7.12.2010. Before the process of election could be completed, the Government of Jammu and Kashmir, vide its order No.27-Coop of 2010 dated 29.11.2010, appointed a Board of Management comprising of Shri Sanjeev Verma, IAS, Deputy Commissioner, Jammu as Chairman, Joint Registrar (B&F) Cooperative Societies, Joint Registrar (Special) Cooperative Societies, Jammu and Deputy Registrar (Agri), Jammu as members, for a period of two months, to take steps to conduct election to the Board of Directors of the Corporation, superseding the existing Board.

The Superseded Board approached this Court by its Writ Petition OWP No.1380/2010 seeking quashing of the Government Order.

On consideration of the matter, the Government Order No.27-Coop of 2010 dated 29.11.2010 was found unsustainable, for non compliance of the provisions of Section 30 of the Jammu and Kashmir Cooperative

Societies Act, 1989, which mandated issuance of fifteen (15) days prior Notice before exercising jurisdiction and power to supersede the Board of a Cooperative Society. The Court was, however, of the view that the existing Board may not be able to complete the election process within the left out statutory period of its tenure; it, therefore, in the circumstances, appointed Shri Pawan Dev Kotwal, the then 3rd Additional District and Sessions Judge, Jammu, as the Board of Management of the Corporation. He was directed to initiate process afresh, to hold election to the Board of Directors of the Corporation, in accordance with law, rules and Bye-laws governing the affairs of the Corporation.

The Board of Management, so appointed, was to furnish fortnightly status report to the Court about the affairs of the Society and the progress achieved in the process of holding election.

Pursuant to the directions of the Court, the Board of Management, initiated process for election.

Out of the electoral college of 42 Primary House

Building Cooperative Societies, only 19 Societies opted to participate in the election. After scrutiny of the documents filed by such Societies, 12 Societies were found eligible to participate. These Societies were, therefore, directed to submit complete particulars of their representatives and other requisites indicated in the Notice published by the Board in this behalf. Objections, if any to the eligibility of the 12 Societies too were invited by the Corporation.

The representative of one of such Societies, i.e. Utter Behni Cooperative House Building Society, Mr. Surjeet Singh Manhas, was held ineligible to participate in the election on the ground that offence under Sections 5(1)(d) and 5(2) of the Jammu and Kashmir Prevention of Corruption Act, 2006 read with Section 120-B RPC was found proved against him by the Police.

Before the election process initiated by the Board could be finalized, three Cooperative House Building Societies namely The Lake View Cooperative House Building Society Limited, The Faisal Cooperative

Housing Building Society Limited and The Budgam Cooperative House Building Society Limited, filed a Writ Petition in Srinagar wing of the Court on December 30, 2010 questioning the process of election on various grounds, *inter alia*, urging that the Societies had not received any notice from the Board of Management regarding election process and nor would they know about the publication of the Notice published in the Newspaper, as they were not subscribing to the Newspaper in which the Notice had come to be published.

On this Petition coming up for Motion hearing, the Court directed maintenance of *Status quo* with regard to the election process.

The order passed on 31.12.2010 in Writ Petition, OWP No.983/2010, was questioned by the Tawi Cooperative House Building Society Limited in the Hon'ble Supreme Court of India by Special Leave to Appeal(Civil) No.1308/2011.

While disposing of the Special Leave Petition, the

Supreme Court of India, vide its order dated 25.01.2010, observed and directed as follows:-

“Accordingly, without going further into the matter and keeping in mind the submissions made with regard to the publication of notice, non-service thereof, the climatic conditions in the State of Jammu & Kashmir and in particular in Srinagar at the relevant time, we hold that this is a fit case where even if the electoral process had started, the High Court is entitled to look into the matter and, accordingly, we direct that the records of OWP NO.983 of 2010 be transferred to the Jammu Bench of the J&K High Court, with a request to the Hon’ble Chief Justice to have the matter placed before the Bench in seisin of these matters. The records, should be sent to the Jammu Bench of the J&K High Court positively within 7 days from the date of communication of this order and the Jammu Bench of the aforesaid High Court is requested to dispose of the same within seven days of receipt of the records.

Apart from the above directions, one other order is required to be made in these proceedings, inasmuch as, the petitioner herein is not a party to the Writ Petition, being OWP No.983 of 2010. Accordingly, on the oral prayer made on behalf of the petitioner, we direct that the petitioner herein be added as a respondent in OWP No.983 of 2010, with liberty to file Objections to the Writ Petition before the Jammu Bench of the J&K High Court

within a week from date. Rejoinder thereto, if any, may be filed within three days thereafter.

The interim order of status quo passed by the Srinagar Bench in the aforesaid Writ Petition, will continue until further orders of the Jammu Bench of the J&K High Court.

The Special Leave Petition is disposed of with the aforesaid observations and directions.”

Pursuant to the orders of the Supreme Court, Writ Petition, OWP No.983/2010 was transferred to Jammu Wing of the Court where it came to be registered as OWP No.983-S/10.

During the pendency of the Writ Petition, seven more cooperative societies approached this Court by their separate Writ Petitions questioning the decision of the Board of Management holding them ineligible to participate in election and seeking directions of the Court for participation in the election process.

As the issues raised in all these Petitions pertained to the election to the Board of Directors of the Corporation, so all these Petitions were ordered to be listed for joint consideration, allowing the parties time to complete their pleadings.

Heard learned counsel for the parties and considered their submissions.

Before proceeding further to consider the submissions advanced by learned counsel for the parties, reference needs to be made to the case/defence set up by the parties to these Petitions.

OWP No.983-S/10:

**Lake view Cooperative House Building Vs. State of J&K & ors
Society Limited & others**

This Petition has been filed by three Co-operative House Building Societies viz;

- 1) The Lake View Cooperative House Building Society Limited,
- 2) The Faisal Cooperative House Building Society Limited, and
- 3) The Budgam Cooperative House Building Society Limited.

The case set by the petitioners is that they were unaware of the process initiated for Election to the Board of Directors of the Corporation because the notices issued in connection therewith, were published in a Newspaper which had only 5% circulation in Kashmir Valley and the petitioners were, therefore,

deprived of their right to participate in Election to the Board. It is further alleged that despite requests, the Corporation did not settle the accounts indicating their liability to the Corporation and the action of the Corporation in holding them ineligible to participate in the election process, for non-payment of loan, without settlement of accounts, was unwarranted.

The petitioner-Societies are stated interested to participate in the election process but were disabled so to do for no fault of theirs. According to them, in the past too, the election to the Board was managed permitting participation of only a limited few in the election and they were, therefore, entitled to participate in election to the Board of Directors of the Corporation.

Contesting the case set up by the petitioners in the Writ Petition, besides questioning the maintainability of the Writ Petition against a Cooperative Society on the ground that the Society not being a “State” or “Other Authority”, in terms of Article 12 of the Constitution of India, was not amenable to the Writ jurisdiction of the

Court, the Corporation says that the Notices issued for holding election to the Board of Directors were published in Daily Excelsior and Daily Kashmir Times, which had wide circulation in the State of Jammu and Kashmir and the petitioners' plea that they had no knowledge of the election process, was incorrect.

It is specifically pleaded by the Corporation that the petitioners Lake View Cooperative House Building Society and Budgam Cooperative House Building Society Limited were in huge arrears of Rs.2166139 and Rs.31587,334.46 respectively to the Corporation and in this view of the matter these Societies were ineligible to participate in the election process, in terms of the provisions of the Jammu and Kashmir Co-operative Societies Rules.

OWP No. 1553/2010 :

**The Bahu Cooperative House Building. Vs. State of J&K & Ors.
Society Limited**

This Petition has been filed by the Bahu Cooperative House Building Society Limited questioning the decision of the Board of Management holding it

ineligible to participate in the Election on the ground that the Affidavit filed by it, was invalid, in that, it was attested by a Notary and not by a Magistrate as required under rules.

According to the petitioner, the irregularity in attestation of the Affidavit was not of such a nature that would debar the Society of its right to participate in Election, and, in any case, the Corporation was required to accept the fresh Affidavit of the petitioner-Society which is stated to have been refused for no justifiable reasons.

The Society, therefore, seeks directions to the Board of Management to accept its fresh Affidavit permitting its participation in the election process.

Responding to the Writ Petition, the Corporation says that the petitioner-Society was apprised of the deficiency in its Affidavit and rather than supplying the deficiency, it had invoked the Writ Jurisdiction of the Court. The petitioner's request, if allowed, at this stage, it is stated, would unnecessary delay the election

process.

OWP No. 1558/2010 :

Chenani House Building Society Ltd. Vs. State of J&K & Ors.

The case set up by the petitioner-Society is that it had been erroneously held ineligible to participate in the Election process by the Board on the ground that it was under liquidation, when as a matter of fact, there was no liquidation order in force, in that, the order passed by the Registrar for petitioner's liquidation stood stayed by the Jammu & Kashmir Special Tribunal, before the initiation of Election process.

The petitioner-Society, therefore, seeks its participation in the Election process.

Justifying its decision to hold the petitioner-Society ineligible to participate in election, the Corporation says that the petitioner-Society was not included in the list of 42 Societies because its registration stood cancelled in the year 2008 and the Corporation was not a party respondent to the petitioner's Revision Petition before the Jammu and Kashmir Special Tribunal against the Registrar's order.

OWP No. 2/2011 :**The Jammu Cooperative Rural
Housing Building Society Ltd.****Vs. State of J &K & Ors.**

The petitioner-Society has questioned the Board's decision to hold it ineligible as it had not liquidated the loan advanced to it by the Corporation, urging, *inter alia*, that the period stipulated for repayment of loan having not yet expired, the Corporation had erred in holding it a defaulter and thus, disentitled to participate in election.

It is additionally stated that the Corporation, being a member of the joint venture along with the petitioner-Society, for which the loan was advanced by the Corporation, the Society could not be held defaulter and thus disentitled to participate in the election.

To support its decision that the petitioner-Society was ineligible to participate in the election, the Corporation says that arrears to tune of Rs.2,99,63,435/- were due from the petitioner-Society to the Corporation against the principal loan amount of Rs.8,12,47,362/- and the Society was, therefore, ineligible to participate in election, in view of the

provisions of the Jammu and Kashmir Co-operative Societies Rules.

OWP No. 391/2011 :

**Kandoli Nagrota Cooperative Vs .State of J&K & Ors.
House Building Society Ltd.**

The petitioner-Society questions the Corporation's decision holding it ineligible to participate in the election because its representative was not the member of the Managing Committee of the Society on the ground that the rejection was unwarranted in view of the provisions of the Cooperative Societies Act and Rules framed thereunder, in terms whereof the representative chosen by the Society for participation in election to the Board of Directors of the Corporation, need not be a member of the Managing Committee of the Society.

The petitioner-Society, questions the order passed by this Court too whereby the Board of Management was appointed.

Responding to the case set up by the petitioner-Society, the Corporation says that the petitioner-Society was in arrears to the tune of Rs.13,950.42 and,

therefore, ineligible to participate in election additionally because its representative was not a member of the Managing Committee.

The Society's plea that there being no provision in the Rules for holding elections to the Apex level Society, the election to the Board of Directors of the Corporation were unwarranted, is contested by the Corporation relying on the provisions of the Constitution of Jammu & Kashmir and the provisions of the Jammu & Kashmir Cooperative Societies Act, 1989 and the rules framed thereunder.

OWP No. 405/2011 :

**Advit Swaroop Cooperative
House Building Society Ltd.**

Vs.

State of J&K & Ors.

The petitioner has questioned the decision of the Corporation to hold it ineligible to participate in the election as its representative was in arrears to the Corporation, urging, *inter alia*, that Rules and principles of Natural Justice were not followed by the Corporation before declaring the petitioner-Society ineligible to participate in election and its decision was, therefore,

unsustainable.

It is further pleaded by the petitioner that there being no rules permitting election to the Apex Level Society, the election process initiated by the Corporation was unwarranted.

Contesting the case set up in the Writ Petition, the Corporation says that the petitioner's representative Mr. Rattan Lal, who had taken loan from the Corporation was in arrears to the tune of Rs.1,75,593.25 and the Society was, therefore, ineligible under rules to participate in the election process for its representative's default in clearing the loan taken from the Corporation. The Corporation justifies the holding of election to the Board of Directors relying on the provisions of the Constitution of Jammu and Kashmir and the provisions of the Cooperative Societies Act.

OWP No.394/2011:

**Utter Behni House Building
Cooperative Society Limited.**

Vs.

State of J&K & ors.

The petitioner-Society questions the decision of the Board of Management holding the Society ineligible to

participate in election because allegations of mismanagement/ embezzlement/ mis-appropriation of the funds of the Society stood proved against its representative, Mr. Surjeet Singh Manhas, on the ground that the decision was violative of the principles of Natural Justice and against the provisions of Rule 25 of the Cooperative Societies Rules.

The Corporation justifies its decision to hold the Society ineligible on consideration of Registrar Cooperative's request for review of the acceptance of nomination paper of the Society's representative for his involvement in FIR No.51/2003 registered at Police Station Crime Branch, Jammu and on the ground that the Society being non-functional, it was not entitled to participate in election. Reliance is placed on Rule 25 of the Cooperative Societies Rules to justify its decision.

OWP No.406/2011:

**Vikas Cooperative House.
Building Society Ltd.**

vs. State of J&K & ors.

The Petitioner-Society questions the decision of the Board of Management to declare it ineligible as it

had changed its name and no elections thereto were conducted after 2007, urging that the Board of Management had proceeded on wrong premise because the change in the name of the Society stood duly acknowledged by the Registrar and election to the Society too were held on October 22, 2009 in which its representative, Tara Chand, besides others, were duly elected as members of the Managing Committee of the Society.

Responding to the Writ Petition, the Corporation says that the documents filed by the petitioner-Society with the Corporation revealed contradictory facts, and the decision taken by the Board could not, therefore, be faulted. The maintainability of the Writ Petition by the Society is questioned on the ground that, if it had changed its name, it could not maintain the Writ Petition in its earlier name.

In view of the case set up by the petitioner-Societies, the Corporation's defence thereto, and the submissions made at the time of consideration of the

Writ Petitions, the following issues arise for consideration:

- 1) Whether the Writ Petitioners were disentitled to invoke the Extra Ordinary Writ Jurisdiction of the Court to seek directions against the Corporation for their participation in election to the Board of Directors of the Corporation because Writ against a Co-operative Society was not maintainable?
- 2) Whether holding of election to the Board of Directors of the Corporation was impermissible in view of the provisions of the Jammu and Kashmir Cooperative Societies Rules, 2001?
- 3) Whether the petitioners in Writ Petition, OWP No.983-S/2010, were not informed of the process initiated by the Corporation for election to its Board of Directors?
- 4) Whether or not the decision of the Board of Management to hold the petitioners-Societies ineligible to participate in the election process was unsustainable?
- 5) Whether or not the petitioners-Societies' request to clear the arrears payable by them to the Corporation, facilitating their participation in election, needs to be allowed, in the facts and circumstances of the case?

First Issue:

Whether the Writ Petitioners were disentitled to invoke the Extra Ordinary Writ Jurisdiction of the Court to seek directions against the Corporation for their participation in election to the Board of Directors of the Corporation because Writ against a Co-operative Society was not maintainable?

The Corporation is a Cooperative Society registered under the Jammu and Kashmir Cooperative Societies Act. According to its Bye-laws, the membership of the Corporation consists of the Cooperative Housing Societies in the State, the Life Insurance Corporation of India and HUDCO, besides the State Government. No member is entitled to hold more shares than the number of shares which would represent $\frac{1}{5}^{\text{th}}$ of the share capital of the Corporation. The funds of the Corporation may be raised by (a) Shares, (b) Debentures (c) Donations and advertisements, Admission fee, Grants and Deposits. The Objectives of the Corporation, as indicated in its Bye-laws, are, *inter alia*, to grant loans or advances to the members and to invest in debentures issued by

Housing Societies registered in the State of Jammu and Kashmir, which are members of the Corporation, on security of immovable property, to borrow, raise, or secure the payment of money by the issue of debentures, debenture stock and bonds, to receive deposits and borrow money otherwise than by the issue of debentures, to purchase, take on lease or in exchange or otherwise, and to acquire and develop lands for benefit of housing programme, and to take up Commercial/Urban Development Schemes for General Public as a part of Housing Scheme, to acquire, hold and **generally deal with movable and immovable properties.**

The ultimate authority in all matters relating to the administration of the Corporation vests in the General Body. Its Board of Directors include seven members from member Cooperative Housing Societies, one Director nominated by the Financial Institution, one Director co-opted by the Board from technical field, besides the Government nominees, in terms of the

provisions of the Jammu and Kashmir Cooperative Societies Act and Rules framed thereunder.

Perusal of the Bye-laws of the Corporation and its objectives reveals that the Corporation is not financially, functionally and administratively, dominated, in any way, by, or, is under the control of, the State Government. The objectives of the Corporation do not hint at any such activity, on the basis whereof, it be said to have come into being for doing any “public duty”.

Therefore, looked from any angle, the Corporation cannot be said to be “State” or “Other Authority” in terms of the provisions of Article 12 of the Constitution of India. I am supported in taking this view by *Pardeep Kumar Viswas v. Indian Institute of Chemical Biology* and ors reported as (2002) 5 SCC 111, *Lt. Governor of Delhi and others v. V. K. Sodi and others*, reported as (2007) 15 SCC 136 and *G. M. Kisan Sahkari Chini Mills Ltd. v. Shatrughan Nishad* reported as (2003) 8 SCC 639.

The Corporation cannot, therefore, be said amenable to the Writ Jurisdiction of the Court.

Although the Corporation may not, as such, be amenable to the Writ Jurisdiction of the Court, yet to find answer to the issue in question, the matter needs to be examined in the context of the facts and circumstances of the present cases in which the petitioners are questioning the decision of the Authority that was appointed by this Court, when, in the circumstances, rather than the management of the Corporation or State Government's, initiating process for holding election to the Board of Directors of the Corporation, the election to the Board, was directed to be held by the Board of Management appointed by the Court.

The petitioners through their Writ Petitions have questioned the orders passed by the Board of Management appointed by the Court and seek directions against him, and not the Corporation as such, which is a Cooperative Society.

In these circumstances, they cannot be held disabled to invoke the Extra Ordinary Writ Jurisdiction of the Court to seek directions against the Authority,

appointed by the Court, in that, the Authority appointed by the Court to manage the affairs of the Society and hold election to the Board of Directors of the Corporation, acts under the supervision and control of the Court and is, therefore, amenable to the Writ Jurisdiction of the Court in exercise whereof the Board of Management was constituted to hold election to the Board of Directors of the Corporation.

In this view of the matter, the Writ Petitions cannot, therefore, be held non-maintainable, as urged by the learned counsel appearing for the Corporation because regardless of the fact that the Corporation may not as such be amenable to the Writ Jurisdiction of the Court yet the orders passed by the Authority appointed by this Court in running the affairs of the Society would be subject to judicial review of the Court. The First issue is, therefore, decided accordingly.

Second Issue:

Whether holding of election to the Board of Directors of the Corporation was impermissible in view of the provisions of the Jammu and Kashmir Cooperative Societies

Rules, 2001?

Election to the Board of Directors of a Cooperative Society is governed by the provisions of Section 29 of the Cooperative Societies Act, 1989. Chapter IV of the Cooperative Societies Rules, *inter alia*, prescribes procedure for such election. Although with the amendment introduced to Rule 16 (1) and (2) of the Rules, there is no reference for holding election to the members of the Board of a Cooperative Society having jurisdiction in two or more Districts, as it existed in the un-amended provisions of the Rules, yet the omission, cannot be construed to mean that there was no provision at all for holding election to the Societies and their Committees having jurisdiction in two or more Districts or, for that matter, the State Level Societies, in view of the provisions of Rule 16(8) of the Rules which indicate that election of representatives of a society or a higher level society shall be made by the Committee of the Society. If one were to proceed on the premise that there was no prescribed procedure for holding election

to the Societies and its Committees having jurisdiction in two or more Districts or to the State Level Societies, as it existed in the amended Rules for District level Societies, the omission cannot be construed as providing no mechanism for holding election to the State level and other Societies other than District level societies, in view of the provisions of Section 29 of the Cooperative Societies Act, in terms whereof, after the expiry of the statutory tenure of the Board of Directors of the Societies, the Board of Management or the Administrator, if any, so appointed, has to be arranged for constitution of a new committee, in accordance with the provisions of the Act, Rules and the Bye-laws of such Society.

There being specific provision in the Bye-laws of the Corporation for holding election to the Board of Directors of the Corporation, the petitioners' contention that election to the Board of Directors was impermissible, under the Cooperative Societies Rules, is, therefore, found untenable.

The elections to the Board of Directors, which are being held pursuant to the orders of this Court, are not found impermissible, as argued by the petitioner's learned counsel.

The Second Issue is, therefore, decided accordingly.

Third Issue :

Whether the petitioners in Writ Petition, OWP No.983-S/2010, were not informed of the process initiated by the Corporation for election to its Board of Directors?

According to the records of the Corporation, Notices, by registered post, are shown to have been dispatched to 42 Primary House Building Cooperative Societies at their respective addresses. Entry to this effect appears at Serial Nos. 2186 to 2227 dated 11.12.2010, in the duly maintained **LETTERS DISPATCH & POSTAGE REGISTER** of the Corporation. The Register indicates that these Notices were issued regarding election to the Board of Directors of the Jammu and Kashmir Cooperative Housing

Corporation. The records of the Corporation and the orders passed by the Board of Management further indicate that these Notices had appeared in two newspapers having circulation in the State of Jammu and Kashmir as well, i.e., The Kashmir Times-Kashmir Edition and The Daily Excelsior in their Issue of December 12, 2010.

Rule 18 of the Cooperative Societies Rules prescribes issuance of Notice to the members of the Society by any of the following modes viz.:-

1. By Post under Certificate of posting;
2. By circulation among the members;
3. By affixing the Notice on the Notice Board of the Society or its branches, if any.

The Corporation having issued Notices by registered post to the Member Societies, informing them of the election to the Board of Directors of the Corporation, has, therefore, complied with the provisions of the Statute in informing the Societies regarding election to the Board.

Not only this, it has ensured information to all its Member Societies by publishing Election Notice in two leading newspapers having wide circulation in the State.

The registered Notices sent to the Member Societies have not been received back un-served.

The Writ petitioners' plea in OWP No. 983-S/2010 that they had no Notice of the election to the Board of Directors of the Corporation because they were not subscribing to the newspaper, the Daily Excelsior, in which the election notice had been published, therefore, appears to be an afterthought, in that, in the absence of any pleading to the effect that the registered Notices were not received by them and their significant silence about the affect of publication of the election notice in another newspaper i.e. Kashmir Edition of Kashmir Times, the plea of the petitioners cannot be accepted in view of the strong presumption that the Notices sent to them by registered post on their proper addresses so carry. The Notices sent to the petitioners by registered posts are, therefore, presumed to have been received

by the petitioners.

For all what has been said above, there is, therefore, no merit in the petitioners' contention that the Petitioner-Societies had no knowledge of the election to the Board of Directors of the Corporation.

Even otherwise, the petitioners-Lake View Cooperative House Building Society Limited and Budgam Cooperative House Building Society Limited are stated, by the Corporation, to be in huge arrears running in Crores, which would, otherwise disable them to participate in the election process in view of the provisions of Rule 25 (1) (a) of the Cooperative Societies Rules.

The petitioners having opted not to participate in the election process despite having received intimation about the onset of the election process, cannot, therefore, be permitted to participate in the ongoing election to the Board of Directors of the Corporation.

The Third Issue is, therefore, decided accordingly, holding that all the Primary Societies including the

petitioners had due notice of election to the Board of Directors of the Corporation.

Fourth Issue:

Whether or not the decision of the Board of Management to hold the petitioners-Societies ineligible to participate in the election process was unsustainable?

The Board of Management of the Corporation has held the Jammu Cooperative Rural Housing Building Society Limited, the Kandoli Nagrota Cooperative House Building Society Limited and the Advit Swaroop Cooperative House Building Society Limited, ineligible to participate in election on the ground that the Societies were in default to the Corporation in respect of the loans taken by them.

The Kandoli Nagrota Cooperative House Building Society has been found ineligible to participate in the election additionally on the ground that its representative was not the member of the Managing Committee of the Society.

The Utter Behni House Building Cooperative

Society Limited has incurred ineligibility on the ground that its representative was stated involved in FIR No.51/2003 registered at Police Station Crime Branch, Jammu.

The Vikas Cooperative House Building Society Limited was found ineligible on the ground that no elections were held to it after 2007 and that the change in its name had not been reported to the Corporation.

The Chenani Cooperative House Building Society Limited has been found ineligible on the ground that it was under liquidation.

The Bahu Cooperative House Building Society Limited, has been found ineligible to participate in the election for its failure to furnish requisite Affidavit attested by a Magistrate.

Although the question as to the ineligibility or otherwise of the petitioner-Societies to contest election to the Board of Directors of the Corporation, according to the settled legal position, is required to be gone into only after the elections were over, yet taking into

consideration the fact that the election process has been put on hold in view of the interim orders of the Court in these Writ Petitions, it is considered appropriate, in the broader interests of the Corporation, to deal with the issue of eligibility of the petitioner-Societies, so that the elections to the Board of Directors were held expeditiously and in a fair and transparent manner providing opportunity to all those Societies which may be eligible, under law, to participate in the election.

I will first deal with the challenge thrown to the decision of the Board holding the Jammu Cooperative Rural Housing Building Society Limited ineligible to participate in election.

The case projected by the petitioner-Society is that although it had availed loan of Rs. 08 Crore 40 Lac from the Corporation for development of Housing Society at Raipur Domana/Kot, Jammu, yet in terms of the Agreement entered into by the Corporation with the petitioner-Society, the project, which the Society, had to take off had become a joint venture of the Corporation

and the Society, and, in this view of the matter, the Society cannot be said to be in default to the Corporation against the loan received by it from the Corporation because its status had changed from that of a loanee to that of a partner in the project.

I have gone through the Agreement Deed placed on records by the petitioner-Society.

The Agreement relied upon by the petitioner-Society to support its contention, unambiguously, acknowledges the petitioner-Society to have obtained loan of Rs.08 Crore 40 lacs from the Corporation, sanctioned vide its Resolution No.64 of December 30, 2003.

To help and facilitate the Society run its project, the Corporation, in terms of the Agreement, had undertaken to do some part of the work, for and on behalf of the Society. But the terms of the Agreement, when read as a whole, do not, *prima facie*, indicate any such thing, on the basis whereof, it be said that the petitioner-Societies status as a loanee, had ceased or its liability to the

Corporation, to pay back the loan amount along with interest accrued thereon, in any way, affected.

This apart, the dispute raised by the petitioner that the transaction between it and the Corporation had ceased to be a loan transaction, is a dispute, which in terms of Clause 12 of the Agreement was required to be settled by Arbitration of the Chairman of the Corporation.

The petitioner having not sought resolution of its alleged dispute with the Corporation by arbitration, is, therefore, disentitled to say that it was not in default to the Corporation to which it owed Rs.2,99,63,435/- against the principal amount of Rs.8,12,47,362/-. Being in default of the amount payable by it to the Corporation, the petitioner-Society has been rightly held ineligible to participate in election to the Board in terms of Rule 25 (1) (a) of the Cooperative Societies Rules, 2001.

The decision taken by the Board holding the petitioner-Society ineligible cannot, therefore, be faulted.

The Kandoli Nagrota Cooperative House Building

Society Limited has been held ineligible on the ground that its Chairman, Mr. Rameshwar Dutt, had committed default in paying the amount due to the Corporation and the representative elected by it to participate in the election was not the member of the Managing Committee of the Society. The amount payable by Mr. Dutt to the Corporation till 15.01.2011 is indicated as Rs.13,950.42/-.

Learned counsel for the petitioner, who, initially questioned the decision of the Corporation to hold the Society ineligible to participate in election urging that the Corporation had not maintained true and proper accounts, however, later submitted that the petitioner-Society was prepared to deposit the amount payable by its Chairman to the Corporation and that the Society be permitted to participate in the election.

It was further submitted by the learned counsel that the Corporation had erred in holding the society ineligible to participate in election on the ground that its nominated member was not the member of the

Managing Committee of the Society, which course, according to him, was not countenanced by the provisions of Rule 22 of the Cooperative Societies Rules.

I have considered the submissions of learned counsel for the parties on the issue and find that Rule 22 of the Cooperative Societies Rules does not provide that the representative of a Society to the higher level Society must necessarily be a member of the Managing Committee of the Society.

In the absence of any specific provision in Rule 22 of the Cooperative Societies Rules or any of the rules so providing, the petitioner-Society cannot be held ineligible to participate in election on the ground that its representative was not the member of the Managing Committee of the Society.

However, the Society lacks eligibility to participate in the election of the Corporation because of its Chairman's default in not clearing the loan taken by him from the Corporation.

The petitioner's learned counsel's plea that in view of the petitioner's willingness to deposit the amount due to the Corporation, the Society deserves permission for participation in election, shall be dealt with a little later.

Questioning its ineligibility to participate in the election process, the Advit Swaroop Cooperative House Building Society Limited says that the election to the Corporation were impermissible in view of the provisions of the rules and that the Society had been illegally held ineligible to participate in election on the ground that its representative was defaulter to the Corporation, because having not got its account audited in accordance with the provisions of the Cooperative Societies Act, the Corporation could not hold the petitioner-society as defaulter.

However, during the course of hearing of the Petition, petitioner's learned counsel, like other learned counsel appearing for the Societies, which were in arrears, submitted that the Society be permitted to participate in the election on its clearing the amount

payable by its Chairman to the Corporation.

As it has already been held elsewhere in the judgment that the elections to the Corporation were not, in any way, in contravention to the provisions of the Cooperative Societies Act and the rules framed thereunder, so the plea raised by the petitioner's learned counsel that the elections were impermissible, fails.

The petitioner's learned counsel's plea for permitting Society's participation in election to the Corporation in view of the Society's willingness to pay the amount payable by its representative to the Corporation shall be dealt with while dealing with similar plea of the other Societies.

The Utter Behni House Building Cooperative Society has been held ineligible to participate in election on the ground that the Vigilance Organization had proved petitioner's representative's involvement in FIR No.51/2003, which would disentitle it to participate in election.

Rule 25 of the Cooperative Societies Rules,

prescribes Disqualifications for membership /appointment / election of Committee.

Rule 25 (h)(i)(b), disqualifies a person, who was found guilty of embezzlement or mis-appropriation of funds or stocks of any Cooperative Society.

The expression “found guilty” means, held guilty, in accordance with the procedure prescribed by law. This, in other words, would mean that a person may not be said to have been found guilty unless a competent Court of jurisdiction, after a permissible trial, holds him guilty of the offence.

Mr. Surjeet Singh Manhas, has not yet been found guilty of embezzlement or mis-appropriation of funds of the Society by any Court of law.

The Vigilance Organization’s finding that on the basis of the investigation of the case, the allegations appearing in the case against Mr. Surjeet Singh were found substantiated, would not, of itself, be sufficient to disqualify the Society of its participation in election, because merely on the basis of the findings of the Police

substantiating its case against an accused, the person against whom such case was substantiated, cannot be said guilty of the offence, unless he was held so guilty by a competent Court of jurisdiction after his trial in accordance with law.

The Corporation has, therefore, erred in holding the Utter Behni Cooperative House Building Society ineligible to participate in the election on the ground that the Vigilance Organization had proved case registered under FIR No.51/2003 against its representative.

The decision of the Corporation holding the Utter Behni Cooperative House Building Society, therefore, needs to be set aside.

The Vikas Cooperative House Building Society Limited has been held ineligible on the ground that it had changed its name and no elections were held to it after 2007.

Both the grounds on the basis whereof the Petitioner-Society was held ineligible to participate in the election are found untenable for, the change of the

petitioner's name as the Jammu Cooperative Tourism and House Building Development Society Limited has been duly accepted and acknowledged by the Registrar Co-operative Societies with the issuance of a fresh Certificate of Registration on 28.04.2007 and the records produced by the Society, which are certified by Mr. D.K.Sharma, retired Deputy Registrar, who was appointed as Returning Officer to conduct election, that the elections were held to the Society on 22nd of October, 2009.

In view of the above factual position on the two aspects, the decision of the Corporation to hold the Petitioner-Society ineligible to participate in the election cannot, therefore, be sustained.

The Chenani Cooperative House Building Society has been held ineligible on the ground that being under liquidation, it was disentitled to participate in election.

The Society has placed on records the Jammu and Kashmir Special Tribunal, Jammu's Order dated 09.10.2010 in terms whereof the operation of the

Registrar's Order dated 20th November, 2008 whereby the petitioner's registration was cancelled, stands stayed.

As the order of the Jammu and Kashmir Special Tribunal was in operation when the process of election was initiated, the Corporation was not right in treating the petitioner ineligible to participate in election, in that, the operation of the Registrar's Order cancelling petitioner's registration, having been stayed, the petitioner-society could not be held suffering from disqualification pursuant to the orders of the Registrar. Non-impleadment of the Corporation as party respondent to the petitioner-Society's Revision Petition before the Special Tribunal would not render the Tribunal's order ineffective and in view of the subsisting order of the Tribunal staying the operation of the Registrar's order. The Corporation's decision not to include the petitioner-Society in the list of eligible Societies cannot, therefore, be sustained.

The Corporation's order disentitling the petitioner to

participate in election is, accordingly, found unsustainable. The petitioner-society is entitled to participate in election and a direction is, therefore, warranted against the Corporation to permit the petitioner-society its participation in election.

The Bahu Cooperative House Building Society Limited has been held disentitled to participate in election only on the ground that the Affidavit produced by it was not attested by a Magistrate.

The rejection of the petitioner's candidature on the ground that the Affidavit filed by it in response to the Notice inviting participation in election, was not sworn by a Magistrate, may not be justified, in the circumstances, for the view taken by the Corporation, appears to be too pedantic for acceptance.

Before rejecting the petitioner's candidature, the Corporation should have called upon it to file a fresh Affidavit to remedy the defect which had appeared because of Society's omission to file requisite Affidavit which it was required so to do in terms of the Rules of

the Corporation.

The Society, therefore, needs to be permitted participation in election, allowing it opportunity to file fresh Affidavit, duly attested by a Magistrate to satisfy the requirement.

The Fourth Issue is, therefore, decided accordingly.

Fifth Issue :

Whether or not the petitioners-Societies' request to clear the arrears payable by them to the Corporation, facilitating their participation in election, needs to be allowed, in the facts and circumstances of the case?

The plea of the Petitioner-Societies that they had no notice of the election to the Board of Directors of the Jammu and Kashmir Cooperative Housing Corporation Limited, having failed, those Petitioner-Societies which had not responded to the Notice issued by the Corporation inviting their participation in the election process cannot be allowed permission to participate in the election at this stage, as no ground much less substantial has been made out by the Societies

justifying start of the election process afresh, which course, even otherwise, may not be in the interests of the Corporation as it was likely to delay further, the already delayed elections to the Board of Directors of the Corporation. Another reason which weighs with the Court in not permitting the Petitioner-Societies their participation in the election process is that they are defaulters to the Corporation owing Crores of Rupees to it, which had been advanced to them by way of loan.

During the course of consideration of the Petition, there was no attempt made on behalf of those Societies which were defaulters and owed huge arrears of loan to the Corporation, to clear the amount taken as loan from the Corporation. There is, therefore, no equity in their favour for permitting them participation in the election process.

However, the request of those Petitioner-Societies who have offered to clear the amount of loan payable by them or their representatives, to the Corporation needs to be considered, so as to encourage larger participation

in election to the representative Apex Cooperative Housing Society.

The Jammu Cooperative Rural Housing Building Society Limited, the Kandoli Nagrota Cooperative House Building Society Limited and the Advit Swaroop Cooperative House Building Society Limited, keeping in view their offer to clear the amounts payable by them to the Corporation, can, therefore, be permitted by the Corporation to participate in the election in case they clear the amount payable by them or their representatives to the Corporation, within a period of ten days from this order.

The fifth issue is decided accordingly.

The upshot of the above discussion and findings is that

1. Writ Petitions OWP Nos. 983-S/2010 & 2/2011, are dismissed.
2. Writ Petition OWP Nos. 394/2001 and 406/2011 are allowed quashing the Board of Management's decision holding the

Petitioners-Societies ineligible to participate in election. A direction shall issue to the Board of Management to permit them to participate in election.

3. Writ Petition OWP No. 1558/2010 is allowed quashing the Board's decision holding the petitioner-Society ineligible to participate in election. The Board is directed to permit the Petitioner-Society participation in election.
4. Writ Petition OWP No. 1553/2010 is allowed with a direction to the Board of Management of the Corporation to permit petitioner-Society's participation in election on its furnishing requisite Affidavit attested by a Magistrate.
5. Writ Petitions OWP Nos. 391/2011 and 405/2011 are disposed of with a direction to the Board of Management to permit the petitioners-Societies' participation in election in case they deposit the amount payable by

them, their representatives or members of the Managing Committee, to the Corporation, within a period of ten days. Non-payment of the amount by the Societies to the Corporation shall revive their disqualification for participation in election.

6. The Board of Management of the Jammu and Kashmir Cooperative Housing Corporation Limited is directed to complete the election process expeditiously furnishing fortnightly status report about the affairs of the Society and the progress achieved in completing the election process.

(J.P. SINGH)
JUDGE

JAMMU
29.08.2011.
Tilak, Secy.