

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1497 of 2017**

1. Shirish Tiwari, S/o Late Shri Arun Tiwari, aged about 42 years Representative At Jila Sahkari Kendriya Bank Maryadit, Raipur, Member Of Sahkari Samiti, Raksha Reg. No. 987, R/o New Shanti Nagar, Civil Line, Raipur, Tehsil & District Raipur (CG)
2. Rajesh Sharma, S/o Shri Radheshyam Sharma, Aged About 48 Years Member Of Sahkari Samiti Damakheda, Reg. No.1102, R/o C-1, Samta Colony, Raipur, Tehsil & District Raipur (CG)
3. Arun Kumar Singh, S/o Late Shri Rana Chitrnanjan Singh, aged about 60 years, Member Of Seva Sahkari Samiti, Akaltara, R/o Akaltara, P.O. Akaltara, District Janjgir Champa (CG)

---- Petitioners**Versus**

1. State Of Chhattisgarh Through the Secretary, Department of Cooperatives, Block-3, Second & Third Floor, Mantralaya, Indravati Bhawan, New Raipur, District Raipur (CG)
2. Secretary, Chhattisgarh Co-Operative Societies Election Commission, In Front of Dr. B.R. Ambedkar Statue, Collectorate Square, Raipur (CG)
3. Secretary, Department Of Law & Legislative Affairs, DKS Bhawan, Mantralaya, Raipur, District Raipur (CG)

---- Respondents

For Petitioners	:	Dr. N.K. Shukla, Sr. Advocate with Mr. V.R. Tiwari, Advocate.
For Respondents	:	Mr. P.N. Bharat, Addl. Advocate General..

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu,J

Order on Board**Per Ajay Kumar Tripathi, CJ****12/12/2018**

1. In the present writ application the constitutional validity of Sections 48 (3), 48-B (2) (a) & (b) of the Chhattisgarh Co-operative Societies Act, 1962 (for short 'the Act of 1962') read with Rule 49-E (2) of the Chhattisgarh Co-

operative Societies Rules, 1962 (for short 'the Rules, 1962') is being challenged. The aforesaid provisions are reproduced herein below:-

“48. Final authority in society- .-

(1) xxxxx

(2) xxxxxx

(3) The reservation of the seats on the board of the society from among its members belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes shall be in proportion to their membership.

Provided that such reservation shall not exceed 50% of membership of the board.

Provided further that one seat shall be reserved for Scheduled Castes and Scheduled Tribes, as the case may be”

“48-B. Representatives and delegates;- (1) xxxxxxxx

(2) (a).- In a society where not less than half of the members belong to Scheduled Castes and Scheduled Tribes, the representative shall be only from amongst the members belonging to such castes or tribes; and

(b) In a society where not less than two-third of the members belong to other Backward Classes , the representative shall be from amongst the members belonging to such classes;”

“49-E. Procedure for election of members of the Board;-

(1) (a) xxxxxxxx

(2)- The seats for the members belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women shall be reserved by the Returning Officers as per the provisions of sub-section (3) and (8) of Section 48 of the Act. Subject to the provision of sub-section (8) of Section 48 where seats are to be reserved in the Board for women members, the Returning Officer shall reserve such seats for women members by drawing a lot before the Board/Administrator of the Society. For this purpose, chits shall be prepared equal to the total number of seats in the Board describing thereon reserved and scheduled Caste, Scheduled Tribes or Other Backward Class as the case may

be, two chits shall be picked up and seats shall be reserved, for women accordingly. If the members of Board fail to attend the meeting convened for this purpose, the Returning Officer may reserve such seats before any three members of the outgoing Board or District Co-ordinator.”

2. The thrust of argument by learned Senior Counsel for the petitioners while pressing writ application is that the said sections enacted by the State Legislature seems to be contrary to the legislative intent as brought about in the Constitution (Ninety-seventh Amendment) Act, 2011, which dealt with status of co-operative societies, with the object of strengthening the co-operative movement.
3. Article 243-ZJ of the Constitution of India lays down the number and term of the Board and its office bearers. Said Article reads as follows:-

“243-ZJ.- Number and term of board and its office bearers.- (1)
The board shall consist of such number of directors as may be provided by the Legislature of a State, by law:

Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one:

Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on board of every co-operative society consisting of individuals as members and having members from such class or category of persons.

(2) The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be conterminous with the term of the board:

Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.

(3) The Legislature of a State shall, by law, make provisions for co-option of persons to be members of the board having experience in

the field of banking, management, finance or specialisation in any other field relating to the objects and activities undertaken by the co-operative society, as members of the board of such society:

Provided that the number of such co-opted members shall not exceed two in addition to twenty-one directors specified in the first proviso to clause (1):

Provided further that such co-opted members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to be eligible to be elected as office bearers of the board:

Provided also that the functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in the first proviso to clause (1).”

4. Argument built-up is that State Legislature no doubt have been given power to make legislations on the issue but they are bound to provide for reservation of only one seat for the scheduled castes or scheduled tribes and two seats for women on Board for every cooperative society. However, in Section 48 of the Act of 1960 reservation has been provided not only for the scheduled castes and scheduled tribes but even Other Backward Classes (OBC) in proportionate to their membership provided that such reservation shall not exceed 50% of the membership of the Board.
5. There is difficulty in accepting submission of learned Senior Counsel for the petitioners assailing the constitutional validity of Section 48 of the Act of 1960 for two reasons; (i) that the Constitutional Amendment itself provides power to the State to make laws in relation to such co-operative societies and so-called offensive sections are part and parcel of that power of the legislation, therefore, no challenge can be thrown on the ground of legislative competence.

6. Coming to the argument whether State Legislature has exceeded its power by providing for more reservation to scheduled castes and scheduled tribes as also extending that benefit by including Other Backward Classes (OBC) in the Act of 1960 as well as allowing reservation more than contemplated under Article 243-ZJ of the Constitution of India. In our considered opinion, the Constitution (Ninety-seventh Amendment) Act, 2011 only broadly laid down as to what would be the structure of the Board, its office bearers and numbers. By reading proviso to Article 243-ZJ of the Constitution of India, it is evident that the said article mandated that there has to be reservation of one seat for the scheduled castes and scheduled tribes and two seats for women on the Board. This by itself does not mean that a ceiling has been provided to the representation which can be on the Board of said categories or classes of people. Said proviso is required to be read as mandating a minimum reservation of seats for such category of persons whenever the State Legislature makes the law. But it does not prevent them from providing more representation or including yet another class of people who too are required to be given protection and representation on the Board. Article 243 ZJ of the Constitution cannot be read in isolation and other constitutional provisions cannot be overlooked like Article 15 (4) of the Constitution of India.

7. Similar challenge seems to have been made before other High Courts and such challenge has been repelled by the Division Bench of Madras High Court in the case of **S. Karupiah v. The Government of Tamil Nadu** reported in **AIR 2016 Madras 51**. Relevant paragraphs of this judgment reads thus;-

“15. To substantiate his plea, learned Advocate General referred to the judgment of the Supreme Court in *Jyoti Basu v. Debi Ghosal*, (1982) 1 S.C.C. 691 : (AIR 1982 SC 983), wherein it was held that the right to elect, to be elected and to dispute an election are neither fundamental rights nor common law rights, but are simply statutory rights and are subject to statutory limitation.

16. We may notice that in the rejoinder filed, the learned counsel for the petitioner sought to advance a new plea in respect of the requirement of consultation with the National Commission for Scheduled Castes / Scheduled Tribes as contained in Article 338 (9) of the Constitution of India in policy matters affecting Scheduled Castes and Scheduled Tribes, alleging that no such consultation was held, but on being asked to point out the averments and the plea, learned counsel conceded that there was neither such plea raised nor any averment was made about such facts.

17. Having given our thought to the matter, we find really no merit in the petition. The Parliament enacts the law. The Court interprets the law. The Parliament in its wisdom provided for in the 73rd Amendment, while dealing with Part IX-A of the Municipalities, such kind of reservation by rotation even for Chairpersons. However, while making the subsequent amendment by the 97th Amendment in the year 2011 in respect of Part IX-B dealing with Co-operative Societies, reservation has been provided for membership of

the Board and not for the post of a President. This Court cannot step in and assume the role of the Parliament to in fact amend the Constitution of India Part IX-B, which would be the logical consequence, were the plea of the petitioner to be accepted. This is the role exclusively of the Parliament and this is not a matter where the Court can step in to fill in, what the petitioner claims to be, a lacuna or a gap. In fact, there is no such lacuna, and the reason for the constitutional amendment to be so worded possibly arises from what is set out in paragraph 16 of counter affidavit, as it may infringe the right of other members to be President of the Co-operative Society.”

In Ram Vishun Singh & another v. The State of Bihar & ors reported in **AIR 2015 Patna 1**, the Division Bench of Patna High Court has held thus;-

“21. The very 97th amendment to the Constitution in second proviso to Article 243 (ZJ) enjoins the State Legislature to provide for reservation for Scheduled Castes/Scheduled Tribes and Women on the board of every co-operative society consisting of individuals as members and having members from such class or category of persons.

22. Article 243 (ZJ) read with Article 15 (4) of the Constitution, the legislative competence of the State Government to make reservation on the Board / in the managing committees of the co-operative societies for Scheduled Caste / Scheduled Tribe/ other backward classes and for women is unquestionable.

23. In my view, therefore, neither the State Legislature lacks legislative competency in providing the reservation in

constitution of the Board or managing committee of the Cooperative Societies; nor the said proviso are in contravention of Article 19 (1) (c) of the Constitution; nor do the said proviso abridge or abrogate or offend any fundamental right conferred under Part III of the Constitution nor under Article 19 (1) (c) of the Constitution.

24. I see no merit in the challenge to the proviso to Section 14 (2) of the Bihar Cooperative Societies Act, 1935 substituted by the Bihar Act 6 of 2013 or to the Rules 12A, 20(1A) and 22(1A) of the Bihar Cooperative Societies Rules, 1959 inserted under the Bihar Cooperative Societies (Amendment) Rules, 2008.”

8. Keeping in mind the constitutional provisions and the power conferred upon the State Legislature and further the object and purpose of the Constitution (Ninety-seventh Amendment) Act, 2011, we are of the opinion that the sections under challenge to the Act of 1960 and the Rules, 1962 are intra vires and cannot be struck down as such.
9. Writ application stands dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-