

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12355 of 2022

***All Odisha State Bank Officers* *Petitioner*
Housing Cooperative Society Ltd.**

Mr. Prabodha Chandra Nayak, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Ajodhya Ranjan Dash, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
30.08.2022**

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the judgment and order dated 20th April, 2022 (Annexure-1) passed by learned Member, Cooperative Tribunal, Odisha, Bhubaneswar in TA No.3 of 2021, whereby he confirmed the order dated 17th February, 2021 (Annexure-II) passed by Registrar, Cooperative Societies, Odisha (for short, 'RCSs') pursuant to direction of this Court dated 3rd July, 2020 passed in W.P.(C) No.13076 of 2017, refusing to amend the Byelaws of the Petitioner-Society due to lack of quorum.
3. Mr. Nayak, learned counsel submits that the Petitioner-Society in order to amend its Byelaws with an intention to continue the membership of retired employees of the State Bank of India, called a general body meeting. Due notices were served on the members of the Cooperative Society. On the date of resolution, 83 members were present and all of them voted for amendment of the bylaws. Accordingly, a resolution was passed and the same was placed before RCSs for approval. But, the

same was turn down. Assailing the same, some of the members of the Petitioner-Society preferred W.P.(C) No.13076 of 2017, W.P.(C) Nos.19962 of 2017 and W.P.(C) No.502 of 2018. All these writ petitions were heard analogously and disposed of by a common judgment dated 3rd July, 2020, with the following direction.

“20. On cumulative effect of the aforesaid facts coupled with judicial pronouncement, the impugned order under Annexure-6 of opposite party no.2, the Registrar, Cooperative Societies regarding deletion and correction of the clauses of the Bye-laws under Annexure-6 and order dated 18.04.2017 passed by the appellate authority in Appeal No.01 of 2014 under Annexure-8 is quashed and set aside and the case is remitted to the Registrar, Cooperative Societies to consider afresh in accordance with law as per the relevant provisions of the Co-operative Societies Act as expeditiously as possible preferably within a period of three months from the date of receipt of the copy of the order.”

Accordingly, RCSs considered the matter afresh and rejected the proposal vide order under Annexure-11 and refused to register the proposed amendment of Byelaws (Annexure-6) of the Petitioner-Society for nominal membership and continuance of the members after their retirement from service. Assailing the same, Petitioner-Society preferred T.A. No.03 of 2021 before the Tribunal. Learned Member, Cooperative Tribunal, vide judgment and order dated 20th April, 2022 (Annexure-1) dismissed the appeal. Hence, this writ petition has been filed.

4. It is submitted by learned counsel for the Petitioner that RCSs rejected the proposal of amendment of the Byelaws of the Society on the ground that required quorum was not available to pass the resolution for amendment of the bylaws. Rule 14(1) of the Cooperative Societies Rules, 1965 (for short, ‘the Rules’)

submits that procedure regarding amendment of bylaws has been stipulated therein.

*“14. **Procedure regarding Amendment of Bye-Laws.**—
The following procedure has to be adopted in regard to amendment to the byelaws of a Society:-*

- (i) Every amendment shall be made only by a resolution passed by not less than two-thirds of the members present at a meeting of general body of the members of the society at which a quorum shall be present;*
- (ii) No such resolution shall be valid unless due notice of the proper amendment of the bye-laws is given in accordance with the byelaws.*

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He further submits that Rule 28(1) of the said Rules provide quorum of general body meeting, which reads as follows:-

*“28. **Quorum of General Meeting-** (1) The quorum for a general meeting shall be as fixed in the bye-laws. No business shall be transacted at any meeting unless there is quorum.”*

Further, the Byelaws of the Petitioner-Society provides that *“the quorum for general body shall be 30 or 1/3rd of the total number of members on the role at the time whichever is less. No business shall be transacted at any meeting unless there is a quorum.”* He, therefore, submits that when all 83 members, who were present at the time general body meeting, voted for amendment of the Byelaws, RCSs could not have denied to register the same. He further submits that learned Tribunal did not at all take this aspect into consideration and by merely recording the rival contentions of the parties passed the impugned order without recording any reason thereto. He, therefore, prays for setting aside the orders under Annexures-1 and 11 and to remit the matter to learned Tribunal for adjudication of the matter afresh.

5. Mr. Dash, learned AGA although submits that while adjudicating the matter, RCSs did not at all take into consideration the provision of Rule 14 of the Rules, but the quorum provided in the Byelaws is not in consonance with the provisions under the said Rules. When Rule 14(i) clearly provides that every amendment shall be made only by a resolution passed by not less than 2/3rd of the members present in the meeting of the general body of the members of the Society at which a quorum shall be present, the Byelaws provides for lesser number of members to be present for amendment of the Byelaws. Thus, the provision as laid down in the Byelaws for a quorum is not sustainable in the eyes of law. In support of his contention, he relied upon the decision in the case of *Veena Kumari Tandon v. Neelam Bhalla*, reported in (2007) 12 SCC 764, wherein it is held as under:-

“11. It is now a well-settled principle of law that a legislative Act shall prevail over the subordinate legislation. Bye-laws must, therefore, conform to the provisions of the Act and cannot act in derogation thereof.”

He, however, submits that the matter requires fresh consideration as learned counsel for the Petitioner submits that all the 83 members present in general body meeting voted for amendment of the Byelaws.

6. Upon hearing learned counsel for the parties and on perusal of relevant provisions of law, it is manifest that for amendment of Byelaws, a resolution has to be passed by not less than 2/3rd members present at the meeting of the general body. Rule 28(1) further clarifies that the quorum of general body meeting shall be fixed by the Byelaws. Applying the aforesaid provisions to the case at hand this Court finds all the 83

members present in the general body meeting voted for amendment of Clauses-6 and 8 (5) of the Byelaws for nominal membership and continuance of the members after retirement from service respectively. Although RCSs has referred to Rule 14(i) of the Rules, but has not discussed as to how the provision of the said Rule is violated in the instant case. Further, on perusal of the order passed by learned Tribunal, it appears that there has been neither any discussion of the provisions of law nor any finding is recorded in support of its conclusion.

7. In that view of the matter, this Court, while setting aside the order under Annexure-1, remits the matter back to learned Tribunal to adjudicate the same in accordance with law afresh giving opportunity of hearing to the parties. Since the amendment of Byelaws is pending for a considerable period, learned Tribunal shall do well to make an endeavour to take a decision in the matter at an early date in accordance with law giving opportunity of hearing to the parties concerned.

8. With the observation and direction as aforesaid, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy