

Hamidullah Bhat and anr. Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Feb-26-2004

Reported in : 2005(2)JKJ151

Judge : S.K. Gupta, J.

Acts : [Constitution of India](#) - Article 226; ;Constitution of Jammu and Kashmir - Section 103

Appeal No. : OWP No. 1144/02

Appellant : Hamidullah Bhat and anr.

Respondent : State and ors.

Advocate for Def. : J.P. Singh, Adv.

Advocate for Pet/Ap. : P.N. Raina and; Anjushas Sharma, Adv.

Disposition : Petition allowed

Judgement :

S.K. Gupta, J.

1. In this petition, under Article 226 of the [Constitution of India](#), read with Section 103 of the Constitution of Jammu and Kashmir State, preferred by the petitioner, seeking quashment of Government Notification SRO 508 dated 09.12.2002, by

issuance of writ in the nature of certiorari and further commanding the respondents to permit the elected Board of Directors of J&K; Central Co-operative Land Development Bank, Srinagar to function and discharge their duties without any hamper. A preliminary objection was taken by the respondents in their demurrer, filed to the writ petition that the petition pertains to the Province of Kashmir and could not be entertained in Jammu wing of the High Court under 'writ proceedings rules'. Mr. J.P. Singh, learned counsel appearing for respondents 1 to 3 further submitted that such a writ petition pertaining to the particular wing could be filed at the other bench with the leave of the Chief Justice or in his absence of the senior Judge available at the Headquarter.

2. On behalf of the petitioners, Mr. P. N. Raina learned Advocate, urged that since the validity of notification SRO 508 dated 9.12.2002 has been challenged in this writ petition and the same having been issued by the Government of J&K;, Agriculture Production and Co-operative Department, Civil Secretariat, Jammu, so the writ petition could be entertained at Jammu.

3. I have heard the learned counsel for the parties. I am of the view that the submission made by Mr. J. P. singh, learned Advocate for the respondents, must be accepted. Elections of the Directors of J&K; Central Co-operative Land Development Bank, Srinagar, was held at Srinagar, where both the petitioners were declared elected. Every activity of the petitioners pertaining to the functions and discharge of the duties as Board of Directors of the J&K; Central Co-operative Land Development Bank, Srinagar would be at Srinagar. The Board is to function at Srinagar. Even the relief by issuance of writ in the nature of mandamus, commanding the respondents to permit the elected Board of Directors to discharge their functions and duties of the J&K; Central Co-operative Land Development Bank, Srinagar, also pertains to Srinagar. The submission made by Mr. Rain, learned Advocate for the petitioners, that since the Civil Secretariat was at Jammu, where the notification came to be issued on 9.12.2002, cannot, therefore, be accepted. Whereas on the other hand, Mr. J.P. Singh, learned Advocate for the respondents, carried me through order dated 26.10.93 passed by the Chief Justice of this High Court reproduced in the judgment of the Apex Court in AIR 1997 SC 11, where the matter with regard to error in entertaining LPA came up for

consideration and the Apex Court held that the High Court was in error in entertaining the Letters Patent Appeal filed by the respondents at Srinagar, and allowed the appeal, set aside the order and directed that LPA should be transferred to Jammu wing of High Court for consideration Mr. J.P. Singh further produced order dated 22nd August, 1996 passed by the then Chief Justice Hon'ble Justice M. Rama Krishna, directing the filing of the petitions/appeals pertaining to the Province of Jammu in the Jammu wing and petitions pertaining to the Province of Kashmir, Leh and Kargil in the Srinagar wing of the High Court, and only in exceptional circumstances mentioned in the proviso viz, when it is not practicable to file a petition pertaining to a particular wing, it may be filed at the other wing with the leave of the Chief Justice or in his absence, the senior Judge available at the Head-quarter.

4. In the present case, the contingency referred to in the proviso is neither pointed out by Mr. Raina nor appears to have a reason because the benches are available both at Jammu as well as in Srinagar, wing of the High Court. The petitioner therefore, could not take the benefit of the proviso, and prefer the writ petition in Jammu wing of the High court when it pertains to the Province of Kashmir. The preliminary objection raised with regard to filing of the writ petition in Jammu wing when it pertains to province of Kashmir, is allowed and the petition is directed to be returned to the petitioners to be presented before the appropriate wing of the High Court.

Ordered accordingly.