

(2016) 3 JKJ 782

Jammu & Kashmir High Court

Case No: Case No : OWP 135 of 2015 c/w SWP 14 of 2015

Mohammad Maqbool
Malla

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 18, 2015

Acts Referred:

- Lambardari Act, 1972 - Section 6
- Lambardari Rules, 1980 - Rule 14

Citation: (2016) 3 JKJ 782

Hon'ble Judges: Mr. Muzaffar Hussain Attar, J.

Bench: Single Bench

Advocate: Mr. I. Sofi, Advocate, for the Petitioner; Mr. M.A. Wani, Advocate, for the Respondent

Final Decision: Disposed off

Judgement

Mr. Muzaffar Hussain Attar, J.(Oral) - These two writ petitions are taken up together for final disposal as the issue involved is identical in both

the writ petitions.

2. A dispute has arisen in respect of the post of Lumberdar in village Bicherwari, Handwara, District Kupwara.

3. After the death of Lumberdar, namely Ghulam Nabi Sheikh, the Tehsildar, Handwara, vide order dated 31st March, 2012, appointed

Mohammad Shafi Naikoo, respondent in OWP 135/2015, as Lumberdar, Bicherwari, whose appointment is called in question in the said writ

petition.

4. The Government has issued Notification SRO 407 dated 14th October, 2014, where under the Deputy Commissioner (DC), Kupwara, Shri

Itrat Hussain Rafiqi, has been appointed as Returning Officer for the purpose of holding the election of Lumberdar in village Bicherwari,

Handwara, District Kupwara. This Notification is called in question in SWP 14/2015, which is clubbed with OWP 135/2015.

5. The election to the post of Lumberdar is governed by the Jammu & Kashmir Lumberdari Act, 1972 (for short Act of 1972) and Jammu &

Kashmir Lumberdari Rules, 1980 (for short Rules of 1980).

6. Section 6 of the Act of 1972 prescribes the power to make Rules. Sub section (2) of section (6) prescribes that without prejudice to the

generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

a) Procedure for election or appointment of Lumberdars ;

b).....

c).....

d).....

e).....

7. Rule 14 of the Rules of 1980 provide for elections. Sub rule (1) of Rule 14 provide that general election of Lumberdar shall be held in

accordance with these rules, within such time and within such areas, as may be prescribed by Revenue Minister by notification in the Government

Gazette. Sub rule (2) rule 14 of Rules of 1980 prescribes that till the general election is held, the existing Lumberdar, appointed against permanent

post, shall continue.

8. The private respondent, in OWP 135/2015, has been appointed as Lumberdar by the Tehsildar without conducting election as prescribed by

the Act of 1972 and Rules of 1980. Sub rule 4 of rule 14 of the Rules of 1980 provides that subject to the provisions of sub rule (2) where the

vacancy is not filled by election, the appointment to a vacant post of Lamberdar shall be made by the Revenue Officer not below the rank of

Tehsildar subject to confirmation by the Collector. The proviso attached to the said sub rule prescribes that the appointee shall possess all the

qualifications prescribed in this behalf and shall not suffer from any disabilities that apply to the election of the Lumberdar.

9. As already stated, the Government has issued Notification SRO for conducting of election. The appointment of private respondent in OWP

135/2015 will continue only till such time a Lumberdar is appointed by conducting of election for which Notification stands already issued.

10. True it is that appointment of Mohammad Shafi Naikoo as Lumberdar by Tehsil Handwara is not confirmed by the Collector as no document

about it is placed on record. However, the post of Lumberdar cannot be kept vacant till such time election to the said post is conducted in

accordance with the Act of 1972 and Rules of 1980.

11. Mr. M.A.Wani, learned counsel appearing for Mohammad Shafi Naikoo, respondent in OWP 135/2015, made an abortive attempt to show

that the order issued in favour of his client is valid and incapable of being challenged.

12. Be that as it may, the election to the post of Lumberdar has to be conducted in accordance with the Act of 1972 and Rules of 1980, for which

Notification stand issued.

13. For the above stated reasons, this writ petition is disposed of in the following manner :

The respondent State/Competent Authority shall take all necessary steps for conducting election to the post of Lumberdar in village Bicherwari,

Handwara, District Kupwara and complete the said process within eight weeks from the date copy of this order is served. Till the post of

Lumberdar in village Bicherwari is filled up by conducting of election, Shri Mohammad Shafi Naikoo, respondent in OWP 135/2015, shall be

allowed to continue to held such post.

14. Disposed of along with connected MPs.