

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.12.2009

+ **WP (C) 13611/2009**

**JIWAN JYOTI COOPERATIVE GROUP
HOUSING SOCIETY LTD AND ANR**

... Petitioner

- Versus -

**REGISTRAR COOPERATIVE SOCIETIES,
DELHI AND ORS**

... Respondents

Advocates who appeared in this case:-

For the Petitioner	: Mr Rajiv Vig
For the Respondents	: Mr Amiet Andlay

CORAM:-

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order passed by the Financial Commissioner on 22.10.2009 in a review petition under Section 116 of the Delhi Co-operative Societies Act, 2003 (hereinafter referred to as 'the said Act') seeking review of the order dated 25.03.2009 passed by the Assistant Registrar, in the Office of the Registrar of Co-operative Societies, Government of NCT of Delhi. By the order dated 25.03.2009, the said

Assistant Registrar had written to the President/Secretary of the petitioner society with reference to an agenda notice regarding the conduct of elections of the Managing Committee of the society which had been forwarded by the said society through their letter dated 03.03.2009. The said Assistant Registrar had indicated that the Registrar of Co-operative Societies was pleased to appoint Mr K.K. Satija, Statistical Officer, in the office of the Registrar of Co-operative Societies, Government of NCT of Delhi, as the Returning Officer to conduct the elections of the Managing Committee of Jiwan Jyoti Co-operative Group Housing Society (the petitioner herein) and, therefore, the President / Secretary of the society was directed to contact the said Mr Satija for necessary action in the matter.

2. The petitioner society is aggrieved by the said order dated 25.03.2009 appointing Mr K.K. Satija as the Returning Officer because of the fact that the Managing Committee had already appointed a Returning Officer by virtue of its letter dated 03.02.2009 and had displayed the final list of candidates. The number of candidates and the number of posts were the same as a result of which all the candidates were declared elected uncontested by the said Returning Officer. Only a formal declaration with regard to the result remained to be made when the said order dated 25.03.2009 was received by the Returning Officer. Being aggrieved by this, the petitioner society and one Mr L.R. Madan, who was a member of the society, filed the revision petition under Section 116 of the said Act challenging the said order dated 25.03.2009, whereby Mr K.K. Satija had been appointed as the Returning Officer. By virtue of the impugned order

dated 22.10.2009, the Financial Commissioner dismissed the revision petition as being not maintainable. The operative portion of the order is as under:-

“4. It is observed that this petition relates to an election matter. Section 112(2) of the Act stipulates that appeals concerning dispute relating to election lie to the Tribunal. Since the issue under consideration being subject matter in respect of which an appeal to the Tribunal is provided, it would be beyond the purview of this Court to take up the case under Section 116 of the DCS Act. The revision petition is, therefore, dismissed as not maintainable.”

3. From the above extract, it is apparent that the Financial Commissioner was under the impression that election matters were to be dealt with under Section 112 of the said Act and, therefore, the revision petition under Section 116 of the said Act was not maintainable. Aside from the question as to whether the revision under Section 116 of the said Act was maintainable or not, this much is clear that the first finding that the appeals in respect of election matters were to be entertained only under Section 112 of the said Act is not a correct finding. The law in this regard has been settled by a Division Bench of this court in the case of **Narender Kumar Jain v. Government of NCT of Delhi: WP(C) 6955/2007** and other connected matters, decided on 21.10.2008, wherein the Division Bench clearly held that an appeal under Section 112 of the said Act was not the remedy in respect of election matters and that the only remedy was provided under Section 70 of the said Act.

4. That apart, there appears to be a slight confusion with regard to the letter dated 03.02.2009 which was sent by the erstwhile Managing Committee of the petitioner society on the subject of holding of elections.

The said letter in its entirety reads as under:-

“Sub: Regarding holding of elections

The Society Management comprising of President, Vice President and five members were elected in the last week of Feb’2006 for three years and their term expired after 26th Feb’2009. The process of holding elections has been started with the appointment of Election Officer, updating the list of members of the society with the list of defaulting members. Sh. J.C. Chug, who is a gazette officer of the custom department and a bona fide member and resident of the society, was designated as Election Officer vide resolution of the Managing Committee passed on 01.02.2009, has given his concurrence for the same. The election time schedule shall be worked out in consultation with the election officer and after completing all legal formalities.

In view of the above, it is requested that necessary order for holding election may kindly be passed and the present Society Management be advised for further requisite legal formalities so that fair and free elections may be conducted. It is also requested that looking to the urgency of the matter and completion of election process and adhering to the time schedule, we request that further instructions as are necessary, may kindly be given at the earliest.”

(underlining added)

5. From the aforesaid extract, it appears that Mr J.C. Chug was appointed as the election officer / returning officer by a resolution of the Managing Committee passed on 01.02.2009. The only conflict which arises at the present moment is with regard to the validity of the appointment of Mr J.C. Chug as the election officer / returning officer. As per Section 35(1) of the said Act, no member or employee of a society can be appointed as an

election officer / returning officer. The letter dated 03.02.2009 does indicate that Mr J.C. Chug was “a bona fide member” and a resident of the society.

6. The learned counsel appearing on behalf of the Registrar of Co-operative Societies submitted that it is because of this statement that Mr J.C. Chug was considered to be ineligible to be appointed as an election officer / returning officer and that, consequently, Mr Satija was appointed as the returning officer by virtue of the order dated 25.03.2009. However, the learned counsel for the petitioner states at the bar that Mr J.C. Chug was neither a member nor an employee of the petitioner society at the relevant time. He submits that he was only a resident of the society and that the letter dated 03.02.2009 wrongly indicates that Mr J.C. Chug was a *bona fide* member of the society.

7. According to the learned counsel for the Registrar of Co-operative Societies, if Mr J.C. Chug was not a member or an employee of the petitioner society, then there was no impediment in the election process and the results can be declared formally. To obviate any further controversy on this aspect, we direct that Mr J.C. Chug should file an affidavit with the Registrar of Co-operative Societies within a week clearly indicating that, at the relevant point of time, he was neither a member nor an employee of the petitioner society. In case the said affidavit is filed, Mr J.C. Chug would be entitled to declare the results formally and thereafter the new Managing Committee shall assume office. We also make it clear that if such an affidavit is not filed, as indicated above, then the process of election would

be continued by the returning officer appointed by virtue of the letter dated 25.03.2009. The impugned order stands modified to the extent indicated above.

The writ petition stands disposed of. Dasti.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

DECEMBER 17, 2009

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