

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 15.11 2010

% Date of decision : 19.11.2010

WP (C) Nos. 7637 & 7638 of 2010

PAWAN KUMAR JAIN & ORS. PETITIONERS

Through : Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Rakesh Kumar Garg &
Mr. Anil Amrit, Advocates.

- V E R S U S -

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through : None for R – 1.
Mr. Arun Gupta, Adv. for R – 2.
Mr. Jayant Bhushan, Sr. Adv. with
Mr. Amit Gupta, Adv. for Rs – 3 to 8 in
WP (C) No. 7637/2010 & for Rs – 3 & 4
in WP (C) No. 7638/2010.
Rs – 9 & 10 in WP (C) No. 7637/2010 &
Rs – 5 & 6 in WP (C) No. 7638/2010 are
formal parties.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J.

1. The subject matter of the present writ petition is the
elections which have been held of respondent No. 2 Bank

on 31.01.2010, which were challenged by respondents No. 3 to 8 in WP (C) No. 7637/2010 and respondents No. 3 in WP (C) No. 7638/2010 by filing a reference under Section 70 of the Delhi Co-operative Societies Act, 2003 (hereinafter to be referred to as, 'the said Act'). The Award was made by the Arbitrator on 23.10.2010 setting aside the election of the petitioners herein with a suggestion that the Registrar, Co-operative Societies may appoint an Administrator to take charge of the Co-operative Bank with immediate effect and to order fresh elections to be held in due course of time. This Award has been challenged by the petitioners in appeal before the Delhi Co-operative Tribunal. In terms of the impugned order dated 03.11.2010 while time has been given to file reply and the case has been fixed for arguments on 03.01.2011, on the application for interim relief filed by the petitioners, interim stay has been declined. This order is sought to be challenged by the petitioners as the consequence thereof would be that the petitioners cannot function as the elected members; there may be possibility of appointment of Administrator and also holding of fresh elections, which may make the appeal itself infructuous. The operative portion of the impugned order of the Tribunal reads as under :-

“Learned counsel for respondents / caveators have intelligently pointed out that in the application u/S 117 of DCS Act, 2003, the applicant has stated, “No loss will be caused to anyone if the

operation of impugned award is stayed". In the application, it is not stated that the applicant would suffer irreparable loss if the stay is not granted.

On the merits of the application, both the counsels have raised many points and have even read the documents and contents of the appeal. In my opinion, if the operation of the award is stayed at this stage, it would give perpetuity to the term for which the appellants are elected and it would be against the spirit of the co-operative movement. The infirmities in the award can be appreciated when the respondents file their replies. At this stage, we are not inclined to stay the operation of the impugned order."

(emphasis supplied)

2. We heard the writ petitions finally at the request of learned counsel for the parties since the only issue to be determined was as to what should be the interim arrangement pending hearing of the appeal finally by the Delhi Co-operative Tribunal for which the date has been fixed as 03.01.2011. If the aforesaid impugned order is perused, the first out of the two operative paragraphs does not seem to make much cogency. If the applicant states that no loss would be caused to anyone if the operation of the impugned order is stayed, it can hardly be said that this is different from stating that the applicant will suffer irreparable loss and injury if the stay is not granted. The Tribunal appears to be only indulging in semantics while penning down this portion of the order. The other operative paragraph records that many points have been urged and documents read. There is not even a brief mention of the same or analysis of the respective

arguments. In that sense, the order is completely unsustainable. However, it is stated that staying of operation of the order would amount to the applicants / appellants, who are the petitioners herein, getting perpetuity to the term for which they are elected. Simultaneously, it has been observed that infirmities in the Award can be appreciated when the respondents file their replies.

3. We must record at the inception itself that both the counsels for the parties stated that the impugned order makes no cogency and is hardly sustainable, but the submission of learned senior counsel for the private respondents was that this Court could go into the Award dated 23.10.2010 to determine as to what should be the interim arrangement.
4. In order to appreciate the contentions and keeping in mind the objective of this order to find an interim arrangement for about a month and a half, we consider it appropriate to examine the Award dated 23.10.2010 itself.
5. The case of the private respondents, who challenged the elections, is that the CEO of the Bank has hatched a conspiracy with the petitioners to delay the audit of the Bank inordinately aimed at gaining disqualification for the Board of Directors consisting of the private respondents herein at the relevant time. This resulted in the

candidature of a large number of candidates including the claimants being rejected.

6. The second plea was that the list of defaulters as prepared by the CEO was patently defective because a large number of defaulters including the petitioners herein failed to find a mention, thus, facilitating their participation in the election both as voters and candidates. Partiality was also alleged against the Returning Officer.
7. A couple of instances have been given to show that some persons, who were defaulters, had not been declared so altering the result of the election. This plea has found favour with the Arbitrator.
8. It was not disputed before us by learned senior counsel for the private respondents that merely because some voters are included in the list, who ought not to have been so included, the election process is not vitiated unless it has a material bearing on the elections. It is also not disputed that there are only couple of examples and the election result could not have been effected by the same. Thus, really nothing turns on this plea.
9. The Arbitrator has also taken note of the fact that petitioner No. 1, the present Chairman of the Bank, was alleged to be in default of Rs.1,449/- and that a notice of default was served on him. Interestingly, another aspect noted is that the removal of the previous CEO of the Bank, Shri S.P. Bansal had been cancelled by the Registrar, Co-

operative Societies and Shri Bansal had been re-instated. Despite this fact, Shri Anil Kumar Jain continued to work as CEO. This aspect is important because it is the private respondents, who were on the Board at the relevant stage of time to which these allegations relate. As to how the present CEO could be alleged to have conspired with petitioner No. 1 herein to scuttle recovery proceedings against him raises a number of doubts.

10. The Arbitrator has concluded that the Returning Officer was duty-bound to have excluded persons, who were defaulters and, thus, came to the conclusion that there was collusion between the CEO and the Returning Officer to favour petitioner No. 1.
11. It has not been disputed that no objections were filed against the candidature, but that is sought to be explained away in the Award by forming an opinion that the same cannot be a ground for the Returning Officer to close his eyes and not to scrutinize the nomination papers filed before him.
12. In our considered view, once the appeal was being examined and fixed for a near date of early January, 2011, i.e., 03.01.2011, it would be in the fitness of things that the elected body after a process of election should continue to manage the affairs of the Co-operative Bank, but ensuring that no prejudice would be caused to the private respondents. The appeal cannot be made infructuous

when a direction has been passed by the Arbitrator to hold fresh elections. Learned senior counsel for the respondents could not even seriously dispute the latter part, but submitted that all that was required to be done was that the elections may not be held till the appeal is decided, but the petitioners should not be permitted to perpetuate an illegality arising from their election through an improper process.

13. We have already noticed that insofar as the election process being vitiated on account of some ineligible voters being excluded is concerned, the number cited was so small that they did not have any impact on the result and, thus, any conclusion based on the same in the Award prima facie cannot be sustained. The only real question is as to whether the petitioners were defaulters and if they were so, could they have been permitted to participate in the election process. In this behalf, the allegations against the Chairman of the Bank is of non-payment of Rs.1,449/-. Of course, the extent of the amount does not make a difference, but we are only pointing it out to show that there are no allegations of any falsification of accounts or other commercial misdemeanor and, in fact, it could not have been such as the petitioners were not in control of the management of the Bank. It is the private respondents, who were in control of the management of the Bank and the petitioners succeeded in the elections.

14. Prima facie, thus, the pleas raised in the appeal by the petitioners needed examination and had some merit and the balance of convenience was in favour of continuation of that arrangement of the elected representatives running the Bank subject to certain terms and conditions, which could have been imposed by the Tribunal. There would be an irreparable loss and injury if a fresh election was held and even if an Administrator was appointed despite having succeeded in the elections and shown a prima facie case to challenge the Award, the petitioners would be out of the management of the Bank.
15. We are, thus, of the considered view that the impugned order is liable to be set aside with the following directions:
- (i) The petitioners would continue in the management of the Co-operative Bank and there is no need for the appointment of the Administrator or holding of fresh elections pending consideration of the appeal.
 - (ii) The petitioners will not enter into any fresh contracts or incur any liability other than in usual course of business during the pendency of the appeal.
 - (iii) The Tribunal having fixed the date of 03.01.2011 would proceed to hear the appeal finally even if the private respondents fail to avail of the opportunity to file replies. We may note that the

proceedings before the Tribunal being in the nature of the appeal, there is hardly any reason for a reply to be filed.

16. The writ petitions are accordingly allowed leaving the parties to bear their own costs.

17. Needless to say, any observations made by us in this Order are only prima facie in nature for purposes of consideration of the interim order pending consideration of the appeal and would not in any manner affect the final outcome before the Tribunal.

SANJAY KISHAN KAUL, J.

November 19, 2010
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VALMIKI J. MEHTA, J.