

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

Judgment Reserved on: **15th February, 2011**

% Judgment Pronounced on: **May 09, 2011**

+ **W.P.(C) No. 421/2010**

NARENDER KR. JAIN & ORS. Petitioners
Through: Mr. Amit Gupta, Adv.

Versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through: Mr. Abhinav Tandon, Adv. for
Mr. V.K. Tandon, Adv. R-1&2
Mr. S.K. Kaushik, Adv. for R-4

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

DIPAK MISRA, CJ

Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners have prayed for declaring Section 2(t) and Section 35(7)(d) of the Delhi Cooperative Societies Act, 2003 (for brevity 'the 2003

Act') ultra vires Articles 14, 19 and 21 of the Constitution of India and for issue of a writ of certiorari for quashment of the order dated 18th January, 2010 passed by the Returning Officer, the third respondent herein, who has declared the petitioners as disqualified from contesting the elections to the Board of Directors of the Jain Cooperative Bank Ltd., the fourth respondent herein.

2. The facts which are essential to be stated for adjudication of this writ petition are that the petitioners were elected to the Board of Directors of the fourth respondent in the elections held on 3rd December, 2006. The petitioner No.1 was elected as the Vice-Chairman and the rest of the petitioners were elected as the Directors of the Board. The statutory audit for the year 2006-2007 for the respondent No.4 was completed on 23rd July, 2007. The bank was approached by one M/s. M.L. Puri & Co., Chartered Accountants, for getting empanelled as statutory auditors of the bank. The Board of Directors, which consisted of 12 members including the petitioners herein, appointed M/s. M.L. Puri & Co. as the statutory auditors to carry out the statutory audit for the financial year ending 31st March, 2008. M/s. M.L. Puri & Co. wrote a letter for getting no-objection certificate from the earlier statutory auditors, M/s. Shiromani Tyagi & Co., Chartered Accountants, on 14th May, 2008. M/s. M.L. Puri & Co. submitted the option-cum-appointment letter for conducting the

audit of the office of the Registrar, Cooperative Societies, the respondent No.2 herein, on 27th May, 2008, the approval for which was given by the said respondent on 9th June, 2008. The said M/s. M.L. Puri & Co., vide letter dated 20th August, 2008, informed the bank that they were not in a position to commence the audit immediately and complete the same before 27th August, 2008. It was stated that the audit could only be completed by the first week of September, 2008. The fourth respondent, by communication dated 21st August, 2008, informed the said Chartered Accountants firm that the accounts were required to be audited immediately and, therefore, the audit should be taken up and completed by 27th August, 2008. The said firm expressed its inability and stated that they had no objection if some other auditor was appointed and also mentioned that their letter may be treated as a letter of resignation. In the meantime, M/s. Shiromani Tyagi and Co., vide letter dated 22nd August, 2008, wrote to the fourth respondent expressing their willingness to be empanelled for conducting the statutory audit. On 23rd August, 2008, the resignation of M/s. M.L. Puri & Co. was accepted by the Board of Directors. M/s. Shiromani Tyagi and Co., Chartered Accountants firm was appointed as the statutory auditor on 25th August, 2008. The said fact was intimated to the respondent No.2 who, by communication dated 9th September, 2008, did not accede to the request of the

Board of Directors for changing the statutory auditor and informed that the earlier appointed auditor had agreed to complete the audit by 15th September, 2008. Thereafter, M/s. M.L. Puri & Co., by letter dated 11th September, 2008, intimated the second respondent that they were not in a position to complete the audit by 15th September, 2008. They also expressed that they had no objection if the bank appoints some other auditor. On 23rd September, 2008, M/s. M.L. Puri & Co. entered into correspondence with the second respondent stating, inter alia, that they were waiting for the directions of the respondent No.2 to proceed with the audit work. The respondent No.4, vide letter dated 26th September, 2008, wrote to the respondent No.2 that M/s. M.L. Puri & Co. was again delaying the audit and requested to appoint a fresh auditor for conducting the audit but no response was received. The respondent No.4, by letter dated 30th September, 2008, wrote to the Deputy General Manager, Reserve Bank of India, for granting one week's time for submission of the audited accounts for the year ending 31st March, 2008.

3. Number of correspondences were carried on between the Managing Committee and the Chartered Accountants and eventually, the audit report was submitted on 27th October, 2008.

4. On 29th December, 2009, the respondent no.3 issued an agenda notice for holding the election of the Managing Committee of the respondent no.4 on 31st January, 2010. The petitioners filed their nomination forms on 14th January, 2010 for the elections. On the date of scrutiny, an objection was raised on behalf of the respondent no.5 that the candidature of the petitioners deserved to be rejected as the audit for the financial year 2007-2008 was not conducted prior to 31st July, 2008. The respondent no.3, by the impugned order dated 18th January, 2010, disqualified all the seven petitioners on the ground that the audit for the year 2007-2008 was not conducted within 120 days of the closing of the cooperative year.

5. Be it noted, while challenging the said decision, the constitutional validity of Sections 2(t) and 35(7)(d) of the 2003 Act is also called in question. It is the admitted position that the Managing Committee had not completed the audit of the accounts of the society within the time stipulated and, hence, they had incurred the disqualification set out in Section 35(7)(d) of the 2003 Act. A Division Bench of this Court in W.P.(C) No.2859/2008 [Col. Suresh Chand (Retd.) & Anr. v. Delhi Co-operative Tribunal & Ors.] decided on 19.11.2009 has held as follows:

“Be that as it may, in view of our conclusion with regard to the disqualification incurred under Section 35(7)(d) of the 2003 Act, the net result of the aforesaid discussion is that, at least, six members of the present Managing Committee stand disqualified.”

We respectfully concur with the aforesaid view.

6. Hence, we are only required to dwell upon the constitutional validity of the provisions. Section 2(t) of the 2003 Act reads as follows:

“(t) “officer” means the president, vice-president, chairman, vice-chairman, managing director, secretary, manager, member of committee, treasurer, liquidator, administrator and includes any other person empowered under this Act, the rules or the bye-laws, to give directions in regard to the business of a co-operative society”

7. Though the constitutional validity of Section 35(7)(d) of the 2003 Act is called in question, yet we think it appropriate to reproduce Section 35(7) in entirety:

“35. Election and nomination of members of committee.

(1) to (6) xxx xxx xxx

(7) Notwithstanding anything contained in this Act, a person shall be disqualified for election of office in a committee –

- (a) if he holds any such office on a committee of another co-operative society of the same type;
- (b) if he holds and such office on the committees of three or more co-operative societies of a different type or types;
- (c) if he has been held guilty of any of the offences as enumerated in section 118;
- (d) if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed in this Act; or
- (e) if he fails to give a declaration on oath about his eligibility for contesting election as prescribed.”

8. Be it noted, Section 35 deals with the election and nomination of the members of the committee. Sub-section 35(7) lays a clear postulate under what circumstances a person is qualified for the election of office in a committee. There are various circumstances which form the grounds of disqualification. Sub-section 7(d) stipulates that a person shall be disqualified for the election of office in a committee if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed under the Act. It is urged in the petition that such a provision is contrary to the scheme of the 2003 Act and further, if Section 35(7)(d) is read with Section 2(t), there is no rationale to debar the entire existing board of directors from contesting the election in case the audit for any year is not completed beyond the period of 120

days from 31st March. It is urged by Mr. Gupta, learned counsel for the petitioners, that it is a penal provision which affects the board of directors irrespective of the fact whether they had personally contributed to the default or not and, hence, it invites the frown of arbitrariness and unreasonableness which is an anathema to the spirit of Article 14 of the Constitution. It is propounded that the said provision is over inclusive, that is, it includes not only those who are at fault but also those who are not at fault and such over inclusion offends the basic equality clause enshrined under Article 14 of the Constitution of India.

9. To appreciate the aforesaid submissions, we may profitably refer to the dictionary clause in Section 2(e) which is as follows: -

“(e) “committee” means the governing body of a co-operative society by whatever name called, to which the management of the affairs of the co-operative society is entrusted.”

In this regard, we may also reproduce Section 2(h) which defines ‘co-operate society’. It reads as follows: -

“(h) “co-operative society” means a society registered or deemed to be registered under this Act.”

In this regard, it is seemly to refer to Section 2(n) which is as follows: -

“(n) “financing bank” means a co-operative bank the objects of which include the creation of funds to be lent to other co-operative societies.”

10. Section 4 which occurs in Chapter II dealing with the registration of Co-operative Societies provides for the co-operative societies which may be registered. It is reproduced herein below: -

“4. Co-operative societies which may be registered

(1) Subject to the provisions hereinafter contained, a co-operative society which has its object the promotion of economic, social and cultural interests of its members, in accordance with co-operative principles, or a co-operative society established with the object of facilitating the operations of such a co-operative society, may be registered under this Act with limited liability:

PROVIDED that a co-operative society shall be registered only if it fulfills the viability norms with limited liability as prescribed for a co-operative society or class of co-operative societies to ensure that it is economically sound and its registration may not adversely affect the development of co-operative movement.

(2) The word “limited” or its equivalent in any Indian language shall be the last word in the name of every co-operative society registered under this Act with limited liability.”

11. Section 22 of the Act deals with persons who can be admitted as members of a co-operative society. It is appropriate to reproduce the same –

“22. Persons who may become members

(1) No person shall be admitted as member of a co-operative society except the following, namely: -

- (a) an individual competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);
- (b) any other co-operative society;
- (c) the Government;
- (d) a firm, a joint stock company, or any other body corporate constituted under any law; and
- (e) such class or classes of persons or association of persons as may be notified by the Government in this behalf:

Provided that the provisions of clause (a) shall not apply to an individual seeking admission to a co-operative society exclusively formed for the benefit of students of a school or college:

Provided further that no individual shall be eligible for admission as a member of any financing bank or federal co-operative society except as provided in clause (m) of Section 2.

(2) Notwithstanding anything contained in sub-section (1), the Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any co-operative society or class of co-operative societies by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing as member or shall be eligible for membership only to a limited extent of any specified co-operative society or class of co-operative societies, so long as such person is or such persons are engaged in or carrying on that profession, business or employment, as the case may be.”

12. Section 26 of the Act deals with manner of exercising vote. Sub-section (2) of Section 26, being relevant, is quoted hereunder –

“26. Manner of exercising vote.

(1) xxx xxx xxx

(2) Notwithstanding anything contained in sub-section (1), a co-operative society which is a member of another co-operative society, may appoint one of its members to vote on its behalf in the affairs of that other co-operative society.”

13. Section 34 of the Act which deals with ‘constitution of committee’ is reproduced below: -

“34. Constitution of committee.

The general body meeting of a co-operative society shall constitute a committee as prescribed and in accordance with the bye-laws and entrust the management of affairs of the co-operative society to such committee.”

14. Section 37 provides for supersession of committee by the registrar under certain circumstances.

15. Section 43 stipulates the co-operative society to be body corporate. It is as follows: -

“43. Co-operative society to be body corporate.

The registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceeding and do all things necessary for the purposes for which it is constituted.”

16. It is well settled in law that a body corporate has a different connotation and meaning in law. The body corporate is not merely a body of persons. Section 43 of the Act stipulates that a cooperative society is a body corporate and hence, the statute confers on it a distinctive legal status. In this context we may profitably refer to the Halsbury’s Laws of England, 4th Edition, Volume IX wherein in paragraph 1201, the term “Corporation” has been described as under-

“1201. Corporation and unincorporation associations corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question. There are many associations and bodies of persons that are not corporation. Some of these, such as registered friendly societies, may be quasi-corporations, as they have some of the usual attributes of corporations, such as the possession of a name in which they may sue or be sued, and the power (independently of any contract between the members) to hold property for the purposes defined by their

objects and constitutions. Partnerships are not usually regarded as quasi-corporations, although if carrying on business in England or Wales, they may sue and be sued in the firm name. Subject to the exceptions mentioned above, unincorporated associations cannot sue or be sued in their own name nor (unless their purposes are charitable) can property be held for their purposes otherwise than by virtue of a contract between the members for the time being. The Crown has power by letters patent to grant to any company or body of persons associated together for any trading or other purposes, although not incorporated, any privileges which, according to the rules of common law, it would be competent the Crown to grant to any such company or body of persons in and by any charter or incorporation. Such letters patent may provide that actions by or against the company or body of persons shall be carried on in the name of one or two officers to be appointed for that purpose and may limit the individual liability of the members."

In paragraph 1202 in the said volume there has been a classification of "Corporation" into two classes, namely, "Corporation aggregate" and "Corporation sole". "Corporation aggregate" has been explained in paragraph 1204 which is as under: -

"1204. Meaning of Corporation aggregate. A Corporation aggregate has been defined as a collection of individuals united into one body under a special domination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and exercising a variety of political rights, more or less extensive, according to the design of its institution, or

the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence.”

In paragraph 1205 there has been further explanation of “Corporation aggregate” which we may usefully reproduce:

“1205. Composition and capacity. A Corporation aggregate may be either a mere body, composed of constituent parts no one of which differs essentially from another or it may be a body with a head or other distinct member, the existence of which is essential to the vitality, so to speak, of the body as a whole. A Corporation aggregate has only one capacity, namely its corporate capacity; so that a conveyance to a corporation aggregate can only be to it in its corporate capacity.”

In paragraph 1206 “Corporation sole” has been explained. It reads as under: -

“1206. Definition, capacity and presumption of due appointment. A Corporation sole is a body politic having perpetual succession, constituted in a single person who in right of some office or function a capacity to take, purchase, hold and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alienate) real property, and now, it would seem, also to take and hold personal property, to him and his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous; that is, there may be and often are, periods in the duration of a corporation sole, occurring irregularly, in which there is a vacancy, or on one in existence in whom the corporation resides and is visibly represented.

Unlike a Corporation aggregate, a Corporation sole has a double capacity namely, its corporate capacity and its natural or individual capacity; so that a conveyance to a corporation sole may be in either capacity.

A Corporation sole appears now to be capable of taking personality in succession. The occupant of a corporation sole is presumed to have been duly in possession of his office until the contrary is proved."

On a fair scrutiny of the aforesaid paragraphs it is plain as day that in the characteristics of Corporation, concept of its continuity and distinct entity are inhered. In paragraph 1209 of the said volume it has been explained that the Corporation is a distinct juristic entity. It is worthwhile to reproduce the same.

"1209. Corporation a distinct entity. The nature of a corporation may be shown by contrasting it, as a legal conception, with the individuals in which it resides. In law the individual corporators, or members, or which it is composed are something wholly different from the corporation itself; for a corporation is a legal person just as much as an individual. If a man trusts a corporation, he trusts that legal person, and must look to its assets for payment; he can only call upon individual members to contribute if the Act or charter creating the corporation has so provided. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation, and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess but

a nominal interest in its property, or hold their interest in trust for him. Notice to an individual who happens to be a member of a corporation aggregated but has no authority to receive notices is not equivalent to notice to the corporate body; and where an action is maintainable by and in the name of a corporation, it cannot be maintained by individual members of the corporation. After the dissolution of a corporation the members, in their natural capacities, can neither recover debts which are due to the late corporation nor be charged with debts contracted by it."

In paragraph 1211 it has been stipulated that a name is essential to a "Corporation" and in the case of a Corporation created by grant of charge or by Special Act the name must be either expressed in the grant or the Act or implied from the nature of it.

In this context, we may refer with profit to a decision rendered by the Constitution Bench of the Apex Court rendered in the case of Daman Singh v. State of Punjab, AIR 1985 SC 973 wherein their Lordships, after referring to the case of Board of Trustees, Ayurvedic and Unani Tibia College, Delhi (AIR 1962 SC 458) (supra) and scanning Section 30 of the Punjab Co-operative Societies Act, 1961, held as under: -

"6. We have already extracted S. 30 of the Punjab Act which confers on every registered co-operative society the status of a body corporate having perpetual

succession and a common seal, with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. There cannot, therefore, be the slightest doubt that a co-operative society is a corporation as commonly understood.....”

17. From the scheme of things, it is evident that the co-operative society has been conferred the privilege of a body corporate. A society which is a body corporate has a different status. An officer of a co-operative society includes a member of a committee. The submission of the learned counsel for the petitioner is that instead of fixing personal responsibilities, to include every officer is over inclusive and defeats the purpose of classification. We really fail to appreciate the aforesaid submission canvassed at the Bar. The officer has been given a meaning under the dictionary clause which is in consonance with the purpose of the Act. It includes a member of a committee of a society. A committee of a co-operative society has been assigned a different responsibility. In this context, we may profitably refer to Rule 60(1) of the Delhi Co-operative Societies Rules, 2007 which stipulates as follows: -

“60. Meetings of the Committee

(1) A committee of a co-operative society shall exercise all the powers of the co-operative society, discharge all the duties

as may be specified in its bye-laws by means of resolutions passed at its meetings. No resolution shall be passed by circulation to the members of its committee.”

18. On a perusal of the role assigned to the committee, it is quite clear that every member of the committee has a joint responsibility. A member of the committee cannot afford to plead that he has no responsibility once there is a non-compliance of the statutory audit within the statutory period. Fiscal accountability has been made joint by the provision. The members of the Board of Directors have a collective responsibility. The definition in Section 2(e) provides that a committee means the governing body of a co-operative society by whatever name called, to which the management of the affairs of the co-operative society is entrusted. Thus, each director shares the responsibility. There is no question of fixing any kind of personal responsibility, rather the duty is fixed on the committee. We do not see any facet of arbitrariness in it. The concept of classification, as projected by the learned counsel for the petitioner, remotely touches the periphery of Article 14 of the Constitution of India.

19. We really do not perceive any ground to declare either Section 2(t) or Section 35(7)(d) to be unconstitutional being hit by Articles 14, 19 and 21 of the Constitution of India, as submitted. Nothing has been pleaded as to how the

same really invites the frown of Articles 14, 19 and 21 of the Constitution of India. We also do not perceive any reason which can be ushered in to make the provisions ultra vires the said Articles of the Constitution.

20. Resultantly, the writ petition, being devoid of merit, stands dismissed without any order as to costs.

CHIEF JUSTICE

MAY 09, 2011
kapil/dk

SANJIV KHANNA, J