

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

Date of decision: 27th September, 2011

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W.P.(C) 7815/2010

**WAZIRPUR INDUSTRIAL POLLUTION
CONTROL (CETP), SOCIETY**

..... Petitioner

Through: Mr. S.K. Bhattacharya & Mr. Niraj
Bobby Poonam, Advs.

Versus

LT. GOVERNOR, NCT OF DELHI & ORS **..... Respondents**

Through: Mohd. Noorullah, Adv. for R-1&2.
Mrs. Avnish Ahlawat & Ms. Urvashi
Malhotra, Advs. for R-3 to 5.
Mr. S.S. Jauhar, Adv. for applicant in
CM No.21580/2010.
Mr. Saran Suri & Mr. Gunjan Kumar,
Advs. for applicant in CM
No.11803/2011.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not Necessary |
| 2. | To be referred to the reporter or not? | Not Necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not Necessary |

RAJIV SAHAI ENDLAW, J.

1. The writ petition has been filed seeking declaration that the actions of the respondent No.3 Commissioner of Industries and the respondent No.4 Additional Commissioner of Industries of not allowing elections to take place of the petitioner Society is illegal, arbitrary and contrary to provisions of law, and for restraining the respondents from placing any fetters on the smooth conduct of elections of the petitioner Society.

2. Notice of the petition was issued. This Court in order dated 25.05.2011 noticed one of the issues concerning election being as to the list of eligible voters and issued certain directions in that regard. On 11.08.2011, the counsel for the respondent No.5 Dy. Commissioner of Industries informed that upon verification in terms of the earlier order dated 25.05.2011, it was found that only eight members had deposited the subscription upto 31.03.2011 and that as per the Bye-Laws of the petitioner Society only those who had deposited the subscription upto 31.03.2011 were eligible to vote in the election to be held thereafter. It was also stated that the election was to take place for eleven posts and thus the members eligible

to vote were not even sufficient to fill up the eleven posts to which elections were to be held.

3. CM No.21580/2010 has been filed by one Jai Kumar Bansal and Mahavir Jain claiming to be occupants of Wazirpur Industrial Area and entitled to vote in the election of office bearers of petitioner Society, for impleadment. CM No.11803/2011 has been filed by one Sh. Amarnath Gupta claiming to be the President of the Wazirpur Audyogic Sangh also for impleadment.

4. The counsel for the petitioner, the counsel for the respondents and the counsels for the applicants have been heard.

5. At the outset, it has been enquired as to how the writ petition qua the elections to the post of a Society registered under the Societies Registration Act, 1860 is maintainable.

6. The counsel for the petitioner has contended that the respondents are illegally interfering with the election process of the petitioner Society and

which they are not entitled to. The counsels for the respondents and the counsel for the applicants have invited attention to the Delhi Common Effluent Treatment Plants Act, 2000 and contended that the petitioner Society has been incorporated in terms thereof.

7. The said Act was enacted to provide for recovery of dues as arrears of land revenue in respect of capital and recurring costs of common effluent treatment plants setup in the Industrial Estates in the National Capital Territory of Delhi and matters connected therewith. Section 3 thereof provides that an industrial estate either by itself or along with one or more industrial estates in Delhi may constitute a Common Effluent Treatment Plant (CETP) Society to be registered under the Societies Registration Act, 1860 and duly approved by the appropriate authority to be constituted under the said Act for the purposes of performing such functions including setting up and operating a CETP for the units in such industrial estate or estates, as may be entrusted to such society.

8. It is not in dispute that the petitioner Society is approved by the

appropriate authority stated to be respondent No.3 Commissioner of Industries, for the Wazipur Industrial Estate.

9. During the hearing, it has also emerged that the petitioner Society has been incorporated only in the year 2009 and no elections have been held till now and the elections are to be held now for the first time.

10. In the circumstances, it is deemed expedient to entertain this writ petition.

11. The following points of controversy as to the holding of elections have arisen:

- A. (i) First is the dispute as to who all are the members of the Society. While the counsel for the persons presently in management of the petitioner Society (and who, the applicants contend are perpetuating their illegal management of the Society and are not interested in holding of elections) contends that only such of the

persons, who have applied for becoming a member of the petitioner society and who have paid their subscription are entitled to be members of the Society and to vote in the ensuing election, the counsel for the respondents and the counsels for the applicants invite attention to Section 3(2) of the Act, as per which every “occupier” shall be a member of that CETP Society. Occupier is defined in Section 2(10) of the Act, in relation to any establishment, factory or premises, as a person who has control over the affairs of the establishment, factory or the premises. They thus contend that irrespective of whether subscription has been paid and whether the name exists on the roll of the Society or not, if a person is “occupier” of the industrial estate, he would be entitled to vote in the ensuing election.

- (ii) In this regard, it has emerged that though earlier survey had found 1803 industrial units in the industrial estate,

the current survey has found only 953 units in existence; of the said 953 units also, only 149 according to the petitioner and 155 according to the respondent No.3 Commissioner of Industries have become members of the Society. It is further the case of the petitioners that another 162 industrial units, though have deposited their dues upto 31.03.2011 but have not completed the formalities of being a member of the Society.

- (iii) The question to be adjudicated thus is, whether a person merely for the reason of being an “occupier” becomes a member of the Society and becomes entitled to vote or, is required to formally apply for membership and to pay the subscription.
- (iv) The Rules and Regulations of the petitioner Society though restrict the membership to persons *inter alia* having industrial unit in the Wazirpur Industrial Estate,

require a member to pay the annual subscription fee regularly without any fail and further require a occupier to make an application for so becoming a member.

- (v) I am of the opinion that it is necessary to have a formal roll of members of the Society and the membership of the Society cannot be left vague, dependent upon the occupation of the industrial estate. The occupiers of the various industrial units of the industrial estate may change from time to time. However, they are required to apply for and enroll themselves as a member of the Society.
- (vi) The counsels have informed that in another proceeding in the Supreme Court, it has been directed that failure to become a member can lead to an action by the Commissioner of Industries.
- (vii) Thus it is held that making of a formal application for

becoming a member and payment of subscription fee is necessary to be a member of the Society and to be on the rolls of the Society and only such of the occupiers of industrial estate who have made an application to become a member and have paid the subscription, in accordance with Rules and Regulations of Society, are entitled to vote in elections to the post of office bearers of the Society.

- B. (1) The next controversy is as to the capital cost and the operation and maintenance charges for the CETP, with the counsel for the petitioner contending that to be able to become a member of the Society the occupiers are required to also clear the arrears of capital cost and operation & maintenance charges (O&M) and the counsels for the applicants controverting the same.
- (ii) There are allegations and counter allegations as to the

amount of capital cost of CETP and operation and maintenance charges of CETP with the counsel for the petitioner contending that the occupiers are not paying their share and the counsel for the applicants alleging misappropriation and excessive demands by persons presently in management of petitioner Society.

- (iii) I am of the opinion that since the first elections are to be held, insistence on payment of arrears of capital cost & O&M charges would unnecessarily restrict the electoral college which is to elect the elected body of the Society. Therefore it is deemed expedient to allow all the occupiers who apply for enrolment as members and pay the subscription fee to participate in the first elections to be held, with it being left open for decision whether in the subsequent elections, members who may have paid their subscription money but not paid the capital costs or the O&M charges are entitled to participate in the

election or not.

- C (i) Apprehensions have also been expressed as to the competence and fairness of those presently in management of the petitioner Society to hold the elections of the Society. The counsels for the applicants have invited attention to the Minutes of the Meeting held on 10.09.2010 in the Office of the Commissioner of Industries where a two member Committee consisting of Sh. Prem Prakash, Assistant Commissioner of Industries and Mr. Ram Vilas Gupta one of the occupiers was constituted to take steps for conducting the elections.
- (ii) The counsel for the persons presently in management of the petitioner Society has contended that under the Rules and Regulations of petitioner Society, the Governing Body of the Society is to hold the elections and there is no reason for interfering therewith.

(iii) However, the Governing Body presently in management is not an elected Governing Body. I find this Court to have in ***Delhi Jan Sudhar Samiti Vs. Ramesh Chand Gupta*** MANU/DE/7614/2007 (DB), ***Ram Krishan Bhalla Vs. Registrar of Co-operative Societies*** MANU/DE/1333/2000 (DB) to have in similar situations appointed a retired Judge as Observer to the elections. To allay any apprehensions and doubts and to ensure free and fair elections, it is deemed expedient to prescribe a procedure therefor.

12. Accordingly, the petition is disposed of with the following directions:

A. Mr. Raj Pal Gupta stated to be present Secretary of the Society, is directed to within 10 days from today submit to the Commissioner of Industries the list of members of the Society together with proof of payment by the said members of their subscription up to 31.03.2011.

- B. The Commissioner of Industries to give opportunity to other occupiers of the Industrial Estate desirous of becoming member of petitioner Society, to so become member and time schedule therefore be drawn up.
- C. The Commissioner of Industries to verify whether the persons already admitted as members and the applicants for membership, are in fact occupiers of the said industrial estate and device a procedure for submission of proof and scrutiny thereof.
- D. The said list of members be displayed on or before 20.12.2011 and thereafter the election to the fourteen posts of the Society shall be held.
- E. Justice S.N. Dhingra (Retd.) is appointed as the Observer for scrutiny of the members and for the election. The Directorate of Industries to liase with Justice Dhingra on all the aforesaid aspects. The fee of Justice Dhingra is fixed at ₹1,00,000/-

besides out of pocket and administrative / secretarial expenses to be borne by the petitioner Society. Mr. Raj Pal Gupta to ensure payment within one week of today.

- F. The present Governing Body to deliver charge of the affairs of the petitioner Society to the newly elected Governing Body.
13. It is clarified that the inclusion as member or allowing the “occupiers” to vote as members would not prevent the recovery of the capital goods and O&M charges or other coercive action against the occupiers.
14. The petition is disposed of; no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 27, 2011
‘gsr’