

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

+ **W.P.(C) 4645/2013**

PRADEEP JAIN & ORS.

..... Petitioners

Through: Mr. Anil Kumar, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Rakesh Mittal, Advocate
for the Respondent Nos.1 to 3.
Mr. Amit Gupta, Advocate for
the Respondent No.4.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. This petition is directed against the impugned order dated 12.6.2013 passed by the Assistant Registrar (Banking), Cooperative Societies, Delhi purportedly in exercise of the powers vested in him under Sections 61 of the Delhi Cooperative Societies Act, 2003 appointing an Inspecting Officer to conduct inspection of the Respondent No.4/Bank on the issues raised by the Administrator of the Bank vide letter dated 12.3.2013.

2. Notice of the petition was issued to the Respondent Nos.1 to 3 and learned counsel for the Respondent Nos.1 to 3 was afforded time by us to obtain instructions as to whether an opportunity of hearing was given to the Petitioners before the passing of the order under Section 61 of the Act in terms of the judgment of the Division Bench of this Court dated September 15, 2009 passed in W.P.(C) No.11663/2009 ***“Panchshila Co-operative House Building Society Ltd. vs. Govt. of NCT of Delhi”***. On obtaining instructions, learned counsel for the Respondent Nos.1 to 3 states that no opportunity has been afforded to the Petitioners before passing of the order under Section 61 of the Act nor in fact it is incumbent upon the Registrar to afford such opportunity to the persons against whom the complaint has been made. The aforesaid submission made by counsel for the Respondent Nos.1 to 3 is echoed by counsel for the Respondent No.4 Bank, namely, Jain Cooperative Bank Ltd.

3. The contention of learned counsel for the Petitioners is that the acts and deeds complained of by the Administrator appointed by the Registrar, Cooperative Societies are stated to have taken place during the time when the Petitioner No.1 was a Director of the Respondent No.4/Bank and as such an opportunity of being heard ought to have been given to the Petitioner before the passing of the order. It is further submitted that even otherwise the impugned order is not in conformity with the provisions of Section 61 of the Delhi Cooperative Societies Act, 2003, in that there is no provision in the Act which empowers either the Respondent No.2/Registrar or any other officer to pass an order for inspection under Section 61 of the Act on the

complaint of the Administrator of the Bank. Further, as per the provisions of Section 61 of the Act, the power to pass an order under the said section is vested with the Registrar only and not upon the Assistant Registrar, who has passed the order in the instant case. The order being without jurisdiction and authority is liable to be set aside.

4. Reliance is placed by learned counsel for the Petitioners on the judgment of the Division Bench rendered in ***Panchshila Co-operative House Building Society Ltd.'s case (supra)*** as well as the judgment rendered by the Division Bench in W.P.(C) No.208/2010 ***“Sh. Narender Kumar Jain vs. Govt. of NCT of Delhi”*** dated 12.5.2011. In both the aforesaid cases, the impugned order was set aside on the ground that the due procedure indicated in the provisions of the Act had not been followed and the Registrar had failed to return a finding that he was *prima facie* satisfied that an inspection was necessary. It was held that such finding was to be recorded by the Registrar in writing and that too after affording an opportunity to the person against whom the complaints were made. In both the said decisions, it was noted that no opportunity had been given to the Petitioner Society or the members of the Managing Committee against whom serious allegations were levelled and therefore the impugned order could not be sustained.

5. From the aforesaid two decisions of this Court, we are satisfied that the impugned order has not been passed after following the due procedure envisaged by the Act. A bare look at the provisions of Section 61 of the Act, in our opinion, is in itself sufficient to enable us to uphold the aforesaid contention of learned counsel for the

Petitioners in this regard. The relevant portion of Section 61 reads as under:-

“61. Inspection of co-operative societies.

- (1) *The Registrar may, on the request made by a creditor or, not less than one-thirds of the members of the committee, or not less than one-fifths of the total number of members, of a co-operative society, undertake inspection of a co-operative society or class of co-operative societies by general or special order in writing and authorise any person by order in writing in this behalf, to make an inspection into the constitution, working and financial condition of a co-operative society.*

PROVIDED that where a serious complaint is made by a member or a public servant in writing about the affairs of a co-operative society or committee or office bearers, to the Registrar or to any person authorized by him in this regard not below the rank of Joint Registrar and if the Registrar is prima-facie satisfied, after recording his views in writing and affording an opportunity to the person against whom complaint has been made, he may order an inspection in respect of only issue or issues as the case may be, raised in the complaint and the inspection shall be conducted by a person not below the rank of an Assistant Registrar.

- (2) xxxx xxxx xxxx xxxx
- (3) xxxx xxxx xxxx xxxx

(4) xxxx xxxx xxxx xxxx”

6. An effort was made in the course of hearing by counsel for the Respondents to urge that the present case fell within the proviso of Section 61(1) of the Act and not under Sub-Section (1) of Section 61. Even if this be so, this would not materially alter the position. The pre-conditions would still have to be satisfied. The pre-conditions required to attract the applicability of Section 61 of the Act have been dealt with at length in the case of ***Panchshila Co-operative House Building Society Ltd. (supra)*** and we can do no better than reproduce them. The relevant portion of the said judgment is accordingly extracted hereunder:-

“It is apparent that in the normal course of events, an inspection may be undertaken at the direction of the Registrar only upon a request made either by (a) a creditor; or (b) not less than one-third of the members of the committee; or (c) not less than one-fifth of the total number of members of a cooperative society. In the present case, none of these pre-conditions are fulfilled and, therefore, no inspection could have been initiated under the main provision of Section 61(1) of the said Act. However, a proviso to Section 61(1) was inserted with effect from 01.04.2005. The said proviso pertains to cases where serious complaints are made by a member or a public servant in writing about the affairs of a co-operative society or the committee or office bearers. A plain reading of the proviso indicates that such a complaint must be made in writing to the Registrar or to any person authorized by him in this regard not below the rank of Joint Registrar. Secondly, it is only if the Registrar is prima-facie satisfied, after recording his views in writing and affording an opportunity to the person against whom the complaint

has been made, to order an inspection in respect of the complaint in entirety or in respect of some issues therein. It is also a requirement that the inspection, in such an eventuality, would be conducted by a person not below the rank of an Assistant Registrar.

3. Even if the present case is treated as one falling under the proviso, inasmuch as serious allegations have been levelled, the pre-conditions have to be satisfied before an inspection can be ordered. The first pre-condition is that the complaint must be made to the Registrar or to any person authorized by him in this regard not below the rank of Joint Registrar. The second condition is that it is the Registrar who has to be prima-facie satisfied and not any other officer. It appears from the impugned order itself that the complaints were received in the Office of the Registrar of Cooperative Societies. It was, therefore, necessary on the part of the Registrar to have returned a finding that he was prima facie satisfied that an inspection was necessary. This finding was to be recorded in writing and that too after affording an opportunity to the person against whom the complaints were made. In the present case, admittedly, no opportunity of hearing has been given to the petitioner society or the members of the managing committee against whom serious allegations have been leveled. Apart from this, the order which is impugned herein, is one which has been made not by the Registrar which was the requirement under law, but by the Deputy Registrar (South). Although the operative portion of the order states that the Registrar of Cooperative Societies has satisfied himself and is, therefore, pleased to appoint Mr C. R Garg, DIG, Central Prison, New Delhi to inspect the relevant record of the society, the satisfaction, if any, must be recorded by the Registrar himself and must not be conveyed in the manner as indicated in the impugned order.

4. *Thus, even if we assume that the proviso would be applicable in this case, the pre-conditions necessary for passing an order on inspection have not been satisfied and, therefore, the impugned order is liable to be set aside. It is ordered accordingly.*

5. *The setting aside of the impugned order dated 28.08.2009 would not, however, come in the way of the Registrar to follow the procedure as laid down in Section 61(1) to arrive at a satisfaction as to whether any inspection is to be ordered or not, after giving an opportunity to the affected persons. The learned counsel appearing for the Registrar of Cooperative Societies submits that the Registrar will re-examine the matter after following the due procedure indicated in the provisions of the said Act and shall take a definitive view within four weeks.”*

7. In our considered opinion, the pre-conditions for the applicability of Section 61 of the Act have not been satisfied in the instant case. Serious allegations made in the complaint of the Administrator have been dealt with by the Assistant Registrar without even affording an opportunity of hearing to the Petitioners.

8. We accordingly set aside the impugned order dated 12.6.2013 with the clarification that the setting aside of the impugned order would not come in the way of the Registrar to pass an order under Section 61(1) of the Act after re-examining the matter and recording a *prima facie* finding as to whether inspection is to be ordered or not after giving an opportunity to the Petitioners and/or other affected persons of being heard.

9. The Writ Petition is disposed of in the above terms.

**REVA KHETRAPAL
JUDGE**

**PRATIBHA RANI
JUDGE**

August 01, 2013
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