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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3259/2014

VISHAL SINGH AND ANR

..... Petitioners

Through: Mr. Harish Malhotra, Senior Advocate
with Mr. T. Singhdev and Mr. Ankit
Kumar Lal, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. B.V. Niren, Advocate with Mr. Udit
Gupta and Ms. Archana Gaur, Advocates
for UOI/respondents No.1 to 3.

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Date of Decision : 21st May, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

Issue notice.

Mr. B.V. Niren, learned counsel accepts notice on behalf of respondents. He prays for and is granted six weeks to file a counter affidavit.

Rejoinder affidavit, if any, be filed before the next date of hearing.

List the matter on 07th August, 2014.

CM APPL. 6734/2014 in W.P.(C) 3259/2014

Present writ petition has been filed challenging the orders dated 24th February, 2014, 18th March, 2014 and 16th May, 2014 issued by the respondents whereby not only certain directions have been issued by the respondents, but also the Board of Directors of the petitioners-Multi State Cooperative Society have been removed. CM Appl. No. 6734/2014 has been filed for stay of operation of impugned orders dated 24th February, 2014, 18th March, 2014 and 16th May, 2014.

Mr. Harish Malhotra, learned senior counsel for petitioners states that petitioners' Board has been superseded without giving any opportunity of hearing in violation of Section 123 of the Multi-State Cooperative Societies Act, 2002 (hereinafter referred to as 'Act, 2002').

Mr. Malhotra further states that prior orders and directions had been issued to the Chairman in his personal capacity, whereas by virtue of Section 122 of the Act, 2002, Central Government had to give directions to the Board.

Mr. Malhotra points out that a Division Bench of this Court in ***Jeet Ram Gupta vs. Union of India & Ors. W.P.(C) 1795/2014*** has observed that if the Central Government was of the opinion that the petitioners' Board had to be superseded, it could exercise that power after following the mandate under Section 123 of the Act, 2002. Mr. Malhotra, submits that by not giving a separate notice to the Board Members as well as by not holding a full-fledged inquiry, the Central Government has not exercised the power in accordance with the manner prescribed in Section 123 of the Act, 2002.

In support of his submissions, Mr. Malhotra, learned senior counsel relies upon a judgment of the Supreme Court in ***State of Madhya Pradesh***

and Others vs. Sanjay Nagayach and Others, (2013) 7 SCC 25 wherein it has been held as under:-

“42.1 Supersession of an elected Managing Committee/Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the terms for which it is elected.

42.2. Elected Committee in office be not penalised for the shortcomings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous Committees.”

On the other hand, Mr. B.V. Niren, learned counsel for respondents states that the Government despite holding 78% shareholding had been a victim of a proxy war going on between the Chairman and the previous Managing Director.

Mr. Niren points out that the Central Bureau of Investigation has confirmed irregularities at various stages while deciding the work of award of contract for supply of six lac metric tonnes of imported coal and had recommended action against the Chairman of the Board.

Mr. Niren also points out that the Chairman of the Board had refused to cooperate with the inquiry and the Board Members despite being intimated of the directions dated 24th February, 2014 and 18th March, 2014 had not taken any action against the Chairman.

Having heard the learned counsel for parties, this Court is prima facie of the opinion that very serious allegations have been made against the Chairman of the petitioners' Board. The aforesaid allegations have not been made on a mere complaint by a third party, but on the recommendation of the Central Bureau of Investigation, which it seems from the paper book had conducted a preliminary inquiry. The Chief Vigilance Officer of NCCF, it

seems from the impugned orders, had also forwarded a detailed inquiry report intimating serious irregularities in supply of imported coal against Chairman NCCF.

A perusal of the impugned order dated 24th February, 2014 reveals that the previous Chairman had also contrary to CVC directions appointed a Committee headed by a non-official Vice Chairman to decide all the pending vigilance cases. Certain other acts not in the interest of the petitioners' society were also pointed out by the Central Government on 24th February, 2014 to all the Board Members.

This Court finds that the Board Members owed a fiduciary duty to discuss the issues raised in the aforesaid notices by the Government and to 'rein in' the Chairman, if required.

However, the impugned order dated 16th May, 2014 reveals that the Chairman and some of the Directors mis-behaved with the Government nominees in a Board meeting held on 30th April, 2014. The allegation of mis-behaviour and intimidation by the Board members has been made not only by the former Managing Director, whose appointment was set aside, but also by another Government Director Mr. A.K. Jain.

This Court is of the view that the principles of natural justice have been complied with as letters dated 24th February, 2014 and 18th March, 2014 were forwarded to the Board Members. In the opinion of this Court, principles of natural justice are not to be placed in a 'strait jacket' as they are no 'unruly horse'. The Supreme Court in *M/s. Shrikrishnadas Tikara Vs. State of M.P. and Others*, AIR 1997 SC 1691 has held, "*It is well-established that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances*

of each case.”

It is pertinent to mention that though all the directions which had been issued by the Government under Section 122 of the Act, 2002 were brought to the notice of the Board Members, may be by way of information, yet they did not take any action to either resolve the controversy or to ‘control’ the Chairman.

In fact, in the impugned order dated 16th May, 2014, it has been stated that despite adequate opportunities being offered to the Chairman to explain its position even by way of personal hearing, he had refused to cooperate with the inquiry process.

Undoubtedly, the power of supersession of board has to be resorted to in exceptional circumstances. But keeping in view the facts, this Court is prima facie of the view that present case falls within the ambit of exceptional circumstances. Consequently, judgment of *State of Madhya Pradesh and Others vs. Sanjay Nagayach and Others* (supra) is inapplicable.

In any event, as the Administrator had already taken over charge, this Court is of the view that no interim order is called for. Accordingly, present application is dismissed.

The observations made by this Court are only prima facie and for disposal of the present application. They shall not come in the way of adjudication of writ petition on merits.

MANMOHAN, J

MAY 21, 2014

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