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

\+ **W.P.(C) 8014/2015**

% **Date of decision : 28th September, 2015**

VINOD SEHRAWAT AND ANR. ..... Petitioner
Through: Mr. Sandeep Sharma, Adv.

versus

REGISTRAR, COOPERATIVE SOCIETIES AND ORS. ..... Respondent
Through: Mr. Peeyoosh Kalra, ASC with
Mr. Sudhindra Tripathi, Adv. for R-1
Mr. Vivek Singh, Adv. for Delhi Nagrik Sehkari Bank Ltd.

AND

\+ **CM Nos. 19583-84/2015 in W.P.(C) 7963/2014**

BIJENDER KAUSHIK & ORS ..... Petitioner
Through: Mr. Rakesh Kr. Khanna, Sr. Adv. with
Mr. Virender Singh and
Ms. Shefali Jain, Advs.

versus

REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS ..... Respondent
Through: Mr. Peeyoosh Kalra, ASC with
Mr. Sudhindra Tripathi, Adv. for R-1
Mr. Vivek Singh, Adv. for R-2
Mr. Rajesh Srivastava, Adv. for applicant

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J.

1. These writ petitions are concerned with different aspects of elections to the Delhi Nagrik Sehkari Bank Ltd. – a society registered under the provisions of Delhi Co-operative Societies Act, 2003.

2. Learned counsel for the parties pray that the writ petitions be taken up and disposed of given the fact that the elections to the society discharging serious functions is involved.

3. W.P.(C) No. 6274/2014 was filed laying a challenge to the notification of the election by the returning officer for the reason that the verification of the members of the Delhi Nagrik Sehkari Bank was not complete. We had recorded the following common order on the 27th November, 2014 in W.P.(C)No.6274/2014 Anil Kumar Gaur v. Registrar, Cooperative Societies, Govt. Of NCT of Delhi & W.P.(C) No.7963/2014 Bijender Kaushik & Ors. v. Registrar of Cooperative Societies & Ors.(also against the same society):

> "We have heard the counsel for the parties. After hearing and going through the photographs and the video which were placed before us we are of the view and all the counsels are agreed that the election conducted on 21.09.2014 has to go. Consequently, we set aside the said election.
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> Mr Andlay appearing on behalf of the Registrar of Co-operative Societies has given us copies of the orders,

notifications etc. which are taken on record which indicates that Mr A.S. Raghav, I.A.S. (Retired) has been appointed as the Administrator of the Delhi Nagrik Sehkari Bank Limited. The documents indicate that Mr Raghav has already taken charge on 26.11.2014.

In view of the aforesaid developments, the fresh election for the Managing Committee of the Delhi Nagrik Sehkari Bank Limited shall be conducted by the Administrator in accordance with the provisions of Delhi Co-operative Societies Act, 2003 (hereinafter referred to as 'the said Act') within the time period specified under the said Act.

The writ petitions stands disposed of accordingly. The pending applications also stand disposed of."

(Emphasis by us)

4. Time bound directions had been issued to the administrator of the bank to hold the elections in accordance with the statutory provisions within the time frame.

5. The order dated 27th of November, 2014 was modified by us in W.P.(C)No.7963/2014 when we had taken note of the statement made by the administrator that he had recently taken over the management of the society and was in the process of conducting verification of the members. We had directed the Administrator to complete the process of verification or eligibility of the members to participate in the elections within a period of one month thereof. The returning officer was further directed to ensure that the elections shall be held and completed within a period of one month of the submission of the report by the Administrator. On request of the Administrator, this period for completing the verification of the list of members by the administrator

was extended.

6. It appears that the Administrator conducted proceedings for verification of the members and purported to complete a list of verification, drawn up valid as well as defaulters list of members which were placed on the main server of the bank in June, 2015. This process was a subject matter of ***W.P.(C)No.7821/2015, Sanjeev Kumar & Ors. v. Registrar of Co-operative Societies & Ors***. It is unnecessary for the purposes of present consideration to dwell at length with the challenge made in the said writ petition. Be it noted that we had accepted the W.P.(C)No.7821/2015 and allowed the same in terms of the following prayers (c) and (d) thereof :

> "(c) to issue an appropriate writ or order/direction to set aside the agenda notice of the elections dated 06.08.2015 issued by the Returning Officer for being illegal, arbitrary, unconstitutional, unjust, unreasonable, manipulated and against the provisions of Delhi Cooperative Societies Act, Rules and by-laws;
> (d) to issue appropriate writ or order/direction to Respondent No.1, to hold free and fair elections of the society after preparing the list of the members in fair and transparent manner in accordance with the provisions of the DCS Act."

We are informed that the compliance of our order dated 6th August, 2015 is underway.

7. After we had passed the above orders, the present writ petition has been filed inter alia challenging the agenda notice dated 6th August, 2005

and the schedule published on 17th August, 2005. This prayer stands granted by our order dated 6th August, 2015. However, the petitioner is pressing the following prayer before us :-

> "(b) A writ/order/direction, thereby directing the Respondent no.2 to conduct the elections in accordance with the bye-laws of Respondent No.3 and make provision for two posts for professionals and carry out grouping of branches of bank as envisaged in bye-law no.30 of Bye-law of Respondent no.3."

8. We have heard the learned counsels for the parties as well as Mr. Rakesh Khanna, learned senior counsel appearing on behalf of the petitioner in W.P.(C) No.7963/2014.

9. W.P.(C) No.7963/2014 was filed by the petitioner seeking quashing of the elections to the executive committee of the respondent bank held on 21st September, 2014. This prayer was accepted by the court and with the consent of the parties, the elections to the respondent bank held on 21st September, 2014 were set aside. The court noted that one Mr. A.S. Raghav, IAS (Retd.) had been appointed as an Administrator of the respondent bank. Directions were issued to him to conduct elections to the Managing Committee of the Bank in accordance with provisions of Delhi Cooperative Societies Act, 2003.

10. After the disposal of the writ petition, the petitioner filed CM Nos. 9397-9398/2015. These applications came to be withdrawn on 9th September, 2015 in view of the orders dated 21st August, 2015 passed in W.P.(C) No.7821/2015.

11. Thereafter, the petitioner has filed CM No.19583/2015 seeking appointment of an Administrator and CM No.19584/2015 praying for grant of ad-interim injunction, both in W.P.(C) No. 7963/2014. The applicants have further prayed for appointment of an Administrator as the Returning Officer afresh. The Administrator has filed a response to these applications.

12. The writ petition was concerned with conducting elections and stands disposed of. We have passed detailed directions on 21st August, 2015 in W.P.(C) No.7821/2015 Sanjeev Kumar & Ors. v. Registrar of Cooperative Societies.

13. An important issue with regard to the reading of the bye-laws of the Society in the context of conduct of elections has been placed in W.P.(C) No.8014/2015. Mr. Rakesh Khanna, learned senior counsel for the applicant in W.P.(C) No. 7963/2014 submits that he joins the petitioner in this writ petition in making the prayer for urgently conducting the elections to the Board of the Bank in accordance with the statutory provisions as well as bye-laws of the society.

14. We now examine the prayer made by the petitioner in this writ petition for conducting elections in accordance with the bye-laws of the respondent no. 3. For the reasons of convenience and expediency, we extract the relevant provisions of bye-law no. 30, compliance whereof is made before us.

> "30. BOARD OF DIRECTORS :
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> i) The ***Board of Directors*** shall ***consist*** of not more than

12 Directors to be ***elected from amongst the share-holder members*** of the Bank. Atleast ***2 Directors out of the 12 directors*** shall be elected from among the share-holders residing in the area of the Bank's branches, where the ***branches may be grouped in such a way that the shareholders in each group constitute an electoral college*** for the election of the Directors. At all times, ***the Board shall have atleast two professional directors*** i.e. persons with ***suitable banking experience (at middle/senior management level***) or with ***professional qualification in the fields of law, accountancy or finance***.

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Note : The above Bye-law has been amended by the Registrar, Coop. Societies vide order No.AR(B)/2009/1223 of dated 5.03.2009."

(Emphasis by us)

15. The writ petitioner makes a grievance that despite the mandatory requirement of Bye-law 30(i), no elections amongst the professionals are being held. It is submitted that no heed is being paid to the requirement of directors residing in different areas of the Bank's branches and no electoral colleges have been identified.

16. Before discussing the contention of the parties, we may advert to the Master Circular dated 1st July, 2011 circulated by the Reserve Bank of India with regard to the constitution of the Board of Directors of Primary (Urban) Cooperative Banks which sheds light on the important aim and object of the requirements of Bye Law 30(i). In para 1.6 of the circular (page 52), the Reserve Bank of India has made the following recommendations :

> "1.6. To ensure professionalism in the Board, the banks should have atleast two directors with suitable banking experience (at middle/senior management level) or with relevant professional qualification in the fields of law, accountancy or finance. The banks should also have a suitable provision in their bye-laws to ensure this. However, these instructions would not be insisted upon in case of Salary Earners Bankers in view of the nature of their membership."
>
> (Underlining by us)

17. The petitioner has vehemently sought enforcement of the requirement as contained in the bye-law 30(i) of the respondent bank in making a reservation of two positions of the Board of Directors from two persons termed as "*two professional directors, i.e. persons with suitable banking experience (at middle/senior management level) or with professional qualification in the fields of law, accountancy or finance*". We agree with the petitioner that it is mandatory to have two professional directors on the Board of Directors. As such, from amongst the nominations which are invited for participation in election to the Board of Directors of the Bank, in terms of bye-law 30(i), two posts of directors have to be reserved for professional directors as described in the bye-laws and elections to these two posts can be only from members who are professional directors as well. The same cannot be obviated in any manner by the bank and elections to the Board of Directors must ensure compliance with this requirement.

18. A second plea addressed on behalf of the petitioner is also premised on the petitioner's reading of clause (i) of para 30 of the bye-

laws. It has been contended that the first part of sub-para (i) of the bye-laws mandates that the Board of Directors shall consist of two out of the 12 directors being elected from amongst the shareholders residing in the area of the bank's branches outside the headquarters.

19. The respondent-bank in the instant case is stated to be having 14 branches. The respondents have to ensure compliance with the requirement of the first part of para (i) of bye-law 30 and ensure that two of the directors for which posts also elections are being conducted, shall be "*amongst the shareholders residing in the area of the bank's branches outside the headquarters*".

20. On this aspect as well, learned senior counsel for the petitioner has drawn our attention to the recommendations of the Madhav Das Committee on "Urban Cooperative Banks in regard to Board of Directors".

21. So far as the recommendation by the Madhav Das Committee on the issue of the Board being mandatorily representative and including persons from different branches as members thereon is concerned, the same has been considered by this Committee. The recommendations in this regard are relevant and reads thus :-

> "**Recommendations made by the Madhava Das Committee on Urban Co-op. Banks in regard to Board of Directors**
>
> **Recommendation**
> **1. Board to provide Representation to Branch Members**

> Representation on the Board of directors to members of branches is necessary with a view to involving them in the management of the affairs of urban banks. The branches may be grouped according to the following categories for the purpose of election of directors on the Board.
> (i) Branches within the limits of the head office, including only the branches within about 25 Kms. from the head office town.
> (ii) Branches falling outside the above limits but within the district.
> (iii) Branches outside the district including those outside the state.
> The representation may be based on membership and not on deposits or loan business of branches. Certain number of seats on the board may be provided exclusively for the head office town and every branch in a group may get representation by rotation."
>
> (Underlining by us)

22. These recommendations have also been accepted by the Reserve Bank of India. Para 1.4 of the Master Circular dated 1st July, 2011 of the Reserve Bank of India has been placed before us in this regard which reads thus:-

> "1.4 The recommendations made by the "Committee on Urban Co-operative Banks", headed by Shri Madhava Das, regarding the BODs and recommended by the Reserve Bank for adoption by the banks are indicated in Annexure 1."

23. It cannot be denied that ensuring a board which is representative in every manner, be it gender, expertise or geographic representation; is extremely imperative. These requirements have been incorporated in

bye-law 30 (i) and are essential to ensure efficient management of the working of a Sehkari Bank.

24. All parties in these writ petitions including the respondent bank as well as the office of the Registrar of Cooperative Societies, are at one on the issue that not only the statutory provision but the bye-laws of the bank have to be strictly adhered to while conducting elections.

25. A reading of the bye-law 31 as well as the recommendations of the Madhav Das Committee as accepted by the Reserve Bank of India would show that apart from the reservation of the post of two directors for two professional directors, the Board of Directors must include geographic representation of the directors as well. As such, the branches of the bank outside the headquarters have to be grouped into electoral colleges for the purposes of election of the directors. Each electoral college must be represented on the Board of Directors. As such, apart from the reservation for two professional directors, representation from the head office, there would necessarily have to be reservation of one director each from the electoral college from the group in which the branches have been clubbed to constitute the electoral college. An essential consideration for identifying such group and determining the electoral college, care has to be taken that the number of members in each of such group is more or less equal. As recommended by the Reserve Bank of India, within the electoral college it has to be ensured that every branch of the Bank gets representation the Board by rotation. This is again to ensure the compliance with the spirit and intendment of

the bye-laws as well as the recommendations of the Madhav Das Committee and the requirements of the Reserve Bank of India.

26. We also note that in terms of Section 35(8), there have to be two women directors to the Board.

27. It is also informed by Mr. Rakesh Khanna, learned Senior Counsel for the applicant in W.P.(C)No.7963/2014 that Mr. Naglendra Singh, Returning Officer has resigned and no other returning officer has been appointed by the office of the Registrar of Co-operative Societies.

28. We are informed by Mr. Vivek Singh that by an order passed in the first week of September, 2015, the A.D.M. (East) has been appointed as the Returning Officer of the Bank. He further states that the process of verification of the members of the bank is underway. The respondent no.3-Bank and the Returning Officer shall ensure that all steps towards the expeditious conduct of elections and compliance with our above directions are effected forthwith.

29. In view of the above as well as the response of the Administrator and the orders in the petitions noted above, Mr. Rakesh Khanna, learned senior counsel submits that these applications (CM Nos. 19583 and 19584/2015) are not pressed. These applications are dismissed as not pressed.

30. In view of the above, we direct as follows :-

(i) Steps shall be taken by the respondent no. 3-Bank to declare electoral colleges in terms of bye-law 30(i) of the bye-laws of the bank, keeping in view our observations above.

(ii) While inviting nominations for participation in election to the Board of Directors, it shall be clearly declared that elections of two directors are to be held from amongst professional directors alone as defined in bye-law 31, as well as two directors to be appointed from the electoral colleges.

(iii) The respondent no. 3-Bank shall also notify the rotation of the branches within the electoral college for determining the turn of the Branch from which a member shall participate in the election.

(iv) The steps in terms of the above shall be completed within eight weeks from today.

W.P.(C) No. 8014/2015 is allowed in the above terms.

CM Nos. 19583 and 19584/2015 in W.P.(C) No.7963/2014 are dismissed as not pressed.

Dasti to parties.

GITA MITTAL, J

I.S.MEHTA, J

SEPTEMBER 28, 2015
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