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

+ **W.P.(C) 5668/2015**

JOHNSON JOSEPH & ANR

..... Petitioners

versus

UNION OF INDIA & ORS

..... Respondents

Through : : Sh. Wills Mathews with Sh. Jose Abraham, Advocates, for Item No.12, for petitioner.

Sh. Arun Bhardwaj, CGSC with Ms. Gunjan Bansal, Advocate, for Item No.12.

Sh. K.S. Parihar and Sh. H.S. Parihar, Advocates, for RBI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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22.01.2016

1. The petitioner's grievance is that despite the fulfilment of the requisite criteria under Section 6 of the *Multi-State Cooperative Societies Act, 2002* [hereafter "the 2002 Act"], the Evergreen Multi-State Cooperative Society Limited [hereafter "the Society"], promoted by him has not been registered as such.

2. The facts are that the petitioners are promoters of the Society. The first petitioner was a former President of a Panchayat and also the President of a Service Cooperative Bank. The second petitioner likewise was a Managing Director of a company. Both state that they joined and mobilized amounts from 103 members of which 30 members were from Kerala and 53 from Delhi. The main object of the proposed Society is, "*to promote the interest of all its members to*

attain their social and economic betterment through self-help and mutual help and mutual aid in accordance with the co-operative principles.” The members of the Society in Kerala are basically rubber planters.

3. It is submitted that pursuant to this resolve, the first petitioner applied for registration of the proposed Society with the Central Registrar of Cooperative Societies. On 26.03.2014, the Central Registrar of Cooperative Societies [hereafter “the Registrar”] issued an order stating that henceforth multi-state cooperative societies would be registered initially with only two *contiguous* states/UTs as their area of operation. The said order also stated that after incorporation, the Society could submit for amending the bye-laws for extending the area of operation. It is contended that having regard to the fact that the provisions of the multi-cooperative societies nowhere prescribed the rule of contiguity insisted upon, nor do the rules in that regard mandate fulfilment of such condition, the insistence by the respondents in the impugned order is unlawful. It is stated that the condition amounts to an unreasonable restriction under Article 19(1)(c) of the Constitution. The petitioner has relied upon various decisions of the Supreme Court to say that the restriction of contiguity is neither authorized by law nor reasonable having regard to the circumstances. Learned counsel relies upon *Kavalappara Kottarathil Kochuni v. The State of Madras and Others* AIR 1960 SC 1080.

4. Learned counsel for the respondents relies upon averments in the counter affidavit, especially the additional affidavit filed in response to these proceedings. The respondents have explained the

rationale for insisting upon the requirement of contiguity spelt-out in the order dated 26.03.2014. It is submitted that firstly the Registrar is empowered under Rule 3 of the Multi-State Cooperative Societies Rules, 2002 [hereafter “the 2002 Rules”], to make such appropriate policies. The additional affidavit states *inter alia* as follows:

“8) It is respectfully submitted that the condition of granting initial registration for two contiguous states/UTs only was mandated vide order dated 26.03.2014 as it was felt that some societies had proposed area of operation confined to far flung states. Since in the initial stages, any society lacks the infrastructure to carry out business, it takes some time to build up the infrastructure. If members are located in far flung states then interest of members in all states are difficult to serve, thus defeating the purpose and objective of enacting the MSCS Act, 2002, i.e. of serving the interest of members. Issues like attending General Body meetings by members of all states, and attending board meetings by board members hailing from many far flung states also becomes difficult for a society which has just started its operation and it also adds to the avoidable costs of a society on TA/DA of board members located in far flung states. However, after commencement of operation, when the society attains financial strength, is at liberty to submit proposal for amendment of its bye-laws for extending the area of operation. Answering respondent No.2, if satisfied with the performance of the society and that it has been working well for their members in the existing area of operation, further extension in area can be granted.”

5. The Constitution of India, by Article 19(1)(c) guarantees the Right to Freedom of Association. The State – which includes the Union is, of course, empowered to impose such reasonable restrictions as may be conceived in public interest, having regard to

the circumstances. What is in issue in the present case is the rule of contiguity or in other words that the multi-state cooperative societies should be incorporated in two contiguous States or UTs to start with, after which, amendment of bye-laws will be permitted. Section 6 of the 2002 Act spells out the requirements as it were, or eligibility conditions which are to be fulfilled by the State Cooperative Societies to approach and seek registration. It provides as follows:

“6. Application for registration

(1) For the purposes of registration of a multi-state cooperative society under this Act, an application shall be made to the Central Registrar in such form and with such particulars as may be prescribed.

(2) The application shall be signed

(a) in the case of a multi-state cooperative society of which all the members are individuals, by at least fifty persons from each of the state concerned;

(b) in the case of a multi-state cooperative society of which the members are cooperative societies, by duly authorised representatives on behalf of at least five such societies as are not registered in the same state; and

(c) in the case of a multi-state cooperative society of which another multi-state cooperative society and other cooperative societies are members, by duly authorised representatives of each of such societies: Provided that not less than two of the cooperative societies referred to in this clause, shall be such as are not registered in the same state;

(d) in the case of a multi-state cooperative society of which the members are cooperative societies or multi-state cooperative societies and individuals, by at least

(i) fifty persons, being individuals, from each of the two states or more; and

(ii) one cooperative society each from two states or more or one multi-state cooperative society.

(3) The application shall be accompanied by four copies of the 12 proposed bye-laws of the multi-state cooperative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require.”

6. According to Section 2(u) of the 2002 Act, “prescribed” means “prescribed by rules”. Rule 3 of the 2002 Rules which is relied upon in the present case, spells out the relevant details which the applicant has to fulfil while applying for registration. Importantly, Section 5 emphasizes that the main objects of the proposed Society should be “to serve the interests of members in more than one State”.

7. It is thus apparent that the restriction, that in the first instance, the applicant cooperative society should belong to two contiguous States or Union Territories, as the case may be, is not aligned to the Act and Rules framed thereunder. It is well-settled that executive instructions can never supplement or supplant provisions of law or rules. In the present case, the impugned order insists upon disqualification provided for over and above what is authorized by the provisions of the apparent Act and the Rules. Clearly, on this ground itself, the petition has to be allowed. It has been held that the right to impose restrictions is only by authority of law, i.e. enacted law by Parliament or valid regulations framed thereunder [*refer Satwant*

Singh Sawhney v. D. Ramarathnam AIR 1967 SC 1836 and *Union of India v. Naveen Jindal* 2004 (2) SCC 510.

8. In the present case, since neither the Act nor the Rules provided for such a restriction, the respondents could not have insisted upon it and refused registration on this ground. The writ petition accordingly succeeds. A direction is issued to the respondents to process the petitioner's application for registration under the 2002 Act and the Rules framed thereunder and pass appropriate orders in accordance with law. Para 3 of the impugned order dated 26.03.2014 is hereby quashed/set-aside. The entire process shall be completed within three months. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 22, 2016

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