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

\+ **W.P.(C) 9826/2015**

Date of decision: 13th July, 2016

DAVINDER KUMAR ..... Petitioner

Through Mr. Rajiv Vig, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through Ms. Manjula Gandhi and Mr. Sarfaraz Ahmad, Advocates for R-1 and R-2.
Mr. Mayank Rustagi, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

Davinder Kumar, the petitioner is the chairman of the Chandigarh State Federation of Cooperative House Building Societies Ltd. and a duly elected member of the Board of Directors, National Cooperative Housing Federation of India, the respondent No.3 in the present writ petition.

2. The case setup by the petitioner is that the Union of India had from time to time given financial grants amounting to Rs.20,25,000/- and in lieu thereof issued 2025 shares of Rs.1000/- each in the National Cooperative

Housing Federation of India. This issue of members' share is challenged by the petitioner on the ground of violation of Section 25 of the Multi State Cooperative Societies Act, 2002 as the Union of India had not made any application as required by sub section (4) thereof and no resolution was passed by the Board of Directors of the third respondent admitting the Central Government as a member.

3. Section 25 of the Multi State Cooperative Societies Act, 2002 reads as under:

> "25. **Persons who may become members.-**
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> (1) No person shall be admitted as a member of a multi-state cooperative society except the following, namely:-
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> (a) an individual, competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);
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> (b) any multi-state cooperative society or any cooperative society;
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> (c) the Central Government;
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> (d) a State Government;
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> (e) the National Cooperative Development Corporation established under the National Cooperative Development Corporation Act, 1962 (26 of 1962);
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> (f) any other corporation owned or controlled by the

Government;

(g) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(h) such class or classes of persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-state cooperative society.

(2) No individual person shall be eligible for admission as a member of a national cooperative society or a federal cooperative.

(3) Any person eligible for membership of a multi-state cooperative society may, on his application, be admitted as a member by such society.

(4) Every application for admission as a member of a multi-state cooperative society shall be disposed of by such society within a period of four months from the date of receipt of the application, and the decision of such society on the application shall be communicated to the applicant within fifteen days from the date of such decision: Provided that if the application is not disposed of within the period aforesaid, or the decision is not communicated within a period of fifteen days of the expiry of the aforesaid period of four months, the multi-state cooperative society shall be deemed to have made a decision, on the date of expiry of such period, refusing admission to the applicant.

(5) It shall be the duty of every member of a multi-state cooperative society to promote and protect the interests and objects of such society.

4. A reading of sub section (1) to Section 25 of the Multi State Cooperative Societies Act, 2002 would indicate that the Central Government and a State Government can be admitted as members of a Multi State Cooperative Society. The petitioner admits that the Union of India i.e. the Central Government had written several letters between 22nd March, 1984 and 22nd March, 1991 conveying the President's sanction for the Government of India's investment in the share capital of the Federation. Two such letters have been enclosed herewith. By the first letter dated 26th March, 1984, a sum of Rs.2,00,000/- was paid to the National Cooperative Housing Federation of India Ltd. and by the second letter dated 22nd March, 1991, a sum of Rs.5,00,000/- was paid. It is accepted that a total sum of Rs.20,25,000/- was paid till 27th August, 1991 in a similar manner in lieu of which 2025 shares of Rs.1000/- each have been issued in favour of the Union of India/Central Government.

5. A reading of the two letters enclosed reflects that the Central Government, while making the aforesaid payments, had clearly stated that the same were made for investment in the share capital of the Federation. It was also stated that the share certificates, when ready should be sent to the Government of India by the Federation. Further, the share of the

Government should stand on equal footing with the shares contributed by the other members. It is an admitted and accepted position that 2025 shares of Rs.1000/- each have been duly issued.

6. We do not agree with the contention of the petitioner that the Government of India did not make any application in terms of sub section (4) to Section 25 and the Federation had not admitted them to their membership. Sub section (4) requires every applicant who seeks admission to make an application. The letters written and enclosed with the writ petition along with the payments were in the nature of applications seeking admission for membership. Sub section (4) requires that the application should be disposed of within 4 months and the applicant should be informed within 15 days of the said decision. The proviso stipulates that in case the application is not disposed of within four months or decision is not communicated within a period of 15 days thereafter, the multi state cooperative society shall be deemed to have made a decision on the date of expiry of period refusing admission to the applicant. The said sub section would not be applicable for the Federation by issuing shares to the Central Government, has accepted their membership. The petitioner's reliance on Section 25 of the Multi

State Cooperative Society Act, 2002 would faulter and has to be rejected for another apparent reason. The Central Government has been a member of the respondent No.3 federation at least since 1984, after they had written letter dated 26th March, 1984. The Act in question was enacted and enforced in 2002. Section 25 of the 2002 Act was not applicable in 1984. The petitioner does not rely on any provision in the earlier enactment. Once the Central Government was admitted as a member, issue of further shares post the 2002 enactment would amount to issue of further shares to an existing member.

7. This being the position, we do not think that the case of the petitioner relying upon Section 25 of the Multi State Cooperative Societies Act, 2002 has any merit. The contention and submission is rejected.

8. The petitioner claims that in the Annual General Meeting held on 6th February, 2015, the respondent No.3 Federation had taken the decision to refund share capital of Rs.20,25,000/- to the Government of India. Accordingly, the Chairman i.e. the petitioner, was authorized to do the needful in the matter and thereupon inform the Board and General Body accordingly. The resolution to refund the share capital, it is submitted, was passed in the meeting of the Board of Directors of respondent No.3 Federation held on 6th February, 2015. The petitioner claims that thereafter the respondent No.3 in their letter dated 14th May, 2015 to the Union of India, addressed to the Central Registrar of Cooperative Societies, Ministry of Agriculture & Coop, Krishi Bhawan, New Delhi, had informed them about the decision taken and enclosed a cheque of Rs.20,25,000/- towards redemption/refund of the share capital. Thereafter, letter dated 15th July, 2015 was written by the third respondent to the Union of India requesting for return of the share certificates at the earliest.

9. The writ petition does not mention or state whether the Union of India was issued notice for the Annual General Meeting held on 6th February, 2015.

10. The Union of India in their reply have stated that under Section 35 of the Multi State Cooperative Societies Act, 2002, redemption for shares is permissible and postulated if the two conditions are satisfied. The conditions are: (i) if the byelaws of multi state cooperative society so provide or (ii) or if it is so agreed between the multi state cooperative society and the authority. The respondent No.3 cannot refund/redeem the amount by any resolution to that effect. Further, the respondent No.1 and 2 have asserted that they have not received the two letters and the cheque of Rs.20,25,000/- towards redemption/refund of the share capital.

11. The submission and stand of the Union of India is right and should be accepted. Section 35 of the Multi State Cooperative Societies Act, 2002 reads as under:-

> "35. Redemption of shares
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> (1) Shares held in a multi-state cooperative society by any of the authorities referred to in clauses (c) to (g) of sub-section (1) of section 25 shall be redeemable in accordance with the bye-laws of such multi-state cooperative society and in a case where the byelaws do not contain any provision in this regard, in such manner as may be agreed upon between the multi-state cooperative society and such authority.
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> (2) The redemption of shares referred to in sub-section (1) shall be on the face value of the shares.

Sub section (1) to Section 35 states that shares held in a multi state cooperative society by any of the authorities referred to in clauses (c) to (g) can be redeemed in accordance with the byelaws of such multi state cooperative society and in case the byelaws do not contain any provision in this regard, in such manner as may be agreed between the multi state cooperative society and such authority.

12. It is an accepted case of the parties that the byelaws of respondent No.3 do not provide for redemption of the shares held by authorities covered by clauses (c) to (g) of sub-section (1) of Section 25. In these circumstances, the manner of redemption has to be agreed upon between the multi state cooperative society and the authority. The respondent No.3 cannot unilaterally issue a cheque and direct the Central Government to redeem the shares. It is open to the respondent No.3 to get in touch with the authorities in accordance with the provisions of sub section (1) to Section 35. The said steps have not been taken. The writ petition to this extent is premature.

13. The petitioner, who is a director of respondent No.3 Federation, cannot by way of this Writ Petition, seek direction from this Court that the Government of India must agree to redeem the shares. The third respondent has not approached the Government of India/Central Government in accordance with sub section (1) of Section 35 of the Multi State Cooperative Societies Act, 2002. If and when the third respondent approaches the Government of India, the matter can be examined by the authorities.

14. With the aforesaid observations, the writ petition is dismissed without any order as to costs.

SANJIV KHANNA, J.

JULY 13, 2016 **SUNITA GUPTA, J.**
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