

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

+ O.M.P. 18/2018 & IA 11097/2018

+ O.M.P. 19/2018 & IA 11099/2018

Reserved on: 21st August, 2018
Date of decision: 31st August, 2018

SMT. POONAM RAWAT & ORS. Petitioners
Through: Mr.V.P.Singh, Sr. Adv. with
Mr.Apurva Upmanyu, Mr.Ekansh
Bansal, Advs.

versus

YOGENDRA SARASWAT & ORS. Respondents
RAKESH KUMAR PACHORI & ORS. Respondents

Through: Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.Avi Singh, Mr.Shashank
Dixit, Mr.Katyayini & Ms.Purnima
Malik, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. These petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') challenging the Arbitral Awards dated 31.05.2018 and 30.05.2018 passed by the Sole Arbitrator in Arbitration case No.01/2017 (***Mr.Yogendra Saraswat & Anr. v. Kendriya Bhandar & Ors.***) and Arbitration case No.02/2017 (***Mr.Rakesh Kumar Pachori v. Union of India & Ors.***) respectively. As identical issues arise for consideration in the present petitions, the same are being disposed of by this common order. The facts herein are taken from OMP 18/2018.

2. The Sole Arbitrator, by the Impugned Awards has *inter alia* held that the erstwhile Board of Directors of Kendriya Bhandar that is, the petitioners herein, failed to conduct elections in accordance with the Bye-Laws of the Central Government Employees Consumer Co-operative Society Ltd. (Kendriya Bhandar)(hereinafter referred to as the ‘Bye-Laws’) and The Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as the MSCS Act) and incurred disqualification under Bye-Law No.23(ii). The Arbitrator has further declared the election of the petitioners herein as Delegates/Directors/Chairperson of the Kendriya Bhandar held between 23.08.2017 to 23.10.2017 as null and void.

3. The petitioners and respondent nos.1 and 2 are the members of the Kendriya Bhandar, which is registered under the MSCS Act. It is not disputed between the parties that the election of the General Body of the Kendriya Bhandar was last held on 9th May, 2012; election of the Board of Directors was held on 21st July, 2012 and the election of the Chairman was held on 27th July, 2012. As per the Bye-Laws 14(vi) and 19(iii) of the Kendriya Bhandar, the period/term of members of General Body and Board of Directors is five years.

4. Bye-Law 14(ii) of the Kendriya Bhandar provides that the Board of Directors shall meet at least 120 days in advance before the date of expiry of its term to appoint a Returning Officer and decide the time, date and place for conducting the election of Delegates. Bye-Laws 14(ii) is reproduced hereinunder:

“14. GENERAL BODY AND ELECTION OF DELEGATES.

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(ii) To conduct the election of the General Body, Board shall meet at least 120 days in advance before the date of expiry of its term and by resolution appoint a Returning Officer and decide the time, date and place for conducting the election of delegates. The Returning Officer so appointed shall neither be a member of the Board nor an employee of the Society.”

5. Bye-Law 19(i) further provides that the Board of Directors shall meet at least 60 clear days in advance of the date of expiration of its term and appoint a Returning Officer and determine the date, time and place for convening a General Body Meeting for the conduct of election of its successor Board. Bye-Law 19(i) is reproduced hereinbelow:

“19. ELECTION OF BOARD OF DIRECTORS AND ITS CHAIRMAN

(i) The Board of Directors in Office shall meet atleast 60 clear days in advance of the date of expiration of its term and by resolution appoint a Returning Officer and determine date, time and place for convening a General Body Meeting for the conduct of election of its successor Board as per provision of the Acts and Rules made thereunder.”

6. A reading of the above provisions would show that it is the responsibility of the Board of Directors to ensure that timely elections are held to the General Body as also to elect the Board of Directors of the Society. This is further recognized in Bye-Law 23 (ii), which is reproduced hereinbelow:

“(ii) It shall be the responsibility of the Board of Directors to ensure that elections to the General Body are conducted within the stipulated period. Failure to do so will make them ineligible for continuation/further election as delegate /member of the Board.”

7. It is the case of the petitioners that in compliance with Bye-Law 14(ii), the Executive Committee in its meeting held on 18th February, 2017 had decided that elections be held in such a manner so that duly elected members of the General Body and the Board of Directors are able to succeed the present incumbents in time. It is further contended that in such meeting, other decisions like approaching the Department of Personnel and Training for seeking names of officers who could be appointed as the Returning Officer for such elections, were also taken. It is further contended that the decision taken by the Executive Committee was thereafter ratified by the Board of Directors on 25th March, 2017, which is within the prescribed time under Bye-Law 14(ii). In the alternative, it is submitted that the Bye-Laws of the Co-operative Society, are not the 'law' or have the force of law and therefore, any violation thereof cannot lead to a disqualification of the petitioners. In this regard, reliance has been placed on the judgment of the Supreme Court in ***Co-operative Central Bank Ltd. & Ors. vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad & Ors.*** AIR 1970 SC 245 and the judgment of this Court in ***Jagjit Singh Sangwan vs. Union of India & Ors.*** 1996 (36) DRJ 192 (DB).

8. The learned senior counsel for the petitioners has further submitted that in any case, the elections having been held and no prejudice having been caused to the respondents, the Impugned Awards cannot be sustained.

9. I have considered the submissions made by the learned senior counsel for the petitioners, however, I find no merit in the same.

10. In *Co-operative Central Bank Ltd.* (supra), the Supreme Court has held that though the Bye-Laws of a Co-operative Society cannot be held to be ‘law’ or to have the force of law, at the same time, they are binding between the persons affected by them and they are in the nature of the Articles of Association of a Company incorporated under the Companies Act and govern the internal management, business and administration of a Society. Therefore, to that extent, the Bye-Laws of the Kendriya Bhandar are binding on its members, including the petitioners.

11. Bye-Law 23(ii) provides that failure of the Board of Directors to ensure that the elections to the General Body are conducted within the stipulated period will make them ineligible for continuation /further election as delegate/member of the Board. Section 43(2) of the MSCS Act also provides that if the Board of a Multi State Co-operative Society fails to conduct elections of the Board under Section 45 of the said Act, the members of the Board shall be ineligible for being elected as such a member for a period of five years. Section 43(2) of the Act is reproduced hereinbelow:

“43. Disqualifications for being a member of board.—

(1) xxxxxxxx

(2) *A person shall not be eligible for being elected as member of a board of a multi-State co-operative society for a period of five years if the board of such multi-State co-operative society fails—*

(a) *to conduct elections of the board under section 45;”*

12. Section 45 (1) of the MSCS Act provides that the conduct of elections to the Board of Multi State Co-operative Society shall be the

responsibility of the existing Board. Section 45(5) of the MSCS Act further provides that the term of office of elected members of the Board shall be such, not exceeding five years from the date of elections, as may be specified in the Bye-Laws of the Society. Therefore, the Board of Directors of a Multi State Co-operative Society has to ensure that the election of the new Board is held within the time prescribed in the Bye-Laws of the Society. Failure to do so would result in a statutory disqualification of the members of the existing Board from being elected as a member of the Board of a Multi State Co-operative Society for a period of five years.

13. In the present case, the reliance of the learned senior counsel for the petitioners on the decision taken by the Executive Committee on 18th February, 2017 cannot be sustained for more than one reason. The responsibility of holding elections is that of the Board of Directors and not of the Executive Committee. Further, the resolution passed in the said meeting cannot be said to be in conformity with the requirement of Bye-Laws 14(ii) or 19(i) of the Society. The decision of the Executive Committee is quoted hereinbelow:

“EXTRACTS FROM THE MINUTES OF EXECUTIVE COMMITTEE MEETING HELD ON 18.02.2017”

4. Secretary submitted that election of delegates & directors/chairperson were last held in May 2012 & July, 2012 respectively and the present term of 5 years will complete accordingly. Therefore, elections are required to be held in such a manner that duly elected members of the general body and Board are able to succeed the present incumbents in time. Shri. M.S.Rawat, Director directed that action for electing Delegates may be initiated. A committee of Directors be

formed for grouping of members in accordance with the bye-laws of the Society. Chairperson advised that a Committee comprising of Shri HCS Rawat/Shri Rakesh Rawat, Shri Prem Singh and Shri MS Rawat be formed immediately. It was also decided that a letter be sent immediately to DOPT to seek the names of 3-4 officers to place before the Board, in next meeting to be held in March 2017, to appoint suitable officer as Returning Officer for the elections.”

14. In the said meeting, therefore, neither was the Returning Officer appointed nor the date, time or place for conducting the election of delegates and/or for convening a General Body Meeting for the conduct of election of the successor Board determined.

15. Learned senior counsel for the petitioners, relying upon Bye-Law 26(k) has contended that the Executive Committee had taken the decision in exercise of its powers vested under Bye-Law 26(k), which is reproduced hereinbelow:

“26. POWER & FUNCTIONS OF THE EXECUTIVE COMMITTEE

The Executive Committee shall besides exercising the powers and duties delegated to it by the Board of Directors, in particular perform the following:

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(k) In exceptional circumstances, where a prompt and urgent decision has to be taken in furtherance of the interest/objective of the Society, the Executive Committee shall be Competent to decide on the advice of the Managing Director by exercising the powers of the Board of Directors. Any action/decision taken by the Executive Committee in pursuance of this authority shall be placed in the next meeting of the Board of Directors.”

16. The Arbitrator has rejected the above argument holding as under:

“Byelaw No.26(k) cannot come to the rescue of the said Respondents as no exceptional circumstances have been shown whereby the Executive Committee was prompted to exercise powers of Board of Directors to comply Byelaw No.14(ii). The decision taken in Executive Committee Meeting on 18.02.2017 does not fall within the meaning of “prompt & urgent decision” as the Board of Directors ought to be aware of their duty to comply Byelaw No.14(ii) within the prescribed time. No explanation has been given as to why the Board could not have conducted Meeting within the prescribed time i.e. 120 days in advance, as per Byelaw No.14(ii). Even on 18.02.2017, there was sufficient time to reach threshold of 120 days advance period and the Board could have conducted the Meeting and taken decision. There is another aspect of the matter, as per Byelaw No.26(k), the Executive Committee shall be competent to exercise powers of Board of Directors on the advice of Managing Director of the Respondent No.1. The Minutes of Meeting dated 18.02.2017 does not anywhere record that Managing Director gave any such advice to the Board of Directors. In fact, in the Misc. Items decided by the Executive Committee on 18.02.2017, there is reference of Managing Director in para nos.1 and 7 that he apprised the Board regarding issues mentioned in these paras, but there is nothing to show that the decisions taken in para nos.4 and 5 regarding elections were based on advice of Managing Director. Rather, para no.4 mentions that the Secretary submitted that elections of Delegates and Directors/Chairpersons were last held in May, 2012 and July, 2012 respectively and the present term of 5 years will complete accordingly. The said submission of Secretary does not meet the requirement of Byelaw No.26(k).”

17. I am in full agreement with the view taken by the Arbitrator. In any case, as the decision taken in the meeting held on 18th February, 2017 was also not in terms of Bye-Laws 14(ii) and/or 19(i), this argument of

the learned senior counsel for the petitioners is really only academic in nature.

18. The learned senior counsel for the petitioners has also placed reliance on the meeting of the Board of Directors held on 25th March, 2017 to contend that on this date, the Board of Directors ratified the decision of the Executive Committee taken on 18th February, 2017 and, therefore, should be taken to have complied with the requirement of Bye-Law 14(ii).

19. The decision taken by the Board of Directors in its meeting held on 25th March, 2017, in so far as is relevant for the present petition, is quoted hereinunder:

“EXTRACTS FROM THE MINUTES OF BOARD MEETING HELD ON 25.03.2017”

The Board considered the note placed before it. Managing Director apprised the members of the Board that we had requested the Ministry of Personnel, PG & Pensions for furnishing a panel of suitable Officers for consideration of the Board for appointment as Returning Officer for holding the election of Delegates, Directors and Chairman, Kendriya Bhandar. He stated that Ministry vide their letter no. 13/6/2010-Welfare dated 06th March, 2017 has suggested the following Officers for appointment as Returning Officer for conducting the elections :

- 1. Shri A.K.Saha, Deputy Secretary (CS-II)*
- 2. Shri G.Srinivasan, Deputy Secretary (Res.)*

Shri Sanjiv Kumar, Government Nominee brought out that due to exigencies of service, Shri G Srinivasan, Deputy Secretary (Res) may not be available for election duties. As such, all the government directors were of the view that Shri

AK Saha, Deputy Secretary (CS-II) may be appointed as Returning Officer. Shri M.S.Rawat and Other Directors suggested that Shri G.Srinivasan, Deputy Secretary (Res.) be appointed as Returning Officer.

*After detailed discussions, Board by majority approved the appointment of **Shri G.Srinivasan, Deputy Secretary (Res) DOPT** as Returning Officer for conducting the election of Delegates, Directors and Chairman of the Society as per provisions of MSCS Act, 2002, the rules thereunder and byelaws of Kendriya Bhandar.”*

20. A reading of the above would show that the only decision taken by the Board of Directors was on the appointment of the Returning Officer, however, again there was no decision taken with respect to the time, date or place for conducting the elections. This again cannot be a compliance of Bye-Law 14(ii) and/or Bye-Law 19(i).

21. As far as the argument that no prejudice has been caused to the respondents due to default in meeting the timelines as prescribed in Bye-Law 14(ii) and/or 19(i) is concerned, the same is stated to be rejected. The timelines have been provided in the Bye-Laws in order to ensure that the new General Body and the Board of Directors of the Society are in place before the expiry of the term of the current General Body and the Board of Directors as prescribed in Bye-Laws 14(vi) and 19(iii) and Section 45 of the MSCS Act. Failure to conduct elections in time itself causes prejudice, as it leads to management of the affairs of the Society being conducted by an ad hoc body of incumbent members, which do not have the mandate of the Bye-Laws. In any case, Section 43(2)(a) and Bye-Law 23(ii) read with Bye-Law 21(II) do not require any prejudice to be shown to the complainant and in fact, provide for an automatic

disqualification of the members of the Board which failed to conduct the elections within the stipulated period.

22. Apart from the above, the Arbitrator in the Impugned Award has further held as under:-

“Without getting into the argument of the actions taken by RO with regard to re-notification of election schedule after expressing his inability to conduct the elections, I have reached to following conclusion:

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(2) The Board of Directors failed to comply with bye-law No.14(iii) as it carried out grouping in utter disregard of Bye-Laws of Respondent no. 1 despite repeated objections by the Govt. Directors (nominee) as well as specific directions of the Govt. vide its letter dated 3.5.2017. The Board of Directors however later admitted the mistake of carrying out grouping in a manner which violated the mandatory provisions of Bye-law 14(iii). It has also been admitted that due to such wrongful grouping, the election process was delayed.

(3) The members admitted from 25.03.2017 to 31.03.2017 were wrongfully admitted by Chairperson, who had no powers to do so. The names of the members admitted from 22.5.2017 to 31.5.2017 (it should be 25.03.2017 to 31.03.2017) have therefore been wrongly included in the final voters list.

(4) There has been violation of bye-law no. 19 as such newly admitted members were allowed to participate in election of the members of Board, despite there being specific prohibition for a period of 12 months under bye law. no.19(ii).”

Therefore, the entire election process stood vitiated.

23. It is lastly urged by the learned senior counsel for the petitioners that the elections could not be held as the Department of Personnel and Training, Central Government had issued a show cause notice dated 15th June, 2017 under Section 123 of the MSCS Act requiring the Board to show cause why it should not be superseded. The said show cause notice was, however, discharged by the Central Government only on 29th August, 2017.

24. I do not find any merit in the said argument. The show cause notice was issued by the Central Government only on 15th June, 2017, that is after the prescribed period of five years of the initial term of the General Body. Therefore, no delay or hindrance to the holding of the General Body elections can be attributed to the show cause notice. As far as the fact of the proceedings initiated by the Central Government having any bearing on the challenge filed by the respondent nos.1 and 2 and decision of the Arbitrator is concerned, the Arbitrator has also held that the same can have no bearing while deciding the dispute under Section 84 of the MSCS Act. The Arbitrator has held as under:

“Section 122 of the MSCS Act empowers the Central Government to give directions to specified Multi-State Cooperative societies in public interest and the Section 123 empowers the Central Government to supersede the Board. If the Government issues a Show Cause Notice and discharges it for whatever reason, it would not mean that the grounds raised by the Government in its Show Cause Notice cannot be raised as an election dispute. If the election dispute is raised on same/similar grounds on which the Show Cause Notice was issued, this Tribunal would not be in any way bound by or influenced with the outcome of proceedings under Section 122 and 123. If the facts disclose that there is some illegality or

breach of rules/law in conduct of election or facts and circumstances give rise to an election dispute, this Tribunal has to decide the same. Moreover, the Hon'ble High Court in its Orders passed in Writ Petition Nos.7073 of 2017 and 7880 of 2017 has observed that the party aggrieved with the election process or any illegality or breach of rules has an option to pursue and lay a challenge thereto upon the election being over.

The intent, purpose and scope of the proceedings under sections 122 and 123 of MSCS Act is entirely different and the proceedings under Section 122/123 of MSCS Act are not meant for resolution of any dispute within the meaning and framework of Section 84 of MSCS Act and it will not be correct interpretation of law to bind the Claimants with any observations made in the proceedings initiated by the Central Government under sections 122 and 123 of MSCS Act. This Tribunal has to decide the election dispute on the touchstone of bye-laws of the Respondent No.1 and provisions of MSCS Act and Rules. ”

25. I am in full agreement with the observations made by the Arbitrator.

26. In view of the above, I find no merit in the present petitions and the same are accordingly dismissed with no order as to costs.

NAVIN CHAWLA, J

AUGUST 31, 2018

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