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

+ W.P.(C) 8969/2018 and CM APPL. 34483/2018

SHRI SANDEEP KHANDELWAL AND ORS. Petitioners
Through: Mr. Anand Yadav with Ms. Anita
Tomar, Advocates and petitioner No.1 in person.

versus

REGISTRAR COOPERATIVE SOCIETIES AND ANR

.....Respondents

Through: Ms. Prabhsahay Kaur and Mr. Surender
Chawla, Advocates for R-1/RCS.

Mr. Asutosh Lohia, Mr. Bimlesh Kumar Singh,
Ms. Soumya Kumar, Mr. Sanyam Khetrpal and
Mr. Sanjay Kumar Yadav, Advocates for R-2 with
R-2, Mr. Narinder Singh, R.O. in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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29.08.2018

1. The present petition has been filed by the petitioners claiming to be the Secretary, Vice President, Joint Secretary and Member, respectively of the Navniti Cooperative Group Housing Society Ltd. (in short 'Society') praying *inter alia* for quashing and setting aside the show cause notice dated 06.08.2018 issued by the respondent No.2, appointed as the Administrator-cum-Returning Officer by the respondent No.1/RCS, calling upon the addressees including the petitioners to show cause as to why they should not be disqualified from contesting the elections of the Managing Committee of the Society scheduled on 02.09.2018. Further, the petitioners pray for quashing of an order dated 18.08.2018 passed by the respondent No.2/RCS

pursuant to the notice to the aforesaid show cause, debarring them from contesting the ensuing elections of the Managing Committee of the Society.

2. Mr. Yadav, learned counsel for the petitioners submits that the impugned order dated 18.08.2018 passed by the respondent No.2 is malafide inasmuch as the said order has disqualified the petitioners from filing their nominations papers on or before the deadline, i.e., 20.08.2018. He submits that while passing the impugned order, the respondent No.2 has not considered the replies of the petitioners dated 14.08.2018, in the correct perspective and has acted with a pre-determined mind by debarring them from contesting the elections. He further contends that the respondent No.2 has failed to appreciate that since all the office bearers of the Managing Committee were not agreeable to the audit report submitted by the auditors and instead of signing it, the President and the Treasurer had given a dissent note in respect of some entries, the petitioners cannot be blamed for non-compliance of the Delhi Cooperative Society Act, 2003 and the Rules.

3. Lastly, learned counsel for the petitioners submits that the respondent No.2 failed to appreciate that the balance sheets were submitted by the auditors directly in the office of the respondent No.1/RCS, immediately upon completion of the audit on 20.06.2017, much before the time prescribed under Section 60(1) of the Delhi Co-Operative Societies Act, 2003 (in short 'the Act') read with the Rule 38 of the Rules, which requires that the audit must be completed within 120 days from the date fixed for making up the accounts for the relevant year. He submits that the accounts are required to be audited by auditors selected from a panel prepared by the respondent No.1/RCS in 120 days and therefore, a request was submitted by the Society to the respondent No.1/RCS for appointment of auditors on

20.04.2017, whereupon the auditor was appointed on 26.05.2017 and the audit was completed on 20.06.2017. Thus the audit for the year 2017, which was required to be done before 28.08.2017, was completed within the statutory period.

4. Per contra, Ms. Prabhsahay Kaur, learned counsel for the respondent No.1/RCS has produced the relevant records and submits that the same reflects that the Society had submitted the audited accounts in the office of the RCS only on 31.01.2018, which was beyond the prescribed time period laid down in Section 60(1) of the Act. She further states that even the said returns have not been signed by the President of the Society and though the same bears the date 20.06.2017, the said documents were actually received in the office of the RCS on 31.01.2018, making it evident that the audit had not been completed before 28.08.2017.

5. Ms. Kaur places reliance on the decision in the case of Suresh Chand (Retd.) vs. Delhi Co-Operative Tribunal reported as **2010(167) DLT 590**, in support of her contention that a person is mandatorily disqualified for election to an office in a Committee if he is an officer of a Co-operative Society which has not got its statutory audit completed within the statutory period prescribed in the Act. In support of her submission that every member of the Committee has a joint responsibility and on non-compliance of the statutory audit within the stipulated period, no member of the Committee can plead that he has no responsibility, reference is made to the case of Narender Kumar Jain vs. Govt. of NCT of Delhi reported as **2011(5) AD(Delhi) 235**.

6. Mr. Lohia, learned counsel for the respondent No.2/Administrator-cum-Returning Officer also opposes the present petition and states that all

the opportunity was given to the petitioners to reply to the notice to show cause dated 06.08.2018, explaining as to why they should not be disqualified from contesting the elections and after carefully examining the replies submitted by them, the impugned order dated 18.08.2018 has been passed. Learned counsel particularly alludes to Section 35(7) of the Act that contains a non-obstante provision and states as follows:-

“35(7) Notwithstanding anything contained in this Act, a person shall be disqualified for election of office in a committee—

(a) if he holds any such office on a committee of another co-operative society of the same type;

(b) if he holds any such office on the committees of three or more co-operative societies of a different type or types;

(c) if he has been held guilty of any of the offences as enumerated in section 118;

(d) if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed in this Act; or

(e) if he fails to give a declaration on oath about his eligibility for contesting election as prescribed.”

7. The attention of the Court is drawn to Section 60 of the Act that deals with audit. Learned counsel for the respondent No.2 submits that Section 60(5) of the Act makes it the mandatory duty of the Managing Committee to ensure that its accounts are audited annually and the audit report is presented for consideration in the Annual General Body Meeting of the Society, as contemplated in Section 31 and further, that a copy of the audit report is furnished by the Society to the respondent No.1/RCS for his information. Section 31 of the Act that refers to the Annual General Body Meeting prescribes that every Cooperative Society shall within a period of 180 days next after the date fixed for making up its accounts for the year under the

rules, call a general body meeting of its members for considering the audit report alongwith the audited accounts and the annual report.

8. Learned counsel for the respondent No.2 goes on to submit that Rule 38 of the Delhi Cooperative Societies Rules, 2007 provides that for the purpose of calling the Annual General Body Meeting, as contemplated in Section 31, the date fixed for making up the accounts for the year shall be 30th April of each year and that the closing accounts shall be signed by the Secretary or the Treasurer or any other officers of the Society authorised by the Committee. It is canvassed that the plea of the petitioners is that since the President and the Treasurer of the Managing Committee had failed to sign the audited returns, they cannot be blamed for non-compliance of the relevant provision, runs contrary to the statute for the reason that any one of the petitioners, particularly petitioner No.1, who was the Secretary was empowered to sign the audited returns and submit the same with the respondent No.1/RCS.

9. Learned counsel for the respondent No.2 further submits that Rule 79 of the Rules prescribes the procedure for appointment of auditors and for conducting audit and sub-rule (2) stipulates that the Committee shall ensure that the audit of the Society is complete within the period provided under Section 60(1) of the Act and the report thereof, placed before the Annual General Body Meeting. It may be useful to refer to Rule 79(2), which reads as follows:-

“(2) The committee shall ensure that the audit of the co-operative society is complete within the period as provided under sub-section (1) of section 60 of the Act to enable it to place the report before annual general body meeting and also to file Tax Returns in time as prescribed under the Tax Laws.

The committee shall also ensure that the Auditor selected by the co-operative society has not exceeded the limit of prescribed number of audits specified by the Registrar under these rules. The auditor appointed out of the panel of Chartered Accountants shall conduct audit of at least three Co-operative societies whose turnover is less than rupees five lakhs and shall charge audit fee at the rate of rupees five hundred from each co-operative society per year and may conduct audit of any other five co-operative societies.

Provided further that in-case of special audit, the auditor shall be appointed by the Registrar.”

10. Counsel for the respondent No.2 argues that the petitioners, who were a part of the Committee, did not take any steps to comply with Rule 79(2) of the Rules, as the report of the auditors was never placed before the Annual General Body Meeting. Lastly, it is stated that though the petitioners claim that they had no role to play once five members of the Committee had resigned on 06.08.2017, but at the same time, they had continued to operate the bank accounts of Society between 06.08.2017 to 13.03.2018.

11. On confronting learned counsel for the petitioners with the aforesaid position, he admits on instructions that the bank accounts of the Society were no doubt being operated by the petitioners even after five members of the Committee had resigned on 06.08.2017, but he seeks to explain that the said accounts were being operated for meeting the day-to-day requirements for maintaining the Society, by clearing the water and electricity bills.

12. The said statement does not appear to be correct as learned counsel for the petitioners does not deny the fact that the petitioners had expended amounts to the tune of Rs.2.50 lakhs, purportedly for raising a boundary

wall and towards installation of CCTV cameras in the Society. By no stretch of imagination can the said expenses be treated as essential expenses for maintaining the Society. The petitioners had obviously exceeded their brief. On the one hand, they maintain that they had no role to play in the affairs of the Society after 06.08.2017, when five members of the Managing Committee had tendered their resignation and on the other hand, they admit to the fact that they have continued running the affairs of the Society and operating the Bank accounts.

13. That being the position, we are of the opinion that it was the bounden duty of the petitioners to have complied with the mandatory provisions of the Act and Rules requiring preparation of audit reports and placing them before the Annual General Body Meeting etc. within the prescribed period. Having failed to comply with the mandatory provisions of Section 35(7) of the Act, the petitioner stood automatically disqualified from participating in the elections of the Managing Committee. Our view finds support from the decision of a Co-ordinate Bench of this Court in the case of Suresh Chand (supra), para 10 whereof reads as under:-

“10. A plain reading of the said provision makes it clear that, first of all, it is a non-obstante provision and, secondly, a person is mandatorily disqualified for election to an office in a Committee if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period „prescribed“ in the Act. Section 2(v) defines the word "prescribed" to mean prescribed by rules made under the Act. Section 60(1) of the said Act stipulates that a co-operative society shall get its accounts audited annually by an auditor selected from a panel prepared by the Registrar of Co-operative Societies in the prescribed manner within the period of 90 days (this has been changed to 120 days w.e.f. 13.01.2007) from the prescribed date for making up its account for the year. **Thus,**

reading the provisions of Section 35(7)(d) alongwith the provisions of Section 60 of the said Act and other related provisions, it is clear that a person, who is a member of a Managing Committee which does not complete the audit within the stipulated period of 90 days from the end of the co-operative year, would be disqualified for the purposes of contesting an election in the succeeding elections to the Managing Committee.” (emphasis added)

14. For the reasons stated above, we are not inclined to interfere with the impugned order dated 18.08.2018, based on the notice to show cause issued by the respondent No.2 on 06.08.2018, whereby the petitioners have been disqualified from participating in the ensuing elections of the Managing Committee of the Society scheduled on 02.09.2018.

15. The petition is accordingly dismissed with costs of Rs.5,000/- imposed on each of the petitioners to be deposited with the “Principal Secretary (Finance) CMDRF Kerala” within one week from today. Proof of deposit shall be filed failing which, the matter will be placed back before the Court for appropriate orders.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 29, 2018

rkb/ap