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

+ **W.P.(C) 11558/2018 & C.M. No. 44726/2018**

ADESH KUMAR

..... Petitioner

Through: Mr. Rakesh Kumar with Mr. Bipin
Kumar and Mr. Suresh Chandra
Sharma, Advocates.

versus

**THE REGISTRAR CO-OPERATIVE SOCIETIES GOVT. OF
N.C.T. OF DELHI AND ANR.**

..... Respondents

Through: Mr. Satinder Singh Bawa, Adv. for R-
1
Mr. R.K. Gupta, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
26.10.2018

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1. Issue notice. Notice is accepted on the behalf of the respondents by learned counsels. The issue involved in this case is narrow and the original record has been produced before us and seen by us. We proceed to dispose of the petition.
2. The petitioner has preferred the present writ petition to seek, inter alia, a declaration that the nomination of the petitioner for the post of President in the forthcoming elections to the Managing Committee of the Nav Nirman Group Housing Society Ltd. is valid.
3. The brief background of the facts is that the petitioner is an erstwhile

President of the Nav Nirman Group Housing Society Ltd. Since the elections were due, the Managing Committee appointed a returning officer - one Mr. Virender Singh, who is respondent No.2. We are informed that his wife is a member of the cooperative society.

4. The petitioner filed his nomination for the post of President. The nomination of the petitioner was proposed by one Mr. L.N. Dhawan – a member of the respondent society having membership No. 177. The said nomination proforma clearly states that he proposes the name of Shri Adesh Kumar i.e. the petitioner, who is a member of the cooperative society. It appears that in the blank space provided for filling the membership number of the candidate, he filled in the membership No. of the petitioner - Adesh Kumar as 363. We may note that the membership No. of the petitioner is actually 369. The proforma contains an Annexure 1, which is filed by the candidate (i.e. the petitioner in this case) himself. In that form, he states that he agrees to his nomination for the post of President of the respondent Society. Pertinently, in the said proforma, he discloses his membership No. as 369 on two places: firstly, in the blank space provided in the proforma, and secondly, while signing the said proforma.

5. The nomination of the petitioner was, however, rejected by the respondent No.2 Returning Officer on the ground that the membership No. of the candidate had been mentioned by the proposer as 363, whereas the same is 369.

6. The petitioner has approached this Court, in view of the fact that the election is scheduled for 28.10.2018 and the nomination was rejected only on 22.10.2018, thereby leaving hardly any time to the petitioner to avail of any other remedy.

7. Upon issuance of notice, the submission of the learned counsel for the respondent Returning Officer is that the remedy of the petitioner lies by way of arbitration under Section 70 of the Delhi Cooperative Societies Act.

8. We asked the respondents to produce the original record and the original file containing the Proforma for nomination Form - B has been produced before the Court and perused by us. We have retained copy of the said proforma on record.

9. Having heard Ld. Counsels and perused the record, we are of the considered view that the conduct of the Returning Officer in rejecting the petitioner's nomination on the aforesaid ground is completely specious and frivolous. The nomination form filed by the petitioner and the Proposer Mr. L.N. Dhawan leaves no manner of doubt that the proposer had proposed the name of the petitioner, and no other member. We inquired from Mr. Gupta whether there is any other member called by the name of Adesh Kumar in the Nav Nirman Cooperative Group Housing Society. He is not in a position to state that there is any other member with the same name.

10. Pertinently, that is not the reason recorded by the Returning Officer for rejecting the nomination of the petitioner. Secondly, it is clear from the proforma filed in by the petitioner that he had clearly put his name and membership number correctly. Therefore, even if there was any scope for any doubt upon the reading of the form filed by the proposer – L.N. Dhawan, that would have got extinguished upon reading of the form filed by the candidate himself i.e. the petitioner.

11. It is clear that the Returning Officer has failed to follow the Delhi Cooperative Societies Rules Schedule II, which lays down the procedure for the conduct of the elections of the committee. The said procedure provides

in Rule 6 that the nomination of the candidate should not be rejected merely on the ground of incorrect description of his name, or the name of his proposer or seconder, or any other particulars relating to the candidate, or his proposer or seconder, as entered in the list of members referred to in Clause 3, ***“if the identity of the candidate, proposer or seconder, as the case may be, is established beyond reasonable doubt.”***

12. In the present case, the Returning Officer has sought to raise a doubt when none existed. It is clear as daylight that the said nomination was that of the petitioner, and none else.

13. It has been pointed out by the learned counsel for the petitioner that only two nominations were filed in respect of the post of President i.e. by the petitioner, and incumbent President - Vijay Laxmi Singh and the returning officer was also appointed by the outgoing managing committee. We are, thus, left with the feeling that the Returning Officer was handpicked to scuttle the nomination form of any other candidate, so as to perpetuate the Rule of the past President.

14. Though, this Court would normally not entertain a writ petition when efficacious alternative remedy is available to an aggrieved person, there is no constitutional or statutory bar to entertainment of a writ petition directly by the Court without requiring the petitioner to exhaust his other alternative statutory remedy. This is a self imposed restriction by the High Court, and may be waived in appropriate and deserving cases. If the petitioner were to be relegated to his remedy under Section 70 of the Delhi Cooperative Societies Act, the same would require appointment of an Arbitrator and the administrative process involved in the appointment of an arbitrator itself would defeat the right of the petitioner to contest the forthcoming elections.

Looking to the nature of the controversy raised, and the fact that the election is scheduled for 28.10.2018, and there is hardly any time left for the petitioner to avail of any other remedy, we are inclined to interfere in the present matter at this stage.

15. The conduct of the Returning Officer has left much to be desired and raises doubts in the mind of the Court with regard to his competence and independence. In these circumstances, we consider it appropriate to divest him of his authority as the Returning Officer. We, accordingly order so. We direct the Registrar – Cooperative Societies to nominate the Returning Officer latest by 27.10.2018, who shall conduct the elections as already scheduled. We hold that the petitioner nomination is valid and he is entitled to contest elections for the post of President of the Managing Committee of Nav Nirman Cooperative Group Housing Society Ltd.

16. The petition stands disposed of in the aforesaid terms.

17. Copy of this order be given dasti under the signatures of the Court Master.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 26, 2018

N.Khanna