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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12817/2019 and CM APPL. 52336/2019 (stay)**
JAMIA COOPERATIVE BANK LIMITED Petitioner

Through : Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Tarique Siddiqui,
Mr. Rakesh Kumar, Ms. Reetika
Gupta and Mr. Aamir Zaidi,
Advocates.

versus

GOVT. OF NCT OF DELHI AND ANR. Respondents
Through: Mr. Gautam Narayan, ASC
with Ms. Dacchita Shahi and
Ms. Shivani Vij, Advocates for
R1 and R2.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
05.12.2019

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Dr. S. Muralidhar, J.:

1. Notice. Mr. Gautam Narayan, learned ASC, accepts notice on behalf of the Government of NCT of Delhi/Respondent No. 1 and the Registrar of Co-operative Societies ('RCS') (Respondent No.2).
2. Since the point involved is short, with the consent of learned counsel for the parties, the writ petition is heard finally at this stage itself.
3. The Petitioner is a Co-operative Bank, as defined under Section 2 (f) of the Delhi Co-operative Societies Act, 2003 ('DCS Act'). It has been

functioning under the supervision and control of the Reserve Bank of India ('RBI') for banking related functions in terms of the powers vested in the RBI under the Banking Regulation Act, 1939 and the Reserve Bank of India Act, 1934.

4. Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the Petitioner states that the Petitioner is one of the few banks in the co-operative sector earning profits with satisfactory results year after year. He points out that the bank was last inspected by the RBI for the year ending on 31st March, 2019 and that the bank's business for the last financial year increased by 15.72%.

5. The term of the present Management Committee of the Petitioner came to an end on 6th August, 2019. On 30th May, 2019 the Board of Directors of the Bank met and resolved to request the RCS to appoint a Returning Officer ('RO') for conduct of elections to the Managing Committee. Consequently, on 4th June, 2019 a letter was addressed to the RCS informing him that the present term of the Board of Directors was expiring on 6th August, 2019.

6. When no RO was appointed, the Petitioner filed W.P.(C) 12415 of 2019 in this Court. When that writ petition was listed on 24th November 2019, Mr. Gautam Narayan, learned counsel appearing on advance notice for the Respondents informed the Court that an RO would be appointed within a week. Recording that statement, the writ petition was disposed of.

7. Within 4 days thereafter, the RCS issued the order dated 29th November, 2019, which has been impugned in the present petition, whereby in exercise

of the powers vested in Respondent No.2 under Section 35 (5) of the DCS Act, Mr. R.S. Krishnan, Deputy Secretary was appointed as 'the Administrator-cum-Returning Officer' to conduct the election in the Petitioner Bank within 90 days from the date of his appointment.

8. The Petitioner is aggrieved by the impugned order to the extent that it appoints Mr. Krishnan not just as the RO but also as Administrator of the Petitioner.

9. Mr. Nandrajog points out that under Section 35 (1) of the DCS Act it is the Managing Committee of the Co-operative Society which is expected to exercise its superintendence, direction and control in the preparation of the electoral rolls and the conduct of elections of the members of the committee. However, in terms of the second proviso thereto, where the election is to be held to a co-operative bank, financial bank, federal co-operative society and a housing society that has been allotted land, it is the Government, in this case the Government of NCT of Delhi (Respondent No.1), which had to appoint the RO, not below the rank of Gazetted Officer or retired Gazetted Officer.

10. Mr. Nandrajog accordingly explains that in terms of Rule 53 of the Delhi Co-operative Societies Rules, 2007 (DCS Rules) read with Schedule II thereof, in the present case it is the RO appointed by the Government who will draw up the election schedule. Relying on the decision of this Court dated 22nd April, 2010 in W.P.(C) 2589/2010 (*New Friends Co-operative House Building Society v. Registrar, Co-operative Societies*) Mr. Nandrajog contends that the failure to arrange the elections of the committee

was attributable in the present case to the Respondents and not to the Petitioner and that therefore, there was no justification in appointing an Administrator to take over the affairs of the Petitioner pending the election of the new managing committee.

11. Mr. Gautam Narayan, learned counsel appearing for the Respondents, on the other hand, sought to refer to para 1 of Schedule II to the DCS Rules, which requires the Committee to meet at least 60 days in advance from the date of expiry of its term and by resolution “determine the date, time and place for convening a general body meeting for conduct of election of a successor committee”. He referred to para 1 (ii) which requires “the Committee to submit a copy of such “Resolution” to the Registrar along with request for appointment of an RO for conduct of Election”. According to him, since in the present case, the Resolution of the Managing Committee, whose term expired on 6th January 2019, passed at its meeting held on 30th May, 2019 was not enclosed with its letter dated 4th June 2019, there was noncompliance with the requirement of Rule 53 read with para 1(ii) of Schedule II thereof and, that therefore, the Respondent No. 2 was justified in exercising the powers under Section 35 (5) of the DCS Act to appoint an Administrator.

12. In order to examine the above submissions it is necessary first to refer to Section 35 (1) and 35 (5) of the DCS Act which read as under:

“35. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of elections of the members of the committee of, a cooperative society shall be vested in the committee which shall appoint returning officer who shall not be a member or an employee of

the society:

Provided that on the request of the committee or one-sixth members of the society, and in case of dispute in a society, the Registrar may appoint the returning officer to conduct the election of a society:

Provided further that the Government shall appoint returning officer, not below the rank of a gazetted officer or a retired gazetted officer to conduct the election of a co-operative bank, financial bank, federal co-operative society and such housing society as has been allotted land and draw of lots has not been conducted in accordance with the provisions of section 77 and such housing society as is awaiting allotment of land.

.....

(5) Thereafter the committee shall arrange election of the new committee before the expiry of its term and in case the committee fails to do so, the committee shall cease to hold office on the expiry of its term and the affairs of the co-operative society shall be managed by an administrator appointed by the Registrar who shall also hold election within ninety days from the date of his appointment.”

13. Mr. Nandrajog is right in his submission that in terms of second proviso to Section 35 (1), an exception is carved out where the society is a Co-operative bank, financial bank, federal co-operative society and housing society. In such event, it is the Government which appoints the RO. The RO then draws up the schedule for holding the elections. The Court’s attention has been drawn to the earlier instance in 2016 when the agenda notice detailing the schedule of the election to be held to the Managing Committee/Board of Directors was in fact drawn up by the RO appointed by the Respondents. Therefore, this appears to be a departure from what is set out in Schedule II to the DCS Rules, where in para 1(i) the Committee is

expected to set out in its resolution ‘the date, time and place for convening a general body meeting to conduct an election of the successor committee.’ While in the present case, the Managing Committee of the Petitioner had to send a copy of the resolution of the Board of Directors to the RCS in terms of Clause 1 (i) of Schedule II of the DCS Act, that by itself will not attract Section 35 (5) of the DCS Act particularly where there has been a lapse on part of the GNCTD in appointing an RO to conduct the election.

14. On a collective reading of second proviso of Section 35(i) with Rule 53 and Schedule II to DCS Rules, it appears that in the case of the co-operative bank it is the RO appointed by the Government who will draw up the schedule for conduct of elections and not the committee whose term was coming to an end. There appears to be a logical reason for this, inasmuch as with the RO being appointed by the Government, clearly he will have the last word in actually drawing up the schedule for conduct of elections which the co-operative society and its outgoing managing committee/Board of Directors, will have to abide by.

15. The consequence of not holding elections is what has led the Respondents to appoint an ‘Administrator’ to the Petitioner society. The power to do so can be traced to Section 35 (5) of the DCS Act. A careful perusal of the said provision reveals that it is on the failure of the committee to arrange the election of the new committee that the committee “shall cease to hold office on the expiry of its term”, and in such event, its affairs “shall be managed by an Administrator appointed by the Registrar who shall also hold election within 90 days from the date of his appointment”.

16. In the present case, the trigger for the appointment of the Administrator, viz., the failure on part of the existing committee to arrange for the election of the new committee, cannot be said to have been fulfilled in the facts and circumstances narrated hereinbefore. On its part, the existing Committee did write, at least 2 months in advance on 4th June 2019, to the RCS informing him of the impending expiry of the term of the present committee on 6th August, 2019. If on receipt of the said letter, the RCS was of the view that a copy of the resolution of the committee was also required, he could have easily asked for it. In any event, it was incumbent on the RCS to immediately arrange to appoint an RO for conduct of the elections in terms of the second proviso to Section 35 (1). Such RO, if appointed sufficiently in time would be expected to draw up the schedule for holding the election, so that a new committee is in place immediately upon or soon before the expiry of the term of the present committee.

17. In fact, this is what apparently happened on the previous occasion in 2016. This time around, with the RCS not responding to the Petitioner's letter dated 4th June 2019, the Petitioner was constrained to file W.P.(C) 12415 of 2019 and in the order disposing of the said petition, a statement was recorded by this Court of counsel for the Respondents that an RO would be appointed. Clearly, therefore, the failure to appoint an RO within reasonable time was that of the Respondents.

18. The upshot of the above discussion is that there is no failure by the outgoing Managing Committee of the Petitioner society to arrange for

election of the new committee in terms of Section 35 (5) of the DCS Act and, therefore, the occasion to appoint an Administrator to the Petitioner society did not arise.

19. Consequently, the impugned order to the extent that it appoints Mr. Krishnan not just as an RO to conduct the elections to the new committee, but also as an Administrator of the Petitioner society is bad in law and that part of the impugned order appointing him as Administrator is accordingly set aside. He will, of course, continue as the RO for the purpose of conduct of elections to the Managing Committee/Board of Directors of the Petitioner.

20. The next question that arises is what should happen in the interregnum i.e. after the expiry of the term of the earlier Managing Committee and the election of the new one in terms of the election schedule to be drawn up by Mr. Krishnan as an RO of the Petitioner society? Although there is no clear cut answer either in the DCS Act or the Rules in Delhi, the course that commends itself to be adopted in the present case would be to require the present committee to continue as a 'caretaker committee', till such time the new committee is in place, with the added condition that the present committee shall not take any major policy decision or transfer/utilise any funds of the committee, except to the extent necessary for the day-to-day administration, including payment of salaries of the staff and other normal banking activity. The copies of the decisions taken by the committee will be open for inspection by the Registrar. Mr. Krishnan, the RO will go strictly by the time limit specified in the Act and the Rules therewith, and

draw up a schedule for the elections.

21. The petition is allowed in the above terms but no orders as to costs. The application is disposed of.

CM APPL. 52337/2019 (exemption)

22. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 05, 2019 / tr

