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

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Date of Decision: 24.04.2019

% **W.P.(C) 3221/2019 & C.M. No. 14896/2019**

DR. GYANENDRA KUMAR AND ORS. Petitioners

Through: Mr. Ravi Gupta, Senior Advocate
along with Mr. Akhil Sacher,
Ms.Sunanda Tulsyan, Mr. Sachin Jain
& Ms. Diya Kapoor, Advocates.

versus

REGISTRAR COOPERATIVE SOCIETIES GOVT. OF NCT OF
DELHI AND ANR. Respondents

Through: Mr. Santosh K. Tripathi, ASC,
GNCTD along with Mr. Virendra
Kumar, RCS.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The Registrar of Cooperative Societies (RCS) has filed a short counter-affidavit in the matter. We have heard learned counsels.
2. The petitioners grievances were taken note of in our order dated 01.04.2019. To understand the background of the controversy raised, we reproduce the said order:

“ The grievance of the petitioner is two-fold. Firstly, it is pointed out that the society requested the Registrar of

Cooperative Societies as early as on 19.09.2018 for appointment of a Returning Officer to hold the elections to the Managing Committee. The last elections having been held on 12.12.2015, the society decided to hold the next elections on 02.12.2018. The said letter was followed by a reminder sent on 02.11.2018 and several other letters. The Registrar of Cooperative Societies however, did not appoint the Returning Officer and therefore, the elections could not be held on the scheduled date. Subsequently, once the term of the Managing Committee was over, the Registrar of Cooperative Societies appointed the Administrator to hold the elections. The submission of Mr.Gupta, learned senior counsel for the petitioner is that the Registrar of Cooperative Societies failed in appointing the Returning Officer within time and on that premise appointed the Administrator.

This Court has in the recent past has come across several cases wherein the Registrar of Cooperative Societies appoints the Administrator in similar situations. In our view, unjustified appointment of an Administrator by the Registrar, even when the concerned cooperative society requests for appointment of a Returning Officer well in time before the expiry of term of the Managing Committee, is an abuse of the power vested in the Registrar of Cooperative Societies.

The second submission of Mr.Gupta is that the society has been raising demands from the Members to raise the construction which is going on in full speed. He points out that the 19th demand aggregating to a total demand of Rs.86 lakhs was raised according to which the amount was to be paid by 31.03.2018. Despite that being the position, the Registrar of Cooperative Societies has issued the impugned communication on 12.03.2019 fixing the cut off amount of Rs.68 lakhs to entitle the Members to participate in the forthcoming elections. It is pointed out by Mr.Gupta that as on date, 109 Members have paid Rs.86 lakhs and more and only 71 Members have paid amounts lesser than Rs.86 lakhs even though the amount payable as on date is Rs.97 lakhs.

Issue notice. Counsel for the respondents accepts notice. We direct the Registrar of Cooperative Societies to produce the relevant records on the next date to explain as to why the request made by the petitioner society for holding the elections on 02.12.2018 by appointment of a Returning Officer, was not actioned within time. He will also file an affidavit disclosing in how many cases the Administrator stands appointed even though the society had requested for appointment of the Returning Officer well in time before the expiry of its terms. The RCS should also explain as to on what premise the amount of Rs.68 lakhs, has been fixed as the cut off for determining the eligibility of the voting Members. The affidavit be filed within two weeks.

List on 24.04.2019.”

3. The short affidavit filed by the RCS shows that, admittedly, there has been a lapse on the part of the RCS in appointing the Returning Officer to hold the elections within the stipulated period. This has led to the appointment of the Administrator. The RCS has stated that he has reviewed the process and provisions relating to appointment of Returning Officer by the RCS, and would take requisite steps to expedite the process, so as to ensure timely disposal of such requests at the level of the RCS as well as possible amendments in the provisions of the Act so as to provide for a certain period of extension of the term of the Managing Committee where the election process was initiated during the tenure of the Committee, and could not be completed before the expiry of its term.

4. The steps proposed to be taken by the RCS for appointment of Returning Officers for holding the elections to the Managing Committee are the following:

“1. The provisions of Section 35 (1) which vest the power to appoint RO in the society itself would be widely publicized by issuing advertisements to the effect in leading National dailies as well as by writing letters to the President/ Secretary of the societies.

2. To facilitate the societies in making appointments of RO, a panel of Government officers would be provided at the website of RCS and an application would also be developed to provide a panel of 3 officers staying/ working in the nearby locality or areas of the address of the society with a built in check that the Returning Officer appointed in the society in past 2 years does not get repeated.

3. The requisite powers to approve the proposal of appointment of RO except in cases where the power to appoint the Returning officer vests in the Government and in all cases on the request of the Committee or one-sixth members of the society and in case of dispute in a society; would be delegated at the level of Deputy Registrar.

4. A detailed circular laying down step wise time limits, is being issued to ensure that the entire process of appointment of RO including issuance of letter of appointment of RO to the society is completed within two weeks.

5. A proposal for amendments in the provision of the act to provide for some period of extension of term of MC where the election process was initiated during the tenure of the committee and could not be completed before expiry of its term and there are no representations or the complaints against the election; would be submitted to the government for its consideration and approval for effecting the requisite amendments.”

5. The RCS has stated that the steps are being taken to appoint respondent No.2/ Administrator as the Returning Officer as well for holding the elections to the Cooperative Society in question, i.e. the Maharishi

Dayanand Cooperative Group Housing Society Limited.

6. We direct the RCS to take the aforesaid steps and all other steps required to ensure that requests for appointment of Returning Officers are actioned without any delay, so that the need for appointment of an Administrator does not arise in cases where the elections are proposed to be held within the requisite period. The RCS should realize that the fundamental spirit of the cooperative movement is self-governance, and interference in the democratic governance of the cooperative societies by its members should not be lightly interfered with by the RCS.

7. The short affidavit filed by the RCS is, however, silent on the other aspect taken note of in our order dated 01.04.2019. We have heard learned senior counsel for the petitioner as well as learned counsel for the respondent/RCS on the said aspect, namely, as to what should be the cut-off amount that the members of the said cooperative society should have paid to be eligible to vote in the forthcoming elections.

8. The fixing of the cut-off amount is an aspect which the General Body of the Cooperative Society can and should decide upon. The purpose of fixing the cut-off amount is to ensure that such of the members, who do not make their contribution for raising construction of the flats of the Cooperative Society, should not be calling the shots, since such members impede and drag the process of construction on account of their acts & omissions. When the construction process is on, obviously, the society would require funds which have to be contributed by its members. When some of the members do not make their contribution as per the demands

raised by the society, while a majority of the members do respond positively to such calls and demands, the same is bound to adversely impact the construction process to the disadvantage of other members, who understand their responsibility and make their contributions in time. The fixing of the cut-off amount encourages the members to remain upto date with regard to their liability to contribute for raising construction of the flats in the society.

9. We, therefore, direct that the respondent No.2/ Administrator shall forthwith take steps to call a General Body Meeting of all the members of the Maharishi Dayanand Cooperative Group Housing Society Limited within the next twenty days with the agenda item being: Determination of the cut-off amount that the members of the society should pay for being able to participate in the forthcoming election process. The General Body shall take a decision on the said issue by majority. The General Body may also consider giving to the members some time – say about two weeks, to pay up the amount so that they may meet the cut-off requirement and become eligible to participate in the forthcoming election process. The Administrator may, if considered necessary, hold a secret ballot for the said purpose. Whatever decision is taken by the General Body on the said agenda item, shall be implemented by fixing the cut-off amount and the cut-off date, if any, as per the decision of the General Body for the forthcoming elections.

10. We also direct the RCS to ensure that the Administrator – respondent No.2 is appointed as the Returning Officer within the next two weeks, and we direct that the election process should be initiated and completed at the

earliest keeping in view the minimum time required for completion of the said process of election.

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

VIPIN SANGHI, J.

REKHA PALLI, J.

APRIL 24, 2019

B.S. Rohella

