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

Date of Decision: 05.04.2019

+ **W.P.(C) 3495/2019**

**SHEETAL VIHAR COOPERATIVE GROUP HOUSING
SOCIETY LTD. AND ORS.**

..... Petitioners

Through: Mr.Rakesh Munjal, Sr. Adv. with
Mr.Raghav Jha & Mr.Pranshu Garg, Adv.

versus

THE REGISTRAR COOPERATIVE SOCIETIES AND ORS.

..... Respondents

Through: Mr.Anjum Javed, ASC with
Mr.Devendra Kumar & Mr.Faran
Ahmed, Advs. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

C.M. No.16032/2019

Exemption allowed, subject to all just exceptions.

W.P.(C) 3495/2019 & C.M. No.16031/2019

1. The petitioners have preferred the present writ petition to assail the order dated 25.02.2019 passed by the Assistant Registrar of Cooperative Societies, conveying the decision of the Registrar of Cooperative Societies that the election of the President and

Secretary of the petitioner no.1/society, i.e., Sheetal Vihar Cooperative Group Housing Society Ltd. held on 11.02.2018, was in violation of Rule 22(1) read with Rule 53 of the Delhi Cooperative Societies Rules, 2007 and, thus, was illegal. The order dated 25.02.2019 in its entirety reads as follows:-

“To

*The President/Secretary,
Sheetal CGHS Ltd.,
Plot No.10, Sector-23,
Dwarka, New Delhi-110077.*

Sub: *Illegal election of President and Secretary who were the joint members with their names stand second as per the list of members.*

This office is in receipt of a representation from some of the members of Sheetal Vihar CGHS Ltd. alleging that despite pointing out the disqualification of candidate namely Sh.Chander Mohan Gupta and Sh.Sanjeev Nayyar, being second name in joint membership, the R.O had allowed them to contest the election and also declared them elected on 11.02.2018 as President and Secretary, respectively, of the society, violating the section 25(b) and 35(6) of DCS Act 2003.

In view of the above, it is to inform that the matter was submitted before the higher authorities and it has been decided that the election of President and Secretary of the society held on 11.02.2018 was conducted in violation of Rule 22(1) read with Rule 53 of DCS Rules, 2007 and thus is declared illegal. The society is also directed to conduct the fresh election of the post of President and Secretary for democratic setup, under intimation to this office.

**(K.P. SUHAG)
Asstt. Registrar (Sec-7)”**

2. The submission of Mr.Munjal, learned senior counsel for the petitioner, firstly, is that the said order has been passed illegally and without any jurisdiction. He submits that if any member of the petitioner no.1/society was aggrieved by the election of petitioner nos.2 and 3 as the President and Secretary of the said society respectively, it was for them to challenge the same in an election petition under Section 70 of the Delhi Cooperative Societies Act. He further submits that the reply submitted by the petitioners on 31.07.2018 to the notice dated 02.05.2018, has not been considered by the Registrar of Cooperative Societies while passing the impugned decision.

3. Mr.Munjal has further contended that even though the petitioner nos.2 & 3 were not primary members of the petitioner no.1/society, they could be authorized by the primary members to vote and attend meetings on their behalf. In support of his aforesaid contention, Mr.Munjal sought to place reliance on the first proviso to Rule 22(1), which entitles a person whose name stands first in the share certificate to authorise others to vote and attend meetings on his behalf. In this regard, he also places reliance on a decision of the Division Bench of this Court in ***Krishna Devi & Anr. vs. Rajasthan Cooperative Group Housing Society Ltd. & Ors.***, W.P.(C) No.5849/2014 decided on 01.10.2014.

4. We have heard the submissions of Mr.Munjal and considered the same. We have also perused the impugned order and the other documents placed on record as also the legal position emerging from the relevant provisions of the Delhi Cooperative Societies Act, 2003 (hereinafter referred to as “Act”) and the Rules.

As would be seen, the impugned order itself observes that the appointment of the petitioner nos.2 and 3 was in violation of Section 25(b) and 35(6) of the Act. Section 25 of the Act insofar as it is relevant, reads as follows:-

“25. Votes of members

Every member of a co-operative society shall have one vote in the affairs of the co-operative society:

PROVIDED that –

(a) xxx xxx xxx

(b) A nominal or associate or joint member shall not have the right of vote

(c) xxx xxx xxx.”

5. The admitted position is that the petitioner nos.2 and 3 are joint members and they are not primary members of the petitioner no.1/society. Thus, on the face of it, the petitioner nos.2 and 3 did not have the right to vote at any election of the petitioner no.1/society. It is well settled that a member who has no right to vote, cannot also offer his candidature to any executive post in an organisation.

6. Sub rule (1) of Rule 22 permits admission of joint members along with the primary member, subject to certain conditions. The said rule reads as follows:-

“22. Procedure for admission of joint member, minor and person of unsound mind and inheriting the share or interest of deceased member

(1) A co-operative society may admit joint member **provided the proposed joint member make a declaration in writing that the person whose name stands first in the share certificate shall have the right to vote** and all other rights shall be enjoyed jointly and severally and liabilities shall be borne jointly and severally by them as provided under the Act, the rules and the bye-laws:

PROVIDED that in case of inability of the person whose name stands first in share certificate, he/she can authorize the other to vote and attend the meeting on his behalf.

PROVIDED FURTHER that in case of co-operative group housing/house building society, the joint membership shall be restricted to only person in first degree blood relationship.

(2) In accordance with the procedure laid down in the bye-laws and these rules for admission of any member, **a co-operative society may admit minor and person of unsound mind inheriting share or interest of deceased member as its member through their legal representative or guardian respectively.** The members so admitted will enjoy such rights and liabilities as are laid down in the bye-laws of the co-operative society that are consistent with the Act and rules.”

(emphasis supplied)

7. Thus, as per the first proviso to Rule 22(1), the right to vote conferred upon joint members is only in case of ‘inability’ of the person whose name stands first in the share certificate to act, and not otherwise. The ‘inability’ spoken of in the first proviso to Rule 22(1) of the Rules is a legal inability. It does not cover voluntary renunciation or transfer of the right of the primary member of his right to vote as a member of a society. The same relates to inability which the primary members may suffer from on account of

minority, insanity or other legal disability. This is clear not only from the heading of the Rule, but also from sub-rule (2). In fact, Sub-Rule (1) clearly provides that the joint member has to furnish a declaration that the person whose name stands first in the share certificate shall have the right to vote. If the first proviso to Rule 22(1) were to be interpreted broadly – to mean that ‘inability’ includes a conscious decision of the primary member to voluntarily give up or cede his/her right to vote in favour of the joint member, it would mean that any member would be able to authorise the joint member to vote and attend meetings on his/her behalf. But such an interpretation would clearly be contrary to proviso (b) of Section 25 of the Act taken note of hereinabove. There is no gain saying that rules are subordinate to the provisions contained in the Act, and cannot survive if they are in contravention of the statutory provisions. Thus, the only way in which the first proviso to Rule 22(1) can be saved from being declared ultra vires, the Act, is to read it meaningfully, i.e., to limit the scope of the phrase ‘inability of the person’ to mean legal ‘inability’ or ‘disability’. Thus, it clearly emerges that the petitioner nos.2 and 3 were not entitled to vote, much less, contest in the elections for the post of President and Secretary in the petitioner no.1/society.

8. Reliance placed by Mr.Munjhal on our decision in ***Krishna Devi*** (*supra*) is misplaced. The facts of that case are materially different. Moreover, proviso (b) to Section 25 of the Act was neither referred to, nor considered in the said decision since its application did not arise for consideration.

9. The submission of Mr.Munjhal that the impugned order is illegal, since the same has been issued without authority by the

Registrar of Cooperative Societies, does not motivate us to invoke our discretionary jurisdiction under Article 226 of the Constitution of India, since it is clear to us that no injustice has been done to the petitioners with the passing of the impugned order. The petitioners cannot run away from the fact that the petitioner nos.2 and 3 were not entitled to contest the elections, and be elected as President and Secretary of the petitioner no.1/society. This Court is not obliged to exercise its discretionary jurisdiction under Article 226 of the Constitution of India in every case, even if there is some irregularity pointed out by the petitioner. We are, therefore, not inclined to interfere with the impugned order.

10. The writ petition is dismissed in the above terms along with the pending application.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 05, 2019
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