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

+ **W.P.(C) 9042/2019 & C.M. APPL. No. 37312/2019 (stay)**

ATUL BHARDWAJ

..... Petitioner

Through: Mr. Rajesh Srivastava, Advocate

versus

THE REGISTRAR, COOPERATIVE SOCIETY, DELHI
AND ANR.

..... Respondents

Through: Mr. S. K. Tripathi, ASC (GNCTD)
with Mr. Arpit Bisht and Mr. Shashank Tiwari,
Advocates for Respondent No. 1

Mr. R. D. Sharma and Mr. Rajat Sharma,
Advocates for Respondent No. 2

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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30.10.2019

1. The present petition challenges an order dated 25th July, 2019 passed by the Financial Commissioner ('FC') in Revision Petition No. 192/2019.

2. The facts in brief are that there were elections held to the Respondent No. 2 Delhi Nagrik Sehkari Bank Ltd. ('Bank') on 3rd December, 2017 pursuant to an order dated 28th August, 2017 passed by this Court in W.P.(C) No. 4432/2017. Arising out of the said election, a dispute was raised under Section 70 of the Delhi Cooperative Societies Act, 2003 ('DCS Act') which resulted in an Award dated 4th March, 2019 being passed by the Arbitrator. The challenge by the Plaintiffs in the arbitration proceedings was to the election results declared on 11th December, 2017. The learned Arbitrator

upheld the challenge, holding the elections to have been held in violation of the applicable rules.

3. Consequent upon the aforementioned Award, an order was passed by the Registrar of Cooperative Societies ('RCS') (Respondent No. 1) on 7th March, 2019 appointing an Administrator under Section 138 of the DCS Act. The Administrator is stated to have taken charge on 8th March, 2019.

4. One of the Directors of the Bank filed an appeal before the Delhi Cooperative Tribunal ('Tribunal') challenging the Award dated 4th March, 2019. By an order dated 11th March, 2019, the Tribunal stayed the operation of the Award on the basis that the Administrator had not yet taken charge of the Bank.

5. As far as the present Petitioner is concerned, on 4th April, 2019, the Bank issued him a letter informing him that he was no longer a Vice Chairman on the Bank's board in view of his handing over charge to the Administrator. The Petitioner along with three other Directors addressed a complaint on 15th April, 2019 to the RCS for directions to the Bank to withdraw the letter dated 4th April, 2019 and initiate disciplinary proceedings against its Chief Executive Officer ('CEO').

6. Meanwhile, on 8th May, 2019, the Tribunal set aside the order dated 7th March, 2019 of the RCS pursuant to the Award dated 4th March, 2019 on the basis that the Board of Directors and Managing Committee of the Bank continued to retain all the powers which they could exercise under the DCS

Act, and the Rules and Bye-laws thereunder. According to the Tribunal, as a result of this, the aforementioned orders of the RCS would cease to operate.

7. On 21st June, 2019, the RCS issued an order stating that the letter dated 4th April, 2019 addressed to the present Petitioner by the Bank would be kept in abeyance. This order of the RCS was challenged by the Bank by filing Revision Petition No. 192/2019 before the FC.

8. Admittedly, the present Petitioner was not made a party in the said case. On 25th July, 2019, the FC passed an order staying the operation of the order dated 21st June, 2019 of the RCS by fixing the matter for further hearing on 16th August, 2019.

9. In the present petition, on 27th August, 2019, while directing notice to issue to the Respondents, this Court directed that any action taken in the meanwhile by the Bank would be subject to the outcome of the present petition.

10. Pursuant to the notice issued, both the RCS as well as the Bank have filed their respective replies. The admitted position is that in the Revision Petition filed by the Bank before the FC, the present Petitioner was not made a party. This is strange considering that the order challenged before the FC was an order passed by the RCS on 21st June, 2019 in the proceedings initiated by the present Petitioner aggrieved by the letter dated 4th April, 2019 issued to him by the Bank. Clearly therefore, the Petitioner was both a

necessary and proper party in Revision Petition No. 192/2019 filed by the Bank before the FC. There is no valid explanation forthcoming from the Bank for its failure to make the Petitioner a party.

11. On this short ground, the Court is of the view that the FC could not have passed the impugned order without ensuring that the Petitioner had been made a party to the Revision Petition No. 192/2019 and without giving the Petitioner an opportunity of being heard even as regards the interim relief that the bank was seeking against the order dated 21st June, 2019 of the RCS.

12. In that view of the matter, the impugned order dated 25th July, 2019 passed by the FC is hereby set aside and the matter i.e. Revision Petition No. 192/2019 is now directed to be heard on 1st November, 2019, the date already fixed by the FC, on which date the Petitioner here will appear before the FC.

13. Learned counsel for the Bank undertakes that on 1st November, 2019 he will keep ready the amended memo of parties impleading the present Petitioner as Respondent No.2 in Revision Petition No. 192/2019, which amended memo will be taken on record by the FC. The Court in any event directs that the present Petitioner will stand impleaded in Revision Petition No. 192/2019 as Respondent No. 2. The FC will give a reasonable time to the Petitioner to file his reply in the said Revision Petition as well as any application for interim relief that may be filed in the said Revision Petition by the Bank. After hearing the parties including the Petitioner, the FC will

pass a fresh order on merits.

14. If there is any application for interim relief during the pendency of the said Revision Petition, it will be open to the FC to deal with such interim application on its merits.

15. The Court clarifies that this Court has not expressed any opinion on the merits of the contentions of the parties.

16. The petition is disposed of. The pending application is disposed of.

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

S.MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 30, 2019

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