

#S-14

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 31.10.2022

W.P.(C) 13699/2019

**DELHI TELEPHONES CO-OPERATIVE GROUP HOUSING
SOCIETY LTD. (REGD.)** Petitioner

versus

THE REGISTRAR, CO-OPERATIVE SOCIETIES

.....Respondent

Advocates who appeared in this case:

For the petitioner : Mr. Lalit Kumar, Advocate with Mr. D.C. Sharma,
Secretary.

For the respondent : Mr. Santosh Kumar Tripathi, Standing Counsel
(Civil), GNCTD with Mr. Arun Panwar, Mr.
Pradeep, Ms. Mahak Rankawat and Mr. Pradyuman
Roy, Advocates.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE AMIT SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The present writ petition has its genesis in a proceeding initiated by the Registrar of Co-operative Societies, the respondent *herein*, against the Delhi Telephones Co-operative Group Housing Society Limited (Regd.) (hereinafter “petitioner Society”), under the provision of Section 96 of the Delhi Co-operative Societies Act, 2003, on the premise that the latter had not been carrying out its functions in terms of the stipulations of the said Act, and had remained non-functional between the years 1990 to 2004.

2. The facts as are necessary for the adjudication of the present proceeding are adumbrated as follows:

- i. A show cause notice bearing no. F.No. 47/1222/GH/Coop/2015/545-546 dated 06.02.2015 was issued to the petitioner Society, requiring it to show cause, why action within the meaning of Section 96 (1) of the said Act, be not taken against the former.
- ii. Since the petitioner society failed to reply to the aforesaid notice under Section 96 (1) of the said Act, notice under Section 96 (2) of the said Act was issued to the petitioner Society, by the Registrar. Finding the response to the aforesaid notice being not satisfactory, the Registrar issued a final notice under Section 96 (2) (iii) of the said Act, by way of publication, on 05.09.2007. Subsequent upon granting an opportunity to the petitioner Society to respond to the show cause notice, the Registrar *vide* its order dated 29.06.2015, observed as follows:

“ In order to decide the proceedings under Section 96 of DCS Act, 2003, it is necessary to have the factual back ground of the society. The facts of the case are that the society was registered under the DCS Act, 1972 in the year 1983 having its-registered office at Telephone Exchange, Kidwai Bhawan, Janpath, Room No. 103, New Delhi-110001. As per records of the office, in the year 1988, the society started making defaults in carrying out its functions as per the DCS Act and Rules as it failed to get its elections held in time and thus a requisition dated 21.6.1990 was sent to it by this Office to get the elections conducted, which were due in the year 1988. But no communication was made by the society with this office in this regard. Accordingly, the society was issued a show cause notice under Section 30(2) of DCS Act, 1972. It was only after issuance of show cause notice that the society came forward and submitted a reply that the elections were held on 20.12.1990.

The record further shows that in the year 1991 the society intimated this office that it had changed its office from Kidwai Bhawan to IX, 3967, Ajit Nagar, Gali No 15, Gandhi Nagar; Delhi, but there is no record of any resolution being passed by the GBM of the society for change of address having been submitted by the society with this office. Accordingly, the society was called upon to submit its relevant records but the society failed to submit any record in this regard despite service of the letter to it. The record further indicates that in the year 1993, a letter was received from the society intimating about the list of Managing Committee members as on 26.2.1993. Since the society did not submit the required documents, it was called upon to submit the records of nomination forms, GBM proceedings dated 26.2.1993 and list of Managing Committee members since the date of registration of the society. However no record was submitted by the society. Rather, a complaint was received from one Sh. S.M. Ahid, a member of Committee against the Managing Committee. Accordingly, the society was called upon to submit its record for verification. But again no record was submitted and the society went into doldrums as no communication was made to this office till 2006, with regard to MC meeting, AGM, GBM and Audit etc.

In the year 2005, the new Act came into force. Since the society was not functional, therefore, a Show Cause Notice dated 28.08.2006 u/s 96(1) of DCS Act, 2003 was issued to the society at its registered address i.e. Telephone Exchange Kidwai Bhawan, Janpath, Room No. 103, New Delhi-110001 vide office letter no. F.1069, which was received back undelivered. A letter was received from the society in month of September 2006 with request to update the records of change of address to Dilshad Colony, Delhi but again no GBM resolution was submitted by the society showing the members have taken a collective decision to change address of society to new address. Since the society failed to submit its reply to notice U/s Section 96(1), therefore, notice under Section 96 (2) of DCS Act, 2003 was issued to society by this office. In response to the said notice the society submitted a vague reply dated 10.11.2006 stating that it had carried out its functions properly and that it had submitted the records from time to time to AR(Central). It was at that time that the society submitted the alleged election agenda for the year 2001,

2004 and 2005 and the alleged UPC receipts. Since the reply of the society dated 10.11.2006 in response to the notice was not found to be satisfactory, a final notice under section 96 (2) (iii) of DCS Act, 2003 was issued by way of public notice in the leading newspaper i.e. Indian Express on 05.09.2007.

Before further action could be taken against the society by this Office, it filed a Revision Petition in the Court of Financial Commissioner against the proceedings under Section 96 of DCS Act, 2003 and the Hon'ble Financial Commissioner disposed of the said petition vide its order dated 19.10.2010 with directions to carefully consider the evidence produced by the society and take a reasoned view. Pursuance to the orders of the FC, the society requested for appointment of R.O instead of getting the proceedings under Section 96 disposed of. The matter was again examined and it was opined that the society had stated nothing about its functioning prior to 2005. The matter was further being elaborated upon in this office as the societies scam surfaced wherein defunct societies were being got revived on basis of false documents.

Before a reasoned order could be passed, the society again approached the Hon'ble Financial Commissioner and the revision petition was disposed of vide order dated 20.3.2014 with directions to reconcile the records in expeditious manner and pass a final well reasoned Order as per law.

Pursuant to the directions of the Hon'ble financial Commissioner, the society was given an opportunity of hearing by calling upon it vide notice dated 6.2.2015. In response to the said notice, the society submitted its reply dated 7.4.2015. In its reply the society stated that it was submitting its records to Central Zone from the changed address and it not known how the notice was issued at the old address. It further stated that from the website of the RCS office, it came to its knowledge that the society is placed under South Zone and it accordingly made communication to the said zone regarding holding of election in 2004. It further stated that on discussions with the concerned Assistant Registrar, the society again submitted copy of GBM/Election of the year 2004 and 2005. The society further submitted that the Audit of the society was approved on 17th Feb 2005 and Audit has been conducted by the society. With respect of election, the

society had submitted, that the elections had been held regularly, GBM is being carried out regularly and Annual Returns are also being filed regularly. It further stated that the original records of election, Audit and AGBM were duly verified by Assistant Registrar and found in order. The society further submitted that central zone confirmed receipt of letter in the year 2005 regarding election of society and this proves that society is functional.

The society vide its reply dated 07.04.2015 has informed "that the address of the society was changed to IX/3967, Ajit Nagar, Gali No. 15, Gandhi Nagar, Delhi and the society has exchanged communication from the said address. Subsequently the address of the society was changed to G-17, First Floor, Dilshad Colony, Delhi-110095 and the same was informed to The Registrar Cooperative Societies vide letter dated 14.08.2014 of the society. It was further informed to The Registrar Cooperative Societies on its requisition by way of publication dated 17.11.2014 in the news paper, vide the society letter dated 25.11.2014 and the Registrar Cooperative Societies exchanged communication with the society at this address also. Now, the present address of the society is Shop. No. 8, First Floor, Block-B. Central Market, Dilshad Garden, Delhi-110095 which is ongoing and continuing, unless change and informed. The same has been informed to the Registrar Cooperative Societies vide letter dated 20.01.2008 and the communication is presently exchanged from this address". Sd. President & Secretary.

I have carefully gone through the records maintained by the office, report of the Assistant Registrar (Section-2) & (Audit) and the reply filed by the society. It is an admitted fact that the society failed to produce any record with regard to the change of address from its original registered office. No record of the decision taken by the GBM to change the address from the registered one to a new place was brought on record by the society. The society is a body corporate and any change in the registered office has to be through a collective decision of the general body of the society, but no such decision was placed by the society on record of the case. Even if decision was taken by the MC, its intimation to the members of society has also not been placed on record. It is also an admitted fact that there is no communication made by society to this office after 1993 till 2006, when the show

cause notice under Section 96 was issued to it. In response to notice u/s 96 (1) no reply was filed and in response to 96(2), a vague reply was filed, which was not found satisfactory as the society is silent about its functioning from the year 1993 till 2005. Though the society is claiming that it carried out the functions as per the Act by holding elections, AGBM, Audit regularly, however the records speaks contrary to what the society is claiming as nothing has been placed on record in respect of the elections/Audit/AGBM to have been held regularly. Even upon being called to submit the record of the AGBM and election record, the society remained silent. However, Assistant Registrar (Section-2) has submitted a report that the request of the society for change of address vide letters dated 31.05.1991, 14.08.2004 and 25.11.2014 have been taken on record, but inadvertently the notices were sent at old address. However, ARCS failed to produce any documentary evidence having .being filed by the society in support of their claim. Even the reply of the society dated 07.04.2015 is contradictory.

While deciding the present proceedings, the status of the society at the time of issuance of the notice under Section 96 of DCS Act, 2003 and the documentary evidence of the relevant period have to be seen. As per records no communication is on the records of this office. Whatever communication was made by the society, the same was accordingly dealt by the concerned zone at the relevant time. The election procedure under DCS Act, 1972 is dealt under Section 31, which lays down that the elections of the committee shall be get conducted through returning officer appointed by the Government i.e. Hon'ble Lt. Governor. It further lays that the term of the Managing Committee shall be three years. In the present case neither the election has been held by R.O appointed by the Govt. nor has any election record been produced by the society. Moreover, the status of election as shown by society itself speaks that the same was not in accordance with the provisions of Section 31. Further, Section 53 of DCS Act. 1972 requires that the Audit is to be got done at least once in each year but in this case audit for the period 1990 till 2004 was conducted in one go. This indicates that the society was not functional from 1990 to 2004 as it was not carrying out any business The society submits that the records were submitted to Central Zone from time to time but the records of this Office speaks to the contrary as the society has

failed to produce any single document that was submitted by it to the office of RCS after than change of address. Vague assertions have no meaning in the eyes of law , it must be produced and proved. The society is also required to submit Annual returns every year after conduct of audit which it has failed to submit. The language of Section 96 is very clear and it lays down that where a society has not got its business conducted for two consecutive years, then the society is liable to be wound up. The non conduct of the business by the present society is clearly established by the records of the case and the documents produced before the undersigned.

In my considered opinion, the society did not carry out its functions as per DGS Act and Rules and remained non-functional from 1990 to 2004 and therefore the initiation of the proceedings under Section 96 of DCS Act, 2003 is held to be valid. The society is hereby ordered to be wound up under the provisions of the DCS Act 2003 and DCS Rules 2007. ”

- iii. Aggrieved by the said order dated 29.06.2015, passed by the Registrar of Co-operative Societies, the respondent *herein*, the petitioner Society instituted an appeal under the provisions of Section 112 of the said Act, before the court of the Financial Commissioner, Delhi.
- iv. It was the case of the petitioner Society before the Financial Commissioner, that they approached the Financial Commissioner, in the first instance, in the year 2007, against a publication dated 05.09.2007, whereby it had been held by the Registrar of Co-operative Societies, that they were not functioning in accordance with the mandate of the provisions of the said Act, and that the Financial Commissioner had, on that occasion remanded the matter back, to the Registrar of Co-operative Societies, for determination of the issue afresh, subsequent upon the issuance of the fresh show cause notice, and after affording an opportunity of

personal hearing to the petitioner Society.

- v. It was also urged on behalf of the petitioner Society, that the order rendered by the Registrar of Co-operative Societies was manifest with non-application of mind, in as much as, there was no material to show, that the petitioner Society had started making defaults in carrying out its functions, in terms of the provisions of the said Act, before the Registrar of Co-operative Societies. By way of an explanation, it was asseverated on behalf of the petitioner Society, that they had shifted their place of business thrice, since their initial registration, and that therefore, the complete relevant record was not available with them.
- vi. In this behalf, the petitioner Society further urged, that although there was no relevant record available with them, there was no delay or default on their part, in the conduct of elections. It was also urged, that no complaint had ever been received by the official respondent *qua* the delay or default in the conduct of elections by the petitioner Society. It was lastly urged on behalf of the petitioner Society that in the year 1991, they had intimated the official respondent, regarding the change of its office from Kidwai Bhawan to IX, 3967, Ajit Nagar, Gali No. 15, Gandhi Nagar, Delhi, which establishes unquestionably, that they had been relocating their place of business from time to time under intimation to the official respondent. The above submissions made on behalf of the petitioner Society, in their view, were by themselves sufficient to demonstrate, that the anomalies pointed out by the Registrar of Co-operative Societies, *qua* their not being operational between the subject years, were just that and could not result in the consequence of their being proceeded against, under

the provisions of Section 96 of the said Act. It was also urged, that the petitioner Society could not be burdened or held responsible for maintenance of the relevant record.

vii. On behalf of the official respondent, it has been maintained throughout, that the proceedings initiated on behalf of the petitioner Society, are incompetent and not maintainable, owing to the circumstance that there was no authorization in favour of any individual by the Managing Committee of the petitioner Society, to prosecute any proceeding, on the former's behalf. It has also been the case of the official respondent, that intimation of change of address of the registered office of the petitioner Society does not come to the aid of the latter, since they came to life, after a long lull, only upon the issuance of the subject show cause notice. The official respondent also asseverated, that no election to the petitioner Society was demonstrated to have been conducted since the year 1988; that the change of address of the petitioner Society being preferred as an explanation for the reason, why there was no record of the functioning of the petitioner Society, could not have been done without the convening of a General Body Meeting, which material is conspicuous by its absence. It was further pointed out that there was no communication addressed by the petitioner Society to the Registrar of Co-operative Societies, as required by law, from the year 1993 till the year 2006.

viii. The Financial Commissioner, having considered the respective stands on behalf of the parties, as afore-stated, held as follows:

"I have considered all the facts, documents on record and heard both the parties at length. I find that in the year 1991 the society intimated the office of Registrar Cooperative Societies that it had changed its office from Kidwai Bhawan to Ajit Nagar, Delhi but there is no record of any resolution being passed by the General

Body Meeting of the society having been submitted by the society with the office of RCS. Change of address is a major decision and a major decision in a society has to be taken in the GBM. Society stated that the place of business of the society has been shifted thrice since its registration and further itself admitted that the complete relevant record thereof is not available with the society. I have further perused the documents placed by the Society on record. The alleged communication from the Society to the office of the Registrar clearly indicates that the conduct of elections was not as per the DCS Act and Rules. Section 31 deals with the conduct of election in the Society. Section 31(1) stipulates that the election of the society shall be conducted by the Returning Officer not below the rank of Gazetted Officer as may be appointed by the Lt. Governor in this behalf. In this case no such Returning Officer was appointed and the conduct of elections is also doubtful. A perusal of the various documents that were submitted by the society allegedly addressed to the Assistant Registrar (Cooperative Housing Societies), shows there was no receipt from the office of the RCS. Even if the society were to submit the documents which shows a valid receipt, the fact that elections were not conducted as per provisions of the Delhi Cooperative Societies Act, 1972 would render them void ab initio.

Regarding Audit of the society, the additional documents that the society has placed on record regarding audit of the society is in the year 2004 after the show cause notice to the society was taken out in the newspapers. A copy of the documents placed on record shows that audit was alleged to be conducted from the year 1990-91 to 2003-04 at one go which is against the provisions of the Delhi Cooperative Societies Act, 1972. I am in consonance with the views of the RCS that this proves that the society was not functioned from the year 1991 to 2004. I see no reason to interfere with the order of the RCS.”

3. Mr. Lalit Kumar, learned counsel appearing on behalf of the petitioner Society has invited our attention to internal file notings, from the record of the Registrar of Co-operative Societies, to urge that the concurrent finding of fact arrived at, by the statutory authority, on the face of it, demonstrate non-application of mind.

4. At this juncture, on a specific query from the Bench, Mr. D.C. Sharma, who has instituted the present petition, on behalf of the petitioner Society, states that he was elected as Member of the

Executive body in the year 1994 and as Secretary, in the year 2004. However, there is no material on the record to show that he has ever been re-elected to the Managing Committee, beyond the year 2004. In the absence of the same, the petitioner Society, being a corporate body, could not have initiated proceedings through Mr. D.C. Sharma, as there was no Managing Committee existing, authorizing him to initiate proceedings, on behalf of the petitioner Society.

5. Mr. Lalit Kumar has reiterated the arguments canvassed on behalf of the petitioner Society before the Financial Commissioner, to urge that the impugned order dated 31.01.2019 deserves to be set aside and quashed, and the petitioner Society ought to be permitted to continue with its business.

6. We however, find ourselves unable to agree with the contentions raised by the petitioner Society.

7. As observed by the Financial Commissioner in the impugned order, that barring the communication address to the Registrar of Co-operative Societies in the year 1991, intimating the latter of the change in its official address from Kidwai Bhawan to IX, 3967, Ajit Nagar, Gali No. 15, Gandhi Nagar, Delhi; which communication to, is not substantiated by any record of any resolution, having been passed at a duly-held General Body Meeting of the said Society; there is no other material on the record to show that the petitioner Society remained functional for the subject period, preceding the issuance of the show cause notice, in terms of the provisions of Section 96 of the said Act. The Financial Commissioner also was of the view, and in our consideration correctly, that in the absence of a complete relevant record, the petitioner Society was unable to establish that any activity, much less the compliances required within the meaning of the

provisions of the said Act, had taken place in the petitioner Society. The Financial Commissioner further came to a conclusion that the purported communication from the petitioner Society to the office of the Registrar itself clearly communicates, that the conduct of the elections was not in compliance with the mandate of the said Act; for the reason that it had not been conducted by a Returning Officer of the required rank, appointed by the Lieutenant Governor, in this behalf.

8. Further, even a perusal of the scanty documents submitted by the petitioner Society, purportedly addressed to the Assistant Registrar (Co-operative Housing Societies) belies the claim of the petitioner Society in as much as, it does not bear any endorsement of receipt from the official respondent. Lastly, the Financial Commissioner came to a finding, that the audit conducted was only in the year 2004, subsequent upon the publication of the subject show cause notice, in the newspapers, and had evidently been undertaken in one go, for the years 1990-1991 to 2003-2004, which in itself is in gross violation of the provisions of the said Act. It is in this view of the matter that the Financial Commissioner dismissed the appeal instituted on behalf of the petitioner Society, and upheld the order passed by the Registrar of Co-operative Societies, ordering the winding up of the latter.

9. Having heard learned counsel appearing on behalf of the parties, and in particular, the inability of the petitioner Society, in inviting our attention to any relevant material to establish its continued existence, in the subject years, we find ourselves in agreement with the concurrent findings of the authorities below, to the effect that the petitioner Society axiomatically remained non-functional and dormant between the years 1991-2004, and were directed to be wound-up, as a legal consequence thereof.

10. In view of the foregoing, the present writ petition is devoid of merit, and is accordingly dismissed. Pending application, if any, also stands disposed of.

11. No order as to cost.

**SIDDHARTH MRIDUL
(JUDGE)**

**AMIT SHARMA
(JUDGE)**

OCTOBER 31, 2022/at

[Click here to check corrigendum, if any](#)

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