



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

% Date of decision: August 4, 2023

+ W.P.(C) 10287/2023, CM APPL. 39829/2023

THE DELHI STATE COOPERATIVE BANK LTD AND ANR

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Rajesh Srivastava, Mr. Manan
Takkar and Mr. Gaurav Verma, Advs.

versus

REGISTRAR COOPERATIVE SOCIETIES AND ANR

..... Respondent

Through: Mr. Udit Malik, ASC for GNCTD
with Mr. Surinder Narang, AR

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 39829/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10287/2023

1. This writ petition has been filed by the petitioner Bank along with Dr. Brijender Singh with the following prayers:

"It is therefore most respectfully prayed that this Hon'ble Court be pleased to:-

a. Quash the letters dated 05.07.2023, Annexure-HH, 17.07.2023 Annexure-KK and 21.06.2023 Annexure-LL.



- b. Direct the Returning Officer respondent no. 2 to hold the election of the Petitioner No. 1/Bank - Delhi State Cooperative Bank Ltd. immediately.*
- c. Appoint an observer to oversee/supervise the election.*
- d. Appoint a Joint Registrar or any other officer to hold the election of the bank.*
- e. Pass such other and further orders as this Hon'ble Court may deem fit proper in the facts and circumstances of this case."*

2. We have heard the learned counsel for the parties. The issue which has been narrowed down is with regard to preparation of electoral list for holding election to the Management Committee of the petitioner No.1 / Bank. We may note here that the order to hold election was passed by this Court in W.P.(C) 1072/2023 on February 28, 2023 and on April 27, 2023, respectively. Both the orders read as under:

"CM APPL. 9721/2023

This is an interlocutory Application preferred under Section 151 of the CPC.

The facts of the case reveal that the term of the Petitioner Society was valid up to 04.02.2023 and the Society started requesting the authorities to hold elections, way back in October 2022.

The aforesaid fact is not disputed. The request made on 17.10.2022, was followed by various reminders and finally Returning Officer was appointed in the matter to hold the elections. As the term was valid up to 04.02.2023, the request was accepted by the Respondents and Returning Officer was appointed on 02.02.2023 and for reasons best known, the Returning Officer resigned on 24.02.2023.

In the present Application, the Petitioners have made a prayer for issuance of directions to Respondents to



immediately appoint a new Returning Officer so that the process of election is concluded. The Prayer is certainly a genuine prayer, therefore, the Respondents are directed to appoint a new Returning Officer positively within one week.

Learned Sr. Counsel for the Petitioner has drawn the attention of this Court towards a judgement delivered in the case of Jamia Cooperative Bank Ltd. Vs. Govt. of NCT and Anr. in W.P.(C) No. 12817/2019 and Paragraphs 19 and 20 of the aforesaid judgement reads as under:

“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 for the day-today 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.”

Keeping in view the aforesaid judgement, as the Society in question has certainly made efforts for holding the elections before expiry of the term and as assured by Learned Government Advocate that Returning Officer shall be appointed within one week. The Managing Committee of the Society will continue as a caretaker till the elections are concluded, however, they will not take any policy decision.

With the aforesaid the present Application stands disposed of.

W.P.(C) 1072/2023

List on 27.04.2023.

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xxx

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1. The present petition under Article 226 of the Constitution of India has been filed with the following prayers:

“a. Direct respondent to appoint returning officer for conducting election of petitioner bank in accordance with the DCS Act and DCS Rules and to grant any other consequential relief.

b. allow the present board of the petitioner/bank to continue till election are held.

c. Call for record of case.”

2. At the outset, it has been brought to the notice of this Court that vide Order dated 07.03.2023 passed by the Office of the Registrar Co-operative Societies, a Returning Officer has been appointed for conducting the election of the Managing Committee of the Bank in accordance with the DCS Act, 2003 and Rules framed



thereunder i.e., DCS Rules, 2007. The Order dated 07.03.2023 reads as under:

“F.No.AR/(BKG)/107661513/RCS/2021/141

Dated 07.03.2023.

ORDER

Whereas, the Delhi State Cooperative Bank Ltd. (hereinafter referred as Bank) 31, Netaji Subash Marg, Daryganj. New Delhi 110002, is registered at SI. No. 1921, with this department under the provisions of DCS Act 2003 and DCS Rules 2007 and bye-laws of the Bank framed thereunder.

And whereas the last election of the Management Committee of the Bank were held on 05.02.2020 for a period of 3 years. As the term of the existing Managing Committee of the Bank has expired on 04/02/2023, the Secretary (Cooperation), GNCT of Delhi, appointed Sh. Ajay Arora (DANICS), SDM (Delhi Cantt), as Returning Officer u/s 35(1) of Delhi Co-operative Societies Act, 2003 vide this office order dated 02.02.2023 for holding the election of the Managing Committee of the aforesaid bank, as per the DCS Act, 2003 and Rules framed there under i.e. DCS Rules, 2007 and registered bye-laws of the said bank.

Sh. Ajay Arora SDM (Delhi Cantt) vide his letter dated 23.02.2023 has resigned from the post of Returning Officer of Bank citing administrative preoccupations. The Hon'ble High Court of Delhi vide order dated 28.02.2023 in W.P. (C) No. 1072/2023 titled Delhi State Cooperative Bank Ltd. vs RCS has directed to appoint Returning Officer (RO) within one week and Managing Committee of the society will continue as a caretaker till the elections are concluded.

Therefore, in exercise of the powers vested us 35 (I) of the DCS Act, 2003, the Secretary (Cooperation), GNCT of Delhi, is pleased to appoint Sh. Vijay Singh Malik, Adhoc



DANICS/Dy. Director (Vigilance) Dept. of Education as Returning Officer u/s 35(1) of Delhi Co-operative Societies Act, 2003 after resignation of Sh. Ajay Arora SDM (Delhi Cantt), for holding the election of the Managing Committee of the aforesaid bank, within 90 days, as per the provision of the DCS Act, 2003 and Rules framed there under i.e. DCS Rules, 2007 and registered bye-laws of the said bank.

The expenditure incurred on the conduct of the elections shall be met out from the funds of the Bank

The Caretaker Managing Committee of the Bank is directed to furnish the relevant documents etc. to the Returning Officer, within the specified period as mentioned scheduled -II of DCS Rules 2007.

The Bank shall pay Rs. 10,000/-(Rs. Ten Thousand only) per month as honorarium to the Returning Officer for conducting the election of the Managing Committee of the Bank.

This issues with the prior approval of the Competent Authority.

SD/-

ASSISTANT REGISTRAR (BKG)''

3. In light of the aforesaid Order dated 07.03.2023 passed by the Office of the Registrar Co-operative Societies, no further Orders are required to be passed in the present petition. However, the Returning Officer is directed to conclude the process of election as expeditiously as possible, preferably within a period of four (4) months from today.

4. The Order dated 28.02.2023 passed by this Court shall continue to operate till a new Managing Committee comes into place on account of election conducted by the Returning Officer.



5. In view of the above, the present petition is disposed of, along with pending application(s), if any.”

3. The submission of Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the petitioners is that an issue of inclusion of all the members more particularly 1650 had been raised by the Registrar of Cooperative Societies. According to him, the petitioners have already consented that they (1650 members) may be included as members in the electoral list. So, in that sense, according to him, the electoral list is complete for holding the elections.

4. Mr. Udit Malik, learned Additional Standing Counsel appearing for respondents would submit that with regard to 690 members out of 1650 members, the complete particulars are not available/depicted, which shall mean that the communication with regard to conduct of elections cannot be sent to such members and in that sense, the elections cannot be held in a transparent, fair and democratic manner.

5. He submits that as per his instructions, the RCS or his Nominee, Returning Officer and the representative of the petitioner No.1 / Bank can sit together and collate all information available with the RCS and the Bank and prepare electoral list complete in all respects including the address of communication of the members in terms of the DCS Act.

6. This suggestion of Mr. Malik is agreeable to Mr. Nandrajog subject to the minutes of the meeting as and when held are recorded by the above functionary / nominee /



representative together. Mr. Malik is agreeable to the said suggestion.

7. Mr. Nandrajog and Mr. Malik state that this exercise shall be carried out within a period of three weeks as an outer limit.

8. Taking their submissions on record, this petition is disposed of by directing that the RCS or his nominee along with Returning Officer and the representative of the petitioner No.1 / Bank, to prepare the electoral list complete in all respects including address of communication on the basis of the information available with the Bank / RCS, within three weeks and thereafter, proceed in accordance with law.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

AUGUST 04, 2023/aky