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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: November 17, 2023

+ W.P.(C) 14654/2023

D D JOSHI

..... Petitioner

Through: Mr. Mayank Joshi, Advocate with
Petitioner-in-person.

versus

THE REGISTRAR COOPERATIVE SOCIETIES

AND ORS.

..... Respondents

Through: Mr. Avishkar Singhvi, Mr. Vivek Kr. Singh, Mr. Naved Ahmed, Advocates and Mr. Rahul Fullia, ASO for R-1. Mr. Rajiv Vig and Mr. Manoj Taneja, Advocates for R-2 to R-4 & R-6. Mr. Satyam Pandey, Ms. Purnima Jain, Mr. Raghvendra Upadhyay, Mr. Vaibhav Tripathi and Mr. Kisalaya Shakya, Advocates for R-5 and R-7 to R-10. Mr. Nipun Manocha, Advocate for R-14.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this writ petition is to an order dated November 03, 2023 passed by the Delhi Cooperative Tribunal ('Tribunal', in short) in Appeal No. 158/2023, whereby the Tribunal has set aside the order of the RCS dated October 19, 2023, holding as under:-



“It is well settled that once an election process has commenced it is the Returning Officer who alone is competent to take all the decisions regarding eligibility of the candidates.

In the case on hand, although the Ld. RCS has decided representation under a statutory provision and under the directions of the Hon'ble High Court we agree with the Ld. Counsel for the Appellant that since the election process had already commenced, he should have forwarded the representations to the Returning Officer to take his own decision in the same.

One more aspect of the matter is that if the Returning Officer had taken such a decision, the Appellants could challenge the same in a election petition after the election was over u/s 70 of the DCS Act. However, an order passed by the RCS himself is not liable to be challenged before an Arbitrator. The impugned order therefore also curtails the future right of the Appellants to challenge the election.

We also find force in the arguments of the Ld. Counsel that with regard to the provision of Rule 54(k) which lays down conditions for disqualifications for becoming a member of the Managing Committee. Sub Clause k reads as under:

"Proceedings against him had been initiated for violation of Section 31 and/or Section 60 of the Act, u/s 111 of the DCS Act."

The representations made to the Registrar by the concerned member of the society were relating to non-calling of AGM in time, as provided u/s 31 and non-completion of audit within the statutory limits provided u/s 60 of the DCS Act. However, as per Sec 60(6) on failure of the Managing Committee to get the audit conducted, the Registrar is empowered to get the same conducted and charge the fee against the delinquent officers, which is recoverable as arrears of land revenue as provided u/s 111.

In view of the above Rule 54(k) does give an impression that a member of the committee who is alleged in violation of Sec



60 of the Act can be disqualified only if proceedings u/s 111 have been initiated against him. It is clear that no such proceedings have yet been initiated and there appears to be no scope for such proceedings since the audit is stated to have been conducted, though not within the statutory time.

For the above reasons we find the impugned order dated 19.01.2023 passed by the Ld. Assistant Registrar unsustainable and the same is here by set aside.

The Appeal stands allowed.”

2. We have heard learned counsel for the parties at length. The issue raised by the petitioner is primarily with regard to the disqualification of the members of the outgoing Managing Committee of respondent No. 2, Co-operative Group, to contest the elections on the ground that they have not held the AGMs as well as not completed the audit process in time. However, the same has been contested by the counsel appearing for respondent Nos. 2 to 13.

3. We have also been informed that elections for the Managing Committee of respondent No. 2 have been notified for November 19, 2023, which is proposed to be conducted by a Returning Officer, who has been appointed by the Managing Committee of respondent No. 2.

4. Mr. Mayank Joshi, learned counsel appearing on behalf of the petitioner has certain reservations with regard to the Returning Officer being appointed by respondent No. 2, on the ground that he is the tenant of an outgoing member of the Managing Committee. He states that he has no objection if the elections are held on November 19, 2023, subject to the condition that a new Returning Officer is appointed by the RCS, who shall consider the objections raised by the petitioner with regard to the eligibility



of the members of the outgoing Managing Committee to contest the elections which is to be held on November 19, 2023.

5. On the other hand, counsel appearing for respondent Nos. 2 to 13 would dispute the submissions made by Mr. Joshi and state that merely because the Returning Officer appointed by the Managing Committee of respondent No. 2 is the tenant of an outgoing member, who is also not contesting the elections, his bona fides cannot be doubted and more so, when there is no disqualification with regard to his appointment as a Returning Officer.

6. We have considered the submissions made by Mr. Joshi as well as counsel for respondent Nos. 2 to 13 and we are of the view, in the facts of this case, as the process of elections has already been initiated with the issuance of Notice dated November 03, 2023, it must be taken to its logical end by allowing the elections to be held on November 19, 2023 with the condition that RCS shall appoint a Returning Officer, who shall take over the process of the elections and also consider the objections raised by the petitioner with regard to disqualification of any member of the outgoing Managing Committee, who intends to contest the elections to be held on November 19, 2023, and decide the same in accordance with law. Suffice to reiterate that the Returning Officer shall hold the elections as originally scheduled for, i.e., on November 19, 2023.

7. The decision of the Returning Officer shall be un-influenced by the order dated November 03, 2023, passed by the Tribunal as well as the order dated October 19, 2023, passed by the RCS.



8. With the above directions, the petition is disposed of. The RCS shall appoint a Returning Officer during the course of the day.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 17, 2023/R