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

+ **W.P.(C) 48/2024**

BS RAJESH AGRAJIT

..... Petitioner

Through: Mr. Shyamal Kumar with Mr. Sunil Tomer, Mr. Padmesh Mishra, Ms. Mukta Sharma, Ms. Priya Nagar, Mr. Siddharth Goswami, Mr. Vaibhav Vats, Mr. Aakash Sharma and Mr. Lokesh Verma, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Manisha Agrawal Narain, CGSC with Ms. Shivangi Gumber, Advocates and Mr. Vinay Kumar Jindal, ARO for R-1 to 3.
Mr. Nischal Kumar Neeraj and Mr. JNS Tyagi, Advocates for R-4.
Mr. Kusum Lata Das, Advocate for Intervenor (Through VC).

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Date of Decision: 05th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present writ petition has been filed primarily seeking a direction to the Respondent No. 3-Returning Officer to allow only those members of the SCBA Co-operative Society who have cleared/paid their outstanding/dues of annual subscription to cast votes and contest the upcoming elections of the



Society scheduled to be held on 18th January, 2024.

2. Learned counsel for the Petitioner states that as per Rule 15(b) of the Bye-Laws of the SCBA Co-operative Society, “no person shall be eligible for being or continuing as a member of the Society if he has defaulted in payment of any dues including contribution, subscriptions, if any, as may be decided by the Board of the Society from time to time.” He states that vide Circular dated 07th October, 2023, members were directed to make payment of annual subscription for continuation of membership of the Society and for securing voting rights. The Circular dated 07th October, 2023 is reproduced hereinbelow:-

“D.Y. No.140/2023

Dated – 07.10.2023

NOTICE FOR PAYMENT OF ANNUAL SUBSCRIPTION

Respected Member,

This is to inform you that as per board resolution dated 23.09.2005, the annual subscription is Rs.400/- per year to continue your membership and secure your voting right.

Therefore, the members of Supreme Court Bar Association Multi State Co-operative Group Housing Society Ltd. (Regd.) are hereby requested to clear their dues till 31st October, 2023. It is further requested that the subscription will be accepted at the office time from 10:30 am to 05:00 pm except the holidays through account payee cheque/demand draft in favour of Supreme Court Bar Association Multi State Co-operative Group Housing Society Ltd. (Regd.). No other mode of payment is acceptable. The member who wants to enquire about their dues they may approach to the office staff of Supreme Court Bar Association Multi State Co-operative Group Housing Society Ltd. (Regd.) at Room No.17, M.C. Setalvad Block, New Lawyer's Chambers, Bhagwan Das Road, New Delhi-110001.
Or contact at Telephone No.011-23383351.

Sd/-
Umesh Babu Chaurasia
Vice-Chairman
SCBAMSCGHS Ltd.”

(emphasis supplied)



3. Learned counsel for the Petitioner states as per Section 28 of the Multi-State Co-operative Society Act, 2022 (“**MSCS Act**”), “*no member of a multi-state cooperative society shall exercise the rights of a member, unless he has made the payment to the society in respect of membership, or has acquired such interest in the society, as may be specified in the bye-laws.*”

4. He states that the Returning Officer-Respondent No.3 in collusion with the defaulters, accepted the nomination of members who have not paid their subscription dues for last ten years. In this regard, he highlights that out of 47 members of the Supreme Court Bar Association, Multi-State Cooperative Group Housing Society Ltd. who filled in the nomination form for the position of Director of the Society, 22 members have not paid the subscription fee, 2 members were found defective and 1 nomination was rejected as being filed by a non-voter/shareholder.

5. Thus, he contends that the defaulters should not be eligible to contest the elections and cast votes in the upcoming elections of the Society scheduled to be held on 18th January, 2024.

6. Learned counsel for the respondents states that the notice dated 07th October, 2023 is illegal as it is contrary to the Board Resolution dated 23rd September, 2005 passed by the Supreme Court Bar Association, Multi-State Cooperative Group Housing Society Ltd. and as it had been issued by a Vice-Chairman whose term had come to an end. The relevant portion of the Board Resolution dated 23rd September, 2005 passed by the Supreme Court Bar Association, Multi-State Cooperative Group Housing Society Ltd., is reproduced hereinbelow:-



“...All the members of the SCBA MSCGH Society who have paid Rs.1100/- will be entitled to votes even if there is any other dues like Rs.400/- etc. not yet paid.

b. It was pointed out that there are some members who have not paid Rs.400/- towards the annual subscription of the Welfare Society but if they have paid Rs.1100/- they would have a right to vote and contest for the present election. But a decision on their seniority and for future elections is left to be decided by the New Board of Directors to be elected on 19.10.2005.”

(emphasis supplied)

7. In view of the aforesaid Board Resolution dated 23rd September, 2005 it is apparent that the demand of Rs.400 as annual subscription fee by the Vice-Chairman and suspension of voting rights on account of non-payment is not backed by a resolution of the concerned Society.

8. In fact, when the last election of Supreme Court Bar Association, Multi-State Cooperative Group Housing Society Ltd. was held in 2018, Mr.V.Giri, learned senior counsel, who was then the Returning Officer, had rejected the request of certain members to grant voting rights to only those members who had paid subscription fee of Rs.400 on similar ground. The relevant portion of the proceedings dealing with objections leading to publishing of final voters list dated 08th January, 2018 passed by Mr.V.Giri is reproduced hereinbelow:-

“1. At the outset, I will deal with certain objections raised by Mr. Anil Kumar Gupta in his letter dated 15.11.2017, which are as follows:-

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(b) An annual subscription has been paid by every member with the admission fee of the society but thereafter none of the members have paid the annual subscription fee. He has also contended that no new member can be admitted only the purpose of right to vote.”

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“3. As regard Objection (b), the same relates to the payment of subscription fee. I have perused the records which were made available to me and have come across Minutes of the Directors Meeting held on 23.09.2005. One of the matters considered by the Board in the said meeting related to the right to vote as



regards members who have not paid the subscription of Rs.400/-. It was decided that they would have a right to vote and contest in the said election to be held on 19.10.2005. I have not come across any other resolution of the Board of Directors, subsequent to the same, deciding to make any member ineligible to vote if he has defaulted in the payment of the annual subscription fee. I am of the view that all the persons who find a place in the Voters List are therefore entitled to vote and it is up to the Board of Directors or for that matter the General Body to take a decision on the disqualification of any members, or restraining them from exercising their right to vote in so far as future elections are concerned. Therefore, the aforesaid Objections raised by him are rejected. Mr.Anil Kumar Gupta has not raised any other objection as regards the Provisional Voters List.”

(emphasis supplied)

9. Since no subsequent Board Resolution has been shown to us approving a demand of annual subscription fee of Rs.400 per year or suspending voting rights on account of non-payment, we are of the view that the reasoning contained in the order dated 08th January, 2018 still continues to apply. The elections are scheduled for 18th January, 2024 and for this additional reason, the directions sought in this petition are highly belated. It is trite law that once the election process has been set in motion, the same should not be interjected.

10. Accordingly, the present writ petition being bereft of merits is dismissed. This Court clarifies that it is open to the future General Body and/or the Board of Directors to take a decision with regard to payment of annual subscription fee by its members.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

**JANUARY 5, 2024
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