

IN THE COURT OF THE REGISTRAR COOPERATIVE SOCIETIES,
PARLIAMENT STREET, OLD COURT BUILDING, NEW DELHI
GOVT. OF NCT OF DELHI

F.No. R(S/2019)503-507

Dated: 27/10/2020

In the matter of:

Mr. Rahul Jain

...Complainant

V/s

Manav CGHS Ltd.

...Respondent

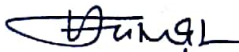
ORDER

This order shall dispose of the complaints dated 25.6.2018, 2.7.2018, 4.7.2018 and 16.7.2018 (referred as P-6 and other in Writ Petition no. 489 of 2019) filed by Sh. Rahul Jain against the illegal Management in Manav CGHS Ltd.

Hon'ble High Court of Delhi vide order dated 23.5.2019 in Writ Petition (Civil) No. 489 of 2019 took note of the report filed by the RCS stating that an Administrator cum RO was appointed in the society who has fixed the election schedule with date of polling falling on 16.06.2019 and further directed the Registrar of Cooperative Societies to pass an order on the representation made by the petitioner- Annexure P6 and other representations.

Accordingly, the notices were issued to the complainant and Administrator who filed their respective written submissions during the course of hearing. The complainant was specifically given an opportunity to file a consolidated submission covering all the points raised by him so far or the points he wanted to raise.

The issues raised by the complainant in his various complaints earlier (referred as P-6 and other in Writ Petition no. 489 of 2019) and also the submissions made by him during the course of hearing in succinct are as follows. It was submitted that during the presidency of Sh. Rakesh Gupta in the year 2013, one Mr. C. K. Jain was holding the position of Vice President and one Mr. J.K. Jain was appointed as Joint Secretary of the Society's Management Committee. The office of President of the Society became vacant, after the sad demise of Sh. Rakesh Gupta and therefore Sh. Pratap Singh Bisht was appointed as Returning Officer on 27.11.2015 by the Society to conduct the election of the Managing Committee. Further, elections were conducted in the Society on 03.04.16 wherein Mr. Vineet Dhamija and Shri C. K. Jain contested


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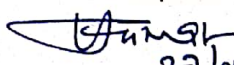
for the post of President and Shri Vineet Dhamija became the elected President of the Society.

However, Mr. Vineet Dhamija, President and Shri Pankaj Jain, Secretary resigned from the post of President & Secretary respectively in the year, 2017 and thereafter Mr. C.K. Jain and Mr. J.K. Jain in connivance with some other persons illegally declared themselves as President and Secretary of the Managing Committee without holding any election or following the procedures prescribed in the DCS Act & Rules. Upon inquiries by the complainant (including by way of several RTI applications) it was revealed in one of the replies to the RTI application filed by him that said self appointment of the erstwhile purported members of the MC was made in a SGBM held on 06.08.2017 "by show of hands".

It was also informed that list of elected members was also submitted with this office on 10.08.2017. A legal notice was also served upon the society for clarifying the situation. In reply to the notice, society stated that Sh. C.K Jain and the Secretary Sh. J.K Jain were duly notified and appointed office bearers of the society in terms of the society's bye-laws.

The complainant further submitted that therefore, the purported MC of Society had been illegally holding their respective offices and was unlawfully operating in the society's name. In fact, the purported MC of the society had also been engaged in operating funds and bank accounts of the society without having any legal authority to do so and thus had been carrying out various illegal and wrongful acts including misappropriation/misuse of huge sums of money belonging to the society. Besides, self-styled President and the Secretary were doing illegal activities such as writing letters on the letter head of the society to the government and to the other government departments without any legal right and locus standi and they have incurred a sum of Rs. 3.50 lacs on illegal construction by converting the stilt parking area by bricks, aluminium doors and by fixing three ACs without any sanction plan from the MCD. It was further pointed out that such a huge amount cannot be incurred by the society without any AGM meeting and approval from the said meeting.

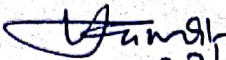
It was also submitted that since the complainant and his family members have been making various efforts to bring out the facts of illegal occupancy of the purported Management Committee of the society as well as the issues of mismanagement of the affairs of the society by it, purported MC irked by such bonafide enquiries by the complainant illegally initiated proceedings to expel the complainant and his mother from the membership of the society and also cancel the allotment of their flats. It was further pointed out that the mother of the complainant was not even a member of the society (to be expelled from any


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membership) and the house of complainants mother is a freehold property. Furthermore, there was no power available in DCS Act and DCS Rules to the purported MC to cancel the allotment of flats and hence the said expulsion proceedings were nothing but illegal, mala fide and reflective of vindictiveness of the erstwhile purported MC.

Sh. Girish Sethi, Administrator-cum-Returning Officer of the Manav CGHS Ltd. vide his detailed report submitted that as per society record, the last election in the society were conducted on 03.04.2016 by one Sh. P S Bist, Returning Officer and a managing committee consisting of 11 members was formed. Further, Sh. Vineet Dhamija was elected as President in election after defeating Sh. C K Jain. The Administrator further stated that due to resignation of the President Sh. Vineet Dhamija in July, 2017 & subsequent resignation of Sh. Pankaj Jain, Secretary with expulsion of two members, an emergency executive body meeting was called by Sh. Surinder Sharma, Vice President on 30.07.17 and decided to call an emergency Special General Body Meeting of the Members on 06.08.17. In this meeting Vice president Sh. Surinder Sharma (acting President) informed the vacancy position and it was decided by the members present in the meeting that election should be held in the society and immediately names for the post of President and other Members were asked. It was further submitted that as per minutes of the meeting dated 06.08.17 name of Sh. C.K. Jain (defeated President in election held on 03.04.16) was proposed by Smt. Seema Goyal (non-elected Member) and seconded by Shri Surender Sharma. Further the name of Sh. M.P. Bhardwaj (non-elected member) was proposed by Sh. C.K. Jain and seconded by Shri Rakesh Sharma (non-elected Member), the name of Ms. Seema Goyal was proposed by Shri O.P. Pahuja and seconded by Sh. M. P. Bhardwaj and name of Sh. J. K. Jain (non-elected member) was proposed by Shri Surinder Sharma and seconded by Sh. K. K. Jain and all were declared elected unanimously in the same meeting held on 06.08.17 and the list of members of the Managing Committee Members was informed by the Society to RCS Office on 10.8.17. Later in April, 2019 one Smt. Indira Jain (non-elected Member) was also included in the Managing Committee in place of Sh. K.K. Jain.

Administrator's report further states that, as alleged by the complainant, election held on 06.08.17, was not conducted in the society through the appointment of a Returning Officer and Managing Committee was formed in the same SBGM on 06.08.17 by the members present by adopting above procedure. Once the election was decided by the Members in the meeting on 06.08.17, the same was not informed on Notice Board to all Members but immediately President and the Members present in the meeting were nominated and MC was formed. The Society had also in response to an RTI replied that the


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procedure was done by 'show of hands' though the same is not recorded anywhere in the minutes of the meeting.

Referring to the illegal activities of construction of stilt parking space meant for parking of cars and scooters converting into a Manav Hall below the flat no. C 119 and C 120 and near to C 108, it was stated that North Delhi Municipal Corporation notices were received by the society for unauthorized construction. The Society in response to the notice earlier vide letter dated 31.10.18 replied that no pucca construction was done by the society and there was no encroachment etc. Also informed that space is being used for Satsang/Kirtan and recreational activities for senior citizens but the Society later on 18.11.18 informed the Authorities that it had removed the said construction and have restored the stilt parking.

The complainant also filed a response to the report submitted by the Administrator cum RO inter-alia stating that a bare perusal of the report reconfirms the position that after resignation of Mr. Vineet Dhamija from the post of President in the year 2017, Mr. C.K Jain and Mr. J.K Jain were appointed as president and secretary respectively, without holding any election and also that Mr. C.K. Jain had lost the validly held election to Mr. Vineet Dhamija and Mr. J.K Jain had not even contested any election in the society. It was further contended that their appointments were admittedly made in a Special General Body Meeting dated 06.08.2017 "by show of hands" and any appointment by way of show of hands is not a valid mode of appointment/election under the DCS Act, 2003 and DCS Rules, 2007 and thus the elections were not carried out as prescribed under DCS Act, 2003 and particularly, Schedule II of the DCS Rules, 2007 and ought to be declared illegal by this office.

The complainant also stated that though he had highlighted a few of the many illegalities perpetrated by the erstwhile illegal Management Committee, the Report of Administrator, however, deals only with one of such issues- i.e. illegal construction of a community hall in place of stilt parking and the other issues i.e. misuse of society's name, misappropriation of funds, unauthorised fund collections etc. perpetrated by the erstwhile illegal Management Committee have not been dealt with in the Report and further requested for a detailed enquiry against each member of the erstwhile illegal Management Committee besides, declaring the appointment of erstwhile illegal Management Committee as illegal and to take appropriate legal action against the members of erstwhile illegal Management Committee.

At this stage it would be pertinent to refer to the provisions of Section 35(1) of DCS Act, Rule 53 of DCS Rules, 2007 as well as the provisions contained in Schedule II appended to the said rules which relate to conduct and


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procedure for conduct of election of the committee of a cooperative society. The extracts of these provisions are extracted here below for ready reference:-

“35.Election and nomination of members of committee.

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of elections of the members of the committee of, a co-operative society shall be vested in the committee which shall appoint returning officer who shall not be a member or an employee of the society:

Provided that on the request of the committee or one-sixth members of the society, and in case of dispute in a society, the Registrar may appoint the returning officer to conduct the election of a society:

Provided further that the Government shall appoint returning officer, not below the rank of a gazetted officer or a retired gazetted officer to conduct the election of a co-operative bank, financial bank, federal co-operative society and such housing society as has been allotted land and draw of lots has not been conducted in accordance with the provisions of section 77 and such housing society as is awaiting allotment of land.

Rule 53

Election of committee notwithstanding anything contained in these rules or the byelaws, election of members of the committee of a co-operative society shall be conducted in the manner given in Schedule II.

Schedule II

SCHEDULE -II

PROCEDURE FOR THE CONDUCT OF ELECTION OF THE COMMITTEE


(See rule - 53)

1 (i)-----

(ii)-----

(iii) The committee or Board of a cooperative society other than mentioned in clause (ii) shall appoint Returning officer who shall not be a member and employee of such society. The Returning Officer should be a man of integrity, good social repute and competent to conduct elections in a fair manner.”

The Schedule II appended to the Rules, further contains the detailed provisions qua the conduct of the election including issuance of notice of the general body with particulars of Schedule for issuance of nomination forms, acceptance of nomination, scrutiny of nomination as well as the date, place, hours of polling etc.


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The report of the Administrator referred to above, clearly reveals that these provisions have not been followed in the instant case as averred by the complainant. Pertinently, Rule 53 provides that election of a members of the committee are to be mandatorily conducted in the manner given in schedule II.

Though Section 39 of DCS Act provides that no act of the society or committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure or in the constitution of the cooperative society or of the committee or in the appointment or election of any officer or on the ground that such officer was disqualified for his appointment, the protection as provided under the said provision may not be available in the present case in as much as no procedure whatsoever as contemplated under the provisions of DCS Rules and also under Schedule II appended to the said Rules was followed and as such the question of consideration of thematter in view of any defect in procedure or in the appointment or election of any officer or on the ground that such officer was disqualified for his appointment does not arise.


In view of the admission of the society itself as placed on record vide the report of the Administrator that the election held on 06.08.17 was not conducted in the society through the appointment of a Returning Officer and Managing Committee was formed in the same SBGM on 06.08.17 by the Member present by adopting above procedure and also that though the election was decided by the Members in the meeting on 06.08.17, the same was not informed on Notice Board to all Members but immediately President and the Members present in the meeting were nominated and MC was formed; it is clear that the induction of the members Sh. M.P. Bharadwaj, Smt. Seema Goyal in the managing committee of the society and further of Sh. C K Jain as President of the society and Sh. J K Jain as Secretary of the society in the SGBM held on 06.08.2017 and thereafter the formation of the new managing committee was illegal and any action taken by it including the expulsion proceedings initiated against the complainant cannot be on the face of it be taken to be legally tenable.

It is noted that the complainant has also stated that though he had highlighted only a few of the many illegalities perpetrated by the erstwhile illegal Management Committee, the Report of Administrator, however, deals only with one of such issues- i.e. illegal construction of a community hall in place of stilt parking and the other issues i.e. misuse of society's name, misappropriation of funds, unauthorised fund collections etc. by the erstwhile illegal Management Committee have not been dealt with by the Administrator in his Report and further requested for conduct of an inquiry into the matter. It would be thus just & expedient if an inspection into the affairs of the cooperative society is also conducted qua the various issues raised by the complainant. I accordingly

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further order that the requisite proposal be put up by the concerned Asst. Registrar for appointment of Inspection Officer for the purpose.

Ordered Accordingly.


27/2/20
(VIRENDRA KUMAR)
REGISTRAR COOP. SOCIETIES

To

1. Sh. Rahul Jain, Membership NO. 83, B-308, Manav CGHS Ltd. Sector-9, Rohini, Delhi-110085.
2. The President/Secretary, Manav CGHS Ltd., Plot No. 3, Sector-9, Rohini, Delhi-110085.
3. Addl. Registrar, O/o RCS for compliance
4. Asst. Registrar, O/o RCS for compliance of the order.
5. Guard File.