

OFFICE OF THE REGISTRAR COOPERATIVE SOCIETIES
GOVERNMENT OF NCT OF DELHI
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI - 110 001

No.AR(BKG.)/C.D.No.107670307/RCS/2021/334-338

Dated.: 12/11/2021

IN THE MATTER OF:-

Mukesh Kumar Saini
S/o Late Sh Sukhbir Saini
R/o House No.: 3174, Kucha Tara Chand
Daryaganj, New Delhi-110002.Petitioner

Versus

Saini Cooperative Thrift & Credit Society Ltd.,
(Through its Administrator-Cum-RO)
2420-21 Kamra Bangash
Daryaganj, New Delhi-110075.Respondent

Present : Sh Sandeep Kumar, Ld Advocate for the petitioner
Sh Sanjay Chiripal, Ld Advocate for the respondent society

ORDER

WHEREAS Hon'ble High Court of Delhi vide order dated 05.10.2021 in WP(Civil) No.: 11384/2021 titled as Mukesh Saini versus Registrar of Cooperative Societies and Saini Cooperative Thrift & Credit Society Ltd., has directed Registrar of Cooperative Societies to treat the writ petition as a representation and look into the grievances ventilated in the petition, in accordance with law, rules, regulations and Government policies, applicable to the facts of the present case, as expeditiously as possible and practicable.

WHEREAS summons dated 03.11.2021 were issued to both the parties for 11.11.2021 in compliance of the above stated directions of Hon'ble High Court of Delhi.

Submissions of the Petitioner in Writ Petition:-

The petitioner is a bonafide member of the society. Last elections were held on 05.08.2018 wherein 15 members of the Managing Committee (in short MC) were elected. After getting elected there have been inter-se disputes between MC members. The erstwhile President and Secretary of the society who



have been involved in financial irregularities have devised malafide plans to retain power by deciding to enrol new members and that too through online mode only i.e. through their website although no new members have been enrolled in the society for last more than seven years.

The society has not informed any member of the society regarding the website and same is being done so that entire process of enrolment of new members can be manipulated and hacked by the MC members just to make their own persons as members with sole purpose to facilitate and help MC in the forthcoming elections. The enrolment is being done through Online mode only as has never been done in past as also most of the members of the society are from backward/rural areas and are not so equipped with the technology.

A detailed complaint was given in this regard on 04.04.2021 to Registrar of Cooperative Societies (in short RCS). Even some of the MC members have also filed a complaint dated 09.02.2021 in this regard. RCS issued order on 04.03.2021 to the society to enrol new members through offline mode also. Society defied orders of RCS and did not enrol any new member through offline mode even though more than 1200 members applied for membership through offline mode also. MC got enrolled their own kith and kin as out of total 3341 application forms (2078 online and 1263 offline) only 650 applicants (only online mode) were enrolled as members and no reason for rejection or selection has been given by the MC.

The process of enrolment started on 01.03.2021 and even during enrolment process, on 15.03.2021 society wrote a letter to RCS for appointment of Returning officer (in short RO) as the MC has decided to conduct elections before expiry of their term which shows that entire process of enrolment was done at time when there were disputes amongst erstwhile MC.

RO was appointed vide Order dated 18.03.2021 issued by RCS. Even after appointment of RO members were enrolled till 25.03.2021 which can be seen from letter dated 13.03.2021 issued by the society to persons who registered for becoming members. 650 members have been enrolled after the appointment of RO which shows that they are illegal to take advantage in forthcoming elections and the same is against free and fair democratic setup in the society. The petitioner has given a representation dated 06.04.2021 to RCS not to allow these illegally enrolled 650 members in the society to participate in the forthcoming elections. RO has issued a list of members in the society which is also as per whims and fancies of erstwhile MC as 17 new illegally enrolled members out of 650 members have not been included in the List. RCS vide order dated 17.08.2021 appointed an Administrator cum RO in the society as term of the MC expired on 05.08.2021 as elections could not be held due to corona. Erstwhile MC has not handed over records to the Administrator as per report of Administrator Sh. M C Jha.

Erstwhile MC has gone to HC and Supreme Court to remove Administrator and still using the name of the society in cases. Erstwhile MC is leaving no stone unturned to come back to power. It is very much essential to remove the newly enrolled 650 members from the list of voters in the forthcoming elections so that democratic set can be established in the society in a free and fair manner.

SUBMISSIONS OF THE PETITIONER ON 11.11.2021:-

The Ld Counsel for the petitioner argued on the same lines as of the writ petition stressing mainly that all 650 members have been made through online mode inspite of directions of RCS to enrol members through both online and offline mode. Ld Counsel for the petitioner has stressed the fact that enrolment of the 650 members is illegal and that they should not be allowed to vote.

He further argued that no new members have been enrolled for last seven years. Ld counsel for the petitioner further stressed the fact that 650 members were enrolled even after appointment of Returning Officer on 18.03.2021 and hence they are not entitled to vote.

He further argued that all these 650 newly enrolled members are relatives and friends of the erstwhile MC and have been enrolled solely for the purpose of getting their votes in the elections. The Ld Counsel for the petitioner further argued that no harm will be done if these 650 members are not allowed to vote.

SUBMISSIONS OF RESPONDENT SOCIETY:-

Ld Counsel for the respondent society argued the case on the basis of various Judgments submitted by him, namely:-

- A. Judgment of Hon'ble High Court of Delhi in the matter of Ber Sarai Coop Vegetable & fruit Growers Marketing Society & Anr versus Lt Governor, Delhi & Ors., reported as (1997) 69 DLT 624.
- B. Judgment of Hon'ble High Court of Delhi in the matter of Parwana Coop Group Housing Society Ltd., versus The RCS and others reported as (2011) 123 DRJ 195.
- C. Judgment of Hon'ble High Court of Rajasthan in the matter of Devi Chand versus State of Rajasthan & Ors reported as (1995) 2 Raj LR 330.

D. Judgment of Hon'ble High Court of Kerala in the matter of K V Vijayakumar versus The Joint Registrar of Coop Societies &Ors., reported as (1996) AIR(Kerala) 150 :: (1996) 2 ILR (Kerala) 19.

E. Judgment of Hon'ble High Court of Gujarat in the matter of Shantiniketan Coop Housing Society Ltd., versus District Registrar, Coop Societies &Ors., reported as (2002) AIR (Gujarat) 428 :: (2002) 2 GLR 1768.

Ld. Counsel for the respondent society argued that the petitioner himself admits that 650 persons have been enrolled as members of the society in March 2021. He further argued that the membership of 650 persons has not been challenged before any authority and neither any Competent Court of Law has held the membership of those 650 persons as illegal and that these 650 persons continue to be members of the society till date.

He further argued that membership of a person can be removed, expelled or extinguished only by following due process of law and which has not been initiated till date qua these 650 members. He further argued that voting right of these 650 members cannot be curtailed or restricted on mere unsubstantiated allegations by the petitioner. He further argued that the resolution of the dispute pertaining to the validity of the enrolment of members can be determined only under arbitration conducted in pursuance to Section 70 of the DCS Act 2003 and not in these proceedings.

Ld. Counsel for the respondent society argued that no adverse order can be passed at the back of these 650 members of the society particularly when voting right is given under the statute and is a valuable right. He further argued that elections process starts only when Agenda Notice is issued and not when RO is appointed, hence enrolment of members after appointment of RO in no manner makes the enrolment as illegal. Ld Counsel for the respondent society stated that in any case enrolment was done in March 2021 and elections are scheduled for 28.11.2021 and nothing in this respect makes the enrolment of these 650 members as illegal.

Ld Counsel for the respondent society laid stress on the fact that all allegations levied by the petitioner are without any basis and without any evidence. The prayer sought for by the petitioner for en bloc curtailment of voting rights of 650 members enrolled in March 2021 cannot be allowed in the present proceedings as no Law empowers such an act. Ld Counsel for the respondent society argued that even if all the 650 members have been enrolled through online mode only and no member has been enrolled through offline mode, even then the enrolment of the 650 members enrolled through online mode does not become illegal.

If the members not enrolled or whose applications have been rejected are aggrieved of their membership being rejected then they have separate remedies under the provisions of DCS Act 2003 and DCS Rules 2007.

Rejection of membership of some persons does not make the enrolment of 650 other members illegal. Ld Counsel for the petitioner has further stressed that voting right of a member of a society can be curtailed only if he incurs any disqualification as per the provisions of DCS Act 2003 and DCS Rules 2007 and not on mere allegations levied by the petitioner.

CONCLUSIONS:-

I have gone through the Writ Petition with all its annexures and have heard both the Ld Counsels for the petitioner and the respondent society at length.

The prayer in representations dated 04.02.2021 and 09.02.2021 for directions to the society to stop enrolment process has become infructuous as already 650 new members have been enrolled in March 2021. As regards first prayer in the representation dated 06.04.2021 for postponement of elections for 2-3 months, the same has also become infructuous as the elections are now to be held on 28.11.2021.

It is an admitted fact that around 650 members were enrolled in March 2021. Petitioner has levied allegations of their being enrolled for purposes of procuring votes in favour of the erstwhile MC. It has further been alleged by the petitioner that all the 650 members have been enrolled through online mode only and none have been enrolled through offline mode. I am in agreement with the Ld Counsel for the respondent society that unless the membership of 650 members enrolled in March 2021 is held to be illegal or they are removed from membership after following due process of Law they continue to be members of the society and their voting right cannot be curtailed. Allegations levied by the petitioner have not been proved by any competent authority. Mere assumptions and presumptions and allegations cannot be a valid ground for curtailment of a valuable right to vote which accrues as soon as a person is enrolled as a member of a society.

It is further correct that election process does not start with the appointment of Returning Officer but starts with the issuance of Agenda Notice. In the present case, elections are now scheduled for 28.11.2021 and members were enrolled in March 2021. There is nothing in DCS Act 2003 and/or DCS Rules 2007 which incurs disqualification on this count as regards these 650 members.

Further, I tend to agree with the argument of Ld Counsel for the respondent society that mere fact that all 650 members were enrolled through online mode does not per se make their enrolment invalid as no member has been enrolled through offline mode.

In view of the above discussions, the prayer of the petitioner in the writ petition and in the representation dated 06.04.2021 not to include the names of the newly enrolled 650 members in the list of voters in the forthcoming elections and/or not to allow approximately 650 new members enrolled in the society in March 2021 to cast their votes in the forthcoming elections is rejected. The voting right of those approximately 650 newly enrolled members cannot be curtailed on mere allegations.

The newly enrolled 650 members will have a voting right in the forthcoming elections now due on 28.11.2021. The Returning Officer is however at liberty to consider the cases of those newly enrolled 650 members of the society separately as regards disqualification to vote, if any, as per the provisions of DCS Act 2003 and DCS Rules 2007, besides the allegations levied by the petitioner which are all rejected. The petitioner is at liberty to challenge the validity of newly enrolled 650 members as per the remedies available to him as per the provisions of DCS Act 2003 and DCS Rules 2007.


(Dr.T. Philip Thanglienmang)
Special Registrar Cooperative Societies

Copy To:

1. Assistant Registrar (Banking).
2. Guard file.
3. Computer cell.


(Dr.T. Philip Thanglienmang)
Special Registrar Cooperative Societies