

GOVT. OF NATIONAL CAPITAL TERRITORY DELHI
IN THE COURT OF THE REGISTRAR COOPERATIVE SOCIETIES
OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI-110001

No.AR(Bkg)/RCS/CD-107661513/2021/161-163

Dated:- 22/2/24

In the matter of:-

Mantola Co-operative Thrift and Credit Society Limited
(Through President/Secretary)

...Respondent

ORDER

This order shall dispose of the Show Cause Notice issued under section 37(1) of DCS Act, 2003 dated 13.09.2023 to the Mantola Cooperative T/c Society Ltd.

Whereas, The Mantola Co-Operative Thrift & Credit Society Limited (hereinafter referred to as 'Society'), 541, Mantola, Paharganj, New Delhi- 110055, is registered with this office under the provisions of DCS Act, 2003 and rules framed there under.

And whereas, as per Bill No. 5527 dated 23.11.2022, issued by the Department of Post, the Society has sent the annual general body meeting notices for 28-12-2022, through 'Book Post' which is not a legal mode as per Rule 51(4) of the Delhi Cooperative Societies Rules, 2007 which provides that the notice of every general body meeting shall be given to each member of the cooperative society either personally or by post under U.P.C. or by courier services agency duly registered in Delhi having Certificate of Incorporation' from Registrar of Companies, Delhi and Haryana and also having Certificate of Registration under section 69 of the Finance Act, 1994 (32 of 1994) from Assistant Commission, Central Excise Service Tax.

And whereas, it is prima facie appeared from the above narrated facts that the managing committee of the Society is negligent in the performance of the duties imposed on it under Delhi Cooperative Societies Act, 2003 and rules framed there under. The act of the managing committee of the Society by not sending the meeting notice to the members of the Society, as per the procedure prescribed in Rule 51(4) of the DCS Rules, is prejudicial to the interest of the Society and its members. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.

And whereas, as per the Minutes of the General body meeting held on 18/12/22 out of 10195 members only 359 members attended the general body meeting held on 18/12/22.



And whereas, it is observed that the venue of the meeting was Rain Kedarnath Auditorium, Ramjas School No. 4, Chirtaguot Road, Paharganj, New Delhi which is not big enough to accommodate 10155 members.

And whereas, from the facts narrated above, this office is of the opinion that the managing committee of the Society has committed serious negligence in the performance of the duties imposed on it under DCS Act, 2003 or the DCS rules and bye-laws framed thereunder.

Accordingly, Show Cause Notice under section 37(1) of DSC Act, 2003 dated 13.09.2023 was issued to the society.

The society filed reply to the Show Cause Notice wherein the society submitted that:

1. With regard to the violation of Rule 51(4) of DCS Rules, 2007, it is submitted that the Rule 51(4) of the DCS Rules, 2007 reads as under:

"The notice of every general body meeting shall be given in each member of the co-operative society either personally or by post under UPC or by courier services agency duly registered in Delhi having Certificate of Incorporation In case the notice is sent by post, service thereof shall be deemed to be effected after expiry of forty-eight hours of postage by properly addressing, prepaying and posting it."

2. It is of common knowledge that the Post Office nowadays do not accept post under UPC and therefore, as a matter of practice, for the last many years, the different Managing Committees of the answering society have been sending notices to all its members for the Annual General Body Meetings in the shape of Booklet containing, inter-alia, Balance Sheet & Income & Expenditure Statement for the relevant period, Report in brief and various activities undertaken by the Society through Book Post from Post Office.
3. Even the Administrator appointed by the RCS had called the AGBM in April, 2022 by sending notices to all the members of the Society through Book Post only.
4. A copy of the notice of AGBM/SGBM is also invariably sent to the RCS office also but no objection has ever been received by the answering society in this regard even from the RCS office. Otherwise the answering respondent would have taken the requisite steps.
5. It is once again clarified here that sending of notices of AGBM to its members every year through book post, the answering society never mean to avoid proper service of notice of the AGBM to its members or any intentional violation of any provision of law but a bonafide attempt to avoid the unnecessary cost of postage.
6. It is submitted that even no member has ever made any complaint in this regard to the knowledge of the present committee to the society or anyone else.



7. Without prejudice to above, the present MC undertakes to send notices of all its future AGBM and SGBM through Speed Post or Courier or the mode prescribed under the Rule 51.
8. So far as the venue of Annual General Meetings/Special General Body Meetings is concerned, it is submitted that all the AGBMs/SGBMs of the answering society for the last many years have been conducted at the same venue i.e. Rai Kedarnath Auditorium, Ramjas School No.4, Chitragupta Road Pahar Ganj, New Delhi-110055, which is in the vicinity of the answering society's office in Mantola, Pahar Ganj, New Delhi for the convenience of the majority of members of the answering society. Even, the last AGM convened by the Administrator of the Society appointed by your office, was at the same above-mentioned venue.
9. The aforesaid Auditorium has a big lawn in front of it which can be used in case of shortage of space, though it is a matter of record that only twice, during last 10 years, around 1000 members had attended the AGBM, otherwise the average attendance of the members in most of the AGBMs is around 500, which the above auditorium can easily accommodate and in case of, more members by chance the same can easily be accommodated in the lawn attached with the auditorium.
10. There is no other venue in the vicinity of Pahar Ganj where 10,000 members can be accommodated. There are only couples of stadiums in Delhi which are more than 10,000 capacity but they are extremely expensive and will unnecessary put huge strain on the financial position of the Society especially when the average attendance of the members in such AGBM is not more than 600 during last many years.

Whereas, the Banking Branch of the Department has filed rejoinder on the written submissions filed by the society wherein they submitted that:

1. It is not correct to state that the Mantola Cooperative T/C Society Ltd. (hereinafter referred to as 'Society') has been performing its function as per the provisions of DCS Act, 2003 and the rules framed there under. In this regard, it is pertinent to mention here that the section 31(1) of DCS Act, 2003 states that "Every Co-operative society shall within a period of one hundred and eighty days next after the date fixed for making-up its accounts for the year under the rules for the time being in force, call a general body meeting of its members."
2. Rule 38 of DCS Rules, 2007 states that Every co-operative society shall maintain accounts and books for the purpose of recording business transactions by it and close them every year on 31 March, by the 30th April. Each closing entry in the cash book, in each ledger account shall be signed by the president or secretary or the treasurer or any other authorised officials of the society authorised by the committee in this behalf. The closing balances, which are thus authenticated, shall be carried forward to the following year commencing on the 1st April. For the



- purpose of calling the annual general body meeting as provided in section 31 of the Act, the date fixed for making up the accounts, for the year shall be 30th April of each year. The closing accounts shall be signed by the secretary or the treasurer or any other officers of the society/bank authorized by the committee."
3. Section 31(2) of DCS Act, 2003 states that "If a co-operative society fails to hold the annual general body meeting within the aforesaid period of one hundred and eighty days, the Registrar or any person authorised by him may call such meeting in the manner prescribed and that meeting shall be deemed to be a general body meeting duly called by the co-operative society and the Registrar may order that the expenditure incurred in calling such a meeting shall be a charge on the delinquent members of the committee of the co-operative society who have failed to conduct the general body meeting within the prescribed time limit and the said amount shall be recoverable as arrears of land revenue from such delinquent members of the co-operative society in the same manner as provided in section 111. But, the annual general body meeting of the Society was held on 28.12.2022. The Society had also sent the meeting notices to the members through 'Book-Post'. It is pertinent to mention here that service of notices to members through 'Book-Post' is not permissible, as per the provisions of Rule 51(4) of DCS Rules. Rule 51(4) of the DCS Rules, 2007 reads as under:-

"The notice of every general body meeting shall be given to each member of the cooperative society either personally or by post under U.P.C. or by courier services agency duly registered in Delhi having 'Certificate of Incorporation' from Registrar of Companies, Delhi and Haryana and also having Certificate of Registration under section 69 of the Finance Act, 1994 (32 of 1994) from Assistant Commissioner, Central Excise Service Tax."

4. It is stated that service of notice to the members of the cooperative societies through 'Book-Post' is not permissible, as per the provisions of Rule 51(4) of DCS Rules, 2007. The service of notices sent through book post cannot be ascertained. Therefore, Rule 51(4) of DCS Rules has been framed, by the legislation, with the intent to ensure proper service of notices to the members. The contention of the society that in order to avoid the unnecessary cost of postage, the notices have been sent to the members through book-post is unsustainable and has no force of law. It is pertinent to mention here that it is a settled principle of law that it is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.
5. The RCS office is not responsible of the actions of the administrator, if he has contravened the provisions of DCS Act & Rules. Administrators appointed by RCS office are required to follow DCS Act & Rules.



Whereas, the society has written submissions on the rejoinder filed by the Banking Branch of the Department wherein the society submitted that:

1. It is submitted that the Ld AR (Banking) in his rejoinder indirectly and vaguely tried to raise a totally new issue, for the first time, regarding the holding of the AGBM of the society on 28.12.2022 despite fully knowing that the same was not part of the show cause notice dt.13.09.2023 issued by this Hon'ble Court u/s 37 of the DCS Act, 2003 to the respondent society. The Ld. AR has just referred to Section 31(2) of the DCS Act, 2003 in its rejoinder for the first time and still did not make any submission as to why the said provision is being referred to for the first time and that too in the rejoinder.
2. At the cost of repetition, in the show cause notice only two issues were raised i.e. issuance of notice of AGBM through book post and holding of the said AGBM at Rai Kedarnath Auditorium Ramjas School No.4, Chirtagupta Road, Paharganj, New Delhi.
3. It is well settled law that no new charge/issue can be raised in the rejoinder and considered while passing order which was not part of the show cause notice. So, in view of the settled law, no new issue, which is not part of the original show cause notice, can be raised or considered by any court while deciding judicial or quasi-judicial proceedings.
4. It is submitted that the present Managing Committee was elected on 04.09.2022 in the election got conducted by the Returning Officer appointed by the worthy RCS. The new Managing Committee immediately after its election vides letter dt. 15.09.2022 requested the RCS for extension of time for holding AGBM of the society as elections were just held.
5. Since the AGBM was eventually held on 28.12.2022, and the minutes thereof were also duly submitted in the RCS office to which no objection was ever raised by the RCS office, thus there was no question or occasion for invoking Section 31(2) of the DCS Act, 2003 by the RCS as the said provision can only be invoked when no AGBM is held by or in the society. As stated above, AGBM was eventually held by the Managing Committee and no objection or restrain order was issued by any authority. The AGBM of the next year was held within time on 03/09/2023.
6. The Ld. AR in its rejoinder has not denied the categorical statements made by the respondent society in its reply that (i) there has never been any complaint by any member against the present Managing Committee and (ii) it is also a matter of fact that there has never been any inspection or inquiry of any kind ordered by this office in respect of the affairs of the society and (iii) the Managing Committee of the respondent society has been holding its elections, audit and AGBM within time in accordance with law. The only exception as



mentioned above was due to the reason beyond the control of the present Managing Committee.

7. The overemphasis of the Banking department on Rule 51 (4) of DCS Rules, 2007 and that too only against the respondent society forget to consider the basis principle of law that Rules are always subservient to and is in aid to justice. The Hon'ble Supreme Court of India has repeatedly held that a processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.
8. About venue of holding AGBM/GBMs of the society which have been taking place on the same Venue for last many years and present MC has simply followed the said practice as most of its members reside or work in the nearby area. It is submitted that the society for last many years has been holding its AGBMs/GBMs at the same venue i.e. Rai Kedarnath Auditorium Ramjas School No.4, Chirtagupta Road, Paharganj, New Delhi keeping in view average number of members attending AGBMs /GBMs for last many years. Records of the last 10 years shows that only on two occasions around 1000 members attended the AGBMs/ GBMs of the society otherwise the average number of attendee members were around 500 members only.
9. The respondent society in its reply categorically stated that there is a big lawn in front of Auditorium booked by the society and in case number of members exceed the average number as mentioned above in any given year the same can be adjusted in the lawn. Even the Administrator appointed by RCS held a GBM at the same venue, again following the past practice as being followed by the present managing committee.
10. The contention of the Ld. AR (Banking) in its reply that RCS office is not responsible of the actions of the administrator is contrary to law as Administrator is the appointee / agent of the RCS and principle is responsible for the action of its agent.
11. That the respondent society has been regularly issuing notice as well as minutes of all its AGBMs/GBMs to the RCS office especially AR Banking and AR audit and the concerned branch of the RCS office never raised any objection in this regard. The duty of the RCS office is also of guide. Had the RCS office raised any objection in this regard and the society had ignored the same intentionally, then the situation would have been different.

I have gone through the submissions made by the society and the ARCS Banking Branch of the Department. It is alleged that the society has not followed the prescribed procedure as per law while conducting the AGBM for the year 2023. Like the society has send the notices through book post which is not a valid mode as per Rule 51(4) of



DCS Rules, 2007 and the venue for the meeting is also not big enough to accommodate approx 10000 members of the society.

Regarding the mode of notice delivery, while the society's argument about cost-effectiveness and practicality is understandable, adherence to legal requirements is paramount. Rule 51(4) of DCS Rules, 2007 clearly specifies the acceptable methods of notice delivery, and it appears that sending notices through book post does not comply with these requirements. Therefore, the society should endeavor to find alternative methods of delivery that are in line with the prescribed rules to ensure proper notification to all members.

Regarding the venue for meetings, while the society has valid reasons for selecting Rai Kedarnath Auditorium, the department's concern about its capacity to accommodate all members is legitimate. If the venue is unable to accommodate the entire membership, alternative arrangements should be considered to ensure that all members have the opportunity to participate in the meetings.

In summary, the alleged violation by the society seems unintentional, as they claim to have followed past practices without any deliberate wrongdoing, and no member complaints were raised. The court is taking lenient view this time keeping in view the aforesaid observations. However, this may be treated as last and final warning with direction to strict adherence to legal requirements which is vital for meeting transparency and fairness. It's crucial for the society to address departmental concerns and ensure strict compliance with relevant laws and bye-laws, such as the DCS Act, 2003, and DCS Rules, 2007. Future AGMs must adhere strictly to these regulations, with any non-compliance treated seriously and coercive action will be taken.



Anil Kumar Singh
Anil Kumar Singh
Registrar Cooperative Societies

Sent to:

1. Managing Committee Members, Mantola Cooperative Thrift and Credit Society Ltd., 541, Mantola, Paharganj, New Delhi-110055.
2. ARCS, Banking Branch, O/o RCS with the direction to issue general circular to all the societies regarding strict compliance of DCS Act and Rules while holding society meetings.
3. Incharge Computer Cell with the direction to upload on the website of the Department.