(2014) 05 DEL CK 0252

In the Delhi High Court

Case No : W.P. (C) 1795/2014

Jeet Ram Gupta APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:
Multi-State Cooperative Societies Act, 2002 — Section 122, 123, 3(b), 45, 48

Citation : (2014) 05 DEL CK 0252

Hon'ble Judges : Pradeep Nandrajog, J;Jayant Nath, J

Bench : Division Bench

Advocate : Harish Malhotra, Sr. Advocate Instructed by Mr. T. Singhdev and Mr. Mohd. Ali Chaudhary, Advocate for the Appellant; Richa Kapoor and Ms. Saahila Lamba, Advocates for R-1 and Mr. Mahesh Srivastava, Mr. Vaibhav M. Srivastava and Mr. Ravi N. Rout, Advocates for R-2, Advocate for the Respondent

Judgement

Pradeep Nandrajog, J.—The impugned Office Order No. 132/2013 dated December 23, 2013 has been issued by the Central Government and is addressed to The National Co-operative Consumers Federation of India Ltd., a multi-State co-operative society registered under The Multi-State Co-operative Societies Act, 2002. It conveys the decision of the Competent Authority that hitherto fore Shri S.K. Nag, Director (CWF) would hold additional charge to the post of the Managing Director of the Society. Filed in public interest, the challenge is to the said order, alleging that the same is contrary to not only the bye-laws of the society but even The Multi-State Co-operative Societies Act, 2002. It is the case of the petitioner that the order violates the very ethos of a co-operative movement.

2. Just as any other juristic entity discharges its functions through human beings, a multi-State co-operative society registered under The Multi-State Co-operative Societies Act, 2002 acts through human beings: The Board. As per Section 3(b) of the Act the Board means the Board of Directors or the Governing Body of a multi-State co-operative society in which the direction and control of

the management of the affairs of the society is vested.

3. As per Section 45 the Board of a co-operative society is constituted by holding a secret ballot in which constituent members are entitled to vote. As per Section 48, if the Central Government or a State Government has subscribed to the share capital of a multi-State cooperative society the Central Government or the State Government, as the case may be has a right to nominate members on the Board. Depending upon the subscription, issued share capital of the Board, number of members on the Board can be nominated.

4. The powers and functions of the Board are as per Section 49 of the Act.

5. Every multi-State co-operative society has a Chief Executive, by whatever designation he may be called; and we are given to understand that in most co-operative societies registered under the Act the nomenclature is: ''Managing Director''.

6. Section 51 of The Multi-State Co-operative Societies Act, 2002 reads under:-

51. Chief Executive-

(1) There shall be a Chief Executive, by whatever designation called, of every multi-state cooperative society to be appointed by the board and he shall be a full-time employee of such multi-state cooperative society.

(2) The Chief Executive shall be a member of the board and of the Executive Committee and such other committees or subcommittees as may be constituted under sub-section (1) of section 53.

(3) Where the Central Government or the State Government holds fifty one per cent, or more of the equity share capital or of total shares of the multi-state cooperative society, the salary and allowances payable to and other terms and conditions of service including pension, gratuity and other retirement benefits of the Chief Executive shall be such as may be prescribed.

7. It is apparent that the Chief Executive has to be appointed by the Board and has to be a full-time employee of the society. As per sub-Section (3) of Section 51, where the Central Government or the State Government holds 51% or more of the equity share capital of a multi-State co-operative society, the salary, allowances, pension, gratuity, retirement benefits and terms and conditions of service of the Chief Executive have to be as prescribed.

8. Bye-law 34(a) of National Co-operative Consumer''s Federation of India Ltd. (NCCF) reads as under:-

34(a) The Board of Directors shall appoint a Managing Director, who shall be a full time employee of the Federation on such terms and conditions and for such period as it may decide.

9. It is thus apparent that as per the bye-law and the Act, the Managing Director of the Federation has to be appointed by the Board and he acts as the Chief

Executive Officer of the Federation.

10. It needs no further argument to reach the conclusion that the Office Order dated December 23, 2013 is without jurisdiction.

11. We quash the same.

12. Learned counsel for respondent No. 1 would urge that from the counter affidavit filed it is apparent that there has been a large scale abuse of authority by the power and its existing Managing Director. It is urged that from the counter affidavit filed, it is apparent that the Board and its Managing Director are acting contrary to the interests of the federation. Counsel urges that in this view of the matter, since more than 51% of the equity share capital of the federation has been subscribed to by the Central Government, and since salary, allowances and other benefits payable to the Chief Executive Officer of the Federation are as prescribed by the Central Government, the Central Government would have the power to remove a Managing Director and nominate one.

13. Merely because the Central Government holds more than 51% shares of the federation and thus the conditions of service of the Managing Director of the federation have to be as prescribed by the Central Government would not empower the Central Government to remove the Managing Director and in his place nominate another.

14. It is trite that where law does not confer a power, the same cannot be exercised pro-bono.

15. Sections 122 and 123 of The Multi-State Co-operative Societies Act, 2002 read under:-

122. Central Government''s power to give directions to specified multi-state cooperative societies in public interest-

If the Central Government is satisfied that in the public interest or for the purposes of securing proper implementation of cooperative production and other developmental programmes approved or undertaken by the Central Government or to secure proper management of the business of the specified multi-state cooperative societies generally or for preventing the affairs of such society being conducted in a manner detrimental to the interests of the members, any depositors or creditors thereof, it is necessary to issue directions to any class of specified multi-state cooperative societies generally or to any specified multi-state cooperative society or societies in particular, the Central Government may issue directions to it or to them, from time to time, and all such specified multi-state cooperative society or the societies concerned, as the case may be, shall be bound to comply with such directions.

123. Supersession of board of specified multi-state cooperative society-

(1) If in the opinion of the Central Government, the board of any specified multi-state cooperative society is persistently making default or is negligent in the

performance of the duties imposed on it by this Act or the rules or the bye-laws or has committed any act which is prejudicial to the interests of the society or its members, or has omitted or failed to comply with any directions given to it u/s 122 in public interest or that there is a statement in the constitution or functions of the board, the Central Government may, after giving the board an opportunity to state its objections, if any, and considering the objections, if received, by order in writing, remove the board and appoint one or more administrators, who need not be members of the society, to manage the affairs of the society for such period not exceeding six months, as may be specified in the order which period may, at the discretion of the Central Government, be extended from time to time, so, however, that the aggregate period does not exceed one year.

Provided that in the case of a cooperative bank, the provisions of this sub-section shall have effect as if for the words "one year", the words "two years" had been substituted.

(2) The Central Government may fix such remuneration for the administrators, as he may think fit and the remuneration shall be paid out of the funds of the specified multi-state cooperative society.

(3) The administrator shall, subject to the control of the Central Government and to such instructions as it may from time to time give, have power to exercise all or any of the functions of the board or of any officer of the specified multi-state cooperative society and take all such actions as may be required in the interests of the society.

(4) Save as otherwise provided in sub-section (5), the administrator shall, before the expiry of his term of office, arrange for the constitution of a new board in accordance with the bye-laws of the specified multi-state cooperative society.

(5) If, at any time during the period the administrator is in office, the Central Government considers it necessary or expedient so to do, it may, by order in writing giving reasons therefore, direct the administrator to arrange for the constitution of a new board for such specified multi-state cooperative society in accordance with the bye-laws of such society and immediately on the constitution of such board, the administrator shall hand over the management of such society to such newly constituted board and cease to function.

(6) Where a specified multi-state cooperative society is indebted to any financial institution, the Central Government shall, before taking any action, under sub-section (1) in respect of that society, consult the financial institution.

16. If the Central Government is of the opinion that the Board of the Federation has to be superseded, which would obviously mean the supersession of its Managing Director, power can be exercised u/s 123 and an Administrator may be appointed.

17. The bye-laws of the Federation and the statutory provisions contained in The Multi-State Co-operative Societies Act, 2002 make it abundantly clear that the

Managing Director of the Federation has to be elected by the Board of the Federation. Thus, if this is the manner prescribed by law to appoint the Managing Director of the Federation, he has to be appointed as per the procedure prescribed. It is trite that power to appoint includes the power to remove. Thus, the Board of the Federation alone would be empowered to remove the elected Managing Director.

18. We dispose of the petition quashing the Office Order No. 132/2013 dated December 23, 2013.

19. If the Central Government is of the opinion that an Administrator of the Society needs to be appointed it would be free to exercise that power but in the manner as prescribed by law.

20. No costs.

