

(2004) 01 DEL CK 0052
In the Delhi High Court
Case No : C.W.P. No. 4184 of 2003

L.C. Gupta and Others

APPELLANT

Vs

Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 13-01-2004

Acts Referred:

Citation : (2003) 109 DLT 491 : (2004) 72 DRJ 687

Hon'ble Judges : H.R. Malhotra, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : R.P. Bansal and Sudhir Nandrajog, for the Appellant; V.K. Tandon, for Respondent Nos. 1, 2 and 4 and Rakesh Munjal, Senior Advocate and Rajiv Vig, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—The petitioners, who are the members of the Managing Committee of the Capital Co-operative Thrift and Credit Society Ltd. have approached this Court with the prayer that the orders dated 1.5.2003, 19.6.2003 and 20.6.2003 be set aside. They have also prayed that the petitioners are entitled to hold the office as the members of the Managing Committee of respondent No. 3 society for a period of 3 years from the date of their elections as per Bye-law 23(b) and Section 31(3) of the Act.

2. It is also prayed that respondent No. 1, Registrar, Co-operative Societies, respondent No. 2, Assistant Registrar and respondent No. 4 the Election Officer of the Capital Co-operative Thrift and Credit Society be restrained from holding elections for electing the members of the Managing Committee.

3. Brief facts which are necessary to dispose of the writ petition are recapitulated as under:

4. Admittedly on 2.12.2001, elections were held for Constituting the entire Managing Committee consisting of 15 members. According to the unamended bye-laws of the society the elections were held to elect office bearers for a period

of one year only. On 24.10.2002 the relevant Bye-law 23 was amended. The said amended Bye-law 23(b) reads as under :

"23(b) The entire Committee members including President, Vice-President shall retire after every three years and shall be eligible for re-election. No member shall be eligible for holding the office of the President, Vice-President, Chairman, Vice-Chairman, Managing Director, Secretary, Jt. Secretary and Treasurer for more than two consecutive terms whether full or part. These office bearers shall also not be eligible to hold such office on a Committee of another Co-operative Society of the same type or on the committee of more than three different types of societies."

5. The petitioners were alleged to be office bearers of the said society and were elected in the election held on 2.12.2001. The short question which arises in this petition is whether the election which had taken place on 2.12.2001 be governed by the bye-laws which were in force at that time or by the amended bye-laws which came into force on 24.10.2002. According to the amended Bye-law 23(b) the entire committee members including office bearers shall retire after every three years. The contention of the petitioners is that they were elected office bearers in pursuance to the election which had taken place on 2.12.2001, but they are entitled to continue in office for a period of three years in view of the amendment in the bye-laws on 24.10.2002.

6. In pursuance to the notice issued by this Court, a counter affidavit has been filed by Arun Lal, Secretary on behalf of the Capital Co-operative Thrift and Credit Society. It is mentioned in the counter affidavit that the last election of the whole of the Managing Committee was held on 2.12.2001. By that time the Bye-law 23(b) increasing the tenure of the members of the Managing Committee to three years had not been amended or approved while the same was done later on by respondent Nos. 1 and 2. It is mentioned that on bona fide belief, respondent No. 3 society presumed no need of election in the month of December, 2002 as terms of all the members of Managing Committee was increased to three years, but requisition notice was received. Thereafter a special meeting of the Managing Committee had taken place on 18.5.2003 and it was felt in the said meeting that interpretation given by communication dated 1.5.2003 also holds good and to avoid any confrontation respondent No. 3 society opted to hold election. The election process had started. The Election Officer was appointed and after the election process had started the petitioners have approached this Court.

7. It may be pertinent to mention that even the petitioners have opted to participate in the election which were scheduled to take place pursuant to the requisition notice dated 1.5.2003. The office bearers who were elected pursuant to the election held on 2.12.2001 want to continue in the office by interpreting Bye-law 23(b) in a manner that their election on 2.12.2001 was for a period of three years and they may even now be permitted to complete the full term of three years.

8. We have heard the learned Counsel for the parties at length. We are clearly of the opinion that the election which had taken place on 2.12.2001 had to be governed by the bye-laws which were in existence at that time when the election had taken place. Bye-law 23(b) which was amended on 24.10.2002 came into operation from the date of its amendment, i.e. 24.10.2002 only.

9. The petitioners who were elected office bearers in pursuance to the election which had taken place on 2.12.2001 cannot take benefit of the amendment in Bye-law 23(b). The plea of the petitioner is wholly untenable. The amendment in Bye-law 23(b) cannot have any retrospective operation. The other factors which also need to be highlighted is that the election process had already started and even the petitioners had participated in the election.

10. On consideration of the totality of the facts and circumstances of this case, the writ petition being devoid of any merit is accordingly dismissed. However, in the fact and circumstances of this case, the parties are directed to bear their own costs.