
(2002) 08 DEL CK 0267
In the Delhi High Court
Case No : C.W. No. 2781 of 2001

Milan Vihar C.G.H.S. Ltd.

APPELLANT

Vs

Koka Janardhan Kumar and Others

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Citation : (2002) 08 DEL CK 0267

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : Rakesh Munjal and Thampi Mathur, for the Appellant; J.N. Gupta, for R-1, for the Respondent

Judgement

J.D. Kapoor, J.—Through this writ petition the petitioner society has sought quashing of orders dated 8.2.2001, 18.1.2001 and 24.7.2000 passed by R-4, R-2 and R-3 respectively.

2. Short dispute raised before the Registrar Co-operative Societies u/s 60 of the Delhi Co-operate Societies Rules, 1973 (hereinafter referred to as the Rules) by R-1 was whether he continued to be the member of the society after having resigned from membership on 11.2.1994 which was duly accepted by the Managing Committee on 10.12.1994 because of his having withdrawn the resignation vide application dated 5.4.1995 addressed to the President of the Society. However, the dispute raised by R-1 was found to be the one covered u/s 60 of the Delhi Co-op. Societies Act and was referred to arbitration u/s 61 of the Act vide order dated 18.1.2001.

3. The grievance of the petitioner-society was that the Joint Registrar passed the order dated 18.1.2001 without issuing any notice to the petitioner-society and, Therefore, the said order has been passed in violation of the principles of natural justice and further the order also suffered from the vice that no findings as contemplated under Rule 88(4) of Rules were given by R-2 and the undertaking given by R-3 before the High Court was also not honoured.

4. The petitioner also challenged the order dated 18.1.2001 before the Delhi Co-operative Tribunal but by then the proceedings had been undertaken by the Arbitrator u/s 61 of the DCS Act. The appeal was dismissed in limine on the premise that the arbitrator had already informed and petitioner-society about the next date of hearing being 8.2.2001 and the petitioner-society can agitate the plea of registration by R-1 and its acceptance by the society in the proceedings u/s 61 of the Act.

5. We are afraid the Tribunal fell in grave error by equating the proceedings u/s 60 with those u/s 61 of the DCS Act. The main grievance of the petitioner was that the dispute raised by R-1 did not come within the ambit of Section 60 and Therefore the question of agitating the dispute in the arbitration proceedings u/s 61 of the Act did not arise. Instead of redressing the grievance of petitioner-society that it was not given any notice or opportunity of being heard by the Registrar Co-op. Societies in proceedings u/s 60 of the Act, the Tribunal commanded the petitioner-society to raise the plea in the proceedings u/s 61 of the Act which it intended to raise in the proceedings u/s 60 before the Arbitrator.

6. On the face of it the impugned order is illegal and unsustainable. For, if on factual as well as on legal matrix the petitioner-society succeeds before the Registrar Co-op. Societies that the dispute was not covered u/s 60 as R-1 had ceased to be the member of the society as his resignation had been accepted in terms of Rule 40 of DCS Rules, the question of referring the dispute to the arbitrator would not arise. Rule 40 provides as under:

"40. Cessation of Membership- without prejudice to the provisions of Section 27, a person shall cease to be a member of a co-operative society on his resignation from the membership thereof being accepted or on the transfer of the whole of his share or interest in the society to another member, or on his death, removal or expulsion or incurring any of the disqualifications specified in the Act and the rules.

7. No party can be condemned unheard. Any order passed in the absence of opposite party or the party against whom the relief has been sought the same cannot withstand on the anvil or principles of natural justice. Admittedly R-1 submitted application for resignation on 11.2.1994 which was accepted by the managing committee of the society on 10.12.1994. It was on 5.4.1995 that R-1 withdrew the resignation. These facts demonstrate that the society should have been given reasonable opportunity of being heard before arriving at the conclusion that the dispute raised by R-1, whether he still continued to be the full-fledged member of the society, was a valid dispute u/s 60 for being arbitrated upon u/s 61 of the Delhi Co-operative Societies Act 1972.

8. In view of the foregoing reasons we set aside not only the impugned order but also the order dated 18.1.2001 passed by the Joint Registrar with the direction to the Registrar Co-op. Societies to provide full opportunity to the society to put up its case before it in the proceedings initiated by R-1 u/s 60 of the DCS Act.

Parties are directed to appear before the Registrar on 20th August, 2002 who is directed to pass appropriate orders in the matter on hearing parties within two months from the date of appearance of parties.