

(2019) 05 DEL CK 0239

In the Delhi High Court

Case No : Civil Writ Petition No. 1350 Of 2019

Pradeep Kumar

APPELLANT

Vs

Registrar Cooperative Society And Anr

RESPONDENT

Date of Decision : 23-05-2019

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 31(1), 33
Delhi Co-operative Societies Act, 1972 — Section 35(i), 40, 40(i)

Citation : (2019) 05 DEL CK 0239

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Advocate : Rajesh Srivastava, Shubhangi Rathore, Shadan Farasat, Rudrakshi Dev, Hafsa Khan, Virender Kumar, Vaibhav Sharma, Manish Jain, Rukban Tyagi

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J

1. We have heard learned counsels for the parties. The Registrar of Co-operative Societies (RCS) is also present and he has also made his submissions and we proceed to dispose of the present petition.

2. The petitioner had preferred this petition with the grievance that even though respondent No. 2 Society had forwarded the KYC particulars of all the available members, the Registrar of Co-operative Societies (RCS) had not yet finalized the list of eligible voters. The concern of the petitioner was that the elections to the respondent No. 2 Society/ co-operative bank were required to be held on or before 17.07.2019, of inaction on the part and on account of the same may be delayed. Consequently, we issued notice to the RCS requiring it to file an affidavit on the said aspect and to report the status of the verified list of members. On 25.04.2019, it was stated on behalf of the RCS that steps taken by the respondent Society in compliance with Section 40 read with Rule 31(1) of the Delhi Co-operative Societies Act and Rules, were deficient. Consequently, the respondent society/ bank had issued public notice on 18.03.2019 in the

Hindustan Times as well as in the Hindustan (Hindi) in compliance with Section 40 read with Rule 31(1) of the Delhi Co-operative Societies Act and Rules. The members were called upon to submit their KYC particulars and were asked to appear before the Board of Directors of respondent No.2 on 21.04.2019 in response to the notice. We directed the respondent society/ bank to communicate to the RCS within one week, the outcome of the exercise undertaken by it. We also directed the RCS to proceed strictly in terms of the Act and Rules to ensure that the holding of the elections, scheduled to be held on or before 17.07.2019, is not delayed. The matter was adjourned to 20.05.2019 for directions. It was further adjourned to 23.05.2019 i.e. today.

3. A status report has been filed by the RCS, wherein it is stated that the existing position, as informed by the respondent No.2 bank, was that there were 16,417 non verified members. 28 members represented themselves in the Board meeting of the respondent society/ bank and their memberships were found to be in order. From amongst the list on non-verified members, 1062 member have closed their accounts. The final position, therefore, which emerged, according to the respondent No.2 society/ bank was as follows:

"i. Non verified members 16417 Nos.

ii. Twenty eight members presented themselves in the Board meeting and membership of all of them was considered in order. From the list of non verified members, 1062 members have closed their accounts.

iii. KYC submitted up to 30/09/2018 2956 Nos.

iv. Now KYC done up to 21/04/2019 426 Nos.

v. Total (iii + iv) 3382 Nos."

4. The respondent RCS also stated that the respondent society bank had, vide communication dated 01.05.2019, requested the RCS to initiate expulsion proceedings under Section 40(i) of the Act in respect of 16,417 non verified members. The RCS has stated in the report that it has initiated the process of expulsion and notices to the said 16,417 non verified members are being issued to appear before the Additional Registrar, Co-operative Societies, who has been vested with powers to conduct expulsion proceedings under Section 40(i) of the Act on various dates between 28.05.2019 to 31.05.2019. They have been required to submit their requisite clarifications and produce documents for verification of membership. Such of the members who respond shall be given a hearing for submission of documents on 3rd and 4th June, 2019. A public notice has been given informing the details of place and schedule for hearing. Learned counsel states that the said notice has been published in the English daily today, and would be published in the Hindi daily on 25.05.2019. It is further stated that once the exercise is completed, the final position would emerge with regard to the members who are verified and eligible to vote in the forthcoming elections. It is also stated that, simultaneously, a proposal to appoint the Returning Officer

under Section 35(i) of the Act is also being submitted to the Government for approval.

5. Rule 33 of Delhi Co-operative Societies Rules obliges every co-operative society to prepare a list of its members as on the last day of each co-operative year. The list has to be kept open at the office of the co-operative society during office hours for inspection by any member of such co-operative society. The list of members is required to be revised 30 days prior to the date of meeting fixed for the election of the committee of the co-operative society and it shall include the members admitted, and exclude the members resigned, or ceased, or expelled during the period commencing from the date when the list was last revised and ending with the date of the revision of the list.

6. Respondent No.2 society has undertaken the said process and as noticed above, forwarded the list to the RCS. It has also required the RCS to grant approval to the expulsion of 16,417 non verified members.

7. From the scheme of the Act and Rules, it appears that the fixation of the Electoral College/ Voter List for conduct of elections, and the undertaking of the process of approval of expulsion are two different processes. No doubt, the decision that the RCS may take in the matter of approval of expulsion, would have a bearing on the Electoral College/ Voter List since, if expulsion is approved, the expelled member will not be entitled to vote or participate in the election process. On the other hand, if expulsion is not approved, the member(s) would be so entitled to participate in the election process as a member(s) of the co-operative society. However, it is clear that the process of election is not dependent upon the completion of the process of approval of expulsion. This is because the elections are required to be held in a time bound way, and the process of approval of expulsion may itself take much longer, considering factors like: the number of persons whose expulsion is under consideration; the requirement of issuance of notice to them; the objections that they may raise and evidence that they may produce, which would require consideration.

8. Thus, even though, respondent No. 1 may have initiated the process for grant of approval to the proposed expulsion of 16,417 non verified members of the respondent society, we make it clear that that process will not come in the way of fixation of the Electoral College/ Voting List for conduct of election on before 17.07.2019. The RCS has personally assured this Court that the schedule has been fixed by him for consideration of the proposals for expulsion of the said 16,417 non-verified members in such a way, that the entire process is likely to be completed latest by 04.06.2019 publishing the list on 05.06.2019.

9. He submits that the RCS shall communicate to list of eligible voters on 05.06.2019 for it to be published by respondent No.2 and that would leave sufficient time for inviting the nominations and holding the elections on or before 17.07.2019. The RCS states that the Returning Officer would possibly be appointed within the next 5 days.

10. In view of the statutory scheme that we have taken note of hereinabove, we make it clear that if, for any reason, the cases of expulsion of the 16,417 members are not finalized by 04.06.2019, in any event, the list of eligible voters shall be forwarded by the RCS to the respondent society/ bank, to be published by the society on 05.06.2019 on the basis of the status provided by the RCS. In respect of non-verified members, who do not respond to the notice issued by the RCS, the RCS may form its opinion with regard to their expulsion. In respect of the members, who respond to the notice issued by the RCS, in case, a decision is taken one way or another on their expulsion, the same would be communicated to the respondent society/ bank. However, cases of such of the members who respond to the notice and whose cases the RCS is not able to finalise due to paucity of time by 04.06.2019, the names of such members would also be forwarded to the respondent bank/ society and they would be treated as eligible to participate in the elections, since expulsion would not have been finalized by then.

11. It goes without saying that the members eligible to vote would have to comply with, on or before 04.06.2019, the requirement of furnishing their KYC in terms of the minutes of the meeting held in the office of the RCS on 28.06.2018, copy whereof has been placed on record.

12. We, therefore, dispose of this petition with directions to the respondents to strictly comply with the aforesaid schedule and to fulfill their respective obligations so that the elections of the Managing Committee of the respondent No.2 society are successfully held on or before 17.07.2019.

13. The petition stands disposed of in the aforesaid terms.

14. Dasti.