

(2006) 12 DEL CK 0132
In the Delhi High Court
Case No : W.P (C) No. 18492 of 2006

Rajeshwar Kumar Gupta

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 16-12-2006

Acts Referred:

Citation : (2006) 12 DEL CK 0132

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Party in perso, for the Appellant; Sujatha Kashyap, for Respondents Nos. 1 to 3 and Sunil Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner, who appears in person, claims to be a member of Maharshi Dayanand Co-operative Group Housing Society Ltd. He has filed this petition primarily challenging the agenda notice dated 16.11.2006 issued by the Returning Officer appointed in respect of the Delhi Co-operative Housing Finance Corporation Ltd (for short 'the DCHFC'), by claiming that the entire election programme for the three seats on the Board of Directors of the DCHFC i.e. respondent no.5 stands vitiated. He also seeks a direction that a fresh election programme should be chalked out in accordance with the Delhi Co-operative Societies Act, 2003, Delhi Co-operative Societies Rules, 1973 and the Registered Byelaws of the DCHFC to elect three Directors on the Board of Directors of DCHFC.

2. DCHFC is an apex body constituted for the purpose of granting finance to housing co-operative societies in Delhi. Various housing co-operative societies in Delhi are members of the DCHFC. According to the petitioner there are 1289 members in DCHFC. The petitioner states that the byelaws of DCHFC were amended whereby byelaw no.42(a)(i) was added to the existing byelaws. The result of this amendment was that three seats on the Board of Directors of DCHFC were reserved for the following categories:

- (1)one women representative
- (2)one SC/OBC representative
- (3)one general category representative

3. Petitioner states that for the purpose of filling up these three posts by election, a Returning Officer was appointed on 2.6.2006.

4. The membership of DCHFC consisted of other housing co-operative societies. Its general body consists of authorized representative of the member housing co-operative societies. It is these authorized representatives of housing co-operative societies who were entitled to participate in the election process for electing three members on the Board of Directors of DCHFC.

5. The Returning Officer issued a notice dated 16.11.2006 to the member housing co-operative societies informing them that the general body meeting of members of DCHFC will be held on 17.12.2006 for the election of three members as per the Delhi Co-operative Societies Act. He called upon the Managing Committees of the member Co-operative Group Housing Societies/Co-operative House Building Societies of DCHFC to nominate one representative on the general body of DCHFC in accordance with the established rules and procedure and to send an attested copy of the resolution nominating one representative of the society to participate in the general body of DCHFC. A specimen copy of the instrument of nomination was attached to this notice. A declaration was also required to be made by the Secretary/President of the Society in the prescribed form. In the end it was stated "the above information/documents should be submitted by authorized representative of the society by 30th November, 2006."

6. The petitioner claims that he was nominated as the representative of Maharshi Dayanand Group Housing Society Ltd. Admittedly his nomination was not submitted with the Returning Officer by 30.11.2006.

7. The Returning Officer issued an agenda notice which is stated to be of the same date i.e 16.11.2006 for conducting the election and according to the election programme, the nomination forms were to be issued on 1.12.2007 and nominations were to be filed on 4.12.2006. After scrutiny of nominations, display of valid list of nominations, withdrawal of nominations and display of final list of contesting candidates, the polling is scheduled as per this agenda notice on 17.12.2006.

8. With regard to the quorum of the said meeting, the agenda notice also contained a special note which reads as follows: "The meeting shall start on 9.30 a.m at NCUI Auditorium, 3 Siri Institutional Area, August Kranti Marg, New Delhi-110016 i.e. (polling venue). The quorum of the meeting will be observed up to 10.30 a.m. In case the quorum is not complete the meeting shall stand adjourned for Half an Hour on the same day i.e from 10.30 a.m to 11.00 a.m at the same place and the adjourned meeting for the election shall take place from 11.00 a.m to 4.30 p.m on 17.12.2006. In the adjourned meeting, no quorum

shall be necessary in terms of the amended rules 53(3) of the DCS Rules, 1973."

9. The grievance of the petitioner is that out of 1289 housing co- operative societies, who were members of DCHFC, only about 29 had nominated their representative to participate in the general body of DCHFC by 30.11.2006. His first submission is that in these circumstances, the elections should not be allowed to proceed. The petitioner further submits that according to Rule 53(1), (2) and (3), the quorum of the general meeting is 1/3rd of the total number of members subsisting. Since there are 1289 members, the quorum in respect of DCHFC would be about 430 members. However, since only about 29 members have nominated their representatives on the general body for the meeting to be held on 17.12.2006, this quorum can possibly be not achieved. This is another ground for quashing the election process initiated by the Returning Officer.

10. Counsels for the respondents are present, though no court notice has yet been issued and they have been heard in opposition to the writ petition. Mr. Sunil Sabharwal, who appears for respondent no.5 on the other hand submits that the petitioner has no locus standi to file the present petition. It is disputed that he is the nominee of Maharshi Dayanand Co- operative Society Ltd, since the so called nomination was not produced by 30.11.2006 before the Returning Officer. In any event, the member society i.e. Maharshi Dayanand CGHS Ltd has not raised any grievance with regard to the election process and, if at all, the said member society could have raised a grievance and not the petitioner who is a mere individual and not a member of DCHFC.

11. Ms. Sujatha Kashyap, who appears for the Registrar of Co- operative Societies submits that the notice dated 16.1.2000 had been duly issued to all the member societies of DCHFC by speed post and the petitioner can have no grievance if a majority of the member societies chose not to nominate their representatives for the purpose of holding elections in the meeting to be held on 17.12.2006.

12. Having heard the learned Counsel for the parties, we are inclined to reject this petition. We find merit in the preliminary objection raised by respondent no.5 i.e DCHFC. The petitioner, in our view, is not competent to maintain the present petition since it is not he who is a member of DCHFC, of which the elections are being held. If Maharshi Dayanand CGHS Ltd had any grievance in relation to the election process, the said society could possibly have raised a dispute before an appropriate forum. Merely because the petitioner claims to have been nominated as a representative, though belatedly, by M/s Maharshi Dayanand CGHS Ltd that would not entitle him to maintain the present petition. The said nomination, even if it had been made within time, would have been valid only for the purpose of the election process and not for the purpose of pursuing legal remedies on behalf of Maharshi Dayanand CGHS Ltd.

13. Even on merits, we find no force in the submissions of the petitioner. The notice dated 16.11.2006 as stated by learned Counsel for the Registrar were

issued by speed post. The petitioner, apart from making a vague assertion that the notice was not received in time and that it was issued belatedly, does not give any details or particulars in this behalf. The member societies of DCHFC evidently had sufficient time to make their nominations. Admittedly 29 member societies have made their nominations within the time granted for the purpose. It was sufficient that the member societies were put to notice of the election process, which has been done in the present case. It was entirely up to the members whether or not to nominate their representatives for the purpose of participating in the election process. Merely because a small fraction of the members have shown interest in the election process, it cannot be said that the election process is in any way vitiated. Election process is a voluntary exercise and members are free to decide whether or not to participate therein. The election process cannot be said to be vitiated merely because only about 29 member societies out of 1289 had opted to nominate their representatives within time, especially in the absence of any alleged irregularities.

14. The argument of the petitioner with regard to the quorum not being fulfilled is also misplaced. Rule 53(1) itself says that the quorum for a general meeting shall be 1/3rd of the total number of subsisting members "subject to a minimum of 10 members". Further Rule 53(3) provides that if within one hour of the appointed time for the meeting, the quorum is not present, the meeting shall stand adjourned for half an hour on the same date and that at the adjourned meeting no quorum shall be necessary. Consequently the submission that in the case of DCHFC, the quorum would consist of 430 members is not correct and is Therefore rejected.

15. For the aforesaid reasons, we find no merit in this petition and dismiss the same.