

(2010) 08 DEL CK 0298

In the Delhi High Court

Case No : Writ Petition (C) 6314 of 2008

Rajinder Kumar Sharma and Another

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Delhi Co-operative Societies Act, 2003 — Section 118, 137, 137(2), 35, 35(7)

Delhi Co-operative Societies Rules, 2007 — Rule 53, 54

Citation : (2010) 08 DEL CK 0298

Hon'ble Judges : Veena Birbal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sunil Sabharwal, for the Appellant; Ruchi Sindhwani and Bandana Shukla for Respondent Nos. 1-3 and S.K. Kaushik, for the Respondent

Judgement

Veena Birbal, J.—Petitioners are the bonafide members of respondent No. 5, a Cooperative Bank duly registered with respondent No. 3 i.e., Registrar, Cooperative Societies under the provisions of Delhi Cooperative Societies Act, 2003 (hereinafter referred to as "the Act"). The said Bank is governed by the aforesaid Act and the Rules framed thereunder i.e., Delhi Cooperative Societies Rules, 2007 (hereinafter referred to as "the Rules"). Respondent No. 5 is registered with respondent No. 3 in the name and style of Delhi Nagrik Sehkari Bank Limited. On 8th July, 2008, the Returning Officer i.e., respondent No. 4 appointed by Government of NCT of Delhi issued an agenda notice and election programme dated 19th August, 2008 for holding the election of Board of Directors of respondent No. 5/Bank. The agenda notice contained a clause that "in case of the candidates getting less than 1/6th of the total votes polled, the security deposit shall be forfeited and such candidates shall be disqualified for contesting the election in the Bank for the period of two terms of the Board". It is contended that the said clause has been illegally added in Schedule II Clause 4 vide notification dated 19th October, 2007. The relevant portion of the Rules reads as under:

If a candidate fails to get less than 1/6th of the votes polled, the security deposit shall be forfeited and such candidates shall be disqualified for contesting the election in that cooperative society for a period of two terms of Committee.

It is alleged that petitioners being the members of respondent No. 5/bank contested the previous election for the office of the Committee on 16th October, 2005 and could not secure more than 1/6th of the total votes polled and, therefore, their security deposits were forfeited. On enquiry, the Returning Officer informed that they are not eligible to contest the present election in view of the above position of "the Rules". It is stated that petitioners are otherwise not disqualified under the provisions of Section 35 of the Act to contest the election but due to Clause 4 of Schedule II of the Rules which has been notified on 19th October, 2007, petitioners become disqualified for contesting the elections for two terms.

By way of the present writ petition, it is prayed that the Clause 4 of Schedule II of the Rules providing disqualification from contesting election in the Cooperative Society for a period of two terms is ultra vires the Act as the Act nowhere provides such a disqualification. It is further contended that the same is also arbitrary, unconstitutional and takes away the right of a person to contest the election and as such the same be struck down.

2. In the counter affidavit filed by respondent No. 3 i.e., Registrar Cooperative Societies it is stated that Clause 4 of Schedule II of the Rules provides that if a candidate fails to secure 1/6th of the total votes polled then his security deposit shall be forfeited and such candidate shall be disqualified to contest the election in that society for two terms. It is contended that the said clause is not unconstitutional and rather has an object and purpose. The purpose is to prevent persons from contesting the election unnecessarily and to prevent wasteful expenditure where a candidate is not having sufficient support and is unlikely to succeed. It is contended that such a clause disqualifying a member from contesting the election is a reasonable one.

3. The stand of respondent No. 5/bank is that the last election of the Board of Directors of the respondent No. 5/Bank was held on 16th October, 2005. In the agenda notice dated 19th August, 2005 for the election issued by the then Returning Officer, it was clearly mentioned that in case any candidate gets less than 1/6th of the total votes polled, security deposit of such a candidate shall be forfeited and he shall be disqualified for contesting the election of the bank for a period of three years. It is contended that petitioners contested the elections held on 16th October, 2005 and could not secure 1/6th of the total votes polled. It is contended that nomination papers of the petitioners have been rejected as they did not complete the penalty period. It is stated that newly elected board has already taken over. It is further stated that Clause 4 of Schedule II of the Rules is in the interest of Cooperative Banks, its members and the cooperative movement at large and the same is neither ultra vires the Act nor is it arbitrary as is alleged.

4. Learned Counsel for the petitioners has contended that Sub-section 7 of Section 35 of the Act lays down disqualification for election of office in a committee. It is contended that Clauses (a) to (d) therein provides the grounds of disqualification. In the said provision, it is nowhere provided that if a person secures less than one sixth of the votes polled, he shall be disqualified for contesting the election of office in the said committee for two terms of the Committee. It is contended that under the Act one term of the Committee is for a period of three years which means that if a candidate gets less than one sixth of the total votes polled, his security will be forfeited and he shall be disqualified for contesting the election for six years. Learned Counsel has contended that as regards, forfeiture of security amount, there is no grievance but the provision that a person will be disqualified for a period of two terms is contrary to "the Act" and is liable to be struck down under Article 226 of the Constitution of India. It is contended that the Rules have to carry out the purpose of the Act and should not be in derogation of the Act.

5. On the other hand, the stand of respondent No. 3 and respondent No. 5/bank is that Clause 4 of Schedule II of the Rules lays down a reasonable condition for disqualification of a candidate and is not ultravires of the Act nor is it unconstitutional as alleged. Learned Counsel for respondent No. 3 submits that the aforesaid clause is not ultra vires of the Act rather the Act and the Rules supplement each other. In support of her contention, learned Counsel has relied upon: (i) St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, ; (ii) Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others, (paras 38 to 40) and (iii) State of MP and Anr v. Bhola alias Bhairon Prasad Raghuvanshi 2003 (3) SCC (paras 18 & 20).

6. The provisions of the Act and the Rules relevant in the present case are as under:

Section 35 Election and nomination of members of Committee

xxxx xxxx xxxx (7) Notwithstanding anything contained in this Act, a person shall be disqualified for election of office in a committee-

(a) if he holds any such office on a committee of another co-operative society of the same type;

(b) if he holds any such office on the committees of three or more co-operative societies of a different type or types;

(c) if he has been held guilty of any of the offences as enumerated in Section 118.

(d) if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed in this Act; or

(e) if he fails to give a declaration on oath about his eligibility for contesting election as prescribed.

(8) xxxx xxxx xxxx xxxx (9) The Government may make rules generally to provide for or to regulate matters in respect of elections of members of the committees.

Section 137 of the Act empowers the Government to make rules for carrying out all or any of the purposes of the Act and for any class of co-operative societies which are as under:

Section 137(2)

xxxx xxxx xxxx xxxx (r) the procedure for holding of the elections and the steps to be initiated for such election before the expiry of the term, appointment of an administrator on failure to conduct elections and to conduct election within ninety days, recovery of expenses from the delinquent officers of the committee in cases of default;

xxxx xxxx xxxx xxxx (t) rules and procedure for conducting the election of the committees.

Rule 54 of the Rules provides various grounds of disqualification for membership of committee and consequently make him ineligible to contest elections of the Committee. The same is reproduced as under:

54. Disqualifications for membership of committee.

Subject to provisions of Sub-sections (7) of Sections 35 of the Act, no person shall be eligible for election as a member of the Committee, if,

(a) he is in default to the co-operative society in respect of any sum due from him to the co-operative society;

(b) he has, directly or indirectly, any interest in any contract to which the co-operative society is a party except in transaction made with the co-operative society as a member in accordance with the objects of the co-operative society as stated in the bye-laws;

(c) he has, at any time during a period of one year prior to the date of scrutiny of nomination papers, engaged in any identical private business, trade or profession of any description carried on by the society:

(d) he has been convicted of any offence involving dishonesty or moral turpitude during the period of six years prior to the date of scrutiny of nomination paper or he has been ordered to repay or restore the money or property or any part thereof under Sub-section (2) of Section 66 of the Act by the Registrar;

(e) he during a period of one year preceding the date of filing of nomination papers, has been carrying on, through agencies other than the co-operative society of which-he is member, same business as being carried out by such co-operative Society;

The procedure for conduct of election of the committee is given in Schedule II of

the Rules. The relevant clause for the present case is Clause 4 of aforesaid Schedule which is as under:

4. The nomination of a candidate for election shall be made in Form -A in case of federal co-operative society or in Form-B in case of other co-operative society which, shall be supplied by the Returning Officer to any member, free of cost (Form A and Form B are annexed with the Schedule).

[The proposer and seconder member shall not be a defaulter. The candidate shall make a security deposit of five thousand rupees for the post of President or Vice President and as well as for Managing Committee members or Board of directors in case of Co-operative Banks, Financing Institution(s) and federations. In case of other co-operative societies, the candidate will deposit one thousand rupees as security either in cash or bank draft or pay order alongwith nomination papers. If a candidate fails to get less than one-sixth of the votes polled, the security deposit shall be forfeited and such candidate shall be disqualified for contesting the election in that co-operative society for a period of two terms of committee. No member shall be eligible to contest election on two seats simultaneously. In case a member nominated for two seats, the member shall intimate his final choice to contest in one seat on the date of withdrawal, failing which his both nomination paper shall be deemed to have been cancelled.

Every nomination paper shall be presented in person or sent by registered post acknowledgement due by the candidate himself or by his proposer or seconder to the Returning Officer of the society to any other officer duly authorized in this behalf by the Returning Officer so as to reach him before the date and hour specified in item (iv) of the notice referred to in Clause (2). The person who receives the nomination paper shall enter on the nomination paper its serial number and certify the date and hour at which the nomination is received by him and shall immediately give a written acknowledgement for the receipt of the nomination paper which is delivered which shall bear the seal of the society/ Returning Officer. Any nomination paper which is not delivered or received on or before the date and time fixed for its receipt shall be rejected.

7. In view of the above provisions of the Act and the Rules noted above, it may be seen that Sub-section (7) of Section 35 of the Act provides that a person shall be disqualified for election of office in a committee (a) if he holds any such office on a committee of another co-operative society of the same type; (b) if he holds any such office on the committees of three or more co-operative societies of a different type or types; (c) if he has been held guilty of any of the offences as enumerated in Section 118; (d) if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed in this Act; or (e) if he fails to give a declaration on oath about his eligibility for contesting election as prescribed. Rule 54 also lays down the grounds which makes a person ineligible to contest election as a member of a Committee in case one of those grounds exists. The other ground for disqualification as is alleged in the present case is provided in Clause 4 of Schedule II of the Rules

which has been added vide notification of Government of NCT of Delhi dated 19th October, 2007. In the earlier Act of 1972 as well as Rules framed thereunder i.e., Delhi Cooperative Societies Rules, 1973, there was no such disqualification. Subsequently by way of amendment vide notification dated 6th August, 1997, in case a candidate gets less than 1/6th of votes polled, disqualification for three years was added in 1973 Rules and for the first time vide notification dated 19th October, 2007 disqualification for two terms is added. No doubt u/s 137 of the Act, Government has the power to make rules to provide for or to regulate matters in respect of election of members of the Committee. Clause 4 Schedule II has been added by the Government by exercising its rule making power under the aforesaid provision. Rule 53 also provides that election of a cooperative society shall be conducted in a manner given in Schedule II as such it cannot be said that the said Clause 4 of Schedule II is ultra vires the Act as is contended. However, though the rule making power exists, it must be exercised reasonably and not in an arbitrary fashion. The power to make rules does not mean a power to make rules which are patently unreasonable and arbitrary.

8. As regards the contention of arbitrariness raised by petitioner, learned Counsel for respondent has argued that such a disqualification has been added to prevent persons from contesting the elections unnecessarily and to prevent wastage of the expenditure where a candidate is not having sufficient support and is extremely unlikely to succeed. It may be mentioned that it is not shown as to how there will be wastage of money if large number of candidates contest the election. Further election of a Cooperative Society is not a costly procedure. Learned Counsel also argued that there are various other Acts providing such a disqualification, however, she has failed to point out any such clause/provision in any other Act/Rules which prohibits a person for contesting election for six years in case he secures less than 1/6th of the total votes polled. There is a possibility that a person who secured less than 1/6th of the total votes polled might be able to muster support in the next election. A cooperative institution is democratic in its functioning and its members should have freedom to choose appropriate members as their representatives in the Committee/Governing Body and similarly members should have freedom to contest the election. Such a clause disqualifying a member from contesting elections for two terms curtails the freedom of members to contest election and is an impediment to the democratic functioning of the society. The reasons stated for adding such a disqualification are not justified.

9. We are of the view that such a clause is harsh, arbitrary and is not in the interest of the Cooperative Societies. The same is violative of the mandate of Article 14 of the Constitution of India. We, therefore, strike down Clause 4 of Schedule II of the Rules in so far as it disqualifies a candidate to contest the election for two terms in case he fails to secure 1/6th of the total votes polled. Thus, such a disqualification would not attach to the petitioners and would not bar them from contesting the next election provided, of course, that they do not suffer from any other disqualification.

10. The petition stands disposed of accordingly with no order as to costs.