

(2014) 08 DEL CK 0113
In the Delhi High Court
Case No : Writ Petition (Civil) 3259/2014

Vishal Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0113

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Harish Malhotra, Sr. Advocate and Ankit Kumar Lal, Advocate for the Appellant; Sanjay Jain, ASG, Akshay Makhija, Pallavi Shali, Mahesh Srivastava, Rabi Naryan Raut and Vaibhav Manu Srivastava, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioner has, by way of this petition, called into question the letters dated 24.02.2014 and 18.03.2014 issued by respondent no.2 under Section 122 of the Multi State Cooperative Societies (MSCS) Act, 2002 (herein after referred to as the "Act") as well as an order date 16.05.2014 passed by respondent no.2 under Section 123 of the said Act. However, the learned counsel for the petitioners has limited the challenge in the present petition only to the order dated 16.05.2014 under Section 123 of the Act. (herein after referred to as the impugned order)

2. The petitioner herein is aggrieved by the impugned order, whereby respondent no.2 have superseded the Board of Directors of National Cooperative Consumers Federation (NCCF) without giving an opportunity to the members of the Board to state their objections and appointed the Joint Secretary, Department of Consumer Affairs (i.e. respondent no. 3) as Administrator to manage the affairs of the NCCF.

3. The principal ground of challenge to the impugned order is that the same was passed without affording any opportunity to the petitioners to voice their objections to any action under Section 123 of the Act.

4. Before proceeding further, it would be necessary to refer to the provisions of Section 123 (1) of the Act which read as under:-

"(1) If in the opinion of the Central Government, the board of any specified multi-state cooperative society is persistently making default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or has committed any act which is prejudicial to the interests of the society or its members, or has omitted or failed to comply with any directions given to it under section 122 in public interest or that there is a statement in the constitution or functions of the board, the Central Government may, after giving the board an opportunity to state its objections, if any, and considering the objections, if received, by order in writing, remove the board and appoint one or more administrators, who need not be members of the society, to manage the affairs of the society for such period not exceeding six months, as may be specified in the order which period may, at the discretion of the Central Government, be extended from time to time, so, however, that the aggregate period does not exceed one year. Provided that in the case of a cooperative bank, the provisions of this sub-section shall have effect as if for the words "one year", the words "two years" had been substituted."

5. It is apparent from the plain reading of Section 123(1) of the Act that before any action is taken under the said provision an opportunity has to be given to the Board of the Society in question to state its objections against any proposed action.

6. The learned ASG has contended that notices under Section 122 of the Act had been served and the action under Section 123 of the Act is predicated on non-compliance of the said notices. It is contended that an opportunity of further notice, in these circumstances would be a mere formality considering that such opportunity had already been granted on two earlier occasions. (i.e. in view of notices under Section 122 of the Act) .

7. I am unable to accept the contention of the learned ASG as a direction under Section 122 of the Act and an action under Section 123 of the Act are entirely separate and distinct actions. Whereas Section 122 of the Act contemplates directions to be issued to a society, Section 123 of the Act contemplates an action inter alia on the ground that the said directions have not been complied with. It is indisputable that an action under Section 123 of the Act is a drastic measure and is an action adverse to the, allegedly delinquent, Board of Director. Therefore, in any event principles of natural justice are required to be complied with before any such adverse action is taken. Accordingly, an opportunity to be heard is necessarily to be afforded to the Board of Directors of the society. In the present case, Section 123 itself embodies that such an opportunity be given before any action is taken under the said provision. The Board must have an opportunity to explain why directions under Section 122 of the Act were not complied with and also address any other issues that may be held against them. In my view the opportunity for raising objections under Section 123 of the Act is

not a mere formality but a substantive right. In this view, the writ petition is allowed and the impugned order dated 16.05.2014 is set aside.

8. The petitioners shall be given an opportunity for being heard and to raise objections against any action under Section 123 of the Act in the event the respondents intend to pursue to remove the Board of Directors of NCCF and appoint an Administrator.

9. Nothing construed in this order shall be considered to be an expression of opinion on the merits of the controversy; whether any action under Section 123 is warranted.