

(2017) 08 DEL CK 0073

In the Delhi High Court

Case No : 7073 of 2017

YOGENDRA SARASWAT

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 22-08-2017

Acts Referred:

[Multi State Co-operative Societies Act, 2002](#), [Section 123](#) - Supersession of board of specified multi-State co-operative society

Citation : (2017) 08 DEL CK 0073

Hon'ble Judges : Hima Kohli, Deepa Sharma

Bench : DIVISION BENCH

Advocate : Puneet Mittal, Vivek Singh, Amitej Kumar Nagar, Kshitij Kumar, Anil Soni, Archana Varma, G.Srinivasan, Dipak K. Nag, Apurva Upmanyu, Mukesh Kumar

Judgement

1. The present petition has been filed by the petitioner, a member of the respondent No.4/Kendriya Bhandar, praying inter alia for setting aside the Notification dated 01.08.2017, issued by the respondent No.3/Returning Officer appointed by the Board of Directors of the respondent No.4, whereunder elections of delegates have been fixed for 06.09.2017. Further, the petitioner seeks a declaration to the effect that the Board of Directors and Chairperson of the respondent No.4, elected pursuant to the elections of General Body held on 09.05.2012, be declared as ineligible for any further elections. The petitioner also prays for appointment of an Administrator to manage the affairs of the respondent No.4 and conduct the election of the delegates.

2. On the last date of hearing, at the request of Mr. Soni, learned counsel for the respondents No.1 and 2/UOI, the matter was adjourned to enable him to obtain proper instructions from the Department. Today, he states on instructions that the respondent No.3 was appointed as a Returning Officer by the Board of Directors of the respondent No.4 in March, 2017. Vide letter dated 14.06.2017 addressed by the respondent No.3 to the respondent No.1, he had brought on

record certain facts relating to the conduct of the elections and pointed out that term of delegates of the General Body would expire on 09.05.2017 and the term of the Board of Directors, on 31.07.2017. Further, he had identified some difficulties relating to the failure on the part of the Board of Directors of the respondent No.4 to take steps to conduct the elections as per the prescribed provisions and the Bye-laws of Kendriya Bhandar and had expressed his inability to proceed further in the matter of conducting elections of the respondent No.4.

3. Contemporaneously, on 15.06.2017, the respondent No.1 had issued a notice to show cause under Section 123 of the Multi-state Cooperative Societies Act, 2002 (hereinafter referred to as MSCS) to the Chairperson and members of the Board of Directors of the respondent No.4 calling upon them to explain as to why the Board be not removed on account of persistent negligence in performing their duties and discharging their responsibilities.

4. Learned counsel for the respondents No.1 and 2/UOI submits that all the addressees of the show cause notice have submitted their replies and they have been granted personal hearing on two dates. The third and final hearing is scheduled on 30.08.2017. He assures us that a decision on the notice to show cause shall be taken by 30.08.2017, so that the schedule of the elections already declared, is not disturbed in any manner.

5. Respondents No.1 and 2/UOI shall ensure that the notice to show cause issued to the Chairperson and the members of the Board of Directors of the respondent No.4 is brought to a culmination by passing a final order on or before 30.08.2017, under intimation to the affected parties.

6. Enclosed with the impugned Notification dated 01.08.2017, is Annexure III, which lays down the schedule of the elections as follows:-

S. No.

Action Date by which action has to be completed

Time

1.

Letter issued by Kendriya Bhandar for appointment of Returning Officer

07.04.2017 --

2.

Returning Officer issues notification appointing Polling Officer

27.04.2017 --

3.

Notice in newspaper for election of Delegates to verify their names in the list of voters.

06.05.2017 --

4. Despatch of list of shareholders, Nomination papers etc. to Returning Officer.

29.07.2017 --

5.

Press release to be issued for declaring date of election as 6th September, 2017.

31.07.2017 --

6. Polling Officers to issue notification inviting nominations, giving schedule of Election

04.08.2017 --

7.

Last Date for submission of nomination papers etc.

17.08.2017 Up to 5 p.m.

8.

Scrutiny of nomination papers

19.08.2017 1 p.m. - 2 p.m.

9.

Announcement of valid nominations

21.08.2017 Up to 5 p.m.

10.

Withdrawal of nominations

23.08.2017 Up to 5 p.m.

11.

Announcement by Polling Officer the name of candidates (contestants)

24.08.2017 --

12.

Intimation of names of candidates (contents) to Returning Officer

24.08.2017 By 5 p.m.

13.

Printing of Ballot Papers and their dispatch to P.O's (alongwith ballot boxes, stationery etc.)

04.09.2017 --

14. Polling date for election of delegates

06.09.2017 10 a.m.- 5 p.m

15. Counting of votes polled and announcement of results

07.09.2017 By 5 p.m.

16.

Intimation of name of elected delegates by Polling Officers to Returning Officer

11.09.2017 --

17.

Notification issued by RO for declaration of names of members of the society elected as Delegates

12.09.2017 --

18.

Preparation of list of eligible delegates to vote and display of the same on Notice Board at Kendirya Bhandar Head Office & issue of notification.

12.09.2017 --

19.

Filing of Nomination Papers

13.09.2017 - 18.09.2017

10a.m. - 5 p.m.

20.

Scrutiny of nomination papers

19.09.2017 1 p.m. - 2 p.m.

21.

Announcement of name of candidate

21.09.2017 --

22.

Withdrawal of nomination paper

22.09.2017 10a.m. - 4 a.m.

23.

Announcement of final list of candidates by R.O.

23.09.2017 --

24. Election of Directors

15.10.2017 10 a.m. - 2 p.m.

25.

Notification issued by R.O. for declaration of names of members of the society elected as Directors

16.10.2017 --

26.

Notification issued by R.O. for election of Chairman

17.10.2017 --

27.

Filing of Nomination Papers

20.10.2017 10 a.m. - 2 p.m.

28.

Scrutiny of nomination papers

21.10.2017 1 p.m. - 2 p.m.

29.

Withdrawal of nomination paper for the post of Chairman 23.10.2017 10 a.m.- 4 p.m.

30.

Election of Chairman

24.10.2017 1 p.m. - 2 p.m.

31. Notification issued by R.O. for declaration of Chairman

24.10.2017 --

7. It can be seen from the above that the election process has already commenced and is at the stage of submission of nomination papers. It is well settled that once the wheels of election are set into motion, courts should refrain from interfering in the said process. Even if there is some illegality or breach of rules, as has been alleged by the petitioner herein, courts should forbear from interfering with the election. There are several judicial pronouncements that emphasize that as a matter of general principle, courts should ordinarily refrain from interfering with the election process between the commencement of such a

process and the stage of declaration of the result. On the election being over, the aggrieved party has always an option to pursue his remedies and lay a challenge thereto in accordance with law. [Refer: Ponnuswami vs. Returning Officer, (1952) 1 SCR 218, S.T. Muthusami vs. K. Natarajan and Ors., (1988) 1 SCC 572, Umesh Shivappa Ambi and Ors. vs. Angadi Shekara Basappa and Ors., (1998) 4 SCC 529, Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. vs. State of Maharashtra and Ors., (2001) 8 SCC 509 and Avtar Singh Hit vs. Delhi Sikh Gurdwara Management Committee and Ors., (2006) 8 SCC 487].

8. In the present case, the last date for submission of the nomination papers has been fixed by the respondent No.3 as 17.08.2017 and the polling date for the election of the delegates has been fixed as 06.09.2017. Out of nine members on the Board of Directors of the respondent No.4, only three members are stated to be eligible to participate in the ensuing elections.

9. Mr. Soni hands over a copy of a recent Notification dated 18.08.2017 issued by the Returning Officer, wherein taking note of the pendency of the present petition and its status, further steps relating to the election process have been kept in abeyance till 22.08.2017, i.e., till today. A copy of the said Notification is taken on record.

10. Having regard to the submissions made by the counsel for the respondents No.1 and 2/UOI as recorded above and in view of the fact that the election process has already been set into motion, we do not deem it appropriate to pass any orders for setting aside the Notification dated 01.08.2017, as prayed for by the petitioner or to appoint an Administrator in respect of the respondent No.4.

11. Having regard to the fact that not only has the Returning Officer laid down a schedule for conducting the elections, several steps as mentioned in Annexure III enclosed with the impugned Notification dated 01.08.2017 have already been taken, we find no reason to stall the said process in any manner. The respondent No.3/Returning Officer is directed to take immediate steps to take further action in terms of the schedule laid down under Annexure III, so that the elections can be conducted on the date and time fixed.

12. The petition is disposed of alongwith the pending application.