

(1992) 03 DEL CK 0058

Delhi High Court

Case No: Civil Writ Appeal No. 3235 of 1991

A. Sundara Rajan

APPELLANT

Vs

The Registrar Cooperative
Societies and Others

RESPONDENT

Date of Decision: March 5, 1992

Citation: (1992) 48 DLT 339 : (1992) 23 DRJ 215 : (1992) RLR 269

Hon'ble Judges: R.L. Gupta, J; D.P Wadhwa, J

Bench: Division Bench

Advocate: Rajiv Nayar, A. Ahlawat and R.S. Tomar, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This writ petition has been filed against the respondents for issuing a writ of mandamus or any other appropriate order of direction for restraining Audyogic Karamchari Cooperative Group Housing Society Ltd., respondent No. 2 (the Society in short) from holding and conducting elections on 20th October, 1991 on the basis of an undated notice. The notice required holding of election of only 1/3rd of the members of the Managing Committee of the Society.

(2) The allegations are that the petitioner is a legal and bonafide member of the Society which was registered in 1970 under the provisions of Delhi Cooperative Societies Act 1972 (Act for short). Section 29 of the Act says that every Co-operative Society shall within a period of six months, after updating its accounts for the year under rules for the time being in force, call a general meeting of its members for approval of its activities, election of the members of the committee other than nominated members, consideration of annual audit report, etc. According to Section 31 of the Act, which provides procedure for holding elections and nomination of members of the Committee, superintendence, direction and control of preparation of electoral rolls shall be vested with such returning officer not below the rank of a gazetted officer as may be appointed by the Lt, Governor in this behalf. The term of

the office of the elected members shall be such, not exceeding three co-operative years, including co-operative year of their election, as may be specified in the bye-laws of the Society.

(3) The main grievance of the petitioner is that in terms of Section 31 of the Act all the members of the Managing Committee could hold office for a term which is in consonance with the bye laws of the Cooperative Society. Since the election sought to be held in respect of 1/3rd members only, was contrary to the provisions of the Act and the bye laws, it was necessary to issue an appropriate writ.

(4) By an interim order on 11th October, 1991, elections were allowed to be held and declared, but subject to further orders of the Court.

(5) In the counter affidavit of the Society, it is stated that u/s 60(2)(c) of the Act, any dispute arising in connection with the election of an officer of a Society was liable to be referred to the Registrar of the Cooperative Societies, i.e. the first respondent. So an efficacious remedy being available, the petition was not maintainable. The other ground taken up is that the election process had already been completed, counting had taken place and result declared and hence the writ petition has become infructuous. It is also stated that according to Rule 62 of the Co-operative societies rules 1973 (Rules for short), one-third members of the Committee retire in each year and, Therefore, elections were liable to be held only against vacancies of retiring members. Therefore, there was no illegality in holding the election against the vacancies of one-third retiring members only.

(6) The plea in the counter affidavit of the first respondent is that after election of 1/3rd members of the Society under Rule 62, a new committee comes into existence and, Therefore, there was no illegality in the procedure of holding elections for 1/3rd members only.

(7) We have heard arguments advanced by the learned counsel for the parties.

"ON behalf of the first respondent it is argued that dispute regarding holding of the election of 1/3rd members of the committee of the Society was squarely covered u/s 60(2)(c) of the Act, and, Therefore, the proper remedy for the petitioner was to approach the first respondent instead of rushing to this court. On behalf of the petitioner, it is argued that the dispute referred in the present petition is not covered by the aforesaid provision, because the challenge in this petition is not to the election of an individual members or members, but whether the respondent Society is justified in holding elections of 1/3rd members in the light of Section 31 of Act, Rule 62 and Bye-law 23(5) of the Society. We are of the opinion that the contention of the learned counsel for the petitioner has merit. It is the interpretation of the aforesaid section, rule and bye-law which calls for decision regarding holding of elections of 1/3rd members. No dispute of any individual member is involved and, Therefore, there is no bar to the maintainability of the petition."

(8) Now the contention on behalf of the petitioner is that according to the bye laws of the Society, the period during which any member of the Managing Committee of the Society could hold office was limited to only one Co-operative year. For this purpose, our attention has been drawn to bye law No. 23 and specially to Sub-clause (5). Sub-clause (5) says that "the Committee member shall be elected and hold office for one year and shall be eligible for re-election; provided that if for any unavoidable reason, a general meeting could not be held at a suitable time within the year, the existing committee shall continue to hold office till the election of the new committee, but such election shall be held within a period of 18 months from the previous election unless the Registrar extends the period of holding the general meeting and the election by a general or special order with regard to a Society or class of Societies."

(9) There is no dispute that the Society in the present case is not excluded from consideration by the inclusion of the words "such Co-operative Societies or class of Co-operative. Societies" as used in Section 31 of the Act. Therefore, according to the learned counsel, when the elected members of the Society could hold office only for one Co-operative year, the Society cannot have recourse to Rule 62 of the Rules for holding elections of 1/3rd members only because Rule 62 is in clear violation of Section 31 of the Act. Section 31, the argument further goes, cannot be read so as to permit the continuation of 2/3rd elected members of the society for three continuous Co-operative years specially when it says that the term of the office of the elected members of the Committee shall be such as may be specified in the bye laws of the Society. Since bye law 23(5) of the Society permits the Committee members to be elected and hold office for one year only, it was incumbent upon the respondents to hold elections of the entire Managing Committee of the Society every year, of course within the limitations contained in the aforesaid bye law. To rebut this argument, our attention has been drawn to Rule 62 of the Rules. Upon the basis of the Rules, it is argued that this Rule mandates that 1/3rd members of the Committee shall retire each year and in that situation, the Society was competent to hold elections in respect of only the vacancies caused by the retiring members. "So far as the perusal of the Rule goes, there is no doubt that its intention is the same. The aforesaid Sub-section clearly mandates that the term of the office of the elected members shall not exceed three Co-operative years, but at the same time, this term cannot be more than that specified in the bye laws of the Society. Therefore, unless the bye laws of the Society permit the elected members or a part of them to continue to hold office for three Co-operative years, it is not possible to hold that such a power can be conferred by simply enacting a Rule. The Rules derive their force from the power conferred in the main body of the Act. If the bye laws of the Society had permitted the continuation of the term of office of the elected members for three Co-operative years. Rule 62 of the Rules could be validly invoked by the respondents. Since, in the present case, bye law 23(5) of the Society permits the elected members to hold office only for a period of one year, we think that Rule 62

cannot be invoked by the respondents to validate the election of only 1/3rd members of the Society in a particular Co-operative year. As the bye laws of the Society, in the present case, do not allow the elected members to hold office for more than one co-operative year, it must be held that the elections of the Society will have to be held every year, of course, within the limitations prescribed by the bye laws." Bye law 23(5) permits the Committee to continue to hold office till the election of the new Committee for a period of 18 months unless the Registrar extends the period of holding the General Body Meeting and the election by a general or special order.

"THEREFORE,we are of the view that the action of the respondent-society in holding elections qua 1/3rd members only does not conform to section 31 of the Act read with bye law 23(5) of the Society."

(10) In the present case, the elections of 1/3rd members of the Managing Committee were allowed to be conducted and results declared in terms of the interim order dated 11th October, 1991. Because of the view which we have taken that election has necessarily to be invalidated. The only consequence will, Therefore, be that the respondents will hold the elections of the whole managing committee of the Society as early as possible, preferably within a period of three months from today. We, accordingly, direct that the first respondent shall hold the elections of the members of the Society within a period of three months. There will be no order as to costs.