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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4421/2024 & CM APPL. 18064/2024**

**ASHOKA ENCLAVE COOP. G/H SOCIETY LTD. THROUGH ITS
PRESIDENT /SECRETARY Petitioner**

**Through: Mr. M.P. Sahay, Ms. Awanitika and
Mr. Sachin Kharb, Advocates**

versus

REGISTRAR COOPERATIVE SOCIETIES DELHI & ORS.

..... Respondents

Through: Mr. Udit Malik, ASC for R-1

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Date of Decision: 28th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The present petition has been filed by the Society under Article 226 of the Constitution of India to challenge the order(s) dated 13th March, 2024 ('impugned orders') passed by the Returning Officer- Respondent No. 2, whereby the said Respondent has cancelled the name of Respondent No. 3 and Respondent No. 4 from the list of defaulters of the Society and thus, entitling them to vote in the elections scheduled on 31st March, 2024.

2. It is stated that the Petitioner- Society has filed a claim petition dated 11th June, 2023 before Respondent no. 1 with respect to the pending dues and default of Respondent No. 3 under section 70 of DCS Act, 2003 ('Act of



2003') for seeking reference to arbitration. Similarly, the Society has also filed a claim petition before the Respondent no. 1 on 31st December, 2023 with respect to pending dues and default of Respondent No. 4 for seeking reference to arbitration.

2.1. It is stated that Respondent No. 2 has been appointed on 20th February 2024 as a Returning Officer for holding elections of the Management Committee of the Petitioner-Society. It is stated that Respondent Nos. 3 and 4 names appear in the list of defaulters and thus, they are not entitled to vote in the elections.

2.2. *Vide* separate representations dated 06th March 2024, Respondent Nos. 3 and 4 requested the said Returning Officer for cancellation of their names from the list of defaulters of the Society. It was stated by Respondent Nos. 3 and 4 therein that the demands raised by the Managing Committee are fictitious, unjustified and disputed. It was further stated that the claim petitions filed by the Society are pending reference to arbitration and there has been no final adjudication.

2.3. It is stated that Respondent No. 2 has allowed the said representations and removed the names of Respondent Nos. 3 and 4 from the list of defaulters, thereby entitling them to cast a vote in the forthcoming elections. It is stated that the Petitioner-Society is aggrieved by the said action of Respondent No. 2.

3. Learned counsel for the Petitioner states that the impugned order(s), both dated 13th March, 2024, passed by Respondent No. 2 are illegal. He states that since claim petitions stood filed before the RCS, the reliance placed by Respondent No. 2 on the definition of defaulter in Rule 2(e) of the DCS Rules, 2007 is incorrect.



3.1. He states that the dues recoverable from the said members i.e., Respondent Nos. 3 and 4 are duly reflected in the books of account as well as in the balance sheet and recovery proceedings have been initiated before the RCS. He states that Respondent Nos. 3 and 4 have been rightly placed in the defaulters list in accordance with Section 25(d) of the Act of 2003. He states that the defaulter is not entitled to voting rights as per the said provisions. He also relies upon paragraph 10(d) of the Handbook for Returning Officer.

4. In reply, learned standing counsel for Respondent No. 1- RCS states that since the elections are scheduled for 31st March, 2024 and the order has been passed by the Returning Officer, the present petition should not be entertained as it would derail the scheduled elections.

5. We have heard the learned counsel for the parties and perused the record.

6. The issue raised by the Petitioner- Society in the present petition is with respect to the validity of the order(s) of the Returning Officer deleting the names of Respondent Nos. 3 and 4 from the defaulters list.

7. The Petitioner has relied upon the guidelines set out in the Handbook for Returning Officer¹ ('Handbook') issued by RCS and the Notice dated 03rd March, 2024 issued by the Respondent No. 2- Returning Officer calling a Special General Body Meeting of the Society on 31st March, 2024 for conducting elections of the Managing Committee.

8. Guideline at paragraph 9 of the Handbook stipulates that a list of all the enrolled members of the Society; as well a separate list of members who

¹ Annexure P-12



are in default, is to be prepared by the Managing Committee. The named defaulting member is however allowed to clear his/her dues before the date of filing of nomination. This guideline corresponds to Clause 3 of Schedule II of the DCS Rules, 2007. In the present case, to this effect the Notice dated 03rd March, 2024 issued by the Returning Officer also grants an opportunity to the defaulting member against whom dues are pending, to clear the said dues before filing nomination or casting the vote.

9. Guideline at paragraph 10 of the Handbook sets out which of the enrolled members are entitled to vote and it corresponds to Section 25 of the Act of 2003. The statutory provision of Section 25 of the Act of 2003 and Rule 34 of the DCS Rules, 2007 contemplate that the named defaulting members will not be entitled to vote in the election of cooperative society.

10. Pertinently, the phrase 'default' has been statutorily explained in the said Section 25 of the Act of 2003, Rule 2(e) of the DCS Rules, 2007 and Paragraph 10 of the Handbook. The said definition has been considered by the Returning Officer, while adjudicating upon the representations of Respondent Nos. 3 and 4 to hold that in the absence of an award passed in favour of the Society upholding their demand for the alleged dues, the inclusion of Respondent Nos. 3 and 4 in the defaulter list is not made out.

11. The definition of default in Explanation I to Section 25 (d) of the Act of 2003 and defaulter at Rule 2(e) of the DCS Rules, 2007 are relevant and the relevant portion of the same reads as under:

“25. Votes of members.- Every member of a co-operative society shall have one vote in the affairs of the co-operative society :

Provided that –

...



d) if a member is in default in payment of the sum demanded by the co-operative society or has transferred his interest in a co-operative society to any other member (or to any other person without the approval of the competent authority he shall have no voting right in the general body meeting of the co-operative society);

...

(e) ...

Explanation [I]. - Default means any default in payment of loan installment, land money, construction money and annual subscription payable as provided in the bye-laws of a co-operative society for which due notice for payment has been served on the member or an award has been passed for recovery of such sum."

Rule 2(e) of the DCS Rules reads as under:

““Defaulter” means any co-operative society, member or other person committing default in payment of loan instalment, land money, construction money or annual subscription payable as provided in the byelaws of co-operative society for which due notice for payment has been served on the member/cooperative society or an award has been passed for recovery of such sum.”

(Emphasis supplied)

12. In view of the fact that the demand raised by the Society on Respondent Nos. 3 and 4 is categorically disputed by the said members and the Society has itself elected to file a claim petition under Section 70 of the Act of 2003 inviting adjudication of its claims, the expression ‘*an award has been passed for recovery of such sum*’ in the statute and Rules is attracted to the facts of this case. The opinion formed by the Returning Officer that Respondent Nos. 3 and 4 cannot be declared to be defaulters until the passing of the award as the dues claimed by the Society are disputed, is a reasonable conclusion.

13. In the facts of this case, for instance, the Society in the claim petition dated 11th June 2023 filed before the RCS has raised demand for ‘rent’ against Respondent No. 3 for a room allegedly occupied by her unauthorizedly, which claim has been disputed by the said Respondent and



would require adjudication. Similarly, in the claim petition dated 31st December, 2023 filed against Respondent No. 4, the Society has raised a claim for recovery of 'rent' for car parking space, which again is disputed by the said member and is pending adjudication. The said demands towards 'rent' raised by the Society are not admitted dues; the validity of the claims is sub-judice and therefore, the view of the Returning Officer that in the absence of an award upholding the demand of the Society, Respondent Nos. 3 and 4 cannot be declared to be defaulter is a reasonable view and cannot be said to be arbitrary.

14. In addition, in view of the fact that the elections are scheduled on 31st March, 2024, we are not inclined to entertain the present writ petition as it would derail the said elections.

15. Accordingly, the present petition is dismissed along with pending application. It is however, clarified that the observations made in this order are not in expression of the merits of the claims of outstanding claims raised by the Society against Respondent Nos. 3 and 4.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 28, 2024/hp/ms