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

% **Date of Decision: 17.01.2019**

+ W.P.(C) 8300/2018 & CM APPL. 31887-31888/2018

ISHWAR SINGH ANR ORS. Petitioners
Through Mr. Jayant Mehta and Mr. Sachin
Mittal and Ms. Drishti Harpalani,
Advs.

versus

THE REGISTRAR OF CO-OPERATIVE
SOCIETIES AND ORS. Respondents
Through Mr. Pankaj Yadav and
Mr.Priyaranjan Dubey, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The petitioners have preferred the present writ petition to assail the order dated 11.05.2018 passed by the Delhi Co-operative Tribunal (DCT) in Appeal No. 168/2016/DCT.
2. The said appeal had been preferred by the petitioners in the present petition alongwith two others to assail the order dated 09.08.2016 passed by the Registrar of Co-operative Societies (RCS) in respect of Arunodaya Co-operative Group Housing Ltd., as well as the elections results in respect of

elections held on 28.08.2016 for electing the members of the Managing Committee of the said Society.

3. It appears that the Returning Officer was appointed by the Asstt. Registrar (Section-I) under Section 35 (1) of the Delhi Co-operative Societies Act, 2003 (the Act) on 19.10.2015 in respect of the said Co-operative Society to conduct the elections for electing members of its Managing Committee. On 05.05.2016, the Returning Officer sent a communication to the RCS, complaining about the delay caused by the erstwhile Managing Committee Members in submission of the documents desired by the Returning Officer to conduct the election. In the said communication dated 05.05.2016, he also observed that:

“ further, the Auditor has conducted the audit of the Society for the financial year 2011-12 and 2012-13 on 24/12/2013 and Audit Reports have been submitted in the Audit Branch on 15/06/2015 and for the Financial Year 2013-2014 on 15/09/2015 and 2014-15 on 25/09/2015 and submitted in Audit Branch on 04/11/2015, belatedly and a statutory audit has thus not been completed within the statutory period prescribed in the DSC Act. Consequently, in terms of the statutory provisions of Section 35(7)(d) of the Act, the members of the erstwhile Managing Committee of the Society are required to be disqualified for election of office in the committee to be formed after election. The said provisions of Section 35(7)(d) is reproduced hereunder :

“35. Election and nomination of members of committee

.....

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

.....

(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*

In view of the aforesaid facts, permission may kindly be granted in terms of the provisions of Section 35(7)(d) to disqualify the members of the erstwhile Managing Committee of the Society, expeditiously so that election process can be commenced and completed in a timely manner after the extension of tenure.

It is also brought to my notice that similar order of disqualification was passed with regard to the Society on failure to complete statutory audit within the statutory period before the last election of the Managing Committee of the Society. Consequently, members of the last to last Managing Committee were also disqualified from contesting the election. Copy of the Order dated 11th October, 2012 in this regard is attached herewith for ready perusal of your good office.”

4. Based on the said report sent by the Returning Officer, the Registrar of Co-operative Societies on 16.06.2016 granted approval to the Returning Officer to conduct the elections in terms of Section 35(7)(d) after disqualifying the members of the erstwhile Managing Committee due to their failure to complete the statutory audit within the statutory period before the last election. Consequently, the members of the erstwhile Managing Committee were disqualified by the RCS from contesting the elections.
5. However, the said disqualification was recalled by the RCS by

communication dated 09.08.2016 addressed to the Returning Officer, which reads as follows :

“I am directed to convey that Sh. R.N. Bhardwaj, M.S. No. 276 and Sh. V.S. Soin, m.s. No. 279 of The Arunodaya CGHS LTD. May be allowed to participate and contest the forthcoming election of Managing Committee of the Arunodaya CGHS Ltd. As no default has yet been proved against them till date, as mentioned in the defaulter list submitted by the society to the Returning Officer.

It is further conveyed/directed that erstwhile Managing Committee should not be disqualified on the pretext of section 35(7)(d) of DCS Act 2003 as this Committee is not responsible for the delay in the audit for the period of 2014-15.

This issues with the prior approval of the Competent Authority.” (emphasis supplied)

6. Consequent upon the issuance of the said communication, the elections to elect the members of the Managing Committee of the said society were held on 28.08.2016 and eight of the members of the erstwhile Managing Committee were re-elected. All the petitioners contested in the said elections and, except petitioner no.2, they were unsuccessful. The petitioners then preferred the aforesaid appeal being Appeal No. 168/2016/DCT before the DCT to assail the order dated 09.08.2016 passed by the RCS, and also the elections to the Managing Committee held on 28.08.2016. The Tribunal has rejected the said appeal, firstly, on the ground that the elected members of the Managing Committee whose candidature – and consequent elections, were under challenge, were not impleaded as party respondents and, secondly, on the ground that the audit had been

completed by the Society within the statutory period and the delay was, in fact, on the part of the RCS in appointing the auditors for the years 2011-12 and 2012-13.

7. When the writ petition was filed, to overcome the objection taken by the said Tribunal in the impugned order, the petitioners of their own accord impleaded the elected members of the Managing Committee as respondent Nos. 4 to 13. The writ petition was taken up by this court on 31.08.2018. The petitioners stated through counsel that they would implead respondent nos. 4 to 13 by moving an appropriate application. The petitioners, in fact, had moved C.M. No. 31887/2018 along with the writ petition to seek impleadment of the said private parties as respondent Nos. 4 to 11. In the aforesaid light, we allow the application i.e. C.M. No. 31887/2018 and the memo of parties filed along with the writ petition is again taken on record.

8. The submission of Mr. Mehta, learned counsel for the petitioners is that, firstly, the Tribunal was factually incorrect in observing that there was delay on the part of the RCS in appointing the Statutory Auditors. He submits that the factual position with regard to the date of appointment of auditors; dates on which the audits were completed; the dates on which the audit reports were submitted to the RCS; the penalty imposed on account of delayed submission of the audit report, and; the date on which the fine was deposited, is as follows :

Year	Auditor appointed on	Audit completed on	Submitted on	Penalty imposed	Fine deposited on
2011-2012	24.9.2013	24.12.2013	15.06.2015	Rs.1500/- vide order	Rs.3000 on

				dt.7.9.2015	17.8.2016
2012-2013	-do-	-do-	-do-	-do-	-do-
2013-2014	4.08.2015	25.9.2013	9.11.2015	Rs.1500/- vide order dt.21.4.2016	Not deposited yet and not accepted
2014-2015	-do-	-do-	-do-	-do-	-do-

9. Mr. Mehta, submits that on reading of Section 35(7)(d) with Section 60(1) and 60(5) of the Act, it is evident that the obligation of the Managing Committee does not get extinguished merely upon getting the audit completed within the statutory period. The obligation continuous and the Managing Committee is obliged to forward the audit report to the RCS for information and record promptly. In the present case, it would be evident from the tabulation that the audit reports were not forwarded to the RCS till as late as 15.06.2015 – in respect of the years 2011-12, 2012-13, and 09.11.2015 – in respect of the years 2013-14 and 2014-15. He submits that on account of said delays, penalty was imposed upon the said Society. Mr.Mehta submits that the consequence of the audit not being completed set out in Section 35(7)(d) of the Act, is wide enough to include in it the obligation to send audit report for information to the RCS. In support of his submission, Mr. Mehta has sought to place reliance, firstly, on the decision of a Division bench of this Court in *Suresh Chand (Col. Retd.) & Ans. vs. Delhi Co-operative Tribunal & Ors.*, (2010) 167 DLT 590 (DB) and, secondly, on *Mr. Narender Kr. Jain & Ors. vs. Govt. (NCT of Delhi)*, 2011 SCC OnLine Del 2125. Mr. Mehta further submits that the Tribunal erred in observing that the appeal is not maintainable without impleading the elected

members of the Managing Committee (who were elected in the election process in question), since the disqualification under Section 35(7)(d) is incurred automatically upon non-compliance of the said statutory provision and, therefore, their impleadment was neither necessary, nor proper. In any event, they have been impleaded in the present proceedings by way of abundant caution. He further submits that the Managing Committee was made a party - as respondent no.3 in the appeal, and is also the respondent in the present petition. Thus, the elected members of the Managing Committee were duly represented before the Tribunal.

10. We have heard Mr. Mehta, learned counsel for the petitioner and perused the record, including the impugned order. Section 35 of the Act deals with the subject of Election and Nomination of members of the Managing Committee of a Co-operative society. Sub Section (7) of Section 35, in so far as it is relevant, reads as follows:

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

(a).....

(b).....

(c).....

(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)”

11. Section 60 deals with the subject of Audit of the accounts of a Co-

operative society. For our purpose, clauses (1), (5) and (6) of Section 60 are relevant and they read as follows:

*“60. **Audit**– (1) A co-operative society shall get its accounts audited annually by an auditor selected from the panel prepared by the Registrar in the prescribed manner within the period of one hundred twenty days from the prescribed date for making up its account for the year.*

(2).....

(3).....

(4).....

(5) It shall be the duty of the committee of the co-operative society to ensure that its accounts are audited annually and the audit report presented for consideration in annual general body meeting of the co-operative society as provided in Section 31 and a copy of the audit report shall also be forwarded by the co-operative society to the registrar for his information and record.

(6) On failure to get the audit of the co-operative society conducted in time, the Registrar shall get the audit conducted and fee paid shall be a charge against the delinquent officers of the committee and shall be recoverable from them as an arrears of land revenue as provided in Section 111.

7.

8.

9.”

12. A reading of the aforesaid provisions makes it clear that it is obligatory for a co-operative society to get its accounts audited annually.

The audit of the accounts has to be got conducted by an Auditor selected from the panel prepared by the RCS. The audit has to be undertaken within a period of 120 days from the prescribed date for making up the accounts for the year. Once the audit is complete, it is the duty of the Managing Committee to ensure that its accounts are presented for consideration in Annual General Body Meeting of the Co-operative society in terms of Section 31, and it is also obligatory for the Managing Committee to forward a copy of the audit report to the Registrar for his information and record.

13. The consequence of failure on the part of the Managing Committee to fulfill either of the aforesaid obligations are different, and have been set out in different provisions of the Act. The failure of the Managing Committee to get the statutory audit completed within the statutory period attracts the penal consequence for the members of the Managing Committee of them being disqualified for election to the office of the Managing Committee. It also entails the consequence of the Registrar getting the audit completed, and recovering the fee from the delinquent officers of the Committee as arrears of land revenue (under Section (6) of Section 60). On the other hand, the failure of the Co-operative Society in willfully not furnishing the required information attracts penalty under Section 118 of the Act.

14. It is well settled that penal provisions have to be construed strictly. Section 35(7) is a penal provision, since it seeks to enlist circumstances in which a person shall be disqualified for election as a member of the Managing Committee of a co-operative society. The circumstances enumerated in clauses (a) to (e) of Sub-Section (7) of Section 35 would, therefore, have to be strictly construed. They cannot be given an expanded

meaning on an assumption that they are wide enough to cover not only the breaches enlisted in clauses (a) to (e), but also other kinds of breaches which are not specifically mentioned or covered by the said clauses.

15. The submission of Mr. Mehta that Clause (d) of Section 35(7) covers within its scope, not only the obligation of the members of the Managing Committee to get the statutory audit completed within the statutory period prescribed, but also the obligation to forward the audit report to the RCS (which is required under Section 60(5)), cannot be accepted.

16. As noticed above, the said two obligations are set out in two different provisions of the Act, and the consequences of failure to fulfill the said obligations had been also differently set out.

17. Reliance placed by Mr. Mehta on *Suresh Chand* (supra) is completely misplaced. In this case, the audit for the year 2004-05 was completed on 20.08.2006, and for the year 2005-06, it was completed on 11.09.2006. Thus, the Court was dealing with a completely different fact situation. The ratio of this decision is, therefore, not attracted. Even if, one were to go by the dates set out by the petitioners in their submissions, it is evident that the audits were completed well within 90 days/ 3 months of the appointment of the auditor by the RCS. No doubt, there has been a delay in the submission of the audit reports in the office of the RCS and, consequently, the society in question was subjected to fine, but that does not entail the disqualification of the members of the managing committee from contesting elections.

18. Similarly, reliance placed on *Narender Kumar Jain* (supra), is

completely misplaced. In this case too, the conduct of the statutory audit was not undertaken within the statutory period prescribed. Consequently, the members of the Managing Committee incurred the disqualification under Section 35(7)(d). It was sought to be urged before the Court, that only those officers incur the disqualification who were responsible for the said breach. The Division Bench rejected the said arguments by observing as follows:

“On a perusal of the role assigned to the committee, it is quite clear that every member of the committee has a joint responsibility. A member of the committee cannot afford to plead that he has no responsibility once there is a non-compliance of the statutory audit within the statutory period. Fiscal accountability has been made joint by the provision. The members of the Board of Directors have a collective responsibility. The definition in Section 2(e) provides that a committee means the governing body of a co-operative society by whatever name called, to which the management of the affairs of the cooperative society is entrusted. Thus, each director shares the responsibility. There is no question of fixing any kind of personal responsibility, rather the duty is fixed on the committee. We do not see any facet of arbitrariness in it. The concept of classification, as projected by the learned counsel for the petitioner, remotely touches the periphery of Article 14 of the Constitution of India”.

19. The further submission of Mr. Mehta, that it was not obligatory for the petitioners to implead the elected members of the managing committee as party respondents before the Tribunal, even though their election was sought to be assailed, is also misplaced. He has argued that the disqualification results automatically under Section 35(7)(d) and there is no

need for issuance of a notice by the RCS before declaring that the members of the managing committee have incurred the disqualification under Section 35(7)(d) of the Act. We do not find any merit in this submission of Mr. Mehta.

20. To determine, whether, or not the members of the managing committee have incurred disqualification, it would be essential for the RCS to comply with the principles of natural justice, since such disqualification has adverse civil consequences for the disqualified members. The present is, in itself, an example of the prejudice that the members of the Managing Committee may suffer, in case they are declared to be disqualified under Section 35(7)(d), or under any of the other clauses of Section 35(7) of the Act, without prior notice or hearing to the affected persons. The Registrar, merely on the basis of the report sent by the Returning Officer and, without notice or hearing to the affected parties/ members of the managing committee concluded that the members of the managing committee had incurred the disqualification under Section 35(7)(d) while passing the order dated 16.06.2016. However, when it was brought to his notice that the audits were got completed within the statutory period of the appointment of the auditors, he recalled the said order on 09.08.2016. This back and forth movement could not have been avoided, and the inconvenience and anxiety caused to the members of the managing committee averted by first giving a show cause notice to the members of the managing committee and seeking their explanation as to why they should not be disqualified from contesting the forthcoming elections.

21. It is an obvious and well settled position in law that a party whose

rights are sought to be adversely affected, should be heard before a decision is taken by any authority. Otherwise the order passed in the proceedings would be vitiated on account of the breach of the principles of natural justice. We fail to understand as to how the petitioners could have sought to assail the election of respondent Nos. 4 to 13 before the Tribunal, without first impleading them as party respondents. Only when they were to be impleaded as party respondents, they would have had the right to appear before the Tribunal and to contest the allegations made against them by the petitioners of having incurred the disqualification under Section 35(7)(d) of the Act. The impleadment of the managing committee of the said society, by itself, is wholly insufficient. The Managing Committee is not the agent of the members who constitute it. Thus, we reject all the aforesaid submissions of Mr. Mehta.

22. For the aforesaid reasons, we dismiss the petition with costs quantified at Rs. 20,000/-. The costs be deposited by way of cash/ pay order in the Prime Minister's National Relief Fund within 2 weeks. The petitioners shall produce before this Court the receipt of payment of costs. For that purpose list the matter on 20.02.2019.

VIPIN SANGHI, J

A.K. CHAWLA, J.

JANUARY 17, 2019

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