

Bijender Singh and Others Vs. Union of India and Others

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Court : Delhi

Decided On : Sep-01-2015

Judge : The Honourable Ms. Justice Gita Mittal & I.S. Mehta

Appeal No. : W.P.(C) No. 3897 of 2015 & CM No. 6960 of 2015

Appellant : Bijender Singh and Others

Respondent : Union of India and Others

Advocate for Def. : Mr. Amit Mahajan, Mr. Jayant Mehta

Judgement :

Gita Mittal, J.

1. The order dated 8th April, 2015 passed by the respondent no. 1 appointing an administrator of the National Cooperative Consumer's Federation of India Ltd. (~NCCFfor brevity hereafter) arrayed as respondent no. 3 herein premised on allegations relating to the elections to the post of Chairman and Vice-Chairman of the Board of Directors which were held on the 6th of February, 2015 is the subject matter of this writ petition. The NCCF is stated to have been constituted and registered under the provision of the Multi-State Cooperatives Societies Act, 2002 (~MSCS Act, 2002hereafter). The impugned order is sourced to exercise of powers under Section 122 and 123 of this enactment.

2. The writ petitioners herein are members of the respondent no. 3 who successfully stood for the elections to the Board of Directors of the respondent no. 3 conducted on 6th February, 2015. The petitioner nos. 1 and 2 were also elected to the posts of Chairman and Vice-Chairman respectively in a separate election of office bearers on the same day. Certain complaints came to be made by the respondent no. 5 with regard to the eligibility of two societies (being Priya Consumer Cooperative Store and Janta Central Consumer Cooperative Store Ltd.) of which the petitioner nos. 1 and 2 were members. These societies had been declared as valid members of the respondent no.3. As a result, the eligibility of petitioner nos. 1 and 2 to contest the elections of office bearers to the Board of Directors was questioned. On these complaints, the respondent no.1 firstly initiated an enquiry and thereafter proceeded to pass the order dated 8th April, 2015 inter alia directing that the result of the elections to the post of Chairman and Vice-Chairman set aside; results of elections to the Board of Directors be kept in abeyance and appointed an administrator to manage the affairs of the respondent no.3.

3. Before proceeding in the matter, it may be useful to extract the operative portion of the order dated 8th April, 2015 which reads thus:-

Now the Government of India in exercise of the powers conferred by Sections 122 and 123 of the Multi State Co-operative Societies Act, 2002 in the overall interests of NCCF makes the following directions:

1. The elections held on 06.02.2015 to the post of Chairman and Vice Chairman of Board of NCCF are hereby set aside due to gross irregularities;
2. The results of elections to the Board of Directors be kept at abeyance till the allegations into the two co-operative societies namely Priya Consumer Co-operative Store Ltd., New Delhi and Janta Central Co-operative Store Ltd., Mumbai, not satisfying the criteria to contest elections to the NCCF Board are enquired into and a decision is taken by the Government thereafter in the matter;
3. The inquiry into the allegations of ineligibility and irregularity as set out in Para 2 above be conducted by a committee comprising of Shri Ashok Kumar Jain, Chief

Vigilance Officer of NCCF. He will submit the inquiry report to the Government within three months from the date of this order.

4. MD, NCCF will seize all documents in connection with the controversial elections to the Board of NCCF and hand the same over to the Government for safe custody;

5. Until further orders, the Joint Secretary in the Department of Consumer Affairs will function as Administrator of NCCF. The present Managing Director, NCCF will assist the Administrator in the matter of day to day functioning of the Federation.

6. That until further orders, the MD, NCCF will seek orders of Government through Administrator on all major policy issues, financial and services matters. (Underlining by us)

4. The instant writ petition came to be filed before us on 16th April, 2015 and was listed before us for the first time on 21st April, 2015. Notice was issued to the respondents for 23rd April, 2015. It appears that after the filing of the writ petition, the respondent no. 1 issued a corrigendum dated 23rd April, 2015 directing that the expression set aside in the impugned order dated 8th April, 2015 be read as "kept in abeyance. ?

5. We have heard Mr. V.P. Singh, learned senior counsel for the petitioner; Mr. Amit Mahajan, Mr. Jayant K. Mehta and Mr. J.P. Sengh, learned senior counsel for respondent no.3 at length who have carefully taken us through the paper book, the bye-laws of the respondent no. 3 as well as through the statutory provisions.

6. The factual narration giving rise to the present writ petition is within a narrow compass. To the extent necessary, we note the same hereafter.

7. It is undisputed that an order dated 3rd December, 2014 was passed by the Central Registrar, Cooperative Societies, Department of Agriculture and Cooperation of the Central Government (respondent no. 2 herein), whereby the respondent no. 4 herein was appointed as a returning officer to conduct elections to the Board of Directors (~BODhereafter) of the respondent no. 3. In accordance with the provisions of sub-section 3 of Section 38 of the Act, the returning officer

requested all member societies of the NCCF by his communication dated 9th December, 2014 to send the names of their delegates so as to reach him 21 days prior to the date fixed of the general meeting. All members of the NCCF were also informed by a communication dated 18th December, 2014 to convene a special general body meeting of the respondent no. 3 in accordance with Section 40(i) of the enactment on 6th February, 2015 for election of the new Board of Directors and the office bearers.

8. The returning officer issued a communication dated 6th January, 2015 intimating the members of the respondent no. 3 about the vacancies to the board and enclosing therewith, a copy of the provisions of the bye-laws of the society. For the purposes of the election, a list of delegates was published on 19th January, 2015 containing such names as had been received 21 days prior to the date of the meeting scheduled on 6th February, 2015.

9. It has been urged by the petitioner before us that in accordance with the bye-law no.25(b) of the respondent no. 3, the Government of India-respondent no. 1 herein has the right to nominate three nominees. Mr. Amit Mahajan, learned counsel for respondent no.1 draws our attention also to the provisions of Section 48(c) of the Act, which empowers the Government of India to nominate its directors. Accordingly, the respondent no. 1 conveyed the names of three nominee directors to the managing director of the respondent no. 3. It is submitted that these names were received at about 6 p.m. on 5th February, 2015, literally on the eve of the elections which were to be held on 6th February, 2015.

10. Mr. V.P. Singh, learned senior counsel appearing for the petitioner has placed Rule 20 of the Rules which reads as follows :-

20. Election of the office bearers. “ (1) The election of the office bearers of the board shall be conducted as per the programme given in the election schedule.

(2) The eligibility of the candidates for the election of office bearers shall be subject to the provisions contained in section 43 and 44 of the Act. ?

11. We may also extract para 7 of the Schedule to the Rules which reads as follows:-

7. Election of office bearers “ (1) As soon as the members of the board have been elected the returning officer shall, notwithstanding anything contained in the bye-laws of the multi-state cooperative society, convene a meeting of the newly constituted board for the purpose of election of the president or chairperson, vice-president or vice-chairperson or other elected office bearers of the society, by whatever name they are called. Such a meeting of the board shall not be conducted unless a majority of the number of members of newly constituted board, as per bye-laws are present.

(2) At the meeting so convened by the Returning Officer, he shall preside over the meeting for the purpose of election of the office bearers. The election of office bearers of the multi-state cooperative society shall be by secret ballot.

(3) The returning officer shall announce the schedule of election of office bearers, stating the number of vacancies to be filled by election, date, place and time between which nomination papers shall be filled by the members; the date on which and the time and place at which the nomination papers will be taken up for scrutiny; the date and time of withdrawal; and the date on which, the place at which the polling, if required, will take place. The returning officer shall intimate the schedule of election to all the newly elected or nominated members of the board. The nomination, in form V, shall be made to the returning officer at such a meeting. The returning officer shall decide the objections if any, which may be made at the time, to any nomination and after making such summary inquiry, as he thinks necessary, announce the name of valid nominations.

(4) If for any office for which elections are to be held, the number of candidates in respect of whom valid nominations have been announced, does not exceed the number of candidates to be elected for that office, the candidates for whom valid nominations have been announced shall be deemed to have been elected for that office and the returning officer shall make a declaration to that effect. If the number of candidates in respect of whom valid nominations have been announced for any office exceeds the number of candidates to be elected a poll by secret ballot shall

be taken by the returning officer. The returning officer shall, thereafter, announce the number of votes secured by each candidates and the result of the election.

(5) The returning officer, shall immediately thereafter record the proceedings of the election in a comprehensive report which shall form part of the records of the society and shall be binding on all. The returning officer shall immediately also furnish a copy of such a report together with a copy of the return of the polling, to the society for onward transmission to the Central Registrar. The society shall immediately forward such report and return of the results furnished by the returning officer to the Central Registrar. (Emphasis supplied)

12. In view of the above provisions, elections to the office of chairman and vice-chairman of the Board of Directors had to be conducted after the elections to the Board of Directors on 6th February, 2015 were completed. Consequently the elections of office bearers of the society were conducted on 6th February, 2015, the same day.

13. It is an admitted position that Sh. Vijay Kumar Singh (respondent no. 5 herein) was one of the persons elected as a director who submitted his nomination for election to the post of vice-chairman of the Board of Directors. It is contended that the respondent no. 5 subsequently withdrew his candidature after it was found valid.

14. It is the petitioners case that upon his nomination, immediate arrangements were made to enable the respondent no. 5 to participate in the election which were scheduled to be held on 6th February, 2015.

15. We may also note at this stage that so far as the list of delegates etc which had been published on 19th January, 2015 is concerned, no objections appear to have been received with regard to the validity of the names of the delegates as appeared therein.

16. It is also undisputed that elections to the Board of Directors were conducted by the returning officer on 6th February, 2015 and a report in this regard along-with a record of the proceedings relating to the elections of the several candidates, were

submitted with the managing director of the NCCF with copy to the Central Registrar, Cooperative Societies.

17. It is also an undisputed position that Dr. Bijender Singh, petitioner no. 1 herein and Sh. Virendra Singh-petitioner no. 2 herein submitted their nominations for the post of chairman and vice-chairman, which nominations were found to be valid. It appears that the petitioner no. 1 was the sole nominee for the post of chairman. After the respondent no. 5 withdrew his nomination for the post of vice-chairman, the petitioner no. 2 was left as the sole contestant for the post of vice-chairman. The petitioner nos. 1 and 2 were consequently unanimously declared elected to the post of chairman and vice-chairman of the Board of Directors respectively.

18. It appears that on the very day of the elections, i.e. 6th February, 2015, the respondent no. 5 submitted a complaint to the respondent no.1 about the conduct of elections to the post of chairman and vice-chairman of the respondent no. 3 making allegations that the same have been conducted in a mala-fide manner. The petitioners contest the allegations and urged that they were misconceived and made in a mala-fide attempt to wrest the control of the management and affairs of the respondent no. 3 from a duly elected board of directors.

19. Mr. V.P. Singh, learned senior counsel for the petitioners has drawn our attention to certain earlier orders which were passed by the respondent no. 1 with regard to the business and affairs of the respondent no.3. It appears that the Government of India-respondent no. 1 had earlier issued an order dated 16th May, 2014 under Section 123 of the MSCS Act. By this order, the Government substituted the board of directors of the respondent no. 3 without giving an opportunity to the members of the board to state their objections and appointed the Joint Secretary, Department of Consumer Affairs as an administrator to manage the affairs of the NCCF.

20. The order dated 16th May, 2014 was the subject matter of challenge by way of W.P.(C) 3259/2014 filed by two members of the respondent no. 3, the primary ground of challenge being failure to comply with the mandatory requirement of section 123 of the MSCS Act to afford an opportunity to the society to voice their objections to any action against it under the statute. We may usefully extract the

relevant portion of the order dated 13th August, 2014 allowing the writ petition passed by learned Single Judge who was in seizin of this challenge (by way of W.P.(C) No. 3259/2014) which reads thus:-

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. (Emphasis by us)

21. We are informed by Mr. Amit Mahajan, learned standing counsel that pursuant to the judgment dated 13th August, 2014 in W.P.(C) No. 3259/2014, the Government of India issued a notice to show cause dated 20th August, 2014 to the respondent no. 3 under Section 123 of the MSCS Act. No further response was received in reply thereto and after consideration of the matter, an order dated 1st October, 2014 came to be passed by the respondent no. 1 appointing Sh. Prem Raj Kuar, Deputy Secretary in the Ministry of Consumer Affairs to function as an administrator to manage affairs of the administration for an initial period of six months or till further orders. We are informed that at the time of conduct of the elections on 6th February, 2015, this administrator was still in place.

22. It appears that so far as the complaint made by the respondent no. 5 with regard to the elections held on 6th February, 2015, the managing director of the respondent no. 3 had submitted detailed comments in response to a letter dated 10th February, 2015 from the Joint Secretary of the respondent no.1. Additionally the complaints of respondent no. 5 were also referred on 6th February, 2015 and 24th February, 2015 to the NCCF. These were responded to by a communication dated 26th March, 2015 of the respondent no. 3. It is contended on behalf of the petitioners before us that the respondent no. 3 had explained the legal and factual matrix with regard to each and every issue complained off by the respondent no.5. It is neither necessary nor open to us to examine the validity of membership of individual members and we are refraining from undertaking such exercise.

23. It appears that the respondent no.1 decided to conduct a preliminary enquiry into the validity of membership of two member of cooperative societies - Priya Consumer Cooperative Store, New Delhi and Janta Central Consumer Cooperative Store Ltd., Mumbai, against whom it had been alleged that they did not satisfy the criteria of bye-laws 5(c) and 25(a) of the respondent no. 3 in order to render them eligible to participate in the elections to its Board of Directors. The

respondent no. 5 had alleged that the petitioner nos. 1 and 2 being members of such societies, would therefore be rendered ab initio ineligible for being appointed as directors even, let alone holding the offices of chairman or vice-chairman of the Board of Directors.

24. Respondent no. 1 has placed before us a copy of the inquiry report dated 12th March, 2015 submitted by the enquiry officer. We note hereunder the portions of the report which have been referred to by learned counsels before us :-

In view of the above it is felt that Shri Vijay Kumar Singh has been denied his democratic right while it was possible to ensure that he participates in the election of the Chairman of NCCF and therefore the election of the Chairman, NCCF is bad in law and practice. In my view the allegation that the Government Director was not given a fair chance to compete for the post of Chairman is proved. The Returning Officer and the MD, NCCF should have waited a little more since the Government Director Shri Vijay Kumar Singh was on his way. By taking a narrow technical view they have denied a rightful opportunity to a Govt. Director. As such the election of Chairman is vitiated and the end of justice and fair-play will be met if the results of the election of Chairman is set aside and fresh election for the post is held. However, the election of the Vice-Chairman cannot be said to be bad in law as Shri Vijay Kumar Singh, Shri Ajay Kumar and Shri Banibrat Roy, all the three Government nominee Directors had participated in the election, Shri Vijay Kumar Singh himself had filed the nomination for the post of Vice-Chairman and his nomination papers were found valid after scrutiny by the Returning Officer, though it was withdrawn by Shri Vijay Kumar Singh himself. (Emphasis by us)

25. With regard to the challenge to the legality of the election on grounds of want of quorum, the enquiry officer has reiterated thus :-

Since there was quorum and the two Government Directors were present at the start of the proceedings the allegation is not substantiated in fact and law. ?

26. On the issue of the eligibility of the two afore-stated societies, in the report dated 12th March, 2015 the enquiry officer has recommended as follows :-

.....These allegations are serious allegations. The complaint has been sent to NCCF for inquiry and report. However, since the two Co-operative Societies have been held eligible by the Returning Officer and the MD, NCCF has also upheld the list of members declared eligible to take part in election to the Board and to the posts of Chairman and Vice-Chairman, in my view such inquiry should not be left to NCCF officials but should be done by some outside officers having experience in matters of Co-operative Societies or a senior officer from this Ministry, who may submit a report to this Department in a month and till then the results of the elections to be Board and to the post of Chairman and Vice-Chairman and Actions, if any, taken by the new Board and the new officer bearers after the elections, may be kept at abeyance.

As regards the other allegation and request for inquiry into the circumstances under which Shri. S.D. Indoria has been appointed Returning Officer, it is stated that I, as Administrator of NCCF, had approved his appointment as Returning Officer and hence I should not be associated in any inquiry into it and in the interest of fair play the aforesaid outside officers/ a senior officer of this Department may look into the allegation as well and submit the facts in the report to be submitted by them in a month. ?

27. Based on the above observations, the enquiry officer drew the following conclusions :-

12. Conclusions:

Based on the above findings, the followings conclusions are submitted:

(i) Elections to the posts of Chairman and Vice-Chairman are vitiated and the results of election to the posts of Chairman and Vice-Chairman may be set aside.

(ii) The election to the Board of NCCF is prima facie, valid. However, if the serious allegations of the two Co-operative Societies, namely Janata Central Co-operative Consumer Store (Mumbai) and Priya Consumer Co-operative Store, New Delhi not fulfilling the criteria of Bye-laws 5(c) and 25(a) of the bye-laws of NCCF India Limited are substantiated by the inquiry as proposed in Para 11.5, the election to

the Board would be established as vitiated/irregular. In view of such likely fall-out of the allegation, if found, true, it is felt that it would be appropriate that results of election to the Board may be ordered to be kept in abeyance till the inquiry report proposed in para 11.5 is submitted.

(iii) The possibility of amending the bye-law may be explored to incorporate a provision disallowing such Directors of NCCF against whom CBI inquiry on serious allegations are going on from contesting elections to important posts such as Chairman and Vice-Chairman of NCCF."

(Emphasis by us)

28. The respondent no. 1 has proceeded to act on this report dated 12th March, 2015. No further proceedings were undertaken and straight away the impugned order dated 8th April, 2015 was issued. This order stands challenged before us by the petitioner by way of the present writ petition.

29. Mr. V.P. Singh, learned senior counsel would contend that the respondent no.1 has no power at all to make orders against individual members under Section 123, and that it can pass orders only against the Board as a whole. Mr. Singh submits that the first direction in the impugned order has no foundation in the facts of the case or in law. It is submitted that elections having been validly conducted, the board of directors of the respondent no. 3 came into existence on 6th February, 2015. It is contended that removal of such board or its supersession can only take place after following the process under Section 123 of the MSCS Act, 2003. The challenge by the petitioner rests primarily on the contention that the impugned order has been issued in blatant violation of the law, especially the specific requirement of Section 123 of the statute and that no notice to show cause as is mandated by law has been issued to the board of directors of the society. Several other contentions have been placed which we shall note hereafter.

30. Mr. Amit Mahajan, learned standing counsel for the respondent no. 1 has supported the order submitting that the Government has acted in accordance with law. Strong reliance is placed on the enquiry report dated 12th March, 2015 to submit that the action of the Government is a considered one, having carefully

constituted an enquiry which has examined the matter in great detail. Mr. Mahajan also places strong emphasis on the seriousness of the allegations against the petitioner nos. 1 and 2.

31. Mr. Jayant Mehta, learned counsel for the respondent no. 5 has vehemently contended that the conduct of the petitioner nos. 1 and 2 as office bearers of the Board in the previous tenure is under serious cloud, so much so the CBI is conducting investigations into the allegations against them which are still underway. It is urged that the order dated 8th April, 2015 is, therefore, completely justified and legal.

32. Before examining the rival contentions, we extract hereunder the statutory mandate as contained in Sections 122 and 123 of the MSCS Act which read as follows :-

Section 122. Central Government's power to give directions to specified multistate cooperative societies in public interest If the Central Government is satisfied that in the public interest or for the purposes of securing proper implementation of cooperative production and other developmental programmes approved or undertaken by the Central Government or to secure proper management of the business of the specified multi-state cooperative societies generally or for preventing the affairs of such society being conducted in a manner detrimental to the interests of the members, any depositors or creditors thereof, it is necessary to issue directions to any class of specified multi-state cooperative societies generally or to any specified multi-state cooperative society or societies in particular, the Central Government may issue directions to it or to them, from time to time, and all such specified multi-state cooperative society or the societies concerned, as the case may be, shall be bound to comply with such directions.

Section 123. Supersession of board of specified multi-state cooperative society

(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.

(2) The Central Government may fix such remuneration for the administrators, as he may think fit and the remuneration shall be paid out of the funds of the specified multi-state cooperative society.

(3) The administrator shall, subject to the control of the Central Government and to such instructions as it may from time to time give, have power to exercise all or any of the functions of the board or of any officer of the specified multi-state cooperative society and take all such actions as may be required in the interests of the society.

(4) Save as otherwise provided in sub-section

(5), the administrator shall, before the expiry of his term of office, arrange for the constitution of a new board in accordance with the bye-laws of the specified multi-state cooperative society. (5) If, at any time during the period the administrator is in office, the Central Government considers it necessary or expedient so to do, it may, by order in writing giving reasons therefore, direct the administrator to arrange for the constitution of a new board for such specified multi-state cooperative society in accordance with the bye-laws of such society and immediately on the constitution of such board, the administrator shall hand over the management of such society to such newly constituted board and cease to function.

(6) Where a specified multi-state cooperative society is indebted to any financial institution, the Central Government shall, before taking any action, under sub-section (1) in respect of that society, consult the financial institution. ?

(Emphasis by us)

33. We may first and foremost note the contentions of Mr. V.P. Singh, learned senior counsel which have really been pressed to dispel any prejudice which may have been created in the mind of the court because of the vehemently urged submissions of the private respondent no. 5 that the petitioners have been implicated in serious offences which are under investigation by the Central Bureau of Investigation and their having been rendered ineligible to participate in the elections thereby.

34. So far as this submission is concerned, in the aforesaid report dated 12th March, 2015, the enquiry officer had observed thus :-

.....These Sections and clauses do not contain any provision which mentions pendency of any enquiry as a qualification. Therefore, this allegation is not borne out by law.

However, it is a fact that CBI enquiry is going on against Shri Virendra Singh for serious irregularities committed by him during his previous tenure as Chairman of NCCF. The Board of Director under his Chairmanship was superseded by the Central Government for many irregular activities and mismanagement of the affairs of NCCF. The fact of ongoing CBI enquiry was also a point among the irregular activities and mismanagement on the part of the Chairman. However, this is not a disqualification to disallow him to contest election. Unless the MSCS Act, MSCS Rules and the Bye-Laws provide for such disqualification it will not be lawful to disallow any Director contesting for election to the post of Chairman and Vice-Chairman. However, morality demands that a Director of NCCF (ex-Chairman) who was removed on serious allegations under CBI investigation should not have been allowed to run the Government-owned co-operative again through the backdoor by coming as Vice-Chairman. In view of the factual position the election to the post of Vice-Chairman may also be considered to be set aside and fresh

election for the post of Chairman may also be ordered. ?

(Underlining by us)

35. It is urged by Mr. V.P. Singh, learned senior counsel that so far as the eligibility to be a member of the society or to participate in elections is concerned, an examination of Section 26 of the statute is necessary which stipulates that the bye-laws of the society shall prescribe qualification of the members of the respondent no.3. It is urged that the mere pendency of any enquiry in criminal proceedings is not a disqualification for membership of the society or being an office bearer in the Board of Directors, either under the MSCS Act or the bye laws of NCCF.

36. In this regard, our attention is also drawn to Section 29 of the statute which prescribes the disqualifications for membership of a Multi State Cooperative Society. It is submitted that other than the stipulations statutorily made, no other condition can be added or considered for the purposes of rendering a person ineligible for being a member of the multi state cooperative society. The contention is that, therefore, for the purposes of deciding a member's eligibility to contest elections, pendency of the CBI investigation is wholly irrelevant.

37. Mr. Singh, learned senior counsel has also placed Section 30 of the MSCS Act which provides for the manner in which expulsion of a member can take place. Section 30(i) of the statute stipulates that a member who is alleged to have committed acts which are detrimental to the proper working of the society can be expelled from the membership of the multi state cooperative society only by a resolution passed by majority of not less than two thirds of the members present and voting at a general meeting of members. It is urged that in case any of the allegations was found sustainable against any of the petitioners, he/they could be ousted or expelled from the membership of a respondent no. 3 only by such a resolution and in no other manner. Mr. Singh submits that the first direction in the impugned order is completely unsustainable.

38. It has been emphasised from the above that the enquiry officer had specifically concluded that the elections had been conducted as per the statutory provisions of the bye-laws and that the process could not be halted and that the suggestion of

removal of a director on moral grounds is completely non-est to law and cannot be accepted. Learned senior counsel would contend that the conclusion by the enquiry officer suggesting that the result of the elections be kept in abeyance, premised on pendency of a criminal enquiry against one of the petitioners, also cannot be the basis for either rendering him ineligible for participation in election nor impact the validity of his election to the post, for the reason that there is no such prohibition either in the statute or the existing bye-laws. The submission is that though the discussion and conclusions of the Enquiry Officer in the report are factually erroneous and legally misconceived, even the enquiry officer Sh. Prem Raj Kuar has suggested incorporation of such a prohibition in the bye-laws.

39. Mr. Singh submits that despite receipt of this recommendation, the respondent no. 1 proceeded to pass the order dated 8th April, 2014 which has such drastic consequences to the petitioners and the society.

40. Placing reliance on Section 84 of the statute, it is additionally urged that the legislature has carefully craft out the manner in which disputes with regard to the functioning of multi state cooperative societies have to be adjudicated. It is submitted that Section 84 makes it mandatory for reference of the disputes set out therein to be referred to arbitration. Our attention is drawn to the provisions of clause (c) of sub-section 2 of section 84 which prescribes that any dispute arising in connection with the election of any officer of a multi state cooperative society ?, shall be deemed to be the dispute on which the constitution management or business of a multi state cooperative society and it shall be referred to arbitration. Such disputes are, therefore, mandatorily required to be referred to arbitration in accordance with the provisions of sub-section 1 of Section 84 of the enactment.

41. Our attention has also been drawn to sub-section 4 of Section 84 which provides that for settling or deciding the dispute under sub-section (1), the arbitrator has to be appointed by the Central Registrar.

42. It is also the submission on behalf of the petitioner that the impact of the order dated 8th April, 2014 is to interdict elections validly conducted on matters which order is predicated, or premised on the complaint of the respondent no.5 against petitioner nos. 1 and 2 only. It is urged that the grievance or the allegations were

completely in the realm of disputes mentioned in clause (c) of sub-section 92 of section 84. Mr. Singh submits that if the respondent no. 1 wanted to act thereon, the allegations were in connection with the election of the petitioner nos. 1 and 2 to the board of directors of the respondent no. 3 society and the only option available to the respondent no. 1 was to proceed in the manner prescribed under Section 84 to appoint the arbitrator.

43. It is further urged that a perusal of the impugned order dated 8th April, 2015 would show that the impugned order impacts the results of elections and prevents an elected board of directors of the respondent no. 3 from so functioning. Mr. V.P. Singh, learned senior counsel for the petitioner would contend that whether it be to set aside results of elections or whether to keep them in abeyance, the order dated 8th April, 2015 as well as the corrigendum dated 22nd April, 2015 are completely contrary to law and cannot be permitted. It is urged that the respondent no. 1 has no power at all under any statute which enables it to pre-emptorily interdict the election process once it has commenced. It is urged that as per the statutory scheme, the Government had no authority or power to pass such an order. Mr. Singh submits that the order directing the results of the elections to be held only to the post of chairman and vice chairman to be kept in abeyance is wholly misconceived and cannot be sustained.

44. The further submission is that the impact of the directions contained in serial no. 4 to 6 of the impugned order dated 8th April, 2015 is to take over the management and functioning of the respondent no. 3 society and it has the effect of supersession of the Board of Directors of the respondent no. 3 which has been validly constituted in the elections conducted on 6th February, 2015.

45. It has been pointed out that Section 123 of the statute provides that supersession of the entire Board. Here the respondent no. 1 has put in abeyance the election of only the chairman and vice-chairman and not the entire board. It is submitted that the appointment of the administrator in this circumstances is also unsustainable.

46. In opposition, Mr. Jayant Mehta, learned counsel for respondent no.5 has contested that Section 122 of the statute is pre-emptory and mandates that the

respondent no.1 has to act once it is satisfied that it is essential in public interest or for the purposes of securing proper implementation of cooperative functioning. It is submitted that the allegations against the petitioners are serious and include allegations of falsification of accounts as well as defalcation of money of the respondent no.3 society. It is urged that the impugned orders are purely intended to secure proper management and business of the respondent no. 3 as well as to prevent the affairs of the society being conducted in a manner detrimental to the interests of the members. Mr. Mehta would submit that the impugned order deserves to be sustained as they are necessary to ensure proper and fair functioning of the respondent no.3.

47. It is further submitted by Mr. Jayant Mehta, learned counsel that the impugned order does not have the impact of expulsion of any person from his membership of the society as it has only had the effect of keeping the result of the election to the post of chairman and vice-chairman in abeyance. It is further submitted that the rest of the board of directors has been validly elected and there is no objection to the same.

48. Mr. Amit Mahajan, learned Standing Counsel for the respondent no. 1 also supports the impugned order contending that the same have been passed after conducting an enquiry and that the same cannot be faulted for non-compliance of any statutory provision. It is urged that the manner in which the petitioner nos. 1 and 2 have conducted themselves during their previous tenures as office bearers of the Board of Directors, rendered it imperative for the Government to interdict their functioning.

49. Mr. J.P. Sengh, learned senior counsel has drawn our attention to the statutory scheme pointing out that wide powers are conferred on the respondent no.1 to take action against respondent nos.1 and 3.

50. Mr. Amit Mahajan, learned standing counsel submits that the respondent no. 1 has treated this matter as deemed of utmost priority and urgency as it concerns eligibility of the two societies and affairs of a multi state cooperative society. We are informed by Mr. Mahajan that the chief vigilance officer of the respondent no. 4 Sh. A.K. Jain has also enquired into the allegations of irregularity of M/s Priya

Consumer Cooperative Store Limited, New Delhi and M/s Janata Central Cooperative Store Limited, Mumbai, under Bye-law 5(c) and 25(a) of the Bye-laws of NCCF to contest in the elections to the Board of directors of NCCF and submitted his report to respondent no. 1 on 30-06-2015. Mr. Jain has also submitted a report dated 30th June, 2015 to the respondent no. 1. The submission is that this report supports the validity of the order dated 8th April, 2015.

51. It is well settled that an impugned order has to be tested in the light of the material which subsisted before the authority when such order was passed. (Ref: Mohinder Singh Gill v. Chief Election Commissioner, New Delhi (1978) 1 SCC 405; Commissioner of Police v. Gordhandas Bhanji, AIR 1952 SC 16; Dipak Babaria v. State of Gujarat, (2014) 3 SCC 502). Reliance on the report dated 13th June, 2015 to support the order dated 8th April, 2015 is completely mis-directed. In case the respondent no. 1 proceeds to take any action on the report dated 30th June, 2015, it has to abide by the statutory requirements and the well settled legal principles. We refrain from making any comment on the report dated 30th June, 2015, as it was not the basis of the impugned order.

52. We have given our considered thought to the rival contentions. For the purposes of the present order, though we have noted the several submissions made in the course of hearing including those relating to the merits of the allegations made by respondent no. 5 so far as the eligibility of the petitioners to participate in the elections as well as those relating to the legality and validity of the election process to the post of chairman and vice-chairman of the Board of Directors of the respondent no. 3 are concerned, we are refraining from dealing with the same in as much as it is completely unnecessary to do so. We are confining the present consideration to the primary objection of the petitioners that the impugned order is in violation of the principles of natural justice so far as setting aside the election of Chairman and Vice-Chairman at serial no. 1 of the impugned order dated 8th April, 2015 and the directions made at serial no. 2 therein keeping the result of elections of the Board of Directors in abeyance as well as the directions at serial nos. 4 to 6 without compliance with the mandate of Section 123 of the Multi State Cooperative Societies Act, 2002.

53. It cannot be disputed that setting aside of allegations especially on the ground of gross irregularities has serious implications. It works to the prejudice of the persons elected to the post of Chairman and Vice-Chairman i.e. the petitioner nos. 1 and 2 herein. The direction tantamounts to an acceptance of the correctness of the material gathered by the respondent no. 1 behind the back of the persons effected. It needs no elaboration that such an order merited the bare adherence with the principles of natural justice and a reasonable opportunity to the persons concerned to defend their elections as well as to establish the validity thereof. The persons effected were also entitled to place material before the respondent no. 1 to disprove the allegations made in the complaints against them. If such opportunity were granted, the petitioners could have urged all the grounds placed by Mr. V.P. Singh, learned senior counsel for consideration before the respondent no. 1. The petitioners having been deprived of such opportunity, the impugned orders and directions against them cannot be sustained on this ground alone.

54. In fact, the respondent no. 1 has passed the direction no. 2 in the order dated 8th April, 2015 premised on allegations against the two cooperative societies named by the complainants on which the enquiry is stated to be underway. Needless to say, those societies would have the right to challenge the orders in accordance with law.

Furthermore, the direction to keep the results of elections to the Board of Directors in abeyance while an enquiry is underway would show that such direction has been made on a complaint without material in support. The same is not sustainable for this reason.

55. It needs no elaboration that the statutory provisions have to be strictly adhered to, especially when they ensure compliance with the salutary provisions of principles of justice. A notice to show cause before punitive action is taken against any person is one such instance.

56. It needs no elaboration that where law prescribes, the manner in which an act has to be performed, it has to be performed in that manner or not at all. This principle emerged from the case of Taylor v. Taylor reported as (1875) 1 Ch.D 426 (Chancery Division). (Ref: Nazir Ahmed v. Emperor AIR 1936 PC 253;

Ballabhadas Agarwala v. J.C. Chakravarty, AIR 1960 SC 576; State of Uttar Pradesh v. Singhara Singh and Ors., AIR 1964 SC 358; Gujarat Electricity Board v. Girdharlal Motilal and Ors., AIR 1969 SC 267; Ramachandra Keshav Adke v. Govind Joti Chavare and Ors., Air 1975 SC 915; Sulochna Uppal v. Surinder Sheel Bhakri, 1990 (3) Delhi Lawyer 325; Harnam Singh and Ors. v. Bhagwan Singh and Ors., ILR (1991) 2 Del 625). Any exercise of power, especially such as is being undertaken in public interest can be effected only after strict compliance with statutory provisions.

57. Section 123 incorporates this requirement and stipulates that the Board of Directors of a multi state cooperative society has to be given an opportunity to state its objections, if any before an order removing the Board and appointing one or more administrators to manage the affairs of the society is effected. It needs no elaboration that the society is entitled to an opportunity to state as to why the grounds stated in Section 123 are not satisfied or made out for removal of the board. The requirements of a proper show cause notice is clearly peremptory and has to be complied with. So far as respondent no. 5 is concerned, the judgment dated 13th August, 2014 in W.P.(C) No.3259/2014 by the learned Single Judge in the case of respondent no. 3 society has quashed a similar order in 2013 by the respondent no. 1 in respect of the respondent no.3 society for the same non-compliance of Section 123 of the Act. In this judgment the respondent no.1 stands told that compliance therewith is not a mere formality, but a substantive legal requirement. It is unfortunate that despite the vehement arguments premised on grave irregularities, the respondent no.1 has failed to abide by the statutory mandate.

It is necessary to point out that while Section 122 enables the respondent no. 1 to make directions to the society, non-compliance thereof renders the society liable for action in accordance with Section 123 of the MSCS Act.

58. So far as the action of the respondent no.1 in conducting enquiries is concerned, the same cannot be faulted in as much as it is open to the authority to undertake the exercise of gathering material to enable it to take a considered stand. However, given the requirement of providing an opportunity to the Board of

Directors of the society to state its objections under Section 123 of the MSCS Act, the Board would be entitled to the material which is available with the Government and being relied upon for the proposed action in order to make the member to show cause truly meaningful and compel and in consonance with the requirements of principles of natural justice. We do not know if the respondent no. 3 was joined in the inquiries into the allegations against them or have been furnished the reports against it.

59. We have also discussed above that before setting aside the elections of the petitioner nos. 1 and 2, they were entitled to a notice to show cause as well as all material relied upon by the respondent no. 1 against them. Such notice was necessary to ensure compliance with the principles of natural justice and failure to do so renders the direction at serial no.1 of the impugned order as violative of principles of natural justice and illegal.

60. We may note that the submissions made before us premised on Sections 26, 29, 30 and 84 of the MSCS Act and all those noted above can be made by the petitioners and/or the respondent no. 3 in answer to any notice to show cause which may be issued by the respondent no.1 and placed for consideration before the respondent no.1 as well.

61. We make it clear that nothing herein contained is an expression of opinion on the merits of any of the contentions of either the petitioners or those on behalf of respondents with regard to either the conduct of the petitioners herein or on the manner in which elections were conducted for the office-bearers of the respondent no. 3 society. It is open for the parties to proceed in accordance with law thereon.

62. In view of the above discussion, the directions made at serial nos. 1, 2 and 4 to 6 in the order dated 8th April, 2015 and the corrigendum dated 22nd April, 2015 issued by Director (Cooperation), Ministry of Consumer Affairs, Food and Public Distribution, Government of India are hereby set aside and quashed for violation of principles of natural justice and the mandate of Section 123 of the Multi State Cooperative Societies Act, 2002. It is also left open to the respondent no. 1 to proceed in the matter in accordance with the statutory provisions.

This writ petition is allowed in the above terms. There shall be no orders as to costs.

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