

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.336/2012

Appeal under Section 112 (n)
of the Delhi Cooperative
Societies Act, 2003.

In the matter of :-

Tel Avam Gas Cooperative Group Housing
Society Ltd.
C/o ONGC Ltd. 8th Floor,
Jeevan Bharti Building Tower-II
New Delhi-110014.

Appellant

Versus

Registrar,
Office of the Cooperative Societies,
Old Court Building, Parliament Street
New Delhi-110011.

Respondent

DHARAM PAL, FINANCIAL COMMISSIONER

Order dated 13th January, 2015

1. This order shall dispose of the Appeal filed by the Tel Avam Gas CGHS against the impugned order dated 23.07.2012 passed by the Registrar of Cooperative Society, vide which a liquidator was appointed to complete the process of liquidation within 6 months from the date of issue of order.

2. Society filed an appeal against this order under Section 112 (n) of DCS Act primarily on the following ground:

- (i) That the audit of the society was conducted lastly for the period of 2002-03 in the presence of authorized person of the respondent with the permission of respondent and audit report had been duly submitted and requisite charges had been paid.
- (ii) That there after the appellant society was not able to hold annual general meeting and submit the audit report from the year 2004 till the year 2010 due to unavoidable circumstances.
- (iii) That the appellant society vide letter ref no. AGM/10-11/01 dated 13.01.2011 brought it to the notice of the respondent that the appellant society wants to hold its annual general meeting on 29.01.2011 at 11.00 AM and the same was held on this date in

accordance with the schedule specified in the letter to the respondent.

- (iv) That the appellant society vide its letter dated 07.02.2011 forwarded the minutes of the annual general meeting held on the 29.01.2011 informing the respondent about decision taken at the annual general meeting of the appellant with the request to appoint presiding officer for holding the overdue election of the managing committee.
- (v) That appellant society further informed the respondent that the audit for the appellant society could not be conducted from the year 2004 till 2011 for reason beyond their control and requested for appointment of auditors from the panels approved by the respondent's office so that the legal provisions for the running of the society are complied with.
- (vi) That even after repeated request for the appointment of the presiding officer for the conduct of elections and auditor for auditing the accounts for the appellant society by the appellant there was no response from the office of the respondent.
- (vii) That the appellant to its utter shock came to know that the respondent instead of appointing auditors for audit of the accounts and presiding officers for the conduct of election of the managing committee has ordered the winding up of the appellant society.
- (viii) That in the winding up order passed by the respondent dated 23.07.2012, the respondent has incorrectly mentioned that account of the appellant society have not been audited since the year 1999.

3. Registrar, Cooperative Society (respondent herein) in his reply has stated:

- (a) That the last election of the society was conducted in the year 30.06.1996. Thereafter no correspondence was received from the society with regard to holding of the elections, holding of AGBM, GBM or Audit. Since the society failed to correspond with the office of RCS since 1999, a show cause notice under Section 96 (1) of DCS Act dated 10.08.2006 was issued to the society.
- (b) That after a long gap, the society suddenly woke up and submitted a representation dated 07.02.2011 thereby stating that the society wants to hold its AGM. The office of RCS took up the matter and

asked the society to furnish its comments for long hibernation but the society failed to reply to the query raised by the office of RCS.

- (c) That after not receiving any reply from the society, publication under Section 96 (2) (iii) of the DCS Act was issued in two national daily on 08.03.2012. Again no response was received from the society. This shows that the society was not functioning as per the DCS Act.
- (d) The appellant society is defunct as the last election was held in the year 1996 and Audit was held upto 2002-03 and thereafter no correspondent has been made wherein it has been intimated that election has been held after completion of tenure of the MC that expired on 30.06.1996.
- (e) That as per Section 32 of DCS Act, 2003 every year within thirty days of holding of annual general body meeting, the committee shall file returns relating to its constitution, business and allied matters to the Registrar as prescribed but the petitioner failed to file the returns as per DCS Act and therefore the RCS passed order for winding up the petitioner Society.
- (f) That as per records of the answering respondent, no election has been held of the Managing Committee of the Society after the last election held on 30.06.1996.
- (g) It is an admitted fact neither AGBM were held nor Audit was got done by the petitioner and thus after a long gap of 9 years it cannot come and say that the Audit was not done due to certain circumstances.
- (h) As the last election of the petitioner society was conducted in the year 1996 and the term of the MC being for three years expired in the year 1999. Thereafter neither election was held nor any AGBM or GBM was held. This shows that the society was not functional as per the provisions of DCS Act. The members would have held various meetings like GBM, SGBM and AGM. However, there is no such record. This indicates that the society was not active but lying defunct.
- (i) That the mere holding of AGM in year 2011 would not make the society active as it remained defunct for a long period of 9 years. The Society deliberately failed to carry out the cooperative principles as envisaged under DCS Act.

4. I have considered all the facts and circumstances of the case and heard all the concerned parties at length. After perusal of the petition and the replies submitted by the Registrar, Cooperative Society (respondent herein), it become evident that—

(i) That the last audit of the society was conducted in the year 2002-03 and no audit has been conducted thereafter till date.

(ii) Last elections of the society were conducted in the year 1996 and no elections thereafter were conducted till date.

5. As per section 32 of the DCS Act, 2003, the managing committee is required to file returns relating to its constitution, business and allied matters to the Registrar within 30 days of holding of Annual General Body Meeting. Since no correspondence was received from the society with regard to holding the elections, AGBM, GBM and the Audit, RCS issued show cause notice under section 96(1) of the DCS Act on 10.08.2006. Since no reply was received from the society to this notice, the same was got published in the two national dailies on 08.03.2012 in compliance with sub section 2 of section 96 of DCS Act. Again society failed to respond to this publication.

6. Perusal of section 96 of DCS Act, 2003 reveals that action for dissolution of Cooperative Society can be initiated if it is found that Society:

“(a) has not commenced business within one hundred eight days from the date of its registration or the number of members has been reduced to less than fifteen:

(b) has not carried on business for two consecutive co-operative years in accordance with the bye-laws and the cooperative principles; or

(c) has not got the accounts of the society audited since last three or more consecutive years;”

In the instant case, it is clear that accounts of society were not audited for 8 years i.e. from 2005 to 2011. There is nothing on record to suggest that normal business of the society was carried out after 1996 or after 1999 when the term of the Management Committee had expired. Further no elections have been conducted after term of the Managing Committee had expired in 1999. I also find that impugned order was issued by RCS after issuing notice under section 96 (a) and subsequently publishing the same in the leading newspapers as required under section 96(2)d of DCS Act, 2003. Petitioner contended that society itself approached the RCS office vide letter dated 13.1.2011 to inform that

society wants to hold its Annual General Meeting on 29.1.2011. Society vide letter dated 07.02.2011 requested RCS to appoint a presiding officer for holding the election of Managing Committee through its Secretary. This averment does not hold any ground as the society itself admitted that it could not hold AGM and submit audit report from the year 2004 till the year 2010. Further, it is an admitted fact that no elections were conducted by the society after 1999, thus satisfying fully the conditions (b) and (e) of the Section 96 of the DCS Act, 2003, which warrants dissolution of the Co-operative Society. Further writing a letter in 2011 can't be treated as response to notice under section 96 (1) of the Act which was not responded to despite its publication in two leading news papers on 08.03.2012. Nothing on record suggests that there was valid elected managing committee after 1999. Further there is nothing in the law that suggests that Secretary or President of the society can hold the office after lapse of its tenure of elected managing committee.

7. Therefore, in view of the above discussion, I find no infirmity in the order passed by the RCS. The Revision Petition is accordingly dismissed.

8. Announced in the open Court.

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(DHARAM PAL)
Financial Commissioner, Delhi
13th January, 2015