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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Date of decision: 08th July, 2026**Uploaded on: 14th July, 2026*

+ W.P.(C) 8755/2023 and CM APPL. 49700/2025

K.K. MIGLANI

.....Petitioner

Through: Mr. Akshay Makhija, Sr. Adv.
(*Amicus Curiae*) with Ms. Shweta
Kumar, Adv. along with Petitioner in
person.

versus

GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Dhruv Rohatgi, Panel Counsel
(Civil), GNCTD, Mr. Dhruv Kumar
and Mrs. Chandrika Sachdev, Adv.
for RCS/GNCTD.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE VIKAS MAHAJAN****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition had been filed seeking directions to the Respondents for considering the name of the Petitioner in the panel of arbitrators drawn up by the Registrar Co-operative Societies, GNCTD (hereinafter “RCS”).

Factual Background

3. The Petitioner is a retired Group-A Gazetted Officer, who had applied in response to an advertisement issued on 11th March, 2022 for empanelment of arbitrators by the RCS for a term of three years from 2022-2025. The said empanelment is pursuant to Section 71 read with Section 137 (zl) of the Delhi



Cooperative Societies Act, 2003 (hereinafter “DCS Act”) and Rule 87 of the Delhi Cooperative Societies Rules, 2007 (hereinafter “DCS Rules”).

4. The Petitioner had applied for empanelment in terms of the said advertisement but after the applications were received, the cut-off regarding maximum age of 70 years was fixed by the Selection Committee due to which the Petitioner’s application was not considered. Thereafter, the Petitioner made various representations to the Government, however, since there was no response, the present petition was filed. The original prayer in this petition is as under:

“a). A writ of mandamus or any other writ or direction in the nature thereof thereby directing the Respondents to consider the name of the petitioner for inclusion in the panel of Arbitrators prepared by the Registrar of Co-op. Societies. Govt. of NCT of Delhi for the year 2022-2025.

b). Pass any other order as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

5. During the pendency of this writ, the term of the initial advertisement which was issued for three years expired and a fresh advertisement was issued by the RCS dated 30th June, 2025 for a period of three years *i.e.*, 2025-2028.

6. The Petitioner then sought amendment of the writ for directions to the Respondent for considering the name of the Petitioner in respect of the fresh panel of arbitrators for the period of 2025-2028. The amendment was allowed on 08th August, 2025 and a counter affidavit to the amended writ petition has also been filed on 22nd August, 2025.

7. Considering the nature of dispute *vide* order dated 05th August, 2025,



Mr. Akshay Makhija, Id. Senior Counsel was appointed as *Amicus Curiae* to assist the Court.

Submissions of the Parties

8. Id. *Amicus* has made his submissions today and has taken the Court through the provisions of the DCS Act and the DCS Rules. It is urged by the Id. *Amicus* that on the date when the Petitioner first filed his application for being considered for empanelment for the period of 2022-2025, the Petitioner had not attained the age of 70. While the said application was pending he attained the age of 70.

9. It is his further submission that neither in the DCS Act and DCS rules nor in the two advertisements that were issued by the RCS, there was any eligibility criteria relating to age prescribed. Under such circumstances, it is the Id. *Amicus's* submission that prescribing a cut-off age after the applications were filed, that too in the meetings held by the Selection Committee, is completely untenable. In this regard, reliance is placed on the Selection Committee's Minutes of Meetings dated 30th August, 2022 of the meeting held on 6th July, 2022.

10. Accordingly, it is urged that the said Minutes of Meeting would be contrary to the provisions of the DCS Act and the DCS Rules, and hence, are unsustainable.

11. Insofar as the fresh advertisement dated 30th June, 2025 for the period 2025-2028 is concerned, the said advertisement also does not prescribe any age limit as eligibility criteria. Thus, it is argued that the Petitioner's case ought to be considered even now for empanelment.

12. Mr. Makhija, Id. *Amicus* submits that even in the past the Petitioner had been empanelled as an arbitrator with the RCS.



13. Finally, reliance is placed upon the decision of the Constitution Bench of the Supreme Court in ***Tej Prakash Pathak & Ors. v. Rajasthan High Court & Others, (2025) 2 SCC 1***, to argue that the rules of the game ought not to be changed after the game has started.

14. On the other hand, Mr. Dhruv Rohatgi, Id. Counsel appearing for the RCS has urged that under Rule 87 of the DCS Rules, which prescribes the process for appointment of arbitrators by the RCS, considerable leeway has been given for selection of arbitrators for empanelment. The language of Rule 87(2) of the DCS Rules itself reads “*the following persons may be considered for appointment as an arbitrator*”, thus, it is submitted that the Selection Committee has complete freedom to decide the manner in which the selection would be undertaken. Further, it is his submission that considering the large number of applications which are received, some criteria which is fair, could be adopted by the Selection Committee, in order to shortlist the candidates.

15. He submits that the Minutes of Meeting dated 30th August, 2022 itself would show that the decision was unanimous and the Petitioner was not being targeted in any manner whatsoever. The same criteria has been applied to all candidates and therefore, there is no unfairness in the process.

16. Lastly, Mr. Rohatgi, Id. Counsel argues that the term of the empanelment at the time when the Petitioner had first applied *i.e.*, for 2022-2025, has itself come to an end and hence, the writ petition is infructuous.

Analysis and Findings

17. This Court has heard Id. Counsel for the parties and considered the matter.

18. Section 71 of the DCS Act contemplates reference of disputes to arbitration by the RCS. Sub-section (2) of Section 71 states that the manner,



method and appointment of arbitrators etc., would be as prescribed under the DCS Rules. The relevant portion of Section 71 of the DCS Act reads as under:

“Reference of disputes to arbitration.

71. (1) The Registrar may, on receipt of the reference of dispute under section 70 –

- (a) decide the dispute himself, or*
- (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or*
- (c) refer it for disposal to an arbitrator.*

(2) The method, manner of selection, appointment of arbitrators, their qualifications, terms and conditions of appointment and fees payable to them shall be as prescribed under the rules.

19. Section 137 of the DCS Act which permits framing of rules by the government, specifically empowers the government to make rules for selection and appointment of arbitrators. The said provision reads as under:-

“137. (1) The Government may, by notification published in the official Gazette, make rules for carrying out all or any of the purposes of this Act and for any class of cooperative societies.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely –

(a). xxxx

(zk) the manner in which disputes to be referred for arbitration and fee for it;

(zl) the procedure for selection and appointment of members of arbitrator, their terms and conditions of service and related matters;”



20. Section 137(2) of the DCS Act also requires every Rule made by the government under the DCS Act to be laid before the Legislative Assembly, GNCTD. The said rule reads under:

“(2) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly of the National Capital Territory of Delhi while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification to the rule or the Legislative Assembly agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

21. Rule 87 of the DCS Rules, which prescribes the persons who may be considered for appointment as an arbitrator also reads as under:

“87. Appointment of arbitrator-

(1) The Registrar shall invite application for appointment of arbitrators by advertisement in two national daily leading newspapers (Hindi and English).

(2) The following persons may be considered for appointment as an arbitrator-

(3) (a) Gazetted officers including retired, of any department under the Government ; or

(b) Officers/Co-operators, serving or retired of co-operative societies having experience of ten years and having graduate degree preferably a Diploma in Cooperative from recognized Cooperative Training Institute; or



(c) Officers of local bodies and public sector undertakings of the Government.

(3) The registrar shall scrutinize and compile the applications received and submit the same before the selection committee constituted under sub-section (3) of section 71 of the Act.

(4) The committee shall select and approve the arbitrators and after receipt of the approval of selection committee, the Registrar shall issue appointment orders of Arbitrators so selected.

(5) The term of the Arbitrator shall be three years.”

22. A perusal of the above provisions would show that whenever, there are disputes which are brought before the RCS, the same may be referred to an arbitrator for adjudication. In this regard, the RCS has the option to consider appointment of arbitrators from different categories of persons as mentioned under Rule 87 of the DCS Rules. It is noted that in Rule 87, no outer age limit has been prescribed for empanelment as an arbitrator.

23. The subject advertisements which were issued by the RCS for empanelling of arbitrators have to be considered in light of the statutory position as mentioned above. The advertisement dated 11th March, 2022 which was initially issued for empanelling the arbitrators reads as under:

**“OFFICE OF THE REGISTRAR OF CO-OPERATIVE
SOCIETIES, OLD COURT BUILDING, PARLIAMENT
STREET, GOVERNMENT OF NCT OF DELHI,
NEW DELHI -110001**

Website <https://rcs.delhigovt.nic.in>

Email: arbitrationrcs@gmail.com

“1. Applications are invited from all the eligible Officers for the empanelment of Arbitrators under Section 71 of the Delhi Cooperative Societies Act 2003 and under Rule 87 of the Delhi



Cooperative Societies Rules 2007 for a period of three years starting from 2022-2025.

2. Eligibility Criteria as per Rule 87:-

87. Appointment of Arbitrator -

(i) *The Registrar shall invite application for appointment of arbitrators by advertisement in two national daily leading newspaper (Hindi and English).*

(ii) *The following persons may be considered for appointment as an arbitrator-*

(iii) (a) *Gazetted officers including retired, or any department under the Government; or*

(b) *Officers/Co-operators, serving or retired of Co-operative societies having experience of ten years and having graduate degree preferably a Diploma in Co-operative from recognized Co-operative Training Institute; or*

(c) *Officers of local bodies and public sector undertakings of the Government.*

(iv) *The registrar shall scrutinize and compile the applications received and submit the same before the **Selection Committee** constituted under **sub-section (3) of Section 71 of the Act**.*

(i) *The committee shall select and approve the arbitrators and after receipt of the **approval of Selection Committee**, the Registrar shall issue appointment orders of arbitrators so selected.*

(ii) *The term of the arbitrator shall be three years.*

3. Remuneration: As per Rule 88:—

88. Arbitration Fee

The Registrar shall have power to require the person referring a dispute under sub-section (1) of the section (70) of the Act, to deposit in advance with the office of Registrar in “Settlement and Executive Expenses Fund” a fee at the rate specified in the Schedule below, that may be revised by the Registrar from time to time.”

24. The above advertisement did not contemplate any maximum age limit.

25. After the said advertisement was issued, depending upon the various applications which were received, it appears that the Selection Committee took a decision to prescribe a cut-off age limit of 70 years. The Selection Committee which had met on 06th July, 2022, approved certain resolutions that are as under:



“The Committee was further apprised that an advertisement in this regard was published in leading English and Hindi Newspapers inviting applications from the interested and eligible persons. A total of 332 application were received.

The Selection Committee has unanimously approved the following points: -

1. To consider candidates only from categories given below:-

A- Gazetted Officers including retired of any department under the Government.

B- Officers/Co-operators, serving or retired of Cooperative Societies having Experience of 10 years and having graduate degree preferably a diploma in Cooperative.

C- Officers of Local Bodies and PSUs of the Government.

*2. **To consider candidates upto 70 years of age.***

3. To obtain undertaking from all the selected candidates regarding any FIR & Criminal proceedings pending against them.

4. Those Arbitrators whose performance is poor in past will not be selected.

5. To ensure fair play, it is decided that such officers who are at present working within RCS will not be assigned any arbitration cases till the time they are posted in the RCS office. In case any officer who is empanelled as Arbitrator and is subsequently posted to the RCS office, the assignment of arbitration cases will be withdrawn from him on joining the RCS office and the case allotted to somebody else.”



26. As can be seen from the above Minutes of Meeting, the Selection Committee appears to be concerned by the fact that a total of 332 applications were received and in order to prepare some kind of shortlist, further decisions were taken unanimously including the prescribing of age limit of 70 years, bad performance previously, criminal proceedings against candidates etc.,.

27. Some of these conditions may be quite reasonable for disqualification such as that the candidate ought not to have any criminal proceedings against him or poor performance in the past, etc. However, the issue that the Court is presently dealing with is about fixing the cut-off age of 70 years. While there can be no doubt that the Selection Committee has considerable discretion in selecting arbitrators for empanelment, the legality of such post-application criteria, could render the process of selection writ with allegations of bias, favouritism etc.,

28. Ld. Counsel for the RCS has argued that Rule 87 of the DCS Rules itself does not limit the kind of persons that may be chosen for appointment as an arbitrator. A bare reading of the said Rule would support this position. However, whenever any advertisement for appointment is issued, such an advertisement should clearly spell out any further conditions that the Selection Committee wishes to impose including disqualification due to age, due to criminal cases, relationship with any officers serving at the RCS etc.

29. Once a candidate has filed an application based upon the eligibility criteria set out in the advertisement, prescribing additional criteria thereafter, that too in closed doors would not be permissible. Such a practice would be contrary to basic principles that have laid down in judicial precedents. The Constitution Bench of the Supreme Court in **Tej Prakash Pathak (supra)** has been relied upon by the *Id. Amicus*. The relevant portion of the said judgment



is extracted below:

“Analysis

21. To effectively analyse and adjudicate upon the questions referred, we would divide our discussion into following parts:

21.1. (a) When the recruitment process commences and comes to an end;

21.2. (b) Basis of the doctrine that **“rules of the game” must not be changed during the course of the game, or after the game is played;**

21.3. (c) Whether the decision in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] is at variance with earlier precedents on the subject;

21.4. (d) Whether the above doctrine applies with equal strictness qua method or procedure for selection as it does qua eligibility criteria;

21.5. (e) Whether procedure for selection stipulated by Act or Rules framed either under the proviso to Article 309 of the Constitution or a statute could be given a go-by;

21.6. (f) Whether appointment could be denied by change in the eligibility criteria after the game is played.

XXXX

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23. **The doctrine proscribing change of rules midway through the game, or after the game is played, is predicated on the rule against arbitrariness enshrined in Article 14 of the Constitution.** Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the concept of equality in all matters relating to public employment. These two articles strike at arbitrariness in State action and ensure fairness and equality of treatment. **They require that State action**



must be based on valid relevant principles alike to all similarly situate and not to be guided by any extraneous or irrelevant considerations. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest.

24. The principle of fairness in action requires that public authorities be held accountable for their representations. Good administration requires public authorities to act in a predictable manner and honour the promises made or practices established unless there is good reason not to do so.

25. **Candidates participating in a recruitment process have legitimate expectation that the process of selection will be fair and non-arbitrary.** The basis of doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. **This doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure.**

26. However, the doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse



factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation.”

30. Prescribing of an age after applications have been invited could result in exclusion of a large number of candidates and reduce the pool of applicants. The process would then be unfair on the applicants who are excluded. In light of the above well-settled legal position, the prescribing of the age criteria of 70 years after the issuance of the advertisement and after the applications having been submitted, would be contrary to law.

31. The term of the initial empanelment advertisement *i.e.*, 2022-2025 has already elapsed. Presently, the advertisement which is operating in which the applications are being considered is the advertisement dated 30th June, 2025 for the term 2025-2028.

32. The amended prayer in the writ petition is that the Petitioner ought to be considered for the empanelment for the term of 2025-2028 and be exempted from the 70 year age limit which the Selection Committee has imposed.

33. It is noted that in the new advertisement also, there is no new age limit which has been prescribed, accordingly, the Petitioner's candidature may be considered by the Selection Committee without considering the age limit of 70 years.

34. The remaining selection process would be purely within the domain of the Selection Committee.



35. In future, if the Selection Committee wishes to impose any eligibility criteria upon candidates for empanelment of arbitrators to be appointed by the RCS, such conditions may be prescribed in the advertisement itself so as to avoid any allegations of illegality or impropriety, bias or favouritism.

36. It is further clarified that the cut-off age of 70 years shall not be made applicable in respect of any candidate who may have applied for the term of 2025-2028.

37. The office of the RCS is also free to consider expanding the zone of consideration of persons eligible in terms of Rule 87(2) of the DCS Rules by allowing persons with legal expertise who would be willing to act as arbitrator. If such a zone of consideration is expanded, the same shall be spelt out in the advertisement itself.

38. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

JULY 8, 2026/nsa/dss/msh