

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

Judgment reserved on: 12.12.2011

% Judgment delivered on: 04.01.2012

+ W.P.(C.) No. 4860/2011 & C.M. No. 19583/2011 (for intervention)

HARYANA WRESTLING ASSOCIATION AND ANR

..... Petitioners

Through: Mr. Narender Hooda, Advocate .

versus

WRESTLING FEDERATION OF INDIA AND ORS

..... Respondents

Through: Mr. Pradeep Dewan, Senior Advocate, with Mr. Anupam Dhingra, Advocate, for the respondent No.1/WFI.

Mr. Devrat Sharma & Mr. M.P.Singh, Advocates, for the respondent No.2/UOI.

Mr. Navin Chawla, Mr. Bharat Arora and Ms. Nidhi Mohan Parashar, Advocates, for the respondent No.4.

Mr. Ravi Prakash Gupta, Advocate, for the applicant in C.M. No. 19583/2011.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

C.M. No. 19583/2011 (for intervention)

This application has been preferred by Sh. K.S. Minhas to intervene in the present writ petition. He claims to be the Life President of WFI. He has already initiated two civil suits, details whereof are contained in the application and have been noticed in the following judgment. The pendency of the said suits has no bearing on the determination of the issues raised by the petitioners in the writ petition. My reasons for the said observation are detailed in the following judgment. The present application is clearly an attempt on the part of the applicant to put a spoke in the wheel and prevent this Court from disposing of the writ petition. I, therefore, find no merit in this application. The same is, accordingly dismissed.

W.P.(C.) No. 4860/2011

1. The petitioners, i.e. petitioner No. 1/Haryana Wrestling Association (HWA) acting through its Hony. Secretary Sh. Raj Kumar Hooda and petitioner No. 2/Sh. P.V. Rathee, representative of the petitioner No. 1, have preferred this writ petition under Article 226 of the Constitution of India to

seek a writ of certiorari – to quash the order dated 05.04.2011 issued by the Returning Officer of the respondent No. 1/Wrestling Federation of India (WFI), whereby the representation of petitioner No. 1 dated 04.04.2011 to revise the election schedule was rejected, and Article XIII (d) of the Constitution of WFI was held to be in operation. The petitioners also seek quashing of the election of respondents No. 4, 5 & 6, i.e. Sh. Dushyant Sharma, Sh. Raj Singh and Sh. Hamza Bin Omar as the President, Secretary General and Senior Vice President respectively of WFI on the ground that the same has been held in violation of the Constitution of WFI. Certain interim reliefs have also been sought by the petitioners keeping in view the final reliefs.

2. The petitioner No. 2 filed his nomination to contest for the post of President of respondent No. 1/WFI as the nominee of petitioner No. 1. The Returning Officer rejected the said nomination by the impugned order dated 8.4.2011.

3. At this stage itself I may take note of the order dated 15.07.2011 passed in these proceedings. The counsel for the petitioners was asked to explain as to how the petitioners can raise a challenge to the elections for the posts of Senior Vice President and Secretary General inasmuch, as, no

person aggrieved by the said election had preferred a petition, and the petitioner No. 2 was not a candidate for the said posts. The counsel for the petitioners had then made a statement that he confines the relief in the petition to challenge the election for the post of President only. Consequently, respondents No. 5 & 6, who were elected to the post of Secretary General and Senior Vice President respectively in the election process in question, were deleted from the memo of parties by the said order dated 15.07.2011.

4. Respondent No. 1/WFI is a society registered under the Societies Registration Act, 1860. WFI is the apex body in India for the sport of wrestling. It represents India in all wrestling events around the world. It has affiliated units in each & every State. It is recognized by the respondent No. 2/Union of India (UOI) for the purpose of releasing the grant in aid, training and selection of wrestlers who represent the nation in various international wrestling meets and championships.

5. The case of the petitioners is that the constitution of respondent No. 1/WFI was amended in the year 2007 by inserting Article XIII (d) therein. Article XIII (d) reads as under:

“It shall be mandatory requirement of elections to the post of President, Senior Vice President and Secretary General that

only those members, who had held the office in the outgoing Executive Committee of WFI for a period of 4 years shall be eligible to contest the election.”

6. The purport of the said amendment was that only existing executive members of WFI, who had served in that capacity for a period of four years, were eligible to contest the elections for the post of President, Senior Vice President and Secretary General, and all other members of the WFI were precluded from doing so. Consequently, there was a limited contest for the said three posts, which, undoubtedly, are the most important posts in the organization of WFI.

7. The case of the petitioners is that the petitioner No. 1/HWA is the apex body for the discipline of wrestling in the State of Haryana and is one of the affiliated units of WFI. It is also the case of the petitioners that it was mooted that Article XIII (d) be deleted from the Constitution of Respondent No.1/WFI as it had the effect of restricting participation and competition for election of the President, Vice President and General Secretary of respondent No. 1, to only those members of the Executive Committee of WFI, who had served as such for a period of four years. However, the then General Secretary of WFI, who was eyeing the post of President in the next process of election, was not in favour of deletion of Article XIII (d), as the

said deletion would increase competition and reduce his chances of getting elected. Consequently, the President of the WFI called a Special Meeting of the General Council/General Body of respondent No. 1/WFI on 05.02.2011, wherein the amendment of the Constitution of WFI was approved. One of the amendments approved was that Article XIII (d) be deleted.

8. On 12.03.2011, the then Secretary General of WFI, namely Sh. Kartar Singh, IPS, issued a notice for holding of elections of the office bearers of WFI. The election for the various posts was scheduled to be held on 15.04.2011. The following schedule was fixed for conduct of elections:

TIME SCHEDULE FOR WFI'S ELECTION

<i>DATE</i>	<i>ACTIVITY</i>
<i>5th April 2011</i>	<i>Publication of the Electoral College</i>
<i>5th-6th April 2011</i>	<i>Collecting of nomination papers of candidates for various posts and members of the Executive Committee.</i>
<i>8th April 2011</i>	<i>Scrutiny of nomination papers</i>
<i>9th April 2011</i>	<i>Withdrawal of nomination by candidates, if any</i>
<i>10th April 2011</i>	<i>Publication of final list of candidate and their circulation to all Units</i>
<i>15th April 2011</i>	<i>Annual General Body Meeting at 11:00 A.M., New Delhi</i>

9. It appears that on 25.03.2011, the erstwhile Secretary General of WFI also appointed Mr. Justice S.K. Aggarwal (Retd.), Judge of this Court, to function as the Returning Officer. It appears that the Government of India took note of the aforesaid notification of election, as well as appointment of Returning Officer in their communication dated 28.03.2011.

10. The nominee of the Returning Officer issued a communication dated 28.03.2011 to the various State Wrestling Associations, Union Territories Wrestling associations, Services Sports Control Board (SSCB), Railway Sports Promotion Board (RSPB), FILA Bureau Members & Life Presidents on the subject of holding of elections of the office bearers and members of the Executive Committee of WFI for the next four years term. In this communication Article XIII (d) of the Constitution of WFI was specifically referred to and reproduced in relation to the elections for the post of office bearers and/or members of the Executive Committee.

11. It appears that petitioner No. 1/Sh. Raj Kumar Hooda, represented against, firstly, the reference made to Article XIII (d) despite the same being deleted by the General Council on 05.02.2011, and also represented against fixation of the tight schedule for holding the elections on the ground that

even though the Electoral College was scheduled to be declared only on 05.04.2011, the nominations were invited to all the posts by 06.04.2011, thereby giving hardly any time for the intending candidates to approach the other members for subscribing to their nominations.

12. According to the petitioners, in response to the said representation made by the petitioner No. 1, the Observer appointed by the Government of India issued a communication dated 05.04.2011. The Returning Officer was made aware of the issues raised by the petitioner No. 2. The Government of India also communicated, inter alia, to the Returning Officer that the restrictive clause similar to one contained in Article XIII (d), was proposed to be incorporated in the Constitution of the Indian Olympic Association, which had not been approved by the Ministry of Sports. The Government Observer also agreed with the grievance of the petitioner No. 2 with regard to the insufficiency of time allowed for filing of nominations. It was further stated that it would be in the interest of purity of electoral process that sufficient time is given to the intending candidates to file their nominations as stipulated in the Standard Election Bye-Laws circulated by the Ministry of Sports to all National Sports Federations.

13. On 7th April, 2011, the Government of India acting through its Under Secretary in the Ministry of Youth Affairs and Sports also sent a communication to respondent No.1 stating that Article XIII (d) is contrary to the Government Guidelines on Good Governance and Healthy Development of Sports as it perpetuates existing members, and does not provide level playing field to all the member units. It was also stated that holding of elections by office bearers of the respondent/federation without addressing the said issue would not only be violative of the resolution passed by the General Council at its previous meeting held on 5.2.2011 wherein it had been decided to dispense with the said clause, but it would also deny the opportunity to the members who have not held such positions in the outgoing Executive Committee of WFI for a period of four years from contesting the elections. It was, therefore, recommended that the general body should first settle this matter and after confirming the removal clause, should proceed with the elections with revised schedule giving due time at each stage of the election process, including time for the candidates to campaign for themselves. It was also stated that proceeding with the elections without properly addressing these matters, would result in an impasse, as the Government would not be in a position to recognize the new

management as legitimate management of the WFI and provide financial and other support for development of sports.

14. The petitioner submits that the Returning Officer appointed by the General Secretary passed the impugned order dated 05.04.2011, rejecting the representation of petitioner No.1 dated 4.4.2011 to revise the election schedule. The Returning Officer also held that Article XIII (d) of the Constitution of WFI continued to remain in operation. The relevant extract from the impugned order passed by the learned Returning Officer in this regard reads as follows:-

‘ii. Mr. Narender Hooda next argued that in the alternative, even if the amendment vide resolution dated 17.12.2007 is taken to have been validly passed, the deletion of the same vide resolution dated 05.02.2011 was validly passed and that the rigors contained in section 12 of the Societies Registration Act do not apply for amendment of the rules and Regulations of the WFI. There is a difficulty in accepting this submission.

iii. The perusal of the records reveal that the notice dated 03.12.2010, calling for special General Council meeting inter alia to consider and adopt the amendments to the constitution of WFI as given in Annexure A at Ranchi, Jharkhand, as well, as the subsequent notice dated 12.01.2011, rescheduling the said meeting with the same agenda, and even the minutes of the said meeting are signed by Mr. G.S.Mander, President, and not by Secretary General as required by Article XV relating to the amendment of Rules and Regulations which read as follows:

“No amendment shall be made to these Rules and Regulations except at the Special General Council

Meeting of the WFI and supported by the 2/3rd of the representatives present and voting. All proposed amendments must be presented to the Secretary General, at least three weeks before the meeting and forwarded by him to every member at least fourteen days before the meeting”(emphasis supplied)

In addition to the above the minutes of the meeting of all the meeting dated 05.02.2011 are yet to be confirmed by the General Council.

In view of all this, it is difficult to accept the contentions that by virtue of the said Resolution, clause XIII(d), stands deleted or it can be given effect to. In respect to the other amendments referred to in the said resolution, the same result would follow.

iv Mr. Narender Hooda next argued till the Electoral College is finalized, the nomination cannot be submitted or called and therefore, the date of calling of the nominations and others election dates be rescheduled. It was pointed out that I the prescribed proforma for nominations require to mention their serial number of the Electoral College, which may not known to the candidates in the absence of the publications of the Electoral College.

v. There may be merit in this contention, but it is not possible for this Authority to reschedule the dates, particularly when the same have been approved by the Government as well as the Hon'ble Division Bench of the Delhi High Court.

vi. Mr. Narender Hooda has also argued that the Section 12 of the Societies Registration Act do not apply for amendment to Rules and Regulations of the Society. Learned Counsel frankly conceded that even if Section 12 does not apply, the power would still remain the General Council to add to amend the Rules and Regulations. It is not necessary to deal with this argument any further.”

15. The first submission of learned counsel for the petitioner is that Section 12 of the Societies Registration Act has no application so far as the amendment to Article XIII (d) is concerned. He also submits that the resolution dated 05.02.2011 took effect the moment it was passed, and it was neither dependent upon registration by the Registrar, nor on its confirmation in the subsequent meeting.

16. In this regard, he places reliance on the judgment of the Supreme Court in *Managing Committee, Khalsa Middle School & Ors. Vs. Mahender Kaur (Smt.) & Ors.*, 1993 (Suppl.) (4) SCC 26.

17. Learned counsel for the petitioner submits that even though the Secretary General of WFI, i.e., respondent No.5 was called upon to call a meeting of the Council, inter alia, to consider amendment to Article XIII(d), he did not do the needful as he was himself not interested in the said amendment being brought about. Consequently, the President himself called the meeting of the Council to consider the said amendment. He relies upon Article X(a)(i), which sets out the duties of the President. These duties empower the President to call meeting of the Council and Executive, if he deems it appropriate. He, therefore, submits that the meeting in which the

amendment to Article XIII(d) was considered was duly called for the said purpose.

18. Learned counsel for the petitioner submits that the WFI in their counter affidavit admit and acknowledge the position that the resolution passed in the Governing Council meeting on 5.2.2011 whereby Article XIII(d) was deleted, was confirmed in the next meeting of the Governing Council held on 18.6.2011. In reply to ground “G”, in their counter affidavit, respondent No.1 has, inter alia, stated as follows:-

“The proposed amendment, as per the provision of the Constitution of WFI, was put in the agenda in the meeting held at Ghaziabad on 05/02/2011. The proposed amendment of Article- XIII (d) was passed, which required to be confirmed. The proposed amendment of Article- XIII (d) was confirmed in General Council Meeting dated 18/06/2011 held at Jammu.”

19. Learned counsel submits that following the passing of the impugned order by the learned Returning Officer, holding that Article XIII(d) continued to remain in operation despite the amendment carried out in the meeting of the Council held on 05.02.2011, the learned Returning Officer, inter alia, rejected the nomination of the petitioner for the post of President on 8.4.2011.

20. The petition is opposed on behalf of respondents No.1 and 4. Learned counsel for respondent no.1 submits that Article X(d)(xiii) shows that before

the minutes of the meeting are confirmed in the next meeting, they do not come into operation. He submits that even though the amendment to Article XIII(d) was passed vide resolution dated 5.2.2011, the said amendment was not confirmed till after holding of the elections on 18.6.2011. Consequently, the said amendment did not take effect at the time when the election was held between 5.4.2011 and 15.4.2011. Article X(d)(xiii) which is relied upon by respondent No.1 reads as follows.

“X(d) x x x x x x x

*xiii) To keep records of the proceedings, resolutions and decisions of all meetings of the council, Executive Committee and other committees. **The minutes having been confirmed by the Chairman of the next meeting shall be the conclusive evidence of their correctness.**”(Emphasis supplied)*

21. Mr. Chawla who appears for respondent No. 4 firstly submits that no candidate, whose nominations were found to be valid by the Returning Officer, raised any grievance with regard to the time schedule notified by the General Secretary for conduct of elections between 05.04.2011 & 15.04.2011. The petitioner not even being a qualified candidate, therefore, could not have raised any grievance in relation to the time schedule fixed by the General Secretary vide a notice dated 12.03.2011. He submits that the said time schedule was also approved by the Government on 28.03.2011,

when the Government sent its communication approving the appointment of Mr. Justice S.K. Aggarwal, (Retired) Judge, Delhi High Court, as Returning Officer for the elections of the WFI to be held on 15.04.2011.

22. Mr. Chawla submits that the notice dated 12.01.2011 issued by the then President of WFI proposing to hold special meeting of the General Council of WFI on 05.02.2011 at Ghaziabad itself is under challenge in CS(OS) 143/2011 filed by one Sh. K.S. Minhas, who claims himself to be the Life President of WFI. In this suit, the plaintiff has, inter alia, sought a declaration that the notice calling the said special meeting of the General Council on 05.02.2011, and the proceedings of the special meeting of 05.02.2011, are null & void. The submission of the learned counsel for the respondent No.4 is that the President of the WFI was not authorized to call any meeting of the General Council, inter alia, to consider the amendment to Article XIII (d). In this regard he places reliance upon Article X(d) which states that the *“Honorary General Secretary shall be responsible for carrying out the general business of the federation, keeping the minutes of the meeting, maintaining of the records of the federation, **calling meeting of the General Council and the Executive Committee.**”*

23. Mr. Chawla further submits that a second suit preferred by one Sh. Kartar Singh and Sh. K.S. Minhas being CS(OS) 1477/2011 is also pending disposal in this Court. In this suit, the plaintiffs have assailed the results declared in the election process in question on 15.04.2011 by the Returning Officer for the posts of Officer Bearers of the Executive Committee of WFI. Other consequential reliefs have also been sought in that suit. Mr. Chawla submits that since these suits are pending disposal, this Court should not exercise its jurisdiction to entertain the present writ petition.

24. Mr. Chawla submits that the Registrar could not register the amendment in the Articles made on 5.2.2011, as the WFI had not enclosed the requisite documents as per the guidelines/check list of the said department. He submits that the reasons given by the learned Returning Officer in the impugned order for concluding that Article XIII (d) is in operation, and not effected by the resolution passed by the General Council on 05.02.2011 deleting the same, are germane and reasonable. He submits that the impugned order has to be tested on the basis of the facts as existing on the date on which the same came to be passed, and not on the basis of any subsequent facts or communications. He, therefore, supports the view of the

learned Returning Officer that Article XIII (d) continued to remain in operation for the following reasons:

- (i) The meeting of 05.02.2011 of the General Council, and the subsequent meeting of 18.06.2011 are under challenge.
- (ii) Minutes of the General Council meeting held on 05.02.2011 required to be confirmed before they could come into operation and they were not confirmed at the time when the elections were notified on 12.03.2011 and held between 05.04.2011 & 15.04.2011. They were confirmed only on 18.06.2011.
- (iii) The amendment to the articles were not registered with Registrar, and unless so registered, they could not come into operation.
- (iv) The amendments are themselves in serious doubt as two suits assailing them are pending disposal before this Court.
- (v) The petitioner has himself given up the challenge to the elections to the other posts, and he is only challenging the elections to the post of President. However, the issues raised by the petitioner, if allowed to be agitated and in case the petitioner succeeds, would impact the elections to the other posts of Senior Vice President and General

Secretary, even though they no longer are parties to the present petition.

25. The Government of India, i.e. respondent no.2 has also filed its counter-affidavit. It is stated in the affidavit of the Government that though by its communication dated 07.04.2011 the Government had objected to the restrictive clause in the constitution of WFI, i.e. Article XIII (d) and to the schedule of elections which did not give due time at each stage of the election process, since the elections were held by the federation on the strength of the interim orders passed by the Supreme Court on 13.04.2011 in S.L.P. (Civil) 10183/2011, *“with a view to obviating a situation of vacuum in the management and governance of the sport of wrestling in the country, the Government granted conditional recognition to the newly elected office bearers and the members of the Executive Body vide letter No. F.51-1/2011-SP.III dated the 15th June, 2011 (Annexure IV) subject to fulfillment of the following conditions within a period of three (3) months from the date of issue of the letter:*

(a) Incorporation of government guidelines in its constitution on age and tenure of office bearers as per circular dated 1st May, 2010.

(b) Removal of restrictive clause requiring the candidates for the posts of President, Senior Vice President, Secretary General and any other posts to be members of the outgoing governing body for at least four years.”

26. The submission of learned counsel for respondent no.4 that this Court should not entertain the present writ petition on account of the pendency of the aforesaid two civil suits in this Court, wherein challenge to the amendment of the Articles as well as the election process is pending, has no merit. The petitioners have preferred this writ petition on the basis of undisputed facts. The issues raised by them are purely legal and require determination on a reading of the Articles of the constitution of respondent no.1. Unless and until the resolutions in question dated 05.02.2011 and 13.06.2011 are set aside, they would continue to operate with full force. Mere pendency of other civil proceedings, therefore, cannot come in the way of this Court in entertaining and deciding the present writ petition. Pertinently, there is no interim stay granted by the Civil Court either of the resolutions dated 05.02.2011 or 13.06.2011 passed by the General Council, or in relation to the election process in question.

27. The submission of learned counsel for respondent no.4 that since the petitioner has given up the challenge to the election held for the posts of Senior Vice President and General Secretary, the present petition cannot proceed, as the determination of the issues raised by the petitioner with regard to the enforcement of the resolution of the General Council, whereby amendment of Article XIII(d) was made on 05.02.2011, would directly impact the election to the said posts as well, cannot be accepted. The petitioner had given up the said challenge to the elections for the post of Senior Vice President and General Secretary, as the respondents had raised an objection on the ground that the petitioner was not a candidate for the said posts, and was only a candidate for the post of President. Therefore, the locus standi to challenge the elections for the posts of Senior Vice President and General Secretary was questioned. It is in this background that the petitioner gave up the challenge to the elections for the posts of Senior Vice President and General Secretary. However, it does not mean that the petitioner is precluded from raising all such issues as are relevant and germane for challenging the election to the post of President of the WFI. If, as a consequence of the judgment of this Court in this petition, the elections

to the post of Senior Vice President and General Secretary also become vulnerable, that is not a reason not to entertain the present petition.

28. I would now deal with the issue as to whether the President had the power to call the special meeting of the General Council to consider the proposed amendment to Article XIII(d) of the Constitution, and; whether the amendment to Article XIII (d) of the Constitution of respondent No. 1/WFI either required confirmation or registration before the Registrar of Societies under the Societies Registration Act, before it became effective.

29. Admittedly, in the Special Meeting of the General Council held at Hotel – Mela Plaza, District – Ghaziabad the Articles/Constitution of the WFI was amended, whereby clause (d) of Article XIII was deleted. The effect of this amendment was to throw open the posts of President, Senior Vice President and Secretary General to contest by all members of WFI, which, prior to the amendment could be contested only by those members who had held office in the outgoing Executive Committee of WFI for a period of four years. Respondents No. 1 & 2 in their counter-affidavit do not contest the power of the President to call a Special Meeting of the General Council. However, respondent No. 4 in its counter-affidavit has urged that the President has no power to prepare the agenda relating to the

amendment of the Constitution of respondent No. 1. In this regard, reliance is placed on Article XV of the Constitution of respondent No. 1.

30. I do not find any merit in this submission of respondent No. 4. Article XV of the Constitution of the WFI reads as follows:

“XV – Amendments to the Rules and Regulations

No amendment shall be made to these Rules and Regulations except at the Special General Council Meeting of the WFI and supported by 2/3rd of the representatives present and voting. All proposed amendments must be presented to the Secretary General, at least three weeks before the meeting and forwarded by him to every member at least fourteen days before the meeting.” (emphasis supplied)

31. Therefore, the requirement is that the proposed amendments must be presented to the General Secretary at least three weeks before the meeting and forwarded by him to every member at least 14 days before the meeting. The argument of the respondents is not that the proposed amendments were not so presented to the General Secretary at least three weeks before the meeting.

32. However, the General Secretary failed to act on the said proposal as required by him. The General Secretary cannot hold the respondent No. 1/WFI and its members to ransom by not calling a meeting to consider the proposed amendment to the Constitution of respondent No. 1/WFI, merely

because he may not be in favour of the proposed amendment. To deal with such a situation and break the stalemate Article X(a)(i) empowers the President to call meetings of the Council and Executive, if he deems it proper. It is in exercise of this power that President called the Special Meeting of the General Council on 05.02.2011 to consider the amendment to the Constitution of WFI, including the deletion of clause (d) of Article XIII. Therefore, the submission of respondent No. 4 that the meeting called by the President on 05.02.2011 at Hotel – Mela Plaza, District – Ghaziabad to consider the amendment to the Constitution of WFI was without authority, has no merit and is rejected.

33. The submission of the respondents that the resolution passed on 05.02.2011, thereby amending the Constitution of WFI (including the deletion of clause (d) of Article XIII) could not take effect until it was confirmed by the Chairman in the subsequent meeting, is also meritless. Article XV deals with the aspect of amendment to the rules & regulations. It does not provide that the resolution amending the rules & regulations or even the Constitution requires confirmation at a subsequent meeting before it takes effect. No other article of the constitution has been relied upon to support this submission.

34. Reliance placed by the respondents on Article X(d) appears to be misplaced. Article X(d) deals with the powers & responsibilities of the Honorary General Secretary of WFI. It does not deal with the aspect - as to when and how the resolutions passed by the General Council shall take effect. Clause (xiii) of Article X (d) merely states that it shall be the duty of the Hony. General Secretary to keep records of the proceedings, resolution and decisions of all meetings of the Council, Executive Committee and other Committees. Merely because this sub-Article also states that “*The minutes having been confirmed by the Chairman of the next meeting shall be the conclusive evidence of their correctness*”, it does not mean that in this sentence one can read the mandatory requirement that the resolution/minutes of the Special Meeting of the General Council should first be confirmed by the Chairman of the next meeting, before they take effect. The confirmation by the Chairman of the next meeting only leads to authentication of the minutes of the Council/Executive Committee/other Committees. Pertinently, there is no dispute that in the subsequent meeting held on 18.06.2011 the General Council has approved the amendments to the Constitution adopted on 05.02.2011 by the Special Meeting of the General Council. The aforesaid clause does not mean that unless the

minutes/resolution passed by the General Council are approved or confirmed by the Chairman in the next meeting, they shall not come into effect forthwith. The confirmation would relate back to the date on which the resolution was initially passed.

35. I also do not find any merit in the respondents submission that unless the amendment to the Constitution was registered by the Registrar of Societies, the same could not be said to have come into effect. Section 12 of the Societies Registration Act, on which the respondents placed reliance, has absolutely no application in the present case. Section 12 of the Societies Registration Act reads as follows:-

“Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the

votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.”

36. A bare perusal of the aforesaid provision shows that Section 12 is applicable only where the amendment is sought to be made with regard to the purpose for which the society is constituted, so as to alter, extend or abridge such purpose, or the amendment is sought to be made to amalgamate the society either wholly or partially with any other society.

37. Firstly, that is not the case in hand. Amendment to Article XIII (d) neither seeks to alter, extend or abridge the purpose for which the respondent No.1 society has been constituted, nor the management of the respondent/society is sought to be amalgamated either wholly, or partially, with any other society.

38. Secondly, a plain reading of Section 12 of the Societies Registration Act shows that it nowhere talks about the amendment to an Article being first registered with the Registrar before it comes into operation.

39. The judgment of the Supreme Court in ***Managing Committee, Khalsa Middle School & Anr.*** (Supra) is clearly applicable in the present case. In this case, the appellant school initially was a minority educational

institution. It was converted into a non-minority educational institution by amendment of its articles. Some time thereafter, it was again converted into a minority institution. The amendments were made by passing resolutions by the society. The last of these resolutions, whereby the minority status of the institution was restored, took some time for its registration. In the meantime, the services of a teacher of the institution were terminated. The issue arose whether the appellant/institution was entitled to be treated as a minority institution under the provisions of the Delhi School Education Act and the Rules framed thereunder, during the period between the passing of the last of the resolution (thereby restoring the minority status of the institution), and its registration. The Supreme Court, after taking note of the statutory provisions, including that contained in Section 12A of the Societies Registration Act as applicable to Delhi, which provided for registration of change of name of the society (and with which we are not concerned in the present case), held as follows:-

*“Apart from the requirement contained in Section 12A for registration of the change of name of a Society, with the Registrar, **there is no requirement in the Societies Registration Act which requires registration of any amendment in the memorandum of association or the rules and regulations of a society to be registered with the Registrar.** Even in the Companies Act, 1956 a distinction is made in the matter of alteration of the memorandum of association and alteration of*

the articles of association. Under Section 18 of the Companies Act, it is necessary that the alteration of memorandum of association be registered with the Registrar of Companies within the prescribed period and the alteration takes effect from the date of its registration and under Section 19(1), it is provided that the alteration shall have effect only if it has been duly registered in accordance with the provisions of Section 18. There is no such requirement with regard to registration of the alteration in the articles of association of the company. Here we are concerned with the amendment in the rules and regulations of the Society. **In the absence of any requirement in the Societies Registration Act that the alteration in the rules and regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. It is, therefore, not possible to accept the contention of Shri Mehta that the amendment which was made in the rules and regulations by resolution dated July 1, 1979 did not come into effect till March 13, 1980 when the amended rules and regulations were registered with the Registrar, Firms and Societies. The said amendment should be treated to have come into effect from the date on which the resolution making the said amendment was passed, i.e., July 1, 1979.** As a result of the said amendment in the rules and regulations of the Society, the alterations made in the rules and regulations in 1963 were reversed and the position as it stood prior to the amendment of 1963 was restored. Consequently, the school which was a minority institution till the amendment of the Rules and Regulations in 1963 and had ceased to be a minority institution as a result of the amendment in 1963 regained its status as a minority institution after July 1, 1979, when the rules and regulations were amended and the original position was restored. In view of the restoration of the minority character of the institution the provisions of the Education Act and the Education Rules ceased to be applicable to the institution after July 1, 1979. The impugned order of termination of the services of the respondent was passed on December 31, 1979, i.e., after the school had become a minority institution. The said order

cannot, therefore, be held to be invalid on the ground that it was passed in contravention of Section 8 of the Education Act. The order passed by the Delhi High Court quashing the said order as well as the Disciplinary proceedings cannot, therefore, be upheld. The respondent was placed under suspension on August 11, 1972 and continued under suspension till April 9, 1973 on which date the Education Act came into force. In other words she was under suspension at a time when the Education Act was not in force. The order of suspension cannot be judged on the basis of the provisions of the Education Act and the Education Rules. We are, therefore, unable to uphold the direction of the High Court quashing her order of suspension.”
(Emphasis supplied)

40. Consequently, it is clear to me that the amendment to the Constitution including the deletion of clause (d) to Article XIII took effect on 05.02.2011 itself and was not dependent either on confirmation thereof, or registration thereof, as contended by the respondents. The impugned order dated 05.04.2011 passed by the learned Returning Officer, insofar as it holds that Article XIII(d) was effective, and in operation, on the date of notification of the election process, therefore, cannot be sustained and is set aside.

41. The elections to the various posts held between 05.04.2011 to 15.04.2011 could not have been governed by Article XIII (d) of the Constitution of WFI which stood deleted on 05.02.2011. Consequently, the rejection of the petitioner's nomination for the post of President by the learned Returning Officer vide order dated 08.04.2011 was illegal and

cannot be sustained. The same is set aside. The election for the post of President of WFI in the aforesaid election process is, therefore, liable to be set aside, and fresh elections deserve to be called for the said post.

42. However, since the petitioner has given up the challenge to the elections for the posts of Senior Vice President and General Secretary in the election process in question, and the same has not been challenged before me in these proceedings, the elections to the said posts is sustained, without prejudice to the rights of any other person to challenge the same independently in other proceedings.

43. I also find merit in the petitioner's submission that the election has not been fairly held, on account of the tight time schedule fixed by the then General Secretary for conduct of elections vide his notice dated 12.03.2011. Pertinently, the publication of the Electoral College was scheduled for 05.04.2011, i.e. on the same day on which the process of filing of nomination papers of candidates for various posts members of the Executive Committee started. The said process concluded on the following day, i.e. on 06.04.2011. Therefore, the eligible members, who could be interested in filing their nomination papers and offer their candidature for various posts of members of the Executive Committee, were granted hardly any time to

verify as to whether, or not, they were themselves eligible and, if so, as to who all were eligible to either contest the elections or to sponsor/support the nominations. It is well-known that unless an eligible member, who may be desirous of contesting the elections is made aware of the electoral college, he may not be able to take a call on whether, or not, to file his nomination. A candidate is entitled to know as to who all constitute the electoral college sufficiently in advance so as to enable him to assess his chance on the basis of the support that he may enlist. It is for this reason that not only the Government Observer, but even the Government itself called upon the respondent/WFI to fix a time schedule which would lead to conduct of elections in a transparent manner and to maintain the purity of the election process. The learned Returning Officer before whom the grievance was raised, obviously could not have tempered that the election schedule given to him for conduct of elections even though he agreed with this grievance of the petitioner.

44. However, that does not mean that the respondent/WFI itself could not have heeded to the advice of the Government Observer and to the Government's advice contained in the communications dated 05.04.2011 & 07.04.2011 respectively.

45. It cannot be said that the government approved the time schedule fixed by the respondent /WFI merely because the Government accepted the nomination of the learned Election Officer, as nominated by the General Secretary. It is clear that when the petitioner raised the issue with regard to the time schedule, the said issue was gone into and after application of mind the Government conveyed its desire that the elections be held with a proper schedule so that transparency and purity is maintained in the election process.

46. The counter-affidavit of Government of India shows that though they disapproved to the conduct of the elections in question either on the basis of Article XIII(d), or on the basis of the time schedule fixed for holding the elections. Only so as to obviate the situation of a vacuum in the management and governance of WFI, the Government granted conditional recognition to the newly elected office bearers subject to conditions.

47. In the light of the aforesaid discussion, this petition is allowed. It is declared that Article XIII(d) of the constitution of WFI stood deleted on 05.02.2011, and the said deletion took effect forthwith. It is also declared that the elections held by the respondent, WFI between 05.04.2011 and 15.04.2011 on the basis of Article XIII(d) were illegal. The election for the

post of President of WFI, held in the election process between 05.04.2011 and 15.04.2011 is hereby set aside. The orders dated 05.04.2011 and 08.04.2011 of the learned Returning Officer, insofar as they hold that Article XIII(d) was effective and operative in relation to the election process in question, and insofar as the petitioners nomination for the post of President was rejected, are set aside. The respondent no.1 is directed to initiate fresh process for holding the election to the post of President in terms of its amended constitution forthwith. The notification for conduct of elections should be issued within the next two weeks.

48. Petition stands disposed of. Parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JANUARY 04, 2012
'BSR'/SR