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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: May 27, 2014

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W.P.(C) 3235/2014

RAM GOPAL SHARMA & ORS. Petitioners

Represented by: Mr.Vinay Kumar Garg, Advocate
with Mr.Neeraj Kumar Sharma,
Advocate

versus

NORTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

Represented by: Mr.Kapil Dutta, Advocate for R-1 and
R-2
Mr.Rajan Tyagi, Advocate for R-3
Mr.Rajat Malhotra, Advocate for R-4
None for R-5 and R-6
Dr.Seema Singhal, Advocate for R-7

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J. (Oral)

1. None appears for R-5 and R-6 in spite of service being effected.
2. Learned counsel appearing for other respondents who have been served state that the facts stated in the writ petition are not in dispute.
3. Accordingly, having heard learned counsel for the parties we proceed to judgment.
4. Writ petitioners herein, who are Members of Hardayal Municipal Public Library (HMPL), have challenged the appointment of respondent

No.5 as the Secretary of HMPL and have also prayed for directions to hold elections of Members from amongst the subscribers of the library and also to elect on the Managing Committee of HMPL such members who have to be elected on the Managing Committee for the year 2014-15.

5. Set up in 1862, as part of a reading club meant for the Britishers, the reading room was then known as ‘*The Institute Library*’. The Library was initially set up in the building now known as Town Hall, but in 1902, it was shifted to another building and renamed as the Delhi Public Library and Reading Rooms. The Library received grant of about ₹1,000/- (Rupees One Thousand only) from the then Municipal Committee and the Managing Committee of the Library comprised of the Deputy Commissioner of Delhi as its ex-officio President besides few Members. In 1916, the Library was again renamed as Hardinge Municipal Public Library and was shifted to a new building in the then Queen’s Garden area. In the year 1942, name of the Library was further shortened as Hardinge Library. Under an agreement made between the Delhi Municipal Committee and the Managing Committee of the Library, status of an autonomous body with 100% grant-in-aid from the then Delhi Municipal Committee was conferred upon the Library. The preamble of the agreement reads as under:-

“Whereas the Hardinge Library Building in Queen’s Gardens, Delhi, was erected in 1915-1916 by the Hardinage Memorial Fund Executive Committee on the site provided by the Municipality for the purpose.

And whereas by a resolution of the Hardinge Memorial Fund Executive Committee, passed on the 22nd day of December, 1916, the said building was handed over to the Municipality as a Public Trust subject to the condition that the Municipality

shall undertake its upkeep and shall invest the Library Committee with full control of the uses of the building, to which the Municipality assented by Resolution No.7 of its Ordinary Meeting held on the 8th day of May, 1917, and accepted the Trust.

And whereas in pursuance thereof the Library took possession of the building and has since been in possession thereof.

And whereas the Municipality has fulfilled its commitments and obligations in accordance with its aforesaid resolution and has recently extended the building by the addition of a Hall to the south thereof and supplied furniture at an approximate cost of ₹21,000/- for the benefit of the Library.

And whereas after negotiations with the Library, the Municipality resolved by Resolution No.5 of its Special Meeting held on the 5th day of March, 1942, to finance the Library almost entirely subject to certain conditions therein set out and made a proposal in accordance therewith to the Committee of Management of the Library.

And whereas the Committee of Management of the Library at its meeting held on the 9th day of March, 1942, accepted the said proposal.

And whereas the Municipality thereafter finally confirmed its previous resolution at its special meeting held on the 25th day of March, 1942.”

6. Post enactment of the Delhi Municipal Corporation Act, 1957, the Library continued to receive 100% grant-in-aid from the then Municipal Corporation of Delhi. In the year 1970, the Library was renamed as Hardayal Municipal Public Library.

7. Constitution of the Library was initially published in the year 1943 and later amended in the year 1951. The Constitution as then existed,

envisaged a Managing Committee comprising of 11 persons for the governance of Library. After Delhi Municipal Corporation (Amendment) Act, 2011 by which the then Municipal Corporation of Delhi was trifurcated into three Corporations as North, South and East Delhi Municipal Corporations, the Constitution of HMPL was amended increasing the strength of Managing Committee to 13.

8. To resolve the controversy in hand, it shall be profitable to refer to different clauses of the Constitution of HMPL which read as under:

“1. The Library shall be known as the Hardayal Municipal Public Library instead of Hardinge Municipal Public Library.

2. The North, South and East Delhi Municipal Corporation shall hence forth be responsible and from time to time make adequate grants for the meeting of the financial requirement of payment of salary to its respective staff, incidental expenses i.e. Paper Periodical, Electric, Water, Telephone etc. and for maintenance and upkeep of the Libraries in three corporations together with its Branches, Reading Rooms, Buildings, Furniture and fittings.

3. The Governance of the Library for the purpose of discharging functions in connections with the management and control of the Library in general or otherwise in relation to the execution of the Library shall vest in a Governing Body hereinafter called the Managing Committee comprising of (13) thirteen persons namely:

a. The Mayor of the North Delhi Municipal Corporation, Delhi who shall be the Ex-officio-President of the Managing Committee of the Library.

b. Six elected sitting members of the North Delhi Municipal Corporation, one elected sitting member of

the South, Delhi Municipal Corporation and one sitting member of the East, Delhi Municipal Corporation, Delhi, nominated by its separately i.e. by North-DMC, South-DMC and East-DMC to the Managing Committee and

c. Four persons elected by the subscribers of the Library.

The eight elected sitting members nominated six by the North-DMC; One South-DMC & One East-DMC shall hold office one year.

The four persons elected by the subscribers of the Library shall hold office for one year but shall be eligible for re-election at the expiry of their term of office.

A Secretary and a Joint Secretary shall be elected by the Managing Committee from amongst its members for a period of one year. The persons so elected shall continue to hold office until a fresh election is held and shall also be eligible for re-election.

4. Until a new Managing Committee is formed the old Managing Committee shall continue to function.”

5. Any change in the constitution of the Library shall be subject to ratification by the North, South and East Delhi Municipal Corporation.

6. The Managing Committee of the Library shall be an autonomous body and shall have the absolute management and entire control of the Library together with its Reading Room, funds, building, books, furniture, fittings and other articles.

7. The Managing Committee of the Library shall have power to make, rescind, alter or add to its own rules and

regulations (not being consistent with this deed) from time to time as it may think fit, and shall have full liberty of action in the day to day administration of its affairs including fixing of the days and hours when and of the conditions under which the Library may be used by the subscribers and as well as well the public with the concurrence of the Librarian. The Managing Committee shall always respect the wishes of the North, South and East Delhi Municipal Corporation in larger matters of policy.

8. The Managing Committee may from time to time open and maintain in the name of the Library a banking account. All cheque shall be signed by its Secretary and counter signed by the President or one of the members of the Managing Committee and by the Accountant or Librarian of the Library. This clause have been amended in the Managing Committee Meeting held on 8th October 2012 vide item No.05.

9. The Managing Committee may apply any part of the funds of the Library in the purchases of such books, pamphlets, periodicals, manuscripts, reports and other documents furniture and other articles or things as it may deem expedient and may also at any time sell or otherwise dispose of any of the books, periodicals, furniture and other articles or things purchased under this clause or otherwise acquired for the general purposes of the Library and all moneys arising from any such sale or other disposition as aforesaid shall form part of its funds and shall be applicable accordingly.

10. The Managing Committee may any time permit any part of the premises of the Library to be used either gratuitously or on reasonable payment for lectures, meeting or other purposes provided that the use thereof as and for the purposes of the Library shall not thereby be interfered with.

11. Meeting of the v shall be held at such times (not being less than once in three months as the Managing Committee shall prescribe and five days' notice of every meeting shall

ordinarily be sent to each member of the Managing Committee by the Secretary.

12. At each meeting of the Managing Committee the Mayor of the North-DMC, New Delhi, or if he is not present then such person as the members present may appoint, shall be chairman (Five members shall form a quorum) Every question determined by the majority of the members present and voting thereon. In case of the votes being equal, the chairman shall have second or casting vote.

13. A Minute Book shall be kept by the Managing Committee and all proceedings of the Managing Committee shall be entered therein.

14. The Managing Committee may open Reading Rooms in different localities of the City of Delhi/New Delhi as and when the demand grows and the funds are available.

a. The Reading Rooms shall be deemed to be the branches of the Library.

b. They shall be open to the public free of charge.

c. They shall be circulating libraries also.

15. In the event of the dissolution of the library the entire property of the library and of its staff members, Reading Rooms shall revert to the respective Municipal Corporation, Delhi i.e. North, South and East as the case may be.”

9. A bare reading of Clause (3) of the Constitution would depict that the Managing Committee of HMPL comprises of the Mayor of the North Delhi Municipal Corporation (as its ex-officio President), eight Members to be nominated from amongst the elected sitting Members of the three

Corporations and four Members to be elected from amongst the subscribers of the Library. Though, proviso to Clause (3) of the Constitution prescribes a fixed term of one year for the eight nominated Members as well as four elected Members, Clause (4) permits the existing Managing Committee to continue to function until a new Managing Committee is formed. Proviso to Clause (3) provides for election of a Secretary and a Joint Secretary from amongst the Members of the Managing Committee who shall hold office for a period of one year or till fresh election is held and shall also be eligible for re-election.

10. The general rules of management empower only the Secretary to call a general or other meeting for which under Clause 11 of the Constitution, notice of at least five days has been prescribed to be given to each Member of the Managing Committee. However, in case of any vacancy in the Managing Committee, the rules empower the remaining Members of the Managing Committee to fill up the vacancy that may arise during the course of a year, by nomination from amongst the Subscribers.

11. In W.P.(C) No.3440/2003, one of us (Pradeep Nandrajog, J.) by a consent order dated July 23, 2004, disposing of the writ petition which had challenged the election of four Members to the Managing Committee from amongst the subscribers, issued the following directions:

“(i) Ms. Geeta Sharma, Advocate C-129, Sarvodaya Enclave, New Delhi be appointed as an Election Officer to conduct the elections for the four subscriber members on the Managing Committee of the Hardayal Municipal Public Library.

(ii) The records of the subscribers on the rolls of the library as on 31.03.2004 would be provided to Ms. Geeta Sharma who

would prepare the list of eligible voters, being such subscribers who have paid their subscription for the financial year 2003-2004.

(iii) After preparing the list of voters, being such of the subscribers who have paid the subscription for the financial year 2003-2004, the Election Officer shall notify the election schedule which shall be as follows:

(a) Date of inviting objections to the list of voters.

(b) Date of finalization of the voters list after objections are decided.

(c) Date for receipt of nominations.

(d) Date for scrutiny of nominations.

(e) Date of publication of list of eligible contestants.

(f) Date of poll, if any required.

x x x

12. Result would be declared by the election officer and record would be deposited in the office of the Municipal Secretary.

13. Fee of the Election Officer is fixed at ₹30,000/- which shall be paid out of the funds of Hardayal Municipal Public Library. Any additional expenditure incurred by the Election Officer for the conduct of polls, including traveling to Hardayal Municipal Public Library shall be re-imbursed from the funds of the library.

14. With the consent directions aforesaid, the writ petition stands disposed of without any adjudication on the rival contentions as laid in the writ petition.

15. *No costs.*”

12. It has been submitted by the learned counsel for petitioner that in spite of directions issued by this Court as above, till date no election for the four posts of Members from amongst the Subscribers has been held and even after the amendment of the Constitution increasing the number of Members in the Managing Committee from the then eleven to thirteen, two new Members, one each from South Delhi Municipal Corporation and East Delhi Municipal Corporation from amongst their sitting Members, have not been nominated. Resultantly, the Managing Committee continues to comprise only six Members nominated from amongst the sitting Members of North Delhi Municipal Corporation and its Mayor as the Ex-officio President. It is further argued that though, the term of the Mayor, North Delhi Municipal Corporation was due to expire on April 28, 2014 and notification for election for the post had been issued on April 11, 2014, the then Mayor, on April 21, 2014 called an emergent meeting which was attended only by four out of the six nominated Members and appointed respondent No.5 as the Secretary of HMPL. It is submitted that the action of the Mayor and the meeting dated April 21, 2014 is illegal in law since the meeting could not have been called by the Mayor; the notice for the meeting was deficient and the quorum for the meeting was also incomplete. It is also argued that in any case the election for the post of Secretary could not have been held unless the Electoral College for election for the post is complete.

13. On May 21, 2014 at the stage of admission of the writ petition the learned counsels for respondents No.1, 3 and 4 had entered appearance and accepted notice. Notices to the remaining respondents No.2, 5, 6 and 7 have

been served Dasti and proof of service on the respective respondents has been filed on record by the petitioner.

14. Learned counsel for respondent No.1 who enters appearance on behalf of respondent No.2 also admits that the vacancies of the newly introduced Members, one each to be nominated by respondent No.2 and 3, post amendment in the Constitution of HMPL, have not been filled up. It is also admitted that no election for four posts of Members from amongst subscribers has been held.

15. The Constitution of HMPL clearly prescribes the term of the office of Member, either nominated from amongst the sitting Members of the respective Corporations or elected from amongst the Subscribers, to be for one year. Rule 1 of the General Rules of Management empowers the Managing Committee to fill up any vacancy in the Committee from amongst the Subscribers. Thus, the Constitution and General Rules of Management mandate holding of elections and filling up of vacancies in the Managing Committee in the manner prescribed. The transitory provision under Clause (4) of the Constitution to permit the old Managing Committee to continue to function till a new Managing Committee is formed cannot be used as an unending reservoir to empower the Managing Committee to continue forever without the need to hold elections or to fill up vacancies and to form the new Managing Committee. Further, the rules clearly empower only the Secretary to call a meeting and in the absence of the Secretary calling a meeting of the Managing Committee, no notice of meeting of the Managing Committee can be issued by the Mayor who acts as its ex-officio President.

16. It is pointed out by learned counsel for the petitioner that the Mayor had written letter dated April 11, 2014 to respondent No.7, the then

Secretary asking her to call a meeting of the Managing Committee. Respondent No.7 in her reply to the Mayor has claimed that letter dated April 11, 2014 has been received by her on April 15, 2014 at 12:30 pm. It is on the basis of these, it has been argued that meeting dated April 21, 2014 thus, did not meet the requirement of notice for minimum period of five days as required under Clause (11) of the Constitution. However, in the absence of there being any further material on record to substantiate this allegation, we refrain from recording any finding in this behalf. Nonetheless, we find merit in the submissions of the learned counsel for the petitioners that meeting dated April 21, 2014 lacked the quorum prescribed under Clause (12) of the Constitution. Clause (12) of the Constitution prescribes that five members shall form the quorum for a meeting. A bare look at the minutes dated April 21, 2014 of the meeting electing respondent No.5 as the Secretary, would however, reveal that the meeting called by the ex-officio President was attended by only four Members. Thus, the meeting clearly did not have the requisite quorum prescribed under Clause (12) of the Constitution of the Library. Apart from these, the proviso to Clause (3) of the Constitution requires election of the Secretary from amongst the Members of the Managing Committee. The Members prescribed under Sub-Clauses (b) and (c) of Clause (3) of the Constitution are the eight Members nominated from amongst the sitting elected Members of the three Corporations and four Members elected from amongst the Subscribers. Thus, unless deficiency either in the number of Members to be nominated under Sub-Clause (b) or the Members to be elected under Sub-Clause (c) of Clause (3) of the Constitution is made up, no election for the post of Secretary in terms of proviso to Clause (3) of the Constitution could be held

as it would result in denial of representation of such vacant posts of Members in the Managing Committee. Resultantly, election of respondent No.5 as Secretary of HMPL cannot be sustained and is liable to be set aside. It is accordingly set aside.

17. As noted by us above in spite of directions issued by this Court as back as on July 23, 2004, respondents have failed to hold election for the four posts of Members of the Managing Committee from amongst the Subscribers of the Library. Not only this, even the two vacancies of the Members to be nominated one each from amongst the elected sitting Members of respondents No.2 and 3, have not been filled up till date. In these circumstances, we are left with no other choice but to appoint an administrator to take over the governance and management of HMPL and also to hold elections to fill up four vacancies of Members to be elected from amongst the Subscribers of the Library.

18. We therefore, allow the writ petition with the following directions:

- a) Election of respondent No.5 as Secretary of Hardayal Municipal Public Library, Delhi is set aside and quashed;
- b) Mr. Laliet Kumar, Advocate, Chamber No.50, Tehsil Building, Tis Hazari, New Delhi, Ph. No.9811147161 is appointed the administrator of Hardayal Municipal Public Library, Delhi to take over the governance and management of Hardayal Municipal Public Library, Delhi and to hold elections to fill up four vacancies of Members to be elected from amongst the Subscribers of the Library. He shall operate the bank account and would be entitled to a monthly honorarium of ₹1,00,000/- (Rupees One Lac only) which he can withdraw from the account of the library;
- c) Respondent No.2 and 3 are directed to nominate one Member each,

to the Managing Committee of Hardayal Municipal Public Library, Delhi from amongst their elected sitting Members within a period of four weeks from today;

d) Respondents No.1, 2, 3 and 6 are directed to forthwith handover the complete charge and control of the management of Hardayal Municipal Public Library, Delhi to the administrator

e) Respondents No.1, 2, 3 and 6 are directed to provide within a period of two weeks from today, records of the Subscribers on the rolls of HMPL as on March 31, 2014, to the administrator, who will prepare a list of eligible voters from amongst the Subscribers who have paid their subscriptions upto financial year 2013-14;

f) The administrator will thereafter, but not later than four weeks from the date of receipt of records from respondents No.1 to 3 and 6, shall notify election schedule for the four posts of Members of the Managing Committee to be elected from amongst the voters Subscribers of the Library;

g) Upon constitution of the Managing Committee of Hardayal Municipal Public Library, Delhi, the administrator shall call a meeting of the Managing Committee for holding election of Secretary and Joint Secretary of the Managing Committee.

h) Upon election of the Secretary and Joint Secretary of the Managing Committee, the administrator shall handover charge and control of the management to the Secretary, Managing Committee, Hardayal Municipal Public Library, Delhi.

19. The writ petition allowed in terms of the above directions.

20. No costs.

CM No.6707/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MAY 27, 2014
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