

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.24869 of 2012

Date of decision: **19**.01.2015

Arun Goyal son of Shri Sumer Chand Goyal, resident of House No.380, Model Town, Panipat, Haryana.

.... Petitioner

versus

State of Haryana through its Chief Secretary, Haryana Civil Secretariat, Chandigarh, and others.

... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Sanjiv Bansal, Advocate,
for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General,
Haryana.

Mr. Anupam Gupta, Senior Advocate, with
Mr. Harkesh Manuja, Advocate, and
Mr. Siddharth Sharma, Advocate,
for respondents 5 to 26.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J.

1. The subject of lis

1. The short point that falls for consideration in the writ petition is whether the election to the 5th respondent-Society called Sanathan Dharam Education Society would require to be conducted

through a system of collegium as contemplated under the Haryana Registration and Regulations of Societies Act of 2012 or not. This poser is on account of the manner of how the election was conducted by the Returning Officer, without constituting a collegium, by notifying a schedule of different dates for the process of election from the stage of filing of the nomination forms till the stage of counting of votes and by the order that was passed by the Returning Officer, it was found that the election held was proper and there was no defect in the manner complained of by the petitioner.

II. The relevant sections reproduced

2. The learned counsel for the petitioner would point out to the fact that by an amendment to the bye-laws, the provisions for membership was raised to 301 from 201 and the plea is that the moment the threshold of number in excess 300 is provided for a Society, the system of collegium as contemplated under the provisions of the Haryana Registration and Regulations of Societies Act of 2012 will apply.

3. Admittedly, although the contemplated strength of Society was increased to 301, there were only 300 members, and of them, 3 had died and 12 of them had been declared as wrongly inducted through a decision of the civil court in Civil Suit No.96 of 2011. These two incidents make the tally of membership to less than 300 and that has been considered in the impugned order as relevant

for the non-applicability of the system of collegium for election of the office bearers of the Society.

4. The learned counsel for the petitioner refers me to the definition of “collegium” under Section 2(iii) which reads as under:-

“Collegium” means an intermediate body consisting of elected representatives of members of a Society and required to be constituted in cases where the number of members exceeds three hundred.”

The counsel would contend that the reference to the number of members exceeding 300 must be understood as members' strength as approved by the Society. The counsel would also refer me to three other Sections as relevant and they are reproduced as under:-

“29. (1) The total number of persons admitted as members of a Society in accordance with the provisions of the Act shall constitute its General Body.

(2)

(3)

(4)”

“30. (1) A Society consisting of more than three hundred members, unless it is divided into two or more Societies or opts to re-determine and revise its membership in accordance with clause (ii) of sub-section (1) of section 32 and sub-section (2) of section 51, shall constitute a Collegium consisting of not less than twenty one and not more than three hundred members in accordance with its Bye-laws. The status of a Collegium in this case shall be the same in all respects as that of the General Body of a Society comprising of not more than three hundred

members.

(2)

(3)"

“32. (1) Where a Society, registered prior to the coming into force of the Act, consists of more than three hundred members, it shall convene a meeting of its members to consider and resolve through a special resolution at least six months before the due date for election of Governing Body,-

(i) to continue with the present number of members; or

(ii) re-determine the number of members of the General Body by prescription of a revised criteria, including membership fee and annual subscription or special additional charges:

Provided that in case the number of members opting for any such revised criterion exceeds three hundred, the membership may be decided by draw of lots.

(2) Where the term of Governing Body is expiring before the expiry of six months from the commencement of the Act, it shall be deemed to have been extended up to six months from the date of commencement of the Act and the Society shall take action according to clause (i) or (ii) above.

(3) Where the membership of a Society exceeds three hundred, the Governing Body shall prepare a scheme of determination of the electoral colleges in accordance with the principles, as may be prescribed, for holding elections to the Collegium and place the same for

consideration of its members as a special resolution with consequential amendment to its Bye-laws.

(4) Where a Society resolves to approve a scheme under sub-section (2) above, the Governing Body shall submit the resolution to the District Registrar for his approval.

(5) The District Registrar shall examine the scheme received under sub-section (3) above and, -

(i) approve the same and take it on record, if found to be in accordance with the principles as prescribed; or

(ii) suggest such modification, as he may consider necessary, and the Society shall reconsider and revise the scheme accordingly.

(6) to (11)

III. The significance of the difference between Sections 29 & 30, as canvassed by the petitioner

The counsel would make a distinction between a Society and a General Body. Section 29 contemplates General Body and a General Body may have less than 300 as in this case admittedly it is. However, 'collegium' which is contemplated under Section 30 uses the expression 'a Society' and does not use the expression 'General Body'. This, according to him, will spell the distinction that they are not treated as synonymous. The sanctioned strength is what a Society is. The counsel would also state with reference to Section 32 that a Society which is registered prior to the coming into force of the Act, may determine its strength after the Act which will decide on whether the provision for collegium will be attracted or not.

According to him that the intention of the legislature must be gathered from the fact that it allows the collegium system as intermediary body to elect the office bearers of the society and to prevent large scale malpractices or horse-trading if canvassing of a large body of members were to elect a small body of office-bearers directly. If the Act has stipulated the collegium system for a society in excess of 300, it would become possible for a Society to deliberately scuttle the collegium process by directing some of the members to voluntarily resign before the submission of the nomination so that the strength is brought down to less than 300 and defeat the collegium system and re-induct them after the election is held.

IV. Response by respondents and the relevance of further provisions

5. The learned Senior Counsel appearing on behalf of the Society would argue that the reference to collegium cannot be done without reference to the definition of “member”, for, the collegium shall be from amongst the number of members who exceed 300. The Senior Counsel would argue that if the admitted position is that the Society has only 300 members and not one number in excess of 300, the system of administration of collegium does not arise. I find the total number of members has never exceeded 300 and that is the admitted position. It is also admitted that 3 persons have died and 12 have been de-recognized as members by a civil court decree.

Admittedly, therefore, the total number of members is less than 300. The case cannot be merely disposed of on the ground that the total number of members has become less than 300 without examining how the definition of membership is made under the Act. We have to therefore turn to definition under Section 2(xv) that defines members thus:-

“member” means a person who fulfills the eligibility criteria for becoming a member of a Society, as specified in the Act and has been admitted as a member of the Society in accordance with its Bye-laws.”

The Senior Counsel would state that it is not merely a person who fulfills the eligibility criteria for membership that will be treated as a member but the Section requires a conjoint application of another requirement, namely, of such a person, having to be admitted to membership. If the total number of persons admitted to membership had not exceeded 300, then the question of voluntarily resigning just before election does not arise. The counsel would also refer me to the requirement of Section 18 that a Society maintains a Register of its members and clause (3) which requires a Society to file an updated list of members separately showing the inclusions and deletions every year within a period of 60 days of the close of the financial year. Section 20(2) again uses the expression that every person “admitted as a member” on the date of notification of elections shall have the right to vote in person subject to his being

not in arrears. The Counsel would therefore argue that a person, who is a member shall be a person who is admitted to membership and if such membership has not increased above 300, the applicability of collegium simply does not arise.

6. The learned senior counsel would refer me to a Presidential reference to the Supreme Court on the composition of electoral college for election to the post of President in **Re Presidential Poll-(1974) 2 Supreme Court Cases 33**. The case was with reference to an election to the post of a President that is contemplated under Article 54 of the Constitution of India. That Article reads as under:-

“54. Election of President. The President shall be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament; and the elected members of the Legislative Assemblies of the States.”

The point of reference, inter alia, was the effect of the absence of elected representatives of some of the States. The Supreme Court reasoned thus:-

“24. The electoral college as mentioned in Article 54 is independent of the Legislatures mentioned in Article 54. None of the Legislatures mentioned in Article 54 has for the purpose of that Article any separate identity vis-a-vis the electoral college. The electoral college compendiously indicates a number of persons, holding the qualifications specified in the Article to constitute

the electorate for the election of the President and to act as independent electors.

25.

26. The actual number of electors at the date of the election of the President may not be equal to the total number of all the elected members of both Houses of Parliament and all Legislative Assemblies of all States.

27.

28. The words 'an electoral college consisting of' in Article 54 mean that the electoral college shall consist of persons mentioned therein. The words 'consisting of' refer to the strength of the electoral college. The Houses of Parliament and the Legislative Assemblies are mentioned in Article 54 only for the purpose of showing the qualifications of members of electoral college. The dissolution of the Assembly means that there are no elected members of that dissolved Assembly. The electoral college is always ready to meet the situation at the expiry of the term of office or any vacancy caused by death, resignation or removal or otherwise. The elected members of a dissolved Legislative Assembly of a State are no longer members of the electoral college consisting of the elected members of both Houses of Parliament and elected members of the Legislative Assemblies of the States and are, therefore, not entitled to cast votes at the Presidential election.

29.

30. The true meaning of Article 54 is that such persons as possess the qualification of being elected members of both Houses of Parliament and of Legislative Assemblies of States at the crucial time of

the date of election will be eligible members of the electoral college entitled to cast vote at the election to fill the vacancy caused by the expiration of the term of office of the President.”

The Supreme Court held that the electoral college will only consist of persons, who are actually members of the Assembly and dissolution of any Legislative Assembly will not have any bearing to the election. The inference for the learned senior counsel is that the collegium, like the electoral college, must be understood as composed of the actual number of persons who constitute the representatives of the members of the Society and if that membership of the Society is less than 300, the election to the collegium does not arise. To bring home the same point, the Counsel would also refer me to the decision of the Supreme Court in **In the matter of special reference No.1 of 2002 (Gujarat Assembly Election matter)** that was made in the context of requiring interpretation of Article 174 and the effect of Election Commission in not notifying a fresh election within a period of 6 months from the dissolution of the Assembly on account of vitiated communal atmosphere post-‘Godhra incident’ in Gujarat. The issue was whether the action of the Election Commission in not notifying the election was constitutionally permissible. The Supreme Court answered the reference thus:-

“41. The act of summoning, sitting, adjourning,

proroguing or dissolving of the legislature is necessarily referable to an Assembly in *praesenti* i.e. An existing, functional legislature and has nothing to do with the Legislative Assembly which is not in existence. It is well understood that a dissolved House is incapable of being summoned or prorogued and in this view of the matter also Article 174(1) has no application to a dissolved Legislative Assembly, as nothing survives after dissolution.”

The lesson which the learned senior counsel would draw for this case is that it is the actual existence of the members in its totality that should govern the number of composition of the collegium and if it was less than 300, it was not possible to apply the collegium system.

V. Rule of interpretations: No scope for feeding words into Section which do not exist

7. Keeping in mind the respective contentions, I am of the view that the contention canvassed by the counsel appearing on behalf of the petitioner is not correct. The Section has to be interpreted in the manner in which the Act states and the intention has to be gathered from the express provisions themselves. There is no scope for supplying words which do not exist there. Consequently, if the collegium is required to be constituted in cases where the number of members exceeds 300, it is the actual crossing of the limit of the number as prescribed at any time before the filing of the nominations that will be relevant. It is not possible to feed a

clause such as, “where the number of members *prescribed* exceeds 300.” Prescribed or sanctioned is not an expression which collegium uses. Again, if even a member must be understood as not merely from examining the eligibility criteria but actually the person, who is admitted to membership and if the admitted members are less than 300, there is no scope for discarding the actual number to look for the limit upto the which the numbers could be admitted. It is not without reason that Chapter V describes the manner of admission and maintenance of membership roll and deletion of members. Even Section 22 envisages the death of a member as constituting a cessation of membership to the society. This provision under Section 22(iv) shall have no meaning if the event of death is irrelevant consideration for the maintenance of a membership roll or to determine the strength of the Society. I, therefore, discard the argument that the sanctioned strength alone is relevant for administration of system of collegium.

VI. Collegium of a general body of members and of society mean the same

8. Even the argument made by the counsel that the language used under Sections 29 and 30 referring to the General Body and Society respectively give the clue to the manner of interpretation envisaged by the petitioner is not sound. All the members admitted to membership constitute a General Body. The collective expression is to represent the body of persons. A Society

is a legal fiction to give such a body a name. It is really irrelevant that Section 30 uses the expression Society when it makes reference to collegium, instead of using the expression the General Body consisting of more than 300 members. The body of members is called, 'General Body', but "Society" is an expression as defined under Section 2 (xxiii): "a Society duly registered or deemed to be registered under the provisions of the Act and includes a State Aided Society." A Society with its name can be functional only through a human agency. That human agency will be drawn from the General Body of members. The expression found under Section 30 that a Society having more than 300 members shall have a collegium must always be understood as a Society having a General Body of whose membership is more than 300. That is the only way that Section 30 could be understood. A collegium of society and collegium of general body members represent the same thing. Again, a member of the general body and a member of a society mean the same. A general body is of members; A general body is of society as well. A society is a collective noun, the same way as a general body is a collective expression for the composition of members. This is surely not to say that society is dictionary meaning for general body. Society is a generic name; General body is a particular body of all members.

VII. Relevance of the decision of SC as a guide to understanding the legal position obtaining in the instant case

9. The decision of the Supreme Court in **Re Presidential Poll** (supra) is sought to be distinguished by the learned counsel on a plea that the Supreme Court was deciding two different situations of an electoral college comprising of members of Legislative Assemblies of all the States and the another situation of some of the Assemblies which have been dissolved. In this case, we do not have a dichotomy of the actual number of members who could vote and persons, who cannot vote. I do not think that distinction sought to be made has any relevance. The inference to be drawn from the decision of the Supreme Court in **Re Presidential Poll** (supra) is that if the Constitution prescribes an electoral college of the members of the Assemblies, the relevant criterion will be only such of those persons who are actually members at the time of election. This judgment must be understood to the limited purpose of how the actual membership alone before the election controls the requirement of collegium.

VIII. Effect of deliberate registration of membership

10. The argument made by the learned counsel for the petitioner that the purpose of the Act will be defeated by making some of the members to deliberately resign before the submission of nomination to constitute a fall in membership to less than 300 only to defeat a collegium is purely hypothetical and we do not have such

a situation emerging in this case. Even as a proposition it is not sound, for, if any deliberate act is made to constitute the membership to fall below the threshold, then it ought to be an issue for an adjudication regarding the validity of the election and in such a case, if motivation for withdrawal of membership or resignation could be shown only to scuttle the collegium process, then that situation could be remedied by finding the actual membership, irrespective of the fraudulent resignation, as not making possible the dissolution of the collegium or its composition.

IX. Disposition

11. I do not find that there was any error in the decision taken through the impugned order. The result in the election declared on the basis of the total number of members as not requiring the election through collegium was correct. The challenge to the mode of election must therefore fail and the writ petition is dismissed.

(K.KANNAN)
JUDGE

19.01.2015

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