

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

CWP No. 9915 of 2015

DATE OF DECISION : 18.05.2015

Rajasthan Association (Regd.), Faridabad

.... PETITIONER

Versus

State of Haryana and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Kunal Dawar, Advocate,
for the petitioner.

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SATISH KUMAR MITTAL, J.

The petitioner Association is a registered Society registered with the Registrar of Societies Haryana on 23.07.1980 under the provisions of the Societies Registration Act, 1860. Since its inception, the petitioner society had different kinds of members, such as Patron, Associate, Life and Honorary members, and as on date, there continue to be 54 patron members and 624 total members, including Patron, Associate, Life and Honorary members. As per clause 14 of the Memorandum of Association of the petitioner society, voting rights of all types of members will be considered according to the weightage to their membership fee. It has been provided that the patron members shall have voting rights equal to 40 members, associate members shall have voting rights equal to 10 members and life

members shall have voting rights as 1 member. In the year 2012, Haryana legislature had enacted the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as 'the Act of 2012'). This Act came into force with effect from 28.03.2012. As per sub-section (1) of Section 92 of the Act of 2012, the Societies Registration Act, 1860, has been repealed. Sub-section (2) provides as under :

Notwithstanding such repeal, anything done or any action taken under the said Act (including any order, rule, regulation, instructions, certificate or Bye-laws) in the exercise of any power conferred by or under the repealed Act shall be deemed to have been done or taken in the exercise of the powers conferred by corresponding provisions of the Act of 2012.

Sub-section (3) reads as under :

Any Society registered at any place in the State of Haryana under the Societies Registration Act, 1860, shall be deemed to have been registered under the Act, and its principal office shall be deemed to be the registered office :

Provided that -

(i) the Memorandum and the Bye-laws of any such Society, to the extent these are repugnant to or inconsistent with any of the provisions of the Act and the rules made there under, shall be brought in conformity with the provisions of the Act within a period of two years from the commencement of the Act or within such further period as the Government may allow, and thereafter, to the extent of such repugnancy or inconsistency, be deemed to be void and of no effect;

(ii) x x x

Sub-section (4) reads as under :

Nothing under the Act of 2012 shall affect any right, privilege, obligation, liability or punishment under the repealed Act:

Provided that any investigation or proceedings, including proceedings for dissolution, or the supersession of the Governing Body or appointment of an Administrator commenced before the coming into force of the Act, shall be continued and conducted in accordance with the provisions contained in this Act.

Clause 14 of the Memorandum of Association of the petitioner society goes contrary to the provisions of the Act of 2012, as under the Act of 2012, weightage of voting rights of different types of members is not permissible. Therefore, as per the aforesaid proviso, the petitioner society was required to amend its Memorandum of Association within a period of two years from the commencement of the Act of 2012, but when they did not comply with the said requirement and hold the election of the Governing Body contrary to the provisions of the Act of 2012, Registrar of Firms and Societies, Haryana, wrote various letters to the petitioner society asking it to amend its Memorandum and Bye-laws in conformity with the provisions of the Act of 2012, whereafter the petitioner society filed the instant petition challenging the proviso (i) to Section 92 (3) of the Act of 2012, being violative of the spirit of Section 92 (Repeal and Savings).

It has been contended that the said provision is contrary to the spirit of Section 92 of the Act of 2012, which provides for repealing of the

Societies Registration Act, 1860. Learned counsel contends that proviso (i) to Section 92 of the Act of 2012 has curtailed rights of the members under the old registered bye laws, which have been in existence prior to the commencement of the Act of 2012, despite the presence of saving clause. The said proviso is clearly in contradiction to sub-sections (2) and (4) of Section 92 of the Act of 2012, which are also the part of the saving clause. It has been further argued that it is settled position of law that in case the already existing rights are being curtailed by enactment of a new law the same has to be expressly made retrospective.

After hearing learned counsel for the petitioner society, we do not find any substance in the arguments raised by him. We do not find that proviso (i) to Section 92 (3) of the Act of 2012 is ultra vires or that it takes away vested rights of the members of the petitioner society. This proviso is very clear and is in consonance with the repealing clause contained in Section 92. Sub-section (2) of Section 92 saves all the actions already taken under the repealed Act, Rules and Bye-laws, but sub-section (3) protects registration of all the societies under the repealed Act. Under the new Act of 2012, Section 14 provides that a society may admit several types of members, like Founder Members, Life Members, Ordinary Members, Associate Members, Tenure Members or Honorary Members, in accordance with the provisions contained in its Bye-laws. Section 15 provides different fees for different types of members. Further, sub-section (4) of Section 29 of

the Act of 2012 clearly provides that every member shall have one vote and shall cast his vote in person. Under the Act of 2012, there is no rule for providing different voting rights to different type of members, as contained in Clause 12 of the Memorandum of Association of the petitioner society. To that extent, the said Memorandum is violative of the provisions of the Act of 2012 and the petitioner society is under legal obligation to amend the same within a period of two years from the commencement of the Act or within such further period as the Government may allow. In our opinion, providing more voting rights or more weightage of voting rights to different type of members, merely on the ground that they have donated more is totally unreasonable and arbitrary and is against the principle of democracy as well as free and fair elections. In our opinion, proviso (i) to Section 92 (3) of the Act of 2012 cannot be said to be contrary to sub-sections (2) and (4) of Section 92. Sub-section (2) protects anything done or any action taken under the repealed Act and provides that anything done or action taken under the repealed Act shall be deemed to have been done or taken under the new Act of 2012; and sub-section (4) provides that nothing under the new Act of 2012 shall affect any right, privilege, obligation, liability or punishment under the repealed Act. Under the new Act of 2012, no voting right of any member has been taken away. The only requirement is that one member shall have only one vote and shall cast his vote in person. Therefore, it cannot be said that any vested right of any member has been

taken away. One member has only one vote. He/she cannot be given more weightage equal to 10 or 14 persons, merely because he has contributed more funds.

In view of the above, we do not find any illegality in proviso (i) to Section 92 (3) of the Act of 2012.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

May 18, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE