

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

+ **W.P.(C) No.8567/2014**

% **7th January, 2015**

REV. DR. FR. JOSE AIKARAPetitioner
Through: Mr. Balbir Singh, Advocate with Mr.
Achint Singh Gyani, Advocate.

VERSUS

**COUNCIL FOR THE INDIAN SCHOOL CERTIFICATE EXAMINATIONS
AND ORS.** Respondents

Through: Mr. Rajiv Nayar, Senior Advocate with
Mr. J.K. Das, Advocate for respondent
No.1.
Mr. Sandeep Sethi, Senior Advocate
with Mr. Sandeep Das, Advocate for
respondent No.2.
Mr. N.L. Ganapathi, Advocate for
respondent No.3.
Mr. Darpan Wadhwa, Advocate with
Mr. Sandeep Das, Advocate for
respondent No.4.
Mr. Manish Mohan, Advocate with Ms.
Sidhi Arora, Advocate for respondent
No.7.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.228-29/2015 (exemption)

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

+ W.P.(C) No.8567/2014 and C.M. No.227/2015 (stay)

2. This writ petition under Article 226 of the Constitution of India is filed by the petitioner who was a Chairman and member of the Council of the respondent no.1-Council for the Indian School Certificate Examinations. In the writ petition as originally filed certain prayers were made challenging the decisions/resolutions of the executive committee and the general body of the respondent no.1 removing the petitioner from the posts of Chairman and a member of the Council of the respondent no.1, however, thereafter pursuant to the order of the learned Single Judge of this Court dated 18.12.2014, an amended writ petition is filed and which contains the following prayer clauses:-

“(a) Issue a writ in nature of certiorari or any other appropriate writ or order or direction quashing the Executive Committee meeting dated 12.11.2014 and the General Body meeting dated 12.11.2014 being illegal and violative of the Rules and Regulations of the Respondent no.1.

(b) Issue a writ in nature of certiorari or any other appropriate writ or order or direction to annul the resolutions passed at Executive Committee meeting dated 12.11.2014 and the General Body meeting

dated 12.11.2014 being illegal and violative of the Rules and Regulations of the Respondent no.1.

(c) Issue a writ of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India directing the Respondent no.1 and its members to reinstate/restore the Petitioner as the Chairman cum member as well as co-opted member of the Respondent no.1.

(d) Pass any other or further order which this Hon'ble Court may deem fit and proper and other reliefs as the nature and circumstances of the case may require in favour of the Petitioner.”

3. The issue is whether the petitioner has been validly removed from the chairmanship and membership of the council of the respondent no.1. Admittedly, the relevant rules in this regard are Rule 5 with its various sub rules and Rule 6 of the Rules and Regulations of the respondent no.1, and which Rules 5 and 6 read as under:-

“5. (i) The members of the Society shall be as follows:

a) **The Chairman who shall be appointed by the Society.**

(b) Two members nominated by the Government or two Assessors (observers) of the Government of India, whichever is preferred by that Government.

(c) The Director of Education/Public Instruction (or his deputy) of the States in which there are schools affiliated for the examinations conducted by the Society.

(d) *One representative of the Association of Indian Universities.*

(e) **Not more than six persons to be co-opted by the Executive Committee of the Council.**

(f) Two representatives of the Inter-State Board for Anglo-Indian Education.

(g) *Fourteen* Principals of affiliated schools who shall be selected as follows:

(i) Six, of whom *two* shall be ladies, elected by the Association of Heads of Anglo-Indian Schools in India.

(ii) Two, elected by the Indian Public Schools' Conference.

(iii) Six, elected by the Association of Schools for the Indian School Certificate Examination.

Provided that the maximum number of representatives of any one of the three organisations mentioned in (g) (i), (ii) and (iii) above shall not exceed six:

Provided further that if one or more of the categories mentioned in (i) (b) to (g) above are not represented on the Council this shall not prevent the Council from functioning.

5.(ii) *The term of office of members specified under Clauses 5(i)(a), (d), (e), (f) and (g) sub clause (i) (ii) and (iii) shall be for three years:*

Provided that when a member is appointed in place of another before expiry of the term of membership of the latter he shall hold office for the residue of the term of the original member,

Provided further that members whose term has expired shall be eligible for re-nomination/re-cooption.

5.(iii) A member shall cease to be a member of the Society:

(a) on his resignation to be signified in writing to the Secretary;

(b) on the passing of a resolution by the majority of the members of the Society at a General meeting present in person or by proxy, that he should cease to be a member;

(c) on a notification from the Government/organisation which has nominated/elected the member that the member has ceased to represent that Government/organisation.

(iv) Disqualified members shall not be entitled to vote.

(v) Persons, institutions and organisations in known sympathy with the objects of the Society may be admitted as Associate members with the approval of the Society on such terms as the Society may determine. As Associate members they shall have no right to vote at a General Body Meeting.

ADMINISTRATION

6 (i) The Society shall be administered by an Executive Committee consisting of the following:

(a) A Chairman-

The Chairman of the Society to be ex-officio Chairman of the Executive Committee.

(b) Four Members to be elected by the Society.

(ii) *The quorum for a committee meeting shall be three.*

(iii) *The Secretary who is the Chief Executive Officer of the Council will be ex-officio Chief Executive and Secretary of the Committee.*

(iv) ***The Executive Committee shall have a term of three years.”***

(underlining added)

4. It is conceded before me by both the parties that as per the interpretation of Rules 5 and 6, removal of a person from chairmanship and the membership of the council, has to be in terms of Rule 5(iii)(b) i.e by passing of a resolution of the majority of the members of the society at a general meeting of the respondent no.1-society. It is also a common position that removal as a Chairman or from membership of the council has the effect that such a removed person is no longer the member of the executive

committee. Petitioner himself has filed minutes of the special meeting of the general body of the council dated 12.11.2014 as Annexure P-2 to the amended petition, and in these minutes of the special meeting of the general body of the council it is resolved that the general body of the council in view of the facts and circumstances stated in the resolution unanimously has resolved to remove the petitioner from his post and office as Chairman and he stands removed as Chairman of the council with immediate effect. As already stated above, there is also no dispute raised before this Court that the effect of this resolution, if correct of course, is to remove the petitioner from both the chairmanship and as a member of the council of the respondent no.1.

5. Learned counsel for the petitioner made an endeavour before this Court to show that the meeting of the general body was not validly called and in fact the minutes of the meeting of the general body resolution dated 12.11.2014 are not yet signed by the general body members, and on which counts it is argued that the resolution dated 12.11.2014 must go, however, the arguments of the petitioner are totally misconceived and are liable to be rejected for the reasons stated hereunder.

6. Every society or a body operates through majority of the members. If there is violation of procedure or rules for calling of the general body meeting, only such person can object to such a meeting being called will be one who is/are the member(s) of the general body himself/themselves. If a meeting of the general body is to be called after notice of a particular number of days, this is a waivable provision because only the members are the persons who would be aggrieved in case such a resolution is taken up by the general body without adequate notice and if no such objection is taken by any member of the body, then the petitioner has no *locus* to question the decision of the general body on account of alleged violation of a procedural provision. Once the persons who attended the general body meeting on 12.11.2014 which has passed the resolution against the petitioner do not object to the meeting being called allegedly in violation of the rules without a particular day notice, I fail to understand as to how the petitioner can challenge the resolution of the general body. As many as 36 members (as stated by the counsels for the respondents) of the general body of the respondent no.1 were present and the total members of the general body are about 54 in number (as stated by the counsels for the respondents). The only way to get a resolution of the majority of the general body set aside is if such a resolution is challenged in a Court of law by a concerned person

i.e a member or members of the general body and only who would have *locus standi* to challenge the resolution. Since in the present case there is no averment on behalf of the petitioner, and nor could be, that the resolution of the general body dated 12.11.2014 has been set aside by any Court of law, that resolution has therefore to be taken as final, and as per which resolution the petitioner stands removed from the membership and chairmanship of the respondent no.1.

7. I also cannot agree with the argument urged on behalf of the petitioner that the resolution dated 12.11.2014 is not effective because it has not been circulated and signed by the members of the general body who attended the special meeting on 12.11.2014 inasmuch as there is not even a whisper of this ground in the entire writ petition that the resolution dated 12.11.2014 of the general body is liable to fail because the resolution is not signed by the members of the general body who attended the special meeting on 12.11.2014. In fact, I put to the counsel for the petitioner that if that is so petitioner can withdraw the petition with liberty to file a fresh petition by making averments of the non signing of the minutes of the special meeting of the general body dated 12.11.2014 but the counsel for the petitioner yet seeks judgment in favour of the petitioner on a ground which is not even

found in the entire writ petition of the resolution dated 12.11.2014 being not valid because it is not signed by the general body members of the respondent no.1. Of course, I very much doubt that the position as urged by the petitioner, of non-signing, would be factually correct and in any case normally it takes time for the minutes of a meeting of a general body having many members for being signed.

8. Dismissed.

JANUARY 07, 2015
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VALMIKI J. MEHTA, J