IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision:13.07.2016

1. CWP No.11639 of 2016

Parveen Jindal .....**Petitioner**
Vs.
The State of Haryana and others .....**Respondents**

2. CWP No.13557 of 2016

Deepak Goyal .....**Petitioner**
Vs.
The State of Haryana and others .....**Respondents**

3. CWP No.13559 of 2016

Subhash Chand Gupta .....**Petitioner**
Vs.
The State of Haryana and others .....**Respondents**

4. CWP No.13582 of 2016

Satish Babu Goyal .....**Petitioner**
Vs.
The State of Haryana and others .....**Respondents**

5. CWP No.13720 of 2016

Pankaj Gupta .....**Petitioner**
Vs.
The State of Haryana and others .....**Respondents**

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. P.S. Poonia, Advocate, Mr. R.K. Gupta, Advocate and Mr. Ashish Gupta, Advocate for the petitioners.

Mr. N.K. Mittal, Advocate and Mr. Deepak Manchanda, Advocate for the respondents.

Mr. R.A. Sheoran, Additional Advocate General, Haryana.

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RAKESH KUMAR JAIN, J.(Oral)

This order shall dispose of five petitions bearing CWP No.11639 of 2016 – Parveen Jindal v. The State of Haryana and others (Ist Petition), CWP No.13557 of 2016 – Deepak Goyal v. The State of Haryana and others (2nd Petition), CWP No.13559 of 2016 – Subhash Chand Gupta v. The State of Haryana and others (3rd Petition), CWP No.13582 of 2016 – Satish Babu Goyal v. The State of Haryana and others (4th Petition) and CWP No.13720 of 2016 – Pankaj Gupta v. The State of Haryana and others (5th Petition), as issue involved in all the five cases is similar. However, for the sake of convenience, the facts are being extracted from the first petition.

The Vaish Education Society (Regd) has more than 15,000/- members. The members elected the collegium of 105 members, who had further elected the Governing Body of 21 members for the year 2014. A majority of the collegium held a Special General Meeting and dissolved the Governing Body which was constituted in the year 2014.

The Observer recommended to the District Registrar for fresh election of the Governing Body. The State Government, thereafter, appointed the Administrator to manage the affairs and to hold the elections of the Society. The Advisory Committee of five members was also appointed by the State Government on the recommendation of the Administrator for his assistance. The petitioner who is a collegium member was elected as the Manager of Vaish Institute of Management and Technology (VIMT) for the period from December, 2009 to December, 2012. The Administrator served a show cause notice to the petitioner on 29.4.2016 to explain his position in regard to the alleged misappropriation of funds of the VIMT as the petitioner has allegedly debited the funds of the Institute as expenses incurred in his personal capacity. The petitioner along with others filed CWP No.8930 of 2016 to challenge the validity of the show cause notice dated 29.4.2016. The said writ petition was disposed of by this Court on 3.5.2016 on the premise that since the petitioner has already filed his reply to the show cause notice, the Administrator would take decision on the notice within two days from the date of passing of the order and gave a liberty to the petitioner that in case any adverse order is passed by the Administrator, then the same could be challenged by him. It is submitted that the Administrator, thereafter, appointed the Inquiry Officer on 5.5.2016. The Inquiry Officer issued a notice on 7.5.2016 to join the inquiry proceedings and to appear on 14.5.2016 at 4:00 P.M. On 14.5.2016, the petitioner allegedly asked for certain documents, much less copy of complaint and audit report from the Inquiry Officer for the purpose of contesting the audit report on the basis of which allegation has been made against him of financial irregularities as the case of the petitioner is that the accounts for the years 2009-2012, when he was the Manager of the VIMT had already been audited by one Rakesh Gupta, Chartered Accountant and were found to be in order. The request of the petitioner was acceded to by the Inquiry Officer and the audit report was shown to him and was given to the petitioner but it is alleged that the other relevant documents were not given to him. The Inquiry Officer submitted his report on 24.5.2016 to the Administrator holding the petitioner guilty of financial irregularities on the basis of the report of Chartered Accountant Manmohan Gupta. Relying upon the said inquiry report, the Administrator has passed the impugned order on 25.5.2016 removing the petitioner from the membership of the Society.

At this stage, counsel appearing on behalf of respondent No.3 has raised a preliminary objection about the remedy available to the petitioner under the Statute and submitted that the petitioner has deliberately did not mention this fact in para 11 of the petition as it is averred therein that the petitioner does not have any equally efficacious or alternative remedy except to approach this Court by way of invoking the jurisdiction of this Court under Articles 226/227 of the Constitution of India. Counsel for respondent No.3 has further submitted that as per Section 21 of the Haryana Registration and Regulation Societies Act, 2012 (for short, `the Act'), if any member is aggrieved with the removal of his membership from the Society then he would have a right to challenge that removal order before District Registrar with prescribed fee.

Counsel for the petitioner contested this argument on the ground that Chapter 5 of the Act, dealing with membership, do not envisage the removal by an order of the Administrator rather it is sought to be argued that the settlement of the membership dispute is in regard to the admission and removal of the member at the initial stage.

It is also submitted by counsel for the petitioner that the Administrator exercising the power of the Governing Body does not have the power to terminate the membership of the petitioner. In this regard, he has referred to the Memorandum and Bye-laws of the Society with reference to the powers, functions and duties enjoyed by the Governing Body and has submitted that the Governing Body does not have the power to terminate the membership. He has also submitted that the cessation of membership can occur only in terms of Section 22 of the Act in which it is provided that in case he resigns, ceases to fulfil eligibility condition for being admitted as a member mentioned under Section 16 of the Act, to pay membership annual fee as may be prescribed or upon his death.

To the contrary, counsel for respondent No.3 has referred to Clause 8 of the Bye-laws which provides cessation of membership and more particularly clause 8(iii) which says that "Upon such member being found guilty of a financial misappropriation of the funds of the society". It is also submitted by counsel for respondent No.3 that in Clause 5(i) of the Bye-laws, the Governing Body has been given power to admit person as a member of the Society and thus has the implied power to terminate the membershp.

It is argued by counsel for the petitioner that when the Administrator was appointed, he was given only the power to conduct the election of the Society and not to terminate the membership by holding an inquiry against the member on the ground of financial misappropriation. In this regard, counsel for respondent No.3 has drawn the attention of the Court to the order dated 5.8.2015 passed by the Principal Secretary by which the Administrator was appointed and directed to perform the functions as contained in Section 68(2)(3) of the Act to manage the affairs and conduct elections in the Society. It is, thus, submitted that while managing the affairs of the Society, it was the duty of the Administrator, as Governing Body, to ensure that the Members who are guilty of financial misappropriation shall not carry on with the affairs of the Society to cause further damage to the Society and in that process, the Administrator ordered for an inquiry on the allegations against the petitioner that he had been using the funds of VIMT for his personal gain when he was acting as a Manager during the period December 2009 to December 2012 and relied upon the audit report of Manmohan Gupta, Chartered Accountant.

I have heard counsel for the parties at length and after examining the submissions made by both the sides in respect of the remedy available under the Statute, I am of the considered opinion that Section 21 of the Act specifically provides a remedy to a Member who is aggrieved of his removal from the membership of the Society to approach the District Registrar though with prescribed fee. It is well settled that jurisdiction of this Court under Articles 226/227 of the Constitution of India is an extra-ordinary jurisdiction which is invoked when there is no statutory remedy available to the person aggrieved. In the present case, I am of the considered opinion that in the presence of the statutory remedy under Section 21 of the Act, which provides for a forum where the petitioner can raise his grievances and seek redressal, this petition before this Court is not maintainable.

It is pertinent to mention that while disposing of these petitions at this stage, I have not made any observations on the merits of the cases on the either side. The petitioner may, if so, advised file an appropriate petition before the District Registrar along with prescribed fee in terms of Section 21 of the Act along with application for stay as early as possible and if such petition and application is filed, the District Registrar shall decide the same forthwith by giving opportunity of hearing to both the parties in accordance with law.

Copy of the order be given dasti under signatures of the Bench Secretary.

July 13, 2016 **(RAKESH KUMAR JAIN)**
renu **JUDGE**