

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13347 of 2016 (O&M)
Date of Decision:-28.09.2016

Suresh Chand Gupta

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Akshay Kumar Goel, Advocate,
for the petitioner.

Ms.Gaganpreet Kaur, AAG, Haryana.

Mr.M.K. Mittal, Advocate,
for respondents No.2 & 4.

Mr.Manoj Bajaj, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the notice dated 30.06.2016 issued by the returning officer, appointed by the District Registrar, Societies under the Haryana Registration and Regulation of Societies Act, 2012 [for short 'the Act'] for conducting mid-term election of the Governing Body, consisting of 21 members, of the Vaish Education Society, Rohtak [for short 'the Society'] on 15.7.2016 by the 98 members of the Collegium, who were elected on 06.7.2014 by the General Body of the Society.

In brief, the petitioner has submitted that the Society is an educational society, registered on 14.7.1919 under the Societies Registration

No.00578 on 20.1.2014 under the Act. The Society has about 15000 members, who constitute the General Body. It is submitted that if the members of the General Body are more than one thousand then it has to elect a Collegium out of the General Body, which has to further elect the Governing Body, which would manage the day-to-day- affair of the Society. It is submitted that on 6.7.2014, the General Body elected 105 Collegium members. The term of the Collegium is upto three years. The Collegium further elected 21 members of the Governing Body on 15.7.2014, which was required to be approved by the District Registrar. The approval came on 21.7.2014. The term of the Governing Body is also of three years w.e.f. 21.7.2014. It is submitted that the Society is a State Aided Society to which 95% aid is given by the Government and 5% aid is given by the members. On 24.5.2015, 77 members of the Collegium passed a resolution and dissolved the Governing Body and on 9.6.2015 the District Registrar requested the State Government for appointment of the Administrator. Notice was issued in this regard on 7.7.2015 to the president of the Society. On 5.8.2015, Deputy Commissioner, Rohtak was appointed as Administrator, who took the charge on 11.8.2015. After having been appointed as the Administrator, he found some bungling in the financial affairs of the Society and thus appointed Vikram, IAS as an enquiry officer, who submitted his report on 4.1.2016 against three persons. After a stint of about six months, the Administrator decided to elect the Governing Body by way of election and issued notice on 22.3.2016 in this regard for the purpose of election on 8.4.2016. The District Registrar appointed the returning officer. While the elections were to be held, one of the members of the society, who is the member of the Collegium as well, filed CWP No.6371 of

term elections and also on the ground that out of 105 members of the Collegium, number of members are not eligible to cast vote. The said writ petition was dismissed on 3.5.2016 by this Court with liberty to the petitioner to approach the District Registrar in terms of Section 39(4) of the Act observing that if a person is aggrieved against the list of members, who are supposed to vote and contest the election for the Governing Body, may approach the District Registrar for the desired relief. It is pertinent to mention that during the pendency of the said writ petition, the elections were postponed on 4.4.2016 by the Administrator and another enquiry was marked by the Administrator to respondent No.4 on 5.5.2016. The enquiry was held against 9 members and all were found guilty in the report dated 24.5.2016. The Administrator ultimately found 7 members of the Society guilty and exonerated only 2 members out of 9 members vide its order dated 29.6.2016 and thus the strength of the Collegium, which was 105 reduced to 98. Then on 30.6.2016, the impugned notice was issued by the returning officer for the mid-term election of the Governing Body of the Society, which was to be held on 15.7.2016. The Governing Body was to comprise of 5 office bearers, namely, President, Vice President, General Secretary, Joint Secretary, Treasurer and sixteen executive members of Governing Body. The nominations were to be filed on 15.7.2016 and scrutiny of nominations was also to be held on the same day besides withdrawal of nominations. Publication was to be done on 15.7.2016 including allotment of symbol and polling was also to be held on the same day.

Be that as it may, the petitioner sent his objection to the list of voters on 4.7.2016 in which notice was issued by the District Registrar on 6.7.2016 for 12.7.2016. Before the District Registrar could have taken any decision in this matter, the petitioner approached this Court on 8.7.2016 with

the present petition in which he had prayed that the election should not be held on the basis of notice dated 30.6.2016. At the preliminary stage when notice was issued by this Court, it was observed that the election shall be subject to the decision of the writ petition.

Learned counsel for the petitioner has vehemently argued that the holding the mid-term poll for the Governing Body is neither provided in the Act nor the Bye-laws. He has rather submitted that in case the mid-term poll was really required, it could have been only by electing the new Collegium in terms of Section 39(1) of the Act and not otherwise. It is further submitted that in case this argument is not accepted or in other words it is held by this Court that the mid-term poll can be held under the provisions of the Act then the respondents have erred in not following the mandatory provisions of Section 39 of the Act.

On the other hand, learned counsel for the respondents have submitted that firstly the writ petition is not maintainable because the petitioner has not approached this Court with clean hands as he could not have filed the petition before the decision is taken by the District Registrar on his objection filed in respect of the list of voters. It was an unholy haste on his part to approach this Court because the District Registrar could have passed the order. It is also submitted that the mid-term poll can be ordered by the Administrator in terms of Section 32(6)(i) of the Act.

Mr. Manoj Bajaj, Advocate, appearing on behalf of newly added respondent No.5 has submitted that the petitioner does not have the *locus standi* to file the present petition because on the one hand he is challenging the election process and on the other hand he himself participated in the election and has been declared as executive member.

the same issue was raised by another Collegium member in the previous writ petition, therefore, the present writ petition is not maintainable in terms of Section 2 Rule 2 of the Code of Civil Procedure, 1908 [for short 'the CPC']

I have learned counsel for the parties and perused the record.

From the narration of the aforesaid Act, the questions which arises for determination by this Court are (i) as to whether there is any provision in the Act for holding mid-term election at the first instance of *ad hoc* body or the Administrator? and (ii) In case the power is vested with the *ad hoc* body or the Administrator to order for the mid-term election, as to whether the mid-term election in respect of the Governing Body, which is dissolved by the Collegium, can be held after re-election of Collegium or can be held by the Collegium which is already in existence?

In order to find answers to these questions, it would be relevant to refer to certain provisions of the Act.

The words which have occurred time and again in various provisions of the Act and are relevant to be mentioned are as follows: -

“2(iii) - **“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 one thousand.”

“2(xi) – **“General Body”** means the body of all members of the Society.”

“2(xii) - **“Governing Body”** means the Executing Committee, Managing Committee or any other committee constituted or elected by the members of the General Body or

Collegium, as the case may be and responsible for the management of day-to-day affairs of the Society.”

“2(xxvi) **“State Aided Society”** means a Society which is in receipt of any recurring grant or financial aid from the Government or a local body or any of its entities to manage its facilities or institutions established in accordance with the objectives set out in its Memorandum or its Bye-laws and shall include a Society where any one or more of its institution is receiving aid.”

Section 29 of the Act is in respect of “General Body” and is reproduced as under: -

“General Body - (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) *Every Society shall prescribe in its Bye-laws the composition of its General Body, its powers, functions and duties, the periodicity of and the quorum for the meetings, the manner of recording of its proceedings and all other matters relating to the affairs of the General Body.*

(3) *The quorum for the meeting of the General Body shall not be less than forty percent of the total members entitled to vote and present in person subject to a minimum of four;*

Provided further that in case the meeting of General Body is adjourned for a second time for want of the quorum, the quorum for an adjourned meeting shall not be less than twenty-five percent of the members entitled to vote and present in person subject to a minimum of four.

Provided further that in case such meeting is adjourned for a second time for want of the reduced quorum of twenty-five percent, the quorum for such adjourned meeting shall be fifteen percent of the members entitled to vote and present in person subject to a minimum of four.

(4) Every member shall have one vote and shall cast his vote in person.”

Section 30 of the Act, which is in respect of “Collegium” is reproduced as under: -

“Collegium - (1) *A society consisting of more than one thousand 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 one thousand members.*

(2) *The tenure of the Collegium shall not exceed three years and the members elected to the Collegium shall, in turn, elect the Governing Body.*

(3) *The Society shall file the list of the elected members of the Collegium with the District Registrar within a period of fifteen days of holding the elections for the Collegium in the manner, as prescribed.”*

Section 33 of the Act, which is in respect of “Governing Body”
is reproduced as under: -

“Governing Body - (1) *the members of the General Body or the Collegium, as the case may be, shall elect the Governing Body (by whatever name called), consisting of not less than three and not exceeding 21 members. The office-bearers shall comprise of the President, Secretary and Treasurer as a minimum, and other office-bearers, as prescribed under the Bye-laws.*

(2) *the Society shall file the list of the elected office-bearers with the District Registrar within a period of thirty days of holding of the elections for the Governing Body in the manner, as prescribed.*

(3) *The tenure of the Governing Body shall not exceed three years, The matters pertaining to re-election of any office-bearer shall be regulated in accordance with the Bye-laws.*

(4) *Every Society shall maintain a register showing the names, addresses and occupation of the persons appointed or*

elected as office-bearers and shall file with the District Registrar,-

(i) a copy of the register within a period of thirty days from the date of appointment or election of the office-bearers;

(ii) a notice of every change in the office-bearer within a period of thirty days, from the date of such change; and

(iii) the details of the office-bearers alongwith the annual return in the manner, as prescribed under the rules.

(5) The constitution of the Governing body, appointed or elected for the first time or thereafter, shall be valid only upon approval thereof by the District Registrar and its tenure shall commence from the date of its approval.

Provided that the District Registrar shall take a decision regarding the approval or rejection of the constitution of the Governing Body within a period of thirty days of filing the list of elected office bearers as specified under sub-section(2), failing which the constitution of the Governing Body of the Society shall be deemed to have been approved. In case of rejection, the District Registrar shall record the reasons for doing so and pass an order in this regard.

Section 39 of the Act, which is in respect of “Election and settlement of disputes” is reproduced as under: -

39. Election and settlement of disputes.—

(1) Elections shall be first held for the constitution of the collegiums from within the electoral colleges determined thereof, wherever applicable, and thereafter for the Governing Body by the Collegium.

(2) The process of elections of the collegiums of a Society shall be commenced, in so far as possible, three months prior to the due date so that the newly elected governing body is in place on or before the due date.

(3) On the day the elections of a Society are notified, the Governing Body or the adhoc body or the Administrator, as the case may be, shall publish the list of members entitled to vote. Such list of members shall be made available to a member on demand, on payment of such fee, as may be prescribed by the Society in its Bye-laws.

(4) Any person or group of persons, if aggrieved with the list of members published under sub-section (3) above on account of non-inclusion or wrongful inclusion of any member, may file a petition with the District Registrar stating the specific grounds of challenge within a period of fifteen days of publication of the list of members. The District Registrar may, where the number of members is very large and for reasons to be recorded, accept the petition within an extended period of seven days.

(5) the District Registrar may, if he has reasons to suspect the bona-fides of any such petition, require the petitioners to deposit such amount, as prescribed, as a surety against any abuse of sub-section(4) above. The amount deposited by the petitioners shall be refunded forthwith if the petition succeeds but shall be liable to be forfeited, if such petition is found to have been made without any merits.

(6) Where a petition is filed before the District Registrar under sub-section (4) above, the District Registrar shall, after fulfillment of the condition specified under sub-section(5), immediately hold the election process in abeyance and proceed to conduct an inquiry by himself or by an officer appointed by him, in this behalf, for determining the list of eligible members.

(7) the district Registrar may, for the purpose of his inquiry, refer to the annual return of members filed by the governing body in his office and consult any or all the relevant records of the Society. The District Registrar shall enjoy all the powers vested in him under Chapter XII of the Act for holding the inquiry. Any such inquiry shall be conducted in the open and completed in a summary manner.

(8) Upon completion of the inquiry under sub-section (6) above, the District Registrar shall determine the list of members eligible to vote, make it public and set the process of election in motion. Where the initial list of members published under sub-section (3)

above is found to be defective during the inquiry, the election of the Collegium or the Governing Body, as the case may be, shall be conducted by the District Registrar under his direct supervision and control after setting the dispute as per the provisions of the Act.

(9) Where elections of the Governing body are held by the members of the General Body, without requirement of a Collegium, any challenge to the list of members of the General Body shall be settled by the District Registrar in the same manner, as specified above.

(10) where the elections of the governing Body are not held by the due date, for whatsoever reasons, the District Registrar may constitute an adhoc committee or appoint an Administrator to manage the affairs of the society, immediately upon the expiry of the due date, for the intervening period and for conducting the elections of the Governing Body.

(11) A Society may approach the District Registrar for appointment of the returning officer and/or an observer for conducting the elections of the Collegium or the Governing body, as the case may be, whereupon the District Registrar shall order the appointment of the returning officer and/or an observer within seven working days of the receipt of such request from the Governing Body or the adhoc Committee or the Administrator, as the case may be.

(12) The returning officer appointed by the District Registrar shall ensure a minimum notice of fifteen days to all the members, served individually where possible, or through a public notice, at the expense of the Society, for the information of the members.

(13) The returning officer and/or the observer, wherever appointed, shall complete the process of elections, and submit a report thereof to the District Registrar, whereupon the duly elected Governing Body shall be placed in charge of the affairs of the Society and the appointment of any adhoc committee or the Administrator shall cease to continue forthwith.

(14) The District Registrar may fix the remuneration or honorarium for the person appointed as the Administrator, the returning officer, the observer or member of adhoc Committee in the manner and at the rates prescribed from time to time.

Section 66 of the Act, which is in respect of “Chapter to override other provision of Act” is reproduced as under: -

66. Chapter to override other provisions of Act.—*The provisions of this Chapter shall be applicable to State Aided Society and shall have effect notwithstanding anything contrary contained in the Act or any other State law for the time being in force and any reference to the word ‘Society’ in this Chapter shall mean a State Aided Society.*

Section 68 of the Act, which is in respect of “Supersession of Governing Body and appointment of Administrator” is reproduced as under:-

68. Supersession of Governing Body and appointment of Administrator.—(1)

If, in the opinion of the government, the Governing Body of any Society.-

(i) makes default or is negligent in the performance of duties imposed on it; or

(ii) commits acts which are prejudicial to the interests of the Society, its members or public at large; or

(iii) fails to resolve disputes with regard to the eligibility of members; or

(iv) fails to hold elections of the Governing Body; or

(v) is otherwise not functioning properly,

It may, after giving a show notice, direct the supersession of the Governing Body and appoint an Administrator, alongwith or without constitution of committee of persons to assist him for a period not exceeding two years in the first instance:

Provided that the period may be extended and continued at the request of Administrator but it shall not exceed five years in continuity.

(2) The Administrator shall, subject to the overall control of the Registrar General and such directions as may be received from him, have the powers to exercise all or any of the functions of the

Governing body of the Society and take action as may be required for proper management of the Society.

(3) The Administrator so appointed shall, before the expiry of his term, make efforts to arrange for the constitution of the Collegium, if applicable and the Governing Body, as the case may be, in accordance with the Bye-laws, provisions of the Act and the rules made thereunder.

(4) The Registrar General may fix the honorarium or remuneration payable to the Administrator or the member of the committee with the approval of the Government and direct such expenditure to be defrayed out of the funds of the Society.

The relevant Clauses of the Bye-laws of the Society are Clauses 15, 24 and 27, which are also reproduced as under: -

“15. Powers, Functions & Duties of the Collegium:

- i) To guide the Governing Body in determining and fulfilling its aims and objects of the Society.*
- ii) To decide policy matters such as change of name of the Society, amendment in the Memorandum of Association and the Bye-laws of the society, approval for disposal of immoveable assets of the Society etc. subject to final approval of General Body in a special meeting convened for the purpose.*

iii) To elect the members of the Governing Body and its Office Bearers.

iv) To approve the annual accounts of the society and its institutions.

v) To approve or deny the continuation of a person appointed as a member of the Governing Body against a casual vacancy by a majority vote. For holding such meeting an intimation will be sent to the District Registrar of Societies to enable him to appoint an observer, if he so desires.”

“24. Filling of any Vacancy of the Governing Body:

Any vacancy arising on account of resignation or death of any member of the Governing Body or for any other reason, may be filled-up by the Governing Body, if required, from amongst the members of the Collegium on adhoc basis till the holding of next Meeting of the collegium. Such adhoc member of the Governing Body shall cease to be a member of the Governing Body on the date of the next Meeting, if his appointment is not approved in the next Meeting by a majority vote for the balance term of the Governing Body.”

“27. Cessation of members of the Governing Body:-

An office-bearer/executive member of the Governing Body shall cease to be an office-bearer or executive member:

- (a) *Upon submission & acceptance of his resignation;*
- (b) *If he ceases to be a member in accordance with of Clause 8 of these Bye-laws.*
- (c) *If he is removed by a resolution passed in the meeting of the Collegium.”*

There is no dispute that the General Body of the Society consists of the persons admitted as members as provided under Section 29(1) of the Act. Section 30(1) provides that if the Society has more than one thousand members then it shall constitute Collegium consisting of not less than twenty one and not more than three hundred members in accordance with the Bye-laws. Section 33(1) provides that the members of the General Body or the Collegium, as the case may be, shall elect Governing Body, meaning thereby, if the members are more than one thousand then the General Body would elect Collegium and the Collegium shall elect the Governing Body. The Governing Body shall not be less than 3 but not exceeding 21 members, which would also include the office-bearers comprising of President, Secretary and Treasurer as a minimum and other office-bearers as prescribed under the Bye-laws. It is also provided under Section 33(3) of the Act that the tenure of the Governing Body shall not exceed three years and the matter pertaining to the re-election of any office-bearer shall be in accordance with the Bye-laws. There is no dispute about the constitution of the General Body, Collegium and the Governing Body but Section 68 of the Act provides that if in the opinion of the Government, the Governing Body of the Society commit certain defaults, as provided under Section 68(i) to (v) of the Act, then it may after giving *show*

cause notice, direct the supersession of the Governing Body and appoint an Administrator, who could be there for a period not exceeding two years in the first instance but the said period can be extended on the request of the Administrator but not to exceed 5 years in continuity. The Administrator as per Section 68(2) of the Act shall be subject to the overall control of Registrar General and shall have the powers to exercise all or any of the functions of the Governing Body of the Society and take action as may be required for proper management of the Society. Section 68 (3) of the Act further provides that the Administrator so appointed shall, before the expiry of his term, make efforts to arrange for the constitution of the Collegium, if applicable and the Governing Body, as the case may be, in accordance with the Bye-laws, provisions of the Act and the rules made thereunder.

The arguments raised by learned counsel for the petitioner is that as per Section 68(3) of the Act, the Administrator shall constitute Collegium first if the members of the Governing Body are more than one thousand for the purpose of constituting Governing Body and if it is less than one thousand then he may directly constitute the Governing Body. According to him there is no provision for the mid-term poll whereas as per Section 32(6) Act if an existing society does not have a duly elected Governing Body in position and the affairs of the Society are being managed either through *ad hoc* body or through an Administrator appointed by the Government then such *ad hoc* body or the Administrator is to take steps to hold the elections of the Governing Body, if its membership is within the specified numbers. The combined reading of Section 68(3) of the Act and Section 32(6)(i) of the Act itself clearly shows that the Administrator has the power to hold the elections before the expiry of its term when the Governing Body, once elected, is out of power. Thus the first question raised by

counsel for the petitioner that there is no provision in the Act for the purpose of holding mid-term election by *ad hoc* body or Administrator is replied is repelled.

Insofar as the second question is concerned that as to whether the Administrator has to first hold the election of Collegium for the purpose of holding election of the Governing Body in case the members are more than one thousand of the General Body, I am not convinced with the arguments raised by counsel for the petitioner, who has basically relied upon the provisions of Section 39(1) of the Act to contend that for the elections and settlement of disputes, elections shall be first held for the constitution of the Collegium from its elected members and then the Governing Body is to be elected by the Collegium. The process which is suggested by the petitioner is for the election for the first time and not for the mid-term poll because the Collegium in this case has never been dissolved rather it is Governing Body which has been dissolved. It is to be kept in mind that the Collegium is also elected body out of the members of the General Body and its term cannot be cut short because of the election of the Governing Body which can be superseded with the appointment of the Administrator. If the Government has found fault in the work of the Governing Body then the elected body of the Collegium cannot be dissolved first in order to make way for the election of the Governing Body. If this procedure is to be followed then the members of the Collegium, who have been duly elected out of the bigger electoral college have to face the election unnecessarily at the cost of the misdoings of the Governing Body.

In view thereof, I do not agree with the second question raised by the counsel for the petitioner and the same is also rejected and it is held that for the purpose of mid-term poll, in order to elect the Governing Body

by an *ad hoc* body or the Administrator in terms of Sections 68(3) and 32(6) of the Act, election of the Collegium is not required and the members of the Collegium, who have already been elected for a fixed term of three years can choose/elect their representatives to govern the affairs of the Society in the shape of Governing Body. The second question is thus decided accordingly.

No other point has been raised by counsel for the petitioner.

In view of the aforesaid observations, the present petition is dismissed.

28.09.2016

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No