

CWP No. 16791 of 2015

Date of decision: 18.01.2016

Ramesh Shukla and others

.....Petitioners

versus

The District Registrar Firms and Societies

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. O.P.Goyal, Sr. Advocate with
Mr. Mukesh Verma, Advocate
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate
for respondent No.2.

Mr. Ashwani Gaur, Advocate
for respondent No. 3.

Rakesh Kumar Jain, J.(Oral)

The petitioners are the members of Sri Gaushala Society (Regd.), G.T.Road, Panipat(hereinafter called the Society) which is registered with the Registrar of Firms and Societies, Haryana, with an objective to serve Gaumata. As per Bye-laws of the Society, it had elected some office bearers for its Governance namely: President, Vice President, Manager, Treasurer and Auditor. It is submitted that initially the society was founded with 80 members but the said number was reduced to 71 because of the death/resignation etc. of the members. 18 more members were inducted on 6.6.2005. Their induction was challenged by way of civil suit which was dismissed on 8.02.2012.

It may be pertinent to mention here that CWP No. 22615 of 2011 was filed because the elections of the Governing body of the

Society were not being held. The said writ petition was disposed of on 23.01.2012, when the counsel appearing on behalf of the State made a statement that the elections shall be held in accordance with law for which the process had already commenced. The Court then passed the order that, in case of any election dispute, the same can be referred, under Section 24 of the Societies Registration Act, as applicable to the State of Haryana. On 24.01.2012, 71 more members, who were enrolled, were not allowed to participate in the election process. Therefore, some members of the Society filed a writ petition bearing CWP No. 2425 of 2012, in which, they had claimed that the respondents therein should allow the original 71 members besides 18 members inducted on 6.06.2005 and 71 more members inducted on 24.01.2012 to participate in the election. Vide an interim order dated 10.02.2012, the newly added members were also allowed to participate in the election process subject to the final out-come of the writ petition. Thereafter, on 10.02.2013, 134 members were also enrolled. In the mean time, two members filed an application under Order 1 Rule 10 CPC in CWP No. 2425 of 2012 to become a party. Their application was not allowed and ultimately the said writ petition was also disposed of on 21.01.2015 (Annexure P-5) in which the following order was passed:-

“Since the issue of membership has not been finally concluded through a judicial adjudication, it shall only be appropriate that the withdrawal of the writ petition, if permitted, ought not be taken as recognition of the petitioners as Members. The applicant before the Court who has the objection to the withdrawal shall be at the liberty to challenge the induction of the 71

members including the three petitioners in this writ petition by means of appropriate legal action. The legal forum, in my view, would be the Civil Court, for we are considering the issue of induction of Members on 24.01.2012 i.e. before coming to the force of 2012 Haryana Act. The adjudication shall be only before the Civil Court and if such a suit is filed, that would be no objection without the jurisdiction of the Civil Court to render such an adjudication. The right to vote for the persons whose membership is in question is not decided by me and it will be subject to any orders, that the Civil Court may issue in this regard.

The writ petition is permitted to be withdrawn, but the petitioners will be bound by the observations made, as regards their status as members as not concluded, the same way as their entitlement to vote is not concluded. By the fact that the respondents in the writ petition were office bearers having no objection for the withdrawal of the writ petition, they will also be bound by any order that the Civil Court may pass. The court shall not in any way will be fettered by observations that have been made by this Court while passing interim orders in the above writ petition. The suit shall be filed within a month from today. The pendency of the writ petition itself ought to be taken as a period to exclude the period of limitation that could otherwise be placed against the petitioners.”

It is also apt to mention that a civil suit has also been filed to challenge the membership of 235 members who were enrolled over and above the original members. In that suit, it is submitted that no stay has been

granted by the civil court about the participation of those members in the election process.

This petition came to be filed by the petitioners when the District Registrar, Firms & Societies, Panipat passed the order dated 25.03.2015, appointing an ad hoc committee of the Society to manage its affairs because the term of the Governing body had expired on 11.02.2015 and in the absence of duly constituted body, the work of the Society was suffering. The charge of the affairs of the Society was handed over to ad hoc committee on 24.03.2015. Ad hoc committee was also entrusted with the job of starting election process of the Governing body after getting the final list of the members of the Society from the District Registrar, Firms & Societies, Panipat.

Counsel for the petitioners has submitted that they are not against the order of the District Registrar, Panipat insofar as the appointment of ad hoc committee is concerned rather the only prayer made in the petition is to issue a direction to respondent No. 1 to ensure the election of the Society through ad hoc Governing body so that the reins of the society should come into the hands of the members of the society instead of being with the ad hoc Governing body.

Counsel for the respondent has submitted that at the most 71 old members and 18 members who were enrolled on 6.06.2015 could take part in this election as 71 and 134 new members were enrolled without any authority.

In this regard, counsel for the petitioner has submitted that the respondent did not raise any objection when the list of 134 members was filed in the CWP No. 2425 of 2012 and as such they have no justification to

raise the objection at this stage in the present writ petition. He further submits that in view of the order passed by this Court on 21.01.2015, 71 members who were enrolled on 24.01.2012 may not be allowed to participate in the election but the remaining members out of 294 may be allowed to participate in the election.

I have heard learned counsel for the parties and after examining the available record, am of the considered opinion that in so far as the order dated 24.03.2015(Annexure P-7) passed by respondent No. 1 is concerned, it was only an interim arrangement made, after the term of the Governing body had expired on 11.02.2015 and till the new Governing body would take over after the election. The ad hoc committee has otherwise also entrusted the job of holding election of the Governing body after taking the final list of the members of the Society from the District Registrar, Firms & Societies, Panipat.

In the given facts and circumstances, especially the order dated 21.01.2015 in which this Court has already directed that this issue may be settled before the civil suit but for the 71 members who were enrolled on 24.01.2012, the remaining members can take part in the election process for which the ad hoc Committee, under Section 39(13) of the Act shall appoint a returning officer on a reasonable/nominal fee, who shall hold the election within a period of 1½ months from the date of passing of this order.

18th January, 2016
Shivani Kaushik

[Rakesh Kumar Jain]
Judge