

Sr. No.122

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 280 of 2016

Date of decision:30.11.2016

Rajiv Dahiya

.....Petitioner

versus

State of Haryana and others

.....Respondents

CWP No.6017 of 2016

Jaipal Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CWP No. 6028 of 2016

Suresh Kumar Rana

.....Petitioner

versus

State of Haryana and others

.....Respondents

CWP No. 6119 of 2016

Nahar Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CWP No. 6194 of 2016

Ajay Singh

.....Petitioner

versus

CWP No. 280 of 2016 & connected cases

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State of Haryana and others

.....Respondents

CWP No. 6330 of 2016

Dai Ram Khatkar

.....Petitioner

versus

State of Haryana and others

.....Respondents

CWP No. 6366 of 2016

Vijay Pal

.....Petitioner

versus

State of Haryana and others

.....Respondents

CWP No. 6367 of 2016

Birham Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Anil Rathee, Advocate
for the petitioners.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Rajbir Sehrawat, Advocate
for respondents No. 6 and 8.

Mr. Ramesh Sindhar, Advocate
for respondent No. 7(CWP No. 6017/2016)

Rakesh Kumar Jain, J.(Oral)

This order shall dispose of 8 writ petitions bearing CWP Nos.
280, 6017, 6028, 6119, 6194, 6330, 6366 and 6367 of 2016 as the issue
involved in all these writ petitions is common *as to whether the petition*

filed by an individual member of the society, challenging the election of the collegium, by way of petition filed under Section 40 of The Haryana Registration and Regulation of Societies Act, 2012(for short, 'the Act') was maintainable?

In order to decide the aforesaid question, the facts are being extracted from CWP No. 280 of 2016 titled as *Rajiv Dahiya vs. State of Haryana and others*.

The petitioner is stated to be a life member enlisted at Sr. No. 2522 of Tika Ram Education Society(Regd.), Sonapat (for short, 'the society') which is running 6 educational institutions namely, 3 colleges, two senior secondary schools and one Tika Ram Primary Model School at Sonapat.

As per the provisions of the Act, if the members of the Society namely General Body are more than 300 then it requires to form collegiums by way of election from which members are further elected to the governing body. In order to constitute the collegium, election programme was announced as per which the nomination papers were to be filed on 11.05.2015, scrutiny was to be held on 14.05.2015, nomination was to be withdrawn on 18.05.2015, list of eligible candidates was to be prepared on 19.05.2015 and election was to be held on 24.05.2015.

There is no dispute that election of 5 collegiums i.e. 25, 53, 57, 94 and 96 was held on 25.05.2015 by way of toss because of the equal votes. The petitioner was basically aggrieved against the rejection of nomination papers on 18.05.2015 by the returning officer of 7 candidates who were contested for the different collegium. He filed the petition under Section 40 of the Act before the Registrar/District Registrar Firms &

Societies against the order of the returning officer dated 18/19.05.2015 by which nomination paper of 7 candidates were rejected/cancelled. Since the said petition was not being decided, therefore, the petitioner filed the writ petition bearing CWP No. 12352 of 2015 which was disposed of by this Court on 12.06.2015. The operative part of the order reads as under:-

“Accordingly, the present petition is disposed of with a direction to respondent No. 4-District Registrar Firms and Societies, Sonapat to decide the petition (Annexure P-4) of the petitioner within a period of two weeks of the receipt of a certified copy of this order. However, it is clarified that till the decision of the said petition, respondent No. 4 would not take any step in the matter of election of governing body. It is further clarified that this order shall not confer any right to the petitioner beyond the statutory provisions.”

Accordingly, the matter was taken up by the District Registrar and by letter dated 17.06.2015, he informed the State Registrar of Societies that the petition filed under Section 40 has to be decided by the State Registrar. The operative part of his letter reads as under:-

“The petition dated 01.06.15 under Sec.40 of Haryana Registration and Regulation of Societies Act, 2012 mentioned in the CWP has been filed in your office as information by petitioner. Neither any petition has been filed in this office nor this office is competent under sec. 40 to deal election dispute.”

It is submitted by counsel for the petitioner that 12 more petitions were filed by the individuals who had filed the petitions under Section 40 of the Act with required members of the collegium. It is stated that the said petitions were filed in continuation of the petition already filed. The State Registrar dismissed the petition filed by the petitioner after

considering the reply of the returning officer both on merit as well as maintainability vide his order dated 3.07.2015. The relevant observations recorded in the order are as under:-

“It is apparent that the Sub Divisional Magistrate-cum-Returning Officer of the Society has conducted the election of the collegiums in a transparent manner without committing any irregularity. Keeping in view the instant petitions' facts both on ground of merit as well as maintainability thereof, I hereby order to dismiss the petitions.”

The petitioners had filed the review application before the State Registrar which was decided on 3.08.2015 dismissing the petition but additionally it was held that *“Since there were only two panel candidates namely Sh. Ram Kumar and Sh. Samunder Dahiya who had filed the nominations for contesting election from Collegium no. 74, there is no need to hold afresh election for Collegium no. 74. Therefore, I, hereby order to declare Sh. Samunder Dahiya as winning candidate from this Collegium.”*

The petitioner is not concerned with the election of Samunder Dahiya. However, he was concerned with the dismissal of his petition filed under Section 40 of the Act and thus, filed further appeal before the Director General which was also dismissed on 3.11.2015 on the ground that the petition filed under Section 40 of the Act was not duly constituted as it was neither referred by the District Registrar to the State Registrar nor it was signed by 1/4th members of the general body. However, it is also pointed out by counsel for the petitioner that the petitions which were filed in continuation of the original petition were dismissed by the State Registrar on 30.09.2015 and were not further challenged before the Director General by way of appeal and had attained finality at that stage.

The question raised by counsel for the petitioner in this petition is that the respondents have committed an error in interpreting Section 40 of the Act in dismissing the petition on the ground that the petition is not filed by 1/4th member of the general body much less the collegium. It is further submitted that once the nomination paper has been rejected even of the other candidates who were contesting for the different collegiums, the petitioner has the *locus standi* to maintain the petition under Section 40 of the Act on their behalf and for that matter, he was not required to get it referred by the District Registrar or to get it signed by atleast 1/4th members of the general body.

On the other hand, counsel appearing on behalf of the respondents have vehemently opposed the petition, inter alia, on the ground that the petitioner had no competence to espouse the cause of others. The petition filed under Section 40 of the Act was not constituted because it was not signed by 1/4th member of the general body and the letter of the District Registrar to the State Registrar dated 17.06.2015 can not be termed as a reference. It is further submitted that the petitioner can not take advantage of the petition filed in continuation of the original petition because those petitions were dismissed by the State Registrar for lack of court fee and attained finality because it was not challenged in appeal thereafter.

I have heard learned counsel for the parties and perused the record with their able assistance. Since the issue involved is about the interpretation of Section 40 of the Act, therefore, it would be relevant to produce the same as under:-

“40. Settlement of disputes arising from election of Collegium or Governing Body and its office bearers. [(1) Where a dispute or doubt arises

with regard to election or continuance in office of any elected member in a collegium, the District Registrar or at least one fourth members of the General Body and where a dispute or doubt arises with regard to election or continuance of any members in the Governing Body, the District Registrar and if there is need to constitute the collegium, then the District Registrar or at least one fourth members of the collegium, may refer to the dispute or doubt by moving a reference or petition before the Registrar with thirty days from the date of declaration of result and the Registrar shall decide the same and pass such orders, as he may deem fit, preferably within a period of ninety days but not later than one hundred twenty days.]

Provided that the election of any or all the members of the Collegium or the office-bearers of the Governing Body shall be set aside where the Registrar is satisfied:-

(i) that any corrupt practice has been committed by such office-bearer(s); or

(ii) that the nomination of any candidate has been improperly rejected; or

(iii) that the result of the election, in so far as it concerns such office-bearer, has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or does not comply with the provisions of any Bye-law.

Explanation I. *A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or through any other person:-*

(i) induces or attempts to induce, by

fraud, intentional misrepresentation, coercion or threat of injury to any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;

(ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to induce any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets the doing of any of the acts specified in clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the Government may prescribe to be a corrupt practice.

Explanation II.*A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself, or for anyone in whom he is interested.*

(2) The Government may, prescribe the procedure for hearing and deciding of doubts or disputes in respect of such elections and make

provision in respect of any other matter relating to such elections, for which insufficient provision exists in the Act or in the rules framed thereunder.

(3) Where by an order made under sub-section (1), an election to the Collegium or the Governing Body is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearer of a Society has not been held within the time and in accordance with the Bye-laws, he may cause a meeting of the General Body or Collegium, as the case may be, convened for electing such office-bearer or office-bearers, and such meeting shall be presided over and conducted by the District Registrar or by any officer authorized by the Registrar in this behalf, and the provisions of the Bye-laws relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(4) Where a meeting of the General Body or the Collegium, as the case may be, is convened on the orders of the Registrar under sub-section (3), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the Society.”

A bare reading of this provision would show that where there is a dispute regarding election of a member of collegium then a petition can be filed by at least 1/4th member of the general body or matter can be referred by the District Registrar to the State Registrar. Where there is a dispute regarding continuance of any elected member in a collegium even then the

same procedure has to be followed. Where a dispute or doubt arises with regard to election or continuance of any member in a governing body, the same procedure has to be followed. The provision further provides period to initiate action i.e. 30 days from the date of declaration of result and the period is also fixed for the Registrar to decide within a period of 90 days but not later than 120 days. It further provides that the election of any or all other members of the collegium or the officer bearers of the governing body can be set aside by the Registrar if he is satisfied that any corrupt practices has been committed by such office bearers or that the nomination of any candidate has been improperly rejected or that the result of the election, in so far as it concerns such office-bearer, has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or does not comply with the provisions of any Bye-law.

In the present case, admittedly, at the first instance, the petition has been filed by a person whose nomination paper was not rejected. The petition is filed by a member of the general body on account of rejection of nomination paper of other candidates who wanted to contest as member of the various collegiums. Secondly, there is no reference by the District Registrar to the State Registrar to initiate action in terms of Section 40 of the Act nor the petition is signed by at least 1/4th members of the general body. The mere fact that after the filing of the petition by the individual member, members of the collegium filed some petitions would not cure the defect in the petition filed by the petitioner much less when the said petitions were dismissed by the State Registrar and were not further challenged by those members of the collegium in appeal who had filed the

petition in the alleged continuation of the first petition. The petitioner thus, had no competence to file the petition for wrong rejection of nomination paper without complying the provision of Section 40(1) of the Act. None of the counsel for the parties has cited any precedent in their favour.

However, after discussion of the aforesaid facts and circumstances, this Court holds that for the purposes of challenging the election, in terms of Section 40(1) of the Act, either the reference has to be made by the District Registrar or by way of a petition by any member of the general body with at least 1/4th members signatures on the petition. The petition has to be filed within the time prescribed and the Registrar who has to decide the petition has also to decide the same within the further time prescribed under the said provision. With these observations, I am of the considered opinion that there is no merit in these petitions and are thus, ***dismissed.***

At this stage, counsel for the petitioner has submitted that he has also challenged the vires of Section 40 of the Act. I am not deciding the issue about the vires, as prayed by him because as he wanted to challenge it in separate proceedings. Thus, the question of vires of Section 40 of the Act is kept open.

The petitioner would be at liberty to file a separate petition to challenge the vires of Section 40 of the Act, if so advised.

[Rakesh Kumar Jain]
Judge

30th November, 2016

Shivani Kaushik

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No