

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1525 of 2014 (O&M)

Date of decision: May 26 , 2016

Kapisthal Charitable Society (Registered)
and others

----Appellants

Versus

State of Haryana and others

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Arun Jain, Sr. Advocate with
Mr. G.S. Duhan, Advocate for the appellant.

Mr. R.D. Sharma, Deputy Advocate General, Haryana.

Mr. Manjeet Singh Advocate for respondent No.4.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 27.08.2014 of the learned Single Judge, whereby, CWP No.25847 of 2013 filed by the appellant for quashing the orders dated 01.03.2013 (Annexure P-27), 26.03.2013 (Annexure P-28) and 29.10.2013 (Annexure P-29) passed by District Registrar, State Registrar of Societies, Haryana and Registrar General, Firm and Societies, Haryana, respectively has been dismissed.

2. The appellant-Society, was constituted in the year 2007-08 with the objectives amongst others of creating awareness in society towards education and health. Since 2007-08 it has been running a nursing School

named Kapisthal Institute of Medical Sciences and Nursing, Ghararsi, Kurukshetra.

3. Respondent No.4 was the first elected President of the Society.

The other office bearers and Executive Members were as under:

- “1. Sh. Brish Bhan, Vice President.*
- 2. Sh. Narender Singh, Secretary.*
- 3. Sh. Jitender Singh, Treasurer.*
- 4. Sh. Chatter Singh, Executive Member.*
- 5. Sh. Ved Parkash, Executive Member.*
- 6. Sh. Kanti Chander Sharma, Executive Member.”*

4. The Rules and Regulations formulated by the Society are at Annexure P-1.

5. The appellant-Society passed resolution No.1 dated 08.08.2012 purportedly accepting the resignation dated 10.07.2012 of respondent No.4 from the office of President and membership of the Society. Four life Members of the appellant Society namely Narinder Singh (Secretary), Jitender Singh (Treasurer), Ved Parkash (Executive Member) and Kanti Chander Sharma (Executive Members) were said to have been present in the meeting where the above resolution accepting the resignation of respondent No. 4 was passed. This meeting was presided over by the Secretary of the Society. Vide the same resolution the Society also inducted four new members namely Smt. Santosh Devi w/o Sh. Narinder Singh, Pushpa Devi w/o Sh. Ved Parkash r/o village Gharasi District Kurukshetra, Kanta Devi w/o Sh. Jitender Singh and Ravi Raj s/o Sh. Jitender Singh r/o Devigarh District Kaithal.

dated 20.08.2012 of Kanti Chander Sharma, tendered by him in view of his old age and ill health was accepted. Vide this resolution the existing general body of the society was dissolved and it was decided to hold elections of the governing body by deciding to fix the date of elections later on. Copies of these resolutions were sent to the concerned authorities, as required by the law.

7. On 3.9.2012 the election of the governing body of the Society was conducted and vide letter dated 13.09.2012 copy of the resolution regarding this was sent to the District Registrar as required.

8. Alleging that he had come to know about his removal from membership on 5.9.2012 which was done by fabricating his resignation letter and stating that he had never resigned, Respondent No.4 filed a petition before the District Registrar under Section 21 of the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as 'the 2012 Act') for setting aside the resolutions dated 08.08.2012 (Annexure P-5), 22.08.2012 (Annexure P-8), 25.08.2012 (Annexure P-9) and 03.09.2012 (Annexure P-11).

9. The District Registrar while deciding the petition in his order dated 26.03.2013 (Annexure P-28) considered the following five questions:

- “1. Whether the resignation of the petitioner is a fabricated document as alleged by the Petitioner?*
- 2. Whether the members inducted by the society have been enrolled as per Haryana Registration and Regulation of Societies Act, 2012 and Rules are framed there under?*
- 3. Whether the resignation of Kanti Chander Sharma is also a fabricated document?*
- 4. Whether the meeting dated 08.08.2012 was convened in accordance with the provisions of the bye-laws and the Act and the Rules?*
- 5. Whether the Form-XV submitted by respondents on 18.09.2012 for approval of list of members of society along*

with changes therein is in compliance of the Haryana Registration and Regulation of Societies Act, 2012?”

10. With regard to the first question, the District Registrar took note of the stand of respondent No.4 that he had given a blank signed letter head to the appellant when going out of station which had been misused by the appellants to type out his resignation on it. He also took note of the fact that signature of respondent No.4 on the resignation was appended far below his name, which would not have happened if he had himself signed it after first writing/typing the resignation. This question was accordingly answered in favour of respondent No.4.

11. On the question of enrollment of new members vide resolution dated 08.08.2012, it was concluded that this was done without adopting proper procedure as required under the 2012 Act and Rules. Reference was made to Rule 11 of the Haryana Registration and Regulation of Societies Rules, 2012 (hereinafter referred to as the “2012 Rules”) which mandates that the payment of membership fee shall be made by the applicant from his bank account through a bank instrument (demand draft, pay order, cheque) and would in no case be accepted in cash. In the instant case, membership fee was taken in cash. It was further noted that the appellants despite being directed did not produce the original notice for the meeting dated 08.08.2012 and the request letter/Form X of new members inducted by the society along with the agenda for the meeting. The Vice President of the society appeared before the District Registrar and stated that he was not intimated regarding the meeting dated 08.08.2012 nor was his consent taken nor any agenda was circulated to him. Further reference was made to Clause A of Chapter IV of the bye-laws dealing with the

functions of the President and Clause B dealing with the functions of the Vice President. As per Clause B, in the absence of the President, the Vice President is to exercise all the powers of the President. It was inferred, that in case meeting was to be convened in the absence of the President then it was only the Vice President, who could convene the meeting. As the Vice President was available, therefore, the Secretary could not convene the meeting. No consent was taken from the Vice President to convene the meeting held on 08.08.2012. Hence, the meeting was held to be not validly convened.

12. With regard to the resignation of the Kanti Chander Sharma, the District Registrar held that on a careful scrutiny of the document alleged to have been signed by Kanti Chander Sharma, it was apparent that his signatures differed on the resignation letter, the affidavit tendered by him and on the resolution dated 08.08.2012. Furthermore, despite being summoned on every hearing, he did not come forward to make a statement that the resignation was tendered by him. Additionally, the resignation was accepted in the meeting dated 28.02.2012 wherein quorum was not complete as the four members inducted on 08.08.2012 could not be treated as members of the society.

13. Accordingly, vide his order dated 26.03.2013 (Annexure P-28) the the resolution accepting the resignation of respondent No. 4 dated 10.07.2012 was set aside. It was held that the members inducted by the society as per resolution dated 08.08.2012 had not been enrolled as per the provisions of the 2012 Act and the Rules framed thereunder, therefore, they could not be considered to be members of the Society. The resignation of

Kanti Chander Sharma was set aside due to mismatch in his signatures. The Form XV submitted by the appellant on 18.09.2012 was returned without approval and it was held that the society consisted of seven old member only. Further, as the term of the governing body had already expired, hence in exercise of the powers under Section 39 (10) of the 2012 Act, the governing body was set aside and an ad hoc committee consisting of four members was constituted for managing the affairs of the society till the new governing body of the society was elected.

14. The appeal filed by the appellants against the aforesaid order was dismissed by the State Registrar of Societies vide order 26.03.2013. Further appeal before the Registrar General of Societies was dismissed vide order dated 29.10.2013.

15. The writ petition filed by the appellants came to be dismissed on 27.08.2014. The findings of the authorities on all issues except regarding the removal from membership Kanti Chander were upheld. The finding with regard to the alleged wrongful removal of Kanti Chander was set aside primarily on the ground that he had himself not assailed his removal.

16. Mr. Arun Jain Learned Senior Counsel for the appellants has raised the following arguments:

(i) The dispute regarding validity of resignation and its acceptance cannot be raised under Section 21 of the 2012 Act, hence the impugned orders are without jurisdiction.

(ii) Learned Single Judge had erred in holding that in the absence of the President and the Vice President, the Secretary of the Society had no power to call a meeting of the governing body. In this context he has referred to Chapter IV Clause C of

the Bye laws as per which the Secretary is empowered to call the ordinary, extra-ordinary meeting of the general body and the Managing Committee of the society.

17. He has further made pointed reference to the fact that earlier respondent No. 4 had resigned on 15.2.2011. Along with this resignation he had also submitted a duly attested affidavit in which he affirmed that the resignation was voluntary and of his free will. However, as only a carbon copy of this resignation had been sent to the Society, so this resignation was not acted upon. It is alleged that respondent No. 4 being the President of the Society committed various irregularities and he did not convene the meeting of the Society for almost two years, which prompted the Treasurer of the Society to send a legal notice to him. With a view to pre-empt any adverse action, he submitted his resignation on 10.7.2012 which was accepted. He further stated respondent No. 4 remained silent for almost four months after the acceptance of his resignation on 8.8.2012 and filed the petition u/s 21 on 4.1.2013 as an afterthought. It was argued that he cannot be permitted to raise the dispute after so long.

18. On the other hand explaining the delay in filing the petition, learned counsel for the respondent No.4 states that he came to know of the resignation only on 9.9.2012, where after he moved an application before the District Registrar on 19.9.2012 alleging that his resignation had been forged on some old letter head and requesting that the resignation be not acted upon. He submitted further applications/ reminders dated 9.10.2012 and 14.12.2012 requesting that an enquiry be initiated into the alleged acceptance of his resignation. It was only when he received no response to

19. With regard to the objection regarding maintainability of the petition under Section 21, he referred to the contents of the impugned resolution wherein he is referred to as having been 'removed with immediate effect from membership of society and President of the Managing Committee'. He has argued that the acceptance of resignation would tantamount to removal and this question can be raised in a petition under Section 21. He has referred to Section 89 which bars jurisdiction of the Civil Court in respect of any matter which is required to be settled, decided or dealt with by an authority under this Act.

20. He has further supported the findings of the authorities and the order of the learned Single Judge by stating that the meeting dated 8.8.2012 was not validly convened. In this context he has referred to the provisions of Sections 31 and 36 of the 2012 Act. He states that no prior notice as required under Section 36 was given and consent for shorter notice was not taken. Still further he has argued that as per Chapter IV Clause C of the Bye laws the Secretary is only empowered to call the meetings but he cannot preside over the meetings because as per Clause B of the Bye laws in the absence of the President it is the Vice President who will exercise all the powers of the President which includes presiding over the meetings. He further argues that as per Section 34 any power exercised by an office bearer in excess renders the decision non est.

21. Heard Learned counsel for the parties and perused the paper-book.

22. On the argument of the parties two questions arise for consideration in this case:

- i. Whether the petition of respondent No. 4 is maintainable under Section 21 of the 2012 Act?*
- ii. Whether the meeting dt. 8.8.2012 could be said to be validly convened and whether the resolutions passed therein are legal and valid?*

23. Sections 21 and 22 of the 2012 Act are relevant for determination of the first question . The same are reproduced below:

“21. Settlement of membership disputes.- (1) Where any member claims to have been admitted as a member but not included in the register of members or any member is aggrieved with his removal from the membership of the Society, such person may submit a petition to the District Registrar along with prescribed fee.”

(2) The District Registrar may require such person to support his petition with such documentary or other evidence, as may be considered appropriate.

(3) Upon receipt of any such petition, the District Registrar shall consider the matter and settle the disputes in accordance with the Bye-laws after giving opportunity of hearing to all concerned

(4) Where the Bye-laws are observed to be silent or lack clarity for addressing the dispute or are inconsistent with the provisions of the Act and the rules made thereunder, the District Registrar shall decide the matter in accordance with the provisions contained in the Act or the rules made thereunder.

(5) Where the Society has large number of members and it is considered expedient to verify, determine and establish the identity and genuineness of such members, the District Registrar may require all members of the Society to appear before him in person along with an acceptable proof of identity and address, as recorded in the register of members, within such time and in such manner, as may be prescribed.

(6) Where action is taken in accordance with sub-section (5) above and certain members do not appear before him inspite of two opportunities granted, the District Registrar shall be competent to strike off the names of such members from the Register.

22. Cessation of membership.-- A member admitted to a Society shall cease to be so in the following events,--

- (i) Upon submission and acceptance of his resignation; or*
- (ii) if he ceases to fulfil the eligibility condition for being admitted as a member as mentioned under Section 16; or*

- (iii) upon his failure to pay membership fee or annual subscription fee continuously for a period, as may be prescribed; or*
- (iv) upon the death of member.*

Provided that in case of a Society registered for the purposes pursuant to the Haryana Apartment Ownership Act, 1983 (Act 10 of 1983), a housing society or a resident welfare association registered as a society for the operation management and maintenance of facilities for the residents or civic amenities of any defined area, the nominee or the legal heir shall be enrolled as a member subject to fulfilment of qualifications as laid down in the Bye-laws and the provisions of the Act.”

24. Learned Single Judge noted that Section 21(1) provides for two distinct reliefs. (i) cases where a person is admitted as a member but is not included in the register of members. (ii) where a person is aggrieved with his removal from membership of the society. It was noted that the manner of 'removal of membership' is not specified in the Act as there is no specific provision dealing with removal. But the situation is dealt with under a different nomenclature 'cessation of membership' under Section 22. Section 22 contemplates four different situations which would result in cessation of membership. (i) upon submission and acceptance of his resignation; or (ii) if he ceases to fulfil the eligibility condition for being admitted as a member as mentioned under section 16; or (iii) upon his failure to pay membership fee or annual subscription fee continuously for a period, as may be prescribed; or (iv) upon the death of a member.

25. Learned Single Judge then referred to the Bye Laws of the Society which under Clause 3 deals with a situation of 'cessation of membership' and 'removal of a member' under Clause 4.

26. As per Clause 3, a member shall cease to be the member of the Society on the happening of the following events:-

- “(i) if he dies
- (ii) if he becomes insolvent
- (iii) if he is convicted by any court in a case of moral turpitude
- (iv) if he turns insane.”

27. Clause 4 states that name of any member other than a life member can be removed from the membership registrar of the society by a majority vote in the meeting of general body. Clause 28 of the Bye Laws of the Society lists out five different clauses by which the vacancy would occur on the Managing Committee as :- (a) if any member dies (b) if any member resigns (c) if any member taking intoxicated things (d) if any member becomes insane. (e) if any member absents himself for more than ten consecutive meetings of the Managing Committee.

28. On an analysis of the aforesaid provisions the Ld. Single Judge concluded that Section 21 could be certainly invoked by a person who contends that he continues to be a member and that he is being wrongly deprived of membership on the ground that he had voluntarily resigned, which resignation he disputes as being untrue. This conclusion of the learned Single Judge cannot be found fault with.

29. To fortify the conclusion of the learned Single Judge, Learned Counsel for respondent No. 4 has additionally argued that the effect of cessation from membership under Section 22 is one of removal from membership and that his how the resolution is worded. He has stressed that thus as per the plain language of Section 21, the case was covered therein.

30. We are in agreement with his contention. In **Sewa Singh v. State of Punjab, ILR (1975) 2 P&H 552**, this Court was construing

Sections 26 and 27 of the Punjab .Co-operative Societies Act, 1961 and Rules framed thereunder. Section 27 conferred power on the Registrar to remove a member if he persistently made default or was negligent in the performance of his duties or committed any act prejudicial to the interest of the society or its members.

31. Section 26 and Rule 26 dealt with cessation of membership on various grounds one of which was that if the member continued to be in default in respect of any sum due from him to the Co-operative Society for such period as was specified in the bye laws. The order for cessation of membership was passed by the Assistant Registrar which was impugned in the writ petition on various grounds including that it was without jurisdiction.

32. The Division Bench of this Court relying on an earlier decision in the case of **Lakha Singh v. The Registrar, Co-operative Societies, Punjab, Chandigarh and others ILR (1974) 2 P&H 597** rejected the argument that on default within the meaning of Rule 26 of the Punjab .Co-operative Societies Rules, 1963, a member of the Society would automatically cease to hold his office and that no order was required in this respect. Further relying on the same decision it was observed that in substance, removal from membership and ceasing as a member have the same effect for an elected person. As the power of removal had been conferred under Section 27 on the Registrar, in the absence of any specific authority specified for exercising the power of cessation, the matter regarding a declaration regarding cessation of membership of a member under Rule 26, must be decided by an authority vested with the powers of

the Registrar.

33. Thus, this judgment, though rendered in a different context, is posited on the premise, that in substance cessation of membership and removal from membership have the same effect and have to be treated similarly.

34. As already noticed above cessation of membership under Section 22 of the 2012 Act can be in four circumstances (i) upon submission and acceptance of his resignation; or (ii) if he ceases to fulfil the eligibility condition for being admitted as a member as mentioned under section 16; or (iii) upon his failure to pay membership fee or annual subscription fee continuously for a period, as may be prescribed; or (iv) upon the death of a member. In Clause 3 of the Bye laws three additional grounds for cessation of membership are mentioned namely, (i) if the member becomes insolvent (ii) if he is convicted by any court in a case of moral turpitude (iii) if he turns insane. As the provisions of the Act are not self executing, on the determination of the happening of any event entailing cessation of membership, an order/ resolution recording such cessation will necessarily have to be passed, requiring a further act of removing the name of the member from the list of members of the society. Thus it has to be held that cessation of membership whether under Section 22 or under the Bye laws of the Society entails removal from membership of the Society. A dispute regarding the same is thus liable to be entertained under Section 21 of the Act.

35. The 2012 Act has replaced the Societies Registration Act, 1860. The Statement of Objects and Reasons accompanying the Bill throws

light on the intention of the Legislature in its enactment. The same is reproduced below:

“At present, the law relating to the Societies and their registration is governed by the Societies Registration Act, 1860 (Central Act 21 of 1860) in its application to the State of Haryana. The Societies Registration Act, 1860, being a 19th Century legislation, has become outdated and found to be deficient in addressing the present day requirement. As such, need has been felt for framing a comprehensive legislation with regard to the registration and regulation of Societies to meet the present day requirement.

The inadequacies of existing legislation and absence of a comprehensive regulatory framework has led to a number of disputes and filing of a number of court cases. Disputes relating to memberships and the elections of societies are in the forefront. It has been observed that the membership of certain societies is very large, generating contested claims and counter-claims, involving allegation of bogus memberships, which in turn often lead to election related disputes. The enormity and spread of the members makes it difficult to ensure participation of members in the process of decision making.

*Keeping in view that the scope of activities covered by various Societies registered under the 1860 Act is very large and the stakeholders belong to all sections of Society, it has become imperative to make provisions for effective regulation of the societies and simplify the provisions to minimise the scope of any ambiguity. **This bill provides for summary settlement of membership and election related disputes which take very long time in courts.** It provides for vesting of properties in the Society itself rather than the Governing Body as per existing section 5 of the 1860 Act and which could be misused by an office-bearer for personal use. The Act forbids employment of a member or dependent in the society and division of profits among the members except in case of housing societies. It introduces the concept of electoral colleges and constitution of a Collegium as an intermediate body to address the problems of societies with large memberships and to ensure and enable participative decision making. The Bill seeks to establish a regulatory framework with the objective to provide clear guidelines for smooth administration and management of the affairs of the Societies registered under this Act in the State of Haryana.”*

36. From this it is clear that one of the objectives of the Act was to provide for summary settlement of membership and election related

disputes which take very long time in courts.

37. The Preamble of the Act states that it is '*An Act to consolidate the law relating to the registration and regulation of Societies in the State of Haryana, promoting art, fine arts, charity, craft, culture, education, literature, philosophy, political education, religion, sports, science, any public or charitable purpose and for matters connected therewith or incidental thereto*'.

38. Unlike the Societies Registration Act, 1860 which it has replaced, the 2012 Act is a exhaustive Act dealing with various facets of the Registration and functioning of the Societies. It has different Chapters dealing with Membership; Constitution of the General Body, Collegium, Governing Body; Elections; Settlement of Disputes arising from Elections; Property and Funds of the Society; Accounts, Audit and Filing of Documents; Amalgamation and Division; Inquiry and Supersession of the Governing Body including appointment of Administrator; Suspension, Cancellation and Dissolution etc. It has a separate Chapter dealing with Officers of the Society. Provisions of Appeal and Review have been incorporated. Section 89 bars the jurisdiction of the Civil Court to entertain or proceed with a suit or to settle, decide or deal with any matter which under the Act is required to be settled, decided or dealt with by an authority under the Act.

39. These detailed provisions including a bar of jurisdiction of the Civil Court, the objectives as reflected in its Statement of Objects and Reasons, the recital in the Preamble of it being an Act to consolidate the law relating to the registration and regulation of Societies in the State of

Haryana, clearly manifest the intention of the legislature to make the 2012 Act a complete code with respect to matters dealt with therein. Specifically the intention was that the disputes relating to membership and elections be decided as per the provisions of the Act expeditiously without resort to the time consuming processes of the civil courts.

40. Thus, any challenge to the cessation of membership consequent on acceptance of resignation which is disputed on the ground of it being not a voluntary resignation but being forged using signatures on a blank sheet and the validity of the resolution of removal, on the ground of the meeting not being validly convened, would, in our view be within the purview of Section 21 of the Act. The findings of the learned Single Judge on this issue are thus affirmed.

41. On the second question regarding the legality of the meeting convened on 8.8.2012, the Learned Single Judge referred to Clause 23 of the Bye laws which provides that notice for meeting of the Managing Committee would ordinarily be given to the members and office bearers by the Secretary of the Society 7 days ahead of the date of meeting and 24 hours notice shall be given to the members and officer bearers of the Managing Committee if an extraordinary or ordinary meeting of the Managing Committee is required. It was noted that it has been observed by the District Registrar that no notice of the meeting had been served on any member and the Vice President had given a statement that he himself had not received any notice. Nor was any attempt made by the then Secretary who was petitioner No. 2 to assert that he had served notice of meeting on members.

42. Learned Single Judge held that considering the fact it was a closely held body, it was just as well possible that even without written notice, the parties could have collected themselves to be present. But in that event the presence of all members would be required to hold that there was duly convened meeting. A reference was then made to the memorandum and bye laws as per which in the absence of President, it was only the Vice President who could preside over the meeting. But in this case the Vice President was not only not present but he had affirmed before the District Registrar that he did not have intimation of meeting, Thereby it was held that there was no duly convened meeting and consequently acceptance of resignation could not be valid. The findings of the District Registrar were upheld.

43. Learned Counsel for the appellant has contended that the view of the learned Single Judge that because the Vice President had not been informed of the meeting and he did not attend and preside over the meeting, which in the absence of the President only the Vice President was authorised to do, and thereby the meeting could not be considered to be validly convened is not correct as it ignores the provisions of Clause C of Chapter IV of the Bye laws where under the Secretary is empowered to call the ordinary, extra-ordinary meeting of the general body and the Managing Committee of the society.

44. To appreciate the aforesaid contention it is necessary to refer to the relevant provisions namely Section 36 and Bye law 23, which deal with the requirement of notice for meeting of the General Body and the same are as under:

“Section 36. (1) Meetings of the Governing Body may be held as and when required. However, the Governing Body shall meet once every quarter and hold at least four meetings in a financial year.

(2) A clear notice of three days of every such meeting shall be given by the Secretary of the Governing Body to the office bearers before the date appointed for the meeting. However, the Governing Body may meet at shorter notice, wherever so required, with the consent of at least fifty percent of its members.”

Clause 23 of the Bye Laws is as under:

“23. Notice for meeting of the Managing Committee would ordinarily be given 7 days ahead of the date of meeting to the members and office bearers by the Secretary of the Society and 24 hours notice shall be given to the members and office bearers of the Managing Committee, if an extraordinary or an urgent meeting of the Managing Committee is required.”

45. As per Section 36(2) for a meeting of the Governing Body a clear notice of three days is required to be given by the Secretary of the Governing Body to the office bearers before the date appointed for the meeting. However, the Governing Body may meet at shorter notice, wherever so required, with the consent of at least fifty percent of its members.

46. As per Bye Law 23, ordinarily 7 days advance notice of the meeting is to be given by the Secretary of the Society but in case of extraordinary or urgent meeting 24 hours notice shall be given to the members and office bearers of the Managing Committee.

47. The Vice President of the society had appeared before the District Registrar and stated that he was not intimated regarding the meeting dated 08.08.2012 nor was his consent taken nor any agenda was circulated to him. The District Registrar noted that the appellants despite being directed did not produce the original notice for the meeting dated

08.08.2012 along with the agenda for the meeting. Though during the pendency of this appeal the Secretary of the Society has filed an affidavit dated 3.11.2014 stating that he had called the extraordinary meeting of the members of the Managing Committee after giving 24 hours notice personally to all the members of the Society, that in our view would not improve the situation in the light of the factual position recorded in the order of the District Registrar that despite being directed the original notice and agenda of the meeting dated 8.8.2012 had not been produced before him. Nor for that matter would it be possible to disregard the statement of the Vice President of the Society that he was not intimated regarding the meeting dated 08.08.2012 nor was his consent taken nor any agenda circulated to him. Thus, it is not possible to disagree with the finding that the meeting dated 8.8.2012 was held without service of advance notice at least to the Vice President of the Society and on that account it has to be held to be not validly convened and consequently the resolutions passed therein are of no legal validity.

48. In the face of the aforesaid conclusion, the argument of the learned Counsel based on Clause C of Chapter IV of the Bye laws whereby the Secretary is authorized to call the ordinary, extra-ordinary meeting of the general committee and the Managing Committee, does not in any manner improve the position.

49. Chapter IV of the Bye laws lists the Office Bearers of the Society and details their powers.

50. The relevant clauses A, B and C dealing with the powers and functions of the President, Vice President and Secretary are reproduced

below:

“A. President:

The President will function as under:-

- I. To preside over the meeting of the General Committee and Managing Committee.*
- II. To hold elections.*
- III. To declare results of elected member and the office bearers of the Managing Committee.*
- IV. To control all the affairs of the society.*
- V. To exercise casting vote.*
- VI. To represent all the affairs of society or appointment any office bearer to represent the President.*
- VII. To address the members of the Managing Committee General Committee of the Society and teachers of the society regarding the affairs of the society.*

B. Vice President.

In the absence of President, Vice President will exercise all powers of President.

C. Secretary

- I. To submit annual budget for approval and consideration of the Managing Committee.*
- II. To call the ordinary, extra-ordinary meeting of the general committee and the Managing Committee of the society.*
- III. To seek approval of the Managing Committee regarding the admission of members.*
- IV. To keep the proper records of the proceedings of the Managing Committee.*
- V To circulate the agenda of the meeting of the Managing Committee.*
- VI. To represent the Managing Committee and General Committee to represent behalf of the Managing Committee.*
- VII. To represent the Managing Committee before the courts with regard to the affairs of the society and to do such acts necessary in connection with the suit.”*

51. From the above provisions it is clear that in the absence of the President it is only the Vice President who can exercise the powers of the President. A similar power has not been conferred on the Secretary who is only authorised to call the ordinary, extra-ordinary meeting of the general committee and the Managing Committee of the society, which does not include the act of presiding over the meeting. There may be a situation not contemplated in the Bye laws, where both the President and Vice President

which event, of necessity, the members may have to authorise any member/ office bearer to preside over the meeting. But such is not the situation here. At the relevant time of the meeting Brishen Bhan was the Vice President of the Society. As per his statement before the District Registrar he was not informed about the meeting and thereby he could not attend. Hence, it has to be held that not only was the meeting not validly convened because of non- service of notice on all the members, but it was also not conducted as per the Bye laws having been presided over by a person not authorised by the Bye Laws.

52. As per Section 34 (2) of the Act, the office-bearers shall exercise their powers strictly in accordance with the provisions contained in the Bye-laws and any powers exercised in excess of the authorisation under the Bye-laws shall render such decisions non-est.

53. For this reason as well the meeting and the resolutions passed therein including accepting the resignation of respondent No. 4 are to be treated to be illegal and of no effect.

54. Accordingly there is no merit in this appeal and the same is dismissed.

55. Counsel for the parties have referred to some criminal cases instituted inter se the parties and made allegations of forgery of record etc.

56. It is clarified that this appeal has been disposed of on the limited facts specifically adverted to herein and as per the provisions of the Act, Rules and Bye Laws. Consequently the observations made herein are for the limited purpose of the decision of this appeal only. Nothing stated herein would be construed as an expression of opinion, one way or other,

on the disputes inter- se the parties in the pending criminal cases.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 26, 2016
Atul

(Refer to Reporter)