

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 20502 of 2015 (O&M)

Date of Decision: April 28, 2017

Adhoc User Committee Vikram Vihar

.....Petitioner

Vs.

Adjutant General and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. A.S. Khara, Advocate
for the petitioner.

Mr. Sudhir Mittal, Advocate for respondent No.1.

Mr. R. Kartikeya, Advocate for respondents No.5 to 24.

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M.M.S. BEDI, J.

The petitioner before this Court in the present writ petition is duly elected Adhoc User Committee of Vikram Vihar, Sector 27, Panchkula which is constituted after elections under the Haryana Registration and Regulation of Societies Act, 2012, for short 'the Act' and consists of 10 members. As per the technical brochure, for the purpose of ensuring that all the centralized services, mentioned in the technical brochure, be provided to the allottees of the dwelling units, the members of the petitioner Adhoc User Committee are to form "Residents Welfare Association" (RWA) after the

completion of the project. The grievance of petitioner Adhoc User Committee is that notices annexures P-1 and P-2 which have been issued by the Army Welfare Housing Organization (AWHO), instructing the petitioner to hold election for formation of another AUC and Welfare Maintenance Society in the form of Residents Welfare Association (RWA) are bad. Quashing of annexure P-1 dated September 11, 2015 and P-2 dated July 22, 2015 has been sought on the ground that the notices are in contravention to the technical brochure and the provisions of the Act as the project of construction by AWHO is still not complete and there does not exist any provision for formation of another AUC. A writ in the nature of mandamus has also been sought for issuance of directions to respondents No.1 to 4 to decide the objections of the petitioner dated September 15, 2015 (P-3) and dated July 28, 2015, August 7, 2015 and October 20, 2015, (P-4 Colly) wherein the election for formation of another AUC of RWA has been ordered.

Brief facts relevant for the just decision of the present writ petition are that the respondents Adjutant General, the Managing Director, AWHO, Project Director of AWHO had, vide advertisement dated October 1, 2005 invited applications for AWHO dwelling units under different categories. The project was to be completed in the year 2008 but there was delay in delivery of possession of the dwelling units to the ex-servicemen/ serving army officers/ widows, the construction being not complete till date, and there has been gross lack of basic amenities as the incomplete dwelling units had been allotted to 483 allottees. The petitioner claimed that the petitioner has received notice dated September 11, 2015 and July 22, 2015

which have been placed on record as annexure P-1 and P-2. Annexure P-1 reads as follows:-

*“Tele: 23017231 Army Welfare Housing Organization
South Hutments, Kashmir House,
Rajaji Marg, New Delhi-110011
B/03001/55/AWHO/Panchkula (Sector 27) 11 Sep.2015
Project Director,
Army Welfare Housing Organization
AWHO Project, Sector 27,
Panchkula (Haryana) 134113*

*ELECTION FOR AUC AT VIKRAM VIHAR
SECTOR 27, PANCHKULA*

- 1. After due deliberations and in order to constitute a more ‘representative’ body of allottees for coordination with AWHO, Registrar of Societies, Civic bodies etc. it has been decided to hold elections for formation of AUC as per schedule given at Appx. A.*
- 2. **Status of AUC:** Since the AUC is an adhoc and non-registered body, it does not have ‘legal’ and ‘statutory’ status of a registered RWA. It is an advisory body of allottees to assist and advise Project Director in maintenance functions of facilities of the society. The role of AUC is as per Appx ‘B’.*
- 3. **Conduct of Election:** In order to provide equal representative to allottees of all the blocks (A to K), the election will be conducted blockwise. One representative will be elected from each block to be the member of AUC. These elected members will thereafter elect the Management Committee consisting of President, Vice-President and*

Secretary from amongst themselves. The election will be conducted in presence of 'Independent Observer' (IO) to be detailed by HQ Western Command. Regional Director is nominated as the Returning Officer and Project Director Panchkula will be the coordinator.

4. ***'Voting' and 'Nominations' for the Elections:-***

As per the clarification received from the office of Registrar of Societies, Panchkula (Haryana), voting will be allowed 'in person' only by the allottees. No proxy voting is allowed as per the extant rules on the subject in the State of Haryana. Only resident allottees staying in AWHO Vikram Vihar complex will be allowed to file nominations to contest for the AUC membership elections., It would be appreciated that the physical presence of the members of AUC at project site will ensure optimum contribution from them towards welfare of the residents.

5. ***Responsibilities:-*** Responsibilities for conduct of AUC elections at Vikram Vihar are as under:-

- a) ***Overall coordination:*** HQ AWHO (Secretary).
- b) ***On site coordination:*** Project Director, Panchkula.
- c) ***Returning Officer (RO):*** Regional Director, Western Command.
- d) ***Independent Observer:*** To be detailed by HQ Western Command.

6. ***Tenure of AUC:*** AUC will have a tenure of a maximum of one year Extension of this tenure of elected AUC will only be on the written consent of HQ AWHO on expressed recommendations of Project Director.

7. Request ensure strict compliance. Clarifications, if any may please be sought from this office.

Sd/-Rajbir Singh,
Col. Secretary,
For Managing Director,

Copy to:-	
MG-IC-Adm. HQ Western Command, Chandimandir.	Request detail an 'Independent Observer' for the subject election as per para 3 of the letter.
Regional Director (WC) Army Welfare Housing Organisation C/O HQ Western Command Chandimandir, Panchkula Haryana - 134107	You have been detailed as 'Returning Officer' (RO) for the said elections. Request co-ord. and provide regular feedback to this HQ on the subject.
Internal Dir(Mktg.) Dir (Plg-1) Dy.Dir (L&L)	For info and necessary action please."

Annexures P-2 is a letter dated July 22, 2015 in which it is mentioned that as per the order of HQ AWHO, New Delhi and during the 'Open House Forum' held on May 17, 2015 it emerged that there was an urgent need for a comprehensive representative body (in the form of a RWA) to maintain, manage and administer the colony. It was intimated that Regional Director, Western Command Chandimandir had been detailed as 'Returning Officer' for the elections of Collegiums. As per the Act and byelaws issued vide the Act notified vide notification dated March 28, 2012,

the date of nomination, dates of withdrawal and scrutiny of nominations, dates of election and declaration of results were mentioned in the said letter. The eligibility conditions, electoral college, collegiums etc. were also detailed in said letter annexure P-2.

It is not out of place to mention here that vide another letter annexure P-16, dated September 17, 2015, order has been passed by Managing Director, AWHO, dissolving the AUC, which has also been challenged by amending the present petition. The determination and legality of the order of dissolution of the AUC passed subsequently would be dependent upon the decision of the validity of notices annexures P-1 and P-2 as such the application for filing the amended petition though having been filed, has not been allowed and is pending adjudication. Even the counsel for the parties agreed that the application for amendment can be decided after the decision of the present writ petition.

It is not disputed that the petitioner is a duly elected committee of 10 members which is looking after the common area/ centralized services of the dwelling units being constructed by the AWHO. Respondent No.3- the Project Director of AWHO is required to give minimum essential expenses out of the society's fund to the AUC for its maintenance. Copy of the order appointing AUC elected on February 11, 2014 has been placed on record as annexure P-10. The role of the petitioner Committee is mentioned in the technical brochure which is reproduced hereunder for understanding the status of the Society:-

“Formation of Users Committee/ Welfare Maintenance Society:

The allottees are required to form a Welfare Maintenance Society for maintenance and upkeep of the essential services once the project is completed. Before the Maintenance Society gets formed and registered, a Users Committee will be formed to immediately start functioning and looking after the day to day running of the complex and other allied activities of the colony. The Users Committee that will be formed will be an adhoc committee since it takes a long time for all allottees to move in and start staying in the colony. The Users Committee/ Maintenance Society shall take over all common areas/ services on 'as is where is' basis immediately on completion of the project, but not later than four months from the date of completion of the project, and start maintaining the complex.

Minimum essential expenses out of Society funds shall be given to the Users Committee through the Project Director on a monthly basis for maintenance of the colony till formation and registration of a proper Society."

A perusal of the above provisions clarifies that the AUC is formed for looking after the day-to-day activities of the complex and as the name suggests it is only the adhoc committee till the project is fully completed as per the technical brochure. Petitioner claimed that there is no provision to replace the AUC during the pendency of the completion of the project. As the AUC is formed to take over the centralized services as promised in the technical brochure to the allottees and thereafter the AUC shall conduct elections for the formation of RWA and accordingly get it registered under the Act. After the project is complete in all prospective and the allottees are handed over the complete project, thereafter the existing

AUC would conduct elections for formation of RWA. The petitioner Committee has pleaded that four members of AUC have resigned and sent resignation letters to respondent No.3. The AWHO in its second Board of Governors meeting on April 22, 2014, (copy of report has been placed on record as annexure P-6), in which Chief of the Army staff was the President (ex-officio) wherein at Sr. No.39, delay and short-comings of the project were submitted by GOC-in-C Western Command in the report, has observed that the building lacks safety measures and safety checks were proposed and accordingly CBRI and technical teams were requested to attend to the complaint of the allottees and submit a report of the shortcomings.

The petitioner Committee has alleged that the Welfare Maintenance Society cannot be registered under the Act as the project is still incomplete. In this context a reference has been made to report dated June 10, 2014 wherein it was found that the fire-fighting scheme was not complete but a certificate had been obtained from HUDA despite the finding of the Committee pertaining to major variations from technical brochure, in context to the non-provision of steel grill door with fly mesh at entrance of each dwelling unit; omission of kitchen doors in all dwelling units; change of teak door frames to red mirandi; external grit finish changed to textured exterior finish and non provision of 9 x service lifts in luxury, super deluxe and deluxe blocks; and major defects pertaining to columns and beams not in plumbs, painting on walls, ceilings and roof not done properly etc. Copy of the report with the list of pending work has been appended with the petition as annexure P-7. The petitioner Committee claims that it had initiated inquiry regarding obtaining of occupation certificate from HUDA

without having installed fire-fighting systems in the apartments regarding which complaint had been sent to the Chief Minister window and on inquiry it was found that no objection certificate of fire safety had been obtained fraudulently without installing the same. Above said facts have been mentioned to establish that the petitioner Committee had pointed out number of defects as a result of which respondents No.1 to 4 were displeased and with an oblique motive issued notices annexure P-1 and P-2 with an objective to dissolve the petitioner Committee and hold fresh elections for formation of a fresh AUC and RWA. It has also been pointed out in the petition that the respondents had given a contract of construction of dwelling unit to one construction Company M/s SVEC Construction Limited, wherein the Project Director i.e. respondent No.3 had been directed for more fund for the completion of the project vide letter dated June 3, 2015. An amount of Rs.2.92 crores was demanded for the completion of the project and for rectification of the repair work. These facts have been mentioned to reflect that the project of construction is still in-complete. It is pleaded that AWHO is a registered Society under the Act and is registered with the Registrar of Societies, Delhi. As per the memorandum of association of AWHO and the Master Brochure July 1987, amended upto 2004, the aim of the organization is to promote appropriate housing scheme for serving and ex-servicemen within the rules and regulations of the authorities. Respondents No.1 to 3 were duty-bound to ensure that the contractor completed the project within time; AWHO formed a user Committee; User Committee facilitated the handing over of the individual's flats to the allottees between the contractor and AWHO but since they have bye-passed the complete process, the

present AUC being well-conversant with the irregularities committed, with an objective to get rid of the present Committee, notices annexures P-1 and P-2 have been issued. Referring to the legal provisions, reliance has been placed on Section 32 (6) of the Act which provides that adhoc body shall take steps to hold elections of the governing body and further prepare and submit a scheme for determination of the electoral colleges and constitution of a Collegium and determine the number of members. In view of said provisions, it has been claimed that the AUC is required to form RWA but only after the work is completed and project is handed over as per the technical brochure. The formation of RWA cannot be permitted at this stage as per the technical brochure, and Society bye-laws. As per Section 39 of the Act, the list of voting members is required to be published but in the present case, two blocks are still incomplete and having not been handed over to the allottees and 50 number of the allottees still waiting to take over the dwelling units as such RWA cannot be formed without considering all the allottees who have not been given the possession. The petitioner claimed that the election of AUC cannot be held until the project is completed.

The writ petition has been contested by respondents No.1 to 4 by raising a preliminary objection that AWHO is a Society registered under the Act. The projects executed by it are self-financing and no Government funds are involved in their execution. The expenses for day-to-day functioning of AWHO are met through the funds generated from the AWHO itself. It being not a State instrumentality under Article 12 of the Constitution of India, the writ petition is liable to be dismissed as not maintainable. Locus standi of the petitioner which is an AUC created by the

said residents, has been questioned. The Adhoc Users Committee was elected on February 11, 2014 and it has also been dissolved by annexure R-1 dated September 17, 2014. The respondents have taken up the plea that the order dated September 17, 2014 having not been challenged the writ petition is not maintainable. It is admitted that Vikram Vihar Society consists of 483 dwelling units out of which possession of 433 dwelling units had been delivered. The balance 50 units are ready but possession had not been delivered. It is averred in the written statement that the AWHO Rules govern the project executed by AWHO. Copy of the Rules have been appended with the reply as annexure R-2. Rule 76 of the said Rules provides for formation of User Committee before registered Welfare Maintenance Society is elected in accordance with the local law regarding registration and regulation of housing societies. In case a registered Maintenance Society is not formed within one year of completion of the project, the AWHO is entitled to pull out therefrom and a sum of Rs.20000/- per head is kept aside for creating a corpus to be handed over to the Welfare Maintenance Society so that in the initial stages the residents do not suffer from lack of funds. It is averred that 10 members of the AUC were elected by AWHO on February 11, 2014. Office bearers were elected on February 18, 2014, vide annexure R-3. The said Committee did not function effectively. Three members of the said Committee were residents of Chandigarh and thus did not effectively contribute to its functioning. Four members submitted their resignation on August 20/25, 2015. The reason for resignation was non-democratic functioning of the Committee. One of the members of the Committee was involved in an incident of assault on

respondent No.3. Complaint annexure R-5 dated September 9, 2015 and complaint annexure R-6 dated September 3, 2015 have been appended with the reply to state that the petitioner Committee had not been functioning properly as such it was decided to replace the said Committee with a more representative body so that effective steps could be taken before the Welfare Maintenance Society was elected as such the notice annexure P-1 was issued. So far as notice annexure P-2 is concerned, it has been submitted that the same has been withdrawn vide letter dated August 26, 2015 vide annexure P-6. This was followed by a letter dated September 1, 2015 from the office of respondent No.4, copy of which has been appended as annexure R-8. Allegations have been levelled against the petitioner Committee that it ceased to be a representative body and was ineffective as majority of the residents were dissatisfied with the functioning and were on September 3, 2015 seeking replacement as such respondent No.3 called a meeting on September 3, 2015 in which residents of Vikram Vihar also participated. As the existing AUC deserved to be dissolved, the same was dissolved vide annexure R-1 on the basis of resolution. It is admitted that the functions of the AUC is primarily to ensure and take care of common services and amenities and framed bye-laws of the societies and get the same registered in accordance with local laws so that a registered Welfare Maintenance Society may be elected. It was not meant to ensure completion of project. The individual allottees are responsible for ensuring completion of individual units before possession and completion of common facilities such as security, water, electricity etc, which is the responsibility of respondent No.3. The existence of deficiencies pointed out by the petitioner Committee

have been defined and denied and it has been submitted that all the deficiencies stand rectified or are being rectified.

Learned counsel for the petitioner Committee has vehemently contended that the action of respondents No.1 to 4 in issuing notices annexures P-1 and P-2 and the action of passing an order in previous date regarding dissolution are absolutely illegal and deserves to be quashed.

It is an admitted fact that the notice annexure P-2 has been withdrawn as such the writ petition regarding validity of the order annexure P-2 to form RWA and the election schedule formulated has become infructuous and does not require any adjudication. The legality of the order annexure R-1 dated September 11, 2015 for holding election for formation of new AUC as per schedule annexure 'A' appended to annexure R-1 is the only question which is required to be considered in the present petition.

The stand of counsel for the respondents is that on account of AUC elected in the year 2014 having not been functioning to the satisfaction of the AWHO and to the allottees it was necessary to issue notice for the election after its dissolution. A serious objection has been raised regarding the maintainability of the petition against AWHO.

Counsel for the petitioner has submitted that the AWHO is an instrumentality of the State performing public functions and is under the supervision of the Army Authorities as the Army Officers can be deputed to the AWHO for employment in various heads upto the extent of 1/3rd of the establishment of AWHO. In this context, reliance has been placed on the letter dated May 11, 2002 issued by the Ministry of Defence and addressed to the Chief of the Army Staff. The period of deputation would be treated as

Army service for the purpose of seniority, increment, pensionary benefits and leaves. The selection of the deputationists is carried out by service Headquarter and approved by Ministry of Defence. The officers deputed on deputation in AWHO would be under the administrative control of the respective local authorities even though the function and control would vest with the DG, AWHO. Counsel for the petitioner also submitted that the Board of Management has all the powers relating to financial executive and administrative control of AWHO for laying down the policies regarding financial management, store purchases, procurement of lands, project accounting, recruitment of staff and other matters, as per the regulations of the AWHO. The Board of Management consists of Adjutant General in the Army Headquarters as ex-officio member as Chairman, the Quartermaster General in the Army Headquarters as ex-officio member as Vice Chairman, Engineer-in-Chief in the Army Headquarters would be member ex-officio. Similar is the status of the Deputy Adjutant General in the Army Headquarters who would also be member ex-officio.

Counsel for the respondents has relied upon judgment of Delhi High Court in **Army Welfare Housing Organisation Vs. Adjutant General's Branch and others**, reported as MII LJ (Supp.) 2015 DEL.HC 17, wherein for the purpose of Right to Information Act, the Army Welfare Housing Organisation was held to be not a public authority within section 2 (h) of the Right to Information Act despite the fact that the officers of the Army are ex-officio members of the Board of Management while acting as ex-officio members board of management of AWHOA as such the officers of the Army who are ex-officio members of the Board of Management cannot

be said to act as per the dictates of the Army Headquarter or defence ministry. Counsel for the respondents has also relied upon the Division Bench judgment of Delhi High Court in **Smt. Asha Vij and others Vs. The Chief of Army Staff and others**, decided on August 9, 2012, in which the question involved was whether a writ would lie against Army Welfare Education Society which was managing the School, for the purpose of Article 12 of the Constitution of India. The writ petition was held to be not maintainable on the ground that the School was a Regimental Welfare Institution and that it was not being run out of the regimental funds. He also relied upon the judgment in **Lt. Col. Ashok M. Chacko, Retd., Vs. Union of India and others**, decided on June 2, 2010 in which the petitioner had claimed entitlement to the allotment of a flat constructed by the Air Force Naval Housing Board. Though the writ was held to be not maintainable but the High Court had issued a direction to the AFNHB to refund the amount to the petitioner which was deposited by him. A perusal of the said judgment indicates that despite the fact that the Court held that writ petition was not maintainable but in the interest of justice a direction had been issued to secure the ends of justice.

Counsel for the petitioner has, however, relied upon the judgment of Division Bench of Delhi High Court in Writ Petition (Civil) No. 6448 of 2007-Smt.Saroj Devi (Widow) Vs. UOI and ors., decided on December 19, 2008 in which a war widow had sought a direction for the allotment of the deluxe apartment under Greater Noida Scheme by remitting the requisite amount and registration fee. One of the questions arose before the Division Bench was whether the writ for retrospectively of the grievance

is maintainable under Article 226 of the Constitution of India against AWHO. Taking into consideration all the aspects and following the criteria in **Binny Ltd. Vs. V. Sadasivan**, (2005) 6 SCC 657 wherein it was held that on fulfillment of the three conditions i.e. whether the private body is discharging a public function; the decision sought to be corrected or enforced is in discharge thereof; and the public duty imposed is not of a discretionary character, it was held that the writ petition by widow of Army personnel for allotment would be maintainable. In **Brig (Retd.) D.K. Jetley Vs. Army Welfare Housing Organisation and another**, 1995 (5) JT 135, the Hon'ble Apex Court had issued directions to the AWHO directing the allotment of flats to the petitioners despite the fact that writ petitions, suits relating to the allotment of flats were pending implying thereby that the AWHO is amenable to writ jurisdiction.

In **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V.R. Rudani and others**, (1989) 2 SCC 691, it was held as follows:-

“20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the

body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

21. **In Praga Tools Corporation Vs. Sri C.A. Imanuel and others**, 1969 (3) SCR 773, it was held that—

"a mandamus can issue against a person or body to carry out the duties placed on them by the Statutes even though they are not public officials or statutory body. It was observed (at 778): It is however not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body, A mandamus can issue, for instance, to an official or a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (See Halsbury's Laws of England (3rd Ed. Vol. II p. 52 and onwards).

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states 'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of administrative Act 4th Ed. p.540). We share this view.

The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice whenever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.'

In **Binny Ltd.'s case** (supra) it was held that the writ petition under Article 226 of the Constitution of India against private bodies was held to be maintainable though pre-eminently a public law remedy if the triple condition is satisfied. The said three conditions are:

- i) Such private body is discharging a public function;
- ii) The decision sought to be corrected or enforced is in discharge thereof; and
- iii) The public duty imposed is not of a discretionary character.

The ratio of the above said judgments is being taken into consideration by this Court coupled with the circumstances that the AWHO is manned by Army Officers / deputationists as per the letter dated May 11, 1982 issued by the Ministry of Defence and the management of the Welfare Organization is not purely a private body with no public duty but it is required to discharge public functions and the said public duty imposed is not absolutely of discretionary character but is under the supervision of senior Army Authorities as such the writ in my opinion would be

maintainable only in the cases where there is glaring abuse of discretion while discharging a public function. There is an element of official discretion which is certainly guided by the rule of natural justice, equity and fair play. Merely because it is debatable that it would fall under the authority under Article 12 of the Constitution of India, any decision of the AWHO is not beyond the judicial review by a writ Court when there is a glaring arbitrariness in any order passed by AWHO.

The circumstances of the present case warrant interference as the reason for issuing notice annexure P-1 is that certain irregularities have been committed by the AUC and the functioning had not been to the satisfaction of the members of the allottees who are the ultimate beneficiaries of the functioning of the AUC. If any adverse order had to be passed against the petitioner AUC the minimum requirement of rules of natural justice was that a show cause notice could be issued pointing out the complaints and the irregularities. After having given a fair opportunity to the members of the elected Committee the acts of the Committee should have been considered objectively to dissolve the same in a democratic manner, i.e. the glaring breach of rules of natural justice in the present case is apparent as such the order annexure P-1 is liable to be set aside.

As discussed above, the notice annexure P-2 having been withdrawn, its validity is not required to be adjudicated upon.

I have considered the application under Order 6 Rule 17 CPC for amendment of the writ petition for challenging the order annexure P-16/R-1 passed by AWHO dated September 17, 2015 which bears an endorsement that it was released on September 27, 2015 whereas the writ

petition had been filed on September 21, 2015. The validity of a document which is placed in the record with the written statement to defeat the rights of petitioner can always be looked into by a Court, while considering the rights of the petitioner. As the order annexure P-16/ R-1 is apparently an order passed without following the rules of natural justice in contravention to Article 14 of the Constitution of India, it is a nullity and is apparently an act of malafide as the document appears to have been created after defeating the rights of the petitioner in the writ petition. There is no need to amend the writ petition as the validity of annexure R-1 has already been considered in the writ petition and the same has been held to be invalid and not enforceable on the rights of the petitioner. The foundation of annexure R-1 is annexure P-1 which is held to be invalid as such the same would become illegal having been based on the foundation of annexure P-1 dated September 11, 2015 which stands challenged and quashed in the present writ petition.

Application for amendment is disposed of as having been rendered infructuous.

The order annexure P-1 is liable to be set aside partly as the AWHO is competent to hold elections for the four persons who have already resigned as members of AUC.

The writ petition is partly allowed and partly dismissed holding that notice annexure P-1 dated September 11, 2015 and the order annexure R-1 dated September 17, 2015, so far these relate to the four members who have already resigned are not illegal but these are held improper, arbitrary, discriminatory and violative of rules of natural justice so far as six elected

members having been elected in February 2014, are concerned. It will be open to the concerned officials of the AWHO- respondent to pass a fresh order pertaining to the elections of four members of AUC above said who have already resigned and the order annexure P-1 and R-1 are held bad qua the remaining six members.

April 28, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.