

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 25463 of 2016

Date of decision : September 1, 2017

R. K. Yadav and another

..... Petitioners

Vs.

Registrar General, Firma and Societies, Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. P. R. Yadav, Advocate
for the petitioners.

Mr. Amandeep Chhabra, Advocate for
Mr. Deepak Vashisth, Advocate
for respondent No.4.

Mr. Surender Saini, Advocate
for respondent No.5.

RAKESH KUMAR JAIN, J (oral).

This petition is filed by the Residents Welfare Association and its President in order to challenge the order dated 1.6.2016 passed by the State Registrar, Firms and Societies, Haryana and order dated 24.8.2016 passed by the Registrar General, Firms and Societies, Haryana and order dated 5.12.2016 by the District Registrar, Firms and Societies, Gurgaon.

The election of the Governing Body of the Society was held on 12.4.2015. After the election, the list of the Governing body was submitted to the District Registrar on 17.4.2015. Respondent No.5 along with three other members of the collegium made a complaint to the District Registrar on 21.4.2015 alleging that the elections were not held in terms of the provisions of Haryana Registration and Regulation of Societies (Amendment) Act, 2015 (hereinafter referred to as 'the Act') and the Bye

application. However, the District Registrar advised them to file a petition before the State Registrar against the alleged irregularities during the election. Thereafter, the so called appeal/election petition was moved on 20.9.2015 before the State Registrar by 28 members of the collegium. The said appeal was allowed and the matter was remanded by the State Registrar to the District Registrar vide his order dated 1.6.2016. Now, it was the turn of the petitioner to file appeal against the said order dated 1.6.2016 before the Registrar General. The appeal was however, dismissed vide order dated 24.8.2016 and thereafter the District Registrar issued notice dated 5.12.2016 for the purpose of holding re-election.

Counsel for the petitioner has raised two issues in this case. Firstly, the application/petition filed by the respondents was beyond the period of limitation as it was filed after a period of 30 days from the date of declaration of the result. Secondly, the application was not filed by 1/4th members of the total members of the collegium, rather it was filed by four members of the collegium, though the collegium comprises of 89 elected members, therefore it should have been filed by 23 members. It is also submitted that the complaint was not maintainable before the District Registrar which was filed on 21.4.2016.

On the other hand, counsel for the respondents has submitted that the complaint has been filed before the State Registrar as directed by the District Registrar on 15.7.2015 and the time consumed before the District Registrar was to be excluded for the purpose of calculating the period of limitation for filing the petition/appeal before the State Registrar. It is further submitted by the respondents that the application filed before the State Registrar is by 28 members, therefore, it is

by 1/4th of the members of the collegium and is in compliance of Section 40 of the Act.

In reply, counsel for the petitioner has submitted that once the period of limitation of 30 days is provided in the statute, without there being any provision of condonation of delay, it cannot be extended even if it is assumed that the complaint dated 21.4.2016 was wrongly filed before the District Registrar and the actual appeal/election petition was filed on 20.9.2015. It is also submitted that the first complaint dated 21.4.2016 which was filed by four members of the collegium whereas it should have been filed by 1/4th members of the collegium. Therefore, the proceedings initiated against respondent No.4 are completely erroneous and contrary to the provisions of Section 40.

He has also referred to Section 33 (5) of the Act to contend that the District Registrar, after the list of elected members of the Governing body submitted to it, has to take a decision regarding approval of the election otherwise, in case, if he do not take any decision, then it should be deemed to have been approved.

I have heard learned counsel for the parties and perused the record with their able assistance.

In order to appreciate the rival contentions, it would be appropriate to refer to certain provisions of the Act as follows:-

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

(2) The Society shall file the list of the elected office-bearers

with the District Registrar within a period of thirty days of holding of the elections for the Governing Body in the manner, as prescribed.

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

(4) Every Society shall maintain a register showing the names, addresses and occupation of the persons appointed or elected as office-bearers and shall file with the District Registrar, - (i) a copy of the register within a period of thirty days from the date of appointment or election of the office-bearers; (ii) a notice of every change in the office-bearer within a period of thirty days, from the date of such change; and (iii) the details of the office-bearers along with the annual return in the manner, as prescribed under the rules.

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

Section 40: Settlement of disputes arising from election of Collegium or Governing Body and its office-bearers:-

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 of the members of the General Body and where a dispute or doubt arises with regard to election or continuance of any members in the Government Body, the District Registrar and if there is need to constitute the collegium, then 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 within 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);

(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.”

Section 33 deals with the Governing body . It provides that members of the General Body or the Collegium as the case may be, shall elect the Governing Body consisting of not less than three and not exceeding 21 members.

Section 33 (5) further provides that the Governing Body, appointed or elected for the first time or thereafter, shall be valid only upon approval thereof by the District Registrar and its tenure shall commence from the date of its approval. The proviso added to Section 33 (5) by Haryana Registration and Regulation of Societies Act 22 of 2013 is that the District Registrar to whom the list of the Governing Body members is submitted, has to approve or reject the same within a period of 30 days otherwise the constitution of the Governing Body of the Society shall be deemed to have been approved. In case of rejection, the District Registrar shall record the reasons for doing so and pass an order in this regard.

Insofar as Section 40 of the Act is concerned, it provides for the settlement of disputes arising from election of Collegium or Governing Body. It provides that the District Registrar or by at least one-fourth of the members of the General Body or the Collegium, may refer to the dispute or doubt by moving a reference or petition before the Registrar within thirty days from the date of declaration of the 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.

Accordingly, a dispute, or doubt, could be made by the District Registrar suo motu or on the application of 1/4th members of the collegium to the Registrar within a period of thirty days from the date of declaration of result and the Registrar is also under the obligation to decide the same, as early as possible, preferably within a period of 90 days but not later than 120 days. The scheme of the Act suggests that the time period has been fixed for raising the dispute within 30 days from the date of declaration of the result. The Registrar is also given a time frame to decide

the dispute and pass such orders, as he may deem fit, preferably within a period of ninety days but not later than one hundred twenty days. Meaning thereby, that if he is unable to decide the dispute within a period of 90 days or beyond the period of 120 days then the ball would be out of his court. Similar is the position of proviso to Section 33 (5) in which again a period of thirty days has been given so that the list of Governing Body submitted to the District Registrar for his approval or rejection may not remain pending for indefinite period. If he has to reject the consideration of the Governing Body then he has to react within a period of thirty days but by passing a speaking order and if he is unable to react, one way or the other, it would be presumed that the list submitted by the Governing Body has his approval.

Reverting back to the facts of this case, the election took place on 12.4.2015. List of the Governing Body was submitted to the District Registrar on 17.4.2015. Now the District Registrar was to react either to accept or reject the said list upto 17.5.2015. However, he did not decide to either accept or reject the list. Meaning thereby, that in terms of Section 33 (5) of the Act the said list has been approved by him in accordance with law. Insofar as complaint dated 21.4.2015 is concerned, if it is presumed that it was to be filed before the competent authority i.e. District Registrar then it is not in accordance with Section 40 of the Act as it has to be filed by 1/4th members of the collegium or it should have been filed by the District Registrar himself but if it is to be presumed that the District Registrar is a competent body then it should have been filed within a period of thirty days but the appeal/representation has been filed on 20.9.2015 after expiry of period of five months.

In view thereof, once a particular time frame is provided

under the provisions of the Act for the purpose of reference of the dispute, it has to be adhered to and the delay cannot be condoned. In support of his contentions, learned counsel for the petitioner has referred to a decision rendered in **CWP No. 8302 of 2015** in which it has been held that the provisions as contained in the special statute, which prescribe certain period of limitation, cannot be further extended by resorting to the provisions of the Limitation Act, 1961 and the provisions under the special statute shall prevail over the provisions as contained under Section 5 of the Limitation Act, 1961.

Be that as it may, thus looking from any angle, the case of the petitioner is found to be meritorious. Inasmuch as the complaint dated 21.4.2015 is concerned, if it is presumed to have been rightly made before the competent authority then it is not in accordance with Section 40 of the Act. If it is not made rightly before the State Registrar then it is beyond the period of limitation and insofar as the District Registrar is concerned since he has not passed any order, either accepting or rejecting the list submitted by the petitioner to the Governing Body within a period of thirty days then as per proviso to Section 33 (5) the said list has the approval by him.

In view of the facts and circumstances mentioned above, the writ petition is allowed. The impugned orders are set aside.

(RAKESH KUMAR JAIN)
JUDGE

September 1, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No