

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

**CWP No.15651 of 2017
Date of decision : 02.04.2018**

Ahir College Society, Rewari

.....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Argued by : Mr. R. B. S. Chahal, Advocate for the petitioner.
 Mr. S. S. Mann, Senior DAG, Haryana.
 Mr. Atul Lakhanpal, Senior Advocate with
 Mr. Mukesh Mittal, Advocate for respondents No.5 & 6.

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DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing impugned order dated 06.06.2017 (Annexure P-17), whereby the Administrator of the petitioner-Society has been appointed. A further prayer has also been made for direction to the “appropriate authority” amongst the official respondents to decide pending issues of filling up the existing vacancies of membership of the Society pending since 2012 and, thereafter, to hold the election.

Briefly, the facts of the case as made out in the present petition are that the petitioner-Society *i.e.* Ahir College Society, Rewari was registered under the Societies Registration Act, 1860 on 11.10.1972 with the object to promote education. The election of the Management Committee/office bearers of the Society was to be conducted by its own

members after every three years. The last election of the Society was held on 17.12.2008. Notice dated 30.11.2011 was circulated amongst the Members of the Society for holding of meeting of the Society on 16.12.2011 to decide the date of election and to appoint the Returning Officer for conducting the elections. It was decided in the meeting that election was to be held on 16.01.2012. Respondent No.5 was the Vice President of the Society and he was also discharging the duties of the President. Accordingly, the meeting to be held on 16.12.2011 was presided over by him for the election of the Society. The Vice President was elected unopposed and daughter of respondent No.5 was elected as Treasurer of the Society. For the posts of President and General Secretary, the candidates got equal votes *i.e.* six each and the matter was referred to the University/State Government for taking necessary action. A decision was taken to hold the election again on 26.08.2012. However, the process of re-holding the election was challenged by respondent No.5 by way of filing CWP No.16302 of 2012 before this Court. While declining to issue notice in that petition, it was directed that election process would go on but the result be not declared. Ultimately, said writ petition was dismissed as withdrawn on 10.09.2012. The result was declared on 30.09.2012 and Rao Yadavendra Singh was declared as President and Col. (Retd.) Rewat Kumar was declared as General Secretary of the Society. Said result was accepted and it was not challenged by respondent No.5. A meeting of the Society was convened on 21.10.2012. The agenda of the meeting was circulated amongst members by the elected General Secretary. It was one of the agenda before the newly elected office bearers that two vacant posts of the members of the

Society were to be filled up but it was challenged by respondents No.5 and 6. The matter was referred to the appropriate authority and the filling of vacancies was stayed by respondent No.4 (District Registrar, Firms & Societies, District Industries Centre, Rewari). The District Registrar vide its letter dated 24.05.2013 stated that there was no direction for conducting an enquiry and office could not act without any direction from the office of the Registrar General, Firms and Societies, Haryana. Thereafter, respondent No.6 Raghvendra Singh at the behest of respondent No.5 Rao Inderjeet Singh approached the District Registrar for stay of proposed meeting. Respondent No.4 (District Registrar, Firms & Societies, District Industries Centre, Rewari) issued letter dated 10.09.2015 directing the petitioner-Society not to hold meeting for initiating the election process. Due to said direction, the petitioner-Society again notified holding of meeting. The General Secretary of the Society appeared before respondent No.1 (Principal Secretary, Industries & Commerce Department, Haryana, Civil Secretariat, Chandigarh) along with all relevant record and election process was stayed vide letter dated 24.09.2015 till further orders.

The petitioner was aggrieved by the action of the District Registrar while issuing order dated 03.11.2015 on the ground that the Society had been illegally bifurcated at the instance of respondents No.5 and 6. Thereafter, petitioner-Society filed CWP No.25041 of 2015, which was withdrawn on 16.02.2016. Thereafter, another petition *i.e.* CWP No.5134 of 2016 was filed by petitioner Society but it was also withdrawn with liberty to file fresh petition. Respondents No.5 and 6 took over the management of the Society. On the recommendation of the University, there

was a proposal to appoint Administrator as the Society had failed to hold the elections but the appointment of the Administrator of the Society was kept in abeyance under the orders of the Court passed in CWP No.2834 of 2017 till the issue of filling up the vacancies was decided. The election of the Society was notified and for that purpose a voter list was also prepared. As per direction issued by the Court, the petitioner approached the District Registrar by way of filing objections but those objections were not considered. Ultimately, the objections were dismissed and recommendation was made to hold election by appointing an Administrator vide order dated 11.05.2017. Petitioner filed an appeal before the Registrar on 08.06.2017 but the matter was kept pending. Ultimately, vide order dated 06.06.2017 respondent No.1 while exercising powers under Sub Section (1) of Section 68 of the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as 'the HRRS Act, 2012') appointed Additional Deputy Commissioner, Rewari as the Administrator of the Society for a period of six months or till holding of elections. Said impugned order dated 06.06.2017 is subject matter of challenge in the present petition.

Learned counsel for the petitioner has challenged the impugned order by raising various grounds. He submits that the impugned order is not only arbitrary but same has been passed against the provisions of law and Rules of the Society for extraneous considerations. Learned counsel submits that the Managing Committee/Governing Body is only legitimately elected body as elected in the last election of the Society which was held on 26.08.2012 and same was approved by this Court also as the result was declared after the Court had satisfied itself through a report called from the

Deputy Commissioner, Rewari. Learned counsel also submits that respondent No.4 (District Registrar, Firms & Societies, District Industries Centre, Rewari) did not allow the Governing Body to fill up the vacancies and to hold the election. Learned counsel also submits that the State Government was not permitting the petitioner-Society to hold election at the instance of respondent No.5 and due to that reason, the Administrator was appointed just to supersede the legitimately elected Governing Body of a State aided Society. The writ petition was filed by respondent No.5 on false grounds as he was not successful in being elected as President of the Society. It was done just to take over the management illegally. Learned counsel further submits that Ahir College Society and the Governing Body of the College are one and the same entity and the members of the Society *ipso facto* becomes the member of the Governing Body.

At the end, learned counsel for the petitioner submits that as per decision taken vide notice the election of the Society which was scheduled to be on 16.01.2012 was challenged by respondent No.2 before this Court which clearly shows that there is no bifurcation of Ahir College Society into two separate bodies. It was confirmed on perusal of the notice and CWP No.16302 of 2012 filed by respondent No.5 as a report was submitted by Deputy Commissioner, Rewari and finally the order was passed by this Court. Learned counsel also submits that the impugned order is liable to be quashed as no fault can be attributed to the petitioner for not holding election of the Society.

Learned Senior counsel for respondents No.5 and 6 has raised a preliminary objection that the present petition is not maintainable as

Governing Body of the College and of the College Society are separate entities as the Governing Body of the College is governed by the private college Management Act as well as University Calender/Rules, whereas the concern of Ahir College Governing Body is limited only to the College affairs. It functions under Ahir College Society. Learned counsel also submits that election of both the bodies was fixed on 16.01.2012. Petitioner filed nomination for the post of President of Ahir College Society and also for the Governing Body. Separate elections were conducted and both the candidates secured equal votes for the post of President of Governing Body which was sought to be resolved by way of toss. Thereafter, the members present in the meeting while exercising power conferred vide Section 13(1) of Constitution of the Society authorised respondent No.5 to constitute Executive Committee and it was constituted in said meeting only for the period from January 2012 to January 2015. Said resolution was submitted to District Registrar, Firms and Societies, Rewari and, thereafter, it was approved by the District Registrar. Learned counsel also submits that election of the Governing Body was held in presence of University Observer but due to securing equal votes, the result for the post of President and General Secretary could not be declared, whereas result of rest of the posts was declared. The election for the post of President and General Secretary was held on 26.08.2012. The petitioner was elected as President and Rewat Kumar as General Secretary. The term of the Governing Body of Ahir College as well as Society had expired in the month of August 2015 and, thereafter, the petitioner on one pretext or the other prevented holding the election of the Governing Body by way of filing various writ petitions

before this Court on one ground or the other. Learned senior counsel further submits that filing of separate nominations for the post of President of Ahir College Society and Governing Body clearly reflects that these are two different bodies. Learned senior counsel also submits that only the re-election of the Governing Body of Ahir College was challenged in CWP No.16302 of 2012 and not the election of the Ahir College Society. Learned senior counsel has also denied the submissions made by learned counsel for the petitioner as Col. (Retd.) Rewat Kumar was not the General Secretary of the Ahir College Society. The Governing Body of Ahir College was duly approved by the District Registrar, Rewari. The petitioner was not having any concern with the Ahir College Society and wrong notice was issued which was objected. The writ petition filed by the petitioner was accordingly withdrawn by giving statement to approach the appropriate authority. Thereafter also, the petitioner filed another petition but subsequently, it was also withdrawn on 03.11.2015. However, the liberty was given by this Court to challenge order dated 08.03.2016.

Learned counsel for respondents No.1, 2 and 4 have also filed joint written statement and have also reiterated the arguments raised by learned senior counsel for respondents No.5 and 6 by raising arguments that the present petition is not maintainable as no legal right has infringed. It has also been reiterated that the governing body of Ahir College and Ahir College Society are two separate entities as the Ahir College Society is governed by the HRRS Act, 2012 and Governing Body of the College is governed by the University Calender/Rules. The election of respondent No.5 as President of Ahir College Society held in the meeting dated

16.01.2012 was duly approved by respondent No.4 and same has not been challenged till date. At the end, learned counsel for the respondents submits that petitioner had challenged order dated 03.11.2015 before this Court and he has filed three petitions but subsequently those petitions were withdrawn. As per direction issued by this Court, the matter was decided and directions were complied with. The Court declined to interfere with the order dated 03.11.2015 passed by the official respondents. The issue of appointment of Administrator was kept in abeyance, under the orders of this Court. The objections of the petitioner were considered and he was granted fair opportunity. Learned counsel also submits that petitioner has also filed an appeal which is still pending.

After hearing arguments of learned counsel for the parties and on perusal of documents available on the record, it reveals that the issue is whether the Society of the College and Governing Body are the same and single entity or two different bodies.

As per the case of the petitioner, both the Society of Ahir College and Governing Body are one and the same entity as the Members of the Society becomes Member of the Governing Body *ipso facto*, whereas as per stand of the respondents, both are two different entities. The Ahir College Society is governed by the HRRS Act, 2012, whereas the Governing Body of the College is governed by the University Calender/Rules. The functioning of College is limited only to the College affairs, functions under the Ahir College Society and the petitioner is President of Ahir College and not of the Society. Petitioner earlier challenged order dated 03.11.2015 before this Court and thereafter, two

different writ petitions were filed but subsequently, the writ petitions were withdrawn. In CWP No.25041 of 2015, show cause notice dated 03.11.2015 was challenged. Said petition was dismissed as withdrawn on 16.02.2016 with the liberty to avail the appropriate remedy, if any, against the order passed by respondent No.4-District Registrar. Thereafter, instead of availing the appropriate remedy, he filed another CWP No.5134 of 2016, which was also withdrawn on 07.02.2017 with liberty to challenge order dated 08.03.2016 issued by the Assistant Registrar (Colleges) for D.C.D.C. Again the petitioner filed CWP No.2834 of 2017 before this Court, which was disposed of vide order dated 17.02.2017 and the petitioner was permitted to raise all the pleas before the Registrar who had seized of the matter. A direction was also issued to keep the appointment of Administrator in abeyance and also directed the Deputy Registrar/Registrar who seized of the matter as per letter dated 08.03.2016 (Annexure P-13) to decide the objections filed by respondent No.6 within a period of two months from the date of receipt of certified copy of the order. The District Registrar vide order dated 11.05.2017 recommended the matter for election of the Governing Body to the State Registrar Societies under HRRS Act, 2012 to hold the election at the earliest possible by appointing an *ad hoc* Committee/Administrator in continuation of office memo No.335 dated 22.03.2016 for smooth functioning of the Society. Thereafter, vide order dated 06.06.2017 Additional Deputy Commissioner, Rewari was appointed as Administrator for a period of six months or till election was conducted. It is apparent that Governing Body of the College and the Ahir College Society are two separate entities. Ahir College Society is governed by the

provisions of the HRRS Act, 2012 and the Governing Body of College is governed by the Private College Management Act as well as University Calender/Rules. The concern of the Governing Body is limited only to the College affairs and its functions under the College Society. The election of Governing Body of the College was held in presence of University Observer but due to getting equal number of votes for the post of President and General Secretary, result could not be declared. Thereafter, election was held on 26.08.2012 and in that election, the petitioner was elected as President and Rewat Kumar as General Secretary. The term of the Governing Body had already expired in the month of August, 2015. Due to pendency of various writ petitions, the election could not be conducted. The election process had already been started and the nominations were to be filed on 04.08.2017. Because of pendency of this petition and also because of interim orders, election could not be held. Petitioner himself filed two separate nominations for the post of President of the College Society as well as Governing Body, which shows that both the bodies are separate entities. The assignment was given to the University for conducting election of the Governing Body of the College and qua to petitioner-Society, it was given to District Registrar. An appeal was filed under Section 79 of the HRRS Act, 2012 and without awaiting the decision of that appeal, the present petition has been filed. The only ground which has been raised that Governing Body and the Society are one and the single entity. Without filling up the vacancies and deciding the issue pending before the appropriate authority since 2012, the election of the Society would be void *ab initio*.

Undoubtedly, the term of the Society/Governing Body has already expired but only because of pendency of issue of two members, the election could not be held. The petitioner himself has filed nomination for Governing Body of Ahir College as well as for the Society but he has taken the contrary stand in the writ petition that these are one and the same thing and this contention cannot be accepted.

Accordingly, the present petition is partly allowed and the appropriate authority is directed to decide the matter with regard to two members within a period of two months and, thereafter, the respondents are directed to conduct elections of both the Governing Body as well as the Society within a period of three months from the date of receipt of certified copy of the order, as per law and Rules applicable.

02.04.2018*sunil yadav***(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No