

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18362 of 2017

Date of decision: October 3, 2018

Lt.Col.R.G.Dhaka (Retd.) and others

...Petitioner

Versus

State of Haryana and others

...Respondents

A N D

CWP No.4845 of 2018

Col.R.S.Malik and others

..Petitioner

Versus

State of Haryana and others

..Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.Neeraj Kumar, Advocate for the petitioners in CWP No.18362 of 2017.

Mr.Ashwani Bakshi Advocate for the petitioners in CWP No.4845 of 2018.

Mr.Saurabh Mohunta, DAG Haryana.

Mr.Kuldeep Sheoran, Advocate for respondent No.5 in CWP No.4845 of 2018.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two petitions bearing **CWP No.18362 of 2017** titled as **Lt.Col.R.G.Dhaka (Retd.) and others Versus State of Haryana and others** (hereinafter to be referred to as "Ist petition") and **CWP No.4845 of 2018** titled as **Col.R.S.Malik and others Versus State of Haryana and others** (hereinafter to be referred to as '2nd petition').

In brief, the petitioners are the members of Haryana Ex-Services League (Registered). They had filed a petition under Section 39(4) & (5) read with Sections 46 and 90 of the Haryana Registration and Regulation of Societies Act, 2012 (for short 'the Act') to direct the Society to cancel the notification for elections published in the newspaper dated 4.6.2017 and to hold election process in abeyance for wrongful inclusion of the names of the persons who are not the members is decided. Since the District Registrar did not take any action, therefore, the first petition was filed before this Court which was listed for preliminary hearing on 18.8.2017 and notice was issued for 27.9.2017. It is an admitted fact that District Registrar has stayed process of election vide his order dated 4.9.2017. Thus, in view thereof, the prayer made in the first petition has become redundant and the same is dismissed as such.

Insofar as the second petition is concerned, the petitioners are also the members of the Society. They had challenged the order dated 4.9.2017 passed by the District Registrar of Societies, Rohtak by way of an appeal filed under Section 79(1) of the Act before the State Registrar. Their appeal was disposed of on 12.10.2017 by the State Registrar with the following observations:

“In view of above, it is apparent that the main cause to keep the election process in abeyance is membership dispute which has to be decided by the District Registrar u/s 21 of the HRRS Act, 2012. Therefore, I hereby order that the District Registrar, Rohtak shall decide the membership dispute preferably within 15 days from the date of receipt of order. The appeal is disposed of accordingly.”

Order dated 12.10.2017 is not challenged by the petitioners rather it has been challenged by the petitioners of the first petition by way of further appeal in terms of Section 79 of the Act before the Registrar General. It is also

an admitted fact that no date has been given by the aforesaid appellate Authority till date. However, pursuant to the order dated 12.10.2017, the District Registrar had appointed an administrator vide his order dated 17.11.2017. The order passed by him read as under:

Accordingly, Sh.Pradeep Ahlawat, HCS, Managing Director, Rohtak Cooperative Sugar Mills, Bhall Anandpur, Rohtak by post) is hereby appointed as Administrator of HESL by exercising powers conferred u/s 39(10) of Haryana Registration and Regulation of Societies Act, 2012 and rules framed thereunder for a period of six months or formation of new governing body whichever is earlier. The administrator will manage the affairs of the HESL for intervening period and will conduct the election of the HESL strictly as per provisions of Act.”

The petitioners in the second petitions have the grievance that the District Registrar has not only not complied with the order dated 12.10.2017 passed by the State Registrar but also violated the provision of Section 39(6) of the Act for not holding the enquiry.

Sh.Saurabh Mohunta, DAG Haryana and other counsel appearing on behalf of the respondents have submitted that District Registrar has infact appointed an *ad hoc* Committee to look into the dispute about the membership. Counsel for the petitioner has submitted that District Registrar had no jurisdiction to delegate his powers. On the other hand, counsel for the respondents have referred to Section 39(10) to contend that the Administrator can appoint the *ad hoc* Committee for the purpose of compliance of the order.

I have heard learned counsel for the parties in the second petition and perused the record carefully.

The dispute in this case is regarding the genuineness of the membership of the Society. The District Registrar, vide his order dated 4.9.2017, has kept the election on hold but the State Registrar has directed the

District Registrar, vide his order dated 12.10.2017, to resolve the dispute of the membership within 15 days. The District Registrar, instead of resolving the dispute, appointed the Administrator for the purpose of governance of the affairs of the Society. So far no effort has been made by the District Registrar to resolve the dispute of membership rather the District Registrar has appointed the administrator for the governance of the Society. The Administrator has not resolved the issue of membership and has rather appointed *ad hoc* Committee or advisory Committee.

Section 39(6) of the Act categorically provides that the District Registrar shall after fulfillment of the condition specified under sub-section (5), immediately hold the election process in abeyance and proceed to conduct an inquiry by himself or by an officer appointed by him, in this behalf, for determining the list of eligible members.”

Nothing has been brought on record by the respondents that the District Registrar has either himself started an enquiry or has appointed somebody else on his behalf for the purpose to decide the eligibility of the members. Insofar as Section 39(10) of the Act is concerned it only says that where the elections of the Governing Body are not held by the due date for whatsoever reasons, the District Registrar may constitute an *ad hoc* Committee or appoint an Administrator to manage the affairs of the Society. In the present case, there is a specific direction of the State Registrar to District Registrar for the purpose of deciding the issue of membership within the specified time and that time has already elapsed but nothing has been done by the District Registrar. All that has been done by him is the appointment of Administrator so that work of the Society may not hamper but the dispute about the membership is still not resolved. Thus, I am of the considered opinion that second petition has merit and as such, the same is hereby allowed with a

direction to the District Registrar to comply with the order dated 12.10.2017 passed by the State Registrar i.e. resolving the issue of membership within a period of one month from the date of receipt of the certified copy of this order.

October 3, 2018

Meenu

(Rakesh Kumar Jain)

Judge

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