

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

**CWP No. 27407 of 2017
Date of Decision: 14.2.2018**

Janta Vidya Bhawan, Butana

.....Petitioner

v.

Registrar General of Societies, Haryana and others**Respondents**

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. B.S. Rana, Senior Advocate with
Mr. Gagandeep Rana, Advocate, for the petitioner

Mr. Saurabh Mohunta, DAG, Haryana

Mr. S.S. Duhan, Advocate, for the respondent/caveator

RAKESH KUMAR JAIN, J (Oral) :

This petition is filed by the petitioner-society, registered under the Haryana Registration and Regulation of Societies Act, 2012 (for short 'the Act') to challenge the order dated 26.9.2017 passed by the Registrar General of Societies, Haryana, to the extent of issuance of directions for reconstitution of collegium of the petitioner-society.

The facts given to me during the course of argument are that there are 2201 verified members of the petitioner society. The society was to elect 11 members of the Governing Body, therefore, it constituted the collegiums comprising of 40 members each. Thereafter, 55 collegiums members were to elect 11 members of the Governing Body. The society was in existence, therefore, the provisions of the Act became applicable. The Governing Body of the society, in its meeting held on 5.3.2014, framed the scheme of collegiums and submitted to the District Registrar for its

approval. The list of collegiums was published in two newspapers i.e. Jan Satta and Indian Express on 8.5.2014 to invite objections, if any. However, it is submitted that no objection was received and accordingly, the election for the constitution of the collegium was held on 25.1.2015 and the members to the Governing Body were elected on 23.2.2015.

Respondent No.4, who is allegedly a life member of the society, made a representation on 17.11.2014 to the Deputy Commissioner, Sonapat against the preparation of scheme of collegium. Since, the Deputy Commissioner was not having the jurisdiction to deal with the representation, therefore, he send the said application/representation to the District Registrar's office on 20.11.2014. The District Registrar disposed of the representation on 12.12.2014 and advised both the groups to put up representations of respondent No. 4 before the General Body of the society to take necessary action as per provisions of the Act and bye laws of the society observing that if the members of the society deem it fit for any rectification then they should have approached the General Body of the society. It is also pertinent to mention here that respondent No.4 had also made a representation on 16.12.2014 under Section 54 (2) of the Act for holding an enquiry in the alleged preparation of scheme of collegium. The enquiry was held in the said complaint by the Assistant Director, District Industries Centre, Sonapat. The relevant text of the said enquiry is read as under :

“After hearing, speaking order was passed by District Registrar to the both parties that all the disputed issues shall be placed in next General Body meeting which was already fixed on 14.12.2014, but due to insufficient quorum and postponed for 21.12/2014, all the disputed issues i.e. determination of collegium and amended

Constitution were placed in its meeting and after detailed discussion the both issues were unanimously approved again. From the perusal of the record and discussion during both the parties at the time of hearing, it appears that determination of of collegium and amended constitution were placed in the General Body meeting which was held on 21.12.2014 and both issues were unanimously passed by the General Body. It is worthwhile to mention here that if the complainant was not satisfied with the decision already passed by your good self on dated 12.12.2014, he should have approached to the Higher Authority i.e. State Registrar under Section 79 sub Section 1 of the Societies Act, 2012. Moreover, further instead of the complainant has already been filed the petition before the Ld. Addl. Chief Judicial Magistrate, Sonapat, in which the next date has been fixed for 27.11.2015. So that the matter is sub judice in the Hon'ble Court and no further action will be taken in these circumstances.

The Enquiry report is submitted for your kind information and necessary action plead.”

Respondent No.4 had allegedly filed a protest petition on 29.10.2015 before the State Registrar in regard to the aforesaid enquiry report.

It is pertinent to mention that respondent No.4 had made a representation on 2.1.2015 followed by another representation dated 7.7.2015. The order dated 14.12.2015 has been passed by the District Registrar on the representation dated 7.7.2015. The observations have been made as under “that Capt. Dilawar Singh Sangwan again made a representation on 7.7.2015 with a prayer to enquire into the matter whether direction contained in the order dated 12.12.2014 had been complied with by the society or not? The said representation was got enquired from Asstt. Director of this office. As per his report dated 29.11.2015, the society has complied with the said instructions. He further added that since the complainant has already filed a criminal case in the Court of ACJM,

Sonepat, narrating all the points which have been raised in the present representation and thus, matter become sub judice and no further action shall be taken in these circumstances. The next date in the Civil Court, Sonepat is 15.1.2016. The scheme was submitted by the society in this office on 4.3.2014 and the same was approved by the then District Registrar on 11.3.2014 and on the basis of which society conducted the election of the governing body on 25.1.2015. Hence, the matter of review the approval of collegium is beyond jurisdiction of District Registrar.”

This order, by which the District Registrar has laid to rest the controversy in regard to the constitution of the collegium approved on 11.3.2014, was challenged by respondent No.4 by way of an appeal provided under Section 79 of the Act before the State Registrar of Societies. The said appeal was dismissed on 13.7.2016 with the following observations :

6. *Having taken into consideration the provisions of the Haryana Registration and Regulations of Societies Act, 2012, oral submissions of appellant/respondents and documents placed on the record, the following observations are made :-*

a. *The scheme of collegium was submitted by the society to the District registrar, Sonepat on 4.3.2014 and the then District Registrar had approved the scheme on 11.3.2014. After a gap of more than 8 months, the appellant had made a representation on 17.11.2014 to Deputy Commissioner, Sonepat against the approval of scheme and which was further received by the District Registrar office on 20.11.2014. The District Registrar vide order dated 12.12.2014 had disposed off the representation mentioning that the scheme of collegium has already been approved by the then District Registrar on 11.3.2014 and during last 9 months has not received any representation regarding scheme of collegium. He advised both groups to put the*

representation before General Body to take necessary action as per Act/bye laws of the society if members of the society deemed it fit for any rectification.

b. Further the appellant again made a representation on 7.7.2015 before the District Registrar, Sonapat to enquire the matter whether the directions contended in the order 12.12.2014 had been complied with by the society. The District registrar mentioned in his letter dated 14.12.2015 that “the scheme of collegium was approved by the then District Registrar on 11.3.2014 and on the basis of which society conducted election of Governing Body on 215.1.2014. Hence the matter of review the approval of collegium is beyond jurisdiction of District Registrar.”

c. Section 79(1) of the HRRS Act, 2012 contains that “An appeal against any orders passed by the District Registrar shall lie with the Registrar and the appeal against the orders passed by the Registrar shall lie with the Registrar General”. Section 79(3) contains that “Any appeal shall be filed within a period of sixty days of the date of issue of the impugned orders. The appellant authority may entertain an appeal beyond this period up to a maximum of another sixty days on sufficient grounds for condonation of delay being shown”.

*d. The Full Bench judgment of Hon'ble High Court reported as **State of Haryana V. Hindustan Machine Tools and Others**, where it has been held that an appeal can be admitted up to the period which has been prescribed under the statute, if any statute prescribed certain period of limitation, the the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the India Limitation Act, 1963 shall stand excluded. Since the statute itself provide for a maximum period of 60 days up to which the delay can be condoned, the appeal on this ground is not maintainable being time barred.*

e. Under Section 54(1) of the HRRS Act, 2012 after receipt of application from majority of office bearers or application not less than one third of the member of the

General Body or collegium as the case may be, the District Registrar can conduct an enquiry into the matter, but the representation for cancellation of approved scheme of collegium does not cover under this section. Whereas the representation was not signed by the one third members. Regarding objections against approval of scheme of collegium, Section 54 is not applicable and the appellant can submit an appeal before the State Registrar of Societies within 60 days under Section 79(3) of the Act against the order of District Registrar regarding approval of the scheme.

f. The appellant has filed appeal for cancellation of scheme of collegium (which was approved by the then District Registrar on 11.3.2014) after delay of 1 year 7 months 18 days. Even the appellant had submitted his representation on 17.11.2014 to the DC/District Registrar, Sonapat i.e. after a gap of more than 8 months from the date of approval of the scheme of collegium beyond 60 days.

g. The appellants referred Section 17 of the Limitation Act, 1963 which contains that "Where, in the case of any suit or application for which a period of limitation is prescribed by this Act -(a) the suit or application is based upon the fraud of the defendant or responsible or his agent or (b) the knowledge of the right or file on which a suit or application is founded is concealed by the fraud of any such person as aforesaid or (c) the suit or application is for relief from the consequences of a mistake; or (d) where any document necessary to establish the right of the plaintiff the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production". But, the Section 17 of the Limitation Act, 1963 is not relevant in the appeal.

h. The society had also issued public notice in two newspapers i.e. Indian Express and Jan Satta on 8.5.2014 in

respect of finalization of collegium for inviting objections.

But the appellant did not submit any objections.

In view of the above facts and observations, I hereby order to dismiss the appeal on the grounds of non-maintainable being time barred.

Orders be communicated to all the concerned.”

Still aggrieved, respondent No.4 had filed the second appeal before the Registrar General of Societies, Haryana, which was also dismissed on the ground that the procedure for formation of collegiums has clearly not been followed by the Society and approved the orders passed by the earlier Registrar and State Registrar. Relevant observations of the said order are as under :

“3. The respondents have forcefully reiterated the stand that the appeal suffers from limitation and is hopelessly time barred. They have also contested the allegations of forgery and manipulation and stated that the collegium were formed after following due procedure.

4. I have heard the parties and gone through the submissions made by them. The appellant has challenged the scheme of collegium constituted during the year 2013 on various grounds including forgery and the fact that no specific scheme of collegium was ever submitted to the General Body and no resolution was passed by the General Body adopting any such scheme. It has been stated that the collegium have been constituted with mala fide intentions with a view to group together supports of the respondents to influence the outcome of the elections. In fact, a perusal of the record produced before the undersigned reveals that in the General Body meetings dated 7.3.2013, 25.6.2013 no specific scheme of collegium was submitted or adopted by the General House contrary to the provisions of the HRRS Act-2012. It is further seen that the list of 55 collegium was sent to the District Registrar after nine months. The scheme of collegium was approved by the DR on 11.3.2014.

5. Notwithstanding the above, it is a fact that based upon the above collegium elections to the Society have been held and the

appeal for cancellation of scheme of collegium approved by the DR on 11.3.2014 is clearly barred under limitation. The effect of cancellation of the scheme of collegium with retrospective effect shall have direct bearing on the subsequent elections to the Governing Body against which no petition has been filed. However, since the procedure for formation of collegium has clearly not been followed by the Society as observed above, the Society is directed to reconstitute collegium by following the due procedure as laid down under the provisions of the HRRS Act, 2012 before the next elections. The appeal is declined with the above observations.”

The sum and substance of the argument of the petitioner is that the Registrar General had no jurisdiction to pass the aforesaid order, directing to reconstitute the collegium on the ground that the collegium once constituted would remain in place for 15 years and has referred to proviso to Section 32 (3) of the Act and in this regard he had drawn the attention of this Court to Appendix-1, which relates to the amendment in the Act called the Haryana Registration and Regulation of Societies (Amendment) Act, 2013 (for short 'the Amended Act') in which Section 4 deals with amendment to Section 32 of the Act and addition of proviso after sub Section (3) which read as under :

“Provided that the electoral college once constituted shall remain intact, save requisite adjustments on account of cessation of members or addition of new members, for a period of fifteen years or more, as may be decided by the Society through a special resolution :

Provided further that when it is not feasible to adjust the members inducted after initial determination of electoral colleges within the existing colleges without disturbing the permissible average strength of a college, the Governing Body may create additional college subject to the strength of new members being at least fifty per cent of the average membership of one college. The action taken by the Governing Body in this behalf shall be got

ratified from the Collegium in its next meeting :

Provided further that a Society may recast/re-determine the electoral colleges through a revised scheme on expiry of fifteen years period subject to the condition that any such re-determination of electoral colleges shall be taken up at least six months prior to the election of the Collegium. The revised scheme of determination of electoral college shall also be got approved as per provisions of this Act.”

Further he has referred to Rule 18 of the Haryana Registration and Regulation of Societies Rules, 2012 which deals with the determination of electoral colleges and read as under :

“18. Determination of electoral colleges :- (1) *Where a Society has more than three hundred members and it is required to constitute electoral colleges in accordance with sub section (3) of Section 32 of the Act, it shall decide on the number of electoral colleges, no exceeding three hundred, to be created so as to include maximum participation of members. The number of electoral colleges should be at least five times the number of members (including the office bearers) of the Governing Body. Guidelines and Illustrations given in Appendix-2 may be referred for guidance purposes in this behalf.*

(2) *the constitution of an electoral college may be determined by a Society following any one or a mix of the following criteria:*

(a) *on the basis of straight numbers i.e. Membership No. 1 to 30 constituting one college, Membership No. 31 to 60 constituting another college and so on and so forth; or*

(b) *on the basis of geographical spread of the members i.e. members residing in Ward 1 and 2 of a Municipal Town or Villages 'X' 'Y' and 'Z' constituting one electoral college and so on and so forth; or*

(c) *on the basis of professional or qualification criteria i.e. an electoral college consisting of Advocates, another college consisting of Professionals (Doctors, Cas, Engineers, Architects etc.), still another college consisting of Post-graduates, another college consisting of graduates, another consisting of persons belonging to the teaching profession, another one consisting of social workers and so on and so forth; or*

(d) On the basis of sizes/categories of dwelling units in the case of Societies formed in pursuance to the Haryana Apartment Ownership Act (Illustration 4 in Appendix-2 may be referred).”

Learned counsel has also referred to Appendix-2 i.e. pertaining to the General Guidelines qua determination of the number of Electoral Colleges and its relationship with the constitution of the Governing Bodies with reference to Rule 18 of the Rules which read as under :

“General Guidelines :

1. An existing Society with more than 300 members, shall be required to carve out electoral colleges in accordance with the provisions contained in Section 32 of the Act read with Rule 18 unless it opts to exercise other options available under sub section (1) of Section 30 and sub section(1) of Section 32 of the Act. Carving out of electoral colleges may involve two major challenges i.e. determination of the electoral colleges and the allocation of members to an electoral college. The Governing Body of such Society is expected to define the criteria for creation of the electoral colleges. It is for the Governing Body of the Society to determine the same and also introduce a process of settling any objections from the members. However, once finalized, the constitution of an electoral college should remain intact for all times to come and the inter se allocation of members should not change unless there is outgo and fresh induction of members in respect of an electoral college. Once finalized, these shall become a part and parcel of the bye laws of a Society.”

It is argued that once the constitution of the Electoral Colleges is finalized, it remains intact for 15 years or more, as the case may be, and it cannot be reconstituted as directed by the Registrar General of Societies. It is further submitted that the statute has provided internal mechanism for challenging the validity of the Electoral Colleges, constituted by the General Body, but it comes into effect only after its approval by the District Registrar and once it is approved, it can only be challenged by way of an

appeal.

It is submitted that though respondent No.4 had not filed any appeal directly against the said order dated 11.3.2014 but representations dated 16.12.2014 and 7.7.2015 were filed after the order was passed by the State Registrar on 11.3.2014. Even then, the said remedy has been found to be useless as it has been obtained before the authority having no jurisdiction. It is further submitted that respondent No. 4 has been unsuccessful before the State Registrar when he had filed the appeal and reasons have been given while dismissing the same being time barred. Same was the situation when the Registrar General dealt with the appeal filed by respondent No.4 but he exceeded his jurisdiction in passing the impugned order.

Learned counsel for the respondent No.4, however, vehemently opposed the argument of the petitioner on the ground that the Registrar General is empowered to hold an enquiry in terms of section 54 of the Act and can also appoint an administrator in supersession of the Governing Body. He has also referred to Section 59 in support of his submission that in case of fraud, the State Registrar can initiate action.

Sections 54 (1) and 59, invoked by learned counsel for respondent No.4 are also reproduced for a ready reference :

“Section 54. Power to inquire : (1) Where on the information received or gathered under Section 52 or on the application of a majority of the office bearers or on the application of not less than one-third of the members of the General Body or Collegium, as the case may be, or if so moved by the District Collector or the State Government, the Registrar General, Registrar of District registrar is of opinion that there is apprehension that the affairs of a Society are being so conducted as to defeat the aims and objects of the Society

or its Governing Body is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations or to defraud its creditors, he may, either himself or by any person authorized by him in that behalf, hold an inquiry into the affairs of the Society.”

Section 59. Cancellation of registration upon inquiry : (1) The Registrar may, if he is satisfied -

- (i) That the Society has contravened any of the provisions of the Act or the rules made thereunder; or*
- (ii) that the Society is insolvent, or must necessarily become so; or*
- (iii) that the business of any such Society is conducted fraudulently or not in accordance with its Bye-laws or the aims and objects specified in its Memorandum; or*
- (iv) that it is carrying on any unlawful activity or allowing unlawful activity to be carried on in the premises under its control, order an inquiry to be conducted by the District Registrar or any other officer authorized by him.”*

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

The facts are not disputed. The case of the petitioner is that once the collegium is approved by the District Registrar, it can be changed only in case of any inclusion or exclusion of the members and not otherwise and has relied upon Appendix-2 of the Rules.

In regard to invoking of Section 54 of the Act by respondent No.4, it is submitted that the said provision would come into play only when the Governing Body has been elected. It is submitted that the power to enquire into the matter has been given to Registrar General or to the authorities under the Act if they are of the opinion that there is an apprehension that the affairs of the Society are being so conducted as to defeat the aims and objects of the society or its Governing Body is guilty of

mismanaging its affairs or of any breach of fiduciary or other like obligations or to defraud its creditors.

In this case, adequate opportunity was given to all the members of the society to object to the constitution of the collegium when it was published in newspapers on 8.5.2014 but respondent No.4 did not choose to avail that remedy and rather filed the application to the Deputy Commissioner, who otherwise had no jurisdiction. When the matter was brought to the notice of the District Registrar, he passed an order on 11.3.2014 asking the General Body to look into the grievance of respondent No.4, which has been re-looked and again on 21.12.2014 the order was passed by the General Body, reiterating the decision taken on 11.3.2014. Though respondent No.4 had been making his efforts to highlight the alleged bungling in the constitution of the collegium but had not adopted due procedure of law by which both the parties are governed. Thus, in view of the aforesaid, in the absence of any power having been conferred upon the state Registrar by the statute much less the Act or the Rules, he could not have issued the direction which have been impugned herein in this case, as the said direction would go contrary to the provisions of Appendix-1 much less the proviso added to Section 32 (3) of the Act.

With these observations, the present petition is hereby allowed and the impugned portion of the order dated 26.9.2017 passed by the Registrar General of the Society is hereby set aside.

(RAKESH KUMAR JAIN)
JUDGE

14.2.2018

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No