

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

Regular Second Appeal No. 4576 of 2011(O&M)

Date of Decision: December 19, 2018.

Rajiv Kumar and others

..... APPELLANT (s)

Versus

Vijay Aggarwal and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellants.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate and
Mr. Harkesh Manuja, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellants are aggrieved of judgments and decrees dated 21.08.2009 and 17.08.2011 passed by the learned Civil Judge(Senior Division), Panipat and the learned Additional District Judge, Panipat, respectively, whereby suit filed by the plaintiffs/respondents No.1 and 2 for declaration that induction of members over and above the cap of 201 life members is illegal, arbitrary, null and void with consequential relief of mandatory as well as permanent injunction has been decreed.

Brief facts necessary for the adjudication of the case are that, respondents No.1 and 2 – Vijay Aggarwal and Naresh Singla (plaintiffs) filed a suit for declaration to the effect that elections of defendant No.1 – Shree Sanatan Dharam Education Society, Panipat (for short, the 'Society') and its members institutions should be held as per the list attached as Annexure-A and that enlistment and enrollment of defendants No.5 to 97 as members of the Society was illegal, without jurisdiction, null and void. Mandatory injunction was sought for directing the defendant-Society to hold elections as per the list. It was pleaded that defendant-Society was an educational society registered with the Registrar of Firms and Societies, Haryana. Defendant No.2-Rajinder Kumar Goel (appellant No.6 in this appeal) was the Secretary of the Society at that time and was looking after the day to day affairs, while defendants No.3 and 4 – Ram Niwas Gupta and Anoop Garg (proforma respondents 3 and 4, respectively in this appeal) were the executive members of the Committee. It was pleaded that the defendant-Society comprised of members including life members having faith in Sanatan Dharam. A meeting of all the members comprising general body was held every year. The Society manages, runs and controls the institutions as detailed in para 2 of the plaint. It was further pleaded that the defendant-Society issued a notice on 02.06.2006 for Annual General Meeting of the Society for 18.06.2006 while specifically mentioning that elections for the posts of office bearers of all the Institutions mentioned therein as well as Secretary of the defendant-Society would be held on 18.06.2006 at 12.00 noon. It is further submitted that the defendant-Society, as per its constitution, could have a maximum of 201 life members at a time. Induction of new members was

permissible in the event of death of existing members or someone renouncing Sanatan Dharam or being of unsound mind or incompetent to remain a member. New members were to be then inducted as per applications moved by them subject to the permissible limit of 201 members. It was pleaded that the plaintiffs came to know that some members were inducted in the Society in an illegal and unauthorized manner taking the number of members to 294 whereas the number of members could not exceed 201. Moreover, the new members could be inducted by following due procedure and that too within the stipulated cap of total 201 members. Addition of the members, it was averred, was with a sole motive to circumvent free and fair elections and to gain control of the institutions of the appellant-Society, the budget of which runs into crores. It was thus pleaded that elections should be held as per the list of voters (Annexure-A) and the newly inducted members as mentioned in Annexure-B should not be permitted to participate. All the defendants were stated to be in collusion with each other. Hence, the suit was filed.

Defendants No.1 and 2 i.e., appellants No.5 and 6, as well as defendant No.35 (proforma respondent No.32) have filed their separate written statement, whereas joint written statement was filed by defendants No.3 and 4. Joint written statement was filed by defendants No.8,9, 11,13,14,21,25,26,62,67, 80, 85 to 87 and 93. Defendants No.1 and 2 pleaded that resolution dated 18.06.2006 was passed in the Annual General Meeting of the Society after enrollment of another 100 members. Furthermore, the Executive Committee, which was competent to receive applications had scrutinized the same. Applications of 90 candidates were considered and their membership was

approved as per resolution dated 18.06.2006. Effective strength of the Society was pleaded to be 294. Defendant No.2 being the Secretary of the Society called for the Annual General meeting of the Society on 18.06.2006 for holding elections of the Society and its educational institutions and circulated the list of 294 members. Law and order problem was however alleged to have been caused by the plaintiffs due to which elections of the Society were postponed. Annual General Meeting, thereafter to be held on 17.09.2006 was also postponed. Enrollment of defendants No.5 to 97 was pleaded to be in accordance with the rules and regulations of the Society. It was denied that strength of the members of the Society could not exceed 201. Dismissal of the suit was prayed for. Replication to the written statement was filed.

On the basis of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiffs are entitled for a decree of declaration as claimed? OPP
2. If issue No.1 is proved, whether the plaintiffs are entitled for a decree for permanent injunction and mandatory injunction as claimed in para No.15(b),(c) and (d) of the plaint ? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus-standi nor any cause of action to file the present suit? OPD
5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
6. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD
7. Whether the suit has been filed by the plaintiffs in collusion with defendants No.3 and 4? OPD
8. Whether the plaintiffs have suppressed the material facts from the court and as such their suit is liable to be dismissed as claimed? OPD
9. Relief.

Both the parties led evidence in support of their respective stand.

Learned trial court vide judgment and decree dated 21.08.2009 decreed the suit filed by the plaintiffs/respondents No.1 and 2 while concluding that newly inducted 93 members are not valid enrolled members of the Society. Thus, their membership stood cancelled and it was declared that they have no right to participate in the affairs of the Society. Appeal filed by the present appellants was dismissed by the learned Additional District Judge, Panipat. Aggrieved therefrom, present appeal has been filed by some of the defendants.

Learned counsel for the appellant submits that regulation No.4 prescribes that there shall be 201 life members of the society. It does not, in any manner, mean that there is a cap for maximum number of life members which can be inducted in the society at any given point of time. To the contrary, it means that at any given point of time there would be a minimum of 201 life members. Earlier constitution of the society provided for 85 life members and 16 annual members with a cap of maximum 101 members. Amendment was carried out in the constitution of the Society (Ex.D2) and as per the said amendment, maximum number of members of the Society was prescribed to be 201, 185 being permanent and 16 annual. Constitution of the Society was yet again amended as reflected in resolution dated 18.06.2005 (Ex.P3). It was resolved that the Society shall have 201 life members. Provision of annual members was done away with. It is contended that the expression 'the Society shall have 201 life members' necessarily means that at any given point of time there shall be a minimum of 201 life members and not that there is a cap on the number of members to the extent of 201 members. Therefore, induction of 100 other members vide resolution dated 18.06.2005 (Ex.P3) does not in any manner militate against the

constitution of the Society. Furthermore, the said resolution was passed in compliance of the procedure prescribed by the rules and regulations of the Society. It is further submitted that even if it is accepted that an amendment in the constitution of the Society was required for induction of members over and above 201 members, the 100 new members were inducted by way of a valid resolution passed by the Society on 18.06.2005. As per the constitution of the Society, an amendment has to be passed by majority of the members on roll and 2/3rd of the members present. In this case, 102 members were present and the resolution was passed by 74 members. Therefore, the said resolution is indeed valid. It is argued that objection raised by the other side to the effect that the induction of the new members was not on the agenda (Ex.P2), is devoid of any merit for the simple reason that it is specifically provided in regulation 5(h) that any matter with the permission of the chair or by majority can be taken up in the Annual General Meeting. It is thus prayed that the present appeal be allowed, impugned judgments and decrees dated 21.08.2009 and 17.08.2011 passed by the learned Civil Judge(Senior Division), Panipat and the learned Additional District Judge, Panipat, respectively be set aside. Consequently, suit filed by the plaintiffs/respondents be dismissed throughout.

Learned senior counsel for respondents No.1 and 2 vehemently refutes the averments as above. He submits that as per regulation 4, it is obvious that the maximum number of life members of the Society is prescribed as 201. There is no question of the said number of 201 being the minimum members of the Society. In case membership of the Society is to be increased, it should have been done in terms of regulation 5 which provides for amendment of the

constitution of the Society. As per the said regulation, it is imperative that not only should the amendment be passed by a majority of the total members of the Society, but also by 2/3rd members present. Said exercise was clearly not carried out. So-called resolution dated 18.06.2005 (Ex.P3) displays a clear-cut mala-fide exercise on the part of the Society's executive. No such agenda of amendment of the constitution of the Society finds mention in the agenda, Ex.P2, circulated for the meeting. It has thus rightly been held by both the learned courts below that introducing such an agenda seeking shelter of the stipulation of any matter to be taken up with the permission of the chair, is a mala-fide exercise. Moreover, a new category of members was created by the resolution in derogation of the constitution of the Society. Once it is stipulated that the Society would have only life members, it could not have been introduced by way of the said resolution, that the new members inducted may not be treated as life members, but would have all the rights to vote, elections etc. as available to the life members. It is further pointed out that as noted by the learned trial court, it is the case of the defendants itself that an amendment in the constitution was carried out. Therefore, the argument that an amendment of the constitution is not required for inducting new members is misconceived. Procedure for amendment was never followed. It is thus prayed that the impugned judgments and decrees be upheld and this appeal be dismissed.

I have heard learned counsel for the parties at length and have gone through the record with their able assistance.

It is not in dispute that the Society, in question, is a registered Society. Object of the Society is to provide literacy –industrial, commercial,

technical, scientific, professional, moral and religious education, besides, devising means to establish educational institutions. Regulation 4 deals with the membership of the Society. The regulations in currency at the relevant time are on record as Ex.D3. Regulation No.4 dealing with membership of the Society reads as under:-

“4. Membership:

Any aggarwal Sanatanist desirous of becoming a member of Society who shall pay a minimum sum of ₹1,100/- in lumpsum to the Secretary of the society in person/regd. post alongwith the Application Form duly filled in and signed on prescribed form shall be considered for the membership of the society by the Executive Committee of the Society. The Executive shall dispose of any such application within a period of six months from the date of receipt of application by the Secretary. The Secretary shall put up such applications after its receipt to the Executive Committee in the immediate next meeting. The decision of the Executive shall be final.

Any firm/association/society or any other body donating an amount of ₹1,100/- or more in lump sum will be eligible to apply for the membership of the society for one of its partner/member as per the terms and conditions of the society within a period of one month from the date of payment of the said amount.

A register showing the names of the members of society with addresses shall be kept at Regd. Office of the society and can be inspected by any member of the society during working hours.

No person of less than 18 years shall be entitled to become the member of the society.

A person will no longer be the member of the following cases:-

- a) By becoming an apostate by renouncing Sanatan Dharam.
- b) By becoming lunatic the said person will not be continue to be the member.

The society shall have 201 Life Members.

Any member of the society can be removed from the membership of the society by majority of the members of

society on roll but 2/3rd majority of the members present, the proposal as such if any will be put up in Agenda for the meeting.” (emphasis added)

Powers and functions of the general body are embodied in regulation

5. It is stated therein that the Society shall meet at least once in a year and fifteen days notice in writing be given to all the members of the Society. The annual general meeting should be held once in a year and the following business would be transacted:-

- a) Election of the Chairman of the meeting.
- b) Election of the Secretary of the society every three years.
- c) Election of the office bearer for Governing Body's every three years.
- d) To review the progress of the institutions.
- e) Proposals submitted by the Executive Committee and Governing Body and its sub committees.
- f) Accounts of receipts and expenditure the previous/current year's and financial position of the society and institutions.
- g) Proposals submitted by the secretary of the society.
- h) Any other matter with the permission of the chair or passed by majority vote.

Rule regarding amendment in the constitution of the Society reads as under:-

“In case of amendment in the constitution, the amendment should be passed by majority of members of the society on roll but 2/3rd of the members present. The quorum of 1/6 members of the total strength on roll of the society will be legal for meeting.

No member will be allowed by proxy in any meeting of the society.”

At this stage, it is pertinent to note that at the inception of the Society it was provided in its constitution (Ex.D1) that the maximum members of the Society shall not exceed 101 at any stage, out of which 85 members would be

registered as permanent members and 16 as annual members. The provision was thereafter amended. As per Ex.D2 the maximum members of the Society, it was stipulated, shall not exceed 201 at any point of time, out of which 185 members would be registered as life members and 16 as annual members. As per Ex.D3 i.e., the regulations in currency at the relevant time, it is provided that,

“the Society shall have 201 life members”.

Thus, the distinction between life members and annual members was obviously done away with. I do not find merit in the argument raised by learned counsel for the appellant that the said regulation lays down a mandate that at any given point of time the Society shall have a minimum of 201 life members and that no maximum limit has been prescribed. Such an interpretation cannot be countenanced in the light of the specific clause which is clear on a plain reading thereof. The facts and circumstances of the case do not call for reading anything more in the said clause. The term 'shall' occurring in this rule clearly indicates that the stipulation is to the effect that at any given point of time, the Society would have 201 members and not above. There is no doubt that the finding of both the learned courts below in this respect is correct and in accordance with the evidence on record.

The next limb of the argument raised by learned counsel for the appellant is that even if it is accepted that there is a restriction imposed upon the number of members to be inducted, 90 members have been inducted in accordance with the constitution of the Society. It was resolved in the meeting held on 18.06.200 that the Society would have 100 members who may not be treated as life members, but would have all the rights to vote, contest, elect etc.

and they would be members of the Society in addition to 201 life members. The said argument is inherently flawed as a perusal of regulation 4 reveals that there is a mention of only 201 life members. The earlier distinction which was made between life members and annual members was done away with as reflected in Ex.D3. Once there was no provision for induction of members other than life members apart from the other aspects of the case, the said resolution was clearly flawed being in stark violation of the constitution of the Society. Both the learned courts below have rightly held that resolution passed in the annual general meeting held on 18.06.2005 increasing the membership by an addition of 100 members is not a valid resolution, therefore, liable to be set aside.

It is not disputed that addition of the new members by way of amendment of the constitution of the Society did not find place in the agenda, which was circulated before the said meeting. Though any matter with the permission of the chair, needless to say, can be taken up, the fact that such an important issue effecting the constitution of the Society itself was carried out in such a surreptitious manner reflects a lack of bonafides. Resolution which was passed in the meeting held on 18.06.2005 reads as under:-

“Resolution:- With the permission of chair

Shri Puneet Gupta has informed the house that in rule 4 of the rules and regulations of Society nowhere it has been stipulated with respect to the number of the members in the procedure for making member whereas number of life members mentioned as 201. He has proposed to the house that clarification regarding number of members be made and these numbers be specified in figure. The resolution has been endorsed by Shri Vikas Goel, Shri Rajesh Aggarwal and Shri Hari Kishan, because since last 20 years, the Society has opened the new public school and Engineering

College and for this reason, the activities of Society has increased manifolds, and in future as well, there is a planning to open new institutions.

After bearing thoughtful consideration and to keep the interest of Society to be prime, from the members present in the house, a majority of 74 has resolved as follow:

Resolved that Society shall have 100 members, who of course, may not be treated as life members, who however will have all the rights to vote and contest election etc. etc. and for all purposes they shall be members of the Society in addition to 201 life members.”

It is apparent that this resolution was not passed in terms of Clause 5 of the constitution of the Society which provides that an amendment in the constitution can be carried out by a majority of the members of the Society on roll but 2/3rd of the members present. At the time of passing of resolution dated 18.06.2005, admittedly 102 members were present and the resolution was passed by 74 members.

Learned counsel for respondents No.1 and 2 has rightly argued that for an amendment in the constitution of the Society, the resolution should be passed by a majority of the members of the Society on the rolls as well as 2/3rd members present. Interpretation sought to be projected by learned counsel for the appellant that it is the presence of majority of the members of the Society, which is required at the time of the passing of the amendment with 2/3rd of the same agreeing to the amendment is unacceptable, hence rejected.

Learned counsel for the appellants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned courts below have

returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 30.04.2013 and 24.08.2015 passed by the learned Civil Judge (Junior Division), Hoshiarpur and the learned District Judge, Hoshiarpur, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

(**LISA GILL**)
JUDGE

December 19 , 2018.
'om'

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