

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

**CWP-2838-2019 (O&M)
Date of Decision: 27.02.2019**

Shri Sanatam Dharam Sabha (Regd.) & another ... Petitioners

Versus

Registrar General of Societies, Haryana & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. D.V. Sharma, Senior Advocate with
 Mr. Amandeep Vashisht, Advocate for the petitioners.

 Mr. Siddharth Sanwaria, DAG, Haryana.

 Mr. V.K. Jindal, Senior Advocate with
 Ms. Janya Sirohi, Advocate for respondents No.3 and 4.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

CM-3023-CWP-2019:

 Application is allowed as prayed for. The accompanying
document at Annexure P-9 is taken on record.

 Application is disposed of.

Main case:

 The Sanatam Dharam Sabha and S.D. Modern Senior
Secondary School Society are two separate societies registered under the
Haryana Registration and Regulation of Societies Act, 2012 (hereinafter to
be referred to as 'the 2012 Act') and carry registration No.00470 dated
15.04.2013 and registration No.00472 dated 15.04.2013 respectively.

 Both the afore noticed Societies have filed the instant writ
petition assailing the order dated 10.07.2018 (Annexure P-6) passed by the
State Registrar of Societies, Haryana and in terms of which the election

conducted on 03.06.2018 of the office bearers has been set aside. Further challenge is to the order dated 31.12.2018 (Annexure P-5) passed by the Registrar General of Societies, Haryana and whereby the appeals preferred by the Societies against the setting aside of the election have been dismissed.

Notice of motion.

On the asking of the Court, Mr. Siddharth Sanwaria, learned DAG, Haryana accepts notice on behalf of respondents No.1, 2 and 3.

Ms. Janya Sirohi, Advocate, who is present in Court accepts notice on behalf of respondents No.4 and 5.

Complete copies of the writ paper book already stood furnished to counsel for the respondents.

With the consent of counsel for the parties, the writ petition is taken up for final disposal today itself.

Counsel for the parties have been heard at length and the case paper book has been perused.

It has gone uncontroverted that the District Registrar, Firms and Societies, Gurugram vide order dated 25.06.2018 (Annexure P-7) referred the case of election dispute pertaining to Sanatam Dharam Sabha Society to the State Registrar of Societies, Haryana under Section 40 of the 2012 Act. It is in pursuance to such reference that the impugned order dated 10.07.2018 came to be passed by the State Registrar of Societies, Haryana at Annexure P-6 and in terms of which the elections pertaining to both the petitioners/ Societies were set aside. Such order passed by the State Registrar of Societies, Haryana stands affirmed even by the Appellate Authority i.e. the Registrar General of Societies, Haryana vide order dated 31.12.2018

(Annexure P-5).

The first contention raised by Mr. D.V. Sharma, learned senior counsel representing the petitioners is to the effect that there was no reference under Section 40 of the 2012 Act insofar as S.D. Modern Senior Secondary School Society and which has not met with any rebuttal either by learned State counsel or by Mr. Jindal, learned senior counsel representing respondents No.4 and 5.

Under such circumstances, where a reference had not even been made under Section 40 of the 2012 Act pertaining to the S.D. Modern Senior Secondary School Society, the State Registrar of Societies, Haryana could not have set aside the election pertaining to such Society. Even the order passed by the Appellate Authority to such extent is patently erroneous. It is well settled in law that if the initiation of proceedings is bad in law the consequential proceedings also cannot survive. In the present case, however, there was no initiation at all insofar as the S.D. Modern Senior Secondary School Society is concerned as there was no reference pertaining to such Society made by the District Registrar, Firms and Societies under Section 40 of the 2012 Act. The impugned order dated 10.07.2018 passed by the State Registrar of Societies, Haryana and order dated 31.12.2018 passed by the Registrar General of the Societies, Haryana qua petitioner No.2/Society, as such, cannot sustain and the same are set aside.

Mr. D.V. Sharma, learned senior counsel has made a vehement attempt to impress upon this Court that the impugned orders cannot survive even qua petitioner No.1/Society. In such regard, it is contended that the

parties concerned had agreed before the Administrator who had been duly appointed that there was no need for videography as also for putting any serial numbers on the ballot papers and as such, the election pertaining to petitioner No.1/Society could not have been set aside on such ground.

In the considered view of this Court, the submission advanced by learned counsel qua petitioner No.1/Society is not well founded.

Section 40 of the 2012 Act reads as follows:

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

(1) 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 members of the General Body and where a dispute or doubt arises with regard to election or continuance of any members in the Governing Body, the District Registrar and if there is need to constitute the collegium, then the District Registrar or at least one forth 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); or*
- (ii) that the nomination of any candidate has been improperly rejected; or*
- (iii) that the result of the election, insofar 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.”

As per Section 40 wherever a dispute or doubt arises with regard to election to the office bearers of the Society, it would be open for the District Registrar to make a reference to the State Registrar as regards the election that had been so conducted. The proviso to Section 40 mandates that election of any or all the member of the collegium or the office bearers of the Governing Body of the Society concerned may be set aside where the Registrar is satisfied that any corrupt practice has been committed by such office bearer or that the nomination of any candidate has been improperly rejected or that the result of the election has been materially effected by the improper acceptance of any nomination or by the improper rejection.

Placed on record at Annexure P-4 is an order dated 13.04.2018 passed by the District Registrar, Firms and Societies, Gurugram. Perusal of the same would reveal that Deep Chand, who had been appointed as an Administrator had been directed that the election process be conducted upon following the process of videography.

Needless to observe that conducting videography of the election process as also assigning serial numbers to the ballot papers are measures only to obviate any corrupt practice that may be committed.

The contents of the order dated 13.04.2018 (Annexure P-4) are not in dispute. No challenge at any point of time has been raised to such order.

Learned senior counsel representing the petitioner/Society does

not dispute that the election had been conducted on 03.06.2018 qua petitioner No.1/Society without there being any videography as also without assigning any serial numbers on the ballot papers. This is precisely what has weighed with the State Registrar of Societies, Haryana to pass the order dated 10.07.2018 while setting aside the election of petitioner No.1/Society. Such decision has thereafter been affirmed by the Appellate Authority as well.

This Court does not find any infirmity in the impugned orders insofar as setting aside the election of the petitioner/Society is concerned.

In view of the discussion above, the instant writ petition is partly allowed. The impugned orders at Annexures P-5 and P-6 are held to be bad in law and inoperative qua the elections conducted of petitioner No.2/Society is concerned. However, the afore noticed two orders are affirmed qua the setting aside of the elections of petitioner No.1/Society.

Disposed of.

27.02.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |