

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

CWP-18675 of 2019 (O&M)

Date of decision:- 18.07.2019

Kuldeep Singh Kohli

.....petitioner

Versus

Registrar General of Firms and Societies, Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Amandeep Vashisth, Advocate for
Mr. Drupad Sangwan, Advocate for the petitioner.

TEJINDER SINGH DHINDSA J.

Petitioner has filed the instant petition assailing the order dated 12.02.2019 passed by the State Registrar of Societies Haryana, (Annexure P-8) and in terms of which an appeal preferred by respondent No.5 under Section 79 of the Haryana Registration and Regulation of Societies Act 2012 has been accepted and the nomination of the petitioner to contest elections to the post of President of the La Lagune Apartment Owners Association, has been rejected.

Further challenge is to the order dated 31.05.2019 passed by the Registrar General of Societies Haryana (Annexure P-9) affirming the order dated 12.02.2019 passed by the State Registrar of Societies, Haryana.

Brief facts that would require notice are that the petitioner is a member of respondent No.6 which is a society having Registration No.1637 dated 09.02.2015. The schedule of election of the governing body of respondent No.6 society was issued by the Election Officer in the month of December 2018. As per the election schedule, the voter list of 266

members was displayed on the notice board. Nominations were filed on 10.01.2019. Petitioner herein also filed his nomination for the post of President of the Society. Respondent No.5 submitted an application dated 11.01.2019 to the Election Officer against the nomination of the petitioner raising an objection that a member of the BOM cannot contest re-election who has served for the last two consecutive terms. The categorical objection raised was that the nomination of the petitioner was contrary to the Byelaw No.8 (iii) of the Society. Such objection raised by respondent No.5 was rejected by the Election Officer on 16.01.2019 (Annexure P-6) taking a view that the restrictions being cited as per Byelaw 8 (iii) is not in line with the provisions of the Haryana Registration and Regulation of Societies Act 2012 (hereinafter to be referred to as the Act) and as such the nomination of the petitioner seeking re-election is valid. In such communication dated 16.01.2019 (Annexure P-6) reference was even made to a clarification dated 12.06.2017 issued by the District Registrar Firms and Societies Gurgaon (Annexure P-7) wherein a similar view had been voiced. Respondent no.5 at this stage preferred an appeal under Section 79 of the Act, against the order dated 16.01.2019 passed by the Election Officer. In the appeal a challenge was also laid to the clarification contained in the letter dated 12.06.2017 issued by the District Registrar Firms and Societies Gurgaon at Annexure P-7 and on the basis of which the Election Officer had upheld the nomination of the petitioner.

It is such appeal that has been accepted by the State Registrar of Societies, Haryana vide order dated 12.02.2019 at Annexure P-8 rejecting the nomination of the petitioner to contest re-election. The petitioner having challenged the order dated 12.02.2019 passed by the State Registrar of Societies Haryana, the same stands affirmed vide order dated

31.05.2019 passed by the Registrar General of Societies, Haryana (Annexure P-9).

It is against such brief factual backdrop that the instant writ petition has been filed assailing the orders passed by the State Registrar of Societies, Haryana as also the Registrar General of Societies, Haryana at Annexures P-8 and P-9 respectively.

Learned counsel representing the petitioner would vehemently contend that there is no restriction under the Act or the rules made thereunder on the number of “terms” for re-election by an office bearer, and as such any restriction in such regard under the Byelaws of the Society would have to be considered to be inconsistent with the provisions of the Act and would be liable to be ignored. In support of such contention reliance was placed by counsel on a ***Division Bench judgement of Delhi High Court rendered in WP (C) 2859 of 2008 titled as Col. Suresh Chand (Retired) and another Vs. Delhi Cooperative Tribunal and others decided on 19.11.2009.*** The second submission raised by counsel is that the appeal that had been preferred by respondent No.5 against memo dated 12.06.2017 issued by the District Registrar Firms and Societies Gurgaon before the State Registrar of Societies, Haryana, under Section 79 of the Act, was time barred. Counsel would advert to Section 79 (iii) of the Act which provides that any appeal may be filed within a period of 60 days from the date of passing of the impugned order and the Appellate Authority may entertain an appeal beyond this period but upto a maximum of another 60 days on sufficient grounds for condonation of delay being shown. It is contended that respondent No.5 had preferred the appeal under Section 79 of the Act against memo dated 12.06.2017 of the District Registrar, Firms and Societies Gurgaon, only in the month of January 2019 and the same

ought to have been dismissed solely on the ground of delay.

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

Byelaw 8 (iii) of the Byelaws of the respondent No.6-Society reads as under:-

“8 (iii)- Members of BOM cannot contest re-election after having served in last two consecutive BOMs”.

It is the contention raised by counsel that the aforesaid byelaw is inconsistent with the provisions of the Act. Inconsistency would arise in a situation where the same subject matter/field is covered by a provision under the Act as also under the Byelaws. In such a situation, there would be no quarrel with the proposition that the provision under the Act would prevail and the relevant byelaw would have to give way. In the present case the Act is completely silent with regard to the subject of disqualification of a member of a BOM choosing to contest re-election and in a situation that such member had already served in the last two consecutive BOMs. Rather the act does not laid down any disqualification. No provision under the Act in such regard has been pointed out to the Court by the counsel representing the petitioner. In other words the field/subject of disqualification is occupied only by the byelaws framed for respondent No.6-Society. The issue as regards in consistency between the Act and Byelaw 8 (iii) of the society as such does not exist.

The reliance placed by counsel upon the Division Bench judgement of the Delhi High Court in **Col.Suresh Chand's case (supra)** is misplaced. In that matter the Delhi Co-operative Societies Act 1972 was replaced by the Delhi Co-operative Societies Act 2003. Section 35 of the 2003 Act dealt with election and nomination of members of the committee.

Section 35 of the 2003 Act replaced the provisions of Section 31 of the old 1972 Act. Section 31 (5) (a) of the Old Act stipulated that a person shall be disqualified for election to the Office of the President, Vice -President etc., if such person held any such office in that committee during two consecutive terms, whether in full or in part. Such disqualification which was there under the old 1972 Act, did not find a mention in the new Act and particularly in Section 35 (7) thereof. It would be useful to refer to Section 35 (7) of the 2003 Act and which was in the following terms:-

“35. Election and nomination of members of committee

(1) xxxx xxxx xxxx xxxx

(2) xxxx xxxx xxxx xxxx

(3) xxxx xxxx xxxx xxxx

(4) xxxx xxxx xxxx xxxx

(5) xxxx xxxx xxxx xxxx

(6) xxxx xxxx xxxx xxxx

(7) Notwithstanding anything contained in this Act, a person shall be disqualified for election of office in a committee -

(a) if he holds any such office on a committee of another co-operative society of the same type;

(b) if he holds any such office on the committees of three or more co-operative societies of a different type or types;

(c) if he has been held guilty of any of the offences as enumerated in section 118;

(d) if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed in this Act;

(e) if he fails to give a declaration on oath about his eligibility

for contesting election as prescribed.”

The afore-reproduced Section 35 (7) makes it clear that it does away with the disqualification of a person running for three consecutive terms of office which was a disqualification under Section 31 (5) (a) of the old Act. However byelaw 24 (b) which was in terms with the old Act, continued to carry such disqualification. It was under such circumstances that a view was taken that since the field of disqualification already stood occupied by Section 37 (7) of the 2003 Act, the byelaw in question i.e. 24 (b) cannot be at variance and add to the disqualifications. In the present case however the Act is completely silent on the subject of disqualifications. The disqualifications are contained only under the Byelaws i.e. Byelaw 8 (iii). The judgment in Col. Suresh Chand's case (*supra*) as such is distinguishable on facts.

The submission raised by counsel that the appeal preferred by respondent No.5 under Section 79 of the Act being time barred is without merit. The appeal preferred by respondent No.5 was essentially against the order of the Election Officer on 16.01.2019 (Annexure P-6) holding the nomination of the petitioner herein seeking re-election to be valid and overruling the objection with regard to the restriction contained under Byelaw 8 (iii). The appeal had been preferred by respondent No.5 against the order dated 16.01.2019 (Annexure P-6) immediately and in the month of January 2019 itself. Since the impugned order dated 16.01.2019 issued by the Election Officer made a reference to a clarification dated 12.06.2017 issued by the District Registrar, Firms and Societies, Gurgaon (Annexure P-7), accordingly, such clarification dated 12.06.2017 also became a subject matter of consideration before the State Registrar of Societies, Haryana.

The cause of action insofar as respondent No.5 is concerned, had arisen

from the date of passing of the order dated 16.01.2019 (Annexure P-6) by the Election Officer. There was no delay as such in having filed an appeal under Section 79 of the Act. Even otherwise the communication dated 12.06.2017 issued by the District Registrar, Firms and Societies Gurgaon at Annexure P-7 was in the nature of a clarification issued pursuant to a query having been raised by the President of the respondent No.6-Society at that point of time and which was none other than the petitioner herein. Respondent No.5 was not even a party to the proceedings which had led to the issuance of the clarification dated 12.06.2017 at Annexure P-7. The objection that has been raised by counsel as regards delay in entertaining the appeal under Section 79 of the Act at the hands of the State Registrar of Societies, Haryana, as such is rejected.

On a specific query having been put counsel concedes that Byelaw 8 (iii) of the respondent No.6-Society has not been amended till date. The restriction contained in such byelaw as such would apply.

No infirmity is found in the impugned orders dated 12.02.2019 passed by the State Registrar of Societies, Haryana, (Annexure P-8) as also the order dated 31.05.2019 passed by the Registrar General of Societies Haryana (Annexure P-9).

Writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

18.07.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No