

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

**CWP No.12973 of 2022(O&M)
Date of Decision:22.07.2022**

T.K. Chawla

..... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Amit Jhanji, Sr. Advocate with
Mr. Abhishek Kumar, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Akash Sridhar, Advocate,
Mr. M.K. Mittal, Advocate and
Mr. Surender Chaudhary, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction, especially in the nature of certiorari for setting aside the order dated 04.01.2022 passed by respondent No.2, whereby result of the election dated

17.08.2021 to the post of President of The Shree Sanatam Dharam Sabha (Regd.)/respondent No.6 Society has been set aside and directions have been issued to respondent No.3 to get re-poll done for the post of President.

[2]. Perusal of the record would show that the election of the governing body of respondent No.6 was held on 07.02.2021 by following Haryana Registration and Regulation of Societies Act, 2012 (hereinafter called HRRS Act 2012). The result was announced on the same day.

[3]. Petitioner and respondent No.5 were contesting for the post of President. There was a tie between the candidates for the post of President as they secured equal number of votes. A clarification was sought by the District Registrar from the State Registrar in case of tie and the State Registrar advised the District Registrar to take action under the provisions of HRRS Act, 2012. There is no provision to meet such type of contingencies under the Act and Rules framed thereunder, except that the election of the Society can only be conducted by applying HRRS Rules. Initially, the District Registrar vide memo dated 15.03.2021 advised that re-poll for the post of President of respondent No.6 Society be conducted and intimation was also given to the Returning Officer (Sh. P.S. Birla, Advocate). Thereafter, on 17.03.2021, the Returning Officer wrote a letter

to the District Registrar after going through different Acts and Rules on the subject, particularly Section 102 of the Representation of People Act, 1951, Rule 71 of the Haryana Panchayati Raj Election Rules, 1994, Rule 73 of the Haryana Municipal Corporation Election Rules, 1994 and Rule 72 of Haryana Municipal Election Rules, 1978 and communicated to the District Registrar that in the event of finding equal number of votes in favour of both the contestants, the addition of one vote will entitle any of those candidates to be declared elected. The Returning Officer shall decide between those candidates by lot and proceed as if the candidate on whom the lot fall has received one additional vote. Meaning thereby, draw of lots was proposed to answer the aforesaid situation.

[4]. On the basis of aforesaid reference made by the Returning Officer, the District Registrar passed an order dated vide memo No.839 dated 28.07.2021 in larger public interest and advised that draw of lots for the post of President of respondent No.6-Society between the petitioner and respondent No.5 be done and report of the same be sent to the District Registrar within 21 days positively. The aforesaid order/letter dated 28.07.2021 passed by the District Registrar has not been assailed in any Forum.

[5]. In compliance of the aforesaid order/letter dated

28.07.2021, the Returning Officer intimated both the contestants/candidates vide memo dated 11.08.2021, informing that process of draw of lot shall be conducted on 15.08.2021 in the office of respondent No.6-Society. No other person shall be allowed to be part of that process as the same was to be carried out strictly in accordance with the settled principles of election. Thereafter, vide memo dated 13.08.2021, the Returning Officer wrote to the District Registrar, communicating that he has made communication to both the contestants. Petitioner has accepted the communication by giving his consent for draw of lot, whereas respondent No.5 has refused to receive communication and returned the same to the Returning Officer. Thereafter, the Returning Officer sent all the communications to respondent No.5 through electronic media i.e. on whatsapp number. On receiving the communication, respondent No.5 replied in the following manner:-

“not possible due to 15th August already busy”

[6]. After that, the Returning Officer again sent a communication to respondent No.5. Returning Officer informed respondent No.5 that this is an election matter and election process once started cannot be stopped midway and election has to be completed within fixed time framed. The request was made to ensure the presence of respondent No.5 on the date

fixed as communicated in the earlier communication, otherwise, election process shall be completed *ex parte*.

[7]. On 17.08.2021, the Returning Officer conducted the process of election. Petitioner came present well in time, but respondent No.5 did not turn up. The Returning Officer proceeded to complete the election process by drawing lot for the post of President. After waiting for sufficient time for the presence of respondent No.5, the petitioner was declared as unopposed winning candidate and the Returning Officer declared him as duly elected President of respondent No.6. The complete list of office bearers of Managing Committee of respondent No.6 was prepared. On 17.08.2021, the Returning Officer issued the election certificate to the petitioner, endorsing his declaration that the petitioner is duly elected President of Managing Committee of respondent No.6-Society. The election was duly approved and an approval was granted to the elected governing body under Section 33 and Rule 19 of the HRRS Act, 2012 on 09.09.2021 by the District Registrar.

[8]. Respondent No.5 filed a petition under Section 40 of the HRRS Act, 2012 before the State Registrar of Firms and Society, Haryana vide Civil Appeal No.1014 of 2021 against the order dated 17.08.2021 passed by the District Registrar, declaring the petitioner as President of respondent No.6 vide ex

parte decision.

[9]. The State Registrar of Societies vide order dated 04.01.2022 conveyed on 10.03.2022 has accepted the appeal of respondent No.5, thereby setting aside the election result dated 17.08.2021 on the ground that there was undue haste shown by the Returning Officer as there was a tie for the post of President. The date of election was fixed on a national holiday initially for 15.08.2021 and thereafter on 17.08.2021 i.e the date on which respondent No.5 had a loss in the family and the process of draw of lot was not carried out in a transparent manner. Respondent No.5 was not present and it was the duty of the Returning Officer to get the process duly videographed so that no one could challenge the sanctity of the process. The State Registrar passed the order, concluding part of which reads as under:-

“In view of the facts as stated above, I am of the strong opinion that election result dated 17.08.2021 declared by the Returning Officer for the post of President needs to be set aside on the ground that there has been an undue haste shown by the returning officer post there was a tie for the post of Presidentship. Keeping an election on a national holiday i.e. 15.08.2021 and thereafter on 17.8.2021 that too knowing fully well that the Petitioner has had a family loss reflects upon the insensitivity as well as self created urgency by the Returning officer. Besides, when the authority asked for

the videography of the draw of lot conducted on the 17.08.2021, it was told that there was none. The authority would have surely considered the contentions of the Respondents had there been a clear intention of getting the process of draw of lot carried out (even in petitioners absence) in utmost transparent manner. Since the petitioner was not present at the time of draw of lots it was the bounden duty of the Returning officer to get the same duly videographed so that no one could challenge the sanctity of the process atleast and even the Authority would have then deemed it a 'fait accompli' A little commonsense combined with vision and realistic planning was warranted here. Considering the fact that the petitioner enjoyed equal mandate in terms of votes for the post of President, even a minor transgressions in the electoral process would demean the entire electoral process. Thus, in view of the same election result dated 17.08.2021 declared by the Returning officer for the post of President is hereby set aside and District Registrar is hereby instructed to get a re-poll done for the post of President of Society."

[10]. Order dated 04.01.2022 passed by the State Registrar is being assailed in the present writ petition on the premise that instead of re-poll, draw of lot would be an appropriate process in order to prevent rigour of different compliances.

[11]. Learned Senior Counsel for the petitioner submitted that vide order dated 28.07.2021 passed by the District Registrar, draw of lot was ordered in larger public interest and

the said letter/order dated 28.07.2021 has attained finality. Even that letter/order dated 28.07.2021 was not assailed in the petition No.1014 of 2021 before the State Registrar. Learned State Counsel further submitted that the petition under Section 40 of the HRRS Act is not maintainable at the instance of respondent No.5. Section 40 of the HRRS Act, 2012 reads as under:-

“40. Settlement of disputes arising from election of Collegium or Governing Body and its office-bearers:- (1) *The Registrar, on a reference made to him by the District Registrar or by at least one-fourth of the members of the General Body or the Collegium, as the case may be, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of any elected member or office bearer to the Collegium or Governing Body, as the case may be, and may pass such orders in respect thereof, as he deems appropriate:*

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, in so far 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.

Explanation I. - *A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or through any other person-*

(i) induces or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury to any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;

(ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to induce any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets the doing of any of the acts specified in clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste,

community, sect or religion;

(vi) commits such other practice as the Government may prescribe to be a corrupt practice.

Explanation II. - *A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself, or for anyone in whom he is interested.*

(2) The Government may, prescribe the procedure for hearing and deciding of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections, for which insufficient provision exists in the Act or in the rules framed thereunder.

(3) Where by an order made under sub-section (1), an election to the Collegium or the Governing Body is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearer of a Society has not been held within the time and in accordance with the Bye-laws, he may cause a meeting of the General Body or Collegium, as the case may be, convened for electing such office-bearer or office-bearers, and such meeting shall be presided over and conducted by the District Registrar or by any officer authorized by the Registrar in this behalf, and the provisions of the Bye-laws relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(4) Where a meeting of the General Body or the Collegium, as the case may be, is convened on the orders of the Registrar under sub-section (3), no other

meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the Society.”

[12]. Question of law as to whether the petition filed by an individual member of the Society, challenging the election of the collegium by way of a petition under Section 40 of the HRRS Act, 2012 is maintainable or not has been answered in a bunch matter with lead case **CWP No.280 of 2016** titled **Rajiv Dahiya Vs. State of Haryana and others** vide order dated 30.11.2016.

It has been held that for the purposes of challenging the election in terms of Section 40(1) of the HRRS Act, 2012, either the reference has to be made by the District Registrar or by way of a petition by any member of the general body with at least 1/4th members signatures on the petition. The legal issue was decided in the aforesaid manner.

[13]. On the basis of judgment dated 30.11.2016 passed in CWP No.280 of 2016, learned Senior Counsel submitted that petition under Section 40 of the HRRS Act at the instance of respondent No.5 alone was not maintainable. Learned Senior Counsel further submitted that *de hors* the impugned order, draw of lot would be appropriate, for which, he is still ready and willing as the same was rightly ordered by the District Registrar on 28.07.2021 and the said order has attained finality.

[14]. *Per contra*, learned counsel for respondent No.5

submitted that the impugned order is appealable under Section 79 of the HRRS Act, 2012 and therefore, present writ petition is not maintainable. Learned counsel further submitted that draw of lot was conducted in the absence of respondent No.5 when an intimation was sent in respect of pre-occupation of respondent No.5 on account of death in the family and draw of lot was held in a very hastily manner without any videography of the process of draw of lot..

[15]. Learned Senior Counsel for the petitioner countered the objections of learned counsel for respondent No.5 and submitted that once the impugned order is found to be without jurisdiction, then the High Court has the discretion to entertain a writ petition for the enforcement of fundamental right, protected by Part-III of the Constitution of India. The existence of alternate remedy does not by itself divest the High Court of its power under Article 226 of the Constitution of India in an appropriate case. It is true that the High Court would not exercise its writ jurisdiction in normal circumstances, when an efficacious alternate remedy is available. At the same time, existence of an alternate remedy does not by itself create a bar for exercising jurisdiction by the High Court in certain contingencies.

[16]. The Hon'ble Supreme Court in **Magadh Sugar & Energy Ltd. Vs. State of Bihar and others, 2021 SCC Online**

SC 801 by relying upon earlier view expressed in Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai (1998) 8 SCC 1, Harbanslal Sahni Vs. Indian Oil Corporation Ltd.,(2003) 2 SCC 107 and Radha Krishan Industries Vs. State of Himachal Pradesh, 2021 SCC Online SC 334 has summarized the principles governing exercise of writ jurisdiction by the High Court in the following manner:-

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) **the order or proceedings are wholly without jurisdiction**; or (d) the vires of a legislation is challenged;*
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*
- (v) When a right is created by a statute, which itself*

prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

[17]. Evidently, HRRS Act, 2012 is silent in respect of proposition in issue, but perusal of Section 102 of the Representation of People Act, 1951, Rule 71 of the Haryana Panchayati Raj Election Rules, 1994, Rule 73 of the Haryana Municipal Corporation Election Rules, 1994 and Rule 72 of Haryana Municipal Election Rules, 1978 would show that draw of lot is an appropriate remedy to answer the present controversy. Vide the impugned order, State Registrar has ordered re-poll by setting aside the order dated 17.08.2021 passed by the District Registrar. Petitioner is ready and willing to participate in draw of lot for declaring the elected President of respondent No.6-Society as earlier ordered by the District Registrar on 28.07.2021, which has already attained finality.

[18]. In view of aforesaid facts, I deem it appropriate to

quash the order dated 04.01.2022 passed by respondent No.2.

In the light of aforesaid facts, order dated 17.08.2021 is also quashed in order to allow both the contestants to undergo process of draw of lot on a date to be fixed by the District Registrar. This writ petition is accordingly allowed. District Registrar shall undertake necessary exercise to conduct the election by draw of lot in accordance with law.

22.07.2022

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No