

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

Date of Decision:08.03.2022

1. CWP No.18719 of 2020(O&M)

Vijay Aggarwal

.....Petitioner

Vs.

District Registrar Firms and Societies and others

.....Respondents

2. CWP No.18811 of 2020(O&M)

Parveen Goel and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

3. CWP No.15113 of 2020(O&M)

S.D. Education Society Panipat through its Secretary Dinesh Goel and another

..... Petitioners

Vs.

District Registrar Firms and Societies Panipat and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Prateek Gupta, Advocate
for the petitioner(s) in CWP No.18719 of 2020 and
in CWP No.18811 of 2020.

Mr. Manish Gupta, Advocate and
Mr. Yagyaang Ajay, Advocate
for the petitioners in CWP No.15113 of 2020
for respondents No.2 to 4 in CWP No.18719 of 2020

and for respondents No.4, 5 and 6 in CWP No.18811 of 2020.

Mr. Ashish Yadav, Addl., A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CWP No.18719 of 2020 titled Vijay Aggarwal Vs. District Registrar Firms and Societies and others, CWP No.18811 of 2020 titled Parveen Goel and others Vs. State of Haryana and others and CWP No.15113 of 2020 titled S.D. Education Society Panipat through its Secretary Dinesh Goel and another Vs. District Registrar Firms and Societies Panipat and others are being disposed of.

[2]. In CWP No.18719 of 2020, challenge is to the resolutions dated 29.08.2020 and 30.08.2020 passed by S.D. Education Society and to the letters dated 13.09.2020 and 15.09.2020, wherein the petitioner was removed as President of the society. Petitioner has also prayed for decision on the representations dated 01.09.2020, 04.09.2020, 10.09.2020 and 16.10.2020 with a further prayer not to hold elections of the Society in view of letters dated 13.09.2020 and 15.09.2020.

[3]. In CWP No.18811 of 2020, challenge is to the order dated 13.09.2020, whereby respondent No.5 was appointed as Returning Officer for conducting the elections. Petitioner also sought restraint against 13 debarred members including

respondent No.5 from participating in the elections of the Society. Petitioner has also challenged the election notice dated 15.09.2020 being without approval of the General Body of the Society and based upon unapproved and unupdated list of members. Petitioner has also prayed for continuation of *ad hoc* committee amongst the General Body Members.

[4]. In CWP No.15113 of 2020, S.D. Education has come forward to challenge the letters dated 08.09.2020. 09.09.2020 and 10.09.2020. President namely Vijay Aggarwal was not made a party in the said writ petition, therefore, application under Order 1 Rule 10 CPC bearing CM No.9788-CWP of 2020 was filed.

[5]. Since the aforesaid writ petitions are in the context of elections of S.D. Education Society, therefore, common facts are being noticed.

[6]. Vijay Aggarwal was elected as President of S.D. Education Society, Panipat in December, 2018. The term of his appointment was upto December 2021. Before Expiry of his term, the Executive Committee of the Society vide resolution dated 29.08.2020, resolved to remove him from the post of President. Vide letter dated 30.08.2020, Society informed the District Registrar Firms and Societies, Panipat with regard to passing of aforesaid resolution dated 29.08.2020. Petitioner

filed his objections before District Registrar against the aforesaid resolution dated 29.08.2020 on 04.09.2020. District Registrar vide letters dated 08.09.2020, 09.09.2020 and 10.09.2020 wrote to the Society, seeking their comments and in the interregnum prohibited them from holding any meeting of Executive Committee. The Society challenged the aforesaid communications received from the District Registrar by filing a writ petition before the High Court i.e. CWP No.15113 of 2020 titled S.D. Education Society, Panipat Vs. District Registrar Firms and Societies, Panipat and others, in which notice was issued. Since Vijay Aggarwal was not made party as a respondent in the said writ petition, therefore, he filed an application under Order 1 Rule 10 CPC for being impleaded as party therein. The case was adjourned on 25.09.2020 to 22.11.2021. On 22.11.2021, as an interim measure, it was directed that no steps be taken on the basis of the aforesaid letters of the District Registrar. As per Section 40 of the Haryana Registration and Regulation of Society Act, 2012 (for short 'the Act'), in case of removal of an elected member or office bearer by any Society and if such removal is disputed by such member, then on a reference made by the District Registrar to the State Registrar, final adjudication can be made as to whether such removal is in accordance with law or not. In the instant case,

District Registrar on a dispute raised by the petitioner with regard to his removal was still contemplating to make a reference to the State Registrar under Section 40 of the Act. The Society challenged such action before this Court and while this issue was pending before the District Registrar and also before this Court through impugned resolutions/letters, the Society has decided to hold fresh elections to the post of President.

[7]. Evidently, if the Society resolves to remove any of its elected member or office bearer and if such member disputes the same, then on a reference made by the District Registrar or at least 1/4th of the members of the General Body or the Collegium of the Society, the final decision with regard to the legality of the removal of such elected member is to be seen by the State Registrar. Society resolved to remove the petitioner from the post of President, against which the petitioner availed his statutory remedy by filing objections against the removal before the District Registrar, seeking a reference to be made to the State Registrar for a decision under Section 40 of the Act. District Registrar wrote to the Society seeking their comments and in the interregnum restrained them from holding meetings of the Executive Committee. The Society challenged such action of the District Registrar by way of CWP No.15113 of 2020, in

which on 25.09.2020, an application was filed by the petitioner under Order 1 Rule 10 CPC. The matter was adjourned to 22.01.2021 and as an interim measure, direction was issued that no steps be taken in pursuance of aforesaid communications sent by the Registrar of the Society. A final decision on the statutory remedy availed of by the petitioner against the resolution of the Society, seeking to remove him from the post of President remained pending before the District Registrar as the District Registrar was yet to make a reference to the State Registrar for a final decision under Section 40 of the Act. In this manner, the issue was sub-judice before the High Court. The decision of the Society to hold fresh elections to the post of President is being assailed. According to the petitioner, holding of such election would be prejudicial to the rights of the petitioner as somebody would get elected to the post from which the petitioner's removal is yet to be finalized. Holding of fresh election would not only render the petitioner's statutory challenge to be infructuous, but would also create third party rights.

[8]. The period of three years of the tenure of the Governing Body of S.D. Education Society was to complete in October, 2021. The period started w.e.f. 16.10.2018. Vide order dated 23,12.2021, all the aforesaid three writ petitions were

ordered to be listed together. The elections of the Society including the post of President were conducted on 09.12.2018. As per Section 33(3) of the Haryana Regulation and Registration of Societies Act, 2012 (hereinafter referred to as 'HRRS Act, 2012'), the tenure of the Governing Body was of three years and was to expire on 08.12.2021. The entire house (having a body of 33 elected office bearers) was dissolved on 29.08.2020 and fresh elections were conducted on 08.11.2020. The elections were conducted for 32 posts out of 33 posts due to the interim order dated 06.11.2020 passed by the High Court. The Court refused to grant any such stay on the removal of the President. The elections for 32 posts were conducted on 08.11.2020 and were notified and approved by the District Registrar, Haryana on 20.11.2020. As per Section 33 read with Rule 19 of the HRRS Act, 2012 and Rules framed thereunder, the approval granted by the District Registrar, Haryana was notified and approved on 20.11.2020. The elections to 32 posts of office bearers were never assailed before the authorities under the Act and the same has attained finality. According to Section 39(2) of the HRRS Act, 2012, the process of elections of collegium of Society shall commence in so far as possible three months prior to the due date so that newly elected governing body is in place on or before the due date. In any case, election to the post of

President has to take place on due time after expiry of the tenure of the post. The writ petition in any case was to be rendered infructuous on 08.12.2021 after expiry of tenure for the post of President as the tenure of the governing body cannot exceed three years under Section 33(3) of the HRRS Act, 2012. It is also clear that in order to comply with the election process as prescribed under Section 39 of the HRRS Act, 2012, the proceedings in so far as possible should commence three months prior to the due date. There was no stay against holding of election.

[9]. On completion of tenure, election process was started. Once the election process starts from the date of issuance of notification of the election, the same has to end only with declaration of the result. The election process is not supposed to be stopped midway and the election process should be allowed to be completed in a normal process. Anyone aggrieved of the process of the election, has to file an election petition only. The election process started w.e.f. 13.09.2020. On 13.09.2020, the Executive Committee of S.D. Education Society unanimously decided to conduct the election of the office bearers and its educational institutions. Returning Officers were appointed on 13.09.2020. Voter list for the election were notified on 13.09.2020. On 15.09.2020, Returning Officers issued the

election schedule, thereby fixing date of submission of nominations as 01.11.2020, checking of nominations as 02.11.2020, date of withdrawal of nominations as 04.11.2020, distribution of election symbol as 04.11.2020 and date of election as 08.11.2020. On 01.11.2020, several candidates filed their nominations for 29 posts, for which elections were to be held. On 02.11.2020, checking of nominations was finalized. On 04.11.2020, after withdrawal of nominations, the Returning Officer notified that candidature is unopposed against 13 posts i.e. a single nomination was received against each of these 13 posts. In other words, election of these 13 posts stood completed on 04.11.2020. For conducting the elections of remaining 16 posts, distribution of election symbols was carried out by the Returning Officer and ultimately, election was carried out for remaining 16 posts on 08.11.2020. All these things happened during the pendency of present petition(s), wherein there was no such stay for holding elections. After withdrawal of nominations on 04.11.2020, candidatures of 13 candidates went unopposed. Only single nomination remained against each of these 13 posts. The details of candidates are tabulated hereasunder:-

Sr. No.	Name of Candidate	Post	Institution Name
1.	Vinod Kumar Garg	Auditor	APIIT SD India

2.	Anil Saraf	Vice Chairman	APIIT SD India
3.	Deepak Shingla	Secretary	SD Institute of Medical Sciences
4.	Sarwan Mittal	Vice Chairman	SD Institute of Medical Sciences
5.	Ram Lal Singla	Auditor	SD Institute of Medical Sciences
6.	Krishan Kumar	Joint Manager	SD Senior Secondary School
7.	Mukesh Singla	Cashier	SD Senior Secondary School
8.	Suraj Parkash Gupta	Auditor	SD Senior Secondary School
9.	Shri Krishan Aggarwal	Auditor	SD Vidya Mandir City
10.	Raghunandan Sarup Gupta	Chairman	SD Vidya Mandir City
11.	Abhay Shingla	Vice Chairman	SD Vidya Mandir City
12.	Sanjay Singla	Auditor	SD Vidya Mandir Huda
13.	Rohit Garg	Vice President	Shri SD Education Society (Regd.)

[10]. During course of hearing, it has been brought to the notice of this Court that Anoop Kumar Garg has been elected as unopposed President in the election of S.D. Education Society when out of 5 candidates, 4 candidates withdrew their candidature and Anoop Kumar Garg was elected unopposed President. The information has already been sent to the District

Registrar.

[11]. Learned counsel for the petitioner wants to address arguments on merits of the case irrespective of the fact that nothing survives after declaration of the result of President, in which Anoop Kumar Garg has already been elected as unopposed President of the Society.

[12]. Under Article 329 of the Constitution of India, there is a bar to interference by the Courts in electoral matters. No election to either House of Parliament or to the House of Legislature of a State shall be called in question except by an election petition presented before the competent authority in the manner as prescribed under law. As a matter of general principle, the Courts should ordinarily refrain from interfering with the election process between the commencement of such a process and the stage of declaration of the result.

[13]. In the present case, result has been declared, therefore, the petitioner, if so advised, may resort to his remedy under the law. The plenary bar of Article 329(b) of the Constitution of India rests on two principles:

Firstly, the peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement

and the conclusion.

Secondly, the provision of a special jurisdiction, which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution.

[14]. The election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. The fate of the constituency or societies/institutions is involved and therefore, these overriding considerations for welfare of the constituency/society are to be of prime importance. The position of law as explained by the Hon'ble Apex Court in **N.P. Ponnuswami Vs. Returning Officer, AIR, 1952 SC 64,** **Mohinder Singh Gill Vs. Chief Election Commissioner, (1978) 1 SCC 405,** **Election Commission of India Vs. Ashok Kumar, (2000) 8 SCC 216,** **Shri Sant Sadguri Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others, (2001) 8 SCC 509** and **Supreme Court Bard Association Vs. B.D. Kaushik, (2011) 13 SCC 774** can be relied in this context.

[15]. The request of learned counsel for the petitioner for

decision of the case on merits cannot be appreciated as after holding of election to the post of President, nothing survives in the present petition(s). The issue remains only an academic issue, which can be decided in an appropriate case in future.

[16]. For the reasons recorded hereinabove, I deem it appropriate to dismiss all the writ petitions as having rendered infructuous. All the pending applications in the present writ petitions are disposed of accordingly.

08.03.2022	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No