

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

247

CWP-460-2022 (O&M))
Date of decision: 15.02.2024

Chander Parkash Sharma

...Petitioner

VERSUS

The State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Rakesh Nagpal, Advocate for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. H.S. Gill, Advocate for respondents No.4 and 5.

Mr. Nikhil Lather, Advocate for
Mr. Anurag Goyal, Advocate for respondent No.6.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 22.12.2021 (Annexure P-8) whereby respondent No.6 (Dr. Sharanjeet Kaur) has been given extension for a further period of one year as Vice President/Chairperson of the Haryana Welfare Society for Persons with Speech and Hearing Impairment, Panchkula by respondent No.3-The Governor of Haryana-cum-President of the Society.

The following contention of the petitioner was noticed by this Court, while passing its order dated 09.01.2023:-

“xxx

The present writ petition has been filed raising a challenge to the order dated 22.12.2021 (Annexure P-8) whereby respondent No.6 (Dr. Sharanjeet Kaur) has been given extension for a further period of one year as Vice President/Chairperson of the Haryana Welfare Society for Persons with Speech and Hearing Impairment, Panchkula (hereinafter referred to as 'the Society') by respondent No.3 – The Governor of Haryana-cum-President of the Society.

Learned counsel for the petitioner has also placed on record copy of the order dated 22.12.2022 whereby respondent No.6 has been granted extension of her term for a further period of one year.

Learned counsel for the petitioner has drawn attention of this Court to the Rules governing the affairs of the aforesaid Society. Membership has been defined under Rule 4 thereof which prescribes 7 different categories of members. It includes the Patrons, Founders, Life Members, Representative Members as well as Individual Members. The “Office Bearers” of the Society have been defined under Rule 7. A total of 3 posts of the Vice President are prescribed under the Rules of the Society of which two are ex-officio being the Chief Minister as well as Madam Lady Governor. The third Vice President to be appointed is a non-official who shall be nominated by the President. Such nominee of the President shall also be the ex-officio Chairman of the aforesaid Society.

Rule 13 prescribes the Executive Committee and it includes all office bearers of the Society. In addition, two members are sponsored to the Executive Committee from amongst the representatives of the local branch i.e. the representative members mentioned in Rule 4 (d). Besides there are Eight Ex-officio members who have been separately mentioned in Rule 4 (f) of the Rules. Six members are elected from amongst the individual members of the Society at an Annual General Meeting. The said elected members are from amongst the individual members as referred to in Rule 4 (g).

Rule 21 of the Society reads thus:-

“(i) The Executive Committee shall be elected for every two years. Nominations for the elected members of the Executive Committee will be proposed by the outgoing Managing Body which may make suggestions for the nomination of these seats for the coming term Provided that ordinarily no individual shall remain on the Committee for more than two consecutive terms.

ii) The President shall have the power to fill the vacancies in the committee which may arise from time to time.

The Executive Committee may invite to its meeting from time to time representatives of the State Government from whom the Society may receive or its likely to receive material or other help.

iii) The Assistant Secretary/Organising Secretary/ Incharge of the Society at the headquarters, if he is holding regular Charge, may incur an expenditure provided it is a routine item of expenditure involving no departure from settled policy and the sum involved is included in the budget estimated and does not exceed Rs. 500/-. For all expenses higher than Rs. 500/- sanction of the Honorary General Secretary may be obtained for all items included in the budget upto a maximum of Rs. 15000/-. The Chairman's sanction will be necessary for amounts exceeding Rs. 15000/-. For unbudgetted expenses involving more the Rs. 100/- sanction of the Chairman or President may be obtained and cases laid before the Executive Committee in due course.

The Assistant Director/Deputy Director of the Centre, if he is holding regular charge, may incur an expenditure upto Rs. 500/- in respect of budgeted items.”

Learned counsel appearing on behalf of the petitioner contends that the Executive Committee which compromises of not only the Ex Officio members but also the nominated and elected members along with the office bearers of the Society is for a tenure of two years. The nomination for the elected

members referred to in Rule 4 (d) read with Rule 13 (b) is to be proposed by the outgoing Governing Body and that ordinarily no individual shall remain on the Committee for more than two consecutive terms.

Learned counsel for the petitioner contends that the proviso stipulates that under ordinary process, no individual should remain in the Committee for more than two consecutive terms and that the respondent No.6 was appointed as a nominee Vice-President by the President of the Society in the year 2017. Her two terms came to end in the year 2021. She was granted first extension vide order dated 22.12.2021 (Annexure P-8) and that her second extension has now been granted vide order dated 21.12.2022 (Annexure P-18). He contends that the extension of the above term runs contrary to the Rules governing the Society. There is no reason why the process for filling up the vacancies/making up of nominations in the Executive Committee ought not to have been followed. He further avers that respondents have also resorted to nomination of yet another member namely Ms Swati Yadav as a Vice President of the Society vide order dated 27.07.2022 (Annexure P-17). He contends that she could not have been appointed as the Vice President of the said Society since the Rules specifically stipulate the total number of posts and their qualifications/ requirements. Only one member could have been appointed under Rule 7 (iii) and that appointment of Ms

Swati Yadav and the extension granted to respondent No.6 is beyond the Rules applicable to the above Society. It is also averred that a nominee Vice President is also ex-officio Chairperson of the aforesaid Society and that since the said office is a public office, appointment in such a clandestine manner, without affording equal opportunity to all other interested and eligible persons could not have been done. Such clandestine appointment/nomination by the State to a public office is in violation of Article 16 of the Constitution of India. No Rules/Regulations for seeking applications from interested persons or prescribing any qualifications/eligibility for nomination/appointment as Vice President-cum-Chairperson of the Society have been framed and no opportunity had been granted to the petitioner.

Learned counsel appearing on behalf of respondent No.6 contends that the petitioner has not raised a challenge to the initial appointment of respondent No.6 as the Vice President of the Society and that his grievance arose from the subsequent extension granted to the respondent No.6. He further contends that in the absence of any challenge to the initial appointment, the order of granting extension could not have been impugned. It is further vehemently argued by the said counsel that so far as the subsequent appointment of Ms Swati Yadav is concerned, the same is not a subject matter of challenge in the present petition and that said Ms Swati Yadav

is also not a party - respondent in the present petition.

It is not disputed by the respondents that office of the Chairman of the Haryana Welfare Society for persons with Speech and Hearing Impairment, Haryana, is a public office and that two persons could not be nominated by the President as Vice President under Rule 7 (iii).

Learned counsel for the respondents including the State could not refer to any advertisement issued by the respondents or any eligibility criteria prescribed to afford an equality of opportunity to interested and eligible persons to apply for nomination and/or appointment as Vice President-cum-Chairperson of the above said Society.

Invariably the public office prima facie is being continued to be occupied without complying with the mandate of Article 16 of the Constitution of India.

Learned counsel for the petitioner contends that taking into consideration the subsequent developments including appointment of Ms. Swati Yadav as Vice President, she may be impleaded as respondent No.7 on oral request.

On oral request, Ms Swati Yadav, having the residential address of Tower 3, Flat No.6-A, Hibiscus Apartments, Sector 50, Gurugram, Haryana, is impleaded as party respondent No.7.

Amended Memo of Parties shall be filed by the petitioner.

It is prima facie a case where the respondent-State has been making nominations/appointments by nomination without affording an opportunity of hearing to the interested parties even though the appointment is not disputed to be a public office. Besides the appointment of newly added respondent No.7 is although within the permissible limits of three Vice Presidents, however, the Rules provide that only one non-official social worker could be nominated. Since there is no Madam Lady Governor, hence, the said nominee may be a third Vice President, however, the Rules as they stand do not provide for three Vice Presidents simpliciter. Rather it categorises each of the said Vice Presidents. In the event of one of the category is not being occupied, the same cannot ipso facto be construed to allow filling up of the post of Vice President from any other category. The issue would thus require consideration since appointment is in violation of Rules.

Besides, Rule 21 provides for the terms of the Executive Committee. It provides that an "individual" shall not ordinarily remain on the Committee for more than two consecutive terms. The term "individual" used in Rule 21 cannot prima facie be read as "individual members". The same would amount to addition in the Rule and thus would be a Legislative function which High Court cannot do in exercise of its power of judicial review.

Besides, the Rules specifically refer to the words “individual members”, wherever it was their intention. Reference can be made to Rule 4 (g) and Rule 13 (d) to substantiate the same. Rule 21 (i) talks only about “individual.” The same is hence prima facie not the above category of members. The Rule provides for an ordinary term of not more than 2 consecutive durations. Extension cannot be devised as a means of granting 3 consecutive terms without any exceptional or special circumstances for giving an additional term.

Notice to the newly added respondent No.7.

Process dasti as well.

Learned counsel appearing on behalf of respondent No.5 also accepts notice on behalf of newly added respondent No.7 and prays for some time to file reply.

List on 16.02.2023.

In the meanwhile, operation of the impugned order of appointment of respondent No.7 Ms. Swati Yadav dated 27.07.2022 as well as the order of extension dated 21.12.2022 (Annexure P-18) granted to respondent No.6 shall remain stayed till the next date of hearing.

xxx”.

It was noticed that Bye-laws of the society stipulate only one nominated Vice-President to be appointed by the President and respondent No.7 having already been appointed as Vice-President, extension to another

nominated candidate could not have been given by the President as the same would be in violation of the constitutional mandate for appointment/nomination of the Vice-President.

Counsel for the respondents has handed over a copy of the order dated 22.08.2023 whereby the resignation of respondent No.6 as Vice-President has been accepted.

Since the challenge in the present writ petition was to the order whereby extension had been granted to respondent No.6 and she having already been resigned from the said post, no further grievance survives in the present petition and the issue is only academic. The said question is left open. The writ petition is hence **disposed of as having been rendered infructuous.**

(VINOD S. BHARDWAJ)
JUDGE

15.02.2024
Mangal Singh

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