

CWP-1279-2018
Date of Decision : 30.01.2024

Mahabir Chhoker

...Petitioner

Versus

State of Haryana and others

....Respondents

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

Present: Mr. Ravinder Malik, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Vivek Sheoran, Advocate for respondent Nos.6 and 7.

Mr. Jivesh Malik, Advocate for respondent Nos.8 to 12.

VINOD S. BHARDWAJ, J. (ORAL)

1. Challenge in the present writ petition is to order dated 06.01.2016 passed by the District Registrar, Firm & Societies, Panipat and the order dated 22.09.2017 passed by the Director of Industries & Commerce-cum-Registrar General of Societies, Haryana. A further prayer has been made for seeking directions to the respondents to conduct a fair and impartial enquiry into the resolution dated 20.12.2012 alleging that 149 fake voters/members had been inducted into respondent No.6-Society without depositing of the membership fee.

2. Counsel for the petitioner contends that the bye-laws of the Society prescribed that a fee of Rs.3100/- be deposited by an applicant desirous of being inducted as a life member of respondent No.6-Education Society, Samalkha, District Panipat and that one Bhagat

Singh and other private respondents had deposited only a sum of Rs.1100/-, yet they were shown as having been inducted as the voters of the respondent No.6-Society. It is contended that even the said receipt of Rs.1100/- does not bear any date. The induction of Bhagat Singh and other private respondents as members of the Society was thus, on the strength of an ante dated, forged resolution dated 20.12.2012. It is contended that the said objection was raised by the petitioner in the proceedings instituted before the District Registrar of Societies, however, he did not take the same into consideration and proceeded with an assumption that the membership fee had been deposited. He submits that aggrieved of the said order, an appeal No.278 of 2015 had been preferred by the petitioner before the State Registrar of Societies, Haryana. The same was dismissed by the State Registrar on the ground that The Haryana Registration and Regulation of Societies Rules, 2012 was not applicable to the Society on the date when the members were inducted since the Society had not obtained new Registration number under The Haryana Registration and Regulation of Societies Act, 2012. He further submits that the petitioner preferred a revision against the said order passed before the Registrar General, however, he also dismissed the said appeal/petition bearing No.135/RGSH 2016 (Annexure P-15). The objections raised by the petitioner and the grounds as well arguments raised were not considered. It is contended that as the other private respondent had been granted the benefit of being inducted as a member of the Society by relying on induction of Bhagat Singh as a life member. Once the resolution, whereby Bhagat Singh had been inducted as a life member, is itself unsustainable, respondents too ought to be deleted from the list of the voters of the respondent No.6-Society. He further contends that as per the statutory provisions, a person desirous of being inducted as a member of a

Society is required to deposit a membership fee through his account but in the present case, the amount had not been deposited with respondent No.6-Society through any accounting transaction. It is also argued that the accounts of the Society do not tally with the receipts, as would have, in case the fee would have been validly deposited by all the persons claiming to be the members of the Society.

3. Counsel for the respondents have controverted the arguments of the petitioner by contending that the true genesis and the nature of dispute has not been brought forth by the petitioner. It is contended that as a matter of fact the private respondent namely, Madan Kumar son of Zile Singh, Sanjeev Kumar son of Balaki Ram, Ravinder son of Krishan, Omparkash son of Kalam Singh and Ravinder son of Ram Kumar had filed an application before the District Registrar of Societies, Panipat for not being shown in the voter list of respondent No.6-Society despite having deposited an amount of Rs.1100/- and the balance membership fee of Rs.2000/- was to be paid within a period of three years as per the resolution passed by the Society on 20.12.2012. Hence, the remaining amount was to be deposited on or before 19.12.2015. The applicants-respondents had duly deposited the remaining membership fee before 16.12.2015, i.e. within a period of three years as stipulated in the said resolution. Hence, they were entitled to be inducted as the voters in the voter list and to participate in the elections. However, in the voter list issued by respondent No.6-Society, only 99 members had been shown eligible to cast their vote. They had placed reliance on a similar concession having been given to one Bhagat Singh son of Sh. Katar Singh who had also been inducted as a life member of the Society vide the same resolution and claimed parity. It is contended that during the consideration of the aforesaid application submitted

by the respondents before the District Registrar of Societies, Panipat, the petitioner entered appearance as an Objector against the prayer of the respondents for being inducted as members/voters of respondent No.6-Society. Vide his order dated 06.01.2016, the District Registrar Firm & Societies recorded the following findings:

“i) As per election schedule published, the list of members of the Society eligible to vote was displayed on 23-12-2015 and petition was filed on 24-12-2015 i.e. with in time per Haryana Registration and Regulation on Societies Act, 2012.

ii) That at the time of inducting the members of Education Society, Samalkha, the applicants deposited an amount of Rs. 1100/- and remaining membership fee of Rs. 2000/- was to be paid within three years. The society has also passed a resolution dated 20-12-2012 in this regard.

iii) All the five applicants had deposited the remaining membership fees in the account of society within three years.

iv) There are also other members in the list of 149, those have deposited the remaining membership fee in the account of society within three years.

In view of above the applicant (1. Madan Kumar son of Zile Singh. 2. Sanjeev Kumar son of Balaki Ram. 3. Ravinder son of Krishan. 4. Omparkash son of Kalam Singh. 5 Ravinder son of Ram Kumar.) are the valid life members as per the governing body of the society in this regard. Further Returning Officer of the election of the governing body of the society of the remaining 144 persons whether they have deposited the remaining membership fees of Rs.2000/- within time period prescribed in the bye laws and prior to 23-12-2015 i.e. date of display of voter's list, then fresh list of voters may be published providing 15 days (10 days for inviting objections and 5 days for finalizing the objections). Thereafter final list should be displayed and accordingly

election may be rescheduled. The nomination filed on 28-12-2015 also be considered along with others.”

4. It is contended that while dealing with the objections raised and the contentions of the respective parties, the District Registrar directed the Returning Officer to the election of the Governing Body of the Society to conduct an enquiry of 144 persons as to whether they had deposited the remaining membership fee of Rs.2000/- within the stipulated time period and to publish a fresh voter list. It is contended that pursuant to the above said order, the Returning Officer submitted an enquiry report concluding that the balance membership fee of Rs.2000/- had been duly deposited by the respondents and the other similarly placed persons within a period of three years, in terms of resolution dated 20.12.2012 passed by respondent No.6-Society. The names of the respondents had also figured in the voter list as was finally displayed. It is contended that in the elections that were held, Bhagat Singh son of Katar Singh was elected as a President of the Society and he completed the said tenure. It is further argued that the petitioner never raised a challenge to the enquiry report submitted by the Returning Officer accepting the document adduced by the respondents and reporting the respondents having been validly inducted as members of the respondent No.6-Society. The appeal, being in the nature of continuation of an earlier order passed by the District Registrar, the scope of the appeal could not have been enhanced. In the absence of any challenge to the enquiry report submitted by the Returning Officer as also the final list of voters displayed by the respondent-Society, the scope of the Appellate proceedings could not travel beyond the initial objection to induction of the respondents as members of the Society and examine the validity of the resolution of 20.12.2012. It is further contended that the entire emphasis of the petitioner

and edifice of his argument has been that Bhagat Singh had been wrongly inducted as a Member of the Society vide the above said resolution of 20.12.2012, however, the petitioner never impleaded Bhagat Singh as a party or raised any objection against the application form submitted by him for contesting election for President of respondent No.6-Society. It is averred that the argument of the petitioner that the amount in question was required to be deposited only through an accounting transaction, as stipulated in the Haryana Registration and Regulation of Societies Act, 2012 was dispelled by the State Registrar of Societies for the reason that the Society had, till that point of time, not been registered/renewed under the Haryana Registration and Regulation of Societies Act, 2012. Hence, the induction of the members, at a period prior to coming into force of the Haryana Registration and Regulation of Societies Act, 2012, could not be determined as per laws of Act of 2012.

5. It is contended that the State Registrar of Societies duly considered the objections raised by the petitioner and recorded his following findings:

“5. Having taken into consideration the contents of impugned order passed by the District Registrar, bye-laws of society, provisions of the Haryana Registration & Regulation of Societies Act, 2012, oral submission of appellants/respondents and documents placed on record, the following observations are made:-

a. As per clause 4(b)(i) of the amended bye-laws of the society-life members" any person who subscribes to the objects, programmes and constitution of the society and donates Rs. 3100/- in lump sum or in installments within a period of continuous three years or one standard acre of land may be accepted as a life member by the Managing Committee and clause (c) for ordinary member contains that "Any person who subscribes to the objects and constitution of the society and donates Rs. 300/- may be enrolled by the

Managing Committee as an ordinary member for a term of three years, and will be eligible to vote".

b. The District Registrar has concluded that the respondents at sr. no. 4 to 8 had deposited an amount of Rs. 1100/- at the time of induction as member in the society. The society had passed a resolution dated 20-12-2012 in this regard. Further, these 05 members had deposited the remaining membership fee of Rs. 2000/- within three years.

c. As per rule 11(i) of the HRRS Rule, 2012 the payment of membership fee shall be made by the applicant through demand draft/pay order/cheque and in no case be accepted in cash. These 05 members had made the initial member fee of Rs. 1100/- in cash and the remaining fee of Rs. 2000/- through cheques. But the society registered under the Societies Registration Act had not obtained new registration number under the HRRS Act, 2012.

d. Section 92(3) of the Act contains that "Any Society registered at any place in the State of Haryana under the Societies Registration Act, 1860, shall be deemed to have been registered under the Act, and its principal office shall be deemed to be the registered office: Provided that (i) the Memorandum and the bye-laws of any such Society, to the extent these are repugnant to or inconsistent with any of the provisions of the Act and the rules made there under, shall be brought in conformity with the provisions of the Act within a period of two years from the commencement the Act or within such further period as the Government may allow, and thereafter, to the extent of such repugnancy or inconsistency, be deemed to be void and of no effect". But the said society had not obtained new registration number under the HRRS Act, 2012 at the time of induction of respondent no. 4 to 8 as members in the society. As such the payment of receipt of membership in cash does not apply in this case.

In view of the above, I, hereby order to uphold the impugned

order dated 06-01-2016 passed by the District Registrar, Panipat and the appeal is hereby dismissed.”

6. Further, the Revision No.135/RGSH of 2016, preferred by the petitioner before the Registrar General of Societies also noticed the contentions raised by the petitioner and recorded as under:

“4. I have heard the parties and perused the record. During the course of arguments, the appellants produced copies of certain documents (various receipts) alleging fabrication of record. These documents do not form part of the original case. The society was also called to produce original record. However, no conclusion can be drawn from the above regarding the claim of forgery/fabrication of record. In any case, such allegations pertaining to criminal offences need to be adjudicated in a competent court of law under the relevant provisions. So far as the facts before this form are concerned, it is clear that the respondents have deposited the requisite amount to enable them to be inducted as life members of the society. Admittedly, the Returning Officer initially published a list of 99 voters. However, after the objections filed by the appellants, their case was duly examined and recommended by the District Registrar. Thereafter, their names were included in the voter list by the RO. Further, it has also been pointed out that Sh. Bhagat Singh S/o Sh. Katar Singh (now President of the Society) was inducted as life member of the society through the same resolution dated 20.12.2012. It is also noted that as per the order dated 06.01.2016, it has been recorded by the District Registrar that advocate Rajinder Chhoker (appearing on behalf of Sh. Mahabir) orally submitted that the present petition has been filed by only 5 persons out of 149. Therefore, benefit should be given to only five persons.

The order of the District Registrar also records the statement of Sh. Ramphal, General Secretary of the Society who informed that the voter/member list has been published on the basis of the membership fees deposited upto 15.11.2015 and the applicants [present respondents] had deposited the remaining membership fees after 15.11.2015.

5. In view of the above findings, the appeal is hereby dismissed.”

7. It is contended that even though the petitioner has argued that the resolution was invalid and had been wrongly passed, however, other than averring that the receipt of Rs.1100/- issued in favour of Bhagat Singh did not bear any date and as such a presumption ought to be drawn that he was not willingly inducted as a member of the Society, there is no other evidence adduced by the petitioner.

8. Another argument has been raised by the respondents that the provisions of Haryana Registration and Regulation of Societies Act, 2012 prescribed that in the event of any person having any objection with respect to induction of members before an election is to be held, such person is eligible to raise his objections before the District Registrar under Section 39 (4) of Haryana Registration and Regulation of Societies Act, 2012 and that the petitioner having never raised any such objection or challenge the election of Bhagat Singh held in the year 2016, there can be no valid basis for disbelieving and upsetting the resolution passed by the respondent No.6-Society merely on the basis of the inferences sought to be constructed by the petitioner rather than placing reliance on any tangible objective material.

9. Counsel for the petitioner could not dispute the fact that no challenge was raised by the petitioner to the membership/list of voters displayed by the respondents or even to the enquiry report submitted by the Returning

Officer in compliance of the order passed by the District Registrar on 06.01.2016. It is also not disputed that the said proceedings were in fact initiated at the behest of the private respondents wherein they wanted induction of their names as members claiming parity with Bhagat Singh. It is also not in dispute that the petitioner never initiated any proceedings against either the Returning Officer who submitted the enquiry report after going through the documents and record of respondent No.6-Society and also never initiated any proceedings against Bhagat Singh or made him as a respondent in any of the proceedings initiated by him before the State Registrar or the Registrar General of Societies. Further, it is also not in dispute that no objections/petition under Section 39(4) of the Haryana Registration and Regulation of Societies Act, 2012 had been preferred, in case the contention of the petitioner is to be accepted to the effect that the provisions of the Haryana Registration and Regulation of Societies Act, 2012, would be applicable, hence, the objections would be fallacious.

10. It is also undisputed that the Haryana Registration and Regulation of Societies Act, 2012 was notified on 28.02.2012 and as per provisions of the Act as well as the bye-laws, an existing Society could seek its re-registration under Section 9(4) of the Haryana Registration and Regulation of Societies Act, 2012 whereas a new registration was required to be submitted in a statutory form read with Section 9 (1) of the Haryana Registration and Regulation of Societies Act, 2012. Till such time that the Registration certificate of the Society had not been renewed under the Haryana Registration and Regulation of Societies Act, 2012, on submission of an application under Section 9(4) of the Act (supra), the induction of members could not have been tested on the parameters of the said Act and the society would continue to be governed by the

regulations as were in force then. A specific finding has also been recorded by the authorities to the effect that after looking into the documents/record of the Society, the sum of Rs.1100/- had been deposited by the respondents well in point of time and they had been granted three years' time to deposit the balance amount of Rs.2000/- which such amount had also been deposited within the prescribed time schedule. Hence, there is no tangible, objective or admissible evidence at this stage on the basis whereof it can be held that the findings recorded by the authority was incorrect or not based upon correct appreciation of the evidence.

11. Further, merely because the amount did not reflect in the credit account of the society would not ipso facto be sufficient to hold that the amount in question had not been deposited. Any appropriation/misappropriation of the amount deposited by the applicants, by the erstwhile management or Governing body of the Society, cannot cast any aspersions on the validity of the deposit made by the respondents. It was thus, essential to dispel that the receipts with respect to deposit of the balance amount had been forged or were invalid. There is, however, no evidence to establish the said allegation. Consequently, the deposit of the amount by the respondents remains undisputed and uncontroverted.

12. Further, the questions have already been examined by three different authorities i.e. District Registrar; the First Appellate Authority and by the Revisional Authority. Once all the factual aspects have already been dealt with, the High Court, in exercise of its power of judicial review would not ordinarily enter into the arena of ascertaining the factual aspects, more-so, when the conclusions drawn by the authorities are sought to be challenged on the strength of an inference to be drawn by a perceptive reading of the receipts

executed/issued by the respondent No.6-Society. I am afraid that such an interpretation or exercise would not be undertaken by the High Court in exercise of its power of judicial review. Unless a finding of fact recorded by the authorities is in direct conflict with the unimpeachable evidence which is available on record, such finding, concurrently, recorded by all the fact finding authorities would not ordinarily be interfered with.

13. Further, the fact that the petitioner never raised a challenge to the publication of the voter list, despite having the remedy, at the time when such list was published i.e. in the year 2016 when the Society had already been registered under the new Act and the remedy to raise an objection was available to the petitioner under Section 39(4) of the Act, 2012, and making it mandatory for the District Registrar to delve into an enquiry in the event of such allegations/petition being preferred, I feel that the pursuit of the present writ petition is a circuitous bypass to challenge a published voter list, which cannot be permitted. Having chosen not to raise a challenge to the finally published voter list, in a manner known to law, the petitioner cannot be permitted to agitate/dispute the said voter list by way of a petition which is not appropriate and is not in accordance with the mandate of the Haryana Registration and Regulation of Societies Act, 2012.

14. The present writ petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

January 30, 2024
ps

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