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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision: 21<sup>st</sup> August, 2024**

+ **W.P.(C) 1133/2024 & CM APPL. 4770/2024**

**SUNIL AGARWAL AND ORS.**

.....Petitioners

Through: Mr. Akshay Makhija, Senior Advocate with Ms. Richa Kapoor, Mr. Kunal Anand, Mr. Sandesh Kumar and Mr. Jai Batra, Advocates.

versus

**GOVT. OF NCT OF DELHI AND ORS.**

.....Respondents

Through: Mr. Prashant Manchanda, ASC with Ms. Nancy Shah and Ms. H. Medha, Advocates for R-2.  
Mr. Alishan Naqvee, Ms. Rupal Bhatia and Mr. Saurav Chaudhary, Advocates for Interveners-Mr. Tilak Raj and Mr. Kumar Manglam.

**CORAM:  
HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

1. This petition arises from internal disputes among the office bearers of the Savitri Education Foundation, Respondent No. 3, a society registered under the Societies Registration Act, 1860<sup>1</sup> which runs a CBSE-affiliated school known as “The Newtown School” in Kolkata. The core of these

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<sup>1</sup> “the Act”



dispute primarily revolves around the management and structural changes within the governing body of the society.

FACTUAL BACKGROUND AND THE CONTROVERSY

2. The Petitioners contend that reorganization of the society's governing body was ratified during an extraordinary general meeting held on 13<sup>th</sup> June, 2018. At this meeting, Petitioner No. 1 and Mr. Sanjay Kumar Khemka were purportedly elected as Joint Presidents, while Petitioner No. 2 and Mrs. Ambika Khemka were designated as Joint Secretaries. The Petitioners assert that these changes, including amendments to the Memorandum of Association and Rules & Regulations of the Society, were necessary for achieving the objectives of the society. Respondent No.3 through communication dated 13<sup>th</sup> June, 2018 intimated Respondent No.2 of the change in the governing body by sending a revised list of governing body members as on 13<sup>th</sup> June, 2016. Furthermore, supporting this reorganization, an affidavit purportedly confirming the unanimous consent of the governing body members to the new structure, was submitted to Registrar of Societies/Respondent No. 2 on 18<sup>th</sup> June, 2018.

3. Subsequently, after much delay, Respondent No. 2 issued a communication on 02<sup>nd</sup> November, 2020, questioning the legitimacy of the revised list of governing body members submitted by Respondent No. 3 as follows:

*"Sir,*

*A list has been received in this office of Governing Body of "Savitri Education Foundation" wherein 02 (Joint President), 02 (Joint Secretary) and 04 Members.*

*In this regard, it is informed that as per Society Registration Act-1860, the*



*Rules and Regulation of the Society formed for Education purpose the governing body will be consisted with the following members:-*

- 1. President – One*
- 2. Secretary – One*
- 3. Treasurer – One*
- 4. Member from - to –*

*You are requested to provide the list of governing body as aforesaid has been mentioned.”*

4. The afore-noted communication was responded by the Petitioner through communications dated 26<sup>th</sup> November, 2020 and 04<sup>th</sup> January, 2021. They asserted that the restructuring of the governing body was essential for the effective management of the society and was unanimously approved at the Extraordinary General Meeting held on 13<sup>th</sup> June, 2018. They also contended that the amendments to the Memorandum of Association<sup>2</sup> and rules and regulations were made in full compliance with the legal requirements and were unanimously adopted during an extraordinary general meeting. They emphasized that all members of the society, as mandated by its rules and regulations, were present, and the quorum was duly constituted, as documented in the minutes of the meeting dated 13<sup>th</sup> June, 2018. Furthermore, they highlighted that the dual Presidents had jointly affirmed an affidavit on 18<sup>th</sup> June, 2018, endorsing the revised governance structure. This, they argued, demonstrated a collective and well-documented decision-making process consistent with the society's objectives.

5. The Petitioners argue that the absence of any response or objection

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<sup>2</sup> “MoA”



from Respondent No. 2 over a two-year period should be construed as a deemed acceptance of the revised governing body structure. They further contend that during this period, Respondent No. 3 operated in reliance on the amended list, duly informing various authorities and banking partners, thereby effectively incorporating the changes into its operational framework.

6. On 15<sup>th</sup> January, 2024, Mr. Sanjay Kumar Khemka brought to light a copy of reply dated 28<sup>th</sup> July, 2023 issued by Registrar of Societies. This response was issued to an RTI query bearing No. 6373 seeking information about the members of the governing body of the society. According to the Petitioners, the Registrar of Societies has erroneously not updated its records and furnished an old list of members, thereby misrepresenting the correct structure of the governing body of the society. Petitioners further allege that Mr. Sanjay Kumar Khemka is misrepresenting himself as the President of Respondent No. 3 on the basis of the reply dated 28<sup>th</sup> July, 2023 causing prejudice to them. In such circumstances, they seek intervention of this Court to correct the records of Respondent No. 2 by seeking following prayers:

*“a) Writ in the nature of mandamus or any other writ/ order/ direction to the Respondent No. 2 to update its office record as per the resolution passed and recorded in the minutes of the extraordinary general meeting dated 13.06.2018 and other documents served alongwith letter dated 13.06.2018 by Respondent No.3 and consequently set aside letter dated 02.11.2020 and reply dated 28.07.2023 to RTI Application ID no. 6373-T issued by respondent no.2; and*

*b) Pass such other or further order(s) as this Hon'ble Court may deem fit in the interest of justice and in the facts and circumstances of the case.”*

7. The Registrar of Societies has filed a response stating as under:



*“2. That an RTI application under Right to Information Act, 2005 was filed by Sh. Sanjay Kumar Khemka on dated 21.07.2023 and accordingly the information as per available record was provided under RTI act, 2005 on dated 28.07.2023 (Copy enclosed as 'Annexure-A').*

**3. That as per available record the society namely "Savitri Education Foundation" has not submitted application alongwith documentary proof of due procedure followed by the society for its amendment in accordance with Society Registration Act, 1860 and by- laws of the society.**

**4. It is pertinent to mention that as per the Society Registration Act, 1860 the Registrar of Society has no jurisdiction over internal affairs of the registered society under the Society Registration Act, 1860 and has very limited role which is upto registration of Society.**

**5. Further as per Societies Registration Act, 1860 the registrar can neither decide, doubt, nor dispute, regarding as to the elections of society. Hence the registrar cannot interfere in the dispute between the members of the societies.**

*6. The Defendant No.2/Registrar of Society shall remain bound by the decision taken by this Hon'ble Court.”*

[Emphasis supplied]

8. Thus, according to the Registrar of Societies the changes to the governing body in 2018, featuring two presidents and secretaries is not supported by documentary proof of due procedure followed by the society for its amendment in accordance with the Act. Consequently, this deviation was the basis for the refusal to accept the revised list, as communicated on 02<sup>nd</sup> November 2020. However, at the same time Respondent No.2 has also acknowledged that it has no jurisdiction over the internal affairs of a registered society and can neither decide doubt nor dispute any issue regarding the elections of the society. Taking note of this inconsistent pleas, on 2<sup>nd</sup> August, 2024 the Court directed Counsel for Respondent No. 2 to submit a clarification. This order inadvertently refers the Registrar of Societies as Respondent No. 3. Be that as it may, in compliance with Court's instructions, Respondent No. 2 submitted a concise note detailing their



position as under:

- “2. That it is submitted that upon the application of registration of a society, along with the Memorandum of Association of the society, an applicant is required to provide the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, the management of its affairs is entrusted. Such composition has to be sent as per the rules and byelaws of the society. Further, a copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.*
- 3. The powers of the registrar are limited to registration of the society as per the society's own rules and bye laws. At this juncture, it is submitted that as per the rules and bye laws of the Petitioner Society itself, as received along with the Memorandum of Association, there can be one President, one Secretary, one Treasurer and a multiple number of members. Further, as per the said bye laws and rules, the “memorandum and Rules & Regulations may be altered, modified, rescinded or added to be special resolution passed by the 3/4<sup>th</sup> (three fourth) members in a general meeting called for the purpose.”*
- 4. It is for the aforesaid reason, as and when the Answering Respondent has received the composition of the Governing Body Members from the Respondent no.3 Society dated 13.06.2018 under the Section 4 of Registration of Societies Act, showing two Joint presidents and two Joint Secretaries, the same was against the bye laws of the Respondent no.3 itself and therefore, not accepted. The same was informed to the Respondent no. 3 society vide letter dated 02.11.2020.*
- 5. **That it is submitted that as no relevant documents pertaining to the Amendment in Memorandum of Association and Bye laws were provided to the Answering Respondent, the same could not be taken on record by the Answering Respondent by virtue of Section 12 of the Societies Registration Act, 1860.***

[Emphasis supplied]

9. Now, Respondent No.2 has placed reliance on Section 12 of the Act to justify their stand of rejecting the amended MoA and by-laws.

10. Mr. Tilak Raj and Mr. Kumar Mangalam, are not parties to this petition, but have sought to intervene. Their submissions through counsel,



despite absence of a formal application, have been considered, and written submissions submitted across the board is taken on record. At this juncture it must also be must also be clarified that on the previous date, Mr. Alishan Naqve's appearance was mistakenly noted as representing Respondent No. 3; he, in fact, represents Mr. Tilak Raj and Mr. Kumar Mangalam, who are seeking intervention in these proceedings. The intervenors have highlighted that Civil Suit No. CS SCJ No. 313/24,<sup>3</sup> is pending before ACJ/CCJ/ARC(South) at Saket Court, concerning control over Respondent No. 3 society. They argue that no meeting took place on 13<sup>th</sup> June, 2018, and highlight the absence of minutes of meeting, notice, or agenda, and attendance records. They argue that the extracts from the purported meeting held on 13<sup>th</sup> June, 2018, cited by the Petitioners, reference Joint Presidents without any mention of Joint Secretaries and bear the signatures of only two out of the eight members. Additionally, they reference orders passed by the Trial Court directing Petitioners to produce minutes of the alleged meeting, emphasising Petitioners' failure to comply despite multiple opportunities. This non-compliance, they argue, substantiates their claim that no such meeting occurred, and any purported amendment lacks the 3/4<sup>th</sup> majority required to alter the MoA and rules. Moreover, the question of whether the 13<sup>th</sup> June, 2018 meeting occurred or not and whether amendments to the MoA were validly amended to appoint Joint Presidents and Secretaries is a matter for civil adjudication, thereby precluding the Petitioners from seeking reliefs sought through writ jurisdiction. They have submitted a copy of the plaint filed in the civil suit, which seeks the following prayers:

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<sup>3</sup> "Civil Suit"



*“A. Pass an order and decree declaring the Impugned Meeting dated 13.06.2018 and the resolutions passed therein as illegal, void ab initio, and non-est in law, having been passed without the participation of the Plaintiffs and other members of the general body and in complete contravention to the Rules and Regulations of the Defendant No. 1 as well as the principles of natural justice, equity and good conscience;*

*B. Pass an order and decree of mandatory and permanent injunction in favour of the Plaintiffs and against the Defendants, thereby restraining the Defendants, their representatives/agents/assigns/heirs from issuing, signing and verifying, directly or indirectly, any documents with respect to Defendant No. 1 in their designations as stated in the list of governing body members attached to the letter dated 13.06.2018 submitted by the Defendant No. 3 and 4 to the Defendant No. 2;*

*C. Pass an order of ex-parte interim injunction thereby directing the Defendant No. 2 to maintain the status quo and restraining it from taking on record the purportedly amended Memorandum of Association and the Rules and Regulations of the Defendant No. 1 and the purported re-constituted list of the governing body of Defendant No. 1 till the pendency of the present suit;*

*D. Pass an ex-parte interim order restraining the Defendants and their representatives/agents/assigns/heirs from issuing, signing and verifying, directly or indirectly, any documents with respect to Defendant No. 1 in their designations as stated in the list of governing body members attached to the letter dated 13.06.2018 submitted by the Defendant No. 1 to the Registrar of Societies;*

*E. Pass an order and decree awarding costs of the present suit in favour of the Plaintiffs and against the Defendants; and*

*F. Any other relief that this Hon'ble Court may deem fit and proper in the circumstances.”*

11. It is also pertinent to note that the trial court *vide* order dated 14<sup>th</sup> May, 2024 granted an *ad-interim* injunction to the extent that Registrar of Societies was enjoined from proceeding to accept the changed composition until the next date of hearing in the present petition.

12. Furthermore, Petitioners also highlight that during the pendency of



the present Writ Petition, RTI dated 29<sup>th</sup> January, 2024 was filed in the office of Respondent No. 2 seeking the following query:

*“Name, addresses and occupations of the members of the Governing Body including office bearers and executive members of Savitri Education Foundation – a society registered in your office with Registration No. 5/47034, having its registered office at 124 Hans Bhawan, 1 Bahadur Shah Zafar Marg, New Delhi – 110002, as last updated in your office records on 22<sup>nd</sup> June, 2018.”*

The aforementioned RTI application was duly replied by Respondent No. 2 by response dated 15<sup>th</sup> February, 2024 with the amended list of governing body as on 13<sup>th</sup> June, 2018 in contradiction to its earlier reply dated 28<sup>th</sup> July, 2023.

### **Analysis and Findings**

13. On the letterhead of Respondent No. 3, a list of the governing body members as of 13<sup>th</sup> June, 2018, was submitted to the Registrar of Societies. This communication was signed by two individuals who identified themselves as Joint Presidents and included the list of the governing body of Respondent No. 3 as of the same date. However, after two years, the Registrar of Societies questioned the validity of this communication, asserting that the society has failed to submit any supporting documents under Section 12 of the Act, which is mandatory for alterations of the by-laws. At the same time, the Registrar of Societies in their Counter Affidavit have also explicitly acknowledged that it does not have jurisdiction over internal affairs of a registered society and their role is limited up to registration of a society. They have also categorically confirmed that they can neither decide, doubt or dispute regarding the election of a society nor interfere in the dispute between the members of the society.

14. Thus, in light of the explicit stand taken by Registrar of Societies,



relating to its jurisdiction, we have to examine whether the Registrar's reliance on Section 12 of the Act to reject the amendments to the MoA has a legal foundation. Section 12 of the Act reads as follows:

*12. Societies enabled to alter, extend or abridge **their purposes**.— Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society; but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.”*

[Emphasis Supplied]

15. Elucidating on the scope of Section 12 of the Act, the Division Bench of this Court in **Dushyant Sharma v. Haryana Wrestling Association & Ors**,<sup>4</sup> has observed that Section 12 of the Act enables a society to alter or amend its objects and purpose and does not extend to registering any amendment in Rules and Regulations of the society. Additionally, in **Supreme Court Bar Association v. B.D. Kaushik**,<sup>5</sup> the Supreme Court observed that rules relating to the exercise of the right to vote and contest elections do not amount to altering, amending, or changing the aims and objects of the society and can be implemented without the consent of the Registrar, as provided in the Act.

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<sup>4</sup> 2012:DHC:180-DB.



16. In light of the above, it is clear that the Registrar of Societies does not have supervisory powers over the affairs of the society and we must now consider whether the Petitioner's prayer can be granted.

17. In the opinion of the Court, Registrars' reliance on Section 12 of the Act is misplaced. The provision specifically addresses situations where the governing body of a society seeks to alter, extend, or abridge the society's 'purposes'—essentially a change in the objectives or mission of the society. It is intended to regulate changes that would affect the very character and goals of the society, requiring a higher threshold of approval from the members to ensure that such changes are genuinely in the society's best interests. In contrast, the matter before the Court pertains merely to a change in the composition of the governing body members, amendment of MoA and by-laws and not a change in the society's core purposes. Respondent No. 3 society was established with the purpose of establishing educational institutions, and this purpose has remained the same. Therefore, any amendments in the constitution of the governing body would not trigger Section 12 of the Act.

18. Furthermore, the Registrar of Societies does not have the authority under Section 12, or any other provision of the Act, to intervene in the internal affairs of the society, such as the election or appointment of governing body members, unless it involves a statutory violation. The communication dated 02<sup>nd</sup> November, 2020, issued by the Registrar, indicates that the Registrar has assumed the role of an adjudicatory body and

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<sup>5</sup> (2012) 8 SCC 589.



questioned the changes in the governing body, which is beyond the scope of powers conferred on them by the Act. Furthermore, a society is entitled to have its own rules and regulations, which constitute a contract among its members. Although these rules must be registered under the Act, they do not acquire a statutory character, and the authority to amend, vary, or rescind such rules rests with the general body of the society's members. The society's internal governance, including changes in the governing body, is governed by its own rules, subject to compliance with the Act, but not under the purview of Section 12, which strictly pertains to changes in the society's purposes.

19. That apart, the contention of the Registrar of Societies that the relevant documents pertaining to the amendment in the MoA and by-laws were not provided, and therefore the communication dated 13<sup>th</sup> June, 2018 could not be taken on record under Section 12 of the Act, is thus not sustainable. There is no provision of law cited by the Registrar to substantiate this contention. The Societies Registration Act does not empower the Registrar to impose additional procedural requirements beyond those prescribed by the Act itself. The Registrar's demand for such documentation appears to be an overreach of authority, as there is no statutory basis for requiring these specific documents to validate an amendment in the rules and regulations of a society already registered under the Act. Therefore, the Registrar's insistence on such documentation is without legal foundation and cannot sustain.

20. In light of the foregoing, the Registrar's impugned actions are ultra vires the Act. The controversy arising from the communication dated 28<sup>th</sup>



July, 2023, issued in response to an RTI application filed by Mr. Sanjay Kumar Khemka, needs to be addressed. In this communication, the Registrar of Societies disregarded the earlier communication dated 13<sup>th</sup> June, 2018 and instead relied on previous records to assert that the composition of the society's governing body remains unchanged. Given this inconsistency, the communication dated 28<sup>th</sup> July, 2023 must be disregarded.

21. That said, it must be clarified that the observations made by this court are only for the purpose of creating an interim arrangement, till such time, the Civil Court in Civil Suit No. CS SCJ No. 313/24,<sup>6</sup> takes a final view in the matter relating to the legality of the meeting dated 13<sup>th</sup> June, 2018. As can be noted from the prayers sought in the Civil Suit preferred by the intervenors, the minutes dated 13<sup>th</sup> June, 2018 and the resolutions passed therein, have been impugned as *void ab initio* and *non est* in law. The resolution of these issues falls squarely within the jurisdiction of the Civil Court, which must adjudicate the validity of the meeting and the decisions taken therein. The final decision of the Civil Court will be binding on the Registrar of Societies/Respondent No.2 and will determine the legitimacy of the governing body's composition as recognized on 13<sup>th</sup> June, 2018. Therefore, it is reiterated that the observations made by this Court are limited to assessing the jurisdiction and actions of the Registrar of Societies and should not be construed as reflecting any opinion on the validity of the minutes of the meeting dated 13<sup>th</sup> June, 2018. These issues remain within the purview of the civil court.

22. In light of the foregoing, the present writ petition is disposed of with



the following directions:

- a. Respondent No. 2/Registrar of Societies shall update its record as per minutes of meeting dated 13<sup>th</sup> June, 2018.
  - b. The letter dated 2<sup>nd</sup> November, 2020 and reply dated 28<sup>th</sup> July, 2023 to RTI application ID No. 6373-T issued by Respondent No. 2, is set aside.
  - c. All rights and contentions of the parties relating to the validity of minutes of meeting dated 13<sup>th</sup> June, 2018 are left open to be adjudicated by the civil court in case No. CS SCJ No. 313/24
23. With the above directions, the petition is disposed of along with pending application.

**SANJEEV NARULA, J**

**AUGUST 21, 2024**  
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<sup>6</sup> “Civil Court”