



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

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Date of Decision: 13.05.2026

KRISHNA KADIAN AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Manish Jain, Senior Advocate with
Mr. Vaibhav Narang, Advocate,
Mr. Siddhant Jain, Advocate and
Mr. Bharat Mani Goyal, Advocate
For the petitioners

Mr. Akshit Pathania, AAG, Haryana

Mr. Tarun Singla, Advocate (through V.C.)
For respondent No.5 and
Respondent No.5 in person (through V.C.)

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 11.02.2026 whereby Director General of Industries and Commerce-cum-Registrar General of Societies, Haryana has allowed review petition filed in Appeal No. 692 of 2025.

2. As per pleadings, there is a society known as 'Sector 17B Residents Welfare Association' which is duly registered under Haryana



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Registration and Regulation of Societies Act, 2012 (for short '2012 Act').

Tenure of governing body expired on 31.03.2023.

District Registrar Firms and Societies Gurugram on 19.02.2024 appointed *ad hoc* committee comprising five members to manage day-to-day affairs of the society and conduct elections. The strength of *ad hoc* committee was increased from five to eight by order dated 29.03.2022. On 22.04.2022, Jai Singh Yadav was appointed as Returning Officer for conducting elections. He issued notice of elections of the governing body for 09.06.2024. The complete schedule of elections was notified and 22.04.2024 was fixed as date of display of voters' lists. The Returning Officer as well as few members of *ad hoc* committee on 26.05.2024 resigned and announced dissolution of *ad hoc* committee as well as appointment of Returning Officer.

The District Registrar on 21.06.2024 appointed Vijay Kumar Chhikara as Administrator-cum-Returning Officer to manage day-to-day affairs and conduct elections of the society. The Administrator vide notice dated 02.08.2024 notified schedule of elections and 02.08.2024 was notified as date of display of list of members. 22.08.2024 was fixed as date of final list of eligible voters. 15.09.2024 was fixed as date of election and declaration of result. As per petition, no formal petition under Section 39(4) of 2012 Act assailing voter list was filed by respondent No.5 within mandatory 15 days period.

The respondent No.5 served a legal notice dated 28.08.2024 upon District Registrar and the Administrator with respect to cutoff date of voters list. The respondent claimed that cutoff date should be 30.06.2024



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instead of 31.03.2024. The District Registrar referred the matter to Administrator who vide letter dated 02.09.2024 explained the actual position. He clarified that no member had paid subscription for the financial year 2024-25, thus, Para 4(ii) and (iii) of the Society Bye-Laws became unimplementable. Hence cutoff date of 31.03.2024 was considered after due deliberation with all concerned in the meetings held in the RWA office. Majority of the members had agreed for the same.

The District Registrar did not take any action on the basis of aforesaid report and indirectly permitted Administrator to continue with elections. The elections were held as per schedule and petitioners were elected as office bearers of the Governing Body. The respondent No.5 filed a petition under Section 40 before District Registrar assailing elections. The respondent challenged elections on the ground that 30.06.2024 was required to be considered as cutoff date whereas 31.03.2024 was wrongly considered as cutoff date to determine eligible voters.

The District Registrar vide order dated 27.11.2024 directed the society not to take any major financial decision as well as refrain from deciding question of membership. As per prescribed procedure, the District Registrar vide communication dated 13.12.2024 referred the matter to State Registrar. The District Registrar in the reference recommended to allow the petition on the ground that elections were conducted contrary to Clause 4(ii) of the Bye-Laws of the Association. The State Registrar vide order dated 06.02.2025 allowed reference of the District Registrar and set aside elections held on 15.09.2024. The District Registrar was directed to appoint an



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Administrator to conduct fresh elections and manage day-to-day affairs of the society.

The petitioners preferred an appeal under Section 79 of 2012 Act before Registrar General who vide order dated 11.04.2025 set aside order passed by State Registrar. The respondent No.5 filed review petition under Section 79 before Registrar General who vide impugned order dated 11.02.2026 reviewed his order and upheld order passed by State Registrar. He has held that elections were conducted in violation of Bye-Laws, thus, are liable to be set aside.

3. Learned counsel for petitioner submits that Registrar General has passed impugned order exceeding his jurisdiction. The Registrar General is empowered to review his order under Section 79(5) of 2012 Act. He cannot take into account new facts and recall his earlier order. In the present case, the Registrar General considered new facts and recalled his previous order. The original order did not suffer from any patent error or inadvertent mistake. The original order was passed on the basis of available facts and legal position. Registrar General allowed petitioners' appeal on the ground that State Registrar can set aside elections of governing body in case conditions as mentioned in Clause (i) to (iii) of proviso to Section 40(1) of 2012 Act are satisfied. None of the conditions mentioned in the said Section are satisfied, thus, dispute referred by Registrar General did not fall under Clause (iii) of proviso to Section 40(1) of 2012 Act. The Registrar General has passed impugned order on the basis of facts brought on record after passing of original order dated 11.04.2025. The Registrar General could not



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consider new facts brought on record. There was no infirmity in the order dated 11.04.2025. It was based upon correct appreciation of scope of Section 39 vis-à-vis 40 of 2012 Act. The Registrar General while passing impugned order has not considered scope of Section 39 vis-à-vis 40 and simply held that elections of the governing body were conducted in violation of due process and complete disregard of the Bye-Laws of the society, thus, election was liable to be set aside.

4. *Per contra*, learned counsel for respondent No.5 submits that no new fact was brought in the knowledge of Registrar General while passing impugned review order. The respondent within period stipulated under Section 39 filed objection before District Registrar with respect to voter list. The matter was referred to Administrator who forwarded his report to District Registrar. The elections were not kept in abeyance. The Administrator conducted elections. The respondent left with no other option filed petition under Section 40 before District Registrar who made a reference to State Registrar with his recommendation to cancel elections of governing body. The State Registrar cancelled elections on the sole ground that cutoff date for voter list was fixed against the Bye-Laws of the society. The District Registrar recommended cancellation of elections on the ground that elections have been held in violation of Clause 4 (ii) of Bye-Laws of the society. The cutoff date for voter list could not be 31.03.2024 because elections were held after 30.06.2024.

5. Heard the arguments and perused the record.



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6. The conceded position emerging from record is that the petitioners are elected members of governing body of Section 17 B, Residents Welfare Association, Gurugram which is registered under 2012 Act with District Registrar, Gurugram. Tenure of the governing body of the Association expired on 31.03.2023. The governing body as well as general body was supposed to conduct elections of the governing body. District Registrar on 19.02.2024 appointed *ad hoc* committee comprising five members. The strength of members of *ad hoc* committee was later on increased to eight. Jai Singh Yadav was appointed as Returning Officer to conduct election. He issued schedule of elections on 09.06.2024. The elections could not be conducted on account of resignation of Returning Officer. The District Registrar on 21.06.2024 appointed Vijay Kumar Chhikara as Administrator-cum-Returning Officer. The Administrator issued notice of election on 02.08.2024 wherein complete schedule of elections was notified. The respondent No.5 filed objections before District Registrar with respect to voter list. The District Registrar sought report from Administrator who in his report justified voter list. The District Registrar did not withhold elections and Administrator conducted elections as per notified schedule. The respondent No.5 filed petition under Section 40 before District Registrar assailing elections of Governing Body. The District Registrar heard the parties and vide letter dated 13.12.2024 made a reference to State Registrar with his recommendation to cancel elections on the ground of violation of Bye-Laws of the society. The State Registrar vide order dated 06.02.2025 cancelled elections on the ground of violation of Bye-Laws. The petitioners preferred appeal before Registrar General who formed an opinion



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that petition under Section 39(4) was not filed, thus, election cannot be set aside on the ground of deficiency in voter list. The respondent No.5 filed review which came to be allowed by impugned order.

7. From the perusal of record, the following questions arise for the consideration of this Court: -

- I. Whether Registrar General has rightly exercised power of review under Section 79(5) of 2012 Act?
- II. Whether while adjudicating petition under Section 40 of 2012 Act, elections of governing body could be declared invalid on the ground of deficiency in voter list?

8. **Question No. I:** - Whether Registrar General has rightly exercised power of review under Section 79(5) of 2012 Act?

8.1 The petitioners are claiming that scope of review under Section 79(5) is very limited. The Registrar General can review his order if the earlier order is based on some erroneous facts or carry some patent error or suffer from some inadvertent mistake. In the present case, the impugned order has been passed on the basis of new facts brought on record, thus, is beyond the scope of Section 79(5). Section 79 of 2012 Act reads as: -

“79. Appeals and review.—(1) An appeal against any orders passed by the District Registrar shall lie with the Registrar and the appeal against the orders passed by the Registrar shall lie with the Registrar General. The orders passed by the Registrar General in any such appeal shall be final and no further appeal shall be competent against his orders.



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(2) Where an order originates from the Registrar General, an appeal against such order shall lie before the Government.

(3) Any appeal shall be filed within a period of sixty days of the date of issue of the impugned orders. The appellate authority may entertain an appeal beyond this period up to a maximum of another sixty days on sufficient grounds for condonation of delay being shown.

(4) Every appeal shall be accompanied with the fee as prescribed.

(5) The District Registrar, Registrar or the Registrar General may suo motu or on an application received in this behalf from any party that any order has been passed which is based on some erroneous facts or carries some patent error or suffers from some inadvertent mistakes, may review its order within ninety days of its passing with the prior permission of the next higher authority.”

8.2 The petitioners during the course of arguments cited few judgments which are relating to provisions of CPC dealing with power to review. Section 114 and Order 47 of CPC are normally applicable to proceedings before Court. Section 4 of CPC provides that in the absence of any specific provision to the contrary, nothing in the Code shall be deemed to limit or otherwise affect any special or local law in force or any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force. Section 4 of CPC reads as: -

“4. Savings.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form



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of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.”

From the perusal of above-quoted Section, it is evident that provisions made in any special or local law are having overriding effect. The provisions of CPC are not applicable where any specific provision or procedure is prescribed in any special or local law. 2012 Act is a special law. In the said Act, a different procedure with respect to appeal and review has been prescribed. It is more or less a complete code. The remedy of appeal or review has been provided in the Act. The authorities constituted under the Act are empowered to hear appeal and review, thus, inescapable conclusion is that provisions of CPC qua review are inapplicable to the case in hand.

8.3 Section 114 read with Order 47 Rule 1 of CPC provides for power to review. Section 114 and Order 47 Rule 1 of CPC read as: -

“114. Review.—Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed



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the decree or made the order, and the Court may make such order thereon as it thinks fit.”

“Order XLVII Rule 1 of CPC, 1908

1. Application for review of judgment.—*(1) Any person considering himself aggrieved—*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

8.4 From the conjoint reading of Section 79(5) and afore-cited provisions of CPC, it is evident that power and scope of Section 79 is



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different from CPC. Under Section 114 read with Order 47, the power to review is exercised by same Court without seeking approval of higher Court whereas under Section 79(5), the power can be exercised by District Registrar, State Registrar or Registrar General after obtaining prior permission of the higher authority. Object of the same is obvious. Prior approval of higher authority works as check over possible misuse of power. This condition makes Section 79(5) altogether different from provisions of CPC. In the said Section, limitation period i.e. 90 days has also been prescribed. Order 47 uses expression, “discovery of new and important matter or evidence which was not within the knowledge of the applicant, or there is some mistake or error apparent on the face of record or for any other sufficient reason”. Under Section 79(5), power of review has been vested even where the order has been passed on the basis of erroneous facts.

8.5 There are many special Acts like CGST Act, 2017 where power of review has been provided. Ordinarily the *quasi-judicial* authorities including Tribunals are not vested with power of review. The *quasi-judicial* authorities are empowered to correct mistake apparent on record. Section 18(3) of Railway Claims Tribunal Act, 1987 empowers Tribunal to review its order like Civil Court. For the ready reference Section 161 of CGST, 2017 and Section 18(3) of Railway Claims Tribunal Act, 1987 are reproduced as below: -

“161. Rectification of errors apparent on the face of record.— Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any



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other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.”

“18. Procedure and Powers of Claims Tribunal

(1) & (2) --- --- --- ---

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;*



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- (e) issuing commissions for the examination of witnesses or documents;*
- (f) reviewing its decisions;*
- (g) dismissing an application for default or deciding it ex parte;*
- (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;*
- (i) any other matter which may be prescribed.”*

8.6 In the case in hand, the respondent filed petition before District Registrar under Section 40. He prior to filing petition had submitted letters doubting validity of the voter list. The validity was doubted on the ground of violation of Bye-Laws. The District Registrar vide order dated 13.12.2024 formed an opinion that elections were held in violation of Clause 4(ii) of Bye-Laws of the association. As elections were held in violation of Bye-Laws, thus, were liable to be declared invalid. The State Registrar accepted recommendation of the District Registrar and vide order dated 06.02.2025 concluded that elections of governing body were held contrary to Bye-Laws of the society. The sole ground discussed by District Registrar as well as State Registrar was that Administrator wrongly fixed cutoff date of voter list. The cutoff date could be 30.06.2024 whereas Administrator wrongly fixed 31.03.2024. The petitioners preferred appeal before Registrar General who vide order dated 11.04.2025 allowed their appeal on the ground that no petition under Section 39(4) was filed and once the respondent has opted not to challenge the voter list, he cannot challenge the election. The operative portion of order dated 11.04.2025 reads as: -

“V. In view of the above legal position, the Registrar is competent to set aside the Governing Body of the society only



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in case when any of the conditions as mentioned in sub-section (i) to (ii) of Section 40 (1) of the HRRS Act, 2012 are satisfied. None of the conditions mentioned above are satisfied in present matter and the dispute referred by the District Registrar, Gurugram is also not covered under above mentioned sub-section (iii) of Section 40 (1) of the HRRS Act, 2012 as the election of the Governing Body of the society (except treasurer) was conducted un-opposed. Further, as the respondent No. 3 is having grievances with improper voter list and he was well aware about improper voter list, even before its publication which is evident from the facts admitted in his written reply dated 29.03.2025, So, the appropriate remedy available with the respondent No. 3 was to file petition under Section 39(4) of the HRRS Act, 2012. The relevant Section 39(4) of the HRRS Act, 2012 is reproduced as under:-

"39(4) Any person or group of persons, if aggrieved with the list of members published under sub-section (3) above on account of non-inclusion or wrongful inclusion of any member, may file a petition with the District Registrar stating the specific grounds of challenge within a period of fifteen days of publication of the list of members. The District Registrar may, where the number of members is very large and for reasons to be recorded, accept the petition within an extended period of seven days."

From the perusal of record, it reveals that no such petition has been filed by the respondent No. 3.

Once the respondent No. 3, who is well aware about the improper voter list, has opted not to challenge the same, he cannot challenge the election, which is conducted on the said voter list. The Ld. State Registrar of Societies, Haryana, and the District Registrar, Gurugram has failed to consider the above legal position while passing the impugned orders.



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In view of the above, I am of the considered view that the District Registrar, Gurugram and the Ld. State Registrar of Societies, Haryana have passed the impugned orders by overlooking the legal provisions. I hereby set aside order/election reference dated 13.12.2024 made by the District Registrar, Gurugram and order dated 06.02.2025 passed by the Ld. State Registrar of Societies, Haryana and the present appeal is hereby allowed. The pending applications, if any, also stands disposed of.”

8.7 From the perusal of above-quoted paragraph, it is evident that Registrar General allowed petitioners’ appeal on the sole ground that respondent did not challenge voter list in terms of Section 39(4), thus, election could not be challenged under Section 40. The respondent filed review petition which has been allowed by impugned order. The Registrar General has formed an opinion that elections of the governing body were conducted in violation of the process and complete disregard of the provisions of the Bye-Laws of the Association, thus, elections are liable to be set aside under Clause (iii) of proviso to Section 40(1) of 2012 Act.

8.8 The petitioners are claiming that respondent-Registrar General has considered facts which were later on brought on record. The Registrar General could not consider new facts. Contention of the petitioners cannot be countenanced because of the fact that letter disputing voter list was already on record. The petitioner cannot be heard to say that respondent has placed on record new facts. The Registrar General has considered facts which were already on record. A perusal of order passed by District Registrar dated 13.12.2024 makes it clear that respondent vide letter dated 28.08.2024 raised objection with respect to voter list and election was proposed to be



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cancelled on the basis of violation of Bye-Laws, thus, contention of petitioners that respondent-Registrar General has considered new facts cannot be countenanced. Their contention is liable to be rejected and is hereby rejected.

9. **Question No. II:** - Whether while adjudicating petition under Section 40 of 2012 Act, elections of governing body could be declared invalid on the ground of deficiency in voter list?

9.1 The Registrar General by order dated 11.04.2025 held that respondent did not challenge election as per Section 39(4), thus, outcome of election cannot be challenged on the basis of voter list. The Registrar General by impugned order has held that elections were held in violation of Bye-Laws to the extent that cutoff date was wrongly considered.

The respondent is claiming that he has filed objections as per Section 39(4). The respondent's Letter is on record disclosing that he has filed objection. There is no prescribed form for filing objection, thus, his letter needs to be considered as objection especially when District Registrar acted upon said letter and sought report from Administrator. The respondent's contention that he has filed objection as per Section 39(4) deserves to be accepted and accordingly hereby accepted.

9.2 The matter needs to be further examined in the light of scope of Section 39 vis-à-vis Section 40 of the 2012 Act. As per Section 39, the governing body or Administrator or *ad hoc* body has to publish list of members entitled to vote. Such a list of members is made available to members on demand and on payment of such fee as may be prescribed by



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the society and its Bye-Laws. Section 39(3) prescribes that list of members who are entitled to vote shall be notified. As per Section 39(4), any person feeling aggrieved from list of members may file petition before District Registrar who may withhold elections. He may conduct inquiry. He on the basis of inquiry may approve notified voter list or may make amendment in the voter list. In the case in hand, the District Registrar opted to call record from the Administrator who submitted his report dated 02.09.2024 wherein he justified 31.03.2024 as cutoff date. He clarified that there is no member who has paid dues upto 30.06.2024, thus, with the consent of all the members present in the meeting, 31.03.2024 has been considered as cutoff date. The District Registrar on the basis of said report could proceed in accordance with Section 39(6), however, did not pass any further order. He did not conduct any further inquiry. He permitted elections to continue. It is apt to mention here that respondent did not challenge inaction of the District Registrar. The elections were finally conducted on 15.09.2024. The result was declared on 15.09.2024. The respondent at this stage filed petition under Section 40 before District Registrar who by order dated 13.12.2024 referred the matter to State Registrar with his recommendation that election should be cancelled because voter list was not as per Bye-Laws. Section 39 and 40 of 2012 Act and Clause 4(ii) of Bye-Laws read as: -

“39. Elections and settlement of disputes.—(1) Elections shall be first held for the constitution of the Collegium from within the electoral colleges determined therefore, wherever applicable, and thereafter for the Governing Body by the Collegium.



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(2) The process of elections of the Collegium of a Society shall be commenced, in so far as possible, three months prior to the due date so that the newly elected Governing Body is in place on or before the due date.

(3) On the day the elections of a Society are notified, the Governing Body or the ad hoc body or the Administrator, as the case may be, shall publish the list of members entitled to vote. Such list of members shall be made available to a member on demand, on payment of such fee, as may be prescribed by the Society in its Bye-laws.

(4) Any person or group of persons, if aggrieved with the list of members published under sub-section (3) above on account of non-inclusion or wrongful inclusion of any member, may file a petition with the District Registrar stating the specific ground of challenge within a period of fifteen days of publication of the list of members. The District Registrar may, where the number of members is very large and for reasons to be recorded, accept the petition within an extended period of seven days.

(5) The District Registrar may, if he has reasons to suspect the bona-fides of any such petition, require the petitioners: to deposit such amount, as prescribed, as a surety against any abuse of sub-section (4) above. The amount deposited by the petitioners shall be refunded forthwith if the petition succeeds but shall be liable to be forfeited, if such petition is found to have been made without any merits.

(6) Where a petition is filed before the District Registrar under sub-section (4) above, the District Registrar shall, after fulfilment of the condition, specified under sub-section (5), immediately hold the election process in abeyance and proceed to conduct an inquiry by himself or by an officer appointed by him, in this behalf, for determining list of eligible members.



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(7) The District Registrar may, for the purpose of his inquiry, refer to the annual return of members filed by the Governing Body in his office and consult any or all the relevant records of the Society. The District Registrar shall enjoy all the powers vested in him under Chapter XII of the Act for holding the inquiry. Any such inquiry shall be conducted in the open and completed in a summary manner.

(8) Upon completion of the inquiry under sub-section (6) above, the District Registrar shall determine the list of members eligible to vote, make it public and set the process of election in motion. Where the initial list of members published under sub-section (3) above is found to be defective during the inquiry, the election of the Collegium or the Governing Body, as the case may be, shall be conducted by the District Registrar under his direct supervision and control after setting the dispute as per the provisions of the Act.

(9) Where elections of the Governing Body are held by the members of the General Body, without requirement of a Collegium, any challenge to the list of members of the General Body shall be settled by the District Registrar in the same manner, as specified above.

(10) Where the elections of the Governing Body are not held by the due date, for whatsoever reasons, the District Registrar may constitute an ad hoc Committee or appoint an Administrator to manage the affairs of the Society, immediately upon the expiry of the due date, for the intervening period and for conducting the elections of the Governing Body.

(11) A Society may approach the District Registrar for appointment of the returning officer and/or an observer for conduction the elections of the Collegium or the Governing Body, as the case may be, whereupon the District Registrar shall order the appointment of the returning officer and/or an



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observer within seven working days of the receipt of such request from the Governing Body or the ad hoc Committee or the Administrator, as the case may be.

(12) The returning officer appointed by the District Registrar shall ensure a minimum notice, of fifteen days to all the members, served individually where possible, or through a public notice, at the expense of the Society, for the information of the members.

(13) The returning officer and/or the observer, wherever appointed, shall complete the process of elections and submit a report thereof to the District Registrar, whereupon the duly elected Governing Body shall be placed in charge of the affairs of the Society and the appointment of any ad hoc Committee or the Administrator shall cease to continue forthwith.

(14) The District Registrar may fix the remuneration or honorarium for the person appointed as the Administrator, the returning officer, the observer or member of ad hoc Committee in the manner and at the rates prescribed from time to time.”

“40. Settlement of disputes arising from election of Collegium or Governing Body and its office-bearers.—

10(1) Where a dispute or doubt arises with regard to election or continuance in office of any elected member in a collegium, the District Registrar or at least one fourth members of the General Body and where a dispute or doubt arises with regard to election or continuance of any members in the Governing Body, the District Registrar and if there is need to constitute the collegium, then the District Registrar or at least one fourth members of the collegium, may refer to the dispute or doubt by moving a reference or petition before the Registrar within thirty days from the date of declaration of result and the Registrar shall decide the same and pass



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such orders, as he may deem fit, preferably within a period of ninety days but not later than one hundred twenty days.

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-laws.

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;



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(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) Whereby 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



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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.”

“Clause 4(ii) of Bye-Laws

(ii) The payment of annual subscription of a member shall become due as on the 1st of April of every year, which may be paid latest by the 30th of June of such year. The membership of a defaulting member shall be deemed to be under suspension after the due date (30th June) and such member shall not be entitled to cast his vote during the elections of the Society held after 1st July of the said year.”

[Emphasis supplied]

9.3 The impugned orders have been passed while relying upon Clause (iii) of proviso to Section 40(1). As per Clause (iii) of proviso to Section 40(1), the result of the election may be set aside if State Registrar finds that election has been **materially** affected by improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or reception of any vote which is void or does not comply with provisions of any Bye-Laws. There is a fundamental difference between Section 39(4) and Section 40(1). Section 39 is applicable prior to elections and Section 40 comes into play the moment result of election is declared. In the present case, the respondent filed objections under Section 39 which were dealt by District Registrar in one or another way. The elections were not halted and permitted to continue. As soon as elections were held and result was declared, remedy of Section 39 ceased to exist. The District Registrar could not invoke Section 39 and all the authorities were bound to act within the scope and ambit of Section 40.



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9.4 Three grounds are contemplated under proviso to Section 40(1) to declare elections invalid. The impugned orders have been passed while relying upon Clause (iii) of proviso to Section 40(1). The aforesaid Clause of the proviso provides that election may be declared invalid if result of any office bearer has been **materially** affected by improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or reception of any vote. The said Clause is applicable where election of any office bearer is **materially** affected due to acceptance or rejection of any vote. Event of acceptance or rejection of vote takes place at the time of voting. If during voting any vote contrary to voter list is accepted or rejected which **materially** affects election, it may be cancelled. Challenge to voter list is not contemplated by proviso to Section 40(1), thus, authorities have wrongly relied upon Bye-Laws to declare elections invalid.

9.5 There is another aspect of the matter which needs to be examined. The election process actually commenced in the month of April' 2024 when Returning Officer issued notice of election. The elections could not be conducted on account of resignation of Returning Officer as well as members of the *ad hoc* committee. The District Registrar appointed Administrator who again carried out same exercise and issued notice of election for 15.09.2024. There was not even a single member who was eligible to vote had 30.06.2024 been considered cutoff date. The Administrator called meeting of all the members and with the consent of the members, it was concluded that 31.03.2024 should be considered as cutoff date. In the compelling circumstances, the Administrator with the consent of members opted to consider 31.03.2024 as cutoff date. It is settled law that



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any provision including statutory cannot be read in such a manner which makes the entire scheme otiose. The respondent is relying upon one particular provision of Bye-Laws which provides that if elections are conducted after 1st July of the particular year, 30th June of the said year would be considered as cutoff date for voter list. As there was no member who was eligible to vote, had 30.06.2024 been considered cutoff date, the Administrator rightly considered 31.03.2024 as cutoff date. This Court cannot ignore the fact that tenure of the governing body expired on 31.03.2023 and there was no governing body till September' 2024. Appointment of Administrator entails additional cost on the society which gets funds from its members. As pointed out during the course of hearing, tenure of governing body is going to expire in September' 2026. No useful purpose is going to be achieved, if at this stage, elections are declared invalid.

10. The aforesaid discussion leads to answer of hereinabove raised questions as below: -

- i. The Registrar General has power to review his orders if it is found that order was based upon erroneous facts. In the present case, the original order was based upon erroneous facts, thus, Registrar General was empowered to review his order and he has rightly reviewed his order.
- ii. Section 39 is applicable prior to holding elections and Section 40 is applicable post-elections. Objection with respect to voter list can be raised prior to elections and



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District Registrar is empowered to conduct inquiry and take appropriate action. Section 40 is applicable post-elections and District Registrar except to make reference has no power to declare elections invalid. State Registrar has power to declare elections invalid on the grounds enumerated in proviso to Section 40(1). In the present case, the authorities including Registrar General have declared elections invalid on the basis of deficiency in voter list which was not permissible in law. The elections have not been declared invalid on the basis of grounds enumerated in Section 40(1) of 2012 Act.

11. In the backdrop, this Court is of the considered opinion that impugned order is liable to be set and accordingly set aside.

12. Allowed in above terms.

13. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

13.05.2026
SUDEEPAK

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