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**(2000) 05 DEL CK 0117**

**In the Delhi High Court**

**Case No :** I.A. No's. 5106 and 6921/94, 2406/97, 5647, 5648 and 8919/98,  
6960/99 and 2341, 3086 and 3412 of 2000 and S. No. 1269 of 1994

Sanatan Dharam Sabha (Regd.) and Others

APPELLANT

Vs

Naresh Chand Aggarwal and Others

RESPONDENT

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**Date of Decision :** 26-05-2000

**Acts Referred:**

Societies Registration Act, 1860 — Section 15

**Citation :** (2000) 86 DLT 228 : (2001) 2 RCR(Civil) 579

**Hon'ble Judges :** J.B. Goel, J

**Bench :** Single Bench

**Advocate :** Pradeep Nandrajog, for the Appellant; J.P. Gupta, for Defendant Nos. 2 to 9 and 11, Ajit Warriar, for Defendant Nos. 1 to 10 and Anil Gupta, for Defendant No. 12, for the Respondent

**Final Decision :** Dismissed

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## Judgement

J.B. Goel, J.—Shree Sanatam Dharam Sabha (Regd.) plaintiff is a society registered under the Societies Registration Act, 1860 (for short "the Act") which inter alias runs schools and manages religious places at Shahdara. Its affairs are managed by a Managing Committee of 17 persons elected on the basis of election by its members. The Managing Committee has a President, Vice-President, Secretary, Joint Secretary and Treasurer. It appears that the disputes about elections to its Managing Committee has become a perpetual feature. Earlier elections were notified for 19,1.1992, Only 17 persons submitted their nomination which were found valid and they were declared elected. The election was challenged by two persons, namely, S Om Prakash Seerawala and Ram Kishore Gupta in Suit No. 3048/92 titled as Shri Sanatam Dharam Sabha (Regd.) and Ors. v. Shri Parmanand Gupta and Ors.. A settlement was arrived at between the parties, and a joint application (I.A. No. 2375/94) under Order 23, Rule 2, CPC agreeing for holding fresh elections under the supervision of three persons, namely, S /Shri Satish Chand Aggarwal, Dr. Narender Nath and Shiv Shankar Sharaf, was filed along with a list of 311 members eligible to vote. That

compromise was accepted by this Court. Elections were held on 10.4.1994 and the new Managing Committee was constituted which took over charge on 11.4.1994. Some members convened separate meeting and constituted a parallel Managing Committee. Thus fresh disputes arose between the parties. Nine of the members (plaintiffs 2 to 10) elected on 10.4.1994 filed the present suit impleading the remaining 8 members (defendant Nos. 1 to 8) of the Managing Committee besides some other persons seeking, inter alia, declaration that the election held on 10.4.1994 was valid and the plaintiff Nos. 2 to 5 were validly elected as President, Vice-President, Secretary and Treasurer of the plaintiff No. 1 and they along with defendants 1 to 8 constituted the Managing Committee and that a parallel Managing Committee constituted by defendants was illegal. An interim order was passed by this Court on 30.5.1994 restraining the defendants from holding meetings of the Executive Committee of the Society by associating defendant Nos. 9 to 12. However, meeting of the Executive Committee could be held associating plaintiff Nos. 2 to 10 and defendant Nos. 1 to 8 only who were elected on 10.4.1994 and defendants were further restrained from interfering in the right of the plaintiff Nos. 2 to 5 to function as the office bearers of the plaintiff No. 1. The suit dragged for about 4 years without any progress when on 3.4.1998 with the consent of the Counsel for the parties, a retired Additional District and Sessions Judge was appointed as an Administrator to hold elections to the Managing Committee. For that purpose the following order was passed by this Court:

"Learned Counsels for the parties agree that an independent person may be appointed by this Court who will hold the elections of the Governing Body of the Society.

In view of this statement made by the learned Counsel for the parties, I appointed Mr. S.R. Goel, a retired Additional District and Sessions Judge, Delhi as the Administrator only to conduct the elections of plaintiff No. 1 Society according to the constitution and bye-laws of the society.....

The plaintiffs are directed to hand over the relevant documents about the membership of the society to the Administrator within one week. If any dispute is pending about the membership of any person relevant paper(s) will be handed over to the Administrator who will decide the question about the validity of such membership. The Administrator shall hold the elections as early as, if possible, within two months after the receipt of notice of this order. Copy of the order be given duly to the Counsel for the parties."

2. The documents were not handed over to the Administrator within one week and the Administrator was actually approached by the Secretary of the plaintiff only on 13.5.1998 and the relevant papers as ordered were still not given to him. Elections were held under his supervision on 19.7.1998 in which 16 persons got clear majority of vote whereas two persons namely S /Shri Iqbal Chand and Parma Nand Gupta secured 127 votes each and as such there was a tie among these two persons.

3. Dispute was raised before the Administrator about the members of the society who were entitled to vote. plaintiff's group / Secretary had supplied a list of 442 members out of which 148 members were disputed and similarly the defendants furnished a list of 198 members alleged to have also been enrolled by them. After hearing the parties, the learned Administrator vide his reasoned order dated 9.7.1998 rejected the claim of the defendants in respect of 198 members and found only 311 persons eligible to vote. Six persons, namely S/Shri Prem Chand Singhal, Anil Kumar, Dushyant Kumar Tyagi, Satya Prakash Gupta, Arun Kumar and Saran Dass filed here application I.A. No. 5647/98 under Order 1, Rule 10 for being imp leaded as voters in the election. After the elections were held and the report of the Administrator was submitted, this Court vide order dated 10.8.1998, allowed the parties to file objections against the report. The defendants did not file any objections. plaintiffs have alleged having filed objections on 16.10.1998. However, these are not available and it appears that these were returned with some objections and were not refiled. The plaintiffs thereafter filed I.A. 3421 /2000 pointing out that they had filed the objections on 16.10.1998 which were not available on record nor traceable and desired to file a copy of these objections. Defendant Nos. 2 to 11 had filed reply to the applications filed by six applicants as well as against the objections filed by the plaintiffs on the basis of advance copy supplied to them earlier. Subsequently, further objections have been filed on behalf of 23 more persons on 16.7.1999 (I.A. 6960/99) long after.

4. I have heard Mr. Pradeep Nandrajog, learned Counsel for the plaintiffs, Mr. Ajit Warriar for defendant Nos. 1 and 10, Mr. J.P. Gupta for defendant Nos. 2 to 9 and 11, Mr. Anil Gupta for defendant No. 12 and Mr. Ravi Gupta for six applicants in I.A. No. 5647/98.

5. Learned Counsel for the plaintiffs has contended that the learned Administrator has wrongly rejected and excluded from voting 148 members of the society and deprived them of their right to vote and/or to contest the elections thereby exceeded his power and jurisdiction; there was no pending dispute about their membership nor any could be entertained by him; that the learned Administrator has wrongly held that the admission fee of Rs. 251 /- was required for admission as a member for which there was no resolution of the Managing Committee available on the records of the society, also that there has been irregularities in the counting of votes polled and as such the election is liable to be cancelled.

6. Learned Counsel for the six applicants (I.A. Nos. 5647-48/98) has contended that the six applicants were members of the society since long; their names were included in the list of the members of the society, their nominations for the election to the Managing Committee have been wrongly rejected by the learned Administrator. In any case, the question of eligibility of members to vote should have been determined before the programme for election was announced and notified.

7. Whereas Mr. J.P. Gupta, learned Counsel for the defendant Nos. 2 to 9 and 11 has contended that the objections have not been filed by plaintiffs and as such they cannot be heard to dispute the report or the elections held by the Administrator; that names of 148 members had been illegally and unauthorisedly included in the list as members, that they had never been validly enrolled; none of them had paid prescribed admission fee of Rs. 251/- and annual subscription as such they could not have been validly enrolled and so are not eligible to exercise right as members; that they are alleged to have been enrolled in the meeting of the Managing Committee held on 21.4.1994 but the agenda of the meeting and also the minutes of the meeting held on 21.4.1994 have been fabricated. Hence their claim for membership has been rightly rejected; that the question of determining the eligibility of a person as a member was within the scope of the power of Administrator as conferred by this Court vide order dated 3.4.1998; that there were no irregularities in the counting of votes nor any objection to this effect was raised at the time of counting of votes. This objection is not bona fide and there is no valid ground to interfere in the report of the Administrator.

8. As already noticed this Court vide order dated 3.4.1998, had appointed an Administrator to hold elections of the Managing Committee of the Society as far as possible within two months of receipt of the notice. By the same order, the plaintiffs who were managing the affairs of the society and were in custody of its records were directed to hand over all the relevant papers to the Administrator. Copy of the order was ordered to be given dasti. The Administrator was actually approached by the Secretary only on 13.5.1998, i.e., after about 40 days of the order. There is no Explanation given by the plaintiffs or the secretary for such a long delay. Objection has been taken on behalf of the defendants 2 to 9 and 11 that in the meantime the records of the society have been fabricated to regularise membership of 148 persons who in fact were not validity enrolled members. This unexplained long delay casts suspicion on the bona fides of the plaintiffs and of the Secretary. The determination of the question of the membership of a person if a dispute arose to this effect, was within the scope of the power and jurisdiction of the learned Administrator. The learned Administrator has considered this question when dispute arose before him before the date fixed for withdrawal of the nominations and after hearing the parties and considering the material placed before him he has held that the 198 members whose list was given by the defendants and 148 names given by the plaintiffs were not validly enrolled members. On behalf of the defendants, two objections were raised: (1) that a fee of Rs. 251 /- had been prescribed as admission fee for becoming a member of the society as per resolution passed in the General Body Meeting of the Society and none of these 148 members had paid this admission fee; (2) these members were not enrolled on 21.4.1994 but have been illegally enrolled unauthorisedly and later on without any agenda. On behalf of the plaintiffs, it was contended that there was no admission fee prescribed for enrolment as a member and no such resolution was available in

the records of the Society. On behalf of defendants, a receipt No. 288 dated 30.7.1991 was filed before the learned Administrator. This has been exhibited as A-2. By this receipt. Rs. 275/- has been realised from one Shri Subhash Aggarwal s/o Shri Gangu Ram on account of (a) Annual subscription for the year 1991-92 Rs. 24/-; and (b) admission fee Rs. 251 /-, total Rs. 275/-. Genuineness of this receipt was not disputed on behalf of the plaintiffs and no Explanation was given as to how admission fee of Rs. 251 /- had been charged in this case. Records containing relevant resolution of the Society would be available in the records of the society. plaintiff Nos. 2, 3, 4 and 5 were elected President, Vice-President, Secretary and Treasurer respectively of the Managing Committee constituted on 11.4.1994, they must have taken over the control and affairs of the Society along with all the records of Society, which they continue to hold till today. No affidavit was filed by any of these persons before the learned Administrator or even before this Court that relevant records of the society were not available. The learned Administrator has further relied on the plea taken by some of the plaintiffs in the present suit who were defendants in earlier Suit No. 3048/92 titled as Shri Sanatam Dharam Sabha (Regd.) and Ors. v. Shri Parmanand Gupta and Ors., (plaintiff Nos. 2, 4, 7, 8, 9 and 10 were defendant Nos. 2, 1, 9, 5, 13 and 6 in that suit). In that suit, the defendants, in para 6 of the preliminary objections of their written statement had stated that admission fee and subscription was received from 98 members amounting to Rs. 26,950/- by means of receipts issued under the signatures of Ganga Prasad and Roshan Lal and that amount was given to Shri Ram Kishore Gupta but he did not deposit the same in the Bank account of the society. The learned Administrator has made his calculations on the basis of this amount of Rs. 26,950/- as under :

Yearly Subscription Admission fee

Rs. 24.00

Total: Rs. 251.00

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Rs. 275.00

Members

98

Total Amount Rs.275X98 = Rs.26,950/-.

This also shows that admission fee of Rs. 251 /- was payable for enrolment as a member. This inference necessarily arises on the basis of admission made by some of the present plaintiffs as defendants in that earlier suit. It is not the case of the plaintiffs or the applicants that any of these 148 persons had paid admission fee of Rs. 251/- and/or the annual subscription of the society on being enrolled as members on 21.4.1994 and for subsequent period till the dates fixed for nomination for election held on 19.7.1998. No receipt or other document in

proof of their having paid either admission fee or annual subscription have also not been produced. The learned Administrator has drawn inference that the records have been withheld unreasonably. This inference cannot be said to be unreasonable or unjustified.

Section 15 of the Act provides as under:

"15. Member defined : Disqualified members--For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months."

9. Register of membership or a list of members duly signed by the members is required to be prepared by the society. Such a Register or list duly signed by these 148 persons has not been produced on record in this case. Nor it is alleged or shown that they had paid up-to-date annual/monthly subscription to the Society. For this reason also, 148 members were not eligible to vote or to contest election as members.

10. The learned Administrator has also noticed that agenda of the meeting for 21.4.1994 was circulated by notice dated 16.4.1994. In fact the agenda has not been separately circulated but it is mentioned in the minutes of the meeting of the Committee held on 16.4.1994 that the next meeting of the Managing Committee would be held on 21.4.1994 at 8.30 p.m.

The Agenda for the meeting to be held on 21.4.1994 consists of three items:

1. The election of the Managing Committee of the Sanatam Dharam Senior Secondary School, Shahdara, Delhi;
2. Election of the Managing Committee of Sanatam Devnagri Pathshala, Shahdara, Delhi; Avem Sabha ke Naya Sadharan Sadasayon (illegible).
3. Any other item with the permission of the President.

11. The agenda is in Hindi and in item No. 2, the aforesaid underlined words in Hindi appears to have been written in different writing instruments and ink. Decision of agenda No. 1 appears at first page of the minutes recorded on 25.4.1994 whereas decision on agenda No. 2, numbered as 2(A) and 2(B) appears on next page followed by the list of 148 members who were admitted as members. The writing instruments and the ink used in the writing on first page appears to be different from the instrument used in writing from second page onwards. The learned Administrator has held that the enrolment of the members was not part of the agenda but this was introduced in the agenda subsequently. Even assuming this item was included in the agenda and was considered/

approved in the meeting on 21.4.1994, still the position remains that admission fee of Rs. 251 /- and the annual subscription as member had not been paid by them. A person could not be enrolled as a member without payment of admission fee nor eligible to vote as a member for that purpose to contest election to the Managing Committee without payment of subscription as a member. For this reason also, these 148 persons were not eligible to vote or as members to contest election held on 19.7.1998. These persons thus were validly excluded by the learned Administrator from participating in the election.

12. It is also contended that the applicants were not given opportunity of being heard before rejecting their names. The objection regarding membership arose at the time of scrutiny. The applicants ought to have appeared at the time of scrutiny and if they failed to so appear, they cannot take benefit of their own fault.

13. It is also contended on behalf of the plaintiffs that dispute about the membership of these persons was not within the scope of the power of the learned Administrator. This contention has no force. It was specifically mentioned in the order dated 3.4.1998 passed by this Court that if any dispute is pending about the membership of any person, the relevant papers will be handed over to the Administrator who will decide the question about the validity of such membership. The defendants or for that purpose other members would not be aware of the enrolment of these 148 members earlier. This dispute obviously would arise at the time of scrutiny of the nominations. The objection having been raised about validity of a member this had necessarily to be decided by the Administrator. This thus was within the scope of the power and jurisdiction of the Administrator to have decided. The list of 442 members relied upon by the plaintiffs and the applicants were not approved by the Administrator or by this Court. This contention also has no force.

14. In view of the circumstances and the material, no fault can be found with the order passed by the learned Administrator rejecting and excluding the names of 148 members from the list of voters of the society. There is no dispute about remaining 311 members who had also voted in the earlier election held on 10.4.1994.

15. The other contention of the learned Counsel for the plaintiffs and applicants is that irregularities have been committed in counting of votes as some votes have been wrongly added in the names of some candidates whereas votes polled in favor of some candidates have not been included in the names of some other candidates.

16. The learned Administrator in his report has given the details of the procedure adopted by him at the time of counting of the votes. He has stated that after the polling was over, counting of the votes started at 2.30p.m. Valid votes were divided into bundles. Shri P.M. Gupta, Secretary of the Society and Shri Shyam Sunder Gupta of the other party were sitting on his right side and left side

respectively so that they could see the ballot papers properly. (Shri P.M. Gupta is one of the plaintiffs.) Then, two counting sheets were taken, one was given to Mr. Madhu Sudan Sharma and the other to Mr. Rajender Kumar (these are two officials of this Court who were appointed by this Court to assist the Administrator in the elections). Paras 14 and 15 of this read as under :

"14. Shri Madhusudan Sharma and Shri Rajender Kumar were recording the votes polled by each candidate as announced by me in their respective counting sheets and when the votes polled in each bundle were finished, the total of votes polled by each candidate was entered in the counting sheets and if the number in the sheet maintained by Shri Madhu Sudan Sharma tallied with the number of votes entered by Shri Rajender Kumar the total number of votes secured by each candidate were announced by me and when the correctness of this number was confirmed by the contestants or their supporters as they were also recording the numbers of votes polled by each candidate in the sheets with them, the next bundle was taken. This process was repeated in recording and counting the vote of each bundle. After the total votes were counted, the total of votes secured by each candidate was entered in the third sheets maintained by Mr, Madhusudan Sharma and Mr. Rajender Kumar separately and I had also checked the total of the same. Thereafter I had announced to the candidates and their supporters who were present there, the number of votes received by each of the ^35 candidates. The number of votes secured by topmost 18 candidates along with their ballot number is given against each candidate"s name in Annexure-A attached with this report. According to the polling and counting 16 candidates from Serial Nos. 1 to 16 stood elected to 17 members" Managing Committee. Two candidates at Serial Nos. 17 and 18 secured the same number of votes i.e., 127 each, Therefore, the decision as to who out of these should be elected/ selected to the Managing Committee of the Sabha was left to the Hon"ble High Court.

15. The votes polled including the invalid votes were got sealed into a TIN KANASTAR by Shri Parmanand Gupta, the Secretary of Sabha and Shri Rakesh Aggarwal, candidate at Serial No. 13 in the Annexure A. There is no objection with regard to the rejection of invalid votes and the correctness of the votes counted and the method of counting. There was no untoward incident during the polling or counting except a little bickering amongst some members at the time of polling. Of course the police was also there to avert any untoward incident. The unused valid papers which were 26 in number were taken by me in my briefcase, they were cancelled and have been sealed with the cello tape in an envelope. The counting was over at about 11.15 p.m."

17. The learned Administrator has categorically staled that there was no objection raised before him by the candidates or their representatives or by Shri P.N. Gupta or Shyam Sunder Gupta who were present there at the time of counting about the procedure of counting or about the votes polled in favor of the candidates. In view of the report of the learned Administrator, this objection

does not seem to be bona fide and has no merit.

18. It may also be mentioned that the parties were given opportunities to file objections, if any, against the report of the learned Administrator. Counsel for defendant Nos. 2 to 11 made statement not to file any objection. plaintiffs also did not file objections within the time allowed for this purpose. On 24.9.1998 it was ordered that "no further opportunity shall be granted to any of the parties for the purpose". The objections are alleged to have been filed by plaintiffs on 16.10.1998; even those are not available on the record. Noting made by the Registry on the file shows that the objections were returned with office objections and obviously these have not been re-filed. No affidavit has also been filed on behalf of the plaintiffs that the objections were refiled. Assuming that the objections were filed on 16.10.1998, these were not filed within the period specified by this Court and there is no Explanation for delay nor any application for condensation of delay has been made. Thus there are no objections filed by the plaintiffs.

19. The elections were held on 19.7.1998. The report of the learned Administrator was received in this Court on 23.7.1998. Parties were given time to file objections, if any, within two weeks from 24.9.1998. The objections by 23 applicants (I.A. 6960 /99) have been filed only on 16.7.1999, i.e., after about one year of the report of the learned Administrator was received and after about 10 months of the time allowed to file objections by this Court. These objections are highly belated and there is no Explanation for this long delay. Unexplained long delay shows lack of bona fides. These objections thus could not be entertained. In any case, these objectors are among 148 persons who have been held to be not entitled to vote.

20. The contention of the learned Counsel for the six applicants that the voters' list of 442 persons was circulated and was published in the newspaper on 27.6.1998 also has no merit. This list was never approved by the Administrator nor it was published under the order of the Administrator. This was done by the Secretary of the Society of his own. Moreover, the Administrator appointed by this Court was authorised to decide the dispute about the eligibility of the members. There is no irregularity in his going into and deciding this dispute. This contention also has no force.

21. According to the rules and bye-laws of the Society, 17 members who are elected constitute the Managing Committee. In this case, 16 persons have got clear majority votes. They are entitled to be declared to have been elected. Two candidates, namely, Shri Iqbal Chand and Dr. Parmanand Gupta have both got 127 votes each. Thus, there is a tie in their case. The bye-laws of the society do not contemplate for resolution of dispute in case of a tie. As such, these two persons are held to be not elected.

22. In the result, the objections filed by the plaintiffs and the applicants are dismissed. The report of the Administrator is accepted and the following 16

members are declared to have been elected as members of the Managing Committee of the plaintiff No. 1 society in the election held on 19.7.1998 :

S.NO. Ballot No. Name of the Candidate Votes Obtained

1. 2 Anil Kumar Gupta 181
2. 10 Jai Bhagwan Garg 178
3. 17 Om Parkash 165
4. 13 Mohan Lal 160
5. 24 Ram Niwas 155
6. 25 Roshan Lal 154
7. 6 Din Dayal 153
8. 35 Zile Singh 150
9. 3 Ashok Aggarwal 147
10. 1 Amar Singh Goswami 139
11. 7 Ganga Parshad 134
12. 4 Chander Parkash Bansal 132
13. 22 Rakesh Aggarwal 132
14. 21 Rajender Parshad Goel 131
15. 5 Davinder Gupta 128
16. 11 Laxmi Narain Bansal 128

23. They shall assume charge of the office of the Managing Committee forthwith. plaintiffs shall hand over the charge of the society to the President and the Secretary of the Managing Committee so constituted.

I.A. Nos. 5647, 5648/98, 6960/99, 3086/2000, 3412/2000 are dismissed. Interim order dated 30th May, 1994 is hereby vacated.

Suit No. 1269/1994 and I.A. Nos. 5106/94, 6921/94, 2406/97, 5646/98, 5647/98, 8919/98, 6960/99, 2341/2000, 3086/2000 and 3412/2000 stand disposed of.