
(2012) 02 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19919 of 2010

Shri Luxmi Kant Goyal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 4 RCR(Civil) 93

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Pawan Kumar, with Mr. Anshuman Mandhar, for the Appellant; Kirti Singh, DAG, Haryana, for the Respondent Nos. 1 to 3-State, Mr. Ashwani Talwar, Advocate for the Respondent No. 4 and Mr. Gurminder Singh, Manpreet Singh Longia, Ramanpreet Singh Bora and Mr. Rahul Sharma, Advocates for the Interveners, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—In the course of hearing arguments on intervenor Prakash Chand Gupta's application bearing CM No. 6519 of

2011 for vacation of stay order dated 9.11.2010 which was made absolute on 4.4.2011 by this court when the matter was admitted for regular

hearing, the parties by consent agreed that the main matter be itself disposed of on merits. That is how the matter was taken on board for final

disposal and parties heard. The present writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the impugned

order dated 2.11.2010 (Annexure P-6) passed by the District Registrar of Societies, Hisar (for short "DRS, Hisar")-respondent No. 3, holding

that the election to the Shri Vaish Sabha, Hansi (for short "the Sabha"), a registered society, held on 6.10.2010 allegedly in pursuance to an interim

order dated 29.9.2010 (Annexure P-2) passed by the Civil Court is invalid. Consequently, the impugned direction has been issued by the DRS,

Hisar that the election of the Sabha be conducted as per the list of members upto 1.1.2010.

2. It would be necessary to notice the mile-stone facts of the present case. In the general body elections conducted in 2006, one Dev Raj Lohia

was elected President of the Sabha. He died in harness on 2.6.2010. In terms of the bye-laws, the Vice President is deemed to be the President of

the Sabha, on the death of the elected President. One Krishan Kumar Garg, Senior Vice President, became the Acting President of the Sabha. In

that election 7 other office bearers were also elected apart from 12 members of the Executive Committee. The petitioner Luxmi Kant Goyal pleads

that one Prakash Chand Gupta (intervenor), in order to wrest control of the Sabha, got himself unlawfully declared as Acting President of the

Sabha on 12.6.2010 following the death of Dev Raj Lohia in a meeting convened for the purpose by him. It is stated that a meeting was also held

on 21.8.2010 under the chairmanship of Krishan Kumar Garg and a decision was taken by the managing committee that the bogus President

Prakash Chand Gupta be immediately removed from the Sabha and accordingly, a resolution was passed. It appears that Krishan Kumar Garg and

Prakash Chand Gupta are at loggerheads. To return to the narration of facts, in the life time of Dev Raj Lohia, a civil suit came to be instituted in

the learned trial court at Hansi, titled Naresh Kumar and 3 others v. Shri Vaish Sabha Regd., Hansi, challenging various resolutions of the Sabha,

removal of members etc. This civil suit was numbered as 162-C of 2009. On the death of Dev Raj Lohia, a war of succession started. In that suit

three separate applications were moved by Jai Kumar Mittal, Krishan Kumar Garg and Prakash Chand Gupta, claiming themselves to be

representatives of the Sabha and sought impleadment in place of late Dev Raj Lohia. All these three applications were heard on 28.9.2010 by the

learned trial Court and it was held that Krishan Kumar Garg, Senior Vice President of the Sabha, by virtue of holding the office of Senior Vice

President, would be entitled to exercise all powers of the President after the death of the President of the Sabha. Clause 13 of the constitution of

the Sabha was relied upon by the learned trial Court in reaching the conclusion. Krishan Kumar Garg, however, by order, was not entitled to

operate bank accounts. The claims of Jai Kumar Mittal and Prakash Chand Gupta were rejected. The order of learned trial Court is placed as

Annexure P-1.

3. Aggrieved by the order dated 28.9.2010 of the learned trial Court, Prakash Chand Gupta (intervenor in the present case) filed Civil Revision

No. 6637 of 2010 before this Court. The challenge in the suit was that Krishan Kumar Garg was improperly allowed to represent the Sabha in the

suit filed by Naresh Kumar and others. In the suit, resolutions dated 31.8.2007, 3.6.2007 and 15.11.2006 were impugned. The order passed by

this Court is extracted as follows :-

The learned trial Court disposed of all the three applications. While dismissing the three applications moved by the petitioners, accepted the

application moved by Sh. Krishan Kumar Garg for substitution of his name in place of Sh. Devraj Lohia.

Mr. Pankaj Maini, learned counsel for the petitioner, challenged the order passed by the learned trial Court by placing reliance on the meeting of

the executive committee on 12.6.2010 in which the petitioner was said to have been elected as acting President.

The contention of the learned counsel for the petitioner was, that resolution (Annexure P-2) was passed by the executive committee to appoint Sh.

Prakash Chand Gupta so that the financial powers of the Sabha could be exercised by him.

The contention of the learned counsel for the petitioner was, that in view of the election of the petitioner as acting President of the Sabha, it was the

petitioner alone who could represent the Sabha as per the Constitution and not Krishan Kumar Garg, as ordered by the learned trial Court.

This contention of the learned counsel for the petitioner cannot be accepted. The learned trial Court rightly rejected the resolution dated 12.6.2010

to be not in consonance with the Constitution of the Sabha. It is not in dispute, that as per the Constitution of respondent No. 1, in absence of the

President the powers of the President are to be exercised by the Senior Vice-President, therefore, it was only Krishan Kumar Garg, who could

represent the Sabha.

The contention of the learned counsel for the petitioner, that in the meeting dated 12.6.2010, petitioner was appointed as acting President, was

also rightly rejected. It is not in dispute that as per the Constitution of the Sabha, the powers to convene the meeting of the executive committee

vest with the President and in his absence with the Senior Vice-President or Secretary of the Sabha. The meeting dated 12.6.2010 was called by

the Vice-Secretary, who had no such power to convene any meeting of the executive committee.

The contention of the learned counsel for the petitioner, that as Krishan Kumar Garg also signed the resolution passed in the said meeting,

therefore, the resolution is required to be upheld, is again mis-conceived. The meeting, which is not convened by a competent person cannot be

held to be valid merely because the Senior Vice-President also participated in the said meeting, though a specific stand contrary to the said

resolution was taken in the Court to the effect that it was Sh. Krishan Kumar Garg being elected Senior Vice-President, who was to represent the

Sabha.

The finding of the learned trial Court, therefore, is based on correct appreciation of facts and the provisions of the Constitution of the Sabha, which

does not call for any interference by this Court in exercise of revisional jurisdiction.

No merit.

Dismissed.

This order dated 11.10.2010 has attained finality.

4. Yet another Civil Suit No. 30-C of 2010 dated 30.2.2010 was filed in the Court of Civil Judge (Junior Division), Hansi, titled "Praveen Bansal

and others v. Shri Vaish Sabha and others. In this suit an application under Order 39 Rule 1 and 2 CPC was preferred seeking interim injunction

against defendants No. 1 to 18, restraining them from holding elections of the Sabha in the absence of plaintiffs and the proforma defendants i.e.

defendants No. 19 to 175 and respondents No. 176 to 191 as caveators. The further prayer claimed was to prohibit defendants No. 1 to 18 from

convening any meeting of the governing body of the Sabha without issuing any agenda to the plaintiffs and the proforma respondents. In defence of

the suit, Krishan Kumar Garg, Acting President of the Sabha, stated that 177 fresh temporary members of the Sabha have been registered who

had applied for membership after depositing the prescribed fee and had been

duly inducted as temporary members in exercise of powers

conferred under para 10 (ka) of the constitution of the Sabha. The learned trial Court by order dated 29.2.2010 (Annexure P-2) issued the

following restraint order which is reproduced in its operative part :-

In these circumstances, the injunction application in hand is allowed and defendants No. 1 to 18 are restrained from conducting any election of the

Vaish Sabha in the absence of plaintiff and defendant No. 19 to 179 and also from convening any meeting of the Sabha, without issuing an Agenda

in the names of temporary members of the Sabha including the plaintiffs and proforma defendants till the final disposal of the suit.

5. The intervenor Prakash Chand Gupta, was impleaded as contesting defendant No. 17. It is, however, recorded in the order that summons

issued to defendant No. 17, inter alia, were received back unserved. Defendant No. 16-Ram Bilas Singal, who is respondent No. 4 in the present

petition, is represented by Mr. Ashwani Talwar, Advocate. Ram Bilas Singal had protested the claims of the plaintiffs before the learned trial Court

on the ground that the plaintiffs and proforma defendants have not been nominated as temporary members of the Sabha in a legal manner. He had

contended before the learned trial Court and drawn its attention to the direction issued by the DRS, Hisar, vide which it was ordered that the

election of defendant No. 1-the Sabha, be got conducted as per the electoral strength of permanent and temporary members as it existed on

1.1.2010. A statement of Krishan Kumar Garg, Acting President of the Sabha, was recorded, while representing the Sabha, to the effect that as

per the constitution of the Sabha, all the members of the Sabha including permanent as well as temporary, have been granted authority to

participate in the elections. The constitution provides both permanent and temporary members the right to franchise. It appears as a matter of fact

that 177 fresh temporary members were inducted in a meeting presided over by Krishan Kumar Garg and such inductions have been made under

the constitution, and cannot be said to be violative of any provision thereof. Similar statements were recorded of defendants No. 5 to 9 and 13.

The restraint order on a plain reading is a negative injunction. Inasmuch as that no election should be held without granting right of franchise to the

16 plaintiffs. The present petitioner was defendant No. 9 in the suit. Prakash

Chand Gupta was a co-defendant.

6. Prakash Chand Gupta aggrieved by the injunction order dated 29.2.2010 passed by the learned trial Court, preferred Civil Miscellaneous

Appeal No. 19 of 6.10.2010 which came up before the learned Additional District Judge, Hisar on 8.10.2010 and the following three separate

orders were passed on the same day :-

1. By making a separate statement, Sh. S.K. Gupta, learned counsel for the plaintiffs-respondents has stated that the elections of the Vaish Sabha

have already been held on 6.10.2010 in which the plaintiffs and pro-forma defendants were allowed to cast their respective votes. It is further

stated that the plaintiffs do not want to proceed further with the suit and same may be dismissed as withdrawn.

2. By making a separate statement, Sh. Anuj Gupta, counsel for the defendants-appellants has stated that in view of the statement of Sh. S.K.

Gupta, Learned counsel for the plaintiffs, he is withdrawing the present civil misc. appeal. He has further stated that the plaintiffs may be burdened

with special costs. Heard. In view of the statements of the counsel for the parties, the suit of the plaintiffs as well as civil Misc. appeal stands

dismissed as withdrawn with no order as to costs.

3. In view of the statement of Sh. S.K. Gupta, Advocate, I am withdrawing the present CMA. The proceedings allegedly conducted by the

plaintiffs under the garb of ad-interim injunction are not binding upon the appellants-defendants.

7. Consequently, intervenor Prakash Chand Gupta withdrew his appeal by stating that the proceedings allegedly conducted by the plaintiffs under

the garb of ad-interim injunction are not binding on the "appellants-defendants". It may be noticed that the proceedings were not conducted by the

plaintiffs. By "proceedings" it was meant elections. The plaintiffs were newly inducted temporary members who had filed the suit for declaration to

preserve their right of franchise. The present intervenor's statement as appellant also recorded that the proceedings conducted under ad-interim

injunction were not binding upon him. It may be further noticed as a material fact that Prakash Chand Gupta's statement recorded on 8.10.2010

was not urged before this Court when it decided his revision two days thereafter on 11.10.2010. The election in dispute was held on 6.10.2010

when the petitioner was installed as President of the Sabha.

8. Another important fact which may be noticed, at this stage, is that on 21.9.2010 a meeting of the general body of the Sabha was held under the

chairmanship of DRS, Hisar. The report of the proceedings is placed as Annexure R-5/5, in the intervenor's stay vacation application. This

meeting was attended by Krishan Kumar Garg and intervenor Prakash Chand Gupta. So also the petitioner Luxmi Kant Goyal. In a list of 16

members who participated in the meeting, it appears that both the warring factions, in the fight for succession, had suspended each other from the

membership of the Sabha. These meetings rather were said to have been held on 21.8.2010 and 28.8.2010 respectively as a blast and counter

blast. The crux of the proceedings of the meeting held under the chairmanship of DRS, Hisar, as culled out from the report (22.9.2010), is as

follows :-

After hearing both the parties and perusal of the record, it was decided by the District Registrar, Firms and Societies, Hisar that there is no

provision for the Acting President in the Constitution of the Society. All powers of the President with regard to the affairs of the society have been

given to the Vice President in his absence except the financial matters. So the society has violated the bye laws of the society by appointing/electing

Acting President of the society. Now it has been decided as per the decision taken in both the meeting of the society held on 21.8.2010 and

22.8.2010 to cancel the suspension of membership of Sh. Prakash Chand Gupta and Krishan Kumar Garg and they be retained to their previous

post till further election. To conduct election by giving 10 days notice to the Election Officer Sh. Ram Bilas Singal. Not to spend any amount

except salaries of the employees of the society and other required expenses.

At the end of the report, it was concluded that the election should be conducted as per the list of permanent and temporary members as it existed

as on 1.1.2010. These directions of the DRS, Hisar, would have led to the exclusion of 177 temporary members inducted by the officiating

President of the Sabha i.e. Krishan Kumar Garg. It was in this background that civil suit mentioned supra was filed by 16 aggrieved plaintiffs, four

days thereafter i.e. on 25.9.2010, in which the interim directions were handed down by the learned trial Court. It may be noticed that the petitioner

was not a plaintiff.

9. The petitioner next pleads that a meeting of the Sabha was held on 30.9.2010 and the report prepared by the DRS, Hisar was contrary to the

civil Court's directions contained in the order (Annexure P-1) which has recognized Krishan Kumar Garg to be the officiating President of the

Sabha on the death of Dev Raj Lohia. In this meeting it was also decided that the act of DRS, Hisar, in appointing, on his own, Ram Bilas Singal as

the authority to conduct the election, was improper since he was appointed by the un-authorised President Prakash Chand Gupta (intervenor).

Consequent upon the proceedings dated 30.9.2010, a meeting of the general house was called on 6.10.2010 under the chairmanship of Krishan

Kumar Garg in which the petitioner was elected President of the Sabha. The results of the elections was communicated to the DRS, Hisar and of

the election of 9 other office bearers as well as 12 members on the Executive Committee elected unanimously. The result of the election was

received in the office of respondent No. 3-DRS, Hisar on 12.10.2010 (Annexure P-4). The general house meeting in which the election was held

was in the presence of 177 members, both permanent and temporary.

THE PRESENT CONTROVERSY

10. The present dispute leading up to the passing of the impugned order dated 2.11.2010 (Annexure P-6) originates in a letter from the District

Attorney, Hisar, addressed to the DRS, Hisar dated 23.10.2010 in which an opinion was given by the District Attorney, Hisar on the basis of an

opinion tendered by one Mohinder Pal, Deputy District Attorney in the office of District Attorney, Hisar, who opined that the order dated

29.9.2010 passed by the Civil Judge (Junior Division), Hansi, by which ad-interim injunction was granted, would go on withdrawal of the suit on

8.10.2010. It was further opined that the election held on 6.10.2010, on the basis of order dated 29.9.2010, cannot be justified as a legal one due

to the reason that the members who participated in the election are not those members for which DRS, Hisar, ordered that the election of the

Sabha be got conducted as per the electoral strength of permanent and temporary members as it existed on 1.1.2010. This letter has been placed

on record as Annexure P-5. The DRS, Hisar, thereafter, came to issue the impugned order dated 2.11.2010 (Annexure P-6) which read as

follows:-

On the subject mentioned above with regard to holding of election of Shri Vaish Sabha, Hansi the legal opinion of District Attorney was sought and

vide letter No. DAH/2010/ 3463 dated 23.10.2010 (copy attached) in which it was opined that the interim order dated 29.9.2010 passed by the

Hon"ble Civil Judge (JD), Hansi, since all the plaintiffs however in the Court of Additional District Judge, Hisar the aforesaid order was withdrawn

on 8.10.2010. Therefore, the election which was held on 6.10.2010 in pursuance to interim order dated 29.9.2010 is invalid. As per the above

opinion, you are hereby ordered that the election of the said sabha be conducted as per the list of the members upto 1.1.2010.

Encl: As above.

Sd/-

District Registrar of Societies

Hisar, 2.11.2010

It is apparent from the reading of the impugned order that the legal opinion of the District Attorney (Annexure P-5) was made basis and foundation

of the impugned order issued by the DRS, Hisar. The assumption was that since the election was held on 6.10.2010 in pursuance to the interim

order dated 29.2.2010, it is, therefore, invalid on the withdrawal of the suit itself by the plaintiffs in the appeal filed by the presentm intervenor. A

copy of the order was endorsed to Ram Bilas Sin-gal-respondent No. 4, a member of the Sabha, with a direction to conduct the election.

11. On notice having been issued on the present petition, the petitioner arrayed Ram Kumar-DRS, Hisar, as respondent No. 3 who has filed

written statement on behalf of respondents No. 1 to 3. He has supported his own order in the written statement which is impugned in the petition.

He admits that the impugned order dated 2.11.2010 was passed by him in the light of the opinion sought from the District Attorney, Hisar. He

states that the order was passed just to safeguard the larger interests of the Sabha and to keep peace and harmony amongst members of the

Sabha, and therefore, the impugned orders are perfectly legal, independent and are in the interest of the Sabha. It is further stated that inclusion of

177 temporary members by Acting President Krishan Kumar Garg on 21.8.2010, has lost the stake of permanent members in the Sabha which is

not justified and which could never be the intention of the framers of the constitution of the Sabha that the very existence of permanent members,

who are small in number stands vanished. This act shows the malafide intention on the part of the petitioner. Respondent No. 4-Ram Bilas Singal

has filed a separate written statement. He has alleged that the meeting of 6.10.2010 was called without following due procedure and 177 members

have been illegally inducted into the general body of the society as temporary members with full voting rights. It is averred that the tenure of the

previously elected Executive Committee was till April 2011. The previous President Dev Raj Lohia expired on 2.6.2010. In the alleged meeting

the entire elections have been conducted in a manner that 9 office bearers and 12 members of the Executive Committee have gained control of the

Sabha for the full period spanning 2010 to 2015. Therefore, the alleged election does not have the mandate of law. He has supported the

impugned order of DRS, Hisar as being in accordance with law. Prakash Chand Gupta-intervenor, in this matter, though he is not party to the

impugned order, yet in his application CM No. 6519 of 2011 was allowed by this Court on 28.7.2011 to intervene and the following order was

passed in that application :-

Learned counsel for the intervenor as well as learned counsel for respondent No. 4 have vehemently contended that election in question was held

pursuant to the interim order issued by the Civil Court in a pending civil suit and thereafter civil suit itself was withdrawn by the petitioner himself;

civil suit was dismissed as withdrawn without saving the election which was held pursuant to the interim order, therefore, with the dismissal of the

suit election in question also goes.

Learned counsel for the petitioner seeks time to address the Court on this legal question.

List on 18.8.2011.

This is where the matter rested till it was taken up for final disposal by consent of learned counsel for the parties.

12. I have heard the respective learned counsel for the parties at length and perused the record with utmost care with the able assistance of the

counsel with arguments lasting for most of the day.

13. Mr. Pawan Kumar, learned Senior counsel appearing for the petitioner has at

the very outset submitted that the intervenor Prakash Chand Gupta misled the Court by making a wrong statement that the civil suit itself was withdrawn by the petitioner himself. On the basis of this submission, the issue was crystalized by this Court in the above said order. There cannot be any dispute that the petitioner was not a plaintiff but defendant in the suit and obviously, could not have caused withdrawing of the suit in intervenors appeal. Be that as it may, learned counsel submits that the reason given by DRS, Hisar, is irrelevant and a gross misreading of the interim injunction order passed by the civil Court. The impugned order is bad in the sense that there has been no independent determination by the DRS, Hisar who has based his order blindly on the advice rendered by Deputy District Attorney and accepted by the District Attorney, Hisar. Learned senior counsel submits that by no stretch of imagination can it be said that the elections held on 6.10.2010 was in pursuance to the interim order dated 29.2.2010. If the election was not held under Court directions, they cannot be held to be invalidated with the withdrawal of the suit. The election was independent of the interim order. In fact, the interim order was a negative temporary injunction restraining defendants No. 1 to 18 from conducting any election in the absence of the 16 plaintiffs and similarly situated defendants No. 19 to 179 from convening any meeting of the Sabha for purposes of elections, without issuing any agenda in the names of temporary members, inducted in the meeting of the general body, headed by Senior Vice President and Acting President Krishan Kumar Garg in place of late Dev Raj Lohia. Still further, the meeting dated 21.9.2010 conducted by the DRS, Hisar, of which much has been made by the intervenor, is of little consequence. The petitioner's presence in the meeting would not be determinative of anyone's rights or liabilities so long as the induction of temporary members stands and has not been set aside by any Court of competent jurisdiction. It is further submitted that Krishan Kumar Garg, acting as President under lawful authority of the constitution of the Sabha, was recognized as the successor of Dev Raj Lohia, under directions of the learned trial Court in the suit previously filed. Mr. Pawan Kumar, learned senior counsel has drawn my pointed attention to the statement of intervenor through counsel dated 8.10.2010 withdrawing the appeal against the order of the learned

trial Court. The intervenor may not be bound by the proceedings allegedly conducted under the garb of ad interim injunction but that does not mean that the election itself would stand vitiated. It was open to the intervenor to have had recourse to law against the proceedings but he has not chosen to challenge it in any form. He, therefore, has no locus standi to support the impugned order to which he is not a party. It may be true that the plaintiffs in Praveen Kumar Bansal's case were masters of the lis and could withdraw the same. However, the intervenor being a named defendant in that suit could have applied under Order 23 Rule 1A CPC for transposing him as a plaintiff. Had such an application been made, the learned trial Court would have proceeded to decide the same. Order 23 Rule 1A CPC deserves to be reproduced :-

1 A. When transposition of defendants as plaintiffs may be permitted.-Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order 1, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

But the intervenor did not adopt this course nor did he agitate the matter before this Court in Civil Revision No. 6637 of 2010, filed by him in

which the petitioner was a respondent. This Court in its order dated 11.10.2010 upheld the claim of Krishan Kumar Garg for substitution in place

of Dev Raj Lohia. The meeting of the general body in which the intervenor was elected as a President on 12.6.2010, did not meet approval of this

Court. The intervenor having suffered a statement in his appeal and withdrawn it, he could yet have agitated the matter before this Court on

11.10.2010 but chose not to. The order of this Court is final.

14. Mr. Pawan Kumar relies on a decision of this Court rendered in "Residents Welfare Association, Gurgaon v. Registrar of Firms and Societies,

Chandigarh" CWP No. 5091 of 2011 decided on 21.3.2011 where Section 24 of The Societies Registration (Haryana Amendment) Act, 2007

(for short "the Act of 2007) has come in for interpretation and it has been held that :-

Even if the submissions made on behalf of the petitioners are accepted, this Section would clearly show that mechanism to settle the dispute

regarding election of the office bearers is provided. There is an authority prescribed under the Act to whom a reference can be made by the

Registrar or by at least 1/4th members of the Society, who would then hear and decide in a summary manner any doubt or dispute in respect of

election or continuation in office of office bearers of such Society. Even the election of an office bearer can be set-aside by the prescribed

authority, if it is satisfied that a corrupt practice has been committed, nomination has been improperly rejected; the result of election in so far as it

concern to such office bearer has materially affected by improper acceptance of any nomination etc. Even corrupt practice is also defined in this

Section. As per the explanation, the State Government may prescribe the procedure for hearing and decision on doubt or dispute in respect of

such election. The Registrar is also entitled to call a meeting of a general body of the Society. Thus, a complete procedure is prescribed in the Act

to decide the dispute in regard to election of the office bearers. The complete mechanism having been so provided in the Act, the election or a

dispute regarding election can certainly not be called in question by invoking writ jurisdiction.

15. Mr. Gurminder Singh, learned counsel for the intervenor has forcefully argued that the petitioner's election as President in the meeting dated

6.10.2010 is in active connivance with Krishan Kumar Garg who has helped him out to be the President of the Sabha by illegally inducting 177

temporary members with a view to change the complexion of the Sabha completely and drown the voices of the permanent members. To this Mr.

Pawan Kumar, learned senior counsel has drawn my attention to Section 22 of the Act of 2007 as well which reads as follows :-

22. Power of Registrar to call for information.-The Registrar may, by written order, require any society to furnish in writing such information or

document within such time, being ordinarily not less than three weeks from the date of receipt of the order by the society, as he may specify in the

order in connection with the affairs of the society or any documents filed by the society under this act.

(2) On receipt by the society of an order under subsection (1), it shall be the duty of the President, Secretary or any other person authorised in this

behalf to furnish such information or document.

16. The legal defence set up by the DRS, Hisar in his written statement in respect of the impugned order is that he was empowered u/s 24 of the

Act of 2007 to pass the impugned order Annexure P-6. Section 24 of the Societies Registration (Haryana Amendment) Act, 2007 reads as

follows:

24. Disputes regarding election of office-bearers.-(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one

fourth of the members of a society registered in Haryana, hear and decide in a summary manner any doubt or dispute in respect of the election or

continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied-

(a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election insofar as it concerns to 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 by any noncompliance with

the provisions of any rules of the society.

Explanation 1-A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person-

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, 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 inducing 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;

(iii) abets (within the meaning of the Indian Penal Code) 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 interest, 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 State Government may prescribe to be a corrupt practice.

Explanation II-The State Government may prescribe the procedure for hearing and decision 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 this Act or in the rules of the

society.

(2) Where by an order made under sub-section (1), an election 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-bearers of a society has not been held within the time specified in the rules of that society,

he may call a meeting of the general body of such society for electing such office-bearer or office bearers, and such meeting shall be presided over

and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions of the rules of the society relating to

meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under subsection (2), 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.

Explanation-For the purposes of this section, the expression "prescribed

authority" means an officer or court authorised in this behalf by the State Government by notification published in the Official Gazette.

17. The submission is that the DRS, Hisar exceeded jurisdiction in calling and presiding over the meeting dated 29.1.2010 and appointing

respondent No. 4 as the Election Officer. There is no written order setting in motion exercise of power u/s 22 the Act of 2007. Besides, Section

23 of the Act of 2007 deals with investigation of affairs of a society registered under the Act. The Registrar has powers to investigate into the

affairs of the society on information received u/s 22 the Act of 2007 or otherwise. It must, however, be preceded by formation of opinion that

there is apprehension that the affairs of the society registered under this Act are being so conducted as to defeat the objects of the society or any

office bearer is guilty for mis-managing the affairs or any breach of fiduciary or other like obligations, the Registrar could step in for the corrective

dose. Neither Section 22 nor Section 23 the Act of 2007 deal with elections. Disputes as to elections fall exclusively u/s 24 of the Act of 2007.

Once the election has taken place, it can be called in question only in an election petition by the prescribed authority on a reference made to it by

the Registrar, and if not by the registrar then by 1/4th members of the society registered in Haryana, to hear and decide in a summary manner, in a

doubt or dispute in respect of the elections or continuance in office of an office bearer of such society. The intervenor should, according to Mr.

Pawan Kumar, be non-suited in the present petition and be free to call in question the elections in a petition brought for the purpose.

18. Continuing with his arguments, Mr. Gurminder Singh urges that the inclusion of 177 members was a fraud on the society, committed by

Krishan Kumar Garg, for the benefit of the petitioner. He further submits that the petitioner was removed from the Executive Committee of the

Sabha on 8.7.2007 (Annexure R-5/3); that Krishan Kumar Garg is signatory to the resolution dated 8.7.2007. It is stated that on 28.12.2008, the

petitioner was removed by the general body from the primary membership of the society. On 27.9.2010 the petitioner complained in writing to the

Registrar, of his name not finding in the list of members (Annexure P-5/9). The intervenor was authorised to act as President of the governing body

in its meeting dated 12.6.2010 (Annexure P-5/1). Learned counsel for the petitioner would immediately point out that the meeting dated

12.6.2010 has no legal value since its efficacy was rejected by the trial Court and this Court in revisional jurisdiction. Yet Mr. Gurminder Singh,

learned counsel submits that Krishan Kumar Garg was signatory to the resolution and accepted the intervenor's authority. In short, both the

warring sides convened separate meetings and threw each other out of the Sabha. Learned counsel for the intervenor contends that with the

withdrawal of the suit, the election of 6.10.2010 stands invalidated. He relies on *Abhimanyoo Ram Vs. State of U.P. and Another*, and

Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, . On the strength of these decisions, he submits that an undeserving and

unfair advantage gained by a party, invoking the jurisdiction of the Court, must be neutralized as the institutional litigation cannot be permitted to

confer any advantage on a party by the action of the Court. Mr. Gurminder Singh, learned counsel relies especially on Paras 4, 5 and 6 in

Abhimanyoo Ram's case supra. There can be no dispute that normally an interim order would fall with the final disposal of a case unless specified

or directed otherwise. In this case the issue which has crystallized for the consideration of this Court is, whether the election of 6.10.2010 itself

was held under an interim order of a Court. In this case the interim order is dated 29.9.2010. The reading of the interim injunction order/temporary

injunction order does not support the view canvassed by Mr. Gurminder Singh that it for the first time directs elections to be held, therefore, in my

considered view, the ratio of the above decisions do not apply to the case in hand. The election meeting was convened de hors the order and was

independent of it. It has an independent existence breathing outside the four corners of the temporary injunction order of the trial Court. It may

qualify as a cause of action by itself but that cause of action is not before this Court.

19. I find that the only reason given in the impugned order dated 2.11.2010 is that the election was held under interim orders and that elections

were mandated by DRS, Hisar in the meeting ostensibly presided over by him with the electoral college pinned down to the voter list as it existed

on 1.1.2010. If this is not factually correct, I do not see how the impugned order can be supported in law or in fact. It is well settled that if the

reason/reasons assigned in an administrative order put under judicial scrutiny is/are bad, the order must fall and nothing can be added or subtracted

thereafter to support the conclusion. The intervenor has not questioned the induction of 177 temporary members before any Court of competent

jurisdiction. This Court is not called upon to examine the propriety or impropriety of induction of new temporary members in the present case. The

intervenor is at liberty to challenge the induction in appropriate proceedings before a Court of competent jurisdiction. As an intervenor in the

present case he can claim no relief. The intervention itself, in the ultimate analysis, is misdirected. The collusiveness and connivance, as suggested

by learned counsel for the intervenor, may be real or imaginary, yet they are not matters strictly which can be adjudicated in writ jurisdiction being

seriously disputed questions of fact which can be established only on letting in evidence pro and contra in a court of competent jurisdiction. The intervenor did not avail any proper remedy which may have been available to him either at the time when he withdrew the appeal against the order of the trial Court or before this Court in Civil Revision No. 6637 of 2010 or thereafter. He would have to seek his remedy elsewhere, if advised subject to the statute of limitations and just exceptions. I am of the considered opinion that the impugned order dated 2.11.2010 deserves to be quashed on two counts-one; that the election was not held under interim orders of the Court, and second; the impugned order cannot be traced to power u/s 24 of the Act of 2007 as traced by DRS, Hisar (respondent No. 3) himself, being the author of the impugned order or any other provision of the Act. In response to Para 12 (IV) as seen from the written statement, I find that his action in rustling up the meeting dated 21.9.2010 and lording over it and appointing Ram Bilas Singal as election officer was in improper exercise of jurisdiction notwithstanding that the proceedings at the meeting either pretended to protect members or intended to garner peace amongst warring members in the bitter fight for succession. I also harbour serious doubt as to the locus standi of the intervenor to interject in an order to which he was not a party. The liberty reserved by the intervenor before the Appellate Court when he withdrew his appeal is for him to deal with.

20. For the foregoing reasons, the writ petition is allowed, the impugned order (Annexure P-6) is set aside. Still further, the petition is allowed on the ground of availability of alternative remedy of an election petition as well. A complete procedure is prescribed in Section 24 of the Act of 2007 to decide a dispute with regard to election of office bearers of a society. While holding so, I hasten to add, that nothing said in the present case would be taken as an expression of opinion as to the induction of 177 temporary members. That issue is left open, to be decided in appropriate proceedings, if any. I should also not be taken to have put this Court's imprimatur on the manner in which the trial court proceeded to pass the order dated 29.9.2010 since the order has ceased to exist nor is under challenge. This Court was called upon only to examine the validity of the impugned order Annexure P-6.