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

+ **CS(OS) 1811/2015**

R.K. JAIN & ORS.

..... Plaintiffs

Through

Ms. Neelam Rathore, Ms. Pooja Jain
and Mr. Anshuman, Advocates with
plaintiff Nos. 1, 2,4 in person with
Ms. Vidyaben Shah and defendant
No.3.

versus

B.R. SAINI & ORS.

..... Defendants

Through

Mr. Tanuj Khurana and Mr. Gaurav
Malik, Advocates.

+ **CS(OS) 1594/2015**

**INDIA-CIS-CHAMBER OF COMMERCE &
INDUSTRY**

..... Plaintiff

Through

Ms. Neelam Rathore, Ms. Pooja Jain
and Mr. Anshuman, Advocates with
plaintiff Nos. 1, 2,4 in person with
Ms. Vidyaben Shah and defendant
No.3.

versus

DR.JYOTSNA CHAUDHRI & ORS.

..... Defendants

Through

Mr. Tanuj Khurana and Mr. Gaurav
Malik, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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ORDER
30.06.2015

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CS(OS) 1594/2015

Counsel for the parties request that this matter be listed before this Court today so that the same can be disposed of along with the suit which is listed for today being CS(OS) No. 1811/2015.

I have therefore called the file from the Registry and have listed the matter as per the request made by the parties. Registry to show this suit in a typed supplementary list for today.

CS(OS) 1811/2015 AND CS(OS) 1594/2015

1 De-hors the merits of the matter, issues in the case, stage of the case and the contentions and counter contentions, it is agreed before this Court that essentially the suits itself can be and is accordingly disposed of in terms of the following consent directions:-

(a) Fresh elections are to be held of the Governing Body of the Society called as India-CIS-Chamber of Commerce and Industry. Elections to be held of the Governing Body members will be in accordance with the Memorandum and Rules and Regulations of the Society without their existing the amendments which the plaintiffs claim were made in terms of the Annual General Meeting dated

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06.01.2014 and communicated to the Registrar of Societies by the communication dated 22.01.2014.

(b) Elections will be conducted by an Election Officer cum Observer appointed by this Court. It is agreed that this Election Officer cum Observer will be Ms. Kanwal Inder, Retired District & Sessions Judge, Flat No. 60-B, Pocket-B, Siddhartha Extension, New Delhi-110014 having Mobile Number 9810125752. The Election Officer cum Observer will conduct the elections in accordance with the Memorandum and Rules and Regulations of the Society and this order passed today.

(c) Fees of the Election Officer cum Observer is fixed with the consent of the parties at Rs. 1 lakh plus actual clerical cost and which will be equally shared by the parties. 50 percent of the fees will be equally paid initially and 50 percent of the fees will be paid on the date when the list of members are finalized for participating in the elections.

2 The Election Officer cum Observer will fix a schedule of the elections inter-alia, fixing the dates for the following events:-

(a) A cut off date with respect to final list of members of the General Body. Before that cut off date, in accordance with the Memorandum and Rules and Regulations of the Society fresh members can always be enrolled.

(b) A cut off date for filing of nominations by persons who seek to be elected as a member of the Governing Body of the Society.

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(c) The cut off date with respect to withdrawal of the nominations for being elected to the Governing Body of the Society.

(d) The date of the elections, and which date will be a date not before two weeks of the cut off date of withdrawal of the nominations.

(e) Date of declaration of results.

3 If there are any disputes with respect to whether a person is or is not a member, it is agreed that the Election officer cum Observer will be entitled to take a decision with respect to the validity otherwise of the membership of a particular person. Election Officer cum Observer will also be entitled to take any and every decision with respect to the entire process of the elections including declaration of the results.

4 Notices will be issued by the Election Officer cum Observer to each and every existing member of the Society communicating today's order passed in these suits.

5 The Election Officer cum Observer will be entitled to completely supervise, conduct and take all decisions with respect to holding of elections and all matters incidental to the same. The entire election process will be concluded by the Election Officer cum Observer preferably within a period of four months of the receipt of the copy of the present order.

6 During this period till selection of the new Governing Body no expenditure except of a routine nature will be done by the present office bearers of the Society and if any expenditure which is not

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routine expenditure and not pertaining to the elections have to be done from the funds of the Society, then, any of the parties will approach the Election Officer cum Observer and it is agreed that the Election Officer cum Observer will take a necessary decision with respect to the requirement or otherwise of the expenditure from the funds of the Society.

7 If any issue which is an issue in any of the present two suits survives even after the elections to the Governing Body of the Society, then, any of the party is at liberty at that stage to file appropriate independent legal proceedings for seeking any reliefs which the parties think they are entitled to in accordance with law.

8 The interim order passed by this Court dated 26.05.2015 in CS (OS) No. 1594/2015 will continue till the declaration of the results of the elections of the Governing Body of the Society.

9 The Annual General Meeting which is called for today by the plaintiffs in CS (OS) No. 1594/2015 will be held without conducting any formal business of the Society.

10 Both the suits stand disposed of in terms of the present compromise/consent order.

11 Parties are left to bear their own cost. *Dasti* to counsel for the parties.


VALMIKI J. MEHTA, J

JUNE 30, 2015/gb

CS(OS) 1811/2015 & CS(OS) 1594/2015

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- Fresh IA 13325/15 for Modification of above order by Parties
- Suit disposed of vide above order.

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

+ **CS(OS) 1594/2015**

INDIA-CIS CHAMBER OF COMMERCE & INDUSTRY

..... Plaintiff

Through: Mr. Ravi Sikri, Sr. Adv. with Mr.
Tanuj Khurana, Advocate

versus

JYOTSNA CHAUDHRI & ORS

..... Defendant

Through: Ms. Neelam Rathore and Puja Jain,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
27.05.2016

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R.P. No.264/2016

Issue notice. Counsel for the defendant accepts notice. The parties have advanced their respective submissions, and I proceed to dispose of the said review application.

By order dated 30.06.2015, the court had directed holding of fresh elections of the plaintiff society under an election officer cum observer appointed by this court, namely, Ms. Kanwal Inder, retired Dist. & Sessions Judge. The suits and the pending applications were disposed of in terms of the said order.

On 04.08.2015, this court passed further order in two applications

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moved under Order 47 Rule 1. This court observed that the new elected body which may come into office as a consequence of the elections to be held under the election officer cum observer would take a decision whether to proceed in the criminal complaint against the defendants. The court also observed that fresh members could be enrolled by the society and the monies received from them could be deposited in the bank account. However, no bank account was opened to deposit the monies to be received from the newly enrolled members. Thereafter other proceedings have taken place, but which are not relevant to be noticed at this stage.

By order dated 05.02.2016, the time for holding of the elections was extended by this court. The plaintiff then moved an application i.e. I.A. No.3885/2016 to open a fresh bank account. The said application was dismissed with costs on 07.04.2016. Now, the present review petition has been preferred to seek review of the order dated 07.04.2016.

In the meantime, the election officer cum observer has filed her report. From the report, it appears that only 17 nominations were filed, of which one was rejected. The election officer cum observer has observed that under Rule 8 of the Rules and Regulations, the governing body of the society shall consist of not less than 25 and not more than 51 members. It also provides that the governing body will consist of members elected by the general body – $\frac{1}{3}^{\text{rd}}$ from amongst the founder members, $\frac{1}{3}^{\text{rd}}$ from amongst the life members and $\frac{1}{3}^{\text{rd}}$ from amongst the ordinary members. However, the requisite number of nominations from the category of founder members were not received. In the category of life members, 10 nominations were received.

In the aforesaid background, the election officer cum observer

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observed that the elections to the plaintiff body cannot be held.

The submission of learned counsel on both sides is that Rule 8(f) of the Rules and Regulations has, in practice, not been adhered to and is not capable of being adhered to. This is for the reason that most of the founder members of the plaintiff society have passed away with passage of time. The plaintiff society was founded in 1986 i.e. about 30 years ago. Thus, it is not possible to elect 1/3rd members of the governing body from amongst the founder members. Learned counsel for the plaintiff submits that only one or two founder members may be alive as of date.

Looking to the aforesaid circumstances, and that such a constitutional crisis cannot be permitted to result in a deadlock such that the governing body itself cannot be constituted, the said Rule 8(f) has necessarily to be read down. With passage of time, this rule has become incapable of being implemented and, therefore, the requirement that the governing body should consist of at least 1/3rd founder members cannot be considered to be a mandatory provision any longer.

Attention has also been drawn by learned senior counsel for the plaintiff to Section 15 of the Societies Registration Act, 1860 which, inter alia, provides that in proceedings under the said Act, no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrears for the period exceeding three months. The definition of the expression "member" itself means one who has been admitted to the society in accordance with the rules and regulations thereof and who has paid the subscription or shall have signed the roll or list of member thereof and one who has not resigned in accordance with the rules and regulations. It is, therefore pointed out that payment of subscription

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prior to conduct of elections to the governing body is a mandatory requirement. It is noticed that in the elections called by the election officer cum observer, the said observer was given a goby.

Learned counsel for the plaintiff submits that the returns of the society have not been filed with the Registrar of Societies for the last many years. However, according to the plaintiff, the same have been filed for the last three years, when they have been in management. Learned counsel for the plaintiff states that the records pertaining to the society for the past years are not available with the plaintiff. Counsel for the defendant states that even the defendants are not possessed of the records of the society, except for the period of about 1 ½ years during which period the defendants were in management.

In the aforesaid circumstances, with the consent of parties, the earlier orders passed by this Court are modified in the following terms:

1. The elections to the governing body of the plaintiff society shall be held with the electoral college consisting of the original 114 members only.
2. The election officer cum observer shall issue a notice to all the 114 original members of the society, requiring them to deposit their subscription in the name of the society through cheques for the period of three preceding years, i.e. from 1st June, 2013 onwards. In case any member claims that subscription has been paid by him for any portion of the said period earlier, he shall be entitled to claim adjustment towards future subscription once the new managing committee has been formed.
3. The election officer cum observer shall open a new bank account with

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the UCO Bank, Delhi High Court Branch in the name of the society and she is authorized to open the said account. The Bank Manager, UCO Bank shall act on any such instructions issued by the election officer cum observer and open the account in the name of the plaintiff society to be operated by the election officer cum observer for the time being. All the proceeds towards subscription shall be deposited by the election officer cum observer in the said account.

4. The notice to the members requiring payment of subscription shall be issued within the next two weeks, and they shall be granted three weeks time to make payment of the subscription. It is informed that the election officer cum observer is already possessed of the particulars of the original 114 members and their addresses. The election officer cum observer shall also, in the said communication, communicate the new schedule that may be fixed for taking of necessary steps for holding the fresh elections to the governing body.
5. The notice shall specify that only those members, whose subscription is received within the time granted, would be entitled to contest, vote and participate in the election process.
6. The election officer cum observer shall not insist on compliance of Rule 8(f) which requires $1/3^{\text{rd}}$ candidates to be from amongst the founder members. The said requirement shall not be insisted for the other categories as well.
7. In case the number of valid nomination received are less than 25, those who are found to have validly filed their nominations, shall stand automatically elected to the governing body and they shall constitute the governing body, notwithstanding the fact that they are

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less than 25 in number. However, in case the number of nominees exceeds 25, the elections shall be held for electing 25 members of the governing body and such elections shall be conducted by the election officer cum observer.

8. Once the fresh governing body is constituted, the election officer cum observer shall transfer the operation of the bank account opened by her to the office bearers of the fresh governing body.
9. The plaintiff has already stated that the accounts and records of the plaintiff society have been filed with the Registrar of Societies for the past three years. Proof of filing of the same shall be deposited with the election officer cum observer. The plaintiff shall also deposit with her whatever records of the society they are possessed of. The defendant shall deposit whatever records are available with it pertaining to the plaintiff society with the election officer cum observer. In case the defendant has filed any record with the Registrar of Societies, proof thereof shall be furnished to the election officer cum observer. Once the fresh governing body is in place, the said records and communication shall also be transferred by the election officer cum observer to the office bearers of the fresh governing body.
10. The election officer cum observer may withdraw the requisite amounts required for conducting elections from the account that she may open, as aforesaid, in the name of the plaintiff society and submit an account thereof to the fresh governing body once the same is constituted.
11. The fee of the election officer cum observer is now fixed at Rs.2

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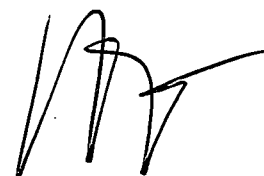
lakhs, including Rs. One lakh already fixed. Learned counsel for the defendant states that the defendants have paid the amount of Rs.50,000/- payable by them as their share earlier. Learned counsel for the plaintiff states that the plaintiff had paid Rs.25,000/- of their share. Consequently, the plaintiff shall make a further payment of Rs.75,000/- to the election officer cum observer, whereas the defendants shall pay the fee of Rs.50,000/- towards their further share of fee.

12. The time for holding elections stand extended. The elections shall now be held on or before 31.08.2016.

The aforesaid order has been passed with the consent of parties and in the presence of Mr. B.R. Saini, the President of the plaintiff society.

The costs earlier imposed on the plaintiff of Rs.50,000/- vide order dated 07.04.2016 stands withdrawn.

Dasti.



VIPIN SANGHI, J

MAY 27, 2016

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