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

+ FAO(OS) 120/2023 & CM APPL. 59077/2023 CM APPL.

11869/2024

SIRAJUDDIN QURESHI

..... Appellant

Through: Mr. Arun Bhardwaj, Sr. Advocate  
with Mr. Javed Ahmad, Md. Yunus,  
Mr. Karn Bhardwaj and Ms. Aakriti  
Aditya, Advocates

versus

MATLOOB AHMAD AND OTHERS

..... Respondents

Through: Mr. Praveen Kumar, Mr. Naman  
Mittal and Mr. Labhansh Mittal,  
Advocates for R-1 and R-2  
Mr. Kirti Uppal, Senior Advocate  
with Mr. Mohd. Amanullah, Mr.  
Misbah Bin Tariq, Mr. Soumya  
Bhaunik, Mr. Azhar Ali, Dr.  
Shabeena Anjum and Ms. Nishu  
Khan, Advocates for R-3 to 9  
Ms. Anshu Davar for Court Observer

+ FAO(OS) 110/2023 & CM APPL. 54027/2023

JAMSHED ZAIDI

..... Appellant

Through: Mr. Sanjeev Sagar and Ms. Nazia  
Parveen, Advocates

versus

MATLOOB AHMAD & ORS.

..... Respondents

Through: Mr. Praveen Kumar, Mr. Naman  
Mittal and Mr. Labhansh Mittal,  
Advocates for R-1 and R-2



Mr. Sanjeev Bhandar, ASC(Crl.) along with Ms. Anvita Bhandari, Mr. Kunal Mittal, Mr. Arjit Sharma and Mr. Vaibhav Vats, Advocates for State

Mr. Mohd. Amanullah, Mr. Misbah Bin Taria, Mr. Nadeem Khan, Mr. Soumya Bhaunik, Mr. Azhar Ali and Dr. Shabeena Anju, Advocates for R-3, 5 to 8

+ FAO(OS) 123/2023 & CM APPL. 59919/2023 CM APPL.

59920/2023

MR. SIKANDER HAYAT AND ORS. .... Appellants

Through:  
versus

MR. MATLOOB AHMAD AND ORS. .... Respondents

Through: Mr. Praveen Kumar, Mr. Naman Mittal and Mr. Labhansh Mittal, Advocates for R-1 and R-2

Mr. Mohd. Amanullah, Mr. Misbah Bin Taria, Mr. Nadeem Khan, Mr. Soumya Bhaunik, Mr. Azhar Ali and Dr. Shabeena Anju, Advocates for R-3, 5 to 8

Reserved on: 7<sup>th</sup> March, 2024

Date of Decision: 02<sup>nd</sup> April, 2024

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**JUDGMENT**

**MANMEET PRITAM SINGH ARORA, J:**



1. The present appeal(s) have been filed by separate persons [who were impleaded as defendants in the suit] under Section 10 of Delhi High Court Act, 1966 read with Order XLIII Rule 1 Civil Procedure Code, 1908 ('CPC') being aggrieved by the order dated 10<sup>th</sup> October, 2023 ('impugned order') passed by the learned Single Judge while disposing of I.A. Nos. 12600/2023, 16240/2023, 10160/2023 and 11575/2023 in CS(OS) 331/2023.
2. It is noted, at the outset, that all parties made their submissions with reference to the paper book of FAO(OS) 120/2023.
3. The present appeals emanate from a civil suit i.e., CS(OS) 331/2023 filed by two members of India Islamic Culture Centre ('Society') aggrieved by the functioning of the Board of Trustees ('BOT') of the Society. The plaintiffs in the suit i.e., Respondent Nos. 1 and 2 herein sought directions, *inter-alia*, for holding of fresh elections and a restraint against convening of a Special General Body Meeting ('SGBM') on 24<sup>th</sup> May, 2023.
4. The learned Single Judge *vide* impugned order dated 10<sup>th</sup> October 2023, appointed a Court Observer to exercise powers and perform functions akin to an administrator, enlisted in paragraph 20 (a) to (h) of the said order.
5. The Appellant(s) in FAO(OS) 120/2023 and FAO(OS) 123/2023 are aggrieved by the restraint issued by the learned Single Judge at paragraph 20(c) of the impugned order and have filed the present appeal(s) seeking vacation of the said restraint. The learned Single Judge by an earlier ad-interim order dated 23<sup>rd</sup> May, 2023 had restrained convening of the SGBM for the agenda proposing amendments to the Memorandum of Association ('MoA') *vide* notice dated 09<sup>th</sup> May, 2023. The said restraint qua the



proposed agenda for amending MoA has been continued *vide* paragraph 20 (c) of the impugned order.

6. The Appellant in FAO(OS)110/2023 is aggrieved by the direction issued to the Court Observer for conducting a financial audit at paragraph 20 (d) of the impugned order and has sought setting aside of the said directions.

7. Pertinently, the Court Observer by the impugned order at paragraph 20(b) was directed to conduct a membership audit, prepare a [verified] list of members and list of voters of the 'Society'. The Court Observer has filed CM APPL. 11869/2024 in FAO(OS) 120/2023 stating that in pursuance to a membership audit conducted by him a tentative voter list of approximately 1835 members has been prepared. In this application, the Court Observer has sought a permission of this Court to hold the Annual General Meeting ('AGM') of the Society and conduct the elections as per the mandate of the impugned order dated 10<sup>th</sup> October, 2023.

#### *Arguments of the Appellants*

8. Mr. Arun Bhardwaj, learned senior counsel for the Appellant in FAO(OS) 120/2023 stated that the Appellant herein had filed I.A. No. 11575/2023 before the learned Single Judge for placing on record a valid requisition in writing dated 10<sup>th</sup> June, 2023, signed by more than 180 members of the Society requesting for holding of a SGBM. He stated that upon receipt of the said valid requisition, the Appellant in his capacity as the President was obliged to hold an SGBM as per Article 16(c)(i) of the MoA.

8.1. He stated that the objection raised by the Respondent Nos. 1 and 2 in the plaint that the earlier members requisition dated 09<sup>th</sup> May, 2023 was



deficient as it was not signed by 50 members, now stands addressed with the issuance of the subsequent fresh valid requisition dated 10<sup>th</sup> June, 2023. He stated that the said fact was duly brought on record before the learned Single Judge by filing I.A. No. 11575/2023. However, the learned Single Judge, without deliberating on the said new fact situation, has disposed of the said application and continued the restraint initially issued vide order dated 23<sup>rd</sup> May, 2023.

8.2. He stated that the General Body is the supreme authority of the Society as per Article 9(a) of the MoA and the Courts cannot grant an injunction to restrain holding of a general meeting for considering the agenda for amendment of the MoA, if the meeting is called in accordance with the existing rules governing the Society. He stated that as per Article 16(e)(i), the power to amend, modify or change the articles of the MoA and rules and regulations of the Society vests exclusively with the General Body. He stated that since the membership audit is now concluded by the Court Observer, the restraint issued by learned Single Judge at paragraph 20(c) of the impugned order ought to be vacated and the Court Observer be directed to hold a SGBM in accordance with the requisition dated 10<sup>th</sup> June, 2023, to enable the General Body to deliberate and vote on the proposed amendments to the Articles of the MoA.

8.3. He stated that the suit is liable to be rejected as the leave granted under Section 92 of the CPC vide order dated 23<sup>rd</sup> May, 2023 is invalid. He stated that the Respondent No. 3 is a Society registered under the Societies Registration Act, 1860 ('Act of 1860') and not a trust. He stated that for the



aforesaid reason, an application, being I.A. No. 16241/2023, has been filed before the learned Single Judge under Order VII Rule 11 CPC for rejection of the plaint.

9. Mr. Bahar U. Barqi, Appellant No. 3 in person in FAO(OS) 123/2023, stated that the requisition dated 10<sup>th</sup> June, 2023 has been signed by more than 180 members. He stated that pursuant to membership audit carried out by the Court Observer, membership of 116 out of the 180 has been confirmed and found to be valid. He stated that as per Clause 16(c)(i) of the MoA, an SGBM is bound to be held upon receipt of a requisition in writing signed by 50 members. He stated that the said requirement is duly met and, therefore, it is imperative that an SGBM be called.

9.1. He stated that the subject to the approval or rejection of the proposed amendments to the Articles of the MoA as per the requisition at the SGBM, the Court Observer can thereafter call for an AGM to hold the elections.

9.2. He stated that the Appellants herein as well have filed I.A. No. 16263/2023 for rejection of the plaint as the suit filed under Section 92 of CPC is not maintainable against Respondent No. 3, Society.

10. Mr. Sanjeev Sagar, learned counsel for the Appellant in FAO(OS) 110/2023 stated that the Appellant herein is aggrieved by the direction issued by the learned Single Judge at paragraph 20(d) of the impugned order, wherein the Court Observer has been directed to conduct a financial audit with respect to income and expenditure of the Society. He stated that a direction for holding financial audit was the final relief sought in the suit at prayer (b). He stated that there was no occasion for the learned Single Judge



to issue the directions for financial audit and in effect handing over the management of the Society to the Court Observer. He stated that there are no grounds and reasons for justifying the directions for conducting a financial audit. He stated that the suit itself is not maintainable against the Society and the leave granted by the learned Single Judge vide order dated 23<sup>rd</sup> May, 2023 under Section 92 of CPC is invalid.

10.1. He stated that similarly by appointing the Court Observer and effectively handing over the management of the Society to him, the Court has allowed prayer (a) of the plaint. He stated that the relief of appointment of an administrator had been sought in I.A. No. 12600/2023 by the plaintiffs. However, no notice had been issued to the defendants in the said application and, therefore, the grant of reliefs prayed for in I.A. No. 12600/2023 in the impugned order is erroneous.

#### *Arguments of the Respondents*

11. In reply, Mr. Kirti Uppal, learned senior counsel for Respondent Nos. 4, 5 and 7 in FAO(OS) 120/2023 stated that he represents the majority of members constituting the BOT. He stated that the BOT is constituted under Article 10 of the MoA. He stated that under Article 12(f) of the MoA, the right to amend the Articles of the MoA vests exclusively with the BOT. He stated that any amendments to the Articles approved by the General Body have to be placed before the BOT and it is thereafter, the BOT which will take a decision to accept or reject the proposed amendments. He stated that this is plainly evident from the language of Article 16(e)(i) of the MoA.

11.1. He stated that Respondent Nos. 4, 5 and 7 support the stand of the



plaintiffs/Respondent Nos. 1 and 2. He stated that the amendments proposed by members to the MoA *vide* requisitions dated 09<sup>th</sup> May, 2023 and 10<sup>th</sup> June, 2023 are not in the interest of the Society. He stated that the Appellant in FAO(OS) 120/2023 has been the President of the Society since the year 2004 and he cannot be permitted to perpetuate his control over the Society by proposing amendment to the age restriction existing at Article 8(d) of the MoA. He stated that the said Appellant is also facing criminal proceedings and is, therefore, not fit for heading the Society.

11.2. He stated that the Appellant had enlarged the voter base in contravention of the MoA and there existed 3676 odd members on the rolls, as stated by the Court Observer. He stated that the Court Observer has since conducted an audit and verified 1835 members. He fairly stated that the Respondents are satisfied with the membership audit exercise undertaken by the Court Observer.

11.3. He stated that the impugned order dated 10<sup>th</sup> October, 2023 was a consent order and, therefore, the present appeals challenging the said consent order are not maintainable.

11.4. After some arguments, he fairly stated that the Court Observer may be directed to convene an SGBM for the agenda proposed by the members *vide* requisition dated 10<sup>th</sup> June, 2023. He stated, however, that the SGBM should be called and conducted under the direct supervision of the Court Observer and the voting rights should be limited to the 1835 members verified by the Court Observer. He stated that, however, the amendments proposed and approved at the SGBM have to be placed before the BOT for its acceptance



as per Articles 12(f) and 16(e)(i) of the MoA.

12. Mr. Praveen Kumar, learned counsel appearing for Respondent Nos. 1 and 2/plaintiffs in FAO(OS) 120/2023 stated that the initial interim order dated 23<sup>rd</sup> May, 2023 has not been impugned in the present appeals and, therefore, the challenge to the direction at paragraph 20(c) of the impugned order is not maintainable. He stated that the affidavit in support of the appeal i.e., FAO(OS) 120/2023 is dated 17<sup>th</sup> October, 2023. However, the present appeal was filed belatedly and listed for the first time on 16<sup>th</sup> November, 2023. He states that the leave to file the suit under Section 92 of the CPC has already been granted and the challenge to the maintainability of the suit is not maintainable.

***Rejoinder Argument on behalf of the Appellants***

13. In response to the objection of the maintainability of the appeal in view of the consent recorded in order dated 10<sup>th</sup> October, 2023, learned counsel for the Appellants stated that the consent was accorded to the appointment of the Court Observer for conducting elections in the Society. It is stated that there was no consent to the directions issued by the learned Single Judge at paragraphs 20(c) and 20(d) of the impugned order as well as for handing over the management of the Society to the Court Observer. The Appellants also expressed their acceptance of the SGBM and AGM being conducted as per the verified members/voters list prepared by the Court Observer.

***Findings of the Court and Directions***

14. We have heard the learned counsel for the parties and perused the record. For the sake of convenience, we have referred to record of FAO(OS)



120/2024 and the record of CS(OS) 331/2023.

15. We may note, at the outset, that the Court Observer in furtherance of the impugned order dated 10<sup>th</sup> October, 2023 has carried out a membership audit and verified a tentative member/voter list of approximately 1835 members. Further, the Court Observer had some doubts with respect to the status of separate 268 members and for this purpose he had filed I.A. No. 5290/2024 seeking clarification before learned Single Judge. The said I.A. No. 5290/2024 has since been disposed of by the learned Single Judge vide order dated 05<sup>th</sup> March, 2024 reserving liberty to the Court Observer to decide the status pertaining to the said 268 members. Subject to the Court Observer's decision on the 268 members, all parties before this Court agreed during the hearing that the SGBM and AGM can be called for on the basis of the verified members/voters list prepared by the Court Observer.

16. We shall now proceed to deal with the objection of the Respondents to the maintainability of the appeals on the plea that the impugned order dated 10<sup>th</sup> October, 2023 is a consent order.

17. The Appellants in FAO(OS) 120/2023 and FAO(OS) 123/2023 seek vacation of the restraint order dated 23<sup>rd</sup> May, 2023 as continued at paragraph 20(c) of the impugned order dated 10<sup>th</sup> October, 2023. The restraint has been issued against taking up the agenda items for amendment of the Articles of MoA proposed by [members] in requisition notice dated 09<sup>th</sup> May, 2023 and 10<sup>th</sup> June, 2023. The requisition notice dated 09<sup>th</sup> May, 2023 is signed by 52 members and 10<sup>th</sup> June, 2023 is signed by approximately more than 180 members. Under Article 16(c)(i) of the MoA,



on receipt of requisition in writing by 50 members, the President of the Society is under an obligation to convene a SGBM. The Appellant in FAO(OS) 120/2023 had filed I.A. No. 11575/2023 under Order XXXIX Rule 4 CPC seeking permission to convene SGBM in furtherance of the requisition dated 10<sup>th</sup> June, 2023, whereas Respondent Nos. 1 and 2 have sought a stay on the holding of the SGBM in I.A. No. 10160/2023 filed under XXXIX Rules 1 and 2 CPC. Both the said interlocutory applications have been disposed of by the learned Single Judge by the impugned order while continuing the restraint. The disposal of the said applications and continuation of the restraint order dated 23<sup>rd</sup> May, 2023 is specifically appealable under Order XLIII Rule 1(r) CPC.

18. The Appellants have denied consenting to the continuation of the restraint order dated 23<sup>rd</sup> May, 2023 for restraining the holding of the SGBM. We are of the considered opinion that the Appellants, who between them represent five members, could not have consented to a restraint against holding of the SGBM in furtherance of the member's requisition dated 23<sup>rd</sup> May, 2023 or 10<sup>th</sup> June, 2023 as the said obligation under Article 16(c)(i) of the MoA confers a vested right in the members of the Society to seek convening of a SGBM and the said right of the member cannot be derogated and circumvented by the parties to the suit by consent. Unless the requisition is withdrawn by the petitioning members, the office bearers of the Society are obliged to convene the SGBM as per the rules of the Society.

19. The Court may curtail such a right of the petitioning members only, if it came to the conclusion that holding the SGBM is in contravention of the



governing act or rules or any other legal provision or the Articles of the MoA. However, there is no such finding of the violation of law or MoA in the impugned order dated 10<sup>th</sup> October, 2023 by the learned Single Judge and, therefore, the SGBM could not have been restrained by consent as alleged by the Respondents. The reasons which weighed with the learned Single Judge while passing the initial order dated 23<sup>rd</sup> May, 2023 had ceased to exist as on the date of the passing of the impugned order dated 10<sup>th</sup> October, 2023. As noted above, a valid requisition of the members dated 10<sup>th</sup> June, 2023 has been placed on record by the Appellants justifying calling of an SGBM. We, therefore, do not find any merit in the submissions of the Respondents that present appeals are not maintainable due to the alleged consent of the Appellants; and we, accordingly, proceed to decide the appeals on merits.

20. The Appellants in FAO(OS) 120/2023 and FAO(OS) 123/2023 are seeking permission to convene a SGBM in pursuance to the valid member(s) requisition dated 10<sup>th</sup> June, 2023, proposing amendments to the Articles of the MoA including Article 8. The Appellants conceded during arguments that they have no objection if the SGBM is conducted by the Court Observer and the voting and participation in this SGBM is limited to the voters/members verified by the Court Observer.

21. The plaintiffs/Respondent Nos. 1 and 2 had approached this Court in CS(OS) 331/2023 and had sought a stay of SGBM scheduled on 24<sup>th</sup> May, 2023 on the principal ground that effectively 48 members had signed the requisition dated 09<sup>th</sup> May, 2023 and the notice period fell short of the



prescribed period of 15 days as contemplated in Article 16(d) of the MoA.

22. We are of the considered opinion that on receipt of the fresh requisition dated 10<sup>th</sup> June, 2023 signed by approximately 180 members, the principal objection to the SGBM which was scheduled on 24<sup>th</sup> May, 2023 in the plaint does not survive and stands cured. We have been informed that the membership of 116 requisitioning members [who have signed the requisition dated 10<sup>th</sup> June, 2023] has been verified by the Court Observer and found valid. Therefore, with the minimum number of 50 being complied with, the Society is obliged under Article 16(c)(i) to convene an SGBM for the agenda proposed in the said requisition.

23. The second objection in the plaint was that notice for SGBM called for 24<sup>th</sup> May, 2023 was for inadequate period and thus, contrary to Article 16(d) of the MoA. The said objection does not survive for consideration since the meeting dated 24<sup>th</sup> May, 2023 was admittedly not held. The compliance of notice period under Article 16(d) of the MoA can be ensured by issuing appropriate directions in this regard.

24. In view of the fact that the term of the office of all the elected members of the Executive Committee and BOT has come to an end by efflux of time on 09<sup>th</sup> January, 2024<sup>1</sup> and the President has also demitted office, the office-bearer responsible for calling SGBM as per Article 16(c)(i) is currently not available in the Society.

25. We, therefore, direct the Court Observer to call for the SGBM with the agenda as proposed by the requisitioning members in pursuance of the

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<sup>1</sup> Statement of the Court Observer in CM APPL. 11869/2024 at Para 7



requisition notice dated 10<sup>th</sup> June, 2023. The Court Observer shall call for the SGBM as per the rules under the MoA regulating the calling, convening and holding of the SGBM.

25.1. It is directed that the members/voters eligible to participate in the said SGBM will be the 1835 members [which already stand verified] and additional members<sup>2</sup>, if any, verified by the Court Observer in furtherance of the order dated 05<sup>th</sup> March, 2023 passed by the learned Single Judge in I.A No. 5290/2024. The Court observer is directed to complete the verification and determine the eligibility of the said members expeditiously and preferably within one week from this judgment.

25.2. The learned senior counsel for the Respondent Nos. 4, 5 and 7 in FAO(OS) 120/2023 had stated that the Respondents would also like to submit a proposed agenda for the SGBM. It is clarified that if the Respondents submit a new valid requisition, duly signed by 50 members, within one week as per the MOA, the Court Observer will include the said agenda as well in the forthcoming SGBM.

25.3. The Court Observer is directed to schedule and hold a SGBM on or before 03<sup>rd</sup> May, 2024. The Court Observer shall cause issuance of notice of the SGBM to all the eligible members/voters in accordance with Article 16(d) of the MoA. In addition to modes of service of notice mentioned therein, keeping in view the modern comparative practices, the Court Observer will also issue notice through digital modes including WhatsApp, SMS and e-mail, subject to availability of the mobile number and e-mail

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<sup>2</sup> 268 Members refer to in I.A. No. 5290/2024 in CS(OS) 331/2023



address of the member. It is directed that service of notice on the member by any of the aforesaid one mode will be sufficient for the compliance of Article 16(d) of the MoA.

26. We would like to observe that in a Society, the General Body constituting of its members is its supreme organ. A Society is formed and dissolved on the express wish of its members as contemplated under Sections 2 and 13 of the Act of 1860. The Governing Body, which includes the BOT and the Executive Committee on the other hand as per Section 16 of the Act of 1860 is a body, which is entrusted with the management of the affairs of the Society and no more. The right of the members to requisition a meeting of the General Body and to take decisions at such a meeting cannot be interfered with either by the Executive Members or minority members or Courts by issuing injunctions. Unless the party approaching the Court can show a statutory prohibition to the resolutions passed by the General Body, it is not open to the Court to grant an injunction restraining implementation of the resolutions. In the present case, the Respondent Nos. 1 and 2/plaintiffs have sought to pre-empt the holding of the SGBM itself, which is impermissible in law.

26.1. The Constitution Bench of the Supreme Court in the landmark judgment of *Life Insurance Corporation of India v. Escorts Ltd. and Others*<sup>3</sup> in the context of a company and a general meeting called by a shareholder categorically held that the said right of the shareholder to call for a meeting cannot be injuncted by the Court. The relevant paras read as

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<sup>3</sup> (1986) 1 SCC 264



under:

**“95. A company is, in some respects, an institution like a State functioning under its “basic Constitution” consisting of the Companies Act and the Memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes “the members in general meeting” and the directorate as the two primary organs of a company and compares them with the legislative and the executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of government. Like the government, the Directors will be answerable to the “Parliament” constituted by the general meeting. But in practice (again like the government), they will exercise as much control over the Parliament as that exercises over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it clearly would not be practicable (except in the case of one or two-man companies) for day-to-day administration to be undertaken by such a cumbersome piece of machinery. So the modern practice is to confer on the Directors the right to exercise all the company's powers except such as the general law expressly provides must be exercised in general meeting. [Gower's Principles of Modern Company Law] Of course, powers which are strictly legislative are not affected by the conferment of powers on the Directors as Section 31 of the Companies Act provides that an alteration of an article would require a special resolution of the company in general meeting. But a perusal of the provisions of the Companies Act itself makes it clear that in many ways the position of the directorate vis-a-vis the company is more powerful than that of the government vis-a-vis the Parliament. The strict theory of Parliamentary sovereignty would not apply by analogy to a company since under the Companies Act, there are many powers exercisable by the Directors with which the members in general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognises that the analogy of the legislature and the executive in relation to the members in general meeting and the Directors of a company is an over-simplification and states “to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution.” As already noticed, the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the directorate and appoint others in**



their place. The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a Director and appoint another.

....

**100. Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review. It is true that under Section 173(2) of the Companies Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein of every director, the managing agent if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, all material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before them. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting. The Life Insurance Corporation of India, as a shareholder of Escorts Ltd., has the same right as every shareholder to call an extraordinary general meeting of the company for the purpose of moving a resolution to remove some Directors and appoint others in their place. The Life Insurance Corporation of India cannot be restrained from doing so nor is it bound to disclose its reasons for moving the resolutions.”**

(Emphasis supplied)

26.2. Recently, the Supreme Court in its judgment titled as ***Bengal Secretariat Cooperative Land Mortgage Bank and Housing Society Ltd. v. Aloke Kumar and Another***<sup>4</sup> in the context of co-operative societies reiterated the salutary principle of the supremacy of the General Body of the Society and held that unless the minority member can show a statutory prohibition, the Court cannot sit over the wisdom of the General Body. The



relevant paras read as under:

**“58. It was also argued on behalf of the Respondent No. 1 that the property is in a good condition and there is no need to redevelop the existing building. In the first place, as noted earlier, the decision of the General Body of the Society to redevelop the subject property has not been challenged at all. Besides, no provision in the Co-operative Societies Act or the rules or any other legal provision has been brought to our notice which would curtail the right of the Society to redevelop the property when the General Body of the Society intends to do so. Essentially, that is the commercial wisdom of the General Body of the Society. It is not open to the Court to sit over the said wisdom of the General Body as an Appellate Authority. Merely because one single member in minority disapproves of the decision, that cannot be the basis to negate the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition. That is not the grievance made before us. In the present case, the General Body took a conscious decision after due deliberations for many years to redevelop its property. Even with regard to the appointment of the “Hi-Rise” as the Developer, the record shows that it was decided by the General Body of the Society after examining the relative merits of the proposals received from the developers.**

**59. The object of the provision has to be borne in mind. The entire legislative scheme goes to show that the Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the bye-laws have to be respected and implemented. The Co-operative Movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great Co-operative movement.”**

(Emphasis supplied)

27. The judgments of the Supreme Court, though given in the context of an incorporated company and a co-operative society, apply with equal force

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<sup>4</sup> (2022) SCC OnLine SC 1404



to the Respondent No. 3, Society herein. Article 9(a) of the MoA expressly declares that the General Body of Respondent No. 3, Society is the supreme authority of the India Islamic Cultural Centre. Article 9(a) reads as under:

***"9. General Body***

*The General Body of the Centre shall be composed of the following:-*

*(a) The General Body shall be the supreme authority of the Centre."*

The contention of Respondent Nos. 1 and 2/plaintiffs and Respondent Nos. 4, 5 and 7/defendant nos. 3, 4 and 6 that the amendments to the MoA [more specifically Article 8(d)] proposed by the requisitioning members is against the interests of the Society as it is intended to perpetuate the presidency of the Appellant, i.e., Mr. Sirajuddin Qureshi or that he is unsuitable/undesirable to be appointed as the President, are contentions which in our opinion do not constitute any legal ground for restraining the SGBM.

27.1. The proposed amendments to Articles of the MoA including Article 8(d) will be deliberated and voted upon in the SGBM. The members of the Society will vote in favour or against the said amendments as per their discretion. The contesting Respondents have failed to show this Court any provision of the statute or rules or bye-laws which prohibits the proposed amendments. In the absence of a statutory provision, the Respondents cannot be heard to oppose the calling of the SGBM and tabling of the agenda. The Respondents will have to avail their right to participate at the General Body meeting to express their opinion and persuade the fellow members. However, the Court cannot injunct the holding of the said meeting.



27.2. For the same reason, if the Appellant, i.e., Mr. Sirajuddin Qureshi becomes eligible to contest the elections post amendment of the MoA in furtherance of the resolution passed at the SGBM, the Respondents will have to follow the democratic process of opposing him at the elections in the manner provided in the MoA and known to law. In the absence of any legal prohibition to the candidature of the Appellant, this Court is of the view that the unsuitability or undesirability of Appellant to hold any office is a matter exclusively in the domain of the members of the General Body. The disapproval of Respondent Nos. 1 and 2/plaintiffs and Respondent Nos. 4, 5 and 7 of the Appellant cannot form the basis of a Court injunction against holding of the SGBM.

28. Initially, the contesting Respondents had stated that amendments to the Articles of MoA can 'only' be carried out by the BOT as per Article 12(f). We are of the considered opinion that the said contention is *ex-facie* contrary to Article 16(e)(i) of the MoA, which confers the power to amend, modify or change Articles of the MoA to the General Body. The power of amendment of bye-laws resting with BOT referred in Article 12(f) is with regard to the amendment to bye-laws framed by BOT under Article 12 (e) of the MoA. Therefore, the reliance placed by the contesting Respondents on Article 12(f) is wholly misconceived. It would be relevant to refer to Articles 12(e), 12(f) and 16(e)(i) which read as under:

***"12. Rights, Powers and Duties of the Board of Trustees***

...

*(e) The Board shall have power to make bye-laws in respect of the following matters:-*

...



*(f) The Board alone shall have power to repeal amend and modify the bye-laws.*

...

### **16. Meetings**

...

#### **(e) Meetings-nature of business including elections**

*(i) General Body- The General Body shall meet to consider the annual report of the Board, elect members of the Executive Committee, and of the Board of Trustees and to issue suggestions to Board of Trustees for consideration; to amend, modify or change articles of the Memorandum of Association and rules and Regulations of the Centre, provided a minimum of 75% of Members of all categories (except the Honorary and Associate Members) present at a specially convened meeting of the General Body of such Member vote for these changes.”*

28.1. Firstly, Article 12(e) of the MoA confers power on the BOT to make bye-laws with respect to matters specified in clauses (i) to (ix). Article 12 (f) provides that the power to repeal, amend and modify the bye-laws will vest with the BOT alone. The exclusivity of the power of the BOT under Article 12 (f) is with respect to bye-laws framed under Article 12 (e). It is the admitted stand<sup>5</sup> of the Respondents that no bye-laws have been framed by the BOT in the history of the Society in pursuance of the Article 12(e). The requisition dated 10<sup>th</sup> June, 2023 proposes amendments to the articles of the MoA and makes no reference to the bye-laws. Therefore, the reliance on Article 12(f) of the MoA by the Respondents is misconceived. The rights, powers and duties of the BOT are set out in detail and comprehensively in Article 12(a) to (g). The said Article does not contemplate any power to the BOT to amend the Articles.



28.2. Secondly, the alternate argument of the Respondents that proposal of amendment to the Articles of MoA at the general body meeting is a mere suggestion to the BOT for its consideration as per Article 16 (e)(i) of the MoA is untenable. The expression '*to issue suggestions to board of trustees for consideration*' and the expression '*to amend, modify or change articles of Memorandum of Association and rules and Regulations of the Centre*' are independent and disjunct as they are separated by a semicolon. The use and effect of the punctuation semicolon in the drafting of an Article after a topic is judicially recognised as making the said topic as distinct and making it unrelated to the topic that follows thereafter. In this regard, it would be relevant to refer to the judgment of the Supreme Court in ***Jayant Verma v. Union of India***<sup>6</sup>. The argument of the Respondents, if accepted, would vest powers in the BOT, which are not contemplated in Article 12 and is contrary to the mandate of Article 9 which records that the General Body is the supreme authority of the Society as also the legal principle that the General Body is supreme as discussed hereinabove.

29. The contesting Respondents raised an alternative argument to state that after the General Body proposes the amendments, modification or changes to the MoA under Article 16(e)(i), such proposals are to be placed before the BOT for its acceptance and consideration. And the final arbiter for acceptance of the proposed amendments, modifications or changes suggested by the General Body will be the BOT alone. For this, the contesting Respondents relied upon the past incident in the year 1993 when

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<sup>5</sup> Paragraph 8(iv) of the plaint



similarly, the MoA was amended and the amendments were affected by the BOT. The relevant extract reads as under:

***"INDIA ISLAMIC CULTURAL CENTRE, DELHI***

*(As amended on the basis of the Resolution adopted on 8-8-1993 at the requisitioned meeting of the General Body of life members, and approved by the Board of Trustees of India Islamic Cultural Centre in its meeting held on 14-8-93) and finally endorsed at the meeting of the General Body of the life members, held on 19.9.93;"*

29.1. We are unable to accept this alternate argument of the Respondents as it is against the fundamental ethos of the functioning of a Society. The contention of the Respondents has no basis in the existing articles of the MoA or in law. Under the existing MoA, the General Body as per Article 9 consists of the members eligible for admission as per Article 3. The constitution and composition of the BOT are set out in Article 10, which comprises the members elected by the General Body amongst them and two (2) nominated members by the Government of India. The Articles also contemplates under Article 11 for setting up of an Executive Committee, which again consists of elected members by the General Body and nominated members. However, upon a perusal of Articles 9, 10 and 11 it is evident that the perennial and continuing body is only the General Body, whereas the BOT and Executive Committee comprises elected or nominated members whose term is for a fixed period and expires by efflux of time. Both the BOT and Executive Committee are constituted by election or nomination and are, therefore, working at the pleasure of the General Body.

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<sup>6</sup> At paragraph 21, (2018) 4 SCC 743



The BOT has been reserved with no rights to reject any amendment, modification or change in Articles proposed by the General Body in accordance with Article 16(e)(i).

29.2. The reliance placed by the contesting Respondents on the process adopted by the Society for incorporating amendments to the MoA in pursuance to the GBM resolution dated 08<sup>th</sup> August, 1993 does not take its case further. The relevant extract referred to above shows that once the resolution was adopted at the GBM on 08<sup>th</sup> August, 1993 it was approved by the BOT on 14<sup>th</sup> August, 1993 and endorsed again at the GBM on 19<sup>th</sup> September, 1993. The final decision, therefore, rested with the GBM alone. The process adopted in 1993 stands to reason as discussed hereinafter. Once the General Body approves amendments to the Articles, the BOT has to implement the resolution(s) of the General Body by incorporating the said proposed amendments in the text of the MoA, and since the BOT is the executive arm of the Society it is entrusted with the responsibility for making the amendments to the said text MoA. However, the BOT in law cannot reject or refuse to implement the amendments proposed by the General Body. The reference to Article 12(f) of the MoA by the contesting Respondents is of no effect. We, therefore, find no merit in the submission of the contesting Respondents that the amendments proposed by the General Body are subject to its acceptance by the BOT.

30. In any event, the matters as they stand today are that all elected members from the BOT and Executive Committee have demitted office on 09<sup>th</sup> January, 2024 and the only existing body is the General Body.



30.1. It is therefore, imperative that the SGBM is held at the earliest<sup>7</sup> and after the decision on the proposed amendment to the Articles by its members, the AGM for conducting election is held immediately in conformity with the decision taken at the SGBM.

30.2. The Court Observer has filed CM APPL. 11869/2024 seeking permission to hold an AGM for conducting election for the posts of the BOT and Executive Committee. We direct that the Court Observer will hold the AGM for the purpose of elections within 30 days after the SGBM, as directed above has been held.

30.3. The list of members/voters frozen within one week from this judgment will also be the basis for calling the AGM.

30.4. The administration of the Society will be handed over by the Court Observer to the elected representatives immediately thereafter.

***FAO(OS) 110/2023***

31. In this appeal, the Appellant, i.e., Mr. Jamshed Zaidi is aggrieved by the direction of financial audit issued at paragraph 20(d) of the impugned order.

32. The impugned direction for financial audit was passed by the learned Single Judge while disposing of I.A. No. 12600/2023 filed by the plaintiffs.

33. The plaintiffs have filed an application<sup>8</sup> before the learned Single Judge clarifying that I.A. No. 12600/2023 was not pressed by them and, therefore, the impugned order be corrected to record mention of I.A. No. 12631/2023 in place of I.A. No. 12600/2023.

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<sup>7</sup> 03<sup>rd</sup> May, 2024



34. We have, accordingly, perused the prayers sought by the plaintiffs in I.A. No. 12631/2023. Upon a perusal of the said application and relief sought therein, it is apparent that no relief for direction of financial audit was sought in the said application. The learned Single Judge in the impugned order has not recorded any reasons or grounds for issuing any directions for financial audit.

35. In the aforesaid facts, we find merit in the submission of Appellant that there was no occasion for learned Single Judge to direct a financial audit of Society, which is even otherwise the final relief sought in the plaint at prayer (b). We accordingly, set aside the said impugned direction for conducting financial audit as directed in the impugned order at paragraph 20 (d). The Court Observer is directed not to take any further steps for conduct of the financial audit.

36. We further note that the prayer for appointment of administrator to run the affairs of the Society was the relief prayed for by the plaintiffs in prayer (a) of the I.A. No. 12600/2023. The said application was not pressed by the plaintiffs and, therefore, no direction akin to appointment of administrator could have been issued by the learned Single Judge. However, due to the office bearers having demitted office of BOT, the management of the Society has been carried out by the Court Observer. At paragraph 20(h) of the impugned order, the learned Single Judge has observed that the management of Society should be handed over to newly elected BOT. It is, therefore, necessary that the SGBM and AGM for holding elections are held

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<sup>8</sup> I.A. No. 20981/2023



at the earliest in accordance with the directions issued hereinabove so as to enable the constitution of the BOT and Executive Committee.

37. We further note that two separate applications under Order VII Rule 11<sup>9</sup> have been filed by separate defendants for the rejection of the plaint. The learned Single Judge is requested to hear the said applications expeditiously.

38. With the aforesaid directions, the restraint contained in the impugned order at paragraph 20(c) is hereby vacated and the direction at paragraph 20(d) is set aside. The appeals are allowed in the aforesaid terms.

39. The parties will be at liberty to approach the learned Single Judge for implementation of the directions contained in the present judgment for calling convening and holding the SGBM on or before 03<sup>rd</sup> May, 2024 and the subsequent AGM for holding elections within 30 days thereafter.

**MANMEET PRITAM SINGH ARORA, J**

**ACTING CHIEF JUSTICE**

**APRIL 02, 2024/hp/ms**

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<sup>9</sup> I.A. No. 16241/2023 and 16263/2023