

Working and Management of a Society

[In continuation with the series of articles dealing with relevant issues of Societies Registration Act, 1860, in this article we are dealing with the topic of 'Working and Management of a Society']

The term Governing Body which is the most commonly used word for the management of a society has not been defined anywhere in the Societies Registration Act 1860. The Governing Body is defined under Section 16 of the Societies Registration Act 1860 as - Governing Body of a Society to consist of the governors, council, committee, trustees or some other body by whatever name called to whom or to which by the rules and regulations of the society, the management of its affairs is entrusted. Therefore we can easily say that the Governing Body of the Society is the brain of the society without which it cannot operate.

In absence of any definition in the Societies Registration Act 1860, we draw an interpretation from the definition as per Sec 32 of the English enactment, namely, Literary and Scientific Institutions Act, 1854 which defines Governing Body as:

" The Governing Body of the institution shall be the council, director, committee, or other body to whom by Act of Parliament, Charter or the rules and regulations of the institution, the management of the affairs is entrusted; and if no such body shall have been constituted on the establishment of the institution, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the institution thenceforth"

For the regular activities of the society, the management, execution and supervision is done by the governing body. The governing body has to work within the framework of the objects of the society as well as carry out the statutory duties laid down in the Act.

The governing body of the society is a fluctuating body, however, the constitution of the governing body is not affected by the change of the members. The governing body will always exist to manage the affairs of the society whether or not it has been properly constituted in terms of the rules and regulations. The entrustment of the management should be complete to the governing body. The criterion in all cases is ' who is managing the affairs of the society'. Similarly the property of the society vests in the Governing Body and not in the members of the society.

Members and Meetings:

Usually the governing body comprises of members chosen from among the members of the society or in some cases if the Government feels necessary, a nominee can be appointed by the Government in the Governing Body for public interest.

The Annual General Meeting (AGM) of the society is held according to the rules and regulations of the society generally once in a year or as is defined in Sec 4 of the Societies Registration Act. Section 4 of the Societies Registration Act

states that:

'Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the registrar of Joint Stock Companies, of the name, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society'.

This section regarding the annual general meeting also corresponds to Section 159 of the Companies Act 1956 which deals with the annual return to be made by a company having a share capital. The section 159 of Companies Act says that, 'Every company having a share capital shall, within forty two days from the date on which each of the annual general meetings referred in Section 166 is held, prepare and file with the Registrar a return containing the particulars specified in part I of Schedule V, as they stood on that date, regarding:

- a) its registered office
- b) the register of its members
- c) the register of its debenture-holders
- d) its shares and debentures
- e) its indebtedness
- f) its members and debenture holders, past and present, and
- g) its directors, managing director, managing agencies, secretaries and treasurers, managers and secretaries past and present

similarly in case of societies we interpret that the society shall file a list containing the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society to the Registrar of Joint Stock Companies,

ó once in a year when the AGM is held

ó in case it is not held once in a year then within 14 days on which the AGM is held according to the rules of the society, and

ó in cases where the rules do not provide for an AGM, then in the month of January.

(Under State Amendments certain states have replaced the word 'Registrar of Joint Stock Companies' by 'Registrar of Societies' or has been omitted).

Changes in the Managing Body/ Governing Body

Several states have inserted Section 4A, 4B, 4C to the Section 4 of the Central Societies Registration Act, which gives insertions regarding the changes in the managing bodies and the rules of the society to be filed with the Registrar.

These sections of various states generally state that along with the list mentioned in Sec 4(list of governing body) to be submitted to the Registrar, a

statement showing changes during the year regarding Governors, Council, Directors, Committee or other governing body to whom the management of the affairs of the society is entrusted along with a copy of the rules of the society corrected up to date, certified by not less than three members of the governing body also has to be filed.

These insertions of section 4A, 4B, 4C have been made in various states like Assam, Bihar, Gujarat, Maharashtra, Nagaland, Orissa, Pondicherry, Uttar Pradesh, and Union Territory- Goa Daman & Diu. (Kindly refer to the respective State Acts for the relevant sections)

Suits by and against the Society

Section 6 of the Societies Registration Act states that every Society registered under this Act may sue or be sued in the name of the President, Chairman or Principal Secretary, or trustees as shall be determined by the rules and regulations of the Society and in default of such determination in the name of such person as shall be appointed by the governing body of the occasion.

However regarding the provisions relating to filing and defending the suits by the Society, Section 7 of the Act provides that no suit or proceeding of a society shall be discontinued in case of death or cessation of office of the person in whose name the suit has been filed. The suit or proceeding shall be continued in the name of or against the successor of such person.

Section 7 states that :

' No suit or proceeding in any civil court shall abate or discontinue by reason of the person, by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or be sued by the same suit or proceeding shall be continued in the name of or against the successor of such person .Therefore same proceedings and suit shall continue in the original form and vacancy in the governing body shall not affect'

Minimum members of a Governing Body

There shall be at least 2 members of any governing body. However, if the society is registered in the state of TamilNadu there should be at least 3 members of the governing body.

The members of the governing body are either elected or nominated as per the rules and regulations of the society.

Term of Office

Generally the term of office of the members of the governing body is given in the rules of the society. However if the society is registered in the state of TamilNadu, the TamilNadu State Act gives the term of office of a member of the governing body for a period which cannot exceed more than 3 years.

The rules of society should also generally provide the procedure for retirement and expulsion of the members.

Property of the Society

Trustee of a society is a person in whom the confidence has been reposed under a trust. A Trustee is a person who is owner of the property and deals with it as principal owner and master subject only to an equitable obligation to account to some person to whom he/she stands in relation of trustee.

A Trust is an obligation annexed to the ownership of a property and arising out of a confidence reposed in and accepted by the owners or declared or accepted by him for the benefit of another and the owner thereof.

The members of the governing body are the Trustees of the Property of the Society. The property whether movable or immovable vests with the society's trustees. In case there are no trustees for the property of the society, it is deemed to be vested in the governing body of the society. An office bearer of a society may also be the trustee of the property.

In case of any civil or criminal proceedings, the property of society is also described as the property of the governing body of such society.

However, the personal property of the person or the officer who has been named on behalf of the society is not in any case liable for any judgements which have been given against the property of the society. Section 8 of the Act states that 'If a judgement shall be recovered against the person or officer named on behalf of the society, such judgement shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.'

Signing Authority

In general all the documents of the society to be filed with the society registrar should be signed by the President or the Chairman or the Secretary of the Society or by any other person specifically authorized in this behalf.

Filing of Documents of the Society

The various documents or the various intimations to the registrar of the society which are to be filed should be signed either by the Chairman or the President, Secretary or by any person specifically authorized in this behalf by the rules and regulations or as authorized by a resolution of the governing body.

Holding Office

There is no specific section or clause in the Societies Registration Act 1860 regarding the qualifications and disqualifications for holding office in a Society. Some of the disqualification given specifically by the Section 28 of the West Bengal Societies Registration Act, section 16 of the UP Societies Registration (Amendment) Act and Section 20 (2) of Travancore Cochin Act are:

ó A person is disqualified for being chosen as or being a member of the governing body are - Person is an undercharged insolvent

- is convicted of any offence in connection with the formation, promotion, management or conduct of the affairs of a society or a body corporate, or of any offence involving moral turpitude.

Referring to the a.m. sections of the State Acts and also the Companies Act 1956, we can interpret that a person who is insolvent or is of unsound mind or convicted of an offence involving moral turpitude should not be allowed to hold any office of a registered society

Statutory Duties of the Governing Body

Since Governing Body manages the affairs of the Society, the members of the governing body have to comply with the provisions laid down in the statute regarding filing of the documents with the Registrar, maintenance of accounts, managing and applying the funds of the society for carrying out the objects of the society etc. The provisions of the principal act lays down the way the society is required to act and for all purposes it is the governing body which has to fulfill these duties on behalf of the society. The statutory duties which the governing body is required to carry out are:

ó Filing of list of the names, addresses, occupations of the Governors, Council, Directors, Committee or other Governing Body at that time entrusted with the management of the affairs of the society, once in a year within 14 days of the annual general meeting (AGM) of the society (or in the month of January if rules do not provide for AGM).

ó Holding of annual general meeting at the time prescribed in the rules and regulations of the society.

ó Holding of extraordinary general special meeting in case some special business has to be transacted which cannot wait till holding of the AGM.

ó Changes in the managing body and the rules of the society have to be filed with the registrar of societies as per the provisions of various state act insertions under Section 4 A ,4 B, 4 C.

ó Notice of the situation of the Registered Office and any change thereof has to be filed with the Registrar within one month from the date of registration of society or the date of the change as the case may be.

ó Any amendments in the memorandum or bye laws has to be registered with the registrar signed by one of the members of the governing body to be accompanied with a copy of the special resolution relating to the amendment with a fee of Rs.2.

ó Ensuring that the notice for the AGM and extraordinary meeting is duly sent to all the members.

ó The registered office should supply to its members on application, copy of bye laws, receipts and payment account, balance sheet at a prescribed fee.

ó Responsibility for investment and application of the funds and properties of the society.

ó Maintenance of register of members as per the rules and regulations of the society.

ó Display of the name of the society at its place of business and its registered office.

ó When required by the Government or the Registrar, the governing body of any society should submit periodical account of income and expenditure and assets and liabilities of the society.

ó A copy of the special resolution passed for any purpose, duly signed by an officer of the society authorised by the rules of the society should be filed with the registrar within 20 days from the passing of the resolution.

ó The governing body should ensure the recording of the minutes of the proceedings of the governing body or the general body.

ó The society should retain the important documents of the society permanently.
To be continued.....

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