

*Punjab Engineering College Versus Mohit Shrivastava and another.
Punjab Engineering College Versus Ravi Kant and another.*

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**IN THE COURT OF DR. AJIT ATRI, UID NO. PB0440.
ADDITIONAL DISRICT JUDGE, CHANDIGARH.**

(1)

**CNR No. CHCH01-008592-2019.
Civil Appeal No. 320 of 2016.
Decided on : 04.01.2020.**

Punjab Engineering College, Old Students Association, Punjab Engineering College (Deemed to be University), Sector 12, Chandigarh through its President Sh. K.K Vohra.

..... Appellant.

Versus

Mohit Shrivastava aged 50 years son of Ram Dass Shrivastava, resident of H. No. 213, Sector 33-A, Chandigarh.

..... Respondent.

Dr. K.K Gogana, Dean Alumni cum Returning Officer-PECOSA Elections, 2018 Punjab Engineering College (Deemed to be University) near old Post Office, Sector-12, Chandigarh.

..... Proforma respondent.

Civil Appeal under Section 96 of CPC against the judgment and decree dated 30.09.2019 passed by the court of Sh. Varun Nagpal, Ld. Civil Judge (Senior Division), Chandigarh in civil suit no. 2301 of 18.7.2018.

Claim in Appeal: To accept the appeal and to set aside the judgment and decree dated 30.09.2019.

Dr. Ajit Atri, ADJ/Chandigarh
UID NO.PB0440/04.01.2020.

*Punjab Engineering College Versus Mohit Shrivastava and another.
Punjab Engineering College Versus Ravi Kant and another.*

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Argued by:- Mr. Puneet Sharma, Advocate for appellant.
Mr. P.K Kukreja, Advocate for respondent.

(2)

**CNR No.CHCH01-008593-2019.
Civil Appeal No. 321 of 2019.
Decided On:- 04.01.2020.**

Punjab Engineering College, Old Students Association, Punjab Engineering College (Deemed to be University), Sector 12, Chandigarh through its President Sh. K.K Vohra.

..... Appellant.

Versus

Ravi Kant aged about 62 years son of Lachhman Dass, resident of House No. 85-C, near D.A.V School, B.R.S Nagar, Ludhiana-141012.

..... Respondent.

Dr. K.K Gogana, Dean Alumni cum Returning Officer-PECOSA Elections, 2018 Punjab Engineering College (Deemed to be University) near old Post Office, Sector-12, Chandigarh.

..... Proforma respondent.

Civil Appeal under Section 96 of CPC against the judgment and decree dated 30.09.2019 passed by the court of Sh. Varun Nagpal, Ld. Civil Judge (Senior Division), Chandigarh in Civil Suit No. 2953 of 23.10.2018.

Claim in Appeal: To accept the

appeal and to set aside the judgment and decree dated 30.09.2019.

Argued by:- Mr. Puneet Sharma, Advocate for appellant.
Mr. P.K Kukreja, Advocate for respondent.

JUDGMENT:-

1- Vide this common judgment I shall dispose of two Civil appeals titled “Punjab Engineering College Versus Mohit Shrivastava and another” and “Punjab Engineering College Versus Ravi Kant and another” as they arise out of the same impugned judgment and decree dated 30.09.2019 passed by the court of Ld. Civil Judge (Senior Division), Chandigarh whereby two civil suits, No. 2301 of 18.7.2018 titled “Mohit Shrivastava Vs. Punjab Engineering College and another” and Civil Suit No. 2953 of 23.10.2018 titled “Ravi Kant Vs. Punjab Engineering College and another” were decreed. Both the cases had been consolidated by the ld. Trial Court vide order dated 27.5.2019 passed in Civil Suit titled Ravi Kant Vs. PECOSA and another.

2- Notice in both the appeals had been issued and the record of the ld. Trial Court was summoned.

3- The brief facts as per the pleadings of the parties are that

(hereinafter the parties are referred to as per their status in the suit) the plaintiff Mohit Shrivastava filed a suit for Mandatory direction to defendants to conduct free and fair elections for the executive for the term 2018-2020 of Punjab Engineering College Old Students Association (PECOSA), perpetual injunction restraining the defendants from conducting elections and annual general meeting (AGM) without finalizing the voter list, suit for declaration that ongoing process adopted by defendants is against the bye laws/rules and suit for declaration to convene the Annual General Meeting and conduct elections as per rules. The second plaintiff Ravi Kant had filed the suit for declaration that the elections of PECOSA executive for 2018-2020 held on 22.7.2018 were illegal, null, void and invalid etc. against the bye-laws and be set aside, for declaration to convene Extra Ordinary General Meeting, hold fresh fair and transparent election of PECOSA for 2018-20 and in alternative directions to defendants to recount the votes for the post of Executive Member and in the alternative relief of declaration that 4 elected members of 1973 batch cannot be appointed as members of governing body as per memorandum of article of association and consequently the election result dated 22.7.2018 may be notified by removing one of the elected member of 1973 batch from the post of Executive Member and directions may be passed to appoint the plaintiff on the Executive Member on the vacancy was created and also a suit for perpetual injunction restraining the body of the PECOSA Executive elected on 22.7.2018 from representing as PECOSA Executive Committee for the

term 2018-20 and from holding and taking other decisions on behalf of PECOSA in violation to the bye-laws consisting in memorandum of article of association of the PECOSA.

4- The first suit filed by Mohit Shrivastava had been filed before the completion of election process and second suit by Ravi Kant had been filed by the plaintiff after declaration of result of the elections. However, the elections had been challenged on the similar grounds. It has been pleaded in the suit filed by Mohit Shrivastava that email dated 9.6.2018 had been sent by the President with regard to the schedule of elections, notification of elections which as per clause 17, the duty vested upon the Executive Committee to decide date, time and venue. The President was not competent to do the same. In view of clause 6 and 17 it was mandatory for the defendants to display the list of members with their batch, email and mobile numbers, if any but the said list was not displayed on PECOSA notice board or the official PECOSA website. In absence of this the voters are not aware. It was required from the defendants to prepare members/voter list, call objections, if any, decide the same and then finalize the voter list. It was also pleaded that no cut out date for the voter list was fixed which does not rule out chances of fake, counterfeit, and bogus voters. In view of clause 2 for becoming life member of PECOSA, the subscription of Rs.500/- was obligatory and it was duty of defendants to scrutinize the eligible members. Wide publicity by using all the means was to be given to ensure maximum participation

but the election notice was not even uploaded on PECOSA website, PECOSA Google group, sms. The emails were not sent properly nor the publicity through press was given. It was also pleaded that election notice or subsequent proceedings were not pasted/published/notified on PECOSA website/Google groups and sms making the members acquainted about agenda of election. The members throughout world will not be in position to visit Chandigarh at short time notice. As the election should not be from small close list of members rather all the members may be apprised about the elections so that more and more members may exercise their vote. The plaintiff Mohit Shrivastava had filed nomination for post of General Secretary but in absence of voters/members list, was unable to canvassing/approach members/voters.

5- The plaintiff Ravi Kant had also pleaded that he had filed nomination for the post of Vice President and Executive members and in absence of voters/members list was unable to properly approach the voters. On persistent request of plaintiff, the defendant No.1 had given a pen drive allegedly with digital data but the files were found obsolete, outdated and of no use. In view of order passed in suit filed by Mohit, at last moment the defendants considered college list prepared by Dean alumni affairs as electoral roll despite the fact that the said list was not in accordance with Memorandum of Articles of Association. The students who passed out during years 1997 to 2000 were to make their subscription to become life members. The elections were pleaded to be in

violation of the rules and by-laws of the Association and hence null and void.

6- Upon notice, defendants No.1 & 2 appeared and filed written statement to the suit filed by plaintiff Mohit Srivastava taking preliminary objection that the plaintiff has not approached the court with clean hands, plaintiff has no cause of action to file the suit. It is pleaded that the plaintiff did not raise any objection while submitting his nomination papers for the post of General Secretary and Executive Member on 22.6.2018. The list of candidates was uploaded on the PECOSA website on 25.6.2018. Thereafter sufficient period of around 10 days was given for withdrawals upto 5.7.2018. Even at the time of withdrawals no objection were raised. Thereafter the Returning Officer uploaded the list of eligible candidates. Thereafter, for another 10 days, no objections were raised. As such the objections raised 4 days before the elections, are irrelevant and merely an afterthought. It is also pleaded that clause 4 of Memorandum and Article of Association states that all old students who have passed any approved course from PEC are members of the General Body and thus every body is eligible to vote. No further publication is necessitated. This has been further made clear under clause 8 of the Rules that all members of Association are eligible to vote for election of the Executive Committee except for those barred under clause 20. It is further submitted that although meeting of AGM can be conveyed with a notice of 21 days yet as the election process was to be

completed, necessary notice for holding AGM and Election for 2018-20 Executive Committee was uploaded on PECOSA website on 6.6.2018 clearly indicating notice for more than 45 days has been given for maximum possible publicity. The notice was sent at the emails addressed on 8.6.2018 and 9.6.2018. Again this notice was sent through bulk mail to more than 3500 alumni on 9.6.2018. In response thereto more than 47 nominations were received including two by the plaintiff for the post of General Secretary and Executive Member. It is submitted that the plaintiff himself was a member of Sub Committee for the drafting of the new Constitution.

On merits it is the case of the defendants that the defendant No.1 issued notice on 6.6.18 for AGM-cum-PECOSA election to be held on 22.7.2018 in compliance of the decision taken by the Executive Committee in its meeting held on 29.4.2018 vide item No.4 of the Minutes of meeting. The publicity of the election notice in the press is not mandatory. The voter list was kept with the notice of election in the PECOSA office. The notice stands appended on the door of the PECOSA office that voter list is available in the office and can be seen between 11.00 AM to 2.00 PM. No further publication is necessitated. This has been further made clear under clause 8 of the Rules that all members of Association are eligible to vote for eviction of the Executive Committee except for those barred under clause 20. The constitution explicitly states that every member of the Association is eligible to vote and there is no ambiguity on this count. The plaintiff himself maintains a website with

domain name; pecalumni.com which contains information about the alumni/members of the various batches of Punjab Engineering College. The security deposit with the Punjab Engineering College are transferred as life membership fee to the Association (PECOSA)'s account as per MOU signed between PECOSA and Punjab Engineering College and by virtue of that they become life members of the Association PECOSA. It is admitted that the plaintiff submitted a representation for the conduct of free and fair election. As all necessary actions are being taken as per Memorandum of Articles and Association of the Constitution, no further action was required to be taken on the representation of the plaintiff. However, in order to ensure free and fair elections, videography of the voting process has been got done and as per the orders of the court, the police personnels were also present at the site.

7- The defendants also filed written statement to the suit filed by the plaintiff Ravi Kant taking preliminary objections regarding maintainability of the suit, the plaintiff has filed the suit only to harass and pressurize the defendants to enter into the governing body of PECOSA through back door, the plaintiff has not approached the court with clean hands and has suppressed true and material facts. It is pleaded that the elections of PECOSA were conducted in free and fair manner by defendant No.2 as per order dated 18.7.2018, passed by the court, in the presence of the police and counting of votes was also done. It is further pleaded that at the time of counting of votes and declaration of result, the

plaintiff did not raise any objection. The plaintiff is trying to mislead the court by saying that four members of 1973 batch have been declared as members against the limit of three, whereas, in fact, the executive members elected from that batch of 1973 are two only. Further objection is taken to the effect that no cause of action has arisen in favour of the plaintiff to file the present suit as the governing body of PECOSA has taken over the charge of office of PECOSA and started functioning after the elections in a free and fair manner. The registration notice has already been issued by the Governing Body for Global Alumni Meet Scheduled to be held on 16.2.2019. On merits, it is pleaded that the defendant No.1 had issued notice on 6.6.2018 for AGM-cum-PECOSA election to be held on 22.7.2018 in compliance of the decision taken by the Executive Committee in its meeting held on 29.4.2018 vide item No. 4 of the Minutes of meeting. PECOSA website and emails were sent to around 3400 alumni all over the world on 8.6.2018 and 9.6.2018. More over, the publication of election notice in the press is not mandatory as per clause 17 of Memorandum of Articles of Association. It is also pleaded that the voter list was kept in the PECOSA office and a notice stands pasted on the door of the PECOSA office that voter list is available in the office and can be seen between 11:00AM to 2:00PM. The election notice was uploaded on the website and emails were sent on 8.6.2018 and 9.6.2018, 45 days before the date of election. As a result of wide publicity, 47 nominations were received for the post of different office bearers and executive members including that by the plaintiff for the post of General

Secretary as well as Executive members. It is denied that the plaintiff did not have the knowledge of members/voters list. The plaintiff has himself admitted that defendant No.1 had provided digital data in a pen drive to him and he had contested the election for the post of executive member, thus, the allegation that he withdrew his nomination for the post of Vice President in the absence of the voter list, is wrong.

8- In replications the averments contained in the written statement were denied/controverted and those in the plaint were reiterated. From pleadings of the following issues were framed in civil suit titled Mohit Shrivastava Vs.PEC and another, by the ld. Trial Court vide order dated 10.10.2018:

1. Whether plaintiff is entitled to relief of mandatory injunction as prayed for?OPP
2. Whether plaintiff is entitled to decree for perpetual injunction restraining the defendants from conducting the elections and Annual General Meeting(AGM) on 22.7.2018 or any other date without finalization of the final voter list?
OPP
3. Whether the plaintiff is entitled to decree for declaration as prayed for?OPP
4. Whether plaintiff has not approached the court with clean hands and concealed material facts from the court?OPD
5. Whether the plaintiff has no cause of action to file the

present suit.?OPD

6. Relief.

9- From pleadings of the following issues were framed in civil suit titled Ravi Kant Vs.PEC and another, by the ld. Trial Court vide order dated 20.02.2019:

1. Whether plaintiff is entitled to decree for declaration as prayed for?OPP

2. Whether plaintiff is entitled to decree for perpetual injunction as prayed for? OPP

3. Whether present suit is not maintainable? OPD

4. Whether plaintiff has not approached the court with clean hands?OPD

5. Relief.

10- To prove their case the plaintiffs Mohit Shrivastava and Ravi Kant themselves appeared into the witness box as PW-1 and PW-2 respectively and thereafter closed their evidence.

11- On the other hand the defendants examined DW-1 K.K Vohra, DW-2 K.K Gogna and thereafter closed their evidence.

12- After hearing the ld. Counsels for the parties and going through the record, the ld. Trial court vide impugned judgment and

decree dt. 30.9.2019 decreed the suits in favour of the plaintiffs and against the defendants and granted the relief as under:

In Ravi Kant' Case:

1. A decree for declaration is passed in favour of the plaintiff Ravi Kant and against the defendants to the effect that the elections of the PECOSA Executive for the term 2018-2020 of Punjab Engineering College Old Students held on 22.7.2018 were illegal, null and void ab-initio against the applicable bye laws viz. Memorandum of Articles of Association and are accordingly set aside and decision taken by the governing body of PECOSA elected on the basis of election result which was declared on 22.7.2018 is null, void, ab-initio and not binding upon PECOSA. Consequently direction is passed to the outgoing Executive Committee to convene Extra Ordinary General Meeting to hold fresh fair and transparent elections of PECOSA executives for the term 2018-2020 strictly as per the Memorandum of Articles of Associations of PECOSA by following the due procedure.
2. Further decree for the permanent injunction is passed in favour of the plaintiff Ravi Kant and against the defendants whereby the body of PECOSA executives elected on 22.7.2018 is hereby restrained from representing themselves as PECOSA executives committee for the term 2018-2020 and they are further restrained from holding meeting and taking other important decisions on behalf of PECOSA in violation to bye laws consisting in the Memorandum of Articles of Association of PECOSA.

In Mohit Srivastava's Case :

1. A decree for the mandatory injunction is hereby passed in favour of the plaintiff Mohit Srivastava and against the defendants whereby the defendants/outgoing executive committee is hereby directed to conduct the free and fair elections for the Executive for the term 2018-2020 of PECOSA as strictly as per the Memorandum of Articles and Associations i.e. applicable bye laws.

2. Further decree for the declaration is passed in favour of the plaintiff and against the defendants to the effect that process of the elections adopted by the defendants for the term 2018-2020 was against the applicable bye laws/rules envisaged in Memorandum of Articles and Associations, arbitrary, not maintainable in the eyes of law and is accordingly set aside.

3. Further the defendants/outgoing Executive Committee is hereby directed to convene the General Meetings and connected process of holding elections as per applicable Memorandum of Articles and Associations. Aggrieved against the impugned judgment and decree the defendant PECOSA is in appeal.

Aggrieved against the impugned judgment and decree the defendant no.1 is in appeal in oth the suit.

13- It has been argued by the ld. Counsel for the defendant no.1-appellant that the ld. Trial Court has overlooked the evidence led by

the defendant and has relied upon the selective part of the evidence of defendant witnesses. The defendants appeared in the witness box and satisfactorily answered the allegations made by the plaintiffs. The important aspect in the examination of DW-2 has been ignored. DW-2 has categorically stated that free and fair elections were conducted by him as per Memorandum of Article of Association. The plaintiffs did not raise any objection while submitting the nomination papers. It is also stated by DW-2 that list of candidate was uploaded on the PECOSA website on 25.6.2018 and sufficient time of 10 days was given for withdrawal upto 5.7.2018. The documents i.e attendance list, stamped ballot papers for General Secretary, statement signed by the members present before the counting of votes, documents showing counting of votes, final result have come on record. But the evidence tendered by DW2 has not been considered. Plaintiff Ravi Kant himself withdrew his nomination and did not raise any objection at any stage. Widespread publicity was given in conduct of the elections but the ld. Trial Court has wrongly relied upon the documentary evidence in Mark DX1/C wherein email to nearly 3914 was sent. If at all there were shortcoming in conduct of election by defendant No.2, the appellant-defendant No.1 cannot be penalised. It is also argued that the ld. Trial Court wrongly interpreted the clause 6, 8, 10, 17 and other clauses of the Article of Association and wrongly decreed the suit.

14- On the the hand it has been argued by the ld. Counsel for

the plaintiff/s-respondent/s that the ld. Trial Court has rightly appreciated the evidence coming on the file and decreed the suit. Even though the election was conducted after the interim order passed by the ld. Trial court but still the procedure has not been followed. The President in his individual capacity was not entitled to notify the schedule of election and in the email sent by him he has no where mentioned about the relevant resolution by the Executive committee with regard to notification of the election schedule. The Returning Officer was to get the nomination etc. with regard to the election process but it is collected by the President himself and submitted to the Returning Officer which is in violation of the model bylaws of the association. It is also contended that the students passed out during the batch 1997 to 2000 were not to be member without deposit of the prescribed fee of Rs.500/- as prescribed in the rules but it is not even the case of the defendants that any voter list in accordance with the subscription or with complete details had been prepared. Only the attendance sheet cannot be termed as a voter list. It is argued that the written statement filed by the defendants also did not specifically mention about the voter list, if any prepared by them. Even the wide publicity has not been given and the emails sent by the President from his own email is only to a few members of the Association and not to all the members. Unless and until all the complete details are prepared in the voter list and made available to the other candidates contesting for the various posts, the process cannot be termed to be fair in itself. The violation of the by-laws is apparent on record from the fact that only 2/3

members were to be from the 1973 batch but in fact there are 4 members including the President. The Id. Trial Court has rightly decreed the suit and even during the course of arguments it is admitted by the defendants that there was no email ID of the association at the relevant time and it has been created subsequently after the elections.

15- I have heard the Id. Counsels for the parties and have also gone through the record.

16- Controversy in both the suits is with regard to holding of election for 2018-20 for PECOSA. The due registration of Society under the Registration of Firms and Societies Act with the Registrar Firms and Societies Chandigarh under No. 2821 of 1998 on 8.12.1998 is not in dispute. The dispute is with regard to elections of the office bearer for the period 2018-20 on 22.7.2018. The By-laws of the Society are also not disputed by the parties and it is the interpretation of the by-laws which require attention. The Rule 2 of the Rules & Regulations of the Association (PECOSA) provides for the terms of admission of the members whereas Rule 3 provides for subscription, Rule 6 for meetings and quaram, Rule 8 for the right to vote and Rule 17 provide for election of office bearer/Executive Committee. After Rule 18 the New Provision for meeting future needs are also provided. The perusal of the Rules leaves no doubt that the participating in the meeting/proceedings as well as election of the office bearer, one has to be member of PECOSA.

Under Rule 3 Subscription, the subscription fee of Rs.500/-, which can be reviewed and increased periodically by the Executive Committee, is provided and it is also prescribed that all the members shall be life members of the PECOSA. As per Rule 3 all the old students who passed before 1996 are deemed to have subscribed the membership fee by way of transfer of their students stores security deposit lying with the college to the Association's account on their passing from Punjab Engineering College Chandigarh. However, the students of the batches passed out during the years 1997, 1998, 1999, 2000 shall have to make their subscription to become life members of the Association. The exemption clause is provided for the faculty member of PEC Chandigarh/PEC University of Technology.

17- Reading of the Rules makes out that Rule 17 provides for mode of election and it is the Executive Committee which shall decide the date, time and venue of meeting and not the individual office bearer. Rule 17(4) also makes out for the election by secret Ballot and Rule 17(6) provides that in case of election by secret ballot, the identity of the members need proper authentication to avoid participation of non-members of General Body. The Returning Officer shall devise his own methodology for the same. Therefore there is no denying to the fact that the process of meeting/election is to be initiated by the Executive Committee and in order to establish the identity of the members to participate there has to be a proper list with details. It is also provide in

the rules that wide publicity shall be given by using the digital means.

18- In the present case the initiation of process has come into being/brought to the notice by the outgoing President from his personal email Ex.P2 though it is stated to be initiated in the meeting of the executive committee dated 29.4.2018. The email makes the subject as “Notice for AGM cum PECOSA Election” and it does not find mention that it is at the instance of Executive Committee. Even in the contents of the email it is not mentioned that the same is the decision of the executive committee and the bare reading makes out that the President seems to be notifying the details at his own. The email is dated 9.6.2018 at 18.35 and the AGM and election is declared/notified for 22.7.2018 at 11.30 AM. The resolution of the executive committee has not been made known to the members in any other mode. This is in direct conflict with the rule provided under Rule 17 and cannot be sustained. It is not believable that the election can be conducted in fair manner without even preparation of electoral roll/voter list. The outcome here is not unanimous but contested one. Unless a proper authenticated electoral roll is available and also made within reach of all the members, it will certainly effect the convessing by the contestants. It is the case of the plaintiff/s that non-preparation of electoral roll affected there reaching to the all possible voters. While filing written statement also it is not pleaded about the preparation of authentic electoral roll/voters list. The attendance sheet brought on the file cannot be said to be voter

list/electoral roll. It is without any index sheet or any mention about the same for the purpose of election for 2018-20. It also carries entry with pen without any explanation for additions made therein. DW-2 the Returning Officer has also stated that he had not checked the authenticity of voter list. The DW-2 also admitted it to be correct that pen written contents were added during process of casting vote. It is not that all the students of PEC became members automatically rather for the students passed in the year 1997 to 2000, subscription was required to be made as per the rules and then only they could become member. The deposition of DW-2 in cross-examination that he is not aware if the students who passed out from 1997-2000 batch were not or eligible to vote, since he was not aware that old students passed out during the tenure 1997-2000 were not eligible to cast vote so even the said student were permitted to cast the vote, will apparently make out an arbitrary way in conduct of election and lack authenticity of voters in absence of any proper authentic list. In case of Karbhari Maruti Agawan and others vs State of Maharashtra and others 1994 AIR (Bombay) 304, a valid list of voters was held to be the basis of a valid election. The Hon'le High court held as under:

“11. In the case of Eknath Ashiram Aleker v. State of Maharashtra, 1990 Mah LR 418 another Division Bench had considered a challenge to the voters' list. 870 sugarcane growers filed a petition before this Court contending that they were sugarcane growers holding lands in the area of operation of Shrigonda Sugar Factory and they had been supplying

sugarcane to the factory regularly. Share money necessary for the membership was deducted from their bills. Despite this they were not enrolled as voters and membership was given to 3387 other persons on the last qualifying date i.e. 30th June, 1988 and many of whom were not even qualified. Following the judgment of Supreme Court in the case of Bar Council of Delhi v. Surjeet Singh, this Court found that it was necessary to interfere”.

19- It is settled proposition of law that in case a certain procedure is required to be followed in completion of the process then the act must be done in due course unless there are extra ordinary circumstances to divert from the procedure. Rule 2 under the conduct of elections provides for receipts of nomination, acceptance of withdrawal, scrutiny of nominations etc. by the Election Officer. The plaintiff while appearing in the court have stated about the conduct of the election in violation of the rules as pleaded and DW-2 in cross-examination admitted that the President had received emails of withdrawal and it is also stated that all the nominations were collected by the President. When these facts are taken with the sending of emails notifying the date, time etc. for the AGM and elections, it is made out that in fact the entire proceedings are done by the President himself and not by the Executive Committee or the Election Officer. It is not that the President himself is not contesting for re-election and hence when the President himself is contesting, the requirements shall be that he stays out of procedure unless his act is

required in official capacity. Rule 10(iii) specifically provides that to give equitable and proportionate representation to the most of the batches, it shall be ensured that not more than 2/3 members are elected/nominated from a particular batch except in respect of Regional Representatives. The reading of the rule does not make any distinction between the office bearer and the nominated/elected members. Therefore the presence of 4 members from the batch of 1973 will also be in violation of the by-laws of the Association. It cannot be possible to make a distinction between the office bearer and the nominated/elected member otherwise. The wide publicity is also provided by the by-laws in the conduct of the elections. It is the case of the defendants that the email to 3914 members was sent vide mark DX1/C but even the said document has not been proved by the defendants in accordance with the law. It is only a marked document and cannot be relied upon outrightly. It is not even the case of the defendants that the total number of members is this much only. Moreover there is nothing on record to hold that even efforts have been made to reach out to all the members. If the email id of all the members are not available then the medium of press can serve as a medium if there is will to reach to all of them but that is not so in the present case rather the defendant are taking the stand that the publicity through press is not the requirement. If the elections are to be held with limited members, it will lose the spirit of the free and fair election. DW2 has even admitted that the President had received the emails of withdrawal and all the nomination papers were collected by the

President. This also apparently make out that the conducting of election is undertaken by the President himself rather than the Returning Officer and cannot be justified as the sub-rule 2 under New Provision for meeting future needs duly provide that the Election Officer shall be responsible for the receipt of nominations, acceptance of withdrawal etc. It is nowhere provided in the Rule and Regulations that these provisions are not to be applied at the time of present elections and hence it cannot be said that the ld. Trial court wrongly interpreted the rules of the Association. In these circumstances the arguments of the appellant that the election has been conducted as provided in the by-laws has no force in it.

20- In view of the above discussion there is no illegality or perversity in the findings recorded by the ld. Trial court, both the appeals titled “Punjab Engineering College Versus Mohit Shrivastava and another” and “Punjab Engineering College Versus Ravi Kant and another” are dismissed with costs being without merits. Decree sheet/s be prepared accordingly. Copy of the judgment be also placed on the connected file. File be consigned to record room after due compliance.

Pronounced in open court
04.01.2020.

(Sushil Kumar)
Stenographer-1

(Dr. Ajit Atri, UID No.PB0440)
Additional District Judge,
Chandigarh.

Punjab Engineering College Versus Mohit Shrivastava and another.
Punjab Engineering College Versus Ravi Kant and another.

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Punjab Engineering College Versus Mohit Shrivastava and another.

Argued by:- Mr. Puneet Sharma, Advocate for appellant.
Mr. P.K Kukreja, Advocate for respondent.

Vide separate common judgment of even date, this appeal alongwith the connected appeal titled “Punjab Engineering College Versus Ravi Kant and another”, has been dismissed with costs being without merits. Decree sheet/s be prepared accordingly. A copy of the judgment be placed in the connected appeal. The record be returned and appeal file be consigned to the record room after due compliance.

Pronounced in open court
04.01.2020.

(Dr. Ajit Atri, UID NO.PB0440)
Additional District Judge,
Chandigarh.

(Sushil Kumar)
Stenographer-1

Punjab Engineering College Versus Mohit Shrivastava and another.
Punjab Engineering College Versus Ravi Kant and another.

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Punjab Engineering College Versus Ravi Kant and another.

Argued by:- Mr. Puneet Sharma, Advocate for appellant.
Mr. P.K Kukreja, Advocate for respondent.

Vide separate common judgment passed in Civil Appeal titled “Punjab Engineering College Versus Mohit Shrivastava and another”, this appeal has also been dismissed with costs being without merits. Decree sheet be prepared accordingly. A copy of the judgment be placed in this appeal. The record be returned and appeal file be consigned to the record room after due compliance.

Pronounced in open court
04.01.2020.

(Dr.Ajit Atri, UID NO.PB0440)
Additional District Judge,
Chandigarh.

(Sushil Kumar)
Stenographer-1