

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

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Date of decision: 2nd August, 2013

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W.P.(C) No.4890/2013

S.P. JAIN

..... Petitioner

Through: Mr. Anil K. Aggarwal & Mr. Abhay
Kumar, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Amiet Andlay, Adv. for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India pleading:-

- (a). that the petitioner is a patron trustee member of the constructive charitable trust namely Shree Aggarsain North Ex Welfare Society registered under The Societies Registration Act, 1860, formed in the year 2003 with the object *inter alia* to establish and maintain hospitals;
- (b). that the said Society was in the year 2007 allotted by the DDA an institutional plot of land measuring 10,000 sq. mts. in Sector 22, Rohini for establishment of a hospital and has in the year 2011 commenced the construction of a proposed 455 beds hospital over the said land with an estimated cost of more than Rs.100 crores;

- (c). that as such the said Society is performing public function for the collective benefit of the public at large and therefore is amenable to the writ jurisdiction of this Court;
- (d). that though as per the Rules & Regulations of the Society the term of its Executive Body is for two years only but no elections have been held for the last ten years and there is no elected Executive Body to manage the affairs of the Society including the construction of the hospital and the affairs of the Society are being illegally managed by self appointed persons at their whims and fancies;
- (e). that the Society has also not complied with Section 4 of The Societies Registration Act, 1860 and not submitted the annual list of its Managing Body to the Registrar of Societies and has thus become liable for fine of maximum Rs.50/-.
- (f). that though there are more than 3000 Trustees and Patron Trustee members of Society but there is no confirmed and approved list of members of the Society;
- (g). that no true accounts of the Society are being maintained and funds collected in the name of charity are being mismanaged;
- (h). that though a section of the members of the Society issued notice of Extraordinary General Body meeting of the Society to be held on 31st March, 2013 but a similar notice was given by another section of members, with the result that no meeting was held;

- (i). that a Compromising Committee was constituted which has decided to hold elections to the Executive Body on 11th August, 2013 and appointed a panel of Election Officers who have also issued a Notification for the election to be held on 11th August, 2013;
 - (j). that the petitioner submitted his nomination for the post of President but was not supplied a copy of the eligible voters list and has rather learnt that members/trustees are being enrolled even after formal announcement of election and which is contrary to the Rules & Regulations of the Society; not only so the Notification of election has also been illegally amended;
 - (k). that the programme fixed for the election is impracticable and there is no chance of free and fair election; and,
 - (l). that the petitioner thus withdrew his nomination.
2. On the aforesaid pleas, the following reliefs are sought in the petition:-
- (i). a direction to the respondent no.1 Registrar of Societies to issue a direction to the respondents no.2&3 who are the General Secretaries of the Society to immediately submit an updated list of trustee members of the Society;
 - (ii). a direction to the panel of five Election Officers impleaded as respondents no.4 to 8 to not allow members enrolled after announcement of election to vote and participate in the election;

- (iii). a direction to the respondents no.3 to 7 to hold the election strictly as per the Rules & Regulations of the Society and in compliance of Section 15 of The Societies Registration Act;
- (iv). a direction to the panel of five Election Officers to provide to the petitioner a complete and updated list of eligible voters;
- (v). a direction to the respondents no.2&3 being the General Secretaries of the Society to handover the office of the Society with complete records and day-to-day management of the affairs of the Society to the respondents no.4 to 8 Election Officers;
- (vi). of annulment of the name of Shri Arjum Kumar (not impleaded as a party to the writ petition) from the panel of Election Officers; and,
- (vii). to appoint a former Judge of this Court as an Observer to monitor the entire process of election and hear and decide any election related disputes and to ensure compliance of statutory provisions and Rules & Regulations of the Society.

3. It has at the outset been enquired from the counsel for the petitioner, (i) as to how the jurisdiction under Article 226 can be invoked for the aforesaid reliefs; (ii) what is the power of the Registrar of Societies to direct the General Secretaries of the Society to submit the list of its members; (iii) how directions under Article 226 can be issued to the respondents no.2 to 8 even if in their capacity as office bearers or Election Officers of the Society; (iv) whether not the appropriate remedy on the grievances made is under Section 92 of the Code of Civil Procedure, 1908; (v) whether not the grant of the reliefs claimed would

entail adjudication of factual disputes; and, (vi) whether not the directions sought would tantamount to interference by this Court in the internal affairs of a Society.

4. The answer of the counsel for the petitioner to each of the aforesaid queries is the judgment of this Court in *Sai Sewa Dal (Regd.) Vs. Union of India* 2006 LawSuit(Del) 1525.

5. The writ petition in *Sai Sewa Dal (Regd.)* supra was filed with respect to the Society in management of Sai Temple at Lodhi Road, New Delhi and the only relief pressed was of clothing a retired Judge of this Court who had been appointed by the said Society itself as Observer for the election to the Management Committee of the Society with certain incidental powers to ensure free and fair elections and for management of the said Temple till the constitution of a Managing Committee of the Society in pursuance to the election to be so held. Undoubtedly by the said judgment the said relief was granted and the retired Judge appointed by the Society as Observer was authorized to adjudicate upon the eligibility of voters for the election and to take steps and adopt such procedure as may be permissible in consonance with the Rules & Regulations of the Society for the conduct of proper election to the Managing Committee; he was also authorized to manage the affairs of the Sai Temple till the constitution of the new Managing Committee. The Society in the said case also had objected to the jurisdiction under Article 226 being invoked and had cited various judgments in that respect but it was held that since the Society, though a private body, was discharging public functions, directions under Article 226 could be issued.

6. The counsel for the petitioner has contended that the Society in the present case also is discharging public function; on enquiry as to what function it is discharging, it is argued that the Society is constructing a charitable hospital and is thus engaged in public function of providing healthcare.

7. Just like in *Sai Sewa Dal (Regd.)* it was held that the judgments cited to resist the exercise of jurisdiction under Article 226 were not applicable owing to the peculiar facts of *Sai Sewa Dal (Regd.)*, the facts of the present case also do not justify applicability of *Sai Sewa Dal (Regd.)* as a precedent. A reading of the judgment in *Sai Sewa Dal (Regd.)* shows that what prevailed with this Court to exercise jurisdiction under Article 226 of the Constitution of India was the facts, (a) that the Society in that case was managing the Sai Temple daily donations and charities from devotees wherein were to the tune of more than Rs.1 lac; (b) though the donation boxes had been installed but the same were not locked and were being opened secretly and privately and there was no transparency as to how much donations were being collected; (c) that the retired Judge of this Court, directions for clothing whom with certain powers was sought had been appointed by the Society itself as the Observer for the election and there were thus no disputed facts; (d) the appointment of the retired Judge as Observer, without the powers with which he was sought to be clothed was found to be an empty exercise; and, (e) the Society having itself appointed the retired Judge as the Observer could not object to conferment of the requisite powers on him.

8. On the contrary, in the present case, (i) there are no daily collections of money in cash; (ii) the Society has not agreed to appoint any Observer for the election and has rather appointed a panel of five Election Officers; (iii) though

allegation of bungling of funds in construction are made but the same are vague—there are no averments as to what are the sources of funds of the Society and the construction admittedly is underway for the last two years; (iv) if there has been any bungling, the same can be taken care of by the newly appointed Executive Committee for which elections are scheduled on 11th August, 2013; (v) there are likely to be disputed questions of fact; (vi) the petitioner is but one of the more than 3000 members and there is nothing to show that any of the other members have grievances; (vii) any interference at this stage would be an interference with the elections scheduled on 11th August, 2013 which are just about ten days away; (viii) it is the settled law that the Courts will not interfere in the election process once begun; and, (ix) there is no public element in the affairs of the subject Society as was found to be the case in *Sai Sewa Dal (Regd.)*.

9. Section 4 of The Societies Registration Act though requires a Society to hold an annual General Meeting and to file with the Registrar of Societies a list of names, addresses and occupations of the persons entrusted with the management of the affairs of the Society but does not empower the Registrar to, if the Society is in default thereof issue any such direction to the Society. The only consequence provided of non-compliance of Section 4, that too vide amendment in Delhi is of making the Society liable for fine not exceeding fifty rupees. There is thus no basis in law for the direction sought to the Registrar of Societies to issue a further direction to the Society to comply with the provisions of Section 4.

10. The counsel for the petitioner has argued that once the legislature by the Societies Registration Act has conferred a right on the citizens to form a

Society, the Act cannot be read as making the State helpless and powerless if the affairs of the Society are not run in accordance with its Rules & Regulations. Relying on Section 15 defining a member of the Society it is contended that the State is obliged to ensure such compliance. It is further argued that certain actions of the respondents in relation to the election to be held are in contravention of the Rules & Regulations of the Society. It is yet further contended that Sai Sewa Dal (Regd.) which was the petitioner in the cited case was not even a member of the Society subject matter of that case; on the contrary the petitioner who is a member of the subject Society is much better placed and has better locus than the petitioner in the cited case. It is argued that it is the duty of the State to resolve the infighting within the Society.

11. It is not as if in case the grievances of the petitioner are genuine, the petitioner is remediless. Section 92 of the CPC empowers the principal Civil Court of original jurisdiction to in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, to issue directions for removal of any trustee, appointment of any trustee, vesting any property in a trustee, directing accounts and inquiries, settling a scheme or to grant any other relief. However the petitioner instead of availing the said remedy and which could have been availed by at least two persons, has filed this petition and that too at the eleventh hour clearly with an intention to derail the election process which has been commenced. It is the case of the petitioner himself that the affairs of the Society are being mismanaged for the last ten years. The petitioner if genuinely

aggrieved, has no explanation for his slumber for such a long time and his awakening only with an intent to derail the election process underway. Moreover if the elections are not held in accordance with the Rules & Regulations of the Society and the law, the option of challenging the said election by way of a suit is available to the petitioner. Rather filing of the petition at this hour and entertaining which will definitely derail the election, raises serious doubts as to the *bona fides* of the petitioner. The petitioner should rather be keen that a democratically elected body would come into power to manage the affairs of the Society.

12. If the judgment of this Court in *Sai Sewa Dal (Regd.)* is read as permitting interference in exercise of powers under Article 226 in the affairs of all Societies constituted for charitable purpose, the same will inundate the High Courts with petitions seeking reliefs interfering with the internal affairs of the Society and which the Courts have repeatedly (in *Jagjit Singh Sangwan Vs. Union of India* MANU/DE/0976/1995 where the Division Bench of this Court held that writ jurisdiction cannot be invoked for securing enforcement of bye laws of a Co-operative Society, the same being meant for the internal management of the Society and being contractual in character and *All India Women's Hockey Federation Vs. Indian Olympic Association* 55 (1994) DLT 607, *Hoshiar Singh Mann Vs. Charan Singh* 162 (2009) DLT 208 & *Pramod Dhawan Vs. Mes Builders Association of India (Regd.)* MANU/DE/3818/2012 where also the Courts on the same principle refused to interfere) held to be not permissible. There is no explanation as to why, if as per the petitioner the affairs of the Society are in the hands of a handful of people out of more than 3000 members of the Society, can the said members if of the

same view as the petitioner not democratically exercise their rights and take appropriate action.

13. Though the counsel for the petitioner has laid much emphasis on the Society being a charitable one but a perusal of the Memorandum of Society filed with the petition shows its aims and objects to be *inter alia* “to start, establish run take over or manage and maintain hospital, charitable dispensaries, maternity homes, child welfare centers.....” and which does not show that the hospital to be established and run by the Society necessarily has to be a charitable one. The petitioner has also not filed any document of allotment of land by the DDA in favour of Society imposing any such condition on the petitioner. For this reason also, the Society cannot be compared with the Society subject matter of *Sai Sewa Dal (Regd.)*.

14. The Supreme Court recently in *Jatya Pal Singh Vs. Union of India* MANU/SC/0401/2013 reiterated that a body (private) performs public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public as having authority to do so or when they intervene or participate in social or economic affairs in public interest. *Videsh Sanchar Nigam Ltd.* was held to be not and hence the writ remedy was held to be not available against it. I am unable to find the Society in the present case to be, at least at present, performing any public function for collective benefit of the public. It was further held in *Binny Ltd. Vs. V. Sadasivan* (2005) 6 SCC 657 that even where a private body is discharging a public function, the public law remedy under Article 226 can be availed, only where the denial of right is in connection with the public duty imposed on such body. Seen in this light also, the denial of rights by the private respondents complained of in this

petition is not in connection with any public duty of the Society but of a private right of the petitioner as a member of the Society. Again, in *Sai Sewa Dal (Regd.)* the members of the public visiting the temple were found to be affected and jurisdiction under Article 226 was exercised for that reason.

15. No case for entertaining the present petition is thus made out. The petition is dismissed; however no costs.

RAJIV SAHAI ENDLAW, J

AUGUST 2, 2013

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