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

+ W.P.(C) 198/2016 & CM No.813/2016 (for stay)

SUNITA ARORA

..... Petitioner

Through: Ms. Roma Bhagat with Mr. Pankaj
Sinha & Ms. Nupur Grover, Advs.

Versus

DELHI UNIVERSITY & ORS

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Mohinder J.S. Rupal & Ms.
Simran Jeet, Advs. for University of
Delhi.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.01.2016

1. The petition impugns (a) the Minutes of the General Body Meeting (GBM) dated 28th November, 2015 of the respondent no.2 (DUWA) containing the decision to hold the election to the Executive Committee of the respondent no.2 DUWA; as well as, (b) the Notification dated 2nd January, 2016 of the Returning Officer appointed in the aforesaid GBM for holding the elections, announcing the result of the election. Axiomatically, mandamus is also sought to the respondent no.2 to DUWA to hold *de novo* election.

2. It is also *inter alia* the pleading of the petitioner that the respondent

no.1 Delhi University has interfered with the affairs of the respondent no.2 DUWA and axiomatically relief of restraining the respondent no. 1 University from interfering with the elections of DUWA is also claimed.

3. Though the petition came up first before this Court on 8th January, 2016 and thereafter on 11th January, 2016 but was adjourned and notice has not been issued as yet. The order dated 11th January, 2016 records the contention of the senior counsel for the respondent no.1 University appearing on advance notice that the writ petition is not maintainable in view of the law laid down by the Division Bench of this Court in *S.D. Siddiqui Vs. University of Delhi* 2006 (3) AD (Delhi) 290 that Delhi University Teachers Association (DUTA) is not a State or an instrumentality of the State under Article 12 of the Constitution of India and does not perform any public function and is a purely private body working for the welfare of teachers of the university and affiliated colleges and hence no writ lies against DUTA.

4. The senior counsel for the respondent no.1 University today also contends that the respondent no.2 DUWA is identically placed as DUTA and thus what has been held qua DUTA would equally apply to the respondent no.2 DUWA.

5. The counsel for the petitioner on the aspect of maintainability of the

writ petition contends that the judgment aforesaid is a judgment only on the aspect of DUTA being not a State. It is contended that in the present proceeding it is the case of the petitioner that the respondent no.1 University has unreasonably, arbitrarily and unauthorizedly interfered with the process of election of DUTA and thus a writ petition is maintainable. It is argued that the Returning Officer of the election was appointed by the Vice Chancellor (VC) of the respondent no.1 University and which the VC was not authorized to do and the same has vitiated the entire election process. It is even otherwise contended that since the elections have been held wrongly and in an arbitrary manner, the petition would be maintainable.

6. I have enquired from the counsel for the petitioner whether the petitioner was a candidate in the said election.

7. The answer is in the negative.

8. The senior counsel for the respondent no.1 University states that the petitioner could not have been a candidate having been a member of the Executive Committee of the respondent no.2 DUWA for the past two consecutive terms.

9. The counsel for the petitioner controverts that the petitioner was the member of the Executive Committee of the respondent no.2 DUWA for two

consecutive terms. It is stated that the petitioner was a member of the Executive Committee for one term only and though was eligible to contest the election to the Executive Committee this year also but chose not to.

10. I have in the circumstances enquired from the counsel for the petitioner as to what is the cause of action of the petitioner to maintain this petition, even if the same was to be maintainable.

11. The counsel for the petitioner states that this is not a suit, for the petitioner to have a cause of action.

12. I am afraid that is not the position in law. It would be preposterous to say that a writ petition can be filed without a cause of action. In fact, the Division Bench of this Court in ***Guru Gobind Singh Indraprastha University Vs. Smit Rajput*** MANU/DE/1356/2015 while relying on the judgment of Supreme Court in ***Shipping Corporation of India Ltd. Vs. Machado Brothers*** (2004) 11 SCC 168 has held that where the cause of action with which a writ petition is filed disappears during the pendency of appeal, the same is to proceed no further. The Constitutional Court should not proceed to decide the issues in vacuum and should close the writ petition. Reference can be made to ***Arnit Das Vs. State of Bihar*** (2001) 7 SCC 657 and ***Ram Das Athawale Vs. Union of India*** MANU/SC/0212/2010.

13. In my view, the petitioner, without being a candidate in the election which was admittedly due, cannot challenge the same especially when it is not in dispute that the election was due. Only a candidate desirous of participating in the elections and wrongfully denied such participation or a candidate who has contested in the election and the result whereof is claimed to be vitiated, would in my opinion in such circumstances have cause of action to challenge the result of the election. The position may be different if the statute or the Rules and Regulations of the body / society vest such a right.

14. The High Court of Madhya Pradesh, in ***Bhushan Ramlal Kahsyap Vs. S.D.O.*** MANU/MP/0496/1996, relying on ***Jasbhai Motibhai Desai Vs. Roshan Kumar Haji Bashir Ahmad*** AIR 1976 SC 578 held that in order to have *locus standi* to invoke certiorari jurisdiction, the person must be an aggrieved person and relying on ***Calcutta Gas Co. Vs. State of West Bengal*** AIR 1962 SC 1044 held that the right which can be enforced under Article 226 shall ordinarily be a personal or individual right of petitioner. Applying the said principles it was held that person aggrieved must be the person who has suffered a legal grievance, a man against whom decision has been pronounced which has wrongfully deprived him from something. Further

applying the said principles and finding that the petitioner therein was not a candidate in the election, it was held that the petitioner was not a person aggrieved to maintain a petition against the order of the Election Tribunal.

15. Supreme Court in *Thammanna Vs. K. Veera Reddy* (1980) 4 SCC 62, though in the context of election petition under the Representation of Peoples Act, 1951 held that a respondent to an election petition, who neither joins issue with the contesting party nor do anything tangible to show that he had made a common cause with the election petitioner was not a person aggrieved to prefer an appeal against the decision of the High Court in the election petition. The contention that since an election petition is in the nature of a representative action on behalf of whole body of the electors, he had a right to appeal, was negatived.

16. The counsel for the petitioner then states that the petitioner as the member of the outgoing Executive Committee is entitled to refuse to handover the charge to an illegally constituted Executive Committee.

17. I am afraid the petitioner is not entitled to do so. The petitioner could have challenged the election only if had been an aspirant thereto and not otherwise. None can be permitted to perpetuate his / her term of elected office by contending that the result of the next election is vitiated – without

participating in that election. If the same were to be permitted, it would vest a right in each and every member of outgoing elected body to challenge the election and may lead to multiple challenges indefinitely delaying the taking over of reigns by the newly elected body. A Division Bench of the High Court of Allahabad in *Dr. P.P. Rastogi Vs. Meerut University* MANU/UP/0648/1997 also held that to permit individual members of Committee of Management to seek review of the order in a petition filed by the Committee of Management would create a lot of problems because any individual member or several members may file applications at any time resulting in confusion. Following the same, a learned Single Judge of the High Court of Allahabad in *Committee of Management, Sri Kachcha Baba Inter College Vs. Regional Committee Pancham Mandal* MANU/UP/2165/2007 held that members of society have no right to agitate the result of elections.

18. At this stage, some further arguments have taken place and the senior counsel for the respondent no.1 University has also drawn attention to paragraph 30 of *S.D. Siddiqui* supra where it has been held that if one wishes to challenge an election, he has to file an election petition if that is provided under the relevant statute or Rules, and if there is no such provision in any

statute or Rule for election petition, then one has to file a civil suit for this purpose and not a writ petition.

19. Faced therewith the counsel for the petitioner states that the petitioner would be satisfied with a direction to the respondent no.1 University not to interfere in future with the affairs of respondent no.2 DUWA.

20. In this view of the matter, need is not felt to record certain other arguments earlier made by the counsel for the petitioner or to deal therewith.

21. On being asked as to what is the interference of respondent no.1 University, the counsel for the petitioner states that on 25th November, 2015 the wife of the acting VC of the respondent no.1 University took over as the President of the respondent no.2 DUWA and in her capacity as President, issued an additional agenda item for the GBM, with respect to elections scheduled on 28th December, 2015 and which did not satisfy the requirement of the minimum notice to be given of the election.

22. However, I find that the Memorandum of Association of the respondent no.2 DUWA provides for the VC to be the *ex officio* patron of the Association and the wife of the VC of the respondent no.1 University to be the *ex officio* President of the respondent no.2 DUWA and only in the event of the VC at the relevant time being a woman, provides for the President to

be elected from amongst the members of respondent no.2 DUWA.

23. The counsel for the petitioner states that the provision is with respect to VC and not with respect to acting VC.

On enquiry whether in the University Ordinance and Statutes there is any difference between powers of the VC and the acting VC while the counsel for the petitioner is unable to answer, the counsel for the respondent No.1 University states that there is no distinction.

24. The counsel for the petitioner then contends that the Minutes of the GBM do not truly record what transpired at the GBM.

25. However this again amounts to entering into the arena of affairs of respondent no.2 DUWA and qua which the counsel for the petitioner has not pressed the writ petition in view of the judgment supra.

26. The petition is thus dismissed with liberty however to the petitioner to avail of the suit remedy with respect to the affairs of the respondent no.2 DUWA.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 15, 2016
'gsr/bs'