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

\+ W.P.(C) 3832/2016 & CM APPL. 16304/2016

R.S. TOKAS (RETD.) & ORS ..... Petitioners
Through: Brig. Anil Kumar Srivastava, Advocate with Mr. Amit Kumar Sachan, Advocate.

versus

DEFENCE SERVICES OFFICERS WELFARE FUND (DSOWF) & ORS ..... Respondents
Through: Mr. V. Shekhar, Senior Advocate with Mr. Pradee K. Dubey, Mr. Shomu P. and Mr. K.N. Agnihotri, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

<u>O R D E R</u>
% **09.05.2016**

Present writ petition has been filed with the following prayers:-

" (a) Revert back to Original Rule 27 as contained in the Rules Book of DSOI printed May 1986 and the subsequent amendments illegally and surreptitiously without following due process of law carried out as contained in DSOI Rule Reprint Mar 2008 be quashed. (Annexure-P1/3 Original Rule 27 at Page 37, 38 and 39 and amended Rule 27 at page 69A & 69B of paper book).

(b) The catering of DSOI and providing its services at the banquet hall be continued.

(c) Holding of elections to the Executive Council of DSOWF and Managing Committee of DSOI be held forthwith to give proportionate representation of serving and retired members.

(d) Regular holding of AGBM of DSOWF and DSOI be brought in Vogue w.e.f Dec 2016.

(e) The present Managing Committee of DSOI be dismissed to cater for proportionate representation to both categories of m embers i.e. retired and serving members forthwith and an interim Management Committee be constituted.

(f) Imposing heavy cost on the Respondents for compelling the Petitioners to undertake avoidable litigation and reasonable compensation to the Petitioner for causing unspeakable harassment, humiliation and trauma to them & their entire family.

(g) Issue any other writ/direction that this Hon'ble Court may deem fit and proper in the facts of this Case."

It is the petitioner's case that Managing Committee of respondent No.1 in connivance with the Managing Committee of respondent No.3 has amended some crucial Rules and Bye-laws of Defence Services Officers Institute Club.

Learned counsel for petitioner states that the management has outsourced banquet hall of respondent No.3 to private contractors which has led to hike in the cost incurred by the members for booking the venue inside the DSOI Club. He states that outsourcing facilities of the banquet hall is defeating the very objective of respondent No.1, which is a non-profit organisation.

On the other hand, learned senior counsel for respondents states that the present writ petition is not maintainable and in support of his submission, he relies upon a judgment of this Court in ***Harish Bhatt & Ors. vs. Union of India & Ors., 2011 IX AD (Delhi) 507***, wherein it has been held as under:-

> *"5. I have considered the submissions made by the learned counsel for the petitioners and also the respondent/DSOI. There cannot be any dispute that respondent No.4/DSOI is a proprietary Institute of a society registered as Defence Services Officers Welfare Fund (DSOWF). In this regard, reference is made to Certificate of Registration under the Societies Registration Act which was issued on 2nd January, 1963. The petitioners do not dispute this aspect. However, as noted above, their submission is that this respondent/DSOI has claimed itself to be a „State" before the Sales Tax authority and was claiming some exemptions. In this regard, reference was made to a letter dated 24th March, 1975 purported to have been written by some Hony. Secretary of DSOWF to the Secretary of respondent/DSOI. Reference is also made to copy of the minutes of the meeting of DSOI dated 6th January, 2008. The learned counsel has also referred to the resolution of DSOWF dated 19th May, 1986. I have perused these documents and do not see anything to be mentioned therein that DSOI was either funded, or controlled or managed by the Ministry of Defence or any other department of Government of India or any other Government. In the letter dated 24th March, 1975 purported to be written by Honorary Secretary of DSOWF to DSOI it was stated that DSOI is a subordinate office of Ministry of Defence. In the meeting of 6th January the Institute had resolved to take up the case with Ministry of Defence for exemption from payment of property tax. In the minutes of 19th May, 1986, suggestion of the Auditors was put up before the Committee and it was decided that DSOI is neither registered as a society nor it is filing income tax returns as it is branch of DSOWF. These nowhere in any form describe the DSOI to be an instrumental agency of the Government. The mention of the civil case by learned counsel also does not support his contention firstly because the same has not yet been filed in the present proceedings and so it is not known as to what was stated by DSOWF and in what context. In any case, mere fact that either DSOI or DSOWF at any point of time either claimed any benefit of sales tax or it claimed to be a department of Ministry of Defence, will not make this respondent to be an*

instrumental agency of the Government and an authority to be covered under the ambit of Article 12 of Constitution of India. It is primarily because there is nothing on record to controvert the plea taken by the DSOI that it has been running and managing its affairs from the contributions and donations of the members and was not taking any grant-in-aid or fund from the Government Exchequer in any form.

*6. Similar question arose before this Court in the case of **Lt. Col. N.C. Rastogi Vs. Union of India & Ors.** AIR 1986 Delhi 128 wherein it was held as under :*

> *"There is no State financial assistance to AWHO. The funds of AWHO are created by the society itself. Suitable financial arrangements for the participants of the schemes are made from various financial agencies such as Life Insurance Corporation of India, banks etc. and loan from Central Government. No instrumentality of the Government is involved in making financial arrangement from the aforesaid organizations. It is clear from the Memorandum, Rules and Regulations of AWHO that the Government does not appoint or nominate the Board of Management or the Executive Committee. The Board of Management as well as the Executive Committee to whom the management and affairs of AWHO are entrusted, are controlled by the provisions of the rules of AWHO. No specific appointment is made by the Government. The officers of AWHO are not paid from the Consolidated Fund of the Government of India but are paid from the funds of AWHO."*

*7. In the case titled as **Asha Vij & Ors.** (supra), identical question arose with regard to the Army Welfare Education Society which was managing and running the affairs of its school within the Regiment Fund, it was held as under :*

> *"Society who is managing and running the respondent school out of Regimental Fund would not come within the ambit of the expression „State" or any other authority as envisaged under Article 12 of the Constitution of India. The*

school in question is managed out of the Regimental Fund, which is not a public fund and the said school is managed by a society registered under the Societies Registration Act. The same is neither controlled nor managed by the Government of India or by the State Government nor the society receives any fund from the said Governments."

8. In view of above, the respondent/DSOI does not fall within the ambit of Article 12 of the Constitution of India and thus the petition outrightly is not maintainable."

In the opinion of this Court, the issue whether the banquet hall facility could be outsourced or not should not be determined in writ proceedings. Even the petitioner's allegation with regard to amendment of Bye-laws and Rules has to be adjudicated upon in a proceeding other than writ proceedings inasmuch as the petitioner is laying challenge to Rules/Bye-laws which at the highest constitutes a contract between the petitioner and the respondents.

This Court is further of the opinion that just because a non-profit institute will earn some profit by privatisation of banquet hall facility will not make such decision illegal. There is no bar on non-profit organisation earning profit, only the distribution of profit is prohibited. If the respondent-Institute make some profit, it can certainly plough it back for some other activity like a sports facility. In fact, a Coordinate Bench of this Court is ***Lok Sevak Cooperative House Building Society Ltd. vs. S.P. Goyal & Ors., 70 (1997) DLT 152***, has observed as under:-

"24. It is true that a co-operative Society is not a joint stock company which is formed to make profits for the purposes of share-holders whereas the functioning of a co-operative Society is to improve the economic conditions of the members to help

them in their respective pursuit and not to earn profits. Nevertheless there is no such bar for a Society to earn profits in case the Society should be encouraged to do so. Had it not been so the society would not be in a position to attain its goal for which it is formed. I am tempted here to illustrate the above point with the help of an example. Suppose a Co-operative Society is formed with one of the objects of the Society to run educational institutions. If the society is debarred from making the profit it would be inconceivably for it to run the school. However, it is true that profit cannot be its motive in the sense in which it is that of a joint stock company to earn profits for its share-holders. The above point is quite clear from a reference to Sections 46 and 47 of the Delhi Co-operative Societies Act."

Consequently, present writ petition is dismissed with liberty to petitioner to file other proceedings in accordance with law.

MANMOHAN, J

MAY 09, 2016
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