

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

% **Date of decision: 4th March, 2016.**

+ **W.P.(C) 2777/2015**

SANADHAN SWIMMING CLUB AND ORS. Petitioners

Through: Mr. Asutosh Lohia with Ms. Soumya
Kumar & Mr. Sagar Chauhan, Advs.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. S. Mukerjee & Mr. Avijit Singh,
Advs. for R-3.
Mr. Abhiya with Mr. Abhay Singh
Kushwaha, Advs. for R-4&5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition was filed by 10 private swimming clubs of Delhi and by their officials impleaded as petitioners no.11 to 13 claiming the relief of i) stay of the elections to the post of office bearers of the respondent no.3 Delhi Swimming Association (DSA) schedule to be held on 22nd March, 2015, ii) for setting aside of the fresh list of the electoral college dated 1st March, 2015 prepared by the Returning Officer (RO) appointed of the said election, iii) for a direction to the RO to consider favourably the nomination filed by certain petitioners whose nominations had been rejected for no plausible reason, and iv) seeking a direction for holding of election of the

respondent no.3 DSA by calling fresh nominations from all concerned including the petitioner Clubs who had been omitted from the electoral college in an allegedly illegal and arbitrary manner and as per the official list submitted by the respondent no.3 DSA of 173 member Clubs.

2. The petition came up first before this Court on 19th March, 2015 when the application of the petitioners for interim relief seeking stay of the election was dismissed with the observations “However, it is clarified that the outcome of the election shall be subject to the further orders that may be passed in this petition” and notice of the petition was issued.

3. Counter affidavits have been filed by respondent no.3 DSA and respondents no.4&5 being the Swimming Federation of India (SFI) and the Ad-hoc Committee in management of respondent no.3 DSA.

4. The petition came up for hearing on 21st July, 2015 when the following order was passed:

“1. After some hearing the counsel for the petitioners seeks time to satisfy this Court as to how the dispute raised in this petition is not an election dispute and if it is an election dispute then the fora before which the same is to be adjudicated.

2. Pleadings if any remaining by the respondents, be completed before the next date.

3. List on 3rd August, 2015.”

5. Thereafter the petition was adjourned from time to time. Hence, today when the matter came up, the same query has been put to the counsel for the petitioners, who has been heard. The need to call upon the counsels for the respondents has not arisen.

6. What emerges is i) that the election of office bearers of the respondent no.3 DSA, a Society registered under the Societies Registration Act, 1860, as per its Rules and Regulations are to be held every four years and were held last on 22nd March, 2011; ii) that the SFI being the National Sports Federation (NSF) for the sport of swimming, in or about the year 2014 i.e. even prior to the expiry of the term of the office bearers of the respondent no.3 (DSA) removed the office bearers elected on 22nd March, 2011 from the management of respondent no.3 DSA and appointed an Ad-hoc Committee i.e. respondent no.5 for management of the affairs of respondent no.3 DSA; iii) W.P.(C) No.3652/2014 was filed by the respondent no.3 DSA in this regard and when the same was being heard on 29th October, 2014, all the counsels agreed / consented to hold fresh elections for all the post of office bearers and members of the Managing Committee of respondent no.3 DSA in accordance with its Bye-laws / Memorandum / Rules as also the

Model Elections Guideline of National Sports Development Code of India 2011 of Ministry of Sports, Government of India (Sports Code); Justice (Retd.) Reva Khetrapal was appointed as RO for holding of the election with the assistance of the Ad-hoc Committee aforesaid and it was further directed that “complaints / objections, if any, of the member units of DSA for determining its electoral college be also resolved by the Returning Officer (RO) after the publication of electoral college and before calling for the nominations”; the entire electoral process was ordered to be completed within three months; iv) it is the case of the petitioners that the RO so appointed published a list of electoral college for the elections and in which list the names of the petitioners no.1 to 10 Clubs found mention; v) that some of the petitioners also filed nominations for contesting the posts of office bearers of the respondent no.3 DSA; however thereafter all of a sudden a fresh list of electoral college was drawn up and from which the names of the petitioners no.1 to 10 Clubs were deleted and resultantly the nominations filed by some of the petitioners also rejected; vi) that though the petitioners represented to the RO but the RO did not pass any order and which led to the filing of this petition.

7. I have at the outset enquired from the counsel for the petitioners that the petitioners having been unsuccessful in obtaining the interim stay of holding of the election and now that the election has been held and the office bearers have been elected, whether not even if merit was to be found in the contentions of the petitioners, the only relief which can be granted is of setting aside of the result of the election so held on 22nd March, 2015 and whether all the office bearers who have been elected and whose election would thereby stand set aside are parties to the present petition.

8. The counsel for the petitioners though replies in the affirmative to the first part of the question but with respect to the second part states that since DSA of which all the elected office bearers are now in management of is before this Court, there is no need for their impleadment individually.

9. I have further enquired from the counsel for the petitioners whether not, in the absence of any provision for resolution of election disputes in the Rules and Regulations of respondent no.3 DSA, the only manner in which an election can be set aside, as held by the Division Bench of this Court in *S.D. Siddiqui Vs. University of Delhi* 2006 (3) AD (Delhi) 290 relating to

the challenge to the elections of Delhi University Teachers Associations, is by filing a civil suit for that purpose and not a writ petition.

10. The counsel for the petitioners states that since the grievance of the petitioners is with respect to the RO appointed by this Court in W.P.(C) No.3652/2015 and since this Court while issuing notice of the petition and denying interim relief has observed / held that the outcome of the election shall be subject to further orders in the writ petition, this petition would be maintainable. Reliance is placed on (i) ***Kanglu Baula Kotwal Vs. Chief Executive Officer*** AIR 1955 Nagpur 49 (FB) laying down in relation to an election dispute that the availability of the alternative remedy is not a bar to the maintainability of a petition under Article 226 of the Constitution of India; (ii) ***Bar Council of Delhi Vs. Surjeet Singh*** AIR 1980 SC 1612 approving the dicta aforesaid of the Full Bench of the Nagpur High Court and laying down that the view expressed by some of the High Courts that the petition would be maintainable in spite of there being an alternative remedy being available because the whole election has been challenged cannot be accepted as a right proposition and only if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or, in any event, is not an

adequate and efficacious remedy, then a writ petition be maintainable; (iii) ***K. Venkatachalam Vs. A. Swamickan*** 1999 (2) SCR 857 but the reliance whereon the counsel for the petitioner could not justify; and (iv) ***K.G. Khanna Vs. Prakash Chand*** AIR 1959 HP 20 referring to ***Lekh Raj Vs. Cantonment Board, Jullunder Cantt.*** AIR 1958 Punjab 356 laying down that the powers of the High Court under Article 226 of the Constitution of India are untrammelled by law providing for a mode of challenge to an election.

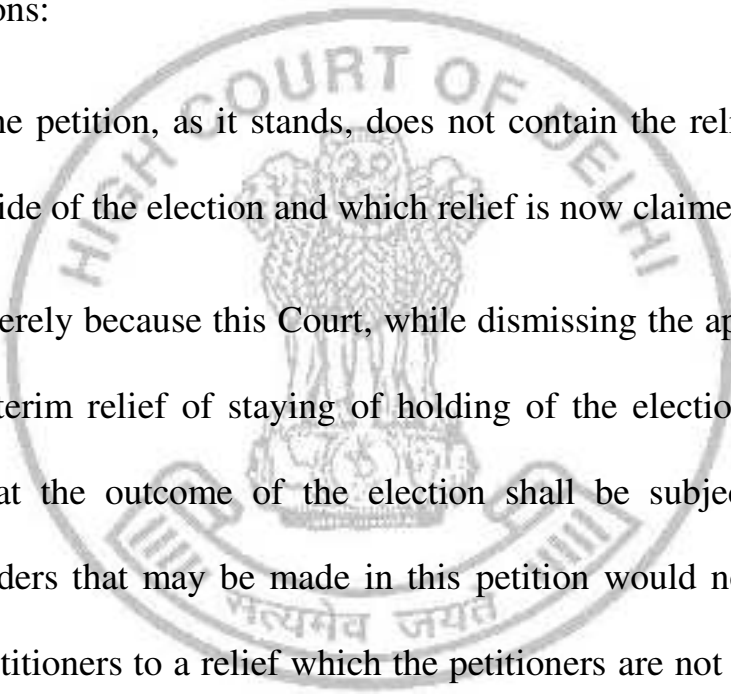
11. Finding that the order in W.P.(C) No.3652/2014 vide which the RO, with respect to whose actions grievance is made in this petition, was appointed, did not dispose of that petition, the final outcome of that writ petition has been enquired.

12. In this regard, it may be noticed that the counsel for the respondent no.3 DSA had interjected to say that the petitioners did not object to the report filed by the RO in that writ petition.

13. Though the order disposing of that writ petition is not available but the counsel for the petitioners in response to the interjection has invited attention to the order dated 19th January, 2015 in that writ petition

dismissing an application under Order I Rule 10 of the CPC filed by one Kamal Kishore, Secretary of respondent no.3 DSA for impleadment in that petition observing that grievance with respect to the election were to be addressed by the RO appointed by the Court.

14. I am of the view that the present petition is not maintainable for the following reasons:

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- (A) The petition, as it stands, does not contain the relief of setting aside of the election and which relief is now claimed.
 - (B) Merely because this Court, while dismissing the application for interim relief of staying of holding of the elections, observed that the outcome of the election shall be subject to further orders that may be made in this petition would not entitle the petitioners to a relief which the petitioners are not entitled to in the petition. In this regard, it may be noticed that the petitioners neither thereafter nor after the query was first raised on 21st July, 2015 chose to amend this petition to seek the relief of setting aside of the election.

- (C) Even if it were to be held that the relief can be modified by the Court, the relief of setting aside of the election cannot be granted in the absence of the person(s) whose election is being set aside. Merely because that person(s) is presently in the Management of the DSA and which is a party hereto would not suffice. A challenge to the election has to be made by impleading the person whose election is sought to be set aside in his / her individual capacity and not by impleading the body / entity to office whereof he / she has been elected. DSA is a juristic person and a corporation sole and a distinct legal entity from the persons in management thereof.
- (D) The RO for holding the election appointed by this Court was in the nature of a Court Commissioner and any objection to the actions of the said Commissioner could have been filed only in the proceeding in which the Court Commissioner was appointed and if at all permitted to be raised by an independent proceeding, by an appropriate proceeding in law. Merely because the RO was appointed vide order in a writ petition would not entitle challenge to actions of RO by way of a writ

petition, if otherwise in law the same is required to be made by way of a suit.

- (E) Though the counsel for the petitioners took it as given and a fundamental fact that the electoral college once drawn up could not have been changed but upon being asked to show the basis on which it is so assumed drew attention to page 166 of the Sports Code, being the Model Election Guidelines to be followed by all NSFs. However upon being asked whether the respondent no.3 DSA is a NSF, it is admitted that it is not and that SFI is the NSF. Upon it being further asked that how would the Model Election Guidelines to be followed by NSFs, apply to the election to the respondent no.3 DSA which is a constituent of NSF, the counsel for the petitioners states that since the order dated 29th October, 2014 in W.P.(C) No.3652/2014 records the consent of the parties therein for holding of the elections in accordance with the Model Election Guidelines of Sports Code, accordingly, the said order dated 29th October, 2014 in W.P.(C) No.3652/2014 makes the Model Election Guidelines applicable also to constituent of NSF. The

said argument, in my opinion, is totally misconceived. Merely because the parties then agreed to holding of election besides in accordance with Bye-laws, Memorandum and Rules of respondent no.3 DSA as also as per the Model Election Guidelines of the Sports Code, would not make the provisions of Sports Code which are not applicable to a constituent of NSF, applicable to a constituent of NSF. Only that part of the Model Election Guidelines of Sports Code which as per the terms of the Code are applicable to a constituent of NSF, are to be made applicable. The counsel for the petitioners has not been able to show any provision of the Model Election Guidelines of Sports Code applicable to constituents of NSF, as the respondent no.3 DSA is, and which has been violated.

- (F) This Bench at least is bound by the dicta aforesaid of the Division Bench of this Court in ***S.D. Siddiqui*** supra and which has been followed by the undersigned in ***Sunita Arora Vs. Delhi University*** MANU/DE/0119/2016.

(G) The counsel for the petitioners on enquiry, subject to verification, states that 10 petitioner clubs were ordinary members of the respondent no.3 DSA. A perusal of the Rules and Regulations of the respondent no.3 DSA shows that only those Clubs which had taken active part in at least two consecutive years in swimming championships organised by the respondent no.3 DSA are entitled to be made the ordinary members of the Club. It is the contention of the counsel for the respondent no.3 DSA that all the petitioners were enrolled as member surreptitiously on 27th February, 2014, with effect from 6th September, 2013 and it is for this reason only were issued Membership Certificates on a letterhead different from the letterhead of the respondent no.3 DSA by the then Secretary Sh. Kamal Kishore of the respondent no.3 DSA. The said fact is denied by the counsel for the petitioners. It may however be mentioned that counsel for Sh. Kamal Kishore, though not a party to this petition, has been actively assisting the counsel for the petitioners herein.

(H) I may in this regard notice that two replies / counter affidavits have been filed on behalf of the respondent No.3 DSA to this petition. One reply is dated 21st April, 2015 and is supported by the affidavit of one Sh. Bhanu Sachdeva who has described himself as Ex-Treasurer of the respondent No.3 DSA. The said counter affidavit supports the petitioners and in the prayer paragraph seeks that the petition be allowed.

(I) The other counter affidavit dated 17th July, 2015 has been filed by Sh. Ram Rattan Singh Tokas elected in the election held on 22nd March, 2015. The said counter affidavit seeks dismissal of the petition pleading (i) that the RO appointed had submitted a report running into 225 pages before this Court in W.P.(C) No.3652/2014 supra and copies of the said report were made available to all concerned and none assailed the said report which thus became final; (ii) that the RO in the said report has reported

(a) that on the date of the last election held on 27th March, 2011, the total affiliated clubs / units of the respondent No.3

DSA were 133 in number and of which 54 units were with voting rights and 79 units were without voting rights because they had not fulfilled the eligibility criteria of having minimum one year old affiliation as on the date of preparation of the electoral roll, as prescribed in Clause 3(D) of the constitution of DSA;

- (b) that the new affiliations beyond 133 were under a serious cloud and in fact no affiliation in the eyes of law;
- (c) that in September-October, 2013 or thereabout, serious differences arose between the then President of DSA on the one hand and the Secretary on the other hand;
- (d) that till then also there were only 133 members of DSA;
- (e) that however subsequently, the membership of DSA was inflated to 173 and then to 197 or 198;
- (f) that no General Body Meeting of DSA had taken place to discuss the affiliation of these new units i.e. the units beyond 133 units;

(g) that as a consequence of the *inter se* disputes, all powers of Sh. Kamal Kishore, General Secretary of DSA stood withdrawn by the Managing Committee on 29th December, 2013 and subsequently in the General Body Meeting held on 15th March, 2014, he and the Treasurer were removed from their respective posts;

(h) that the affiliation granted by Sh. Kamal Kishore, as General Secretary, under his signatures on 27th February, 2014 i.e. after his powers had been withdrawn were invalid;

(iii) that though Sh. Kamal Kishore had earlier filed W.P.(C) No.3652/2014 on behalf of DSA but no relief was obtained by him in relation to the affiliation so made by him; (iv) that the petitioners also did not claim any relief in those proceedings in relation to their alleged affiliation carried out on 27th February, 2014, though were fully aware thereof; (v) that in these circumstances, the RO after scrutiny, confined the electoral college to the 133 members only.

(J) While correcting the orders, I had also perused on the website of this Court for the orders in W.P.(C) No.3652/2014. The order dated 22nd April, 2015 therein records that the elections as directed had been concluded and a new Executive Committee was in position and disposes of the writ petition with a direction to the previous Executive Committee to hand over the records to the new Executive Committee. Thereafter, CM No.7804/2015 is found to have been filed complaining of the records having not been handed over. The said application came up before this Court on 1st May, 2015. The subsequent order dated 25th May, 2015 records that the earlier Executive Committee had handed over the records to the new Executive Committee and accordingly the said application also was disposed of.

(K) I am of the view that if at all, it is open to the petitioners to challenge the election on the ground of having been deprived of their right to vote therein and / or on the ground of their nominations having been illegally rejected, the said adjudication would entail disputed questions of facts which

cannot be adjudicated by way of a writ petition and which have to be necessarily adjudicated by way of a suit which has otherwise also been held to be an appropriate remedy for challenging an election and / or for seeking setting aside of an election, when the rules relating to holding of the election do not provide for a mechanism for settling the disputes with respect thereto.

- (L) As far as the judgments cited by the counsel for the petitioners are concerned, the Full Bench of the Nagpur High Court in ***Kanglu Baula Kotwal*** supra also though held that the High Court would not ordinarily interfere under Article 226, where another remedy which is equally convenient is open to the petitioner but proceeded to hold that the existence of another remedy is not in every case a bar to exercise of the powers under Article 226 and the Court can interfere, if the circumstances of the case demand interference. In that case, the Court proceeded to interfere in exercise of powers under Article 226, finding that the point which had been raised was of a fundamental character, affecting a large number of election

disputes and had already been subject matter of adjudication on two previous occasions and on which two different views were taken. It is not so here. The dispute raised by the petitioners is personal to themselves, as to their membership and adjudication whereof entails adjudication of, whether the membership claimed by the petitioners of DSA was granted in accordance with the constitution of DSA. It cannot be said that the said disputes are of a fundamental character or likely to arise again and again or even if arises again and again, any legal question is required to be adjudicated. In each case, it will have to be decided, whether the person claiming membership was validly admitted as a member or not. Similarly, reliance on ***Bar Council of Delhi*** supra is misconceived. The challenge therein was to the Proviso to Rule 3(j) of the Bar Council of Delhi Election Rules, 1968. The vires of the Rule could certainly be gone into in a writ petition and owing to the electoral roll having been prepared on the basis of such Rule, which was held to be *ultra vires* and invalid, the challenge to the election was also entertained. The counsel for the petitioners certainly

cannot match the facts of his case to the said judgment. In ***K.G. Khanna*** supra also, the election was to the Municipal Committee, Solan and the petition was entertained because there was an admission of the electoral roll being defective and as many as 362 persons who were not qualified to vote having been permitted to vote. Certainly, there is no admission on the part of the respondent No.3 DSA in the present case, of the petitioners, inspite of being members having been deprived of their rights to vote. Thus, all the judgments cited are without regard to the riders, subject to which petitions were entertained in their respective facts and do not come to the rescue of the petitioners.

15. The petition is thus dismissed as not maintainable.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 04, 2016

‘gsr/bs’

(corrected & released on 16th June, 2016)