

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P. No. 43312 of 2016

Jeya Sudhahar

.. Petitioner

Versus

1. District Registrar (Registration of Societies)
Office of the District Registrar,
Central Chennai,
Chennai - 600 014.
2. Inspector General of Registration,
Santhome,
Chennai - 600 004.
3. The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009.
4. The Association of Surgeons of India,
Rep. By its President,
Dr.Suresh Vasistha

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to consider the representation of the petitioner dated 28.11.2016 and appoint a fair and neutral person as Chief Election Officer for conducting the fresh election for the post of President 2017 and Governing Council Members 2016-2018 of the 4th respondent Association of Surgeons of India.

For Petitioner	:	Mr. K. Vijayaragavan
For Respondents	:	Mr. A. Kumar, Special Government Pleader.

ORDER

The petitioner seeks for issuing a Writ of Mandamus directing the respondents 1 and 2 to consider his representation dated 28.11.2016 and appoint a fair and neutral person as Chief Election Officer for conducting the fresh election for the post of President 2017 and Governing Council Members 2016-2018 of the 4th respondent Association of Surgeons of India.

2. The petitioner would state he is one of the members of the 4th respondent Association and practicing as Consultant Gastro-entriologist for the past 16 years. The petitioner further submits that the fourth respondent organization was established in the year 1938 to realise a long standing wish among the Indian surgeons to get together for the purpose of sharing each other's experiences and enhancing their surgical skills. It is stated by the petitioner that Dr.Suresh Vasistha is presently the President of the fourth respondent and the management of the fourth respondent is vested with Governing Council. According to the petitioner the usual procedure for conduct of election to the fourth respondent was very much described in Clause 14 of the Rules and Regulation 1984-85. The voting in the election was done through secured on-line for last five years and for that purpose, the services of M/s.Sam Agency was engaged to conduct electronic voting. The petitioner further submits that the electronic voting through the agency called M/s Sam was duly approved and democratically selected by members of both General Council and General Body of the 4th respondent. The amendments in the constitution was drafted in the year 2009 and circulated to the members and presented in the special General Body Meeting held at Patna in July 2010, but it could not be passed in view of lack of strength. Thereafter, the Annual General Body Metting for the years 2011 and 2012 did not take place. Since the amendment was passed during Annul General Body Meeting 2014, the amended constitution was sent to the 1st respondent for approval, whereas, the 1st respondent vide his letter dated 24.08.2015 has informed that, "the amendment to the by-laws submitted shall not be accepted, due to some deficiencies found in the amendments made in the by-laws".

3. The petitioner would further submit that the fourth respondent has proposed to conduct the election as per the amended constitution, though it was not approved by the first respondent. Therefore, the notification dated 01.07.2015 for the election for the post of President 2017 and Governing Council Members for the years 2016-2018 was issued by Dr.Suresh Vasistha, in the capacity of Chief Election Officer. In those circumstances, the first respondent vide its letter dated 27.05.2016, bearing letter No.3544/E2/2016 has informed that 1984-1985 amendment and rules was not approved by the District Registrar and all the other amendments and rules submitted by the fourth respondent was kept pending till this date due to delay in filing the proposal for amendment. Further, the first respondent in the subsequent communication dated 22.07.2016 directed to conduct the elections as per approved Rules & Regulations, which will clearly establish the case that the elections have to be conducted as per 1984-1985 Rules & Regulations since the amendments were not approved and kept pending.

4. The petitioner would further submit that as per Section 12(3) of the Tamil Nadu Societies Registration Act, 1975, an amendment of the Memorandum or the bye-laws shall be registered and such registration shall take effect from the date of passing of such special resolution. Further, as per Section 12(4), "if the Registrar is satisfied that any amendment of the memorandum or the bye-laws is not contrary to the constitution of this Act, he may register the amendment". Whereas, in the present case, the District Registrar vide letter dated 24.08.2015 bearing No.876/E2/2015 has informed that, "the amendment to the bye-laws submitted shall not be accepted, due to some deficiencies found in the amendments made in the bye-laws". Thus, it is evident that, amendments in the constitution was not approved by the District Registrar, because of which, it does not have any legal force. In these circumstances, one Dr.Rajkumar, who is the member of the 4th respondent has filed a suit in O.S.No.5007 of 2016 against the 4th respondent Association on the file of the VII Assistant City Civil Court, Chennai, seeking mandatory injunction for re-polling the election 2015, in which, the 4th respondent, based on the letters of the first respondent, has agreed for re-polling and filed a memo to that effect. On the basis of the same, an order dated 07.11.2016 was passed by the learned VII Assistant City Civil Judge, Chennai by recording the memo of the 4th respondent and decreed the suit. Followed by the order, the petitioner has sent a representation on 28.11.2016 to the respondents 1 and 2, requesting for fresh conduct of election as per approved rules and regulation. Since no response is forthcoming, the petitioner came forward to file this Writ Petition.

5. Heard the submissions of the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the records.. The representation dated 28.11.2016 submitted by the petitioner is pending before the respondents 1 and 2. In and by the said representation, the petitioner seeks for conduct of election as per the approved Rules, Regulations and bye-laws governing the fourth respondent Association. Having regard to the above facts and circumstances, taking note of the limited relief sought for by the petitioner in this writ petition, without expressing any opinion on merits, the respondents 1 and 2 are hereby directed to consider the representation of the petitioner dated 28.11.2016, after affording an opportunity of hearing to the petitioner, fourth respondent and all the persons concerned, who have a say in the matter, and thereafter pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

6. With the above direction, the Writ Petition is disposed of. No costs.

s/d-
Assistant Registrar (CO)

//True Copy//

Sub-Assistant Registrar

To

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Office of the District Registrar,
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- +1 CC to Mr. Vijayaragavan, Advocate sr 82
+1 CC to Govt. Pleader sr 216

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MG (CO)
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