

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

% **Date of decision: 13th January, 2017.**

+ **CS(OS) 322/2016 & IA No.10549/2016 (u/O XXXIX R-1&2 CPC)**

KIRAN AND ANR

..... Plaintiffs

Through: Mr. Manish Kaushik and Mr. Lovish
Sharma, Advs.

Versus

**SHANTILAL BHAGCHAND KOCHETA JAIN
& ORS**

..... Defendants

Through: Ms. Vibha Datta Makhija, Sr. Adv.
with Mr. Varun Jain, Mr. Abhishek
Kumar, Ms. Disha Vaish and Ms.
Anisha Mathur, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The present suit relates to the election of the National President of the defendant No.4 Shri All India Shwetambar Stanakwasi Jain Conference, a Society registered under the Societies Registration Act, 1860. The said election for the period of 2016-2018 was, in the meeting of the members of the National Working Committee of defendant No.4 held on 24th January, 2016, announced to the held on 22nd May, 2016 and in accordance with the Rules and Bye-Laws of the defendant No.4, an Election Committee comprising of a Chief Election Officer and two Assistant Election Officers was constituted. The Chief Election Officer resigned on 5th May, 2016. The election as scheduled on 22nd May, 2016, in five zones in which India has been divided under the Rules and Bye-Laws of the defendant No.4 were

held, except in the State of Tamil Nadu. The result of the said election held was announced on the same day. On 21st June, 2016, announcement was made of the election to be held in the State of Tamil Nadu on 26th June, 2016.

2. The plaintiffs, of which the plaintiff No.1 Mr. Kiran is a life member of the defendant No.4 and plaintiff No.2 Mr. A.S. Bora Jain was a candidate for the post of National President, on 23rd June, 2016 instituted this suit *inter alia* impugning the election process and for restraining the election scheduled on 26th June, 2016 in the State of Tamil Nadu.

3. The suit came up before this Court on 24th June, 2016 when, though summons thereof were issued but the interim order sought of restraining the election scheduled on 26th June, 2016 in the State of Tamil Nadu declined.

4. After the elections in the State of Tamil Nadu, the defendant No.5 Mr. M.L. Chopra Jain was declared elected as the National President of the defendant No.4.

5. The suit came up before this Court first on 5th August, 2016 when it was enquired from the counsel for the plaintiffs, whether not the suit had become infructuous. The counsel for the plaintiffs, agreeing therewith, sought adjournment to amend the plaint and which was allowed. The plaintiffs thereafter filed an application for amendment and which was allowed on 30th August, 2016.

6. The suit as it now stands impugns the election of the defendant No.5 Mr. M.L. Chopra Jain as the National President of the defendant No.4.

7. Pleadings were completed in the suit and the suit came up for framing

of issues yesterday.

8. Finding that the election of the defendant No.5 was for a period of two years only i.e. till 31st December, 2017 / 31st March, 2018 as contended by the respective counsels, it was enquired from the counsels, as to what purpose framing the issues and putting the suit to trial would serve, inasmuch as, owing to the workload of this Court, there was hardly a possibility of the disposal of the said suit before the said dates. It was thus proposed that the suit could be disposed of by making appropriate arrangement for holding of the next election as soon as due and for ensuring that the lapses, if any in the election under challenge are not repeated in the next election.

9. Faced therewith, the counsel for the plaintiffs stated that his application for interim relief for setting aside of the election was also pending; it was his contention that the plaintiffs will either succeed or fail in the same and if the interim relief is denied, the suit itself would become infructuous.

10. In view of the aforesaid, on request, the matter was posted for hearing today.

11. The counsel for the plaintiffs and the senior counsel for all the defendants have been heard.

12. As aforesaid, it is only the plaintiff No.2 Mr. A.S. Bora Jain who was a participant or contestant in the election, outcome whereof is under challenge and the plaintiff No.1 Mr. Kiran was not a contesting candidate.

13. The counsel for the plaintiffs has challenged the election, on the

following grounds:

A. Upon the Chief Election Officer resigning on 5th May, 2016, the election process could not have been continued by the remaining Election Officers. It is the contention of the counsel for the plaintiffs that since the power to appoint Election Committee, as aforesaid, is of the National Working Committee of the defendant No.4, upon the resignation of the Chief Election Officer, the election process should have been put on hold and the matter should have been referred back to the National Working Committee for commencing the election process afresh.

B. Since elections were to be held in all Zones on same day, upon elections being not held in Tamil Nadu State, the elections in other Zones of India should have been annulled and the election process should have been re-commenced.

C. The announcement in the newspapers, of the elections in Tamil Nadu State on 26th June, 2016, was made only on 21st June, 2016. The said time was insufficient as the Rules and Bye-Laws of defendant No.4 require 90 days notice.

D. Though elections in Tamil Nadu State had not been held but the result of the elections held in the remaining Zones was announced on 22nd May, 2016 itself and which influenced the voters in Tamil Nadu State. It is argued that though Tamil Nadu State had 3291 voters, only 500 turned up to vote.

E. As per the result of the elections held on 22nd May, 2016, the plaintiff No.2 was trailing the defendant No.5 by 2178 votes and

Tamil Nadu State having 3291 voters was capable of making the plaintiff No.2 win and the election held in Tamil Nadu State on 26th June, 2016, after the result of the elections in the other Zones had been announced, is bad; if the electors in Tamil Nadu had not known the result of election elsewhere, all the electors would have voted, enabling the plaintiff No.2 to garner more votes than the defendant No.5.

14. The senior counsel for the defendants has clarified that the Chief Election Officer resigned on 5th May, 2016 and out of the two remaining Election Officers, one resigned on 22nd May, 2016, after Elections except in the State of Tamil Nadu had been held.

15. On enquiry, it is stated that there is no provision in the Bye-Laws for the contingencies of any of the members of the Election Committee comprising of three Election Officers resigning or of the elections at any of the venues being not held on the date scheduled.

16. The senior counsel for the defendants, on enquiry, as to the percentage of the voters who had voted in the Zones other than Tamil Nadu State states that the turn out of the voters was about 25%. The counsel for the plaintiffs states that he has no knowledge in this regard.

17. During the hearing, it has also emerged that in the Election held on 22nd May, 2016, the plaintiff No.2 secured 51 votes and the votes secured by the defendant No.5 were in excess by 2178, as aforesaid.

18. The senior counsel for the defendants has contended (i) that the reason for which election could not be held in Tamil Nadu State on 22nd May, 2016 is also attributable to the plaintiffs; (ii) that one Mr. Ashok

Kumar Lodha instituted a proceeding in the High Court of Madras and vide order dated 13th May, 2016 therein, there was a restraint against holding the election in Tamil Nadu State on 22nd May, 2016, except in the manner provided therein; (iii) that on the defendant No.4 filing an application for vacation of the said order, the same was vacated vide order dated 13th June, 2016; (iv) that the said Mr. Ashok Kumar Lodha again filed an application in that proceeding for injunction the election scheduled on 26th June, 2016 in Tamil Nadu State and which application was dismissed vide order dated 24th June, 2016; (v) that the said proceeding has since been dismissed on a plea by the defendant No.4 that as per the Bye-Laws of the defendant No.4, the jurisdiction is of Delhi Courts.

19. The senior counsel for the defendants has further contended that in the absence of any provision in the Bye-Laws for a situation in which the election at one of the venues is held up or not held, the whole election process cannot be re-commenced and the procedure, as of holding of bye-election for the Parliament and for the Legislative Assembly, has to be followed.

20. The senior counsel for the defendants has also referred to ***G. Sarana Vs. University of Lucknow*** (1977) 1 SCR 64, ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd.*** (1985) 1 SCC 260, ***State of Rajasthan Vs. Swaika Properties*** (1985) 3 SCC 217, ***Deoraj Vs. State of Maharashtra*** (2004) 4 SCC 697, ***State of Uttar Pradesh Vs. Ram Sukhi Devi*** (2005) 9 SCC 733, ***Ramjas Foundation Vs. Union of India*** (2010) 14 SCC 38, ***P. Subba Rao Vs. Andhra Association Delhi (Regd.)*** (2008) SCC OnLine Del 417 (DB) and ***Vijendra Kumar Verma Vs.***

Public Service Commission, Uttarakhand (2011) 1 SCC 150 to contend that the plaintiff No.2, having participated in the entire election process, is estopped from challenging the same. It is contended that the plaintiff No.2, after coming to know the result of the election announced on 22nd May, 2016, filed this suit to scuttle the election of the defendant No.5 as National President, knowing fully well that he would not be able to make up the margin of votes by which he was trailing defendant No.5, even if got majority of votes polled in Tamil Nadu State.

21. The counsel for the plaintiffs in rejoinder has reiterated his earlier arguments. No case law has been shown as to the general principle to be followed in the absence of any provision in the Bye-Laws for the situations which have arisen.

22. I have considered the rival contentions.

23. I am of the view that neither of the grounds urged by the plaintiffs entitles the plaintiff No.2 to challenge or to have the election set aside.

24. For this reason, notwithstanding the fact that the counsel for the plaintiffs himself has said that if the plaintiffs are not entitled to the interim relief, the suit would become infructuous, I am also of the view that no triable issue arises and the only question to be considered is, whether the grounds urged constitute a ground for setting aside of the election. If they do not, there is nothing to prove in evidence, which can make the same a ground.

25. The questions which arise for consideration are:

(A) In the absence of any provision in the Bye-Laws of a society,

whether the election process commenced stands annulled on any of the members of the Committee constituted to hold the election or the Chief Election Officer resigning and the outcome of the election if continued to be held, liable to be set aside.

(B) In the absence of any provision in the Bye-Laws of a society, in the case of an election to be simultaneously held at plethora of venues all over India, whether in the event of election being not held at any of the venues, the election held at other venues also is of no effect and the election process to be re-commenced and if not, the outcome thereof liable to be set aside.

(C) If the answer to the above two questions is against the plaintiffs, whether under the Bye-Laws of the defendant No.4 Society, for the election to be held at the venue where it could not be held on the scheduled date, notice of 90 days was required to be given.

(D) If the answer to the first two questions is against the plaintiffs, again in the absence of any provision in the Bye-Laws of the defendant No.4 Society, whether the announcement of the result of the elections held at other venues vitiates the result of the election at the venues left out, constituting a ground for setting aside of the election or the result thereof.

26. I am at the outset reminded of the basic premise relating to election law and which is often found escaping the attention in the context of challenge to the elections and/or to the procedure of the election, that, a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right; it is pure and simple,

a statutory right; so is the right to be elected; so is the right to dispute an election. It was so held in ***Jyoti Basu Vs. Debi Ghosal*** (1982) 1 SCC 691 where it was further held that outside of statute, there is no right to elect, no right to be elected and no right to dispute an election - statutory creations they are, and therefore, subject to statutory limitation. It was further reasoned that an election petition is not an action at Common Law, nor in equity; it is a statutory proceeding to which neither the Common Law nor the principles of equity apply but only those rules which the statute makes and applies. Concepts familiar to Common Law and equity were held to be strangers to Election Law unless statutorily embodied. It was held that a Court has no right to resort to them on considerations of alleged policy because policy in such matters is what the statute lays down. The aforesaid principle, though laid down in relation to Parliamentary and Municipal elections has in ***K.K. Shrivastava Vs. Bhupendra Kumar Jain*** (1977) 2 SCC 494 been extended to Bar Council Elections and in ***Avatar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee*** (2006) 8 SCC 487 to Delhi Sikh Gurudwara Management Committee election and would thus apply to the present controversy as well.

27. Of course, we are here not concerned with any statute providing for elections. The Societies Registration Act under which the defendant No.4 is registered as a society merely provides for holding of election and does not lay down any Rules or procedure thereof and leaves it to the societies registered under it to frame their own Rules and Bye-Laws therefor. The defendant No.4 Society, though is found to have framed its Rules and Bye-Laws for holding of elections and laid down procedure therefor but the same

are not found to be providing for the contingencies as have arisen herein. Two views are possible in such a situation. One, that the Bye-Laws having contemplated election to be conducted by an Election Committee comprising of a Chief Election Officer and two Assistant Election Officers and to be held on the same day at all venues all across India, once the election is not so conducted and held, it is liable to be set aside. The other view is that in the absence of provision for such contingency in the Bye-Laws, the principles as provided in Statutes providing for such contingency be adopted.

28. Though a large number of statutes make provision for elections but it is safe to go by the provisions of Representation of the People Act, 1951 (RP Act) enacted only to provide for conducting of elections of the Houses of Parliament and to the House or Houses of Legislature of each State.

29. It is the contention of the senior counsel for the defendants and not disputed by the counsel for the plaintiffs that with respect to elections to Parliament and Legislative Assemblies of States, under the RP Act, in the event of the Election Officer resigning or the election scheduled at one of the venues being not held, the election process does not come to a standstill and does not have to be re-commenced. A provision therefor can be found in Section 57 of the RP Act.

30. I tend to take the latter of the two views aforesaid possible. The principles enshrined in the RP Act in this regard are based on public policy and in public interest. When elections are held at All India level, the mere fact that the elections at one of the venues cannot be held for whatever reason, cannot be a ground for holding up of the election process spanning

all over the country and / or for re-commencing the entire election process, whenever disruptions is caused in election at any place. If the same were to be permitted, it would become a tool in the hands of unscrupulous elements for disrupting the election, either with a motive to perpetuate the term of the existing executive or for any other reason. Similarly, if it were to be held that inspite of the Committee entrusted with holding of elections comprising of several persons, resignation of any of the members of the Committee brings the election process commenced to a standstill and requires it to be commenced de novo may result in election being not held indefinitely, jeopardizing the democratic management of the societies provided for in Sections 2 and 16 of the Societies Registration Act. Supreme Court, in the context of Supreme Court Bar Association, also a Society registered under the Societies Registration Act, in ***Supreme Court Bar Association Vs. B.D. Kaushik*** (2011) 13 SCC 774 held it to be governed by democratic principles. Recently in ***Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Limited*** (2015) 8 SCC 1 also it was held that a Society, in that case a Co-operative Society, is bound to function as a democratic institution. Not only so, holding of All India Election is a mammoth task requiring not only infrastructure and human resource to be mobilised but also monies to be spent. To hold that every obstruction in holding of election requires the election process to recommence will put unnecessary burden on the Society and deplete it of its funds.

31. Yet another reason which prevails with me to hold the general principles of RP Act to apply is that Bye laws and Rules of a Society are drafted not by experts in drafting but by ordinary persons desirous of

coming together for the purpose for which societies are permitted to be formed. They may not, make detailed provisions for election. Once the Rules of Society have made a provision for constituting an Election Committee to hold elections, the said Election Committee should be left to, as per need, take decisions and which decisions, to prevent them from being arbitrary, have to be in consonance with the general principles of election under the RP Act. I find the Division Bench of High Court of Allahabad to have in ***Ramakant Singh Vs. State of U.P.*** 2005 SCC OnLine All. 1424 held general principles of election law to be applicable to election of Committee of Management of Credit Society under the provisions of UP Co-operative Societies Act, 1965. The High Court of Karnataka also in ***Siddaiah Vs. Returning Officer, Corporation of the City of Bangalore*** AIR 1988 Kar 135 applied the principles of RP Act to election under the Karnataka Municipal Corporations Act. Supreme Court, in ***Shri Banwari Dass Vs. Shri Sumer Chand*** (1974) 4 SCC 817 also applied principles of RP Act to election under Delhi Municipal Corporation Act, 1957.

32. Once we apply the above principles, it but has to be held that resignation of member or Chief Election Officer of Election Committee and non holding of election at one of the venues does not call for setting aside of election or result thereof. Supreme Court in ***Mohd. Yunus Saleem Vs. Shiv Kumar Shastri*** (1974) 4 SCC 854 rejected the contention of a fresh notification being required to be issued and held that the change of date of poll gets engrafted in the original form in pursuance to the subsequent notification made in valid exercise of power. A Division Bench of the High Court of Allahabad also in ***Moti Lal Vs. Mangla Prasad*** AIR 1958 All 794

in the context of Section 57 of the RP Act held that the same does not contain any direction that counting of votes should take place after the polling at all the centres had been finished. The High Court of Gauhati also in *Jalanta Sen Gupta Vs. State Election Commission* AIR 2008 Gau 88 held in the context of election under the Assam Panchayat Act, 1994 that if in a State there are 60 constituencies, result of counting of votes in all the constituencies need not be stopped owing to the election at one of the places being held up and it will be enough compliance of law, if the counting of votes in respect of constituency where the polling has been adjourned is kept deferred until the time adjourned polls are completed. It was held that the contrary view may lead to devastating consequences.

33. I therefore decide questions (A) & (B) framed hereinabove in para 25 against the plaintiffs.

34. Coming to question (C) framed in para 25, the Rule / Bye-Law 12 of the defendant No.4 provides for the National Executive Committee / National Working Committee of the defendant No.4 to, 90 days before the election, declare the election. It is not in dispute that the National Executive Committee / National Working Committee of the defendant No.4 had declared the election 90 days before 26th June, 2016, when election in the State of Tamil Nadu was held. There being no provision in the Rules / Bye-Laws of the defendant No.4, as aforesaid, in the eventuality of election at any of the venues being not held and to be held subsequently, the occasion for providing time therefor in the Bye-Laws did not arise. I am of the view that once an election has been declared 90 days before the date stipulated therefor, the non-holding thereof for any reason whatsoever does not require

a fresh period of 90 days notice of the next date scheduled being given. The Bye-Laws of the defendant No.4 have provide for 90 days period, to enable the entire gamut of election process, of nominations, withdrawal of nominations and time to the candidates to make the electors / voters aware of their candidacy, take place. Once the elections, for whatsoever reason, cannot be held on the scheduled date and have to be re-scheduled but to be held on the basis of the preparation already made for the election, with the existing candidates, remaining in fray, there is no necessity for a notice of the same duration. Even otherwise, since the election of the National President of the defendant No.4, notwithstanding elections having been held in rest of the country, was dependent on the outcome of the election in the State of Tamil Nadu, to require the notice of the re-scheduled date of 90 days, would again tantamount to unnecessarily deferring the election of the National President and extending the term of the sitting National President.

35. I find considerable merit also in the contention of the senior counsel for the defendants of estoppels. The plaintiffs, if had been aggrieved of the resignation of the Chief Election Officer and if of the view that the entire election process has to be re-commenced, would have objected thereto immediately after 5th May, 2016 and not allowed the election process to go on. The plaintiffs however did not object at that stage and took a chance of the plaintiff No.2 being declared elected in the election scheduled on 22nd May, 2016. The plaintiffs, after failing therein, cannot be permitted to agitate the ground of the election being vitiated owing to the resignation of the Chief Election Officer. Though the judgments cited by the senior counsel for the defendants are with respect to interim orders but reference

may also be made to the judgment of the Division Bench of the Patna High Court in ***Raghuni Nayak Vs. Dist. Magistrate*** AIR 1959 Patna 7 where the challenge to the election was dismissed *inter alia* on the ground of the petitioner having participated in the election process and being estopped from challenging the said process, after losing the election.

36. I therefore answer question (C) framed in para 25 hereinabove also against the plaintiffs.

37. That brings me to the last question (D) framed in para 25 hereinabove. This ground to challenge the election is premised on the voters / electors in the State of Tamil Nadu, without knowing the result of the election held on 22nd May, 2016 having voted in larger numbers than they did and thereby enabling the plaintiff No.2 to make up the margin of votes with which he trailed the defendant No.5 in the election held in rest of the country on 22nd May, 2016. Supreme Court in ***Vashit Narain Sharma Vs. Dev Chandra*** AIR 1954 SC 513 reiterated in ***Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri*** (2011) 2 SCC 532 held that it is impossible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes may have gone to one or the other on some supposed or imaginary ground. In the latter judgment, on examining the polling pattern in the election and after applying the law of averages, conclusion was drawn that the election petitioner could not have expected to wipe off the larger arrears under which he was labouring and could not have made a successful bid for the seat, even with the assistance of the voters who had not cast their votes. It was further held that there is no warrant for drawing presumption that those who had not cast their votes would have cast their votes in favour

of the election petitioner. Reference in this regard may also be made to (i) ***Vadivelu Padayachi Vs. Sanjeevi Padayachi*** 1962 SCC Online Mad 48 holding that where there are means of tracing improper vote and ascertaining on scrutiny for whom it was cast, there is no difficulty at all; but where vote has not been cast, it will be extremely unsafe to act on the presumption that it would have been cast in favour of the petitioner; and, (ii) ***R. Natarajan Vs. The State Chief Election Officer, State Election Commission, Govt. of Tamil Nadu, Secretariat, Fort St. George, Chennai*** 2011 SCC Online Mad 413 where it was held that even when the persons whose vote has been wrongfully rejected are relatives of the petitioner, it could not be legally presumed that they have voted only in favour of the petitioner. Applying the said principle, when in rest of the country, the turnout of voters was about 25% only and of which only 51 voted for the plaintiff No.2 as against 2229 who voted for the defendant No.5, the contention that had the result of the election held on 22nd May, 2016 been not announced, more than 500 voters would have voted in the State of Tamil Nadu and the plaintiff would have made up the margin of 2178 votes by which he was trailing, cannot constitute a ground for setting aside of the election.

38. Thus, question (D) framed in para 25 hereinabove also cannot be answered in favour of the plaintiffs.

39. Even otherwise, the law of elections is that success of a candidate who has won at an election should not be lightly interfered with. It has been held that the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public

funds and administration. Reliance in this regard can be placed on *Jeet Mohinder Singh Vs. Harinder Singh Jassi* (1999) 9 SCC 386, *Jagan Nath Vs. Jaswant Singh* AIR 1954 SC 210 and *Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe* (1995) 5 SCC 347.

40. The counsel for the plaintiffs has also not contended and I do not find any plea in the plaint that any of the grounds aforesaid on which the election of the defendant No.5 is sought to be set aside is attributable to the defendant No.5 or as to how the defendant No.5 has benefited therefrom. Without the plaintiffs attributing any *mala fides* or corrupt practices to the defendant No.5, the plaint for this reason also does not disclose any cause of action to the plaintiffs for having the election of the defendant No.5 set aside. A perusal of Section 100 of the RP Act prescribing the grounds for declaring election to be void shows that the grounds prescribed, of either the returned candidate being not qualified or any nomination having been improperly rejected or of the nomination of returned candidate having been wrongly accepted or a corrupt practice having been committed by the returned candidate. Section 100(2) of the Act however clarifies that an election of a returned candidate, if held to be guilty though of corrupt practice but not by himself but by an agent would not be set aside, if such corrupt practice was contrary to the returned candidate's order or consent or if the returned candidate had taken all reasonable means for preventing such corrupt practice and the conduct of the returned candidate was himself free from corrupt practice. The principle again is of the election of the returned candidate being liable to be set aside on account of corrupt practice only if such corrupt practice is attributable to the returned candidate. Supreme

Court in *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi* 1987 (Supp) SCC 93, finding that the corrupt practice was not attributable to the returned candidate, upheld the order of rejection of the election petition. Applying the aforesaid law, I am of the opinion that if the election of an office bearer of a society registered under the Societies Registration Act is not found to be contrary to any express Bye-Laws and Rules of the society and if the grounds for setting aside of the election otherwise are not attributable to the returned candidate, they will not constitute a ground for setting aside of the election.

41. I am therefore of the view that not only are the plaintiffs not entitled to any interim relief but the plaint otherwise also does not disclose any cause of action to the plaintiffs for having the election of the defendant No.5 Mr. M.L. Chopra Jain as the National President of the defendant No.4 Shri All India Shwetambar Stanakwasi Jain Conference set aside.

42. The counsel for the plaintiffs after dictation of the judgment had commenced handed over copies of *N.P. Ponnuswami Vs. The Returning Officer, Namakhal Constituency, Namakkhal, Salem Dist.* AIR 1952 SC 64, *Billimoria Jehan Bux Tehmijras Vs. Indian Institute of Architects* 2005 2 MhLJ 206 and *R. Rajagopal Vs. U.O.I.* AIR 1999 SCW 4890.

43. While the first of the said judgment was relied upon to contend that the word 'election' embraces the whole process of election and not confined to final result thereof, the second was cited for its observation that the instances of preventing *bona fide* voters from voting, replacement of and/or tampering with the ballot papers are not uncommon and elections of societies, clubs and various board and the last to contend that since the

telecast of opinion / exit poll also, till the holding of election is prohibited, the declaration of the result of the election in rest of the country, would certainly be detrimental to the election at the left out venue. The need for dealing with the first two judgments is not felt, in the light of what is observed hereinabove. As far as the last of the three judgments is concerned, it is an interim order. I am of the view that an opinion poll / exit poll cannot be at par with the result of the actual election.

44. I am however of the view that the defendant No.4, with the experience of this suit, should take remedial steps to avoid reoccurrence thereof. Thus, while dismissing the suit, a direction is issued to the defendant No.4 to, well before the announcement of the next elections, consider the aforesaid aspects at the appropriate level and if deems any remedial steps viz. of amendment of its Bye-Laws to be required therefor, take the same.

45. No costs. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 13, 2017

Bs..

(Corrected & released on 8th February, 2017)