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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2805 of 2019

and C.M.P.Nos.27606 and 24401 of 2019

M. Sardarmal Chordia

Secretary

Agurchand Manmull Jain College,

Meenambakkam

Chennai - 600 114.

... Appellant/Petitioner

vs

1. State of Tamil Nadu

rep by the Principal Secretary,

Higher Education Department,

Secretariat,

Chennai - 600 009

2. The Director of Collegiate Education,

College Road,

Chennai - 600 006

3. The Joint Director of Collegiate Education,

Chennai Region,

Chennai 600 015

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the common order dated 24.07.2019 passed in W.P.Nos.32322 of 2017.

Prayer in W.P.No.32322 of 2017:-This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records in the order bearing Moo.Mu.No.44933/G1/2016 dated 02.03.2017 passed by the second respondent and quashing the same and forbearing the respondents from interfering with the functioning of the petitioner as the Secretary of the Agurchand Manmull Jain



College, Meenambakkam, Chennai as per clause 20(a) of the Memorandum of Association of Shri Sweatambar Stanakwasi Jain Educational Society.

For appellant : Mr.Radhakrishnan

For respondents : Mr.V. Kadhirvelu
Spl. Government Pleader

For Intervenor : Mr.M. Sunil Kumar

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JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the parties. We had earlier passed the following Orders on 13.12.2019 and 20.12.2019:-

Order dated 13.12.2019:

"Heard learned counsel for the appellant and learned counsel for the Intervenor Mr.S.D.Manohar Kumar Lodha, who had filed O.S.No.3502 of 2015. The said suit in relation to the dispute of elections was closed keeping in view the provisions of the Arbitration Act and relegating the parties for arbitration. The arbitration has not proceeded yet, nor has yielded any results.

2. We have gone through the impugned judgment and we find that the learned Single Judge has found that the elections of the Executive Committee of the Institution were not held within the time prescribed and as a matter of fact, the elections were not held for the past five years. It is in this background that the writ petitioner/appellant had approached this Court contending that in view of the provisions of Clause 20 (a) of the bye-laws of the Society, the office bearers are to continue till their successors are chosen and therefore, the educational authorities are not justified in not acknowledging the appellant as Secretary of the Society.

3. The writ petition has been dismissed holding that once it is established that elections have not been held for the past five years, then the elections should be concluded by 30th September as envisaged under the bye-laws and after the dispute is resolved, the authorised concerned Secretary to exercise powers in respect of the Institution.

4. The intervenor Mr.S.D.Manohar Kumar Lodha has come up contending that the appellant cannot be



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permitted to continue inasmuch as it is only the validly elected Secretary, who can continue in the Institution, as the tenure of the appellant had already expired long back.

5. Having considered the submissions raised, we find that elections of the Executive Committee has not been held timely and that gave rise to the aforesaid dispute where the authorities are insisting upon the authorised validly elected Secretary to act on behalf of the Institution. We also find that Mr.S.D.Manohar Kumar Lodha initiated legal proceedings by first instituting a suit and then filed C.R.P.No.2440 of 2017 and also filed writ petition before this Court.

6. Learned counsel for the intervenor submits that he is prepared to withdraw all such litigations provided elections are held and validly elected Secretary discharges his duties as Secretary of the Executive Committee. In the wake of the aforesaid submissions raised by learned counsel for the intervenor, we do not find any reason now to proceed with the matter as admittedly the tenure of the appellant as Secretary had come to an end long back and his continuance is by virtue of Clause 20(a) of the by-laws. Learned counsel for the intervenor contends that it would be appropriate that the Society i.e., S.S.Jain Educational Society, which is authorised to hold elections of the Executive Committee may proceed to get elections held at the earliest.

7. We, accordingly, direct the appellant to implead S.S.Jain Educational Society through its Secretary General as party respondent in this appeal and serve notice on him within a week. Learned counsel for the intervenor may also file an affidavit on behalf of his client indicating what has been recorded today in the matter.

Put up on 19.12.2019 for further orders."

Order dated 20.12.2019:

"Learned counsel for the appellant, Mr.M.Vetriselvan, has produced before us the tendering of notice on Dr.Harish L.Mehta, who, according to the respondents also, is the present Secretary General of Shri SS Jain Educational Society. This was done in compliance of our order dated 13.12.2019.

2.Learned counsel for the intervenor has filed an affidavit today giving his undertaking that he shall withdraw all the litigations provided directions are issued and the Society proceeds to get the elections



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held by the Executive Committee of the Institution. The said affidavit is taken on record.

3. However, in spite of service of notice, we do not find any one representing Shri SS Jain Educational Society and therefore, we direct the learned counsel for the appellant to implead S.S.Jain Educational Society through its Hony. Secretary, Dr. Harish L. Mehta, as respondent no.4 in this appeal.

4. Even though notice had been issued, we direct the learned counsel for the appellant to put the newly impleaded respondent no.4 to notice to file a response in this appeal, vis-a-vis the order passed by us dated 13.12.2019, as also the undertaking given by the intervenor for the purpose of holding of elections by the Executive committee of the Institution.

Let the matter come up on 06.01.2020."

2. The affidavit of Dr. Harish L. Mehta has been filed today, where an undertaking has been given that the election for the Executive Committee of Sri SS Jain Educational Society will be conducted by 30.09.2020.

3. We find such request up to September 2020 to be not reasonable keeping in view the fact that the tenure of the Committee of the Management of the Institution has expired long back and therefore, the elections are admittedly over due.

4. We would therefore direct that the elections be held within a period of three months from today i.e., by 30.04.2020.

5. In the light of the said undertaking given before us and the elections which are to be held, we find that the matter can be disposed of finally, more so, in the wake of the fact that the intervenor, Mr. S.D. Manohar Kumar Lodha, represented through Mr. M. Sunil Kumar, learned counsel, has made an offer to withdraw all the litigations provided that the elections are held at the earliest.

6. In order to finally put the matter to rest, in supersession of the order of the learned Single Judge impugned herein dated 24.07.2019, we dispose of this writ appeal with a direction that the Executive committee of Sri SS Jain Educational Society, which is reported to convene a meeting on 11.01.2020, shall place our order on the Agenda tomorrow for finalising the election programme within the period as indicated herein. The present state of management will continue till 30.04.2020 only and the newly elected office bearers shall be



put in place consequent to the new elections to be held as indicated herein above.

7. With the aforesaid observations, this writ appeal stands disposed of with the consent of both the parties. The State and its concerned authorities shall ensure payment of salaries in accordance with the Rule to the validly appointed employees of the Institution. No costs.

The implead applications shall stand disposed of with the closure of the writ appeal.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
State of Tamil Nadu
Higher Education Department,
Secretariat,
Chennai - 600 009
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006
3. The Joint Director of Collegiate Education,
Chennai Region,
Chennai 600 015

+3cc to Mr.M.Sunil Kumar, Advocate Sr.No.2780
+2cc to Mr.M.Radhakrishnan, Advocate Sr.No.2696

AKM/10.01.2020/5P-9C /

W.A.No.2805 of 2019