

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Judgment: 24th August, 2021**

+ **CM(M) 550/2021**

SUNIL KUMAR VAID

..... Petitioner

Through: Mr. Saket Sikri with Mr. Achin Mittal, Mr. Ajay Pal Singh Khullar and Mr. Diwakar Chatterjee, Advocates.

versus

GENERAL MOHYAL SABHA (REGD.) & ORS Respondents

Through: Mr. Devdatta Kamat Sr. Advocate with Mr. Hardik Luthra, Advocate for R-1.

Ms. Hetu Arora Sethi, AS/GNCTD with Mr. Siddarth Agarwal, Advocate for R-2.

Mr. Rakesh Kr. Khanna, Sr. Advocate with Mr. Sudhir Naagar, Advocate for R-3 to 5.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

[VIA VIDEO CONFERENCING]

CMs No. 27632/2021 & 27633/2021 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

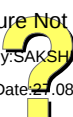
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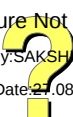
3. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 17th August, 2021 passed by the Additional District Judge-05, Tis Hazari Courts, Central District, Delhi in a Civil Suit filed by the petitioner, being CS No.773/2020, whereby the application of the petitioner seeking appointment of Court Observer for monitoring, supervising and ensuring free and fair elections of respondent no. 1 has been dismissed.

4. Upon enquiry from the Court, learned counsel for the petitioner concedes that most of the election process is already over and what remains is only the receipt of ballot papers and the actual counting of the said ballot papers. Learned counsel for the petitioner submits that the delay in seeking the appointment of a Court Observer is not on account of the petitioner. The petitioner has been agitating this issue since 2020 and the delay, if any, is on account of the Court process. He relies upon the order dated 7th August, 2015 in CS(OS) 2005/2015 passed by this Court whereby in respect of the previous elections held in respondent no. 1 in 2015, the Court had appointed Justice (Retd.) P.K. Bhasin as the Court Observer. He places reliance on the report of the said Court Observer to submit that the elections were not conducted in a free and fair manner on the previous occasions and therefore, there exists a strong apprehension that even current elections will not be conducted in a free and fair manner. It is further contended that one of the members of the Election Committee, Mr. Arun Bali was a part of the earlier management committee and therefore, there is an apprehension that he would interfere in the election process.



5. Learned senior counsel appearing on behalf of respondent no. 1 submits that (i) the present petition is a gross abuse of the process of the Court; (ii) there are more than 300 members of respondent no. 1 and nobody other than the petitioner has alleged any foul play in the conduct of the elections; (iii) there is no factual foundation for the petitioner to make the allegations that the petitioner has made; (iv) it is settled position of law that once election process has started, the Court cannot interfere with the same and the proper course would be for the aggrieved party to file a petition after elections are over and the results are declared; (v) the Election Committee now appointed is totally different from the earlier Election Committee and therefore, the apprehensions of the petitioner that the elections will not be conducted in a fair manner are completely unfounded; and (vi) the petitioner himself admits that he has made new averments in the present petition which were not a part of the application that was dismissed by the impugned order.

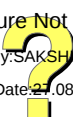
6. Learned senior counsel further submits that the petitioner has been agitating the same relief over and over again. He draws attention of the Court to the earlier writ petition, being W.P.(C) No.2845/2021, where the same relief was sought and the said writ petition was withdrawn on 3rd March, 2021 with liberty to seek the same relief by way of application in CS No.773/2020, the suit from which the present petition arises. Thereafter, another petition under Article 227, being CM(M) 261/2021, was filed before this Court on 19th March, 2021 where once again the relief of appointing a Court Observer to supervise the elections of respondent no. 1 was sought. Even the said petition was withdrawn by the petitioner on 23rd March, 2021 with liberty to approach the Trial Court and seek preponement of date of hearing in respect of the application filed by the petitioner under Order



XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) before the Trial Court. Once again, another petition under Article 227, being CM(M) 468/2021, was filed by the petitioner before this Court where one of the reliefs sought was with regard to appointment of Court Observer. The said petition was dismissed by the Court vide order dated 22nd July, 2021. Thereafter, the interim application filed by the petitioner was taken up for hearing by the Trial Court and the same has been dismissed by the Trial Court vide the impugned order dated 17th August, 2021.

7. Learned senior counsel appearing on behalf of the Election Committee, respondents no.3 to 5 states that (i) all steps have been taken to ensure free and fair conduct of the elections, including videography of the entire election process; (ii) no complaints have been received by any member with regard to conduct of elections other than the petitioner; (iii) all shortcomings identified by the earlier Court Observer in his report have been addressed; (iv) Mr. Arun Bali was not a part of the erstwhile management committee as alleged by the counsel for the petitioner. He was only one of the members of the respondent no. 1 and it is normal in election processes to appoint one of the erstwhile members of the management committee as a part of the Election Committee and there is nothing unusual about that; (v) the Election Committee comprises of eminent people from the society and there have been no allegations made against them; and (vi) the election process is at the fag end and the last date of receipt of the ballot paper is 27th August, 2021 and the counting has to take place from 30th August, 2021.

8. Attention of the Court is drawn to Annexure P-20 wherein the format of the envelope in which ballot paper has to be inserted, as well as the

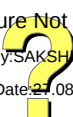


sample of the ballot paper which is in the form of OMR sheet, are provided. It is submitted that the ballot paper alone has to be inserted in a separate envelope and the form for giving details of the member/voter is segregated upon receipt of the envelope.

9. I have considered the rival submissions. It is clear from the record that the petitioner has been unsuccessfully filing repeated petitions seeking the same relief i.e. that of appointment of a Court Observer for conduct of free and fair elections. Similar submissions that are made in the present petition were also made before this Court in the earlier i.e., CM(M) 468/2021. The said petition was dismissed by a Co-ordinate Bench of this Court vide order dated 22nd July, 2021, observing as under:

“5. Having heard learned counsel and having perused the petition, this Court finds absolutely no merit in the same. An application for early hearing had been moved by the petitioner/plaintiff before the learned Trial Court, who, in view of the various submissions made, allowed that application and preponed the date of hearing from 31st July, 2021 to 26th July, 2021. The learned Trial Court also moved expeditiously to allow the application moved by the petitioner/plaintiff under Order I Rule 10 CPC for impleading the Election Committee of the Society, which would only facilitate the passing of an appropriate order on the application for appointment of Observer.

6. Vide the impugned order, this very application for appointment of an Election Observer has been fixed on 26th July,



2021. Despite this, the petitioner/plaintiff has chosen to move this Court with exactly the same prayer. Obviously, this appears to be nothing short of "forum shopping". The approach of the petitioner/plaintiff in repeatedly moving this Court and withdrawing the petitions with permission to move similar applications before the learned Trial Court, reflects the conduct of the petitioner in very poor light.

7. The petition is accordingly dismissed along with the pending application, with costs of Rs.5,000/- (Rupees Five Thousand only) to be deposited by the petitioner/plaintiff in the Lawyers' Welfare Fund, Tis Hazari Courts, Delhi."

10. Thereafter, relying upon the judgment of the Supreme Court in **Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. Vs. State of Maharashtra and Ors** (2001) 8 SCC 509 and of this Court in **Javed Rahat and Ors. Vs. Bar Council of India and Ors.** 129 (2006) DLT 104, the Trial Court dismissed the application filed by the petitioner vide the impugned order, holding as under:

"In the facts and circumstances of the present matter, election process of the society/defendant no.1 has already been commenced and significant stages of election process like preparation of electoral collage, filing of nominations, drawing of list of eligible candidates, printing of ballot paper is completed and the same were dispatched.

In these circumstances, I do not deem it appropriate to appoint the court observer at the final stage of election process as now only ballot papers are to be received back and counting of votes is to be done. The present application under Section 151 CPC for appointment of court observer to monitor the election of the society is dismissed and stands disposed of accordingly.”

11. As noted hereinabove, the petitioner has repeatedly filed petitions before this Court and subsequently withdrawn the same to file application before the learned Trial Court seeking the same relief. It is only on account of various proceedings initiated by the petitioner that there has been delay in the Trial Court passing the impugned order. In fact, the Trial Court allowed the application for early hearing filed on behalf of the petitioner and advanced the date of hearing from 31st July, 2021 to 26th July, 2021. The Trial Court also allowed the application under Order I Rule 10 of the CPC filed belatedly by the petitioner for impleading the Election Committee, which the petitioner ought to have done at the first instance.

12. Once the Trial Court had fixed the hearing of the application on 26th July, 2021, there was no occasion for the petitioner to file CM(M) 468/2021 before this Court. While dismissing the said petition, this Court has observed that the conduct of the petitioner amounts to “forum shopping”.

13. Even on merits, no case has been made out by the petitioner for interference. It is an admitted position that the election process has been substantially completed and the only remaining steps remaining to be completed are the receipt of the ballot papers and counting of the same. As noted above, the delay is solely attributable on account of the petitioner

filing various petitions at different forums seeking the same relief. The senior counsels for the respondents have rightly contended that just because an Observer was appointed by this Court in respect of the elections conducted in 2015 cannot be a ground for appointing an Observer for the current elections. The petitioner had to make factual averments with regard to malpractices in the current elections in the application filed before the Trial Court. No factual foundation has been made out by the petitioner in respect of any irregularities for the present elections. Further, no allegations have been made against the Members of the Election Committee appointed for conducting the present elections except the bald allegation made against Mr. Arun Bali, which has been rebutted by the respondents. The relief of appointing a Court Observer cannot be granted on mere apprehensions.

14. The Trial Court has correctly observed that the election process, once underway, cannot be interfered with. The only remedy available for the aggrieved party is to file an election petition after the results of the election are declared. The Court is also satisfied with the steps being taken by the Election Committee for the conduct of the election underway.

15. No ground for interference is made out.

Dismissed.

AMIT BANSAL, J

AUGUST 24, 2021

A/Sakshi R.

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Signature Not Verified

Signed By: SAKSHI RAMOLA
Location:
Signing Date: 24.08.2021
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