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

Date of Decision: 27th July, 2022

+ W.P.(C) 4128/2022 & CM APPLs. 12341-342/2022

DR. CHAJJED ARUNKUMAR

..... Petitioner

Through: Mr. Aniruddha Deshmukh, Advocate.

versus

REGISTRAR OF SOCIETIES AND ORS.

..... Respondents

Through: Mr. Sameer Vashisht, ASC, Civil
(GNCTD) with Ms. Sanjana Nangia
and Ms. Shreya Gupta, Advocates for
R-1 & 2.

Mr. Venkatesh, Mr. V.M. Kannan and
Ms. Isnain Muzanil, Advocates for R-
3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J. (Oral):

1. Petitioner – a dentist by profession and life member of Indian Dental Association [Respondent No. 3], which is the apex professional association of Indian dentists founded in 1946 and registered under the Societies Registration Act, 1860 [*hereinafter, 'the Act'*] in Delhi – is before this Court seeking the following reliefs: -

“(i) Issue a Writ of Mandamus, or any other writ, direction or order under Art. 226 of the Constitution of India, directing the Respondent No. 1 and 2 to forthwith consider the Representations of the Petitioner dated 06.01.2022 and 08.02.2022;

(ii) Issue a writ of mandamus, or any other writ, direction or order, to the Respondent No. 1 and 2, to forthwith hold elections to Office Bearers of the



Central Council of the Respondent No. 3 in accordance with the Constitution of India, by appointing an independent observer and returning officer to ensure free and fair elections.

(iii) Issue a writ of prohibition against Respondent No. 3, restraining its Central Council and/or the Office Bearers from holding office any further in terms of the Constitution of the Respondent No. 3;

(iv) Pass an ad-interim, ex-parte order in terms of Prayer (iii) above;”

2. At the outset, Respondent No. 3 has strongly objected to the maintainability of the petition, on which issue the Court has heard the counsel for the parties at sufficient length.

3. Although the reliefs extracted above give a fair idea of the dispute between the parties and the foundation of Respondent No. 3’s objection, yet, it is considered appropriate to set out a brief narration of facts in order to fully comprehend the scope of the instant petition.

4. Petitioner’s primary grievance stems from the fact that the Central Council of Respondent No. 3, in its meeting held on 27th December, 2020, instead of demitting office on or before 28th February, 2021 – which was the date for its dissolution, has illegally extended the tenure of its office bearers by one year. It is contended that the said decision is illegal and contrary to the constitution of Respondent No. 3. Petitioner submitted two representations, one on 06th January, 2022 and the other, on 8th February, 2022 to the Registrar of Societies (‘**ROS**’) [Respondent No. 1], requesting his intervention on the basis of alleged misconduct of the Secretary General of Respondent No. 3. Relevant portions of the requests made in the above-



stated representations are extracted hereinbelow: -

(i) Representation dated 06th January, 2022

“ xx .. xx .. xx
To sum up

I request you,

1. Cancel the A.G.M. & Election Notification of Indian Dental Association sent by IDA HO.
2. Appoint an Election Officer/Receiver, & issue fresh Notification which includes Election of all Office Bearers whose Term is over.
3. The Hon. Secretary General & Other Office Bearers should be asked to stop functioning.
4. All Banks in which the Accounts of Indian Dental Association & its subsidiaries should be instructed accordingly.
5. Conduct a free & fair Election.

Please treat this as Notice to your august office for urgent intervention.

Expecting your urgent attention & action since the AGM is scheduled on 30.01.2022

Thanking you in anticipation

Sd/-

Dr. Chhajed Arunkumar”

[Bold in original]

(ii) Representation dated 08th February, 2022:

“ xx .. xx .. xx

In light of the above circumstances, I request you to urgently look into the matter on priority and

- All the Office Bearers whose tenure/Term gets over on 28-02-2022 should be asked to step down and stop functioning as Office Bearer.
- All the Banks where various accounts of Indian Dental Association & its subsidiaries are should be instructed accordingly
- Appoint a receiver who will take over all the financial dealings of Indian Dental Association.
- Conduct free & fair Elections.
- Handover the Reins of the association to duly elected office bearers.

Please acknowledge the receipt of this & previous letters and inform me; what actions you have initiated in this matter,

Waiting for your response,



Dr Chhajed Arunkumar”

5. Aggrieved with the inaction of the ROS, the instant petition has been filed. The first two prayers are directed towards Respondent No. 1 and Respondent No. 2 [SDM (HQ) through Assistant District Magistrate] for consideration of the afore-noted representations and conducting elections of Respondent No. 3.

6. On the above aspect, Mr. Aniruddha Deshmukh, counsel for Petitioner, argues that the ROS is duty bound to discharge his functional jurisdiction and ensure that registered societies conduct their affairs in accordance with the Act. The above submission regarding jurisdiction of the ROS, as a general proposition, is quite appealing, but can that be the basis for issuance of a writ of mandamus as prayed for? The answer to the above question has to be in the negative. In fact, the requests made to the ROS by the Petitioner *vide* representations noted above are reproduced in this judgment only to highlight that these requests are not founded on any statutory provision. The Act vests no statutory right in favour of Petitioner to approach the ROS claiming such reliefs. No provision is shown which empowers the ROS to take the actions as requested, and/or hold elections of a society registered under the Act. The Court thus cannot identify any right vested in favour of the Petitioner, or the corresponding duty of the ROS that is sought to be mandated.

7. At this juncture, it must also be noted that prayers seeking directions for disposal of representations are routinely made in writ petitions and since



those appear to be innocuous – the Courts are often inclined to pass the desired directions; but that in the opinion of the Court, should not be done as a matter of course. The Court must firstly ascertain whether there is any statutory right in favour of Petitioner which has been infringed by non-consideration of the representations. Secondly, it must be determined whether the right, as asserted, is founded on any statutory provision. The obligations and responsibilities of the ROS are well-defined under the Act, and if a request is made beyond the purview of the Act, the Court is not obligated to issue direction(s) *qua* such a representation, considering the discretionary jurisdiction under Article 226 of the Constitution of India, 1950.

8. That said, like in every petition, the endeavour of the Court would always be to ascertain the real cause of action, which can straightforwardly be done by a meaningful reading of the petition. In this case, as narrated above, the purported cause of action pertains to elections and the functioning of Respondent No. 3. Considering the constitution of Respondent No. 3 and nature of its activities, which are adverted to shortly hereinafter, Petitioner could not have filed a writ petition *qua* Respondent No. 3 without impleading Respondents No. 1 and 2. Thus, solely for the purpose of maintaining the writ petition, Respondents No. 1 and 2 – who are certainly amenable to the writ jurisdiction of this Court, have been arrayed as co-respondents. They have been made parties only for advancing Petitioner's grievance, which is plainly aimed towards Respondent No. 3 only. However, the Court will not be dodged by the illusion created by Petitioner. Respondent No. 3, as already noted above, is a society registered under the



Act. The Act does not vest any control/ power of supervisory or disciplinary nature for the ROS to take an action against a society. For this reason, as well, the representations given by Petitioner do not mandatorily require a response from Respondents No. 1 and 2, as canvassed before this Court.

9. It would also be apposite to refer to Section 13 of the Act which deals with the dissolution of societies and adjustment of their affairs. The same reads as follows:

“13. Provision for dissolution of societies and adjustment of their affairs – Assent required – Government consent. – Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite: Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose: Provided that whenever any Government is a member of or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of the Government of the Province of registration.”

10. The above-extracted provision itself makes it evident that any dispute arising among the governing body or the members of the society shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situated. Needless to say, a writ Court under Article 226 of the Constitution of India, 1950 is not a Court of



original civil jurisdiction. Once there exists a proper procedure for dissolution and adjustment of affairs of a society under a statute, no other procedure can be adopted. It must also be noted that counsel for Respondent No. 3 relies upon Article 12 of its constitution to submit that any dispute between the members can only be referred to arbitration in terms of the complaint procedure prescribed under Articles 12 (2A), (2B) and (2C) thereof, which has to be mandatorily exhausted before resorting to other dispute resolution mechanisms. Be that as it may, the Court need not deliberate on this issue, as undoubtedly, in a writ petition, Respondents No. 1 and 2 cannot be mandated to forthwith hold elections of office bearers of the Central Council of Respondent No. 3.

11. That brings us to the question of conduct of elections, with which the Petitioner is chiefly aggrieved. On this aspect, the crucial question is whether Respondent No. 3 is amenable to writ jurisdiction. It is well settled that a writ can only be issued against a 'State Authority' in accordance with Article 12 of the Constitution of India, 1950. Determination of whether a body is, in fact, a State Authority requires examination of financial, functional and administrative control of the Government over the concerned body. If such control is found to be substantial and pervasive, a body is deemed to be a State Authority. Respondent No. 3 is an unaided society registered under the Act, functioning on self-generated funds; it is not an association which governs the field of dentistry but is merely a private association of qualified dentists. It is also not financially or administratively controlled by the State or the Central Governments. Therefore, it is evident that Respondent No.3 is plainly a private society that is neither an agency



nor instrumentality of the State; and a writ against it, independently, cannot lie.

12. Broadly speaking, the proposition that a writ cannot lie against a private society cannot be disputed in light of several judgments and decisions, including previous orders passed by this Court. Nevertheless, since Petitioner has argued to the contrary by placing reliance on two judgments, those need to be briefly noted and discussed. Firstly, reliance was placed on the case of *M/s Narinder Batra v. Union of India*,¹ which pertained to the Indian Hockey Federation. Although the said Federation is also a private society registered under the Act, yet, a writ was entertained for the reason, that the Indian Hockey Federation controls the game of hockey in the country at all levels, its members are the State Hockey Associations and the boards of Government departments such as railways and services controlling the game in their services all over the country. It has been recognised as a national sports federation, akin to the control of the BCCI over cricket players. This distinguishing factor, which is evident from a reading of paragraph 47 of the said judgment, renders the said judgment inapplicable. Next, the judgement in *Praga Tools Corporation v. Shri C.A. Imanual and Ors.*,² is again distinguishable on facts. In the said case, the Appellant was a company registered under the Companies Act, 1956 and at the material time, 56% of its shares were held by Union of India, 32% by the Government of Andhra Pradesh and 12% by private individuals. In that light, it was observed that a mandamus can be issued in respect of an entity performing a

¹ ILR (2009) IV Delhi 280.

² [1969] 3 S.C.R.



public duty. Undoubtedly, the Court's power to issue a mandamus is quite wide, but when a statute providing for special remedies in matters of election does not specifically vest the power with the ROS to interfere with the same, the Court finds no reason to accept the submissions advanced by Petitioner. In this regard, the observations made by this Court in *Supreme Court Bar Association v. Registrar of Societies*,³ are also relevant, wherein this Court had noted that the ROS had acted beyond its jurisdiction by going into disputes regarding registration of members and list of voters— which is only a dispute between a society and its members and cannot be resolved by the ROS.

13. For the above reasons, the Court is not inclined to entertain the present writ petition, and accordingly, the same is dismissed along with pending application(s).

14. It is clarified that in case Petitioner was to resort to mechanism provided under the Act or the constitution of Respondent No. 3 for redressal of his grievance *qua* the reliefs sought in the instant petition, the observations made hereinabove would not come in his way.

15. To state the obvious, the Court has not expressed any views on the merits of the case. All rights and contentions are left open.

SANJEEV NARULA, J

JULY 27, 2022/nk

³ 2012 SCC OnLine Del 6415.