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IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 114/2022 & CM. APPL. No.21766/2022



Date of Decision: 06.05.2022

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FAO 114/2022

IN THE MATTER OF:

SH GAUTAM BARMAN & ORS.

..... Appellants

Through: Mr.Joydeep Mazumdar and Mr.Vikas
Kumar, Advocates.

versus

RAISINA BENGALI SCHOOL SOCIETY & ORS. Respondents

Through: Mr.Ankur Raj, Ms.Nikita Raj and
Mr.Diwakar Goel, Advocates for
respondents No.1 to 7.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.(ORAL)

CM. APPL. No.21767/2022

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

FAO 114/2022 & CM. APPL. No.21766/2022

1. The present appeal has been preferred under Order 43 Rule 1(r) CPC on behalf of the appellants/plaintiffs against the order dated 07.01.2022 passed by the learned Civil Judge, Patiala House Courts, New Delhi in Civil Suit No.991/2021, whereby the appellants' application under Order 39 Rules 1 and 2 read with Section 151 CPC was dismissed. Other ancillary reliefs are also sought by the appellants.
2. By way of the aforesaid application, the appellants/plaintiffs had sought an *ex-parte* ad-interim injunction restraining defendant Nos.2 to 8



from conducting any elections till the identities of each and every voter were physically verified, as well as directions to them to file their educational qualification certificates and proof of experience in the field of education.

3. A perusal of the case records would show that appellant Nos.1 and 2 have claimed to be the Secretary and the Member of Parent Teacher Association of the *Raisina Bengali Higher Secondary School, Mandir Marg, New Delhi* (hereinafter, referred to as the 'School') and appellant No.3 has claimed herself to be a Parent/Guardian. The wards of the appellants are stated to be students of the School.

Respondent No.1/Society is stated to be a Society registered under the Societies Registration Act, 1860 as Raisina Bengali High School, New Delhi, running two schools namely *The Raisina Bengali Higher Secondary School, Mandir Marg, New Delhi* and *The Raisina Bengali School, Chittaranjan Park, New Delhi*. It is said to be managed by a Governing Body consisting of 11 members, out of which 7 members are directly elected by the General Body once every 2 years in accordance with the Rules, and the other 4 members consist of (a) One parent from each school elected by the Parent Teacher Association of the respective schools and (b) One teacher from each school elected by the teachers of the respective schools.

4. It is further stated that vide Circular dated 24.11.2004 issued by the Directorate of Education, Govt. of NCT of Delhi, it was mandated that the Governing Body members of the Society should not only be graduates, but also have some experience in the field of education. By subsequent Circular dated 16.08.2017, the earlier Circular was made applicable to the Management of all Aided Schools including the Raisina Bengali School.

5. In support of the prayers made in the aforesaid application under Order 39 Rules 1 and 2 CPC, it was highlighted that in the earlier elections



conducted in February, 2018 for the term 2018-2020, no appointment was made for four members for the term 2018-2020, which resulted in the filing of Civil Suit bearing No.104/2018 before the learned ADJ, Patiala House Courts, Delhi. While disposing of the said suit vide order dated 02.04.2019, elections held for the term 2018-2020 were reportedly declared null and void, as two of the elected members were found to be not even graduates and thus ineligible to contest the elections. Further, the Court had appointed an Administrator-cum-Observed, who in turn, was to appoint a Returning Officer, for conducting the elections of Respondent No.1/Society.

In RFA No.321/2019, the order dated 02.04.2019 was partially modified on 06.05.2019 to the extent that in case *Mr. Swapan Kumar Ganguly* and *Mr. Sasmal* filed their nominations for the elections, the issue with respect to their educational qualification and consequent eligibility to contest, was to be considered and decided by the Administrator-cum-Observed appointed.

6. Mr. Joydeep Mazumdar, learned counsel for the appellants, submits that by way of the aforesaid application, the appellants/plaintiffs are only concerned with the next elections, which are likely to take place in near future.

7. Mr. Ankur Raj, learned counsel for the respondents, while appearing on advance notice, has resisted the prayers made in the present appeal. He submits that the election schedule is yet to be announced and prayers made in the appeal, such as, to verify the identities of each and every voter prior to the elections, can be made before the designated officer/Returning Officer. He further submits that the appeal and the aforesaid prayer are premature, inasmuch as neither election schedules have been notified nor a Returning Officer has been appointed.

8. I have heard learned counsels for the parties and perused the material



placed on record.

NEUTRAL CITATION NO: 2022/DHC/001876

9. Having carefully gone through the submissions advanced by the learned counsels for the parties, this Court is inclined to agree with the submissions made by the learned counsel for the respondents that the appellants/plaintiffs would be at liberty to approach the designated officer/Returning Officer, as per the Rules that may be prescribed, to seek prayer(s) made herein for verification of the Voter list.

10. In view of the aforesaid, the present appeal is dismissed, along with the pending application.

(MANOJ KUMAR OHRI)
JUDGE

MAY 6, 2022/v