

08. 12.12.2023
bd. Ct.15

W.P.A. 24339 of 2023

Sujata Ghosh
-vs-
Union of India & Ors.

Mr. Rajdeep Bhattacharya
Mr. Debasarshi Brahma ... for the petitioner.

Mr. Sukanta Chakrabarty
Mr. Amit Kumar Chaturvedi
Ms. Anamika Pandey ... for the respondent no. 1

Mr. Tapas Mukherjee
Mr. Aftab Hossain ... for the respondent nos. 2 to 6.

Mr. Anirban Roy
Mr. Biswabrata Basu Mallick
Mr. Tamal Taru Panda ... for the State.

The subject matter of challenge in this writ petition is the notice dated 31st July, 2023 issued by the General Secretary (Membership Affairs) whereby for reconstituting the Executive Committee and Executive Council of the Indian Science Congress Association (hereinafter referred to as 'ISCA') election programme has been framed. Such notice dated 31st July, 2023 is questioned by a sole member of ISCA on the score that General Secretary (Membership Affairs) is not authorised to issue the said election notice dated 31st July, 2023 since the post of General Secretary (Membership Affairs) was created by the ISCA in the year 2010-2011 *de hors* the relevant provisions of section 8 and section 9 of the West Bengal Societies Registration Act, 1961. It has also been contended by the learned advocate representing the petitioner that in addition to General Secretary (Membership Affairs) General

Secretary (Scientific Activities) was also created *de hors* the relevant provisions of the said Act of 1961. In this regard attention of this Court has been drawn to Section 8 and section 9 of the said Act of 1961 in order to demonstrate before this Court that without previous permission of the Registrar of Societies such creation of posts as aforesaid is impermissible. Therefore, according to the petitioner, since election programme was notified by the General Secretary (Membership Affairs) vide notice dated 31st July, 2023 the same is not tenable and there is requirement to stall the election.

Mr. Chakraborty, learned advocate representing Union of India as well as Secretary, Department of Science and Technology being additional respondent submits that ISCA is a fully financed association under the control of Department of Science and Technology, Government of India. Therefore, such association is bound by the directives which are issued from time to time. It has also been submitted on behalf of Union of India that in the month of May, 2023 by-laws were made for ISCA but astonishingly ignoring adoption of such by-laws the ISCA is trying to reconstitute executive committee as well as executive council. Therefore, on behalf of Union of India it has been urged before this Court that immediate adoption of by-laws which was framed in the month of May, 2023 is necessary.

Learned advocate representing ISCA has submitted that election has already been started and it is about to be concluded on 15th December, 2023. It has also been submitted on behalf of ISCA

that a writ petition being WPA 16709 of 2023, inter alia, challenging framing of by-laws by the Department of Science and Technology for ISCA has been filed and order has been passed by a coordinate Bench on that writ petition on 18th August, 2023 directing the parties to exchange affidavits.

According to the ISCA, the issue relating to adoption of by-laws dated May, 2023 cannot be urged in this writ petition in view of pendency of the aforesaid writ petition.

Having considered the submissions made by the learned advocates representing the parties this Court finds that the plank of argument advanced on behalf of petitioner is infraction of section 8 and section 9 of the West Bengal Societies Registration Act, 1961, thereby creating two posts i.e., General Secretary (Membership Affairs) and General Secretary (Scientific Activities). However, it transpires from the submissions made by the parties that creation of posts as alleged on behalf of the petitioner was made in 2010-2011 whereas election notice has been issued on 31st July, 2023. If this Court assumes the contention of the petitioner that creation of aforesaid posts was made in violation of the relevant provisions of the statute the same was made in 2010-2011 and on the basis of these facts after 12 years the election notice dated 31st July, 2023 cannot be questioned. There is delay in presenting this writ petition questioning the authority of ISCA to create aforesaid posts whereas the Supreme Court in **Shiv Dass -vs- Union of India** reported in (2007) 9 SCC 274 has

succinctly decided that normally the writ petition is maintainable if the challenge is thrown within a period of three years from the date of accrual of cause of action.

It has also been submitted on behalf of ISCA that election is going to be completed by 15th December, 2023, therefore, this Court is not inclined to interfere with the election procedure which has been initiated pursuant to the notice dated 31st July, 2023.

Accordingly, the writ petition stands dismissed. There shall be no order as to costs.

Supplementary affidavit filed on behalf of petitioner is taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)