

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

+ **W.P.(C) 2961/2023 & CM APPLs. 11549/2023, 11550/2023**

Date of Decision: 15.03.2023

IN THE MATTER OF:

DEEPAK DWIVEDI
S/O SHRI HS DWIVEDI
R/O C -126, GROUND FLOOR,
DEFENCE COLONY
NEW DELHI-11

..... PETITIONER

Through: Mr. Abhishek Singh and Mr. Akshat
Choudhary, Advocates

Versus

FOREIGN CORRESPONDENTS CLUB OF SOUTH ASIA,
AB-19, MATHURA ROAD,
NEW DELHI
THROUGH ITS PRESIDENT

.... RESPONDENT NO.1

GOVERNMENT OF NCT OF DELHI
THROUGH ITS REGISTRARS OF SOCIETIES
NEW DELHI, DISTRICT,
JAMNAGAR HOUSE, NEW DELHI

..... RESPONDENT NO. 2

Through: Mr. Umesh Sharma, Advocate for
Respondent No. 1

Mr. Satyakam, ASC alongwith Ms. Pallavi Singh,
Advocate for respondent No. 2

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India seeking directions against respondent No. 2- Registrar under the Societies Registrar Act, 1860 (hereinafter referred to

as 'Act of 1860') to act on the complaint of the petitioner dated 03.03.2023 and to ensure physical voting either by way of raise of hands or by way of ballot.

2. Shri Abhishek Singh, learned counsel appearing on behalf of the petitioner submits that respondent No. 1-Society is incorporated under the provisions of the Act of 1860 and the certificate of registration has been granted by respondent No. 2 while approving the Memorandum of Association (in short 'MoA'). On 15.03.2021, the petitioner, who is one of the Members of the respondent No. 1-Society made a complaint to the Registrar to look into the alleged irregularities and to conduct a valid and proper election of respondent No. 1-Society. He submits that respondent No. 2-Registrar conducted proceedings and found that there is a dispute in the Society and accordingly it referred the parties to avail the remedies in accordance with Section 13 of the Act of 1860. He further submits that on 03.03.2023 the petitioner again made a complaint to the respondent No. 2-Registrar pointing out the sham process of holding fake elections is being conducted by the present incumbent, *i.e.*, one *Munish Gupta*, who is holding the post of President. According to him, there is a gross violation of bye-laws and the constitution of the Society. He, therefore, submits that appropriate directions are required to be issued to ensure that physical voting either by way of raise of hands or by way of ballot, as contemplated under Clause 8 of the MoA, during the Annual General Meeting to be held on 27.03.2023 under the supervision of respondent No. 2-Registrar is conducted. According to him, the aforesaid directions are necessary to restore the democratic process inside the Club *i.e.*, respondent No. 1-Society.



3. This court on the last date of hearing, called upon the learned counsel for the petitioner to satisfy this court as to how a dispute emanating from the bye-laws of a Society can be gone into in a summary jurisdiction of a writ court.

4. Learned counsel appearing on behalf of the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Jatya Pal Singh v. Union of India and Others***¹ and submits that the writ court in exercise of power under Article 226 of the Constitution of India can very well look into the aspects of a Society, which may strictly not be a 'State' but is discharging public function. According to the learned counsel, if the bye-laws of respondent No. 1-Society are perused, the same would indicate that respondent No. 1-Society is performing public functions. He has taken this court through bye law No. 3(ii) of the MoA to indicate that the respondent No. 1-Society provides a forum for discussion of various matters of professional concern which might affect its members, to establish at a fixed premises a club for their use, and international forum for establishing links of mutual benefits with members of other professions, governmental people foreign diplomats and others who might be invited from time to time to become associate members of the Society in accordance with the provisions therein. For the sake of clarity, bye-law No. 3 in its entirety is reproduced as under:-

“3) The aims and objects for which the society is established are:

i. To provide information and other facilities to accredited correspondents of the foreign press and radio broadcasters photographers of foreign publications news picture agencies and broadcasting companies who are assigned temporarily or permanently in South Asia whether of

¹ (2013) 6 SCC 452

Indian or any other nationality who supply information and material to media organisations based around the various countries of the world (hereinafter referred to as the “Foreign Correspondents”.

ii. *To provide a forum for discussions of various matters of professional concern which might affect its members to establish at a fixed premises a club for their use which should become an international forum for establishing links of mutual benefits with members of other professions governmental people foreign diplomats and other who might be invited from time to time to become Associate Members of the Society in accordance with the Provisions herein.*

iii. *To work in cooperation with journalistic organisations in India for the advancement of common aims and to help inform members about the current affairs around the world generally.*

iv. *To organize social meetings amongst the members as well as between other persons of prominence and the members of the society generally.*

v. *To undertake, organize and facilitate conferences seminars lectures or research in matter relating to different problem of national and international interest.*

vi. *To promote the study of question relating to the development of India so as to develop a body of informed opinion on national affairs of the country through the study research discussions, Seminars conferences public meetings exchange of ideas and information etc. with other persons and bodies throughout and abroad interested in or engaged in similar activities.*

vii. *In general to undertake do or get done all or any such other acts deeds or things from time to time as shall be deemed necessary for incidental or conducive to the promotion of any of the ideas or attainment of any of the objects of the Society”.*

5. Learned counsel appearing on behalf of the petitioner, therefore, submits that if the entire matter is examined in right perspective in the

context of the relief claimed herein, the same would indicate that the purpose of the petitioner is to ensure that the election of respondent No. 1-Society be conducted in a fair and transparent manner, so as to inspire confidence in its members in that the democratic process shall continue to be maintained. He, therefore, submits that if any direction is issued by this court or by the Registrar to ensure that there is a strict compliance of the MoA, the same would not, in any manner, be said to be beyond the powers under Article 226 of the Constitution of India. He, therefore, submits that simple directions to respondent No. 2 to take appropriate action on complaint dated 03.03.2023 can very well be issued by this court.

6. Shri Umesh Sharma, learned counsel appearing on behalf of respondent No. 1-Society and Shri Satyakam, learned ASC appearing on behalf of respondent No. 2-Registrar opposed the submissions made by learned counsel for the petitioner. They submit that notwithstanding the fact that one or some of the functions of respondent No. 1-Society are in the nature of public functions, yet the writ petition emanating from an election dispute would not be maintainable before this court. They further submit that the decision relied upon by learned counsel for the petitioner, in the instant case, would have no relevance rather the decision in the case of *Lt. Governor of Delhi v. V.K. Sodhi & Ors.*² and another decision of this court in the case of *Indian Veterinary Association (Regd) v. GNCTD*³ will have direct application under the facts of the present case. They, therefore, submit that the instant petition at the instance of one of the Members of respondent No. 1-Society,

² (2007) 15 SCC 136

³ 2021 SCC OnLine Del 5282

which admittedly is a Society registered under the Act of 1860 is not maintainable.

7. I have heard learned counsel appearing on behalf of the parties and perused the record.

8. This court in the case of ***P. Padmanabha Rao v. Union of India and Ors.*** in W.P.(C) 13570/2022, dated 07.03.2023, while dealing with the controversy with respect to one of the Societies registered under the Societies Registration Act i.e. Institute of Electronics and Telecommunication Engineers has considered the aspect of maintainability of the writ petition emanating from election dispute. Various decisions of the Hon'ble Supreme Court and of this court have been taken into consideration including the applicable bye laws therein. The reliance in the case of ***P. Padmanabha Rao (supra)*** was also placed on a decision of the Hon'ble Division Bench of this court in the case of ***Dr. Jitarani Udgata v. Union of India and Anr.***⁴, wherein this court declined to entertain a writ petition with respect to the election of the Gem and Jewellery Export Promotional Council (GJEPC) and it was held that the writ petition emanating from election dispute of the said society was not maintainable.

9. This court in paragraph No. 21 has held that the status of the Society therein i.e. IETE was not of a 'Government Company' or 'Public Sector undertaking'. It was found that the same was neither created by the 'State' for carrying on its activities nor the Society concerned was governed by any statute for the purpose of administering its functioning. This court takes note of the fact that a private body having no statutory power and not supported by a State Act can still discharge a public duty

⁴ 2022 SCC OnLine Del 3449

to maintain high professional standards or to set up a unique example in the society but that itself is not sufficient to bring it within the folds of the expression 'State' under Article 12 of the Constitution of India. Paragraph Nos. 21 & 22 of ***P. Padmanabha Rao (supra)*** are reproduced as under:-

“21. The status of the respondent No.3-IETE as has been seen, is not of a ‘Government Company’ or ‘public sector undertaking’. The same is not created by the ‘State’ for carrying on its activities. It is not governed by any statute for the purposes of administering its functioning. It is thus a private body having no statutory power and is not supported by a State Act. A private organisation can also discharge a public duty to maintain high professional standards or to set up unique example in the society but that itself is not sufficient to bring it within the folds of the expression ‘State’ under Article 12 of the Constitution of India.

22. It is thus held that respondent No. 3-IETE does not fall within the ambit of ‘State’ or ‘other authorities’ under Article 12 of the Constitution of India and, therefore, no writ petition would be maintainable against the respondent No. 3”.

10. The requirement of maintainability can not be fulfilled by a mere statutory requirement of registration under the act of 1860, or that the said act mandates the approval of MoA of respondent No 1, society, what is required is a constant, consistent and dominant statutory regulatory framework which governs the society. In the present case, the provisions, the violations of which is alleged are rooted not in statutory law, but to the contrary, find their force in the provisions of the MoA.

11. Even the decisions relied upon by learned counsel appearing on behalf of the respondents in the cases of ***Lt. Governor of Delhi (supra)*** and ***Indian Veterinary Association (Regd) (supra)*** affirm the said proposition and it has been held in the case of ***Lt. Governor of Delhi***

(*supra*) that in the matter of education, the interests of the society at large should prevail and the issuance of any direction that may endanger interests of the public at large must be attempted with extreme caution and only after careful deliberation. It has been held that SCERT is neither a State nor other authority within the meaning of Article 12 of the Constitution of India and normally not amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India. The dispute in that case was with respect to some of the terms and conditions of the employment. In the case of ***Indian Veterinary Association (Regd)*** (*supra*), this court has held that once the Act provides a procedure for dissolution of the Society registered under the Act, it is only that procedure which can be invoked, and no other procedure can be adopted. It has been held that if a thing is prescribed to be done in a particular way, it can be done in that way only and by no other way. The reliance in the said case was placed on various earlier decisions of the Hon'ble Supreme Court and of this court.

12. If the facts and situation in the instant case is examined, the same would clearly indicate that under Section 13 of the Act of 1860, the Registrar is not obligated to decide the dispute with respect to the grievance raised by the petitioner in his application dated 03.03.2023. The election of the respondent No. 1-Society will have to be conducted strictly in accordance with the MoA. If there is any breach of the terms of the MoA, the remedy that would lie to the aggrieved person is to take appropriate recourse in accordance with law before appropriate forum but in no case such a dispute can be agitated before a writ court under Article 226 of the Constitution of India.

13. As far as the decision relied upon by learned counsel for the petitioner in the case of *Jatya Pal Singh (supra)* is concerned, there is no dispute with respect to the principle of law laid down therein. Paragraph Nos. 48 to 52 of the said decision are reproduced as under:-

“48. Dr K.S. Chauhan had also relied on the United Kingdom Human Rights Act, 1998 (Meaning of Public Function) Bill which sets out the factors to be taken into account in determining whether a particular function is a public function for the purpose of sub-section (3)(b) of Section 6 of the aforesaid Act. Section 1 enumerates the following factors which may be taken into account for determining the question as to whether a function is a function of public nature:

“1. (a) the extent to which the State has assumed responsibility for the function in question;

(b) the role and responsibility of the State in relation to the subject-matter in question;

(c) the nature and extent of the public interest in the function in question;

(d) the nature and extent of any statutory power or duty in relation to the function in question;

(e) the extent to which the State, directly or indirectly, regulates, supervises or inspects the performance of the function in question;

(f) the extent to which the State makes payment for the function in question;

(g) whether the function involves or may involve the use of statutory coercive powers;

(h) the extent of the risk that improper performance of the function might violate an individual's convention right.”

49. In our opinion, the functions performed by VSNL/TCL examined on the touchstone of the aforesaid factors cannot be declared to be the performance of a public function. The State

has divested its control by transferring the functions performed by OCS prior to 1986 on VSNL/TCL.

50. Dr Chauhan had also relied on Binny Ltd. wherein this Court reiterated the observations made by this Court in Dwarka Nath v. ITO. It was observed that: (Binny Ltd. case)

“11. ... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

51. This Court also quoted with approval Commentary on Judicial Review of Administrative Action (5th Edn.) by de Smith, Woolf and Jowell. In Chapter 3 Para 0.24 therein it has been stated as follows: (Binny Ltd. case)

“A body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.

Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to ‘recognise the realities of executive power’ and not allow ‘their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted’. Non-governmental bodies such as these are just as capable of abusing their powers as is Government.”

52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function,

the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so.”

14. If the principles of law laid down in the said decision are applied in the present case, the fact would show that the respondent No. 1-Society is purely a Society registered under the Act of 1860. The dispute raised in the instant petition admittedly relates to conduct of election and alleged violation of the conditions in the MoA. The Hon'ble Supreme Court in the case of **Jatya Pal Singh (supra)** was considering the controversy with respect to V.S.N.L. which was the successor Public Sector Undertaking of Overseas Communication Service and was initially formed under the Department of Indian Radio and Telecommunication Company Limited.

15. Under the facts of the present case, the said decision would not have any assistance to the case of the petitioner.

16. In view of the aforesaid, this court finds that the petition emanating from dispute relating to conduct of election of respondent No. 1-Society is not maintainable before this court as respondent No. 1-Society is neither a 'State' nor an 'other authority' and also is not otherwise amenable to the writ jurisdiction.

17. The petition is, accordingly dismissed alongwith pending applications.

18. Needless to state that if in case the petitioner avails any alternative remedy, any expression made by this court will not be treated to be an expression on the merits of the case.

19. At this stage, learned counsel appearing on behalf of the petitioner submits that since the elections are to be held on 27.03.2023, therefore,

directions for expeditious hearing of the matter in case the petitioner approaches any other authority, be issued.

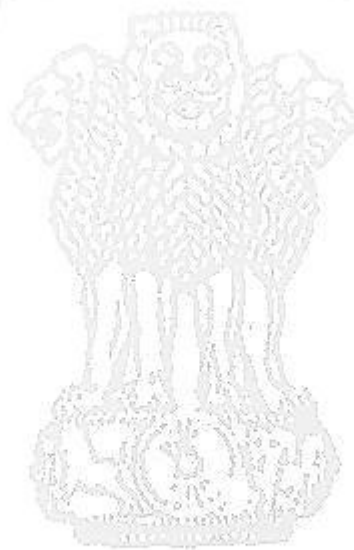
20. Needless to state that if any request for expeditious hearing is made by the petitioner, there is no doubt that the same would not be considered by the concerned court in accordance with law.

21. *Dasti.*

PURUSHAINDRA KUMAR KAURAV, J

MARCH 15, 2023

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