

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3495/2023, CM APPL. 13532/2023, CM APPL. 19143/2023**

Date of Decision: **27.04.2023**

IN THE MATTER OF:

DR SARAVANA KODANDAPANI

S/O KODANDAPANI,
AGED ABOUT 50 YEARS,
ADDRESS:- 404, 4th CROSS,
1ST PHASE, IDEAL HOMES TOWNSHIP,
NEAR SHUBASH BHAVAN,
RAJARAJESWARI NAGAR,
BANGALORE SOUTH,
BANGALORE,
RAJARAJESWARINAGAR,
KARNATAKA, 560098

..... PETITIONER NO. 1

DR. LADI JEEVAN SITARAM,
FLAT NO.801/802, SHANGANGA
BUILDING, SALISBURYNPUR, WANWARI
BAZAAR, P & T COLONY, CAMP, PUNE,
MAHARASHTRA 411001

..... PETITIONER NO. 2

Through: Mr. C. Kranthi Kumar, Mr. Sabarish
Saubramanian and Mr. Vishnu,
Advocates.

versus

THE ALL INDIA OPHTHALMOLOGICAL SOCIETY
REPRESENTED THROUGH ITS PRESIDENT,
AIOS HEADQUARTER,
8A, KAKARDOOMA INSTITUTIONAL AREA,
NEAR DEEPAK MEMORIAL HOSPITAL,
KAKARDOOMA,
DELHI-110092.



..... RESPONDENT NO.1**THE ELECTION COMMISSION 2023**

THE ALL INDIA OPHTHALMOLOGICAL SOCIETY,
 AIOS HEADQUARTER,
 8A, KAKARDOOMA INSTITUTIONAL AREA,
 NEAR DEEPAK MEMORIAL HOSPITAL,
 KAKARDOOMA,
 DELHI-110092.

..... RESPONDENT NO.2

Through: Ms.Priya Hingorani, Senior Advocate with
 Mr.Arjun Krishnan, Mr.Abhijeet Singh and
 Mr.Himanshu Yadav, Advocates.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The petitioners, *vide* the instant petition under Article 226 of the Constitution of India pray for the following reliefs:-

“a. issue a Writ of Mandamus or any other appropriate writ, direction or order in the nature of a Writ, declaring the effect of the word ‘WILL’ found in the Article VIII of the bylaws of the society which mandated the linking of the contestants for the offices of Honorary General Secretary/Treasurer as ultra vires the Memorandum and Rules and Regulations of AIOS particularly Rule-16(B) and/or;

b. issue a Writ of Mandamus or any other appropriate writ, direction or order in the nature of a Writ quashing the Notification dated 11th November, 2022, the subsequent finalized list of contestants dated 11th January, 2023 and the Notification dated 15th March, 2023 announcing the dates of polling for the General Elections 2023 issued by the Respondents as illegal, arbitrary and ultra-vires the Rule-16(B) and other provisions of the constitution of Respondent AIOS and/or the objects of the Respondent Society AIOS and/or the Article-14 ,19 of the Constitution of India and/or;

c. issue a Writ of Mandamus or any other appropriate writ, direction or order in the nature of a Writ, to direct the Respondents

to dissolve the current Election Commission and appoint neutral administrators and direct them to reconstitute a new neutral and unbiased Election commission with instructions to it for accommodating the eligible candidates who contest for the posts of Secretary and Treasurer individually and independently and/or;

d. issue a Writ of Mandamus or any other appropriate writ, direction or order in the nature of a Writ, to suspend the current respondents & appoint neutral administrators such as retired judges or retired IAS officers for interim management of the society till external audit is completed and action taken report is submitted to the court & to direct the court appointed administrators to form various committees to organize and supervise the welfare measures of the members, to appoint neutral external auditor to inspect into the accounts of the society and submit the detailed reports including the balance sheet/ trial balance and books of accounts before the annual general body meeting and to direct the court appointed administrators to conduct elections in a free, fair, transparent and honest manner with all safeguards and implementation of model code of conduct for candidates and past and present office bearers after completion of the external audit and submission of the action taken report to the court.”

2. The facts of the instant case would show that respondent no.1-The All India Ophthalmological Society (hereinafter referred to as ‘the Society’) is a Society established under the Societies Registration Act, 1860 (hereinafter referred to as the ‘Act of 1860’).

3. The petitioners claim to be the members of respondent no.1- Society. The administration of the Society including the election process is governed by the, (i) Memorandum of the Society, (ii) Rules and Regulations and (iii) Bye-Laws; applicable to it. The petitioners are aggrieved by the election notification dated 11.11.2022, subsequent notifications dated 11.01.2023 and 15.03.2023 for the General Elections, 2023 of office bearers. According to the petitioners, the elections being held, are contrary to the applicable Memorandum and Rules and Regulations of the Society. The petitioners submit that under Article VIII of the Bye-Laws of the Society, the word

‘WILL’ should be declared as *ultra-vires* to the Memorandum and applicable Rules and Regulations of the Society. In particular, the petitioners seek to challenge the validity of Article VIII (i) of the applicable Bye-Laws as the mandated linking through the use of the word ‘will’ is violative of Rule-16(B) of the Rules and Regulations of the respondent no.1-Society. It is submitted that in case of any inconsistency between the Bye-Laws and the Rules and Regulations of the Society, the latter has to prevail as per the Preamble to the Bye-Laws.

4. Learned counsel appearing on behalf of the petitioners states that the meaning of ‘Authority’ under Article 226 of the Constitution of India is much wider than the scope of Article 32 of the Constitution of India and this court under Article 226 of the Constitution of India can issue a writ to any person or authority for enforcement of the right conferred by Part III of the Constitution of India or for any other purpose. He further states, while placing reliance on various decisions of the Hon’ble Supreme Court and different High Courts, that notwithstanding the fact that the respondent no.1-Society is a society registered under the Act of 1860, this court can still entertain a writ petition if it is satisfied that the respondents are conducting elections of the Society in violation of the applicable Rules and Regulations of the Society.

5. He also states that respondent no.1-Society is performing public functions and the respondents have failed to carry out the duties imposed on them by the statute and by the Constitution of respondent no.1-Society. Hence, they are amenable to the jurisdiction of this court under Article 226 of the Constitution of India.

6. He explains the public functions while placing reliance on a decision

of the Hon'ble Supreme Court juxtaposed to the Bye-Laws of respondent no.1-Society to indicate that if the aims and objects of respondent no.1-Society are perused, the same would clearly indicate that the respondent no.1-Society is discharging public functions. He further states that even a mandamus can be issued against a private person or body depending on the duties imposed on them by the statute or by charter, common law, custom or contract, even though they are not public officials or a statutory body. Various instances have been indicated by him where the courts interfered in the election of the office of the Society. He also submits that there is no alternate or efficacious remedy and also for the reason that the *vires* of the legislation governing the conduct of the election is under challenge, therefore, the aforesaid challenge cannot be adjudicated by any other forum.

7. Learned counsel appearing on behalf of the petitioners places reliance on various decisions to supplement his stand, such as *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*¹, *Board of Control for Cricket in India v. Cricket Association of Bihar*², *Praga Tools Corpn. v. C.A. Imanuel*³, *Binny Ltd. v. V. Sadasivan*⁴, *Shiv Kumar Akela v. Registrar, Societies Firms and Chits*⁵, *P.K. Dash, Advocate & Ors. v. Bar Council of Delhi & Ors.*⁶, *Amol Shrivastava & Anr v. Bar Council of India & Ors.*⁷ *Dr. G. Krishnamurthy v. The President, Madras High Court Advocates*

¹(1989) 2 SCC 691

²(2015) 3 SCC 251

³(1969) 1 SCC 585

⁴(2005) 6 SCC 657

⁵2005 SCC OnLine All 566

⁶2016 SCC OnLine Del 3493

⁷2018 SCC OnLine MP 112



Association,⁸ *Chandrakant v. Respondent: Karnataka State Bar Council and Ors.*,⁹ *Shri Sai Sewa Dal v. Union of India*,¹⁰ *Saroj Devi v. Union of India (UOI) and Ors.*,¹¹ *Ramesh Ahluwalia v State of Punjab*,¹² *The Kerala Roller Skating Association v. Ernakulam District Roller Skating Association*¹³, *Bar Council of India v. Surjeet Singh*¹⁴, *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra*¹⁵, *Pundlik v. State of Maharashtra*,¹⁶ *East Bengal Club v. Paltu Mukherjee & Ors.*¹⁷, *T. Gattaiah v. Commissioner of Labour*,¹⁸ *Jiby P. Chacko v. Principal, Medici School of Nursing, Ghanpur, Ranga Reddy District and Ors.*¹⁹, *Ramdeo Baba Kamala Nehru Engg. College v. Sanjay Kumar*,²⁰ *Gopal Y. Unkal v. Karnataka Vidya Vardhaka Sangha, Dharwad and Anr.*²¹ and *Chandrakant Mahadev Patole v. State of Maharashtra and Ors.*²²

8. I have heard learned counsel appearing on behalf of the petitioners and perused the record.

9. The fundamental question that arises for consideration before this court is whether a writ petition relating to the challenge of the Bye-Laws of a Society can be entertained in exercise of power under Article 226 of the Constitution of India.

⁸ 2001 SCC OnLine Mad 352

⁹ MANU/KA/4411/2020

¹⁰ 2006 SCC OnLine Del 1178

¹¹ MANU/DE/1851/2008.

¹² 2012 12 SCC 331

¹³ MANU/KE/2193/2014

¹⁴ (1980) 4 SCC 211

¹⁵ (2004) 1 SCC 133

¹⁶ (2005) 7 SCC 181

¹⁷ 2010 SCC OnLine Cal 2377

¹⁸ 1981 SCC OnLine AP 25

¹⁹ MANU/AP/0290/2002

²⁰ (2002) 10 SCC 487

²¹ 2018 SCC OnLine Kar 4192

²² 2009 SCC Online Bom 2486

10. Clause 3 of the Memorandum of Society prescribes for the aims and objects of the Society, which reads as under:-

***“3. Aims and Objects :** The objects of the Society shall be the cultivation and promotion of the study and practice of ophthalmic sciences, research and man power development with a view to render service to the community and to promote social contacts among ophthalmologists by :*

- 1) Organising conferences, symposia, seminars, workshops, refresher courses, etc. for promotion and mutual exchange of knowledge.*
- 2) Promoting clinical, experimental, community and operational research in ophthalmology.*
- 3) Instituting awards, Orations, Prizes, Fellowships, Studentships, and Research grants.*
- 4) Promoting, teaching, training and continuing education in ophthalmology by establishing and maintaining reference library, publishing journals and proceedings of the Society and other such materials.*
- 5) Organising exhibitions of machinery, implements, tools, appliances etc., pertaining to ophthalmology with a view to encourage and improve the manufacture of such instruments and appliances in India, and also to promote and advise quality control in the manufacture of the aforesaid instruments and appliances.*
- 6) Encouraging formation and affiliation of State Ophthalmological Societies.*
- 7) Co-operating with other Medical Societies/Associations.*
- 8) Promotion of social contact and creation of goodwill amongst the Ophthalmologists.*
- 9) Ensuring ethical practice, and professional conduct of its members as laid down by the society from time to time.*
- 10) Advising on legislation affecting ophthalmic practice and science of ophthalmology.*
- 11) Maintaining liaison with the Central Government, State Governments and various appropriate Bodies regarding matters concerning teaching*

and practice of Ophthalmology and rationalisation of ophthalmic fitness and standards for various jobs.

12) Raising finances through subscriptions, contributions, donations from members and non-members and creating Special Funds to run the activities of the Society.

13) Develop Academic and Scientific Research Fund.

14) Acquiring and disposing movable and immovable property and assets by purchasing, constructing, altering, maintaining, selling or mortgaging properties that may be necessary for the aforesaid objectives.

15) Framing bye-laws, rules and regulations and to amend, add, alter or delete the same as and when necessary.

16) Undertake health education to prevent visual impairment and control blindness.

17) Doing all such other things as may be incidental to or conducive to the attainment of the aims and objectives of the Society.

18) All the acts/activities/programs shall be Non Profitable and shall be done on 'No Profit-No Loss' basis.

19) Society will invest its money/funds according to the Sec. 11(5) of the I.T. Act, 1961.

20) All the incomes, earnings, movable/or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objects only as set forth in the Memorandum of the society and no profit thereof shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or the past members of the society or to any person claiming through any one or more of the present or the past members. No member of the society shall have any personal claim on any movable or immovable properties of the society or make any profits, whatsoever, by virtue of this membership."

11. In addition to the Memorandum of Society, there are certain Rules and Regulations which are the guidelines for all administrative purposes and functions of AIOS.

12. Rule 2 of the said Rules and Regulations of the Society prescribes rules *qua* the membership and types of membership, which stipulates that the regular membership of the Society is to be decided by General Body Meeting from time to time, however, the same is open to any medical practitioner holding allopathic qualification recognized under Schedule I or III of the Indian Medical Council Act, 1956 and the person concerned is interested in the science and art of Ophthalmology, but subject to the approval of the General Body of the Society. The General Body also has the power to expel/terminate a member from the Society,

13. As per Rule 11, the management and administration of all affairs of the Society is vested in the Managing Committee, which is also elected by the General Body. Various office bearers constitute the Managing Committee such as President, President Elect, Vice President, General Secretary, Treasurer and Executive Members.

14. Rule 15 provides for the election of its members subject to the procedure laid down in Article VIII of the Bye Laws.

15. The Bye-Laws are stated to have been framed under Section 9 of the Act of 1860 and under Clause 3(15) of the Memorandum of Society. The relevant extract of Article VIII of the Bye-Laws, which deals with the election procedure, reads as under:-

“Article VIII. Election Procedures

a) In pursuance of Article 15(2) of the Rules & Regulations of the Society the Election of the following Office Bearers will be held at the time of the Meeting of the General Body for a period of 3 years or at the end of the 3rd Annual Conference whichever is longer, at the end of which period they will be eligible for reelection for not more than one more term:

i) Hony. General Secretary

- ii) *Hony. Joint Secretary*
- iii) *Hony. Treasurer*
- iv) *Hony. Joint Treasurer*
- v) *Editor of the Indian Journal of Ophthalmology*
- vi) *Editor of the Proceedings of the Society*
- vii) *Chairman, Scientific Committee*
- viii) *Chairman, Academic & Research Committee*
- ix) *Seven(7) Members of the Scientific Committee*
- x) *Five (5) Members of the Academic & Research Committee i.e. one member from each of the Zones viz. North, South, East, West & Central Zones.*

b) The Election will be held online and through EVM at the Venue as per sub Article (q) below.

c) The commencement of the Conference referred to in article 15(4) of the Rules & Regulations of the Society will mean the inauguration of the Conference i.e. the President-Elect of the Previous year will become President from the inaugural ceremony of the Conference and will continue in office till he/she hands over charge at the inaugural ceremony of the next conference.

d) The Hony. General Secretary shall invite nominations for posts for Election six months before the conference date along with preliminary notice of the conference. The proposals must be received on or before a date specified by him.

e) For posts of Nominated members of the Managing Committee representing each State, names of members elected/nominated at their respective State Society should be received through affiliated branches wherever they exist. In case nominations are not received by the due date a reminder may be sent by Hony. General Secretary to the Societies to send the nominations at least one month before the conference.

f) Only ratified members and ratified eligible overseas members will be allowed to vote (see Note below Article 1(a)). Hony. Treasurer will, therefore, keep ready an up- to-date list of such members during the election period.

g) As per article 16(c) of the Rules & Regulations one member can contest only for one Office Bearer post. He may, however also contest for other posts of Members of Committee.

h) No member, already holding an elected position may contest for another elected position during his tenure(except in the last year of his tenure) unless he/she first resigns from the present position before filing his nomination for election to another post.

i) Hony. General Secretary and Hony. Treasurer will be from the same city/town. The candidate for Hony. General Secretary / Hony. Treasurer will have to select their running mate from the same city/town. Both will file their Nominations together as a team. They will also fight Election together as a team. The names of both the candidates i.e. Hony. General Secretary and Hony.Treasurer will be printed together against one box in the Ballot Paper and voters will have an option to cast only one vote for one team.

j) The President will constitute an Election Commission consisting of 3 Members from amongst the Past Presidents with one of them as Chief Election Officer who will also be the Returning Officer. Other Members of the Commission will be known as Election officers. An aggrieved candidate may represent within 15 days of the declaration of the results, to the Appellate Election Commission. This Commission will consist of Four Members, in addition to the President, to be announced by the President each year in April. The representation will be considered by this Appellate Commission, within 15 days, and the decision of the said Commission shall be final, binding and irrevocable.

k) In case of a tie, the casting vote of the President (in addition to his regular vote) of the meeting will decide the result.

16. The specific Clause (i) of Article VIII of the Bye-Laws requires that the Honorary General Secretary and Honorary Treasurer will be from the same city/town and is one of the aspects under challenge in the instant writ petition and the same is claimed to be in violation of Rule 16(B) of the Rules and Regulations.

17. Rule 16(B) of the Rules and Regulations, which prescribes the eligibility for various offices, reads as under:-

B) Honorary General Secretary & Honorary Treasurer :

a) Hon. General Secretary and Hon. Treasurer should be from the same city/town.

- b) Must have been a member of good standing of the Society for 10 years.
- c) Must have been a member of the Managing Committee for atleast one term and attended at least two meetings of the Managing Committee.
- d) Should have actively participated in the scientific/ organisational activities of the society.

18. The Hon'ble Division Bench of this court in the case of ***S.D. Siddiqui v. University Of Delhi***²³, while considering the aspect in relation to the election of the Delhi University Teachers Association has considered various earlier pronouncements of the Hon'ble Supreme Court and in paragraph nos. 29 and 30, it has been held that assuming that the function of the Board of Delhi University Teachers Association does amount to discharging a public duty or carrying out public functions, the question which requires to be considered is whether the same would be sufficient to hold the Board to be a 'State' for the purpose of Article 12 of the Constitution of India.

19. The Hon'ble Division Bench of this court, in unequivocal terms, has held that when the actions of the Board are not the actions as an authorized representative of the State, the answer should be in the negative. Paragraph nos. 29 and 30 of the said decision are reproduced as under:-

"29. In view of the above discussion, we are clearly of the opinion that the DUTA is not a State or an instrumentality of the State under Article 12 of the Constitution of India and it does not also perform any public functions. It is a purely private body working for the welfare of teachers of the University and affiliated colleges. There is no deep or pervasive control of the State over it. There is no averment that it is largely financed by the State. Hence, in our opinion, no writ lies against DUTA.

30. Apart from the above, we are further of the opinion that if one wishes to challenge an election, he should file an election petition, if that is provided under the relevant statute or rules, and if there is no such provision in any statute or rule for election petition, then one has to file a civil suit for this purpose and not a writ petition."

20. What has been observed therein is that if the petitioners wish to

²³2005 SCC OnLine Del 1226

challenge the election, they should file an election petition if that is provided under the relevant statute or rules and if there is no such provision in any statute or rules providing for an election petition, then one has to file a civil suit for the aforesaid purpose and not a writ petition.

21. This court in its decision dated 07.03.2023 in the case of ***P. Padmanabha Rao v. Union of India and Ors.***²⁴, while considering the challenge to the election process of the Governing Council of the Institute of Electronics and Telecommunication Engineers has held that in order to be considered a ‘State’ under Article 12 of the Constitution of India, the authority in question should be under the control of the Government. The ambit of ‘other authorities’ under Article 12 of the Constitution is well settled which undoubtedly includes the private institutions and societies which perform public functions. However, under the facts of that case, it was found that the Society in question was not under the pervasive control of the State and, therefore, while placing reliance on the decision of the Hon’ble Division Bench in the case of ***Dr. Jitarani Udgata v. Union of India and Anr.***²⁵, it was held that the Society was not a ‘Government Company’ or a ‘Public Sector Undertaking’ and since the same was also not created by the State for carrying on any activity of the State, therefore, in absence of the same being governed by any statute for the purpose of administering its functioning, the writ petition was held to be not maintainable.

22. Paragraph nos.21 to 24 of the case 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

²⁴ 2023/DHC/001770

²⁵ 2022 SCC OnLine Del 3449

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.

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

24. Needless to state that the petitioner is at liberty to avail any other alternate remedy, in accordance with law. Nothing expressed in the instant order would be construed to be an expression on the merits of the case."

23. A similar view has been taken in the case of **Deepak Dwivedi vs. Foreign Correspondents Club of South Asia**²⁶ vide order dated 15.03.2023, where, the directions were sought against the Government to decide a representation with respect to an election dispute of the Foreign Correspondents Club of South Asia. While placing reliance on various decisions, it was held that when the dispute relates to conduct of elections and violation of the conditions in the Memorandum of Association, a writ petition under Article 226 of the Constitution of India would not be the appropriate remedy.

24. In the present case, it is seen that the election process does not have any Government influence nor is the Society answerable to the Government for any of its functions. Rule 20 of the Rules and Regulations lays down the sources of income of the Society; a majority of which is derived from the

²⁶ 2023:DHC:1958

admission and subscription fee of the members, in addition to funds received from conferences, exhibitions etc. Hence, there is no material to show any Government control over the functioning of the Society, whether financial or administrative.

25. It is also seen that the Society does not carry out any State function nor is it associated with any government body. It only works to promote and endorse the field of Ophthalmology. It does not carry out any policy decisions or perform any function as an instrumentality of the State, hence cannot be said to fall within the ambit of 'State' or 'other authorities' under Article 12 of the Constitution of India.

26. What has been argued by the learned counsel appearing on behalf of the petitioners is that the *vires* of the Bye-Laws is under challenge, therefore, the same cannot be examined by any other court. The said argument is not acceptable for the simple reason that the Bye-Laws of respondent No.1-Society are not statutory in nature. There is no reason to believe that if any challenge to the Bye-Laws in question is laid before the appropriate court, the same would not be decided in accordance with law.

27. It is also to be noted that the petitioners have relied upon a plethora of decisions which indicate the nature of public function that falls under the scope and ambit of power under Article 226 of the Constitution of India which can be exercised by the High Court but in none of the cases, a dispute with respect to the election of a society *per se* is considered.

28. So far as the decisions with respect to the Bar Councils/Associations are concerned, the courts have dealt with those aspects keeping in mind the occupation of advocacy, specifically, which has been held to involve the element of public function and various attendant circumstances, such as, the

applicability of the provisions of the Advocates Act, 1961 and other statutory provisions. In no case, the dispute *simpliciter* with respect to the election of a society is decided by the High Court directly under Article 226 of the Constitution of India.

29. In view of the aforesaid, this court does not find any substance to entertain the instant petition. The same is accordingly dismissed alongwith the pending applications.

30. Needless to state that nothing stated hereinabove shall amount to any expression on the merits or demerits of the case.

31. The petitioners are at liberty to take recourse to the appropriate remedy, in accordance with law.

PURUSHAINDRA KUMAR KAURAV, J

APRIL 27, 2023

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