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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 14692/2021 and CM APPLs. 46261/2021, 5213/2022, 28908/2022**

Date of Decision: **25.04.2023**

IN THE MATTER OF:

SAJAL MITRA

S/O LATE SH. BISWANATH MITRA
R/O 410 I, ASHOKA ENCLAVE, GH SOCIETY,
PLOT 8A, SECTOR-11, DWARKA
NEW DELHI-110075

..... PETITIONER NO. 1

SHRI G.P. KUMAWAT

S/O SH. D.L. KUMAWAT
R/O 167, RAIL VIHAR, SECTOR 33,
NOIDA, U.P.

..... PETITIONER NO. 2

(Through: *Mr. Vijay Joshi, Mr. Gurjas Singh Narula and Mr. Shubham Chaturvedi, Advocates.*)

Versus

THE INSTITUTION OF ENGINEERS (INDIA)

DELHI STATE CENTRE
(THROUGH ITS CHAIRMAN)
ENGINEERS BHAWAN
2, BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002

..... RESPONDENT NO. 1

THE INSTITUTION OF ENGINEERS (INDIA)

(THROUGH SECRETARY AND DIRECTOR GENERAL)
8, GOKHALE ROAD
KOLKATA- 700020

..... RESPONDENT NO. 2

THE INSTITUTION OF ENGINEERS (INDIA)
 (THROUGH ITS PRESIDENT)
 8, GOKHALE ROAD
 KOLKATA- 700020

..... RESPONDENT NO. 3

DEVENDRA GILL
 S/O SWARAN SINGH
 R/O 78, GOLDEN JUBILEE APARTMENTS, DDA SFS FLATS
 ROHINI, SECTOR-11, DELHI-110085

..... RESPONDENT NO. 4

PRAMOD KUMAR
 S/O PITAM CHAND
 R/O A-10, BLOCK-A, GALI NO. 5, SHASHI GARDEN,
 MAYUR VIHAR PHASE-1, DELHI-110091

..... RESPONDENT NO. 5

KULDEEP SINGH
 S/O NIRANJAN SINGH
 R/O B-7, DMRC OFFICERS QUARTER.
 CIVIL LINES, DELHI- 110054

..... RESPONDENT NO. 6

RAMAKANT UPADHAYAY
 S/O HRIDAYA NARAIN UPADHYAYA
 R/O TYPE-4/14, SLBSNS UNIVERSITY CAMPUS.
 B-4 QUTAB INSTITUTIONAL AREA.
 HAUZ KHAS, DELHI -110016

..... RESPONDENT NO. 7

SAURABH PRATAP SINGH
 S/O S K SINGH
 R/O TYPE-5, FLAT NO.29, DELHI TECHNOLOGICAL UNIVERSITY.
 BAWANA ROAD, TEHRI DAULAT PUR, SAMAI PUR,
 NARELA, DELHI- 110042

..... RESPONDENT NO. 8

(Through: *Mr. R. S. Bains, Senior Advocate with Mr. Ashok Kumar, Advocate for R-1 to 3.*
Mr. Pragyan Pradip Sharma, Mr. Anoop George and Mr. Aditya Singhania, Advocates for R-4 to 8.)

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioners have filed this petition under Article 226 of the Constitution of India seeking *inter alia* directions to restrain the respondents from declaring the election result of the Delhi State Council and the Delhi State Committee of the respondent no. 1 without conducting a re-assessment by the cyber crime team. The relief claimed is reproduced as under:

- “a) Restrain the Respondents from declaring the election result of Delhi State Council and Delhi State Committee without conducting the reassessment by the cybercrime team and maintain status quo till the disposal of present petition;*
- b) declare the election result of Delhi State Council and Delhi State Committee as void and set aside the same;*
- c) direct the Respondents to conduct the inquiry and to initiate strict action against the wrongdoers;*
- d) issue a direction for complete assessment of the election process either by the Police Officials or by an independent software company;*
- e) award the cost of this Election Petition from Respondents; and*
- f) pass such further order or directions as this Hon'ble Court may deem fit, proper and necessary in the facts and circumstances of the instant case.”*

2. The petitioners are essentially challenging the election of the Delhi State Centre of The Institute of Engineers (India) (hereinafter referred to as 'IEI')-respondent nos.1 to 3 for vacancies arising in the Delhi State Council and the Delhi

State Committee. The petitioners and others have contested the election of the Delhi State Committee held between 28.09.2021 to 27.10.2021. As per the election schedule, the last date for submission of nomination forms was 11.08.2021 till 5:00 PM and the commencement of the online election date was 28.09.2021. The closing date of the online election was 27.10.2021 and the counting and publishing of the result was to take place on 28.10.2021. The petitioners alleged various illegalities and anomalies in conducting the election. The petitioner no.1 on 03.11.2021, made a representation to the President of Board of Scrutiny (in short BOS), requesting therein, that on account of unfair and illegal practices, the entire election be cancelled.

3. According to him, pursuant to the representation submitted by petitioners, the Chairman, the Delhi State Committee of the IEI preferred to assign the investigation to a software company, namely AMIGO, for assessment of the voting pattern. The said software company has submitted a report wherein, the apprehensions and allegations made by the petitioners were found to be proved. According to the petitioners, the reports submitted by AMIGO clearly indicate that there has been a leakage of data from the website which was an important aspect that required immediate attention. He, therefore, states that the analysis made by AMIGO was based on their preliminary assessment; however, if AMIGO is provided with a full server access, a detailed analysis can be conducted. He has placed reliance on a copy of the assessment report submitted by AMIGO dated 25.11.2021. According to him, even after the receipt of the report, no action was taken by the respondents, therefore, the petitioners were left with no option except to approach this court.

4. Shri Vijay Joshi, the learned counsel appearing for the petitioners places reliance on various documents, namely, the opinion of Mr. M. C. Setalvad, the

then Attorney General of India, with respect to the Royal Charter as granted to the IEI in the year 1935, the Regulations of Institutions of Engineers (India), the MoU between Centre for Innovations in Public Systems (CIPS) and the IEI dated 21.02.2019, the 35th Indian Engineering Congress held during 18th to 20th December 2020, e-mail dated 04.05.2022 regarding re-elections at IEI Odisha State Centre, and details of the IEI with regard to the Delhi State Centre. He further states that under the same circumstances when the election was conducted with respect to Odisha State Centre/Council, the IEI itself had declared that election as null and void. He claims parity of the said declaration under the facts of the present case as the same kinds of illegalities were conducted in the election of the Odisha State Centre/Council.

5. He places reliance on the decision of the Hon'ble Supreme Court in the cases of *Institution of Mechanical Engineers (India) vs. State of Punjab & Ors.*¹, *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors.*², decision delivered by the High Court of Punjab and Haryana in the case of *Kartar Singh vs. Union of India*³, the decision rendered by the High Court of Chhattisgarh in the case of *Manohar Prasad Saha vs. Institution of Engineers (India)*⁴.

6. Shri R.S. Bains, the learned senior counsel appearing for respondent nos. 1 to 3 and Shri Pragyan Pradip Sharma, the learned counsel appearing for respondent nos. 4 to 8 vehemently opposes the submissions made by the petitioners and state that this petition itself is not maintainable as the same relates to the election dispute of a society. They further state that the IEI is not a State or other authority under

¹ (2019) 16 SCC 95

² (1989) 2 SCC 691

³ 2012 SCC OnLine P&H 21066

⁴ 2016 SCC OnLine Chh 969

Article 12 of the Constitution of India, 1950 and, therefore, the petition is not maintainable.

7. According to them, IEI is neither created under any statute nor is it funded by the government. The government does not have any control over it. Learned counsel appearing for respondent nos. 4 to 8 further states that respondent no. 4 was duly elected as a member of the Delhi State Council and on 26.11.2021, a message to that effect was received by him. He also states that the election results were already declared on 28.10.2021 and this fact has been suppressed by the petitioners. He also states that the present petition has been filed at the behest of the Chairman of the Delhi State Centre, namely, Mr. Dinesh Kumar, who lost the election to respondent no. 4 in the Delhi State Council. According to him, the petitioners have no locus to call in question the instant elections as they only contested for the post of members of the Delhi State Committee not for the Delhi State Council. The learned counsel has also explained the *inter se* relation between the Delhi State Centre and the Delhi State Committee. According to him, the election process was conducted strictly in accordance with law, with utmost fairness and transparency. He denies any malpractice and states that the report from AMIGO is obtained at the behest of Mr. Dinesh Kumar. According to him, the IEI has not obtained any report from the said company and, therefore, the truthfulness of the said report being obtained by Mr. Dinesh Kumar cannot be considered as gospel truth. He further states that there is evidence to indicate that AMIGO was paid by Mr. Dinesh Kumar for preparation of the report. He also states that the IEI has specifically denied of obtaining the aforesaid report in their counter-affidavit. He also explains that even AMIGO has accepted in their letter that they were paid by Mr. Dinesh Kumar for the purposes of preparation of the said report. The learned counsel distinguishes the decisions relied upon by the

learned counsel for the petitioners and has placed reliance upon the decisions in the case of *Ramesh K Reddy vs. UOI* [W.P.(C) 9214/2021] dated 23.12.2021, *Ashwani Kumar Srivastava vs. Institution of Engineers (India)*⁵, *Saikat Ghosh vs. Institution of Engineers (India)*⁶ and *Samir Chakraborty vs. Institution of Engineers (India)*⁷.

8. The learned counsel appearing on behalf of the petitioners, in rejoinder submissions, submits that as per the bye-laws 25G, the result has to be formally announced in the Annual General Meeting, (in short 'AGM') of the State, Centre or local centre. According to him, the AGM was scheduled for 18.12.2021 which was postponed to 14.02.2022, however, no formal result has been announced in the formal meeting of the AGM as per 25G of the bye-laws. He further states that since this court *vide* order dated 20.12.2021 passed an interim order, therefore, no formal result has been announced in the AGM. In response to the submission made by learned counsel appearing for respondent nos.4 to 8 that the report of AMIGO has been obtained by Mr. Dinesh Kumar, he states that Mr. Dinesh Kumar has obtained the report in the capacity of the Chairman of the Delhi State Committee and, therefore, for all practical purposes, the report given by AMIGO has to be considered. According to him, the Chairman under the bye-laws is fully empowered to ask for investigation related to any issue arising out of or within the IEI.

9. I have heard learned counsel appearing for the parties and perused the record.

10. In the case of *Institution of Mechanical Engineers (India)* (supra), the Hon'ble Supreme Court considered the role and duties of the All India Council for

⁵ AIR 1986 Allahabad 251

⁶ 1995 SCC OnLine Cal 97

⁷ 2018 SCC OnLine Cal 13022

Technical Education (in short 'AICTE') and the issue of the degrees or certificates awarded by the Institution of Mechanical Engineers (India) (in short, 'IME') equivalent to engineering degrees without any statutory basis and against the norms and standards laid down by the AICTE, the apex court had held that the same were invalid, however, the relief was granted to the candidates who had undergone the said course on the basis of the peculiar circumstances. It be noted that the said decision had arisen out of the decision rendered by the High Court of Punjab and Haryana in the case of **Kartar Singh** (supra).

11. The decision in the case of **Manohar Prasad Saha** (supra) of the High Court of Chhattisgarh relates to the dispute where the petitioner in that case was working as Sub Engineer (Diploma Holder), in the Department of Water Resources, and had preferred a writ petition seeking a direction to respondent no.1 therein to the effect that a particular course, which was governed by some old policy, be continued to be governed under the old policy till such students, who had acquired 'A' Section and appeared in 'B' Section examination. The petitioner in that case had obtained the Diploma in Civil Engineering from Polytechnic College, Raigarh and was employed as Sub Engineer in the Water Resource Department. The High Court of Chhattisgarh in turn relied upon the decision of the Division Bench of the High Court of Punjab and Haryana in the case of **Kartar Singh** (supra) and keeping in view the fact that the certificate of Associate Member of the Institution of Engineers (India) (in short, 'AMIE') of the concerned course, issued by the respondents therein was recognised as equivalent to the degrees granted by the Universities, therefore, it was held that the writ petition would be maintainable.

12. At this stage, it would be appropriate to refer to the decision relied upon by the respondents in the case of **Ramesh K Reddy** (supra) delivered by the High Court of Andhra Pradesh in W.P.(C) 9214/2021. The controversy in that case was

related to the action of the Secretary and Director General of IEI, Kolkata in not holding Council Meeting, Extraordinary General Meeting and Special General Meeting on time. The High Court of Andhra Pradesh in the aforesaid decision has considered the decision passed by the High Court of Punjab and Haryana in the case of **Kartar Singh** (supra) and the decision passed by the High Court of Chhattisgarh in the case of **Manohar Prasad Saha** (surpa). Paragraph nos. 24 to 26 of the said decision read as under:

“24. It is absolutely not in dispute that initially the Institute of Engineers (India) came to be registered under the Companies Act and subsequently, on the request made by the Institute of Engineers (India) to issue a grant of charter of incorporation to the Institute, a Committee of Lords was appointed by Her Excellency Queen to offer opinion on the said proposal and the said Committee submitted a report and basing on the said report, a warrant was issued. According to the learned counsel for the respondents, under the Royal Charter Queen had three functions or prerogatives, viz., Legislative, Executive and Judicial. It is very much clear from a reading of the judgment of the Allahabad High Court in Ashwani Kumar Srivastava's case (6 supra), a Division Bench of the Allahabad High Court drew a distinction between the said prerogatives and eventually, came to the conclusion that the said action was executive in character and eventually, found that the same could not be brought within the parameters of Article 372 of the Constitution of India. It is also very much clear from a reading of the above said judgment that the Allahabad High Court referred to a judgment of the Calcutta High Court in Natendra N. Chowdhury and another Vs. The Institute of Engineers India and others. The Allahabad High Court also categorically observed in the said judgment that the institute was not created by any Act and cannot be termed as a statutory body. Learned advocates for the petitioner, in order to sustain their arguments, have placed reliance on the opinion of the Hon'ble Attorney General on the Royal AIR 1964 Calcutta 73 Charter. A perusal of the said opinion, which is filed as a material paper in W.P.No.14395 of 2021, it is very much clear that the Hon'ble Attorney General did not express any opinion as to the nature of the Royal Charter, i.e., whether it was granted in exercise of Legislative or Executive power. Therefore, this Court is not inclined to agree with the contentions advanced on behalf of the petitioner in support of maintainability of the Writ Petitions.

25. In the present case on hand, obviously, the complaint of the petitioner herein is that the respondents have violated the Bye-laws of the Institute of Engineers. In the instant case, the issue pertains to the election to the Office

Bearers of Institute of Engineers (India) and the alleged contravention of the Bye-laws. Admittedly, the Institute of Engineers is neither controlled nor funded by the State nor has any of the instrumentalities nor it has Office Bearers from the State. Obviously, while dealing with the aspect of educational courses being offered by the Institute of Engineers, which has the flavor of public duty, the Chhattisgarh High Court held in favour of the maintainability of the Writ Petition.

26. It is also pertinent to refer to a Full Bench judgment of the composite High Court of Andhra Pradesh in the case of SKCC Bank Limited, Amalapuram Vs. N. Seetharama Raju, wherein it was held that Bye-laws made by Co-operative Society, registered under the Andhra Pradesh Co-operative Societies Act do not have the force of law and in the instant case also, the petitioner herein is A.P.L.J 1990(1) (HC) (FB) asking for enforcement of Bye-laws, which deal with day-to-day administration of the Institute of Engineers (India). Therefore, in these circumstances, this Court has absolutely no hesitation to hold that the present Writ Petitions filed under Article 226 of the Constitution of India are not maintainable and are liable to be dismissed. Accordingly, issue No.1 is answered against the petitioner.”

13. The bye-laws of IEI which have been placed on record would indicate that the governance and control of the institution and its affairs shall vest with its Council and the Council shall exercise all the powers of the institution and perform all the duties of the institution with the intention to give effect to the provisions of the Charter and the bye-laws for the time being of the institution except so far as the same are by the Charter or by the bye-laws for the time being expressly required to be done in the General Meetings of the Corporate Members or by the President or by the Secretary and the Director General of the institute. There are various bodies which are required to be constituted in accordance with the bye-laws. There are different kinds of membership depending upon the qualification of the members such as Honorary Fellows and Honorary Life Fellows, Members, Associate Members, Member Technologists, Associate Member Technologists, Senior Technician Members, Technician Members and Institutional Members, etc.

14. A perusal of bye-laws nowhere indicates that any government officers or government has control over the affairs of IEL. It also nowhere indicates any control or funding by the State organ. Therefore, I am in full agreement with the view taken by the High Court of Andhra Pradesh in the case of **Ramesh K Reddy** (supra).

15. This court in the case of **P. Padmanabha Rao vs. Union of India and Ors.**⁸ has held that the society therein i.e. The Institution of Electronics and Telecommunication Engineers (in short 'IETE') was neither a government company nor a public sector undertaking. It was found that the same was neither created by 'State' for carrying on its activities nor the society concerned was governed by any statute for the purposes of administering its functioning. This court took 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 to maintain high professional standards or to set up a unique examining society but that in itself is not sufficient to bring it within the scope of the expression 'State' under Article 12 of the Constitution of India.

16. Paragraph nos.21 and 22 of the said case 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

⁸ 2023/DHC/001770

and, therefore, no writ petition would be maintainable against the respondent No. 3.”

17. A similar view has been taken by this court in the case of ***Deepak Dwivedi vs. Foreign Correspondents Club of South Asia and Anr.***⁹, a decision dated 15.03.2023. *Vide* paragraph nos.10, 12 and 16 of the said case, it has been held as under:

“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.

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.

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.”

18. There is no doubt that a writ is maintainable even against a non-aided private educational institution when a public law element is involved and the said claim is based on the government instructions. However, it has to be seen that the functions of such body is of public importance and closely related to governmental functions. In the instant case, the entire dispute relates to the manner in which the elections have been conducted. The election of various office-bearers of different bodies

⁹ 2023:DHC:1958

is to be conducted strictly in accordance with applicable bye-laws. There are allegations and counter-allegations with respect to various aspects.

19. The Division Bench of this court in the case of *S.D. Siddiqui vs. University of Delhi and Ors.*¹⁰, while considering the dispute with respect to the election of Delhi University Teacher Association has considered various earlier pronouncements of the Hon'ble Supreme Court and in paragraph nos.29 and 30 it has been held 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. It is seen that under the facts of the present case, the election dispute with respect to office-bearers of the society is raised, the same cannot, by any stretch of imagination, be said to be in discharge of a public duty and, therefore, such an action cannot be held to be amenable to the writ jurisdiction of this court under Article 226 of the Constitution of India.

21. The petition is, therefore, dismissed along with pending applications.

PURUSHAINDR KUMAR KAURAV, J

APRIL 25, 2023/Priya

¹⁰ 2006 III AD (DEL) 290