



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

110

CWP-24721-2024 (O&M)
Date of decision: 08.11.2024

Rohit Paul

...Petitioner

VERSUS

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Amit Dhawan, Advocate for the petitioner.

Mr. Sudhir Nar, Sr. Panel Counsel for respondent No.1-UOI.

VINOD S. BHARDWAJ, J. (Oral)

CM-16958-CWP-2024

Application is allowed as prayed for subject to all just exceptions. Annexures P-12 to P-19 are taken on record.

Registry is directed to tag the same at an appropriate place with its paging.

Main case:

1. Challenge in the present petition is to the election of Diocese of Chandigarh-Church of North India, CNI Mission Compound, Brown Road, Ludhiana, stated to have been held on 23rd and 24th August, 2024 at Avalon Girls Senior Secondary School, Pathankot, on the allegations that the same was illegal, arbitrary and in violation of the settled provisions of law. A further prayer is made for issuance of directions to respondent No.6 i.e. Diocesan Council, Diocese of Chandigarh, not to take any policy decision until adjudication of the present writ petition. Further direction is also sought



against respondents No.1 to 5 to conduct a fresh, fair and impartial elections of the Diocesan Council of Diocese of Chandigarh under the supervision of respondents No.1 to 3.

2. Summarized factually, the petitioner claims himself to be an ex-serviceman, who had retired in March-2007 from the post of Sergeant in the Indian Air Force and a practicing Christian by religion. He further claims to be involved in the welfare activities for betterment of the followers of Christianity. He also claims to have served as a Treasurer of CNI Church, Dhariwal, District Gurdaspur and as Secretary of Church, CNI, Kharar from 2022 onwards. It is averred that on 30.08.2023, the Synod of the Church of North India i.e. respondent No.4 issued a letter whereby an Adhoc Committee of Diocese of Chandigarh was formed. It was informed through the said letter-communication that by a unanimous resolution, the Diocesan Council of Diocese of Chandigarh had been dissolved with immediate effect and that a new Adhoc Committee was formed by the Moderator, CNI, Synod. Respondent No.7-Amit Prakash was appointed as Secretary of the said Adhoc Committee. Another letter dated 19.04.2024 was later issued by the Diocese of Chandigarh conveying that its Adhoc Committee had resolved to hold the 20th Ordinary Diocesan Council Meeting of Diocese of Chandigarh, CNI. The agenda for the said meeting was circulated vide letter dated 07.08.2024, informing about the venue of the meeting to be held at Avalon Girls Senior Secondary School, Pathankot, on the 23rd & 24th August 2024. It is claimed that the said communication did not mention about any agenda of the meeting pertaining to the election of Chandigarh Diocesan



Council to be held. It was orally informed in the above said meeting of the Ordinary Diocesan Council that the election was also to be held. The petitioner sent a letter dated 20.08.2024 to the Moderator's Episcopal Commissary, Diocese of Chandigarh requesting to ensure security of delegates of different pastorates attending the Council from 23rd August till 24th August, 2024, apprehending possibility of disruption of the smooth functioning of Council by some mischievous persons. The petitioner also participated in the said election process and submitted his nomination before the nomination committee.

3. In the 20th Ordinary Diocesan Council Meeting of Diocese of Chandigarh, CNI held at Avalon Girls Senior Secondary School, Pathankot on 23rd & 24th August 2024, the Adhoc Executive Committee of the Diocese of Chandigarh is alleged to have acted in an unfair manner while holding the elections and it was alleged that there were various irregularities and illegalities committed in the voting procedure. The petitioner thus failed to get elected in the said meeting. It is also averred that the election result was not declared by respondent No.4- the Synod of the Church of North India on the same date allegedly, for malicious reasons and to ensure that the persons close to the members of the Adhoc Executive Committee assume control of the Council.

4. An application dated 10.09.2024 was claimed to have been submitted by the petitioner to Diocese of Chandigarh for supplying the election result of 20th Ordinary Meeting of Chandigarh Diocesan Council of the Church of North India by specifically stating that the petitioner had



contested for being elected in the said meeting. Despite the representation having been submitted for being supplied with the election results, the same have not been forwarded to the petitioner. Alleging that the election had not been held in a fair and proper manner and that the communication sent by the petitioner was not being responded indecisively and coupled with failure to circulate an advance agenda, the petitioner has approached this Court by way of a writ petition.

5. The principal grounds/allegations of irregularities that have been set out in the present petition can be crystallized as under:-

- (i) The election had been conducted by the Adhoc Executive Committee through its Secretary-respondent No.7 even though he was not competent to be the Secretary of the Adhoc Executive Committee having been debarred by the Diocese of Chandigarh-Church of North India for a period of 06 years on 09.02.2021;
- (ii) The result of the election held has been alleged to be illegal and liable to be quashed since respondent No.7-Secretary had been debarred from participating in governance of Church and that the election had been held under his aegis, being the Secretary of the Adhoc Executive Committee of the Diocese of Chandigarh;
- (iii) Certain objections were raised by members of the Council against involvement of respondent No.7 in the process of conducting 20th Ordinary Diocesan Council Meeting of



Diocese of Chandigarh, CNI, which were not considered and were brushed aside;

- (iv) The Agenda of 20th Ordinary Diocesan Council Meeting of Diocese of Chandigarh, CNI did not mention about holding of the election in the said meeting and that the said fact had been conveyed only orally;
- (v) That the voting was not got conducted in a fair manner as there was no provision for a secret ballot;
- (vi) Cultural programs were being conducted at the place of voting and thus the sanctity of election process could not be maintained;
- (vii) The voting was conducted during late night of 23.08.2024 as well as in the early morning of 24.08.2024 causing hardship to the women and elderly participants;
- (viii) Five ballot papers were found missing during the counting process although the same were placed in a box in the presence of witnesses and as such the counting process was allegedly in violation of the prescribed procedure;
- (ix) The electoral list issued by respondent No.5 had not been supplied to the petitioner and as such, the election process had been conducted in an undemocratic manner;
- (x) One Sunil, a former Principal of St. Thomas School, Dhariwal, District Gurdaspur cast his vote despite the



fact that the said school had been closed by the authorities;

(xi) No numbering is stated to have been made on the counter foils while issuing ballots that were infact printed at the spot using a computer and there was no recording done by the Secretary or Observer appointed during the election process;

(xii) That the persons elected were closely associated to the members of the Adhoc Executive Committee and that a farce democratic process of election had been undertaken to wrestle control of the Diocese Council and to hand over the said management to the favoured individuals.

6. The matter came up for hearing before this Court on 25.09.2024 when it was adjourned to 30.09.2024. On the said date of hearing, a specific query was put to the learned counsel for the petitioner as regards the maintainability of the present writ petition considering that the issues espoused before this Court were in relation to the election to the governing body of a religious organization which would not fall within the definition of an agency and instrumentality of the State and thus, would fail to satisfy the test prescribed under Article 12 of the Constitution of India. Learned counsel for the petitioner had sought time to search case law and to assist this Court. The matter was thereafter adjourned to 16.10.2024 when further time was granted to the petitioner to search case law and to assist this Court and the matter was fixed for today.



7. Learned counsel for the petitioner has reiterated the alleged shortcomings extracted above and has contended that the entire election process was illegal, un-democratic and was undertaken with a malicious intent to elect a specific group of people, who were under the patronage of respondent No.5 i.e. Diocese of Chandigarh-Church of North India, CNI Mission Compound, Brown Road, Ludhiana. Reliance was placed on a Full Bench Judgment of Madras High Court in the matter of **D. Bright Joseph Vs. Church of South India (CSI) Synod Secretariat, Chennai and others**, reported as **2024 (1) LW 930** to contend that a writ petition invoking jurisdiction of High Court under Article 226 of the Constitution of India lies against the Church of South India which is also a private body, hence the present petition would be maintainable. The operative part of the same reads thus:-

“23. From the conspectus of the above principles and judgments which describe a public duty, it is amply evident that the respondent apart from its ecclesiastical functions, is running and managing various schools, colleges and hospitals. The respondent is definitely discharging the public function and if any action taken by them which is detrimental to the discharge of this duty, a writ petition would definitely be maintainable. Unlike, Article 32 of the Constitution of India any person even if he is not a person aggrieved can invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner is aggrieved by the fact that



respondents 1 and 2, by manipulating the electoral process are nominating persons of questionable character, especially against whom criminal proceedings have been directed. Further, an amendment to increase the age of superannuation has been put in place to ensure that the persons now in management can continue for a further period unopposed. The activities of such persons would seriously impair the standards of education as also the institutions. Therefore, taking note of the fact that it is these persons who constitute the educational agency, the writ petition is maintainable.”

8. He contends that the above said Full Bench judgment of the Madras High Court thus conclusively rules that a private body including Church are amenable to a writ jurisdiction.

9. No other argument has been raised and no other judgment has been cited by the learned counsel for the petitioner before this Court.

10. I have heard the learned counsel appearing on behalf of the petitioner and have gone through the documents available on record and have also gone through the judgment cited by him.

11. Before proceeding further into the matter, a writ petition is maintainable against a State or its agencies and instrumentality. A private body may also be subjected to a writ jurisdiction if it performs any public duty or discharges a public function.

12. A Public duty can be understood to be imposing obligation on



an individual that serves the public interest or is for the benefit of the public at large. The entity thus performs a task mandated by law or delegated by a Government authority and involves ensuring compliance of legal obligations, public rights or necessary services.

13. Similarly, a public function relates to the activity that is essential for public welfare and governance. Such function may be traditionally performed by the governments but could also be delegated to private entities and is accountable to public law due to its impact on public rights or services.

14. Since, the governing body of the religious organisation is not claimed to be receiving any grant-in-aid from the Government nor the State exercises any deep and pervasive financial, managerial or supervisory control, hence, the only test which is left is to determine any public function or public duty and as to how such public function gets prejudiced or gravely impacted due to the outcome of election results.

15. The finer nuances of the issue were discussed in a Five Judges Bench of this Court in the matter of ***Ravneet Kaur Vs. The Christian Medical College, Ludhiana*** reported as ***1997 (3) SCT 210***. The dispute in the case pertained to admission in the medical college and an objection pertaining to the maintainability of writ petition was raised. While dealing with the issue, this Court held as under:-

“41. It is, thus, clear that the old and the conservative view regarding the maintainability of writs against the State or its instrumentalities is giving way to "a liberal meaning." The



*power under Article 226 is no longer confined to the issue of writs against statutory authorities and instrumentalities of the State. It covers "any other person or body performing public duty." Medical Colleges are supplementing the effort of the State. These cannot survive or subsist without recognitions and/or affiliation. The bodies which grant recognition are required to ensure that the institution complies with Article 14 of the Constitution. These decisions represent a quantum jump from 'the tests' in *Ajay Hasia v. Khalid Mujib*, AIR 1981 Supreme Court 487 to a liberal meaning to the term 'authority' in Article 226.*

42. *A private educational institution receiving aid from State funds may not be a 'State' as defined in Article 12. Yet, Article 29(2) confers a fundamental right on all citizens not to be discriminated against in the matter of admission to such an institution on grounds only of religion, caste, language or any of them. If a citizen is denied admission by such an institution on any of the grounds specified in Article 29(2), can it be said that the aggrieved person cannot seek a writ for the enforcement of his rights either under Article 32 or 226 on the ground that it happens to be a private educational institution ? Certainly not.*

43. *In view of these conclusions, the view taken by the Full Bench in *Gurpreet Singh's case* (supra) wherein it was held that*



"against these institutions, no general fundamental right of equality of admission on merits can even be evoked...." is no longer good law. A citizen can invoke the right to equality in the matter of admission on merit even against a private medical college affiliated to a University. This right "without a remedy will become a mere adornment.... as writ in water." It is not so.

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50. The above observations clearly show that the issue of 'prerogative writs' is not limited to the authorities having a duty to act judicially. It can issue when there is an error of law or a failure to act fairly towards the person who is adversely affected by the order. Equally, a writ of certiorari can issue when there is violation of the principles of natural justice.

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53. In view of the above, it is no longer necessary that an authority must be under a duty to act judicially before its actions may be corrected by the issue of a writ of certiorari. Is the authority required to act fairly Yes. Writ of certiorari can issue.

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59. In view of the above, we hold that :-



- (i) *Powers of High Courts under Articles 226 of the Constitution are wider than those of the court of King's Bench in England.*
- (ii) *The power of the High Courts is not confined to the issue of prerogative writs as initially understood in England. The procedural restrictions which had been imposed on the Courts in England do not bind the High Courts in this country. The High Courts are empowered to issue not only writs in the nature of certiorari, mandamus etc. but also orders and directions to enforce fundamental rights or for any other purpose.*
- (iii) *The power under Article 226 of the Constitution is not confined to the enforcement of fundamental rights like the power under Article 32. Still further, the High Courts can issue writs, orders or directions even to any person or authority discharging a public duty for enforcement of the fundamental rights or for any other purpose.*
- (iv) *The words "any person or authority" used in Article 226 do not mean only State as defined in Article 12 or statutory authorities. These cover any person or body performing a public duty.*
- (v) *In view of the importance of 'health' to the community, institutions providing medical education form a distinct*



class. These institutions perform a public duty and supplement the State's effort. By their affiliation to a University or any other statutory examining body, they become partners with the State. They are, thus, subject to the restrictions contained in Part III. They are bound to act in conformity with the provisions of the Indian Medical Council Act, 1956 and the rules/regulations framed by the appropriate University/body. Whenever they act unfairly, arbitrarily or violate the prohibitions contained in part III of the Constitution or the rules and regulations framed by the University etc., their actions can be corrected by issue of a writ of certiorari or any other appropriate writ, direction or order. Similarly, if it is found that an institution has failed to carry out an obligation under the Constitution or the rules/regulations framed by an appropriate body, it can be compelled to perform its duty by the issue of a writ of mandamus. This principle shall, however, not be attracted in case of every private school or college.

- (vi) *The Full Bench decisions of this Court in **Pritam Singh v. State of Punjab and others, 1982(84) PLR 530** and **Gurpreet Singh Sidhu v. The Punjab University, Chandigarh and others, 1983(85) PLR 46 (F.B.)** do not contain a correct enunciation of law and are overruled.”*



16. Since healthcare and education were held to be public functions, hence, the writ jurisdiction was held to be extended to the same.

17. As against the same, in the facts of the present case following essential aspects arise:-

- a. There are no details about any public function being discharged by the religious body i.e. number of institutions run, students admitted etc.
- b. There is nothing on record as to how the *inter se* control and relationship amongst the church and the institute, if any, operate.
- c. There is also nothing to show as to who are the persons elected and what is their connection to the running of the institution and as to how their being elected would impact functioning of the institution.

18. In the absence thereof, the writ jurisdiction would not be an appropriate remedy merely because of some remote and non-proximate cascading effect being suggested or alleged by a litigant.

19. Internal affairs of a religious organisation is not a public function discharged by the government and it does not amount to any public service as well. On examination of the dispute, it is purely an election dispute raised on various allegations by a candidate who failed to succeed in the electoral battle.

20. I further find that the reliance placed by the learned counsel for the petitioner on the judgment of the Full Bench of Madras High Court is



misconceived and is based upon an incorrect reading and interpretation of law canvassed in the said judgment. It is apparent from a perusal of the said judgment that conspectus of the principles and judgments rendering a private institution amenable to a writ jurisdiction is borne out from the nature of function being discharged, which has to be primarily in the form of a “public duty”. Under the circumstances, where the function being discharged may also be categorized as a public function, such private individual may also be made amenable to a writ jurisdiction. These exceptions, enlarging the scope of the writ jurisdiction have been made to ensure that the rights of general public are not truncated or violated when a public function or a public duty is being performed by an individual. Public duty has been defined by this Court in its judgment in **CWP-7599-2020** titled as ‘**Gursharan Singh vs State of Punjab and others**’. The relevant paragraph of the judgment is extracted hereunder:

“...While a public function is an activity where one performs and acts for and on behalf of State or its Institutions, public duty is a duty which the State, public or any community at large may owe to anyone else, the obligation which any entity owes to the public whether or not statutory or otherwise, would still have fallings of a subjugation under the writ jurisdiction, however, where both the said aspects are missing, their function becomes a purely private function propelled by profit orientation....”



21. For the purposes of understanding the cardinal principles beyond public duty, the Hohfeldian principles of jurisprudence must be kept in mind. A public duty entails a corresponding enforceable public right. In the absence of corresponding public right, an election of a Diocese Church cannot be held to be a function which may be labelled as being in the nature of “Public Duty” or a “Public Function”. Relevant extract of the judgment passed by this Court **Gursharan Singh (supra)** is extracted as under: -

“Existence of a ‘public duty’ and the functions being a ‘public function’ is thus a parameter which is required to be ascertained and satisfied before a writ jurisdiction can be issued. Such public duties may be statutory or non-statutory and that failure to perform such duties is an act required to be ascertained. Thus, where any private party has acted in a manner which may be illegal and/or which may prejudice the right of any other person, a writ jurisdiction would not ordinarily be the remedy available.”

22. The cardinal activity which renders institutions/body amenable to jurisdiction must fulfill the test of being a public duty or public function. Any indirect remote link by way of a cascading effect on a public function cannot bring the parent body amenable to a writ jurisdiction for its own independent acts. I am further strengthened in my aforesaid view by the



judgment of the Hon'ble Supreme Court in *St. Mary's Education Society v. Rajendra Prasad Bhargava*, (2023) 4 SCC 498. The relevant part of the judgment is extracted hereunder:

“75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service



conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(emphasis supplied)”

23. When the Madras High Court was dealing with the aspect of subjecting the Church of South India to writ jurisdiction, it had noticed that a total of 2300 Schools, 150 Colleges and 104 Hospitals in India were being run by the said institution and taking into consideration the large public functions and public duties being performed by the institution, the dispute which pertained to the management of the educational institutions and associations was examined. It was stated that the private respondents therein were attempting to supersede the electoral bodies of the Diocese to change the composition of the electoral college and by favouring the same in a bid to take over the educational institutions.

24. In a stark contrast to the facts noticed by that Court and the overwhelming number of the functions being discharged, there is no such averment, allegation or suggestion established in the present petition.

25. The grounds of challenge are in fact largely centered around the appointment of respondent No.7 as the Secretary of the Adhoc Executive Committee and claiming that the said person could not have been involved in the process of election or with the affairs of the Council since he had been debarred from participating in the affairs for a period of 06 years of Diocese Church. The other allegations levelled are in relation to the voting that had



continued not only on 23.08.2024 but also in the earlier hours of 24.08.2024 and coupled with the allegations of certain missing votes as well as the election not being held through secret ballot.

26. All the abovesaid aspects are at best a ground of challenge to the election on merit since the allegations are yet to be established. The petitioner has not even made a reference to the governing statute. Hence, the suggested procedure cannot be ascertained by referring to any law. It is also not discernible as to what procedural part was mandatory and what was directory.

27. Further it is also seen by this Court that the petitioner never raised any challenge to the process of election at any time prior to the conduct of election even though election was held nearly one year after the appointment of the Adhoc Committee. The challenge to the process has now been raised only after he had participated in the election process and lost in the same. Hence, so far as the objection to the election being held by the Adhoc Executive Committee, which also comprised of respondent No.7 in violation of any law, such a decision or communication was never challenged by the petitioner at the first instance rather, he preferred to participate in the election process only to be aggrieved later when the results were not favourable.

28. Insofar as the allegation of the petitioner about the people having not been informed about the agenda of the 20th Ordinary Diocesan Council Meeting of Diocese of Chandigarh, CNI is concerned, the petitioner cannot claim that he is in any manner aggrieved since he was aware about



the same and also participated in the election process. He has not referred to any enforceable bye-laws on the touch-stone whereof the procedure could be tested. No person of the electoral college or a member, who was competent to cast his vote, has approached this Court about having not been apprised of the same.

29. The disputes raised herein, in relation to the election process, are disputed questions of fact that cannot be gone into by a writ Court.

30. A specific question was also posed to the learned Counsel for the petitioner as to whether respondent No.5 is a registered body and if so, under what Act the said body is registered, he is not able to respond the same as well.

31. Hence, on a first brush, the challenge is primarily is in the nature of an election petition that has been brought up by the petitioner being dissatisfied with the final results.

32. The counsel for the petitioner has failed to draw the parallel equating election of the Diocese Council to be a public function or public duty. Hence, reliance on the Full Bench of Madras High Court does not come to the rescue of the petitioner.

33. Considering it from any angle, the present writ petition is liable to be dismissed in *limine*.

34. Ordered accordingly.

(VINOD S. BHARDWAJ)
JUDGE

08.11.2024

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No