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

+ W.P.(C) 3780/2024, CM APPL. 15560/2024, CM APPL. 32854/2024,
CM APPL 40916/2024

MAZDOOR PANCHAYAT & ORS.

.....Petitioner

Through: Mr. Adarsh Kr. Tiwari, Mr. Ashutosh
Mani Tiwari and Mr. Vinit, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vineet Dhanda, CGSC.
Mr. Padam Kumar, Mr. Yash Tyagi,
Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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12.09.2024

1. The petitioner in the instant writ petition seeks to challenge various issues with respect to the preparation of voter's list from Joint Consultative Machinery (JCM) Level-IV council election for membership and also the verification, thereto. If the prayer clause is perused, the same would indicate that the subsequent election pursuant to preparation of voter's list and verification, thereto, came to be conducted on 13.01.2024 and the same, according to the petitioner, is in violation of guidelines issued by Council of Ministry of Defence from time to time.

2. A perusal of memo of parties would indicate that even the elected office bearers have not been arrayed as respondents. Even otherwise, the



Court finds that the election of trade union is the subject matter of the instant writ petition.

3. This Court in W.P.(C) 5542/2024 vide order dated 02.09.2024 titled as ***Vehicle Depot Karamchari Union v. Union of India*** was considering almost similar grievance and while placing reliance on the decision in the case of ***Pradeep Kumar V. Union of India***¹ and ***Sanjiv Mukherjee v. Northern Railway***² has declined to entertain the said writ petitions.

4. In W.P. (C) 3577/2016 also, the Court has decided almost similar grievance and has held that the writ petition relating to election dispute of a trade union normally may not be entertained by the High Court in the exercise of power under Article 226 of Constitution of India, paragraph no.21 to 26 ***MTNL staff union class III and IV (Regd.) vs Mahanagar Telephone Nigam Ltd.*** reads as under:

21. A Coordinate Bench of this Court in the case of ***Pawan Kumar & Ors. v. Union of India & Ors.***, while deciding the maintainability of a writ petition against a cooperative society, held that merely because the procedure of elections owes its genesis to the Act and Rules, it would not be enough to reach the conclusion that a society would be amenable to the writ jurisdiction of the Court. Paragraph no.31 of the said decision is reproduced as under:-

“31. Turning then to the registration of the cooperative society under the Act, it may at the outset be observed that *the affairs of various bodies may be regulated and controlled by myriad statutes in respect of a wide range of activities and functions that may be performed by them. However, merely because the affairs of a particular body may be regulated by statute, that cannot be determinative of the question that stands raised. As was aptly observed by the Supreme Court in Ramakrishna Mission, law is a “ubiquitous phenomenon” and touches various aspects of the*

¹ 2006 SCC OnLine Del 388.

² 2013 SCC OnLine Del 3023



functioning of a body. It was observed that merely because a body is obligated to comply with various statutory requirements, that cannot be conclusive to answer the question of whether it is discharging a public function. The fact that the cooperative society is registered under the Act or that the Byelaws or the procedure of elections owe their genesis to the Act and the Rules, would not be sufficient to hold that it would be amenable to the writ jurisdiction of the Court.”

[emphasis supplied]

22. This Court, in another decision titled as **Dr. Saravana Kodandapani & Anr. v. The All-India Ophthalmological Society**, wherein, a challenge was laid to the election of a society, has held that if the bye-laws governing elections of such registered organisation are not statutory, then a writ for its contravention will not be maintainable. The relevant paragraph of the said decision is reproduced herein for reference:-

“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.”

23. Reverting to the facts of the present case, it is discernible that the challenge raised by the petitioner purportedly hinges on the infraction of the CoD by the respondents. However, from the aforementioned discussion, it becomes apparent that as per the CoD, there is no statutory obligation on respondent nos.1 to 4 to conduct the process of verification of membership of majority unions operating in MTNL through secret ballot. Bearing in mind the decision rendered by the Supreme Court in **Ramakrishna Mission** (supra) in juxtaposition with the Guidelines, the recognition of trade unions operating in MTNL as majority unions cannot be said to involve any public function for the purpose of holding the respondents amenable to writ jurisdiction. The public law element is conspicuously missing. The petitioner cannot assert any indefeasible statutory right for holding the elections through the secret ballot as per the CoD.

24. Insofar as the order dated 08.10.2012 in W.P.(C) 6333/2012 is concerned, the said order does not deal with the contention of maintainability of the writ petition at all. Since the issue of maintainability had not been dealt with, the said order could not be



construed to be an authority on the issue under consideration in the instant petition. Therefore, the said order would not come to rescue the case of the petitioner. A decision is binding not because of its outcome but in regard to its rationale and the principles laid down therein.

5. The parties are at liberty to approach the appropriate forum/Court for redressal of their grievance. Needless to state, the Court has not commented on merits of the case. All the rights and contentions are left open.

6. In view of the aforesaid, the Court is not inclined to entertain the instant writ petition. The same is accordingly dismissed along with pending applications.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 12, 2024/KG