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

+ W.P.(C) 16747/2023, CM APPL. 67458/2023, CM APPL.
31148/2024

MR ROY DANIEL & ORS.

.....Petitioner

Through: Mr. K. Vijayan and Mr. Gopala
Krishnan, Adv.

versus

THE PRESIDENT, KERALA EDUCATION
SOCIETY AND ORS.

.....Respondent

Through: Mr. Manish Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **31.07.2024**

1. The petitioner in the instant writ petition has prayed for the cancellation of election notification dated 16.12.2023 regarding election of Managing Committee of Kerala Education Society (Regd.) which is stated to be conducted without addressing the grievance concerning voters list. The petitioner is essentially seeking enforcement of bye laws of the said society.

2. When the learned counsel appearing for the petitioner was specifically confronted as to how the writ petition would be maintainable with respect to present dispute which essentially relates to the election of a society registered under the Societies Registration Act, 1860, he points out that the society involved in the writ petition is aided and 90 per cent of the



fund is being given by the State Government. He, therefore, submits that the same shall be treated as the 'State' and accordingly, the Court should entertain the writ petition.

3. However, the Court is not inclined to entertain the instant writ petition. This Court had an occasion to consider almost similar submissions in W.P. (C) 4671/2024 titled as ***Sumir Dhir & Anr. v. Union of India & Ors.***, wherein, while relying upon various decisions of the Supreme Court and this Court, it has been held as under:-

*“11. Further, the Supreme Court in the case of **K.K. Saksena v. International Commission on Irrigation & Drainage**, took a view that even if an organization or body performs a public function, all of its decisions cannot be entertained while wielding an authority under Article 226 of the Constitution. The relevant paragraph of the said decision reads as under:-*

*“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. **Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.**”*

[emphasis supplied]



12. It is also pertinent to draw a sustenance from the decision dated 19.07.2022 of this Court in W.P. (C) 2942/2020 titled as **Sushil Kumar v. Central Registrar of Coop Socy and Ors.**, wherein, it was observed that the byelaws constitute a contract between the society and its members and members inter se. The Court went on take a position that a mere violation of such byelaws would not lead to the invocation of writ jurisdiction. In the said case, the Court was dealing with a challenge laid to the election of a cooperative society and in terms of paragraph no.31, it was held 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 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. This Court also bears in mind the principles enunciated by the Full Bench of the Allahabad High Court in Vijay Behari Srivastava where it was pertinently observed that merely because the affairs of a society are controlled by the Registrar that would not make that body “State” as contemplated under Article 12 of the Constitution. In S.S. Rana the Supreme Court held that the general regulation of a society by statute is merely meant to ensure its proper functioning and would not render the activities of that entity as being subject to State control. The aforesaid position in law clearly emerges from the decision of this Court in Mohinder Singh. It would be pertinent to note that both Sushila Devi Bhaskar and S.K. Gambhir, on which reliance was placed by Mr. Garg, were dealing with cases where the Court had found that the cooperative societies had become instruments and vehicles for implementation of State policy and acting as an adjunct to the Delhi Development Authority. It was in that backdrop that the writ petitions were held to be maintainable.”

[Emphasis supplied]



13. This Court vide order dated 27.04.2023 in W.P.(C) 3495/2023 titled as **Dr Saravana Kodandapani & Anr. v. The All India Ophthalmological Society & Anr.** considered the election dispute with respect to All India Ophthalmological Society, wherein, almost similar submissions were made by the learned counsel who appeared in the said writ petition. While referring to the articles of association therein, it was contended by the petitioners therein that the nature of duties being discharged by the concerned society reflects a characteristic of State and therefore, the writ petition should be entertained. However, the Court, while considering the exposition of law on maintainability of writ petitions against the elections of a society, as enunciated in the decisions of this Court in the cases of **S.D. Siddiqui v. University of Delhi and Others**, **Padmanabha Rao v. Union of India and Ors.** and **Dr. Jitarani Udgate v. Union of India and Anr.**, has held as under:-

"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 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."



14. Similarly, in the case of **Sajal Mitra and Anr. v. The Institution of Engineers (India)**, this Court considered the dispute relating to election of the Institution of Engineers (India) and while taking into consideration various aspects and decisions of the Supreme Court, the Court was of the following opinion:-

"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 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.*, 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."

15. Turning to the factual matrix of the case at hand, undisputedly, what is sought to be enforced is the implementation of byelaws which appear to have been approved by the Government. Applying the tests of maintainability of the writ petition against the election of a society, as already discussed in the abovementioned judgments, it can be concluded that the instant writ petition is not maintainable. Assumingly, even if respondent no.2 is discharging any public function, the nature of grievance raised in the instant petition does not allude to any involvement of public law. As a natural corollary, the petitioners cannot seek a public law remedy in the absence of discharging any public function qua the issue at hand. The law in this regard is well settled in K.K. Saxena (supra), which unequivocally asserts the position that before issuing a writ of mandamus, the Court has to satisfy itself that the action which is sought be challenged falls under the domain of public law."

(emphasis supplied)

4. In view of the above, the fact whether the society is being aided by the Central Government or by the State Government would not be the only factor to entertain a writ petition which essentially relates to a dispute relating to the office bearers of the Society.

5. The petition along with pending applications are accordingly dismissed. However, liberty is reserved in favour of the petitioner to take any other appropriate recourse in accordance with law.

PURUSHAINDRA KUMAR KAURAV, J

JULY 31, 2024/KG