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

+ **W.P.(C) 13337/2024 & CM APPL 55708/2024**

B SURESH KUMAR

.....Petitioner

Through: Mr. Shailesh Madiyal, Sr. Adv. with
Mr. Vinayak Sharma, Ms. Divija
Mahajan, Mr. Vaibhav Sabharwal,
and Mr. Vaksal Joshit, Advs.

Versus

CPWD ENGINEERS ASSOCIATION & ANR.Respondents

Through: Mr. C. Mohan Rao, Sr. Adv. with Mr.
Lokesh Kumar Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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23.09.2024

1. The petitioner in the instant writ petition has prayed for the following reliefs:-

“A. Issue a writ(s)/order(s)/direction(s) in the nature of certiorari for quashing the Eligible candidates list dated 07.09.2024 and the Final list of contesting candidates dated 10.09.2024 published by the Respondent No. 2 insofar as the candidature of the petitioner has been cancelled;

B. Issue a writ(s)/order(s)/direction(s) in the nature of certiorari for quashing PARAGRAPH 2 of the Notice/Bulletin titled “Precautionary Guidelines for the filling up of the Nomination Form” issued by the Respondent No. 2; and

C. Issue a writ(s)/order(s)/direction(s) of mandamus directing the Respondent No. 2 to re-draw the final list of contesting candidates including the name of the petitioner and to permit the Petitioner to contest for the post of joint secretary in the central committee of Respondent No. 1 in the impending election scheduled to be held on 30.09.2024.;”



2. Examining the prayer clause, it is seen that the grievance of the petitioner pertains to election of Central Public Works Department Engineers Association [CPWDEA].

3. Learned Senior Counsel appearing on behalf of the petitioner submits that respondent no.2 i.e., the Election Officer, CPWDEA has published an election notice, which laid down the schedule for elections. Under the said election notice, the last date for submitting nomination forms was 06.09.2024 and the eligible candidates' list after scrutiny of nominations was to be displayed on 07.09.2024. *Vide* election notice, the petitioner herein has apparently submitted his nomination form before the deadline.

4. Learned Senior Counsel for the petitioner avers that on 07.09.2024, when the list of eligible candidates was published, the petitioner found that his candidature/nomination stood cancelled and other than the remark "*Cancelled*" in the final list of candidates, there were no reasons assigned or any speaking order passed, indicating as to why the candidature of the petitioner was cancelled. He further submits that the impugned action was done without affording the petitioner an opportunity of being heard which is in violation of principles of natural justice.

5. He submits that the cancellation of the candidature of the petitioner was based on a Notice/Bulletin "*Precautionary Guidelines for the filling up of the Nomination Form*", more specifically paragraph 2 of the notice. Learned Senior Counsel contends that neither the said bulletin was issued along with the original election notice nor the said notice/bulletin refers to the election in controversy. He further submits that the guidelines in the said notice/bulletin are not fortified by any corresponding provisions in the bye-laws of respondent no.1. Based on these contentions, he submits that the



conditions stipulated in the said notice/bulletin are arbitrary and issued with *mala fide* intentions. He further submits that the final schedule was published hastily, which casts aspersions on the conduct of respondent no.2.

6. Finally, he contends that some individuals who are in alleged contravention of the same bye-laws were not barred and that the petitioner herein was singled out.

7. When questioned on the maintainability of the instant writ petition, the learned Senior Counsel, while taking this Court through *the Central Civil Services (Recognition of Service Associates), Rules 1993 [Rules of 1993]*, more specifically, notification dated 05.11.1993, submits that the Rules have been framed in exercise of the powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution of India.

8. He submits that the respondent herein is an association of Government servants and that respondent no.1-service association is recognised by the Government under the said notification. He categorises the nature of the duties discharged by respondent no.1 to be of public character. Learned Senior Counsel has emphasized on Rule (4), 5(b), 6(f) and 10, seeking to indicate that under the aforesaid provisions, the Government has pervasive control over the functioning of respondent no.1 and further submits that under the said rules, in case there are any disputes with respect to the provisions of these rules or fulfilment of conditions for recognition, such disputes shall be referred to the Government.

9. Learned Senior Counsel seeks to draw an analogy that respondent no.1 consists of public servants and these members, in turn, discharge their respective duties in accordance with the service rules. Thus, according to him, if the entire gamut of the applicable rules, bye-laws and the facts



involved in the instant case are considered, the act of respondent no.1 can be considered to be in line with the performance of a public duty. He, therefore, submits that the Writ Court, in exercise of authority under Article 226 of the Constitution of India, can entertain the writ petition to remedy the injustice being caused to the petitioner.

10. To substantiate his contentions, learned Senior Counsel for the petitioner has placed reliance on the decisions of the Supreme Court in the cases of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others v. V.R. Rudani and Others*¹, *A. Umarani v. Registrar Cooperative Societies and Others*² and *K.K. Saxena v. International Commission on Irrigation and Drainage and Others*³. He then indicates that the decision dated 09.09.2024, passed by this Court in W.P.(C) 12316/2019 titled as *Balwan Singh and Anr. v. The Registrar of Societies and Ors.*, is clearly distinguishable from the controversy involved in the instant writ petition. He submits that in the case of *Balwan Singh*, the controversy pertains to the election of Resident Welfare Association (RWA), whereas in his case, the controversy pertains to the election of an association which has been granted recognition by the Government and functions under statutory bye-laws.

11. Vehemently denying the contentions advanced by the learned Senior Counsel for the petitioner, learned Senior Counsel appearing on behalf of respondent nos. 1 and 2, on advance notice, submits that this Court has taken a consistent view in similar cases, wherein, the controversy related to the election of a society. He submits that the disputes relating to election of a

¹ (1989) 2 SCC 691.

² (2004) 7 SCC 112.



society is not amenable under Article 226 of the Constitution of India and therefore, according to him, applying the same analogy, the instant writ petition also deserves to be dismissed. He further submits that the respondent no.1 may have been formed under the applicable service rules, however, the analogy drawn by the petitioner herein would fail if the function of respondent no.1 is appreciated in its true sense. He submits that the function of respondent no.1 is solely to redress the grievance of the officers employed in the Public Works Department and thus, an association which redresses the grievances of certain employees of a Government department cannot be categorised as to be at the helm of discharging public functions. He further proceeds to contend that in absence of there being any indicators of conclusive and pervasive Government control in the functioning of the association, the instant writ petition would not be maintainable. He submits that one such yardstick for gauging the control is the contribution by the Government to the association and there is nothing on record to indicate any such contribution.

12. I have considered the submissions made by learned Senior Counsel appearing on behalf of the parties and have also perused the record.

13. Respondent no.1-association is admittedly a recognized association. The recognition is granted in terms of Rules of 1993. Under the Rules of 1993, the Service Association, its recognition, its object and the function etc. have been clearly delineated under Rule 6(f) of the Rules of 1993. It can be seen that respondent no.1 is bound to abide by and to comply with all the provisions of its Constitution/bye-laws.

14. Upon an examination of the entire bye-laws of respondent no.1, it is

³ (2015) 4 SCC 670.



seen that they are not statutory in character. The respondent no.1's bye-laws solely indicate the *modus* in which the association shall function/operate. The bye-laws nowhere indicate towards any Government contribution. The members of the respondent no.1 may have been consisting of various Government servants, but the association does not seem to discharge any public function. Furthermore, the controversy herein specifically relates to the election to certain positions within the association, which are governed by the applicable bye-laws. The Rules of 1993 solely pertain to the recognition of the Service Associations and, nowhere, venture to deal with the internal elections of the association.

15. The Court has also considered the decision relied upon by learned Senior Counsel for the petitioner. In W.P.(C) 4671/2024, in the case of ***Sumir Dhir and Anr. v. Union of India and Ors.***, this Court had adjudicated the controversy pertaining to the election rules which were applicable to the Wool and Woollens Export Promotion Council. In the aforesaid decision, a contention was made by the petitioner therein that the said council was subject to Government interferences at various stages as per the bye-laws of the said council.

16. The argument was considered in the context of various clauses of the said association and in paragraph no.10 of the said order, the Court relied on the decision of the ***Ramakrishna Mission v. Kago Kunya***⁴. In the said order, the Court has considered the applicability of various decisions which the learned Senior Counsel for the petitioner herein has relied on. In paragraph no.15, the Court has held that assumingly, even if the concerned association in that case was discharging any public function, the nature of grievance



raised in that writ petition pertaining to the internal election of the said council did not allude to any aspect of public law. Paragraph no.15 of ***Sumir Dhir (supra)*** reads as under:-

“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.”

17. Furthermore, in ***Ramakrishna Mission (supra)***, it was further held that to assume that an organisation is discharging any public function, such function so being discharged has to be scrutinised and upon such scrutiny, it must be closely related to functions which are performed by the State in its sovereign capacity. The State/Government encouraging the functions of the society, providing certain resources/facilities/funding by itself would not result in the conclusion that the organisation discharges a public function and thus, be termed to fall under the ambit of a public authority.

18. With respect to the aspect that the bye-laws of the respondent association were formulated in compliance with the Rules of 1993, and thus, the association can also be termed as an organisation engaged in public function, is concerned, it is pertinent to place reliance on ***Federal Bank Ltd.***

⁴ (2019) 16 SCC 303.



v. *Sagar Thomas*⁵, wherein, the Supreme Court has held that private bodies or persons, which are required to comply with statutory provisions, when they fail to do so, a writ may be issued subject to availability of alternate remedies. But in event there is no alleged non-compliance or violation of any statutory provisions by the private body, a writ may not be issued at all.

The relevant paragraph reads as under:-

“27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.”

19. In the instant case, the Court finds that the grievance raised by the petitioner relates to adherence of the applicable bye-laws in the internal election. In the considered opinion of this Court, the question as to whether respondent no.1 has abided by the applicable bye-laws or is in breach of the same are the aspects that may not strictly fall within the definition of public function. The same would clearly relate to the rights of the concerned

⁵ (2003) 10 SCC 733.



Government servant(s) in their individual/personal capacity as members of the association, with respect to the conduction of the election according to applicable bye-laws.

20. So far as the decision relied upon by learned Senior Counsel for the petitioner in *Andi Mukta (supra)* to contend that the scope of mandamus is broad enough to issue a writ against a private body constituted by statute is concerned, upon careful examination of that decision, it is evident that the Court did not interfere with the institution's operations or assess its compliance with its bye-laws. In that case, the Court merely directed the educational institution to settle the outstanding dues of terminated employees, who were not seeking any affirmative relief such as reinstatement or specific performance. A key distinction is that the educational institution in that instance received Government funding and public money was involved, whereas, in the case at hand, there is nothing on record to indicate any pervasive Government control or contribution.

21. The learned Senior Counsel has further placed reliance on *A. Umarani (supra)*. Upon an examination of the said decision, it is seen that the dispute pertains to regularisation of certain employees who were allegedly regularised in contravention to applicable provisions. In its decision, the Supreme Court, while rejecting the relief sought, has held that when the State has no administrative control over its day-to-day affairs or has not borne any part of the financial burden, the State cannot interfere into the appointments of the said cooperative society. The relevant paragraph of the said decision reads as under:-

“60. Although we do not intend to express any opinion as to whether the cooperative society is a “State” within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ



petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the nodal centre functions and supervision of the cooperative society, the State has no administrative control over its day-to-day affairs. The State has not created any post nor could it do so on its own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularisation of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time.”

22. In view of the above, the Court is of the considered opinion that in the instant case, there does not appear to be any involvement of public law element in the impugned action and the Court, therefore, declines to entertain the instant writ petition. The petitioner is, however, at liberty to take appropriate recourse in accordance with law, including filing of a Civil Suit.

23. With the aforesaid liberty, the petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J.

SEPTEMBER 23, 2024

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