

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. 16709 of 2023
CAN 3 of 2023

The Indian Science Congress Association & Ors.
-vs-
The Union of India & Ors.

For the Petitioners	: Mr. Subir Sanyal, Advocate Mr. Ratul Biwas, Advocate Mr. Shoham Sanyal, Advocate Mr. Sourojit Mukherjee, Advocate
For the Respondent Nos. 1 to 5	: Mr. Dhiraj Trivedi, Ld. D.S.G., Advocate Mr. Sukanta Chakraborty, Advocate Ms. Anamika Pandey, Advocate Ms. Sanjukta Guha, Advocate
For the Respondent Nos. 7 & 8	: Rajdeep Bhattacharyya, Advocate
Hearing concluded on	: 6 th March 2025
Judgment on	: 2 nd April, 2025

Saugata Bhattacharyya, J.:

1. The Indian Science Congress Association (hereinafter referred to as 'said Association') its General President, one Executive Committee Member and one Council Member have approached this court with the present writ petition, *inter alia*, challenging an order dated 3rd May, 2023 and subsequent communication dated 8th June, 2023, first one was issued by

the Scientist 'G & Head (AI)' and the subsequent communication was issued by the Under Secretary, Government of India, Department of Science and Technology (hereinafter referred to as 'DST'). By order dated 3rd May, 2023 said Association was intimated that its Rules & Regulations and Bye-Laws were amended and the amended Rules & Regulations and Bye-Laws were appended to the impugned order dated 3rd May, 2023 and there was further direction to take necessary action to notify and implement the amended Rules & Regulations and Bye-Laws immediately and an action taken report was called for by DST.

2. By subsequent communication dated 8th June, 2023 referring to the letter dated 9th May, 2023 being no. GP/I/2023-24 of the Executive Secretary of said Association, the General President of the said Association was further informed that former DG, CSIR being a renowned scientist was nominated as a member of the Executive Committee by DST and the composition of Executive Committee and the names of members of the said Executive Committee were also delineated therein.
3. At the outset, Mr. Subir Sanyal, learned senior advocate representing the petitioners has elaborated brief history of said Association from the time of its inception. Said Association was originally registered under Act XXI of 1860 and now deemed to be registered under West Bengal Societies Registration Act, 1961 (hereinafter referred to as 'said Act of 1961').

According to the petitioners, it is well acclaimed scientific organization of the country having its Head Quarter at Kolkata which started its journey 1914. First congress of the said Association was held in 1914 at Kolkata and Hon'ble Justice Sir Asutosh Mookerjee being the then Vice-Chancellor of the University of Calcutta presided over the first congress. Initially there were 105 scientists from different parts of India and abroad attended the said congress. In efflux of time the said Association has grown up and at present it has more than thirty thousand members who are scientists. The annual meeting of the said Association is held in the month of January every year. Renowned personalities in the field of Science & Technology who made endeavour for the promotion of science were the General Presidents of the said Association and the first General President was Hon'ble Justice Sir Asutosh Mookerjee and thereafter, Colonel Sir Sidney G. Burrard, Acharya Prafulla Chandra Ray, Sir Rajendra Nath Mukherjee, Sir J.C. Bose, Professor C.V. Raman, Professor M.N. Saha, Sir U.N. Brahmachari adorned the chair of General President of the said Association.

4. It has been submitted that from 1972 said Association is in receipt of Government grant without any interference in its autonomy for facilitating the said Association to make endeavour for the development of science. A Memorandum of Understanding (for short 'MoU') for the first time was signed by said Association and DST from 2017-2018 and the last MoU was signed for the year 2022-2023. According to the petitioners, the reason for

introducing MoU was to deal with financial affairs of the said Association without altering its Memorandum of Association, Rules & Regulations and Bye-Laws. It is the specific contention made on behalf of the petitioners as per terms and conditions contained in the said MoU which were in existence from 2017-2018 to 2022-2023 said Association was permitted to function following its Rules & Regulations and Bye-Laws without altering the nature and character of the said Association and without tweaking three bodies namely, Executive Committee, Council and General Body which were formed and functioning based on the objects of said Association as delineated in the Memorandum of Association.

5. In terms of Memorandum of Association of ISCA the objects are as follows :-

- a) To advance and promote the cause of Science in India;
- b) To hold an annual Congress at a suitable place in India;
- c) To publish such proceedings, journals, transactions and other publications as may be considered desirable;
- d) To secure and manage funds and endowments for the promotion of science including the rights of disposing of or selling all or any portion of the properties of the Association;
- e) To do and perform any or all other acts, matters and things as are conducive to, or incidental to, or necessary for the above objects.

6. As per the key features of the Regulations of the said Association membership shall be open to all persons with graduate and equivalent qualification who are interested in advancement of science in India. There are Honorary Members, Sessional Members and persons studying in under graduate level may be enrolled as Student Member provided his application needs to be duly certified by the Principal or Head of the Department. However, total number of Honorary Member is limited to 25. The notice of this court has also been drawn to relevant part of the Regulations which provides the composition of the Executive Committee of the said Association consisting of General President, immediate past General President, General President-Elect, two General Secretaries, Treasurer and ten members elected by the General Body and Secretary or his nominee, DST, Government of India. The procedure for electing ten members of the General Body is also delineated in details under Rule 9(B). Similarly, in the Regulations the composition of the Council is detailed and how the election of seven members on the Council to be conducted by the General Body is narrated in Regulation 13(B). Regulation 13(F) also provides that $1/3^{\text{rd}}$ of the members of Council shall form quorum. In terms of Regulation 14, General Body of the said Association consists of all members (with voting right) and its Honorary Members. In terms of Rule 15(A) the annual meeting of the General Body is held during its session of the Congress, $1/3^{\text{rd}}$ of the members with voting right personally present at the commencement of the meeting shall form quorum for the meeting.

7. Much emphasis has been laid on Regulation 29 which deals with change of Regulations. According to the said Regulation 29 proposal for addition and alteration of the existing Regulations may be made by the Executive Committee, the Council and the members with voting right or the Honorary Members of the said Association and such proposal along with amendments, if any and the opinions thereon of the Executive Committee and the Council shall be placed before the General Body for its consideration at its annual meeting during the session of Congress. Regulation 29 (E) also provides that at the meeting of the General Body voting on such proposals and amendments, shall be in accordance with Regulation 15 and the proposal shall be accepted if three-fourth of the number of members (with voting right) present, cast their vote in favour of the proposals.
8. It has been submitted on behalf of the petitioners that DST proposed amendment of Rules & Regulations and Bye-Laws of the said Association and in response thereto a detailed representation was made by the General President of said Association by letter dated 11th April, 2022 indicating in three separate columns existing provisions of said Association, proposed provision (by DST) and suggestion of said Association in connection with the proposal of amendment of Rules & Regulations and Bye-Laws made by DST. One of the proposals regarding amendment of Rules & Regulations and Bye-

Laws is related to eligibility of Student Members which is confined to PG or equivalent to B.E, B.Vet, MBBS etc. whereas such restriction of having PG or equivalent degree as indicated in the proposed amendment is not there in the Regulations of said Association. Said Association made objection to the extent of the said amendment on the ground the aim of said Association to bring inclusivity and to include science teachers with graduate qualification as members of the association which would be defeated in accepting said proposal. Another proposed amendment made by DST is minimum qualification prescribed for membership is post graduate or equivalent degree in Natural/Agricultural Sciences whereas the existing Regulations provide that membership is open to all persons with graduate and/or equivalent academic qualification who is interested in the advancement of science in India. Such proposal of amendment of Regulation is also objected by said Association and an alternative proposal has been made that graduates can be members without voting rights but members having post graduate qualification can cast vote in order to fulfill the aim of the said Association to motivate members with general academic background. The proposal for amendment of Regulation related to deletion of Sessional Members and Student Members is also objected on the ground that large number of students, school teachers and Sessional Members take membership in order to attend the annual event and are benefited. The proposal of deletion of Regulation relating to presence of elected members in the Executive Committee is also objected on the ground that Executive

Committees and Councils of Bodies like NASI, IASc., INSA and INAE are all elected Bodies. The proposal of DST that the Treasurer shall be a regular employee of appropriate level of said Association is also objected by the Association on the ground that Treasurer is inducted as per West Bengal Societies Registration Act, 1961 and Treasurer renders honorary service and Treasurers of academies and professional bodies are elected representatives which is well known practice in the country. Lastly, the proposal of modification of composition of various committees of said Association on replacing elected members by the nominated members which has been made by the respondents is also opposed by the said Association on the ground that the said Association would be deprived of its autonomy. Other proposals relating to amendment of Regulations, Rules and Bye-Laws as made by DST are accepted subject to certain modifications.

9. It was submitted on behalf of the petitioners that surprisingly after submitting the response of said Association vide letter dated 11th April, 2022 relating to proposal to change Rules & Regulations and Bye-Laws, Scientist 'G & Head (AI)' of DST by issuing impugned order dated 3rd May, 2023 informed the said Association through its General President that Rules & Regulations and Bye-Laws of said Association have been amended and are appended to the said order dated 3rd May, 2023 with direction upon the said Association to take further necessary action to notify and implement the amended Rules & Regulations and Bye-Laws with immediate effect and

action taken report was called for. It was also contended on behalf of the petitioners that the said order dated 3rd May, 2023 is cryptic which reflects non-application of mind. Why deliberation of said Association as contained in the letter dated 11th April, 2022 relating to the proposal of amendment of Rules & Regulations and Bye-Laws as made by DST was discarded, was not discussed in the said order dated 3rd May, 2023. There was another communication dated 31st May, 2023 by the Under Secretary, UOI, DST intimating the General President of the said Association to upload only one Bye-Laws and Rules & Regulations as finalized by DST vide order dated 3rd May, 2023 on said Association's website to avoid confusion.

10. Subsequently, vide communication dated 8th June, 2023 Under Secretary, UOI, DST informed the General President of the said Association, the composition of the Executive Committee in terms of amended Rule 7(a) of the Bye-Laws. Apart from General President, General Secretary (Membership Affairs), General Secretary (Scientific Activities), names of nine members of the new Executive Committee were indicated in the said communication dated 8th June, 2023. On receipt of the aforesaid communication dated 8th June, 2023 the General President of said Association vide letter dated 20th June, 2023 intimated the Under Secretary that duly elected Executive Committee for the year 2023-2024 is functioning and the said Executive Committee includes representative of DST therefore it would be legally not correct to notify another Committee.

11. By further communication dated 26th June, 2023 of the Under Secretary, UOI, DST the Executive Secretary of said Association was informed that in terms of the newly amended Bye-Laws notification needs to be issued for carrying out functions of the organization smoothly. Therefore, said Association through its Executive Secretary was directed to issue notification regarding formation of the Executive Committee as per letter dated 9th May, 2023 which would be in terms of new amended Bye-Laws and the same was directed to be intimated to the department.

12. It was also brought to the notice of this court by the learned advocate for the petitioners that after issuance of the impugned order dated 3rd May, 2023 the Executive Secretary of the said Association vide letter dated 9th May, 2023 informed the concerned authority of DST that Dr. Arvind Kumar Saxena, General President of said Association by email dated 9th May, 2023 directed him to inform DST based on Rule 16C(v) of the existing Regulations and Bye-Laws of said Association that it was agreed to implement newly amended Bye-Laws which has been framed by DST. According to the petitioners, the basis of the said letter dated 9th May, 2023 being no. GP/I/2023-24 is email letter of General President of said Association which was sent to the Executive Secretary. Copy of the said email letter dated 9th May, 2023 is not part of the writ petition but during course of hearing same was produced before court and taken on record. Short email letter dated 9th

May, 2023 was read over during course of hearing and it was submitted that on referring to Rule 16C(v) of the existing Regulations of said Association though it was projected on behalf of DST that the General President was in agreement to implement newly amended Rules & Regulations and Bye-Laws framed by DST but the learned advocate for the petitioners invited this court to consider said Rule 16C(v) which is at pages 49 & 50 of the writ petition containing provision that in absence of any definite Regulation on any questions likely to arise in connection with the administration of the Association or in case of a doubt as to the interpretation of the Regulations, the General President shall give decision and his/her ruling or interpretation which would prevail for the time being. It was further contended on behalf of the petitioners keeping in view of the provision as contained in said Regulation 16C(v) that the provision contained therein is wholly inapplicable in accepting newly amended Rules & Regulations and Bye-Laws as framed by DST. The purpose of such Regulation 16C(v) is different. Therefore, email letter dated 9th May, 2023 of the General President does not come in aid of DST in implementation of amended Rules & Regulations and Bye-Laws. Furthermore, another email letter dated 26th June, 2023 is enclosed to this writ petition based on which it was submitted on behalf of the petitioners that the General President of said Association intimated the General Secretary to withdraw the notification which was issued by the General Secretary relating to amendment and implementation of newly framed regulations as framed by

DST, from said Association's website immediately otherwise steps would be taken against the said General Secretary.

13. Learned advocate for the petitioners in relation to amendment of Rules & Regulations and Bye-Laws placed reliance on Regulation 29 of the Rules & Regulations and Bye-Laws of the said Association vis-à-vis Section 4, Section 8 and Section 9 of the said Act of 1961. According to the petitioners, the method which has been followed by DST in amending Rules & Regulations and Bye-Laws of the said Association is contrary to Regulation 29 of the said Association and Section 8 of the said Act of 1961. It was argued on behalf of petitioners that merely by issuing impugned order dated 3rd May, 2023 nature and character of the Association cannot be altered thereby a democratic registered society cannot be replaced by an autocratic organization which would function at the dictate and behest of DST on changing composition of the Executive Committee thereby removing the elected members and incorporating the nominated members of DST.

14. It was submitted that as per Regulation 29 the proposal for amendment of Rules & Regulations and Bye-Laws needs to be placed before the General Body for its consideration at its Annual General Meeting and proposal shall only be accepted if three-fourth of number of members (with voting right) present cast their vote in favour of the proposals. Thereafter, steps are required to be taken in terms of the provisions of Section 8 & Section 9 of

the said Act of 1961. According to the petitioners, in absence of such steps being taken by said Association as contemplated under Regulation 29 of the said Association and Section 8 and Section 9 of the said Act of 1961 amendment of Rules & Regulations and Bye-Laws is impermissible.

15. In addition to the statements made on behalf of the petitioners regarding their inability to notify the newly amended Rules & Regulations and Bye-Laws as framed by DST in affidavit-in-reply affirmed on behalf of the petitioners on 21st February, 2024 it was averred that in the General Body Meeting held on 7th January, 2023 the proposal of amendment of Rules & Regulations and Bye-Laws was rejected by the members present having voting right for the year 2020-2023. The minutes of annual meeting of the General Body held on 7th January, 2023 is appended to the said affidavit-in-reply.

16. A supplementary affidavit filed on behalf of the petitioners which was affirmed on 3rd August, 2023 contains averments in paragraphs 2 & 3 relating to the authority of the petitioners to institute the present writ petition in reference to the order passed by a co-ordinate Bench on 1st August, 2023. In order to satisfy the court minutes of the Executive Committee meeting held on 2nd June, 2023 was brought on record by filing the supplementary affidavit and the statements are made in paragraph 3 of the supplementary affidavit that on virtual mode a meeting was convened on

2nd June, 2023 relating to implementation of newly amended Bye-Laws which are not in sync with the autonomy of said Association as ensured by the existing Bye-Laws and 12 members were present in the virtual meeting of the Executive Committee unanimously agreed to authorize the General President, the petitioner no. 2 to take appropriate legal steps in order to protect the interest of the said Association.

17. According to petitioners section 2(b) of the said Act of 1961 read with Regulation 10(A) of the said association authorise the Executive Committee to take steps in connection with the attempts of the respondent authorities to amend Rules & Regulations and Bye Laws as it emanates from the resolution dated 2nd June, 2023 adopted in the virtual meeting of the Executive Committee. To buttress the decision taken by the Executive Committee in its meeting dated 2nd June, 2023 reliance is also placed on the order dated 20th March, 2024 passed on the application being CAN 2 of 2023 preferred by some members of ISCA seeking to be impleaded as respondents in this writ petition wherein necessity of impleadment was not felt as elected body of the said association approached the court with the writ petition.

18. In support of submissions made on behalf of the petitioners reliance was placed on **(1999) 1 CHN 578 (Pradip Kumar Guha vs. State of West Bengal & Ors.)**

19. On the other hand, first limb of submission advanced by Mr. Dhiraj Trivedi, learned Deputy Solicitor General appearing on behalf of the Union of India and Department of Science and Technology being respondent nos. 1 to 5 is against the meeting of the Executive Committee of said association dated 2nd June, 2023 and the decision taken in the said meeting is also questioned on the ground that the mode of holding meeting is contrary to Regulation 11(A) of the said association. It is submitted that there was no agenda of the said meeting dated 2nd June, 2023 and in absence of agenda the decision taken thereby authorizing General President of the said association to file court case against Department of Science and Technology is void. According to respondents, the meeting dated 2nd June, 2023 is illegal since in terms of Regulation 11(A) of said association apart from three statutory meetings of the Executive Committee, additional meeting and emergency meeting can be held; in case of additional meeting fortnight's notice and in case of emergency meeting week's notice are required. In the present case in connection with meeting dated 2nd June, 2023 no notice was given and no such notice is disclosed by the petitioners in the writ petition as well as in the supplementary affidavit. In furtherance of the submission made that there was lack of notice of meeting dated 2nd June, 2023 it was contended that nominee of Department of Science and Technology did not receive any such notice that the meeting was going to be held on 2nd June,

2023. Regulation 11(D) of the said association provides that minutes of the proceedings of every meeting of Executive Committee needs to be prepared but no such exercise was made for preparation of minutes of the meeting dated 2nd June, 2023. It was submitted that if meeting dated 2nd June, 2023 is treated as emergency meeting in that event the decision taken by holding such meeting should contain description of emergent situation which was not done that makes the decision nugatory. Who were present in the said meeting dated 2nd June, 2023 is not discernible from the document at page 7 to the supplementary affidavit affirmed on 3rd August, 2023 and authorization letters issued by the members of the Executive Committee did not refer specifically the meeting dated 2nd June, 2023. Therefore, the stand which is taken on behalf of respondent nos. 1 to 5 is that the meeting held on 2nd June, 2023 was erroneous and no credence may be given to such meeting and the decision taken in the said meeting on 2nd June, 2023 authorizing petitioner no. 2 to take legal steps against the decision of the respondent authority to amend Rules & Regulations and Bye-Laws of the said association is void ab initio as such petitioner no. 2 is not authorized to present this writ petition being the General President of the said association which makes the present writ petition not maintainable.

20. Reliance is also placed on Regulation 26 of said association which according to respondent authorities empowered the Executive Secretary of shouldering legal responsibilities who is also responsible for general

administration. It is contended that the Executive Secretary took steps for implementation of newly framed Rules & Regulations and Bye-Laws as communicated vide order dated 3rd May, 2023 which is apparent from e-mail letter dated 9th May, 2023 addressed to the General President of the said association.

21. Based on the facts as submitted on behalf of the respondent authorities that the said association is being funded by the Union of India through the Nodal Department i.e. DST from 1947 which has transformed the said association as Article 12 Authority over the years. It is asserted that apart from fund being provided by the Union of India functionally and administratively the said association is dominated and controlled by the DST/ Union of India. In support such submission reliance was placed on the judgment of the Hon'ble Bombay Court reported in **2011(2) MhLJ 723 (Indian Council of Agricultural Research (ICAR), New Delhi & Anr. vs. Duryodhan Hiranman Ingole & Ors.)** and the judgment of the Hon'ble Supreme Court reported in **1981 (1) SCC 722 (Ajay Hasia Others. vs. Khalid Mujib Sehravardi & Ors.)**. Placing reliance on paragraph 9 of **Ajay Hasia** (supra) it was submitted that since DST has deep and pervasive control over the said association which should be indicative of the fact that the said association is "other authorities" as contemplated under Article 12 of the Constitution of India. Reliance was also placed on two other decisions - **(2013) 5 SCC 470 (Rajasthan State Industrial Development and**

Investment Corporation And Another - vs - Diamond & Gem Development Corporation Limited And Another) and (1990) SCC 613 (Charan Lal Sahu – vs – Union of India).

22. Much emphasis was laid on MoU which was being signed on behalf of the said association and DST from 2017-2018 onwards and the last MoU which was made for the year 2022-2023 is annexed at pages 74 onwards of the writ petition. Under Part-II of the said MoU delineating responsibilities of the institute which has been provided in Clause 3 that for statutory bodies, the provisions of Parent Act and rules and regulations made thereunder, will apply. Clause 4 provides the institute shall carry out such directions as may be issued to it from time to time, by the Government of India for its efficient management. It was submitted that based on the authority as derived from Clause 4 of Part-II of MoU, Union of India/DST is authorized to issue order dated 3rd May, 2023 thereby directing said association to amend Rules & Regulations and Bye-Laws and to implement the Rules & Regulations and Bye-Laws which were framed by DST.

23. According to the respondent authorities, MoU was introduced for providing fund to the said association in terms of the relevant provisions of General Financial Rules, 2017 (for short 'GFR'). Rule 230(14) of GFR contemplates any other special terms and conditions or procedures for transaction of business as Government may desire to be followed by the

Grantee Institution or Organization, shall be got incorporated in the Articles of Association or Bye-Laws of the Institute or Organization concerned before release of grants-in-aid. According to the respondents, since said association signed MoU which was introduced in terms of relevant provisions of GFR made Rule 230(14) applicable in case of the said association and in terms of Rule 230(14) as per desire of the Union of India procedure for transaction of business of the said association if required shall be provided in Articles of Association or Bye-Laws of the said association which would be pre-condition for release of grant-in-aid. In other words, the meaning which was attempted to be attributed based on Rule 230(14) of GFR is empowering Union of India/DST to amend or substitute new Rules & Regulations and Bye-Laws which were framed by the Central Organization for the said association since said association is in receipt of Central government grant. On applicability of GFR one office memorandum dated 2nd November, 2010 issued by the under Secretary to the Government of India, Ministry of Finance, Department of Expenditure, was relied upon wherein it was provided that relevant provisions contained in GFR shall be deemed to be applicable to autonomous bodies except to the extent of Bye-Laws of an autonomous body provides for separate financial rules which have been approved by the Government. Based on such office memorandum dated 2nd November, 2010 it is submitted that GFR is applicable to the said association notwithstanding the provisions of GFR being repugnant to the existing Rules & Regulations and Bye-Laws of said

association as those existing Rules & Regulations and Bye-Laws are repudiated by the respondent authorities by deciding to amend existing Rules & Regulations and Bye-Laws on implementation of new set of Rules and Bye-Laws as communicated vide order dated 3rd May, 2023.

24. On behalf of added respondent nos. 7 & 8 it was submitted that there are altogether 22 employees who are working in said association and concern has been expressed on payment of their salaries in the event government grant is stopped. According to added respondents, their salaries are being paid out of the fund provided by the Union of India/DST therefore they are apprehending in case fund is not provided by the Central Authorities they may suffer due to non-payment of salaries. According to these respondents, previously certain amendments to the Rules & Regulations and Bye-Laws were made by said association without taking recourse to the relevant provisions of the said Act of 1961; therefore, in implementing new Rules & Regulations and Bye-Laws as communicated vide order dated 3rd May, 2023 to said association, it is not required to follow the statutory provisions which were given go-by previously in similar situations.

25. From the respective submissions made on behalf of the parties it appears that said association was formed in 1914 and registered under Act XXI of 1860 and subsequently registered under the said Act of 1961. Objects of the said association are delineated under clause 3(a) to 3(e) of Memorandum of

Association. Perusal of the objects reveals that the said association is primarily engaged in promoting cause of science, holding annual congress at a suitable place in the country, publish science journals and other publications as considered to be found desirable, management of funds and endowments for promotion of science along with miscellaneous objects as stated under clause 3(e). Said association is in receipt of financial grant from Central Government however time of commencement of extending such grant is disputed as petitioners claimed such grant commenced from 1972 whereas on behalf of respondent nos. 1 to 5 it was alleged that grant is being extended from 1947. Another important feature is signing of MoU from 2017-2018 based on which it was argued by the respondents that said association is required to follow GFR. Therefore, the issue is poised in between applicability of relevant provisions of the said Act of 1961 vis-a-vis terms and conditions contained in MoU.

26. It was specifically submitted on behalf of the petitioners that the said association squarely comes under the purview of the said Act of 1961 as a result whereof signing of MoU from 2017-2018 by the said association does not absolve said association of sweep of said Act of 1961. To rebut such claim much stress was laid on behalf of the respondent nos. 1 to 5 on terms and conditions of MoU which was being signed by the said association from 2017-2018 onwards read with relevant provisions of GFR. Reliance was laid on clause 1 under Part - II of MoU which provides that institute would

function as per provisions of its Memorandum of Association (MoA), Rules & Regulation and Bye-Laws as approved by Government of India (for short GoI). Authority was conferred upon GoI for creation of posts including upgradation and down-gradation of posts, condition of service of employees of the institute shall be identical to those in case of Central Government employees and institute is required to carry out such direction as may be issued to it from time to time by GoI for its efficient management. It was argued that said association being signatory to MoU is under obligation to accept Rules & Regulations and Bye-Laws approved by GoI and directions which are issued from time to time by GoI for efficient administration of the said institute. Therefore, said association is under obligation on accepting impugned order dated 3rd May, 2023 of DST to adopt and implement amended Rules & Regulations and Bye-Laws which are appended to said order dated 3rd May, 2023 and accordingly reconstitute Executed Committee in terms of letter dated 8th June, 2023 of the DST.

27. While asking the General President of the said association to reconstitute Executive Committee in terms of the composition as delineated in the said letter dated 8th June, 2023, one e-mail letter of General President dated 9th May, 2023 was referred to which is not part of record but during course of hearing said e-mail letter dated 9th May, 2023 was placed before this court by which General Secretary was conveyed alleged consent under Rule 16C(v) of Regulations and Bye-Laws of said association for implementation of the

Regulations and Bye-Laws as framed by DST. It was argued such e-mail letter dated 9th May, 2023 of the General President shows acceptance of Regulations and Bye-Laws framed by DST on behalf of said association. According to respondent nos. 1 to 5, signing of MoU by the said association brings it within the domain of GFR; Rule 229(xi) provides autonomous organizations as also others with a budgetary support of more than rupees five crores per annum should be required to enter into a Memorandum of Understanding with the Administrative Ministry or Department with specifications as contained in sub-rule (xi). According to respondent authorities, Rule 230(14) is relevant in appreciating the effort made by DST to amend Rules & Regulations and Bye-Laws of the said association since it is provided therein that any other special terms and conditions or procedures for transaction of business as government may desire to be followed by Grantee Institution or Organization, shall be got incorporated in the Articles of Association or bye-laws of the Institution or Organization concerned before release of Grants-in-aid. Sanction of financial grants in favour of said association according to DST makes the said association liable under Rule 230(14) of GFR read with terms and conditions of MoU to accept amended Rules & Regulations and Bye-Laws as communicated by order dated 3rd May, 2023. Therefore, it is also obligatory on the part of said association to constitute its Executive Committee as per the composition details of which were communicated vide letter dated 8th June, 2023.

28. Now the test is whether the said association which is indisputably registered under said Act of 1961 and was formed in 1914 for receiving limited financial grant from the Central Government based on signing MoU from 2017-2018 is compelled to amend its age-old Rules & Regulations and Bye-Laws in defiance of Section 8 and Section 9 of the said Act of 1961 read with Regulation 29 of said association. Section 4(1) of the said Act of 1961 postulates any seven and more individuals associated for any of the objects mentioned in Sub-Section 2, may subscribe their names to a Memorandum of Association and file it along with a copy of the regulations with the Registrar for the registration of association as a society under this Act. Alteration of Memorandum and Regulations is provided under Section 8 which is quoted below :

“8. Alteration of memorandum and regulations.- (1) A society shall not alter its memorandum except with the previous permission of the Registrar in writing, and the votes of three-fourths of its members.

(2) Before granting permission under sub-section (1), the Registrar shall satisfy himself that the alternation does not make the society ineligible for registration under this Act.

(3) Subject to the provisions of this Act, the rules and the provisions of the memorandum a society may, by the votes of three-fourths of the members, alter its regulations.”

29. After the steps taken as prescribed under Section 8 by any association registered under the said Act of 1961 for alteration of Memorandum and Regulations, a copy of every alternation of the memorandum and regulations needs to be filed with the Registrar within a specified time under Section 9(1). Court finds it apt to quote Section 9 below :

“9. Altertions to be filed.- (1) *A copy of every alteration of the memorandum and of the regulations shall be filed with the Registrar within thirty days of such alteration.*

(2) The Registrar shall, except for special reasons to be recorded by him in writing within thirty days from the date of such receipt, record the alteration and send an intimation of the fact to the society or communicate to the society his objections to such alteration.

(3) An appeal shall lie to the State Government against any objection made by the Registrar and the decision of the State Government on such appeal shall be final.

(4) An alteration shall have effect from the date on which the intimation referred to in sub-section (2) is received by the society or in the event of any objection being raised by the Registrar, from the date on which the State Government allows the alteration on appeal.”

30. Regulation 29 of the said association also prescribes the procedure which is required to be followed for altering its regulations which requires proposal for alteration of regulations can be made by Executive Committee, the Council, the Members with voting right or the Honorary Members and such

proposal and opinions thereon of the Executive Committee and the Council is required to be placed before the General Body for its consideration at its Annual Meeting during the Session of the Congress. It is provided under Regulation 29(E) that in the meeting of the General Body voting on proposal for amendment is required to be conducted in prescribed manner and, thereafter, proposal for amendment is accepted if three-fourth of the number of members (with voting right) present, cast their vote in favour such proposal.

31. Said association being registered under the said Act of 1961 for amending its Rules & Regulations and Bye-Laws is obliged to follow Section 8 and Section 9 read with Regulation 29 of the association. This proposition is fortified by ratio of **Pradip Kumar Guha** (supra) wherein a coordinate bench decided that a mere resolution adopted at a Special General Meeting is not sufficient for the purpose of amendment and/or alteration of the Rules & Regulations unless there is due compliance of Section 8 of the West Bengal Societies Registration Act, 1961. On accepting the case made out on behalf of respondent nos. 1 to 5 if mandamus is issued directing the said association to amend its Rules & Regulations and Bye-Laws and reconstitute Executive Committee following order dated 3rd May, 2023 and letter dated 8th June, 2023 without taking recourse to Section 8 and Section 9 of the said Act of 1961 read with Regulation 29 of the said association

that would make statutory provisions of the West Bengal Societies Registration Act, 1961 nugatory.

32. MoU as it appears from page 75 of the writ petition was signed in pursuant to Rule 229(xi) of GFR-2017. Rule 229 of GFR contains general principles for setting up of autonomous organization. Said association is age-old association which commenced its journey from 1914 which is admittedly registered under the said Act of 1961 as such, provisions to amend Rules & Regulations of said association whether can be governed by certain clauses as contained in MoU since it was signed on behalf of said association from 2017-2018 onwards. It needs to be recorded herein as it appears from MoU that same was signed by the said association and DST in pursuance of Rule 229(xi) of GFR-2017 and Rule 229 is confined to general principles for setting up of autonomous organizations; whether Rule 229 can be extended to the said association which was set up in 2014. Much emphasis has been laid on Rule 230(14) of GFR whereunder transaction of business by the grantee institute or organization is required to be conducted in a particular manner which will form part of Articles of Association or Bye-Laws of the institution or organization concerned for release of Grants-in-aid. Therefore, object of Rule 230(14) of GFR is to prescribe certain conditions relating to transaction of business which is to be followed by grantee institute before release of Grants-in-aid. In the present case, if court accepts the submission made on behalf of respondent nos. 1 to 5 that grant

is coming from the Central Government from 1947 onwards; then at the time of signing of MoU on behalf of said association from 2017-2018 onwards why the respondent authorities found it necessary to follow the provisions of Rule 230(14) of GFR is not discernible. At the same time, it needs to be kept in mind that MoU was signed pursuant to Rule 229(ix) of GFR-2017 which is only confined to the purpose of setting up of autonomous organization.

33. Taking cue from Rule 230(14) of GFR-2017 that certain steps are required to be taken relating to transaction of business before release of Grants-in-aid by the Central Government and the concern which was expressed by the Deputy Solicitor General relating to misuse of Government Grants detailed in paragraph 13(vii) of the affidavit-in-opposition used on behalf of respondent nos. 1 to 5 to the writ petition this court granted opportunity to the respondent nos. 1 to 5 vide order dated 5th September, 2024 to fix modality for proper utilization of fund sanctioned by the Central Government in favour of the said association, if same is found expedient and to disclose such modality by filing an affidavit.

34. A supplementary affidavit was affirmed on behalf of respondent nos. 1 to 5 on 7th October, 2024 pursuant to the order dated 5th September, 2024 to bring on record modality/Standard Operating Procedure (SOP) for utilization of financial grant comes from the Central Government. However, on perusal

of the SOP being annexure-A to the said affidavit it transpires that DST proposed constitution of Finance and Establishment Committee with varied administrative powers to control general service conditions of permanent employees of the said association, to frame conduct rules and leave rules of employees and other series of administrative powers which have no nexus with regard to curb alleged misuse of funds sanctioned by the Central Government. On mere perusal of SOP would reveal a situation where respondent nos. 1 to 5 in the guise of fixing modality/SOP for proper utilization of government grant has made a tacit attempt to usurp administrative control over the said association though same was not the object of passing the order by this court on 5th September, 2024. Nature of SOP framed by respondent nos. 1 to 5 taking advantage of the order dated 5th September, 2024 passed by this court has exacerbated the case of the respondent authorities and it reveals a situation if amendments of Rules & Regulations and Bye-Laws is not found to be possible in terms of impugned order dated 3rd May, 2023 as well as letter dated 8th June, 2023 another veiled effort is made on framing SOP apparently which was framed for proper utilization of Central Government fund to amend rules & regulations and bye laws of the said association.

35. From the submissions made on behalf of parties and case made out by them it appears that entire financial burden of the said association is not borne by the Central Government/DST and to the extent of rupees five crore

per year fund is allotted in favour of the said association out of which lion's share is spent for paying officers and staff of the said association and rest is utilized for other purposes. Therefore, it cannot be inferred that the said association is fully financed by the Central Government/DST. However, the Central Government/DST is authorized to express its concern before this court relating to utilization of government grants if it is found that the same is not properly utilized. To dispel doubt in the mind of the respondent authorities concerning utilization of government grant account of said association needs to be audited by the Comptroller and Auditor General (CAG) periodically and said association is agreeable to it.

36. By letter dated 11th April, 2022 said association on receipt of proposed amendment of Rules & Regulations and Bye-Laws made certain suggestions and objections as detailed in tabular form appended to the said letter dated 11th April, 2022. There were objections raised by the said association relating to eligibility of Student Members, fixing of minimum qualification for membership i.e. Post-Graduation or equivalent degree in Natural/Agricultural Sciences, deletion of Sessional Members and Student Members, exclusion of Elected Members in the Executive Committee and to be replaced by Nominated Members therein and substitution of Elected Members by Nominated Members in other Committees of the said association. But those objections were discarded without assigning any cogent reasons. According to said association if proposed amendments

without alterations as per objections raised by the said association which were communicated by letter dated 11th April, 2022 are accepted then said association would loose its inclusivity by excluding members not having requisite educational qualification as prescribed by DST in the proposed amended Rules & Regulations and Bye-Laws and more important is said association also will loose its democratic character if Executive Committee and other Committees consist of majority members who are nominated by government authorities. It was categorically submitted before the court if objections and observations made by the said association were taken into consideration and accordingly proposed amended Rules & Regulations and Bye-Laws would have been altered in that event said association being a registered society under said Act of 1961 could take steps for amendment of its Rules & Regulations and Bye-Laws following Regulation 29 of said association read with Section 8 and Section 9 of the said Act of 1961.

37. Court taking note of relevant provisions of the said Act of 1961 read with Regulation 29 does not find it apt to issue mandamus directing the said association to amend its Rules & Regulation and Bye-Laws de-hors the provisions as contained in Section 8 and Section 9.

38. Argument was advanced on behalf of respondent nos. 1 to 5 that the decision taken in the meeting dated 2nd June, 2023 by the Executive Committee by conducting virtual meeting is defective due to lack of proper

notice and agenda. It was submitted in terms of Regulation 11 notice was required to be issued to the members of the Executive Committee in the prescribed manner as provided in the said Regulation and in absence of same authorization made in favour of petitioners vide decision taken in the meeting dated 2nd June, 2023 was not valid authorization. However, such technical plea raised on behalf of respondent nos. 1 to 5 pales into insignificance since out of total 17 members of the Executive Committee 12 members participated in the meeting held on 2nd June, 2023 and submitted authorization letters in favour of General President of the said association to take necessary legal steps against the decision of the respondent authorities to amend Rules & Regulations and Bye-Laws. Therefore, the virtual meeting dated 2nd June, 2023 does not suffer from lack of quorum. In addition thereto in the affidavit-in-reply petitioners have disclosed minutes of annual meeting of General Body dated 7th January, 2023 wherein proposal of amendment of Rules & Regulations and Bye-Laws was rejected by the members leaving no scope to the Executive Committee to take steps for amendment of its parent Rules & Regulations and Bye-Laws in terms of relevant provisions of said Act of 1961 read with Rule 29 of the Regulation of said association.

39. Respondent nos. 1 to 5 relied upon one e-mail letter dated 9th May, 2023 addressed to the Executive Secretary of the said association by its General President regarding implementation of amended Rules & Regulations and

Bye-Laws framed by DST in reference to Regulation 16(C)(v) which provides in absence of any definite Regulation on any questions likely to arise in connection with administration of the association or in the case of a doubt as to the interpretation of any of the Regulations the General President shall give a decision and his/her ruling or interpretation shall prevail for the time being. Provision under Rule 16(C)(v) does not have nexus with amendment of Rules & Regulations and Bye-Laws of the said association for which a separate procedure is prescribed under Regulation 29 vis-a-vis Section 8 and Section 9 of the said Act of 1961. Therefore, the issue of acceptance of proposed Rules & Regulations and Bye-Laws framed by DST is not covered by said Regulation 16(C)(v) and there is no exclusive right conferred upon the General President to adopt Rules & Regulations and Bye-Laws of DST without following procedure as envisaged under Regulation 29 and the relevant provisions of the said Act of 1961.

40. It is argued on behalf of respondent nos. 1 to 5 that petitioners cannot approbate and reprobate based on ratio of decision reported in **(2013) 5 SCC 470 (Rajasthan State Industrial Development and Investment Corporation and Another vs. Diamond and Gem Development Corporation Limited and Another)** in the context that said association being signatory to MoU is estopped from challenging the decision of DST to amend Rules & Regulations and Bye-Laws. In view of the discussion alluded above in consideration of Section 8 and Section 9 of the said Act of 1961

read with Regulation 29 of the said Association *qua* scope of MoU pursuant to Rule 229(xi) of GFR-2017 challenge laid against alternation of Rules & Regulations and Bye-Laws cannot be termed an act of approbate and reprobate on the part of the said association. The very Act of DST to make an effort to amend Rules & Regulations and Bye-Laws vide impugned order dated 3rd May, 2023 thereby substituting the present Executive Committee of the association by the proposed Executive Committee which chiefly consists of nominated members goes to show that the Central Government/DST does not have deep and pervasive control over the said association. Moreover, this court has held in preceding paragraphs that there is limited financial grant extended by the Central Government/DST in favour of said association which does not satisfy the tests as contained in paragraph 9 of the judgment of the Hon'ble Supreme Court in **Ajay Hasia (supra)** wherein it has been succinctly held in paragraph 9(2) that financial assistance of the State is such which can meet almost entire expenditure of the corporation and it would afford some indication of the corporation being impregnated with governmental character. Therefore, attempt made on the part of respondent nos. 1 to 5 to describe the said association as an authority under Article 12 of the Constitution, fails. Facts of this case and provisions of Section 8 and Section 9 of the said Act of 1961 since found to be relevant by this court in altering Rules & Regulations and Bye-Laws of said association, doctrine of necessity as enunciated by the Hon'ble Supreme Court in the judgment reported in **(1990) 1 SCC 613 (Charan Lal**

Sahu vs. Union of India) does not come in aid of the respondent authorities.

41. In aforesaid conspectus impugned order dated 3rd May, 2023 notifying amended rules & regulations and bye Laws and subsequent letter dated 8th June, 2023 intimating altered composition of the Executive Committee stand set aside.
42. Writ petition is allowed to the above extent and same is disposed of. Connected application if any pending, is also disposed of.
43. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)