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(2022) 05 DEL CK 0055

In the Delhi High Court

Case No : Civil Writ Petition No. 7107 Of 2022, Civil Miscellaneous Application No. 21821 Of 2022

Jagjeet Singh — APPELLANT

Vs

Union Of India — RESPONDENT

Date of Decision : 09-05-2022

Acts Referred:
Constitution Of India, 1950 — Article 226
Companies Act, 2013 — Section 8

Citation : (2022) 05 DEL CK 0055

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Rajesh Yadav, Gaurav Kokar, Lakshay Raheja, Adab Singh Kapoor, Shefali Menezes, Pramod Kumar Sharma, Prashant Bajaj, Shekhar Vashisht, Manish Mohan, Devendra Kumar, Vedansh Anand

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The petitioner has approached this Court assailing the election notices dated 28.02.2022 and 18.04.2022 issued by the respondent nos.1 & 2, the election officers appointed for conducting elections for the management committee of the respondent no.4/All India Motor Transport Congress for the term 2022-24. The petitioner also seeks a consequential direction to the respondent nos.1 & 2 to initiate the process of conducting elections after 01.07.2022, which he claims is necessary as per the Articles of Association of the respondent no.4.

2. The petitioner is the Managing Director of the Karnataka Freight Movers Pvt. Ltd and claims to be a lifetime member of the respondent no.4 company, as also a member of its 'bye-laws committee'. While the respondent no.4 is a private company registered under Section 8 of the Companies Act, 2013 having been established, inter alia with the object to protect and promote the interests of persons engaged in the business of motor transport in the country, the

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respondent nos. 1 & 2 are the Election Officers appointed to conduct elections for the Managing Committee of the respondent no.4 for the term 2022-24. The respondent no.4 is a private company, which had been established to cater to the needs and interests of the transporters across India.

3. An election notice for conducting elections for the post of members of the Managing Committee of the respondent no.4/All India Motor Transport Congress for the term, 2021-2023 was issued on 21.10.2021 by the respondent no.1 who was appointed as the Chief Election Officer by the respondent no.4. The elections could, however, not take place in 2021 and were therefore, deferred for the term, i.e., 2022-2024.

4. On 28.02.2022, upon an election notice being issued by the respondent nos.1 & 2, the petitioner learnt that the respondent no.2 had also been appointed as an Election Officer to conduct the elections for the Management Committee of the respondent no.4 company. It was stipulated in the said election notice that on account of delay in the election process, the term of the Management Committee would stand revised from the year 2021-23 to 2022-24.

5. Aggrieved by the issuance of the election notice, the petitioner made representations to the respondent nos.1 & 2 on 24.03.2022 which was followed by a representation to the respondent no.4 on 28.03.2022. These representations of the petitioner, wherein he had raised his grievances against the proposed elections, did not elicit any response from the respondents and on 18.04.2022, the respondent nos. 1 & 2, issued yet another election notice for the elections to the Management Committee of the respondent no.4. It is in these circumstances that the petitioner has approached this Court assailing the election notices dated 28.02.2022 and 18.04.2022 and is seeking a direction for holding the elections strictly in accordance with the Articles of Association of the respondent no.4.

6. The petition is vehemently opposed by the respondents by first contending that the petitioner, not being a member of respondent no.4, has no locus to approach this Court. They contend that merely because the petitioner is the Managing Director of a company, which is a member of the respondent no.4, it would not entitle him to challenge the election thereof and that too, without placing on record any resolution to this effect by M/s Karnataka Freight Movers Private Limited, of which he is a Managing Director. They then contend that even otherwise, since the respondent no.4 being a purely private body, is only one of the various associations established to cater to the interests of the members of the transport fraternity across India, no writ petition would be maintainable against the respondent no.4. They submit that, apart from the respondent no.4 company, various other associations, including the All India Transport Welfare Association (AITWA), the Bus Operators Confederation of India (BOCI), Automobile and Containers Goods Operators Association of India (ACGOAI) & the Indian Transport and Truckers Association (ITTA), are working for the welfare of motor transporters with a common objective to promote the transportation

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sector across the country. They submit that the respondent no.4 association represents the interests of only a small population of over two lakh transporters, as it has only about 6,500 members and not 50,000 members, as is sought to be contended by the petitioner. They, thus, contend that the respondent no.4 is not involved in discharging any public functions and is therefore, not amenable to the writ jurisdiction of this Court. They, therefore, pray that the writ petition ought to be dismissed on this ground alone.

7. In response, learned senior counsel for the petitioner submits that the very fact that the respondent no.4 is a charitable company registered under Section 8 of the Companies Act, 2013, which can, as per the Articles of Association, have upto 50,000 members, shows that it plays a pivotal role in the motor transportation fraternity. By drawing my attention to the letter head of the respondent no.4, he contends that the respondent no.4 describes itself as the Apex body of the motor transport fraternity of India, whose primary aim is to facilitate the growth and development of the motor transport sector. He, therefore, contends that the respondent no.4, despite being a private party, is indeed discharging important public functions and would therefore, be amenable to the writ jurisdiction of this Court.

8. In support of his plea that a writ petition would be maintainable against a private entity as well, learned senior counsel for the petitioner places reliance on the decision of the Apex Court in Ramesh Ahluwalia Vs. State of Punjab and Ors. (2012) 12 SCC 361, a decision of the Full Bench of the Allahabad High Court in Roychan Abraham Vs. State of U.P. and Ors. (2019) SCC Online All 3935 and on a decision of the Madras High Court in C. Dhanabal and Ors. Vs. The Central Registrar of Co-Operative Societies, Department of Operation and Ors. W.P.(MD) No. 19116/2018.

9. Having considered the submissions of the learned counsel for the parties and perused the decisions relied upon by the learned senior counsel for the petitioner, I find that even though there can be no dispute to the settled legal position that a writ petition under Article 226 of the Constitution of India, can in certain circumstances lie against a private body as well, the real test, however, in such cases is whether the said private body is discharging any public functions or not. In the present case, once it is an admitted position that the respondent no. 4 is a private company registered under Section 8 of the Companies Act, 2013, the question that really needs to be determined is whether the respondent no.4 can be said to be discharging any public function, so as to make it amenable to the writ jurisdiction of this Court.

10. In order to determine the issue, it would be apposite to first refer to the Memorandum of Association of the respondent no. 4, from which it is evident that respondent no. 4 has been incorporated as a company whose main objects, inter alia are to represent the motor transport fraternity at all forums, to facilitate growth and development of the country’s motor transport sector, to protect and promote the interests of persons engaged in the business of motor

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transport, and find ways to improve their services. The letterhead of respondent no. 4, on which, reliance has been placed by learned senior counsel for the petitioner, describes the respondent no. 4 as the Apex body of Truckers, Transporters and Passenger Vehicle Operators. Thus, what emerges is that the primary aim of the respondent no. 4, is to cater to the interests of the transporters across the country, and work for the development of transport industry as a whole. Whether this would imply that the respondent no. 4 is discharging any public function, is the moot question. In a country like ours with such a vast population, there are more than about 2 lakh motor transporters who are engaged in this industry, and to cater to their needs, proactive transport organizations have been established in different parts of the country. When the factual position that the respondent no.4 is representing the interests of only 6500 members/transporters, is considered with reference to the population of the country, and the number of transporters engaged in this industry, it clearly emerges that the respondent no.4 represents only the interests of a small number of transporters, which is not sufficient enough to categorize the said company as a body discharging any public function.

11. At this stage, a reference may be made to the decision of the Apex Court in K.K. Saksena vs. International Commission on Irrigation and Drainage & Ors. (2015) 4 SCC 670, wherein the Apex Court held that in order to determine the maintainability of a writ petition, the primary focus of the Court should be to examine the nature of functions being carried out by the body/organization. The relevant observations of the Apex Court read as under:

"47. It is clear from the reading of the impugned judgment that the High Court was fully conscious of the principles laid down in the aforesaid judgments, cognizance whereof is duly taken by the High Court. Applying the test in the case at hand, namely, that of ICID, the High Court opined that it was not discharging any public function or public duty, which would make it amenable to the writ jurisdiction of the High Court under Article 226. The discussion of the High Court is contained in paras 34 to 36 and we reproduce the same for the purpose of our appreciation : (K.K. Saksena case [K.K. Saksena v. International Commission on Irrigation and Drainage, 2011 SCC OnLine Del 1894 : (2011) 180 DLT 204] , SCC OnLine Del)

"34. On a perusal of the preamble and the objects, it is clear as crystal that the respondent has been established as a scientific, technical, professional and voluntary non-governmental international organisation, dedicated to enhance the worldwide supply of food and fibre for all people by improving water and land management and the productivity of irrigated and drained lands so that there is appropriate management of water, environment and the application of irrigation, drainage and flood control techniques. It is required to consider certain kind of objects which are basically a facilitation process. It cannot be said that the functions that are carried out by ICID are anyway similar to or closely related to those performable by the State in its sovereign capacity. It is fundamentally in

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the realm of collection of data, research, holding of seminars and organising studies, promotion of the development and systematic management of sustained irrigation and drainage systems, publication of newsletter, pamphlets and bulletins and its role extends beyond the territorial boundaries of India. The memberships extend to participating countries and sometimes, as bye-law would reveal, ICID encourages the participation of interested national and non-member countries on certain conditions.

35. As has been held in Federal Bank Ltd. [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733] solely because a private company carries on banking business, it cannot be said that it would be amenable to the writ jurisdiction. The Apex Court has opined that the provisions of the Banking Regulation Act and other statutes have the regulatory measure to play. The activities undertaken by the respondent Society, a non-governmental organisation, do not actually partake the nature of public duty or State actions. There is absence of public element as has been stated in V.R. Rudani [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] and Sri Venkateswara Hindu College of Engg. [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841] It also does not discharge duties having a positive application of public nature. It carries on voluntary activities which many a non-governmental organisations perform. The said activities cannot be stated to be remotely connected with the activities of the State. On a scrutiny of the Constitution and bye-laws, it is difficult to hold that the respondent Society has obligation to discharge certain activities which are statutory or of public character. The concept of public duty cannot be construed in a vacuum. A private society, in certain cases, may be amenable to the writ jurisdiction if the writ court is satisfied that it is necessary to compel such society or association to enforce any statutory obligation or such obligations of public nature casting positive public obligation upon it.

36. As we perceive, the only object of ICID is for promoting the development and application of certain aspects, which have been voluntarily undertaken but the said activities cannot be said that ICID carries on public duties to make itself amenable to the writ jurisdiction under Article 226 of the Constitution."

48. We are in agreement with the aforesaid analysis by the High Court and it answers all the arguments raised by the learned Senior Counsel appearing for the appellant. The learned counsel argued that once the society is registered in India it cannot be treated as international body. This argument is hardly of any relevance in determining the character of ICID. The focus has to be on the function discharged by ICID, namely, whether it is discharging any public duties. Though much mileage was sought to be drawn from the function incorporated in the MoA of ICID, namely, to encourage progress in design, construction, maintenance and operation of large and small irrigation works and canals, etc. that by itself would not make it a public duty cast on ICID. We cannot lose sight

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of the fact that ICID is a private body which has no State funding. Further, no liability under any statute is cast upon ICID to discharge the aforesaid function. The High Court is right in its observation that even when object of ICID is to promote the development and application of certain aspects, the same are voluntarily undertaken and there is no obligation to discharge certain activities which are statutory or of public character."

(emphasis supplied)

12. Reference may also be made to the decision of the Apex Court in G. Bassi Reddy vs. International Crops Research Institute (2003) 4 SCC 225, wherein the Apex Court while dealing with the term 'public functions' or 'public duty' observed as under:

"A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty (Praga Tools Corpn. v. C.A. Imanual [(1969) 1 SCC 585 : AIR 1969 SC 1306] , Shri Anadi Mukta Sadguru Trust v. V.R. Rudani [(1989) 2 SCC 691] SCC at p. 698 and VST Industries Ltd. v. Workers' Union [(2001) 1 SCC 298 : 2001 SCC (L&S) 227]). ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corpn. v. C.V. Imanual [(1969) 1 SCC 585 : AIR 1969 SC 1306] this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that (SCC p. 589, para 6)

"[A]n application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal v. Union of India [AIR 1957 SC 529 : 1957 SCR 738] .)"

(emphasis supplied)

13. The common thread which runs through these decisions of the Apex Court is that it is only when a private body is discharging functions which are akin to public duty or state actions, will it be amenable to the writ jurisdiction under Article 226 of the Constitution of India. In the present case, merely because the

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respondent no.4-company has been established to cater to the needs and interests of the transporters and boost the transport industry, this in itself cannot be a sufficient ground to hold that the respondent no.4 -company is involved in discharging public functions. The respondent no.4 is only one of the many organizations existing in the country for the welfare of the motor transporters; it has been voluntarily discharging duties for the betterment of the transportation industry, which can, by no stretch of imagination, be classified as a public duty. I am, therefore, unable to persuade myself to accept the petitioner's plea that the functions being discharged by the respondent no.4- company are akin to those performed by the State in its sovereign capacity.

14. I have considered the decisions in Ramesh Ahluwalia (supra), Roychan Abraham (supra) and C. Dhanabal (supra) relied upon by the petitioners. I find that all these three judgments reiterate the well settled principle that a writ petition would be maintainable against a private party if it discharges a public function. As already observed hereinabove, although the respondent no.4 has been established to cater to the interests of transporters and the transport industry, it represents a very small faction of transporters in the country. The respondent no. 4 is clearly not discharging any public functions and therefore these decisions relied upon by the petitioner are not at all applicable to the facts of the present case.

15. In view of my conclusion that no writ petition is maintainable against the respondent no. 4, it being a private party not discharging any public function, I do not deem it necessary to examine the respondent's objections that the petitioner has no locus to approach this Court or to assail the election process of respondent no. 4. For the aforesaid reasons, the writ petition is dismissed.

16. Needless to state, this Court has not expressed any opinion on the merits of the petitioner's claim and therefore, if the petitioner is aggrieved, it will be open for him to seek legal recourse as permissible in law.

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