

(2018) 08 DEL CK 0389

In the Delhi High Court

Case No : Letter Petent Appeal No 525 Of 2016

Samadhan Swimming Club & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Bar Council of Delhi Election Rules, 1968 — Rule 3(j)

Citation : (2018) 08 DEL CK 0389

Hon'ble Judges : RAJENDRA MENON, CJ;V. KAMESWAR RAO, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. KAMESWAR RAO, J

1. The present appeal has been filed by the appellants challenging the order of the learned Single Judge dated March 04, 2016 in W.P.(C) No.

2777/2015. The appellants had filed the writ petition with the following reliefs:-

i) stay of the elections to the post of office bearers of the respondent no.3 Delhi Swimming Association (DSA) schedule to be held on 22nd March,

2015;

ii) for setting aside of the fresh list of the electoral college dated 1st March, 2015 prepared by the Returning Officer (RO) appointed of the said

election,

iii) for a direction to the RO to consider favourably the nomination filed by certain petitioners whose nominations had been rejected for no plausible

reason, and

iv) seeking a direction for holding of election of the respondent no.3 DSA by

calling fresh nominations from all concerned including the petitioner Clubs who had been omitted from the electoral college in an allegedly illegal and arbitrary manner and as per the official list submitted by the respondent no.3 DSA of 173 member Clubs.â??

2. The learned Single Judge dismissed the writ petition holding that the same is not maintainable on various grounds. Suffice to state, we shall refer to the grounds, on which the learned Single Judge has dismissed the writ petition later in the judgment.

3. The facts as averred in the writ petition annexed as Annexure A-14 (colly) are the following. It is their case that they are the Swimming Clubs affiliated with Delhi Swimming Association (for short â??DSAâ??) being their bona fide members as per the constitution of the DSA. The DSA is a registered Society being an Association of Swimming Clubs / Departments operating within the territory of National Capital Territory of Delhi engaged in the sport of Swimming. The DSA lastly conducted its elections on March 27, 2011 as per its constitution. At the time of conduct of elections, a total number of 54 Swimming Clubs participated in the said electoral process in terms of the list of affiliated member Clubs, at the relevant time. After the conduct of the elections, a duly elected electoral body was appointed to conduct and manage the affairs of the DSA. It is the case of the appellants that the electoral body was conducting its affairs in a smooth and efficient manner, when suddenly on April 04, 2014, the Swimming Federation of India suspended the DSA as a member; of the Swimming Federation of India on account of purported infighting amongst the office bearers and appointed a seven member Ad-hoc Committee to look after and run the swimming activities in Delhi.

4. It is represented that vide letter dated April 04, 2014, the office bearers of the DSA conducted an internal meeting amongst themselves and issued a communication dated April 06, 2014 thereby informing the Swimming Federation of India of the resolution of the so-called internal disputes amongst the elected members and requested the Swimming Federation of India to reinstate the original democratically elected body of the DSA.

Thereafter, the DSA has filed a petition being W.P.(C) No. 3562/2014 inter-alia for grant of relief for quashing of suspension of the petitioner

Association therein by the Swimming Federation of India and also directing the

Ministry to appoint an observer for fresh elections to the DSA. Vide order dated October 29, 2014, this Court in the said writ petition directed the conduct of elections of the DSA in accordance with the Byelaws / Memorandum / Rules as also Model Election Guidelines of National Sports Development Code of India, 2011 and the respondent No.2 herein was appointed as an observer with a direction to complete the entire electoral process not later than three months from that date i.e October 29, 2014. It is averred in the writ petition that in terms of the order dated October 29, 2014, representations were received from various parties and the respondent No.2 Returning officer sought replies and documents from all interested member Clubs of the DSA. A total list of 173 member Clubs was submitted by the DSA. The respondent no.2 after the receipt of all representations and duly examining the said representations and rival claims and contentions of the interested member Clubs had issued a final list / electoral college of 195 member Clubs on January 10, 2015. An election notification dated January 12, 2015 was issued thereby informing all affiliated institutions and members of the DSA regarding conduct of elections on January 30, 2015. It is averred that all of a sudden, the respondent No.2 Returning Officer on January 24, 2015 telephonically informed the erstwhile Treasurer of the DSA to convey a message to all members and affiliated institutions of the DSA that the elections stated to be held on January 30, 2015 have been called off / postponed for reasons to be disclosed subsequently. A reference is also made to the fact of certain directions given by this Court in the said writ petition on January 19, 2015 in CM Nos.866/2015, 848/2015 and 1023/2015.

5. It is averred that on March 07, 2015, the petitioner Clubs received a copy of fresh list prepared by the respondent No.2 Returning Officer containing a list of 133 names of affiliated member Clubs to the DSA. It is averred that names of the petitioner Clubs have been deleted / removed / omitted for no apparent reason and no notice has been issued to the appellant Clubs. The appellant Clubs immediately made representations to the respondent No.2 with regard to the omission of their names from the fresh list of electoral college prepared by the respondent No.2. It was in the aforesaid background, the appellant had approached this Court by way of W.P.(C) No. 2777/2015.

6. When the writ petition was listed on March 19, 2015, the application of the appellants for interim relief / seeking stay of the elections was dismissed

with the observation “However, it is clarified that the outcome of the election shall be subject to further orders that may be passed in this petition”

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7. The counter affidavits to the writ petition were filed by the DSA, Swimming Federation of India and the Ad-hoc Committee for Management of the

DSA. When the writ petition came up for hearing on July 21, 2015, the following order was passed:-

“1. After some hearing the counsel for the petitioners seeks time to satisfy this Court as to how the dispute raised in this petition is not an election

dispute and if it is an election dispute then the fora before which the same is to be adjudicated.

2. Pleadings if any remaining by the respondents, be completed before the next date.”

8. In view of the order dated July 21, 2015, an issue arose before the learned Single Judge that the appellant Clubs having been unsuccessful in

obtaining the interim stay of holding of the elections and now that the elections have been held and the office bearers have been elected, whether or

not even if merit was to be found in the contentions of the appellants, the only relief, which can be granted is of setting aside of the result of the

elections held on March 22, 2015 and all those office bearers, who have been elected are parties in the petition.

9. Insofar as the office bearers to be parties in the petition, it was contended that since the DSA, of which all the elected office bearers are in the

Management, is before this Court, there is no need for their impleadment individually. It is noted from the impugned order, the learned Single Judge

had put a query to the learned counsel for the appellants that in view of the position of law in *S.D. Siddiqui v. University of Delhi* 2006 (3) AD (Delhi)

290, the remedy for the appellants is to file a civil suit and not a writ petition. The answer of the learned counsel for the appellants was that since this

Court in its order dated March 15, 2015, while issuing notice on the petition has held that the outcome of the election shall be subject to further orders

in the writ petition, the writ petition would be maintainable.

10. We may note here, the grounds on which the learned Single Judge has

dismissed the petition are the following:-

14. I am of the view that the present petition is not maintainable for the following reasons:

(A) The petition, as it stands, does not contain the relief of setting aside of the election and which relief is now claimed.

(B) Merely because this Court, while dismissing the application for interim relief of staying of holding of the elections, observed that the outcome of

the election shall be subject to further orders that may be made in this petition would not entitle the petitioners to a relief which the petitioners are not

entitled to in the petition. In this regard, it may be noticed that the petitioners neither thereafter nor after the query was first raised on 21st July, 2015

chose to amend this petition to seek the relief of setting aside of the election.

(C) Even if it were to be held that the relief can be modified by the Court, the relief of setting aside of the election cannot be granted in the absence of

the person(s) whose election is being set aside. Merely because that person(s) is presently in the Management of the DSA and which is a party hereto

would not suffice. A challenge to the election has to be made by impleading the person whose election is sought to be set aside in his / her individual

capacity and not by impleading the body / entity to office whereof he / she has been elected. DSA is a juristic person and a corporation sole and a

distinct legal entity from the persons in management thereof.

(D) The RO for holding the election appointed by this Court was in the nature of a Court Commissioner and any objection to the actions of the said

Commissioner could have been filed only in the proceeding in which the Court Commissioner was appointed and if at all permitted to be raised by an

independent proceeding, by an appropriate proceeding in law. Merely because the RO was appointed vide order in a writ petition would not entitle

challenge to actions of RO by way of a writ petition, if otherwise in law the same is required to be made by way of a suit.

(E) Though the counsel for the petitioners took it as given and a fundamental fact that the electoral college once drawn up could not have been

changed but upon being asked to show the basis on which it is so assumed drew attention to page 166 of the Sports Code, being the Model Election

Guidelines to be followed by all NSFs. However upon being asked whether the respondent no.3 DSA is a NSF, it is admitted that it is not and that SFI

is the NSF. Upon it being further asked that how would the Model Election Guidelines to be followed by NSFs, apply to the election to the respondent

no.3 DSA which is a constituent of NSF, the counsel for the petitioners states that since the order dated 29th October, 2014 in W.P.(C) NO.

3652/2014 records the consent of the parties therein for holding of the elections in accordance with the Model Election Guidelines of Sports Code,

accordingly, the said order dated 29th October, 2014 in W.P.(C) No. 3652/2014 makes the Model Election Guidelines applicable also to constituent of

NSF. The said argument, in my opinion, is totally misconceived. Merely because the parties then agreed to holding of election besides in accordance

with Bye-laws, Memorandum and Rules of respondent no.3 DSA as also as per the Model Election Guidelines of the Sports Code, would not make

the provisions of Sports Code which are not applicable to a constituent of NSF, applicable to a constituent of NSF. Only that part of the Model

Election Guidelines of Sports Code which as per the terms of the Code are applicable to a constituent of NSF, are to be made applicable. The counsel

for the petitioners has not been able to show any provision of the Model Election Guidelines of Sports Code applicable to constituents of NSF, as the

respondent no.3 DSA is, and which has been violated.

(F) This Bench at least is bound by the dicta aforesaid of the Division Bench of this Court in S.D. Siddiqui supra and which has been followed by the

undersigned in *Sunita Arora Vs. Delhi University* MANU/DE/0119/2016.

(G) The counsel for the petitioners on enquiry, subject to verification, states that 10 petitioner clubs were ordinary members of the respondent no.3

DSA. A perusal of the Rules and Regulations of the respondent no.3 DSA shows that only those Clubs which had taken active part in at least two

consecutive years in swimming championships organised by the respondent no.3 DSA are entitled to be made the ordinary members of the Club. It is

the contention of the counsel for the respondent no.3 DSA that all the petitioners were enrolled as member surreptitiously on 27th February, 2014, with

effect from 6th September, 2013 and it is for this reason only were issued Membership Certificates on a letterhead different from the letterhead of the

respondent no.3 DSA by the then Secretary Sh. Kamal Kishore of the respondent no.3 DSA. The said fact is denied by the counsel for the petitioners.

It may however be mentioned that counsel for Sh. Kamal Kishore, though not a

party to this petition, has been actively assisting the counsel for the petitioners herein.

(H) I may in this regard notice that two replies / counter affidavits have been filed on behalf of the respondent No.3 DSA to this petition. One reply is dated 21st April, 2015 and is supported by the affidavit of one Sh. Bhanu Sachdeva who has described himself as Ex-Treasurer of the respondent No.3 DSA. The said counter affidavit supports the petitioners and in the prayer paragraph seeks that the petition be allowed.

(I) The other counter affidavit dated 17th July, 2015 has been filed by Sh. Ram Rattan Singh Tokas elected in the election held on 22nd arch, 2015.

The said counter affidavit seeks dismissal of the petition pleading (i) that the RO appointed had submitted a report running into 225 pages before this

Court in W.P.(C) No.3652/2014 supra and copies of the said report were made available to all concerned and none assailed the said report which thus

became final; (ii)that the RO in the said report has reported;

(a) that on the date of the last election held on 27th March, 2011, the total affiliated clubs / units of the respondent No.3 DSA were 133 in number and

of which 54 units were with voting rights and 79 units were without voting rights because they had not fulfilled the eligibility criteria of having minimum

one year old affiliation as on the date of preparation of the electoral roll, as prescribed in Clause 3(D) of the constitution of DSA;

(b) that the new affiliations beyond 133 were under a serious cloud and in fact no affiliation in the eyes of law;

(c) that in September-October, 2013 or thereabout, serious differences arose between the then President of DSA on the one hand and the Secretary on the other hand;

(d) that till then also there were only 133 members of DSA;

(e) that however subsequently, the membership of DSA was inflated to 173 and then to 197 or 198;

(f) that no General Body Meeting of DSA had taken place to discuss the affiliation of these new units i.e. the units beyond 133 units;

(g) that as a consequence of the inter se disputes, all powers of Sh. Kamal Kishore, General Secretary of DSA stood withdrawn by the Managing

Committee on 29th December, 2013 and subsequently in the General Body Meeting held on 15th March, 2014, he and the Treasurer were removed

from their respective posts;

(h) that the affiliation granted by Sh. Kamal Kishore, as General Secretary, under his signatures on 27th February, 2014 i.e. after his powers had been

withdrawn were invalid;

(iii) that though Sh. Kamal Kishore had earlier filed W.P.(C) No.3652/2014 on behalf of DSA but no relief was obtained by him in relation to the

affiliation so made by him; (iv) that the petitioners also did not claim any relief in those proceedings in relation to their alleged affiliation carried out on

27th February, 2014, though were fully aware thereof; (v) that in these circumstances, the RO after scrutiny, confined the electoral college to the 133 members only.

(J) While correcting the orders, I had also perused on the website of this Court for the orders in W.P.(C) No.3652/2014. The order dated 22nd April,

2015 therein records that the elections as directed had been concluded and a new Executive Committee was in position and disposes of the writ

petition with a direction to the previous Executive Committee to hand over the records to the new Executive Committee. Thereafter, CM

No.7804/2015 is found to have been filed complaining of the records having not been handed over. The said application came up before this Court on

1st May, 2015. The subsequent order dated 25th May, 2015 records that the earlier Executive Committee had handed over the records to the new

Executive Committee and accordingly the said application also was disposed of.

(K) I am of the view that if at all, it is open to the petitioners to challenge the election on the ground of having been deprived of their right to vote

therein and / or on the ground of their nominations having been illegally rejected, the said adjudication would entail disputed questions of facts which

cannot be adjudicated by way of a writ petition and which have to be necessarily adjudicated by way of a suit which has otherwise also been held to

be an appropriate remedy

for challenging an election and / or for seeking setting aside of an election, when the rules relating to holding of the election do not provide for a

mechanism for settling the disputes with respect thereto.

(L) As far as the judgments cited by the counsel for the petitioners are concerned, the Full Bench of the Nagpur High Court in Kanglu Baula Kotwal

supra also though held that the High Court would not ordinarily interfere under Article 226, where another remedy which is equally convenient is open to the petitioner but proceeded to hold that the existence of another remedy is not in every case a bar to exercise of the powers under Article 226 and the Court can interfere, if the circumstances of the case demand interference. In that case, the Court proceeded to interfere in exercise of powers under Article 226, finding that the point which had been raised was of a fundamental character, affecting a large number of election disputes and had already been subject matter of adjudication on two previous occasions and on which two different views were taken. It is not so here. The dispute raised by the petitioners is personal to themselves, as to their membership and adjudication whereof entails adjudication of, whether the membership claimed by the petitioners of DSA was granted in accordance with the constitution of DSA. It cannot be said that the said disputes are of a fundamental character or likely to arise again and again or even if arises again and again, any legal question is required to be adjudicated. In each case, it will have to be decided, whether the person claiming membership was validly admitted as a member or not. Similarly, reliance on Bar Council of Delhi supra is misconceived. The challenge therein was to the Proviso to Rule 3(j) of the Bar Council of Delhi Election Rules, 1968. The vires of the Rule could certainly be gone into in a writ petition and owing to the electoral roll having been prepared on the basis of such Rule, which was held to be ultra vires and invalid, the challenge to the election was also entertained. The counsel for the petitioners certainly cannot match the facts of his case to the said judgment. In K.G. Khanna supra also, the election was to the Municipal Committee, Solan and the petition was entertained because there was an admission of the electoral roll being defective and as many as 362 persons who were not qualified to vote having been permitted to vote. Certainly, there is no admission on the part of the respondent No.3 DSA in the present case, of the petitioners, inspite of being members having been deprived of their rights to vote. Thus, all the judgments cited are without regard to the riders, subject to which petitions were entertained in their respective facts and do not come to the rescue of the petitioners.â??

11. Mr. Ashutosh Lohia, learned counsel for the appellants while challenging the order of the learned Single Judge has reiterated the submission made

by him before the learned Single Judge that as the learned Single Judge in his order dated March 19, 2015 has clarified that the outcome of the

elections shall be subject to further orders in the writ petition, he should have gone into the aspect of elections held by the Returning Officer and if

found the same were illegal, should have set aside the same.

12. Mr. Lohia has filed his written submissions on August 20, 2018 and has stated in the same that the present appeal involves the following questions

of law:

1. Whether the Ld. Single Judge has failed in returning a finding that the Ld. Returning Officer has acted contrary to the principles of natural justice in

having removed the names of the Appellants from the published electoral college without any notice or hearing on the same?

2. Whether the Ld. Single Judge has failed to appreciate that the Ld. Returning Officer was bound to conduct the elections as per the National Sports

Development Code as well as the Constitution of Delhi Swimming Association?

3. Whether the Ld. Single Judge has rightly held that the Ld. Returning Officer was right in conducting an election without preparing an electoral

college as per law?

4. Whether the Ld. Single Judge has erred in not returning a finding with regard to the Ld. Returning Officer not adopting â??adequate procedural

regulations to ensure that there is no conflict of interestsâ? by operating from the office of the Ad-hoc Committee and authorizing the said committee

to receive and scrutinize the nomination?

5. Whether the Ld. Single Judge has failed in returning a finding that the elections have been conducted in â??a clear, transparent and fair mannerâ???

6. Whether the Ld. Single has failed in returning a finding that the Ld. Returning Officer has violated the constitution / rules and regulations /

memorandum / bye-laws of the Delhi Swimming Association in accepting â??undertakingâ? in place of duly paid arrears of subscription as per Rule

16 of the Constitution when there is no provision for an undertaking?

7. Whether the Ld. Single Judge has failed in returning a finding that the Ld. Returning Officer has violated the constitution / rules and regulations /

memorandum / bye-laws of the Delhi Swimming Association in accepting nominations from proposers / seconders who are not even bona-fide

members of the Association?

8. Whether the Ld. Single Judge has failed in returning a finding that the Ld. Returning Officer has violated the constitution / rules and regulations /

memorandum / bye-laws of the Delhi Swimming Association as well as the rules of the SFI and the Sports Code in permitting Government servants as

well as Swimming coaches (who are otherwise ineligible to contest) to successfully contest the elections?

9. Whether the Ld. Single Judge has failed in returning a finding that the Ld. Returning Officer has ignored and violated the Sports Code and / or

displayed a manifest bias / collusion by permitting a change of address for various (so called) Swimming Clubs; allowing Clubs to participate whose

subscription is not paid; allowing clubs to participate who are admittedly disaffiliated by the DSA for non-prosecution?

10. Whether the Ld. Single Judge has failed in returning a finding that the Ld. Returning Officer has misconducted herself for giving no justification of

change in election process and circulars for 30.01.2015 and 22. 03.2015 particularly when there is no reason for justification for calling off the earlier

election scheduled for 30.01.2015?

11. Whether the Ld. Single Judge has failed to appreciate that the orders of the Honâ??ble Court dated March 19, 2015 to the effect that

â??however, it is clarified that the outcome of the election shall be subject to the further orders that may be passed in this petition..â? have to be

given effect to and the petition cannot be summarily dismissed without a finding on the same.

13. Insofar as the submission of Mr. Lohia, that the learned Single Judge should have gone into the aspect of conduct of elections held by the

Returning Officer is concerned, a similar submission made before the learned Single Judge was rejected by him in paras 14, A, B and C, which we

reiterate as under:-

â??14. I am of the view that the present petition is not maintainable for the following reasons:

(A) The petition, as it stands, does not contain the relief of setting aside of the election and which relief is now claimed.

(B) Merely because this Court, while dismissing the application for interim relief of staying of holding of the elections, observed that the outcome of

the election shall be subject to further orders that may be made in this petition would not entitle the petitioners to a relief which the petitioners are not

entitled to in the petition. In this regard, it may be noticed that the petitioners neither thereafter nor after the query was first raised on 21st July, 2015

chose to amend this petition to seek the relief of setting aside of the election.

(C) Even if it were to be held that the relief can be modified by the Court, the relief of setting aside of the election cannot be granted in the absence of

the person(s) whose election is being set aside. Merely because that person(s) is presently in the Management of the DSA and which is a party hereto

would not suffice. A challenge to the election has to be made by impleading the person whose election is sought to be set aside in his / her individual

capacity and not by impleading the body / entity to office whereof he / she has been elected. DSA is a juristic person and a corporation sole and a

distinct legal entity from the persons in management thereof.â??

We agree with the above conclusion of the Ld. Single Judge.

That apart, what is important in the case in hand is that the appellants have not challenged the report filed by the Returning Officer, which report is

conclusive against the appellants on the elections conducted to the DSA.

14. In so far as the questions of law referred to by Mr. Lohia are concerned, the said questions of law would not arise in the writ petition filed by the

appellants, in view of the subsequent developments i.e. the elections having been held, and the members of the new executive committee having been

elected, who were not parties and also in view of the limited prayers made in the writ petition. The appellants were / are required to file separate

proceedings in accordance with law challenging the elections.

15. Mr. Lohia has also relied upon the following judgments in support of his contentions:

1. Kanglu Baula Kotwal v. Chief Executive Officer, Janpad Sabha, Durg, AIR 1955 Nag49

2. Bar Council of Delhi and Anr. V. Surjeet Singh and Ors. (1980 AIR SC 1612)

3. K.G. Khanna v. Prakash Chand and Ors. (AIR 1959 HP 20)

4. Bhailal Jagdish v. Additional Deputy Commr. And Anr. (AIR 1953 Nag 89(FB))

16. In so far as the judgments relied upon by Mr. Lohia are concerned, we find that three judgments [except Bhailal Jagdish (supra)], have been

considered and dealt with by the learned Single Judge in the impugned order, with which conclusion we concur. The judgment in the case of Bhailal

Jagdish (supra), referred to by Mr. Lohia to contend that a petition under Article 226 of the Constitution of India confer powers of widest magnitude

on the High Courts and this power must be invoked redressing wrongs and for passing suitable orders to effectuate its decision under Article 226 of

the Constitution of India. Suffice to state as stated above in view of the reliefs prayed in the petition and the subsequent developments including the

fact that elections have been held and the members of the executive committee of the DSA have been elected whose personal right shall be effected,

being not parties in the writ petition, the writ petition was rightly dismissed. The remedy for the appellants was to challenge the elections surely in

accordance with law, which includes the dicta of this Court in the case of S.D. Siddiqui v. University of Delhi 2006 (3) AD (Delhi) 290, wherein this

court held as under:

“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.”

17. We do not see any merit in the appeal. The same is dismissed.