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

+ W.P.(C) 11799/2019 and CM APPLs. 48379/2019, 53842/2019,  
11041/2024

**SURAJMAL MEMORIAL EDUCATION SOCIETY (REGD.) AND  
ORS.** ..... Petitioners

Through: Mr. Viraj R. Datar, Sr. Adv., Mr.  
Naresh Kaushik, Sr. Adv. along with  
Mr. Vishwa Pal Singh, Mr. Ranbir  
Singh Kundu, Mr. Mukesh Kumar,  
Mr. Ashutosh Bhardwaj, Mr. Saurav  
Joon, Mr. Manoj Joshi and Ms.  
Shikha John, Advs.

versus

**GOVT. OF NCT DELHI AND ORS.** ..... Respondents

Through: Ms. Mehak Nakra, ASC (Civil),  
GNCTD.  
Ms. Madhurima Mridul, Mr. Harsh  
Dahiya, Mr. Hiren Sharma and Mr.  
Dhruv Arora, Advs. for R-7.  
Mr. Ramchander Dalal, Adv. for  
applicants in CM APPLs.12666/2024,  
13270/2024, 13271/2024.

**CORAM:  
HON'BLE MR. JUSTICE SACHIN DATTA**

**ORDER**  
**06.03.2024**

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**W.P.(C) 11799/2019, CM APPL.12666/2024, CM APPL.13270/2024, CM  
APPL.13271/2024 & CM APPL.13272/2024**

1. CM APPL.12666/2024 & CM APPL.13270/2024 are impleadment  
applications filed by persons who have raised serious doubts about the  
manner in which the proposed elections of the petitioners are being



conducted. CM APPL.13271/2024 and CM APPL.13272/2024 are applications seeking injunctive order(s) qua the elections proposed to be held on 10.03.2024.

2. The controversy as regards the conduct of the elections of the petitioner no.1/society has been a persistent one; previous election/s in respect of the petitioner no.1 have also been embroiled in controversy. In the present petition, this Court has been engaged with various issues that are required to be addressed to ensure that a credible electoral exercise is undertaken.

3. *Vide* order dated 27.09.2023, it was directed by this Court as under:-

“O R D E R  
27.09.2023

1. On 25.09.2023, this court has passed the following order:

*“1. Having heard learned counsel appearing on behalf of the parties, this Court finds that the election of the Management of the petitioner-Society will have to be conducted as expeditiously as possible.*

*2. It is also seen that there is consensus between the parties with respect to the aforesaid aspect and they agree to appoint a former District Judge/Additional District Judge, to be nominated by this Court for overseeing the conduct of the elections.*

*3. Let the name of the District Judge/Additional District Judge be suggested by the parties by 27.09.2023.”*

*2. Since the dispute in the instant case relates to the preparation of the electoral roll and other related issues to conduct the election, under the facts of the present petitions, this court finds it appropriate to appoint Mr. N. P. Kaushik, Former District and Sessions Judge (Retd.), Ch. No.28, Patiala House Courts, New Delhi as Observer to conduct the election of the petitioners-societies.*

*3. Without prejudice to the objections raised by the parties, this court directs that the Returning Officer be appointed by the Society with consultation of the Observer, as has been appointed by this court.*

*4. Let the schedule for the election be placed on record before the next*



*date of hearing.*

*5. Let the steps taken by the Returning Officer and the Observer for the smooth conduction of the election be brought on record before the next date of hearing. This would mean that they have to take into consideration the amount of time within which the objection with respect to the electoral roll will have to be invited and adjudicated. All such steps must be included in the proposed election schedule.*

*6. List this matter on 29.02.2024.*

*7. Let this matter be communicated to Mr. N. P. Kaushik, Former District and Sessions Judge (Retd.). The expenses of the Observer will be borne by the Society and the Observer can submit the remuneration as per his discretion.”*

4. Para 2 of the aforesaid order clearly records that the central issue that is required to be addressed before the conduct of elections is preparation of an electoral roll. Para 5 specifically directs that the steps to be taken by the Returning Officer and the Observer for smooth conduct of elections be brought on record of this Court. Para 5 also contemplates that an election schedule would be drawn up.

5. Unfortunately, no report has been filed by the Observer appointed by this Court *vide* the aforesaid order dated 27.09.2023. Instead, certain additional documents have been filed by the petitioners *vide* diary no.539515 which, *inter alia*, include an annexure purporting to be a letter containing the details of the steps taken by the Observer pursuant to the directions contained in the aforesaid order dated 27.09.2023. The same, *inter alia*, states as under :-

*“9. Some of the members of SMES expressed their apprehension of fake voting. The undersigned with the help of the Election Officer perused the Voters’ List carefully. SMES had been substituting new members against the allotted number of a member who had since expired. This practice continued till 2013 but thereafter no new member has been added. The Executive Committee of SMES stated that this practice was adopted so that*



*the gaps created in the list with the death of the members are filled-up. This would not make the list unduly lengthy and the memberships shall remain in continuity. Our team ensured that all such substitutions were genuine-ones. For this purpose, a sample testing was also done. Be that as it may, at the time of Polling, every voter is required to produce one of the following photo-identity document issued by the Government for verification:-*

*a) Aadhar Card.*

*b) Voters ID Card issued by Election Commission of India.*

*c) Passport.*

*d) Driving Licence*

*e) Service ID Cards issued by Central/State Govt. /PSU/Public Limited Companies*

*Since there was a strong objection from some quarters to the recognition of Identity Card issued by SMES, production of such I-Cards has been dispensed with.*

*10. Election Schedule has been issued by the Election Officer on 1.2.2024, copy of which is Annexure-D.*

*11. In pursuance to the claims and objections for alteration, addition of the names omitted inadvertently, deletion or correction, a total of 19 applications had been received. All these applications were for the change of address by the members. A supplementary list of all such changes had been prepared and displayed on the Notice Board. Such changes have also been uploaded on the website of SMES on 17.2.2024.”*

6. It appears that prior to issuing notice for elections, no effective steps appear to have been taken to audit/review the electoral roll to ensure that the names of ineligible/non-existing members are not included therein. Although the observations made in the aforesaid para 9 of the letter of the Observer suggests that some attempts have been made to deal with the issue of discrepant membership numbers, it appears that no comprehensive audit has been conducted to ensure integrity of the electoral roll, and to remove discrepancies therein on account of (a) inclusion of ineligible persons as part of the list; (b) duplicate entries. Yet another issue is that of fake voting, which is required to be separately addressed.



7. As regards alleged inclusion of ineligible persons in the voters' list, it is noticed that in the affidavit dated 20.11.2019 filed by the respondent no.3 (Sh. Rahul singh, District Magistrate), it has been categorically averred as under:-

*"6. It is most respectfully submitted that between the year 2013-2016 out of the then existing electoral college about 818 persons died. The consequence of this should have been to initiate the process of filling up the said vacancies in accordance with law by the governing body of the Petitioner. It is submitted that it appears prima facie, that, the Petitioner Society instead, filled the vacancies with their own chosen persons. This therefore formed the basis of the allegation of illegal manipulation of the voters list."*

8. It appears that the controversy as to whether vacancies that arose on account of the death of erstwhile members have been validly filled up or not, has not been addressed. Also, the contents of the aforesaid para 6 of the affidavit of the respondent no.3 (which suggests that between the year 2013-2016, the vacancy arising on account of death of 818 persons in the electoral college were filled up) is contrary to the observations made in para 9 of the aforesaid letter of the Observer, in terms of which, no new member has been added after the year 2013.

9. The very purport of the directions contained in the order dated 27.09.2023 was to ensure that a duly verified electoral roll is prepared so that there is no doubt as regards the veracity and integrity thereof.

10. The electoral roll/ voters' list has not been placed on record of this Court; the same has been handed over in Court during the course of hearing by the learned counsel for the applicant in CM APPL.12666/2024. A perusal of the same indicates that there are as many as 9549 voters therein. To demonstrate the discrepancies in the voters' list, learned counsel has brought out that even on a cursory examination thereof, one can find duplicate



entries. In this regard, specific reference has been made to the following entries:

| <i>Sr. No.</i> | <i>Name</i>                                   | <i>Membership No.</i> | <i>Address</i>                                                       |
|----------------|-----------------------------------------------|-----------------------|----------------------------------------------------------------------|
| 1.             | <i>Sh. Vijay Singh</i>                        | <i>A- 4975</i>        | <i>303, Panchmadhi, Kaushambi, Ghaziabad, U.P.</i>                   |
|                | <i>Sh. Vijay Singh</i>                        | <i>B- 5221</i>        | <i>303, Panch Mandi, Kaushambi, Ghaziabad, U.P.</i>                  |
| 2.             | <i>Sh. K. S. Kharb</i>                        | <i>A- 3562</i>        | <i>C-2/55, Sec-31, Noida, Ghaziabad, U.P.</i>                        |
|                | <i>Sh. K. S. Kharab</i>                       | <i>B- 2667</i>        | <i>C-255/Sector-31, Noida, Gautambudh Nagar, Noida, UP.</i>          |
| 3.             | <i>Sh. Babu Ram S/o Sh. Lakhi Ram Pradhan</i> | <i>A- 1036</i>        | <i>B-99, Sector-51, Noida, U.P.</i>                                  |
|                | <i>Sh. Babu Ram S/o Sh. Lakhi Ram</i>         | <i>B-3083</i>         | <i>B-99, Sector-51, Noida, U.P.</i>                                  |
| 4.             | <i>Kaptain Om Prakash S/o Sh. Bhola Ram</i>   | <i>A-949</i>          | <i>Prop. Punjab Medical Store, 69L, Model Town, Rohtak, Haryana.</i> |
|                | <i>Capt. Om Prakash S/o Sh. Bhola Ram</i>     | <i>B-3693</i>         | <i>69L, Model Town, Rohtak, Haryana.</i>                             |
| 5.             | <i>Smt. Prakashvati</i>                       | <i>A- 3059</i>        | <i>26/60 Shakti Nagar, Delhi.</i>                                    |
|                | <i>Smt. Parkashwati</i>                       | <i>B- 1458</i>        | <i>26/64, Shakti Nagar, Delhi.</i>                                   |



|    |                                                      |         |                                                             |
|----|------------------------------------------------------|---------|-------------------------------------------------------------|
| 6. | Sh. Ashok Kumar S/o Ch. Dhoom Singh                  | A- 6928 | 186/1, Gautam Nagar, New Delhi.                             |
|    | Sh. Ashok Chaudhary                                  | B-6372  | 186/1, Gautam Nagar, New Delhi.                             |
| 7. | Sh. Amarbeer Singh Kadiyan S/o Sh. Bir Singh         | A-6541  | H. No.101/22, Laxmi Nagar, Sonapat Road, Rohtak, Haryana.   |
|    | Sh. Amar Beer Singh Kadian S/o Sh. Beer Singh Kadian | B-7809  | H. No.101/22, Lakshmi Nagar, Sonapat Road, Rohtak, Haryana. |

11. It is, *prima facie*, evident from the above that the electoral roll/ voters' list is tainted, on account of duplicate entries/multiple membership numbers being assigned to the same voter.

12. Thus, the need for a comprehensive audit of the electoral roll/ voters' list is imperative to ensure the sanctity of elections.

13. This court is mindful of the salutary principle that the election process be not disturbed once it has set in motion, yet, at the same time, in the peculiar facts of the present case, this Court cannot turn a blind eye to (i) the apparent discrepancies in the electoral roll on account of duplicate entries/ multiple membership numbers being assigned to a single member; (ii) the omission to conduct a verification as to the eligibility of persons who have been included in the voter's list [in view of the observations in para 6 of the affidavit of respondent no. 3]; (iii) the non-compliance of the directions contained in order dated 27.09.2023 passed by this Court in terms of which this Court specifically contemplated that a clean electoral roll would



be prepared and that the same would be placed before this Court, along with a report as to the steps taken by the observer. It transpires that the election notice was issued and/or election schedule was announced without this Court being apprised as to the steps taken for compliance with the directions contained in the order dated 27.09.2023.

14. In the circumstances, it is imperative to issue appropriate directions to preserve the sanctity of the electoral process and to ensure that the elections of the petitioner society are not reduced to a farcical exercise. If elections are allowed to proceed in the present circumstances, the prevalent situation as regards the petitioner society, which has been plagued with controversies surrounding its election process, would become worse confounded.

15. Consequently, the following directions are issued:

- (i) Mr. Justice (Retd.) Permod Kohli, Former Chief Justice, Sikkim High Court (Mobile No.:9622141111) is appointed as the “senior observer” for overseeing the conduct of elections, and specifically tasked with conducting a comprehensive audit/ review of the electoral roll/ voters list, so as to ensure that the same is free from discrepancies/ inclusion of ineligible persons. Adequate measures shall also be taken and put in place to obviate the possibility of any fake voting/ impersonation. The observer appointed vide order dated 27.9.2023, as also the incumbent returning officer/s, shall assist the senior observer for the purpose of the aforesaid exercise. The senior observer shall also be at liberty to avail the services of appropriate experts for the aforesaid exercise, at the cost of the Petitioner society.
- (ii) Keeping in view the necessity to expeditiously conclude the



election process qua the Petitioner, an endeavour shall be made to conclude the aforesaid exercise within 4 weeks. In the meantime, the polling/ election process shall remain deferred.

- (iii) Once the electoral roll/ voters list has been finalised, the same shall be placed before the Court, alongwith a report of the senior observer, whereupon the revised election/ polling schedule shall be drawn up.
- (iv) For the purpose of the aforesaid exercise, the senior observer would grant an opportunity of hearing, and consider the objection/s of any interested person/s who have any grievance as regards the electoral roll/ voters list.
- (v) The senior observer shall fix his remuneration, in consultation with the petitioner society.

16. List for further consideration on 22.04.2024.

**SACHIN DATTA, J.**

**MARCH 6, 2024/r**