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

+ W.P.(C) 11799/2019

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

.....Petitioners

Through: Mr. Devesh Pratap Singh, Md.
Faizan Danish an Mr. Sanjay
Tyagi, Advocates.

versus

GOVT. OF NCT DELHI AND ORS.

.....Respondents

Through: Ms. Mehak Nakra, ASC with Ms.
Anjali Pandey and Ms. Gunjan,
Advocates for GNCTD.

Mr. Kirtiman Singh, Mr. Ranjeev
Khatana, Mr. Hirein Sharma, Mr.
Harsh Singh Dahiya and Mr.
Saurabh Goel, Advocates for R-6
& 7.

Mr. N.S. Dalal, Ms. Nidhi Dalal,
Mr. Alok Kumar, Ms. Rachana
Dalal and Mr. Kunal Narwal,
Advocates for intervener.

Mr. Ramchander Dalal, Advocate
for Applicants.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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30.09.2024

CM APPL. 57508/2024 (for directions to the observer)

CM APPL. (to be numbered) (Diary No.3757543/ 2024)

1. Respondent Nos. 6 and 7 have filed two applications for directions with regard to the impending elections to the petitioner - Society



[Surajmal Memorial Education Society].

2. The elections are to be held in terms of orders passed in this writ petition on 27.09.2023 and thereafter. By the order dated 27.09.2023, the Court appointed a former District and Sessions Judge as an Observer to conduct the elections of the petitioner- Society. By a further order dated 06.03.2024, a former Chief Justice of Sikkim High Court was appointed as the “Senior Observer” and detailed directions were given with regard to the conduct of elections. The order dated 06.03.2024 was also carried to the Division Bench by some members, and was pressed only with regard to fixing of a time frame for the conduct of the elections. The Division Bench, by order dated 03.04.2024 in LPA 260/2024, directed as follows:

“2. Keeping in view the limited prayer sought in the present appeal, this Court directs the Election Officer and the Observer appointed by the learned Single Judge to conduct the election of Respondent no.1/Society as expeditiously as possible, preferably, within three months. Needless to state that the audit directed by the learned Single Judge shall be completed prior to holding of the election.”

3. Respondent Nos. 6 and 7 have now filed CM APPL. 57508/2024 for the following reliefs:

“a) Direct the Observer to conduct KYC verification of all eligible voters to ensure their bona fides before they are allowed to cast their vote and to retain copies of the identity documents of all voters post-voting for maintaining a record and for ensuring the transparency of the election process.

b) Pass any such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

4. They have also filed an application under Diary No. 3757543/2024 for the following reliefs:

“a) Direct the Society and Petitioners to produce and bring on record the following documents and records of the Surajmal



Memorial Educational Society, in order to ascertain the authenticity and veracity of the Membership Register and other Society records:

- i. Membership Register*
- ii. AGM Records*
- iii. Minutes of Meetings*
- iv. Suraj Sujan Magazine*
- v. Fee Payment Details*
- vi. Bank Account Records*

b) Pass any such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

5. Although the second application is not on Board today, a copy has been handed over in Court. The Registry is directed to number the application, and the application is taken on Board with the consent of learned counsel for the parties.

6. Both applications arise out of the allegations of the applicants that the membership records of the petitioner- Society have not been properly maintained and that a thorough exercise of verification is required to arrive at a correct electoral roll. It is with these contentions in mind that the Court, by order dated 06.03.2024, noted certain deviations and came to a *prima facie* conclusion that the electoral roll/ voters' list was tainted on account of duplicate entries and multiple membership numbers being assigned to the same roll. The Court, therefore, required a comprehensive audit of the electoral roll/ voters' list and gave the following directions:

"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.”

7. The exercise of drawing up the voters’ list has been completed by the learned Observers about one month ago, and the list has been filed before this Court on 14.09.2024. The number of eligible voters in the list filed by the Observers before this Court is 7379.

8. The contention of the applicants with regard to completion of the KYC process is that in other societies, the Registrar of Cooperative Societies circulated a KYC Information Form on 03.05.2016. The learned Observers have, however, in their report of 19.09.2024, stated that physical verification of KYC is likely to take long as the members live in various States and Union Territories of the country, as well as abroad.



9. I do not consider it necessary at this stage to direct KYC formalities in the manner suggested by the applicants. The form circulated by the Registrar of Cooperative Societies was applicable to members/ account holders of Co-operative Thrift and Credit Societies Ltd., Urban Banks and the Delhi State Co-operative Bank Limited. These institutions are in the category of financial institutions, for which purpose KYC information is required to map the economic activity of account holders across sectors. The petitioner- Society, on the other hand, is an educational society and runs schools, colleges, etc. No material has been pointed out, which mandates an independent pre-election exercise of collecting details of all members of the Society in a KYC form. Such an exercise does not appear to be necessary to ensure the integrity of the electoral process. As observed by the learned Observers, it would also require considerable expenditure of resources, time and effort, and will come in the way of holding expeditious elections, as directed by this Court and by the Hon'ble Division Bench.

10. What is, however, required without doubt, is to ensure that the persons casting their votes, are indeed the members included in the voters' list. The possible potential of misuse by fake voting or impersonation has been highlighted in paragraphs 6 and 15(i) of the order dated 06.03.2024. As far as this aspect is concerned, the apprehension of the applicants can be allayed by the Observers taking an appropriate decision as to the identification of the persons casting their votes, through government - issued means of identification, and correlating the same with the voters' list. A decision on this aspect is left to the Observers.

11. The only other aspect urged by Mr. Kirtiman Singh, learned



counsel for the applicants, concerns disclosure of information to the applicants in the form of the Membership Register, AGM Records, etc. In this connection, it is his contention that, at the hearing held on 24.09.2024, the petitioner- Society had offered access of the records maintained in its library to all members. That offer is reiterated today, and it is made clear that the members of the petitioner -Society will be entitled to access the library to peruse the records maintained therein.

12. As far as other records are concerned, the learned Observers are requested to preserve the record on the basis of which they have arrived at the final voters' list, so that the record can be reviewed in the event of any post-election challenge on the ground of defects in the voters' list. This Court has made no comment on the maintainability of such a challenge, or the forum before which the challenge will be entertained. For the present, suffice it to request the Observers to preserve the record.

13. The applications are disposed of accordingly.

PRATEEK JALAN, J

SEPTEMBER 30, 2024/MR/