



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 4th OF OCTOBER, 2024

WRIT PETITION No. 30862 of 2024

JAGJIT SINGH TUTEJA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

*Shri Narinder Pal Singh Ruprah and Shri Manan Dhakad -
Advocate for the petitioners.*

Ms. Mradula Sen- G.A. for the State.

Shri Vivek Patwa- Advocate for the respondent No.6.

*Shri V. K. Jain- Senior Advocate with Shri Shri Vivek Phadke-
Advocate for the respondent No.7.*

*Shri Vijay Kumar Asudani- Advocate for the respondent No.8
on caveat.*

ORDER

Heard on the question of admission.

2] This petition has been filed by the petitioners seeking the following reliefs:-

“It is, therefore, most humbly prayed that this Hon'ble Court be pleased to issue a writ in the nature of mandamus/directions/certiorari or the like ordering the respondents:

- (a) To declare that respondent no.8 and respondent no. 9 are not qualified to contest the election of any post of Shri Guru Singh Sabha, Indore (respondent no. 6)
- (b) To declare that respondent no. 7, Harpreet Singh Soodan has lost the authority to continue as Chief Election Commissioner in view of his conduct in the alternative.
- (c) To direct the Collector, Indore (respondent no. 5) to himself decide the objections of petitioner against the candidature of respondent nos. 8 and 9;



(d) This Hon'ble Court be further pleased to pass such other order or orders as it may deem under the facts and circumstances of the case with a view to maintain the sanctity of the historical and other Gurudwaras of Indore.”

3] The grievance of the petitioners is that, despite there being a specific order passed by this Court in W.P. No.27519/2024 dated 20.09.2024 whereby, the respondents were directed to decide the objections filed by the petitioners and other members of the community, the respondents have not decided the objections.

4] Counsel for the petitioner Shri N.P.S. Ruprah has submitted that despite there being a specific order passed by this Court and the subsequent order passed in W.P. No. 29817/2024 dated 30.09.2024, whereby, the respondent No.7 had undertaken to decide the objections filed by the petitioners after giving them opportunity of hearing as well as the respondent Nos.8 and 9, the objections have not been decided and thus, it is submitted that it is a clear case of non-compliance of the order passed by this Court, and in such circumstances, the respondents may be directed to decide the objections and proceed with the elections.

5] In support of his submissions, counsel for the petitioner has also relied upon the decision rendered by the Supreme Court in the case of *Kranti Associates Private Limited and Another Vs. Masood Ahmed Khan and Others*, reported as (2010) 9 SCC 496, in which the Supreme Court has emphasized on the assigning of the reasons becoming indispensable component of decision making process as observing principles of natural justice by judicial, quasi-judicial and even administrative bodies.



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6] The prayer is vehemently opposed by the respondent No.7, Harpreet Singh Soodan, the Chief Election Officer of Shri Guru Singh Sabha, who is also responsible for the conduct of elections.

7] Shri V.K. Jain, learned senior counsel appearing for the respondent No.7 has submitted that the petition itself is not maintainable for the simple reason that the petitioners are aggrieved by the action of the respondent Nos.6 and 7, who are the private persons, as the respondent No.6 is a Society registered under the M.P. Society Registrickaran Adhiniyam, 1973 (hereinafter referred to as 'the Adhiniyam of 1973') and thus, they are not the 'State' as provided under Article 12 of the Constitution of India. It is also submitted that otherwise also, election program has already been declared hence no interference is made out at this state. It is also submitted that the petitioner No.6 has enjoyed the post of President for around twelve years, and all these petitions until now have been filed either by him or through some other person to somehow stall the election and to ensure that the respondent No.8, who is also contesting for the post of President is disqualified even before the elections. It is submitted that the petitioner has efficacious alternative statutory remedy as provided under the provisions of the Adhiniyam of 1973 and in such circumstances, no case for interference is made out.

8] In support of his submissions, Shri V.K. Jain, learned senior counsel for the respondent No.7 has also relied upon the decision rendered by this Court in the case of *Ram Kumar Sharma Vs. The State of Madhya Pradesh* reported as *2014 SCC OnLine MP 5304*; *Siddharth Kapadia and Another Vs. Daly College and Others* reported as *2020 SCC Online MP 3316*; *Sharad Agrawal Vs.*



Registrar State of M.P. and Anr., reported as *2012 SCC OnLine MP 8208, Bharat Coking Coal Limited Vs. Indian Newspaper Society and Others* reported as *(2011) 14 SCC 140; Shiv Kant Dwivedi Vs. State of M.P.*, reported as *2012 SCC OnLine MP 5334; Virendra Singh Vs. Principal, Christ Church Boys Senior Secondary School, Jabalpur and another* reported as *2011 SCC OnLine MP 550* and *Dinesh Kumar Sharma Vs. M.P. Dugdha Mahasangh Sahkari Maryadit and another* reported as *1993 SCC OnLine MP 76*.

9] Counsel for the respondent No.8, Shri V.K. Asudani on the other hand, has submitted that the respondent No.7 has already decided the representation submitted by the petitioners on 13.10.2024 itself, and if they are aggrieved of the same, they may take recourse of the remedy available to them under law, and even otherwise, they have not challenged the aforesaid order in this petition. It is also submitted that the respondent No.8 has also been given a certificate by Shri Akal Takht Sahib, Shri Amritsar certifying that he had tasted 'Amrit', which means that he is already following all the practices of the Sikh religion, and so far as the allegation of gang rape is concerned, he has already been acquitted by the Trial Court. Thus, it is submitted that no case for grant of any relief is made out.

10] Shri Ruprah, in rebuttal, has submitted that this Court has already entertained the petition on last two occasions and in such circumstances, the present petition is maintainable, as it has been filed alleging non-compliance of the earlier orders passed by this Court.

11] Heard. Having considered the rival submissions, on perusal of the record and taking note of the fact that the petitioners have raised various objections regarding the eligibility of the respondent No.8 to



contest the elections, the objections regarding which have already been decided by the Chief Election Officer, Shri Guru Singh Sabha on 03.10.2024, but the same has not been challenged in this petition, even by way of amendment. Whereas a certificate has also been issued to the respondent No.8 by *Sri Akal Takhat Sahib, Sri Amritsar Sahib*, certifying that he has tasted 'Amrit', which might mean that he is already following all the practices of the Sikh religion, but that is a disputed question of law.

12] In the considered opinion of this Court, the present petition itself is not maintainable for the reason that a petition against the private persons is not maintainable, as has also been held by the Coordinate Bench of this Court in the case of *Ram Kumar Sharma (Supra)*, wherein, while taking note of the decision rendered by the Supreme Court in the case of *Supreme Court Bar Association Vs. B.D. Kaushik*, reported as (2011) 13 SCC 774, it was observed as under:-

“In (2011) 13 SCC 774 (*Supreme Court Bar Association v. B.D. Kaushik*) the Apex Court has taken the same view.

Even otherwise, the question of preparation of voter list is a highly disputed question of fact. The question of eligibility of member in the voter list is also a disputed question of fact, which needs to be dealt with as per Section 64 of the Act. A Division Bench of this Court in 2008 (4) MPLJ 353 (*Ram Singh v. State of MP*) opined as under :-

“11. Coming to the question of eligibility of member in the voter list, it is disputed question of fact whether the voter list was correctly prepared, whether or not it was prepared by the management. These disputed question of fact cannot be gone into in writ petition. Matter of preparation of voter list is subject-matter which has to be raised in election dispute under section 64 of the Act as held by this Court in *Akbar Mohd. Khan v. State of MP*, 2002 (2) MPLJ 165. In *Shiv Narain Pandey v. Satish Tiwari*, 1998 RN 178, this Court held that election should



be allowed to be completed peacefully without any interruption from any forum. In Bhawani Shankar Sharma v. State of MP, (1998) 2 MPLJ 20 (DB) the dispute related to earmarking of the particular constituency writ was held to not maintainable as remedy lies in filing election dispute. As per proviso to sub-section (2) of section 64 of the Act, legislative intention is clear of completion of election unhindered; it is the view of this Court in Radheshyam v. Chairman, Sahakari Samiti, AIR 1976 MP 156. Dispute as to voter list, nomination paper is to be raised in election dispute under section 64 not in writ petition is consistent view taken in Radheshyam v. Chairman, Sewa Sahakari Samiti, 1989 MPLJ 208 : 1989 RN 99, Ramdeo Sharma v. Dy. Registrar, Gwalior, 1993 RN 18, Ram Swaroop, Dohare v. Ayukta Sahkarita, AIR 1996 MP 187, Jagdish Sharma v. State of MP, 1996 RN 60, and Suresh Chandra Jain v. State of MP, 1996 RN 131.”

Even if as per Section 64(2) (Proviso), if no remedy is available to the petitioner at present to raise a dispute, he can raise the dispute if he is ultimately prejudiced against the election of respondent No. 6. He will not be remediless even after elections are over.

Since the petitioner has failed to submit objection before last date, I am not inclined to interfere in the election process. Section 57(F) of the Act is the inherent power for the authority to issue directions which are necessary for conducting free, fair and impartial election. No mandamus needs to be issued directing him to exercise the power in a particular manner. The judgments cited by Shri Ravindra Dixit are based on peculiar facts and circumstances of those cases and have no application in the factual matrix of the present matter.

In view of this, I am not inclined to entertain this petition. Petition is disposed of by reserving liberty to the petitioner to avail the remedy under the Act at appropriate stage in accordance with law. It is made clear that this Court has not expressed any opinion on merits.”

(Emphasis Supplied)

Whereas, a similar question also arose regarding the election of members of Old Dalians Association, also a society, in the case of *Siddharth Kapadia and Another (Supra)* wherein, while referring to the decision rendered in the case of *Shri Sant Sadguru Janardan*



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Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. State of Maharashtra reported as (2001) 8 SCC 509, it was observed by Hon'ble Justice S.C. Sharma, (as his Lordship then was) as under:-

“11. The Hon'ble Supreme Court in the aforesaid case has held that once the process of election is set in motion, the High Court should not stay the continuation of the election process, even if there may some alleged irregularities or breach of Rule while preparing with the electoral roll. The Hon'ble Supreme Court has further held that once the result of election is declared, it would be opened to appellants therein to challenge the elections of the returned candidate, if aggrieved, by filing an election petition.”

(Emphasis Supplied)

Another decision of Sharma J., on which Shri Jain has relied upon is in the case of *Sharad Agrawal (Supra)*, in which the petition was dismissed against the Society. The relevant paras of which read as under:-

“The petitioner before this Court has filed the present petition challenging the election programme issued by Anaz Vyapari Sangh, Dewas, which is a Society registered under the Madhya Pradesh Firms and Society Registerikaran Adhinyam, 1973. The petitioner has raised various grounds before this court in the matter of election of a society.

Shri Sudarshan Joshi, learned counsel appearing for the respondent No. 1 has argued before this court that the writ petition is not maintainable against the respondent No. 2 society, as it is not a State as defined under Article 12 of the Constitution of India. He has further argued that the respondent No. 2 Society is not under the control of the State Government nor is a society of State and therefore, as the respondent No. 2 is not a State, the present writ petition is not maintainable.

Heard the learned counsel for the parties and this court is of the considered opinion that the respondent No. 2 is not a State as defined under Article 12 of the Constitution of India, hence the present writ petition is not certainly at all maintainable against an order passed by some private individual or against any order passed by the respondent No. 2 society. Resultantly, the admission is declined.”

(Emphasis Supplied)



Whereas, in the case of *Dinesh Kumar Sharma (Supra)* the Full Bench of this Court has also held that co-operative society registered under Section 9 of the M.P. Co-operative Societies Act is not State within the meaning of Article 12 of the Constitution of India and not amenable to writ jurisdiction of the High Court.

13] In such facts and circumstances of the case, this Court is not inclined to interfere in this petition, while invoking its extra-ordinary powers under Article 226 of the Constitution of India, when the election process has also begun.

14] On the other hand, a bare perusal of the relief clause would also reveal that the petitioner wants to preempt the election proceedings even before it has begun, which certainly cannot be allowed while invoking Art.226 of the Constitution, and merely because earlier writ petitions were entertained to some extent, it would not mean that such practice is required to be perpetuated which does not fall within the realm of Art.226 of the Constitution.

15] So far as the decision relied upon by the counsel for the petitioner in the case of *Kranti Associates Private Limited (Supra)* is concerned, the same is distinguishable on facts and is of no avail to the petitioners.

16] Needless to say, if by the result of the elections, the petitioners are aggrieved in any manner, they will have the liberty to resort to the remedies available to them under law.

17] Accordingly, the petition stands *dismissed*.

(SUBODH ABHYANKAR)
JUDGE