



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

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Date of decision: 23<sup>rd</sup> December, 2023

+ W.P.(C) 16258/2023, CM APPLs. 65412/2023 & 66888/2023

**MUKTA SHARMA**

..... Petitioner

Through: Mr. Vinay Kumar Garg, Sr. Adv. with  
Mr. B.S. Rajesh, Mr. Arun Mishra,  
Mr. J.K. Chawla, Mr. Vaibhav Vats,  
Mr. Karandeep, Ms. Priya Nagar,  
Mr. Siddhant Goswami, Advs. with  
petitioner in person.

versus

**UNION OF INDIA & ORS.**

..... Respondents

Through: Mr. Chetan Sharma, ASG with  
Ms. Manisha Agrawal Narain, CGSC  
with Mr. Sandeep Singh Somaria,  
Ms. Shivangi Gumber, Advs. with  
Mr. Vinay Kumar Jindal, ARO/SDM  
for R-1 to R-3  
Ms. Kumud Lata Das, Adv. for  
Mr. Deepak Tyagi, intervener.  
Mr. Vibhu Shankar Mishra, and  
Ms. Mannu Singh, Advs. for  
candidate of the Election.  
Dr. Adish C. Aggarwala, Sr. Adv. /  
President of SCBA with Ms. Sangita  
Malhotra, Adv.  
Ms. Preeti Chauhan, ACEO for  
R-4/SCBAMSCGHS Ltd.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**  
**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**



**V. KAMESWAR RAO, J. (ORAL)**

**CM APPL. 66888/2023 (for impleadment)**

For the reasons stated in the application, the same is allowed.

The applicant is impleaded as a party respondent.

The application is disposed of.

**W.P.(C) 16258/2023**

1. This petition has been filed by the petitioner with the following prayers:-

*“It is therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:*

*a. issue writ, order, directions in Nature of Certiorari to set aside/quash the election notification dated 23/11/2023 issued by the respondent no. 2;*

*b. Issue writ, order, directions in Nature of Certiorari to set aside/quash the election circular dated 8/12/2023 & 12/12/2023 issued by the respondent no. 3:*

*c. issue writ, order, directions in the nature of Mandamus directing the respondent no. 2 & 3 to issue a fresh election notification specifically specifying the exclusive categories in accordance with Section 41(3) of Multi State Cooperative Act, 2002;*

*d. pass such other or further orders as this Hon’ble Court may deem fit and proper in the interest of justice.”*

2. On December 18, 2023, this Court had passed the following order:-

*“1. Though this writ petition has been filed with the following prayers, Mr. Vinay Kumar Garg, learned Senior Counsel appearing for the petitioner has placed before us*



*two documents, including one order dated December 14, 2023 issued by the Ministry of Co-operation, Office of Cooperative*

*Election Authority, Govt. of India postponing the election without prescribing any date and also the undated order issued by the Returning Officer notifying the 'Revised Election Program' to be held on January 04, 2024:*

*"a. issue writ, order, directions in Nature of Certiorari to set aside/quash the election notification dated 23/11/2023 issued by the respondent no. 2;*

*b. issue writ, order, directions in Nature of Certiorari to set aside/quash the election circular dated 8/12/2023 & 2/12/2023 issued by the respondent no. 3; and*

*c. issue writ, order, directions in the nature of Mandamus directing the respondent no. 2 & 3 to issue a fresh election notification specifically specifying the exclusive categories in*

*accordance with Section 41(3) of Multi State Cooperative Act, 2002. "*

2. *The submission of Mr. Garg is that vide 'Revised Election Program', the Returning Officer has sought the nomination for two reserved seats i.e. for women (02) and for SC/ST (01) category. In other words, it is the submission that the earlier notification issued on November 23, 2023 continues to hold the field in the manner it has been issued.*

3. *According to Mr. Garg, in view of the 'Revised Election Program', the earlier notification issued on November 23, 2023 appears to mean that the same shall now be confined to 12 posts of Director. He submits that the Returning Officer should have issued a composite notification for all the 15 posts and not in the manner sought to be done.*



4. *He also submits that the chances of the petitioner, if at all, she intends to participate in the election, shall get prejudiced. In other words, it is his submission that the 'Revised Election Program' notification is in violation of Section 41(3) of the Multi-State Co-operative Act, 2002.*

5. *Issue notice. Ms. Manisha Agrawal Narain, learned CGSC appears and as of now accepts notice for respondent No.1. She also submits, she shall take instructions whether to appear for respondents No.2 and 3.*

6. *Notice be issued through all modes, to respondent No.4 i.e.. Supreme Court Bar Association Multi State Cooperative Group Housing Society Ltd. (Regd.), returnable on December 21, 2023.*

7. *Perusal of the 'Revised Election Program', would reveal that the nominations for the two posts for women (02) and one post for SC/ST (01), have to be submitted between December 18, 2023 to December 23, 2023.*

8. *We direct that till the next date of hearing, the Returning Officer shall not accept the nominations for the said posts.”*

3. Mr. Vinay Garg, learned Senior Counsel appearing for the petitioner states that the initial notification issued on November 23, 2023, by the Assistant Registrar (Cooperation) notifying the schedule for election of the Supreme Court Bar Association Multi-State Cooperative Group Housing Society Limited i.e. respondent No.4 contemplates the appointment to the 15 posts of Director of the Society.



4. He also submits that a circular dated December 12, 2023 was issued by the ARO / SDM, Vasant Vihar on behalf of Returning Officer, wherein, in paragraphs 1 and 2, the following has been stated:-

*“(1) As per the direction of the Hon'ble High Court of Delhi and in the exercise of the powers conferred under the Multi-State Co-operative Societies (MSCS), Act 2002, the election schedule dated 29.11.2023 was issued by the Returning Officer for the election of 15 members of the board of directors. A total of 44 valid nominations have been finalized after scrutiny and withdrawal. Out of 44 valid nominations, a total of 07 women members have filed nominations for the post of the board of directors and no member belonging to the SC/ST category has filed nomination for this election. Hence, the election will be held for the 14 members of the board of directors.*

*(2) To ensure the provision of Section 41(3) of the Act, the candidates who secured the highest number of votes will be elected as members. If the top 12 elected candidates do not have any women representation then the two members among the women candidates who secured the highest number of votes after 12 elected candidates shall be elected among the final number of members of the board of directors.”*

5. Thereafter, an order dated December 14, 2023 was issued by the ARO, which reads as under:-

### ORDER

*Whereas, in pursuance to order dated 03.11.2023 of the Hon'ble High Court of Delhi in matter of W.P.(C) 10589/2023, CM APPLA. 411382023 54349/2023 and in exercise of the powers conferred by section 45K(1) of the Multi State Co-operative Societies (MSCS) Act 2002 read with rule 19 F(a) of MSCS Rules, 2002, the Co-operative Election Authority vide order dated 23.11.2023 has appointed Shri Santosh Kumar Rai,*



*District Magistrate, New Delhi as Returning Officer (herein referred to as 'RO' for the sake of brevity) for conducting elections of Supreme Court Bar Association Multi-State Cooperative Group Housing Society Limited, New Delhi.*

*2. Whereas, in view of rule 19(H)(2) of MSCS Rules, 2002, the election programme for conducting election of the said society was also forwarded to the RO along with the aforesaid order dated 23.11.2023.*

*3. Whereas, RO vide letter dated 14.12.2023 has informed that tomorrow (15 Dec. 2023) is the polling day, however, the venue of the traditional polling station was not made available to him by the Authorities concerned despite best efforts. Further, the postponement of the election has been requested by the RO on the basis that securing an alternate venue and informing the same to all voters is not practically feasible given the time constraint.*

*4. The Authority after having considered the facts and circumstances of the case, as brought out by the RO in his request, is of the view that it would not be possible for the RO to secure an alternate venue and inform all the voters in time for polling. Therefore, the election of aforesaid MSCS stands postponed. In order to ensure that members of aforesaid MSCS are well-informed, the RO shall give sufficient publicity of postponement of election. The re-scheduled election programme will be notified shortly.*

*This issues with the approval of Co-operative Election Authority.”*

6. He also draws our attention to 'Revised Election Programme' issued by the Returning Officer only to the extent of calling for nomination for reserving the seats for women (2) and SC/ST (1) with



date of nomination to be submitted between December 18, 2023 to December 23, 2023 and with date of election as January 04, 2024.

7. The submission of Mr. Vinay Garg, primarily, as noted in the order dated December 18, 2023, is that vide 'Revised Election Program', the Returning Officer has sought the nomination for two reserved seats for women and one for SC/ST category, resulting in the earlier notification issued on November 23, 2023 to mean that the same shall now be confined to 12 posts of Director. He submits that the Returning Officer should have issued a composite notification for all the 15 posts and not in piecemeal manner of 12+3 posts. He also submits that the chances of the petitioner, if at all, she intends to participate in the elections, shall get prejudiced. If all the women, who submitted nomination against 15 posts, indicate their option for reserved seats, then the same shall reduce the chances of success:-

#### **“REVISED ELECTION PROGRAM”**

*This is in continuation of the public notice dated 29.11.2023, the revised schedule for the election to the Board of Directors of the Supreme Court Bar Association Multi-State Cooperative Group Housing Society Ltd., (SCBA MSCGHS Ltd.) is given below. The Conference Hall, Disaster Management Centre, Humayun Road, New Delhi – 110003 will be the venue of the polling as well as an office for the ongoing entire election process including the nomination.*

#### **Election for Board Members**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Date</i>	<i>Time</i>



1.	<i>Nomination for Reserved Seat for Women (two) &amp; SC/ST (One) Category*</i>	18.12.2023 to 23.12.2023 (Monday to Saturday)	11:00 AM to 03:00 PM (Every day)
2.	<i>Publication of List of Nominations Received.</i>	23.12.2023 (Saturday)	05:00 PM
3.	<i>Scrutiny of Received Nomination Forms</i>	26.12.2023 (Tuesday)	11:00 AM to 3:00 PM
4.	<i>Publication of List of Valid Nominations.</i>	26.12.2023 (Tuesday)	05:00 PM
5.	<i>Withdrawal of Nominations Received.</i>	27.12.2023 (Wednesday)	11:00 AM to 03:00 PM
6.	<i>Publication of Complete List of Contesting Candidates (General /SC/ST/Women)</i>	27.12.2023 (Wednesday)	05:00 PM
7.	<i>Date of Polling, if Necessary (for all categories).</i>	04.01.2024 (Thursday)	08:00 AM to 04:00 PM
8.	<i>Counting of Votes &amp; Declaration of Result.</i>	04.01.2024 (Thursday)	Immediately After Polling

*In the case of candidates belonging to the Women / SC / ST category who have already filed their nomination earlier as per the original election schedule, they may indicate their option to the RO if seeking to contest from the reserved seat. They need not to file fresh nominations.*

*Nominations from contestants belonging to SC/ST shall be attached with appropriate documents / certificates.*

*No fresh nomination for general / non-reserved seats would be accepted and the final list of the contesting candidates will be published on 27.12.2023 (Wednesday)*



*which would include all contestants, that is, General SC / ST / Women for the polling to be conducted on 04.01.2024.*

*If the stipulated minimum representation of the said categories in a board is not achieved, such reserved seat (s) will be kept vacant.*

*If the stipulated minimum representation of the said categories in a board is not achieved, such reserved seat (s) will be kept vacant.*

*Separate ballot paper will be used for the reserved seats.*

### **Officer Bearer Election**

Sl. No.	Particulars	Date	Time
1.	Announcement of Election Schedule.	04.01.2024 (Thursday)	After Declaration of Result of Board Members' Election
2.	Meeting of Newly Constituted Board & Publication of List for Valid Nominations, Polling (If required) & Declaration of Result of Election of Office Bearers.	05.01.2024 (Friday)	10:00 AM Onwards

8. That apart, he submits that there is no provision in the Act and the Rules, which provides for the issuance of two separate notifications for the same election i.e., the order dated November 23, 2023 for 12 posts (now) and undated Revised Election Programme for 3 reserved posts. His only prayer is, that a composite election notification be issued so that there is a fair opportunity to each and every Member, who intends to contest by taking a considered decision. He also states, the



plea of Ms. Das by relying upon the judgment in the case of *West Bengal State Election Commission & Ors. v. Communist Party of India (Marxist) and others (2018) 18 SCC 141*, to state that once the election Notification has been issued, a petition of this nature shall not be maintainable and should be dismissed at the threshold, is not tenable by relying upon the judgment of the Supreme Court in the case of *Union Territory of Ladakh and Others v. Jammu and Kashmir National Conference and Another, (2023) SCC OnLine SC 1140*.

9. On the other hand, Ms. Agrawal, who appears for respondent Nos.1 to 3 would support the Revised Election Programme issued by the Returning Officer to the extent of 3 reserved seats i.e. 2 for women and 1 for SC / ST by stating that the Revised Election Programme clearly grants opportunity to the women / SC / ST category candidates, who have already filed the nomination, as per the original election nomination to indicate their option to the Returning Officer, if they seek to contest the revised seat. In other words, they are not required to file a fresh nomination.

10. She also submits that the plea of Mr. Garg that a composite Notification need to be issued, has no basis, as no prejudice shall cause to any of the candidates because the reserved seats are meant only for women / SC / ST, members, who had applied pursuant to earlier Notification dated November 23, 2023 and can still withdraw their nomination against the 12 posts and show their inclination to contest the reserved seats meant for women / SC / ST.

11. She also relies upon the judgment in the case of *N.P. Ponnuswami v. The Returning Officer, Namakhal Constituency*,



**Namakkal, Salem Dist., and others AIR 1952 SC 64.** She also submits that it is not an adversarial litigation and the respondents are open to comply with any order this Court may pass.

12. Ms. Kumud Lata Das, who appears for Mr. Deepak Tyagi (the impleaded party) would contest the submissions made by Mr. Garg by stating that the petitioner is not a Member, who had applied under the earlier Notification of November 23, 2023 and in that sense, she has no *locus-standi* to file this petition. She also submits that there is no infirmity in the Revised Election Programme issued by the Returning Officer as he has tried to rectify the mistake, which was earlier committed in not reserving the 3 posts meant for women / SC / ST candidates. That apart, she also contends that no prejudice shall be caused as the woman candidates who have filed nominations are at liberty to withdraw their nomination against the 12 posts and show their inclination to contest for the reserved seats under the women category, if eligible. She submits, the petitioner having not submitted her nomination, can still file her nomination against reserved seat. She has also made a reference to the issue electoral rolls pending before the Authority.

13. Dr. Adish C. Aggarwala, President of the Supreme Court Bar Association submits that the Notification issued by the Returning Officer is totally illegal and the schedule as is required is not being followed. He vociferously states that the proceedings need to be quashed and a fresh composite Notification for 15 posts need to be issued.



14. Having heard the learned counsel for the parties and perused the record, we are of the view that the initial Notification, which was issued on November 23, 2023, did not specify the number of posts for which election shall be held. It is presumed and as agreed by the counsel for the parties it was for all 15 posts. The said Notification does not specify the reserved seats for women / SC / ST candidates. To that extent, the Notification has not been properly issued. It is this infirmity in the Notification, which was sought to be corrected by the Returning Officer by issuing the Revised Election Programme, whereby, he has called for nominations for reserved seats for women / SC / ST category.

15. The issue which falls for consideration is, whether the Returning Officer, instead of confining the nominations to 3 seats for women / SC / ST, should have issued a composite Notification for all 15 posts, so that there is a fair opportunity to all the contestants including women / SC / ST candidates to take a considered decision as against which post, they need to contest.

16. It is noted that having issued the Revised Election Programme, the Returning Officer has himself revised the earlier Notification dated November 23, 2023.

17. The plea of Mr. Garg is that the candidates (other than women), who had applied against 15 posts by assessing their chances of success would now contest against 12 posts, which shall reduce their chances of success is appealing. In fact, we note they cannot withdraw their nomination. To that extent, they stand prejudice. The change of nomination is only for women / SC / ST candidates in view of the Revised Election Programme, who intend to contest the reserved seats.



The intent of every candidate is to win election. If the nominations are called in one lot, and not in piecemeal, then a proposed candidate can take a considered decision as to the manner in which to contest the election. In fact, one notification shall give level playing field to all candidates. It may so happen, in view of the nomination having been called for reserved seats for women / SC / ST candidates they may like to contest the other 12 seats as well. In any case, we have not been shown any provision which stipulates calling for nominations through more than one notification.

18. The plea of Ms. Manisha Agrawal that since the petitioner has not applied against the earlier Notification of November 23, 2023 and as such no prejudice is caused to her, looks appealing on a first blush, however, now, in terms of the Revised Election Programme, nominations have been invited from women candidates as well, and the submission of Mr. Garg that the petitioner may decide to contest the election, would justify the filing of the petition by her. It is for the petitioner to take a call once a composite Notification is issued for all the 15 posts, which includes 2 posts reserved for women.

19. So far as the submissions of Ms. Manisha Agrawal and Ms. Das by relying upon the judgment in the case of *N.P. Ponnuswami (supra)* and *West Bengal State Election Commission & Ors. (supra)* are concerned, we are of the view that Mr. Garg is justified in relying upon the judgment in the case of *Union Territory of Ladakh and Others v. Jammu and Kashmir National Conference and Another 2023 SCC OnLine SC 1140*, wherein the Supreme Court in paragraphs 37, 38, 39 and 40 has held as under:-



*“37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time<sup>10</sup>, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.*

*38. The reasoning of the learned Single Judge, further expounded by the learned Division Bench, leaves no doubt that the relief sought by R 1 was required to be granted and, accordingly, the same was granted by the High Court. The stark factor which stares us in the face is that well before and well in time, by way of the writ petition, R 1 had approached the Court of first instance (the learned Single Judge), for the reliefs, which have been found due to them ultimately, and upheld by the Appellate Court (the learned Division Bench). It is the Appellants, who by virtue of sheer non-compliance of the High Court's orders, be it noted, without any stay, can alone be labelled responsible for the present imbroglio. These stark facts cannot be broadly*



*equated with other hypothetical scenarios, wherein the facts may warrant a completely hands-off approach.*

**39.** *This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their powers relating to elections arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that - misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive rethink, as to whether the self-imposed restrictions may need a more liberal interpretation, to ensure that justice is not only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding.*

**40.** *As made clear by us in the foregoing paragraphs, the situation emanating herein is, in a manner of speaking, unprecedented. With a sense of anguish, it would not be wrong to say that the instant judgment has been invited upon themselves by the Appellants. The orders of the High Court, in our considered opinion, were in aid of the electoral process, and no fault can be found therewith.”*

20. We are conscious that in the earlier round of litigation, we have given directions to complete the process of elections in a fixed time. Noting the said mandate, as an important issue has come up for consideration in this writ petition, to balance the equities, we are of the view that the Returning Officer in supersession of earlier Notification / Programme shall issue a fresh Notification / Programme with regard to



15 posts including the reserved posts for women / SC / ST within one week from today by saving 44 nominations which have already been finalized received in terms of the earlier notification, by giving those candidates a right to withdraw their nomination and then proceed to hold elections in accordance with law thereafter.

21. The writ petition and all pending application(s) are disposed of. No costs.

**V. KAMESWAR RAO, J**

**ANOOP KUMAR MENDIRATTA, J**

**DECEMBER 23, 2023/ak**