

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

% **Date of order: 16th May, 2023**

+ CS(OS) 804/2022

DR AJIT ANNASAHEB SHINDE Plaintiff
Through: Mr. Manish Kumar and Ms.
Aparajita Jha, Advocates

versus

INDIAN ORTHOPAEDIC ASSOCIATION & ORS..... Defendants
Through: Mr. Virag Gupta, Mr. Vishal Arun
Mishra and Ms. Saumya
Srivastava, Advocates for D-1
Mr. Anukul Raj, Mr. Anubhav
Deep Singh, Mr. Tushar Bhalla
and Ms. Nikita Raj, Advocates for
D-2
Mr. Rajiv K. Pathak, Advocate for
D-3
Mr. Praveen Swarup and Ms. Payal
Swarup, Advocates for Impleader/
UP Orthopaedic Association

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. 21492/2022 (u/S-39 of the Specific Relief Act)

1. The instant application under Section 39 of the Specific Relief Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of applicant/plaintiff seeking the following reliefs:-

"a). pass an ex parte ad interim mandatory injunction order directing/commanding the Defendant No. 3 to supply the list of names of members who have voted in IOA Election 2022 for the post of Vice President of IOA within 24 hours from such directions to the Defendants,

b). pass any other order(s) that in the fact and circumstances of the present case is/are deemed appropriate by this Hon'ble Court."

2. The captioned suit has been preferred by the plaintiff for declaration and permanent injunction with respect to Indian Olympic Association Election, 2022.

3. The background of the case is that the plaintiff is the Life Member of defendant no. 1, Association, which is registered under the Societies Registration Act, 1860. The plaintiff was desirous to contest the elections of the Indian Olympic Association (hereinafter "IOA") and hence, filed his nomination for the post of Vice President. The defendant no. 2 had also contested the said elections for the same post of Vice President and was declared the winner thereto. The defendant no. 3 is the Vendor and Agency appointed by defendant no. 1 to conducted the IOA Elections, 2022 online.

4. On 16th July 2022, a voters' list was prepared and circulated by the defendant no. 1. The said list did not have the updated details of the voters such as email ids and phone numbers. Therefore, the plaintiff and certain others raised grievances and registered a complaint regarding the same. Accordingly, to resolve the issue an EC meeting was called on 31st October 2022 when it was revealed that the task of updating the voters'

list was given to an agency.

5. It is the case of the plaintiff that the voters' list circulated was not only missing updated details but also had fake email ids and contained the names of deceased members. Thereafter, other concerned nominated candidates also raised the issue of votes being cast on behalf of deceased members/voters.

6. The plaintiff, thereafter, *vide* letter/legal notice dated 2nd December 2022 demanded the list of voters in the IOA Elections 2022 for the post of Vice President. On the same day, the communication furnished by the plaintiff was read in the General Body Meeting held on 2nd December 2022 and his request was also rejected. Ultimately, the defendant no. 2 was declared as the winner for the post of Vice President.

7. The plaintiff is before this Court since before addressing the request by the plaintiff, the decision of IOA Elections were declared. By way of this application, the plaintiff/applicant is seeking an *ad interim* injunction by way of directions to defendant no. 3 to provide the data for the IOA Elections, 2022 for the post of Vice President.

8. The learned counsel for the applicant/plaintiff submitted that since several discrepancies arose *qua* the voters' list, including inclusion of names of deceased persons and incorrect details of the members, on multiple occasions, issues were raised and the demand was made for the supply of the final voters' list. However, despite repeated assurances, nothing was provided by the EC.

9. It is submitted that defendant no. 2 was illegally declared the winner of the Elections in question and the voters' list was shared with

him prior to the circulation. The plaintiff objected to the same, however, no explanation was given by the EC. It is submitted that the IOA Elections, 2022 were shrouded in many doubts and in such circumstances, even the Election Officer, Dr. Ram Chaddha, Vice President of the IOA, resigned from his post. It is submitted that the plaintiff lost the Elections only by one single vote, by which the defendant no. 2 was declared the winner.

10. It is further submitted that the Elections in question were held without the supervision of any Election Observer since the defendant no. 1 conducted the Elections in utter haste.

11. The learned counsel for the plaintiff submitted that a letter dated 6th December 2022 was furnished by the plaintiff to defendant no. 3 to preserve and keep the data of IOA Elections safe. However, nothing was provided by defendant no. 3 regarding the data of Elections, instead, an evasive reply was sent to the plaintiff without providing the voters' list.

12. The learned counsel submitted that since the IOA Elections, 2022 were not free from suspicion, the plaintiff initially sent an email dated 29th November 2022 requesting the supply of the list of voters who had cast their votes, however, since no reply was received, constrained by inaction of defendants, the plaintiff issued a legal notice dated 2nd December 2022 to defendant no. 1. It is submitted that despite the letter and the reminder thereto, the defendants failed to answer the queries and request by the plaintiff, which raises a strong suspicion against the validity of the Elections.

13. Therefore, it is prayed that the reliefs sought by the plaintiff may

be granted by this Court.

14. *Per contra*, the learned counsels for the non-applicants/defendants vehemently opposed the instant application and submitted that there is no merit in the same.

15. It is submitted on behalf of defendant no. 1 that the application made by the plaintiff is based on mere unsubstantiated allegations. The plaintiff has approached this Court by way of the instant suit instead of availing the in-house mechanism available for redressal of grievances, which is bringing a bad name to defendant no. 1.

16. It is submitted that the voters' list was provided to all the candidates and it was for the candidates to point out the inconsistencies so that defendant no. 1 could take appropriate action. It is submitted that plaintiff, along with others has indulged into needless sending of legal notices and litigation. Defendant no. 1 replied to the legal notice and provided requisite available information to the plaintiff.

17. It is further submitted that the Elections were conducted in a transparent manner and even the polling and counting thereto took place on a secured platform. As such the presence of a few names unaccounted for is not enough to render the Elections null or otherwise interfere with them. Moreover, the elections were observed by the Election Officer as well as Election Observer, who is a retired Judge of High Court. It is also vehemently denied that any list was provided to defendant no. 2 in advance.

18. The learned counsel for defendant no. 1 further submitted that the fact that whether a person has voted or not is private and cannot be

divulged automatically. Moreover, this Court has summoned the complete record of the Elections in a sealed cover, and therefore, there is nothing that can remain hidden in digital records. Therefore, there is no relief that accrues to the plaintiff.

19. It has been submitted on behalf of defendant no. 2 that all the averments and contentions on behalf of the plaintiff are based on conjectures and surmises and the plaintiff has failed to substantiate the same. It is submitted that no advance list was provided to defendant no. 2 prior to releasing to other candidates. Since, defendant no. 2 was contesting elections, data were sent to him by multiple people including pharma companies and other supporters.

20. It is submitted that there is no relief that accrues to the plaintiff by way of the instant application. Moreover, there is no balance of convenience in favour of the applicant/plaintiff and no irreparable damage would be caused to him in case the instant application is not allowed.

21. Therefore, it is submitted on behalf of the defendants that the instant application is liable to be dismissed for being devoid of merit.

22. Heard the learned counsel for the parties and perused the record.

23. The applicant/plaintiff has moved the instant application under Section 39 of the Specific Relief Act, 1963 which reads as under:

“39. Mandatory injunctions.—

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an

injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”

24. The provision provides for a mandatory injunction which may be granted by a Court in case it is deemed necessary that to prevent a breach of an obligation, a certain act is required be omitted or compelled to be done. Such injunction may be granted to an aggrieved party when, first, there is an obligation on part of the defendant to perform certain acts but the same has been breached and secondly, the relief sought by the aggrieved party is enforceable by the court.

25. The Hon’ble Supreme Court in the matter of ***Samir Narain Bhojwani vs. Aurora Properties & Investments, (2018) 17 SCC 203***, elaborated upon the scope of Section 39 of the Specific Relief Act, 1963 and opined as under:

“24. The nature of order passed against the appellant is undeniably a mandatory order at an interlocutory stage. There is marked distinction between moulding of relief and granting mandatory relief at an interlocutory stage. As regards the latter, that can be granted only to restore the status quo and not to establish a new set of things differing from the state which existed at the date when the suit was instituted. This Court in Dorab Cawasji Warden v. Coomi Sorab Warden [Dorab Cawasji Warden v. Coomi Sorab Warden, (1990) 2 SCC 117] , has had occasion to consider the circumstances warranting grant of interlocutory mandatory injunction. In paras 16 & 17, after analysing the legal precedents on the point as noticed in paras 11-15, the Court went on to observe as follows : (SCC pp. 126-27)

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final

hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.*
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.*
- (3) The balance of convenience is in favour of the one seeking such relief.*

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

(emphasis supplied)

25. The Court, amongst others, rested its exposition on the dictum in Halsbury's Laws of England, 4th Edn., Vol. 24, Para 948, which reads thus:

“948. Mandatory injunctions on interlocutory applications.—A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application.”

26. The principle expounded in this decision has been consistently followed by this Court. It is well established that an interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. [See Metro Marins v. Bonus Watch Co. (P) Ltd. [Metro Marins v. Bonus Watch Co. (P) Ltd., (2004) 7 SCC 478] , Kishore Kumar Khaitan v. Praveen Kumar Singh [Kishore Kumar Khaitan v. Praveen Kumar Singh, (2006) 3 SCC 312] and Purshottam Vishandas Raheja v. Shrichand Vishandas Raheja [Purshottam Vishandas Raheja v. Shrichand Vishandas Raheja, (2011) 6 SCC 73 : (2011) 3 SCC (Civ) 204] .]

26. Therefore, it is apparent that the relief under Section 39 of the Specific Relief Act, 1963 is not one which may be granted in a routine manner. Instead, stricter judicial scrutiny is to be exercised in cases where

at the interim stage, mandatory injunction is sought. As reiterated by the Hon'ble Supreme Court in the aforementioned judgment, while adjudicating upon an application for mandatory injunction, the important consideration is that such a relief may be granted only to restore the *status quo* and not to establish a new set of things differing from the state which existed at the date when the suit was instituted. It is only in cases where the circumstances invite intervention of the court at an interim stage for the reason that there is a likelihood of alteration of the *status quo* that a relief of mandatory injunction may be granted.

27. In the instant case, the plaintiff has sought this kind of relief against the defendants in form of directions from this Court to preserve the data of the Elections and to provide him with the same. The plaintiff has made several allegations against the defendants to allege that the IOA Elections, 2022 have not been conducted in a transparent, legal and valid manner. The averments pertaining to the illegalities in the election process are subject matter of the suit on merits which are not entered into at this stage for the purposes of adjudicating the instant application.

28. The non-applicants/defendants, especially defendant no.1, have submitted that the legal notices as well as the complaints moved by the plaintiff and other candidates were addressed and replied to by the defendants. Moreover, the defendants have pointed out that the other procedural formalities, which may have been sought and availed by the plaintiff for having his queries and requests addressed, have not been exhausted by the plaintiff. The only relief which has been prayed for by the plaintiff is that the entire record pertaining to the IOA Elections, 2022

be given to the plaintiff. However, the defendants have already provided the relevant information and documents to the plaintiff pursuant to the inquiries made by him.

29. This Court *vide* order dated 16th December 2022, directed defendant no. 3 Agency to preserve the election data of the entire process. Thereafter, on 18th January 2023 a direction was also given to produce the said data before the Court. The learned counsel for defendant no. 3 has already undertaken to furnish the entire data before this Court in a sealed cover before the next date of hearing.

30. The records which have been requested for by the plaintiff shall be placed before this Court and be perused for proper adjudication of the captioned suit. Hence, at this stage there is nothing that remains to be granted to the applicant/plaintiff in the instant application. Moreover, the limited and exceptional relief of mandatory injunction, which may be granted by the Court in rare cases, does not accrue in favour of the plaintiff since the element of stronger test for a *prima facie* case and irreparable damage is not met by him for procuring the records of the election process.

31. Therefore, keeping in view the contentions raised and relief sought by the applicant/plaintiff in the instant application, the arguments advanced on behalf of the parties, the reference and reliance placed upon the judgment passed by the Hon'ble Supreme Court and the fact the records which the plaintiff has sought shall be considered by this Court while adjudicating the dispute and claims between the parties, this Court does not find any cogent reason to allow the instant application and the

reliefs sought therein.

32. Accordingly, the instant application is dismissed for being devoid of merit.

33. The observations made by this Court in the instant application shall have no bearing on the merits of the suit between the parties.

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1. Despite clear direction by this Court vide order dated 18th January, 2023 to the defendant no. 3 for placing the electoral records in a sealed cover, the learned counsel appearing on behalf of defendant No. 3 has filed the entire records pertaining to the Election in question in the Registry.

2. On the specific query made by this Court, he undertakes that the said records shall be withdrawn from the Registry and be placed before this Court post-lunch and on the said undertaking given by learned counsel appearing on behalf of defendant No. 3, the matter was passed over.

3. On the second call, learned counsel appearing on behalf of defendant No. 3 prayed that the entire records pertaining to the Election in question, which have been filed in a sealed cover vide Diary No. 856481/2023 on 15th May, 2023, be placed and taken on record since he was unable to withdraw the same, as submitted by him on the first call.

4. It is directed that learned counsel appearing on behalf of defendant No. 3 shall pursue with the Registry to place the entire records pertaining to the Election in question in a sealed cover on record before this Court

before the next date of hearing.

5. List before the Joint Registrar on 26th July, 2023.

6. List before the Court on 25th September, 2023.

7. It is made clear that the election records directed to be placed before this Court in a sealed cover are only for the purpose of the adjudication of the suit by this Court and hence, the Registry is directed not to reveal or release the same to any other parties to the suit.

8. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 16, 2023

Dy/ms

[Click here to check corrigendum, if any](#)

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