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

+ **W.P.(C) 2502/2023**

KAMALJEET SEHRAWAT

..... Petitioner

Through:

Mr. Mahesh Jethmalani, Sr. Advocate with Mr. Ravi Sharma, Mr. Neeraj, Mr. Ripudaman Singh Bhardwaj, Mr. Pawan Narang, Mr. Hemanshu Sethi, Mr. Shoumandu Mukherjee, Mr. Aman Jha, Mr. Shrey Sherawat, Mr. Kushagra Kumar, Ms. Mugdha Pandey & Mr. Chaitanya Puri, Advocates.

versus

OFFICE OF LIEUTENANT GOVERNOR OF DELHI & ORS.

..... Respondents

Through:

Mr. Udit Malik, ASC for R-2
Mr. Ajay Digpaul, Standing Counsel with Mr. Kamal R. Digpaul, Advocate for MCD/R-3
Mr. Dayan Krishnan & Mr. Rahul Mehra, Sr. Advocates with Mr. Mohit Siwach, Mr. Rohit Kaliyar, Mr. Sanjeevi Seshadri, Mr. Chitinya Gosain, Mr. Anand Thumbayil & Mr. Harsh Gautam, Advocates for R-4.

+ **W.P.(C) 2503/2023**

SHIKHA ROY

..... Petitioner

Through:

Mr. Jayant Mehta, Sr. Advocate with Mr. Amit Tiwari, Mr. Satya Ranjan Swain, Mr. Soumya Karmakar, Mr. Sanket Gupta, Mr. Rajesh Mishra, Priyanka Garg, Mr. Kautilya Birat, Mr. Anant Vikram Singh, Mr. Rudra

Paliwal, Mr. Mukul Singh & Mr.
Mohit Sablok, Advocates.

versus

OFFICE OF LG OF DELHI AND ORS.

..... Respondents

Through: Mr. Udit Malik, ASC for R-2

Mr. Ajay Dignpaul, Standing Counsel
with Mr. Kamal R. Dignpaul,
Advocate for MCD/R-3

Mr. Dayan Krishnan & Mr. Rahul
Mehra, Sr. Advocates with Mr. Mohit
Siwach, Mr. Rohit Kaliyar,
Mr. Sanjeevi Seshadri, Mr. Chiitanya
Gosain, Mr. Anand Thumbayil & Mr.
Harsh Gautam, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

ORDER

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25.02.2023

The hearing has been conducted through hybrid mode (physical and virtual hearing)

C.M. APPL. 9575/2023 IN W.P.(C) 2502/2023

C.M. APPL. 9577/2023 IN W.P.(C) 2503/2023

1. Exemption allowed, subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 2502/2023 & C.M. APPL. 9574/2023 (Stay)

W.P.(C) 2503/2023 & C.M. APPL. 9576/2023 (Stay)

3. The present writ petitions are listed today on an urgent mentioning.
4. Advance copies of the present writ petitions are served upon the respondents and they are represented through their respective counsel.
5. These petitions are arising out of the elections conducted for six

members of the Standing Committee, Municipal Corporation of Delhi held on 24.02.2023. WP(C) 2502/2023 has been filed with the following prayers:-

- A) *“Direct the Mayor MCD / Respondent no. 4, in the capacity of Returning Officer to officially declare the results of elections held on 24.02.2023 of 06 members of Standing Committee to be elected by the General House of Municipal Corporation of Delhi;*
 - B) *Declare Six Members Namely 1. Sh. Mohammad Aamil Malik, 2. Ms. Kamaljeet Sehrawat (Petitioner) 3. Ms. Mohini, 4. Ms. Raminder Kaur, 5. Sh. Gajender Singh Daral, 6. Sh. Pankaj Luthra as Elected Members of The Standing Committee;*
 - C) *Declare Notice Bearing No. D-1029/M.S./2023 Dated 24.02.2023 Passed By Hon'ble Mayor on 24.02.2023 for The Repolls - Election of 6 Members Of The Municipal Corporation Of Delhi Standing Committee as Illegal, Arbitrary And Contrary to The Rules and in Defiance Of The Final Order passed By The Hon'ble Supreme Court In Writ Petition Civil No. 152 Of 2023 Dated 17.02.2023;*
 - D) *And Further Direct Stay on the Notice Bearing No. D-1029/M.S./2023 Dated 24.02.2023 passed By Hon'ble Mayor wherein Repolling/Re-elections was pronounced for the Election of 6 Members To Standing Committee;*
 - E) *And further to call for records ff the entire electoral process in the interest of justice;*
 - F) *Pass such other and further order(s) as may deem fit in the circumstances”*
6. WP(C) 2503/2023 also raises similar issues as raised in WP(C) 2502/2023.
 7. Mr. Mahesh Jethmalani, learned senior counsel appearing on behalf of

the petitioner submits that in pursuance of the judgment dated 17.02.2023 passed by the Hon'ble Supreme Court in W.P.(C) No. 152/2023 titled as '*Shelly Oberoi & Anr. vs. Office of Lieutenant Governor of Delhi & Ors.*', the Administrator had issued notice dated 18.02.2023, fixing the first meeting of the Municipal Corporation of Delhi. As per the said notice, the first meeting of the Corporation was scheduled on 22.02.2023 and the agenda of the said meeting was the elections to the post of Mayor, Deputy Mayor and 6 members of the Standing Committee. In pursuance of the said notice dated 18.02.2023, the elections were conducted for the post of Mayor and Deputy Mayor on 22.02.2023. However, elections for the post of the 6 members of the Standing Committee could not be conducted on 22.02.2023. Dissatisfied with the conduct of the said election process for the post of 6 members of the Standing Committee, a writ petition being W.P.(C) 2431/2023 was filed before this Court. The said writ petition is still pending before this court. Respondent No. 4 conducted elections for the 6 members of the Standing Committee on 24.02.2023. Learned senior counsel for the petitioner submits that now without declaring the result of the elections conducted on 24.02.2023, Respondent No. 4 has illegally and arbitrarily issued the impugned notice dated 24.02.2023 for re-election of the 6 members of the Standing Committee on 27.02.2023 at 11 a.m.

8. Learned senior counsel for the petitioner has drawn the attention of this court to Regulation 51 of the Delhi Municipal Corporation (Procedure & Conduct of Business) Regulations, 1958, which details the procedure prescribed for the conduct of the election of the six members of the

Standing Committee of Municipal Corporation of Delhi.

9. Mr. Jayant Mehta, Senior Advocate appearing for the petitioner in WP(C) 2503/2023 adopted the arguments raised by learned senior counsel in WP(C) 2502/2023 sought quashing of the impugned notice bearing No. D-1029/M.S./2023 Dated 24.02.2023.
10. Mr. Dayan Krishnan, learned senior counsel for Respondent No. 4 contends that the election has yet not been culminated and the Returning Officer has given a note which details that the process has been vitiated due to the unruly behaviour of the elected members. It is further stated that the Returning Officer did not get adequate cooperation from the Member Secretary and the technical expert. Learned senior counsel for respondent no. 4 has handed over a copy of the note written by the Returning Officer and the same is taken on record.
11. Mr. Rahul Mehra, learned senior counsel appearing on behalf of Respondent no. 4 adopted the arguments raised by Mr. Dayan Krishnan, Senior Advocate and sought dismissal of writ petitions.
12. This Court has perused the said Regulation. The relevant Regulation 51 reads as follows:

“Election of six members to be elected by the Councillors from among themselves for membership of the Standing Committee:

51. (1) Every candidate for election as a member of the Standing Committee shall be nominated by a nomination paper in Form 2 which shall be signed by the candidate and two other members of the Corporation as proposer and seconder and delivered to the Municipal Secretary between the hours of Eleven O’ Clock in the forenoon and Five O’Clock in the afternoon at least three clear days before the date of meeting at which the election is to be held.

(2) No member of the Corporation shall sign as proposer or seconder the nomination papers of more candidates than the number of vacancies to be filled. Any nomination paper subscribed in

contravention of this clause shall be invalid and shall be declared as such by the Mayor.

(3) Any candidate may withdraw his candidature at any time before the election is proceeded with in the meeting.

(4) When the number of valid nominations is the same as, or less than the number of members to be elected, the Mayor shall declare such candidate or candidates to be duly elected as members or members of the Standing Committee.

(5) Where the number of nominations exceeds the number of vacancies the election shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be held by secret ballot.

(6) The Municipal Secretary shall provide at the meeting:-

(a) a ballot box;

(b) a sufficient number of ballot papers as prescribed in Form 3;

(c) materials sufficient for the purpose of enabling members of the Corporation to mark the ballot papers.

(7) (a) Every member of the Corporation shall have one vote only.

(b) A member in giving his vote:-

(i) shall place on his ballot paper the Figure 1 in the space opposite the name of the candidate for whom he votes; and

(ii) may, in addition, place on his ballot paper the Figure 2 or the Figure 2 & 3 or the Figures 2, 3 & 4 and so on in the spaces opposite the names of other candidates in the order of his preference.

(8) (a) Every member of the Corporation on receiving a ballot paper shall proceed into one of the polling compartments provided for the purpose of recording vote and shall there record his vote in accordance with the instructions set out on the ballot paper.

(b) The member shall then before quitting the polling compartment, fold up his ballot paper so as to conceal his vote and put the ballot paper so folded into the ballot box in the presence of the Mayor.

(c) Every member shall record his vote and quit the polling compartment without undue delay.

(9) The ballot box shall remain open for the casting of votes for such period as may be fixed by the Mayor.

(10) (a) As soon as the period fixed for casting of votes is over, the Mayor shall:-

(i) open the ballot box and take out the ballot papers contained therein;

(ii) count the number of ballot papers so taken out or cause it to be counted and record such number in a statement;

(iii) scrutinize the ballot papers and separate the ballot

papers which he deems valid from those which he rejects as invalid by endorsing thereon the word "Rejected" and the ground of such rejection;

(iv) arrange the valid ballot papers in parcels according to the first preference recorded for each candidate; and

(v) count the votes in the meeting in the presence of such of the members as may be present with the assistance of such persons as may be appointed by the Mayor in this behalf.

(b)The provisions of Rule 115 Sub-rule (1) of Rule 116, Rules 121 to 127 and Rule 129 of the Representation of the People (conduct of Election & Election Petitions) Rules, 1956, shall so far as may be, apply in relation to the counting of votes at an election of the members of the Standing Committee as they apply in relation to the counting of votes at elections in council constituencies subject to the modification that any reference to the "Returning Officer" in any of those provisions shall be construed as a reference to the "Mayor".

(11) Upon the completion of the counting of votes, the Mayor shall prepare and certify a return in Form 4 setting forth:-

(i) the names of the candidates for whom valid votes have been given;

(ii) the number of valid votes given to each candidate;

(iii) the number of votes declared invalid and rejected; and

(iv) the names of the persons declared elected.

(12) The ballot papers shall be kept by the Municipal Secretary for three months from the date of election and may then be destroyed by him."

13. Regulation 51, clauses 10 and 11 deal with the procedure to be followed by the Mayor, who is also the Returning Officer for conducting elections for the six members of the Standing Committee.
14. From the perusal of Regulation 51, it is nowhere reflected that the Returning Officer/the Mayor has the authority to declare an election for selection of members of the Standing Committee as null and void. It will not be out of place to mention that it has been admitted that the counting of the votes has culminated and it is incumbent upon the Mayor to declare the result of the elections held on 24.02.2023. On a

pointed question to the senior counsel appearing on behalf of respondent No. 4 to show the power of the Mayor/Returning Officer to declare an election as void, the counsel fails to show any relevant provision. *Prima facie*, it appears that Respondent No. 4 is conducting the re-election on 27.02.2023 without declaring the results for the election conducted on 24.02.2023, which is in violation of Regulation 51 of the Delhi Municipal Corporation (Procedure & Conduct of Business) Regulations, 1958 and no purpose will be served by conducting a fresh election on 27.02.2023.

15. Issue notice to the respondents.
16. Mr. Udit Malik, learned counsel accepts notice on behalf of Respondent No. 2 in both the petitions.
17. Mr. Ajay Digpaul, learned Standing Counsel accepts notice on behalf of Respondent No. 3 in both the petitions.
18. Mr. Mohit Siwach, learned counsel accepts notice on behalf of Respondent No. 4 in both the petitions.
19. Learned counsel for the respondents seek and are granted two weeks' time to file their counter affidavits. Rejoinders, if any, may be filed before the next date of hearing.
20. In view of the same, the impugned notice bearing No. D-1029/M.S./2023 Dated 24.02.2023 for holding the re-elections on 27.02.2023 shall remain stayed till the next date of hearing.
21. In the meanwhile, without expressing any opinion, it is made clear that the Municipal Secretary will preserve the ballot papers and ballot box(s) in terms of Regulation 51(12) of the Delhi Municipal Corporation (Procedure & Conduct of Business) Regulations, 1958. It

is further directed that the video recording of the proceedings shall also be preserved.

22. At this stage, learned senior counsel for Respondent No. 4 states that the ballot papers and the ballot boxes have been violated. Let the learned counsel file his response bringing out the said fact on record.
23. List on 22nd March, 2023 before the Roster Bench.

GAURANG KANTH, J

FEBRUARY 25, 2023
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