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

**Pronounced on: 20.10.2023**

+ CS(OS) 414/2020

**DR. P. V. VIJAYARAGHAVAN& ORS** ..... Plaintiffs

Through: Mr. Manish Kumar, Mr. Gaurav Duggal, Mr. Amit Kumar, Mr. Piyush Kaushik, Mr. Brian H. Moses, Ms. Aparajita Jha and Ms. Sanskriti, Advs.

Mr. Raman Kapur, Sr. Adv. alongwith Mr. Varun Kapoor, Adv. for applicant in IA No. 13441/2023.

Versus

**NITYAM SOFTWARE SOLUTION PVT. LTD. & ORS**

..... Defendants

Through: Mr. Aishvary Vikram and Mr. Siddharth Relan, Advs. for D-1 and 2. Ms. Malvika Trivedi, Sr. Adv. alongwith Mr. Ashish Choudhary, Mr. Shailendra Slaria and Mr. Sujal Gupta, Advs. for D-3.

Ms. Sangeeta Bharti, Ms. P. Geetanjali and Mr. Ujjwal Bhardwaj, Advs. for D-4.

Mr. Praveen Swarup and Ms. Archana Pathak Dave, Advs. for D-5.

Mr. Sandeep Sethi, Sr. Adv. alongwith Mr. Attul Bhuchar, Mr. Rajesh Chug, Ms. Riya and Ms. Tanisha Bhuchar, Advs. for D-6.

Mr. Virag Gupta, Mr. Vishal Arun Mishra and Mr. Nikhil Khandelwal, Advs. for D-7.



Mr. Arvind Nigam, Sr. Adv.  
alongwith Mr. Akshay Pratap Singh  
and Mr. Siddhant Nath, Advs. for D-  
8.

**CORAM:**  
**HON'BLE MR. JUSTICE SACHIN DATTA**

### **JUDGEMENT**

#### **I.A. No. 1823/2023**

1. The present application has been filed on behalf of the plaintiffs seeking the following reliefs:-

*“a) Direct the Defendant No.3, 4 & 5 to henceforth stop discharging any function in respect of the position they held on account of illegally winning IOA Elections 2020;*

*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.”*

#### **Background facts :**

2. The present suit has been filed by the plaintiffs being aggrieved with the manner in which the elections of the Indian Orthopaedic Association (IOA) were conducted in November, 2020, to elect certain office bearers of the Executive Committee of the IOA.

3. The prayers sought in the suit are a decree of declaration declaring the entire process of election of IOA and its purported result declared on 22<sup>nd</sup> November, 2020 to be a nullity; a decree of permanent injunction restraining the defendant nos. 1-6 from in any manner acting upon the outcome of Elections held between 01.11.2020 to 21.11.2020 and its subsequent declaration of the result on 22.11.2020, and a direction seeking that an investigation be conducted by an independent agency or a retired judge of



the Hon'ble Supreme Court as regards alleged malpractices/irregularities in the conduct of the aforesaid elections.

4. Along with the suit, an application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 [IA No. 11814/2020] came to be filed by the plaintiffs seeking, *inter-alia*, an interim prayer to the effect that the defendants be restrained from holding the Executive Committee meeting for declaring the results of the said elections.

5. Vide order dated 10.12.2020, the defendant nos. 3, 4 & 7 were restrained from holding the emergent meeting of the Executive Committee scheduled to be held on 11.12.2020 for declaration of the results of the said elections. However, vide judgment/order dated 16.02.2021, this Court dismissed the said application under Order XXXIX Rule 1 & 2 of CPC thereby making way for official declaration of the results of the elections held in November, 2020.

6. In the said judgment/order dated 16.02.2021, it was concluded by this Court as under :-

- (i) No fault could be found with the decisions of defendant No.3 (who was the then Vice President of the IOA and the election officer for the said election) to engage defendant No.1 as a vendor for the conduct of e-elections.
- (ii) Merely because on two previous occasions the election conducted by the defendant No.1 were challenged before the Court/investigating agencies, it could not be held that defendant No.1 has a tainted past so as to be excluded from the zone of consideration for the purpose of conducting the impugned elections.



(iii) There was no requirement that the elections were required to be conducted by a Government approved vendor. Consequently, the court concluded that “it cannot be held that Nityam Software Solution Pvt. Ltd. (defendant No.1) was disqualified from hosting the elections of defendant No.7/Association”.

(iv) Further, the Court found that the fact that defendant No.3 exchanged correspondence with defendant No.1 from his own personal email ID (instead of his official email ID) and the fact that defendant No.3 has paid money to defendant No.1 from his own account and not from the Association’s account, had no bearing on the validity of the election impugned by the plaintiffs.

7. Consequently, this Court dismissed the application under Order XXXIX Rule 1 & 2 of CPC.

8. An appeal came to be filed against the said judgment dated 16.02.2021 which also came to be disposed of by the Division Bench of this Court vide order dated 19.05.2022 passed in FAO(OS) 6/2021, as under:-

*“1. Mr Manish Kumar and Mr Gaurav Duggal, who appear on behalf of the appellants, say that since the elections have already been held and results have been declared, this appeal can be closed, albeit with liberty to seek appropriate relief in the pending suit.*

*2. The only apprehension, however, which Mr Kumar and Mr Duggal have expressed is, that the respondents will take disciplinary action against the appellants if the instant appeal is closed.*

*2.1. According to Mr Kumar and Mr. Duggal, this court had restrained the respondents from taking disciplinary action against the appellants i.e., the original plaintiffs, via order dated 22.01.2021.*

*2.2. We have put to the learned counsel for respondent no.7 as to whether the said respondent intends to take any disciplinary action against the appellants for past infractions, during the pendency of the suit.*



2.3. *Counsel for respondent no.7 says that the said respondent does not intend to take any such action for past infractions till such time the suit is pending.*

2.4. *The statement of counsel for respondent no.7 is taken on record.*

3. *At this stage, counsel for the respondent no.7 says that if there are any infractions committed by the appellants in future, liberty should be given to take appropriate action qua them.*

3.1 *To our minds, since the suit is pending, any disciplinary action that may be intended to be taken against the appellants for infractions committed by them hereafter, the respondents would do well to bring the same to the notice of the learned Single Judge.*

4. *The appeal is, accordingly, closed, with liberty as prayed for.*

5. *Consequently, pending application shall stand closed.”*

9. It may be noted that the election/s conducted in November, 2020, apart from electing the officer bearers of the IOA, also elected the venue for hosting ‘IOACON 2023’ i.e. the annual conference of the members / Orthopaedic Doctors under the aegis of the IOA. In the said election, there were two contenders for hosting the IOACON 2023 – Lucknow and Patna. The outcome of the election was that Lucknow got right to host the IOACON, 2023.

10. In the suit as originally filed, the plaintiff No.5 was IOACON, Patna which was being represented through its organizing Secretary. However, vide order dated 14.03.2022, on an application filed by the plaintiff No.5 seeking to unconditionally withdraw the present suit (I.A 15724/2021), the said application was allowed and plaintiff No.5 was deleted from the array of parties. Subsequently, however, another application i.e. IA 13341/2023 came to be filed by IOACON PATNA, 2023 seeking its impleadment as a co-plaintiff. It has been averred therein that the withdrawal of the said



applicant was “under pressure and duress”. The said application is still pending.

11. The present application has been filed by the plaintiffs/applicants in the light of the fact that during the pendency of the present suit, an FIR came to be registered by the Police and pursuant to investigation conducted, a chargesheet has been filed which has brought out the crucial facts as regards the gross irregularities in the conduct of the IOA elections held in November 2020. It has been specifically averred in the application as under:-

*2. That during the pendency of present proceeding pursuant to the registration of FIR, charge sheet has been filed by the police. As per the charge sheet the entire election has been rigged which is evident from the following paragraphs of the charge sheet:*

*" .... vi. During further investigation of the case, notices were sent to all the voters who voted in the IOA election 2020 through email. Out of 6494 a total of 1559 response was received through email after scrutiny of the email reply it was found that 39 voters confirmed that they did not cast their vote. All 39 voters were contacted telephonically and 27 doctors confirmed that they did not cast the vote in IOA election 2020 ..... During further analysis with the help of access logs received from M/s Nityam Software solutions Pvt. Ltd's server excess logs were got verified and during the examination it was found that logs of 39 voters were verified but log of one voter i.e Dr. Sheth Binoti Arun LM No. 03095 could not found.*

*viii. During further investigation, notices were sent to the alleged M/s Nityam Software Solutions Pvt. Ltd. And M/s Nityam sent its replies. Although M/s Nityam provided the reply but as per Server Analysis reply voting platform remained opened even after 21.11.2020. As per report 15 number of votes were casted after given deadline as per retrieved data from forensics copy of server for which no justification was given by M/s Nityam. 6 voters were registered after deadline date of voter's registration; which also remained unexplained. Activity like reminders SMS after deadline date of vote were also found active tilt 24. 11.2020, for which no satisfactory explanation was provided by M/s Nityam Software Solutions Pvt. Ltd. Although the votes casted after the deadline were not acknowledged by the system.*

*ix. In its reply dated 3.11.2021 (Point No. 5), M/s Nityam admitted that they have not maintained database logs because it is not commercially*



*viable to keep all these logs, as it consumes a lot of data space and there is further cost incurred by maintaining these logs. In view of the non-availability of SQL data base logs, it creates doubt/suspicion about the fairness of the said election.*

*xvi. M/s Nityam could not explain the reasons for activities in the server after the closing of election i.e after 17:00 hrs at 21. 11.2020 which shows that the server was not secured. Not maintaining of SQL database logs by M/s Nityam also create doubts on the functioning of M/s Nityam Software Solutions Pvt. Ltd because without such data it is not possible to check further authenticity of the data/result. To prove the authenticity of any data record submitted from website, logs of SQL database and activity logs should be matched. It is apparent by the conduct of M/s Nityam that M/s Nityam is hiding some material facts. There were some allegations of tempering etc against M/s Nityam by some other organization previously so it was the duty of M/s Nityam to provide flawless voting platform to every online election but it seems M/s Nityam deliberately avoided to maintain the crucial data logs of SQL database to hide any tempering in the election of IOA 2020. The explanation of M/s Nityam that the maintaining of logs are not economical viable is neither justified nor acceptable.*

*xvii. As per investigation conducted so far and statement recorded u/s 161 Cr.P.C. of PWs, it is established that the Election Officer Dr. Ramesh Sen deliberately and with the intend to help certain people, changed the election vendor from M/s Right2Vote to M/s Nityam for conducting IOA election 2020, who was neither approved by the Election Committee nor Govt. approved without proper justification. On the basis of the investigation conducted so far, there are sufficient evidences against abovementioned accused persons namely Dr. Ramesh Sen, Election Officer, IOA 2020 and Mr. Darshan Gesota of M/s Nityam Software Solution Pvt. Ltd. Mumbai and the alleged company M/s Nityam Software Solution Pvt. Ltd. Mumbai (through AR) to prosecute them u/s 16 4201120-81341PC Et661 66CI 660 IT Act. Due to above said -act done by Dr. Ramesh Sen and Darshan Gesota and his company, wrongful loss has been done to IOA financially and reputation wise also."*

12. It has further been averred in the application that the chargesheet clearly brings that the non-engagement of "Right2Vote", the only Government of India approved vendor, on the ostensible basis that it had refused to work on 50% advance is incorrect. In this regard, it is relevant to



note that in the written statement filed on behalf of the defendant No.3, it has been specifically averred as under:-

*“h) That one of the conditions of contract with Right2vote was that 100% advance payment should be done 15 days before the conduct of the election. The same was enquired telephonically from the executive officer of IOA office by Defendant No. 3 and it was informed back telephonically that only 50% advance amount can be given and the remaining amount will be paid immediately after the election is over and till then, a bank guarantee can be given for the residual amount and this is as per the practice followed in previous elections as well. This information was e mailed to Right2Vote but, it was not replied back by Right2Vote.*

*Further, in the submitted contract, Right2Vote had asked for huge extra charges for human support in the election process. When telephonically enquired, Right2Vote was also not willing to conduct the online election of IOA 2020 on the platform with name of Indian Orthopaedic Association and insisted in conducting the election on its own platform with its own name.*

*A true copy of the e-mail dated 18.09.2020 sent by Defendant No.3 to Right2vote alongwith trailing mail is annexed and marked as "Annexure R-6"*

*A true copy of MoU with other vendors evidencing only 50% advance payment is made by IOA is annexed and marked as "Annexure R-7 (Colly)"*

13. It has been averred in the application that the aforesaid averments are false and that the defendant No.3 not only mislead the Court but also committed perjury.

14. It has also been averred in the present application that upon examination of the details of the voters who have voted in 2020 elections it has now been clearly established that the voter list was clearly tainted inasmuch as dead persons were included in the said voters' list. In this regard a specific example has been given of one prominent erstwhile member of the IOA, Dr. A. K. Gupta who had previously been Secretary, Vice-President and President and who expired on 30.12.2007, and who was





not only included in the list of voters for the elections held in November 2020, a vote was also cast on his behalf on 01.11.2020.

15. It is contended that the aforesaid has come to light only because Dr. A.K. Gupta had been an illustrious member of the IOA. It is contended that countless other fake/bogus votes have apparently been cast and the example of Dr. A. K. Gupta is only illustrative of the gross irregularities/illegality in the manner in which IOA Elections 2020 were conducted. Reference has been made in the application to a past precedent, whereby upon uncovering a discrepancy in the voters' list, the concerned election officer was removed and the election which was tainted with such irregularities was declared to be a nullity. In this regard, it is specifically averred in the application as under:-

*“6. It is stated that in the year 2017 during the tenure of Dr. R.C. Meena, the then Vice President and Election Officer, who had updated the data of voters by including their names in the list of voters after the deadline. This was strongly objected to and the matter was referred to the Investigating Committee, constituted by the E.C. of IOA in its GBM, as at the relevant point of time there was no Legal and Grievance Cell in existence. The then member of the Investigating Committee, Dr. Dhillon stated that even one vote if cast illegal, the entire election has to be declared null and void. It was pursuant to the report and recommendation of Investigating Committee which had found Dr. Meena guilty of having altered the voter list after the deadline, not only Dr. Meena was removed as the Election Officer but was censured and warned not to repeat such action in future as alteration in the voters list was taken as very seriously and against the conduct of election rules and regulation by the EC of the IOA. It was post removal of Dr. Meena in 2017, the IOA election were held under the supervision of Dr. Rajesh Malhotra the then President of IOA. The entire proceeding is reported in IOA's newsletter Vol. 64 2019 November Edition, which establishes the fact that there is precedence in IOA, where in a case any Election Officer, who is found in breach of the conduct of election not only the said election officer is being removed but any election held under the supervision of such tainted Election Officers, contrary to Rules and constitution of IOA, such election is declared as a nullity.”*



16. In the present application, it has also been brought out that the irregularities/illegality in the IOA Elections 2020 are evident from the fact that certain votes have been cast even after expiry of the deadline for voting which expired at 5 pm on 21.11.2020.

17. It is in the above circumstances, the present application seeks that defendant nos. 3, 4 & 5 be restrained from discharging any function in respect of the position held on account being declared successful in the IOA Elections 2020.

18. On 07.07.2023, learned counsel for the defendant nos. 1 and 2 informed the court that a vote has been cast in the impugned elections on behalf of the deceased Dr. A. K. Gupta. However, the plaintiffs' contentions in this regard were sought to be countered by asserting that the vote cast in the name of the deceased voter was in favour of the plaintiff no. 2 (who was one of the candidates in the November 2020 elections for the post of secretary). As such, it transpired during the course of hearing, that the defendant no. 1 had unbridled knowledge as to the manner in which the voters had cast their votes. This resulted in a piquant situation, since as per the relevant provisions of the constitution of IOA, election is supposed to take place through secret ballot. Accordingly, the said defendant nos. 1 and 2 were directed to file an affidavit showing how they had acquired the knowledge as to the manner in which the votes had been cast by the voters.

19. Pursuant to the said direction an affidavit was filed by the defendant no 1. In the said affidavit it has been averred that defendant no. 1 always had the audit logs containing the name of the voters, the IP address used by such voters, the HTTP agents (including device/web browser details) used for voting, and other information for sending the OTP on email ID/Mobile



Number shared by the Election Officer in the Final Voters' List. It has also been averred that the defendant No. 1 is constrained to make "selective disclosure" regarding the identity and voting pattern of these voters for getting a fair trial before the Trial Court and therefore this exercise of checking the voting pattern has been undertaken by the defendant No.1.

20. On 07.07.2022, learned counsel for the defendant no.7 also sought some time to ascertain and respond to the aforesaid allegation/contention regarding vote casted by Dr. A. K. Gupta. Pursuant thereto, in the affidavit filed by the defendant no.7 it has been confirmed that Dr. A.K. Gupta, died on 30.12.2007 and his obituary was held on 06.12.2008 during the IOACON, Bengaluru. It has also been averred by defendant no. 7 that removal of dead person from the voting list is a "chronic problem".

### **Constitution of the IOA**

21. The Constitution of IOA contemplates that the membership thereof shall comprise of (a) Honorary Fellows and (b) Associate Members. Further, Article 13 of the Constitution provides as under:-

#### ***"13. OFFICERS:***

- (a) The officers of the Association shall be President, President-elect, two vice-Presidents, Secretary, Joint Secretary and Treasurer.*
- (b) All officers except the Secretary, Joint Secretary and Treasurer shall be elected annually.*
- (c) All the officers shall be honorary."*

22. As regards, the Executive Committee of the IOA, the Constitution provides as under:-

#### ***"14. EXECUTIVE COMMITTEE:***

*The Executive Committee shall consist of the President, two immediate Past Presidents, President-Elect, two Vice-Presidents Hon. Secretary, two Joint Secretaries (one from Delhi and one from the same city as Hon. Secretary) and Treasurer. All Presidents and Hon. Secretaries of State Chapters shall be executive members and their term shall be*



*commensurate with their term of office in their State Chapter. An additional executive member will be elected from each State Chapter, having 250 or more members of IOA as on 31st December of the previous year. State Chapters having 500 members or more shall have two additional executive members apart from President and Hon. Secretary. These members shall be elected by IOA members from that State Chapter and shall have a term of three years. They are entitled for re-election for another term.”*

23. As regards the election of officers and members of the Executive Committee, the Constitution provides as under:-

***“15. Election of the officers and members of the Executive (on any one post).***

*(a) The Vice President shall be elected annually from amongst life members of the Association. **The term of the Vice President shall be of one year who shall automatically become President-Elect next year and President the year after***

*(Explanation). 1. This rule shall come into effect from year 2016 elections. There shall be election of President Elect and one Vice President in that year. From 2017 the election shall be for one Vice President only. The Vice-President shall be the election officer during his term of office as Vice President.*

*2. Members who have been elected to post of Vice President before 2016 can contest for Vice President post in future.*

*3. A member who shall be elected as Vice President from 2016 onwards shall not contest for the post of Vice President in future.*

*Editor of the Indian Journal of Orthopaedics, Associate editors, members of the editorial board shall be appointed by the executive committee on the recommendation of the search committee consisting of the President, bA, President-Elect of bA, Hon. Secretary, bA, Editor IJO and immediate past Editor. For the appointment of Editor, two Past Presidents will also be included in the committee. The nominated posts will be advertised in the IOA newsletter and desirous candidate should apply with their curriculum vitae. The C.V's will be short listed by the Hon. Secretary. He would place it before the search committee for recommending the names. The appointment shall be done by the Executive Committee. One Assistant Editor and 3 members of Editorial board shall be filled every year.*

*The Secretary, Joint Secretaries, Treasurer, Two Fellowship Secretaries, Editor of the Indian Journal of Orthopaedic, Associate Editors, Assistant Editors and members elected from approved state chapters shall hold office for a term of three years and shall be eligible for re-election for*



*another term. Chairpersons for various sub-committee shall also hold office for 3 years and can be re-nominated for another term.*

*The Treasurer and the joint Secretary shall be nominated by the executive from such members of the IOA who are resident and working in the Union Territory of Delhi to facilitate smooth day to- day running of the registered office at Delhi. One joint Secretary will be nominated by Hon. Secretary from the city where he is residing.*

*To contest for any post a member must have been a life member of the Association for at least five years and residing in India.*

*(b) At least 12 weeks before the Annual General Body Meeting, the President Elect shall send to each life member and full member eligible to vote, a notice of the election accompanied by a list of vacancies to be filled in for nomination. All nominations must be received by the President Elect within 28 days of the dispatch of the notice convening the election. If there is more than one nomination for any vacancy, .election shall be on the basis of a majority vote. Any candidate may withdraw his name at least two weeks before posting of ballot papers. The manner of election shall be secret ballot only. This may be by postal ballot or courier which is deemed most democratic by President-elect.*

*(c) The Executive Committee as constituted in accordance with these Rules shall continue in office notwithstanding their period of service which has expired until their successors have been duly elected. (Explanation: it is mandatory for elections to be held every year. The maximum permissible time between two elections is of fourteen months. If the President-elect is unable to carry out the elections due to some reason, the Executive Committee shall nominate an election officer from amongst the members of the Association)”*

24. It is thus notable that the Vice-President shall be elected annually from amongst life members of the IOA; the term of the Vice-President shall be of one year, who shall automatically become President elect next year and the President, the year after.

25. Defendant No.4 was elected as the President in the IOA elections held in November, 2020. As such, by virtue of the aforesaid Article 15(a) of the Constitution of IOA, he is currently the President of IOA.



26. Defendant No.5 was elected as Secretary in the IOA elections held in November, 2020 for a period of 3 years which term is due to expire in November, 2023.

27. Defendant No.3, who was the Vice-President of defendant No.7/IOA and election officer when the elections were conducted in November, 2020, is currently on the Executive Committee of the IOA as “Past President”.

**Submissions of the parties**

28. Learned counsel for the plaintiffs has raised following submissions to contend that the IOA Elections 2020 were rigged:-

a. It is submitted that Dr. Ramesh Kumar Sen/Defendant No.3, who was the Election Officer, has claimed in his reply to IA No. 11814/2020 that Right2Vote (the only Government of India approved vendor) refused to work on 50% advance and 50% backed by Bank Guarantee to conduct IOA Elections 2020, and therefore Dr. Ramesh Kumar Sen had selected Nityam over Right2Vote. However, the investigation carried out by the police, as noted in the Chargesheet, belies this claim. The plaintiffs submit that the selection of defendant no.1/Nityam was in violation of the mandate of the EC meeting held on 19.07.2020.

b. After the filing of the chargesheet, it came to the notice of the plaintiffs that the name of Dr. A.K. Gupta, one of the most prominent members of IOA who passed away on 30.12.2007, is reflected in the list of voters and has voted in IOA Elections 2020. The plaintiffs submit that this in itself is demonstrative of the fact that the voter list and voting in the elections was rigged, and the impugned elections are completely vitiated on this account. The plaintiffs further submit that the defendants have admitted in their replies that the voter list consisted



of dead members.

c. Nityam has violated the provision of secret ballot as mandated under the Article 15(b) of the Constitution of IOA. The plaintiffs submit that the defendant nos.1 and 2, without having been authorized, have been disclosing the details of the vote cast by the voters, as also noticed by this court vide order dated 07.07.2023. The plaintiffs submit that the impugned elections have been conducted contrary to the Rules and Constitution of IOA and are liable to be declared as a nullity.

d. It is submitted that since the defendants have made an unequivocal admission about the IOA Elections 2020 having been rigged, the suit itself is liable to be decreed under Order XII Rule 6 CPC. The plaintiffs submit that Dr. Ramesh Kumar Sen /Election Officer, deserves to be suspended and an enquiry under a retired Judge be directed to be undertaken.

29. Learned counsel for the defendant nos.1 and 2 has argued that the defendant no.1 played no role in the preparation of the voter list, and that the said defendant has maintained the secrecy of the election process. It was submitted that it is not possible to identify who voted for whom in the elections unless a person has both the unmasked voter list and candidate audit trail, and that the said defendant has never shared a completely unmasked voter list or audit trail with the IOA or any member thereof. The defendant's counsel also argued that the police have wrongly accepted the verbal version of 39 people that they have not voted in the IOA Elections 2020.

30. Learned senior counsel for the defendant no. 3 has submitted that defendant no.3 had no role in the preparation of the voter list. The voter list was sent to the defendant no. 3 by the IOA office, vide email dated



15.10.2020. It is further submitted that the reliefs sought by the plaintiffs in the present application have already been rejected by this Court vide judgement/order dated 16.02.2021, while dismissing the IA No. 11814/2020. While dismissing IA No. 11814/2020, this Court held that no inference can be drawn that the elections were not conducted in a free and fair manner. It is submitted that the plaintiffs are re-agitating the issues which already stand adjudicated in judgement/order dated 16.02.2021. It is submitted that even in the appeal filed thereto no relief was granted by the Division Bench of this Court. It is further submitted that the chargesheet should not be relied upon since the trial is pending. Lastly, it is submitted that the defendant no.3 is not a beneficiary of the IOA Elections 2020 in any manner whatsoever.

31. Learned counsel for the defendant no. 4 has argued that the said defendant had no role in conducting the IOA Elections 2020. The said defendant won the post of Vice-President in the IOA Elections 2020 by a huge margin, and therefore the election should not be set aside. The said defendant is currently the President of IOA, and his term will expire in November 2023. It is further submitted that the plaintiffs were aware of the final updated voters' list but did not raise any objections or discrepancies regarding any person's name appearing in the list.

32. In the reply filed on behalf of defendant no. 5, a stand similar to defendant no.4 has been taken. It is averred that the said defendant won the post of Honorary Secretary in the IOA Elections 2020 by a huge margin and one vote will not affect the results of the election.

33. Learned senior counsel for the defendant no. 6 has argued that in the present application the plaintiffs have not sought any relief against the said defendant no.6. In the elections held in November, 2020, the defendant no. 6





(IOACON Lucknow) and plaintiff no. 5 (IOACON Patna) had contested for hosting IOACON 2023. It is submitted on behalf of the defendant no. 6 that the plaintiff no. 5 has already withdrawn from the present suit, and the remaining plaintiffs have no locus to challenge the election of defendant no. 6. It is submitted that in case the Court finds any irregularity or infirmity in the conduct of the IOA Elections 2020, the hosting of IOACON 2023 in Lucknow should not be injuncted, as preparations for the same are in full swing and all bookings and advance payments have been made.

34. Learned counsel for the defendant no. 7 has submitted that a new round of litigation is being created to obstruct the IOA Elections 2023 scheduled to be held in November 2023. It is submitted that the defendant nos. 3, 4 and 5 have no role in conduct of the IOA Elections 2023 and that a retired High Court judge will be appointed an election observer for the said election. It is submitted that plaintiffs are trying to conflate the criminal proceedings with the present suit. It is submitted that criminal trial will take its own course and no conclusion can be drawn on the basis of the FIR and the chargesheet. It is further submitted that removal of dead persons from the voter list is a chronic problem and the same is being addressed by the defendant no. 7.

35. Learned senior counsel for the defendant no.8 submitted that the IOA Elections 2020 were not conducted in accordance with the Constitution of the IOA. It is submitted that the defendant no. 8, who was the chairman of the Legal and Grievance Committee of the IOA at that time, received a complaint from the plaintiffs on 27.11.2020. It has been emphasized that the relevant documents/information sought by the defendant no. 8 was not forthcoming/made available, which inhibited the said defendant from discharging his responsibilities as the chairman of the Legal and Grievance



Committee of the IOA.

### **Analysis and Conclusion**

36. At the outset, it is required to be considered whether the reliefs sought in the present application are precluded on account of findings rendered in the judgment/order dated 16.02.2021. As noted herein above, the said judgment dated 16.02.2021 was rendered at the initial stage of the suit. The Court was concerned with the issue as to whether, the defendant No.7 be allowed to proceed with official declaration of the results in the meeting of its Executive Committee. Further, the Court was primarily concerned with the manner in which the defendant No.1 was appointed as a vendor to conduct the elections. The Court found, on a *prima facie* conspectus, that there was no irregularity in the engagement of defendant no.1 as the vendor/agency for conduct of elections. It was specifically observed by this Court as under:-

*“25. The two reasons why the Dr. Ramesh Kumar Sen as an election officer and with the consent and approval of the two election observers discarded Right2Vote was that the Right2Vote was demanding 100% advance payment and when Dr. Ramesh Sen checked up from the office of the defendant No.7, it was informed that 100% payment could not be made in advance. Further, the cost of conducting elections by Right2Vote was more than that of Nityam. Hence, Nityam was selected.”*

37. Further, the Court came to the conclusion that defendant No.1 though not a Government of India approved vendor, had a certificate from one of the auditors appointed by the Indian Computer Emergency Response Team (CERT-In) and therefore, there was no impediment in selection of the defendant No.1 as the vendor/agency for conduct of elections.



38. Further, at that stage, the Court found that the elections could not be held to be vitiated merely on account of (i) the fact that some previous elections conducted by the defendant No.1 were challenged in some legal proceedings and (ii) the fact that the correspondence between defendant No.1 & 3 were from the personal email ID and not from their official email ID.

39. The Court also found that *“there is no material to come to the conclusion at this stage that Nityam has been instrumental in any illegal online election process which would warrant tampering and this issue will be required to be gone into in detail after the parties have led their evidence.”*

40. A perusal of the judgment/order dated 16.02.2021 reveals that this Court had no occasion to consider any specific instance of irregularity/malpractice which vitiates the elections. In particular, this Court had no occasion to consider the allegations of bogus voting as illustrated by the plaintiffs by giving an actual example of an eminent, deceased life member of the IOA who was not only included in the voters list, but a vote was also cast in the name of the said deceased member. Moreover, crucial facts have subsequently emerged in the police investigation and which have been set out in the chargesheet filed by the police.

41. Given the limited scope of consideration at the stage when the judgement/ order dated 16.2.2021 was passed, and in light of the new facts that have emerged subsequently this Court is not precluded from taking note of the same and passing appropriate orders. The law is also well settled that the principle of *res judicata* does not apply to the findings on which



interlocutory orders like orders of injunction are based; such orders do not decide in any manner the merits of the controversy in issue. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situation which subsequently emerges. In *Arjun Singh v. Mohindra Kumar*, (1964) 5 SCR 946 it has held as under:-

*“14. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of court. There are other orders which are also interlocutory but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the status quo, or to preserve the property pending the final adjudication but are designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation. The case of an application under O. IX, Rule 7 would be an illustration of this type. If an application made under the provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be canvassed in the appeal and dealt with by the appellate court. In that sense, the refusal of the court to permit the defendant to “set the clock back” does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later stages so as to preclude its being reconsidered. Even if the rule of res judicata does not apply it would not follow that on every subsequent day which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on*



*the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however necessarily rest on the principle of res judicata. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application of any rule of res judicata, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of res judicata and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of res judicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in the Other case, on proof of fresh facts, the court would be competent, may would be bound to take those into account and make an order conformably to the facts freshly brought before the court.*

42. The present application is consequently held to be maintainable.

43. Serious and disturbing discrepancies regarding the conduct of elections in November, 2020 have been brought to light in view of (i) the averments made in this application; (ii) the affidavit filed on behalf of defendant No.1 in compliance with the order dated 07.07.2023 passed in these proceedings; and (iii) the chargesheet filed before the court of learned CMM, Patiala House Court, New Delhi in FIR No. 25/2021. These are elaborated hereunder.

44. It has now been established that, in fact, votes have been cast on behalf of dead person/s in the elections held in November, 2020. This is evident from the example of Late Dr. A.K. Gupta given by plaintiffs in the present application. The same has not been refuted by any of the defendants in their replies to the present application. The defendant No.7 i.e. the IOA itself has stated in its reply that “removal of dead persons from voters list is a chronic problem”.



45. Significantly, in Para 6 of the application, it has been specifically contended by the plaintiffs/applicants that there is a past precedent of the Executive Committee of IOA taking a view that “even one vote if cast illegal, the entire election has to be declared null and void”. Para 6 of the application is reproduced as under:-

*“6. It is stated that in the year 2017 during the tenure of Dr. R.C. Meena, the then Vice President and Election Officer, who had updated the data of voters by including their names in the list of voters after the deadline. This was strongly objected to and the matter was referred to the Investigating Committee, constituted by the E.C. of IOA in its GBM, as at the relevant point of time there was no Legal and Grievance Cell in existence. The then member of the Investigating Committee, Dr. Dhillon stated that even one vote if cast illegal, the entire election has to be declared null and void. It was pursuant to the report and recommendation of Investigating Committee which had found Dr. Meena guilty of having altered the voter list after the deadline, not only Dr. Meena was removed as the Election Officer but was censored and warned not to repeat such action in future as alteration in the voters list was taken as very seriously and against the conduct of election rules and regulation by the EC of the IOA. It was post removal of Dr. Meena in 2017, the IOA election were held under the supervision of Dr. Rajesh Malhotra the then President of IOA. The entire proceeding is reported in IOA's newsletter Vol. 64 2019 November Edition, which establishes the fact that there is precedence in IOA, where in a case any Election Officer, who is found in breach of the conduct of election not only the said election officer is being removed but any election held under the supervision of such tainted Election Officers, contrary to Rules and constitution of IOA, such election is declared as a nullity.”*

46. In reply to the aforesaid averments, it is stated by the defendant No.7 as under :-

*“6. That the contents of para 6 are a matter of record. It is submitted that the allegations levelled in the said para have got no relation with the present suit and are without context.”*

47. Thus, in the past, the defendant no.7 has been intolerant of any discrepancy in the voters' list. Given this background, the attempt on the part of the defendant No.7/IOA to trivialise the aspect of inclusion of dead



persons in the voting list for the impugned elections, by characterising the same as a “chronic problem”, is most reprehensible and unfortunate. The gravity of the situation is evident from the fact that not only has there been inclusion of dead persons the voters’ list, votes have also apparently been cast on behalf of such persons.

48. Apart from the aforesaid aspect of inclusion of dead persons in the voters’ list, the investigation carried out by the police have also revealed that many voters who have ostensibly voted in the impugned elections, in fact, did not cast their votes. The relevant observations in the chargesheet are reproduced as under:-

*“During further investigation of the case, notices were sent to all the voters who voted in the IOA election 2020 through email. Out of 6494 a total of 1559 response was received through email after scrutiny of the email reply it was found that 39 confirmed that they did not cast their vote. All 39 voters were contacted telephonically and 27 doctor confirmed that they did not cast the vote in IOA election 2020. One Dr. Shailesh S. Bijwe confirmed that he voted in the said election and one Dr. Yuvaraja Murugan informed that he do not remember whether he cast his vote or not. 10 voters did not pick up their phone. During further analysis with the help of access logs received from M/s Nityam Software Solutions Pvt. Ltd’s server excess logs were got verified and during the examination it was found that logs of 39 voters were verified but log of one voter i.e. Dr.Sheth Binoti Arun LM No. 03095 could not found.”*

49. This Court finds it difficult to turn a blind eye to the aspect of (i) dead persons having been included in the voters’ list; (ii) votes being cast on behalf of dead persons; (iii) false/bogus votes being cast on behalf of persons who have confirmed during police investigation that they actually never cast their votes.

50. There is merit in the contention of learned counsel for the plaintiffs that the anomaly/ example (of Late Dr. A. K. Gupta) cited in the application is symptomatic of a much deeper rot inasmuch as Late Dr. A. K. Gupta had



been a pre-eminent member of the IOA and his discrepant inclusion in the voters list was therefore self apparent and was detected on a mere cursory examination. Also, it is inexplicable as to how a mobile number and email was assigned to Late Dr. A. K. Gupta, through which an OTP was generated, enabling casting of a vote in the name of Late Dr. A. K. Gupta. The same is only illustrative of the nature and extent of the malaise, and serves to underscore the complete lack of integrity of the voters' list.

51. In the above context, order dated 07.07.2023 was passed to require the defendant No.1 and 7 to explain as to apparent casting of vote by the aforesaid voter i.e. Dr. A. K. Gupta.

52. In the affidavit filed on behalf of defendant No.1, pursuant to the aforesaid order dated 07.07.2023, the defendant No.1, has proceeded to disclose the names of the candidate/s in whose favour vote/s was cast on behalf of Late Dr. A. K. Gupta. It is sought to be emphasised that for the post of secretary, a vote has been cast on behalf of Late Dr. A. K. Gupta in favour of the plaintiff No.2 (who was one of the candidate for the post of Secretary in the IOA elections held in November 2020). The same submission has been repeatedly made during the course of arguments, apparently to make the point that the plaintiff/s have not been prejudiced on account of the vote cast on behalf of Late Dr. A. K. Gupta.

53. In the affidavit filed on behalf of defendant no.1 (pursuant to directions contained in the order dated 07.07.2023), it has been averred as under:-

*“33. From the aforesaid information, the Defendant No. 1 traced the IP address and once the IP address was identified, the Defendant No. 1 used the aforesaid IP address to trace the votes casted from the aforesaid IP address.*





34. From the system, it was identified that three votes have been casted from the abovementioned IP address. The relevant details are provided below:-

**TABLE – A**

<i>Post_id</i>	<i>Candidate_id</i>	<i>IP_address</i>	<i>Vote_received_on</i>
1	1	47.9.113.54	2020-11-01 22:50:14
2	5	47.9.113.54	2020-11-01 22:50:14
3	9	47.9.113.54	2020-11-01 22:50:14

35. In the aforesaid table, there are 4 columns, the first column is the Post ID, which means the posts on which voters have casted their vote and each post is given a unique number. In the IOA elections, there were three (3) posts. The second column is the candidate ID, which is a unique number given to each candidate. In the IOA elections, there were a total of 4 candidates for the post of Vice President, 4 candidates for the post of Honorary secretary and 2 candidates for the post of the next IOACON meeting. The third column is the IP address of the voter casting the vote. The fourth column is the time stamp of the vote being received.

36. The tables (Table B and C) provided below, gives details of the averments made above. Table B shows the post and number of candidates for each post. Table C provides the names of the Candidates and the Candidate ID and Post ID for each candidate. The relevant tables are provided below:-

**TABLE B**

<i>Post_id</i>	<i>Post_name</i>	<i>Total_seat</i>	<i>Candidate-count</i>
1	Vice President	1	4
2	Honorary Secretary	1	4
3	Next IOACON Meeting	1	2

**TABLE – C**

<i>Candidate_id</i>	<i>Candidate_name</i>	<i>Post_id</i>
1	Atul Shrivastva	1
2	Sandeep Adke	1
3	SwarnenduSamanta	1
4	Vijayraghavan	1
5	Manish Dhawan	2
6	Naveen Thakker	2



7	Rajeev Raman	2
8	Ramesh Babu	2
9	Lucknow	3
10	Patna	3

37. On a conjoint reading of the aforementioned tables, it is clear that Dr. A.K Gupta has casted the vote in the following fashion:-

S.NO.	Post	Candidate Name	Memo of Parties
1.	Vice President	Mr. Atul Shrivastava	Defendant No.4
2.	Honorary Secretary	Mr. Manish Dhawan	Plaintiff No.2
3.	Next IOACON Meeting	Lucknow	Defendant No.6

38. ....”

54. In the aforesaid manner, the defendant No.1 has openly gone about disclosing the manner in which the votes have been cast by a particular voter. Thus, the fundamental requirement [as mandated under Article 15(b) of the Constitution of the IOA] that the elections are to be through “Secret Ballot” has also been breached in the present case. It has become evident that for the elections conducted in November, 2020, there was no mechanism to ensure that the votes cast by the voters are kept secret.

55. The very premise of elections by “secret ballot” is that there should be no possibility of the voting pattern of any voter/s being disclosed, whether during or after the electoral process. This has been found to be completely lacking in the present case. In fact, it has been specifically stated by the defendant No.1 in his affidavit (filed pursuant to order dated 07.07.2023 passed by this Court) as under:-

“22. All these aspects will be pointed out by the Defendant No. 1 at an appropriate stage before the Trial Court or in other relevant



*proceedings. However, because of these serious lapses in the chargesheet, the Defendant No. 1 is constrained to make selective disclosure regarding the identity and voting pattern of these voters for getting a fair trial before the Trial Court and therefore this exercise of checking the voting pattern has been undertaken by the Defendant No. 1.”*

56. Thus, the defendant no.1 is in a position to identify the specific voting pattern of any voter and has taken a stand that it shall make “selective disclosure” thereof, for the purpose of getting “fair trial before the trial court”. When elections are required to be conducted by “secret ballot”, the secrecy of the ballot can never be a matter of choice or discretion of the agency which is conducting the elections. The fact that there is scope for the defendant no. 1 to make “selective disclosure”, as asserted by the defendant no. 1 itself in its affidavit, completely vitiates the election process, being in utter disregard of Article 15(b) of the constitution of the IOA.

57. Every person entrusted with election duties has an obligation to maintain and aid in maintaining the secrecy of the voting. This obligation is important because it helps to protect the integrity of the electoral process and to ensure that voters can cast their ballots without fear of reprisal. The secrecy of the ballot is not just important on election day, the post-election secrecy of the ballot is equally an important part of ensuring free and fair elections. In ***Kuldip Nayar v. Union of India***, (2006) 7 SCC 1, the Constitution Bench of Supreme Court, approving its earlier decision in ***S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra***, 1980 Supp SCC 53, in context of Section 94 and 128 of the Representation of the People Act, 1951, has held as under:

*“311. Section 59 provided for the “Manner of voting at elections” to be “by ballot in such manner as may be prescribed”. Section 94 made its prescription clear by the marginal note reading “Secrecy of voting*



not to be infringed”, giving immunity mainly to the voter against compulsion to disclose by declaring, in no uncertain terms, that “No witness or other person shall be required to state for whom he has voted at an election”. Section 128 made further provision for insulating the right of the voter to secrecy of vote from onslaught and arranging “Maintenance of secrecy of voting” by making it an obligation of every person entrusted with election duties to “maintain, and aid in maintaining, the secrecy of the voting” and, unless so “authorised by or under any law”, not to “communicate to any person any information calculated to violate such secrecy”.

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**Secrecy of vote — Requisite for free and fair election**

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**401.** This Court ruled thus: (SCC pp. 64-65, para 13)

“13. **Secrecy of ballot undoubtedly is an indispensable adjunct of free and fair elections.** A voter had to be statutorily assured that he would not be compelled to disclose by any authority as to for whom he voted so that a voter may vote without fear or favour and is free from any apprehension of its disclosure against his will from his own lips. ... As Section 94 carves out an exception to Section 132 of the Evidence Act as also to Section 95 of the Act it was necessary to provide for protection of the witness if he is compelled to answer a question which may tend to incriminate him. Section 95 provides for grant of a certificate of indemnity in the circumstances therein set out. A conspectus of the relevant provisions of the Evidence Act and Sections 93, 94 and 95 of the Act would affirmatively show that they provide for a procedure, including the procedure for examination of witnesses, their rights and obligations in the trial of an election petition. The expression ‘witness’ used in the section is a pointer and further expression ‘other person’ extends the protection to a forum outside courts.”

**402.** After taking note of, amongst other provisions, Sections 94 and 128 of the RP Act, 1951 and Rules 23(3), 23(5)(a) and (b), 31(2), 38(4), 39(1), (5), (6) and (8), the second proviso to Rules 40(1), 38-A(4), 39-A(1) and (2) as contained in the Conduct of Election Rules, 1961 (“the Rules” for short) and similar other rules, this Court found that while seeking to provide for maintaining secrecy of ballot, they were meant “to relieve a person from a situation where he may be obliged to divulge for whom he has voted under testimonial



*compulsion*”. It was then observed in para 14 that: (SCC p. 65)

**“Secrecy of ballot can be appropriately styled as a postulate of constitutional democracy. It enshrines a vital principle of parliamentary institutions set up under the Constitution. It subserves a very vital public interest in that an elector or a voter should be absolutely free in exercise of his franchise untrammelled by any constraint which includes constraint as to the disclosure. A remote or distinct possibility that at some point a voter may under a compulsion of law be forced to disclose for whom he has voted would act as a positive constraint and check on his freedom to exercise his franchise in the manner he freely chooses to exercise. Therefore, it can be said with confidence that this postulate of constitutional democracy rests on public policy.”**

**403. It was thus held that secrecy of ballot, a basic postulate of constitutional democracy, was**

**“formulated not in any abstract situation or to be put on a pedestal and worshipped but for achieving another vital principle sustaining constitutional democracy viz. free and fair election”** (SCC p. 66, para 15).

**404. This Court found that Section 94 was meant as a privilege of the voter to protect him against being compelled to divulge information as to for which candidate he had voted. Nothing prevents the voter if he chooses to open his lips of his own free will without direct or indirect compulsion and waives the privilege. It was noticed that the provision refers to a “witness or other person”. Thus, it is meant to protect the voter both in the court when a person is styled as a witness and outside the court when he may be questioned about how he voted. It was found that no provision existed as could expose the voter to any penalty if he voluntarily chooses to disclose how he voted or for whom he voted.**

**405. With a very clear view that “secrecy of ballot” as provided in Section 94 was mooted “to ensure free and fair elections”, the Court opined thus: (SCC p. 67, para 22)**

**“If secrecy of ballot instead of ensuring free and fair elections is used, as is done in this case, to defeat the very public purpose for which it is enacted, to suppress a wrong coming to light and to protect a fraud on the election process or even to defend a crime viz. forgery of ballot papers, this principle of secrecy of ballot will have to yield to the larger principle of free and fair elections.”**

**406. The Court, after noticing that the RP Act, 1951 is a self-contained Code on the subject of elections and reiterating that “there is one fundamental principle which permeates through all democratically elected parliamentary institutions viz. to set them up**



by free and fair election”, observed: (SCC p. 68, para 23)

*“The principle of secrecy of ballot cannot stand aloof or in isolation and in confrontation to the foundation of free and fair elections viz. purity of election. They can coexist but as stated earlier, where one is used to destroy the other, the first one must yield to principle of purity of election in larger public interest. In fact secrecy of ballot, a privilege of the voter, is not inviolable and may be waived by him as a responsible citizen of this country to ensure free and fair election and to unravel foul play.”*

407. In formulating its views, support was found in certain observations of Kelly, C.B., in *R. v. Beardsall* [(1876) 1 QBD 452 : 45 LJMC 157 : 34 LT 660] to the following effect:

*“The legislature has no doubt provided that secrecy shall be preserved with respect to ballot papers and all documents connected with what is now made a secret mode of election. But this secrecy is subject to a condition essential to the due administration of justice and the prevention of fraud, forgery, and other illegal acts affecting the purity and legality of elections.”*

(*S. Raghbir Singh Gill case* [1980 Supp SCC 53] , SCC p. 69, para 25)”

58. In ***Laxmi Singh v. Rekha Singh***, (2020) 6 SCC 812, it has been held as under:-

*“14. It is to be observed that one of the fundamental principles of election law pertains to the maintenance of free and fair elections, ensuring the purity of elections. The principle of secrecy of the ballots is an important postulate of constitutional democracy whose aim is the achievement of this goal....”*

59. In the facts and circumstances of the present case, all the above aspects viz. inclusion of dead person/s in the voting list; votes having been cast by such dead person/s; bogus votes having been cast on behalf of certain persons as noticed in the chargesheet; the voting pattern of the individual voters being subject to “selective disclosure” by the defendant No.1 in these proceedings and/or during the process of investigation in the



FIR and/ or proceedings before the trial Court, have reduced the impugned election/s conducted in November, 2020, to a complete mockery.

60. There are some other disturbing aspects which have been brought out in the chargesheet filed by the police. In the judgment/order dated 16.02.2021, one of the factors which impelled this Court to dismiss the application under Order XXXIX Rule 1 & 2 was that the defendant No.3 was justified in selecting the defendant No.1 for conducting of elections since the only Government approved vendor (i.e. “Right2Vote”) was demanding 100% payment. However, it has been found during the investigation by the police, in particular, from the statement of CEO of “Right2Vote” that this is false. The relevant observation in the chargesheet are reproduced as under :-

*“During the statement of Dr. Sandeep Adke, he stated that in the IOA Election 2020, I was one of the candidates for the post of Vice President. I found that initially the tender was awarded to M/s Right2vote for conducting the IOA election 2020 because M/s Right2vote, Mumbai was Govt approved with lower quotation with no litigation record. But later on the award was changed and given to M/s Nityam Software Solutions Pvt. Ltd. Mumbai without any justification and procedure. After completion of election, we came to know about this change and when we enquired about the said change, Dr. Ramesh Sen, Election Officer informed that M/s. Right2Vote was demanding 100% payment in advance but we came to know that there was an initial proposal but later on it was changed. To confirm the same, I called Mr. Neeraj, Owner of M/s Right2Vote, Mumbai on 19.12.2020 from my mobile No. 9822807007 to his mobile No. 9920591306 and recorded the said conversation which I have already given to you. In this conversation, Mr. Neeraj said that he was ready to conduct this election with 50% advance as well.*

*On 17/08/21 Neeraj Gutgutia S/O Padma Kumar R/O B-406 Hill side CHS Ltd. Raheja Vihar Chandivali Andheri East Mumbai 400072 joined the investigation ..... On 17<sup>th</sup> Sep 2020, Dr Ramesh Sen confirmed via email that Right2Vote has been selected by committee for selection of vendors. In response I emailed him the contract draft and other requirement including requirement of 100% advance*



*payment. On 18<sup>th</sup> September 2020, he emailed us that IOA can give 50% advance and 50% as bank guarantee. We discussed this over call and agreed verbally to 50% advance. .... I received a call from Dr. Sandeep Adke from mobile number 9822807007 (I don't remember the date but from the call transcript from cyber cell it appears to be 19 December 2020.) It is a 17.5 minutes call which I heard and confirm that it is my voice and this call actually happened. As mentioned in the call, I remember that we agreed to 50% in advance on Dr. Sen's request in September 2020 while discussing the final contract.*

*As per documents collected statement of other PWs were recorded it came on record that Dr Ramesh Sen rejected Right2Vote, who was earlier selected for holding IOA election 2020 having Govt approved certificate, because he was not agreeable without taking 100% payment in advance. But after examination of Mr. Neeraj CEO Right2Vote, he confirmed that telephonically he discussed the matter with Dr. Sen and agreed to work with 50% advance and on 19<sup>th</sup> September 2020 he spoke to Dr. Ramesh Sen for specific user interface etc and explained that his interface is better than other platforms, and his company is Govt. approved. On 19.9.2020 he sent standard draft agreement to him after discussion but Dr. Ramesh Sen did not reply. On 22.10.2020 Mr. Neeraj sent an email to Dr. Ramesh Sen to update for the election data etc and felt sorry for not conveying the rejection clearly. Dr. Ramesh Sen replied on 24.10.2020 that election platform of Right2Vote is not as per previous election so their advisors are not ready for change of voting platform, hence they are not considering Right2Vote. On 25.10.2020, Mr. Neeraj again sent an email to Dr. Ramesh Sen to ask him that which organization they have selected but Dr. Ramesh sen did not reply. As per Dr. Ramesh Sen reply that Right2Vote was not ready for 50% advance is found wrong secondly as per the reply of Mr. Neeraj of Right2Vote and email exchanged between him and Dr. Ramesh Sen nothing about rejection of Right2Vote was communicated to Mr. Neeraj, if it was done so by Dr. Ramesh Sen, he must had mentioned in his email dated 24.10.2020. Thirdly as per Dr. Ramesh Sen's email dated 24.10.2020 to Right2Vote he informed the reasons of his rejection was the improper voting platform and their advisors are not agreeing. When Mr. Neeraj of Right2Vote asked about the organization which was selected for election, he did not reply which proves that no communication was sent to Right2Vote about its rejection."*

61. Also, from a perusal of the chargesheet filed in the Court of Ld. CMM, Patiala House Court, New Delhi it also transpires that even through





the elections ostensibly concluded at 1700 hours on 22.11.2020, there was activity in the server after closing of the election, which shows that the server was not secured. Further, SQL database logs were not maintained by the defendant no. 1. In this regard, it has been observed in the charge sheet as under:-

*“M/s Nityam could not explain the reasons for activities in the server after the closing of election i.e. after 1700 hrs at 21.11.2020 which shows that the server was not secured. Not maintaining of SQL database logs by M/s Nityam also create doubts on the functioning of M/s Nityam Software Solutions Pvt. Ltd. because without such data it is not possible to check further authenticity of the date/result. To prove the authenticity of any data record submitted from website, logs of SQL database and activity logs should be matched. It is apparent by the conduct of M/s Nityam and that M/s Nityam is hiding some material facts. There were some allegations of tempering etc. against M/s Nityam by some other organization previously so it was the duty of M/s Nityam to provide flawless voting platform to every online election but it seems M/s Nityam deliberately avoided to maintain the crucial data logs of SQL database to hide any tempering in the election of IOA 2020. The explanation of M/s Nityam that the maintaining of logs are not economical viable is neither justified nor acceptable.”*

62. In view of all the above circumstances, it is, *ex-facie*, evident that there have been serious and material irregularities in the conduct of IOA elections 2020.

63. Admittedly, the defendant No.4 was elected to the position of Vice-President in the impugned elections in November, 2020, and on that basis became President-elect in the subsequent year, thereafter the President of the defendant No.7. Thus, by virtue of the impugned elections held in November, 2020, the defendant no. 4 is the incumbent President. The defendant No. 5 was elected as the Secretary in the impugned elections for a period of 3 years, which term is yet to expire. The defendant No. 3 who was



the Vice-President of defendant No.7 in 2020, and who was the election officer for the elections conducted in November, 2020, is now in the Executive Committee of Defendant No.7 as past President.

64. Given the serious irregularities that *ex-facie* vitiate the elections held in November 2020, and given that the said elections have had a cascading effect as regards the constitution of the Executive Committee of the IOA, it would be appropriate to appoint an Administrator to conduct affairs of the defendant no.7. Such a course is imperative to ensure that the affairs of defendant no. 7 are put in order, and particularly to ensure that appropriate steps are taken to ensure the authenticity of the voters' list and setting up of robust electoral mechanism/s, in view of the upcoming elections scheduled to be held in November, 2023.

65. The appointment of an Administrator, in a situation of this kind, is mandated in terms of the judgments of this Court in *St. Sophia's Christian Education Society v. K. Samuel*, 1997 (42) DRJ, *Sarbjit Singh v. All India Fine Arts & Crafts Society*, ILR (1989) 2 Del 585, and *Neeta Bhardwaj v. Kamlesh Sharma*, 2021 SCC OnLine Del 4503.

66. Accordingly, Mr. Justice (Retd.) J. R. Midha, Former Judge of Delhi High Court (Mob. No. - 9717495003) is appointed as the Administrator for the defendant no.7. The Administrator shall conduct the affairs of the defendant no.7 till the executive committee of the defendant no.7 is re-constituted pursuant to the elections slated to be held in November, 2023, upon results of the said elections being officially declared. The affairs of the defendant no.7 shall be conducted by the said Administrator with the aid of the incumbent executive committee. The Administrator shall, *inter-alia*, be entitled to:



- (i) take appropriate steps to conduct an audit/review of the voters' list for the elections due in November, 2023 so as to ensure that there are no discrepancies therein ;
- (ii) put appropriate mechanisms in place to ensure the purity and integrity of the elections slated to be held in November, 2023;
- (iii) take appropriate decisions to ensure the smooth conduct of IOACON, 2023, slated to be held in December, 2023;
- (iv) exercise oversight over the committees of the defendant no.7 and have access to all records, papers, documents of the defendant no.7.

67. The Administrator shall be paid an interim fees of Rs.5,00,000/- by the defendant no. 7, in addition to reimbursement of expenses incurred and secretarial charges.

68. The Administrator is directed to file an interim report within a period of 3 weeks from today.

69. As regards, the conduct of IOACON, 2023 at Lucknow is concerned; no directions interdicting the holding thereof are being passed since the plaintiff No.5, i.e. IOACON Patna which was also a candidate for hosting of the IOACON, 2023 (for which the elections were held in November, 2020), filed an application seeking to withdrawn from the present suit and the same came to be allowed on 14.03.2022. Also, preparations for hosting IOACON 2023 at Lucknow in the second week of December, 2023, are stated to be at an advanced stage. The defendant No. 6 has brought out that the said event is to be attended by a large number of international faculties and by more than a thousand orthopaedic surgeons from different parts of the country, most of whom are stated to have completed the online registrations for the



event. As such, this Court does not find it apposite to interfere with the conduct of IOACON 2023, slated in December, 2023.

70. This Court is constrained to express its anguish at the state of affairs in the Indian Orthopaedic Association (Defendant No.7), which is an association comprising of highly accomplished doctors in the field of orthopaedic surgery. It is unfortunate that an association having such salutary objectives, constituted to serve the public good, and comprising of some of the most renowned medical professionals in the country, has been reduced to its present state of affairs. It is hoped and expected that necessary remedial steps shall be taken by the association.

71. Let a copy of this order be sent to the learned Administrator. The parties are also directed to apprise the learned Administrator of these proceedings and appear before the learned Administrator, as per the directions of the learned Administrator. The parties shall co-operate and render all possible assistance to the learned Administrator.

72. List for further consideration on 14.12.2023.

**SACHIN DATTA, J**

**OCTOBER 20, 2023**  
**at/hg**