



2024:DHC:9651



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

% *Judgment delivered on: 13.12.2024*

+ **CS(OS) 927/2024**

**KESHAVAMURTHY RAMAIAH** ...Plaintiff

Through: Mr. Ashutosh Dubey, Mr. M. Veerbhadriah, Mr. Abhishek Chauhan, Mr. Amit and Mr. Amit Kumar, Advocates

versus

**UROLOGICAL SOCIETY OF INDIA & ORS.** ...Defendants

Through: Mr. Pran Bora, Senior Advocate with Ms. Anasuya Choudhury and Mr. Abhinav Jha, Advocates for D-1 & 2.

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

**I.A. 45947/2024 (under Order XXXIX Rule 1 and 2)**

1. The present application under Order XXXIX Rule 1 and 2, read with Section 151 of the Code of Civil Procedure, 1908 [hereafter '*CPC*'] has been filed on behalf of the applicant/ plaintiff herein, seeking grant of ad-interim *ex-parte* injunction in favour of the plaintiff and against the defendants.



## FACTUAL CONTEXT

2. The facts of the case, as discernible from the application and the suit, are that the plaintiff is a urologist with over 27 years of professional experience, and he is currently serving as Professor and Head of the Department of Urology and Director in-charge of the Institute of Nephro-Urology, Victoria Hospital, Bengaluru. He claims to be an active and prominent member of the Urological Society of India [hereafter '*USI*'] since the year 1997, and has held several significant positions, including Governing Council Member (2009-2011), Treasurer (2013-2017), Secretary-Elect (2020), and Secretary (2021-2023) at USI.

3. In the Annual General Meeting [hereafter '*the AGM*'] of February 2021, the rules and bye-laws of USI concerning the use of social media during elections were amended – allegedly without adherence to proper procedures or notification requirements.

4. A Notification was issued on 30.06.2024, notifying the election schedule of USI Elections 2025. The schedule was notified as under:

The nomination forms (hard copy) duly completed should reach the Election Officer by 5PM, 30th September, 2024	
Last Date for Receipt of Forms:	5PM, 30th September, Monday, 2024
Last Date for Withdrawal	5PM, 7th October, Monday, 2024
Declaration of the list of eligible candidates:	5PM, 15th October, Tuesday, 2024

5. The said Notification also barred the use of social media or email for election campaigns, and only permitted personal



communication by telephone. The relevant portion of the Notification, in this regard, is as under:

- Election campaigns by using any social media or email are strictly prohibited. If anyone is found using this method of campaign will be disqualified. This embargo on the campaign will come into force from the date of announcements of the candidates officially by the Election officer which is 5PM, 15th October, Tuesday, 2024. Personal communication only by telephone is allowed.

6. On 02.10.2024, the defendant no. 2 i.e. the President Elect-Returning Officer issued a communication to the plaintiff, whereby the plaintiff was informed that his nomination for the post of President Elect for the USI Elections 2025 had been accepted. Thereafter, on 15.10.2024, at about 8:56 PM, the defendant no. 2 notified the names of the candidates contesting on different posts through an email. The relevant portion of email dated 15.10.2024 is extracted hereunder:

**List of Candidates for USI Elections**

From Central Office USI <usicentraloffice@gmail.com>  
via s2.smtpgm.net  
Date Tue 10/15/2024 8:56 PM  
To keshavdr@hotmail.com <keshavdr@hotmail.com>

Dear Members,

Subject: **List of Candidates for USI Elections**

I hope this letter finds you in good health and high spirits. As we approach the upcoming USI elections, I am writing to inform you about the list of contestants who will be participating in the elections.

The following is the list of contestants who will be running for various positions:

<b>President Elect</b>	Dr Anil Elhence Dr Anil Kumar Varshney Dr Keshavamurthy Ramaiah Dr Shailesh Anantray Shah
<b>Council Members</b>	
<b>North Zone</b> (One Seat)	Dr Nitin Agarwal Dr Shivam Priyadarshi Dr Vijay Bora
<b>South Zone</b> (Two Seats)	Dr Arun Chawla Dr Avudaiappan Ponnambalavanan Dr Lalgudi N Dorairajan Dr Phillipraj S Joseph
<b>West Zone</b> (One Seat)	Dr Gaurang Rameshchandra Shah Dr Rohit N Joshi
<b>East Zone</b> (One Seat)	Dr Amitabh Kumar Sinha



7. However, a complaint was lodged on 16.10.2024, by defendants nos. 3 and 4, alleging that the plaintiff had posted a video on WhatsApp at 7:53 PM on 15.10.2024, beyond the declared cutoff time of 5:00 PM, and had thus violated the election code of conduct. Following this complaint, the defendant no. 2 had issued a Show Cause Notice [hereafter 'SCN'] to the plaintiff on 30.10.2024, at about 3:17 PM, based on allegations levelled by defendants nos. 3 and 4. The SCN claimed that the video in question violated the code of conduct, and warranted the plaintiff's disqualification. The SCN reads as under:

Date: 30th October 2024
To, Dr Keshavmurthy Ramaiah
Sub: Show Cause Notice
Ref: Complaint regarding violation of code of conduct of USI Election 2025
In inviting a reference to the above subject, I am to inform you that the undersigned has received complaints from i) Dr Anil Elhence ii) Dr Shailesh Anantray Shah regarding violation of election code of conduct of USI Election 2025.
As per the election notification dated 30th June'2024, there is an absolute bar on campaigning on social media/email by any candidate after 5 p.m 15th October'2024.
Whereas the undersigned has prima facie found after due verification that you have violated the USI Election 2025 Code of Conduct.
Therefore, this show cause notice is served upon you to explain as to why your candidature for the post of President Elect, Urological Society of India shall not be disqualified for violation of the Code of Conduct of USI Election 2025.
In view of this, you are asked to give an explanation as to why your candidature shall not be disqualified within 7 ( seven ) days upon receipt of this notice by email, failing which the matter will be proceeded ex parte.



8. On 31.10.2024, the plaintiff responded to the SCN, annexing evidence that the video had been posted by him at 3:52 PM on 15.10.2024 and the same was delivered to the recipients by 3:55 PM, i.e. well within the stipulated time.

9. On 04.11.2024, the plaintiff filed a suit, i.e. CS(OS) 888/2024, challenging the SCN dated 30.10.2024. By way of order dated 11.11.2024, this Court directed the defendant no. 2 to adjudicate the SCN, observing that no final decision had yet been made. The Court permitted the plaintiff to withdraw the said suit while granting liberty to challenge any adverse order that might be passed. The Court protected the plaintiff's right to canvas during the election and allowed him to challenge the alleged illegal amendment of 14.02.2021, which prohibited social media use during campaigning.

10. On 18.11.2024, defendant no. 2 disqualified the plaintiff from contesting the election, allegedly, by citing additional grounds not mentioned in the original complaint as well as show cause notice, including the alleged use of Facebook for the purpose of campaigning on 16.10.2024. It is the grievance of the plaintiff that the disqualification order dated 18.11.2024 [hereafter '*the impugned order*'] was issued without conducting an inquiry or providing the plaintiff an opportunity to be heard, which violated the principles of natural justice.

11. Aggrieved by the aforesaid, the plaintiff has filed the present suit seeking a declaration to nullify the disqualification and an injunction against its enforcement.



## **SUBMISSIONS BEFORE THE COURT**

### **Submissions on Behalf of the Plaintiff**

12. The case set out by the plaintiff is that USI is administered by the office bearers, who are elected by all the members of the society through an election process, which is currently by way of electronic voting. Further, USI is governed by its Constitution, Rules and Bye-laws and provisions of the Society Registration Act, 1860. The Bye-laws of defendant no. 1 provide for conducting USI Elections, through e-voting platform and also for canvassing through e-platforms, as long as it is done maintaining decorum and without indulging into slander or communications which may reflect the candidates badly. Moreover, the Constitution of USI provides the procedure for the amendment of the Constitution or Bye-laws and also for holding the elections. The learned counsel appearing for the plaintiff drew this Court's attention to the procedure of amendment as laid down in the Constitution of USI.

13. On merits, firstly, the learned counsel for the plaintiff argued that the Bye-laws as regards to canvassing through e-platform were amended in the AGM held on 14.02.2021 without being circulated in six weeks advance, and without being listed in the Agenda. It was also argued that since USI is registered under the provisions of Society Registration Act, the amendment of 14.02.2021 which was carried out without following the due procedure, without being notified to the Registrar under Section 12 of the said Act – which is



mandatory for approval of the Registrar for giving effect to any such amendment – is liable to be struck down.

14. Secondly, the learned counsel for the plaintiff argued that on 18.11.2024, the defendant no. 2, in violation of principles of natural justice, and by completely ignoring the reply filed by the plaintiff, had passed the impugned order. In this regard, it was contended that the plaintiff, in his reply, had specifically mentioned that the WhatsApp video in question was sent well before the stipulated cutoff time of 5:00 PM and was delivered to several recipients at 3:55 PM. It was contended that as per the election notification, personal communication is explicitly permitted, and since his communication was directed to individuals and not broadcasted to a public audience, it does not amount to a violation of the election code of conduct. It was argued that the term “personal communication” used in the Notification cannot be restricted to traditional landline phones but must include modern means of communication such as mobile or smart phones. Consequently, he cannot be disqualified on such grounds.

15. Thirdly, the learned counsel for the plaintiff argued that WhatsApp does not qualify as a social media platform akin to Facebook, Instagram, Twitter, or LinkedIn, which are built for public broadcasting and promotional purposes. Instead, WhatsApp primarily functions as a communication tool between individuals or small groups. It was asserted that social media is broadly understood to include platforms like YouTube and Facebook that cater to public



engagement and broadcasting, whereas WhatsApp is limited to encrypted, one-to-one communication, making it inherently private. Thus, WhatsApp does not fall within the definition of social networking as envisioned by the Bye-laws of USI.

16. Fourthly, it was contended that the Facebook post allegedly made by him on 16.10.2024, at 6:13 AM, was introduced for the first time in the impugned order of disqualification dated 18.11.2024. No opportunity was granted to him to respond to or refute this allegation, which constitutes a violation of the principles of natural justice. In fact, the said post is a fabricated document attributed to him without basis, and the plaintiff has reiterated in the plaint that he had not posted the alleged content on Facebook, and that he was never given a chance to address this allegation.

17. On these grounds, the learned counsel for the plaintiff asserted that the plaintiff has a strong likelihood of succeeding in the election, and the balance of convenience lies in his favor, and that any loss suffered by him if the injunction is not granted would be irreparable and beyond monetary compensation. In contrast, the defendants would not face any significant inconvenience if the impugned order is stayed.

#### **Submissions on Behalf of the Defendants**

18. The learned senior counsel appearing for defendant nos. 1 and 2 opposed the present application. Firstly, he argued that the plaintiff was an integral part of the GBM of 2021 and a member of the Executive Council, holding the position of Secretary Elect at the





time. It was contended that during the Annual GBM on 14.02.2021, the general members had unanimously decided to ban social media and email campaigns for USI elections. Further, the plaintiff, having taken charge as Secretary of USI, was instrumental in formulating the existing election rules, including the restrictions on social media campaigns. He was the Secretary during the 2022 and 2023 elections, during which these very rules were implemented without any objections being raised by the plaintiff. Therefore, it was contended that the plaintiff has been fully aware of these election guidelines since their adoption in 2021 and has not raised any objections to the rules prohibiting social media campaigns until the filing of the present suit. It was submitted that no amendments were made to the Constitution of USI concerning the election campaign, and the Constitution itself does not specify how elections should be conducted. Thus, it was argued that the changes to election rules cannot be categorized as amendments to the Constitution but as modifications to the by-laws, which are within the purview of the AGM.

19. Secondly, it was argued by learned senior counsel that WhatsApp qualifies as a social media intermediary, and the messages broadcasted by the plaintiff on 15.10.2024 at 7:53 PM regarding his election campaign fall within the scope of the USI election notification dated 30.06.2024. The plaintiff was debarred from contesting the USI Elections 2025 due to these actions, which contravened the Rules and Bye-laws. It was contended that the plaintiff was provided an opportunity to represent himself, which he



exercised by replying to the show cause notice *via* email on 05.11.2024 to defendant no. 2. Further, the plaintiff was also granted a hearing through a Zoom meeting with the Executive Council to present his case. It was argued that defendant no. 2, after due verification from multiple sources, had found that the plaintiff's WhatsApp message was received at 7:53 PM by the complainant, which was beyond the stipulated deadline under the USI Election rules. It was also contended that the plaintiff had posted a video on his Facebook page on 16.10.2024 at 6:30 AM, further breaching the rules. It was argued that under Section 13 of the Information Technology Act, 2000, the receipt of an electronic record is deemed to occur when it enters the recipient's computer resource, and thus, the plaintiff's actions were in clear violation of the rules.

20. Therefore, it was contended that the entire election cannot be invalidated solely due to the plaintiff's non-compliance with the Rules pertaining to USI Election 2025. It was further submitted that the plaintiff had an alternative remedy to approach the President of USI regarding his grievances, as issues faced by members are generally resolved by the President in consultation with the Executive Council. Thus, it was prayed that the present application be dismissed.

### **ANALYSIS & FINDINGS**

21. The primary issue for determination in this application is whether the plaintiff has established a *prima facie* case in his favour that justifies granting interim relief, of staying the forthcoming USI



Elections and/or permitting the plaintiff to participate in the elections as a candidate, notwithstanding the impugned impugned order.

22. The Hon'ble Supreme Court, in *Dalpat Kumar and Anr. v. Prahlad Singh and Ors.*: (1992) 1 SCC 719 1993 (1) SCC 325, had discussed the essentials for granting a temporary injunction under Order XXXIX of CPC. The relevant extract of the decision is set out below:

“4... Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. **It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.**

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infringement of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to



grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

(Emphasis supplied)

23. Thus, the essentials of granting an injunction are: (1) existence of a *prima facie* case; (2) likelihood of irreparable injury that cannot be adequately compensated by damages; and (3) balance of convenience favoring the applicant.

24. An injunction serves as a preventive relief to preserve the subject matter of the suit in *status quo* and prevent potential future injury. It is to be noted that while seeking an order of injunction, the plaintiff has to demonstrate, through evidence, the existence of a *prima facie* case and an infraction of his rights requiring court's intervention. The Court has to then carefully weigh the competing



possibilities of harm to determine whether maintaining *status quo* or granting temporary injunction is necessary, pending adjudication.

25. Insofar as the merits of the present application are concerned, *first*, the plaintiff has challenged the amendment made to the bye-laws of USI in the AGM held in February, 2021, specifically the provision imposing an embargo on the use of social media and email for election campaigns. The plaintiff has sought a declaration that the said bye-law is invalid and has prayed for a stay of the elections, scheduled to begin on 16.12.2024.

26. The defendants, however, contended that the amendments to the bye-laws were duly adopted by the AGM, and there is no provision in the Constitution of USI, placed on record by the plaintiff himself, that mandates a specific procedure for conducting elections. The amendments in this case were made solely to the bye-laws, not the Constitution. The defendants also drew this Court's attention to the fact that the plaintiff, at the relevant time in 2021, was the Secretary Elect and a member of the Executive Council. He was thus directly involved in the administration of the society when these bye-laws were adopted. Additionally, the plaintiff served as the Secretary of USI, i.e. during the time when elections were held in the years 2022 and 2023, when the same rules, including the embargo on social media campaigns, were implemented without any objections from him. Undisputedly, the plaintiff, in the plaint itself, has mentioned that he has served as Secretary-Elect in 2020, and Secretary during 2021-2023.



27. It is also pertinent to note that the plaintiff, by filing his nomination for the position of President Elect 2025, clearly undertook to abide by the Constitution, Rules, and Regulations of USI, including the Bye-laws amended by the AGM. The plaintiff, having been an active participant in the society's governance and elections conducted under the same set of rules, did not raise any objections regarding these Bye-laws until the filing of the present suit.

28. Therefore, at this stage, and without further delving into the issues of Constitution and Bye-laws of USI and applicability of the provisions of Societies Registration Act, this Court is not inclined to interfere with the election process, especially when the amendment in question has been in operation for nearly three years without any challenge.

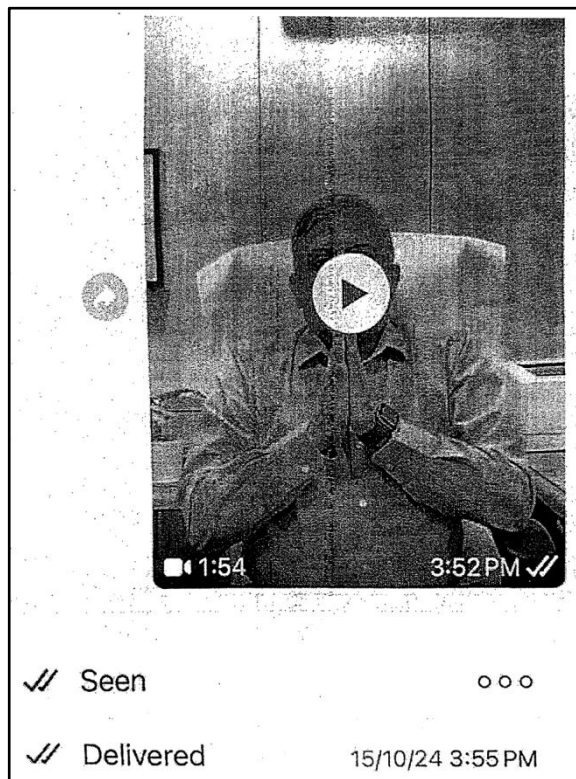
29. Thus, there is no *prima facie* case made out for staying the USI Elections 2025, scheduled to be held from 16.12.2024 to 25.12.2024, on the basis of the alleged invalidity of the Bye-laws relating to the ban on social media campaigns.

30. *Second*, the plaintiff has challenged the impugned order of disqualification dated 18.11.2024, disqualifying him from contesting the elections for the post of President Elect 2025, issued pursuant to SCN dated 30.10.2024.

31. The impugned order alleges that the plaintiff had sent a WhatsApp video message at 7:53 PM on 15.10.2024, i.e. beyond the stipulated cutoff canvassing time of 5:00 PM. However, the plaintiff



has filed on record a screenshot, which was also annexed with his reply to the SCN, reflecting that the video in question was sent at 3:52 PM and delivered to recipients at 3:55 PM, which was, well within the permissible limit of canvassing. The disqualification order is silent on the said submissions of the plaintiff. The screenshot, placed on record, by the plaintiff is extracted herein below:



32. Notably, the defendants have failed to submit before this Court any proof to prima facie substantiate their claim that the video in question was sent by the plaintiff through WhatsApp at 7:53 PM. No screenshot in this regard was attached with the complaint or in the SCN, as evident from the records at this stage. In fact, the impugned order also mentions that the message in question was deleted by the plaintiff at 7:53 PM. Thus, the case of the defendants, as it appears



from the reading of complaint, SCN and impugned order, is that the plaintiff had allegedly sent a WhatsApp video at 7:53 PM and had deleted the said video at the same time. However, as noted, no electronic evidence has been placed before this Court to substantiate the said allegations. And, conversely, the plaintiff has placed on record one screenshot in support of his contentions which reflects that the video in question had been received by the recipient at 3:55 PM, thus making it evident that it was sent prior to 3:55 PM. The plea that it had been received by the complainants at 7:53 PM, at this stage, can be only adjudicated by stating that it is not clear as to in which time zone the complainants were at the relevant time, and the same will be clear only when parties lead their evidence.

33. Further, as regards the allegation of a Facebook post uploaded by the plaintiff on 16.10.2024, at 6:13 AM, the plaintiff contended that this allegation was introduced for the first time in the impugned order and was not part of the original complaint or the SCN. This Court notes that the complaint filed by defendants nos. 3 and 4 and the SCN issued to the plaintiff did not contain any reference to a Facebook post uploaded on 16.10.2024. Clearly, introducing a new allegation in the final impugned order, without affording the plaintiff an opportunity to respond to the same, would thus amount to violation of the principles of natural justice. The defendants have also not explained as to why the plaintiff was not given an opportunity to address the allegation regarding the Facebook post.





34. In view of the above reasons, this Court is of the opinion that since the elections are scheduled to commence on 16.12.2024, and if the impugned order is not stayed, irreparable harm will be caused to the plaintiff, since he will be unable to contest the elections. It is also not in dispute that the plaintiff has previously contested, and succeeded, in the elections of USI. The balance of convenience is in favor of the plaintiff, inasmuch as the harm caused to the plaintiff in case he is not permitted to contest elections on the strength of impugned disqualification order, would be significant and cannot be adequately compensated later.

35. Therefore, this Court finds that a *prima facie* case is made out in favour of the plaintiff, as far as staying the impugned order dated 18.11.2024 is concerned.

36. Accordingly, the impugned order dated 18.11.2024 shall remain stayed during the pendency of the suit. The plaintiff shall be permitted to contest the forthcoming USI Elections 2025, scheduled to be held from 16.12.2024 to 25.12.2024. The defendants shall take appropriate steps *forthwith*, for issuance of ballot papers in the name of plaintiff. Further, to ensure a level playing field and a fair opportunity to the plaintiff to contest elections, the defendants shall immediately take steps, including sending communications through email, to all the stakeholders/members of the society, informing all concerned that the plaintiff has been permitted by this Court, by way of present order, to contest the forthcoming USI Elections 2025 for the post of President Elect. As far as the plaintiff's prayer for grant of



permission for campaigning and canvassing is concerned, it is clarified that the campaigning and canvassing shall be subject to the existing bye-laws of USI and Notification dated 30.06.2024.

37. It is, however, clarified that the aforesaid relief shall remain subject to the outcome of the present suit.

38. It is also clarified that this Court, at this stage, has not returned any finding on the merits of the contention of the plaintiff that the amendment of 14.02.2021 was carried out without following due procedure, rules and regulations, or whether WhatsApp is included within the ambit of 'social media', lest it may affect the case of either the plaintiff or the defendants at a later stage.

39. No other relief is made out at this stage.

40. The application is disposed of in above terms.

41. Nothing expressed herein shall tantamount to an expression on the merits of the case.

**CS(OS) 927/2024**

42. List before learned Joint Registrar (Judicial) for completion of pleadings on 14.02.2025.

43. List before the Court on 25.03.2025.

**SWARANA KANTA SHARMA, J**

**DECEMBER 13, 2024**

*At*