

\$~1

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

+ CM(M) 950/2016 & CM APPL.34889-34890

ABHIJAT

..... Petitioner

Through: Petitioner-in-person

versus

RAJIV KHOSLA & ORS

..... Respondents

Through: Mr. Kanwal Chaudhary, Advocate with
Mr. Arun Kumar, Advocates for R-1 &
R-2 along with R-1 in person
Mr. Mohit Mathur, R-3 in person

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

%

30.09.2016

The present petition under Article 227 of the Constitution of India prays
as follows:-

- “(a) Pass an order setting aside the directions contained in paragraphs No.48 and 49 of the impugned order dated 19.09.2016 passed by the Court of Sh. Surinder S. Rathi, Additional District Judge-03, Patiala House Courts, New Delhi in Civil Suit No.346 of 2016;
- (b) Pass an order setting aside the impugned order dated 20.09.2016 passed by the Court of sh. Surinder S. Rathi, Additional District Judge-03, Patiala House Courts, New Delhi in Civil Suit No.346 of 2016;
- (c) Pass an order calling for trial court record, i.e. Civil Suit No.346 of 2016, titled as “*Rajiv Khosla vs. Delhi High Court Bar Association & Ors.*”; and
- (d) Pass such and any other orders as the Hon’ble Court may deem just, fair and equitable.”

Essentially, Mr. Abhijat, the petitioner who appears in person, assails the directions issued by the trial court in the impugned order dated 19.09.2016 to the extent that they purport to reconstitute the Election Commission, appointed by the Delhi High Court Bar Association.

In order to appreciate the main thrust of the submissions of Mr. Abhijat, it would be necessary to extract the relevant paragraphs of the impugned order dated 19.09.2016. The same are extracted hereinbelow:-

“48. As far as Election Commission appointed by the defendants it is argued that all the name were not as per consensus and that the EC may be reconstituted. Allegation of acting in bias manner and committing gross illegalities is made. No specific instance have been shown of any individual bias on the part of either of Ld. Chief Election Commissioner and other Ld. Election Commissioners. Evidently but Court shown that this EC is taking opinion of defendants on issues which shall be decided by it alone. All of them highly respected Members of the Bar and are well known for their achievements in their professional life and their integrity and commitment towards the welfare of Bar and Society. However since the Court is apprised during course of arguments that initially the Election Commission is ordered to be reconstituted in conjunction with the names unanimously agreed on 27.04.2016 and 25.07.2016 and those named by Hon’ble Supreme Court in order dated 11.12.2013 the Election Commission is reconstituted it as under:-

Old Election Commission

Sh. Ravi Kant Chadha, Sr. Adv.	Chief Election Commissioner
Sh. R.K. Watel, Advocate	Election Commissioner
Sh. A.P.S. Ahluwalia, Sr. Adv.	Election Commissioner
Sh. Sudhanshu Batra, Sr. Adv.	Election Commissioner
Sh. Mohit Mathur, Sr. Adv.	Election Commissioner

New Reconstituted Election Commission:

Sh. Ravinder Sethi, Sr. Adv.	Chief Election Commissioner
Sh. Ashok Bhan, Sr. Adv.	Election Commissioner
Sh. A.P.S. Ahluwalia, Sr. Adv.	Election Commissioner
Sh. Ravi Kant Chadha, Sr. Adv.	Election Commissioner
Sh. Mohit Mathur, Sr. Adv.	Election Commissioner

49. It is clarified that this addition of names is only subject to acceptance and approval by the above Ld. Senior Advocates. However in case either of them expresses any reservation it would be open to the Chief Election Commissioner to co-opt other name to

keep strength at five.”

Further, the consequential order dated 20.09.2016, which has also been impugned in the present petition is relevant and is, therefore, also extracted hereunder:-

“File taken up on application u/Sec 151 CPC moved by plaintiff.

Present: Ld. Counsel Sh. Kanwal Choudhary and Sh. Amit Sharma along with plaintiff in person.

Ld. Counsel Sh. Rishabh Bansal for defendant No.4.

This application has been moved by the plaintiff to bring it notice of this Court that Sh. Ravinder Sethi, Sr. Adv. who was substituted as Chief Election Commissioner for DHCBA 2016-17 Election by this Court in the detailed order passed yesterday has expressed his inability to take up the responsibility. An affidavit to this effect has been filed on behalf of plaintiff. Copy of this application supplied to Ld. Counsel for defendant. Submissions heard.

I see no reason as to why the case shall be adjourned for filing the written reply to the application. More so, when the elections have been ordered to be held on the date decided by Executive Committee DHCBA i.e. 07.10.2016.

Sh. Ravinder Sethi, Ld. Sr. Adv. was substituted as Chief Election Commissioner in so far as he was made the Election Commissioner by the Full Bench of Hon’ble Supreme Court in its order dated 11.12.2013 at the time of holding of DHCBA Election 2013-14.

Had it been a case of recusal by one of the four Election Commissioner, order passed by this Court on 19.09.2016 specifically provides in para 49 that the Chief Election Commissioner would be within his right to co-opt other Member of the DHCBA. However since the recusal is by the substituted Chief Election Commissioner itself, the above stipulation may not holds good. I am not inclined to nominate the two names suggested by the plaintiff apparently because they are not consensual names vis-a-vis the defendants.

I am also not inclined to allow the plea of the defendants that decision qua the name may be left open for decision by the Executive Committee of DHCBA. The reason is simple, time is of essence as of now absence of a Chief Election Commissioner may result in delay of scheduled Election. Moreover once the

Elections have been declared and an Election Commissioner has been appointed it would be in the fitness of things that all the decision related to the Elections are taken by the Election Commission alone instead of out going Executive Committee.

As such in the spirit of para 49 of the order of this Court dated 19.09.2016, the four Ld. Election Commissioner apart from nominating the Senior Advocate amongst them as Chief Election Commissioner.

The application is accordingly stands disposed off.

Copy of this be given dasti to both the sides.

Plaintiff undertakes to inform the Ld. Election Commissioners of this order as well as order passed yesterday.

Put up on date already fixed for final arguments i.e. 18.10.2016.”

Notice.

Mr. Kanwal Chaudhary, learned counsel accepts notice on behalf of respondent Nos.1 and Mr. Khosla, accepts notice for Respondent no.2.

After hearing the parties, it has been agreed by and between the parties hereto as well as the Election Commission that the present petition be disposed of by consent with the following directions:-

(i) Paragraphs 48 and 49 of the impugned order dated 19.09.2016 stand modified to the extent that the Election Commission shall comprise the following members:-

Sh. Ravi Kant Chadha, Sr. Adv.	Chief Election Commissioner
Sh. R.K. Watel, Adv.	Election Commissioner
Sh. A.P.S. Ahluwalia, Sr. Adv.	Election Commissioner
Sh. Sudhanshu Batra, Sr. Adv.	Election Commissioner
Sh. Mohit Mathur, Sr. Adv.	Election Commissioner

Sh. Ashok Bhan, Sr. Adv.

Election Commissioner

Sh. B.K. Sood, Adv.

Election Commissioner

(ii) It is reiterated that the reconstitution of the Election Commission, as above, has been done with the express consent of the parties to the present petition.

It is also clarified that save and except the modification as made hereinabove, the order dated 19.09.2016 has not been altered, modified, varied or stayed, in any manner whatsoever.

In view of the foregoing directions, the impugned order dated 20.09.2016 which modified the earlier impugned order dated 19.09.2016 is set aside and quashed *in toto*.

Nothing further survives in the present petition. The same is disposed of accordingly, directing the parties to abide by the directions issued hereinabove without demur.

SIDDHARTH MRIDUL, J

SEPTEMBER 30, 2016

dn