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

% *Date of Judgment: 03rd July, 2018*

+ L.P.A.349/2018

**EXECUTIVE DIRECTOR ASSOCIATION OF STATE ROAD
TRANSPORT UNDERTAKING.**

..... Appellant

Through: Mr. S. Nanda Kumar, Mr. Sugam
Kumar Jha, Ms. Deepika Nandakumar
and Mr. M.S. Sarana Kumar,
Advocates

versus

PRAMOD KUMAR SINGH & ORS

.... Respondents

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CAV. PET.589/2018

1. None was present on behalf of the caveator when the matter was taken at the first call. We had requested the learned counsel for the petitioner to inform the caveator that the matter has been passed over and would be taken up for hearing today. We are informed that an attempt was made to call the learned counsel for the respondent no.1. Being unsuccessful, the counsel associate Mr. Nand Kumar had personally met Mr. Manish, clerk of Mr. B.K. Gautam, Advocate in his Chamber no.94. A.K. Sen Block, Supreme Court, New Delhi. The clerk informed the counsel that although Mr. Gautam was aware about

the listing of the matter, but he had no instructions to appear. Accordingly, the caveat petition is disposed of.

CMs.APPL 25743-25744/2018(Exemption)

2. Exemption allowed, subject to all just exceptions.
3. The applications stand disposed of.

L.P.A.349/2018

4. The present appeal is directed against the order dated 23.05.2018 passed by a learned Single Judge of this Court in the writ petition filed by respondent no.1.
5. Mr. Kumar, learned counsel appearing on behalf of the appellant submits that the impugned order was passed without issuing notice to the contesting respondents, being the appellant herein and on the first date of hearing. He submits that the respondent no.1, petitioner in writ petition did not bring to the notice of the learned Single Judge that the respondent no.3 in the writ petition was the main contesting respondent. Counsel submits that although the order passed by the learned Single Judge has been complied with and the representation of the respondent no.1 has been considered and rejected and the order of rejection has been conveyed to him, however, the appellant wishes to urge that the writ petition was not maintainable against the appellant herein who was arrayed as respondent no.3 in the writ petition on the ground that the said respondent is not a State within the meaning of Article 12 of the Constitution of India. Mr. Kumar has relied upon the decision in the case of *Dr. Gandikota Venkata Ramanaiah v. The Association of State Road Transport Undertaking* in W.P.(C). 3834/1986 decided on 25.11.1992. This decision was upheld by the

Supreme Court of India when the SLP(C).3380/1993 filed against the same was dismissed. Copy of the order has been filed. Counsel for the appellant has also relied upon various orders, including the order dated 11.03.1994 passed by this Court in Writ Petition no.630/1991 and the order dated 25.08.2003 passed by a Division Bench of Gujarat High Court in the case of *Asha Rubber Pvt. Ltd. v. Union of India*, Special Civil Application no.1106/2003. The counsel for the appellant has relied upon various other orders, including the orders passed by this Court in the case of *S.H. Baheti v. UOI*, W.P.(C).8342/2005 decided on 13.05.2005; *Jeet Electrowelds P.Ltd. v. UOI & Ors.*, W.P.(C).5411/2007 dated 19.01.2009; *Sudhakar Rao Uppada v. Association of State Road Transport Undertaking*, W.P.(C).11104/2009 dated 09.10.2009; and the order dated 30.05.2001 passed in CW.481/2001.

6. We have heard the learned counsel for the appellant. Respondent no.1 had filed a writ petition being W.P.(C).5559/2018 challenging the fresh advertisement issued by the appellant herein to fill up the post of Executive Director in the Association of Road Transport Undertaking (ASRTU) on deputation basis. The respondent no.1 herein pursuant to the advertisement dated 09.11.2017 had applied and had been shortlisted. The respondent no.1 was called for an interview on 20.02.2018. The respondent no.1 was informed that the interview had been postponed and thereafter, a fresh advertisement was issued on 09.04.2018, which was circulated to five Ministries, whereas the earlier advertisement was circulated to twelve Ministries. The change of criteria was challenged by the respondent no.1 herein by filing a

writ petition. The order dated 23.05.2018 passed by the learned Single Judge, reads as under:

- “1. Vide Advertisement of 9th November, 2017 (Annexure P-1), applications were invited to fill up the post of Executive Director in Association of State Road Transport Undertakings (ASRTU) on deputation basis. Petitioner claims to have been short-listed and was called for the interview.
2. Learned counsel for petitioner submits that on 20th February, 2018, petitioner was called for the interview, but he was told on that day that the interview has been postponed. It is the case of petitioner that thereafter, fresh Advertisement (Annexure P-4) has been issued on 9th April, 2018 which according to petitioner's counsel has been circulated to five Ministries, whereas the earlier Advertisement (Annexure P-1) was circulated to twelve Ministries.
3. Learned counsel for petitioner submits that even the eligibility criteria in the impugned Advertisement (Annexure P-4) has been changed to the detriment of petitioner. Quashing of impugned Advertisement of 9th April, 2018 (Annexure P-4) is sought in this petition on the ground that this Advertisement makes petitioner in-eligible.
4. Despite service of advance notice, there is no representation on behalf of second respondent.
5. In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition and the application with permission to petitioner to make a concise Representation to second respondent qua the impugned Advertisement (Annexure P-4) within a week. If any such Representation is received by second respondent, then it be considered and disposed of by a speaking order within a period of four weeks and the fate of the Representation be conveyed to petitioner within a week thereafter, so that

petitioner may avail of the remedies, as available in law, if need be.

6. Second respondent be apprised of this order forthwith, to ensure its compliance. It is made clear that till the fate of said Representation is conveyed to petitioner, the selection in pursuance to impugned Advertisement of 9th April, 2018 be not finalized.

7. With the aforesaid directions, this petition and the application are accordingly disposed of.
Copy of this order be given dasti to petitioner's counsel."

7. While we may notice that despite an advance copy having been served, there was no representation on behalf of respondent no.2. The learned Single Judge proceeded to decide the matter.
8. Mr. Kumar, learned counsel for the appellant has contended that although the directions passed by the learned Single Judge have been complied with, but the appellant apprehends that the order may not be treated as a precedent for future as it has been consistently held by the different High Courts that a writ petition is not maintainable against the appellant herein.
9. We may note that we had passed over the matter once to enable the caveator/respondent no.1 to be present in Court. Ordinarily, we would have issued notice in the matter, but not only an advance copy has been served but a caveat petition has been filed and copy served implying that the respondent no.1 herein is well aware of the matter. Additionally, the matter was passed over to enable counsel for the petitioner to inform the counsel for the respondent no.1. In view of the settled position of law, we make it clear that the writ petition was not maintainable against the appellant herein. Mr. Kumar has

informed this Court that the order of the learned Single Judge has been complied with and the representation of the respondent no.1 stands rejected. Accordingly, the appellant would be free to proceed with the appointment in accordance with law. The appeal is accordingly allowed in above terms.

10. Since the order of the learned Single Judge has been complied with and the representation rejected, we make it clear that it would be open for the respondent no.1 to seek any such remedy as available to him in accordance with law, if so advised.

CM.APPL 25742/2018(stay)

11. The application stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JULY 03, 2018

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