

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-23757-2016

Date of Decision: 29.08.2022

SHIV MANDIR DHARMSHALA

...Petitioner

V/S

DEPUTY COMMISSIONER BATHINDA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**Present: Dr. Rau P.S. Girwar, Advocate
for the petitioner.**

Ms. Niharika Sharma, AAG Punjab.

**Mr. G.L. Bajaj, Advocate
for respondent Nos. 4 to 6 and 8.**

VINOD S. BHARDWAJ J. (Oral)

This is a petition under Article 226/227 of the Constitution of India 1950 for raising a challenge to the order dated 18.07.2016 (Annexure P-8) passed by the Deputy Commissioner, Bathinda whereby the Deputy Commissioner has incorporated the names of three candidates namely Pritpal Nayyar, Babu Ram Dhingra and Rakesh Kumar as Members of the Shiv Mandir Dharmshala (Regd.) Society. A further prayer is sought to restrain the said respondents as well as the official respondents from interfering in the affairs of the society.

Learned counsel appearing on behalf of the petitioner has contended that the petitioner Shiv Mandir Dharmshala Society is registered under the Act-21 of 1860 vide registration No. 145 of 2012-13 dated 08.01.2013. It is further contended that an alleged complaint was submitted by a lady namely Balbir Kaur against the petitioner Society and that she was acting in collusion with

respondent No. 6-Rakesh Kumar who was employed as Ahalmad in the office of the Sub Divisional Magistrate, Bathinda. They intended to grab the property belonging to the Society through dubious means and that frivolous, unsubstantiated and uncorroborated allegations were levelled with regard to management of the affairs and property of the Society.

With the aforesaid object, they started addressing complaints to one Varinder Kumar Modi by addressing him as the President of the Society, even though the said Varinder Kumar Modi had no concern with the Trust. A complaint in this regard was duly sent by members and governing body of the Society. However, no response was received on the same.

The said Babir Kaur started claiming herself to be the President of the Society even though she preaches Sikhism. An order was passed on 26.09.2014 by Sub-Divisional Magistrate, Bathinda stating that Balbir Kaur had no concern with Shiv Mandir and the property of the Society. Certain directives were, however, issued for installing CCTV cameras, putting up notice board giving details when the donation box shall be opened and to open the same in the presence of devotees. Three members were, however, nominated by the SDM vide the said order.

A complaint was thereafter sent to implement the said order by Sanjeev Kumar Sharma, whereupon the authorities conveyed the implementation of the orders.

Resultantly, the order dated 18.07.2016 was passed by the SDM, exercising the powers of the Deputy Commissioner on a complaint moved by one Sanjiv Kumar Sharma to the effect that three new members may be included in the Committee. The aforesaid complainant was alleged to be a protege of the above person.

The present dispute pertains to induction of new members by the SDM exercising the powers of Deputy Commissioner. The operative part of the order bearing Endst. No. 700/Steno dated 18.07.2016, reads thus:

“Petitioner Sh. Sanjeev Kumar Sharma came present in the office. Sh. Varinder Modi President, Smt. Pushpa Rani Cashier and Sh. Manoj Kumar Secretary didn’t caused their appearance. Which appears that they didn’t want to comply with the orders issued by this office. Therefore, order is being passed to incorporate the names of three candidates mentioned in the application by Sanjeev Kumar Sharma petitioner i.e. 1. Sh. Pritpal Nayyar, Sh. Babu Ram Dhingra and Sh. Rakesh Kumar, in Shiv Mandir Dharmshala (Regd.) Society (Regd. No. 145 dated 08.01.2013) as Members. Sh. Varinder Modi, President Shiv Mandir Dharmshala (Regd.) Society is being directed to submit the compliance report of this order to the undersigned on 21.07.2016.”

Pursuant to the aforesaid order passed by the Sub-Divisional Magistrate, Bathinda, on behalf of the Deputy Commissioner, Bathinda, the Additional Registrar of Societies, District Industrial Centre, Bathinda had sent a letter directing compliance of the aforesaid order.

Pursuant to the notice of motion issued by this Court, reply by way of counter affidavit on behalf of respondent Nos. 1 to 3 was filed by the Additional General Manager-cum-Registrar for Societies, wherein it was stated that the order in question has been passed to maintain law and order, public tranquility and to maintain peace in the Society. The relevant extract of the same is reproduced hereinbelow:-

“2. That it is the prerogative of State of Punjab and its functionaries that in order to maintain law and order, public tranquility pass any prohibitory, restrictive and instructive orders and issue instructions to any individual, religious bodies or any other group of people. The present writ petition is not

maintainable in the present form and also the petitioner has no cause of action to file the same against the replying respondents, because the impugned orders dated 26/09.2014 annexed as Annexure P-5 was passed by respondent No. 2-Sub Divisional Magistrate Bathinda and impugned orders dated 18.07.2016 annexed as annexure P-8 were passed by the respondent No. 2 Sub Divisional Magistrate, Bathinda were passed in interest of public, law and order problem because of allegations of misappropriation of funds were found while maintaining the petitioner-Shiv Mandir Dharmshala. However, vide order dated 6-01-2017 annexed as Annexure P-5, Annexure P-8 have been rescinded and fresh instructions were issued to the petitioner by respondent No. 2, while the petitioner was present in his court, but he has failed to comply with the instructions and orders Annexure R-1, as observed in orders dated 31-1-2017 annexed as Annexure R-2. Therefore, the writ petition has become infructuous and hence the present writ deserves to be dismissed on this score.

3. *That the petitioner is under solemn legal obligation to candidly disclose all the material, important facts which have bearing on the adjudication of the issues raised in the petition. He owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence and in case, the petitioner is found guilty of concealment of material facts and making an attempt to pollute the pure stream of justice, the court is duty bound to deny relief to the petitioner. In the present case, vide order dated 6-01-2017 annexed as Annexure P-5, Annexure P-8 have been rescinded and fresh instructions were issued to the petitioner by respondent No. 2, while the petitioner was present in his court, but he has failed to comply with the instructions and orders Annexure R-1, as observed in orders dated 31-1-2017 annexed as Annexure R-2, but he has failed to bring all these facts to the knowledge of the hon'ble court to get an favourable order"*

It has also been stated in the aforesaid response filed on behalf of the

respondents that a fresh order had also been passed on 06.01.2017, whereby the President of the Shiv Mandir Dharmshala Society was directed to furnish report relating to various issues raised therein. The previous order dated 18.07.2016 is stated to be rescinded and superseded by the fresh order.

The matter came up for hearing on 31.07.2017 when the respondents were directed to collect the donations given to the Temple and the same were placed under the supervision of the Deputy Commissioner.

A status report by way of affidavit of the Deputy Commissioner, Bathinda, in compliance of the said order dated 31.07.2017 was passed as per which it was informed that a Committee had been constituted to manage the receipts collected in the Shiv Mandir Dharmshala Society comprising of the President/Additional Registrar-cum-General Manager, District Industries, Bathinda; Naib Tehsildar; Superintendent in the office of General Manager, District Industries, Bathinda.

The matter was taken up again 26.09.2017, when the respondents were directed to file a report about the normal donations made in favour of the Temple and the Dharmshala Society adjoining the same and the manner in which it is spent. A status report in compliance thereto was filed by the Deputy Commissioner, Bathinda on 23.10.2017, giving details of the income and expenditure of the Dharmshala and the temple. The collection was Rs. 54,585/- whereas the total expenditure was Rs. 46,020/- for the period from 14.08.2017 to 30.09.2017. Copies of the collection and the donations received during the said period along with the details of the expenditure incurred were duly furnished. The remaining amount of Rs. 8,565/- was deposited with the Punjab and Sind Bank account mentioned therein.

A written statement on behalf of respondent Nos. 4 to 6 and 8 had also

been filed wherein it was alleged that the petitioner Society is neither the Organizer nor the Trustee of Shiv Mandir Dharmshala and it was pointed out that the same was initially constructed on the land owned by one Kishore Chand son of Shadi Ram. 15 Trustees were nominated vide a registered Trust Deed dated 08.04.1981, who used to take care of the property of the Trust and that the petitioner Society started interfering with the affairs of the Trust and has taken possession thereof. He further started collecting rents from the tenants of the premises and also embezzled the donations so collected.

Even though respondent No. 7 had been served, however, there is no representation on behalf of the respondent No. 7.

Learned counsel appearing on behalf of the petitioner contends that the Society is a registered Society under the Societies Registration Act, 1860. The Memorandum of Association and Articles of Association of the said Society prescribe the mode of inducting Members and the manner in which the affairs of the Society are to be conducted. It is contended that the Deputy Commissioner/Sub-Divisional Magistrate, Bathinda, have passed the impugned order directing induction of three persons as Members of the Society. Such order is not a mode of induction of Members as per the Memorandum/Articles of Association of the Society. He thus contends that the order passed by the Sub-Divisional Magistrate exercising the powers of the Deputy Commissioner is without jurisdiction and he is not the competent authority to issue such directions. The decision, if any, in this regard can only be passed by the competent authority under the Societies Registration Act of 1860. He further contends that the Additional Registrar has filed an affidavit giving reasons behind the passing of the order, whereas the impugned order does not record any such finding. He contends that there is no reason as to why the competent

authority could not have passed an order, if so felt necessary, in a manner known to law instead of the Deputy Commissioner exercising power not vested in him.

Learned counsel representing the State, however, contends that the orders in question had been passed to maintain law and order. He further contends that as a subsequent order had already been passed on 06.01.2017, hence, there is no occasion for the adjudication of the present case. He, however, has failed to refer to any aspect of the impugned order (Annexure P-8), where from it could be ascertained as to the jurisdiction that has been so exercised by the Sub-Divisional Magistrate on behalf of the Deputy Commissioner.

I have heard learned counsels representing the respective parties and have gone through the record appended with the instant petition and do not find myself in agreement with the submissions given by learned State Counsel.

The submission regarding the order having been necessitated to maintain law and order and peace/tranquility in the area concerned is not reflected in the order. It would not be open to the State Counsel to substitute his reasoning for the reasoning adopted by the Deputy Commissioner, especially when there is no reference to the power invoked by the Deputy Commissioner/SDM. Hence, the reasons given today in the Court cannot be accepted as the same are an after-thought.

In so far as the submission of the petitioner that a subsequent order stands passed on 06.01.2017 and as a result thereof, the present petition would not survive, is concerned, the aforesaid submission is noted to be rejected. The said order has been passed during the pendency of the present petition and as such any order which is passed during the pendency of a writ petition before the Court would be subject to the lis and outcome thereof. Furthermore, even in the said order passed by the Sub-Divisional Magistrate, Bathinda, exercising the

powers of the Deputy Commissioner, there is no reference made to any substantive provision or statutory power exercised by the authority concerned. In the absence of reference to any specific power, it is not open to the authorities concerned to pass any order to their whims and caprices. Exercise of every such jurisdiction is subjected to the statutory control and fulfilment of the ingredients prescribed therein. It was incumbent and expected of the officers concerned to make a reference to the specific powers invoked and the statute under which such an order has been passed, so that legality and justification of an order can be tested.

The Hon’ble Supreme Court has held in the matter of “*Hasham Abbas Sayyad Vs. Usman Abbas Sayyad reported as 2007(2) SCC 355 decided on 12.12.2006*”, that an order passed sans any authority or power vested in the statute is void and cannot be given effect to. Failure of the State to refer to the source of its power in exercise of any jurisdiction vested in the authority concerned renders the order liable to be set aside.

This Court is thus, left with no option, but to set aside the same. The authorities would however be at liberty to take recourse to the appropriate remedies in accordance with law to obviate any breach or violation of law.

The present petition is accordingly allowed. The impugned orders dated 18.07.2016 (Annexure P-8) and dated 25.07.2016 (Annexure P-9) and the order dated 06.01.2017 passed during the pendency of the present petition are set aside with liberties as aforesaid.

29.08.2022
Ajay Goswami

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No