

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

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**CWP-8652-2020 (O&M)
Date of decision: 04.12.2023**

RAJESH KUMAR JAIN

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present: - Mr. Sanjiv Gupta, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab
for respondents No.1 to 5.

Mr. S.K. Jain, Advocate and
Mr. Anubhav Singla, Advocate
for respondent No.6.

Mr. Ankur Jain, Advocate
for respondent No.7.

Mr. Rajan Bansal, Advocate
for respondent No. 8.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the letter/order dated 20.06.2020 (Annexure P-5) whereby the Sub Divisional Magistrate, Jagraon has cancelled the election dated 21.06.2020 as well as the election of private respondent No.8 for the post of President pursuant to the election held on

25.06.2020 (Annexure P-7). A further prayer was made that the election schedule for 25.06.2020 may also be stayed in the interest of justice.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner is a member of Sh. Roop Chand S.S. Jain Bradari (Regd) Jagraon which is registered under the Societies Registration Act, 1860. Elections of the office bearers of the Society were due in the month of April, 2020, however, on account of COVID-19, the election of the society was postponed to the month of June, 2020, for the welfare of the members and to check the spread of the pandemic. A general meeting of the society was thereafter held on 10.06.2020. The members of the society passed a resolution and nominated the Election Officers to conduct the election of the Society to the effect that Sh. Anish Jain be appointed as the “Chief Election Commissioner” and Sh. Pardeep Jain be appointed as the ‘Assistant Election Commissioner’. It was also specifically resolved that the election could not be conducted by only one officer. In the event the election is not held on the date fixed, then a decision would be taken by calling meeting of the General House for taking of decision regarding Election Commissioner.

3. He submits that subsequent to the above said resolution passed in the general meeting of the society, the Election Officer(s) issued the schedule on 15.06.2020 and as per the said schedule, the date of voting was fixed for 21.06.2020. A copy of the said schedule was sent to all the members through WhatsApp and Speed post. The last date for filing of the nomination paper was 18.06.2020 and for withdrawal was 19.06.2020. Only one nomination, i.e. by the petitioner had been filed till the last date of hearing. The election was thereafter to be held on 21.06.2020, however, as

there was no other nomination filed, the petitioner was deemed to be elected unopposed and there was no occasion for holding of election.

4. However, notwithstanding that the election had already been held, the respondent society conducted a fresh election on 25.06.2020 wherein the respondent No.8 was elected as the President of the Society. The election of the petitioner was, however, challenged by moving an application before the Sub Divisional Magistrate, Jagraon. Vide the impugned order dated 20.06.2020 (Annexure P-5), the Sub Divisional Magistrate, Jagraon set aside the said election. Aggrieved thereof, the present petition has been filed.

5. Short reply by way of affidavit of Manjeet Kaur, Sub Divisional Magistrate, Jagraon, District Ludhiana has been filed on behalf of respondent No.2, 4 and 5. Learned State counsel submits that there was no necessity for filing of any separate reply on behalf of respondents No. 1 and 3. It has been submitted in the above said reply that a representation dated 18.06.2020 was submitted in the office of Sub Divisional Magistrate by the Society stating therein that the meeting of the general house had been held on 10.06.2020 as per which the election of the society was fixed for 21.06.2020. However, as a complete curfew had been imposed by the Punjab Government on every Sunday, a meeting of the General House was held again on 16.06.2020 in which it was decided by all the members present that the election should not be scheduled on 21.06.2020 being a Sunday and the election process was requested to be stopped. The said representation was sent by the Sub Divisional Magistrate to the relevant authorities as well. An order was also passed by the Sub Divisional Magistrate on 20.06.2020 stating that the scheduled election will not be held and it would stand

cancelled and rescheduled the date of election to 25.06.2020. It is averred that the above said order had been passed only in light of the decision taken by the Government of Punjab to declare all weekends as curfew for maintaining law and order. It is further averred in the said response that the Sub Divisional Magistrate was never informed that the President of the society has already been elected unanimously.

6. A separate reply by way of an affidavit of respondent No.6-the Society has also been filed wherein it has been averred that election in terms of the rescheduled date ordered by the Sub Divisional Magistrate has been held on 25.06.2020 under the guidance and supervision of respondent No.5 by following a due process of law in which respondent No.8 has been elected. It is further submitted that when Mr. Pardeep Kumar Jain was appointed as the 'Assistant Election Officer' alongwith Mr. Anish Kumar as the "Chief Election Commissioner", the said election was to be conducted jointly by both the Election Officers and no Election Commissioner/Election Officer could have conducted the election process individually or in isolation, as per the resolution passed by the General body on 10.06.2020. Mr. Anish Jain, the Chief Election Commissioner had submitted his resignation citing personal reasons on 11.06.2020 and an information whereof was given him not only to the office bearers of the Jain Sabha but also to the Assistant Election Commissioner. Ignoring the decision taken by the General body in its meeting held on 10.06.2020 and discarding the said resolution, Mr. Pardeep Kumar Jain, the Assistant Election Commissioner proceeded ahead with the process of election and notified the schedule for holding the election. The above said illegal act of the Assistant Election Commissioner was brought to the notice of respondent No.2-Deputy

Commissioner, Ludhiana by writing a letter and forwarding the correspondence to other functionaries of the State. A request was made to ensure that the election is conducted under the supervision and guidance of certain government officials deputed for the said purpose. It is contended that due to the ongoing Covid-19 scenario and the curfew imposed by the Government of Punjab, the general body had taken a fresh decision to reschedule the election to be held on 25.06.2020 on which such date the election was duly held in the presence of Naib Tehsildar, Sidhwan Bait who had been deputed as a Duty Magistrate to supervise and oversee the conduct of elections. Two Election Commissioners i.e. Chairman S.S.Jain Maha Sabha, Punjab Uttri Bharat and President All India Jain Conference were appointed for holding of these election by initiating the election process. The renewed election schedule was duly issued to all the interested candidates to file their respective nomination papers. As many as 04 candidates filed their nomination papers before the Election Commissioners on 23.06.2020 which were found in order. On the date of withdrawal, two candidates withdrew their nomination paper and election was held amongst two contesting candidates namely Rakesh Kumar Jain son of Pawan Kumar and Manish Kumar Jain son of Gujjar Mal Jain. The casting of votes was thereafter held on 25.06.2020 and the result was declared by the Election Commissioners, under the guidance and supervision of the Naib Tehsildar, in which Rakesh Kumar Jain was declared as elected. The Election Commissioners issued a certificate of election in favour of the above Rakesh Kumar Jain. The newly elected President of the Jain Sabha thereafter convened a meeting of the General House for nominating his office bearers as per the constitution and a new Team was also announced, which was

also approved by the General House. The affairs of the society are being managed peacefully by the newly elected governing body.

7. An independent separate reply was also filed by respondent No.8 i.e. the newly elected President reiterating the aforesaid facts which are not required to be reiterated for the sake of gravity.

8. Counsel for the petitioner has argued that the decision of the respondent cancelling the election was beyond the powers vested in it. The Society being a registered society under the Society Registration Act, 1860 and the question as regards the outcome of an election and as to whether such result is binding or not is a question which requires declaration of civil rights and authority. Such declaration could not have been done by the Sub Divisional Magistrate and the jurisdiction is vested only with the Civil Courts. He further contends that the reply of the Sub Divisional Magistrate further corroborates his case since the Sub Divisional Magistrate was not aware of the election having already been held on 19.06.2020. Hence, the order whereby the election of the petitioner had been cancelled by the Sub Divisional Magistrate was clearly an act of mistake as admitted by the Sub Divisional Magistrate himself. He thus contends that he is entitled to continue as President of the said society.

9. Per contra, learned counsel appearing on behalf of the respondents have placed reliance upon the resolution passed by the General House on 10.06.2020 as per which the election could have been held only by both the nominated Election Commissioners. The Chief Election Commissioner having submitted his resignation on 11.06.2020, the remaining Assistant Election Commissioner could not have proceeded ahead with the Election and he was required to refer the matter to the General

House for taking a fresh decision in terms of the resolution dated 10.06.2020. Notwithstanding that the Assistant Election Commissioner was aware of the decision taken by the General House and also about the resignation of the Chief Election Commissioner, he proceed ahead with the election schedule. The said power having not been conferred upon him, his acts were beyond power conferred on him and would vitiate acts so undertaken. The Assistant Election Commissioner exercised the jurisdiction beyond what had been conferred upon him by the general house, with malice, and that any act of usurpation of an authority, in violation of the resolution passed by the General House vitiates all consequential acts as well.

10. Counsel for respondent No.8 has additionally argued that the fresh election had already been held in a manner known to law. The General House had reconvened its meeting and had passed a fresh resolution which should be read in supersession of the earlier resolution dated 10.06.2020. Two fresh Election Commissioners had been appointed and the election was duly held on 25.06.2020 under the supervisions of the Naib Tehsildar, Sidwan Baith. The result was declared by the two nominated Election Commissioners after the election having been held on 25.06.2020 wherein the respondent No.8 had been declared as elected. It is vehemently argued by the counsel for the respondents that the petitioner has connived with the Assistant Election Commissioner and the entire process of his election should be vitiated on the fact that the Assistant Election Commissioner did not draw any further authority in terms of the resolution dated 10.06.2020 and the conduct of the election process, despite lack of authority, would not entitle the petitioner to claim any better right. It is, however, not disputed by

the counsel that the question of *inter se* civil rights can only be decided by a Civil Court.

11. Having heard learned counsel for the respective parties and having gone through the documents appended alongwith the present writ petition, the following issues would arise for determination:

i) Whether the Assistant Election Commissioner could have continued ahead with the election process despite the Chief Election Commissioner having tendered his resignation, in terms of the resolution passed by the General House in its meeting held on 10.06.2020.

ii) Whether the election of respondent No.8, that has been held in terms of a fresh resolution passed by the General House, would be valid and would override the uncontested unanimous election of the petitioner since there was no other nomination filed in terms of the schedule of election announced earlier.

iii) Whether the Sub Divisional Magistrate could have set aside an election that is claimed to have been held on 19.06.2020.

12. Having heard learned counsel appearing on behalf of the respective parties and having gone through the documents available on record, the adjudication of the aforesaid issues and the import thereof, on the process that had been adopted and the rights of the elected/returned candidates, would require evidence to be led before the Civil Court. Accordingly, while holding that the Sub Divisional Magistrate had no jurisdiction to cancel an election, if already held, this Court is also conscious of the fact that the claim of the respondents is that the said election cannot be considered as an election in the eyes of law since the process itself was not in accordance with the resolution passed by the General House on

10.06.2020. Besides, the decision of the Sub Divisional Magistrate may technically not be an adjudication on the election and only a deferment of the election schedule, it is thus yet to be determined whether election of the petitioner would be valid or not. These issues would give rise to disputed questions of fact which would require parties to lead evidence.

13. The present writ petition is accordingly disposed of at this stage with liberty to the concerned parties to approach the Civil Court against the said election of the respondent. The parties are at liberty to approach the Civil Court within a period of one month from a receipt of certified copy of this order, if otherwise within limitation. The status quo as it exists today with respect to running affairs of the society shall be maintained by the respective parties till filing of the suit before the Civil Court if any. The finance powers shall be continued to be exercised in terms of the order dated 08.07.2020 passed by this Court till the institution of the suit before the Civil Court.

All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)

JUDGE

DECEMBER 04, 2023

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No