

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.242

LPA-581-2020 (O&M)

Date of decision: 12.09.2023

Rakesh Goyal

....Appellant

Versus

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Ashwani Prashar, Advocate
for the appellant.

Mr. Ramandeep Singh Pandher, Sr. DAG, Punjab
for respondents No.3 and 5.

Mr. Paras Jain, Advocate
for respondents No.23 to 28.

* * *

DEEPAK SIBAL, J. (Oral)

1. Through the present intra court appeal, the appellant challenges the judgment dated 07.07.2020 passed by a learned Single Judge of this Court disposing of the petition filed by respondents No.23 to 28 with a direction to the Sub-Divisional Magistrate, Khanna, District Ludhiana (for short – the SDM) to consider and decide the representation dated 09.06.2020 made by respondents No.23 to 28 within a period of 03 months after giving proper hearing to all concerned. Also under challenge is the order dated 27.08.2020 passed by the learned Single Judge dismissing the review application filed by the appellant seeking review of the aforesaid judgment of the learned Single Judge.

2. The appellant is an elected member of respondent No.4 - Shri

Saraswati Sanskrit Vidayalya Trust and Management Society, Khanna (for short - the Society). He was elected as a member of the Society on 07.06.2020. Respondents No.23 to 28 were aggrieved by the appellant's election and in this regard submitted a representation to the SDM. When such representation was not decided by the SDM they knocked the doors of this Court seeking therein issuance of directions to the SDM to decide their representation. The petition filed by respondents No.23 to 28 was disposed of by a learned Single Judge of this Court with a direction to the SDM to decide their representation within 03 months from the date of receipt of a certified copy of the order but only after giving proper hearing to all concerned.

3. Learned counsel for the appellant contends that the impugned judgment was passed without any notice to the appellant; when he became aware of the impugned judgment he filed an application seeking its review which has been dismissed by the learned Single Judge through a non-speaking order; the learned Single Judge should have not disposed of the petition filed by respondents No.23 to 28 without issuing notice to the appellant as he being an elected representative of the Society was required to be heard before any decision was made which would be prejudicial to his rights; the impugned judgment prejudices the appellant's rights as through the same directions have been issued to the SDM to decide a matter which may result in setting aside of his election; once the election was over the SDM has no jurisdiction to decide any issue with regard to the election as after the declaration of the results of the elections he becomes *functus officio*; in fact, the writ petition filed by respondents No.23 to 28 was not even maintainable against the Society as the Society would not come under

the definition of “State” under Article 12 of the Constitution of India and that all the afore issues were taken by the appellant before the learned Single Judge through a review application which was dismissed through a non-speaking order.

4. Per contra, learned counsel for respondents No.23 to 28 submits that the appellant has no cause to invoke the appellate jurisdiction of this Court as through the impugned judgment all that the learned Single Judge has done is to direct the SDM to take a decision on the representation filed before him; all the issues taken by the appellant were duly considered in the review application filed by the appellant resulting in its dismissal; no prejudice would be caused to the appellant as in the impugned order the learned Single Judge has directed that before the SDM is to take a final decision all concerned are required to be heard; since there is no mechanism provided under the Societies Registration Act, 1860 for challenging the election of the appellant and because the SDM was heading the election committee at the time of holding of the elections it is the SDM who would be competent to take a decision with regard to the validity of the elections of the members of the Society.

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

6. Through the judgment under challenge, the learned Single Court has directed the SDM to dispose of a representation filed by respondents No.23 to 28 through which they have questioned the appellant's election as a member of the Society. Thus, the learned Single Court has bestowed authority on the SDM to adjudicate upon the appellant's election as a member of the Society. These directions were issued without any notice

to the appellant and in terms of such directions the decision to be made by the SDM could prejudice the appellant's rights.

7. In the light of the above and because the appellant has seriously objected to the very maintainability of the writ petition filed before the learned Single Judge and has raised a debatable issue with regard to the jurisdiction of the SDM to decide as to whether the appellant's election was valid as also for the reason that the review petition filed by the appellant by the learned Single Court was dismissed through a non-speaking order, without expressing any opinion on the merits of the case, we are of the opinion that both the judgment dated 07.07.2020 and the order dated 27.08.2020 passed by learned Single Judge need to be set aside and are ordered to be so. Resultantly, the matter is directed to be placed before a learned Single Judge as per roster for a fresh decision on the matter, in accordance with law.

8. The appeal is allowed in the above terms.

9. Needless to add that both the parties would be at liberty to raise all available pleas before the learned Single Judge.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

September 12, 2023

Jyoti 1/sunil yadav

Whether speaking/reasoned Yes/No

Whether reportable Yes/No