

SIKH NEWSPAPER LTD.
v.
D.M. JALANDHAR AND ORS.

JANUARY 2, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Company Law :

Newspaper Company—Deficiency in its working—General Body Meeting of Shareholders for the purpose of working of the company—Suit to be filed by the Company—Commissioner to be appointed to conduct the General Body meeting in accordance with bye-laws and Articles of Association of the Company—Earlier orders passed in this matter by Supreme Court to be basis for taking further action—Directions—Issued.

CIVIL APPELLATE JURISDICTION : I.A. Nos. 8-11 of 1993.

IN

Civil Appeal No. 5855 of 1983.

From the Judgment and Order dated 4.2.83 of the Punjab & Haryana High Court in L.P.A. No. 94 of 1983.

R.S. Sodhi, Ms. Meenakshi Arora, Ms. Ruby Ahuja, Mrs. M. Karanjawala for the Appellants.

Swaraj Kaushal, R.S. Suri, N.K. Aggrawal, G.K. Bansal Rani Jethmalani (NP) for the Respondents.

The following Order of the Court was delivered :

We have heard the counsel on either side. This Court on march 6, 1990 passed the order as under :

"The Arbitrator will determine the above issue and other connected issues indicated above and make his award giving the list of the genuine shareholders of the company as on 10.11.87 within four months from the date of his entering upon the reference. The arbitrator will also fix a suitable date for the holding of a meeting of the above gen-

eral body of shareholders of the company under the Chairmanship of the persons mentioned, and for transacting the business referred to, in the Minutes of Settlement annexed to the order dated 11.11.87 in the manner indicated therein. We direct the appellant company, thereupon, to take necessary steps to convene the meeting on the date so fixed and issue necessary notices to the shareholders on the list drawn up by the arbitrator. We further direct that the meeting be held on the date specified in the award notwithstanding any order, injunction or prohibition issued by any court restraining the holding of the meeting or restraining the shareholders or any of them from voting at the meeting and subject only to any directions that may be issued by this Court before the meeting is actually held. Till the final disposal of the matter, the fixed assets of the Company should not be alienated, parted with or encumbered by any of the parties without the permission of this Court."

I.A. Nos. 8-11/93 have been filed seeking direction to the District Magistrate, Jalandhar, or for that matter any other person, to restore the *status quo* with regard to the status of the applicant Shri Ratnesh Singh Sodhi as the Printer, Publisher and Editor in Chief of the Akali Patrika owned by Sikh Newspaper Ltd. and to restore *status quo* with regard to the same as on 16.4.1993 till a meeting of the share-holders of the Company (as decided by the Arbitrator) is held to determine the said issue.

An affidavit has been filed by Balraj Singh Takhar stating that he has settled down in States and he no longer is interested in pursuing the matter and that, therefore, he is entitled to withdraw from the contest and let the matter be closed. When the matter had come up before us on November 27, 1995, in view of the above statement, Shri R.F. Nariman, learned counsel who appeared for the second appellant in the main appeal had stated that in view of the consent of the parties for appointment of an arbitrator, namely, Shri Justice E.S. Venkataramiah, as he then was, and since the learned Judge had declined to act as an arbitrator, he requested appointment of a fresh arbitrator to pursue the direction issued by this Court. At that stage, it was pointed out that since the Court had no material before it as to who is to prosecute the arbitration proceedings and on whose behalf, it would be difficult to give such direction as sought for which reads thus :

"Learned counsel appearing for the 2nd respondent in the main matter and the applicant in this application stated that in view of the

affidavit filed by Balraj Singh Takhar, son of Shri Banta Singh, appellant No. 2, that he does not wish to proceed further in the management of "Daily Akali Patrika" and that since he has been prosecuting the proceedings and having been settled in U.S.A., it would be difficult for him to proceed with the matter in India. Therefore, he stated that Shri Ratnesh Singh Sodhi may be entrusted to function as printer, publisher and chief editor of the Patrika.

Shri R.F. Nariman, learned counsel appearing for appellant No. 2 stated that earlier order passed by this Court, *inter alia*, directed, by consent of the parties, appointment of an arbitrator and though Justice Venkátaramiah, as he then was, was chosen by the parties to be an arbitrator, since the learned Judge had declined to act as an Arbitrator, a fresh Arbitrator needs to be appointed.

Shri Sodhi, learned counsel appearing for the first appellant contended that he has instructions to state that the first appellant is willing to have the matter settled by arbitration.

We do not have any material on record as to who is intending to prosecute the arbitration proceedings and on whose behalf. Under these circumstances, we cannot give any directions except on filing of an affidavit by appropriate persons concerned and also by consent of all the parties.

Shri sodhi seeks for and is granted four weeks' time for filing an affidavit. Post after four weeks."

Accordingly, Shri Sodhi, learned counsel had taken time to file an affidavit in that behalf. Now, an affidavit has been filed stating that the company is prepared to pursue the proceedings in the arbitration.

Having heard the learned counsel on both sides, we think that appropriate course would be as under :

The order passed by this Court initially made on April 5, 1989 and the final order dated March 6, 1990 would form the basis for further action in the matter.

The company would file a suit in the trial Court having jurisdiction over the area in which the company is situated. In the suit, for conducting the meeting of the General Body, the trial Court would take the aforesaid orders passed

by this Court as basis to take further action.

On that basis a Commissioner would be appointed to conduct the meeting of the General Body and would follow the directions issued in the order dated March 6, 1990 and conduct the proceedings in accordance with the bye-laws and the Articles of Association of the Company and take further action as may be prayed in the suit consistent with the bye-laws and the Articles of Association of the company.

This order, we think, would meet the situation available for working of the company. The I.As. are accordingly ordered.

Directions issued.