

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constt. Petition No. D- 712 of 2022

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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Before:

Justice Adnan-ul-Karim Memon
Justice Abdul Mobeen Lakho

The petitioner : Leela Kalpna Devi Hindu,
Through Mr. Ashfaq Hussain Abro,
Advocate

Respondent(s) : Secretary Minority, Government of Sindh and
others. Through Mr. Abdul Hamid Bhurgri,
Additional Advocate General, Sindh.

Respondents 5&6. : Present in person.

Date of hearing & order: 02-08-2022

ORDER

Adnan-ul-Karim Memon, J. Petitioner Leela *alias* Kalpana Devi, who is a practicing advocate, has filed this petition with the following prayers:-

- a) *To declare that, the election schedule 2023-2025 issued by respondent No.3 and list of members without including the name of petitioner and other female members of community is illegal, without legal justification, therefore, liable to be set-aside.*
- b) *direct the respondent No.3 to revive the list while including the name of petitioner and other female members of community as per order dated 24.12.2020 and to conduct the fresh election on revised list.*
- c) *direct the respondent No.3 to issue nomination to petitioner to contest the election of Hindu Community / Panchayat Larkana.*
- d) *direct the respondent No.2 to supervise and conduct the election.*
- e) *direct the respondents to act strictly in accordance with law, and respondent No.7 to provide security on the day of election.*

2. At the outset, we queried from learned counsel for the petitioner as to how this petition is maintainable against Private Hindu Panchayat, Larkana, and its office bearers, having no legal character in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Mr. Ashfaq Hussain Abro learned counsel for the petitioner has briefed us on the issue involved in the present proceedings and submitted that the petitioner had

contested the election of Hindu Panchayat Larkana, in the year 2013 and had succeeded in the election and remained Representative/Chairperson of Hindu Panchayat, Larkana for a term of 03 years, with effect from 2013 to 2015; and during such tenure, she did her best for the Hindu Community. He next argued that in the election for the term from 2016 to 2019, she intended to contest the election and submitted her nomination form, but the same was rejected by respondent-Panchayat, declaring her ineligible on the ground of her being a female candidate, which acts on their part was illegal and unconstitutional; she challenged such decision of Panchayat in C. P. No.D-460/2016 before this Court, which was allowed in terms of order dated 27.04.2016; however, the election could not take place. Per learned counsel, the petitioner filed another petition bearing C. P. No.D-798/2018 before this Court, and the petitioner was allowed to contest vide order dated 27.11.2019; however, the election was not announced/scheduled. The petitioner also filed Civil Petition No.276-K of 2019 before the Hon'ble Supreme Court of Pakistan, where the respondent No.3/Election Commissioner, Hindu Panchayat, Larkana gave assurance to attempt to persuade the Chairman Hindu Panchayat to revive the list and include the names of females in the member list of District Larkana but failed to do so. Learned counsel added that the schedule of election 2022 of Hindu Panchayat for the term from 2023 to 2025 has been issued; however, the list of members does not contain the name of any female member; whereby the petitioner and other females have been deprived of contesting the election of Hindu Panchayat.

4. Respondents No.5 and 6 who are present in person raised the question of maintainability of the instant petition in terms of Article 199(1) (c) of the Constitution and referred to the para wise comments and submitted that Hindu Panchayat Larkana is not a registered body, which is formed by the Hindu elders/nekmands to redress the grievance which is being faced by their community and the same cannot be termed as a 'person' which may justify the issuance of the writ against it, as is sought for by the petitioner by this Court in the exercise of its constitutional jurisdiction under the pretext that in past she had been chairperson of Hindu Panchayat Larkana. They further submitted that the present matter does not involve the enforcement of the fundamental right of the petitioner. They further submit that in the instant case, the fundamental rights being relied on by the learned counsel in making such an argument are Articles 9, 14, 17, 18, and 25 of the Constitution, all of which do not seem to be relevant in the instant matter on the premise that the internal functioning of the Hindu Panchayat, which is purely a private body, therefore writ is not maintainable against the Hindu Panchayat under Article 199(1) (c). They further submitted that Hindu Panchayat having its aims and objects has not deprived the petitioner of her rights as portrayed by her as such Hindu Panchayat does not provide a female, a gender to be a member of such association, which is not discrimination amongst a class chosen by the Association. They also cited various judgments of the Honorable Supreme Court to substantiate their viewpoint on the maintainability of the instant petition. They further submitted that it was not the business of women to deal with the

matters of the community, so Hindu Panchayat can't afford to allow them to contest elections to control the Hindu Panchayat. They further submitted that they mistakenly allowed the petitioner to contest in 2013. They also referred to Article 199(1) (a) of the Constitution, which reads as follows;

Article 199. Jurisdiction of High Court.- (1)

Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

(a) on the application of any aggrieved party, make an order-

*(i) directing a **person performing**, within the territorial jurisdiction of the Court, **functions in connection with the affairs of the Federation**, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or*

*(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a **person performing functions in connection with the affairs of the Federation**, a Province or a local authority has been done or taken without lawful authority and is of no legal effect;*

5. Learned Additional Advocate General, Sindh has supported the stance of the private respondents.

6. At this stage petitioner sought the indulgence of this Court and requested that she may also be heard on the subject issue of maintainability. Permission was granted to her. She has submitted that she stood up on behalf of all women of the Hindu Community, against male dominancy, that hampered them to cast votes or contest the Elections of a panchayat and filed the instant petition which is maintainable in terms of Article 187(2) and 189 of the Constitution; that she has been irked by the conduct of the respondent-panchayat who have violated the order dated 24.12.2020 passed by the Hon'ble Supreme Court; that it is against the law no allowing females to cast vote and contest panchayat election. She further submitted that Hindu panchayat leaders want to deprive her and other women of their lawful rights. She referred to Articles 17 and 25 of the Constitution of Pakistan and submitted that the said Articles guaranteed that there should be no discrimination based on gender and submitted that for decades, women have not been allowed to take part in the electoral process within the community. She prayed to declare the scheduled election dated 04.7.2022 void ab initio, without lawful authority. She lastly submitted that her intention is simple just to ensure that the ban on women in contesting the Election may be lifted. The private respondents have refuted the claim of the petitioner by referring the letter dated 3.2.2021 page-63 and submitted that order dated 24.12.2020 passed by the Hon'ble Supreme Court in Civil Petition No.276-K/2019 has already been complied with and

copy of the decision has been forwarded to the Registrar of Hon'ble Supreme Court. Petitioner again stood up and submitted that the name of the petitioner has been excluded from the voter list as directed by the Hon'ble Supreme Court which has triggered the cause to the petitioner to approach this court for enforcement of judgment passed by the Hon'ble Supreme court as well as her fundamental rights.

7. We have heard the learned counsel for the parties on the point of maintainability of the instant petition in terms of order dated 6.7.2022, passed by this court, it is an undisputed fact that Hindu Panchayat, Larkana is neither controlled by Federal / Provincial Government or Local Authority nor is a statutory body and nor has its Statutory Rules to be enforced through a writ petition. Principally, Hindu Panchayat, Larkana does not satisfy the function test in terms of Article 199(5) of the Constitution as laid down by the Honorable Supreme Court in the cases of Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others (PLD 1975 §C 244), Pakistan International Airline Corporation and others v. Tanweer-ur Rehman and others (PLD 2010 §C 676), Anoosha Shaigan v. Lahore University of Management Sciences and others (PLD 2007 §C 568), Pakistan Red Crescent Society and another v. Syed Nazir Gillani (PLD 2005 §C 806) and Abdul Wahab and others v. HBL and others (2013 §CMR 1383) and Mirza MUHAMMAD NAZAKAT BAIG Versus FEDERATION OF PAKISTAN through Secretary Ministry of Law and Justice, Islamabad and another (2020 § C M R 631).

8. We have examined the bylaws of the Hindu Panchayat (Page 9 to 19), which explicitly show that these are the internal arrangement of the Panchayat having no backing of the law. Besides that, the nature of the dispute as raised by the parties cannot be adjudicated under Article 199 of the Constitution. On the subject issue, the view expressed by the Hon'ble Supreme Court in Syed Iqbal Hussain Shah Gillani vs. Pakistan Bar Council through Secretary Supreme Court Bar Building, Islamabad (2021 §CMR 425), is clear in its terms and it was held that the writ petition against the Council is not maintainable.

9. In our view Hindu Panchayat, Larkana is not a 'person' in terms of Article 199(5) supra, therefore no writ of Certiorari or Mandamus can be issued against its office holders, in terms of Article 199(1) (a) supra. Hindu Panchayat, Larkana has no status of a public body; therefore, Hindu Panchayat is not a person exercising functions in connection with the affairs of Federation / Province and Local Authority in terms of Article 199(1)(a)(i) and (ii) of the Constitution. Thus, the preliminary objection raised by the respondents is sustained. On the aforesaid proposition, we are fortified with a decision rendered by the Honorable Supreme Court in the cases of Pakistan Olympic Association through President and others v. Nadeem Aftab Sindhu and others (2019 §CMR 221), and Mirza MUHAMMAD NAZAKAT BAIG Versus FEDERATION OF

PAKISTAN through Secretary Ministry of Law and Justice, Islamabad and another
(2020 SCMR 631).

10. In the light of the above facts and circumstances of the case, this petition is not maintainable and is hereby dismissed along with the pending application(s) with no order as to costs. However, the petitioner, if yet subsists grievance against the respondents, may avail her remedy under law.

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