

(2023) 02 DEL CK 0121

In the Delhi High Court

Case No : Civil Writ Petition No. 573 Of 2018

Bhupinder Singh & Anr

APPELLANT

Vs

LT Governor Of Delhi & Ors

RESPONDENT

Date of Decision : 20-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 148, 149, 226, 227
Delhi Sikh Gurdwara Management Committee (Election of Pro-Tempore Chairman, President, other Office Bearers and Members of the Executive Board) Rules, 1974 — Rule 15A
Delhi Sikh Gurdwara Act, 1971 — Section 29, 30, 32(c)
Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 — Section 20
Companies Act, 1956 — Section 226(1)
Companies Act, 2013 &md

Citation : (2023) 02 DEL CK 0121

Hon'ble Judges : Manmohan, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Anunaya Mehta, Gautam Narayan, Asmita Singh, Unmukt Gera, Harshit Goel, Anil Soni, Devrat Yadav, Harish Malhotra, Avneet Kaur, Gaurav Kumar Pandey, Rajesh Ranjan, Aman Kapoor, Ashutosh Agarwal

Final Decision : Dismissed

Judgement

Saurabh Banerjee, J

1. Petitioners by way of this Public Interest Litigation [Hereinafter referred to as "PIL"], involving The Delhi Sikh Gurdwaras Act, 1971 [Hereinafter referred to as "DSG Act"], seek certain directions with respect to the functioning of Delhi Sikh Gurdwara Management Committee [Hereinafter referred to as "Committee"] and Guru Harkrishan Public School (New Delhi) Society in view of their total failures. Primarily, petitioners seek declaration of the provisions of Section 29 of the Delhi Sikh Gurdwara Act, 1971 [Hereinafter referred to as "DSG Act"] as unconstitutional; and a direction to the Committee and GHPS Society to ensure conducting the yearly audit of the entire financial accounts of the Committee and

GHPS Society through Comptroller and Auditor General of India [Hereinafter referred to as "C&AG"]; and a direction to the same Committee and GHPS Society to act in adherence to Section 29 and Section 30 of the DSG Act; and a direction to the C&AG to conduct the "Special Audit" of the Committee and GHPS Society, amongst other reliefs.

2. Prior to commencing arguments, learned counsel for petitioners candidly submitted that he wishes to confine his submissions to conducting of a yearly audit of the entire financial accounts of the Committee and the GHPS Society; and a direction for the C&AG to conduct a "Special Audit" of all the financial affairs of the said Committee and the GHPS Society by the C&AG for certain years; and for laying down of certain guidelines with respect to the functioning of the said Committee and the GHPS Society, we refrain from commenting anything on the same. In any event, for the foregoing reasons qua the issue of maintainability of the present PIL, there arises no actual requirement for this Court to address anything about them.

3. Notice in the present PIL was issued to all the respondents, who filed their counter/ short affidavits in due course. Accordingly, today since the same is ripe for hearing, in the opinion of this Court it will be in the interest of justice, more specifically the parties involved, that a hiatus be brought to the surrounding controversy by drawing the final curtains to this litigation. Today, while hearing learned counsel for all parties and considering the factual matrix involved therein, but without going into the merits of the issues, this Court is of the opinion that since the present PIL is involving the issues arising out of a Statute, the DSG Act, enacted with a view "to provide for the proper management of the Sikh Gurdwaras and Gurdwara property in Delhi and for matters connected therewith" and admittedly as the petitioners, prior to filing of the present PIL, by way of an application under the Right to Information Act, 2005 had ascertained that there was a mis-management and illegal abstraction of the public funds due to connivance and conspiracy of the entire officials of the Committee and the GHPS Society, the moot issue for consideration is qua the maintainability of the present PIL in the wake of the already existing DSG Act.

4. In essence, the question is "can" and/ or "should" this Court entertain the present PIL when the said already existing Act, being a Code in itself, has all the laid out provisions with respect to the Committee, its powers and functions, settlement of election and other disputes amongst other miscellaneous provisions and as Section 32(c) of the said DSG Act specifically provides that the appropriate remedy for redressal of the grievance(s) of the present nature raised in the present PIL of the petitioners lie before the "District Court".

32. Jurisdiction of District Court in other matters. – The Court of the District Judge in Delhi shall also have jurisdiction in respect of the following matters, namely:-

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(c) Petitions regarding complaints, irregularities, breach of trust, mismanagement in any Gurdwara, educational or other institutions against any member, office-bearer or officer or other employee of the Committee.

5. Interestingly, both Committee and the GHPS Society are formed and governed by the DSG Act and are organizations constituted by voluntary contribution and donation from the public with no allocation from the Consolidated Fund of India i.e., they are neither a part of nor belonging to nor controlled by the Government of India. The C&AG can carry out the audit of accounts of certain authorities or bodies after following due process of law provided in Section 20 of The Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 [Hereinafter referred to as "CAG Act"]. Duties of the C&AG are derived from Article 148 and Article 149 of The Constitution of India. Thus, this Court cannot direct C&AG to conduct a "Special Audit" of all the financial affairs of the Committee and the GHPS Society.

6. The committee and the GHPS Society are formed and governed by the DSG Act, a central piece of legislation, which has no provision for conducting of an audit by the C&AG. In fact, what is instead categorically stipulated in Section 29 of the said DSG Act is that the said audit "... shall be audited by one or more auditors duly qualified to act as auditor under sub-section (1) of section 226 of the Companies Act, 1956 (1 of 1956) (hereinafter referred to as the auditor), who shall be appointed by the Committee...". The sum and substance of the same is that the audit is to be carried out by one or more Chartered Accountants after due nomination by the Committee.

7. Further, the Lieutenant Governor of Delhi (Administrator) and Directorate of Gurdwara Elections Government of NCT of Delhi are to conduct an enquiry into the allegations of financial irregularities, if any, under Rule 15A of The Delhi Sikh Gurdwara Management Committee (Election of Pro-Tempore Chairman, President, other Office Bearers and Members of the Executive Board) Rules 1974 [Hereinafter referred to as "DSGMC Rules"], wherein the procedure is clearly stipulated .

15A. Convening of special meeting:- On receipt of written request from not less than thirty-four Members of the Committee alleging gross violation of the provisions of the Act or financial irregularity or impropriety, the Government may direct the Director to conduct an enquiry in to such allegations. If on the basis of the report submitted by the Director, the Government is satisfied that the allegations leveled in the request are prima-facie established, it may direct the Director to convene a special meeting of the Committee for the removal of the office-bearers and the members from their office in the Executive Board by a resolution under Section 17 of the Act and for a fresh election of the Executive Board. For the purpose of conducting elections of the Executive Board, the Director may appoint any officer of the Government of National Capital Territory of Delhi of the rank of at least an Additional District Magistrate as Returning Officer subject to the Superintendence and control of the Director.

8. Admittedly, since the petitioners made no complaint(s) of any kind agitating their grievances as raised in the present PIL prior to its filing, the petitioners cannot be allowed to agitate their grievances by way of the present PIL directly.

9. Moreover, in view of Section 32(c) of the DSG Act the petitioners are estopped from raising any grievances by way of the present PIL before us as they are amenable only to the jurisdiction of the District Court. When there is a specific remedy provided under a Statute (DSG Act herein) governing the disputes raised before a Court of Law (this Court herein), no party (petitioners herein) can be allowed to choose an alternative forum of convenience for agitating grievance(s). Both, Committee and the GHPS Society, are specialized organization formed under a special, DSG Act. Petitioners cannot choose to create an alternate route when there is already an existing prescribed route.

10. In the end, at the time of conclusion of arguments, learned counsel for petitioners orally sought latitude praying for treating both Committee and the GHPS Society as 'Government Entities', however, the same is not possible in view of the admitted facts detailed hereinbefore of them being voluntary organizations with no connection with the Government of India and more specifically, in view of Section 2(45) of The Companies Act, 2013 whereby a 'Government Company' is a company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

11. Last, but not the least, it is only in 'exceptional circumstances', when something is capricious or discerning, desperate needs call for desperate measures and a Court, sparingly, exercises its jurisdiction to interfere with the existing law. If the Court does not find such 'exceptional circumstances' existing, then the Court is to only follow and interpret the existing law. Ordinarily, a Court is not to entertain writ petition(s) under Article(s) 226/ 227 of The Constitution of India or a PIL of the present nature for directing the executive or the legislature to modify or change the existing law far from enacting a new law by exercising its powers of judicial review. It is not for this Court to tread upon the executive or legislative sphere. By virtue of the present PIL, petitioners cannot expect this Court to transpose its function(s) and perform something falling in the realm of the executive or legislature, far beyond its domain. A Court cannot lose sight of its fettered powers and has to be extremely cautious, circumspect and prudent while discharging its functions and in dealing with matters not falling or not concerning its domain.

12. In our discerning view, the facts of the present PIL are most certainly not involving any exceptional circumstance(s) calling for this Court to extend some latitude to the petitioners by granting the reliefs sought for. Thus, the present PIL being not maintainable, cannot be entertained by this Court on two further counts, firstly, as there is already an applicable law, the DSG Act with the

complete methodology and mechanism for carrying out an audit by Chartered Accountants after due nomination by the Committee selected under the said DSG Act in place and secondly, as there is already an existing law, the CAG Act, wherein the C&AG cannot voluntarily carry out an audit on its own save and except as provided in the CAG Act. Needless to say, the best case of the petitioners is qua mis-management and illegal abstraction by the Committee and the GHPS Society, for which they have not followed the due process of law (Rule 15A, DSGMC Rules) and have instead chosen the wrong forum for redressal of their grievances (Section 32(c), DSG Act).

13. Having observed the factual position and in view of the foregoing settled position of law, we have no hesitation in holding that the present PIL is neither maintainable in law nor on facts as the petitioners are unable to make out any case for grant of the reliefs prayed for. As such, finding no merit in the present petition, the same is dismissed. No order as to costs, leaving the respective parties to bear their own costs.

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14. Vide the present application, the petitioner no.1 is seeking to transpose petitioner no.2 as a Proforma Respondent in the array of parties.

15. In view of the findings of this Court in the main PIL hereinbefore, the present application accordingly stands dismissed.