

(1995) 01 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No. 3176 of 1994 and C.M. No's. 5966, 6569 and 8546 of 1994

Gurdeep Singh Dau and others

APPELLANT

Vs

Delhi Sikh Gurdwara Prabandhak Committee

RESPONDENT

Date of Decision : 05-01-1995

Acts Referred:

Citation : AIR 1995 Delhi 182 : (1995) ILR Delhi 460

Hon'ble Judges : Dr. M.K. Sharma, J; D.P Wadhwa, J

Bench : Division Bench

Advocate : Mukul Rohtagi and Rajiv K. Garg, for the Appellant; D.D. Thakur and H.S. Rhandhawa, for the Respondent

Judgement

D. P. Wadhwa, J.—This, it would appear, is the second round of litigation. The first (CWP No. 2630/ 94) was dismissed on 26 July 1994 principally on the ground that the Court was not satisfied about the bona fides of the petitioners therein in filling the petition. The challenge in both these petitions is the same. The petitioners seek a writ in the nature of certiorari or any other appropriate writ, order or direction quashing the proceedings of the meetings held on 10. May 1994 and 21 May 1994 and also Resolution No. 9 dated 26 May 1994 of the Delhi Sikh Gurdwara Management Committee, established u/s 3 of the Delhi Sikh Gurdwaras Act. 1971 (for short "the Act"). The petitioner also seek a restraint on the respondent to take any further action pursuant to the minutes of the two meetings dated 10 May 1994 and 21 May 1994 and the Resolution No. 9 dated 26 May 1994. Yet another prayer is that the respondent be commanded to restore the Committees and the Governing Bodies of colleges and schools as were functioning on 9 May 1994. The petitioners in this petition are all members of the Delhi Sikh Gurdwara Management Committee (called the "Committee" under clause (c) of Section 2 of the Act). In the earlier petition there were five petitioners none of whom was member of the Committee, though they were members of the Sikh community. In the order dismissing that petition it was also observed that the facts were highly disputed and that a civil suit might be an

appropriate remedy. However, in the present petition it was submitted at the outset by Mr. Mukul Rohtagi, Senior Advocate for the petitioners, that he would rely only on the minutes of the meetings held on 10 May 1991 and 21 May 1994 to show that the whole act in electing the office bearers of the respondent was grossly illegal and that there were no elections which the minutes of the two meetings purport to portray.

2. Before we refer to the minutes of the two meeting of the Committee we may briefly refer to the relevant provisions of the Act. u/s 3, a Committee is to be established for the proper management and control of Gurdwaras and Gurdwara Property in Delhi. Section 4 provides for composition of the Committee. It shall consist of forty-six members to be elected from various wards; nine members are to be co-opted by the elected members of the Committee but of which two are to represent the registered Singh Sahas of Delhi; four members, each of being the head priest of the (1) Sri Akal Takhat Sahib, Amritsar, (2) Sri Takhat Kesgarh Sahib, Anandpur, (3) Sri Takhat Patna Sahib, Patna, and (4) Sri Takhat Hazur Sahib, Nanded; one member, being the nominee of the Shiromani Gurdwara Prabandhak Committee, Amritsar; and two members to represent the Sikh community of Delhi as provided in clause (iv) of Section 4 of the Act. There is a proviso that the head priest shall have no right to vote for the purpose of election of office-bearers and other members of the Executive Board under sub-sections (1) and (2) of Section 16. The whole dispute here concerns the election of office-bearers and members of the Executive Board. This Section 16 is as under:--

"16. Election of office-bearers-- (1) The Committee shall, at its first meeting after the election of the Pro Tempore Chairman under sub-section (4) of Section 15, elect from amongst its members a President, who shall conduct the election of the office-bearers and members of the Executive Board under this section.

(2) The Committee shall also at its first meeting elect from amongst its members a Senior Vice-President, Junior Vice-President, General Secretary and a Joint Secretary (hereinafter referred to as office-bearers of the Committee), and shall also at the same meeting in like manner elect ten of its members of the Executive Board of the Committee, and the office-bearers and members so elected shall be the Executive Board of the Committee.

(3)

(4) No members of the Committee, shall, at the same time, hold any of the offices referred to in sub-section (1) or sub-section (2) in more than one capacity.

(5) The president and other members of the Executive Board elected under sub-section (1) or sub-section (2) shall hold office for a term of one year but shall be eligible for re-election for one more term only :

Provided that an outgoing office-bearer or member shall continue in office until election of his successor is held.

(6) The election of the President and other office-bearers and members of the Executive Board under sub-section (1) or sub-section (2) or any subsequent annual election to any of those offices shall be held in such manner as may be prescribed by rules.

(7) The provisions of sub-section (2) of Section 5 shall apply so far as may be to the filling of a casual vacancy in the membership of the Executive Board as they apply in relation to casual vacancies in the membership of the Committee."

3. Mr. D.D. Thakur, Senior Advocate appearing for the respondent submitted that the writ petition was not maintainable inasmuch as the provision existed in the Act and the Rules to challenge the election of the office-bearers and in this connection he referred to Part V of the Act relating to settlement of elections and other disputes (Sections 31, 32 and 33) and the Delhi Sikh Gurdwaras (Election of Pro Tempore Chairman, President, other Office Bearers and Members of the Executive Board) Rules, 1974. In the earlier writ petition (CWP No. 2630/94) it was conceded that if the election was a sham affair it was not necessary to challenge the elections of the members by filing election petitions.

4. During the course of arguments we have been referred to the earlier proceedings between the parties, but we do not think it is necessary for us to examine them as we are confining ourselves only to the minutes of the meetings of the Committee of 10 May 1994 and 21 May 1994.

5. A General Body meeting of the Committee was held on 10 May 1994 under the Presidentship of Kirpal Singh Sangat Puri, who is petitioner No. 5 before us. 34 members attended. Firstly, the minutes of the last meeting were confirmed and then the minutes record as under:--

"2) Some disputes started amongst the members and that time Prof. Manjit Singh Head Priest Akal Takhat Sahib and S. Singh Sahib Gianikewal Singh Jathedar Gurudwara Damdama Sahib joined the General House.

3) Unanimously in writing and with request all rights were given to Singh Sahib Prof. Manjit Singh which is as under:--

We all members of D.S.G.M.C. in today's general house unanimously request Jathedar Sri Akal Takhat Sahib to nominate office bears and Executive members for the current year. We will abide by his orders and will presume his order of new (board) committee as a elected committee.

We undertake that we will not make any objection on nominated committee and orders of Jathedar Akal Takhat Sahib and will not create any hindrance by way of law. The said house give its full consent on the today's proceedings of General House.

GURU PANTH DE DAS SIGNATURE

OF ALL MEMBERS

4. After listening views of every member Prof. Manjit Singh ordered the members to perform Sewa according to the following time table.

The sewa will start from 12-5-1994 and will end on 20-5-1994 as per following schedule.

12-5-1994 Gurudwara Sis Ganj Sahib 13-5-1994 Gurudwara Bangla Sahib
14-5-1994 Gurudwara Rakab Ganj 15-5-1994 Gurudwara Mata Sundri Ji
16-5-1994 Gurudwara Majnu Ka Tila 17-5-1994 Gurudwara Nanak Pao 18-5-1994
" " Bala Sahib 19-5-1994 " " Damdama Sahib 20-5-1994 " " Moti Bagh.

TIMINGS DETAIL

Evening 5 to 5.30 JADUDI SEWA

(FLOOR CLEANING)

5.30 to 6.00 ((CLEANING UTENSILS)

6.00 to 6.30 Polishing of Shoes.

6.30 to 7.30 Kirtan Path.

This was ordered that all the member will perform this sewa jointly.

5. Singh Sahib also announced that on 21-5-1994 at 11.00 A.M. he will announce his decision in General house at Gurudwara Mata Sundri.

6. On request of all the members, Singh Sahib Prof. Manjit Singh Jathedar Akal Takhat Sahib announced that w.e.f. 10-5-1994 whole executive Board of D.S.G.P.C. and all governing bodies of school, colleges and all sub-committees stand dissolved which was accepted by the members unanimously.

7. Till the formation of new committee (board) following procedure will be adopted.

i) For Routine Expenses of D.S.G.P.C. Manager of D.S.G.P.C. is authorised to make payment by cash-pay order. No member will interfere in it. Manager will not receive any Court notice.

ii) Routine expenses of school/colleges will be made by principles till the formation of new Governing bodies.

8. It was also unanimously resolved that no body will object to the decision of Singh Sahib Professor Majit Singh and no body will go to the court of law. In any case if any member has move any court on 10-5-1994 he should withdraw the case.

xx xx xx Sd/-

(SINGH SAHIB PROF. MANJIT SINGH)

JATHEDAR SRI AKAL TAKHAT

SAHIB. Dt. 40-5-1994. "

6. Before the meeting of 21 May 1994 could be held writ petition (CWP No. 2219/94) was filed by Jasbir Singh and another against the respondent and others seeking stay of holding of meeting dated 21 May 1994. A Division Bench of this Court dismissed the writ petition as withdrawn on 20 May 1994 with the following order:--

"20-5-94. Present: Mr. R. K. Anand, Sr.

Advocate, with Mr.

Muneesh Malhotra and

Mr. Lovkesh Sawhney

for the petitioner.

CWP No. 2219/94 & C.M. 4533/94 :

Mr. G. S. Vohra along with S/Sh. M.S. Vohra, A.P.S. Ahluwalia and H.S. Phoolka enter appearance for Delhi Sikh Gurdwara Management Prabhandhak Committee, respondent No. 1 stating that they are appearing under instructions of Manager of the Committee. The learned counsel appearing for both the sides press for an early hearing of the matter at least on the question of interim relief. We would like to hear the respondents 2 to 4. Let notice issue to respondents 2, 3 and 4 in the main petition as well in the C.M., returnable on 24th May, 1994. Service dusty.

At this stage, the learned counsel for respondent No. 1 states that the respondents do not object to election being held tomorrow at 11.00 A.M., which will be conducted by Sardar Kirpal Singh Sangatpuri, respondent No. 2 and held in accordance with law, i.e., the provisions of Delhi Sikh Gurdwara Committee Act, 1971.

In view of that statement the learned counsel for the petitioner withdraws the petition dismissed as withdrawn.

Copy of the order be given dusty to the counsel for both the parties.

7. It is stated that Kirpal Singh Sangatpuri, the President, issued a communication on 21 May 1994 at 9.00 A.M. addressed to the Manager of the respondent informing him that the meeting of the Committee proposed to be held on 21 May 1994 at 11.00 A.M. stood cancelled and that further in formation for calling of the meeting of the Committee in accordance with the Rules and Regulations under the Act shall be called in due course. In this petition we are neither concerned with this communication nor with the fact whether it was received by the respondent or was in the notice of the members of the Committee attending the meeting on 21 May 1994. The meeting on 21 May 1994 was held with 31 members attending, the minutes of this date begin with the following observations of the Acting Jathedar Shri Akal Takht Sahib:--

"B. Starting with the proceeding of the General House Prof. Manjeet Singh Acting Jathedar Shri Akal Takht Sahib announced that he was invited by S. Kirpal Singh Sangatpuri, President, Delhi Sikh Gurdwara Prabandhak Committee on 10-5-1994 to attend the General House and accordingly he was present in that General House Meeting. Before my arrival in the General House going on in the presence of Holy Granth Sahib, some unparliamentarily and unpleasant incident happens which is regretted and I was shocked of this. In order to remove bad feelings", clean hearts and committed mistake and to take blessing of Sat Guruji and Sangat all members have performed Sewa at 9, Delhi Historical Gurudwaras. On protest by all the members that annual election due for 2nd September 92 has not held which is against the law. All the 34 members have in writing empowered me to elect new office bearers and executive members in the General House fixed for 21-5-94 at 11 a.m. and all the powers were delegated to me. It was also undertaken by all the members that no members will go to any Court of law directly or indirectly and will resolve their differences within himself/ themselves."

Thereafter it is recorded that Kirpal Singh Sangatpuri was not present and that Bhaiya Gurbachan Singh, Vice President, was elected President to conduct the proceedings of that day inasmuch as even the senior Vice President was not present. Then the relevant portion of the minutes are as under:--

"D. Minutes of the meeting of General House of Delhi Sikh Gurudwara Committee held on 10-5-1994 already sent to the members should be confirmed and accordingly minutes were confirmed.

E. President of the meeting Bhahiya Gurbachan Singh requested to the members to announce name of the person to be elected as President. On his request Jathedar Inderpal Singh Khalsa presented name of S. Manjeet Singh Calcutta for the post of President, which was seconded by Baxi Jagdev singh and it was confirmed by Prof. Joginder Singh. Further it was announced that if any body wanted to propose any name and no name was proposed and accordingly S. Manjeet Singh Calcutta was elected as President unanimously/ unopposed and his election was cheered by loud sound of Jaikaras/Bole So Nihal.

F. Bhaiya Gurbachan Singh after the election of President of S. Manjeet Singh Calcutta handed over his charge to S. Manjeet Singh Calcutta allowing him to go ahead with the further proceeding of the meeting.

G. B Manjeet Singh Calcutta then demanded name of the candidates to be elected as Senior Vice President. Baxi Jagdev Singh proposed the name of Dr Jaspal Singh for the post of Sr. Vice President which was seconded by Prof. Joginder Singh. Any another name for the post of Sr. Vice President was asked in the General House but no name was presented and accordingly Dr. Jaspal Singh was elected as Sr. Vice President.

H. Name of the post of Junior Vice President was demanded. Pfof. Joginder Singh presented name of Jathedar Surjit Singh for the said post which was seconded by

Jathedar Sher Singh was confirmed by Jaswant Singh Panja Sahib. Any other name was demanded from the members for the said post but no name was proposed and accordingly S. Surjit Singh was elected as Jr. Vice President.

I. For the post of General Secretary President demanded name of the person from the members. S. Inderpal Singh Khalsa presented the name of S. Nirwai Singh which was seconded by Baxi Jagdev Singh and was confirmed by Man Singh Ghai. In the absence of the any other name President announced election of the General Secretary.

J. Further for the post of Joint Secretary. President demanded name from the members. S. Kuimohan Singh's name was proposed by S. Awtar singh Hit which was seconded by Prof. Joginder Singh and was confirmed by S. Baiwant Singh Anand Parbat. Any other name for the said post was demanded and no name was proposed and accordingly S. Kuimohan Singh was elected as Joint Secretary.

K. After the election of the office bearers name of the members for the executive posts was demanded from the members and the name of 10 members as written below were proposed and unanimously General House accepted them.

1. S. Basant Singh
2. Baxi Jagdev Singh
3. Bhaiya Burbachan Singh
4. S. Man Singh Ghai
5. Jasvir Singh Sethi
6. S. Sulekhan Singh
7. S. Jaswant Singh Panja Sahib
8. S. Dalip Singh Tagore Garden
9. S. Inderpal Singh Khalsa
10. Prof. Joginder Singh.

8. It was submitted that Resolution No. 9 dated 26 May 1994 was passed in contravention of this Court's order in I.A. No. 4501/94 in Suit No. 1059/94 filed by Gurdeep Singh Dua against the Delhi Sikh Gurdwara Prabandhak Committee. If there is contravention of Court's order it cannot be subject-matter of a separate writ petition. Mr. Thakur, however, submitted that all Governing Bodies of schools and colleges, etc. stood dissolved as per decision recorded in the minutes dated 10 May 1994 and that was accepted by the members unanimously. That, however, could not be so as ail the members of the Governing Bodies are not members of the Committee.

9. Mr. Rohtagi said that minutes of 21 May 1994 could not be read in isolation and that both the minutes of 10 May 1994 and 21 May 1994 go together, and if

the minutes of 10 May 1994 fall the minutes of 21 May 1994 must necessarily also fall. He said there were no election as a matter of fact and the whole thing was an eye wash and in contravention of the provisions of the Act and the Rules. Mr. Thakur, however, defended minutes of both the meetings and said that no corrupt practice had been alleged and it was not a case of mere nominations but of regular elections as per law and the Court has to first find out the correct facts which cannot be done in a writ petition. Mr. Thakur also said that without the office-bearers who have been elected being parties, the petition was not maintainable. Mr. Thakur said that there was no question of surrender of their rights by the members of the Committee in favor of the Acting Jathedar Akal Takht Sahib and it was not a case of any hukmnama having issued by the Akal Takht and the minutes of 21 May 1994 show that there was no delegation of the rights of the members in favor of any one. He said it could not also be said that presence of Akal Takht Sahib would have any terrifying effect on the members inasmuch as the Act envisages his being a member of the Committee though having no right to vote. In support of his submission Mr, Thakur referred to three decisions of the Supreme Court in (1) K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, Gujarat University Vs. N.U. Rajguru and Others, Daulat Ram Chauhan Vs. Anand Sharma, . Decision of the Supreme Court in K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, , had been referred to in Subramania Goundan Vs. The State of Madras, . In Gujarat University's case there was challenge to election of certain members to "Court" of Gujarat University constituted under the Gujarat University Act. The challenge was by way of a writ petition. The Court said that the Gujarat University Act and the Statutes framed there under provided a machinery or a forum for determination of disputes arising out of election and that the aggrieved person should pursue his remedy before the forum provided by the Statute. The Court said it was not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute, and that ordinarily the remedy provided by the statute must be followed before the authority designated therein. However, the Court said that there might be cases where exceptional or extraordinary circumstances might exist to justify by-passing the alternative remedies. It said that in the case before it there existed no circumstance justifying departure from the normal rule. In K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, a defeated candidate in the election to the Bar Council of Madhya Pradesh moved the High Court under Article 226 of the Constitution challenging the validity of the election. The High Court interfered on the ground that since the entire election was challenged an election petition could not be an appropriate remedy and that the same could not be considered as an equally efficacious remedy. The Court found this approach of the High Court wrong and said that there was no foundation whatever for thinking that where the challenge was to an "entire election" then the writ jurisdiction sprang into action. The Court observed as under:--

"While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition. It is perfectly clear that merely because the challenge is to a plurality of returns of elections, Therefore, a writ petition will lie, is a fallacious argument."

10. The Act and the Rules provide for settlement of disputes regarding elections. In view of the law laid down by the Supreme Court that where even whole of the elections are sought to be challenged it would be no ground to by-pass the statutory provisions for resolving the election dispute by filing a writ petition it was submitted that the (sic) made by the respondent in CWP No. 2630/94 that "if the election was sham it was not necessary to challenge the election of the members by filing election petitions" may be of no relevance. We do not think, however, that that was the intent and purpose of the judgment of the Supreme Court. If on the face of record it is found that there were no real election as contemplated by law and that the elections were merely a pretence in an attempt just to satisfy the requirement of law, it will be a ground to interfere in that context the respondent must be held bound by the statement of law attributed to it in the previous judgment. But then the Court can certainly interfere in writ jurisdiction if it finds that exceptional and extraordinary circumstances exist. These to our mind do exist in the present case. The judgment of the Supreme Court in Daulat Ram Chauhan Vs. Anand Sharma, was cited to show that in order to constitute "corrupt practices" in election what are the necessary particulars, statement of facts and essential ingredients that must be contained in the pleadings.

11. In the counter affidavit filed in opposition to the writ petition, this is how the the happenings in the meetings of the Com- mittee held on 10 May 1994 and 21 May 1994 are referred to:--

"6. That it is respectfully submitted that when the meeting of the DSGMC was held on 10-5-94 petitioners were present in that meeting and they did not raise any objections regarding the proceedings. When the meeting of General House started on 10-5-94 the first item which was taken up as per the practice was to confirm the minutes of the previous meeting of the General House. It was mentioned in the said minutes that next election of the executive Board shall be held in Sept. 1993 that is one year after previous elections held in Sept. 1992. On this issue a large number of members present in the meeting demanded that the decision of General House of holding election to the Executive Board should be implemented. It was also pointed out that the term of the Executive Board expired long back. On this issued there were heated arguments among the members. Some of the members exchanged blows and abused one and other. As per the custom the meeting of the General House was held in the presence of and before the holy Sri Guru Granth Sahib. When alt above mentioned commotion and fight between the members were taking place, at this moment Jathedar Bhai Manjit Singh, Jathedar Sahib Shri Guru Akal Takht, Amritsar, the

Supreme Authority of Sikh religion arrived in the hall where the meeting were taking place. It may be mentioned that Jathedar Sahib Shri Akal Takht Amritsar is an ex officio member of the Committee and the Parliament in its wisdom while enacting the Delhi Sikh Gurdwara Act, 1971 and recognition of authority of Jathedar Sahib as religious head has made the Jathedar Sahib an Ex-officio member of the Committee. When the Jathedar Sahib Bhai Manjit Singh arrived at the venue of meeting and saw the commotion and fight taking place in the presence of and before the holy Sri Guru Granth Sahib, he reprimanded all members for their irreverential and misconduct by showing disrespect to Sri Guru Granth Sahib. He directed the holy Sri Guru Granth Sahib be respectfully taken away from the hall. On this all the members tendered an unconditional apology to Jathedar Sahib. All the members requested Jathedar Sahib to kindly interview in the matter and sought out the differences between them. The existing Executive Board of that time relinquished their office and all the 34 members of the Committee including the previous Office bearers and executive members including the petitioners requested in writing to Jathedar Shri Akal Takht Sahib to help in sorting out the differences between them and decide the new office bearers and executive members, the request letter/undertaking signed by all 34 members is annexed hereunder and marked as Annexure R-III.

After listening the views of every member Jathedar Sahib Bhai Manjit Singh suggested all members to do penance and perform sewa for ten days in various Gurdwaras to show repentance for showing disrespect to Sri Guru Granth Sahib. All the 34 members were directed to perform the sewa jointly to give them chance to converse with each other to reduce their inter se differences. It was decided in the meeting that the next meeting shall be held on 21-5-94 at 11.00 AM to decide about and elect the new office bearers and members of the Executive Board. It may be mentioned that all the 34 members of the Committee including all the petitioners were present in the meeting of 10-5-94.

Accordingly, a meeting was held on 21 -5-94 and the elections to new Executive Board was held in accordance to the law and as per the provisions of the Act and Rules. The elections were held unanimously and none of the members raised any objections. It may be mentioned that at the time of the elections on 21-5-94 31 members out of total 34 members of the committee were present.

7. That the petitioners themselves requested in writing to Jathedar Akal Takht Bhai Manjit Singh to intervene in the matter and sort out the differences between the members of the Committee. It may be mentioned that office of Jathedar of Shri Akal Takht Sahib is the highest spiritual seat of the sikh religion. Any disrespect to this office would hurt the feelings of crores of peoples who have faith in Sikh Religion. The petitioners who themselves involved the Jathedar Sahib to sort out the differences among the members, are now estopped from challenging the authority of Jathedar Sahib to interfere in the matter."

Annexure R-III, which has been mentioned above, may also be set out as under:--

"We, all the members of the Delhi Sikh Gurdwara Management Committee, in today's gathering of General House unanimously give Prof. Manjit Singh, Nathedar (sic) Sri Akal Takht Sahib, complete authority that they may kindly, for the next year, nominate members as Office Bearers and to the Executive Board.

We shall accept his edict with full integrity and shall accept the nominated Committee by his goodself as Committee nominated by the General House.

Today General House gives acceptance to the nominated Committee of the Jathedar Ji.

We pledge that through one mind, utterances, actions, we shall not raise any objection and the nominated Committee, nominated by Jathedar Sahib of Sri Akal Takht Sahib. Also we shall not directly or indirectly create any legal hurdles. Today's General House gives complete acceptance to written above-said proceeding of the House.

In obedience of Guru Panth (All Honourable Members)

Sd/-

All Thirty Four Members."

12. We agree with the submission of Mr. Rohtagi that the proceedings of the meeting of 21 May 1994 are not independent and that one has also to read the proceedings of the meeting of 10 May 1994. Both being read together it is clear that the members of the Committees have abdicated their functions and have acted in contravention of the provisions of the Act. It must not be forgotten that the Committee is a body corporate with the name aforesaid having perpetual succession and a common seal and shall be such name sue and be sued. It is composed of various members out of which 46 are elected from various wards and they are, thus, the elected representative of the Sikhs living in these respective wards.

13. In this petition we are not at all considering, nor it is our function to so consider, the authority of the Jathedar Sahib Shri Akal Takht, Amritsar. Our consideration only is the conduct of the members of the Committee having right to vote. By a bare reading of the minutes of 10 May 1994 and 21 May 1994 and portion of the counter-affidavit set out above it is clear to us that the elections have not been held in accordance with law and the Rules. The Committee, as noted above, is a statutory body and law prescribes the functions of the office-bearers and the Executive Board which consists of ten members. It also prescribes how the elections of the President, Senior Vice President, Junior Vice President, General Secretary, Joint Secretary and each of the ten members of the Executive Board are to be held. That right is to be exercised by the members of the Committee themselves and they cannot abdicate their functions in favor of any one in violation of law under which they had been elected from the respective wards into which Delhi has been divided. Members of the Committee are not members of some association of persons or voluntary organisations

where they can authorise a person to make nominations on their behalf. Here the members of the Committee have to act under the law making them members of the Committee and elected representatives of the persons. Under sub-section (6) of Section 16, the election of the President and other office bearers and members of the Executive Board shall be held in such manner as may be prescribed by the Rules. Under sub-section (3) of Section 19, the President, or in his absence the Senior Vice-President and in the absence of both, the Junior Vice-President, and in the absence of all the three, any other member elected from amongst themselves shall preside at any meeting of the Committee or of the Executive Board. u/s 21, powers of the Executive Board and its office bearers are prescribed. u/s 36, every member of the Committee and the Executive Board and all other sub-committees, etc. shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Under Rule 8, when a member of the Committee is to be elected as President, Senior Vice-President, Junior Vice-President, General Secretary or the Joint Secretary, the President shall call upon the members present at the meeting to nominate candidates for the purpose. Any member present may propose the name of any other member of the Committee for the office of President or for other offices of the Executive Board and if any other member present seconds such a proposal the president shall if the person so proposed agrees to such nomination in case he is present in the meeting or the member proposing the name produces a certificate signed by the person so nominated to the effect that he agrees to such nomination. Under Rule 9, if only one member is nominated as a candidate under the provisions of Rule 8, he shall be deemed and shall be declared to have been elected as President, Senior Vice-President, Junior Vice-President, General Secretary and the Joint Secretary, as the case may be. Rule 10 provides for a situation where there are more than one member nominated for an office. Under Rule 12, similar procedure has been prescribed for election of members of the Executive Board. If we now refer to the minutes of 21 May 1994, we find that the moment Mr. Manjit Singh Calcutta is elected. President, Bhaiya Gurbachan Singh, who was presiding over the meeting, gives his place to Mr. Calcutta who there after conducts a meeting and calls for nominations of other office-bearers and the members of the Executive Board. This he could not have done and Bhaiya Gurbachan Singh had to conduct whole of the meeting and call for nominations. Then the minutes do not show that any consent of the office-bearers and the members of the Executive Board so nominated was obtained before declaration of their respective results. Election of ten members of the Executive Board has also not been in accordance with the Rules. There has been no nomination, no secondation and no mention of any member agreeing to the nomination to the Executive Board. The minutes are signed by the newly elected president and the General Secretary. This again is not in accordance with the practice as the minutes should have been signed by the outgoing President and General Secretary as the minutes had to be confirmed in the subsequent meeting. As Vice-President, the minutes should have been signed by Bhaiya Gurbachan Singh. We find it is a case where exceptional and extraordinary circumstances exist for us to interfere in this

petition under Article 226 of the Constitution. We may also note that an affidavit has been filed by Bhaiya Gurbachan Singh, aged about 92 years, that he is a member of the Committee on 21 May 1994. He denied that being the Vice-President of the Committee he was elected as President to conduct the proceedings of the General House on 21 May 1994 and that the proceedings of the General House started under his Chairmanship. He says the minutes contained totally false and incorrect record of the proceedings. We are, however, not going into that question and we have principally proceeded on the basis that Bhaiya Gurbachan Singh being the Junior Vice-President was elected as President for the meeting of 21 May 1994.

14. We, Therefore, hold that the elections as per the minutes dated 10 May 1994 and 21 May 1994 are not in accordance with law and have to be set aside. We order accordingly.

15. Having said so we must find a method to have the elections of the office-bearers and the Executive Board in accordance with law. It is unfortunate that there has been a constant dispute between the warring groups and various Court cases are pending.

16. The result of our decision is that the office-bearers and the Executive Board which were functioning earlier to the minutes of 10 May 1994 and 21 May 1994 shall be in the office, We are giving the following directions :--

1. Elections of the office-bearers and Executive Board shall now be held on 30 January 1995 at 11.00 A.M. at Gurdwara Mata Sundri, New Delhi. Notices of the meeting shall be issued within one week from today and the Court Observer informed of the same. There shall be no default in this;

2. Mr. Kirpal Singh Sangatpuri shall preside over this meeting and in his absence the Senior Vice-President shall preside over the meeting. In the absence of both, the Committee shall elect a Chairman to conduct the proceedings of that date;

3. Members shall exercise their right to vote by secret ballot so that no charge of any undue influence, etc. is made;

4. Mr. Surjit Singh Malhotra, an advocate of this Court, is appointed as the Court Observer to be present at the time of the elections. Mr. Sohan Singh, a Superintendent of this Court, will be the Joint Observer and shall assist the Court Observer in the discharge of his duties. The Court Observer will prepare a report of the elections held and the results so declared by the Chairman. No obstruction will be caused to the Court Observer or the Joint Observer in the discharge of their duties by any one. The Court Observer will be paid a sum of Rs. 10,000/- as his fee and the Joint Observer shall be paid Rs. 5,000/- as his fee which shall be payable by the respondent. The fees so paid shall be exclusive of all the expenses that may be incurred by these Court officers and that again shall be paid by the respondent. The report of the Court Observer shall be submitted in this Court and shall form part of these proceedings. Copies of the operative part

of this judgment shall be given to the counsel for the parties as well as the Court Observer and the Joint Observer.

With these observations, this petition is disposed of.

17. Order accordingly.