

(2012) 12 DEL CK 0331

In the Delhi High Court

Case No : Writ Petition (C) 936 and 1074 of 2012 and CM 2363 of 2012

Jasjit Singh and Another

APPELLANT

Vs

Directorate of Gurdwara Elections and Others

Dashmesh Sewa Society (Regd) Vs Director Gurdwara
Elections Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Constitution of India, 1950 — Article 25, 26
Representation of the People Act, 1950 — Section 2(f), 29(A)
Societies Registration Act, 1860 — Section 14(3)(a), 14(3)(d)

Citation : (2013) 196 DLT 684

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Abhishek K. Mishra, in W.P. C 1074/2012 and CM 2363/2012 and Mr. Baljit Singh and Mr. Ajai Kumar, In W.P. C 936/2012, for the Appellant; Rajiv Nanda, ASC with Ms. Shawana Bari, for R-1 and 2 in W.P. (C) 1074/2012 and CM 2363/2012, for R1 in W.P. (C) 936/2012, Mr. Maninder Singh, with Mr. Jasmeet Singh, Saurabh Tiwari and Ms. Vatsala Singh for R-3 in W.P. (C) 1074/2012 and CM 2363/2012 and for R2 in W.P. (C) 936/2012, Mr. Raj Kamal and Mr. Faraz Khan for R-4 and 6 in W.P. (C) 1074/2012 and CM 2363/2012 and for R3 in W.P. (C) 936/2012 and Ms. Rashmi Chopra, for R-5 in W.P. (C) 1074/2012 and CM 2363/2012 and for R4 in W.P. (C) 936/2012, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J

1. The captioned writ petitions lay challenge to two orders passed by respondent no. 1, i.e., the Directorate of Gurudwara Elections. The first order, which is dated 02.02.2012, is specific to the petitioners. This order bears a common date, which is, 02.02.2012. There are, however, two separate orders passed qua each of the petitioners. The second order, to which, challenge is laid in both writ petitions is order dated 06.02.2012, once again, passed by respondent no. 1; thus though is a common order. It may be important to note, at the very outset, that in writ

petition no. 1074/2012, my predecessor, vide order dated 23.02.2012, has already rejected the petitioners' prayer for quashing the order dated 02.02.2012 passed by respondent no. 1 qua them. By the very same order a limited notice was issued qua the other aspect, which is, the challenge laid to the order dated 06.02.2012, as it was pending consideration in the other writ petition, which is bearing no. WP(C) 936/2012.

2. Shorn of verbiage, the challenge in the captioned writ petitions pertains to applicability of Rule 14 of the Delhi Sikh Gurudwara Management Committee (Election of Members) Rules, 1974 (in short the 1974 Rules). It may be pertinent to note that the said Rule was amended by respondent no. 2 vide notification dated 28.07.2010. Therefore, for the sake of convenience, I would be referring to the earlier Rules as the Unamended Rules and the Rule, post the amendment, as the Amended Rule.

WP(C) 1074/2012

3. Briefly, the facts obtaining in the captioned petition are as follows:

3.1 Under the Unamended Rules elections to the Delhi Sikh Gurudwaras Management Committee (hereinafter referred to as the Management Committee) were held, in recent past, in January, 2007. Since the term of the Management Committee is four (4) years, the said period, if calculated from the date of the first meeting of the Management Committee, which was held on 09.02.2007, apparently, ended on 09.02.2011.

3.2 As indicated above, on 28.07.2010, Rule 14 of the Unamended Rules was amended vide notification of even date issued by respondent no. 2. Essentially, the amendments made provided substitution of the term "candidate" with "religious parties". In other words, under the Amended Rule 14, election symbols could be allotted to religious parties as against individual candidates. This was, however, subject to two conditions, which are inter alia contained in, the Amended Rule 14(3)(a) and (d). The first condition being: that the applicant religious party had to be registered under the provisions of the Societies Registration Act, 1860 (hereinafter referred to as the 1860 Act) at least one year before the date of expiry of the term of the Management Committee. The second condition being: that at least two elected members of the Management Committee had to be members of the applicant religious party. This condition was incorporated in Rule 14(3)(d).

3.3 Petitioner no. 2, in this writ petition, i.e., Shiromani Akali Dal (Delhi-UK) [hereinafter referred to as the SAD (Delhi-UK)] applied for an election symbol, on 24.01.2012. In order to buttress its case for allotment of its election symbol, SAD (Delhi UK) also secured recommendations of two erstwhile members of the Management Committee. This recommendation was obtained on 21.01.2012. In the meanwhile, against a query raised under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act) a response was received from respondent nos. 1 and 2, on 09.01.2012, whereby it was indicated that respondent nos. 3 to

5, i.e., Shiromani Akali Dal (Badal) [hereinafter referred to as SAD (Badal)], Shiromani Akali Dal Delhi [hereinafter referred to as SAD (Delhi)] and Shiromani Akali Dal -Panthak Jathedar Santhok Singh [hereinafter referred to as SAD (Panthak)], were not registered as per the Amended Rule, in particular, Rule 14(3)(a). It was further intimated that except for two parties, which included SAD (Delhi-UK), no other party had sought allotment of an election symbol on the basis that it was a religious party.

3.4 The request of SAD (Delhi-UK) was, however, rejected vide order dated 02.02.2012, for failing to comply with provisions of Rule 14(3)(d). This is one of the orders, which is impugned in this writ petition.

3.5 The second order, which is the other impugned order, was passed on 6.02.2012. In this order, which is titled as a "Symbol Order, two recitals are set out. The first recital, adverts to the fact that reserved symbols had been allotted to certain "recognized religious parties candidate(s)" of Delhi under the Unamended Rules vide two notifications dated 08.10.1999 and 30.11.2006. The three religious parties referred to in the said order are as follows: Shiromani Akali Dal (Badal), Delhi State, i.e., respondent no. 3; Shiromani Akali Dal (Delhi); and Shiromani Akali Dal (Panthak).

3.6 The second recital adverts to the fact that certain symbols referred to in the said order, had been kept as "free symbols" for allotment to other candidates seeking to stand for elections in the next general elections as members of the Management Committee.

3.7 In the operative part of the order it was indicated that the process of conducting elections to the Management Committee had commenced and notifications for the said purpose, that is, to seek nominations, would be issued soon and, therefore, no application/request of any religious party for either recommendation/allotment for reserved symbol shall be entertained henceforth.

4. The petitioner being aggrieved preferred the captioned writ petition, which was moved as indicated above on 23.02.2012 when, challenge of the petitioners to order dated 02.02.2012 was repelled by this court.

WP(C) 936/2012

5. In this case, the petitioner i.e., Dashmesh Sewa Society (Regd.) [hereinafter referred to as DSS] was registered as a society under the 1860 Act on 26.03.2009. Immediately thereafter, on 22.04.2009, DSS filed an application with respondent no. 1, for allotment of a reserved election symbol. It would be relevant to note, that the said application was filed under the Unamended Rule 14. The petitioner's application was acknowledged by respondent no. 1 vide communication dated 19.06.2009. Pertinently in this communication respondent no. 1 conveyed to DSS that its request had been taken note of, which would be considered "in due course".

6. As noticed above, in the meanwhile, Rule 14 was amended on 28.07.2010.

Apparently, reminders with regard to recognition and allotment of an election symbol were sent by DSS to respondent no. 1 on : 12.10.2011, 23.01.2012 and 28.01.2012. It may also be important to note that since Rule 14 had been amended in the meantime, the petitioner even while referring to the Amended Rule 14 placed reliance on the contents of its application dated 22.04.2009. A specific reference in regard to the same is made in paragraphs 5, 6 and 12 of the letter dated 28.01.2012.

7. It appears that DSS had filed an application under the RTI Act dated 12.10.2011, with respondent no. 1, seeking to raise two queries. The first, as to whether any party/society had applied for allotment of reserved election symbols. Second, names and address of parties/societies, which were registered under the 1860 Act, at least one year before the expiry of the term of the last Management Committee. Response was apparently given by respondent no. 1 vide communication dated 09.1.2012. In respect to the first query, the petitioner was informed that apart from it, the other entity which had applied for allotment of a reserved symbol was: Shiromani Akali Dal, (Delhi U.K.), i.e., petitioner no. 2 in WP(C) 1074/2012. As regards the second query, respondent no. 1 confirmed that as per its knowledge DSS was the only entity which was registered at least one year before the date of expiry of the term of the erstwhile committee.

8. It may be noted that the term of the erstwhile Management Committee (which had been elected for a four (4) year term), came to an end on 08.02.2011, from the date when it held its first meeting. Apparently, on 28.01.2012, a public notice dated 27.01.2012 was issued by respondent no. 1, which got published in the Hindustan Times, on 28.01.2012, whereby all concerned were given information qua the schedule for elections to the Management Committee, which was slated, at that point in time to be held, on 11.03.2012.

9. By virtue of the order dated 02.02.2012, DSS's application for recognition as a religious party and allotment of reserved symbol for election dated 27.01.2012 (sic 28.01.2012) was rejected under the provisions of the Amended Rule 14(3) (d). In other words, the ground for rejection was that the names of two members given in terms of the aforementioned provision as members of the Management Committee were found on verification by respondent no. 1, that the persons named were not the elected members of the incumbent Management Committee. As indicated above, the petition also made reference to the second order dated 06.02.2012, which is the Symbol Order. This order has also been assailed in the said writ petition as well.

SUBMISSIONS OF COUNSELS

10. Briefly, on behalf of the petitioners, in particular, petitioner no. 2 i.e., [SAD (Delhi-UK)] in WP(C) 1074/2012 arguments have been addressed by Mr. Mishra, while Mr Baljit Singh has advanced arguments on behalf of the petitioner i.e., DSS in WP(C) 936/2012.

10.1 Mr Mishra's argument was confined to assailing the order dated

06.02.2012, in view of the fact that, his challenge to order dated 02.02.2012, as noticed above, had already been rejected by my predecessor by an order dated 23.02.2012. Admittedly, the said order of the court has not been challenged in any proceedings. Mr Mishra's submission, therefore, were as follows:

10.2 The Unamended Rule 14 permitted allotment of an election symbol to a candidate. However, contrary to the rules, then obtaining, by virtue of two notifications dated 08.10.1999 and 30.11.2006, reserved election symbols were allotted, inter alia, in favour of religious parties, i.e., SAD (Badal), SAD (Delhi) and SAD (Panthak). It was submitted that, at the very inception, the allotment of reserved symbols to the said religious parties was unlawful as the Unamended Rule provided for allotment of reserved symbols to "candidates" and not to parties, much less religious parties. Mr Mishra submitted that for the first time the Rules contemplated issuance of reserved election symbols to religious parties post the amendment of the Rules vide notification dated 28.07.2010.

10.3 It was Mr Mishra's contention that, therefore, under the Amended Rule 14, a reserved election symbol, could be allotted to a religious party if it fulfilled, inter alia, the conditions provided in Section 14(3)(a) and 14(3)(d). In other words, the religious party should be a society registered under the 1860 Act for a period of atleast one year before the date of expiry of the term of the erstwhile Management Committee. Secondly, it should have at least two elected members of the Management Committee as its members.

10.4 It was Mr Mishra's contention that, in so far as SAD (Badal) was concerned, it was not even a religious party. According to Mr Mishra, SAD (Badal) was a political party and was registered under the Representation of People Act, 1951 (hereinafter referred to as the RP Act), and had, accordingly, been allotted a symbol by the Election Commission of India under the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 1968 Symbols Order). It was contended that if SAD (Badal) along with SAD (Delhi) and SAD (Panthak) claim to be religious parties, they were required to fulfill the conditions stipulated under 14(3)(a) and (d), which apart from petitioner no. 2 i.e., SAD (Delhi-UK) in WP(C) 1074/2102 and the petitioner (i.e., DSS) in WP(C) 936/2012, was not complied with by any of the other parties before it, in particular, SAD (Badal), SAD (Delhi) and SAD (Panthak).

10.5 In these circumstances, Mr Mishra submitted that the order dated 06.02.2012, was erroneous in law, in so far as SAD (Badal), SAD (Delhi) and SAD (Panthak) are concerned.

10.6 It may be noted that, during the course of the argument Mr Mishra conceded that in so far as SAD (Delhi-UK) is concerned, it had made an application for recognition and allotment of an election symbol on 24.01.2012, which is a date after the Amended Rules had come into play. Therefore, based on the arguments advanced by Mr Mishra, the new rules would be applicable and the conditions stipulated therein would have to apply to petitioner no. 2, i.e.,

SAD (Delhi-UK), as well. Since, SAD (Delhi-UK) did not fulfill the conditions stipulated in the amended rule 14(3)(d), which required at least two members of the incumbent Management Committee to be members of the religious party, no fault could be found with order dated 02.02.2012 passed in so far as SAD (Delhi-UK) was concerned.

11. Mr Baljit Singh, on the other hand argued that DSS had been registered under the 1860 Act, on 26.03.2009, based on which an application was filed with respondent no. 1 for allotment of a reserved election symbol, on 22.04.2009. It was thus contended by Mr Baljit Singh that, the Unamended Rules ought to be applied to DSS, as was applied to SAD (Badal), SAD (Delhi) and SAD (Panthak).

11.1 In the alternative, Mr Baljit Singh submitted that even if new Rules are applied, DSS fulfilled the criteria provided therein, in as much as; DSS was registered as a society under the 1860 Act, one year before the date of expiry of the term of the incumbent Management Committee. The term of the incumbent Management Committee expired on 09.02.2011, being the four year term, and DSS was registered on 26.03.2009, which was prior to 08.02.2010.

11.2 As regards the condition prescribed in Rule 14(3)(d) was concerned, Mr Baljit Singh submitted that, the provision could not apply to DSS; as a plain reading of the said provision was indicative of the fact that, if recognition was to be granted to a new religious party, then it would have to be registered not only under the Societies Registration Act but would also require to have as its members at least two elected members of the incumbent Management Committee. In other words, the submission of Mr Baljit Singh was, where a religious party had already registered itself prior to the Amended Rules coming into force, they were required to fulfill the condition provided in amended rule 14(3)(a) and not Rule 14(3)(d).

11.3 Mr Baljit Singh further contended that, in case Rule 14(3)(d) is to be made applicable to DSS, even then, it would pass muster, as there is nothing in the said provision to indicate that it was required of the entity moving an application for recognition and allotment of election symbol, to have as its members, current members of the incumbent Management Committee. In other words, even ex-members would fulfill the criteria stipulated therein.

12. On behalf of Respondent Nos. 1 and 2, arguments were advanced by Mr Rajiv Nanda, ASC.

12.1 It must be recorded that Mr Nanda was squarely asked by me as to how he would respond to the apparent anomaly, which had crept in, which was that, even though the Unamended Rule 14 referred to allotment of a reserved election symbol to a candidate, the said respondents, whom he represented, had by notifications dated 08.10.1999 and 30.11.2006, allotted symbols in favour of SAD (Badal), SAD (Delhi) and SAD (Panthak).

12.2 In response, Mr Nanda submitted that, the term "candidate" would have to

be read as a Group or an Association of Persons, and if that, meaning was accorded to the term "candidate" in the Unamended Rule, then no fault could be found with the two notifications issued by respondent nos. 1 and 2.

12.3 In the same vein Mr Nanda, based on the averments made in the counter affidavit filed on behalf of the said respondents, submitted that the Amended Rules could not be applied to : "already recognized religious parties". In other words, the Amended Rules did not apply to those who were beneficiaries of the notification dated 08.10.1999 and 30.11.2006. As far as petitioner no. 2, i.e., SAD (Delhi-UK) was concerned, Mr Nanda submitted that since, it did not fulfill the conditions laid down in Rule 14(3)(d), its application was rightly rejected.

12.4 With regard to DSS, i.e., the petitioner in WP(C) 936/2012, Mr Nanda contended that its first application, filed on 22.04.2009, was not supported by any documentary evidence, and since, the elections were not slated to be held in the near future, the said application was kept in abeyance. It is when a decision was taken to hold elections, DSS's subsequent applications, were considered under the Amended Rules, and thereupon, was rejected also on account of failure to fulfill the provisions of the Amended Rule 14(3)(d); though in this case, the applicant DSS had claimed as its member, persons, who were not members of the incumbent Management Committee.

13. On behalf of respondent no. 3 (SAD Badal) and respondent no. 5 (SAD Panthak), arguments were advanced by Mr Maninder Singh, Sr. Advocate. Mr Singh submitted that the SAD (Badal) and SAD (Panthak) were allotted reserved symbols under the two notifications dated 08.10.1999 and 30.11.2006; while SAD (Badal) had been given the reserved symbol of "bucket" nearly ten years ago, SAD (Panthak) was allotted "candle" as a reserved symbol and that too six (6) years ago. Based on the symbol allotted, SAD (Badal) had participated in the elections held in January, 2007. Therefore, after such a long lapse of time, SAD (Badal) cannot be called upon to apply for a fresh symbol, nor be called upon to fulfill the conditions stipulated under the Amended Rule 14. Similarly, SAD (Panthak) cannot be asked to fulfill the conditions provided under the Amended Rule 14.

13.1 Mr Singh further argued that the two notifications, under which reserved election symbols had been allotted to SAD (Badal) and SAD (Panthak), were not in challenge. There was no definition of either a political party or a religious party under the Delhi Sikh Gurudwara Management Committee Act, 1971 (in short the 1971 Act). According to Mr Singh, the Amended Rules, which are framed in exercise of power u/s 1971 Act, were ultra vires the provisions of the said Act, as the Amended Rule went beyond the contours of the parent statute.

13.2 Mr Singh also made reference to the provisions of sections 2(f) and Section 29(A) of the Representation of the People Act, 1950 (in short the RP Act). Reliance was also placed on the judgment of the Supreme Court in the case of Bharathidasan University and Another Vs. All India Council for Technical

Education and Others, to contend that the Rule, which sought to recognize religious party, being beyond the provisions of the 1971 Act would have to be "ignored", even though there was no challenge to the said Rule. Specific reference, in this behalf, was made to the observations of the Supreme Court in paragraph 14 of the said judgment at page 688.

13.3 Mr Singh thus submitted that, the Amended Rules were not only required to be in conformity of the 1971 Act but were also required to be in consonance with the provisions of the Constitution, and if, the Rules were not in conformity with the provisions of the Constitution or the Parent Act, the same had to be ignored.

13.4 It was thus the submission of Mr Singh that the Rules in issue, were contrary to the provisions of Article 25 and 26 of the Constitution of India read with Entry 28 in List III of Schedule VII. Mr Singh submitted that the concept of a religious party was unknown to the Constitution of India. He submitted that, SAD (Badal) was a political party which had been allotted a symbol by the Election Commission of India under the 1968 Symbols Order. Reference in this regard was made to Clause 4, 6(a), (b) and 8 of the 1968 Symbol Order.

14. On behalf of Respondent no. 4 i.e., SAD (Delhi), arguments were advanced by Mr Raj Kamal. He submitted that SAD (Delhi) was allotted reserved election symbol vide notification dated 30.11.2006 and, therefore, they were governed by unamended Rule 14. The learned counsel adopted the arguments advanced by Mr Singh, learned senior counsel with regard to other aspects of the matter.

REASONS

15. I have heard the learned counsels for the parties and also perused the record. As indicated above, the course of this litigation would turn-on : whether or not Unamended Rules were applicable to SAD (Badal), SAD (Delhi) and SAD (Panthak), and the meaning, to be given to the term "candidate", if the Unamended Rules are to be applied. What has emerged from the record is undoubtedly the following:

(i) Vide notification dated 08.10.1999, respondent no. 1 specified the choice of symbol to be made by a candidate at an election of a member to the Management Committee from the symbols listed in the said notifications, subject to the restrictions referred to in the said notification. Out of many restrictions, in so far as reserved symbols were concerned (which were set out in List A of the said notification), only a candidate sponsored by a "party" mentioned in List A, would choose, and be allotted the said symbol. In so far as SAD (Badal) is concerned, the symbol allotted was "bucket". As regards SAD (Delhi), the symbol allotted was a "Car". The notification further stipulated that candidates who were not sponsored by a "party", were free to choose what it termed as "free symbols", set out in list B incorporated therein.

(ii) The notification dated 30.11.2006, was issued by respondent no. 1, in continuation of its earlier notification dated 08.10.1999 and in partial

modification of, yet another notification dated 08.05.2002. By this notification, once again, in exercise of powers under the Unamended Rule 14, it was specified that the symbol "candle" was reserved as the symbol qua candidates sponsored by SAD (Panthak) for election of members to the Management Committee.

(iii) None of these notifications have been challenged in any proceedings.

(iv) The order dated 06.06.2012, merely makes a reference to the two notifications and records, as a matter of fact in its first recital, that the symbols referred to therein have been allotted to SAD (Badal), SAD (Delhi) and SAD (Panthak), and thereafter, goes on to refer to the free symbols, which were available for the ensuing elections.

16. The argument of the petitioners based on the language in the first recital to the effect that : "reserved symbols have been allotted to the following recognized religious parties candidate(s) of Delhi under Rule 14 of DSGMC (Election of Members) Rules 1974 for Election of Members to the SDGMC vide Delhi Gazette Notification dated 08.11.1999 and 30th November 2006" is as a matter of fact contrary to the wordings of the two notifications, which use the term "party" as against "recognized religious party".

16.1 Notwithstanding the above, the argument advanced by Messers Mishra and Baljit Singh that under the Unamended Rule 14 election symbol could be allotted only to candidates and not to parties, is met by respondents 1 and 2, by referring to the language of the two notifications which speaks of allotment of symbols to the candidates sponsored by the parties referred to in List A of notification dated 08.10.1999.

16.2 As noticed by me hereinabove, Mr Nanda learned counsel for respondent no. 1 and 2 submitted that Unamended Rule 14, which provided for allotment of election symbol to a candidate, was required to be read as candidates, which were sponsored by a Group or an Association of Persons. If the meaning, as placed by respondent nos. 1 and 2 is accepted, which is perhaps one of the ways of resolving the confusion created by none other than respondent nos. 1 and 2 by using inappropriate language in the order dated 06.02.2012, then, in my opinion, no fault can be found with the allotment of reserved election symbols to SAD (Badal), SAD (Delhi) and SAD (Panthak).

16.3 If, however, this argument is accepted qua the aforementioned parties, then, quite logically it would have to be accepted qua DSS, i.e., the petitioner in WP(C) 936/2012. The reasons for the same are as follows.

16.4 DSS was registered as a society, on 26.03.2009. This fact also stands recognized by respondent no. 1 vide its communication dated 09.01.2012 issued in response to an RTI query by DSS.

16.5 As a matter of fact, the communication dated 09.01.2012, recognizes the fact that the DSS stood registered as a society under the 1860 Act, one year before the expiry of the term of the incumbent Management Committee. This

aspect is relevant in so far as DSS is concerned even qua the applicability of the Amended Rule 14. I would discuss the same, a little later, in the latter part of my judgment.

16.6. In so far as the Unamended Rule is concerned, the same would be applicable to DSS as it had filed an application with respondent no. 1, admittedly, on 22.04.2009, much prior to the notification dated 28.07.2010, whereby Rule 14 was amended. The submission of Mr Nanda that the said application was kept pending as there were no elections around the corner, cannot be an answer to the issue as to whether DSS should be governed by the Unamended Rule 14 or, its amended version. From the facts, as detailed out above, it is quite obvious that, since respondent nos. 1 and 2 had not disposed of the application of DSS, as is evident from their communication dated 19.06.2009, I have no doubt in my mind that application of DSS had to be governed by the Unamended Rule 14. If the Unamended Rule 14 is applied to DSS, then like, SAD (Badal), SAD (Delhi) and SAD (Panthak), it should have also been treated as a Group or an Association of Person, and accordingly, allotted a reserved symbol.

17. Apart from the above, in my view, DSS was entitled to the symbol even if Amended Rule 14 is made applicable to it. For this purpose, the relevant parts of the Unamended Rule 14 and its amended version are extracted hereinbelow for the sake of convenience :

UNAMENDED RULE 14

14. Symbols:- (i) The Director shall, by notification in the Delhi Gazette, specify the symbols that may be chosen by candidates at elections and the restrictions to which their choice shall be subject.

(2) Where at any such election, more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols, made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under Rule 21 even if that nomination paper has been rejected.

(Emphasis supplied)

AMENDED RULE 14

...14 Symbols:-

xxx

xxx

(3) the Director may, by notification in the Delhi Gazette, recognize the religious parties fulfilling the conditions for allotment of reserved symbols to be allotted to a candidate at elections set up by the said religious parties, subject to the following conditions, namely:-

(a) the religious party should be a registered society under the Societies

Registration Act, 1860 at least one year before the date of expiry of the term of the Delhi Sikh Gurdwaras Management Committee.

xxx

xxx

(d) for recognition of a new religious party, the party should be registered under the Societies Registration Act, 1860 and have at least two elected members of the Delhi Sikh Gurdwaras Management Committee as its members....

(Emphasis supplied)

17.1. It is quite clear, that the term religious party, for the first time, was introduced in the Amended Rule 14 as against the term candidate in the Unamended Rule. The petitioner, quite clearly makes an averment, in the very first paragraph of the petition that it is a "religious society". It is also not in dispute that the petitioner was registered under the 1860 Act, on 26.03.2009. The fact that elections to the Management Committee were held in January, 2007 and its term of four years would ordinarily come to an end on 09.02.2011, from the date of the first meeting held on 09.02.2007, was not disputed before me. At least no arguments were made refuting the said submission.

17.2 Therefore, DSS clearly fulfills the condition stipulated in the amended Rule 14(3)(a), in as much as, it was registered under the 1860 Act, on 26.03.2009, which is prior to "at least one year before the expiry of the term of the incumbent Management Committee". The one year period as per amended Rule 14(3)(a) would subsist between February, 2010 and February, 2011, The DSS being registered on 26.03.2009, clearly fulfilled the conditions stipulated.

17.3 The application of DSS was, however, rejected on the ground that it did not fulfill the conditions stipulated in the Amended Rule 14(3)(d). In my opinion, the said condition would not apply to a religious party which had been registered under the 1860 Act prior to the amended Rule coming into force. The difference in the language used in the two sub-clauses (a) and (d) makes this quite clear. Rule 14 (3)(a), seeks to recognize a "religious party", which had been registered under the 1860 Act one year before the term of the incumbent Management Committee coming to an end.

17.4 In other words, an existing religious party, which is registered one year before the date of expiry of the term of the incumbent Management Committee, is not required to fulfill the other condition, which is that it should have at least two elected members of the incumbent Management Committee as its members. The reason for this is two-fold. First : Rule 14(3)(d) provides that for recognition of a new religious party it should fulfill the following conditions: (i) it should be registered under the 1860 Act; and (ii) have at least two elected members of the incumbent Management Committee as its members. The language of 14(3)(d) is entirely different to the language used in Rule 14(3)(a) which speaks only of: the religious party. Secondly, if Rule 14(3)(d) were to be applied to an applicant

simultaneously with Rule 14(3)(a) then, it would lead to conflict. The reason being: Rule 14(3)(a) stipulates a period, prior to which a religious party should be registered. The period of one year is calculated keeping in mind the terminal date, which is the date of expiry of the term of the Management Committee, whereas Rule 14(3)(d) requires two members of the Management Committee to be the members of a new religious party. If, the stand of the official respondents (i.e., respondent nos. 1 and 2) is accepted, which is that the two elected members of the Management Committee, who are required to be the members of the new religious party seeking recognition, are necessarily required to be current members as against ex-members, the condition would fail, if registration under the 1860 Act is to operate by taking into account, the date on which the Management Committee's term expires.

17.5 In my opinion, Rule 14(3)(a) and Rule 14(3)(d) operate in separate fields. DSS being an existing religious party, which came into existence on 26.03.2009, would have to be governed if, Amended Rule 14 is to be applied, by conditions stipulated in Rule 14(3)(a), and not by those stipulated in Rule 14(3)(d). Therefore, on both accounts, whether the Unamended Rule 14 is applied or, its amended version is applied to DSS, it ought to have been recognized and allotted a reserved symbol. The impugned order dated 02.02.2012 qua DSS will thus, have to be set aside.

I may at this stage also take notice of the arguments advanced by Mr Singh that the amended Rule goes beyond the provisions of the 1971 Act. There is no concept of a religious party in the 1971 Act. As a matter of fact, even the amended Rules do not define a religious party. It is not in dispute that the Rule making power is conferred u/s 39 of the 1971 Act. The amended Rule appears to be, prima facie, beyond the scope of the provisions of the 1971 Act. The scope of the delegated legislation, as correctly pointed out by Mr Maninder Singh, learned senior counsel, is encapsulated by the Supreme Court in paragraph 14 of the judgment in the case of Bharathidasan University & Anr. The observations being relevant are extracted hereinbelow for the sake of convenience:

...The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made u/s 23 of the Act have "constitutional" and legal status, even unmindful of the fact that any one or more of them are

found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions....

17.1. However, having regard to the view that I have taken, I need not necessarily rule upon the vires of the Rule in this case. The official respondents, i.e., respondent nos. 1 and 2 will do well to deliberate upon the Amended Rule 14 and make suitable course correction, if deemed fit. In the background of what is stated by me hereinabove, I am inclined to set aside the order dated 02.02.2012 which is impugned in WP(C) 936/2012, by DSS. Accordingly, respondent nos. 1 and 2 are directed to recognize DSS and allot a reserved symbol to it for the elections of members to the Management Committee. The candidates sponsored by DSS will fight elections under the symbol so reserved for DSS. The net result would be same whether respondent nos. 1 and 2 take recourse to the Unamended Rule 14 as in the case of DSA(Badal), SAD (Delhi) and SAD (Panthak), or its amended version. However, the prayer of the petitioners, both in WP(C) 1074/2012 and WP (C) 936/2012, seeking a direction for quashing the order dated 06.02.2011, issued by respondent no. 1, is rejected. Resultantly, WP(C) 1074/2012 is dismissed, while WP(C) 936/2012 is allowed to the extent indicated above i.e., order bearing no. F 1/49/2006/DGE 8463 dated 02.02.2012 is quashed. There shall, however, be no order as to cost.