
(2013) 04 DEL CK 0035
In the Delhi High Court
Case No : LPA No. 190 of 2013

Jasjit Singh and Another

APPELLANT

Vs

Directorate of Gurdwara Elections and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Delhi Sikh Gurdwaras Act, 1971 — Section 13, 39

Citation : (2013) 4 AD 534 : (2013) 199 DLT 563

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Abinash K. Mishra, for the Appellant; Shawana Bari for Mr. Raju Nanda, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The elections to fill up the seats of Delhi Sikh Gurudwara Management Committee are held under the superintendence and control of the Directorate of Gurudwara Elections. In exercise of the powers conferred upon him by sub Section (1) and (3) of Section 39 of Delhi Sikh Gurudwara Act, 1971, the Administrator of Delhi made the Rules called Delhi Sikh Gurudwara Management Committee (Election of Members) Rules, 1974. Rule 14(1) of the aforesaid Rules, prior to its amendment with effect from 28.7.2010 provided that the Director Gurudwara Election appointed u/s 13 of the aforesaid Act shall by notification in Delhi Gazette. After amendment, the rule provides that Director shall, by notification, Delhi Gazette specify the reserved symbols to be allotted to the recognized religious parties and the free symbols to be allotted to other candidates who are not set up by any recognized party at election and the condition for allotment of symbols. The requirement for recognition of a new religious party is that besides being registered under the Societies Registration Act, 1860, it should also have at least two elected members of Delhi Sikh Gurudwara Management Committee as its members. Vide application dated 26.11.2010, the appellant no. 2 Shiromani Akali Dal (UK) applied for registration

as a recognized religious party and allotment of a reserved election symbol, for election of the members of Delhi Gurudwara Management Committee. The application was rejected vide order dated 2.2.2012 on the ground that though the appellant no. 2 had claimed that two elected members of Delhi Sikh Gurudwaras Management Committee namely Davender Singh and Rajender Singh were its members, those persons had in writing denied being the members of the said party. Vide subsequent order dated 6.2.2012, the Director of Gurudwara Election Management Committee reserved the symbols "Bucket" for Shrimani Akali Dal (Badal) Delhi State), "Car" for Shrimani Akali Dal Delhi and "Candle" for Shiromani Akali Dal - Panthak, which are respondents no. 3 to 5 respectively in this appeal. Fourteen other symbols were kept as free symbols for allotment to other candidates seeking election to the next general election of the members of Delhi Sikh Gurudwara Management Committee to be held in March, 2012. Being aggrieved from the order dated 2.2.2012 and 6.2.2012, the appellant no. 2 filed W.P.(C) No. 1074/2012 seeking quashing of the orders dated 6.2.2012 and 2.2.2013. The alternative prayer made in the writ petition was to direct the official respondent to apply the amended Rule 14 from next elections and allot election symbol to appellant no. 2 as well. When the said writ petition came up for hearing before the learned Single Judge on 30.2.2012, the prayer made by the appellants for quashing the order dated 2.2.2012 qua them was rejected and the notice limited to challenge to the order dated 6.2.2012 was issued. The learned Single Judge vide the impugned order dated 20.12.2012 dismissed the writ petition. Being aggrieved, the appellants are before us by way of this appeal.

2. Rule 14 of the Delhi Sikh Gurudwara Management Committee (Election of Members), Rules, 1974, as it stood prior to its amendment reads as under:

14. Symbols-(1) The Director shall, by notification in the Delhi Gazette, specify the symbols that may be chosen by candidate 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.

After its amendment with effect from 28.7.2010, the aforesaid Rule reads as under:

14. Symbols-(1) The Director shall, by notification in the Delhi Gazette, specify the reserved symbols to be allotted to the recognized religious parties recognized under sub-rule (3) and the free symbols to be allotted to other candidates who are not set up by any recognized religious party at elections and the conditions for allotment of symbols.

(2) Where at any such elections, 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 in case of rejection of that, the choice given in the subsequent nomination paper will be considered.

(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 Gurudwaras Management Committee;

(b) at least five members of the religious party should have contested general election of the members of the Delhi Sikh Gurudwaras Management Committee from separate wards;

(c) the religious party should have intimated the details of the office bearers every year in the month of January and within one month from the date of election of the Committee of the said religious party, to the Director; and

(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;

3. The Director may derecognize any recognized religious party, if-

(a) it failed to set up candidates from at least five wards in the last general elections for the Delhi Sikh Gurdwaras Management Committee; and

(b) the total valid votes polled in all wards in the last general election of members of the Delhi Sikh Gurdwaras Management Committee in favour of its candidates has been less than six per cent of the total valid votes polled in such elections:

Provided that before taking action under this sub-rule, the Director shall afford a reasonable opportunity to the recognized religious party;

3. It is evident from a bare perusal of the unamended Rule that it did not envisage allotment of symbol to a party, whether religious or political and the symbols could be chosen only by the individual candidates contesting in a particular election. The provision for allotment of symbol to a party came to be incorporated only on amendment of the aforesaid Rule. Therefore, we are in agreement with the learned counsel for the appellant that no symbol to a party could have been allotted before amendment of the aforesaid Rule.

4. We find from a perusal of the notifications dated 8.10.1999 and 30.11.2006 that certain reserved election symbols were earmarked for the candidates sponsored by Shrimani Akali Dal (Badal) Delhi State), Shrimani Akali Dal Delhi and Shiromani Akali Dal - Panthak. This allotment also finds reference in the

order dated 6.2.2012. Reserving /earmarking a symbol for the candidates of a particular party is nothing but earmarking/reserving the said symbol to the party in question. The unamended Rule, in our opinion, did not permit allotment/reservation of a symbol to a particular party. It envisaged an option to the candidates contesting in a particular election, to choose one of the available symbols, subject to such restriction as the Director could by way of notification specify. During the course of the hearing of the writ petition, when the learned counsel for the appellants/petitioners assailed allotment of reserved symbols to the aforesaid parties on the ground that the unamended Rule provided for such allotment only to an individual candidate and not to any party, the learned counsel for the respondents contended that the expression "candidate" would have to be read as a group or association of persons and if that meaning was accorded, no fault could be found with the said notification. The learned counsel representing the respondent no. 3 Shrimani Akali Dal (Badal) Delhi State) and respondent no. 5 Shiromani Akali Dal - Panthak repelled the challenge on the ground that the allotment could not be challenged after such a long time and these parties cannot be asked to apply for fresh symbols or to fulfill the conditions stipulated under the amended rules. They also pointed out that the aforesaid two notifications had not been challenged in the writ petition. Yet another contention made by their counsel was that the amended rules were ultra vires the provisions of the Delhi Sikh Gurudwaras Management Committee Act, 1971 and were, therefore, liable to be ignored despite there being no challenge to the said Rule. In this regard, they relied upon the decision of the Supreme Court in *Bharathidasan University and Another Vs. All India Council for Technical Education and Others*, . This was also the submission of the learned counsel for the respondents no. 3 and 5 that the concept of "Religious Party" was unknown to the Constitution of India. The learned counsel representing respondent no. 4 also defended allotment of symbol made to it vide notification dated 30.11.2006.

5. A perusal of the order dated 6.2.2012 would show that the reserved symbols "bucket", "car" and "candle" to Shrimani Akali Dal (Badal) Delhi State), Shrimani Akali Dal Delhi and Shiromani Akali Dal - Panthak were not allotted by this order and were allotted by notifications dated 8.10.1999 and 30.11.2006. The order dated 6.2.2012 only contains a recital to this effect in Part-I of the said order. However, since the notification dated 8.10.1999 and 30.11.2006 were not challenged in the writ petition, we need not examine the legality of the said notification. Yet another reason why we are not inclined to go into the allotment of reserved symbols to respondents no. 3 to 5, that the appellants, in our view have no locus standi to challenge the aforesaid allotment. The application of appellant no. 2 for recognition as a religious party and allotment of a reserved election symbol has already been rejected vide order dated 2.2.2012 and that order has become final on account of the notice in the writ petition being confined to challenge to the order dated 6.2.2012. In any case, admittedly, appellant no. 2 had applied for registration and reservation of symbol only after amendment of the rules and did not fulfill the requirement of the amended rules

since it did not have two members of Delhi Sikh Gurudwaras Management Committee as its members. The allotment of symbols to respondents no. 3 to 5, in our opinion, can be questioned only either by a party which has been recognized in terms of Rule 14(3) or by an individual contesting any Gurudwara elections and seeking allotment of such a reserved symbol. Neither any such party nor any such candidate has challenged the allotment of reserved symbol to respondents no. 3 to 5. It goes without saying that if the allotment of reserved symbols to respondents no. 3 to 5 by way of notifications dated 8.11.1999 and 30.11.2006 is challenged by any such party or candidate, the impugned order would not come in the way of such party/person assailing the aforesaid notification on the ground that Rule 14, before its amendment did not envisage allotment of reserved symbol to a party. For the reasons stated hereinabove, the appeal is hereby dismissed. There shall be no orders as to costs.