
(2006) 08 P&H CK 0293
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5938 of 2006

Kawalinder Singh Thekedar and another	APPELLANT
Vs	
State of Punjab and others	RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:

Citation : (2007) 3 PLR 390 : (2007) 1 RCR(Civil) 312

Hon'ble Judges : Uma Nath Singh, J and S.D.Anand, J

Advocate : Mr. B.S. Guliani, Advocate.Mr. Daldeep Singh, DAG, Punjab.For the Respondent Nos. 2 and 3, Mr. H.S. Mattewal, Sr. Advocate with Mr. Sukhbir Singh, Advocate.For the Union of India, Ms. Sushma Chopra, Advocate.For the State of Haryana, Mr. S.K. Monga, DAG, HaryanaFor the U.T., Chandigarh, Mr. Anupam Gupta, Advocate with Mr. Gurinderjit Singh, Advocate., Advocates for appearing Parties

Judgement

Uma Nath Singh, J. (Oral)

1. This judgment shall also dispose of connected writ petition Nos. 6153 of 2006 (Onkar Singh and another v. State of Punjab and others, 7885 of 2006 (Avtar Singh and others v. State of Haryana and others), 7887 of 2006 (Didar Singh Nalvi and others v. State of Haryana and others) and 7901 of 2006 (Jagdish Singh Jhinda and others v. State of Haryana and others), as they involve a common question of law and somewhat similar facts with identical prayer for reliefs.

2. Learned counsel for the petitioners has sought to challenge the provisions of Section 87(1)(b) of the Sikh Gurdwaras Act, 1925 (for short 'the Act') on the ground that power of nomination contained therein suffers from excessive delegation inasmuch as the provisions thereof are totally unguided and arbitrary. For ready reference, the provisions of Section 87 of the Act are reproduced hereunder :

"87. Constitutions of committee not specially provided for (1) Every Committee shall consist of five members out of which one at least shall be a person

belonging to the scheduled castes and shall be constituted as follows :

(a) The Board shall nominate the members, with their written consent, or the committee of the Gurdwara or Gurdwaras, whose gross annual income does not exceed three thousand rupees, who shall be residents of the district in which the Gurdwara or one of the Gurdwaras to be managed by the Committee is situated :

Provided that the Board may, if it so decides, instead of nominating the members, manage the affairs of any such Gurdwara itself in accordance with the provisions of the Act.

(b) The Committee of Gurdwara or Gurdwaras, whose annual monetary income exceeds three thousand rupees, shall consist of four elected members and one member nominated by the Board who shall be resident of the district in which the Gurdwara or one of the Gurdwaras to be managed by the Committee is situated.

If in the election, the required number of members is not elected, the Board may nominate such number of persons as have not been elected so as to complete the Committee for such a Gurdwara or Gurdwaras; provided that the person or persons so nominated shall be the resident or residents of the district in which the said Gurdwara or Gurdwaras are situated.

2. If the Board fails to nominate a member or members of the Committee in accordance with the provisions of clause (a) or (b) the manager and if there is no manager, then Granthi or Granthis of Gurdwara or Gurdwaras shall either by himself or themselves or along with the nominated or elected member or members, if any, as the case may be, perform the duties of the Committee till such time as the Board nominates the required number of members of the Committee."

3. On the other hand, Shri H.S. Mattewal, learned senior counsel appearing for respondent No. 2, Shiromani Gurdwara Parbandhak Committee (for short 'the SGPC') and respondent No. 3, the President of the SGPC, countered the submissions of learned counsel for the petitioners, urging that the powers of nomination as contained in Section 87 of the Act is fully guided by the qualifications given under Section 91 of the Act and further that such powers to nominate are derived from Section 64 of the Act. The said Sections 64 and 91 of the Act, on reproduction, read as under :

"64. Powers of executive committee of Board. The executive committee of the Board shall exercise on behalf of the Board all powers conferred on the Board by the provisions of this Act which are not expressly reserved to be exercised by the Board in general meeting. But the Executive Committee may, if it so decides by a majority of threefourth of its members present in the meeting, delegate any of its powers to a SubCommittee consisting of one or more of its members."

"91. Qualification for nomination to a committee. A person shall not be nominated to be a member of a committee if he

- (i) is less than twentyone years of age; or
- (ii) is of unsound mind; or
- (iii) is an undischarged insolvent; or
- (iv) is a patit (or not a Sikh); or
- (v) is a minister of a Notified Sikh Gurdwara other than the head minister of the Darbar Sahib, Amritsar, or any of the four Sikh Takhsats specified in clause (i) of subsection (1) of Section 43; or
- (vi) is a paid servant of a Notified Sikh Gurdwara; or
- (vii) being a keshadhari Sikh is not an amritdhari; or
- (viii) takes alcoholic drinks; or
- (ix) not being a blind person cannot read or writ Gurmukhi.

Explanation. For purposes of clause (ix) a person shall be deemed to be able to

- (a) read Gurmukhi if he is able to recite Shri Guru Granth Sahib in Gurmukhi; and
- (b) write gurmukhi if he fills his nomination paper for election to the Board in Gurmukhi in his own handwriting. If any question arises whether a candidate is or is not able to read and write Gurmukhi the question shall be decided in such manner as may be prescribed."

4. Learned senior counsel further submitted that the position of the President of SGPC is akin to that of the Pope in Christianity, therefore, his authority to nominate members of the Committee should not be casually questioned. Issues like election and nomination to various bodies and committees under the Act are more like an ecclesiastical question than legal and political ones. Learned senior counsel also contended that the resolution (Annexure P1) and the letter of the Secretary, SGPC (Annexure P2), whereunder the petitioners are claiming right to be nominated, are not the valid documents. Rather, Annexure P2 is only a letter inadvertently addressed by the Secretary of the SGPC to the members of SGPC without the consent of the Committee. He also referred to para Nos. 2, 3 and 4 of the reply on affidavit sworn by the President, the SGPC (respondent No. 3). For ready reference, the said paras are reproduced as under :

"2. That the deponent was authorised by the Executive Committee of the SGPC vide resolution No. 25 dated 7.12.2005 to nominate one or more members on the Committee of Management of Gurdwaras constituted under Section 87 of the Act.

3. That the deponent has nominated various persons on the Committees of Gurdwaras in terms of Section 87(1)(b) of the Sikh Gurdwaras Act and in exercise of the powers given to the deponent vide resolution No. 25 dated 7.12.2005, after considering the proposals received from various quarters. The

list of nominated members was sent to the Commissioner, Punjab, Chandigarh, Gurdwara Election Department vide letter dated 8.4.2006 for notifying the same.

4. That some confusion was created by the letters sent by the Secretary, SGPC, to the Halqa Members of the SGPC. The said letters were not in consonance with the resolution No. 25 dated 7.12.2005. After it came to the notice of the deponent that the letters sent by the Secretary, SGPC, to the Halqa Members and the writing of the resolution can create some confusion, the matter was put to the Executive Committee of SGPC along with the list containing the nominated members, sent by the deponent to the Commissioner, Gurdwara Election, for notification. The Executive Committee of the SGPC vide resolution No. 499 dated 25.4.2006 has clarified the earlier resolution No. 25 dated 7.12.2005 and also approved the list sent by the deponent to the State Government containing the names of nominated members on the committees of various Gurdwaras under Section 87 of the Act. It was also mentioned that the letters written by the Secretary may be read in terms of resolution No. 499 dated 25.4.2006."

According to learned senior counsel, the correct resolution in regard to nomination on the Managing Committees of the Gurdwaras in Punjab, Haryana and U.T., Chandigarh, is the resolution No. 25 dated 7.12.2005.

5. On due consideration of rival submissions, we are not inclined to grant the reliefs as prayed for. The writ petitions are based on the disputed questions of facts, as contained in Annexure P1 (the alleged resolution of the SGPC), and Annexure P2 (the letter of the Secretary of the SGPC), which are denied by the respondents in the wake of resolution No. 25 dated 7.12.2005. Besides, the petitioners, on one hand, are said to have asserted their rights under the impugned provisions of Section 87 of the Act and on the other, they are challenging the validity of the said provisions on the ground of excessive delegation and arbitrariness. Moreover, the petitioners have not filed any replication to the reply of the respondents, as referred to hereinabove. Besides, the nominations to the committee are to be notified by the concerned State Governments and till date no such notification has been issued, therefore, the petitioners cannot be said to have suffered any prejudice in view of the resolution in question. Needless to say that the powers of nomination as contemplated under the provisions of Section 87 of the Act are fully guided by the qualifications laid down under Section 91 of the Act, therefore, the said provisions are held to be valid and the nomination as such is intra vires.

Accordingly, the writ petitions, being devoid of merits, are dismissed.

Petitions dismissed.