
(2017) 02 DEL CK 0116

In the Delhi High Court

Case No : LPA 34 of 2017 & C.Ms. No.1290 of 2017 & 1292 of 2017

Kulwant Singh Baath

APPELLANT

Vs

Lt Governor of Delhi

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Delhi Sikh Gurdwara Management Committee (Registration of Electors) Rules, 1973 — Rule 4

Delhi Sikh Gurdwaras Act, 1971 — Section 5

Citation : (2017) 238 DLT 351

Hon'ble Judges : Ms. Gorla Rohini and Ms. Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Mr. A. P. S. Ahluwalia, Sr. Advocate with Mr. S.S. Ahluwalia, Advocates, for the Appellant; Mr. Satyakam, ASC, for the GNCTD

Final Decision : Dismissed

Judgement

Gorla Rohini, J.—This appeal is directed against the order dated 07.12.2016 passed by the learned Single Judge in W.P.(C) No.11591/2016. The unsuccessful petitioner is the appellant before us.

2. We have heard the learned counsel for both the parties.

3. The appellant/writ petitioner is an elected member of the Delhi Sikh Gurudwara Management Committee from Ward No.28. The elections to the said Committee were held on 27.01.2013 and admittedly, the term of the office members of the Committee would expire in February, 2017. It is also not in dispute that the respondent No.2/Director of Gurudwara Election has already initiated steps for revision of electoral rolls in respect of all Gurudwara Wards of Delhi and Public Notice dated 25.09.2016 was issued in that regard.

4. Alleging that the respondents failed to prepare the Photo Electoral Rolls as required under Rule 4 of the Delhi Sikh Gurudwara Management Committee (Registration of Electors) Rules, 1973 (for short "Rules") as amended on

12.03.2015, the appellant herein filed W.P.(C) No.11591/2016 and sought a direction that the election process shall not go on unless and until a fresh photo electoral rolls is prepared. The learned Single Judge dismissed the writ petition along with W.P.(C) No.11551/2016, filed with an identical prayer, by the order under appeal dated 07.12.2016 observing that the petitions are not only highly belated but are also devoid of merit.

5. Though the issue of de-limitation of wards was also raised in the said writ petitions, it was submitted before us on 19.01.2017 by Mr. A.P.S. Ahluwalia, the learned Senior Counsel appearing for the appellant that the appellant in this appeal is limiting the prayer only to the extent of preparation of Photo Electoral Rolls as required under Rule 4 of the Rules.

6. It is vehemently contended by Mr. A.P.S. Ahluwalia, the learned Senior Counsel appearing for the appellant that the preparation of Photo Electoral Rolls being a statutory mandate, the respondents are bound to comply with the same and no elections can be conducted in the absence of Photo Electoral Rolls. To substantiate his submission with regard to the binding nature of the statutory rules, the learned Senior Counsel relied on Lok Prahari v. State of U.P. & Ors. 2016 (8) SCC 389.

7. However, it is submitted by Mr. Satyakam, the learned ASC for GNCTD appearing for the respondents that in spite of the best efforts made by the respondents and wide publicity given, preparation of electoral rolls with the photographs of all the voters could not be achieved and that the electoral rolls with the photographs of about 62% voters have been finalized and the process of getting them printed is in progress. It is also brought to our notice that the respondent No.2 passed the following order dated 02.02.2017 to facilitate the identification of those voters whose photographs are not printed in the electoral rolls and to prevent impersonation :

"Whereas, with a view to preventing impersonation of electors and facilitating their identification at the time of poll in respect of General Election to the members of Delhi Sikh Gurdwara Management Committee to be held on 26.02.2017 (Sunday), it has been considered essential to prescribe the documents which shall have to be produced by the voters for establishing their identity before casting their voters. Now, therefore, it is direction that all the electors in each of the 46 Gurdwara Wards in Delhi for the General Election to be held on 26.02.2017 (Sunday), shall have to produce any one of the following photo documents for establishing their identity:-

(i) Passport

(ii) Driving License

(iii) Income Tax Identify (PAN) Card

(iv) Service Identity Card issued to its employees by State/Central Govt., Public Sector Undertakings, Local Bodies or Public Limited Companies with photograph.

(v) Passbooks issued by scheduled Public Sector Banks/Post Office and Kisan Passbooks with photograph.

(vi) Property documents such as Pattas, Registered Deeds etc. with photograph.

(vii) SC/ST/OBC Certificate issued by the competent authority with photograph.

(viii) Pension document such as Ex-serviceman's Pension Book/Pension Payment Order/Ex-serviceman's Widow/Dependent Certificates, Old Age Pension Order, Widow Pension Order with Photograph.

(ix) Freedom Fighter Identity Card with photograph.

(x) Arms License.

(xi) Certificate of Physically Handicapped with Photograph issued by the competent authority.

(xii) Job Card issued under MNREGA with photograph.

(xiii) Health Insurance Scheme Smart Cards with photograph (issued by the Ministry of Labour).

(xiv) Aadhar Card

(xv) Smart Card issued by RGI under NPR."

8. It is also brought to our notice that the election notification has been issued by the respondent No.2 on 01.02.2017 fixing the schedule as under:

"(a)

The 8th of February, 2017 (Wednesday)

as the last date for filing nominations.

(b)

The 9th February, 2017 (Thursday)

as the date for scrutiny of nominations

(c)

The 11th of February, 2017 (Saturday)

As the last date for withdrawal of the candidature

(d)

The 26th of February, 2017 (Sunday)

as the date of poll, if necessary

(e)

The 2nd of March, 2017 (Thursday)

as the date before which the election shall be completed"

9. It is relevant to note that W.P.(C) No.4155/2016 titled Paramjit Singh Sarna v. Directorate of Gurdwara Elections and Ors was filed in May 2016 raising the very same issue of preparation of fresh electoral rolls and seeking a direction to the respondents to complete the process of preparation of fresh electoral rolls prior to the commencement of election process. After hearing both the parties, the said writ petition was disposed of by order dated 31.05.2016 recording the statement of the counsel for the respondents and binding the respondents to the said statement. Subsequently, the respondents filed CM No.31658/2016 for modification of the order dated 31.05.2016 together with an affidavit dated 21.09.2016 of the Director of the Directorate of Gurdwara Elections stating the works completed and indicating the expected time line for preparation of the Photo Electoral Rolls. The said application was disposed of by order 30.09.2016 directing the respondents to strictly abide by the expected timeline stated in the affidavit dated 21.09.2016. By the said order dated 30.09.2016, the application for impleadment filed by a third party who also sought a direction for preparation of a fresh electoral rolls was also considered and disposed of observing:

"12. I am of the view that not only is the application for impleadment not maintainable in this disposed of petition but even otherwise at this stage no direction for preparation of fresh electoral rolls can be given. Moreover, it is the respondents who are responsible for holding of elections and for preparation of the electoral rolls and once they have deemed fit to only revise the electoral rolls, they cannot be directed at this stage to undertake the exercise of preparation of fresh electoral rolls and owing to which exercise the holding of elections is likely to be delayed."

10. Subsequently, the respondents moved another application being C.M.No.48260/2016 explaining the steps that have already taken for preparation of the Photo Electoral Rolls and seeking further extension of time in modification of the orders dated 31.05.2016 and 30.09.2016. The said application was disposed of by order dated 01.02.2017 taking note of the affidavit filed on behalf of the respondents stating that the final prints of the Photo Electoral Rolls were already handed over to the concerned EROs for display at their respective offices and that the election schedule has also been issued according to which the election is to be held on 26.02.2017.

11. We have also taken note of the fact that identical objections were raised even before the last election to the Delhi Sikh Gurudwara Management Committee and W.P.(C) No.4166/2011 titled Dashemsh Seva Society and Another v. Lt.Governor of Delhi and Others was disposed of with certain directions for preparation of fresh electoral rolls. There was also a direction that the election notification shall not be issued unless the process of preparation of electoral rolls and de-limitation is undertaken. However, LPA No.128/2012 preferred by the Directorate of Gurudwara Elections was allowed by the Division Bench by judgment dated 01.03.2012 and the order of the learned Single Judge in W.P.(C) No.4166/2011

was set aside observing:-

"20. The process of delimitation and of preparation of fresh electoral rolls is undoubtedly a lengthy process and no error can be found in the Lieutenant Governor subsequently deciding to give more weightage to the holding of elections. As aforesaid, the Act expressly contains a prohibition against the elected members continuing beyond the terms of four years. Moreover, the Rules having sufficiently provided as aforesaid for the existing electoral rolls and wards to continue till fixation of fresh one, there is no reason for this Court to interfere in the decision of the Lieutenant Governor and which is in consonance with the Act and the Rules, howsoever, laudable the reasons which prevailed with the learned Single Judge."

12. Though the matter was carried to the Supreme Court by preferring Special Leave Petitions, the Supreme Court declined to interfere and directed the elections to be completed by 31.12.2012 positively. There was also a direction with regard to preparation of electoral rolls as under:

"As regards the working of de-limitation and preparation of electoral rolls, if found to be necessary, it is directed that this exercise may be undertaken after the above general elections and shall be completed as early as may be possible and in no case later than nine months from the date of declaration of result of above general elections."

13. It is relevant to note that Section 5 of the Delhi Sikh Gurudwara Act, 1971 expressly provides that the term of office of a member of the Committee shall be four years commencing from the date on which the first meeting of the Committee is held under Section 15 and no longer. It is no doubt true that Rule 4 as amended on 12.03.2015 mandates the preparation of the photo electoral rolls. However, non-compliance of the said Rule, in our considered opinion, cannot be a justifiable ground to hold up the election process since the same would be in violation of the provisions of the parent Act which expressly prohibited the elected members to continue beyond the term of 4 years.

14. Even otherwise, we are unable to appreciate the conduct of the petitioner in raising the issue of preparation of photo electoral rolls as per the amended Rule 4 at the fag end of the term of the elected Committee.

15. Having taken note of the steps that have already been taken by the respondent No.2 for preparation of the photo electoral rolls and more particularly, the order dated 02.02.2017 that was issued to facilitate identification of those voters whose photographs are not printed in the electoral rolls, we are also of the view that there is substantial compliance with the requirement of Rule 4 of the Rules. Moreover, as the Election Notification has already been issued, it is impermissible under law to interfere with the election process.

16. For the aforesaid reasons, the relief as prayed for cannot be granted and the

learned Single Judge was justified in dismissing the writ petition. The said order warrants no interference on any ground whatsoever.

17. The appeal is accordingly dismissed.