

(2006) 03 DEL CK 0168

In the Delhi High Court

Case No : LPA 242, 243, 244 and 245 of 2006

Paramjit Singh Sarna, Delhi Sikh Gurdwara Committee and
Another

APPELLANT

Vs

Avtar Singh Hit and Another
 Delhi Sikh Gurudwara
Mgmt. Committee Vs Rajinder Singh Gandhi and Another

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28
Constitution of India, 1950 — Article 12, 226, 226(1A), 32
Delhi Sikh Gurdwara Rules, 1973 — Rule 15, 16, 17, 28
Delhi Sikh Gurdwaras Act, 1971 — Section 100(1), 15, 16, 2, 21
Delhi Sikh Gurudwara Regulations — Regulation 4(1)
Industrial Disputes Act, 1947 — Section 10A
Representation of the People Act, 1951 — Section 100(1)

Citation : (2006) 128 DLT 575 : (2007) 1 ILR Delhi 1180

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : R.K. Anand and G.K. Bharti, in LPA 244 and 245/2006, J.M. Sabharwal, K.N. Balgopal, G.K. Bharti and A.P. Mukundan, in LPA 246 and 247/2006, Arun Bhardwaj and G.K. Bharti, in LPA 249 and 250/2006 and G.K. Bharti, in LPA 242 and 243/200, for the Appellant; A.M. Singhvi and Rajiv Nayyar, Rajiv K. Garg, I.S. Alag and J.S. Lamba, for respondent No. 1, Arvind K. Nigam and R.S. Khurana, for the Respondent

Final Decision : Disposed Off

Judgement

Mukul Mudgal, J.—With the consent of the learned counsel for the parties, these Letters Patent Appeals are taken up for final hearing.

2. These LPAs arise from the judgment of the learned Single Judge dated 23rd January, 2006 by virtue of which elections to the posts of office bearers and members of the Executive Board of Delhi Sikh Gurudwara Management Committee (hereinafter referred to as "DSGMC") were countermanded and fresh elections were ordered to be held on 14th February, 2006.

3. The facts of the case as per the appellants are:-

(a) On 28th November, 2005, the General Secretary of the DSGMC, Shri Ravinder Singh Khurana, the respondent No. 2 in this appeal, issued a letter informing the members that a meeting of the General House of DSGMC would be held on 19th December, 2005 for the purpose of convening elections. The President of the DSGMC Shri Paramjit Singh Sarna, the appellant herein, was not in India when the letter dated 28th November, 2005 was issued by the Secretary of the DSGMC.

(b) Upon his return the President issued a letter dated 8th December, 2005 stating that the General Secretary had no authority to issue the letter dated 28th November, 2005 and issued an order in exercise of his powers u/s 21 of the Delhi Sikh Gurudwara Act, 1971 (hereinafter referred to as the 'DSG Act') to the same effect. Thereafter, a notice dated 12th December, 2005 was issued by the President calling for a special meeting of the Executive Board on 15th December, 2005 at 10.30 am. The said meeting was attended by eight members who constituted a majority in the Executive Board and was presided over by the Secretary since the President was unable to reach at the prescribed time. The majority unanimously approved the letter dated 28th November, 2005 reiterating that the elections would be held on 19th December, 2005. However, the President under the belief that no meeting had been held, convened another meeting at 11.00 am, which was also attended by 8 members of the Executive Board and a resolution was passed to the effect that the elections would not be held on 19th December, 2005 but on 18th January, 2006. The same was communicated by the President vide his letter dated 16th December, 2005. Thereafter, the General Secretary issued another letter dated 15th December, 2005 stating that there would be no change in the original date of election i.e. 19th December, 2005.

(c) The President after seeking legal advice in the matter issued a letter/notice dated 17th December, 2005 to the effect that the elections would be held on 19th December, 2005 as originally decided and intimated by the General Secretary in his letter dated 15th December, 2005 and withdrew his earlier letter dated 16th December, 2005.

(d) On the date of the elections, i.e. 19th December, 2005, 35 members out of an electoral college of 50 members participated and the new office bearers and members of the Executive Board were unanimously elected. Significantly on the night of 18th and 19th December, 2005, the General Secretary issued telegrams to the effect that the elections dated 19th December, 2005 were postponed. But such telegrams reached the office of DSGMC on 20th December, 2005 i.e., after the date of convening the elections.

3. This election was challenged by way of series of writ petitions including one filed by the Secretary, Ravinder Singh Khurana, respondent No. 2 in this LPA, amongst others before the learned Single Judge of this Court, who allowed the writ petitions and countermanded the elections held on 19th December, 2005

mainly on the ground that the conflicting stands of the two factions repeated by several communications on either side had made the issue of holding elections on 19th December, 2005, so confusing that there were no real and fair elections. It is this common judgment and the order of the learned Single Judge in the group of writ petitions which has been challenged in these LPAs.

4. The learned counsel for the appellant, Shri R.K. Anand submitted as follows:-

(a) The writ petition filed by the respondents [petitioners in WP(C) No. 370/2005] under Article 226 of the Constitution was not maintainable since an alternate and an efficacious remedy was available under Sections 31, 32 and 33 of the Part V of the DSG Act which provides for settlement of the elections and other disputes and the Delhi Sikh Gurdwaras (Election of Pro Tempore Chairman, President other Office Bearers and Delhi Sikh Gurudwara) Act, 1971 and the rules framed there under to challenge the election of the office bearers.

(b) In *Gurdeep Singh Uua and Others Vs. Delhi Sikh Gurdwara Prabandhak Committee*, , it was held that the Court can certainly interfere in the elections under its writ jurisdiction if it finds that exceptional and extraordinary circumstances existed. But in the present case no exceptional and extraordinary circumstances exist so as to warrant interference by this Court under Article 226 since factionalism, cut throat competition and heated exchanges etc., are part and parcel of the contemporary election process.

(c) The learned Single Judge has inter alia relied upon the position of law laid down in *Gurdeep Singh Dua's* case (supra) to set aside the election dated 19th December, 2005. However, the position of law laid down in the said judgment is not applicable to the facts of the present case as the position of law laid down in the above mentioned judgment is not with respect to elections but with respect to power of the office bearers to authorize any person to make nominations on their behalf. Para 12 of the *Gurdeep Singh Dua's* case (supra) reads as follows:-

2...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.

(d) Even if the 15 members had participated in the elections dated 19th December, 2005 there would not have been any substantial change in the result of the elections since the faction of the President was elected unanimously by all 35 members who participated in the election. In other words the result of the

elections would not have been materially affected even though the 15 members who were not present on the date of the elections ostensibly due to confusion and communication gap had participated in the election process. The petitioner relies upon the following position of law laid down in the case of Sri Uma Ballav Rath Vs. Sri Maheshwar Mohanty and Others, wherein it was held by the Hon''ble Supreme Court that :

7. The above finding, however, does not end the matter. For the appellant to succeed in the election petition u/s 100(1)(d)(iv) of the Act, he had to establish that the result of the election insofar as it concerns the returned candidate had been materially affected by non-compliance with any of the provisions of the Constitution and of the Act and the Rules and Orders made under the Act but the evidence led by the appellant at the trial of the election petition falls absolutely short of establishing that the result of the election insofar as it concerns the returned candidate had been materially affected thereby. The evidence on the record does not show that the result of the election had been materially affected by allotment of the symbol "Wheel" to Respondent 1. The appellant failed to establish the allegation that the result of the election had been materially effected insofar as the returned candidate is concerned by the action of the Election Commission and the Returning Officer. The learned Single Judge found that the statements of the witnesses were vague, general and conjectural in nature and did not establish the charge made by the appellant. We have been taken through the evidence of the witnesses by learned counsel for the parties and we are not persuaded to take a different view than the one taken by the High Court either. To avoid an election, it is necessary that cogent evidence is led in support of the charge. An election cannot be set aside on "presumptions", surmises or conjectures. Clear and cogent proof in support of the allegations is essential. In the instant case, the evidence led by the appellant runs hopelessly short of establishing the charge u/s 100(1)(d)(iv) of the Act. In this view of the matter, the finding recorded by the learned Single Judge of the High Court on Issue 1 against the appellant cannot be found fault with. We, Therefore, do not find any merit in this appeal. The appeal consequently fails and is hereby dismissed but without any order as to costs.

5. The learned Senior Counsel for the appellants, Shri J.M. Sabharwal has submitted that in elections where close knit groups are present as in the present case, where the electoral college consisted only of 50 members, the plea of confusion should not be believed as strengths and weaknesses of the factions are well known. He further submitted as follows:-

a) That the statutory elections under the Delhi Sikh Gurudwara Act were held under the supervision of an officer of Directorate, Gurudwara Prabandhak Committee. This has also been found by the learned Single Judge. The Act provides a mechanism to challenge the elections by way of an election petition. The provisions of the election petition under the DSG Act are in para materia with the Representation of Peoples Act and the Municipal Corporation Act. Thus,

the DSG Act provides a sufficient alternate efficacious remedy and hence the writ petition is not maintainable under Article 226.

He thus relied upon Sections 2(e), 3, 4, 15 & 16 of the Act and the Rules 15, 16, 17, 28 as framed under the Act.

b) He also submitted that unlike the Representation of People Act, the mechanism of Election Petition under the DSG Act does not provide for the statutory period of six months for disposal of the petition.

c) He also relied upon the following judgments:-

(i) In *Rameshwar Prasad and Others Vs. Union of India (UOI) and Another*, , the Hon"ble Supreme Court laid down the following position of law:-

164. As a consequence of the aforesaid view on point no. 2, we could have made an order of status quo ante as prevailing before dissolution of Assembly. However, having regards of the facts and the circumstances of the case, in terms of order of this Court dated 7th October, 2005, such a relief was declined. Reasons are the larger public interest, keeping in view the ground realities and taking a pragmatic view. As a result of the impugned Proclamation, the Election Commission of India had not only made preparations for the four phase election to be conducted in the State of Bihar but had also issued Notification in regard to first two phases before conclusion of arguments. Further, in regard to these two phases, before 7th October, 2005, even the last date for making nominations and scrutiny thereof was also over. In respect of 1st phase of election, even the last date for withdrawal of nominations also expired and polling was fixed for 18th October, 2005. The election process had been set in motion and was at an advanced stage. Judicial notice could be taken of the fact that considerable amount must have been spent; enormous preparations made and ground works done in the process of election and that too for election in a State like the one under consideration. Having regard to these subsequent developments coupled with numbers belonging to different political parties, it was thought fit not to put the State in another spell of uncertainty. Having regard to the peculiar facts, despite unconstitutionality of the Proclamation, the relief was moulded by not directing status quo ante and consequently permitting the completion of the ongoing election process with the fond hope that the electorate may again not give fractured verdict and may give a clear majority to one or other political party the Indian electorate possessing utmost intelligence and having risen to the occasion on various such occasions in the past.

(ii) In *Harnek Singh Vs. Charanjit Singh and Others*, , the Hon"ble Supreme Court laid down the following position of law:-

15. Prayers (b) and (c) aforementioned, evidently, could not have been granted in favor of the petitioner by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution of India. Such

jurisdiction being discretionary in nature may not be exercised inter alias keeping in view of the fact that an efficacious alternative remedy is available therefore.

22. In view of the aforementioned provision, which is in pari materia with Section 100(1)(d)(iv) of the Representation of People Act, a writ petition may not be held to be maintainable.

25. We, Therefore, do not think that it was a fit case in which the High Court should have exercised its discretionary jurisdiction.

(iii) In Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, the Hon"ble Supreme Court laid down the following position of law:-

4. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this (sic High) Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection para 3 in K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, u/s 70(2)(C) of the Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law.

d) The court will not interfere under Article 226 where an alternative remedy is available, especially in the case of an election petition.

e) The learned senior counsel also submitted that there was no question of confusion in the elections dated 19th December, 2005 since out of the total electoral college consisting of 50 persons, 35 took part in the elections and unanimously elected the office bearers. He further submitted that assuming that the respondents in this LPA were confused, no averments of any kind of confusion have been made in the writ petition. Moreover, even if it is assumed that the respondents were confused about the elections dated 19th December, 2005, there could have been no material effect of the confusion of the respondents with respect to elections dated 19th December, 2005 on the result of the elections. He also submitted that if every voter, after an election process is complete, submits that he was confused, then it would not be possible to convene and conclude any elections.

f) He sought to distinguish the two judgments relied upon by the Single Judge in his judgment. He submitted that the judgment in Gurdeep Singh Dua's case (supra) was not applicable as no election took place in this case but there was only a pre-election nomination.

(g) In respect of Avtar Singh Hit's case (supra) he submitted that this judgment cannot be relied upon because it has been set aside by consent by the Division

Bench of this Court in appeal.

6. The learned counsel for the appellants, Mr. Balgopal submitted as follows:

a. Since the question of confusion in the elections is a disputed question of facts, a writ petition is not maintainable.

b. The 15 persons who were elected as the office bearers in the elections dated 19th December, 2005 and who would be affected by the result of this LPA have not been joined as parties in the writ petition and, Therefore, if necessary parties to the writ petition are not joined, then the writ petition should be dismissed. He further submitted that there a fifth writ petition (Malkinder Singh's case) was filed before the learned Single Judge wherein all affected parties were joined but the same was withdrawn. However, the same has not been mentioned in the order of the learned Single Judge.

c. In reply to a query of this Court whether the elected persons' case and cause was urged before the Single Judge, the learned counsel replied that a portion of that grievance has been taken into consideration by the learned Single Judge.

i) He submitted that as per the following law laid down in Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , the High Court should not hear the writ petition if the necessary parties are not joined.

28. The real question before us, Therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely the reserve pool teachers, were not made parties not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, Therefore, can be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, Therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.

ii) In Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, it was held:-

(9) The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As

we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favor of the successful party. However the High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, Therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interest are directly affected is, Therefore, a necessary party.

iii) In Daulat Ram Chauhan Vs. Anand Sharma, it was postulated as follows:-

As a logical consequence of the principles enunciated by us, it follows that where the allegation of fraudulent practice is open to two equal possible inferences that the pleadings of corrupt practice must fail. For instance, A or in this case Sood or Batish, joined or participated or was present in an election rally or crowd and may have shouted slogans on his own without taking the consent of the candidate concerned, this would not be a corrupt practice within the meaning of S. 123(2) because the element of consent is wholly wanting.

iv) Para 1-A of Part II-Civil of High Court Rules for issue of writs of mandamus, prohibition, quo warranto or certiorari under Article 226 of the Constitution of India. Para 1-A reads as follows:

(i) All petitions under Article 226 of the Constitution of India, wherein a prayer for stay or any other interim relief is contained shall be made on motion after notice to the parties effected thereby.

d. He also relied on para 17 of the judgment of the learned Single Judge to submit that even the learned Single Judge had recorded a finding that 35 members of DSGMC appear to have attended and voted in the elections held on 19th December, 2005 and that the 35 persons who attended and voted in the elections dated 19th December, 2005 ought to have been imp leaded as respondents.

7. The learned counsel for the appellant, Mr. Bhardwaj submitted as follows:-

a. The learned Single Judge has recorded a finding that the procedure of elections was as per the regulations applicable.

b. The respondent No. 2 ought to have approached the Directorate of Gurudwara Prabandhak Committee or ought to have challenged the legality of the letter dated 18th December, 2005 before the learned Single Judge but he did not do so for a period of one month.

c. Since the writ petition involved disputed questions of facts such as the alleged collusion between the President and the Secretary, the appellants were deprived of an opportunity to cross-examine the respondent No. 2.

d. He submitted that the conduct of the respondents was not bonafide because in the writ petition the respondents have suppressed the fact that the elections dated 19th December, 2005 had taken place. The respondents should have informed the court that the elections had already taken place on 19th December, 2005 in the presence of the officer of the Directorate, Gurudwara Prabandhak Committee.

e. The learned Single Judge has granted relief beyond the scope of the prayer made in the writ petition. The prayer of the respondents requests the Hon"ble Court to hold fresh elections but there was no mention of the elections held on 19th December, 2005 because the respondent was aware that such a plea would amount to a prayer best suited for an election petition.

f. The necessary parties to the writ petition are required to be served eight days" notice as per the High Court Rules and as per the law laid down in Dua"s case and Avtar Singh Hit"s case.

8. The learned senior counsel Mr. Rajiv Nayyar, appearing for the respondents submitted as follows:-

a. In respect of the maintainability of the writ petition, he relied on paras 10, 15, 18 & 22 of the judgment of the learned Single Judge to submit that the learned Single Judge did not rely upon Avtar Singh Hit"s case except to the extent of appointment of the observer.

b. He also drew the attention of the Court to the following important documents:-

i) Communication dated 1.12.2005 by the Officiating President (one of the 15 persons who were elected & who also filed an affidavit in support of the LPA);

ii) Letter dated 8.12.2005 by the President saying that the Secretary had no authority to convene the meeting dated 28.11.2005 & letter dated 8.12.05 which was a letter by the President to all the members informing them that no AGM would be held on 19th December, 2005

iii) Order u/s 21 clause (3) wherein the President called for the records of letter dated 20.11.2005 issued by the General Secretary.

iv) Letter dated 12.12.2005 by the Secretary i.e. respondent No. 2 calling for a special meeting to be held on 15.12.2005 at 10.30 AM to discuss the following agenda:-

(i) To discuss about holding of the Annual General Meeting of DSGMC for Election to the Executive Board.

(ii) To discuss about the letter dated 28.11.2005 & subsequent letters issued by the General Secretary, DSGMC.

(iii) To discuss about the order dated 10.12.2005 issued by the President DSGMC u/s 21(3) of the Delhi Sikh Gurdwaras Act.

c. Regulation 4(iii) of the DSG Rules provides for eight days' notice before the date of the meeting. Regulation 4(iii) reads as follows:-

(iii) The agenda papers for the Annual General Meetings shall be circulated by the General Secretary with approval of the Executive Board at least 8 days before the date of meetings.

He also relied upon para 15 of the judgment of the learned Single Judge to submit that the requirement of 8 days prior notice had not been found to be complied with by the appellants.

d. He also submitted that Regulation 4(1)(ii) makes it clear that the Annual General Meetings are not convened only for the purposes of holding elections. The said Regulation reads as follows:-

(ii) Among other items, the Annual General Meetings shall consider and approve

(a) Annual Report of the Committee;

(b) Annual Budget containing proposals for,

1) Revised estimates of the current year;

2) Budget estimates for the next year;

(c) Audited statement of accounts of the last year

(d) Action taken on report for pending audit paras

(e) Format and the manner in which the accounts shall be maintained in the next financial year;

(f) Appointment of Auditors for the next year.

9. Shri Arvind K. Nigam, the learned counsel for respondent No. 2, R.S. Khurana submitted that the Annual General Meeting is not convened only for the purpose of organizing elections but also includes other particulars as specified in Regulation 4(1)(ii) of the DSG Act.

10. The learned senior counsel Dr. Singhvi appearing for the respondent No. 1, submitted as follows:-

a. That "Election" as contended by the appellants is a sham and a non-existent event. Therefore, pleas of the appellants qua "Election Petitions", "Appeal", "impleadment" of the affected parties to the writ petitions are not relevant. A sham election cannot be converted into an actual election. The appellants had till 18th December, 2005 denied the validity of the elections to be held on 19th December, 2005 by virtue of the letter dated 28th November, 2005 issued by the Secretary. He drew the attention of the Court to the following documents to show

the consistent course of written conduct by the appellants through letters or notices showing that the letter dated 28th November, 2005 issued by Secretary was illegal and that no elections would be held on 19th December, 2005:-

(i) A letter dated 1st December, 2005 of the Vice President objecting to the convening of Elections on 19th December, 2005.

(ii) A letter dated 8th December, 2005, by the President to the Secretary objecting to the illegality of the proposed elections on 19th December, 2005.

(iii) A letter dated 8th December, 2005 by the President informing the Members that there shall not be any AGM for holding the elections on 19th December, 2005.

(iv) An order dated 10th December, 2005 u/s 21(3) of the DSG Act issued by the President stating that he had called for the records of DSGMC to ascertain if any decision has been taken by any authority to hold the AGM on 19th December, 2005 and on the record no decision to convene elections dated 19th December, 2005 exists at all.

(v) A letter dated 15.12.2005 issued by the President stating that a special meeting of the Executive Board was held on 15th December, 2005 and the House resolved that the General Secretary had no right to issue the letter dated 28th November, 2005, for deciding the date and the Agenda for holding the annual elections of the Executive Board.

(vi) Order dated 13th December, 2005 wherein, Mr. Phoolka, the learned senior counsel who appeared for the respondent No. 4 in the writ petition/appellant herein, stated that the elections to the DSGMC which were earlier stated to be held on 19th December, 2005 have been cancelled and will not be held on 19th December, 2005.

(vii) A letter dated 15th December, 2005 by the President inter alias to the Directorate of Gurudwara Elections stating that the illegal notice for calling the Annual General Meeting of the Members of the DSGMC has already been cancelled by the President, DSGMC by order No. 981 dated 10th December, 2005.

(viii) A letter dated 16th December, 2005 by the President stating that the General Secretary by illegally issuing the notice for holding annual elections of the Executive Board on 19th December, 2005 has hurt the sentiments of the committee.

b. He relied on para 10 of the judgment in Dua's case (supra) to contend that if the election is a sham then it was not necessary to challenge it by filing election petition. Para 10 relied upon by the appellant reads as under:-

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 bypass the statutory provisions for resolving the election dispute by filing a writ petition it

was submitted that the concession 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 elections 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's case AIR 1984 S.C. 621 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.

c. There was no question of impleadment of 15 elected members because they were not elected members.

d. That the appellants have not conducted themselves in a bonafide manner because the counter affidavit in support of LPA has been sworn by 2 of the elected office bearers regarding whose non joinder amongst others a plea has been raised by the appellants.

11. In reply to the above arguments on behalf of the Mr. Singhvi, Mr. Sabharwal submitted as under:

a. According to Dr. Singhvi the elections were sham, but the findings of the learned Single Judge in respect of the election are in favor of the appellant and the respondents have not challenged the same in LPA.

b. The counter affidavits have been sworn by the persons on behalf of the Managing Committee and are not sworn by the members in their individual capacity.

c. The appellants had denied the circulation of the letter dated 18th December, 2005 by the Secretary, but no rejoinder rebutting this plea was filed by the respondents.

12. We have considered the pleas of rival counsel and are of the view that in the context of the legality of the letter of the Secretary dated 28th November, 2005, convening the elections on 19th December, 2005, the learned Single Judge held as follows:

(a) 8... In my opinion the requirements of Regulation 4 have been met. Before departing from this Regulation I must also reject another argument put forward by learned Senior counsel for the Respondents that the General Secretary was not competent to fix and notify the date of elections. Section 21(2) read with Regulation 4(i) clarifies that either the President or the General Secretary can

take this action, and once it is so done the elections cannot be postponed. The President has himself weeded down this position in its letter dated 17.12.2005. Since Regulation 4 empowers the General Secretary for this purpose and he being an office-bearer of the Executive Board his action has statutory force.

(b) 11. The action of the Secretary in convening elections for 19.12.2005 are in consonance with the statute and the Rules and Regulations framed pursuant thereto. The challenge of the President prior to 17.12.2005, Therefore, has no legal foundation....

(c) 21... Be that as it may, I am of the opinion that the President had correctly reversed his position and decided to adhere to the 19.12.2005 Election schedule, since this Meeting had been legally convened. The Regulations repose power in either the President or the General Secretary for convening the Elections. Most Constitutions of societies and other organizations envisage that such decisions are taken by the President, but this is not the position in the present case. Since a Meeting had taken place at 10.30 A.M. on 15.12.2005 any subsequent meeting without due notice to all persons entitled to attend the meeting could not have been legally and validly convened and held. Assuming that the President had exercised powers u/s 21(3) of the Act in the cancellation of the Secretary's notice viz-a-viz the Elections scheduled for 19.12.2005, it remained unenforceable since it had not been confirmed by the Executive Board.

(d) In order to qualify for the exercise of writ jurisdiction the Petitioners ought to have asserted that they did not have notice of a meeting and not merely that there was some confusion in regard thereto, especially since they were privy to the decision to hold elections on 19.12.2005. I cannot accept the bald statement, which is self-serving, that the General Secretary has colluded with the President. This is also belied by the forceful argument of Mr. Nigam supporting the Petitioners.

(e) Mr. P.N. Lekhi, learned Senior counsel appearing for some of the Respondents has contended that the President had acceded to legal advice that the second Meeting was not in order since the earlier one had commenced at the scheduled time and stated place and had concluded its proceedings. He further contended that because of legal advice the President had decided to withdraw from his repeated written objections and fall in line with the elections convened by the General Secretary. If this is so the decision to confirm the Order No. 981 dated 10.12.2005 must necessarily fall.

13. However, in contradiction to the above findings, the learned Single Judge has also come to the following conclusion:-

A joint reading of the Rules, especially Part III thereof and Regulation 4 indicates that eight days prior notice must be given for Meetings. Had the President conveyed his decision to abide with the Election scheduled for 19.12.2005 and had publicly made an announcement to this effect on or before 10.12.2005 the Meeting would have been perfectly in order.

In our view the findings summarized by us in paragraph 10 of the judgment affirming the validity of the elections scheduled for 19th December, 2005 cannot stand with the above finding holding that the requisition for the elections did not comply with the prerequisite of eight days notice for the election. The detailed and well considered conclusions of the learned Single Judge reproduced by us in paragraph 10 which conclusions we affirm, clearly hold that the elections scheduled for 19th December, 2005 have been found to be legal by the learned Single Judge. Since the respondents/writ petitioners have not challenged the above conclusions of the learned Single Judge holding that the elections scheduled for 19th December, 2005 complied with the statutory requirements we are not going into the question of legality of the 19th December, 2005 elections.

14. There is no question of confusion in a small constituency of 50 voters. The ground of confusion may have had some substance if the constituency was a general one with large number of voters spread over different areas and voters were not easy to communicate with. In a constituency of merely 50 voters with identified factions, the plea of confusion is not sustainable specially in the era of modern communications where use of mobile phones and other contemporary modes of communication are prevalent. Thus, the plea and the finding that 15 members who stayed away from the election got confused is incapable of belief and cannot be sustained particularly in light of the findings of the learned Single Judge that the elections were validly summoned.

15. We are thus of the view that notwithstanding the conflicting claims of the rival factions about the legality and efficacy of the election of 19th December 2005, there was no confusion worth the name. The staying away of 15 members could have been upon perceiving that the rival faction of 35 members led by the President was numerically far stronger and a loss in the elections scheduled for 19th December, 2005 was inevitable. The absence of such members including the Secretary is particularly baffling because all along, the Secretary had been repeatedly asserting by his communication dated 10th December, 2005, 13th December, 2005, 16th December, 2005 and 18th December, 2005 that the elections of 19th December 2005 were valid and the claims to the contrary by the President's faction were baseless. We have also noticed the stand of the President and his faction discernible from communication and meetings dated 15th December, 2005, 8th December, 2005, 10th December, 2005, 12th December, 2005, 15th December, 2005 and 16th December, 2005 that the elections were illegal. However, since the learned Single Judge has concluded that the elections were validly summoned for 19th December, 2005, this plea loses significance. Both the faction of the President and that of the Secretary have adopted stands which took a somersault on the eve of the elections and both such stances were not very edifying considering the elections were to the revered post of the Executive Board of Delhi Gurdwaras. However, in such a situation when the conduct of both the factions leave little to commend itself for approval, it is the writ petitioner who must fail. In light of such a stance put forth by the Secretary, his staying away from the elections leads us with no other

option but to conclude that the absence of 15 members was not due to confusion but by design.

16. We also do not have on record any letter or other communication of the Secretary publicly accepting the stand of the President about the illegality of the election which was proved to have been sent in time. There is only a reference to the letter dated 17th December, 2005 based on an edict of the Akal Takht, which letter even the learned Single Judge found not to have been sent. The Secretary ought to have been present in the elections which had repeatedly been proclaimed by him to be valid. There is also a letter dated 18th December, 2005 sent by the Secretary accepting the cancellation of the 19th December, 2005 meeting. However, the counter affidavit to the writ petition denied the receipt of such a communication dated 18th December, 2005 and there was no rejoinder filed to rebut this plea. Consequently no credence could be given to such a communication accepting the cancellation of the elections scheduled for 19th December, 2005 said to be sent on behalf of the Secretary.

17. Once we find that there was no confusion notwithstanding the diametrically opposite stands adopted by the groups of the President and the Secretary, the very edifice of the judgment of the learned Single Judge cannot stand. Since the learned Single Judge had himself recorded a finding that the summoning of the elections was valid and in accordance with Rule 4, the countermanding of the result of the election by the learned Single Judge, in the absence of a sustainable finding of confusion, cannot be upheld. In this view of the matter we have not dealt with the other pleas of the appellants about the effect of non-joining of affected parties in detail. However, we are satisfied prima facie that this plea is really a plea of desperation and unsustainable as both the factions were adequately and ably represented before the learned Single Judge and the affidavit in support of the LPA was in fact filed by two members elected in the 19th December, 2005 elections.

18. The learned counsel for the appellant Sh.R.K.Anand had contended vehemently that without joining the elected office bearers who were directly affected by the result of the writ petition countermanding the elections, the writ petition was not maintainable. Since we are sustaining the plea of the learned counsel for the appellant on other grounds, we have not gone into this plea of the learned counsel for the petitioner in detail. We are however prima facie of the view that notwithstanding the absence of the affected parties, their interests were fully protected by the stand projected by the appellant's counsel ably before the writ court. Accordingly, prima facie, we do not find that the ground of non-joining of the elected office bearers was a plea on the basis of which the writ petition could and ought to have been dismissed.

19. Mr. Nigam, the learned counsel for the respondent No. 2 has submitted that the Annual General Meeting is not convened only for the purpose of organizing elections but also includes other particulars as specified in Regulation 4(1)(ii) of the DSG Act. We are not dealing with the plea of the learned counsel since the

learned Single Judge has already recorded a finding that the elections dated 19th December, 2005 were legal and such a finding has not been challenged.

20. The learned Single Judge in coming to the conclusion that the High Court can exercise the powers of judicial review under Article 226 of the Constitution to set aside the election process, has relied upon the position of law laid down in the following judgments:- (a) In *L. Chandra Kumar Vs. Union of India and others*, , where the Hon"ble Supreme Court held as under:-

The Court pronounced that the powers of judicial review over legislative action vested, inalienably, in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution, and were integral and essential features of the Constitution Constituting part of its basic structure. Ordinarily, Therefore, the power of these Courts to test the constitutional validity of legislations could not be ousted or excluded. It was further held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and tribunals within their respective jurisdictions was also a concomitant of the basic structure of the Constitution. Divesting the High Courts of these powers had Therefore to be abjured. It was further held that the provisions of the statute which excluded the jurisdiction of the High Courts and the Supreme Court, such as Section 28 of the Administrative Tribunal Act, 1985 were unconstitutional. In these circumstances, whether the Arbitration and Conciliation Act, 1996 is a specialized or a subsequent statute would not, in any way, circumscribe the amplitude of that decision, namely, that the sweep of Article 226 cannot be curtailed by legislative action and ought to remain untrammelled. An interpretation of any of the provisions of the Arbitration and Conciliation Act or the Delhi Municipal Corporation Act or Delhi Sikh Gurdwaras Act which tend to have this effect would become impermissible. If the Legislature is not competent to curtail the extraordinary jurisdiction of High Courts, a fortiori, the provisions of subordinate legislation such as the Rules and Regulations referred to in these proceedings can certainly not do so.

(b) In *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, , where the Hon"ble Supreme Court held as under:-

18. The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission both with respect to the order of the Division Bench and the purpose and scope of the Writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdictions under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority including in appropriate cases, any Government, throughout the territories in relation to which it exercises

jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country".

19. ... Almost a hundred and thirty years ago, Martin B. In *Mayor of Rochester v. Regina* 1858 E B & E 1024 said:

... That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute "Comyn's Digest, Mandamus (A) ...Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction it can be made applicable....

...In Halsbury's Law of England, Fourth Edition Volume I, paragraph 89, it is stated that the purpose of an order of mandamus is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right, and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient beneficial and effectual.

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant consideration or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases in any other fit and proper case a High Court can, in the exercise of its jurisdiction under article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order to give directions which the Government or the public authority should have passed or given had it

properly and lawfully exercised its discretion.

(c) In *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, , where the Hon"ble Supreme Court held as under:-

The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction there under though by various decisions of this Court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, it was submitted before the Constitution Bench that an award u/s 10-A of the Industrial Disputes Act, 1947 savours of a private arbitration and was not amenable to correction under Article 226 of the Constitution. The Court said as under (at p. 429 of AIR):

The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any power "even a private individual " and be available for any (other purpose)" even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226(1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to the residence of such persons.

... The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

(d) In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, where the Hon"ble Supreme Court noted the following observations made in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, which is as under:-

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly by used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised, it can issue writs in the nature of prerogative writs as understood in England: but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the

scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs in to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.

The Hon''ble Supreme Court in Shri Anandi Mukta's case (supra) then observed at page 1607 and 1613 as under:-

The term "authority" used in Article 226 in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, Therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

And finally the Hon''ble Supreme Court held as under at page 1607 and 1613:

...The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. We, Therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

(e) In *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], where a three Judges Bench of the Hon''ble Supreme Court held as under:-

The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writ provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose." The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , this Court in paragraph 102 had pointed out that the difficulty will lie in demarcating the frontier between the public law domain and private law field.

(f) In *Rahul Mehra and Another Vs. Union of India (UOI) and Others*, , a Division Bench of this Court held as under:-

Without making any value judgment on quality of governmental intervention, we may straightaway say that amenability to judicial review is in no way connected with governmental interference in the affairs of the BCCI which is self-regulated body and will continue to be one. The only difference being, that its discharge of public duties and public functions (as distinct from private duties and functions) would be open to judicial review under Article 226 of the Constitution. This does not, ipso facto, translate into governmental intervention in the internal affairs of BCCI which would remain a private body.

...Thirdly, even in cases of judicial review, the High Court exercises self-imposed restraints. It does not substitute its views in place of those under review. Although it has become a hackneyed cliché it bears repetition that in exercise of powers under Article 226, the High Court is not so much concerned with the decision itself in the sense as to whether an action is "right or wrong", but with the decision making process signifying as to whether the action is "lawful or unlawful". So, if the selection of the team is lawfully made, the Court would not be concerned with the composition of the team.

We agree, BCCI, like everyone else, is amenable to writ jurisdiction. However, not every action of BCCI would be subject to the scrutiny of judicial review. Only those actions which fall within the ambit of public law would call for any direction, order or writ under Article 226. Disputes or acts in the sphere of pure private law having no traces of public law would not be the subject matter of writs, directions or order to be issued under Article 226.

21. The learned senior counsel for the appellants has also submitted that the writ petition was not maintainable in view of the alternate remedy available under the DSG Act. We are, however, unable to agree with the submission of the learned senior counsel for the appellant in view of the position of law laid down in *Ram and Shyam Company Vs. State of Haryana and Others*, wherein the Hon'ble Supreme Court held as follows:-

9. Before we deal with the larger issue, let me put out of the way the contention that found favor with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in *Assistant Collector of Central Excise v. Jainson Hosiery Industries* rejected the writ petition observing that the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court.

22. In view of the above position of law, we are in entire agreement with the

summation of the scope of judicial intervention under Article 226 delineated in the above judgments, by the learned Single Judge. "Bonis juicibus est amplius jurisdictionem" is a well known legal maxim which means that it is the duty of the Judge to extend his jurisdiction. Thus, this Court in the interest of justice is bound to extend its powers and jurisdiction under Article 226. We, Therefore, affirm and reiterate the view of the learned Single Judge on the scope of intervention under Article 226 of the Constitution and hold that the writ petitions filed by the respondents under Article 226 of the Constitution of India were maintainable. In the light of the extraordinary circumstances cited by the learned Single Judge, the writ petition was maintainable and writ jurisdiction was rightly invoked.

23. In a petition directly arising from nomination to the election to the post of office bearers and members of the Executive Board, a Division Bench this Court in *Gurdeep Singh Dua and Others Vs. Delhi Sikh Gurdwara Prabandhak Committee*, held as under:-

...If on the face of record it is found that there were no real elections 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.

24. Mr. Anand submitted that the writ jurisdiction could not be a forum for challenging the elections and the appropriate manner was to challenge the elections by an election petition and the ratio laid down in *Gurdeep Singh Dua's* case (supra) was inapplicable to the facts of the present case as the said case dealt with nominations and could not apply to concluded elections. We are unable to agree with this plea of Mr. Anand because the observations in *Gurdeep Singh Dua's* case extracted earlier clearly show that it was held that a writ would lie when there are no elections contemplated by law and were merely a pretence in an attempt to satisfy the law and further that exceptional and extraordinary circumstances do warrant interference by a writ court.

25. In fact the powers under Article 226 cannot be whittled away by the narrow approach canvassed by the learned counsel for the respondents. The very presence of the possible exercise of powers of the writ court's jurisdiction keeps executive excesses in check.

We would like to extract the following position of law laid down by the Hon'ble Supreme Court in *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*,

27. ... The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction. When any citizen or person is wronged, the High

Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances.

26. The above mentioned position of law has also been followed by a Division Bench of this Court in *Subhash Chand v. NDPL and Ors.* in WP(C) No. 23396/2005 and CM. No. 15413/2005. Thus we are fully in agreement with the scope of writ jurisdiction felicitously summed up by the learned Single Judge and indeed affirm his conclusions on the scope of Article 226. We also do not agree that all the members elected on 19th December, 2005 ought to have been joined as parties. The stand on behalf of the appellants was adequately and capably represented before the learned Single Judge and no prejudice whatsoever was caused to the elected office bearers by their not being joined as parties to the writ petitions and the writ petitions challenged the conduct of elections under extraordinary circumstances warranting the maintainability of the writ petitions.

27. Thus in view of the above discussion, we conclude that:-

a) The writ petitions were maintainable notwithstanding the plea of alternate remedy provided under the DSG Act.

b) As per the position of law laid down in *Dua's case*(supra) this Court is empowered under Article 226 of the Constitution to interfere in the elections if exceptional and extraordinary circumstances so exist. The manner in which elections were conducted and the conduct of both the parties certainly warranted invocation of this Court's writ jurisdiction and the examination of the legality and efficacy of the election.

c) The non impleadment of the 15 elected members is not fatal to the case. The interests of these members have been adequately represented before us and before the learned Single Judge. Further the non impleadment of the 15 elected members has not caused them any prejudice whatsoever.

d) There can be no confusion with respect to elections consisting of an electoral college of only 50 persons. Thus the plea and finding of confusion with respect to elections dated 19th December, 2005 is unsustainable.

e) The finding of the learned Single Judge with respect to the legality of the elections dated 19th December, 2005 is affirmed.

28. In view of the above conclusions summarized in paragraph 26 while affirming and approving the exercise of the writ jurisdiction of this Court under Article 226 by the learned Single Judge we partly allow these Letters Patent Appeals and set

aside the learned single Judge's judgment dated 23rd January, 2006 in so far as it quashes the elections dated 19th December, 2005 to the Executive Board, Delhi Sikh Gurdwara Management Committee.

29. These LPAs stand disposed of accordingly with no order as to costs.