

(2019) 03 DEL CK 0133

In the Delhi High Court

Case No : Civil Writ Petition No. 2573 Of 2019, Civil Miscellaneous Application
No. 11982 Of 2019

S. Daljit Singh

APPELLANT

Vs

Director Of Gurdwara Elections And Ors

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Delhi Sikh Gurudwara Management Committee (election of Pro-Tempore Chairman, President and other Office Bearers and Members of the Executive Board) Rules, 1974 — Rule 7A
Delhi Sikh Gurudwaras Act, 1971 — Section 2(c), 2(e), 4(a), 5(i), 13, 13(1), 15, 15(1), 15(4), 16, 16(1), 16(5)

Citation : (2019) 258 DLT 421 : (2019) 6 AD(Delhi) 696

Hon'ble Judges : Yogesh Khanna, J

Bench : Single Bench

Advocate : Sandeep Sethi, Vineet Malhotra, Vishal Gohri, Shubhendu Kaushik, Anuj Aggarwal, G.C. Shyamsunder, Harish Malhotra, Jasmeet Singh

Final Decision : Dismissed

Judgement

Yogesh Khanna, J

1. This petition challenges the notice dated 01.03.2019 issued on behalf of the respondent No.1 to call a meeting of elected members of the Committee to hold elections for appointment of President and other office members of Executive Board until expiry of the tenure of the President and other executive members and further two years thereafter. Secondly it is alleged the respondent No.1 has no power of any kind whatsoever to direct holding of meeting of elected members of respondent no.2 Committee until it is so permitted and directed by the Lieutenant Governor.

2. The learned senior counsel for the petitioner refers to The Delhi Sikh Gurudwaras Act 1971 (hereinafter 'the Act'), as amended by 82 of 1971 more specifically its section 2(c), 4(a), 5(i) which runs as under:

"2. In this Act, unless the context otherwise requires, -(a)-(b) xxxx

(c) "Committee" means the Delhi Sikh Gurdwara Management Committee established under section 3;

(d)-(o) xxxxx...

4. The Committee shall consist of-

(a) forty-six members to be elected from various wards into which Delhi shall be divided in accordance with the provisions of this Act;

xxxxx....

5.(1) Save as otherwise provided in this section, the term of office of a members of the Committee shall be four years and shall commence from the date on which the first meeting of the Committee is held under Section 15, and no longer. "

3. These members who are elected as Committee Members would then elect amongst themselves an Executive Board viz., pro-tempore Chairman and then the President, Secretary etc, per Section 16 of the Act. The annual general meeting of the Committee is to be held every year and the Executive Board shall meet at least once in fortnight or at such intervals as has been prescribed by regulations. Section 16(1) of the Act runs as under:

"16. (1) The Committee shall, at the first meeting after the election of the pro tempore Chairman under sub-section (4) of section 15 elect from amongst its members a President, who shall conduct the election of other office-bearers and members of the Executive Board under this section."

4. The tenure of the Executive Board is two years. Admittedly, the entire Board had resigned on 06.12.2018 and the resignations being accepted on 19.01.2019. This Board needs to be re-elected. The question is who shall call a meeting. Rule 7A of Delhi Sikh Gurudwara Management Committee (election of Pro-Tempore Chairman, President and other Office Bearers and Members of the Executive Board) Rules 1974 says:-

"7A. Appointment of Returning Officer - (I) The outgoing President shall summon the meeting of the general body for conducting the biennial election of the Executive Board not later than two months after the date of completion of two years' tenure of the Executive Board under intimation to the Director for conducting biennial elections of the Executive Board, at least a fortnight before the date of such meeting. If the outgoing President fails to summon the general body for biennial elections of the Executive Board within two months of the expiry of tenure of the Executive Board the Lt. Governor, Delhi may direct the Director to convene meeting of the general body for conducting elections of that Executive Board at a date not later than four months of completion of tenure of Executive Board, unless the tenure of Executive Board is extended by the Lt. Governor for the reasons to be recorded in writing."

5. Rule 7(A) provides the outgoing President need to summon a meeting of the Committee for conducting the biennial elections of the Board within two months of the completion of two years tenure. Now, instead the notice dated 01.03.2019 has been given by respondent no.1 and not by the outgoing President, which is the bone of contention. The learned senior counsel for the petitioner alleges if the outgoing President fails to summon the general body, then the Lieutenant Governor may direct the Director to convene a meeting of the general body. Hence it is urged the Director would come into picture only once the Lieutenant Governor asks him to issue such notice for the meeting, hence, the impugned notice is not in compliance of the Act and rules made thereunder and the entire election process is vitiated. However the learned senior counsel for the respondent no.1 says since everyone from the Board had resigned on 06.12.2018 and their resignation being accepted on 19.01.2018, hence the General Secretary had requested respondent no.1 to initiate the election process and thus the Director (respondent No.1) had issued such impugned notice.

6. Both the parties have filed affidavits and I have perused the same. The affidavits filed on behalf of the petitioner reveal as per past practice it was only the outgoing President who used to give notice for such meeting and never the notice was issued by Director Gurudwara Elections. Similarly the affidavit filed on behalf of the respondent agreed never earlier the notice was issued by the Lieutenant Governor. However during the past, always the term was completed by the outgoing President and the present situation never occurred.

7. Now, Section 2(e) of the Act defines -

"Director Gurdwara Elections' means the Director Gurdwara Elections appointed by the Lieutenant Governor under Section 13"

8. Section 13 of the Act says:-

"13. Director Gurdwara Elections.-(1) The Lt.Governor may, by notification in the Official Gazette, appoint a suitable person to be the Director Gurdwara Elections in whom shall vest the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, elections of members of the Committee.

9. A bare perusal of Section 2(e) and Section 13 of the Act would reveal Director Gurudwara Election is an appointee of Lt.Governor.

10. Admittedly, after the resignations were submitted by the entire Board, two person were appointed as officiating President and Officiating General Secretary and when the officiating President issued notice for calling of meeting, this very petitioner had filed a Civil Suit No.46/2019 wherein order dated 18.01.2019 was passed as under:-

"Now reverting back to the present case. The plaintiff has sought stay on the elections of the Executive Board to be held on 19.1.2019. As per Section 15 of the Act, for the biennial elections, the Directorate of Gurudwara Elections shall summon a meeting of the committee. Further, as per Section 15 (4) of the Act,

the members of the committee will elect Pro-tempore Chairman amongst its members. As per Section 16 of the Act, President shall be elected who shall conduct elections of the office bearers and other members of the Executive Board. Further as per Section 16 (5) of the Act, the President and other members of the Executive Board shall hold the office for term of two years but shall be eligible for reelection for subsequent term also. Thus, from these provisions, it is evident that the role of the Directorate of Gurudwara Elections is only limited to call a meeting of the committee for the elections of Pro-tempore Chairman. Hence, I am agree with the contention of counsel for the defendant that in the second board elections of the Executive Board, the approval of the Directorate of Gurudwara Elections is not required in normal circumstances but in my view, when entire Executive Board which includes President has resigned, as alleged in the present case, then the question emerges how the President will be appointed without a Pro-tempore Chairman. Hence, in my view, in these circumstances, the approval of the Directorate of Gurudwara Elections is required for conducting the elections of board members."

11. It was only when the Civil Court passed the above order, the impugned notice calling for such meeting was issued by the Director/respondent no.1. Though, it is alleged by the petitioner that Director of Gurdwara Elections can only summon the first meeting of the Committee, per Section 15(1), but where all the Members of the Board had resigned or where the committee had becomes headless, and where this petitioner himself had challenged the authority of the officiating President and the officiating General Secretary by filing CS 46/2019 wherein order dated 18.01.2019 was ultimately passed; hence there being no other alternative except either to treat this case as one under Section 15(1) of the Act, where it is only the Director Gurdwara Elections who has to summon such meeting or otherwise, if we examine it per Rule 7(A) (supra), then also if the outgoing President resigns and/or did not call a meeting or if the Committee is headless then in that event too Lieutenant Governor, Delhi shall direct the Director to convene a meeting of the general body. Admittedly per Section 13(1) the Director is an appointee of the Lt.Governor, hence the impugned notice given by him cannot be challenged, as is in consonance of Rule 7A and I see no fault in the impugned notice.

12. In *Rajinder Singh vs DSGP Committee* 1994 III AD (Delhi) 819 this Court had noted:-

"A great deal depends upon the facts of the case which facts are highly disputed. We are also not quite satisfied about the bona fide of the petitioners in filing this petition as it does appear to us that they have been put up as front man by some other person who themselves do not want to come forward to challenge the elections. In a civil suit bonafides of the plaintiff may not be of any consideration, but in the writ jurisdiction it would be so. Moreover, many proceedings are pending either in this Court or in the District Court regarding the non-holding of the elections of the committee, or the elections of the office - bearers of the

executive board of the committee, and it does appear to us that various interim orders have been made in those proceedings. In a matter like this, therefore, we would not to exercise our extraordinary writ jurisdiction and would relegate the petitioner to a civil suit, if they are so advised to file the same. Accordingly, we will dismiss this petition in limine. No costs."

13. Admittedly, petitioner is neither the member of the Union nor the member of the Committee, hence, even otherwise has no locus to file this writ. Now since the petitioner has obtained an order dated 18.01.2019 in CS 49/2019 and had not challenged it; ought not to have filed a writ on same facts and do forum shopping. Thus in the circumstances, I see no reason to warrant exercise of writ and that too at the instance of such petitioner who had already filed a civil suit. Hence, the petition fails and is accordingly dismissed. Pending application also stands disposed of. No order as to costs.

14. Copy of this order be given dasti under signature of the Court Master.