
(2009) 04 DEL CK 0073

In the Delhi High Court

Case No : CS (OS) No. 613 of 2008 and I.A. No. 4077 of 2008

S. Malkinder Singh and Another

APPELLANT

Vs

Delhi Sikh Gurdwara Management Committee and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : AIR 2009 Delhi 153 : (2009) 159 DLT 291 : (2010) 7 RCR(Civil) 177

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : Harish Malhotra and Tanuj Khurana, for the Appellant; K.T.S. Tulsi and Raj Kamal, for D. 1 and D. 2, for the Respondent

Judgement

Rekha Sharma, J.—The management of the Sikh Gurudwaras was placed into the hands of the Sikh community after a long drawn struggle and after great many sacrifices. The Sikh Gurdwara Act of 1925 was hailed as a great victory. The Delhi Sikh Gurdwara Act which followed the Act of 1925 equally appeared to be a salutary achievement since it placed the management of the Delhi Gurdwaras into the hands of local Sikh electorate. However, a strong segment of Sikh intelligentsia feels that "what appeared to be an achievement has turned out to be a real curse for the community" [See - "Towards Corporate Maturity of Sikh" - Jaswant Singh Neki, in The Sikh Review March, 2009].

2. It has become almost a regular feature in Delhi Sikh Gurdwaras that the faction in power makes every effort to hold on to the office making a mockery of the provisions of the Delhi Sikh Gurdwaras Act. The present litigation is the outcome of the struggle of one faction to remain in office and of the other to dislodge.

3. The plaintiffs and the defendants represent the said two factions of the Delhi Sikh Gurdwara Management Committee (hereinafter called the Committee). The Committee is a body that comprises of 55 members of which 46 are elected in terms of Section 4 of the Delhi Sikh Gurdwara Act, 1971 (hereinafter referred to

as the Act). The plaintiffs and the defendants came to be elected to the Committee pursuant to elections held on January 14, 2007 and thereafter as provided in Section 16 of the Act, in its first meeting held on February 9, 2007 defendants No. 2 to 6 were elected as its President, Senior Vice President, Junior Vice President, General Secretary and Joint Secretary respectively. In the same meeting, 10 members from amongst the members of the Committee were elected as members of the Executive Board of the Committee. They are defendants No. 8 to 16. The term of office of a member of the Committee as laid down in Section 5 of the Act is four years and that of a member of the Executive Board as per Section 16(5) of the Act is one year.

4. The powers and functions of the Committee are laid down in Section 24 of the Act and those include all control, direction and general superintendence over all the Gurdwaras and the Gurdwara property which as defined in Section 2(g) of the Act includes all offerings in cash and kind made in various Gurdwaras controlled by the Committee, all grants, donations or contributions made by any person or authority to the Gurdwaras. Section 21 of the Act empowers the Executive Board to exercise on behalf of the Committee all the powers conferred upon it.

5. A tug of war has been going on between the two groups not from now but since long to wrest from the other the control and management of the Gurdwaras. It is this desire for power which is the bone of contention between the two factions and it is this that has given rise to the present suit. At present, the management and control of the Gurdwaras is with the Sarna group represented by the defendants. The plaintiffs seek to unseat them.

6. The plaintiffs allege that the defendants who were elected to the Executive Board on February 09, 2007 for a period of one year only were under an obligation to call for an "Annual General Meeting" of the Committee for holding elections for a new Executive Board before the expiry of their term but they have not only not held the Annual General Meeting but are making all possible excuses to stone-wall the holding of elections with the sole object of perpetuating their hold over the management of the Gurdwaras and the Gurdwara property in total disregard of the fact that their one year term had expired on February 08, 2007. Aggrieved by the alleged deliberate and intentional inaction of the defendants in not holding the Annual General Meeting of the Committee and consequently not announcing the elections, the plaintiffs have filed the present suit for mandatory injunction with the following prayers:

a) pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining the defendants from continuing as office bearers and members of the Executive Board of the Committee as they have deemed to have vacated their office and have become functus officio upon expiry of their term on 8.2.2008.

b) pass a decree of mandatory injunction in favour of the plaintiffs and against

the defendants thereby directing the defendant No. 1 Delhi Sikh Gurdwara Management Committee to hold the election for electing new office bearers and members of the Executive Board of the Committee under the supervision of the Court observer to be appointed by this Court so as to ensure fresh and fair election.

7. The plaintiffs have also filed an application under Order 39 Rules 1 & 2 of the CPC seeking to restrain the defendants from acting as the office bearers and members of the Executive Board of Delhi Sikh Gurdwara Management Committee till the decision of the suit.

8. It is not disputed by the defendants that the life span of the Executive Board is one year and that after the expiry of one year, there has to be an election. It is also not disputed that the present management came to be elected on February 9, 2007 and its one year period expired on February 8, 2008. Why then no Annual General Meeting held, no elections announced and no elections held? The defendants say that by a notification dated September 15, 2008, published in the Delhi Gazette, Section 16(5) of the Act has been amended by The Delhi Sikh Gurdwaras (Amendment) Act, 2008 and thereby the term of office of the Executive Board has been raised from one year to two years. Taking refuge under the said amended Act they contend that they were well within their right in continuing to hold office till February 07, 2009 and as regards their continuance post February 07, 2009 they have relied upon the proviso to Section 16 (5) of the Act as per which an outgoing office bearer or member shall continue to hold office until election of his successor is held. On being confronted as to why the Annual General Meeting of the Committee has not been called and why elections have not been announced even after February 07, 2009 they have relied upon Regulation 4 of "Regulations for Functions of Delhi Sikh Gurdwara Management Committee" framed by the Committee in exercise of power conferred upon it u/s 40 of the Act. The said Regulation lays down that the Annual General Meeting of the Committee shall be held in the month of September every year to hold election of office bearers and members of the Executive Board. It has been argued that in view of Regulation 4, the "Annual General Meeting" is required to be held in the month of September and it will be so held in the month of September, 2009. It has also been argued that u/s 16(6) of the Act, the election of the President and other office-bearers and members of the Executive Board has to be held in such a manner as may be prescribed by the rules and that as consequent to the amendment in Section 16(5) of the Act raising the term of the Executive Board from one year to two years, no corresponding amendment has been made to the "Delhi Sikh Gurdwara Management Committee (Election of Pro-tempore Chairman, President, other Office-bearers and members of the Executive Board) Rules, 1974 (hereinafter called the Rules)," elections cannot be held till the Rules are brought in line with the Act. And lastly it was sought to be contended that the plaintiffs have no moral or legal right to bring the present suit and to be heard by this Court for the reason that when they were in the Executive Board they commended themselves no better for they also did not hold

the elections after the expiry of their term of one year and that it is a case of kettle calling the pot black.

9. Countering the submission of the defendants the plaintiffs have contended that amendment to Section 16(5) of the Act is prospective in operation and the defendants can derive no benefit from the same because their term had come to an end on February 07, 2008 when the unamended provisions were in force and the amendment was not even in contemplation. As regards their reliance upon the proviso to Section 16 of the Act to continue in office till the elections are held it is argued that the defendants who are guilty of violating with impunity the provisions of the Act by not holding elections well in advance before the expiry of their term or even thereafter can draw no support from the proviso for if that is allowed to be done it would be putting premium on their acts of omission and commission.

10. Before I deal with the submissions raised by the respective counsels of the parties it may be noticed that on March 24, 2009 learned Counsel for the defendants made a statement that he was not disputing the facts as stated in the plaint and he had no objection if along with the application under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, the suit is also disposed of. Of-course, learned Counsel for the plaintiffs had no objection. In view of this submission, I shall by this order be disposing of both the suit and the application.

11. I shall first deal with the last submission of the defendants that the plaintiffs have no right to bring the suit or be heard for when they were placed in the same situation as the defendants they too did not hold elections in time. It is true that the plaintiffs too, when in power, acted no better but then this cannot be made a basis to flout the express provisions of law which cry, in this case, for respect and adherence. In fact, as brought out to me orally during arguments, the record of both the sides on this score has been so dismal that it is difficult to decide which bridge to cross and which to burn.

12. The plea of the defendants that non-holding of the election is justified on account of the term of the Executive Board having been raised from one to two years pursuant to amendment in the Act and that in view thereof, they could legitimately continue as members of the Executive Board till February 07, 2009 and thereafter on the strength of the proviso to Section 16(5) of the Act is equally devoid of force.

13. It is well settled that amendment to an existing Act unless it is procedural in nature is to be taken as prospective provided it is specifically made retrospective by the amending Act. The Supreme Court in a recent judgment titled as State of Punjab and Others Vs. Bhajan Kaur and Others, has held that, "a statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication." It has been further held that, "a substantive law is presumed to be prospective and it is one of the facets of rule of law." This

judgment was rendered in the context of amendment to Section 140 of the Motor Vehicles Act which was made effective from November 14, 1994 and whereby the quantum of amount payable to the victims of a road accident on account of no-fault liability was raised from Rs. 15,000/- to Rs. 50,000/-. Though it was a beneficial piece of legislation, yet the Supreme Court held the amendment to be prospective. In the present case also, there is nothing in the amending Act indicating that the amendment will have retrospective operation. Rather Section 1 Sub-clause (3) of the amending Act says that it shall come into force with immediate effect meaning thereby from the date of notification, i.e. September 15, 2008. Therefore, in the absence of any provision in the amending Act making it retrospective, the defendants cannot claim that the amendment empowered them to continue to hold office till February 07, 2009. They were bound to call Annual General Meeting in September, 2007 for the purpose of holding elections to the new General Body before the expiry of their term in February, 2008. They neither held the Annual General Meeting in 2007 nor in 2008. Those members of the Managing Committee who are not members of the Executive Board had a vested right to contest the elections to the Executive Board for the succeeding year and therefore non-holding of the Annual General Meeting for the purpose of holding elections to the Executive Board by the present incumbents was and continues to be in violation of the provisions of the Act and it has deprived the members of the Managing Committee from participating in the election of the Executive Board for the succeeding year. There is thus no justification on the part of the Executive Board in not holding the elections after the expiry of their one year term.

14. There is also no merit in their submission that the proviso to Section 16(5) of the Act empowers them to continue in office unless election of the successor is held. The purpose and object of the proviso is to prevent any vacuum that may get created by vacation of office by the outgoing members of the Executive Board and taking over of office by the new members. The proviso shall apply only where the elections are held in time as provided in the Act and it cannot enure to the benefit of those office bearers who decide not to hold elections in violation of the provisions of the Act. If the interpretation as sought by the defendant is given to the proviso then it will tantamount to allowing the office-bearers to cling to their office.

15. In view of what has been noticed above, I accept the case set up by the plaintiffs and consequently pass a decree of mandatory injunction against defendant No. 1, i.e, the Delhi Sikh Gurdwara Management Committee, its office-bearers and the members of the Executive Board to call for a general body meeting of the Committee within 15 days and hold elections to the Executive Board of the Committee within a month thereafter in accordance with the provisions of the unamended Act. And I pass the decree in the hope that those who manage the Gurdwaras will heed their Gurus' warning "Thanisht Jag bharisht hoe doobta iv Jag (SGGS 662)", "When the holy places are desecrated, the world simply sinks". [See - "Towards Corporate Maturity of Sikh" - Jaswant

Singh Neki, in The Sikh Review March, 2009].

16. The suit and the application are disposed of.