

(2000) 01 DEL CK 0051

In the Delhi High Court

Case No : C.W.P. No. 3302 of 1999 and C.M. No. 14012/99

Shri Avtar Singh Hit and Others

APPELLANT

Vs

The Delhi State and Others

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Sikh Gurdwaras Act, 1971 — Section 11, 12, 13, 17, 3

Citation : (2000) 4 AD 750 : AIR 2000 Delhi 196 : (2000) 84 DLT 781 : (2000) 53 DRJ 746

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. Rajiv Nayar and Mr. Rajiv Garg, for the Appellant; Mr. V.P. Singh, Mr. H.S. Phoolka and Mr. R.K. Anand, Ms. Avnish Ahlawat, Mr. Ashok Kashyap, Mr. J.P. Singh, Mr. Arun K. Sharma, Mr. S.S. Bawa, Mr. Israel Ali, Mr. Harjinder Singh and Mr. M.S. Oberoi, for the Respondent

Judgement

C.M. Nayar, J.—This petition has been filed under Article 226 of the Constitution of India for quashing the proceedings which took place in the second meeting convened to elect members of the Executive Board of Delhi Sikh Gurdwara Management Committee (for short "DSGMC") held on May 12, 1999 and for declaration of the same as illegal and non est.

2. Notice of the meeting was issued on April 21, 1999 by the President S. Jaswant Singh Sethi. The said notice reads as follows :

"2564/3-1 Dt. 21.4.1999 All the Members

Delhi Sikh Gurdwara Management Committee.

Dear Sir,

Waheguru ji ka Khalsa

Waheguru Ji Ki Fateh

A meeting of the Executive of Delhi Sikh Gurdwara Management Committee will be held on Wednesday, the 12th May, 1999 at 11 AM in the office of Delhi Sikh Gurudwara Management Committee, Gurdwara Rakab Ganj Sahib, New Delhi to discuss the following agenda.

AGENDA

Election of the Office-bearers and Members of the Executive Committee.

Kindly attend the meeting in time.

With regards.

Yours Sincerely,

(JASWANT SINGH SETHI)

President

Delhi Sikh Gurdwara Management
Committee"

3. The provisions which are relevant for the purposes of resolving the present controversy between the parties as contained in Sections 3, 4, 5, 11, 12, 13 and 17 of The Delhi Sikh Gurdwaras Act, 1971 (hereinafter referred to as "the Act") may be reproduced as below :

"3. Incorporation of the Committee. - (1) With the effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established Committee to be called the Delhi Sikh Gurdwara Management Committee for the proper management and control of the Gurdwaras and Gurdwara property.

(2) The Committee shall be a body corporate with the name aforesaid having perpetual succession and a common seal and shall by such name sue and be sued.

(3) The Committee shall have its head office in Delhi.

4. Composition of the Committee. - 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;

(b) nine members to be co-opted by the elected members of the Committee referred to in clause (a) in the manner hereinafter appearing -

(i) two members to represent the registered Singh Sabhas of Delhi who shall be chosen by drawing of lots out of the Presidents of those registered Singh Sabhas;

(ii) four members, each being the head priest of the : (1) Sri Akal Takhat Sahib, Amritsar, (2) Sri Takhat Kesgarh Sahib, Anandpur, (3), Sri Takhat Patna Sahib,

Patna, and (4) Sri Takhat Hazur Sahib, Nanded :

Provided that the head priest shall have no right to vote for the purpose of election of office-bearers and other members of the Executive Board under sub-section (1) and sub-section (2) of Section 16;

(iii) one member, being the nominee of the Shiromani Gurdwara Probandhank Committee, Amritsar.

(iv) two members to represent the Sikh Community of Delhi, other than those referred to in sub-clause (i), sub-clause (ii) and sub-clause (iii), to be chosen in accordance with the system of proportional representation by means of a single transferable vote.

5. Term of office. - (1) Save as otherwise provided in this section, the term of office of a member of the Committee shall be four years and shall commence from the date on which the first meeting of the Committee is held u/s 15, and no longer.

(2) When a vacancy occurs in the Committee owing to death, resignation, removal or otherwise of a member, a new member shall be elected or co-opted, as the case may be, in the manner in which the member whose seat is to be filled was elected or co-opted and every such member shall continue to hold office so long only as the member in whose place he is elected or co-opted would have been entitled to hold office, if the vacancy had not occurred.

(3) An outgoing member shall continue in office until the notification of election or co-option of his successor is published u/s 12.

11. Elections. - Election of members under clause (a) of Section 4 whether for the purpose of initial constitution of committee u/s 3, or for filling vacancies arising by efflux of time or a casual vacancy, shall be conducted by the Director Gurdwara Elections in accordance with the rules made in this behalf.

Provided that no election shall be held to fill a casual vacancy occurring within four months prior to the holding of a general election under this section.

12. Publication of results. - (1) The names of all persons elected as a member of the Committee shall, as may be, after such election be published by the Director Gurdwara Elections in the manner prescribed by rules.

(2) The names of all persons co-opted as member under clause (b) of section 4 shall likewise be published by the Director Gurdwara Elections in the manner prescribed by rules.

13. Director Gurdwara Elections. - (1) The Central Government 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.

(2) A person shall not be qualified for appointment as Director Gurdwara Elections unless he is a citizen of India and possesses judicial or administrative experience for a period of not less than ten years.

(3) Subject to the provisions of section 37, the term of office, and the terms and conditions of service of the Director Gurdwara Elections shall be such as may be prescribed by rules.

17. Vacation, resignation and removal of members and office- bearers. - (1) A member of the Committee may resign his office by writing under his hand addressed to the President.

(2) An office-bearer or any other member of the Executive Board-

(a) shall vacate his office if he ceases to be a member of the Committee;

(b) may at any time by writing under his hand addressed to the Committee resign his office; and

(c) may be removed from his office by a resolution of the Committee passed by a three-fourth majority of the total members thereof :

Provided that no resolution for the purpose of clause (c) shall be moved unless it is supported by not less than seventeen members of the Committee and fourteen days" notice has been given of their intention to move the resolution.

(3) The resignation of office under sub-section (1) or clause (b) of sub-section (2) shall be effective from the date from which it is accepted by the Executive Board or the Committee, as the case may be."

4. The meeting which was to be held under the Presidents of S. Jaswant Singh Sethi commenced at the scheduled time. However, there was some sort of pandemonium before the process of elections commenced and the President S. Jaswant Singh Sethi adjourned the meeting for fear of violence and disturbances. The communication sent to the Observers as appointed by the Government was sent promptly on the same day and it may be reproduced as below :

"Delhi Sikh Gurdwara Management Committee Guru Gobind Singh Bhawan,
Gurdwara Rakab Ganj, New Delhi 110001.

Ref. No. 3075/3-1 Dated 12.5.1999 S.B.S. Sahni

S. Inder Mohan Singh

Observers

Gurdwara Elections

Vikas Sadan : New Delhi

Dear Sirs,

As you are aware that in the presence of Holy Sri Guru Granth Sahib, both the

parties of the Delhi Sikh Gurdwara Management Committee, have not kept the sanity of Holy Sri Guru Granth Sahib in spite of my repeated requests. The Members of DSGMC also mishandled the Respected Jathedar, Sri Akal Takhat Sahib S. Puran Singh Ji. Some Members of DSGMC did not allow me to conduct the General Elections properly and legally.

I, Therefore, adjourned the meeting, fearing violence and disturbances, till further orders.

This is for your kind information.

Thanking you,

Yours Sincerely,

Sd/-

(JASWANT SINGH SETHI)

PRESIDENT

DELHI SIKH GURDWARA MANAGEMENT COMMITTEE"

The office of the Committee of DSGMC was also stated to be closed for half day after 2 P.M. on May 12, 1999. The Press release was issued by the President dated May 12, 1999 which is filed as Annexure XIII to the writ petition and makes the following reading :

"PRESS RELEASE

ELECTIONS OF EXECUTIVE BOARD OF DSGMC POSTPONED

The Meeting of the General House of Delhi Sikh, Gurdwara Management Committee which was convened to elect the Executive Board of Delhi Sikh Gurdwara Management Committee has been postponed.

S. Jaswant Singh Sethi President Delhi Sikh Gurdwara Management Committee explained that during the Meeting, Members of opposite Group initiated violence and resorted to physical assault in the Holy presence of Sri Guru Granth Sahib and Jathedar Sri Akal Takhat Sahib - Giani Puran Singh Ji.

Apprehending violence, physical attack and arson and to uphold the sanctity of Holy Sri Guru Granth Sahib, the Meeting of GENERAL HOUSE OF DSGMC has been postponed and duly intimated to officials observers of Gurdwara Elections, as per enclosed letter.

Sd/-

(JASWANT SINGH SETHI)

PRESIDENT

DELHI SIKH GURDWARA MANAGEMENT COMMITTEE".

5. The petitioners have also filed copies of photographs as well as torn ballot papers as Annexure X (collectively) to the writ petition to indicate that the situation was tense and fair and free elections could not take place. The meeting of the Executive Committee was deemed to be postponed by the President. On the above basis it is contended by the petitioners that the meeting for electing the office bearers and members of Executive Committee having been postponed neither any election was possible nor it was held by the respondents. This is the short question which is the subject matter of challenge in the present petition.

6. The respondents have filed their respective counter affidavits and have vehemently assailed the conduct of the petitioners and have argued that no petition under Article 226 of the Constitution of India is maintainable as it raises disputed questions of fact. The elections were validly held by majority of members after nominations were duly invited. The allegations of violence were also denied. The petitioners are provided with an efficacious alternative remedy u/s 32 of the Act and the Court of District Judge in Delhi shall alone have the jurisdiction in respect of the elections and any person aggrieved by the orders passed by District Judge can file an appeal u/s 33 of the Act.

7. The main contention of learned counsel for the petitioners is that no valid elections took place as the meeting was postponed due to fear of violence as the disturbances had already started taking place. There was, Therefore, no valid election as contemplated by the provisions of the Act. The learned counsel for the respondents on the other hand have contended that as S. Jaswant Singh Sethi left the meeting in between as he found no support for his candidature, the remaining members gave the power of the President to the Senior Vice President who conducted the elections and was responsible for electing the office bearers. In the absence of the President, it is contended, it is open for the members to elect another Chairman and continue the meeting as the meeting cannot be postponed at all costs. In the present situation the Senior Vice President supervised the recording of the meeting and the election was, Therefore, validly conducted. In this regard reference is made to the judgments reported as *Smith Vs. Raringa Mines, Limited*, 1906 2 TLR 193; *S. RM. S.T. Narayana Chettiar and Another Vs. The Kaleeswarar Mills Ltd. and Others*, to reiterate that the Directors of a limited Company, in absence of express authority in the Article of Association, have no power to postpone the meeting properly convened and it is not open for the Chairman to stop the meeting and dissolve it before the business of the meeting is finished. Reference is also made to the judgment reported as *John Vs. Rees and others*, 1969 2 All ELR 274. This judgment deals with the powers of the Chairman to continue or to adjourn the meeting. The following passages from pages 292 and 293 may be of relevance in the facts and circumstances of the case which are reproduced as under :

"Although the Lambeth case (47) is of no great assistance in this case, it did, by devious means, ultimately lead me to what I think is a useful passage in a book published in 1840. A PRACTICAL ARRANGEMENT OF ECCLESIASTICAL LAW, by

F.N. ROGERS, Q.C. In discussing vestry meetings at p. 874, the author considers *Stoughton Vs. Reynolds* (48), and then says that this decision -

"by no means interferes with the right which every chairman has to make a bona fide adjournment, whilst a poll or other business is proceeding, if circumstances of violent interruption make it unsafe, or seriously difficult for the voters to tender their votes; nor of adjourning the place of polling, if the ordinary place used for that purpose be insufficient, or greatly inconvenient. In most of such cases, the question will turn upon the intention and effect of the adjournment, if the intention and effect were to interrupt and procrastinate the business, such an adjournment would be illegal; if, on the contrary, the intention and effect were to forward or facilitate it, and no injurious effect were produced, such an adjournment would, it is conceived, be generally supported."

This seems to me sound sense. It does not appear to be inconsistent with any of the authorities, and in its essentials I adopt it for the purposes of this judgment. I do not think it can be right to say that the chairman of a meeting has no inherent power to adjourn the meeting for disorder. It seems generally accepted that one of his functions is to preserve order: if despite his efforts serious disorder persists, and he is denied any power of adjournment, what is he to do? The disorder will almost by necessity make it impossible for the meeting to pass a resolution for adjournment. One must remember that serious disorder may put in a dilemma many of those who are peacefully attending the meeting. If they retire from it, they may afterwards find that the disorder soon subsided, and that the meeting then transacted its business without their voice and vote, and in a sense contrary to their wishes. If they remain, their personal safety may be in peril. The frail and timorous are as much entitled as the robust and bold to a meeting to which they can give their attention, and at which they may make their voices heard without fear of violence; and they need it more.

The first duty of the Chairman of a meeting is to keep order if he can. If there is disorder, his duty, I think, is to make earnest and sustained efforts to restore order, and for this purpose to summon to his aid any officers or others whose assistance is available. If all his efforts are in vain, he should endeavor to put into operation whatever provisions for adjournment these are in the rules, as by obtaining a resolution to adjourn. If this proves impossible, he should exercise his inherent power to adjourn the meeting for a short while, such as 15 minutes, taking due steps to ensure so far as possible that all present know of this adjournment. If instead of mere disorder there is violence, I think that he should take similar steps, save that the greater the violence the less prolonged should be his efforts to restore order before adjourning. In my judgment, he has not merely a power but a duty to adjourn in this way, in the interests of those who fear for their safety. I am not suggesting that there is a power and a duty to adjourn if the violence consists of no more than a few technical assaults and batteries. Mere pushing and jostling is one thing; it is another when people are put in fear, where there is heavy punching, or the knives are out, so that blood

may flow, and there are prospects, or more, of grievous bodily harm. In the latter case, the sooner the chairman adjourns the meeting the better. At meetings, as elsewhere, the Queen's Peace must be kept.

If, then, the Chairman has this inherent power and duty, what limitations, if any, are there on its exercise? First, I think that the power and duty must be exercised bona fide for the purpose of forwarding and facilitating the meeting, and not for the purpose of interruption or procrastination. Second, I think that the adjournment must be for no longer than the necessities appear to dictate. If the adjournment is merely for such period as the chairman considers to be reasonably necessary for the restoration of order, it would be within his power and his duty; a longer adjournment would not. One must remember that to attend a meeting may for some mean traveling far and giving up much leisure. An adjournment to another day when a mere 15 minutes might suffice to restore order may well impose an unjustifiable burden on many; for they must either once more travel far and give up their leisure, or else remain away and lose their change to speak and vote at the meeting."

8. The next point which has been highlighted by the learned counsel appearing for the respondents is that petitioners are provided with an alternative efficacious remedy in the nature of Election Petition u/s 32 of the Act and they can resort to the same and no interference is called for in exercise of powers under Article 226 of the Constitution of India. The judgments reported in this regard are K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, and Babu Verghese and Others Vs. Bar Council of Kerala and others (1999) SCC 422.

9. Strong reliance has been placed on the Division Bench judgment of this Court reported as Gurdeep Singh Dua and Others Vs. Delhi Sikh Gurdwara Prabandhak Committee, 1995 1 AD(Del) 579 by learned counsel for the petitioners to state the proposition that where the proceedings of the meeting held for the conduct of elections were not held properly and were not independent the same could be set aside by this Court. The facts as arisen in that petition as well as the law laid down are stated in paragraphs 13, 14 and 15 which may be reproduced as below :-

"13. In this petition we are not at all considering, nor it is our function to so consider, the authority of the Jathedar Sahib Shri Akal Takht, Amritsar. Our consideration only is the conduct of the members of the Committee having right to vote. By a bare reading of the minutes of 10th May, 1994 and 21st May, 1994 and portion of the counter-affidavit set out above it is clear to us that the elections have not been held in accordance with law and the Rules. 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. Here the member of the Committee have to act under the law making them members of the Committee and elected representatives of the persons. Under sub-section (6) of Section 16, the election of the President and other office-bearers and members of the Executive Board shall be held in such manner as may be prescribed by the Rules. Under sub-section (3) of Section 19, the President, or in his absence the Senior Vice-President and in the absence of both, the Junior Vice-President, and in the absence of all the three, any other member elected from amongst themselves shall preside at any meeting of the Committee or of the Executive Board. u/s 21, powers of the Executive Board and its office-bearers are prescribed. u/s 36, every member of the Committee and the Executive Board and all other sub-committees, etc. shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Under Rule 8, when a member of the Committee is to be elected as President, Senior Vice-President, Junior Vice-President, General Secretary or the Joint Secretary, the President shall call upon the members present at the meeting to nominate candidates for the purpose. Any member present may propose the name of any other member of the Committee for the office of President or for other offices of the Executive Board and if any other member present seconds such a proposal the President shall if the person so proposed agrees to such nomination in case he is present in the meeting or the member proposing the name produces a certificate signed by the person so nominated to the effect that he agrees to such nomination. Under rule 9, if only one member is nominated as a candidate under the provisions of rule 8, he shall be deemed and shall be declared to have been elected as President, Senior Vice-President, Junior Vice-President, General Secretary and the Joint Secretary, as the case may be, Rule 10 provides for a situation where there are more than one member nominated for an office. Under Rule 12, similar procedure has been prescribed for election of members of the Executive Board. If we now refer to the minutes of 21st May, 1994, we find that the moment Mr. Manjit Singh Calcutta is elected President, Bhaiya Gurbachan Singh, who was presiding over the meeting, gives his place to Mr. Manjit Singh Calcutta who thereafter conducts a meeting and calls for nominations of other office-bearers and the members of the Executive Board. This he could not have done and Bhaiya Gurbachan Singh had to conduct whole of the meeting and call for nominations. Then the minutes do not show that any consent of the office-bearers and the members of the Executive Board so nominated was obtained before declaration of their respective results. Election of ten members of the Executive Board has also not been in accordance with the Rules. There has been no nomination, no recondition and no mention of any member agreeing to the nomination to the Executive Board. The minutes are signed by the newly elected President and the General Secretary. This again is not in accordance with the practice as the minutes should have been signed by the outgoing President and

General Secretary as the minutes had to be confirmed in the subsequent meeting. As Vice-President, the minutes should have been signed by Bhaiya Gurbachan Singh. We find it is a case where exceptional and extraordinary circumstances exist for us to interfere in this petition under Article 226 of the Constitution of India. We may also note that an affidavit has been filed by Bhaiya Gurbachan Singh, aged about 92 years, that he is a member of the Committee since 1979 and that he attended the meeting of the Committee on 21st May, 1994. He denied that being the Vice-President of the Committee he was elected as President to conduct the proceedings of the General House on 21st May, 1994 and that the proceedings of the General House started under his Chairmanship. He says the minutes contained a totally false and incorrect record of the proceedings. We are, however, not going into that question and we have principally proceeded on the basis that Bhaiya Gurbachan Singh being the Junior Vice-President was elected as President for the meeting of 21st May, 1994.

14. We, Therefore, hold that the elections as per the minutes dated 10th May, 1994 and 21st May, 1994 are not in accordance with law and have to be set aside. We order accordingly.

15. Having said so we must find a method to have the elections of the office-bearers and the Executive Board in accordance with law. It is unfortunate that there has been a constant dispute between the warring groups and various court cases are pending."

10. The facts as narrated above are similar to the facts which arise for consideration in the present case. The alleged meeting which commenced under the Presidentship of S. Jaswant Singh Sethi 52 members were stated to be present as stated in the Minutes of the meeting as drawn after purported elections having taken place. The operative part of the English Translation of the Minutes may be reproduced as below :

"While beginning the proceedings, S. Jaswant Singh Sethi President DSGMC stated that today's General Body Meeting is being held to elect the office-bearers and Members of the Executive Board. As per Gurdwara Act, the previous executive is dissolved. I request the Members present to propose the names for the post of President Prof. Joginder Singh proposed the name of S. Paramjit Singh Sarna for President and S. Manjit Singh Greater Kailash Seconded the name. Then more names were invited. S. Avtar Singh Hit proposed the name of S. Jaswant Singh Sethi and it was seconded by S. Kuldip Singh Bhogal. When the voting was to begin, S. Jaswant Singh Sethi walked out of the meeting."

11. After S. Jaswant Singh Sethi left the meeting, the proceedings of the meeting were stated to have continued under the Presidentship of S. Gurcharan Singh Gatka Master, Senior Vice-President in the presence of 24 other members. The election was alleged to be held in the presence of only 25 members and the following portion from the translated Minutes may now be reproduced as below:

"S. Gurcharan Singh Gatka Master requested the Members present, to propose

the names for the President of DSGMC. Prof. Joginder Singh proposed the name of S. Paramjit Singh Sarna for President and it was seconded by S. Manjit Singh Greater Kailash. Then more names were invited for the post of President. As no other name was proposed, S. Paramjit Singh Sarna was unanimously elected President of DSGMC. Thereafter, S. Paramjit Singh Sarna assumed Presidentship of the Meeting, the further proceedings of the meetings were performed under his presidentship.

S. Paramjit Singh Sarna invited name for the post of Sr. Vice President, S. Manjit Singh Greater Kailash, proposed the name of S. Nirwair Singh, which was seconded by S. Harmohinder Singh. As no other name was proposed, Therefore S. Nirwair Singh was unanimously elected Sr. Vice-President.

Thereafter, S. Paramjit Singh Sarna invited names for Jr. Vice-President S. Bhajan Singh Walia proposed the name of Jathedar Baldev Singh Rani Bagh which was seconded by Prof. Harmoinder Singh. Then more names were invited as no other name was proposed, Jathedar Baldev Singh Rani Bagh was unanimously elected Jr. Vice President.

Then S. Paramjit Singh Sarna invited names for the post of Gen. Secy. S. Gurcharan Singh Sabharwal proposed the name of S. Jatinder Singh Sahni which was seconded by Prof. Joginder Singh. Then more names were invited for the post of Gen. Secretary. But no other name was proposed, Therefore, S. Jatinder Singh Sahni was elected unanimously as Gen. Secretary.

After the President invited the names for the post of Jt. Secretary S. Bhajan Singh Walia proposed the name of S. Kuldeep Singh Karol Bagh which was seconded by S. Mangal Singh. As no other name was proposed. S. Kuldeep Singh Karol Bagh was unanimously elected Jt. Secy.

After the elections of the Office-bearers, the President invited names for the members of the Executive Board. The following ten members who are proposed and seconded by the following persons were declared elected unanimously.

S. NAME PROPOSED BY SECONDED BY No. 1. S. BALBIR SINGH S. Manjit Singh Bibi Daljit Kaur Greater Kailash Khalsa 2. S.L.S. Bajwa Headmaster S. Mela Singh Sucha Singh 3. Bibi Daljit Kaur S. Balbir Singh S. Harbhajan Singh Pardesi 4. Headmaster Sucha S. Gurcharan Singh Prof. Joginder Singh Gatka Master Singh 5. S. Manjit Singh S. Mangal Singh S. Kuldeep Singh Greater Kailash Karol Bagh 6. S. Mela Singh S. Baldev Singh S. Nirwair Singh Rani Bagh 7. Dr. Harmohinder S. Jatinder Singh Head Master Singh Sahni Sucha Singh 8. S. Bhajan Singh Dr. Inder Singh S. Balbir Singh Walia V.V. 9. S. Mangal Singh S. Gurcharan Dr. Harmohinder U.P. Singh Singh 10. S. Gurcharan Singh S. Mela Singh S. Bhajan Singh Gatka Master Walia

After the meeting was over the result of elected members was sealed in an envelope and was sent to the Director Gurdwara Elections.

Sd/- PARAMJIT SINGH SARNA JATINDER SINGH SAHNI GURCHARAN SINGH

GATKA MASTER"

12. It has been conceded during the course of arguments that there was no secret ballot nor anyone used the ballot papers to cast his or her vote. It is contended that since there was not more than one candidate for each post it was not necessary to do so. Reference is made to Rule 9 of the Delhi Sikh Gurdwaras (Election of Pro Tempore Chairman, President, other Office Bearers and Members of the Executive Board) Rules, 1974 (hereinafter referred to as "the Rules") which reads as follows :

"9. If only one candidate is nominated he is to be declared elected If only one member is nominated as a candidate under the provisions of Rule 8 he shall be deemed and shall be declared to have been elected as President, Senior Vice-President, Junior Vice-President, General Secretary or Joint Secretary, as the case may be."

13. The mode of election of President and other office bearers and the respective nominations are stated in Rules 7 and 8 of the Rules which may also be reproduced as below :

"7. Election of President, other office bearers and members to the Board to take place in the order specified - When office bearers and members of the Executive Board are to be elected at the first meeting of the Committee or at the subsequent annual general meeting under the provisions of Section 16, the election of the President shall first take place and then the election of the Senior Vice-President. Junior Vice-President, General Secretary and Joint Secretary and finally the election of ten members to the Executive Board.

8. Nomination of office-bearers (1) When a member of the Committee is to be elected as President, Senior Vice-President, Junior Vice-President, General Secretary or Joint Secretary, the pro tempore Chairman in the matter of election of President and President in the matter of Election of other office bearers shall call upon the members present at the meeting to nominate candidates for the vacant office.

(2) Subject to the provisions of sub-clause (ii) of clause (b) of section 4 any member present may propose the name of any other member of the Committee for the office of President or for other offices of the Executive Board and if any other member present seconds such a proposal the pro tempore Chairman or the President as the case may be, shall if the person so proposed agrees to such nomination in case he is present in the meeting or the member proposing the name produces a certificate signed by the person so nominated to the effect that he agrees to such nomination:

Provided that if any objection is raised under sub-section (3) of section 16 to the nomination of any candidate, the pro tempore Chairman or the President, as the case may be may make summary enquiry and shall not enter the name of the candidate in the list if he is not satisfied that the candidate fulfills the

qualifications laid down in the said sub-section.

(3) The pro tempore Chairman or the President's decision, as the case may be, on the question whether the candidate should or should not be included in the list of duly nominated candidates shall be final."

It may be relevant to reproduce below the note of the meeting of the Observers :

"Sub : Meeting of Delhi Sikh Gurdwaras Management Committee scheduled for 12th May, 1999 for election of President, Office-bearers and members of the Executive Board.

As directed, we attended the meeting of Delhi Sikh Gurdwaras Management Committee at Gurdwara Rakab Ganj Sahib today at 11 A.M. for election of President, Office-bearers and members of the Executive Board. The meeting was started at 11 A.M. after "Ardas". 49 members of DSGMC were present. The following Head priests of Takhts were also present :

1. Jathedar Manjit Singh : Head Priest Sri Keshgarh Sahib, Anandpur. 2. Jathedar Puran Singh : Head Priest Sri Akal Takhat Sahib, Amritsar.

Thereafter, the election process was started by the President, DSGMC, S. Jaswant Singh Sethi.

First of all, name of S. Paramjit Singh Sarna was proposed by Prof. Joginder Singh and seconded by S. Manjit Singh. Then, the name of S. Jaswant Singh was proposed by S. Avtar Singh Hit and seconded by S. Kuldeep Singh Bhogal.

Before the start of polling, a controversy was raised by some members regarding keeping of Ballot-box. Some members insisted that the ballot box will be kept in the voting compartment (i.e. behind curtain), other members did not agree to this and asked to keep the ballot box in front of Sri Guru Granth Sahib. On this, there were heated arguments from both sides. It continued up to 12 Noon. Thereafter , the President, DSGMC S. Jaswant Singh Sethi announced the adjournment of meeting and left the meeting hall.

Despite efforts made by some members and the Head Priests, further proceedings for election could not be held. Then, at 12.50 P.M. a letter signed by the President, DSGMC was handed over to both of us in the meeting hall in which it was informed that the meeting has been adjourned till further orders, fearing violence and disturbance (copy of letter No. 3075/3-1 dated 12.5.99 is also placed in the file). On receipt of this letter, both of us left the meeting hall.

Submitted for information and record please.

Sd/- (INDERMOHAN SINGH) Sd/- (B.S. SAHNI)"

14. The above will indicate that even S. Jaswant Singh Sethi was validly proposed and seconded and was eligible to contest for the post of President. Thereafter he along with other persons, as already referred to above, left the meeting as it was stated that it was not possible to conduct the same in an

orderly manner. The following Communication dated May 12, 1999 relates to this averment and the same reads as under :

"S.B.S. SAHNI

S. INDER MOHAN SINGH

OBSERVERS

GURDWARA ELECTIONS

VIKAS SADAN; NEW DELHI

Dear Sirs,

As you are aware that in the presence of Holy Sri Guru Granth Sahib, both the parties of the Delhi Sikh Gurdwara Management Committee, have not kept the sanctity of Holy Sri Guru Granth Sahib in spite of my repeated requests. The Members of DSGMC also mishandled the Respected Jathedar, Sri Akal Takhat Sahib - S. Puran Singh Ji, Some Members of DSGMC did not allow me to conduct the General Elections properly and legally.

I, Therefore, adjourned the meeting, fearing violence and disturbances ,till further orders.

This is for your kind information."

15. Subsequently the name of S. Jaswant Singh Sethi was not considered and the election for the post of President as well as other members of the Executive Committee was stated to be held by the remaining members who continued to hold the meeting. In the above background it cannot be said that fair, free and valid elections were conducted in accordance with law and in compliance with the statutory provisions. The respondents are stated to have hurriedly held the meeting and elected members of the Executive Committee and the President without using ballot paper or following the process of law in an ordinary manner. The facts which arise for consideration in this petition can be compared to the facts and circumstances which came for consideration in the judgment of the Division Bench of this Court reported as Gurdeep Singh Dua and Others (supra). The learned Judges even in that case had expressed their regret that there had been a constant dispute between the warring groups and various court cases were pending. There does not seem to me any improvement in the attitude of both the parties. The election was not possible as more than half the members had left the venue and the Observers also categorically stated that the meeting stood adjourned. It is, Therefore, held that the elections as contemplated to be held on May 12, 1999 are not in accordance with law and have to be set aside. It is ordered accordingly. The present arrangement shall, however, continue till the new election is held and office bearers are declared elected.

16. There must, however, be found an amicable solution to the problem and the following directions are necessary in the facts and circumstances of the present

case :

1. Elections of the office-bearers and Executive Board shall now be held on 19th February, 2000 at 11 A.M. in the office of Delhi Sikh Gurdwara Management Committee, Guru Gobind Singh Bhawan, Gurdwara Rakab Ganj Sahib, New Delhi 110001. Notices of the meeting shall be issued within one week from today and the Court Observer shall be informed of the same.
2. Mr. Justice Jaspal Singh, a retired Judge of this Court shall preside over the meeting as Chairman and will be assisted by another member which he may decide for this purpose.
3. The members shall exercise their right to vote by secret ballots.
4. Mr. D.D. Singh, Advocate 343, Lawyers' Chamber, Delhi High Court, New Delhi is appointed as the Court Observer to be present at the time of election. Mr. D.K. Batra, Deputy Registrar of this Court will be the Joint Observer and shall assist the Court Observer in discharge of his duty. The Court Observer will prepare a report of the elections held and the results so declared by the Chairman. No obstruction will be caused to the Court Observer and Joint Observer in the discharge of their duties by any one. The Chairman shall be paid a sum of Rs. 25,000/- as his fee. The Court Observer as well as Joint Observer shall be paid a sum of Rs. 12,000/- and Rs. 6,000/- as their fees respectively. The fees shall be shared equally by the petitioners as well as by the respondents. The report of the Court Observer as approved by the Chairman shall be submitted to this Court and shall form part of these proceedings. A copy of the judgment shall be given to counsel for both the parties as well as to the Chairman, the Court Observer and Joint Observer during the course of the day.
17. The Present petition is disposed of in the above terms.