
(2003) 09 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17853 of 2002

Sucha Singh Langah and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Sikh Gurdwaras Act, 1925 — Section 142, 42, 45(3), 52, 76

Citation : (2004) 136 PLR 705 : (2004) 1 RCR(Civil) 245

Hon'ble Judges : Viney Mittal, J; Swatanter Kumar, J

Bench : Division Bench

Advocate : H.S. Mattewal, Rajni Gupta, Vishal Munjal and Ranbir Singh, for the Appellant; Aman Preet Singh, C.M. Munjal, A.A.G., P.S. Patwalia, Senior Advocate, T.P.S. Chawla, Navkiran Singh and R.S. Bains, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—In all these writ petitions, challenge is to the notification dated 5.7.2002 (Annexure P6 to the writ petitions) vide which the earlier notification dated 12.1.1999 has been rescinded and earlier Judicial Commission has been ordered to be restored. Prayer in the writ petitions itself was made for interim stay of this notification, which was not granted by the Court. However, during the pendency of the writ petitions miscellaneous applications for stay of the interim orders passed by the Judicial Commission functioning under the impugned notifications were also placed on record and by means of the interim application, challenge to the said orders which restrained the present petitioners from functioning as members of the Shiromani Gurdawara Prabhandhak Committee, Amritsar, hereinafter referred to as S.G.P.C., was raised.

2. By this judgment we propose to deal with and dispose of above mentioned ten writ petitions as they involve common question of law based on similar facts. However, for the purposes of clarity and brevity, we are referring to the facts of the case of Sucha Singh Langah v. State of Punjab and Ors., C.W.P. No. 17853 of 2002.

3. Petitioner Sucha Singh had filed this writ petition raising a challenge to the notification dated 5.7.2002, Annexure P6 to the writ petition, vide which the earlier notification dated 12.1.1999 had been rescinded and the earlier Judicial Commission had been ordered to be restored. This writ petition was filed by the petitioner in the Registry of this Court on 2.11.2002. It was listed before the Bench on 9.11.2002 on which date it was adjourned to 11.11.2002. In the meanwhile, a petition u/s 142 read with Section 145 of the Sikh Gurdwaras Act, 1925, hereinafter referred to as the Act, was filed by one Shri Harminder Singh Gill on or about 29.10.2002, on which an interim order was passed by the Sikh Gurdwara Judicial Commission, Amritsar, on 7.11.2002, restraining the present petitioner-respondent therein, from functioning and participating as a member of the S.G.P.C. in any meeting and proceedings of the Executive Committee and the Board forthwith and notice was issued for 27.11.2002. The order dated 7.11.2002 was challenged by the petitioner in this writ petition by filing Civil Misc. No. 35100 of 2002 dated. 15.11.2002. However, when the matter came up for hearing on 11.11.2002, a Division Bench presided over by Hon"ble the Chief Justice, on the oral request of the counsel appearing for the parties, complainant was ordered to be impleaded as respondent No. 8. The counsel also probably produced before the Court, copy of the order dated 7.11.2002 and limited stay was granted by the Division Bench. The relevant part of the Division Bench order dated 11.11.2002 reads as under:-

"10. Having regard to the peculiar facts and circumstances and the definition of the word, Sikh, as defined in Section 2(9) of the Act and the Division Bench judgment of this Court holding that "so far as the suspension is concerned. There is no provision that it can be done by way of an interim measure", we in the interest of justice, stay the operation of order passed by the Sikh Gurudwara Judicial Commission, Amritsar, a copy of which has been produced before us by Shri Patwalia, which is being kept on the record, however, directing that the vote casted by the petitioner shall be kept separately in a sealed cover and shall not be counted for the present, subject to further order by this Court.

11. We are putting on record the statement made by Shri Mtattewal that two copies of this writ petition have been served on the learned Advocate General, Punjab, representing respondent Nos. 1 and 2."

4. The Sikh Gurudwara Act, 1925 provides for constitution and formation of Board, Tribunal, Committees and a Judicial Commission. On 9.11.1979 Shri Dara Singh-respondent No. 3 in this writ petition, was appointed as Member of the Judicial Commission. In July, 1981 Shri Raghbir Singh was also appointed as Member of the Judicial Commission. On 21.11.1996 elections were held after lapse of 17 years to constitute the Shiromani Gurdwara Prabhandhak Committee. Vide resolution dated 20.12.1996 the S.G.P.C. had finalised the panel of names for appointment to the Sikh Gurudwara Judicial Commission and the same was sent to Government of Punjab u/s 71(1) of the Act on 19.2.1997, vide Notification dated 12.1.1999 the Judicial Commission was constituted appointing

S. Manmohan Singh Brar, S. Ajwant Singh and S. Amrik Singh as Members of the said Judicial Common. On 6.1.1999 a notification was issued removing respondent Nos. 4 to 6 as members of the Judicial Commission. This notification was rescinded by notification dated 12.1.1999. Earlier members of the Judicial Commission, namely, S. Dara Singh and S. Kashmir Singh filed a writ petition Nos. 37 of 1999 and 374 of 1999 in the High Court challenging the notification issued by the Government dated 12.1.1999 vide which the Judicial Commission was re-constituted as afore-stated. The writ petitions were dismissed by a Larger Bench of this Court (Five Judges Bench) vide their judgment dated 13.9.2002. During the pendency of those writ petitions before the Larger Bench, the Government had issued notification dated 5.7.2002 rescinding the earlier notification of 12.1.1999 and restoring the earlier Judicial Commission. The petitioner, thus, has challenged the said Notification dated 5.7.2002 in the present writ petition and also the interim order passed by the Judicial Commission dated 7.11.2002.

5. In view of the above pleadings and facts emerging from the record of this file, we are of the considered view that the following questions arise for consideration and determination before the Court:-

- i) Whether the notification dated 5.7.2002 is liable to be set aside being arbitrary exercise of power and for other grounds which have been stated in the writ petition?
- ii) If the answer to the above question is in the affirmative what is its effect on the interim orders passed by the Judicial Commission with a particular reference to the order dated 7.11.2002?
- iii) Whether the Judicial Commission has any power or jurisdiction to pass interim orders, particularly of the nature and consequences, as contained in the order dated 7.11.2002?

6. As far as answer to the first question is concerned, it is not necessary for us to have any deliberation in that regard. This question has already been answered by this Bench in a detailed judgment passed on 14.8.2003 in the case of Manmohan Singh Brar and Ors. v. State of Punjab and Ors., C.W.P. No. 10200 of 2000. In that judgment, the Bench while quashing the impugned notification dated 5.7.2002, held as under:-

"The Board is an elected body. It contributes and plays the definite roles in constitution of its different bodies. The Judicial Commission is one of the pertinent wing of the institution. The Act itself was enacted for providing better administration in relation to the purpose stated therein. It is a religious body elected by democratic process and the institutions thus constituted are expected to function fairly, freely and enriching itself by its expression founded in democratic norms. The role of the Govt. and exercise of powers vested in it has to be in conformity with the provisions, the object, legislative intent and purpose behind enactment. The Board and its various other functionary bodies are to act

as IDEOPRAXIST of the legislative intentment and spirit behind the statute, provisions.

The stand of the State is not only contrary to its earlier pleadings but also offends the judgment. Keeping in mind the factual matrix of the case, well enunciated principle of law referred above, we are of the considered view that the action of the State in issuing the notification dated 5.7.2002 is FAUX-PAS. Furthermore it is a colorable exercise of power and offends the settled principles of law. The power of the Govt. to issue such a notification can hardly be questioned in the light of the above enunciated law but such powers should essentially be exercised fairly, judiciously and in conformity with the spirit of the constitution, which the respondent-State has failed to adhere to in the present case.

Agro we allow this writ petition, quash the notification dated 5.7.2002 while leaving the parties to bear their own costs."

7. No doubt there is no specific challenge to the order dated 7.11.2002 in the writ petition itself, however, as already noticed, an application was filed in the writ petition challenging the validity and legality of the said order, on which the Division Bench had passed interim order. Thereafter the said application was treated as integral part of the writ petition and the parties effectively argued this application at some length and prayed for judgment on this issue. Various contentions have been raised on behalf of the parties in support and against the application on behalf of different parties. Thus, now we revert to discuss the merits or otherwise of various contentions raised in support of the remaining two questions referred above.

8. Section 40 of the Act refers to various organisational bodies, which are to be constituted for carrying out the purpose of the Act. It provides that there shall also be constituted from time to time a Judicial Commission in the manner hereinafter provided. In other words, a Judicial Commission has to be constituted but in the manner provided in the provisions of the Act for carrying out the purpose of the Act. Section 70 of the Act states that the Judicial Commission shall consist of three members who shall be Sikhs and may be appointed from time to time by the State Government. The jurisdiction and procedure of the Commission is dealt with u/s 76 of the Act. The Commission shall, for the purpose of deciding any matter, which it is empowered to decide under the provisions of the Act, would have the same powers as are vested in a Civil Court by the Code of Civil Procedure, 1908. The pecuniary jurisdiction of the Commission is unlimited and its decree and orders are to be executed or given effect to by the District Court of the concerned District. These proceedings, subject to the provisions of the Act, are to be conducted in accordance with the provisions of the Code of Civil Procedure. Other provisions of Chapter VI of the Act provide for the manner of appointment, conditions of service of Members and dissolution of the Commission, reference to which in our opinion is not necessary for deciding the controversy.

9. A Board has to be constituted u/s 40 of the Act, which has to be known by the name as may be decided, in the general meeting of the first Board. The name of the Board was decided to be known as Shiromani Gurdwara Prabhandhak Committee. Such name has duly been notified by the State Government under the provisions of Section 42 of the Act. Section 45 deals with the qualifications of a person for his election as a Member of the Board. Provisions of this Section spell out the conditions which would render a person ineligible for such election. Shortly we would revert and refer to these stipulations in some detail.

10. Section 142 of the Act provides a right of interested persons to complain to the Judicial Commission in respect of misfeasance etc. Rather than referring to this section in any detail, we consider it appropriate to refer to the language of the Section itself, which reads as under:-

"142. Right of interested persons to complaint to commission in respect of misfeasance, etc.- (1) Notwithstanding anything contained in Section 92 of the Code of Civil Procedure, 1908 (5 of 1998), or in the Specific Relief Act, 1877, any person having interest in a Notified Sikh Gurudwara may, without joining any of the other persons interested therein, make an application to the Commission, against the Board, the Executive Committee of the Board, or the Executive Committee or of the Committee, or against any office-holder or past office-holder of the Gurudwara or against any employee past or present of the Board or Gurudwara in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by this Act or any alleged expenditure on a purpose not authorised by this Act and the Commission, if it finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure proved, may consistently with the provisions of this Act and of any other law or enactment in force for the time being direct any specific act: to be done or forborne for the purpose of remedying the same and may award damages or costs against the person responsible for the same, and may order the removal of any office-holder or member of the Board, Executive Committee, or Committee, responsible for the same and may also disqualify any member of the Board, executive Committee or Committee, thus removed from such membership for a period not exceeding five years from the date of such removal:

Provided that no such application shall be entertained by the Commission, if it is made more than six years after the date of the act or omission from which the right to make an application under this sub-section accrues and, in the case of an application against a member of the Board, the Executive Committee of the Board or the Committee, if it is made after such period or after six years of the date of his ceasing to be a member, whichever is later,

(2) The Board may make a similar application to the Commission which may, in like manner, dispose of it.

(3) The Board or any person aggrieved by an order passed by the Commission under the provisions of Sub-section (1) or Sub-section (2) may, within ninety

days of the orders, appeal to the High Court."

11. The Legislature in its wisdom in addition to the protections provided in Sub-sections (2) and (3) of Section 142 of the Act has declared in the provisions of Section 143 of the Act that notice of such application, where it is filed against the Board, or Executive Committee of the Board, it shall be mandatory for the applicant to serve a notice in advance and file such an application until expiry of two months thereafter of the date when it was delivered in such office. Apparently, the powers vested in the Judicial Commission are of wide magnitude. Section 142 empowers the Commission, subject to other laws in force and in consistence to the provisions of the Act, to pass orders for remedying the wrong, award damages or costs against the person responsible for the same and may even order the removal of the office holder or the Member of the Board, Committee etc., and may also disqualify any Member of the Board, Committee etc., thus remove him from such membership for a period not exceeding five years from the date of the removal.

12. The scheme of the Act clearly shows that Legislature has provided an inbuilt machinery for redressal of grievances/complaints of the interested persons before the Judicial Commission. It cannot be disputed that there is no specific provisions in the Act which empowers the Judicial Commission to pass interim orders, particularly of the kind passed by it in the present case. The moot question that arises for consideration of the Court in this writ petition is, thus, what is that ambit and scope of such powers of the Judicial Commission or whether such power could be inferred by necessary implication, in absence of specific provision vesting such powers in the Commission?

13. Harinder Singh Gill had filed a petition before the Judicial Commission u/s 45 read with Section 142 of the Act praying therein as under:-

"It is therefore prayed that the application may please be allowed with costs and the following reliefs may be granted against the respondents:

(i) That the respondent may be disqualified from the membership of S.G.P.C. for the term of five years and they may be removed from membership.

(ii) That the respondent may not be allowed to cast their vote in the election of S.G.P.C.

(iii) That the respondents may not be allowed to contest any kind of post of S.G.P.C.

(iv) That the respondent may be ordered to be punished as per the provisions of Sikh Gurudwara Act 1925.

(v) To any other relief, the applicant is found entitled may also be granted to him."

14. On this application and as it appears from the order an ad-interim exparte order was passed on 7.11.2002 which reads as follows"-

"AD-INTERIM ORDER"":

Present: Counsel for the applicant.

The allegation against the respondent is that by performing the Pooja of Hanuman and reciting 105 paths of Ramayana that is against the tenets of the Sikhism and the teachings of the Sikh Gurus. We have heard the arguments and perused the affidavit of the applicant Harminder Singh Gill, S. Major Singh s/o S. Amrit Singh and S. Shamsheer Singh s/o S. Amarjit Singh and the documents placed on the file and the definition of "Sikh" as given in Sub-section (9) of Section 2 of the Sikh Gurudwara Act, 1925. Notice be issued to the respondent for 27.11.2002 on the payment of process fee to show cause as to why the prayer sought for by the applicant be not granted. Meanwhile, the respondent is restrained from functioning and participating as a member of S.G.P.C. in any meeting and proceeding of the Executive Committee and the Board forthwith till 27.11.2002.

The ad-interim order is issued subject to compliance with Order 39 Rule 3(A) C.P.C. by the applicant today."

15. While impugning the above order, the learned counsel for the petitioners contended that the order is without jurisdiction as there is no provision in the Act enabling the Judicial Commission to pass such *ex parte* orders. Further, it is contended that the order is violative of principles of natural justice as it was passed without notice to the petitioners, which is not permissible. It was also contended that the application and even the order passed there-upon is an abuse of process of law by the applicant therein inasmuch as it has the effect of divesting the petitioners of the rights and privileges vested in them under the various provisions of the Act and granting of such a relief *ex parte* offends the basic canons of law.

16. For enforceability and objective implication of the legislative scheme under the provisions of an enactment, a concentrated reference to the provisions, which are linchpin to the scheme of the Act, is the most appropriate way of defining the limitation of a power provided under the Act. All such interpretations which are likely to disarray the essence of discharge of judicial/quasi-judicial functions in exercise of the statutory provisions, must be avoided. With this background we may refer the other pertinent and other relevant provisions of the Act which would help in enunciation of a correct principle regulating the jurisdiction, procedural or otherwise, of the Judicial Commission. The petitioner is elected member of the Board (Shiromani Gurdwara Prabhandhak Committee) and an application has been filed with a prayer that respondent be disqualified from membership of S.G.P.C. for a term of five years and they may also be removed from membership with other prayers as afore-noted. The grounds taken were that the petitioner had illicit relations with ladies and that he had collected huge amount and property because of his corruption and has committed illegal acts by reciting and participating in Ramayana path conducted by a Pandit which

is against basic principles of Sikhism. Because of these acts, the petitioner has become a "Patit".

17. Section 45 of the Act relates to the condition of eligibility/qualifications for a person to be elected as member of the Board. Under Sub-section (3) of Section 45 no person shall be prevented from standing as a candidate for election, as a member of the Board on the ground that he is "Patit". If, after being elected, he is found to be "Patit" within the scope of Section 84 of the Act, then his election shall be declared void. Section 84 of the Act gives power to the Judicial Commission that where-ever it is necessary to decide for the purposes of Board or Committee under the provisions of the Act whether the person is a "Patit" or not, then it shall decide such question. If any person elected as member of the Board specifically becomes or is found to be, by the Board, subject to any of the disabilities stated in Section 45, then he shall cease to be a member thereof. The person, if aggrieved from such order of the Board, has a right under Sub-section (2) of Section 52 to prefer an appeal to the Commission within one month of the date from which he has knowledge of that order. He also has a right to ask for the restoration of his privileges.

18. Section 142 of the Act, which falls under Chapter XII relating to miscellaneous provisions of the Act gives right to person to complain to the Commission. The jurisdiction of the Commission u/s 142 of the Act, cannot be termed as unlimited and uncontrolled. The provisions of this Section define the causes or the grounds on which consequences stated therein indicating disqualification for a period not exceeding five years and even removal of the members is provided. These are the main provisions of this statute book which have a bearing on the matters in issue before us. It must be noticed with some emphasis that there is no provision in the Act or the rules framed there-under, at least nothing has been brought to our notice, which in its specific terms or even otherwise vests the Judicial Commission with powers to pass interim orders. An elected member, who is alleged to be a "Patit", still holds his rights under these provisions unless he earns a disqualifications stated u/s 52 of the Act and the competent forum i.e. the Board records such a finding. Earning of disqualification and its determination by the competent forum is a condition precedent to a person ceasing to be a member of the Board. Furthermore, such an order is appealable to the Judicial Commission. The right of the person to complain u/s 142 of the Act is controlled by the grounds stated therein and power of the Commission is also limited for passing of such orders as are stipulated under that Section.

19. Passing of an interim order causing cessation of membership of the person in relation to a Committee or a Board can hardly be justifiable. The Judicial Commission had passed an *ex parte* order, "restraining from functioning and participating as member of S.G.P.C.", which is an order which would, at the face of it, impermissible at an interlocutory stage.

20. Section 76 of the Act grants the Commission same powers as are vested in a

Court by the Code of Civil Procedure. But, the most pertinent expression used by the Legislature in the provisions of Section 76 of the Act is, "for the purposes of deciding any matter which it is empowered to decide under the provisions of the Act." A bare reading of this expression, read in conjunction with the language of the section leaves no doubt in our mind that powers of the Court are available to the Commission, but only to decide the matters which they have power and authority to specifically decide under the provisions of the Act. Unless power of the Commission to decide a matter culminates from a specific provision of the Act, the provision of the Code cannot be brought to the aid for making up such a bridge which is not intended by the Legislature. The provisions of Section 76 cannot be interpreted, so as to provide re-course to any inherent power, which is not vested in the Commission under the provisions of the Act, particularly for defeating the specific provisions of the Act. Such approach is neither permissible nor would be in consonance with the settled canons of statutory interpretation.

21. Sine-quo-non for exercise of such power is existence of a legislative provision empowering the Commission to pass such orders. The interpretation suggested on behalf of the respondents, if accepted, would certainly lead to be de-franchise of legal rights and/or protections granted to a member under the afore-referred provisions. The law requires compliance of certain provisions and satisfaction of a competent authority before it passes any such final order, that too after due notice to the other party. That being the scheme of the Act, to pass an order even of a harsher consequences than the final permissible order by way of exercise of so called inherent power, would be entirely frustrative of the object of the statutory provisions.

22. At this stage again it will be useful to refer to the provisions of the Act. The legislative intent seems to be to protect an elected member from un-necessary exposition or alleged violation or disqualification unless such final order was passed upon notice to the affected party. Section 143 of the Act sufficiently indicates the in built intent in providing due notice to the Board of a Committee. If on the basis of vague allegations made in the application on which competent forum/authority has to issue notice and proceed with the matter in accordance with law and then arrive at a conclusion, in that event, the protection and safe-guards provided in the Statute cannot be permitted to be defeated by recourse to power which is assumed by the Commission without any specific provision enabling the Commission to pass interlocutory orders of such serious consequences.

23. Sub-section (3) of Section 45 further indicates an implied safe-guard in favour of even a person who just wishes to stand as a candidate for election to the member, that he is "Patit". On these premises the Court even on pervasive interpretation cannot hold that allegations of "Patit" can be a ground for restraining an elected members to do his duty by passing an exparte interlocutory order.

24. Assumption of inherent powers in absence of specific statutory provisions is a

concept which has hardly met the approval of the Court under different laws. It is a matter of common understanding that the Legislature normally provides for such interim powers if it intends that such Tribunal, Commission or Forum should exercise such powers. It will be appropriate to refer to the provisions of Punjab Panchayat Raj Act, 1994, wherein the Director has power to remove a Sarpanch under the provisions of Section 20 of the Act, their power to suspend during the course of enquiry has been specifically given to the Director u/s 20(4) of the Act. Such interim power has been specifically provided for despite the fact that under the provisions of Section 71 of the said Act the provisions of the Code of Civil Procedure, 1908, would apply where provided under that Act. Reference to this law is an apt example in reference to the facts of the present case. Panch/Sarpanch are again elected persons, but they can be removed after compliance with the prescribed procedure and could be suspended only because of the specific provisions in the Act.

25. It has been repeatedly held that a learned Magistrate discharging his judicial functions in consonance with the provisions of the Code of Criminal Procedure is not vested with any inherent powers and has to exercise his jurisdiction strictly in consonance with the provisions of the Code. The Hon"ble Supreme Court in the case of Central Bureau of Investigation through Central Bureau of Investigation Vs. State of Rajasthan and Another, while deliberating on the powers of the Magistrate to order investigation on the powers of the Magistrate to order investigation and scope of Section 156(3) of Criminal Procedure Code held that Magistrate cannot stretch his powers under these provisions beyond directing the officer incharge of a police station to conduct investigation. Power to issue directions could be used, that too, sparingly by the High Court and the Supreme Court.

26. Exercise of power even by the Courts is well exercised only when it is within the prescribed limits of law. In the case of Tamil Nadu Electricity Board Vs. Sumathi and Others, the Hon"ble Apex Court, while discussing the powers and jurisdiction even of the High Court under Article 226 of the Constitution of India, observed as under:-

"... .There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. Appellant had also raised plea of bar of limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion exercise of jurisdiction by the High Court in entertaining the petitions was not proper and High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act."

27. Reference can also be made to the judgment of the Hon"ble Supreme Court in the famous case of A.R. Antulay v. R.S. Nayak 1998(2) S.C.C. 602 The Apex Court held that its earlier order transferring the cases to the High Court from

Special Court of Bombay called for a review. Dealing with the provisions of Section 7(1) of the Act of 1952, which creates a condition that was sine qua non for the trial of the offence u/s 6(1) of the said Act. Such offences were triable only by the Special Court empowered to try under the provisions of the Act. The provisions of the Act contained a non-obstante clause that notwithstanding anything contained in the Indian Penal Code or any other law, the said offence shall be triable by the Sessions Judge only, if by express terms, therefore, taken away the right to transfer cases as contained in the Code to any other Court which is not a Special Court and the Subordinate Court could not direct transfer of the case to the High Court.

27. Besides that, such a view was taken by another Division Bench of this Court at the motion stage itself in the case of *Sher Singh and Ors. v. Sikh Gurdwaras Judicial Commission, Amritsar, and Ors.*, C.W.P. No. 4117 of 1985, decided on 31.10.1985, by categorically holding that the Commission has no power to pass such interim order. The short judgment reads as under :-

"This petition has been filed under Article 226 of the Constitution of India for quashing the ex-parte order passed by the Sikh Gurdwara Judicial Commission whereby three elected members of the committee had been suspended and a receiver appointed. There is no dispute that a receiver can be appointed by virtue of the provisions of the Code of Civil Procedure, but that can be done only after hearing the concerned party. So far as the suspension is concerned, there is no provision that it can be done by way of ad-interim measure. The impugned order is, therefore, quashed and the case is remanded back for passing a fresh order regarding the appointment of receiver after affording adequate opportunity of hearing to the petitioners. The parties through their counsel have been directed to appear before the commission on 2nd December, 1985."

28. The above principles of law are not derivative in their substance or implementation. They have been reiterated with greater re-affirmation over the times by Courts of competent jurisdiction including the highest Court of the land. To improvise the uniformly applicable principle, may, to some extent, lack good judgment. Law can be applied to the facts of a case. The position of law in the present case, particularly, the averments made in the application before the Judicial Commission, do not justify passing of the impugned order. We are of the considered view that under the scheme of the relevant provisions of the Act, it is not permissible for the Judicial Commission to pass ad-interim ex-parte orders like the impugned one dated 7.11.2002.

We are intentionally not embarking upon the contention in relation to the ambit and scope of Sections 52, 142 and other provisions as the challenge before us is only to an interlocutory order. The competent forum need to advert itself and cogitate over various facts of these provisions including that determination of disqualification u/s 52 of the Act may fall within the jurisdiction and domain of the Board against which an appeal would lie to the Judicial Commission. Deprivation of a right of appeal statutorily may even amount to denial of

procedure established by law as held in A.R. Antulay's case (supra). 29, The impugned order dated 7.11.2002, examined in the light of the legislative scheme demonstrated by the above provisions, the principles of law enunciated supra with reference to the facts and circumstances of the preset case certainly, persuades us to hold that the impugned order is extra jus as well as coram non judice. The line of distinction between an order essentially incidental for proper exercise of jurisdiction and an order without jurisdiction is well accepted and has definite distinctions. The ambit and scope of such powers must essentially be understood for the purposes of appropriate administration of justice by the quasi-judicial authorities constituted under the provisions of this Act. A Division Bench of this Court in the case of Varinder Pal Kashyapa Vs. State Consumer Disputes Redressal Commission, Punjab and Another, held as under:-

"The powers exercisable by the State Commission over the functioning of the District Forum and its members u/s 24-B cannot be equated or treated *pari materia* to the control exercisable by the High Court over the District Courts and Courts subordinate thereto, under Article 235 of the Constitution of India. Unlike constitutional supervisory power as incorporated under Article 235 of the Constitution, the powers exercisable by the Commission u/s 24-B are definite in character and limited in extent. The administrative control exercisable by the State Commission over the District Forum would cover the day to day matters including the performance of its functions by the Members, but cannot hamper, encroach or interfere with quasi-judicial freedom and the powers squarely and plainly fall in the exclusive domain of the disciplinary authority. This settled precept of administrative control hardly need any further elucidation."

30. In our considered view, these writ petitions must succeed and are hereby allowed. The notification dated 5.7.2002 already stands quashed vide judgment dated 14.8.2003 in C.W.P. No. 10200 of 2002. Manmohan Singh Brar and Ors. v. State of Punjab and Ors.. We further hold that the order of judicial Commission dated 7.1.2002 can also not stand the scrutiny of law for the reasons afore-noted. Thus, the *exparte* interim order passed by the Judicial Commission is also quashed. We leave the parties to bear their own costs.

Sd/-

Vinay Mittal, J.