

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st March, 2012

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LPA No. 128/2012

**DIRECTORATE OF GURDWARA ELECTIONS
& ORS.**

..... Appellants

Through: Mr. K.T.S. Tulsi, Sr. Adv. with Mr.
Rajiv Nanda, Addl. Standing Counsel
for GNCTD, Mohd. Aslam Khan, Adv.

Versus

DASHMESH SEWA SOCIETY (REGD) & ORS ... Respondents

Through: Mr. A.K. Mishra, Adv. for R-1&2.
Mr. Arjun Pant, Adv. for NDMC.

AND

LPA No. 133/2012

**DIRECTORATE OF GURDWARA ELECTIONS
& ANR**

.....Appellants

Through: Mr. K.T.S. Tulsi, Sr. Adv. with Mr.
Rajiv Nanda, Addl. Standing Counsel
for GNCTD, Mohd. Aslam Khan, Adv.

Versus

HARMOHAN SINGH & ANR.

..... Respondents

Through: Mr. Gurbaksh Singh, Adv. for R-1&2

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. These intra court appeals by, (i) the Directorate of Gurdwara Elections, (ii) the Lieutenant Governor, Delhi, and (iii) the Government of NCT of Delhi, impugn the common judgment dated 7th February, 2012 of a learned Single Judge of this Court in WP(C) No. 4166/2011 and WP(C) No. 311/2012 preferred by the respondents (a) Dashmesh Sewa Society (Regd.) and Shiromani Akali Dal (Delhi-U.K.) and (b) Shri Harmohan Singh respectively. Vide the impugned judgment, the learned Single Judge has *inter alia* directed the appellants, to first complete the process of preparation of fresh electoral rolls and the process of delimitation of wards/constituencies before notifying the general elections to the post of members of the respondent Delhi Sikh Gurdwara Management Committee (DSGMC). It may be stated that the appellants had vide public notice dated 27th /28th January, 2012, scheduled the said Elections on 11th March, 2012 with notification for conduct of elections and filing of nomination papers to be issued on 16th February, 2012. The Learned Single Judge has in the impugned judgment dated 7th February, 2012 *inter alia* observed, that since

the elections were then yet to be notified on 16th February, 2012, the election process could not be said to have begun for the bar to stay thereof being attracted.

2. WP(C) No. 4166/2011 was filed in or about June 2011 pleading that, (a) DSGMC is a statutory body constituted under Section 3 of the Delhi Sikh Gurdwaras Act, 1971 for management of Sikh Gurdwaras and their properties; (b) DSGMC comprises of 46 members to be elected from various wards into which Delhi is to be divided in accordance with the provision of the Act, besides nine co-opted / nominated members; (c) the term of the Committee is of four years; (d) that the last election of the members of the DSGMC were held on 14th January, 2007 and the term of the Committee then elected expired on 8th February, 2011; (e) that on representation of the respondents/writ petitioners Dashmesh Sewa Society and Shiromani Akali Dal (Delhi-U.K.), the work of preparation of fresh electoral rolls and of delimitation was commenced but had not been completed; (f) that the Delhi Government was not serious about holding fresh elections for membership of DSGMC. Accordingly, mandamus was sought commanding the

appellants to immediately complete the election process and conduct the elections.

3. Whilst the aforesaid writ petition was pending consideration, WP(C) No. 311/2012 was filed in or about January 2012 pleading that though, feeling the need for preparation of fresh voter list and for delimitation of wards which were fixed 25 years ago, directions in this regard were issued by the Lieutenant Governor, Delhi as far back as on 4th June, 2010 but till then neither process had been completed; on the contrary, elections were being threatened to be held on the basis of incomplete voter lists and wards fixed 25 years ago. Accordingly, direction was sought for preparation of electoral rolls having photograph of individual voters and for completion of the exercise of delimitation in terms of the Minutes of Meeting held by the Lieutenant Governor on 5th October, 2011 and before conducting the elections to the membership of the DSGMC.

4. The appellant, Government of NCT of Delhi filed Status Report before the learned Single Judge in WP(C) No. 311/2012 disclosing that subsequent to the meeting held on 5th October, 2011, the Lieutenant

Governor had reviewed the progress and directed, (a) that existing (old) electoral rolls be merged with the newly prepared electoral rolls and the name of the electors existing in both the lists may be deleted from the old list and the combined electoral rolls may be published and utilized for the general elections of the members to the DSGMC; (b) that the exercise earlier undertaken of preparation of fresh electoral rolls shall be treated as revision of electoral rolls; (c) that the electoral rolls for the forthcoming General Elections be prepared without photographs and the identity of the voters may be verified at the time of polling on the basis of other identity documents; (d) that to facilitate the conduct of the elections to the DSGMC at the earliest, the delimitation of the Gurdwara Wards may be deferred to be taken up after the election of the new Committee. It was also disclosed that the following schedule for finalization of electoral rolls and conduct of the general elections of the members of the DSGMC had been fixed.

“a) Publication of Draft Electoral Rolls	10.12.2011
b) Last date for filing Claims and Objections (allowing statutory period of 21 days)	31.12.2011
c) Final publication of Electoral Rolls	15.1.2012

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| d) | Issuance of notification for conduct of General election (to the new DSGMC) and Commencement of filing of the nominations. | 16.2.2012 |
| e) | Last date for making the nominations | 22.2.2012 |
| f) | Scrutiny of nominations | 23.2.2012 |
| g) | Withdrawal of nominations | 25.2.2012 |
| h) | Day of Polling | 11.3.2012 |
| i) | Counting of Votes and declaration of Results | 17.3.2012” |

In accordance with the aforesaid Status Report the Public Notice dated 27th/28th January, 2012 (supra) disclosing the election schedule was also issued.

5. The Learned Single Judge in the judgment impugned before us has found/observed/held :-

- i. that the Lieutenant Governor had as far back as on 4th June, 2010 granted approval for preparation of fresh electoral rolls under

Rule 32 of the Delhi Sikh Gurdwara Management Committee (Registration of Electors) Rules, 1973;

- ii. that in the meeting held on 5th October, 2011 between the Lieutenant Governor and a delegation of Shiromani Akali Dal regarding conduct of elections of DSGMC, two crucial decisions had been taken. The first was to undertake the exercise of preparation of the fresh electoral rolls of DSGMC and the second was to undertake the delimitation of wards;
- iii that as per the decision in the meeting of 5th October, 2011 the work of preparation of electoral rolls was to be completed by 31st October, 2011 and whereafter objections thereto to be invited and decided. Similarly delimitation of wards was estimated to take another 2-3 months. The elections were thus contemplated to be held in May, 2012;
- iv. However, as per the Status Report aforesaid a shortcut had been sought to be adopted; instead of completing the process of

preparation of fresh electoral rolls, it was proposed that the fresh electoral rolls to the extent that they had been prepared, be merged with the existing electoral rolls prepared in the year 2006 and which did not have photographs. Such deviation from the procedure agreed on 4th June, 2010/ 5th October, 2011 had been made purportedly owing to lukewarm response from the Sikh community in the process of enrolment of electors;

- v. that such lukewarm response to preparation of fresh electoral rolls was owing to half hearted measures and lack of serious efforts therefor;
- vi. that the merger of freshly and partly prepared electoral rolls with electoral rolls of the year 2006 would mean that a large number of voters would be included without photographs and which would be contrary to the amended Rules (supra) and may lead to bogus voting;

- vii. that the decision to prepare fresh electoral rolls under Rule 32 (supra) could not have been reviewed after the process therefor had been set rolling and the reason given for review was not a good enough reason;
- viii. there was nothing on record to suggest that fresh process of preparation of the electoral rolls was undertaken in the right earnest. Even the electoral rolls of the year 2006 were not freshly prepared ones; they were mere revision of electoral rolls last prepared in the early eighties;
- ix. that the decision to prepare fresh electoral rolls was a conscious decision owing to the existing rolls having become stale and not containing the photographs. If there was a lukewarm response for preparation of the fresh electoral rolls, efforts should have been made to encourage the members of Sikh community to come forward. The solution was not to cut short and abort the said process which had been initiated and partially undertaken;

- x. while the process of revision of electoral rolls could under the Rules be undertaken when election was held “to fill a casual vacancy”, for general election to be held due to expiry of the tenure of the existing Committee, preparation of fresh electoral rolls applied;
- xi. that the procedure for revision and for preparation of fresh electoral rolls was the same;
- xii. that the appellants were proposing to short circuit the procedure and the process of merger as proposed was *de hors* the Rules;
- xiii. the elections if permitted to be held on the basis of electoral rolls, as proposed to be prepared, were bound to cause heart burn and leave dissatisfaction among the members of the Sikh community and would also dent the purity of the election process and the credibility of the elected body;
- xiv. that there was no reason for sudden change in the time frame for holding elections from May, 2012 to February, 2012 – there was

no tearing hurry for preponing the proposed date of election by three months. Before an administrative decision having bearing on the conduct of elections of a statutory body is reviewed, there have to be very good grounds and reasons to justify the same. In the present case there were no reasons and the later decision to immediately hold elections was irrational, undemocratic, arbitrary and undermined the democratic process.

Accordingly the directions as aforesaid were issued.

6. The senior counsel for the appellants has argued that the learned Single Judge has erred in not following the well settled rule of, the election process once begun to be not interfered with. It is contended that the learned Single Judge has erred in presuming that the election process had not begun because the notification for the election was yet to be issued. Attention is invited to *A.K.M. Hassan Uzzaman Vs. Union of India* (1982) 2 SCC 218 and to *Inderjit Barua Vs. Election Commission of India* (1985) 1 SCC 21 holding that High Court in exercise of powers under Article 226 should not pass any orders, interim or otherwise which have the tendency or effect of

postponing an election which is reasonably imminent and in relation to which its writ jurisdiction is invoked. It is urged that the election process begins not necessarily by the issuance of the election notification, as has been assumed by the learned Single Judge but when the election is imminent.

7. The senior counsel for the appellants with reference to the ***Lakshmi Charan Sen Vs. A.K.M. Hassan Uzzaman*** (1985) 4 SCC 689 has argued that the fact that certain claims and objections are not finally disposed of and notwithstanding the fact that the electoral roll contain errors or have remained to be corrected or appeals with respect thereto are pending, cannot arrest the process of election and election has to be held on the basis of the electoral rolls in force on the last date for making nominations. Of course, such observations were made in the said judgment by the Supreme Court with reference to the rules for election to the West Bengal Legislative Assembly.

8. The senior counsel for the appellants had next invited attention to ***Boddula Krishnaiah Vs. State Election Commissioner, A.P.*** (1996) 3 SCC

416 reiterating that having regard to the important functions which the legislature has to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted.

9. Per contra, the counsels for the respondents have invited attention to ***Election Commission of India Vs. Ashok Kumar*** (2000) 8 SCC 216 laying down that anything done towards completing or in furtherance of election proceedings cannot be described as questioning the election and without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove obstacles therein. The counsel for the respondents have thus supported the judgment of the learned Single Judge by contending

that the directions issued therein are in aid and assistance of the election and in fact conducive to the holding of a fair election.

10. Though the judgment of the learned Single Judge appears to be just and equitable but since the same nevertheless interferes with the election, we have examined the matter closely. The rule of, non-interference with the election process and leaving of objections/disputes to be decided in election petition, is a near absolute one. In the present case it is not in dispute that the term of the elected body had expired on 8th February, 2011 and the elections were / are due since then. The learned Single Judge has sought to carve out a way around the rule of non-interference with the election process by observing that the elections had not been notified till then though were scheduled to be notified on 16th February, 2012. However, the rule, of Courts being prohibited from interfering with the electoral process, cannot be permitted to be defeated by instituting a legal proceeding just before the election notification. The term of elected bodies is always fixed and it is generally known as to when the next election will be notified. If it were to be held that though Courts cannot interfere once elections are notified but

can so interfere before such notification, though election may be imminent and can also restrain issuance of such notification, as has been done in the impugned order, the ultimate effect thereof will be of interference with/delay of elections and which is not permitted. Moreover, the test laid down in ***A.K.M. Hassan Uzzaman*** and ***Inderjit Barua*** (supra) of the applicability of rule of non-interference is also ‘when the election is imminent’ and when the order of the court ‘has the tendency or effect of postponing an election’ and not of ‘when election has been notified’. Thus the judgment of the learned Single Judge is definitely an interference by the Court in the electoral process and which is not permitted. Further, in the present case, the election process has clearly begun by publication on 27th / 28th January, 2012 of the schedule of election. The Apex Court in ***V.S. Achuthanandan Vs. P.J. Francis*** (1999) 3 SCC 737, though in the context of corrupt practices, held that the word election cannot be restricted to the electoral process commencing from issuance of notification and has to be interpreted to mean every stage from the date of notification calling for the election.

11. What however remains to be adjudicated is, the effect of the decision earlier taken by the Lieutenant Governor of having fresh electoral rolls prepared and undertaking the exercise of delimitation before holding the elections. The learned Single Judge has proceeded on the premise that once such a decision had been taken, the elections could not be held without the exercise so begun having been completed, unless good grounds for review of such decision existed. The learned Single Judge found no grounds for review by the Lieutenant Governor of the earlier decision.

12. We have examined the provisions of the Act and the Rules in this regard.

13. Section 5(1) of the Act prescribes the term of office of a member of DSGMC as four years commencing “from the date on which the first meeting of the Committee is held under Section 15 and no longer”. There is thus a prohibition in the Act itself against the term of office of a member being more than four years. However, Section 5(3) provides that the outgoing member shall continue in office until the notification of election or co-option of his successor is published under Section 12. Section 6 provides

for division of Delhi into single member wards and empowers the Director Gurudwara Election to, by order determine the number of wards and the extent of each ward, and to from time to time alter or amend the number and extent of the wards. Section 7 provides for preparation of electoral rolls for every such ward. Section 8 qualifies a Sikh, of not less than 21 years of age and who has been ordinarily resident in a ward for not less than 180 days to be registered in the electoral roll of that ward. Section 9 confers a right to vote in every such person registered in the electoral roll. Section 12 empowers the Director, Gurudwara Elections appointed by the Central Government to hold the elections. Section 31 provides for settlement of disputes regarding elections, corrupt practices and electoral offences in respect of election of members of DSGMC. Rules 23, 25, 26 and 32 of the Rules (supra) are relevant for the present purpose and are set out hereinbelow:-

“23. Period for which the electoral roll is valid – Save as otherwise provided in these rules, the electoral roll for the ward shall come into force immediately upon its final publication and shall remain

in force for a period of until the final publication of a subsequent electoral roll for the ward.

25. Special provision for preparation of electoral rolls on redelimitation of wards – (1) If any ward is delimited anew in accordance with law and it is necessary urgently to prepare the electoral roll for such ward, the Director may direct that it shall be prepared-

- (a) by putting together the electoral rolls of such of the existing wards or parts thereof as are comprised within the new ward; and
- (b) by making appropriate alterations in the arrangements, serial numbering, and headings of the electoral rolls so compiled / and the electoral roll/electoral rolls of the ward/wards or part of the ward/wards whose electoral roll/electoral rolls or part thereof have thus been put together in terms of clause (a) shall stand modified to that extent.

(2) The electoral roll so prepared shall be published in the manner specified in Rule 22 and shall on such publication, be the electoral roll for the new ward.

26. Revision of electoral rolls- (1) The Director may, for reasons to be recorded in writing direct the revision of the electoral roll of

a ward or part of ward in any year or before any election or by-election to fill a casual vacancy.

- (2) The Administrator may, at any time, direct a special revision in the electoral roll in any ward or part of a ward in such manner as it may think fit.
- (3) Subject to the provisions of the Act and these rules, the electoral roll for a ward as in force at the time of the issue of any direction under sub-rule (1) or sub-rule (2), shall continue to be in force until the completion of the revision of electoral rolls under sub-rule (1), or as the case may be, under sub-rule (2).
- (4) When the electoral roll or any part thereof is so revised, it shall be prepared afresh and rules 4 to 22 shall apply except that no fresh application shall be necessary of a Sikh who is already registered as an elector and is resident of the same ward, provided, however, his application shall lie if his address in the same ward has changed or for any error or an omission in the entry relevant to him.

32. Fresh preparation of electoral rolls.- The Administrator may, if it considers it expedient, direct the preparation of electoral roll afresh for a ward or part of the ward before a by-election or election and the rules 4 to 22 shall apply and the electoral roll or

electoral rolls already in force shall cease on the final publication of the fresh electoral roll or electoral rolls.”

What follows from the above is that notwithstanding the direction under Rule 32 for preparation of electoral roll afresh, the electoral roll of the year 2006 is to remain in force until the final publication of a subsequent electoral roll.

14. Once it is so, what follows axiomatically is that the election, if fall due, between the date preparation of electoral roll afresh is directed and the publication of fresh electoral rolls, has to be on the basis of the electoral roll valid as on the date of the election and which in the present case is electoral roll of the year 2006. There is no reason to not apply the same principle to delimitation also i.e. the wards as in existence shall continue till fresh delimitation is completed.

15. What emerges is that the direction for preparation of electoral rolls afresh or for delimitation (and which swayed heavily with the learned Single Judge) cannot hold up the process of election inasmuch as the electoral rolls of the wards, as exist, remain valid notwithstanding such a direction having

been issued. Also, Section 5 of the Act, by using the expression “and no longer”, is indicative of the legislative intent of not allowing the term of office of a member of the Committee to be more than four years. In the present case the said term has already expired and which is found to be in contravention of the Statute.

16. The senior counsel for the appellants has also produced before us the files of the office of the Lieutenant Governor and we have perused the same to decipher the reasons for which the exercise initiated and undertaken of preparation of fresh electoral rolls and of delimitation having not been completed and/or the reasons for directing elections to be held notwithstanding the same. From a perusal thereof we find that the proposal for delimitation and for preparation of fresh electoral rolls was mooted long back in March, 2010 and approval therefor accorded on 4th June, 2010 and various steps therefor also taken. When the term of 4 years of the Committee elected in the year 2007 came to an end on 8th February, 2011, the same was extended since the said process was underway. However it appears that filing of the writ petitions aforesaid, seeking directions for

immediate holding of elections and realizing that the work of delimitation and preparation of fresh electoral rolls would take considerable time, a decision was taken to not hold up the elections which were already due any longer for the said reason. Accordingly, the election schedule was announced. We are also of the opinion that even though the Lieutenant Governor at one point of time appears to have decided to hold the election in or about May, 2012 only after making fresh efforts for completing the process of delimitation and preparation of fresh electoral rolls but subsequently changed his mind, to give precedence to the holding of election.

17. Considering the nature of the decisions, to undertake process of delimitation and preparation of fresh electoral rolls, to defer holding of elections till completion of such process and thereafter of holding the election notwithstanding such process having not been completed, we are of the view that the test applied by the learned Single Judge of the Lieutenant Governor being not entitled to change his mind unless sufficient or good reason for such change existed, was not to be attracted. Such decisions are

purely administrative decisions and there is no bar to the deciding authority changing the same, as long as the ultimate decision is in consonance with law.

18. We, as aforesaid are of the view that the decision of the Lieutenant Governor to not defer the elections any further and to hold the elections is in accordance with law. Rather, in view of the language of Section 5(1) to the effect that the term of the Committee shall not be longer than 4 years, the decision earlier taken to defer the election for the reason of work of preparation of fresh electoral rolls and delimitation being underway was erroneous. As per the Rules, as interpreted above, preparation of fresh electoral rolls and delimitation is not to come in the way of election when due and election is to be held in accordance with the electoral rolls as existing on that date. Even in *Inderjit Barua*, election was sought to be stayed on the ground that the electoral rolls had not been revised as required and the elections were to be held on the basis of old electoral rolls. However the Apex Court held that even such a route which will have the effect of stay of the elections is not open. It was held that the old electoral rolls could

not be condemned as invalid and if any person had objection thereto, it was still open to that person to raise the same. It was yet further held that the Court could not issue any direction not to hold the election until the revision of the electoral rolls is completed. Similarly in *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra* (2001) 8 SCC 509 it was observed that the Court would not stay the continuation of the election process even though there may be some alleged irregularity or breach of rules while preparing the electoral rolls.

19. Mention at this stage may also be made of *Anugrah Narain Singh v. State of U.P.* (1996) 6 SCC 303 where the Supreme Court held that it is the mandate of the Constitution that every Municipality (elections where to were challenged in that case) shall have a life span of five years and thereafter fresh elections have to be held and so far as preparation of electoral rolls is concerned there are sufficient safeguards against any abuse or misuse by providing for appeals in regard to inclusion, deletion or correction of names and there is hardly any scope for a Court to intervene under Article 226 of the Constitution. It was further held that if this is allowed to be done, every

election will be indefinitely delayed and Courts should not intervene on the basis of allegations as to preparation of electoral rolls.

20. The process of delimitation and of preparation of fresh electoral rolls is undoubtedly a lengthy process and no error can be found in the Lieutenant Governor subsequently deciding to give more weightage to the holding of elections. As aforesaid, the Act expressly contains a prohibition against the elected members continuing beyond the terms of four years. Moreover, the Rules having sufficiently provided as aforesaid for the existing electoral rolls and wards to continue till fixation of fresh one, there is no reason for this Court to interfere in the decision of the Lieutenant Governor and which is in consonance with the Act and the Rules, howsoever, laudable the reasons which prevailed with the learned Single Judge.

21. We have also satisfied ourselves that the decision to merge the new electoral rolls with the old one is in the spirit of the Rules. It may be noticed that even after the elections are announced, the draft electoral rolls are published and objections invited thereagainst. We are satisfied that the process of merger is to enable any new voters in the ward to get enrolled and

which they would have been entitled to even after publication of the existing electoral rolls of the year 2006 as draft electoral rolls.

22. We therefore allow these appeals, set aside the judgment of the learned Single Judge and dismiss the writ petitions. It is however clarified that the work of delimitation and/or preparation of fresh electoral rolls if found to be necessary shall be undertaken immediately after the elections and ought be completed well in time so that such a situation does not occur when the next elections become due. The appellants shall now be entitled to fix a fresh schedule for the general elections to the post of members of DSGMC.

The appeals are disposed of. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

1st March, 2012
‘M’