

\$~28 & 33

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

+ W.P.(C) 11551/2016 & CM 45501/2016

SERVICE AND JUSTICE FOR SIKH SOCIETY (REGD.)

..... Petitioner

Through : Mr. Gurbaksh Singh with
Ms. Sakshi Narang, Advocates

versus

LT. GOVERNOR OF DELHI & ORS

..... Respondents

Through : Mr. Sanjay Ghose, ASC with
Mr. Rhisabh Jetley, Advocate for GNCT of Delhi.
Mr. Abinash K. Mishra, Advocate for R-4

AND

+ W.P.(C) 11591/2016 & CMs 45639-40/2016

KULWANT SINGH BAATH

..... Petitioner

Through : Mr. A.P.S. Ahluwalia, Sr. Advocate
with Mr. S.S. Ahluwalia and
Mr. Jatin Teotia, Advocates

versus

LT. GOVERNOR OF DELHI & ORS

..... Respondents

Through : Mr. Satyakam, ASC with
Mr. Joginder Singh, EO, DGE for GNCT of Delhi.
Ms. Avnish Ahlawat, Advocate
Mr. Sumit K. Batra, Advocate
Mr. Akhil Sibal, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

%

07.12.2016

1. The present petitions have been filed by the petitioners praying *inter alia*, for issuing directions to the respondents to prepare a fresh electoral roll as provided under Rule 32 of Delhi Sikh Gurdwara Management Committee (Registration of Electors) Rules, 1973 (in short '**the DSGMC Rules**') and undertake delimitation of wards with equal number of voters.
2. Mr. Gurbaksh Singh, learned counsel for the petitioner in W.P.(C) 11551/2016 states that the main grievance of the petitioner/society is with regard to non-preparation of fresh electoral rolls by the respondents.
3. It may be noted at the outset that this is not the first set of litigation that has been initiated in respect of the elections of the Delhi Sikh Gurdwara Management Committee (in short '**DSGMC**'), that are to be conducted in February, 2017. Earlier hereto, the elections to the Committee were held on 27.1.2013. The tenure of the office of the members of the Committee is for a period of four years and the said period shall expire in the month of February, 2017.
4. In the end of the year 2011 and towards the beginning of the year 2012, Dashmesh Sewa Society and Shri Harmohan Singh, (who is the Secretary of the petitioner Society in WP(C)11551/2016) had filed two petitions, registered as WP(C) 4166/2011 and WP(C) 311/2012 respectively, seeking directions to the respondents therein, i.e., Lieutenant Governor, Govt. of NCT of Delhi, Directorate of Gurdwara Election and DSGMC to undertake preparation of the electoral rolls with photos of the individuals, complete the exercise of delimitation of 46 wards and conduct the elections of the Committee. The said petitions were decided by the learned Single Judge by a common judgment dated 7.2.2012, wherein it was observed that

the elections had yet to be notified and the same were proposed to be notified on 16.2.2012. Directions were issued for completion of fresh electoral rolls and it was further directed that only upon completion of the said process, should the process of delimitation be undertaken within two months thereafter. The respondents were also restrained from conducting the elections till the entire process of preparation of electoral rolls and delimitation was concluded.

5. The aforesaid decision was assailed by the respondent/Directorate of Gurdwara Elections (in short 'Directorate') by filing two intra court appeals, registered as LPA No.128/2012 and LPA No.133/2012, which were allowed by the Division Bench, vide judgment dated 1.3.2013 and it was held as under :-

“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 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.*” (emphasis supplied)

6. Aggrieved by the aforesaid judgment, the petitioners in the captioned petitions had filed two appeals before the Supreme Court, registered as SLP(C)8464/2012 and 9763/2012. Vide order dated 17.9.2012, the Supreme Court had disposed of the said SLPs in the following terms:

“We have heard learned senior counsel and learned counsel for the parties.

2. *We record and accept the statement of Mr. K.T.S. Tulsi, learned senior counsel for the respondent No. 3 - Government of NCT Delhi, that general elections to the post of Members of the Delhi Sikh Gurdwara Management Committee on the basis of Final Electoral Rolls, details of which have been set out in para 2(iii)(a) of the Additional Affidavit filed on 30.07.2012 by respondent Nos. 1 to 3, shall be completed within ten weeks from today subject to availability of police force, school premises and teachers for holding the elections.*

3. *We direct the authorities concerned to provide necessary assistance to the Director, Gurdwara Elections so as to ensure that general elections to the post of Members of the Delhi Sikh Gurdwara Management Committee are completed by December 31, 2012 positively.*

4. *Mr. G.P. Singh, Director, Gurdwara Elections, is present in the Court. He submits that for the identity of the voters, in addition to the Delhi Sikh Gurdwara Management Committee (Election of Members) Rules, 1974, the guidelines notified by the Election Commission of India relating to the identity of voters shall be followed. We accept the statement of the Director, Gurdwara Elections.*

5. *As regards the working of de-limitation and preparation of electoral rolls, if found to be necessary, it is directed that this exercise may be undertaken after the above general elections and shall be completed as early as may be possible and in no case later than nine months from the date of declaration of result of above general elections.*

6. *Special leave petitions are disposed of as above.”
(emphasis supplied)*

7. After the above order was passed by the Supreme Court, as per Mr. Satyakam, learned counsel for the respondent No.2/Directorate, they had started the process of delimitation of wards and issued a Notification dated 5.3.2015 for re-determining the wards for purposes of holding election to the office of the members of the Committee. It is stated by learned counsel for the respondents that the order dated 5.3.2015 re-determining the wards was issued only after the Delimitation Committee had considered all the objections of the wards.

8. Sometime, in mid 2016, Mr. Paramjit Singh Sarna had filed WP(C)4155/2016, seeking a writ of mandamus to the Directorate for completing the process of preparation of the fresh electoral rolls prior to the commencement of the process of election of the DSGMC, that is due in February, 2017. Notice was issued on the said petition on 11.5.2016, returnable on 31.5.2016. On 31.5.2016, counsel for the respondents had

stated that the process of preparation of fresh electoral rolls could not be undertaken due to paucity of staff, but the same had commenced and would be completed on 31.12.2016, well before the elections that are to commence in January, 2017. It was also stated that after the initial exercise, objections shall be invited and dealt with. Binding the respondents to their statements, the captioned petition was disposed of.

9. Subsequently, Mr. Sarna had filed CCP No.960/2016, alleging inter alia that there was wilful disobedience of the order dated 31.3.2016 passed in the captioned petition and raising a grievance that despite assurances given by them, the respondents had not commenced the process of preparation of the fresh electoral rolls. Notice on the said petition was issued to the respondent No.3/Directorate and Mr. Satyakam, learned ASC had appeared and stated that the respondents were revising the electoral rolls, which process would be completed on or before 31.5.2016. He had also stated that he would be filing an application for modification/clarification of the order dated 31.5.2016 passed in WP(C) 4155/2016 within two weeks. While directing the respondent No.3/Directorate to file a reply to the contempt petition, the matter was adjourned to 26.10.2016.

10. In the meantime, respondent No.3/Directorate filed an application in WP(C)No.4155/2016, requesting that the order dated 31.5.2016 be modified (CM No.31658/2016). At the same time, Mr. Tarvinder Singh Marwah, an elected member of DSGMC, filed an application for impleadment in the said petition (CM 36573/2016). Both the above applications were taken up for consideration on 30.9.2016. On the said date, counsel for the petitioner therein had stated that the only purpose of filing the contempt petition was to

ensure that the elections of the DSGMC are held in time in February, 2017 and that there is no delay, as had been happening in the past. Further, he had submitted that in view of the affidavit filed by the respondent/Directorate giving details of the works completed at its own level and the expected timeline for preparation of the photo electoral rolls, the petitioner would be satisfied if the respondents adhere to the said time schedule and do not seek any extension. In response, counsel for the respondents had assured the Court that they did not intend to delay holding of the elections and would abide by the time schedule. In view of the said assurances, both the parties had stated that they shall have the contempt petition disposed of. Accordingly, CM No.31658/2016 was disposed of. This Court is informed that thereafter, Mr. Paramjit Singh Sarna had withdrawn the contempt petition on 26.10.2016.

11. As for the impleadment application filed by Mr. Tarvinder Singh Marwah, the Court was of the opinion that the said application was an attempt on the part of the applicant to delay holding of the elections and thereby perpetuate the term of the existing Management Committee. Observing that the impleadment application was not maintainable in a disposed of petition and further, that no direction for preparation of fresh electoral rolls could be given, the said application was rejected.

12. The observations made in the order dated 30.09.2016, with respect to the impleadment application filed by Mr. Tarvinder Singh Marwah being material, are reproduced herein below for ready reference:-

“9. I may in this regard mention that the grievance of the petitioner with which the contempt case aforesaid is filed also is that though the respondents had before this Court undertaken to prepare fresh electoral rolls but had instead undertaken the

exercise of revision only of the electoral rolls but which grievance the counsel for the petitioner today has stated that the petitioner is not agitating since now it is not possible to prepare the fresh electoral rolls and insistence upon preparation of the fresh electoral rolls may delay the holding of elections.

10. I have enquired from the senior counsel for the applicant Mr. Tarvinder Singh Marwah, as to how a direction for fresh preparation of electoral rolls can be given at this stage and as to why the applicant Mr. Tarvinder Singh Marwah being himself a member of the Managing Committee did not take the requisite steps in this regard and whether the demand of the applicant Mr. Tarvinder Singh Marwah for preparation of fresh electoral rolls at this stage should not be considered as motivated with an intent to delay the holding of the elections and thereby perpetuate term of the present Managing Committee over the affairs of DSGC.

11. The senior counsel for the applicant Mr. Tarvinder Singh Marwah of course contends that the applicant Mr. Tarvinder Singh Marwah has no such intention.

12. I am of the view that not only is the application for impleadment not maintainable in this disposed of petition but even otherwise at this stage no direction for preparation of fresh electoral rolls can be given. Moreover, it is the respondents who are responsible for holding of elections and for preparation of the electoral rolls and once they have deemed fit to only revise the electoral rolls, they cannot be directed at this stage to undertake the exercise of preparation of fresh electoral rolls and owing to which exercise the holding of elections is likely to be delayed.

13. I have enquired from the counsel for the respondents, as to how this Court can ensure that the time-lines as given by the respondents in the affidavit aforesaid are abided by and which all departments are concerned with making the manpower and

other resources available for the said exercise to be conducted strictly within the time-lines indicated.

14. The counsel for the respondents states that a direction to Mr. Dalbir Singh, Director in the Directorate of Gurudwara Elections, GNCTD who has filed the affidavit aforesaid and a direction to the Chief Secretary, GNCTD to make the manpower and other resources available, would serve the purpose.

15. Accordingly, these applications are disposed of by directing the respondents to strictly abide by the expected time-lines stated in the affidavit dated 21st September, 2016 supra and by making the Chief Secretary, GNCTD personally responsible for providing and making available at the appropriate time manpower and other resources to enable the time-lines aforesaid to be met and abided by and by making Mr. Dalbir Singh, Director of Directorate of Gurudwara Elections personally responsible for abiding by the said time-line.” (emphasis supplied)

13. After the aforesaid round of litigations with regard to the procedure of conducting the elections of the DSGMC due in February, 2017 were brought to an end, a fresh crop of petitions have been filed by the petitioners herein who seek directions to the respondents to prepare a fresh electoral roll, as provided for under Rule 32 of the DSGMC Rules.

14. Mr. Gurbaksh Singh, learned counsel for the petitioner in W.P.(C) 11551/2016 and Mr. A.P.S. Ahluwalia, learned Senior Advocate appearing for the petitioner in W.P.(C) 11591/2016 state in unison that the Rules envisage preparation of fresh electoral rolls, whereas the respondent/Directorate has only revised the electoral rolls and in these circumstances, it is a fit case where the election process ought to be stayed to await preparation of fresh electoral roll.

15. Having regard to the fact that the public notice for revising the electoral rolls was issued by the respondent No.3/Directorate in the end of September, 2016, it has been enquired from learned counsels for the petitioners as to the reason for them to approach the Court after over two months, for seeking directions to the respondent No.3/Directorate to prepare fresh electoral rolls, particularly when they were all along aware that the election process shall commence in the very next month, i.e., January, 2017 and the same has been made time bound by several orders passed in the previous litigations referred to above, to the point that the Chief Secretary, Govt. of NCT of Delhi and Mr. Dalbir Singh, Director of the respondent No.3/Directorate have been made personally responsible for providing adequate manpower and other resources to meet the deadline and hold the elections on time.

16. Counsels for the petitioners seek to explain that in this duration, the petitioners have been corresponding with the respondent No.3/Directorate in this regard. Mere correspondence with the respondents will not be a ground for this court to exercise its discretion in favour of the petitioners and stay the election process. In any event no such running correspondence between the parties has been placed on record by the petitioners to substantiate their claim that there was sufficient ground for them to have awaited a response from the respondents.

17. Counsel for the petitioner in W.P.(C) 11551/2016 states, on instructions, that his client was unaware of the passing of the order dated 30.9.2016 in WP(C)4155/2016 and only when the Secretary of the petitioner Society happened to visit the office of the respondent No.3/Directorate and

obtained the Voters' list, did he discover that no fresh electoral roll was being drawn and the same was only being revised. It is stated that the Society had thereafter filed a representation before the respondent No.3/Directorate with a request that a fresh electoral roll ought to be drawn and till the same is done, the respondent be restrained from conducting elections on the basis of the revised electoral roll.

18. To put it mildly, the present petitions are highly belated. As noted above, while passing the order dated 17.9.2012, the Supreme Court had clarified that the work of delimitation and preparation of electoral rolls, if found to be necessary, shall be undertaken after the general elections of 2012 are completed and that the said exercise must be completed expeditiously and in no case, later than nine months from the date of declaration of the result of the general elections.

19. Admittedly, the results of the general elections of the year 2012 were declared on 30.1.2013 and the new Management Committee took over on 26.2.2013. The period of nine months reckoned from the end of February, 2013 would have ended by the end of the month of November, 2013. However, none of the petitioners elected to approach the Supreme Court or for that matter, any court with a grievance that there was non-compliance of the orders passed on 17.9.2012. Incidentally, Mr. Harmohan Singh, who is the Secretary of the petitioner/Society in WP(C)11551/2016 was well aware of the passing of the order dated 17.9.2012 by the Supreme Court, as he was a party in the said case. So it is not as if the petitioners were ignorant or unaware of the orders passed by the Supreme Court.

20. Counsels for the petitioners go on to state that there was no occasion for the petitioners to raise any grievance till May, 2016 for the reason that

the respondents had themselves not indicated till then that they will be preparing a revised electoral roll. Instead, they were all along talking about preparing a fresh electoral roll.

21. Mr. Satyakam, learned ASC vehemently refutes the aforesaid submission and states that the affidavit dated 30.5.2016 filed by the respondent No.3/Directorate in WP(C)4155/2016 had clearly stated in para 11 thereof that “*the electoral roll prepared in the year 2012 was taken as the reference point and the same was given to the contractor for preparation of the electoral rolls*”. He clarifies that the only reason for the respondents to be file an application in W.P.(C) 4155/2016 for modification of the order dated 31.5.2016 was to point out the error that had crept into para 3 of the said order, wherein the words used were “*fresh electoral rolls*” instead of “*revised electoral rolls*”. To substantiate the said submission, he hands over a copy of the short affidavit filed by the respondent No.3/Directorate in the above petition, which is taken on record.

22. The contents of the affidavit dated 30.5.2016, filed by the respondent No.3/Directorate demolishes the contention of the petitioners that the respondent had planned to prepare a fresh electoral roll. In any event, vide order dated 17.9.2012, the Supreme Court had left it to the discretion of the respondents to prepare the electoral rolls, only “*if they considered it necessary to do so*”. There was no direction issued to the respondent that a fresh electoral roll had mandatorily to be prepared before the next general elections. The only mandate was that if the said exercise is undertaken, then the respondents must complete the same at the earliest and not later than nine months from the date of declaration of the results of the general elections that were held on 27.1.2013, in other words, by November, 2013.

If any of the parties, including the petitioners herein were aggrieved by the inaction on the part of the respondents, it was for them to have taken timely action to approach the court.

23. Moreover, on 25.9.2016, the respondent No.3/Directorate had issued a public notice informing all Sikh citizens of Delhi that the work of revision and preparation of Photo Electoral Rolls in respect of 46 Gurdwara Wards of Delhi on a door to door basis for election of the members of the Committee, had commenced and the criteria laid down for the Sikh citizens eligible to be registered as an elector for the respective Gurudwara Wards, was spelt out. All the Sikh citizens were called upon to fill up the relevant forms in their zonal offices and render cooperation to enumerators visiting their residence for verification. Pertinently, the said public notice was directed to be displayed at the Gurudwara notice boards and was uploaded on the website of the Directorate for dissemination of information. So the petitioner cannot feign ignorance and nor can that ignorance be treated as bliss.

24. Counsel for the respondent No.3/Directorate states that only this morning, has another public notice been issued by the Directorate in all leading newspapers informing the Sikh citizens that the electoral rolls for each ward shall be prepared with photographs of the electors and they have been called upon to ensure their photographs in the rolls. He hands over a copy of the said public notice published in the Hindustan Times today and the same is taken on record. The details of the zonal offices set up in the Gurudwara Sahibs of various areas for the said purpose have been set out in the said public notice. This adequately allays any apprehension expressed on behalf of the petitioners that in the absence of photographs in the rolls,

there is a great likelihood of bogus voting.

25. It is pertinent to note that although the petitioners were in the know of the order dated 30.9.2016, passed by the learned Single Judge in WP (C) 4155/2016, no steps were taken by them or any other party to assail the said order in appeal. Instead, Mr. Ahluwalia, learned Senior Advocate appearing for the petitioner in WP(C) 11591/2016 relies on a decision in the case of 'DB Corp. Ltd. vs. Registrar of Newspapers', reported as **172 (2010) DLT 646 (DB)**, to emphasize that once a writ petition is disposed of, then the remedial action available to the writ petitioner is to assail the said order passed before the Division Bench. He states that in view of the fact that WP(C)4155/2016 was disposed of vide order dated 31.5.2016, no further orders could have been passed therein and if any of the parties were aggrieved, they ought to have filed an appeal against the said order.

26. This Court is not impressed with the submission made by learned counsel for the petitioners that the only remedy available to the respondents was to file an appeal against the order dated 31.05.2016. It has already been noted above that the affidavit of the respondent No.3/Directorate, as filed in WP(C)4155/2016, itself talks of a "revised electoral roll" and the application for modification of the order dated 31.5.2016 was limited to seeking correction of an error that had crept in para 3 of the said order, where the words "electoral rolls" were prefixed with "fresh" instead of "revised". When they were only seeking a correction in the said order, there was no requirement for the respondents to file an appeal against the order dated 31.5.2016.

27. As for the observations made in the order dated 30.9.2016, on the impleadment application filed by a third party, i.e. Mr. Tarvinder Singh

Marwah, for reasons best known to him, he did not assail the same by preferring an appeal. Instead, after waiting for over two months, he has now filed a writ petition registered as WP(C)11466/2016, which is listed today for the same relief as has been prayed for by the petitioners herein, without making any reference therein to the orders passed in his impleadment application, in WP(C)4155/2016. At the request of the counsel for the petitioner in the said petition, who has sought time to obtain a clarification from his client for this material omission, the same has been adjourned to 16.12.2016. Appropriate orders shall be passed on the said petition after hearing the explanation sought to be offered by the petitioner therein for withholding material information from this Court.

28. In any case, the order dated 30.9.2016 had stated in clear terms that it is the respondents who are responsible for conducting the elections and for preparation of the electoral rolls and once they have deemed fit to only revise the said rolls, they cannot be directed to undertake the exercise of preparation of fresh electoral rolls as the same would necessarily result in delaying the elections.

29. Given the aforesaid facts and circumstances, this Court is of the opinion that the petitioners herein could have sought their remedies in law for non-compliance, if any, of the order dated 17.9.2012 passed by the Supreme Court, within a reasonable time, upon expiry of nine months reckoned from the end of February, 2013 when the results of the election to the Committee were declared. Having failed to do so for a prolonged period of three years, the petitioners cannot be permitted to rush to the Court at the eleventh hour and seek interference. These petitions appear to be actuated by interested parties and/or fence sitters to somehow or the other, impede

the election process slated to commence in January, 2017, which is impermissible.

30. This Court therefore declines to exercise its discretion in favour of the petitioners by entertaining the present petitions on the ground that the same are not only highly belated, but are also devoid of merits. The petitions are accordingly dismissed along with the pending applications.

HIMA KOHLI, J

DECEMBER 07, 2016

sk/rkb/ap

