

CWP No.11348 of 2012

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.11348 of 2012
Date of decision:21.08.2015**

Gurjant Singh

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. B.S.Guliani, Advocate,
for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. S.S.Mattewal, Advocate,
for respondent nos.2 to 6.

Rakesh Kumar Jain, J.

The election of Gurjant Singh S/o Nachhatar Singh, Gora Singh S/o Gurdev Singh, Jagraj Singh S/o Dharam Singh and Major Singh S/o Mohan Singh, as members of the committee, to manage affairs of the Gurdwara Patshahi Nauvi, Village Dhilwan, District Barnala (hereinafter referred to as "Gurdwara") was notified on 01.02.2006 by the Department of Elections (Local Bodies Elections Wing), Punjab. The 5th member, namely, Roop Singh S/o Natha Singh was nominated by the Shiromani Gurdwara Parbandhak Committee (hereinafter referred to as the "SGPC"). This committee for managing affairs of the Gurdawara (hereinafter referred to as

the “committee”) was constituted for five years. Jagraj Singh was elected as the President and the petitioner Gurjant Singh as the Vice President. Jagraj Singh, however, resigned from the post of President and the petitioner took over as President of the committee. The SGPC filed two separate petitions under Section 142 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the “Act”) before the Sikh Gurdwara Judicial Commission, Amritsar (hereinafter referred to as the “Commission”), for removal of Gora Singh and Jagraj Singh from membership of the committee. The Commission disqualified Gora Singh for becoming member or employee of any Sikh Gurdwara, notified under the Act, for 5 years. Major Singh, another elected member of the committee, tendered his resignation on 07.08.2008, which was duly accepted. Jagraj Singh was also disqualified on 19.01.2010 and resignation of Roop Singh was also accepted. Meaning thereby, except the petitioner, all other 4 members of the committee ceased to be the members of the committee. The petitioner, thereafter, carried on management of the committee/Gurdwara with the help of Granthi and the Manager. However, Major Singh, Ex-Member of the committee, filed CWP No.3415 of 2011, against the SGPC, for a direction to it to fill up the aforesaid 4 vacancies of the members of the committee. The said writ petition was disposed of by this Court on 25.02.2011 with a direction to the SGPC to take immediate action in accordance with law/rules to fill up the four vacancies of the members of the Gurdawara, within a period of three months. Thereafter, the Department of Elections (Local Bodies Elections Wing), Punjab, issued the impugned notification dated 04.04.2012 and nominated Binder Singh S/o

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Gurdev Singh, Joginder Singh S/o S. Gurcharan Singh, Dhan Singh S/o S. Avtar Singh and Raghbir Singh S/o S. Karnail Singh (respondent nos.3 to 6 herein) as members of the committee and on 23.05.2012, a meeting was proposed to be convened on 03.06.2012 by the SGPC for electing the President of the committee amongst the aforesaid members.

The petitioner has, thus, challenged the notification dated 04.04.2012 (Annexure P-1) and notice of the meeting dated 23.05.2012 (Annexure P-2), issued by the SGPC, on the ground that there cannot be 4 nominated members of the committee and as the annual monetary income of the Gurdawara is more than ₹1,00,000/-, the committee has to be constituted in terms of Section 87(1)(b) of the Act and in case of vacancy having been occurred due to death, resignation or removal of any member, the election has to be conducted, as provided in Rule 48 of the Sikh Gurdawara Committee Election Rules, 1949 (hereinafter referred to as the "Rules").

At the time of notice of motion, operation of the impugned Annexures P-1 and P-2 was stayed by this Court on 31.05.2012.

Respondent nos.1 and 2 have taken a common stand, in their separate replies, that the term of the Committee of the Gurdwara had expired in December 2011 and the election of the committee members was to be held by the Sikh Gurdwara Election Commission, which would take time to fill up the vacancies. Since there is only one member of the committee and the quorum under Section 100 of the Act provides that no business or proceedings can be carried out, except at a meeting, in which at least 3 or more members are present and the SGPC, who has been conferred

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power of control, direction and general superintendence over all the committees appointed under Section 125 of the Act, made a proposal to the State Government for nomination of the members/respondent nos.3 to 6 and as such, exercising the powers conferred under Section 88(3) of the Act, the State Government has notified the committee of the Gurdwara, nominating respondents no.3 to 6 for smooth functioning of the Gurdwara, as it is provided under Section 87(1)(b) that if the required number of members is not elected, the Board may nominate such number of persons, as required to be elected, so as to complete the committee of the Gurdawara.

As a matter of fact, the contention of both the parties, at the time of hearing, was what they have said in their pleadings.

After perusal of record and hearing contention of counsel for the parties, the following undisputed facts have been emerged:

The Gurdwara is having annual monetary income of more than ₹1,00,000/-; as per Section 87(1)(b) of the Act, the committee of the Gurdwara was comprised of 4 elected and 1 nominated members; the election of 4 member, elected to the committee of the Gurdwara, was notified on 01.02.2006 and the 5th member was nominated by the SGPC; the tenure of the committee of the Gurdwara was of 5 years which had expired in February, 2011; out of 5 members, 4 members have been removed/resigned during the currency of tenure of the committee, the petitioner, with the help of Granthi and Manager, was looking after the Gurdwara; one of the Ex-member of the committee filed writ petition in this Court for seeking direction to the SGPC to fill up 4 vacancies of the

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members; this Court, vide its order dated 25.02.2011, directed the SGPC to take immediate action in accordance with law/rules to fill up the four vacancies of the members of the committee; and instead of election of 4 members, the private respondents have been nominated by the respondents.

Section 96 of the Act categorically provides that *“on the occurrence of a vacancy in a Committee, a new member shall be elected or nominated, as the case may be, in the manner in which his predecessor was elected or nominated and if no member is duly elected to replace an elected member, the Board may nominate any qualified person to fill the vacancy in accordance with the provisions of section 87 and the fact of filling the vacancy shall be notified by the State Government under sub-section (3) of Section 88”*.

According to the aforesaid provision, it was incumbent upon the respondents to hold election in terms of the procedure as defined in Rule 48 of the Rules which provides that *“when a vacancy occurs among the elected members of the Board by the death, resignation or removal of any member and a new member has to be elected in his place in accordance with the provisions of section 96 of the Act, such election shall be conducted in the manner prescribed in these rules for a general election and the programme of the election shall be framed as soon as may be convenient after the occurrence of the vacancy and the electoral roll in force under the provisions of rule 5 shall be deemed to be the electoral roll for the purpose of holding the election”*.

Respondent nos.1 and 2, thus, were obliged to fill up the

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vacancy by way of general elections in the manner his predecessor was elected. The direction of the High Court to the SGPC was categorical to take immediate action, in accordance with the law/rules, to fill up the four vacancies, which does not mean that the respondents shall fill up the vacancy by way of nomination as it runs contrary to the provisions of Section 87(1)(b) of the Act and insofar as the stand of the respondents is concerned, they have wrongly relied upon the provisions of Section 87(1)(b) of the Act in their favour to justify nomination of the private respondents on the ground that the SGPC had the jurisdiction to nominate them. In order to appreciate the stand taken by both the parties, Section 87(1) of the Act is reproduced as under:-

“87. Constitutions of committee not specially provided for.- (1) Every Committee shall consist of five members out of which one at least shall be a person belonging to the scheduled castes and shall be constituted as follows:-

(a) The Board shall nominate the members, with their written consent of the committee of the Gurdwara or Gurdwaras, whose gross annual income does not exceed One Lac Rupees rupees, who shall be residents of the district in which the Gurdwara or one of the Gurdwaras to be managed by the Committee is situated:

Provided that the Board may, if it so decides,

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instead of nominating the members, manage the affairs of any such Gurdwara itself in accordance with the provisions of the Act.

- (b) The committee of Gurdwara or Gurdwaras, whose annual monetary income exceeds One Lac rupees, shall consist of four elected members and one member nominated by the Board who shall be resident of the district in which the Gurdwara or one of the Gurdwaras to be managed by the Committee is situated. If in the election, the required number of members is not elected, the Board may nominate such number of persons as have not been elected so as to complete the Committee for such a Gurdwara or Gurdwaras; provided that the person or persons so nominated shall be the resident or residents of the district in which the said Gurdwara or Gurdwaras are situated.

xxx

xxx

xxx”

The question of nomination under Section 87(1)(b) of the Act would arise if the elections are held and even in that election, required number of members are not elected, but in the present case, no election has been held, therefore, there is no question of nomination of the required number of members by the SGPC in place of the elected members, as has

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been done in the present case.

Thus, in view of the aforesaid discussion, the present writ petition is hereby allowed and the impugned notification dated 04.04.2012 (Annexure P-1) and the notice of meeting dated 23.05.2012 (Annexure P-2) are quashed being illegal. Further, respondent no.1 and 2 are directed to hold general election to constitute the committee of the Gurdwara in terms of Section 87(1)(b) of the Act, which requires 4 elected members and one nominated member. The needful shall be done within a period of one month from the date of passing of this order.

August 21, 2015
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(Rakesh Kumar Jain)
Judge