

CWP-26748-2013

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

CWP-26748-2013

Date of Decision: 05.11.2015

Gurjant Singh

... Petitioner(s)

Versus

Shiromani Gurdwara Parbandhak Committee and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

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

Mr. S.S.Mattewal, Advocate,
for the respondents.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the Resolution No.78 dated 09.04.2013 (Annexure P-1) passed by the Executive Committee of respondent No.1-Shiromani Gurdwara Parbandhak Committee (in short, 'S.G.P.C.') whereby alleged resignation of the petitioner from the presidentship of the Committee of management of Gurdwara Patshahi Nauvin village Dhilwan, District Barnala has been accepted.

In brief, the facts of the present case are to the effect that

CWP-26748-2013

Gurdwara Sahib Patshahi Nauvi Dhilwan is a notified Sikh Gurdwara under Sections 87 (1) (b) and 88 of the Sikh Gurdwaras Act, 1925 (in short, '1925 Act') and the same is being managed by the duly elected committee as prescribed under the 1925 Act. The tenure of all the committees is five years. It is a body corporate which can sue and be sued. There are three categories of committees of management of Gurdwaras. First category is the S.G.P.C. which directly manages the Gurdwaras as mentioned under Section 85 of the 1925 Act. Second category is mentioned in Section 87 (b) of the 1925 Act which is for Gurdwara or Gurdwaras whose annual income exceeds Rs.1 lakh. The management of these committees is to be carried out by four elected members and one nominated member of the S.G.P.C. and election is to be held as per the provisions of the 1925 Act and Sikh Gurdwaras Committee Election Rules, 1959. The Committee of the present Gurdwara falls in this category. The Committee of management of Gurdwara or Gurdwaras whose annual income is less than Rs.1 lakh falls in third category and management of such Gurdwara(s) will be carried out under Section 87 (a) of the 1925 Act. The management of committee constituted under Section 87 of the 1925 Act is to be notified by the State Government under Section 88 of the 1925 Act. The elections for the committee of the Gurdwara Sahib Patshahi Nauvi, Dhilwan were held in November, 2005 and in December, 2006, committee was constituted to manage the affairs of the Gurdwara comprising of the

CWP-26748-2013

following members:

- (i) Gurjant Singh son of Nachahatar Singh, resident of VPO-Dhilwan (Nabha), Tehsil Tappa, District Barnala.
- (ii) S. Manjor Singh son of S. Mohan Singh, resident of VPO-Dhilwan (Nabha), Tehsil Tappa, District Barnala.
- (iii) S. Jugraj Singh son of S. Dharam Singh, resident of VPO-Dhilwan (Nabha), Tehsil Tappa, District Barnala.
- (iv) Gora Singh son of Gurdev Singh resident of VPO – Dhilwan (Nabha), Tehsil Tappa, District Barnala.

Apart from these four members, one member Roop Singh son of Sh. Natha Singh was nominated by the S.G.P.C. S. Jugraj Singh was elected as President out of the abovesaid members and the petitioner as Vice-President. Later on, Jugraj Singh and Gora Singh were disqualified by learned Sikh Gurdwara Judicial Commission. However, Major Singh and Roop Singh also resigned subsequently. Thereafter, the petitioner was running the committee of the management of the said Gurudwara as its President under the provisions of Section 87 (b) (2) of the 1925 Act. On 07.04.2011, one Gurcharan Singh filed a petition under Section 142 of the 1925 Act against the petitioner and other members of the Committee for their disqualification. Along with the said petition, Gurcharan Singh also filed application under Order 39 Rules 1 and 2 read with Order 40 Rule 1 of the Code of Civil Procedure restraining the petitioner from acting as President and for appointment of

CWP-26748-2013

Receiver. The said application was allowed by learned Judicial Commission vide order dated 19.05.2011 and the petitioner was restrained from working as acting President of the Gurdwara and Receiver was appointed for management of the Gurdwara till the decision of main case. Feeling aggrieved, the petitioner filed Civil Revision No.3577 of 2011 which stands admitted and operation of order dated 19.05.2011 has been stayed vide order dated 30.05.2011 (Annexure P-2). Thereafter, respondent No.1 started harassing the petitioner and ultimately got issued notification No.S.O. 20 P.A/25/S.87 and 88/2012 dated 04.04.2012 whereby four persons were got nominated as members of the committee of the management of the Gurdwara. The petitioner challenged the aforesaid notification by filing CWP No.11348 of 2012 before this Court wherein operation of the notification was stayed vide order dated 31.05.2012 (Annexure P-3). Thereafter, learned Sikh Gurdwara Judicial Commission vide its judgment dated 07.08.2012 disqualified the petitioner from the membership of the Committee for a period of five years and further appointed S. Amrik Singh son of Harnek Singh as receiver for the management of the Gurdwara. Feeling aggrieved, the petitioner filed FAO No.6034 of 2012 challenging the judgment and decree dated 07.08.2012 passed by learned Sikh Gurdwara Judicial Commission, Amritsar wherein this Court vide order dated 21.02.2013 (Annexure P-4) has stayed the operation of the judgment and decree dated 07.08.2012. It needs to be mentioned here that respondent

CWP-26748-2013

No.2-Receiver was duly informed about the order dated 21.02.2013 (Annexure P-4) vide letter dated 25.02.2013 (Annexure P-5), but respondent No.2 refused to hand over the charge of management of Gurdwara to the petitioner. Thereafter, SLP No.12292 of 2013 was filed against the order dated 21.02.2013 (Annexure P-4) which has also been dismissed vide order dated 12.04.2013 (Annexure P-6). Thereafter, respondents in connivance with Inspector Sanjeev Kumar, S.H.O. Police Station Tapa and others, took the petitioner in custody on 22.03.2013 at Phul and was brought to Tappa by the said S.H.O. and he was falsely implicated in a case under Section 107/151 Cr.P.C., vide report No.12 dated 22.03.2013. On 25.03.2013, the said S.H.O. along with respondent No.2, Gurcharan Singh, Major Singh, Albel Singh and several others forced him to sign a letter purported to be his resignation from the post of President of Gurdwara and the said resignation was forwarded to respondent No.1-S.G.P.C.

On 28.03.2013, the petitioner immediately sent a report through fax to respondent No.1 along with his duly attested affidavit (Annexure P-7) that he had never tendered his resignation voluntarily and alleged resignation was a result of fraud, coercion and cheating and, therefore, the same may not be treated his resignation. The petitioner also got issued legal notice dated 29.03.2013 (Annexure P-8) through his counsel requesting respondent No.1 not to accept his resignation, vide postal receipt dated 30.03.2013 (Annexure P-9). However, in spite of

CWP-26748-2013

receipt of FAX as well as registered notice, the President of S.G.P.C. accepted the resignation of the petitioner in his individual capacity on 31.03.2013 which was Sunday on the pretext that Executive Committee would approve the same. Afterwards vide impugned Resolution No.78 dated 09.04.2013 (Annexure P-1), the Executive Committee ratified the order of the President and accepted the resignation of the petitioner without considering his affidavit and legal notice served by him. Hence, this writ petition.

In pursuance of notice of motion, respondent No.1 filed reply with the averments that learned Sikh Gurdwara Judicial Commission has removed the petitioner as Committee Member and has also disqualified him for five years of being the member of the Committee of the Gurdwara vide order dated 31.05.2014, therefore, the petitioner cannot hold the post of the President. Various other objections have also been levelled, but I need not refer to the same as issue involved in the present petition is only to the effect whether alleged resignation of the petitioner was voluntary and President of S.G.P.C. was competent to accept the same.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that the President of S.G.P.C. is not entitled to accept the resignation. The resignation of the President of a committee of

CWP-26748-2013

management of Gurdwara can only be accepted by the Board as per provisions of Section 104 of the 1925 Act. The petitioner has been litigating with the S.G.P.C. from the very day when he was elected as President. The litigation went even upto the Hon'ble Supreme Court and the petitioner has remained successful in every case. The resignation of the petitioner was taken under coercion and the petitioner had immediately sent fax that it was not voluntary and had been procured by Inspector Sanjeev Kumar, S.H.O. Police Station Tappa in connivance with various persons and even legal notice was served upon respondent No.1. Even there is no provision for ratification of the resignation. The resignation of President of the Committee of Gurdwara is required to be sent to the Committee which alone is competent to accept it.

Per contra, learned counsel for respondents has vehemently opposed the contentions of learned counsel for the petitioner and defended the order of President of S.G.P.C. which has been ratified vide impugned resolution (Annexure P-1). Even term of the Committee has expired and it is only an academic issue.

I have considered the rival contentions of learned counsel for the parties.

Before dealing with the contentions, it would be apposite to refer to the relevant provisions. Sections 87, 88, 94, 95 and 104 of the 1925 Act read as under:

“87. Constitution of committee not specially provided

CWP-26748-2013

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, 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, 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.

(2) If the Board fails to nominate a member or members of the Committee in accordance with the provisions of clause (a) or (b) the manager and if there is no manager, then Granthi or Granthis of Gurdwara or Gurdwaras shall either by himself or themselves or along with the nominated

CWP-26748-2013

or elected member or members, if any, as the case may be, perform the duties of the Committee till such time as the Board nominates the required number of members of the Committee.

88. Constitution of committees : *publication of constitution and effect thereof. (1) The Committees shall be constituted as soon as may be after the constitution of the Board; provided that no Committee shall be constituted for any Gurdwara under the provisions of this Act before it has been declared to be a Sikh Gurdwara under the provisions of this Act or the provisions of Part III have been applied to its under the provisions of Section 38.*

(2). ****

(3) *As and when a member or members of any Committee have been nominated in accordance with the provision of clause (a) of sub-section (1) of section 87 or have been elected or nominated, as the case may be, in accordance with the provision of clause (b) of sub-section (1) of section 87, the State Government shall notify these facts and when all the members of such Committee have been nominated or have been elected and nominated the Chief Commissioner when in existence, or otherwise the State Government shall notify the further fact that the Committee has been duly constituted and the date of the publication of last mentioned notification shall be deemed to be the date of the constitution of the Committee.*

94. Period of continuance of committees. - *Every Committee shall continue for five years from the date of its constitution or until a new committee has been constituted, whichever is later.*

94-A. Incorporation of committees.- *Every committee shall*

be a body corporate by the name of the Committee of Management of the Gurdwara or Gurdwaras under its management and shall have perpetual succession and a common seal and shall sue and be sued in its corporate name.

95. Effect of subsequent disability to service as a member of a committee. (1) *If any person having been elected or nominated a member of a committee becomes or is found to be by the Board subject to any of the disabilities stated in section 90 or 91, as the case may be, he shall cease to be a member thereof.*

(2) *Any person aggrieved by the finding of the Board mentioned in sub-section (1) of this section may, within a month of the date of his knowledge of such finding, appeal to the Commission for setting aside the said finding and the order of the Commission passed in this respect shall be final:*

Provided that the person against whom any such finding is given by the Board shall not cease to be a member of the Committee until the order of the Commission in appeal, or, if no appeal is preferred until the time allowed for preferring an appeal has passed.

(3) *If any person having been elected or nominated a member of the Committee absents himself from three consecutive meetings of the Committee, his name may be removed from membership by the Committee, provided that, if he applies to the Committee within one month of the removal of his name to be restored to membership, the Committee may, at the meeting next following the date of the receipt of such application, restore him to office, provided further that no member shall be so restored more*

CWP-26748-2013

than three times to the same Committee.

104. Resignation of president and members of committee. - (1) *A member of a committee other than the president may resign his office by giving notice to the president and a president may resign his office by giving notice to the committee and by informing the Board of his resignation.*

(2) *The resignation shall take effect in the case of a member from the date of its acceptance by the president, and in the case of a president from the date of its acceptance by the committee.*

(3) *If the resignation of a member is accepted by the President he shall immediately inform the Board about such acceptance to enable the Board to fill the vacancy caused thereby.*

(4) *As soon as may be after the constitution of the Committee or the office of the President falling vacant, the Board shall call a meeting of the Committee to elect the office-bearers or to fill the vacancy of the President as the case may be.*

104-A. Servants of the Committee, their appointment and punishment. - *The Committee may appoint such servants as it may deem necessary for the due performance of its duties, and may, from time to time determine the number, designations, grades and scale of salary, or other remuneration of such servants, and may at any time for good cause fine, reduce, suspend, or remove any servant."*

Admittedly, the Committee of Gurdwara Sahib Patshahi

Nauvi Dhilwan falls under the second category out of three categories of managing committees of Gurdwaras as mentioned under Sections 85 and

CWP-26748-2013

87 of the 1925 Act. To manage the affairs of the Committee of Gurdwara Sahib Patshahi Nauvi Dhilwan, four members were elected and one member was nominated by the S.G.P.C. The petitioner was discharging the duties of President of the Committee of management of Gurdwara Sahib Patshahi Nauvi Dhilwan.

The only issue arises in the present petition is whether the petitioner was legally removed from the post of President of the Committee of management of Gurdwara under Section 104 of the 1925 Act. Section 104(1) of the 1925 Act clearly envisages that a member of the Committee other than the President may resign his office by giving notice to the President and a President may resign his office by giving notice to the committee and by informing the Board of his resignation. The only competent authority to accept the resignation of the President is the Board, not the President of the S.G.P.C. The petitioner has never informed the Board of his resignation and the same was not accepted by the Committee. The committee of management of Gurdwara is only to inform the S.G.P.C about resignation as is clear from Section 104(2) of 1925 Act. The resignation is to be applicable from the date of its acceptance by the Committee, not by the President of S.G.P.C and the ratification is also against the law. The petitioner had also sent letter that his resignation was not voluntary and letter was received by the President, S.G.P.C prior to 31.03.2013 i.e. day of acceptance of alleged resignation of the petitioner. Otherwise, President, S.G.P.C was not

CWP-26748-2013

competent to accept the resignation of the petitioner and subsequent ratification by the Executive Committee is also against the provisions of the 1925 Act. The President of S.G.P.C. and the Committee have not considered the notice and FAX sent by the petitioner. They also did not inquire into the allegations made in legal notice sent through FAX subsequently. It seems that in a half-hearted manner, the President of S.G.P.C accepted the resignation, subject to ratification by the Executive Committee, S.G.P.C without considering the fact that it was not voluntarily, rather appears to be under the influence of S.H.O and others.

In view of above, instant petition is allowed and impugned Resolution No.78 dated 09.04.2013 (Annexure P-1) is set aside, being not sustainable in the eyes of law.

It is made clear that since by now term of members have expired, the authorities can proceed for election of fresh members in accordance with law.

05.11.2015
parveen kumar

(Paramjeet Singh)
Judge