

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

CR-5881 of 2018 (O&M)

Date of decision: 10.12.2018

Gurcharan Singh and others

...Petitioner(s)

Versus

Avtar Singh and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. M.K. Singla, Advocate for the petitioner(s).

Mr. P.S. Guliani, Advocate and
Mr. Vivek Thakur, Advocate
for respondent nos.1 & 2.

AMOL RATTAN SINGH, J. (Oral)

1. The three petitioners in this petition are stated to be elected members of the Local Gurudwara Prabandhak Committee of Gurudwara Sahib Nanaksar Cheema, Tehsil Sunam, District Sangrur. Petitioner No.1 is stated to be the President of the committee whereas petitioner nos.2 & 3 are members of the said committee.

They have challenged the order of the learned Sikh Gurudwaras Judicial Commission, Amritsar, dated 01.09.2018, by which they have been restrained from functioning as such President/Members, it having been held in the impugned order that they have committed various acts against the provisions of the service rules framed by Shiromani Gurudwara Prabandhak Committee, and have also violated the *Rehat*

Maryada.

2. During the course of hearing of this petition, a detailed order was passed by this Court on 06.10.2018 which, because it discusses the entire controversy, is being reproduced in its entirety.

“Prior to going into the merits of whether the impugned order passed by the Sikh Gurdwara Judicial Commission, restraining the petitioners from functioning as a part of the Managing Committee of the Gurdwara Sahib, and instead appointing one Jagtar Singh as the Receiver, who is to manage the affairs of the Gurdwara Sahib, the issue of the jurisdiction of the Sikh Gurdwara Judicial Commission, to pass such interim orders has been brought in question.

Learned counsel for the petitioners has first relied upon a judgment of a Division Bench of this Court in “Sucha Singh Langah vs. State of Punjab and Others,” 2004(1) RCR (Civil) 245, wherein one of the questions that arose before the Division Bench was to the following effect:

“XXXX

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 07.11.2002?”

While considering the aforesaid question, it was observed by their Lordships, is as follow:

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“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 others v. Sikh Gurdwara Judicial Commission, Amritsar, and others, CWP 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 Civil Procedure Code, 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 land. To improvise the uniformly applicable principles, 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 facets of these provisions including that determination of disqualification under Sections 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)."

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"30. XXXXXXXX Thus, the ex parte interim order passed by the Judicial Commission is also quashed."

(All emphasis applied in the present judgment only).

Mr.Singla also relies upon four judgments of the Supreme Court, in "Super Cassettes Industries Ltd. vs. Music Broadcast Pvt. Ltd." AIR 2012 SC 2144, "Secretary UPSC and another vs. S.Krishna Chaitanya," AIR 2011 SC 3101, "Indore development Authority vs. Mangal Amusement (P) Ltd.," AIR 2011 SC 199 and "Rajeev Hitendra Pathak and others vs. Achyut Kashinath Karekar and another," (2011) 9 SCC 541, to submit that where a particular statute does not provide for a forum (in the present case the Sikh Gurdwara Judicial Commission), passing orders granting interim relief, such jurisdiction cannot be assumed by that forum.

Pointing to the judgment in "Rajeev Hitendra Pathaks' case (supra), he further submits it had been held that such a forum (including a commission or a tribunal), cannot even recall an order earlier passed by it, either proceeding against any party ex parte or dismissing any particular petition, etc. (reference paragraphs no. 36 to 39 of the said judgment).

Mr.Singla next relies upon another judgment of a Division Bench of this Court, in "Sukhdev Singh vs. Executive

Magistrate, Samana, District Patiala,” 1994(2) RRR 63, to submit that an elected member of a Gram Panchayat should not be restrained from taking part in the proceedings of the Panchayat.

He next distinguishes the Full Bench judgment referred to by learned counsel for the respondents on an earlier date of hearing, in “Sikh Gurdwara Pranandhak Committee vs. Laxman Singh Gill” AIR 1970 P&H 40, to submit that as a matter of fact there was no specific issue framed by the Full Bench with regard to the jurisdiction of the Commission to grant interim relief and the observation with regard thereto was made only as a passing reference, without adverting to any settled legal principle in that regard and consequently, the said observation cannot be taken to be the ratio decidendi governing the issue.

On the merits of the case, as regards whether in the circumstances of the case an interim injunction in favour of the respondents, (petitioners before the Commission), should have been passed or not, Mr.Singla refers to the impugned order dated 01.09.2018, to submit that without actually giving any reasoning as regards the allegations made against the petitioners by the respondents, though the arguments have been noticed, the order has simply been passed by the Commission, holding that the respondents (petitioners herein), in connivance with each other committed acts of omission and commission, and misappropriated funds of the Gurdwara Sahib, including salaries of the employees, got their blood relations appointed, against the provisions of the rules framed by the SGPC and violated the 'Sikh Rehat Maryada'.

Further observations have also been shown from paragraph 6 of the impugned order, by Mr. Singla.

He therefore relies upon a judgment of the Supreme Court in “G.Saraswathi and another vs. Rathinammal and others,” 2018(2) CCC 712(SC), to submit that any court is bound to pass

a reasoned order in every case, which must contain narration of bare facts, the issues arising and the submissions of the parties, as also the legal principles applicable to the issues and thereafter give reasons in support of the findings on all issues, in support of the Courts' conclusion.

Though the aforesaid judgment is not in the context of any other forum but a Court, obviously, the basic principles would be applicable to all.

He next refers to the petition filed before the Commission under Sections 142, 100 and 90 of the Sikh Gurudwaras Act, 1925, to submit that even as per the said petition, petitioner no.1 herein (respondent no.1 before the Commission), who is stated to be the President of the Local Gurdwara Prabandhak Committee (notified Committee as was elected to manage the affairs of the Gurdwara), remains a member thereof and the President of the Gurdwara, but the other members having become unfit to hold such membership of the Committee, the President no longer retains sufficient coram to administer the affairs of the Gurdwara.

The contention of Mr.Singla is that the said reasoning has not even been taken in the application filed by the respondents herein, as regards the interim relief that they sought, yet the impugned order still goes on to restrain even the President and others from functioning as such, without giving any finding as to why they are not fit to hold the posts that they are elected to.

He submits that, therefore, the finding would be especially unsustainable, as it is yet to be proved that members of the Committee are not fit to hold their posts.

Having considered the arguments of Mr. Singla and having perused the impugned order, one thing that is absolutely clear is that the said order does not give any reasoning at all for the Tribunal to show any application of mind by it as to how a conclusion has been arrived at that the petitioners were “in

connivance with each other” and had committed acts of omission and commission, etc.

It is seen that in paragraph 2 of the order the facts of the case, as presented before the Commission on behalf of the respondents herein (petitioners before the Commission), are discussed in detail; paragraph 3 contains the reply of the present petitioners to the petition before the Commission, and paragraphs 4 & 5 refer to the arguments raised by counsel on both sides, with arguments of counsel for the respondents herein (petitioners before the Commission) given in great detail, but with the arguments of learned counsel for the respondents (present petitioners) summed up in a few lines (though possibly that may be reason for that he had made very short arguments, which cannot be commented upon by this Court).

However, thereafter in paragraph 6 it is stated as follows:-

“6. After hearing the arguments of both the parties and after going through the application duly supported by affidavit, reply to the application and documents on the file, it is crystal clear that the respondents in connivance with each other committed the acts of omission and commission, misappropriated the funds of the Gurdwara Sahib, salaries of the employees, got appointed their blood relations against the provisions of the Service rules framed by the SGPC, Amritsar and violated Sikh Rehat Maryada. Even the Gurdwara Inspector of the SGPC Amritsar was also fined being guilty in this matter. The respondents gave less salaries to the employees after getting their signature on receipt of full salaries. In our view a prima facie case is made out to restrain all the respondents from their respective posts, balance of convenience is also in favour of the applicants. As such, we hereby restrained respondent no.1 from working as President, resp. no.2 and 3 from working as Assistant Manager and Accountant and

respondents no.4 and 5 from working as members respectively of the Gurdwara Sahib Nanaksar Cheema, Tehsil Sunam, District Sangrur and hereby appoint Sh.Jagtar Singh son of S.Ajaib Singh resident of Ward no.1 Chadon Road, Cheema, Tehsil Sunam, District Sangrur as Receiver of the Gurdwara Sahib Nanaksar Cheema, Tehsil Sunam, District Sangrur for the betterment and for better management of day to day affairs of the Gurdwara Sahib and safeguard funds and its property till further orders.”

The next paragraph deals with the manner in which the receiver would act.

Thus, what documents show that there was misappropriation of funds, or there was collusion between the parties, have not been referred to in the conclusion drawn by the Commission, which as a matter of fact even at the stage of the application filed for interim relief, virtually holds the petitioners, even before the final order of the case, guilty of collusion, with the evidence still to be led by both sides.

Consequently the said order is unsustainable and is to be set aside and is so set aside.

The question then remains as to whether the matter should be remanded to the Commission for passing of a fresh order, giving proper reasoning by reference to whatever documents it wishes to etc., for granting interim relief to the respondents herein, or whether such remand cannot be ordered by this Court as the Commission may not have jurisdiction to pass interim orders, in terms of what has been held by the Division Bench in *Sucha Singh Langah vs. State of Punjab and Ors.*, 2004(1) RCR (Civil) 245, as opposed to what was held by the Full Bench in *Shiromani Gurdwaras Parbandhak Committee, Amritsar and another vs. Lachhman Singh Gill, Chief Minister, Punjab and others*, AIR 1970 (Punjab) 40, (the Full Bench judgment not having been brought to the notice of the Division Bench).

Hence, in the circumstances, without making any comment whatsoever on the functioning of the petitioners, or on the Receiver appointed by the Commission, it is considered appropriate by this Court to direct the Sub Divisional Magistrate having jurisdiction over the area in which the Gurdwara Sahib falls, to act as a Receiver in the Gurdwara, with the SDM directed to immediately to take over control of the Golak, Langar funds and all other funds of the Gurdwara and to keep the Golak sealed with an additional seal of the SDM to be affixed upon it, with directions that it would not be opened except in the presence of the Receiver, i.e. the SDM, and both parties, at the appropriate time if funds are required for the running of the Gurdwara.

The same would apply as regards the funds received for the Langar, and all other funds as are with the Gurdwara till date.

The said directions be complied with immediately, with the learned Assistant Advocate General, Punjab, to convey to the SDM, Sunam, to do the needful today itself.

It is to be noticed at this stage that Mr. Singla, learned counsel for the petitioners, has vehemently opposed even the appointment of the SDM as a Receiver, on the ground that the petitioners are elected members of duly elected bodies and further, because the Sub Divisional Magistrate who is not proved to be a “non-patit Sikh,” would be exercising control over the Gurdwara, whereas the petitioners who are actually “Keshdhari Sikhs” (as contended), would be debarred from exercising such control.

The first contention with regard to the petitioners being elected members of the elected body is most definitely worth consideration, whereas the second one is not, for the simple reason that the SDM being a neutral person is being directed to take charge of the affairs of Gurdwara as a Receiver as an

interim measure, to try and ensure that no further allegations of funds being misused are made by either side against the other.

As regards the first contention, that the petitioners are elected members, that is a valid contention to be considered by this Court while passing final orders, but with the impugned interim order passed by the Judicial Commission having already been set aside hereinabove, and the Receiver appointed by the Commission therefore having become functus officio now, this Court is bound to at least try and act fairly to ensure that no allegations of mismanagement of Gurdwara funds is made during the pendency of this petition.

Hence, the contention as regards the present interim order being passed is rejected.

A copy of this order be given to the learned State Counsel under the signatures of the Bench Secretary of this Court, but with a direction to inform the SDM, Sunam, to take over as the Receiver of the Gurdwara Sahib immediately, till the next date of hearing of this Court.

Adjourned to 26.10.2018.

To be taken up at 2.00 p.m.

A photocopy of this order be placed on the files of the connected cases.”

3. Thus, the first thing to be stated today is that the impugned order has already been set aside by this Court on 06.10.2018, with the order of this Court having become final.

Hence the only issue pending in this petition, even as per the aforesaid order, is as to whether the matter is to be remitted to the Commission for passing a fresh interim order as per law, or whether the Commission is not competent to pass any interim order and consequently, there being no necessity to remit the matter for that purpose.

4. As also noticed earlier, Mr. Singla, learned counsel for the petitioners, has relied primarily upon a judgment of a Division Bench of this Court in “***Sucha Singh Langah vs. State of Punjab and Others,***” 2004(1) RCR (Civil) 245, to submit that it has been specifically held by the Division Bench that the Judicial Commission has no power to pass any interim orders.

To substantiate the aforesaid contention, the third question framed by the Division Bench in that petition (as already reproduced here-in-above in the order dated 06.10.2018), is again referred to by him, after which he points to what has been held by that Bench as follows:-

“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 under Section 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 under Section 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 under Section 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."

He also relies upon a judgment of the Supreme Court in "**Indore Development Authority vs. Mangal Amusement (P) Ltd.**," AIR 2011 SC 199, from which he points to paragraph 4 which reads as follows:-

"4. Among several contentions on merits, the Authority has also contended that the interim order virtually amounts to

allowing the writ petition at the stage of interim order. We agree with the said contention. If respondents 1 and 2 are permitted to construct the restaurant and banquet hall, etc. in a land held by them on licence from the Authority, even before the writ petition filed by them is heard and disposed, it would amount to allowing the writ petition at interim order stage. It will also cause complications if the writ petition is rejected ultimately. The more appropriate course would be to hear the main matter itself expeditiously.”

He further relies upon a judgment in ***Secretary UPSC and another vs. S.Krishna Chaitanya***,” AIR 2011 SC 3101, from which he points to paragraph 27 which is reproduced as follows:-

“27. We may add here that this Court has observed time and again that an interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage. We reiterate that normally at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. We, however, find that very often courts are becoming more sympathetic to the students and by interim orders authorities are directed to permit the students to take an examination without ascertaining whether the concerned candidate had a right to take the examination. For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result. In the instant case, we have found that the respondent not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations. In our opinion, grant of such interim orders should be avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court.”

(All emphasis applied in the present judgment only)

5. The contention, therefore, firstly of course is that the Division Bench of this Court having specifically held as above in the context of the Sikh Gurudwaras Act, 1925 itself, with the principle contained therein to the effect that an interim order should not virtually allow the petition/suit of the petitioner/plaintiff, therefore other than the impugned order being unsustainable, the Commission cannot pass interim orders and thereby travel beyond jurisdiction conferred upon it by the aforesaid Act.

Hence, he submits that there would be no occasion for this Court to remit the matter to the Commission for the purpose of passing a fresh interim order during the pendency of the proceedings before it.

He also submits that the order of this Court appointing the SDM, Sunam as the Receiver, already having been stayed by the Division Bench in a similar matter (though in contempt proceedings), that order would not be continued by this Court, with the petitioners therefore entitled to run the management of the Gurudwara.

6. *Per contra*, Mr. Guliani, learned counsel appearing for the respondents (petitioners before the Commission), relies upon a judgment of a Full Bench of this Court in ***Shiromani Gurdwara Parbandhak Committee, Amritsar and another vs. Lachhman Singh Gill, Chief Minister, Punjab and others***, AIR 1970 P&H 40, to submit that as a matter of fact the Full Bench has duly considered the question of jurisdiction of the Commission to pass interim orders and has held that such jurisdiction does vest in the Commission.

He further submits that the said judgment never having been brought to the notice of the Division Bench in Sucha Singh's case (supra), that judgment cannot be held to be a binding precedent, with naturally, the Full Bench to rule the field.

He points to the fact that after duly considering sub section (3) of Section 135, and Section 142 of the Act of 1925, their Lordships held as follows:-

“Such powers can be exercised by the Judicial Commission not only in the final decision of the application, but, as held by my learned brother Narula J. in Balbir Singh V. The Sikh Gurdwaras Judicial Commission, Amritsar, Civil Writ No. 2115 of 1966, D/- 25-11-1986- (AIR 1967 Punj 272). the Judicial Commission has also authority to pass interim orders in the nature of grant of injunction or appointment of receiver if such power is otherwise conferred on it. Section 142 of the Act does not prohibit the grant of such interim relief. Provisions of Order 39, Rules 1 and 2, and Order 40, Rule 1 of the Code of Civil Procedure are in no manner inconsistent with Section 142 of the Act, On the contrary, those provisions are not only ancillary to Section 142 but are necessary to be invoked in suitable cases for effectively exercising the jurisdiction vested in the Judicial Commission under that section. The Judicial Commission has jurisdiction, in suitable cases, to issue temporary injunctions or to make interim arrangements by appointment of a receiver on principles which are well established under the Code of Civil Procedure.”

(Emphasis applied only in the present judgment).

7. Having considered the matter, this court would naturally be bound by the ratio of the judgment delivered by the Full Bench, even though what the Division Bench has subsequently held, after duly

formulating a question of law on that very issue, is wholly to the contrary. The judgment of the Full Bench not having been brought to the notice of the Division Bench, to repeat, this Bench would naturally be bound by the ratio of the larger Bench.

8. Consequently, with jurisdiction duly vesting in the Commission to pass interim orders, in terms of the ratio of the judgment in ***Lachman Singh Gill's*** case (supra), and the impugned order in the present petition already having been set aside by this Court, the matter is remitted to the Commission to reconsider the application filed before it by the respondent nos.1 and 2 herein, i.e. the petitioners before the Commission, under Order 39 Rule 1 & 2 and Order 40 Rule 1 read with Section 151 of the Code of Civil Procedure, with it reiterated that while passing the order, reasoning would need to be given by the Commission in support of whatever view it takes (whether to grant injunction or not to grant injunction), this Court already having commented in the order passed on October 6, 2018 that the impugned order was wholly unsustainable, it virtually having held the petitioners guilty even without showing any reasoning from the record as to the petitioners' conduct.

9. Mr. Guliani, counsel for respondent Nos.1 & 2, submits that the SDO (Civil)/SDM, Sunam be allowed to continue to function as the Receiver and manage the affairs of the Gurudwara till such time as an interim order on the aforesaid application is not passed by the Commission Mr. Singla, learned counsel for the petitioners, vehemently opposes the same on the ground that, firstly, a similar order of this Court passed in a connected petition which has been disposed of today, having

been stayed by Division Bench, the SDM should not be allowed to continue to function as the Receiver even in this case.

He further submits that the order appointing the SDM/SDO (Civil) as the Receiver on 06.10.2018, having been passed only till the next date of hearing at that stage, i.e. upto 26.10.2018, the 'effective operation' of that order has already ceased and consequently, the petitioners should be allowed to take control of the management.

10. Having considered the arguments on that issue too, though learned counsel for the petitioners is correct that in a similar petition the order of this Court appointing the SDM as the Receiver has been stayed by the Division Bench in contempt proceedings, the Letters Patent Appeal filed by the petitioners against the interim order of this Court dated 06.10.2018, in this *lis*, having been specifically dismissed by the Division Bench (in LPA No. 1717 of 2018) on 13.11.2018, with no other appeal/petition filed before the Supreme Court against the aforesaid order, the contention of learned counsel for the petitioners is unsustainable.

11. Having considered the above too, in the circumstance of the case, for the reasons also given in the order dated 06.10.2018, it is considered appropriate that till such time as an interim order is not passed by the Commission on the application filed by respondent nos. 1 and 2 under Order 39 Rule 1 & 2 and Order 40 Rule 1 of CPC, the interim arrangement of the SDM remaining a Receiver to manage the affairs of the Gurudwara, should be allowed to continue, the SDM being a neutral person, because even after 26.10.2018, it is not denied that the SDM still continues to be the Receiver till today.

11. The Commission would decide the application within a period of three weeks from the date of receipt of a certified copy of this order, with copies of the interim order to be passed by the Commission to be made available to the parties within one week of the order being passed.

The petition is disposed of in the aforesaid terms.

10.12.2018
sumit.k/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No