

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9537 OF 2019

Sardar Manjieeth Singh Jagan Singh.

Age : 58 Years, Occu. : Business,
R/o Mohalla Gurudwara, Nanded,
Tq. & Dist. Nanded.

At Present Resident of 5-9-45/2,
Bassher Baugh, Hyderabad,
(Telangana).

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The District Collector, Nanded,
Having Official Address as
Office of District Collector, Nanded,
Tq. & Dist. Nanded.
3. Assistant Charity Commissioner,
Nanded, having official addressed
as Office of Assistant Charity
Commissioner, Nanded, Tq. &
Dist. Nanded.
4. Sardar Gurucharan Singh S/o Uttam
Singh Ghadisaj,
Age : 70 Years, Occu. : Business,
R/o Pinky Niwas, Gurudwara Gate
No. 2, Nanded, Tq. & Dist. Nanded.

5. Sardar Sardul Singh S/o Hira
Singh Fauji,
Age : 70 Years, Occu. : Business,
R/o Opposite Baba Fate sing Mangal
Karayalaya, Shahid Bhagat Singh
Road, Nanded, Tq. & Dist. Nanded.
6. Sardar Bahginder Singh S/o
Gurucharan Singh,
Age : Major, Occu. : Nil,
R/o Pinky Niwas, Gurudwara,
Gate No. 2, Nanded,
Tq. & Dist. Nanded.
7. Sardar Jagwir Singh S/o Hari
Singh Shahu,
Age : Major, Occu. : Nil,
R/o Opposite Gurudwara Gate
No. 3, Nanded, Tq. & Dist. Nanded.
8. Shersingh Hirasingh Fauji,
Age : 75 Years, Occu. : Business,
R/o Opposite Baba Fate singh mangal
Karyalaya Shahid Bhagat Singh
Road, Nanded, Tq. & Dist. Nanded. .. Respondents

Shri Ganesh A Gandhe, Advocate along with Mr. S. Jasbir Singh,
Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for Respondent Nos. 1 to 3.

Shri R. S. Deshmukh, Senior Advocate i/by Shri Indraneel
Godsay, Advocate for Respondent Nos. 4 to 7.

Shri S. S. Choudhari, Advocate for the Respondent No. 8.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

Matter closed for Order : 13.02.2020

Order pronounced on : 30.04.2020

JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner assails the notification dated 21.06.2019 issued by the State thereby nominating members on Nanded Sikh Gurudwara Sachkhand Shree Hazur Apchalnagar Sahib Board from Sachkhand Hazuri Khalsa Diwan, Nanded U/Sec. 6(1)(viii) of the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act, 1956 (for short "Act 1956").

3. Mr. Gadhe, the learned advocate for the petitioner strenuously contends that, the impugned notification is contrary to Section 6(1)(viii) of the Act 1956. The general committee has powers to nominate members to the board. The Government cannot finalize the names on their own or on the basis of proposal received by different persons claiming their position in Diwan as members of the Executive Committee. As per Sec. 6(1)(viii) of the Act 1956 and Sec. 4 of the bye-laws of the Diwan, only the general committee of the Diwan can nominate four persons on Gurudwara Board. The general committee is empowered to take policy decision and Executive Committee is not vested with such powers. The general committee of the Diwan has not passed any resolution nominating persons for appointment over the Gurudwara Board from Diwan.

4. The learned counsel for the petitioner further submits that,

two change reports are pending and the competent authority reported that names of working valid executive committee cannot be communicated. In view of that, the Government exceeded its jurisdiction while nominating the members. By accepting the recommendation by one fraction of Diwan, the Government indirectly declared the President of the Diwan, though the change report is yet to be approved. The notification is bad in law. The learned counsel relies on the judgment of this Court in a case of Murlidhar Janrao Kale Vs. State of Maharashtra and others reported in *2011 (3) BCR 850*.

5. It is further contended by the learned advocate for the petitioner that, nineteen *defacto* members of the Executive Committee are alive, but their consent was not obtained before issuance of the impugned notification. No enquiry was also made in respect of resolution. The general committee of the Diwan has not passed any resolution, nor recommended the names of respondent Nos. 4 to 7 for appointment over Gurudwara Board. The learned counsel further submits that, mere filing of change report does not entitle a person to become valid member of the trust. The respondent Nos. 6 and 7 are not the members of the Diwan. Their initial membership is yet to be proved. The respondent No. 6 is the son of the respondent No. 4 and the respondent No. 7 is brother of the respondent No. 8. The membership of respondent Nos. 5 to 7 is not confirmed by the general committee of Diwan. The Diwan has not recommended their names.

6. The learned counsel further submits that, the contention of respondent Nos. 4 to 7 about locus of the petitioner is erroneous. The resolution relied by respondents that, the petitioner and some other members are removed is fabricated. The same is produced by additional affidavit. In the first affidavit filed by respondents there is no whisper about the resolution or challenge to the locus standi of the petitioner. It is only after arguments of the petitioner were concluded, the resolution has been prepared and produced on record. The date of the resolution is shown as 14.04.2015 and the removal date of the petitioner from Diwan is 25.10.2015. The same apparently is forged resolution. The change report filed by the respondent No. 4 dated 09.11.2018 demonstrates that in view of the election dated 09.11.2018, the petitioner is outgoing executive committee member. The name of the petitioner appears at Schedule – I. No change report is filed in respect of removal of petitioner as Executive Committee member. Moreover as per Section 2(18) of the Maharashtra Public Trust Act, the petitioner is the trustee and, therefore, has *locus standi* to file the petition.

7. Mr. Gadhe, the learned counsel further submits that, the respondents have committed perjury. The respondents have relied on resolution dated 30.12.2018 to contend that, on the basis of said resolution, four members are appointed. In the said resolution names of respondent Nos. 5 and 7 were not recommended. The said resolution is signed only by eleven members. There are 421 members of the General Committee of the Diwan. As per Section 4(d) of the bye-laws of the Diwan

1/4th quorum is necessary, as such 105 members ought to have passed resolution. Out of eleven members, some of the members membership is yet to be proved. The resolution dated 30th December, 2018 is not in the file of Government. The learned counsel for the petitioner further submits that, even in administrative matters, this Court can exercise powers of judicial review, more particularly when the same is irrational and illegal. The learned counsel relies on the judgment of the Apex Court in a case of Tata Cellular Vs. Union of India reported in *1994 AIR SCW 3344*.

8. Mr. Deshmukh, the learned senior advocate for respondent Nos. 4 to 7 submits that, the petitioner does not have *locus standi* to file the present petition. He is not the member of the Diwan *inter alia* does not have locus to assail the notification. It is further submitted that, tenure of the Committee of the Diwan is two years. On or about 10.08.1978 Jeevansingh was elected as Pradhan and he selected 27 members from the general committee to be nominated to become the members of the working committee. The Diwan is a public trust. The respondent No. 4 is the Chairman in the office after Jeevansingh and he is entitled to continue the cause initiated by Jeevansingh. On 26.12.1984, the respondent No. 4 became Pradhan of the Diwan. After the death of the earlier President (Pradhan) namely Jeevansingh, the respondent No. 4 filed application bearing Enquiry No. 950 of 1982 on 09th August, 2001 for taking on record as legal representatives of deceased Jeevansingh being surviving trustee and also in the capacity of President on its

working committee since 1984. The said application came to be allowed. The respondent No. 4 filed R.J.E. No. 68 of 2007 for taking entry in the Schedule – I of the Diwan as per the order passed by the District Court, Nanded in Appeal R.J.E. No. 38 of 2007 and Appeal R.J.E. No. 68 of 2007 dated 03.10.2009 before the Assistant Charity Commissioner, Nanded. Said application came to be allowed. In view of the same name of the respondent No. 4 came to be entered as President of the Diwan along with working committee of his body.

9. The learned senior advocate further submits that, in the year 2014 Diwan has intimated the names of its four members to be nominated to the Collector, Nanded. Accordingly, notification dated 15.02.2014 came to be issued by constituting the Administrative Committee of the Gurudwara Board of 22 members and at Sr. No. 19 to 22, the names of the nominations from the Diwan are mentioned. It is submitted that, earlier nominations made by the respondent No. 4 are accepted by the Government. Since 1984 the same is continuing.

10. The learned senior advocate further submits that, the impugned Government notification does not constitute any alleged infringement of the rights of the petitioner. The petitioner has miserably failed to prove his locus. The respondent No. 5 is member of the Gurudwara board. The respondent No. 8 was the President of the Gurudwara Board during the period 1996-1997. The name of the respondent No. 7 is recommended by the respondent No. 4 as well as respondent

No. 8 in the respective letters for nomination to the Government on the Gurudwara Board.

11. The learned senior advocate further submits that, the petitioner is removed from the post of trustee of the Diwan vide resolution No. 4 of the working committee of the Diwan dated 14.04.2015 and the said resolution is not subject matter of challenge till this date in any proceeding. The learned Adhoc District Judge – 2, Nanded in the common judgment and order dated 03.10.2009 in Misc. R.J.E. 38 of 2007 and R. J. E. No. 68 of 2007 is pleased to hold specifically that the respondent No. 4 is stepping in the shoes of Jeevan Singh Aya Singh and is President of the said Diwan. The said judgment has become final. The State Government also in its Revenue and Forest Department has been making communications with the Diwan by addressing letters in the name of either President or Secretary while requesting to suggest four nominations to be nominated on its behalf while reconstitution of the Gurudwara Board. One such letter addressed to the respondent No. 4 as President is placed on record. For the period of two years i. e. 2015-2017, the body headed by the respondent No. 4 is recognized. The same is in pursuance to the proceedings bearing Misc. Application No. 833/2011. The said Misc. Appln. No. 833/2011 is allowed by the Assistant Charity Commissioner under order dated 07.03.2015 and, therefore, four nominations sent by the respondent No. 4 came to be accepted by the State Government and they were nominated under Government notification dated 15.05.2015 as members of the Gurudwara Board representing Diwan. The

present nominations also have been validly accepted. The four names referred to were unanimously sent to the Government for nominating on the board. The learned senior advocate submits that, no error has been committed by the Government in issuing the notification.

12. The learned Additional Government Pleader for respondent Nos. 1 to 3 submits that, the Government had on 21.02.2015 wrote a letter to the Charity Commissioner, Mumbai asking him to opine as to who was authorized to represent the Gurudwara Board. The Charity Commissioner on 17.03.2015 replied that Sardar Gurucharan Singh Ghadisaj was the President of Sachkhand Hazuri Khalsa Diwan. In view of that, persons nominated by Sardar Gurucharan Singh Ghadisaj were accepted and notified as members of the Gurudwara Board in the year 2015. In the present matter Sardar Gurucharan Singh Ghadisaj has made recommendations of the persons from the Diwan to be nominated on the Gurudwara Board. In the light of that, nominations on the Gurudwara Board are made under notification dated 21.06.2019 as per Section 6(1)(viii) of the Act 1956. The respondent No. 1 wrote a letter on 23.01.2019 to the Charity Commissioner, Mumbai asking him to inform as to who authorized office bearers of the Diwan were. The Assistant Charity Commissioner, nanded informed the Collector on 02.02.2019 that Enquiry Applications Nos. 44/2019 and 114/2019 were pending in respect of the Diwan.

13. The learned Additional Government Pleader further

contends that, the respondent No. 1 received three letters of nominations from Diwan. (1) Sardar Surinder Singh as a Secretary of the Diwan. (2) Sardar Gurucharan Singh Ghadisaj as a President of the Diwan wrote a letter on 09.01.2019 and (3) Sardar Sher Singh Fouji also claimed to be President of the Diwan and gave a letter on 04.01.2019. Sardar Gurucharansing Ghadisaj again gave fresh undated letter received by the Collector on 15.06.2019, whereby he recommended different names. The respondent No. 1 received nominations of more than four persons from the Diwan. In such circumstances, the Hon'ble Chief Minister directed to notify the names of respondent Nos. 4 to 7 as members of the Gurudwara board U/Sec. 6(1)(viii) of the Act 1956. Accordingly, names of respondent Nos. 4 to 7 are notified. The said notification does not constitute any infringement of the rights of the petitioner. There is no violatino of Article 26 of the Constitution. The nominations of the members of the Gurudwara Board is necessary for the function of the Gurudwara.

14. We have considered the submissions canvassed by the learned counsel for respective parties.

15. The Nanded Sikh Gurudwara Sachkhand Shree Hazur Apchalnagar Sahib Board (hereinafter referred as to the "Gurudwara Board") is constituted under the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act, 1956. Section 6 of the Act 1956 details the constitution of the board. Same reads thus :

**The Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar
Sahib Act, 1956**

1.
2.

6. 1) The Board shall consist of :
 - i) Two members nominated by the Government;
 - ii) There members nominated by the Government
from the Sikhs of the State:

Provided that after the expiration of the first term of the Board these three members shall be elected from among the Sikhs of the State in such manner as may be prescribed:

- iii) One member nominated by the Government
from among the Sikhs of the cities of Hyderabad and
Secunderabad

- iv) One member nominated by the Shiromani
Gurudwara Prabandhak Committee from among the Sikhs of the
State of Madhya Pradesh;

- v) Three members nominated by the Shiromani
Gurudwara Prabandhak Committee;

- vi) Two members elected by and from among the
sikh members of the parliament;

- vii) One member nominated by the Chief Khals
Diwan of Amritsar;

viii) Four members nominated by the Suchkhand Hazur Khalsa Diwan, Nanded.

2) The nomination and election of members under this section shall be made in such manner and within such period as may be prescribed.

3) i) If the members mentioned in clauses (iv) to (vii) (both inclusive) of sub-section 1) are not nominated or elected, as the case may be within the prescribed period, the Government shall specify such further period as it may deem fit within which such members shall be nominated or elected if such members are not nominated or elected within the further period so specified the Government shall nominate a person or persons to fill the vacancy or vacancies, as the case may be and the person or persons so nominated shall be deemed to be a member or members duly nominated or elected by the respective body.

ii) The term of office of a member nominated under clause I) shall expire at the time at which it would have expired if he had been nominated or elected: as the case may be, with in the period prescribed under sub-section (2)

4) After the members have been nominated or elected, as the case may be, in accordance with the foregoing provisions the Government shall notify the fact of the Board having been duly constituted; and the date of the publication of the notification shall be deemed to be the date of the constitution of the Board.

16. The Gurudwara Board is a body corporate having perpetual succession and a common seal with power to acquire and hold the property. The board exercises the powers and perform the functions entrusted to it under the Act 1956.

17. The matter of debate in the present petition is the nominations of four members by Sachkhand Hazuri Khalsa Diwan, Nanded (for short "Diwan") under Section 6(1)(viii) of the Act 1956. Diwan is registered under the Hyderabad Registration of Societies Act 1350 Fasli. It is also a trust.

18. Diwan is entitled to nominate four members on the Gurudwara Board. The term of the office of the member is three years from the date of constitution or until the constitution of the new board whichever is later. In the present matter, the whole dispute is about four members nominated by the Diwan Nanded.

19. Reading Section 6 of the Act 1956, it is manifest that the Government does not have powers to nominate the members under Section 6(1)(viii) of the Act 1956. It is only the Diwan that can nominate four members on the Gurudwara Board. The memorandum of association of the Diwan as filed by the petitioner does not prescribe the procedure of nominating its members on the Gurudwara Board. The working committee of the Diwan shall consist of twenty eight (28) members. The general committee consists of the members of the Diwan. The memorandum of association also known as the rules does not clearly specify the procedure or the manner of nominating four

members on the Gurudwara Board.

20. The State has issued impugned notification nominating respondent Nos. 4 to 7 as members nominated by the Diwan on the Gurudwara Board.

21. We had called for the original file from the State, pursuant to which the impugned notification is issued nominating respondent Nos. 4 to 7 to verify the nominations received from the Diwan. It appears that, letter dated 01st January, 2019 was received by the State under the signature of Gurucharansingh Uttamsingh Ghadisaj nominating respondent Nos. 4 and 6 and one Surendrasingh Ajayabsingh and Bariyasingh Rajasingh Nawab. Another letter dated 04.01.2019 under the signature of Surindar Singh Ajayabsingh was received by the State, wherein nomination was of respondent No. 4 and Surindar Singh Ajayabsingh, Ranjeetsingh Khandasingh Kamthekar and Gulabsingh Ramsingh Kanchwale. One more letter under the signature of Surindar Singh Ajayabsingh dated 30.01.2019 is received by the State nominating the respondent No. 4, 5 and Surindar Singh Ajayab Singh and Sardar Ranjeet Singh Khandasingh Kanthekar. One more undated letter was received purportedly under the signature of the respondent No. 4 nominating respondent Nos. 4, 6, 7 and one Rajendra Singh Narendra Singh Pujari. The letter dated 01.01.2019 was not accompanied with any resolution. The letter dated 30.01.2019 was also not accompanied with any resolution, nor the undated letter was accompanied by any resolution. Only one letter issued

by Surindarsingh Ajyabsingh as a Secretary dated 04.01.2019 was supported with a resolution. The copy of the resolution is in the Government file and the resolution is signed by Surindarsingh Ajyabsingh as a Secretary.

22. In four letters forwarded to the Government for nomination of the members of the Diwan on the Gurudwara Board, there does not appear to be consistency. The Government on its own does not have the authority to nominate the members of Diwan on the Gurudwara Board. The Government on its own cannot issue notification nominating the members of Diwan on the Gurudwara Board. It is only the Diwan that can nominate the members on the Gurudwara Board. Considering the inconsistency about the names to be nominated from the Diwan as members on the Gurudwara Board, the Government could not have issued the notification nominating the members of Diwan on the Gurudwara Board. Except the name of the respondent No. 4, we do not find consistency of other names in all the letters.

23. The petitioner has also raised dispute with regard to the post of the President and the Secretary. It appears that, in the year 2015, the Committee headed by the respondent No. 4 as a President was held to be valid. For the instant year there appears to be two change reports pending. Under the letter dated 17th March, 2015, the Charity Commissioner, Maharashtra State had communicated the Deputy Secretary, Revenue and Forest Department, that the respondent No. 4 Gurcharansingh Uttamsingh Ghadisaj is the President of the Diwan and names

forwarded by him were nominated as members of the Diwan upon Gurudwara Board in the year 2015. Though, some documents are placed on record to suggest that the membership of the petitioner is cancelled, we are not entering into the said debate and that would not be subject matter of consideration before us. In the present writ petition we would not adjudicate as to who is the President and Secretary of the Diwan. The change reports are subjudice before the Assistant Charity Commissioner, Nanded. It is for the A. C. C. to take the decision upon the same. We are considering the present matter only to the extent of the nominations of the four members of Diwan on the Gurudwara Board.

24. It also appears that, the name of the respondent No. 4 came to be entered as President as per order passed by the District Court in Appeal bearing R.J.E. No. 38 of 2007 and R. J. E. No. 68 of 2007.

25. The letter dated 04.01.2019 issued by the Secretary supported by the resolution of four members of the Diwan to be nominated on the Gurudwara Board includes the respondent No. 4. The names of respondent Nos. 5 to 7 are not included in the same. The respondent No. 4 has also given another undated letter, wherein he has recommended the names of respondent Nos. 4, respondent No. 6 and respondent No. 7. He had not recommended the names of respondent Nos. 5 and 8 in the said letter. Even the letters issued by the respondent No. 4 regarding

members to be nominated on the Gurudwara Board are not consistent. In all four letters only one name appears consistent i. e. the respondent No. 4. In such an eventuality, the State ought to have sought further clarification from the Diwan before issuing notification nominating four members. It could not have picked and choosed members from various letters.

26. The President and the Secretary have recommended different names, the respondent No. 4 again has recommended different names in two letters and that the person claiming to be the Secretary has also recommended names under letter dated 04.01.2019 accompanied with the resolution dated 08th August, 2018 nominating four members. However, the resolution on record is only true copy signed by the Secretary. It would be unsafe to rely upon the same.

27. As observed above, except the name of the respondent No. 4 appearing in all four letters issued by the Diwan and inconsistency with regard to other names, it would not be possible to uphold the notification nominating respondent Nos. 4 to 7 as members of Diwan on the Gurudwara Board in toto.

28. The notification states that, Diwan Nanded has under clause (viii) of Sub Section (1) of Section 6 of the Act 1956 nominated respondent Nos. 4 to 7 to be the members of the Diwan on the Gurudwara Board and that it considers it expedient to notify the said persons nominated by the

Government of Maharashtra and Diwan as members of the Gurudwara Board.

29. As observed above, Clause (viii) of Sub Section (1) of Section 6 of the Act 1956 does not authorize the Government to nominate the members of the Diwan on the Gurudwara Board and it is only the Diwan that can nominate the members.

30. The State ought to have considered the authenticity of those letters. In absence of the proper procedure prescribed in the rules governing nominating members on the Gurudwara Board, it is not clear as to whether the general committee and/or executive committee and/or the President or the Secretary have the powers to nominate the members on the Gurudwara Board. The bye law and/or the rules of Diwan are silent in this regard. The member of the Diwan should take steps to amend the bye-laws/rules to that extent. The dispute also exists with regard to memberships. As observed above, we are not entering into the said dispute. It is for the Assistant Charity Commissioner to decide the dispute about the membership.

31. The Government cannot arrogate the powers unto itself. The Government has usurped the powers of the Diwan. In a system governed by rule of law, the discretion and the exercise of power has to be confined within the defined limits. The decision or notification dehors the power under the Statute cannot be sustained. It is well settled that when a statute requires a

particular thing to be done in a particular manner, it has to be done in that manner only. The notification recommending respondent Nos. 4 to 7 is arbitrary. Arbitrariness has no role in the society governed by rule of law. Arbitrariness is antithesis to the rule of law, justice, equity, fair play and good conscience. The arbitrary action cannot withstand to test of law.

32. In the light of the above, the impugned notification is quashed and set aside.

Rule accordingly is made absolute in above terms. No costs.

33. The original record submitted by the learned Addl. G. P. is returned back.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

33. At this stage, the learned advocate for the respondent Nos. 4 to 8 seeks stay of the present judgment. The learned advocate for the petitioner opposes the said request.

34. Considering the fact that, the respondent Nos. 4 to 7 were occupying the post and by virtue of the present order they are unsettled, we grant stay to the present judgment for a period of three (03) weeks from today. Needless to state on lapse of three (03) weeks, present protection shall come to an end.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

bsb/April 20