

## CIVIL WRIT.

*Before Falshaw and Dua, JJ.*

S. KEHAR SINGH,—*Petitioner.*

*versus*

THE PUNJAB GOVERNMENT AND OTHERS,—*Respondents.*

Civil Writ No 921 of 1957.

*Sikh Gurdwaras Act (Punjab Act VIII of 1925)—Sections 89 and 96—Sikh Gurdwaras Committee Election Rules, 1954—Rule 4—Election Commissioner issuing directions for holding of elections—Whether Government can alter constituencies or postpone elections in the course of the election proceedings when more than half the steps in completing the election have been already validly taken in pursuance of the direction.*

1958

Sept. 2nd

*Held, that*

(1) Section 89 of the Sikh Gurdwaras Act does indisputably confer on the State Government power at any time to alter the local limits of any constituency as it considers proper provided it is done after consultation with the Board. But by altering the limits of the constituency the State Government cannot cancel and nullify the notice validly and properly issued by a Returning Officer under Rule 4 of the Sikh Gurdwaras Committee Election Rules, 1954, particularly when more than half the steps in completing the election have been already validly taken in pursuance of the said notice.

(2) Sub-rule (3) of Rule 4 of the Sikh Gurdwaras Committee Election Rules, 1954, merely permits the State Government or the Deputy Commissioner to change the dates for the steps enumerated in sub-rule (1). Normally speaking, the change of dates contemplated by sub-rule (3) would refer to those steps mentioned in sub-rule (1) which have yet to be taken; it should not be construed as authorising the Government or the Deputy Commissioner under the pretext of changing the dates for the various steps mentioned in sub-rule (1), to set aside the steps already taken. There is no provision of law which expressly empowers the Government to invalidate, cancel or withdraw the order already

issued calling upon the constituency concerned to elect the members of the Committee and to issue a fresh order after changing the limits of the constituency retrospectively. The proviso to sub-rule (3) cannot be interpreted so as to confer this power on the Government. It merely refers to the invalidating of the proceedings taken after the notification calling upon the constituency concerned to elect the member, which invalidation is necessitated by the change in the dates of one or more of the steps taken in pursuance of the said notification.

(3) The notice which the Returning Officer affixes under rule 4 at his office and at the various other places remains intact and no variation or change is permissible under the law to be made in the places at which the notice has to be affixed under sub-rule (1) of rule 4. Sub-rule (3) does not contemplate any change in the area of the constituency because it is confined only to the change in the dates of the election as originally decided upon; no territorial variation in the constituency is contemplated in this sub-rule.

(4) The proviso to section 89(1) of the Act certainly grants power to the Government to alter the local limits of the constituency but this alteration cannot be held to operate retrospectively so as by itself to reopen the proceedings which have already been taken in pursuance of the notice calling upon the constituency to elect members of the Committee. Such an alteration can only operate prospectively.

*Case referred by Hon'ble Mr. Justice Bishan Narain, to a larger bench on 14th October, 1957, for decision of the legal point involved in it and later on finally decided by a division Bench consisting of Hon'ble Mr. Justice Falshaw and Hon'ble Mr. Justice Dua, on 2nd September, 1958.*

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari or mandamus be issued directing the respondents to ignore the nomination filed after the 24th of July, 1957 and further praying that the polling be held in only the Zail of Kotla Nihang, and an early date be fixed for the polling.*

AMAR SINGH AMBALVI, for Petitioner.

L. D. KAUSHAL, Deputy Advocate-General, for Respondents.

## ORDER

DUA, J.—This writ petition initially came up for hearing before Bishan Narain J., who on the 14th October, 1957 referred it for decision by a larger Bench as the point involved was important and bare of authority.

Dua, J.

The facts out of which this petition has arisen briefly stated are that a vacancy on the Committee of management Gurdwara Bhatha Sahib Kotla Nihang, Tehsil Rupar, District Ambala under the Sikh Gurdwaras Act occurred on the 4th of December, 1956 on account of removal of S. Sunder Singh under section 95 of the Sikh Gurdwaras Act (Punjab Act No. VIII of 1925). This necessitated the holding of a bye-election under section 96(1) of the Act read with rule 4 of the Sikh Gurdwaras Committee Election Rules of 1954. On the 4th of July, 1957, Shri Sarup Kishan, Election Commissioner, directed the Returning Officer of committee constituencies for Gurdwaras mentioned in the statement enclosed therewith to call upon the constituencies concerned to elect the required number of members, a complete programme of the election was given in this direction. It may be stated that the elections were to be held with respect to several committees involving more than 100 bye-elections and the extent of the constituency of each committee (including the one in question in the present writ petition) was given in the statement attached to this communication.

In pursuance of this direction, on the 8th of July, 1957, the Returning Officer called upon the constituency in question to elect a member to the Committee of management in place of S. Sunder Singh. It is worthy of note, as mentioned above, that as a matter of fact there were no less than 104 bye-elections to various Gurdwaras in the Punjab

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which were directed by the Commissioner, Gurdwara Elections, respondent No. 2, to be held and the various Returning Officers were directed by the same communication to call upon their respective constituencies on the above date to elect members to the various Committees, the same date-sheet having been adopted throughout the State. Annexure 'A' to the writ petition which contains the directions from the Elections Commissioner contains the following date-sheet:—

1. Petition of notices calling upon the constituency for election and nominations. 8th July, 1957.
2. Last date for presentation of nomination papers. 24th July, 1957.
3. Posting of list of nominations. 28th July, 1957.
4. Scrutiny of nominations and decisions of objections. 29th July, 1957.
5. Last date for presentation of applications for revision of the orders passed by the officer scrutinising the nominations. 5th August, 1957.
6. Decision of the revision application. 10th August, 1957.
7. Last date for withdrawal of candidates. 13th August, 1957.
8. Posting of list of valid nominations. 14th August, 1957.

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| <p>9. Last date for second withdrawal of candidature. 17th August, 1957.</p> <p>10. Posting of list of polling stations. 20th August, 1957.</p> <p>11. Poll if necessary. 28th August, 1957.</p> <p>12. Counting. 29th August, 1957.</p> <p>13. Declaration of result of bye-elections. Immediately after the counting if finished."</p> | <p>S. Kehar Singh<br/>v.<br/>The Punjab<br/>Government and<br/>others.</p> <hr style="width: 20%; margin: 0 auto;"/> <p>Dua, J.</p> |
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It is clear that a list of nominations was duly posted on the 28th of July, 1957 under rule 10 of the Rules and on scrutiny of the nomination papers on the 29th of July, 1957, nomination of one S. Milkha Singh, one of the candidates, was refused. Two other candidates S. Hazara Singh and S. Sant Singh duly withdrew their nominations on the 13th of August, 1957 leaving in the field the petitioner and one S. Kartar Singh. A list of nominations was also duly posted on the 14th of August, 1957. According to the date-sheet 17th of August, 1957 was the last date for second withdrawal of candidature and then under rule 4 polling was to be held, if necessary, on the 28th and counting on the 29th of August, 1957.

It appears that on the 14th of August 1957 the Commissioner, Gurdwara Elections, Punjab, wrote a letter to the Deputy Commissioner, Ambala, requesting him to immediately change the dates for the bye-election in the Committee constituency for Gurdwara Bhatta Sahib (D. 232 of Schedule I) at Kotla Nihang, Tehsil Lupar, district Ambala. According to the letter this was necessitated on account of the limits of the constituency in question having been altered on the 18th

S. Kehar Singh of July, 1957. According to the new date-sheet  
 v. 22nd of August, 1957 was the date fixed for publi-  
 The Punjab cation of notice calling upon the extended consti-  
 Government and tuency for election and nomination and after giv-  
 others. ing various dates for the various steps to be taken  
 in the election, 15th of October, 1957 was fixed for  
 Dua, J. the poll, if necessary, and 16th of October, 1957 for  
 the counting of votes. In the end it was stated  
 that the nomination papers already received and  
 accepted by the Returning Officer, should also  
 remain there and steps already taken by him in  
 connection therewith need not be invalidated.

The question that arises for consideration is whether this direction is in accordance with law and whether the various steps taken up to the 14th of August, 1957 in the course of the election proceedings could be validly set aside by means of the aforesaid directions dated the 14th of August, 1957.

Section 89 of the Sikh Gurdwaras Act (Punjab Act No. VIII of 1925) provides for the election of members. It reads thus—

“89. (1) The elected members of a committee constituted for a gurdwara specified in Schedule I shall be elected by the constituencies specified in the schedule against the gurdwaras:

Provided that the State Government may, from time to time, and after such consultation with the Board as it considers proper, by notification, alter the local limits of any constituency.

2) The elected members of a committee constituted for a gurdwara other than a gurdwara specified in schedule I shall be elected by a constituency formed, subject

to the approval of the State Government, by the Board in general meeting, provided that for the election of such a Committee before the constitution of the first Board under the provisions of this Act, the State Government shall, if necessary, form the constituency.

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- (3) The Board may in general meeting, and subject to the approval of the State Government, from time to time, vary any constituency formed under the provisions of subsection (2).
- (4) When any constituency to elect members of a committee is formed or varied according to the provisions of subsection (2) or (3), as the case may be, the State Government shall notify the fact of the constituency having been so formed or varied and the date of the publication of the notification shall be the date from which the formation or variation of the constituency shall take effect."

It is agreed at the Bar that subsections (2) and (3) do not apply to the Gurdwara in question. The only other relevant section for the purposes of this case is section 96(1) which reads as follows:—

"96. (1) 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 appoint any qualified person to fill the vacancy."

The other subsections of this section are not relevant for the purposes of this case.

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The Governor of Punjab made rules under section 146 of the Sikh Gurdwaras Act which were notified in the *Punjab Government Gazette* on the 5th of August, 1954. Rule 4 provides for notice, to be posted by the Returning Officer at his office and at the office of each tehsil in which the area comprising the constituency, or any part of such area is situated, and at the office of every patwari, if any, and every post office, if any. and every Notified Sikh Gurdwara, situated in such area, in which should be given the date-sheet, and the various steps to be taken in the course of election. Sub-rule (3) of rule 4 confers on the State Government and the Deputy Commissioner power to change the dates at any time provided that, unless the State Government otherwise directs, no such order shall be deemed to invalidate any proceedings taken before the date of the order.

Section 89 of the Sikh Gurdwaras Act does indisputably confer on the State Government power at any time to alter the local limits of any constituency as it considers proper provided it is done after consultation with the Board. The question, however, is whether by altering the limits of the constituency the State Government can cancel and nullify the notice validly and properly issued by a Returning Officer under rule 4 of the Sikh Gurdwaras Committee Election Rules, 1954, particularly when more than half the steps in completing the election have been already validly taken in pursuance of the said notice. The counsel for the respondents attempted to get support for his contention from sub-rule (3) of rule 4 which confers power on the State Government and the Deputy Commissioner to change the dates for doing various things enumerated in sub rule (1). I am affraid sub-rule (3) does not support his submission. Sub-rule (3), as I read it, merely permits



the State Government or the Deputy Commissioner to change the dates for the steps enumerated in sub-rule (1). Normally speaking, the change of dates contemplated by sub-rule (3) would refer to those steps mentioned in sub-rule (1) which have yet to be taken; it should not be construed as authorising the Government or the Deputy Commissioner under the pretext of changing the dates for the various steps mentioned in sub-rule (1), to set aside the steps already taken. Reliance has, however, been placed, by the counsel for the respondents, on the proviso to sub-rule (3) which undoubtedly contemplates invalidating of proceedings taken before the date of the order, passed under this sub-rule, changing the dates; the proviso can, however, come into operation only if the Government issues a direction to that effect. It is contended that sub-rule (3) and the proviso read together must be interpreted as conferring on the Government full power to change the dates so as even to invalidate and set aside all steps or proceedings taken under sub-rule (1).

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Dua, J.

After giving my most anxious thought to the argument advanced on behalf of the respondents, I regret, I do not find it possible to agree with it. The proviso, generally speaking, does not enlarge the scope of the main provision to which it is added. Sub-rule (3) merely enables the Government and the Deputy Commissioner to change the dates for taking the various steps in pursuance of the notification directing the election to be held; there is no provision of law which expressly empowers the Government to invalidate, cancel or withdraw the order already issued calling upon the constituency concerned to elect the members of the committee, and to issue a fresh order after changing the limits of the constituency retrospectively.

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Dua, J.

The proviso cannot, in my opinion, be interpreted so as to confer this power on the Government. It merely refers to the invalidating of the proceedings taken after the notification calling upon the constituency concerned to elect the member, which invalidation is necessitated by the change in the dates of one or more of the steps taken in pursuance of the said notification. The position may also be viewed from another point of view. The notice which the Returning Officer affixes under rule 4 at his office and at the *various other places* remains intact and on variation or change is permissible under the law to be made in the places at which the notice has to be affixed under sub-rule (1) of rule 4. In my opinion sub-rule (3) does not contemplate any change in the area of the constituency because it is confined only to the change in the dates of the election as originally decided upon, no territorial variation in the constituency is contemplated in this sub-rule. Applying this test to the present case, if by changing the dates under sub-rule (3) of rule 4, the State Government could, as contended by the learned counsel for the respondents, acquire the power to enlarge the constituency then it should also have been given the power to direct the Returning Officer under sub-rule (1) of rule 4 in supersession of the entire direction to post the notice with respect to the election, at various places included in the area newly added to the constituency. This power admittedly has not been conferred on the State Government.

The learned counsel for the respondents then relied on the proviso to section 89(1) of the Act. As I have already said the proviso certainly grants power to the Government to alter the local limits of the constituency but this alteration cannot, in my opinion, be held to operate retrospectively so as

by itself to reopen the proceedings which have already been taken in pursuance of the notice calling upon the constituency to elect members of the Committee. Such an alteration can only operate prospectively. The learned counsel for the respondents has not been able to show any provision of the Act or of the Rules under which the Elections Commissioner or the State Government is empowered after various steps in the process of election have been duly and properly taken, to ignore or cancel them and to order a fresh election to be held on the basis of the altered constituency. In the absence of an express provision of law or of binding authority or of some other compelling reason I would be disinclined to construe the provisions of the proviso to section 89(1) and of sub-rule (3) of rule 4 in such a way as to confer by implication such extraordinary and uncontrolled power on the Government to interfere retrospectively with the process of election.

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On general considerations of public policy also I fail to understand how it can be considered desirable or proper in the present democratic set-up to so interpret the above provisions of law as to hold in favour of the Government possessing this power of interfering with the limits of the area of the constituency retrospectively after several important stages have duly been covered in the process of elections. Such a power is not only capable of being easily abused and misused to the serious prejudice of the candidates in the election, but its exercise is also likely to give rise to suspicion about the *bona fides* of the executive authorities. I may mention here that in the present case the petitioner has in fact challenged the *bona fides* of the Government in issuing the impugned order. Unless, therefore, I am compelled

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by a clear and express provision of law or by some other overriding considerations of general public interest I cannot persuade myself to agree with the contention of the learned counsel for the respondents who, it may be stated, has not been able to cite any precedent or authority in support of his contention, he has equally failed to show any other compelling reason inducing me to hold in favour of the Government possessing this unusual power.

The view that I am taking is also calculated to promote the healthy growth of the democratic system of managing public institutions through the agency of popularly elected representatives; this process of election should, in the best interests of democratic institutions, be kept as far as possible free from avoidable and excessive interference by the executive authorities unless the Legislature expressly provides to the contrary; more so when the interference is intended to operate retrospectively. In the circumstances I hold that the impugned direction issued by the Gurdwaras Elections Commissioner is in excess of his power and is, therefore, invalid.

The counsel for the petitioner has also raised the point alleging *mala fides* on the part of the State Government, but from the reply filed on behalf of the respondents, it is clear that the question of altering the limits of the constituency in question was actually being considered since 1956. It is not understood why the matter was not finally decided earlier and why the alteration in the limits of the constituency was sought to be enforced after the election in question had almost reached the stage of polling. It certainly raises some suspicion but on the record, as it is, I am unable to find that the action taken by the Government is *mala fide*.

In the result the petition is allowed and the impugned order dated the 14th of August, 1957 from the Commissioner, Gurdwaras Elections, Punjab, to the Deputy Commissioner, Ambala, and the order dated 16th of August, 1957 from the Deputy Commissioner, Ambala, to the Tehsildar, Rupar, and to the Returning Officer are hereby quashed and set aside and it is directed that the election to the Committee of management for Gurdwara Bhatta Sahib should be completed in accordance with the order dated the 4th of July, 1957 issued by Shri Sarup Krishan, I.C.S., Elections Commissioner, Punjab, to the Returning Officer. Fresh dates will, of course, have to be fixed for taking the steps left out from the original date-sheet on account of the impugned orders which have now been set aside. Such fresh dates may now be fixed without undue delay and the election from the original constituency as shown in the order dated 4th July, 1957 concluded with due despatch. I hope this matter would be given the priority it deserves.

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The petitioner is entitled to have his costs of these proceedings.

Falshaw, J.—I agree.

Falshaw, J.

B. R. T.

#### SUPREME COURT.

Before T. L. Venkatarama Aiyar, P. B. Gajendragadkar and  
A. K. Sarkar, JJ.

DR. S. DUTT,—Appellant.

*versus*

UNIVERSITY OF DELHI,—Respondent.

Civil Appeal No 229 of 1956

Arbitration Act (X of 1940)—Section 30—Award—  
Error on the face of it—Meaning of—Specific Relief Act

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