

Jaimal Singh v. Shiromani Gurdwara Parbandhak Committee  
and another (S. S. Sandhwalia, C.J.)

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10. In view of the above, the petitioner is plainly entitled to an acquittal on the aforesaid ground and it is unnecessary to examine the other submissions raised on his behalf. The revision petition succeeds and the conviction and sentence of the petitioner are hereby set aside.

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H. S. B.

**FULL BENCH**

Before S. S. Sandhwalia, C.J., D. S. Tewatia and S. S. Kang, JJ.

JAIMAL SINGH,—Appellant.

*versus*

SHIROMANI GURDWARA PARBANDHAK COMMITTEE

and another,—Respondents.

*First Appeal From Order No. 145 of 1976.*

April 29, 1980.

*Sikh Gurdwaras Act (VIII of 1925)—Sections 87, 88 (3) and 142—New Committee nominated for the management of a Gurdwara—Petition under Section 142 filed with the Judicial Commission seeking handing over of property and accounts etc. to the new Committee—Constitution of the Committee challenged—Judicial Commission—Whether could adjudicate on the validity of the constitution of the Committee—Notification constituting a Committee under section 88 (3)—Whether conclusive.*

*Held*, that section 142 of the Sikh Gurdwaras Act 1925 is couched in language which seems to have a wide ranging amplitude. It provides that any person having an interest in the notified Sikh Gurdwara may make an application before the Judicial Commission against the Board or a number of other persons specified therein in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by the Act or any alleged expenditure on the purpose not authorised by the Act and if the same is proved before the Commission, it may award damages or costs against such a person or body and impose other penalties provided in the said section. It does not seem to be easy to impose any artificial limitations on the relatively wide ranging powers conferred

on the Commission by virtue of the provisions of section 142 of the Act. Whilst section 87(3) (a) provides for a nominated committee of a management for a Gurdwara whose gross annual income does not exceed Rs. 3,000, the following sub-section (b) in sharp distinction thereto lays down that the committee of a Gurdwara whose income exceeds the aforesaid amount shall consist of four elected members and one member nominated by the Board. Section 88(3) of the Act then lays down that when the members of a Committee have been nominated or elected, in either case, in accordance with the provisions of section 87 of the Act, then the State Government shall issue a notification with regard to the constitution of the Committee and the date of the publication shall be deemed to be the date of the constitution of the said committee. Section 88(3) of the Act does not in any way make the issuance of the notification either sacrosanct or beyond the pale of challenge. In the analogous provisions for the issuance of the notification in sections 5(3), 7(5) and 10(3) of the Act, the law itself provides that the notifications issued thereunder would be conclusive proof of the facts so notified. Section 88(3) of the Act carries no analogous provision and the notification issued thereunder cannot, therefore, be raised to the pedestal of being conclusive on the point. Consequently, the Commission under section 142 of the Act cannot be barred from examining the validity thereof. (Paras 3 and 4).

*First Appeal from order of the Court of Sikh Gurdwaras Judicial Commission, Amritsar, dated the 26th February, 1976, dismissing the petition.*

B. S. Shant, Advocate, for the Appellant.

Narinder Singh, Advocate, for Respondent No. 1.

R. S. Mongia, Advocate, for Respondent No. 2.

#### JUDGMENT

*S. S. Sandhwalia, C.J.*

(1) Whether the Judicial Commission has the jurisdiction under Section 142 of the Sikh Gurdwaras Act, 1925, to adjudicate on the validity of the constitution of a nominated Committee under Section 87(1)(a) of the said Act? — is the meaningful question which has necessitated the admission of this Appeal for decision by a Full Bench.

2. Learned counsel for the parties are agreed that apart from some fragmentary challenge on merits, the aforesaid question of law

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is the only substantial one in issue before us. It, therefore, suffices to notice the facts with relative brevity relevant thereto. The Shiromani Gurdwara Parbandhak Committee had presented the petition under Section 142 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as 'the Act') before the Judicial Commission against Harbhajan Singh and Jaimal Singh, respondents. It was averred therein that Harbhajan Singh, respondent was the President of the former Committee of management of the notified Sikh Gurdwara, Sangatpura, till a new nominated Committee was notified by a notification dated December 22, 1973 which had duly elected Jaimal Singh, appellant as its President. It was the claim that Harbhajan Singh, respondent was imperatively bound to hand-over the complete charge of all the gurdwara property, books of account and cash in hand etc. to Jaimal Singh, appellant on the constitution of the new Committee, but he had failed to do so. On the aforesaid allegations, the relief claimed by the Shiromani Gurdwara Parbandhak Committee was that Harbhajan Singh, respondent be directed to hand-over complete charge of all property, record etc. to the appellant-Jaimal Singh.

3. In response to the notice issued by the Judicial Commission, Harbhajan Singh, respondent appeared and controverted the allegations. The appellant, despite service did not even choose to appear and hence proceedings against him were ordered *ex-parte*.

4. From the pleadings of the parties, as many as eight issues were struck, but it is the agreed position now that the only one which calls for notice is issue No. 5 in the following terms :—

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5. Whether a fresh Committee of management has been validly constituted by the petitioner committee *vide* notification of the State Govt. No. 1008-Gurdwaras dated 22nd December, 1973 as alleged in para No. 5 of the petition?

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Under the aforesaid issue, the parties led their evidence, on appraisal whereof the Commission came to the conclusion that the annual income of the Gurdwara was a little above Rs. 3,200 and that being so the Shiromani Gurdwara Parbandhak Committee had no jurisdiction

to constitute a nominated Committee of management for the Gurdwara and therefore the constitution of the whole Committee was without jurisdiction and void. It was sought to be argued before the Commission that after the notification under Section 88 of the Act, published by the State Government with regard to the constitution of the Committee of management, the Judicial Commission had no jurisdiction to go into that question. In repelling the said contention, primary reliance was placed by the Commission on the Division Bench judgment of this Court in *Shiromani Gurdwara Parbandhak Committee v. Lakhwant Singh*, (1). It calls for pointed notice that it was a challenge to the correctness of this judgment which had necessitated the admission of the case to the Full Bench.

3. As would be evident hereafter, we are firmly of the view that the ratio in *Lakhwant Singh's case* (supra), is impeccable and it would, therefore, be wasteful to elaborate an issue which appears to be well covered by a precedent of this Court. It would perhaps suffice to mention that Section 142 of the Act is couched in language which seems to have a wide ranging amplitude. It provides that any person having an interest in the notified Sikh Gurdwara may make an application before the Judicial Commission against the Board or a number of other persons specified therein in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by the Act or any alleged expenditure on the purpose not authorised by the Act and if the same is proved before the Commission, it may award damages or costs against such a person or body and impose other penalties provided in the said Section. It does not seem to be easy to impose any artificial limitations on the relatively wide ranging powers conferred on the Commission by virtue of the provisions of Section 142 of the Act.

4. Reference in this context may then be made to Section 87 and 88 of the Act. It suffices to notice that whilst Section 87(1)(a) provides for a nominated Committee of management for a Gurdwara whose gross annual income does not exceed Rs. 3,000, the following sub-section (b), in sharp distinction thereto lays down that the Committee or a Gurdwara, whose income exceeds the aforesaid amount, shall consist of four elected members and one member nominated by the Board. Section 88(3) of the Act then lays down that

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(1) P.A.O. 177 of 1965 decided on 20th November, 1970.

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when the members of a Committee have been nominated or elected, in either case, in accordance with the provisions of Section 87 of the Act, then the State Government shall issue a notification with regard to the constitution of the said Committee and the date of the publication shall be deemed to be the date of the constitution of the said Committee. What calls for pointed notice herein is that Section 88(3) of the Act does not in any way make the issuance of the notification either sacrosanct or beyond the pale of challenge. It is in this context that one may refer to the analogous provisions for the issuance of notification in Section 5(3), 7(5) and 10(3) of the Act. Significantly in the aforesaid provisions, the law itself provides that the notifications issued thereunder would be conclusive proof of the facts so notified. Learned counsel for the appellant had to concede that Section 88(3) of the Act carries no analogous provision and the notification issued thereunder cannot, therefore, be raised to the pedestal of being conclusive on the point. Consequently, the Commission under Section 142 of the Act cannot be barred from examining the validity thereof.

5. As I said earlier, the point before us seems to be so well covered by the earlier decision in *Lakhwant Singh's case* (supra), that it would be hardly apt to launch on a fresh dissertation thereon. The sole point raised in the said case, as noticed by the Bench was — whether the Commission had the jurisdiction to go beyond the notification and examine the validity of the constitution of the Committee thereby? After an examination of the question on principle as also in the context of the statutory provisions, Dhillon, J. speaking for the Bench held as follows :—

“..... But in our view, the power of determining the question in hand is vested in the Sikh Gurdwara Judicial Commission under the provisions of Section 142 of the Act. If the Commission comes to the conclusion, that Lakhwant Singh is guilty of the neglect of duty, the Commission has power to pass appropriate orders as it may deem fit and proper in the circumstances of the case. But, on the other hand, if the Commission finds that Lakhwant Singh is not guilty of neglect of duty in not handing over the charge to the Committee which is not legally constituted and which has no jurisdiction to manage the Gurdwara concerned, in that case, no case is

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made out against Lakhwant Singh respondent. Therefore, we are of the opinion that the provisions of Section 142 of the Act are wide enough to include the jurisdiction of deciding the question whether the Committee was duly constituted or not, because this fact is basic and incidental to the controversy between the parties before the Commission. The perusal of section 88 of the Act again shows that no finality has been attached to the notification issued by the State Government while constituting the Committee as nominated by the Board. If the Legislature wanted to give finality to the said notification, it would have been clearly mentioned in section 88, sub-section (3) of the Act that the notification so published shall be deemed to be final and will not be open to question. If that provision would have been made in section 88, in that case, there would have been exclusion of jurisdiction of the Commission specifically and that would have debarred the jurisdiction of the Commission to go into the matter .....

6. Learned counsel for the appellant herein signally failed in levelling any meaningful criticism to the rationale and the ratio of the aforesaid decision. Indeed even though repeatedly pressed, Mr. Shant was unable to concretise any alleged error or fallacy in the said judgment. Nor was any principle cited by the learned counsel to assail the said judgment and further he could point to no failure or omission to notice any relevant statutory provision. In fact, counsel very fairly stated that he could not cite any judgment directly to the contrary or even by way of analogy.

7. In view of the above, we would affirm the Division Bench judgment in *Shiromani Gurdwara Parbandhak Committee v. Lakhwant Singh* (1 supra). Consequently, the answer to the question posed at the very outset is returned in the affirmative.

8. Repelled on the preliminary point of the legal challenge, Mr. Shant was rather half-hearted in assailing the findings of the fact arrived at by the Commission on merits. Apart from baldly saying that the Commission's finding that the income of the Gurdwara was above Rs. 3,000 was perverse and based on no evidence, the learned counsel could point to no infirmity in the appraisal of evidence by the Commission.

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9. On issue No. 5, which is the material one, parties had led evidence. Karam Singh, Record-Keeper (P.W. 1) proved on the record, the notification exhibit P/1, *vide* which the new Committee of management of Gurdwara Sangatpura, had been constituted. In cross-examination, he conceded that this Committee was constituted on the nomination of the Shiromani Gurdwara Parbandhak Committee and that no election had taken place. Surjan Singh (P.W. 2) proved report exhibit P/2 and had in fact to be cross-examined on behalf of the petitioner-Committee. The appellant Jaimal Singh himself stepped into the witness-box and proved exhibit P/3 dated July 25, 1974,—*vide* which the election of office-bearers of the newly nominated Committee of management was recorded. He further stated that the annual income of the Gurdwara was only Rs. 2,400 and that the Gurdwara owned 10 *killas* of land. He was competently cross-examined and was forced to admit that he had his own land, measuring 2 *killas* 1 *kanal*, leased for Rs. 650 and his further cross-examination showed that the quality of the land of the Gurdwara was far superior to his own. He also conceded that besides the income of agricultural land, worshippers also made cash offerings in the shape of wheat and flour on auspicious days.

10. Relying on the evidence of the appellants, Jaimal Singh itself, the Commission rightly concluded that the *nehri* land can fetch at least Rs. 320 as rent per *killa*. It is the common stand that the Gurdwara was in possession of the land and therefore, 10 *killas* of land would inevitably provide an income of Rs. 3,200 apart from the offerings by the devotees. The Commission was, therefore, eminently right in arriving at the conclusion that the annual income of the Gurdwara exceeded Rs. 3,000 and therefore, its Committee of management could only be elected and not nominated. In the aforesaid context, it also deserves notice that the petitioner before the Commission was the Shiromani Gurdwara Parbandhak Committee and admittedly, it led no evidence whatsoever that the income of the Gurdwara at the material time was less than Rs. 3,000. Perhaps it equally calls for notice that the Shiromani Gurdwara Parbandhak Committee has preferred no appeal against the judgment of the Commission. On the other hand, Mr Narinder Singh, learned counsel for the Shiromani Gurdwara Parbandhak Committee, firmly took the stand that section 142 of the Act gave wide powers to the Commission to decide the issue of the validity of the Committee under

section 87 of the Act and stoutly supported the judgment in *Lakhwant Singh's case* (supra).

11. In view of the above, we find that the challenge on behalf of the appellant, both on the point of law and also on merits must necessarily fail. The F.A.O. is hereby dismissed with costs.

D. S. Tewatia, J.—I agree.

S. S. Kang, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., Prem Chand Jain and Harbans Lal, JJ.

GULAB SINGH and others,—Petitioners.

versus

STATE OF HARYANA and others,—Respondents.

Amended Civil Writ Petition No. 5194 of 1978.

May 9, 1980.

*Punjab District Attorneys Service Rules 1960—Rules 5, 9 and 12—Haryana State Prosecution Legal Service (Group A) Rules, 1979—Rules 9 and 19—Constitution of India 1950—Article 309—Appointments made to the service under 1960 Rules of persons not eligible—1979 Rules repealing 1960 rules governing the service—Persons not eligible under the 1960 Rules made eligible retrospectively under rule 19—Rules 9 and 19 of 1979 rules—Whether valid—Such rules—Whether could be deemed to be valedictory.*

*Held*, that once effect is to be given to the retrospectivity clause of sub-rule (2) of Rule 19 of the Haryana State Prosecution Legal Service (Grade A) Rules, 1979, it is evident that the provisions of the sub-rule must be deemed to have been on the statute book with effect from the 1st day of April, 1974). By virtue of this legal fiction the orders of appointment passed under the 1960 rules after the aforesaid date would be wholly in accordance with the provisions of rule 19(1). Consequently, it necessarily follows that the orders of appointment in view of the retrospective operation of rule 19 must be deemed to be in accordance with law and therefore, indeed no validation thereof was required. Even otherwise a plain look at the provisions of rule 19 would indicate that it does not either expressly or implicitly intend to validate anything invalid, but primarily provides for the eligibility for promotion to the post of the