

APPELLATE CIVIL

Before Kapur and Bishan Narain, JJ.

S. HARNAM SINGH,—Appellant

v.

GIANI GURBACHAN SINGH,—Respondent

First Appeal from Order No. 170 of 1954.

The Sikh Gurdwaras Act (Punjab Act VIII of 1925)—Sections 64, 85(2) and 142—Powers exercised by the Executive Committee under section 64—Whether tantamounts to powers exercised by the Board—Sections 85(2) and 142, meaning and scope of—Press note—Whether can take the place of the rules or of the Act.

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Held, that according to section 64 of the Sikh Gurdwaras Act, the Executive Committee of the Board has all the powers of the Board conferred on itself but it cannot be said that any power exercised by the Committee of the Board is power exercised by the Board itself for the purposes of taking action under section 142 of the said Act.

Held, that section 85(2) of the Sikh Gurdwaras Act, imposes a duty on the Board to prepare a scheme for the administration and management of the Gurdwaras and the scheme so prepared is to provide that 5 per cent of the gross income is to be earmarked by the Committee of Management for the promotion and uplift of Industry by which the Sikh Community shall be benefited. There is nothing said in this section as to any money being earmarked for scholarships.

Held, that section 142 of the Sikh Gurdwaras Act, gives the power to persons to complain to the Commission in respect of misfeasance, etc., and the complaint can be in regard to "alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by this Act or any alleged expenditure on a purpose not authorised by this Act."

Held, that a press note cannot take the place either of the rules or the Act.

First Appeal from the decree of Sikh Gurdwara Judicial Commission, consisting of Sh. Buta Singh, President, Judicial Commission, Amritsar, S. Charan Singh, Member, Judicial Commission, Amritsar, S. Manohar Singh, Member, Judicial Commission, Amritsar, dated the 14th day of October, 1953, passing a decree for Rs. 610 in favour of Giani Gurbachan Singh (petitioner) for the benefit of the Shiromani Gurdwara Parbandhak Committee and also ordering to pay Rs. 63 as costs of the petition to the petitioner and removing the respondent from the membership of the Gurdwara Parbandhak Committee, adding that respondent is also disqualified from the membership of Gurdwara Parbandhak Committee for a period of three years from the date of his removal.

S. D. BAHRI, for Appellant.

H. S. GUJRAL, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J.—This appeal is brought by the original respondent Harnam Singh against a decree passed by the Judicial Commissioner ordering him to pay Rs. 610 to the Sikh Gurdwaras Prabandhak Committee and removing him from membership of that body and also disqualifying him for a period of three years.

The original petitioner Gurbachan Singh Giani was the Secretary of the Shiromani Akali Dal, Amritsar, and on the 11th December, 1952, he made an application to the Judicial Commission under section 142 of the Sikh Gurdwaras Act for recovery of money and for other reliefs. It was alleged that the original respondent had by abusing his powers as a member of the Board received monetary advantage of Rs. 610 which was paid to his son by way of cash grants from the funds of the S. G. P. C. and he had thereby incurred disability given under section 142 of the Sikh Gurdwaras Act. It was also alleged that

the petitioner was under legal and moral obligation not to use or deal with the property of the S. G. P. C. for his own private benefit and he was under duty not to connive at or knowingly facilitate any act or conduct of another person which amounted to breach of trust and resulted in loss to the Gurdwara property. The defence was total denial of the allegations.

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The Commission framed the following four issues :—

1. Was Lakha Singh, a son of the respondent, given cash grants from the funds of the S. G. P. C. as mentioned in paras 4, 5 and 6 with the connivance and assistance of the respondent ?
2. If so, is the respondent guilty of abuse of power as member of the S. G. P. C. and breach of trust in getting this monetary advantage to his son or indirectly to himself ?
3. If issues 1 and 2 are proved, is the petitioner entitled to any damages; if so, to what extent ?
4. Relief.

It held that Lakha Singh was granted Rs. 610 from out of the funds of the S. G. P. C., that it was the father Harnam Singh who got scholarships for his son and thereby the original respondent derived personal benefit and therefore he was liable to pay back the money as well as incur the disabilities.

Lakha Singh, son of the original respondent Harnam Singh was a student in the Khalsa College. He applied on the 18th of August, 1950, for a scholarship saying that he was unable to continue his studies and that his father had made sacrifices and taken part

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in Akali agitation and in all movements started by the Panth. By a resolution dated the 26th September, 1950, Rs. 300 were sanctioned which were paid to him on the 7th October, 1950, under receipt Ex. P.W. 1|1. He made another application on the 28th July, 1951, and a resolution was passed on the 27th October, 1951, and Rs. 610 were paid to him on the 15th November, 1951, which is evidenced by receipt Ex. P. W. 1|2. He made no other application but by a resolution dated the 2nd February, 1952, he was paid on the 18th February, 1952, Rs. 150 which is evidenced by Ex. P. W. 1|3. The second application was recommended by S. Sohan Singh Jalalusman who was a member of the executive body of the S. G. P. C. He was also a member of the Board.

Taking the evidence of the petitioner first, Piara Singh P. W. 1. has stated that moneys were paid as I have given above, Lakha Singh, the son of the original respondent, is the next witness and he has stated that he applied without the knowledge of his father and he was given the money as shown above. P. W. 3 is the petitioner himself but his statement does not help the case at all. The respondent went into the witness-box and he stated that his son was given the scholarship without his knowledge and that he was giving sufficient money to his son for his education. Sohan Singh Jalalusman appeared as C. W. 2 and he stated that he recommended scholarship for Lakha Singh as he was not well-off. He also stated that he did not even know whose son Lakha Singh was. Another witness C. W. 1 Ram Kishan Singh stated that scholarships were given to College students but the S.G.P.C. had made no rules as to how scholarships were to be given or to whom.

This in short is the evidence which has been led by the parties. It does not disclose as to what is the duty for the breach of which Harnam Singh is guilty.

According to the evidence of C. W. 1 Ram Kishan Singh the scholarships are given to College students out of a trust fund which is created out of a levy on Gurdwaras' income. No rules have been made, according to him, prescribing the class or classes of persons to whom scholarships can be given. Some press note was issued, but press note cannot take the place either of the rules or of the Act. At any rate the whole of the evidence led by the parties discloses that the scholarships were given by the Executive Committee of which Harnam Singh is neither a member nor is it shown that he has in any way influenced the exercise of the discretion. It may be that it is not right for sons of members to get scholarships from the S. G. P. C., but an impropriety of this kind will hardly come within dereliction of duty imposed by section 142 of the Sikh Gurdwaras Act.

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Section 85(2) of the Sikh Gurdwaras Act imposes a duty on the Board to prepare a scheme for administration and management of the Gurdwaras. The proviso to this section is as under :—

“Provided that any scheme so prepared shall, except for the period from 1st April, 1947, to the 31st March, 1950, provide that 5 per cent of the gross income be earmarked by the Committee of Management for the promotion and uplift of Industry by which the Sikh Community shall benefit.”

All it says is that 5 per cent of the gross income is to be earmarked by the Committee of Management for the promotion and uplift of Industry by which the Sikh Community shall be benefited. There is nothing said in this section as to any money being earmarked for scholarships. Section 142 gives the power to persons to complain to the Commission in

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respect of misfeasance, etc., and the complaint can be in regard to "alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by this Act or any alleged expenditure on a purpose not authorised by this Act." In the present case the evidence led by the petitioner was so sketchy that nothing further need have been done by the Commission, and even the evidence led by the original respondent himself does not make the position any better for the case of the petitioner. The order of the Judicial Commission seems to be more based on conjectures than on evidence. The Commission has remarked under issue No. 2:—

"The insinuation may or may not be correct but this much is clear that the payment was made near about the days of the annual General Meeting. It is, therefore, proved that by getting the payment of Rs. 610 made to his son, it was the respondent who derived personal benefit. We, therefore, find the issue against the respondent".

Merely because some payments were made before the Annual General Meeting cannot necessarily lead to the conclusion that Harnam Singh got the scholarship for his son as a price for voting for a certain person or a set of persons for which there is neither proof nor does anything on the record lead to that inference. The resolution for the grant of Rs. 300 was passed on the 26th September, 1950, and the application was made on the 18th August, 1950. The meeting was held in November, 1950. There is not even proximity of time in this case.

The second application was made on the 28th July, 1951, and although the resolution was passed at an early date, this amount was not paid till the 15th November, 1951, and the Annual General Meeting

had been held on the 28th October, 1951. The third instalment was paid on the 18th February, 1952, and the resolution for this was passed on the 2nd February, 1952, and the meeting was held on the 18th February, 1952. It is not shown that at any one of these meetings Harnam Singh was present or that Harnam Singh voted for any consideration. To merely draw an inference from the dates of meetings is to be over suspicious and I find no ground for upholding the finding of the Judicial Commission that the original respondent drew any personal benefit by misusing his vote. According to section 64 the Executive Committee of the Board of which the appellant was not a member has all the powers conferred on the Board itself, and the words in the section are "shall exercise", and therefore it cannot be said that any power exercised by the Committee of the Board was power exercised by the Board itself for the purposes of taking action under section 142, and I confine myself to the facts of this case.

After consideration of the evidence on the record I am of the opinion that no case has been made out against the appellant and the Commission have misdirected themselves in holding him guilty of abuse of power or any misfeasance. I would therefore allow this appeal and set aside the order of the Commission. Parties will bear their own costs throughout.

BISHAN NARAIN, J.—I agree.

Bishan Narain,
J.

CIVIL MISCELLANEOUS

Befort Bhandari, C.J.

MATHRA DASS,—*Petitioner*

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OM PARKASH AND OTHERS,—*Respondents*

Civil Miscellaneous No. 363 of 1956.

Practice and Procedure—Rent Controller and Appellate Authority—Procedure to be followed—Whether bound

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