

Before T.S. Thakur & C.J. & Surya Kant, J.

**GURU NANAK DEV UNIVERSAL BROTHERHOOD
SOCIETY,—Petitioner**

versus

**SHIROMANI GURUDWARA PRABANDHAK COMMITTEE
AND OTHERS,—Respondents**

C.W.P. No. 6929 of 2008

25th September, 2008

Constitution of India, 1950—Art. 14, 16(4) & 226—Sikh Gurdwara Act, 1925—Ss. 142-PIL—Telecast of Gurbani—Allegations against S.G.P.C. of embezzlement of funds and misdirection/misutilization of amounts received from a Television Channel in connection with contract awarded in its favour—Contract between S.G.P.C. & Commercial Channel—Jurisdiction of High Court to interfere—Unless it is shown that any such arrangement is palpably, irrational, against public policy, morals or good conscience—No infirmity or illegality in telecast of Gurbani through medium of a commercial channel—Section 142 provides an effective, alternate mechanism to ventilate grievances against any act of malfeasance, misfeasance, breach of trust etc. before Sikh Gurdwara Judicial Commission—Proper course for petitioner to approach Commission and to demand an adjudication of issues that he may like to raise—Failure of petitioner to do so not bona fide—Petitioner failing to make any specific charge of embezzlement of any amount paid by Channel nor does it accuse Committee or any member of S.G.P.C. with any specific act of malfeasance, misfeasance, breach of trust, neglect of duty—Simply making an allegation may not be enough—No evidence that can inspire confidence to suggest even on prima facie basis that there has been some misappropriation of funds by any one of the functionaries of the S.G.P.C.—Petition dismissed with costs.

Held, that it is manifest from the provisions of Section 142 that any person having an interest in a notified Sikh Gurdwara, including

a Society like the petitioner can make an application to the Sikh Gurdwara Judicial Commission established under Section 70 of the Act pointing out any act of malfeasance, misfeasance, breach of trust, neglect of duty, abuse of power or any expenditure on a purpose not authorized by the Act. It is further evident from the language employed in the provisions that if the Sikh Gurdwara Judicial Commission finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure to be proved, it may consistently with the provisions of the Act and of any other law of enactment for the time being in force, direct any specific act to be done or forbore for the purpose of remedying the same and may order the removal of any office holder or member of the Board, Executive Committee or Committee, responsible for the same and may also disqualify any member of the Board, Executive Committee or Committee, thus removed from such membership for a period not exceeding five years.

(Paras 8)

Further held, that the allegations made by the petitioner of embezzlement of funds and misdirection or misutilization of the amounts received from respondent No. 3 in connection with the contract awarded in its favour, clearly fall within the wide ambit of the powers conferred upon Sikh Gurdwara Judicial Commission. That it is so was not disputed by Dr. Rahi appearing for the petitioner what was contended by him was that this Court could direct the Sikh Gurdwara Judicial Commission to treat the present writ petition as a complaint/application made before it and to dispose of the same within a period of two months. We regret our inability to accept that submission. If Section 142 of the Act provides an effective, alternate mechanism for the petitioner to ventilate its grievances against any act of malfeasance, misfeasance, breach of trust etc. before the Sikh Gurdwara Judicial Commission, we see no reason why the petitioner should have rushed to this Court with the present writ petition in purported public interest. The proper course for the petitioner was to approach the Commission and to demand an adjudication of the issues that the petitioner may like to raise. Failure of the petitioner to do so is not *bona fide*. The allegation made by the respondent—S.G.P.C. that the petitioner is making common cause with Tata Sky/DTH Platform, who happens to be a competing T.V. Channel

with ETC Punjabi, respondent No. 3, cannot be brushed aside lightly. That is particularly so when the writ petition does not spell out any specific charge of embezzlement of any amount paid by respondent No. 3 nor does it accuse the Committee or any member of the S.G.P.C. with any specific act of malfeasance, misfeasance, breach of trust, neglect of duty etc. Simply making an allegation that S.G.P.C. is misappropriating the funds or misdirecting the accounts or not accounting for the same, may not be enough. It is easy to rush to the Court with a writ petition claiming relief on high moral grounds but difficult to substantiate the allegations made in the same unless the petitioner has done its home work, in the form of investigating the allegations of malfeasance, misfeasance, breach of trust or neglect of duty etc. The petitioner society does not appear to have done anything of that sort. There is no evidence that can inspire confidence to suggest even on *prima facie* basis that there has been some misappropriation of funds by any one of the functionaries of the S.G.P.C. The respondent S.G.P.C. has in its affidavit clearly disclosed that it has received a sum of Rs. 5,48,19,500 from respondent No. 3 till date, since the allotment of the contract. A sum of Rs. 53 lacs out of the total amount is, however, due which respondent No. 3 is required to pay. That is far from saying that there is any misappropriation. The present proceedings in that backdrop, are a clear abuse of the process of law.

(Para 9)

Dr. M.S. Rahi, Advocate *for the petitioner.*

P.S. Thaira, Advocate *for S.G.P.C.*

O.S. Batalvi, Advocate *for Union of India.*

Munish Jain, Advocate, *for ETC, Punjabi.*

T.S. THAKUR, C.J. (ORAL)

(1) This petition purports to have been filed in public interest. It prays for a writ of mandamus directing the respondents not to permit what he describes as “Monopolization of telecast of Gurbani” from the Golden Temple in Amritsar through respondent No. 3, which happens to be a Punjabi Television Channel. It also prays for a declaration that

the telecast of Gurbani through a commercial channel tantamount to commercialization of religion, which is against the basic tenets of Sikhism and detrimental to the interest of the Sikhs as a Community. It prays for striking down the contract entered into between respondent No. 3 channel and respondent No. 1 Shiromani Gurdwara Prabandhak Committee (for short 'S.G.P.C. '), as being against public policy and opposed to Section 23 of the Contract Act of 1872. It also prays for a direction to respondents No. 1 to 3 to account for the money received by them as a consequence of what is described as a "questionable contract" entered into between respondents No. 1 and 3 since the year 2000.

(2) The petitioner claims to be a Society registered under the Societies Registration Act, 1860 for research and propagation of the history and philosophy of Sikhism. It also claims to be responsible for many publications especially '*Guru Granth Sahib in the Eyes of Non-Sikh Scholars*', a book that is alleged to have been published and distributed worldwide in different languages including English, French and Spanish. In the present writ petition, the petitioner is aggrieved of what is described by it as "Commercialization of broadcasting of Gurbani." According to the petitioner, not only is the telecast of Gurbani through respondent No. 3 channel impermissible according to Sikh tenets but the same is also rapidly leading to corruption within the Shiromani Gurdwara Prabandhak Committee, which manages the affairs of the Golden Temple. It is alleged that the contract entered into between S.G.P.C. on the one hand and respondent No. 3 on the other hand, creates a long term monopoly in favour of respondent No. 3 and is, therefore, against the interests of the Sikh Community in general. It also alleges that allotment of such contracts encourages materialism and reduces the efficacy of Gurbani because of the introduction of commercial elements in it, which otherwise is a purely religious discourse. The writ petition traces the history of Sikh institutions and relies upon certain extracts from a thesis is submitted by Professor Kashmir Singh in support of the same. It alleges that immorality and corruption in the running the affairs of the Gurdwaras, was according to the historians, the prime reason for deterioration of the standards of Sikh religious

leaders and Sikh Shrines. It also refers to alleged nepotism and favoritism within the S.G.P.C. and its members and makes a reference to state of affairs at present in the management of the holiest of the shrines of the Sikh community.

(3) Respondent No. 1 S.G.P.C. has filed its counter affidavit in which the allegations made in the writ petition have been stoutly denied. It is denied by respondent-S.G.P.C. that telecast of holy Gurbani tantamount to commercialization or sale of the Gurbani. On the contrary, telecast of Gurbani from *Harmohinder Sahib* has been received very well by the Sikhs and non-Sikhs throughout the World. It also explains that the number of channels selected for relay of Gurbani has nothing to do with the acceptability of Gurbani as a divine song or its efficacy so long as those interested in listening to Gurbani have the means and access to the same. It enumerates different modes by which such programmes can be telecast, and emphasizes that Gurbani Kirtan is free of costs to the viewers all through. No body is according to the respondent-S.G.P.C. deprived of the telecast of Gurbani from Darbar Sahib and the interest of the viewers is no where affected by S.G.P.C. assigning exclusive right of telecast of Gurbani to respondent No. 3. It also points out that before entering into an agreement with respondent No. 3 in the year 2000, the respondents had entered into an agreement with two different channels, called Punjabi World and Channel Punjabi for the relay telecast of Gurbani. These two channels were given rights to telecast the Gurbani from *Harmohinder Sahib* free of cost. Both the channels had, however, failed to ensure the continuity of telecast under the agreement. It also enumerates the back ground in which the S.G.P.C. entered into an agreement with M/s ETC Punjabi respondent No. 3 in this petition and the terms on which the said agreement was arrived at. It also states that the S.G.P.C. has pursuant to the said agreement, already received an amount of Rs. 5,48,19,500 towards education fund which the S.G.P.C. is spending on education without expecting any monetary return from the beneficiaries of the said expenditure. The counter affidavit finds fault with the maintainability of the writ petition and refers to the provisions of Sikh Gurdwara Act,

1925, particularly provisions of Sections 70 and 142 of the said Act. It asserts that in terms of Section 70 of Sikh Gurdwara Act, 1925, a Sikh Gurdwara Judicial Commission comprising law knowing person(s) and possessing the requisite qualifications is competent to entertain from any person having interest in a Notified Sikh Gurdwara, any complaint regarding malfeasance, misfeasance, breach of trust, neglect of duty or abuse of powers conferred by the Act or any alleged expenditure for a purpose not authorized by the Act and the Commission, if it finds any such malfeasance, misfeasance, breach of trust, etc. is competent to direct any specific act to be done or forborne, for the purpose of remedying the same. It may also order the removal of any office holder or member of the Board, Executive Committee or Committee responsible for any such act. Suffice it to say that the respondents have not only disputed the factual assertions made by the petitioner society but questioned the maintainability of this petition on legal as well as factual grounds. In particular respondent-S.G.P.C. has alleged that petitioner society has a vested interest in making common cause with M/s Tata Sky/DTH Platform which is a business concern competing with respondent No. 3 and not a charitable institution. It, therefore, prays for the dismissal of the present writ petition with costs.

(4) We have heard learned counsel for the parties at considerable length and perused the record.

(5) Appearing for the petitioner society, Dr. Rahi made a two fold submission before us. Firstly, he contended that the allotment of contract by S.G.P.C. to respondent No. 3 channel was in itself an act that was contrary to Sikh beliefs as according to the petitioner the telecast of Gurbani was for monetary consideration which tantamount to commercialization of the tenets of Sikhism, an act that is wholly impermissible. Secondly, it was contended by Dr. Rahi that the respondent S.G.P.C. was guilty of embezzling huge amounts of money received by it and its failure to properly account for the receipts was tantamount to a failure to act in accordance with the provisions of the Sikh Gurdwara Act, 1925. It was strenuously argued by learned counsel that the basic tenets of Sikhism, was to fight against social evils prevailing

in the society and corruption was one of the evils that had been clearly deprecated by all the Sikh Gurus. The acts of embezzlement, malfeasance, misfeasance, breach of trust, etc. are according to Mr. Rahi totally intolerable and therefore, deserved to be dealt with a heavy hand. He urged that since the petitioner society had made serious allegations about corruption and malpractice's prevalent in S.G.P.C. in the matter of management of affairs of the Sikh Shrine at Amritsar and embezzlement of the amount received by the Shiromani Gurdwara Prabandhak Committee, it was a fit case which this Court ought to entertain for issue of appropriate directions in public interest.

(6) Having given our thoughtful consideration to the submissions made by Dr. Rahi, we are of the opinion that this petition must be dismissed as there is absolutely no scope for our intervention on the grounds urged before us by Dr. Rahi. The management of the Shrine at Amritsar, as pointed out earlier, is vested in a duly elected statutory body, whose composition and performance are all regulated by the provisions of Sikh Gurdwara Act and the Rules framed thereunder. If the Shiromani Gurdwara Prabandhak Committee comprising of persons who are respected by the Sikh Community and who are well-versed in Sikh tenets, considers telecast of holy Gurbani through a channel for listeners within and outside the country, to be compatible with the Sikh religious belongings, a writ Court exercising public interest jurisdiction would respect that decision and keep its hands off. That apart, the allotment of the contract in favour of respondent No. 3 in the instant case was made as early as in the year 2000 in terms of a formal agreement executed between the parties, a copy whereof has been enclosed as Annexure-P-3 to the writ petition. It is not disputed that the agreement has worked itself to the satisfaction of both the contracting parties for the past nearly eight years. If the version of the S.G.P.C. which manages the affairs of the shrine is to be believed, the Sikh Community and even non-Sikhs interested in listening to the holy Gurbani all over country have shown their happiness and satisfaction over the telecast of Gurbani which is now available to them without any charge whatsoever. Such being the position, we cannot in the present proceedings find fault with the allotment of the contract or

declare that telecast of Gurbani or any other religious ceremony festival or event being performed in the institution, is contrary to the beliefs of the Sikhs either on account of its so called commercial angle or for any other reason. As observed earlier the question whether Gurbani should be telecast and if so by what means and on what terms and conditions and by whom, cannot be the subject matter of a public interest litigation. Management of the affairs of the institution can, in our opinion, be better left to the S.G.P.C. and this Court would be slow to interfere in any contract or arrangement which the S.G.P.C. has arrived at, unless it is shown that any such arrangement is palpably, irrational, against public policy, morals or good conscience. We do not see any such infirmity or illegality in the telecast of Gurbani through the medium of a commercial channel in the present case. We have, thus, no hesitation in rejecting the first limb of the petitioner's case.

(7) That brings us to a question whether allegations regarding embezzlement, misappropriation, malfeasance, misfeasance, breach of trust, etc. made by the petitioner society make out a case for our interference in the present proceedings. Even here the petitioner society has considerable difficulty in its way. The provisions of the Sikh Gurdwara Act especially Section 70 thereof, in our view makes a complete code for redressal of grievances of any person whether the same be against malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or misdirection of the funds. Section 142 of the Sikh Gurdwara Act is in this regard clear and admits of non ambiguity whatsoever. It reads :—

“Section 142. Right of interested persons to complain to Commission in respect of misfeasance etc :

- (1) Notwithstanding anything contained in Section 92 of the Code of Civil Procedure, 1908 (5 of 1998) or in the Specific Relief Act, 1987, any person having interest in a Notified Sikh Gurdwara may, without joining any of the other persons interested therein, make an application to the Commission against the Board, the Executive Committee of the Board or the Committee or against any member or past member of the Board,

of the Executive Committee or of the Committee or against any office-holder or past office holder of the Gurdwara or against any employee past or present of the Board or Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by this Act or any alleged expenditure on a purpose not authorized by this Act and the Commission, if it finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure proved, may consistently with the provisions of this Act and of any other law or enactment in force for the time being direct any specific act to be done or forborne for the purpose of remedying the same, and may order the removal of any office holder or member of the Board, Executive Committee or Committee responsible for the same and may also disqualify any member of the Board, Executive Committee or Committee, thus removed from such membership for a period not exceeding five years from the date of such removal.

Provided that no such application shall be entertained by the Commission if it is made more than six years after the date of the act or omission from which the right to make an application under this sub section accrues and, in the case of an application against a member of the Board, the Executive Committee of the Board or the Committee, if it is made after such period or after six years of the date of his ceasing to be a member, whichever is later.

- (2) The Board may make a similar application to the Commission, which may, in like manner, dispose of it.

The Board or any person aggrieved by an order passed by the Commission under the provisions of sub-section (1) or sub-section (2) may, within ninety days of the order, appeal to the High Court.”

(8) It is manifest from the above that any person having an interest in a Notified Sikh Gurdwara, including a Society like the petitioner in the instant case, can make an application to the Sikh Gurdwara Judicial Commission established under Section 70 of the Act pointing out any act of malfeasance, misfeasance, breach of trust, neglect of duty, abuse of power or any expenditure on a purpose not authorized by the Act. It is further evident from the language employed in the provisions extracted above that if the Sikh Gurdwara Judicial Commission finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure to be proved, it may consistently with the provisions of the Act and of any other law or enactment for the time being in force, direct any specific act to be done or forbore for the purpose of remedying the same and may order the removal of any office holder or member of the Board, Executive Committee or Committee responsible for the same and may also disqualify any member of the Board, Executive Committee or Committee, thus removed from such membership for a period not exceeding five years.

(9) The allegations made by the petitioner in the instant case of embezzlement of funds and misdirection or misutilisation of the amounts received from respondent No. 3 in connection with the contract awarded in its favour, clearly fall within the wide ambit of the powers conferred upon Sikh Gurdwara Judicial Commission. That it is so was not disputed by Dr. Rahi appearing for the petitioner what was contended by him was that this Court could direct the Sikh Gurdwara Judicial Commission to treat the present writ petition as a complaint/application made before it and to dispose of the same within a period of two months. We regret our inability to accept that submission. If Section 142 of the Act provides an effective, alternate mechanism for the petitioner to ventilate its grievances against any act of malfeasance, misfeasance, breach of trust, etc. before the Sikh Gurdwara Judicial Commission, we see no reason why the petitioner should have rushed to this Court with the present writ petition in purported public interest. The proper course for the petitioner, was to approach the Commission and to demand an adjudication of the issues that the petitioner may like to raise.

Failure of the petitioner to do so is in our view not *bona fide*. The allegation made by the respondent-S.G.P.C. that the petitioner is making common cause with Tata Sky/DTH Platform, who happens to be a competing T.V. Channel with respondent No. 3 cannot be brushed aside lightly. That is particularly so when the writ petition does not spell out any specific charge of embezzlement of any amount paid by respondent No. 3 nor does it accuse the Committee or any member of the S.G.P.C. with any specific act of malfeasance, misfeasance, breach of trust, neglect of duty etc. Simply making an allegation that S.G.P.C. is misappropriating the funds or misdirecting the accounts or not accounting for the same, may not be enough. It is easy to rush to the Court with a writ petition claiming relief on high moral grounds but difficult to substantiate the allegations made in the same unless the petitioner has done its home work, in the form of investigating the allegations of malfeasance, misfeasance, breach of trust, neglect of duty etc. The petitioner society does not appear to have done anything of that sort. There is no evidence that can inspire confidence, to suggest even on *prima facie* basis that there has been some misappropriation of funds by any one of the functionaries of the S.G.P.C. The respondent S.G.P.C., has in its affidavit clearly disclosed that it has received a sum of Rs. 5,48,19,500 from respondent No. 3 till date, since the allotment of the contract. A sum of Rs. 53 lacs out of the total amount is, however, due which respondent No. 3 is required to pay. That is far from saying that there is any misappropriation. The present proceedings in that backdrop, are, in our opinion, a clear abuse of the process of law.

(10) In the result, we dismiss this writ petition with costs assessed Rs. 20,000. The costs shall be deposited within four weeks from today in the Punjab and Haryana High Court Lawyers Welfare Funds. In case, the needful is not done, the Registry shall put up the matter separately for directions to ensure compliance.

R.N.R.