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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C)3825/2021**

SHIROMANI AKALI DAL & ANR.

..... Petitioners

Through: Mr. Harish Malhotra, Senior Advocate along with Mr. Abinash K. Mishra, Advocate.

versus

**OFFICE OF THE MINISTER OF GURDWARA ELECTIONS,
GOVERNMENT OF NCT DELHI AND ORS.** Respondents

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Satyakam, ASC, GNCTD for respondent Nos. 1 to 4.
Mr. Chetan Sharma, ASG and Mr. Ajay Diggapaul, CGSC for UOI/ respondent No.5.
Mr. H.S. Phoolka, Senior Advocate with Ms. Shilpa Dewan, Advocate for respondent No. 6.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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31.03.2021

C.M. Nos. 12712/2021 & 12714/2021

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

C.M. No. 12711/2021 & 12713/2021

3. Issue notice. Mr. Satyakam accepts notice on behalf of respondent

Nos. 1 to 4; Mr. Digpaul accepts notice on behalf of respondent No. 5; and Ms. Shilpa Dewan accepts notice on behalf of the newly added respondent No. 6.

4. The present applications have been moved by the petitioner, *inter alia*, to stay the operation of the Gazette Notification dated 30.03.2021 published in the Directorate of Gurdwara Elections, Delhi Gazette by Government of NCT Delhi being F.No. 1/140/2012/DGE/3127 to the extent the same freezes the reserve symbol of “BUCKET” - which the petitioner has been allotted and has used in the previous elections, on the ground of pendency of litigation, for the forthcoming elections of Delhi Sikh Gurdwara Management Committee to be held on 25.04.2021. The petitioner also seeks a direction to the respondents to grant the reserve election symbol of “BUCKET” to the petitioner No. 1 for the forthcoming elections of Delhi Sikh Gurdwara Management Committee to be held on 25.04.2021 in terms of earlier notifications dated 08.10.1999, 30.11.2006, 06.02.2006 and 31.01.2017, which reflects upon their past conduct, in the matter of recognition and allotment of symbol to the candidates sponsored by petitioner No. 1.

5. The present petition has been preferred by the petitioners, *inter alia*, to assail the communication dated 16.03.2021 issued by the Minister (Gurdwara Elections). By this communication, the Minister (Gurdwara Elections) had directed that the recognition of religious parties for conduct of elections to the Delhi Sikh Gurdwara Management Committee should strictly be considered in terms of Rule 14 of the Delhi Sikh Gurdwara Management Committee (Election of Members) Rules, 1974 which was

amended in the year 2010. This communication recognises the fact that despite the amendment to Rule 14 being brought into force in the year 2010, the said amendment was not implemented and it had been overlooked in respect of elections held in 2012 and 2017. The petitioner has also laid a challenge to the said amended Rule 14. In the alternative, the petitioner also prays for reading down the amended Rule 14 by declaring that the said amendment does not create any bar against the individuals to form their own Group/ Association for seeking the reserve symbols in the name of their Group/ Association for the elections of Delhi Sikh Gurdwara Management Committee without being registered and recognised as a “Religious Party”.

6. When the writ petition was taken up for hearing on 26.03.2021, the Court passed the following order:

“3. This petition has been received post Court commencement hours, on transfer on urgent mentioning

4. The petition impugns the communication dated 16th March, 2021 as unconstitutional and ultra vires the Parent Act i.e. the Delhi Sikh Gurdwara Act, 1971 and seeks to restrain the respondents from acting upon the communication dated 16th March, 2021 or on the amended Rule 14 of the Delhi Sikh Gurdwara Management Committee (Election of Members) Rules, 1974, in the forthcoming elections of the members of the Delhi Sikh Gurdwara Management Committee scheduled to be held in the month of April – May, 2021.

5. We have heard the senior counsel for the petitioners as well as the senior counsel for the respondents no.1-4 Government of NCT of Delhi (GNCTD) as well as Mr. H.S. Phoolka Sr. Advocate appearing on behalf of the applicant in CM No.11920/2021.

6. Operation of Rule 14 supra, which is subordinate

legislation, cannot be stayed by an interim order and until this Court concludes that the same is liable to be struck down. The question thus of staying operation of the Rule 14 supra does not arise.

7. However as far as the communication dated 16th March, 2021 of the Minister of Gurdwara Election, Government of NCT of Delhi to the Principal Secretary, Gurdwara Election is concerned, though the senior counsel for the respondents no.1-4 GNCTD has contended that the same does not direct anything at variance with the Rules but a reading thereof prima facie shows that the same may be construed as a binding direction from the Minister, by the authorities under the Delhi Sikh Gurdwara Act entrusted with the conduct of election of the members of the Delhi Sikh Gurdwara Management Committee and which authorities are otherwise required to act independently in accordance with law.

8. Issue notice.

9. Notice is accepted by the counsels for the respondents.

10. CM No.11920/2021 is allowed and disposed of and the applicant in CM No.11920/2021 is impleaded as respondent to the present petition.

11. Amended memo of parties be filed before the next date.

12. Counter affidavits if any be filed within four weeks.

13. Rejoinders, if any thereto be filed within further two weeks thereafter.

14. List on 18th May, 2021.

15. Till further orders, the operation of the communication dated 16th March, 2021 shall remain stayed.”

7. After passing of the order on 26.03.2021, the respondent Nos. 1 to 4 have issued the notification dated 30.03.2021, which is now assailed in this

application. This notification notifies the Delhi Sikh Gurdwara Management Committee Election Symbols (Reservation and Allotment) Order, 2021. In terms of this notification, the symbol “BUCKET” has been frozen due to pending litigation.

8. The submission of Mr. Malhotra, learned senior counsel for the petitioner is that the purport of the order passed by this Court on 26.03.2021 was that the direction issued by the Minister (Gurudwara Elections) should not influence the mind of the statutory authorities under the Delhi Sikh Gurdwara Act who are entrusted with the conduct of elections to the Delhi Sikh Gurdwara Management Committee, which authorities are otherwise required to act independently in accordance with law. Mr. Malhotra submits that even though the amended Rule 14 was made in the year 2010, admittedly, the same has not been enforced in practice, which is clear from the fact that even in the years 2012 & 2017, the petitioner No. 1 was recognised as a religious party for the purpose of the elections to the said Committee, and was allotted the symbol of “BUCKET”. In this regard, our attention has been drawn *inter alia* to the symbol orders dated 06.02.2012 (at page 206 of the record) and 31.01.2017 (at page 210 of the record). These symbol orders show that the petitioner No. 1/ Shiromani Akali Dal was recognised as a religious party and the symbol “BUCKET” was reserved and allotted to petitioner No. 1. Mr. Malhotra submits that aforesaid being the position, there was no reason for the petitioners to assume or doubt that there would be any issue with regard to their recognition as a religious party and to allotment of the “BUCKET” symbol to petitioner No. 1 for the forthcoming elections to the said Committee. All

of a sudden on 16.03.2021, and contrary to the stand taken by the respondents themselves in their written submissions and counter-affidavit filed before this Court in pending litigations, the respondents have taken a somersault and are seeking to enforce the amended Rule 14 even in respect of the already recognised and ruling party in the said Committee.

9. Mr. Malhotra submits that after the stay granted by this Court in respect of the communication dated 16.03.2021 issued by the Minister (Gurudwara Elections), it was expected of the authorities that they would act objectively and by maintaining neutrality, and would follow the past precedents of granting recognition to the petitioner No. 1 as a religious party and allotting the “BUCKET” symbol, as in the past. However, the respondents have issued the impugned notification notifying the symbol order for the forthcoming elections, and freezing the “BUCKET” symbol on account of litigation.

10. Mr. Sethi submits that while issuing the notice in the petition, this Court has expressly not stayed the operation of the amended Rule 14. Therefore, the amended Rule 14 is enforceable, and the respondents authorities are merely seeking to enforce the same. He further submits that the petitioner was issued the notice on 16.12.2016 – requiring it to inform whether it had been registered as a Society under the Societies Registration Act, 1860. Thus, the petitioner had sufficient notice that it had to comply with the amended Rule 14 to be able to seek recognition as a religious party and to be able to secure a reserved symbol for the forthcoming elections.

11. Mr. Phoolka has submitted that he was not so much concerned with the fact whether the petitioner is registered as a Society under the Societies

Registration Act, 1860 one year before the expiry of the term of the previous committee. He, however, submits that the petitioner No. 1 is a political party and not a religious party, and on that account, petitioner No. 1 is not eligible to be recognized as a religious party and allotted the “BUCKET” symbol.

12. Keeping in view the fact that the elections to the said Committee are due to be held on 25.04.2021 and the returnable date fixed in the present petition is 18.05.2021, at this stage, we are only taking a prima facie view of the submissions advanced before us. No doubt, this Court has not stayed the operation of the amended Rule 14. At the same time, the direction issued by the Minister (Gurudwara Elections) seeking to strictly enforce the said Rule has been stayed. Clearly, this was done so that the statutory authorities entrusted with the task of holding free and fair elections are able to take a call independently with regard to the application and interpretation of the amended Rule 14 in the context of the forthcoming elections to the said Committee.

13. It is not in dispute that the candidates sponsored by the petitioner No. 1 were allotted the “BUCKET” symbol for decades even prior to the amendment of Rule 14 in the year 2010. After the amendment to Rule 14 came into force in the year 2010, repeatedly, petitioner No. 1 was recognised as a religious party and was allotted the “BUCKET” symbol to be used by its sponsored candidates for the purpose of elections to the Committee. In this regard, we have already taken a note of two symbol orders issued in the year 2012 and 2017. The submission of Mr. Sethi that the petitioners were issued a notice on 16.12.2016 and, therefore, they were aware of the fact that

the amended Rule 14 shall be enforced has no merit since, despite the said notice, in 2017, the symbol order issued by the respondents again recognised petitioner No. 1 as a religious party and also allotted the “BUCKET” symbol to them for use by their sponsored candidates.

14. There can be no quarrel with the fact that the amended Rule 14, unless struck down, can be enforced. At the same time, one cannot lose sight of the manner in which the respondents authorities have conducted themselves for good 11 years since the amendment of Rule 14 on two successive occasions i.e. in the year 2012 and 2017, they did not insist on strict compliance of Rule 14, and this position was recognized by the respondents themselves when the Minister (Gurdwara Elections) issued the impugned communication dated 16.03.2021. The petitioner No. 1 appears to have enjoyed the confidence and support of the electorate till, at least, the last election. It is pointed out by Mr. Malhotra that the petitioner No. 1 secured majority in the said Committee in the last elections conducted in 2017.

15. The issue raised by the Minister (Gurdwara Elections) and by the respondents with regard to the compliance of amended Rule 14 could, and should, have been raised in an appropriate time i.e. when there was sufficient time for religious parties, including petitioner No. 1 to strictly comply with the mandate of the amended Rule 14. The sudden change of mind exhibited by the respondents in seeking to now enforce Rule 14 strictly means that a major party, which otherwise has been contesting elections to the said Committee consistently with their reserved symbol, and has also obtained majority in the last elections, would be seriously prejudiced, since the candidates sponsored by it would not be able to uniformly contest the

elections on the common symbol which petitioner No. 1 has been using in the past for many years. In our view, prima facie, this would destroy the level playing field, and would undermine the election process. Pertinently, there is no inter se dispute between rival parties/groups with regard to the claim for the 'BUCKET' symbol. In this background, prima facie, the reason given in the symbol order dated 30.03.2021 for freezing the 'BUCKET' symbol also appears to be misplaced.

16. So far as the submission of Mr. Phoolka that the petitioner No. 1 is a political party and not a religious party is concerned, it is pointed out by Mr. Malhotra that there is no definition of a religious party contained in the Rules, and, therefore, there is nothing to say that the petitioner No. 1 is not a religious party, apart from being a political party. Mr. Phoolka has argued that a political party is a secular party and that religious party and a secular party do not go hand-in-hand. We have serious doubts in this regard and, prima facie, we do not find merit in the submission of Mr. Phoolka.

17. In view of the aforesaid, we stay the operation of the notification dated 30.03.2021 – whereby the respondents have notified the Delhi Sikh Gurdwara Management Committee Election Symbols (Reservation and Allotment) Order, 2021 to the extent the symbol "BUCKET" has been frozen due to pending litigation. The said symbol, as in the past, should be allotted to the petitioners for the forthcoming elections to the Delhi Sikh Gurdwara Management Committee to be held on 25.04.2021 to be used by the candidates sponsored by the petitioner No.1.

18. Replies to the applications be filed within two weeks. Rejoinder thereto, if any, be filed before the next date.

19. List on 18.05.2021, i.e. the date already fixed.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 31, 2021
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