DELHI HIGH COURT

Gurdwara Prabandhak Committee

Vs.

Amarjit Singh,

C. R. No. 189 of 1983.

(S. B. Wad, J.)

15.7.1983

JUDGEMENT

S. B. Wad, J.

1. The Gurudwara Prabandhak Committee is a Society registered under Societies Act. It is managing the affairs of the Gurdwara and a Girls School in Delhi Cantonment. The present Managing Committee is in office after this Court directed the election to be held and pursuant to which the elections were held on 11th October, 1981. Respondents Amarjit Singh, H.S.Dhillon, Kartar Singh and Anaib Singh were the members of the earlier Managing Committee. A suit was filed against the said Managing Committee under Section 92, Civil Procedure Code as they had allegedly committed various illegalities and were refusing to hold elections after their term had long expired. The matter came to High Court and the elections were ordered by this Court. The said Amarjit Singh, H.S.Dhillon and Kartar Singh, were not elected and they lost power. Although they had lost the elections, Amarjit Singh and one Anaib Singh (former Presidents) refused to hand over the charge, account books or minute books. A contempt application was moved against the said persons by the new Managing Committee. The said proceedings is continuing.

2. The new Managing Committee has removed Anaib Singh from the Chairmanship of the Girls School Committee. He has filed a suit and the same is pending in the District Court. He has preferred an appeal against the order of the Trial Court refusing interim injunction. The appeal is admitted but no interim injunction has been ordered by the Appellate Court.

3. The said four respondents and some others thereafter filed a suit under Section 92, Civil Procedure Code against the present Management. The main

grievance in the suit is that Anaib Singh was removed from the Chairmanship and one Santosh Kumar Gupta, T. G. T., was removed from the School. It was also alleged that the accounts were not properly maintained. Through the suit the respondents want the enquiry to be conducted in the affairs of the Society under the new Management. It may be stated that the suit was filed within four months from the new Management coming into power. In the plaint itself a prayer was made seeking permission to file the suit under Section 92, Civil Procedure Code. A summons/ notices in the suit was issued to the petitioner. He filed a written statement raising certain preliminary objections and replying the averments on merit. The learned District Judge passed the following order permitting the respondents to file the suit:

"Arguments heard, permission, as required under Section 92, Civil Procedure Code, to file the suit is granted."

4. In this Revision Petition the order of the District Judge is challenged on the following grounds:

(1) The order is a non-speaking order. It is not clear from the order whether the District Judge has considered the objections of the petitioners on the maintainability as well as on the merits of the suit. The order is, therefore, bad in law.

(2) The plaint does not disclose any material on the basis of which permission can be granted by the District Judge to the respondents under Section 92 of the C. P. C.

(3) The suit is *mala fide* filed by persons against whose management the earlier suit was filed, in which the elections were ordered and in which elections they were not returned. The *mala fide* nature of the suit is further clear from the facts that the respondents had not handed over the charge, or the account books or the minute books and a contempt petition is pending on that account.

(4) The suit is a total abuse of the process of law and an attempt to implicate the management in multiplicity of suit. Anaib Singh has already filed a separate suit against the Management and the same is pending. Santosh Kumar Gupta, a teacher has separate remedy under Delhi Education Act.

5. In reply the respondents submit that Section 92 contemplates that the suit should be filed with the leave of the District Court. This power was conferred

on the Court in 1976 in place of the Advocate-General whose consent was necessary for filing the suit before the said amendment. It is a matter of the discretion of the Court to give permission or not. It is not obligatory on the court to state any reasons for granting the permission. The respondents also submit that at the stage where the leave application is being considered by the District Judge a Trust/Society is not entitled to any hearing as no prejudice is caused to it at this stage. It was, therefore, unnecessary in law for the District Court to issue any summons/notices to the petitioners. For the same reason it was unnecessary to pass a reasoned order displaying the consideration of the petitioners' objections. The respondents represent the General Body of the worshippers who have interest in the proper running of the Gurdwaras. There is nothing *mala fide* on by way of abuse of the process of law in filing the suit under Section 92.

6. Both the parties have cited some rulings. However, there is no decision directly interpreting the provisions of Section 92 after its amendment in 1976.

7. The relevant portion of Section 92 reads as follows:

"92. Public Charities.- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained (leave of the Court) may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Stag Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree."

8. As stated earlier the words "leave of the court" were substituted for the words "consent in writing of the Advocate-General" by amending Act of 1976 (Act 104 of 1976). In *Chairman Madappa v. M.N.Mahanthadevaru,* [1] the Supreme Court has explained the main purpose of Sestion 92 (unamended) in the following words:

"The main purpose of S section 92 (1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate-General or two or more persons having an

interest in the trust with the consent in writing of the Advocate-General. The object is that before the Advocate-General files a suit or gives his consent for filing a suit; he would satisfy himself that there is a *prima facie* case either of breach of trust or of the necessity for obtaining directions of the Court."

9. But a question somewhat similar to the one raised by the petitioner was directly considered by Full Bench of the Kerala High Court in *Mayer Simon v. Advocate-General of Kerala,* [2] under unamended provisions. The counsel for the respondent has made his submission mainly relying on some observations from the said judgment.

10. In Mayer Simon the question for consideration was whether the decision of the Advocate-General refusing consent as envisaged by S estion 92 (1) of the Civil Procedure Code is amenable to be quashed by the issue of writ of certiorari. The decision of the Advocate-General was a non-speaking decision. On behalf of the petitioner it was argued that S estion 92 (1) casts a duty on the Advocate-General to act judicially or quasi-judicially. Assuming that the duty was administrative it was urged even then principle of natural justice to act justly and fairly was patent and, therefore, the order itself should have disclosed that he had acted justly and fairly. After review of the English and Indian decisions, the Full Bench held that the Advocate-General was not acting in the judicial or quasi-judicial capacity but was merely performing an administrative function. Persons to whom the leave is refused under S estion 92 are aggrieved parties and are entitled to know why the consent has been refused by the Advocate-General. He has a duty to act fairly and dispassionately and the order must indicate that he has applied his mind to the facts and material before him.

11. The counsel for the petitioner submits that whatever was the position of the Advocate-General under the old provisions, the amendment has made the position clear beyond doubt by entrusting the power to the District Court to judicially consider whether leave should be granted or not. The function being judicial the order of the District Judge must be a reasoned order. He further submits that the requirements of natural justice, in a judicial proceeding, create a right in both the parties of being heard before a decision is taken. The counsel for the respondents repells these sub-missions and contends that there is no change in the legal position even after the amendment in 1976. I am inclined to agree with the petitioner. I think that the main object in amending the Section, so as to empower the District Court to grant leave, was to bring to an end the

controversy raised in several decisions regarding the scope of the power of the Advocate-General to give consent under the earlier provisions. The Legislature to my mind has now put the matter beyond controversy. A District Court normally performs the judicial functions. Where it performs administrative functions, they are expressly so conferred by the statutes or by the Rules of the High Court. All provisions regarding "leave of the court" are judicial in character. A few examples can be cited. Order 37 of the Civil Procedure Code envisages the leave to defend by a debtor. So also Section 14 (1) (e) of the Delhi Rent Control Act contemplates a leave to be obtained by the tenant to defend the Eviction Petition him. An example of leave provided by the Constitution itself is Article 136 of the Constitution where with the special leave of the court an appeal can be filed in the Supreme Court. Before granting leave under Order 37, Civil Procedure Code or Section 14 (1) (e) both the parties are invariably heard and a speaking order is passed. In Special Leave Petitions under Article 136, however, leave is granted or refused *ex parte* and without a speaking order. Sometimes Supreme Court issues notice to respondent and sometimes a speaking order is passed.

12. Leave or permission is essentially a matter of discretion. However, there is a qualitative difference between the discretion that the Supreme Court, as a last court can exercise and the discretion that can be exercised by the Court of first instance. If the Supreme Court grants or refries leave it has the benefit of the decisions of at least three or four courts below it where the matters are judicially heard and disposed of. It is really a final decision in the matter. On the other hand the court of first instance in a civil trial is under the Appellate or Revision control of District Court and High Court. Where the matter is heard for the first time by the District Court, as under Section 92 of the Civil Procedure Code the decision is subject to revision by the High Court. A sound principle of law regarding the appellate jurisdiction is applicable here. The principle is that unless the order of the First Court is a reasoned order, the right of appeal would be an empty right and the appellate court would be powerless to discharge the appellate function. It is for this reason that the judicial orders of the courts below the Supreme Court should be reasoned orders. For the reasons stated above the order of the District Judge under Section 92 should be a speaking order or a reasoned order.

13. Relying on the decision of the Full Bench of the Kerala High Court in

Mayer Simon's case AIR 1975 Kerala 57 the counsel for the respondents submits that the order should be a reasoned order only if the order refuses leave and not where it grants leave. The Full Bench of the High Court observed. (Para 15) :

"When the persons who approach the Advocate-General come before the Court and complain that they are personally aggrieved the Court is certainly entitled to know why the consent had been refused by the Advocate-General. The matter of refusal of consent therefore clearly stands on a footing quite different from a case where consent had been granted by the Advocate-General. The Court must be satisfied in all cases of refusal that the mind of the Advocate-General had been fairly and dispassionately applied to the relevant facts before him. The only way of knowing it is by reading the order in the light of the facts and materials that were before him. So, the order must indicate that mind had been applied to those facts and materials."

I do not think the requirement of stating reasons for the order is limited only to the question of the refusal of leave. It must be remembered that the above observation of the Kerala High Court is in the context of their finding that the function of Advocate-General under Section 92 was not a judicial function but an administrative function. But although it was an administrative function the order was amenable to the High Court's jurisdiction under Article 226 of the Constitution as even the administrative order must be a fair and dispassionate order. If the Court was called upon, as in the present case, to consider the nature of the District Court's power to grant or refuse leave under Section 92 of the Civil Procedure Code. I have no doubt that the Kerala High Court would have come to the same conclusion as drawn by me. In other words, where the function is a judicial function it is inherent in the said character of the function that an order must be a reasoned order. It is not only when the private persons are refused leave that they are entitled to know the reasons for it. Even where the consent has been granted a public trust is entitled to know as to why it should suffer the agony of litigation and spend public money. This is clear from the main object of Section 92 clarified by the Supreme Court in Chairman Madappa's case AIR 1966 Supreme Court 878. The object is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits being filed against them. Public Trusts for charitable and religious purposes are run for the benefit of the public. No individual benefits

from them. If the Managers of the trusts are subjected to multiplicity of legal proceedings funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming trustees of the public trusts. This is the reason why the suits against the public trusts are to be screened and a break has to be applied by the District Court Before the leave is granted the trustees would be able to satisfy the District Court that there is no evidence to support the allegations or that the evidence is not sufficient or the intentions of the private persons are not *bona fide* or that the action is being initiated for selfish personal ends and not with the object of any public good. If thereafter the District Judge grants leave it should be possible for the public trust to demonstrate from the evidence produced by both sides how no enquiry in the affairs of public trust was necessary. I therefore, hold that both in granting the leave or refusing the leave the order of the District Judge must be a reasoned, speaking order. But this analysis would also demonstrate that where the consent is granted, the trust is naturally an aggrieved party and before such consent is granted it should have an opportunity of being heard.

14. There are some other reasons as to why the public trust has a right to be heard before the District Judge at the stage of granting or refusing consent. As I have held the proceeding before the District Judge is a judicial proceeding. It is a court of first instance for the purposes of Section 92. Both parties, therefore, have a right to be effectively heard before the District Judge. It is inherent in the concept of judicial proceedings that no decision adverse to the parties is made without hearing both the parties. Secondly, the concept of natural justice is now so enlarged by the judicial decisions in England as well as in India, even in its application to administrative decisions, that it is idle to argue that in a judicial proceeding one party does not have a right of being heard. There is a qualitative change of far-reaching importance brought about by various decisions of our Supreme Court starting from Maneka Gandhi's case AIR 1978 Supreme Court 597 and continuing though what is popularly known as the Judges case. *S.P.Gupta v. President of India,* [3] Considering the development of the concept of natural justice (the principle of the right of being heard, the concept of an aggrieved person, and the concept of locus standi), the objection to the right of being heard to a public trust under Section 92 cannot be viewed with any seriousness, as the same is completely out of date. Fortunately, in the present case the District Judge had issued a notice and the petitioner Society was heard

by the District Judge before passing the order.

15. Therefore, the grievance of the petitioner in this case is not that he has not been heard, but the complaint is that his submissions, both an maintainability and merits have not been considered by the District Judge. The submission is correct because the order is a non-speaking order. It is not known whether the District Judge has applied his mind to the averments in the pleadings and why he has preferred the version of the respondents as against the petitioner. To my mind the proper course is this situation is to remand the matter to the District Judge who should afford full opportunity of being heard to the parties again and then dispose of the leave application with a reasoned order. I direct accordingly.

16. Counsel for the respondents has submitted that I should not entertain a Revision Petition because the petitioner does not come in the picture at the stage of granting leave and he cannot complain about it. I do not agree. The petitioner has a direct and substantial interest in the matter and considering the main object of the Section, namely, to protect the trust from avoidable harassment, no order can be passed without the trust being heard. It would be a material irregularity if the trust is not heard. The Revision is, therefore, maintainable. To pass a non-speaking order in a judicial proceeding is also a material irregularity and revision lies against such an order. (See *Santosh Kumari Kathuria v. Krishan Kumar Kathuria*) [4]

17. The impugned order is set aside.

18. The matter is remanded to the District Judge who will make available to the parties a full opportunity of being heard and pass a reasoned order. The petition is disposed of accordingly. No order as to costs.

Petition allowed.

Cases Referred.

1. AIR 1966 Supreme Court 878

2. AIR 1975 Kerala 57

3. AIR 1982 Supreme Court 149.

4. 1979 Hindu LR 60 (Delhi).