

SARDAR BAHGINDER SINGH S/O GURUCHARAN SINGH

v.

SARDAR MANJIEETH SINGH JAGAN SINGH AND ORS.

(Civil Appeal No. 2964 of 2020)

AUGUST 20, 2020

**[DR. DHANANJAYA Y CHANDRACHUD AND  
K. M. JOSEPH, JJ.]**

*Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalanagar Sahib Act, 1956 — ss.6(1)(viii); 2(a),(c),(e), 5, 6(2)&(3) – Nomination to Board u/s.6(1)(viii) – Conflicting claims – State Government through notification nominated four members (appellants) to the Board u/s.6(1)(viii) – Challenged by respondents – Notification set aside by High Court – On appeal, held: Two distinct entities are dramatis personae in the present case – First is the public trust registered under the provisions of 1950 Act – Second body is a statutory body – Exclusive statutory authority for making the nomination of four members u/s.6(1)(viii) is vested in the Sachkhand Hazuri Khalsa Diwan, Nanded – Statute does not expressly define the expression “Diwan” – Diwan was constituted as a society initially in 1350 Fasli and was registered as a public trust under the MPT Act in 1982 – s.6(1)(viii) clearly indicates that it is the Diwan alone which has the power to make a nomination of four members – State Government cannot assume that power to itself – Notification issued by State Government was contrary to s.6(1)(viii) – Maharashtra Public Trusts Act, 1950 – Nanded Sikh Gurudwara Rules, 1958 – r.6.*

**Disposing of the appeals, the Court**

**HELD: 1.1** There is a maze of conflicting claims between the two factions, including the issue of the alleged removal of the first respondent as a trustee of the Diwan. The High Court has appropriately not embarked upon an enquiry to adjudicate upon these claims. Justifiably so, since two inquiry applications which have been filed under Section 22 of the MPT are pending before the Assistant Charity Commissioner. The change reports, as they are called, being the subject matter of a pending enquiry by the

- A Assistant Charity Commissioner, it is neither appropriate nor proper for this court to enter into the thicket of factual disputes between the contesting factions. Essentially, the issue which the Court has to decide turns upon the interpretation of the provisions of Section 6(1)(viii) of the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalanagar Sahib Act, 1956. It is on this
- B that the validity of the notification of the State government appointing four persons under Section 6(1)(viii) would rest. Two distinct entities are *dramatis personae* in the present case. The first is the public trust which is registered under the provisions of the MPT Act. Its origins lay in the Sachkhand Hazuri Khalsa
- C Diwan Association Society which was initially registered under the Hyderabad Societies' Registration Act of 1350 Fasli. This body was initially registered as a society with the Registrar of Company Law and Co-operative Societies of the then Government of Hyderabad under registration no. 22 of 1951. The
- D Memorandum of Association of the Diwan indicates that it was formed to protect and guide the followers of the Sikh religion, protect the interests of the Gurudwara and to work in the interest of the Sikhs of the then State of Hyderabad. The name of the society or association was formulated as Sachkhand Hazuri Khalsa Diwan. The General Committee of the Diwan consists of
- E all the members of the Diwan who meet bi-annually. The members of the General Committee of the Khalsa Diwan are alone entitled to vote. For the management of the affairs, there is a Working Committee consisting of 28 members. The Working Committee was to be formed by the President or Pradhan at the first meeting. Elections to the Working Committee are required to be held every two years. The President is entrusted with supervision over the affairs and working of the General Committee. Several decades after the reorganisation of States, a registration certificate was issued under the MPT Act to the society as a public trust on 11 January 1982 by the Assistant Charity Commissioner Nanded in
- F Inquiry Application No 950/1981. This created a round of disputes between the contesting factions and it was eventually on 22 January 2014 that this Court concluded the issue by recording that the registration of the Diwan as a Trust under the MPT Act have attained finality. Disputes in regard to membership were a
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separate matter which could be adjudicated upon in terms of the remedies available under the MPT Act. As a public trust, the Diwan is governed by the provisions of the MPT Act. [Paras 21, 22][365-C-H; 366-A-D]

*Sardar Jeewansingh (d) Th. Lrs. v. Shersingh & Ors.*

**Decision of Supreme Court dtd. 22.01.2014 in SLP**

**(C) Nos.10139-10149 of 2011 – referred to.**

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1.2 The second body with which the present group of appeals is concerned is a statutory body. This was created when the Hyderabad Legislative Assembly enacted the Nanded Sikh Gurudwara Sachkhand Shri Hazuri Apchalganagar Sahib Act 1956. The statute has defined the expression 'Gurudwara' under Section 2(c) to mean the institution known as Nanded Sikh Gurudwara Sachkhand Shri Hazuri Apchalganagar Sahib and to include the premises of the Gurudwara together with all its buildings and the shrines which are specified in the Schedule. A statutory board is constituted under Section 5 to administer the affairs of the Gurudwara in accordance with the enactment. The Board consists of seventeen members. Some of them are nominated by the government (see clauses (i), (ii) and (iii) of sub-section (1) of Section 6). Some members are nominated by specific bodies: under clause (iv), one member is nominated by Shiromani Gurudwara Prabandhak Committee from among the Sikhs of State of Madhya Pradesh; under clause (v) three members are nominated by the Shiromani Gurudwara Prabandhak Committee; under Clause (vii) one member is nominated by the Chief Khalsa Diwan of Amritsar and under clause (viii) four members are nominated by Suchkhand Hazuri Khalsa Diwan, Nanded. As regards the elected members, clause (vi) stipulates that two members shall be elected by and from among Sikh members of Parliament. Sub- Section (2) of Section 6 stipulates that the nomination and election of members under the sprovision "shall be made in such a manner and within such period as may be prescribed". The expression 'prescribed' is defined by Section 2(e) to mean prescribed by rules made by the government under the Act and to include the bye- laws made by the Board under the statute. The expression 'Board' is defined in Section 2(a) to mean

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- A the Board which is constituted under the provisions of Chapter II. Thus, the modalities for nomination and election can be prescribed by the rules made by the government under the Act and in the bye-laws framed by the Board. Sub-Section (3) of Section 6 provides that if the members mentioned in clauses (iv) and (vii) are not nominated or elected within the prescribed period, the government may specify the period within which the exercise has to be completed. If the process is not completed within the period so stipulated, the Government is empowered to nominate a person or persons to fill the vacancy. Significantly, the provisions of sub-section (3) of Section 6 do not apply to the nomination to be made under clause (viii) of sub-Section (1) of Section 6. In other words, the exclusive statutory authority for making the nomination of four members under Section 6(1)(viii) is vested in the Sachkhand Hazuri Khalsa Diwan, Nanded. Section 6(1)(viii) clearly indicates that it is the Diwan alone which has the power to make a nomination of four members. The State Government cannot assume that power to itself. That the authority of the Diwan is exclusive is evident from the provisions of sub-section (3) of Section 6. The Nanded Sikh Gurudwara Rules 1958 contain a provision for the nomination of members under clauses (iv), (v), (vii) and (viii) of Section 6 (1). [Paras 23-25][366-D-H; 367-A-E]
- E 1.3 The provisions contained in Rule 6 indicate that for the purpose of fulfilling the statutory requirement of a nomination, the State Government is to make a request in writing, *inter alia*, to the Diwan under Clause (viii). The power to make a nomination under Section 6(1)(viii) is vested in the Sachkhand Hazuri Khalsa Diwan, Nanded. The statute does not expressly define the expression “Diwan”. The Diwan was constituted as a society initially in 1350 Fasli. It was registered as a public trust under the MPT Act in 1982. The expression ‘Diwan’ needs elaboration. The Memorandum of Association refers to the Khalsa Diwan General Committee which comprises “of all members of the Diwan”. They alone are entitled to vote. The Working Committee is a smaller body consisting of 28 members which is elected for a duration of two years on each occasion. The authority to nominate four representatives under Section 6(1)(viii) of the Nanded Act
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1956 is entrusted to the Diwan. The Diwan consists of the collective body of all members who together are entitled to vote under the Memorandum of Association. Together they constitute the Diwan. Neither the President individually nor any office bearer can be equated with the Diwan. The authority to nominate four members to the Board under Section 6(1)(viii) is not entrusted to an office bearer of the Working Committee or for that matter to the Working Committee. Evidently, conflicts between the rival factions have spilled over into the process of making nominations. The State Government was confronted with conflicting claims. It wrote to the Charity Commissioner seeking some light on the issue and after receiving a communication that Gurucharan Singh was the President, proceeded to issue a notification drawing four members from out of the rival claims that were made by the conflicting factions. The High Court was justified in disapproving of the process that was followed by the State Government but for the simple reason that the nominations were not made by the Diwan. Multiple claims were made in the letters submitted to the State Government. The High Court was correct in its interpretation of the statute when it observed that it was not open to the State Government to arrogate the power of nomination to itself or to usurp the powers of the Diwan. The statute has entrusted the authority to make a nomination under Section 6(1)(viii) to the Diwan. The Diwan comprises of the collective body of all members together to whom the power to make a nomination is entrusted. The provisions of sub-section (2) of Section 6 read with the definition of the expression "prescribed" in sub-Section 2(e) lead to the conclusion that the nomination and election of members under Section 6 has to be made in the manner prescribed by the rules made by the Government under the Act, including the bye-laws made by the statutory board constituted under the provisions of Chapter II. [Paras 26-28][368-A-E, F-H; 369-A-C]

1.4 In authorising the Sachkhand Hazuri Khalsa Diwan, Nanded to nominate four members, Section 6(1)(viii) entrusts that authority to the collective body of members of the Diwan which is entitled to select the four individuals to be nominated to the statutory Board. This process must be initiated forthwith and

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- A concluded within a period of three months from the date of this judgment. The change reports - Inquiry Applications Nos. 44 of 2019 and 114 of 2019 - must be enquired into by the Assistant Charity Commissioner expeditiously and the inquiry shall be concluded within a period of three months from the date of this judgment.
- B judgment. The notification dated 21 June 2019 is held to be invalid and the conclusion of the High Court is upheld. Hence, the submission to permit the members who were notified on 21 June 2019 to continue to function as an interim arrangement cannot be accepted. The conclusion of the High Court that the notification issued by the State Government on 21 June 2019
- C was contrary to the provisions of Section 6 (1) (viii) of the Nanded Act 1956 is affirmed. Directions issued. [Paras 29-32][369-C-E; 370-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2964 of 2020

- D From the Judgment and Order dated 30.04.2020 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 9537 of 2019.

With

- E C.A. Nos. 2966, 2965 of 2020
- E Ms. Meenakshi Arora, Ms. Vibha Dutta Makhija, Sr. Advs., Shashibhushan P. Adgaonkar, Pradnya S. Adgaonkar, Ms. Surabhi Guleria, Shivaji M. Jadhav, Vishal Jogdand, S. Jasbeer Singh, Ganesh Gadhe, Prashant Dahat, Prakash Ranjan Nayak, Rahul Chitnis, Sachin Patil, Smarhar Singh, Advs. for the appearing parties.

- F The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, J.**

- 1. Leave granted.
- 2. Prior to the re-organisation of states, the Hyderabad Legislative Assembly enacted a law called the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalanagar Sahib Act 1956<sup>1</sup>. On receiving the assent of the President on 16 September 1956, the Nanded Act 1956 was published in the Hyderabad Government Gazette on 20 September 1956. Section 2(c) defines the expression 'Gurudwara' thus:

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H <sup>1</sup> "the Nanded Act 1956"

“‘Gurudwara’ means the institution known as the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalanagar Sahib and includes the premises called the Gurudwara with all buildings contained therein, together with all additions thereto or alterations thereof which may hereafter be made from time to time and shrines specified in the schedule.”

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3. Chapter II is titled “Control of the Gurudwara”. Section 3 provides for the constitution of a Board for the administration of the Gurudwara and a Committee of Management. Section 4 provides for the administration of the affairs of the Gurudwara by the Board in accordance with the provisions of the Nanded Act 1956. The Board is constituted by the provisions of Section 5 to be a body corporate. The controversy in this case turns on the interpretation of Section 6 which provides for the composition and constitution of the Board. The provision is extracted below:

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“Section 6(1) The Board shall consist of:

- i) Two members nominated by the Government;
  - ii) Three members nominated by the Government from the Sikhs of the State:

Provided that after the expiration of the first term of the Board these three members shall be elected from among the Sikhs of the State in such manner as may be prescribed;
  - iii) One member nominated by the Government from among the Sikhs of the cities of Hyderabad and Secunderabad;
  - iv) One member nominated by the Shiromani Gurudwara Prabandhak Committee from among the Sikhs of the State of Madhya Pradesh;
  - v) Three members nominated by the Shiromani Gurudwara Prabandhak Committee;
  - vi) Two members elected by and from among the Sikh members of the Parliament;
  - vii) One member nominated by the Chief Khalsa Diwan of Amritsar;
  - viii) Four members nominated by the Suchkhand Hazur Khalsa Diwan, Nanded.
- 2) The nomination and election of members under this section shall be made in such manner and within such period as may be prescribed.

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- A        3)    i) If the members mentioned in clauses (iv) to (vii) (both inclusive) of sub-section (1) are not nominated or elected, as the case may be within the prescribed period, the Government shall specify such further period as it may deem fit within which such members shall be nominated or elected. If such members are not nominated or elected within the further period so specified the Government shall nominate a person or persons to fill the vacancy or vacancies, as the case may be and the person or persons so nominated shall be deemed to be a member or members duly nominated or elected by the respective body.
- C        ii) The term of office of the members nominated under clause (i) shall expire at the time at which it would have expired if he had been nominated or elected, as the case may be, within the period prescribed under sub-section (2).
- D        4)    After the members have been nominated or elected, as the case may be, in accordance with the foregoing provisions the Government shall notify the fact of the Board having been duly constituted; and the date of the publication of the notification shall be deemed to be the date of the constitution of the Board.”
- E        Section 10 provides that where a vacancy occurs in the Board owing to death, resignation or for any other reason, the new member is to be nominated or elected in the manner in which the member whose seat is to be filled was nominated or elected. Section 11 provides for the election of a President. Section 22 (1) provides for the constitution of a Committee of Management consisting of (i) the Collector of Nanded or an officer appointed by the government; (ii) the Superintendent of the Gurudwara as an *ex officio* member; and (iii) three members nominated by the Board at its first meeting in the prescribed manner from among the Sikhs of Nanded. Under Section 36(i), the management, control and superintendence of the administration of the Gurudwara is to vest in the Board. The Board is entrusted with the duty of ensuring that the Gurudwara and its endowments are properly maintained, controlled and administered and that its income is duly applied to the objects and purposes for which they were intended. The Committee carries on day to day administration of the Gurudwara under Section 37(I) in accordance with the directions of the Board. The objects on which the funds of the
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Gurudwara may be spent are specified in Section 39<sup>2</sup>. The Government is empowered to supersede the Board under Section 53 in the event, *inter alia*, of a default in the performance of duty or where it has acted in excess or abuse of its powers. Section 61(1) entrusts a rule making power to the Government. The rule making power extends among other things to providing the manner in which and the period within which the members of the Board shall be nominated or elected under Sub-section 1 of Section 6.

4. On 28 December 1951, a society by the name of The Sachkhand Hazuri Khalsa Diwan Association Society ("Diwan") was registered

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<sup>2</sup> Section 39:

- 1) Subject to any rules that may be made by the Government in this behalf, all properties and income of the Gurudwara shall be under the control of the Board and shall be applied to:-
- a) the maintenance or improvement of the Gurudwara.
  - b) the maintenance of religious worship and the performance and conduct of religious and charitable duties ceremonies and observances connected with the Gurudwara.
  - c) the payment of allowances or salaries of officers and servants of the Gurudwara.
  - d) the fulfilment of the objects of the endowments thereof.
  - e) the maintenance of the langar.
  - f) the payment of the cost of audit of the funds and accounts of the Gurudwara.
  - g) the payment of the salary and allowances of the Secretary and Staff of the Board and the Committee and the Superintendent of the Gurudwara.
  - h) the payment of allowances to the President and members of the Board and the Committee and members of the Committee.
  - i) the payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred by or under this Act.
- 2) If any balance remains after meeting the expenditure referred to sub-section [1] the Board may use any portion of such balance for –
- a) the foundation and maintenance of educational or charitable institutions and orphanages for the benefit of the Sikhs in particular.
  - b) the establishment of hospitals and dispensaries for the relief of the pilgrim and worshippers resorting to the Gurudwara.
  - c) the construction and maintenance of free feeding house and the rest houses for the use of all classes of pilgrims.
  - d) the provision of water supply and sanitary arrangements, and the construction and maintenance of roads and communications and lighting arrangements for the convenience of the pilgrims and worshipper.
  - e) the establishment and maintenance of a veterinary hospital for the animals of the Gurudwara. Leper asylum and poor houses for the disabled and helpless.
  - f) the promotion of the study of the Gurumukhi or any other language and the cultivation of the Indian arts and architecture, and the prachar of the Sikh religion.
  - g) the grant of aid to any other deserving religious institution.
  - h) any other purposes which the Board may deem fit.

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- A under the Hyderabad Societies' Registration Act of 1350 Fasli. Its Memorandum of Association specifies the following objects:
- “i). To guide the followers of the Sikh Religion in the principles of the Sikh faith and to propagate the tenets of the Sikh religion among other communities
  - B ii). To protect their interest and the interest of Gurudwara by all possible amicably peaceful means
  - iii). To be loyal to the Govt. of India
  - iv). To work and agitate for economic, political and social rights of the Sikhs of Hyderabad State by peaceful, amicable and democratic methods wherever necessary and to adopt such policies which will improve the standard of Sikhs of Hyderabad State.”
5. The bye-laws of the Sachkhand Hazuri Khalsa Diwan, Nanded
- D provide for the constitution of a General Committee consisting of all members of the Diwan. The General Committee is to meet twice each year. A Working Committee consisting of 28 members is contemplated for the management of affairs. The General Committee is to elect a President at the first meeting. Thereafter, the President will form their Working Committee. Such elections are to be held in every two years.
- E The Working Committee is to consist of a President, Vice-President, Secretary and other office bearers. The President has the power to exercise full supervision over the affairs and working of the General Committee.
6. On 4 November 1981, an application was filed for the
- F registration of a trust under the provisions of the Maharashtra Public Trusts Act 1950<sup>3</sup>. The application which was numbered as Inquiry Application No. 950/1981 was allowed and a certificate of registration was issued by an order dated 11 January 1982 of the Assistant Charity Commissioner, Nanded. The issuance of the registration certificate
- G became a source of internal disputes between rival factions. The dispute was set at rest by an order dated 22 January 2014 of a two judge Bench of this Court in Special Leave Petitions<sup>4</sup> under Art. 136 of the Constitution. The order of the court concluded that the issue of the registration of the
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- <sup>3</sup> “the MPT Act”
- <sup>4</sup> Special Leave Petitions (C) Nos. 10139-10149 of 2011- **Sardar Jeewansingh (d) Th. Lrs. v. Shersingh & Ors.**

Diwan as a trust under the MPT Act has attained finality. However, the Court noted that the dispute in respect of membership can be adjudicated upon under the provisions of the MPT Act. A

7. The dispute in the present case relates to the nomination of four members in terms of the provisions of Section 6(1)(viii) of the Nanded Act 1956. Under this provision, four members of the Board constituted under Section 5 are nominated by the Sachkhand Hazuri Khalsa Diwan, Nanded. Sub-Section (2) of Section 6 provides that the nomination and election of members shall be made in such a manner and within such period as may be prescribed. Section 2(e) defines the expression ‘prescribed’ thus: B

“prescribed’ means prescribed by the rules made by the Government under this Act and includes the bye-laws made by the Board under this Act;” C

8. On 14 July 1958, the then Government of Bombay notified the Nanded Sikh Gurudwara Sachkhand Shri Hazuri Apchalanagar Sahib Rules 1958<sup>5</sup>. Rule 6, *inter alia*, provides for the nomination of members under clause (viii) of sub-Section (1) of Section 6. Under Rule 6, the State Government was to make a request in writing as soon as may be after the appointed day to the Sachkhand Hazuri Khalsa Diwan, Nanded to nominate within a period of two months of the date of the receipt of the request, members on the Board as required. D

9. From the affidavit which has been filed by the State of Maharashtra by the Collector, Nanded, it emerges that on 10 July 2000, the Revenue and Forest Department of the Government of Maharashtra superseded the Board constituted under Section 5 of the Nanded Act 1956 due to disputes between two factions of the Diwan. As a result, the Board was under the Control of the Revenue and Forest Department of the Government of Maharashtra. E

10. By a notification dated 15 February 2014, the State Government constituted an interim Board. On 21 February 2015, the State Government addressed a communication to the Charity Commissioner enquiring whether Sardar Gurucharan Singh (the fifth respondent in SLP (C) No. 7219 of 2020) or the first petitioner Sardar Sardul Singh was authorised to represent the Diwan. The Charity Commissioner informed the F

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<sup>5</sup> “the Nanded Sikh Gurudwara Rules 1958” G

- A Secretary to the State Government that it was the fifth respondent who was the President of the Diwan. Upon receiving the reply, the State Government notified four persons nominated by the fifth respondent as members of the Board.
- B 11. The dispute about who was entitled to be nominated under Section 6(1)(viii) resurfaced in 2019. Multiple and conflicting nominations were made purportedly with reference to the provisions of Section 6(1)(viii). The affidavit which has been filed by the State refers to the receipt of several nominations. It would be instructive to reproduce an extract:
  - C “9. On 4.1.2019...Shershing Hirasingh Fauji addressed a letter to the Government of Maharashtra in the alleged capacity of President of Diwan nominating four persons to the Board. This letter was not supported by any resolution of the Diwan.
  - D 10. On 4.1.2019, one Sardar Surinder Singh Ajabsingh, as the Secretary of the Diwan nominated four persons to the Board. The letter was supported by a resolution of the Diwan.
  - E 11. On 9.1.2019...Sardar Gurucharan Singh Uttam Singh Ghadisaj addressed a letter to the Government of Maharashtra in the alleged capacity of President of Diwan nominating four persons to the Board. This letter was not supported by any resolution of the Diwan.”
  - F 12. A letter was addressed by the State Government to the Assistant Charity Commissioner in order to seek a solution to the imbroglio with a query about the authorised office bearers of the Diwan. The Assistant Charity Commissioner, by a letter dated 2 February 2019, stated that Inquiry Applications Nos. 44 of 2019 and 114 of 2019 were pending in respect of the Diwan. On 15 June 2019, Sardar Gurucharansingh Uttamsingh Ghadisa gave a fresh letter allegedly in his capacity as the President of the Diwan nominating a different set of four persons.
  - G Eventually, on 21 June 2019, the State Government nominated four members to the Board under Section 6(1) viii.
  - H 13. The maze of conflicting claims for nomination to the Board under Section 6(1)(viii) led to the institution of proceedings under Art 226 of the Constitution before the High Court challenging the validity of the notification dated 21 June 2019. The High Court adverted to the

conflicting claims for nomination made to the government, The High Court held: A

“22. In four letters forwarded to the Government for nomination of the members of the Diwan on the Gurudwara Board, there does not appear to be consistency. The Government on its own does not have the authority to nominate the members of Diwan on the Gurudwara Board. The Government on its own cannot issue notification nominating the members of Diwan on the Gurudwara Board. It is only the Diwan that can nominate the members on the Gurudwara Board. Considering the inconsistency about the names to be nominated from the Diwan as members on the Gurudwara Board, the Government could not have issued the notification nominating the members of Diwan on the Gurudwara Board. Except the name of the respondent No. 4, we do not find consistency of other names in all the letters.” B

The High Court observed that it was not entering upon the issue of who was the President and the Secretary of the Diwan. It was considering the dispute only in so far as it pertained to the nomination of four members of the Diwan on the statutory Board constituted in terms of the Section 5 of the Nanded Act 1956. The High Court held that clause (viii) of sub-Section (1) of Section 6 does not authorise the government to nominate members who will represent the Diwan on the statutory Board and it was only the Diwan which can do so. Faced with the conflicting claims that were made to it, the High Court held that: D

“30. The State ought to have considered the authenticity of those letters. In absence of the proper procedure prescribed in the rules governing nominating members on the Gurudwara Board, it is not clear as to whether the general committee and/or executive committee and/or the President or the Secretary have the powers to nominate the members on the Gurudwara Board. The bye law and/or the rules of Diwan are silent in this regard. The member of the Diwan should take steps to amend the byelaws/ rules to that extent. The dispute also exists with regard to memberships. As observed above, we are not entering into the said dispute. It is for the Assistant Charity Commissioner to decide the dispute about the membership. F

31. The Government cannot arrogate the powers unto itself. The Government has usurped the powers of the Diwan. In a system G H

- A governed by rule of law, the discretion and the exercise of power has to be confined within the defined limits. The decision or notification de hors the power under the statute cannot be sustained. It is well settled that when a statute requires a particular thing to be done in a particular manner, it has to be done in that manner only.
- B The notification recommending respondent Nos. 4 to 7 is arbitrary. Arbitrariness has no role in the society governed by rule of law. Arbitrariness is antithesis to the rule of law, justice, equity, fair play and good conscience. The arbitrary action cannot withstand the test of law."
- C 14. The notification of the State Government was accordingly set aside.
- D 15. The appellants have questioned the *locus standi* of the first respondent (petitioner in the writ proceedings before the High Court) to challenge the appointment of the members made by the State Government on the ground that he is not a trustee of the Diwan. It has been submitted that the first respondent was removed from the post of trustee by Resolution No. 4 of the Working Committee dated 14 April 2015. A copy of the minutes of the meeting of the Working Committee on 14 April 2015 has been marked as Annexure 7 to Special Leave Petition (Civil) No. 7217 of 2020.
- E 16. On behalf of the appellants, a persuasive effort was made by Ms. Meenakshi Arora, learned Senior Counsel and Mr. Shivaji M. Jadhav, learned Counsel to demonstrate the steps which were taken by the Diwan in its capacity as a public trust registered under the MPT Act to ensure the due constitution of its managing body. It has been submitted that in
- F 1984 Gurucharan Singh was appointed as President of the Diwan and that the Working Committee which was elected under his presidency consisted of 28 members. Thereafter, at the lapse of two years, elections are claimed to have been regularly held to the Working Committee. According to the appellants, S. Jivansingh Ayyasingh Sahu was elected as President of the Trust on 11 November 1980 and 13 November 1982
- G for two years on each occasion. Gurucharan Singh became President on 26 October 1984 in which capacity he was re-elected on 14 October 1986, 15 November 1988, 20 October 1990, 28 October 1992, 4 November 1994 and 20 October 1998. According to the appellants, after the registration of the Trust, the Working Committee which was nominated
- H at the time of the initial registration continued from 1984 till 2001. Inquiry

Application No. 44 of 2019 regarding the change report filed by the Trust under Section 22 of the MPT Act is pending. This pertains to the entry of the Working Committee in Schedule I, including Sardar Gurucharan Singh as President (elected purportedly at a general meeting on 9 November 2018). On the other hand, Inquiry Application No 114 of 2019 initiated by Shersingh Hirasingh Fauji showing him as the elected President of the Diwan Trust is also pending. Contending that the elections to the Trust have been held periodically, it has been submitted that there was a settled practice of Gurcharan Singh nominating the four representatives of the Board under Section 6(1) viii. Hence Ms. Meenakshi Arora and Mr. Shivaji Jadhav urged that there was no justification for the High Court to interdict the notification of the State Government accepting the nomination of four members under Section 6(1)(viii).

17. On the other hand, the contesting respondents who had moved proceedings under Article 226 of the Constitution before the High Court have submitted that the first respondent had the *locus standi* to initiate such proceedings. It has been urged in the written submissions filed by the first respondent that Resolution No. 4 dated 14 April 2015 purported to be passed by the Working Committee is fabricated on the ground that the date of expulsion of first respondent from the Working Committee is mentioned as 25 October 2015, while the resolution is dated 14 April 2015. It has also been submitted that the change report filed by Gurucharan Singh dated 9 November 2018 shows the first respondent as an outgoing member of the Working Committee. Further, it has been claimed that till date no change report has been filed to remove the name of the first respondent from the record maintained in Schedule I, as a *de facto* member of the Working Committee. It has been stated that the issue of *locus standi* of the first respondent was not raised in the original counter filed by the appellants before the High Court, rather it was raised through an additional counter as an afterthought in order to dilute the *locus standi* of the first respondent. Hence, it has been submitted that the first respondent is still a trustee under Section 2(18) of the MTP Act and had the *locus standi* to move a petition under Article 226 of the Constitution.

18. The contesting respondents seriously questioned the plea of the appellants in regard to the management of the public trust. Ms. Vibha Dutta Makhija, learned Senior Counsel submitted that after the decision of this Court dated 22 January 2014 which recognized that the registration

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- A of the Trust had attained finality, Gurucharan Singh filed Miscellaneous Application 833 of 2011 before the Assistant Charity Commissioner for taking on record an entry in respect of an election which was held for 2002 - 2004. On 7 March 2015, the Assistant Charity Commissioner passed an order taking on record the entry pertaining to the election of the committee. According to the contesting respondents, the last entry pertaining to the Working Committee which was taken on record by the Assistant Charity Commissioner was for 2002-4. Out of 28 members, nine are stated to be dead while seventeen continue to subsist on the record maintained in Schedule-I in the office of the Assistant Charity Commissioner. Hence, it has been submitted that for the period 2004-6, 2006-8, 2008-10, 2010-12, 2012-14 and 2014-16, neither was any change report in respect of the election of the President or Working Committee reported under Section 22 nor has any change been recorded. However, it is accepted by the respondents that two Inquiry Applications are pending before the Assistant Charity Commission: (i) Inquiry No. 44 of 2019 filed by Gurucharan Singh with a claim that he was elected as President or Pradhan and that a Working Committee of 27 members was elected; and (ii) Inquiry No. 114 of 2019 by Shersingh Hirasingh Fauji claiming that he was elected as President in 2018 and that a Working Committee of 27 members has been elected. Both these applications where there are rival claims for election of the President and for members of the Working Committee are pending at the stage of evidence.
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19. In the written submissions which have been filed on behalf of the First respondent, the conflicting nominations which were made under Section 6(1)(viii) by Gurucharan Singh, on the one hand, and by Shersingh Fauji on the other, have been recorded under the caption “who nominated whom”. For convenience of reference, the extract is reproduced below:

**“2. WHO NOMINATED TO WHOM.”**

- I. By letter dated 04/1/2019... Sardar Shersingh Fauzi nominated to the Sardar Sardulsingh Fauzi and Sardar Jagwirsingh Shahu (petitioners in SLP No. 7219/2020) and other two persons.
- G II. On 09/01/2019, by letter dated Sardar Gurucharansingh s/o Uttamsingh Ghadisaz nominated himself who is the petitioner in SLP No. 7227/2020 and his son Sardar Bhagendarsingh who is the petitioner in SLP No. 7217/2020 and nominated other two persons.
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III. Sardar Gurucharansingh s/o Uttamsingh Ghadisaz by letter dated 09/01/2019 claimed to be the President of “Diwan” as well as Sardar Shersingh Fauzi by letter dated 04/01/2019 also claimed to the President of “Diwan”.”

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20. The State Government is stated to have appointed two persons from the letter dated 9 January 2019 and from the letter dated 4 January 2019. The nominated members are appellants before this Court since their appointments have been set aside.

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21. Our analysis of the submissions must be prefaced by advertizing to the fact that there is a maze of conflicting claims between the two factions, including the issue of the alleged removal of the first respondent as a trustee of the Diwan. The High Court has appropriately not embarked upon an enquiry to adjudicate upon these claims. Justifiably so, since two inquiry applications which have been filed under Section 22 of the MPT 1960 are pending before the Assistant Charity Commissioner. The change reports, as they are called, being the subject matter of a pending enquiry by the Assistant Charity Commissioner, it is neither appropriate nor proper for this court to enter into the thicket of factual disputes between the contesting factions.

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22. Essentially, the issue which the Court has to decide turns upon the interpretation of the provisions of Section 6(1)(viii). It is on this that the validity of the notification of the State government appointing four persons under Section 6(1)(viii) would rest. Two distinct entities are *dramatis personae* in the present case. The first is the public trust which is registered under the provisions of the MPT Act. Its origins lay in the Sachkhand Hazuri Khalsa Diwan Association Society which was initially registered under the Hyderabad Societies’ Registration Act of 1350 Fasli<sup>6</sup>. This body was initially registered as a society with the Registrar of Company Law and Co-operative Societies of the then Government of Hyderabad under registration no. 22 of 1951. The Memorandum of Association of the Diwan indicates that it was formed to protect and guide the followers of the Sikh religion, protect the interests of the Gurudwara and to work in the interest of the Sikhs of the then State of Hyderabad. The name of the society or association was formulated as Sachkhand Hazuri Khalsa Diwan. The General Committee of the Diwan consists of all the members of the Diwan who meet bi-annually. The members of the General Committee of the Khalsa Diwan

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<sup>6</sup> “1350 Fasli”

- A are alone entitled to vote. For the management of the affairs, there is a Working Committee consisting of 28 members. The Working Committee was to be formed by the President or Pradhan at the first meeting. Elections to the Working Committee are required to be held every two years. The President is entrusted with supervision over the affairs and working of the General Committee. Several decades after the reorganisation of States, a registration certificate was issued under the MPT Act to the society as a public trust on 11 January 1982 by the Assistant Charity Commissioner Nanded in Inquiry Application No 950/ 1981. This created a round of disputes between the contesting factions and it was eventually on 22 January 2014 that this Court concluded the issue by recording that the registration of the Diwan as a Trust under the MPT Act have attained finality. Disputes in regard to membership were a separate matter which could be adjudicated upon in terms of the remedies available under the MPT Act. As a public trust, the Diwan is governed by the provisions of the MPT Act.
- D 23. The second body with which the present group of appeals is concerned is a statutory body. This was created when the Hyderabad Legislative Assembly enacted the Nanded Sikh Gurudwara Sachkhand Shri Hazuri Apchalganagar Sahib Act 1956. The statute has defined the expression 'Gurudwara' under Section 2(c) to mean the institution known as Nanded Sikh Gurudwara Sachkhand Shri Hazuri Apchalganagar Sahib and to include the premises of the Gurudwara together with all its buildings and the shrines which are specified in the Schedule. A statutory board is constituted under Section 5 to administer the affairs of the Gurudwara in accordance with the enactment. The Board consists of seventeen members. Some of them are nominated by the government (see clauses (i), (ii) and (iii) of sub-section (1) of Section 6). Some members are nominated by specific bodies: under clause (iv), one member is nominated by Shiromani Gurudwara Prabandhak Committee from among the Sikhs of State of Madhya Pradesh; under clause (v) three members are nominated by the Shiromani Gurudwara Prabandhak Committee; under Clause (vii) one member is nominated by the Chief Khalsa Diwan of Amritsar and under clause (viii) four members are nominated by Suchkhand Hazuri Khalsa Diwan, Nanded. As regards the elected members, clause (vi) stipulates that two members shall be elected by and from among Sikh members of Parliament. Sub- Section (2) of Section 6 stipulates that the nomination and election of members under the
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provision “shall be made in such a manner and within such period as may be prescribed”. The expression ‘prescribed’ is defined by Section 2(e) to mean prescribed by rules made by the government under the Act and to include the bye- laws made by the Board under the statute. The expression ‘Board’ is defined in Section 2(a) to mean the Board which is constituted under the provisions of Chapter II. Thus, the modalities for nomination and election can be prescribed by the rules made by the government under the Act and in the bye-laws framed by the Board.

24. Sub-Section (3) of Section 6 provides that if the members mentioned in clauses (iv) and (vii) are not nominated or elected within the prescribed period, the government may specify the period within which the exercise has to be completed. If the process is not completed within the period so stipulated, the Government is empowered to nominate a person or persons to fill the vacancy. Significantly, the provisions of sub-section (3) of Section 6 do not apply to the nomination to be made under clause (viii) of sub-Section (1) of Section 6. In other words, the exclusive statutory authority for making the nomination of four members under Section 6(1)(viii) is vested in the Sachkhand Hazuri Khalsa Diwan, Nanded. Section 6(1)(viii) clearly indicates that it is the Diwan alone which has the power to make a nomination of four members. The State Government cannot assume that power to itself. That the authority of the Diwan is exclusive is evident from the provisions of sub-section (3) of Section 6.

25. The Nanded Sikh Gurudwara Rules 1958 contain a provision for the nomination of members under clauses (iv), (v), (vii) and (viii) of Section 6 (1). Rule 6 is in the following terms:

“6. Nomination of members under clause iv], v], vii] and viii] of sub-section 1 of section 6, -

1] As soon as may be after the appointed day, the State Government shall make a request in writing to-

1] The Shiromani Gurudwara Prabhandak Committee.

2] The Chief Khalsa Diwan, Amritsar, and

3] The Sachkhand Huzur Khalsa Diwan, Nanded to nominate within a period of two months from the date of the receipt of the request members on the Board, as required by clauses iv], v], vii] and viii] of sub-section 1 of section 6.

- A 2] The members so nominated shall function as the members on the Board from the date of the constitution of the Board.”

26. The provisions contained in Rule 6 indicate that for the purpose of fulfilling the statutory requirement of a nomination, the State Government is to make a request in writing, *inter alia*, to the Diwan B under Clause (viii).

27. The power to make a nomination under Section 6(1)(viii) is vested in the Sachkhand Hazuri Khalsa Diwan, Nanded. The statute does not expressly define the expression “Diwan”. The Diwan was constituted as a society initially in 1350 Fasli. It was registered as a C public trust under the MPT Act in 1982. The expression ‘Diwan’ needs elaboration. The Memorandum of Association refers to the Khalsa Diwan General Committee which comprises “of all members of the Diwan”. They alone are entitled to vote. The Working Committee is a smaller body consisting of 28 members which is elected for a duration of two D years on each occasion. The authority to nominate four representatives under Section 6(1)(viii) of the Nanded Act 1956 is entrusted to the Diwan. The Diwan consists of the collective body of all members who together are entitled to vote under the Memorandum of Association. Together they constitute the Diwan. Neither the President individually nor any office bearer can be equated with the Diwan. The authority to nominate E four members to the Board under Section 6(1)(viii) is not entrusted to an office bearer of the Working Committee or for that matter to the Working Committee. Ms Meenakshi Arora, learned Senior Counsel and Mr Shivaji Jadhav, learned Counsel sought to emphasise that as a matter of practice F nominations were made by Gurucharan Singh from time to time. The practice that was followed cannot be contrary to the interpretation of the provisions of the statute.

28. Evidently, conflicts between the rival factions have spilled over into the process of making nominations. The State Government was confronted with conflicting claims. It wrote to the Charity Commissioner seeking some light on the issue and after receiving a communication that G Gurucharan Singh was the President, proceeded to issue a notification drawing four members from out of the rival claims that were made by the conflicting factions. The High Court was justified in disapproving of the process that was followed by the State Government but for the simple reason that the nominations were not made by the Diwan. Multiple claims H were made in the letters submitted to the State Government. The High

Court was correct in its interpretation of the statute when it observed that it was not open to the State Government to arrogate the power of nomination to itself or to usurp the powers of the Diwan. The statute has entrusted the authority to make a nomination under Section 6(1)(viii) to the Diwan. The Diwan comprises of the collective body of all members together to whom the power to make a nomination is entrusted. The provisions of sub-section (2) of Section 6 read with the definition of the expression “prescribed” in sub-Section 2(e) lead to the conclusion that the nomination and election of members under Section 6 has to be made in the manner prescribed by the rules made by the Government under the Act, including the bye-laws made by the statutory board constituted under the provisions of Chapter II.

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29. We therefore hold that in authorising the Sachkhand Hazuri Khalsa Diwan, Nanded to nominate four members, Section 6(1)(viii) entrusts that authority to the collective body of members of the Diwan which is entitled to select the four individuals to be nominated to the statutory Board. This process, in our view, must be initiated forthwith and concluded within a period of three months from the date of this judgment.

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30. The change reports - Inquiry Applications Nos. 44 of 2019 and 114 of 2019 - must be enquired into by the Assistant Charity Commissioner expeditiously and the inquiry shall be concluded within a period of three months from the date of this judgment.

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31. Ms. Meenakshi Arora, learned Senior Counsel and Mr. Shivaji Jadhav, learned Counsel have made an earnest appeal to this court that pending the finalization of the process of making nominations under Section 6(1)(viii), the four members who were notified by the State government on 21 June 2019 may be allowed to continue. It was urged that during the pendency of these proceedings the judgment of the High Court was stayed. By an interim order passed on 31 July 2020 a direction was issued restraining the Board from taking any major financial or policy decisions. The court however made it clear that this shall not affect the distribution of langar and the activities of the Gurudwara. Hence, it was urged that the four members who have been notified by the State Government may be permitted to continue subject to the conditions contained in the interim order. This request has been opposed by Ms. Vibha Dutta Makhija, learned Senior Counsel. Mr Rahul Chitnis, Standing Counsel for the State of Maharashtra has also submitted that if

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- A the Court were to hold that the notification issued by the State Government on 21 June 2019 is not valid, it would not be appropriate to allow the four members, so nominated, to continue. We have held the notification dated 21 June 2019 to be invalid and have upheld the conclusion of the High Court. Hence, we cannot accept the submission of Ms. Meenakshi Arora, learned Senior Counsel and Mr. Shivaji Jadhav, learned Counsel permitting the members who were notified on 21 June 2019 to continue to function as an interim arrangement.
- B the members who were notified on 21 June 2019 to continue to function as an interim arrangement.
32. We accordingly dispose of the appeals by affirming the conclusion of the High Court that the notification issued by the State Government on 21 June 2019 was contrary to the provisions of Section 6 (1) (viii) of the Nanded Act 1956. We direct that:
- C (i) Inquiry Application No. 44 of 2019 and Inquiry Application No. 114 of 2019 pending before the Assistant Charity Commissioner, Nanded shall be concluded and disposed of in accordance with law within a period of three months from the date of this judgment;
- D (ii) The statutory authority to make a nomination under Section 6(1)(viii) is entrusted to the Sachkhand Hazuri Khalsa Diwan, Nanded. The Diwan signifies the entire body of members, as explained in the text of the judgment;
- E (iii) The process of making the nomination under the provisions of Section 6(1)(viii), as explained above, shall be initiated and completed within a period of three months from the date of this judgment. The Assistant Charity Commissioner, Nanded shall fix a date for the meeting of the Diwan and shall act as an observer at the meeting convened for finalising the nominations. The Assistant Charity Commissioner is entrusted with the authority to determine the members borne on the role of members of the Diwan who are entitled to vote at the ensuing meeting in accordance with the above directions. The Assistant Charity Commissioner is at liberty to adopt appropriate modalities for holding a meeting, including by way of a virtual meeting in view of the outbreak of Covid-19; and
- F (iv) If any further directions of a consequential nature are necessary to implement this judgment, the Assistant Charity
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Commissioner will be at liberty to move the Aurangabad    A  
bench of the Bombay High Court for directions.

33. The appeals are disposed of in the above terms. No order as  
to costs.

34. Pending application(s), if any, shall stand disposed of.      B

Divya Pandey

Appeals disposed of