

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sandhu v. Dhaliwal*,
2010 BCSC 1328

Date: 20100830
Docket: S102766
Registry: Vancouver

Between:

**Amarjit S. Sandhu, Sukhbir S. Gill, Lakhbir S. Khangura. Karnail Singh Brar,
Gurmeet Singh Gill**

Petitioners

And:

**S. Kashmir Singh Dhaliwal, Ranbir Manj, Kesar Singh Bhatti, Sukhwinder Singh
Gill, Gурpal Singh Birak, Joginder Singh Sunner, Ranjit Singh Hayer, Buja Singh
Mangat, Sohan Singh, Gurbax Singh Bal, Ranbir Singh Manj, Ravinder Singh Johal,
Rajinder Singh Dosanjh, Kuldip Singh Thandi, Kashmir Singh Rasoda, Dhian Singh
Bansal, The Khalsa Diwan Society**

Respondents

Before: The Honourable Mr. Justice Walker

Corrected Judgment: The following corrections were made on September 27, 2010:

On page 1, spelling of counsel's name was corrected

Oral Reasons for Judgment

In Chambers

Counsel for Petitioners:

H.A. Mickelson, Q.C.
J.D. Tweedale

Counsel for Respondents:

S.S. de Groot

Place and Date of Hearing:

Vancouver, B.C.
August 30, 2010

Place and Date of Judgment:

Vancouver, B.C.
August 30, 2010

Introduction, the Issues, and the Law

[1] **THE COURT:** The petitioners apply for relief pursuant to the *Society Act*, R.S.B.C. 1996, c. 433 ("Act") for relief pertaining to the membership drive of the Khalsa Diwan Society ("Society") being conducted for its upcoming election in November 2010. The dispute concerns, in part, the validity of membership application forms ("membership forms") taken to date and accepted by members of the Society's executive.

[1] The relief sought by the petitioners is set out in their amended petition, and includes the following orders:

- (a) the petitioners and their counsel be allowed to inspect all of the financial (including banking) documents of the Society relating to any funds received in relation to the Society's membership forms;
- (b) the petitioners and their counsel be allowed to inspect all original membership forms in the custody or control of the respondents;
- (c) all membership forms accepted by the Society to date be invalidated;
- (d) certain procedures be instituted by the Court to ensure a fair and transparent membership enrolment or re-enrolment process;
- (e) the petitioners or their designates be present during the dissemination and collection of membership forms;
- (f) the respondents provide the petitioners with 5,000 blank membership forms to disseminate to prospective members of the Society;
- (g) the Society's office hours during which membership forms are to be disseminated and collected be scheduled on Sundays from 11:00 a.m. to 5:00 p.m. in addition to existing dates and times for membership enrolment;
- (h) alternatively, that a neutral caretaker body be appointed to implement fair and unbiased membership enrolment and election procedures for the Society; and
- (i) the Court remain seized for the purpose of making ancillary or consequential directions, as necessary, in relation to the Society's 2010 election.

[2] The petitioners' application is predicated upon s. 85 of the Act. Section 85(1) states:

Court may remedy irregularities

85(1) Despite anything in this Act, if an omission, defect, error or irregularity occurs in the conduct of the affairs of a society by which

- (a) a breach of this Act occurs,
- (b) there is default in compliance with the constitution or bylaws of the society, or
- (c) proceedings at, or in connection with, a general meeting, a meeting of the directors of the society or an assembly purporting to be such a meeting are rendered ineffective,

the court may

- (d) either of its own motion or on the application of an interested person, make an order

- (i) to rectify or cause to be rectified or to negate or modify or cause to be modified the consequences in law of the omission, defect, error or irregularity, or
 - (ii) to validate an act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the omission, defect, error or irregularity, and
- (e) give the ancillary or consequential directions it considers necessary.

[3] Thus, for the Court's jurisdiction to be engaged, default in compliance with the Society's constitution or bylaws must be shown. If it is, then the Court may, either on its own motion, or upon application, "make an order to rectify or cause to be rectified or to negate or modify or cause to be modified the consequences in law of the omission, defect, or irregularity" or to "validate an act, matter or thing rendered". In doing so, the Court must consider the effect of an order on the Society and its directors, officers, members, and creditors: s. 85(2).

[4] The issues on this application are twofold. First, has there been non-compliance with the constitution or bylaws of the Society such that the jurisdiction of the Court is engaged? Second, if so, what relief, if any, should be granted?

[5] Section 85 applications have been considered in a number of different cases before this Court and the Court of Appeal. The leading authority is the Court of Appeal's decision in *Samra v. Guru Nanak Gurdwara Society*, 2008 BCCA 202, 81 B.C.L.R. (4th) 239, 167 A.C.W.S. (3d) 245. In affirming the decision below, reported at 2007 BCSC 882 and 157 A.C.W.S. (3d) 891, the Court of Appeal cited, with approval, the remarks of Smart J. at paras. 2 and 3. There, Smart J. described the importance of membership requirements to a society and the importance of the enrolment process to the integrity of the election itself:

The requirements for membership in a society and the process by which determinations are made as to whether an applicant has met those requirements are matters of great importance to a society. Further, as it is only members who may vote at general meetings and at the election of a society's executive, the integrity of the membership enrolment process is closely connected to the integrity of the election itself. If membership enrolment is not conducted fairly, then it is unlikely that the election will be fair.

This Court's jurisdiction to intervene in the affairs of a society, including membership enrolments or elections, is limited. It is circumscribed by s. 85 of the **Society Act**, R.S.B.C. 1996, c. 433. In accordance with s. 85, this hearing requires me to determine whether there have been irregularities in the conduct of the affairs of the defendant Society by which there has been a default in compliance with the constitution or bylaws; and[,] if so, what, if any, order I should make, after considering the effect of such an order on the Society and others.

[6] At para. 58, Mr. Justice Smart applied the decision of Low J. (as he then was) in *Sarjit Singh Gill v. Khalsa Diwan Society* (December 3, 1999), Vancouver Registry No. A993150 (S.C.), which was also quoted by Hall

J.A. in *Garcha v. Khalsa Diwan Society - New Westminster*, 2006 BCCA 140, at para. 9:

This court must find irregularities or errors before it has jurisdiction under s. 85. In my opinion, there must be some connection between any irregularity proven and the relief sought. The authority under the section is to correct the problem and make necessary ancillary or consequential directions. The scope of the section is not very broad and the court's discretion is not unfettered.

The court is always reluctant to interfere in the internal affairs of any corporate body. The respondent society should be left to govern itself in a democratic fashion and make its own decisions, including what may be seen by some of its members to be mistakes. The court should not presume that those in executive charge of the society will conduct themselves contrary to the interests of the society or that they will breach the rules of natural justice to the extent those rules apply to the business at hand.

The Facts

[7] It is worthwhile to set out a brief history of the facts leading up to the current dispute. This is the third time that members of the Society have been before this Court seeking relief in relation to membership and election issues conducted since 2000.

[8] The first dispute, *Kaila v. Khalsa Diwan Society*, resulted in a hearing before Wilson J., whose decision is reported at 2004 BCSC 1399, 2004 135 A.C.W.S. (3d) 559. The dispute was ultimately resolved by agreement between the parties. That agreement manifested itself in a detailed consent order, which has been described in subsequent cases as "the transparent process" and used to ensure fairness in membership application drives and elections.

[9] The second dispute was heard by Sigurdson J. on a summary trial application on November 9, 2007. His reasons are unreported (Vancouver, VA S07709). In view of the complex factual matrix involved, Sigurdson J. referred the case to the trial list (the case never went to trial).

[10] Some of the individual parties involved in the present petition, including this application, were involved in those prior disputes. Further, the Society as well as some of the parties involved in this proceeding have been involved in litigation stemming as far back as 1999 (albeit in relation to other matters).

[11] In January 2010, certain members of the Society, who are now petitioners, made a request of the current executive for the transparent process to be followed in respect of the membership drive and the upcoming election. Their request was rejected.

[12] The circumstances leading up to that request begin with a letter sent to the executive dated January 29, 2010; it reads, in part:

DELIVERED BY HAND/MAIL

To: The Executive of Khalsa Diwan Society (the "Society")

We request to meet with members of the Executive to discuss issues of membership such as the application and enrollment procedure for new members.

For example, we have been advised by several people recently that they are unable to submit their applications for membership as there is no clearly designated time or person responsible for collecting applications at the Society's office pursuant to Chapter 2, Section A 1(d) and (e) of the Society's bylaws.

These and other issues need to be addressed as soon as possible and we request that at least one member of the Executive (but preferably all members) arrange to meet with **Sukhvir S. Gill, Gurmit S. Gill, Lakhvir S. Khangura, and/or Amar S. Sandhu** by no later than February 7th, 2010.

[13] The executive's response to that letter was perfunctory, and sent by letter dated February 2, 2010 from the respondent, Mr. Kesar S. Bhatti, who is the senior vice-president of the Society. It reads:

Re: Membership Forms

This is to inform you that the application forms for membership in Khalsa Diwan Society are accepted in the society's office every Sunday between 11a.m. to 1p.m.

[14] A lawyer was retained to represent those petitioners. He wrote to Mr. Bhatti and the other members of the executive committee members on February 5, 2010. That letter reads, in part:

...

Unspecified Office Hours

Although your letter dated February 2, 2010, states that Application for Membership forms ("Membership Forms") are accepted in the Society's office during set hours, we are advised that this is not so in practice. We are advised that numerous people have been turned away with various excuses so that not only are Membership Forms unavailable but are also not accepted by the Executive Committee in a fair and transparent manner. This is in contradiction of Chapter 2 Section A 1(d), (e), and (f) of the Society Bylaws.

...

Requests

We also make the following requests on behalf of her clients:

1. The Executive Committee produce and deliver the list of current registered members of the Society to our office by no later than 30 days from [the] receipt of this letter, pursuant to Chapter 2 Section C 8 of the Society Bylaws.
2. The right of our clients to inspect any Membership Forms received by the Society from November 1, 2008, until now by no later than February 28, 2010. We are advised that on January 31, 2010, the Society's treasurer, Mr. Kuldip Thandi, publicly stated that

approximately 1,103 Membership Forms have been accepted by the Society since November, 2008.

3. To have a representative of our clients present during any dissemination and collection of Membership Forms by the Society.

4. Office hours during which Membership Forms are disseminated and collected be extended from 11 a.m. to 2 p.m. every Sunday.

5. End the practice of collecting information of who each Membership Form [sic] is given to. We understand that each Membership Form is serially marked, and the practice of noting which number is given to which individual may be interpreted as a discriminatory and/or intimidating tactic.

6. Executive Committee members meet with our clients to discuss the above issues by no later than February 21, 2010.

[15] The letter concludes by raising the prospect of litigation:

If these issues and requests are not addressed by the Executive Committee in a timely manner, we will seek instruction to petition the Supreme Court of B.C. for the appropriate relief.

[16] A follow-up e-mail was sent by that same counsel to a lawyer then retained for the Society (and its executive members) dated February 16, 2010:

I write further to your request yesterday that the deadline for response to our February 5, 2010 letter be extended to March 1, 2010.

Our clients are not agreeable to any extension at this time. The Executive Committee has had ample opportunity to respond and address our client's concerns. The February 5, 2010 letter was not the first occasion that our clients have approached the Executive Committee regarding some of the issues in the letter.

Our clients have attempted to open a dialogue with the Executive Committee without the assistance of lawyers, but the Executive Committee has ignored them.

We are therefore instructed to commence legal proceedings if the requests in our February 5, 2010 letter are not adequately addressed. I look forward to your client's response by no later than February 21, 2010.

In addition, it is brought to our attention that the Executive Committee has changed the days in which Membership Application forms are distributed from Sundays to Saturdays and Tuesdays. Kindly advise as to why this unprecedented change was made considering that Sundays are the most convenient days for the congregation to attend at the society's office.

I look forward to your response.

[17] The Society has, by convention, accepted membership forms on Sundays.

[18] The lawyer acting for the Society received that e-mail and took instructions. He wrote a follow-up letter in reply on February 18, 2010, advising that the members of the executive committee were prepared to meet:

Further to your e-mail of February 16, 2010, the Executive Committee would be pleased to hear from your clients in person with respect to their specific concerns over the operating practices of the Society.

Executive Committee members will make themselves available to your clients on either of March 1, 2, or 3 at the Ross Street Temple. It is preferable, given schedules, that meetings be held after 5:00 p.m.

[19] The lawyer acting for the petitioners requesting the meeting prepared an agenda and sent it to the Society's lawyer. That agenda includes items taken from the transparent process ordered by Wilson J. and adopted by some of the parties in their dispute in *Kaila*.

[20] For example, agenda items 3 and 4 provide:

3. Enable family members and friends to submit Membership Forms by way of a fair, non-restrictive process by immediately discontinuing the practice of demanding proof of identification for all applicants whose Membership Forms are submitted by their family member;

4. Provide for fair scrutiny of the Membership Form distribution and submission processes by inviting the attendance of opposition slate representative(s), or their appointees, in numbers equal to the number of Executive Committee members present during any dissemination and collection of the Membership Forms by the Society.

[21] In the covering e-mail sent with the agenda, the executive committee was asked to advise if they wished "to add any further topics".

[22] The Society's response, written by its lawyer, is dated February 26, 2010:

Your clients will be provided the same opportunity to address members of the Exec. Com as would any other members of the Society. No more and no less.

The governing body of the Society will make a considered decision in a reasonable amount of time and makes absolutely no commitment to resolve matters by the end of the meeting.

The agenda is welcomed as a guide to your clients' concerns. The Exec. Com is not bound by it.

Are you able to provided any specific legal authority supporting the position of your clients? If so please forward ASAP so that I may review same.

[23] Case law was then identified by the petitioners in a follow up e-mail sent approximately 30 minutes later: the decisions of this Court and the

Court of Appeal in *Samra* as well as the decision of this Court in *Hara v. Khalsa Diwan Society* (1988) 84 A.C.W.S. (3e) 873 (S.C.).

[24] Approximately 15 minutes later, the lawyer representing the Society replied by e-mail, stating:

I wasn't clear on mynote [sic] to you earlier.

The Exec. Com denies that membership application procedures are unfair or not appropriate per the common law and statute.

We are curious as to what law supports your clients' position regarding imposing deadlines and dictating terms to agoverning [sic] body.

Further, your clients have provide[d] no specifics as to their allegations. In other words can they provide relevant circumstances with details as to when, where, how and who?

The attitude of your clients appears to be, with respect, "do things our way and on our schedules or else". To say this is not constructive is an understatement.

Instead, I would urge you to obtain more specific info from your clients in advance of the meeting.

[25] A list of the Society's members, as at February 28, 2010, was sent to the lawyer representing the petitioners on March 5, 2010. Four days later, the lawyer representing the Society responded with its formal position. The executive committee denied any request to examine membership forms, declined to include Sundays as a day to take membership forms, asserted that the petitioners had failed to provide any evidence to support their claims, and advised that the executive committee had acted within its jurisdiction at all times.

[26] Subsequently, a letter dated April 7, 2010, was sent on behalf of a group called "Sikh Youth Vancouver" to the executive committee, stating, in part:

We are writing this letter to formally request your kind assistance with finding definitive, mutual resolution to the ongoing lack of access to membership forms for new applicants seeking membership to the Society.

As you know, this is our third such request to the Executive, the most recent voiced at our meeting with you on March 1, 2010. During this meeting, you will recall that the Society's attorney ... demanded that we present legal arguments in support of our request to provide all Sangat-applicants with free and fair access to membership forms. We are writing to you, not to present legal arguments, but rather, in the spirit of engaging in open dialogue to mutually resolve an issue which is causing undue hardship to Sangat members seeking membership to the Society.

Accordingly, it is our genuine hope that you will consider our requests, as follows:

1. Provide open access to membership forms on Sundays, the most popular day of worship and most convenient day for Sangat to visit the Gurdwara's offices. Executive members have stated that they are too busy to

distribute forms on Sundays. If required, we are willing to donate the salary of an employee or contract worker who you may appoint, and offer any other assistance you may require in order to facilitate this request; and

2. Allow for online distribution of blank membership forms, a facility for which we are willing to donate any requisite resources.

Should the Executive determine not to implement these mechanisms for providing open and fair access to membership forms, we ask that no fewer than 4,000 blank membership forms be made available and delivered to us as a near-term solution. We will arrange for distribution of these blank forms to the Sangat, and any reasonable printing costs of these forms will be donated by us to the Society.

[27] Ultimately, the Society's executive members determined that no further information should be provided. It was only after this proceeding was commenced that access to the membership forms was allowed.

[28] I have been shown various membership forms, accepted by different members of the Society's executive, that do not comply with the Society's bylaws. By way of example, those forms may be included in the following groups:

- (a) forms signed by the same person, with the same address, on different dates, and with a different signature;
- (b) forms purported to be signed by a different person at a different address, on different dates, bearing the same signature; and
- (c) forms containing no signature at all (signatures are required by the bylaws), yet accepted by an executive member of the Society.

[29] I have also been shown membership forms that fall in the "verification" category. Membership forms may be verified by a family member of the applicant who is not able to attend in person. A family member can attend upon a member of the executive and provide a written verification statement as to the accuracy of the form and the signature of the person on it.

[30] The verification group of documents that I have been shown raise questions as to the integrity and validity of the verification process and the role of certain members of the executive who accepted those documents in very questionable circumstances.

Determination and Findings

Has there been non-compliance with the Society's bylaws?

[31] The evidence shown to me in relation to non-compliant membership forms is not limited to a few documents so that it cannot be said that non-compliance is limited, inadvertent, or the result of the conduct of a naive and innocent member of the executive. Non-compliant membership forms have been taken over a considerable period of time, since at least August 2008. In some instances, non-compliant membership forms falling into the groups identified in para. 28 were taken by the same executive member on the same day or within a relatively short period of time of one another. Further, there are many

instances where such non-compliant membership forms were taken while the dispute between the parties in this proceeding was fully engaged.

[32] The Society has the information contained in the membership forms entered into a computer data system by a data processor. I am satisfied that no effort has been made by the Society, despite the dispute involved in this proceeding, to check for duplicate or other questionable documents or to ensure that no errors have been made in accepting membership forms.

[33] No explanation has been provided by the respondents to explain or justify the taking of non-compliant membership forms.

[34] I find that there has been non-compliance with the Society's bylaws such that this Court's jurisdiction is engaged. I am satisfied from the evidence I have seen that non-compliance is not limited to a few documents taken by one or two naive members of the executive.

What relief, if any, should be granted?

[35] During the course of the first day of the hearing of the petition, counsel for the respondents advised the petitioner and the Court that there existed some 1,200 membership forms beyond those that the petitioners were aware of at the start of the hearing, bringing the total number of membership forms available for examination to some 6,800. The petitioners then reviewed as many of those 1,200 forms as they could, overnight before the hearing resumed on the second day. When the hearing resumed on the second day, I was shown additional membership forms that were non-compliant in respects beyond those the petitioners were aware of at the start of the hearing.

[36] It is troubling that some of the non-compliant membership forms were accepted by certain members of the executive in the spring of this year after the dispute between the parties was fully engaged and after the litigation had commenced.

[37] It is particularly disturbing to see, following disclosure of the 1,200 additional membership forms on the first day of the hearing, that some are, on their face, clearly non-compliant because they do not contain the signature of the applicant. Those forms have been accepted and signed by certain members of the executive even though the bylaws require the signature of the proposed member. That activity was engaged in by certain members of the executive as recently as last week, shortly before the hearing of the petition was to commence.

[38] Recent revelations of additional and substantial numbers of membership forms show that the Society's executive continues to be actively involved in taking membership forms that are clearly non-compliant. In my opinion, non-compliance is so pervasive that the integrity of the entire membership application process is called into question.

[39] This is the third time since 2000 that members of the Society have been before the Court to deal with election and membership form issues. In light of that history, given the executive's outright rejection of the petitioners' request for a transparent process, and due to the very recent and blatant activity of certain members of the executive in accepting clearly non-compliant membership forms, I believe that no right-thinking member of the

Society would have any confidence in the validity of the membership documents. I can say that I do not.

[40] I am also of the view that ordering a transparent process remedy, which would involve each side having a representative participate in the taking of forms, is likely to lead to further conflict and further court proceedings. The time has come for the Society to conduct a membership process and an election in such a way that its members can have confidence that those processes are fair and conducted in an impartial manner.

[41] Therefore, I am of the opinion that the following steps are appropriate remedies in the circumstances of this case:

- (a) all membership forms taken since the last election are invalidated;
- (b) a neutral, independent person ("Electoral Officer"), will be appointed to run the membership drive and to conduct the Society's next election;
- (c) the parties are to agree upon the identity of the Electoral Officer within seven days, failing which I will do so;
- (d) the election presently scheduled to take place in November 2010 is postponed to a date to be agreed upon by the parties in accordance with the recommendation of the Electoral Officer, and failing agreement, by order of this Court;
- (e) the Electoral Officer shall provide recommendations to the parties and the Society concerning the process to be used in conducting the membership drive, including the taking of membership forms, and the process to be used to conduct the election; and
- (f) those recommendations shall be contained in written form and provided to the Court for its approval.

[42] It is my hope that the parties will accept those recommendations. The parties and the Electoral Officer may apply to Court for further directions and such further corollary relief as necessary as I intend to retain supervisory jurisdiction over the process until the election is complete.

[43] I reject the submission of the respondents that rather than invalidating all of the membership forms, lawyers acting for the parties should now engage in a detailed review of all of the membership forms to determine those that should be invalidated.

[44] I have considered what is in the best interests of the Society, its directors, and members. In view of the history of the dealings between the parties and the very recent activity of the executive in taking forms in clear contravention of the Society's bylaws, I think it is inappropriate to force the petitioners or innocent members of the Society who have had nothing to do with this dispute, to bear the significant cost of reviewing each and every membership form. It is wholly unwarranted to require them to incur that legal expense, especially in light of the request made by the petitioners earlier this year for a transparent process.

[45] Moreover, I am satisfied that if the requests made of the executive had been followed, this litigation would have been avoided.

[46] If any members face income tax issues arising from my order invalidating the membership forms, they can take it up with members of the executive.

[47] That then leaves the issue of costs.

[48] Mr. Mickelson, I will hear from you as to whether that should be heard now or later after the Electoral Officer is appointed.

(SUBMISSIONS ON COSTS)

[49] THE COURT: All right. Thank you. Mr. Mickelson, it seems to me that what you propose flows naturally and logically from my decision and the order I have made. I agree that the executive's authority should be limited to current operations and running the affairs of the Society in the ordinary course of business until the election results are in hand and the executive is elected.

[50] The issue of costs is adjourned.

[51] I wish to be advised of the name of the Electoral Officer agreed to by the parties; failing agreement, the parties should arrange for a further hearing. I also wish to be kept informed of the membership drive and election processes recommended by the Electoral Officer.

"P. Walker J."

The Honourable Mr. Justice Paul Walker