

S.No. 47

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No. :- WP (C) No. 3244/2023
CM No. 7858/2023

Sukhjit Singh, Age 65 years,Petitioner(s)/Appellant(s)
S/o Late S. Dayal Singh,
R/o Bawa Talab, Gurah Singhu Kangrail,
Tehsil Bhalwal, District Jammu.

Through: Mr. Abhimanyu Sharma, Advocate

Vs

1. UT of J & K Th. Respondent(s)
Financial Commissioner,
Revenue Department,
Civil Secretariat, Jammu;
2. **Additional Deputy Commissioner**
(Adm.), Jammu (Appellate Authority);
3. **Assistant Commissioner,**
Revenue Returning Officer,
District Gurudawara Prabandhak
Committee Elections, Jammu;
4. **Assistant Returning Officer,**
5-Akhnoor Constituency;
5. **Ranvir Singh S/o S. Hazara Singh**
R/o Nardi Bala Tehsil Maira
5-Akhnoor Constituency

Through: Mrs. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

29.12.2023

1. The petitioner through the medium of instant petition under Article 226 of the Constitution of India seeks the following reliefs:-

a. Certiorari, seeking to quash order dated 22.07.2023 passed by the respondent no. 2, whereby and wherein the appeal under Rule 31(A) of Jammu and Kashmir Sikh Gurudwara and Religious Endowment Rules, 1975

against the election of the private respondent as member of Gurudwara Prabandhak Committee District Jammu from 5-Akhnoor Constituency was dismissed;

b. Certiorari, seeking to quash election result issued under No. ENT/J/2022-23/2180-2195 dated 27.06.2022 to the extent the private respondent no. 5 has been shown who have been elected as member of 5-Akhnoor Constituency to the Gurudwara Prabandhak Committee, Jammu;

c. Mandamus, commanding and directing the official respondents to produce the record pertaining to the votes polled in the election conducted by the respondent no. 3 & 4;

d. Any other order or direction which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case."

2. The facts giving rise to the filing of the instant writ petition are that vide Notification No. FC-LS/GPC-08/11/2016 (18114) dated 25.05.2022, schedule for holding District Gurudwara Prabandhak Committee Election was issued and in the schedule so issued, 27.05.2022 was the date for issuance of election notice, 27.06.2022 was the date of polling and counting and declaration of result. It is stated that the Jammu and Kashmir Sikh Gurudwara & Religious Endowment Act, 1973 (*hereinafter referred to as the "Act of 1973"*) applies to all the Sikh Gurudwara of J&K.

Section 2(e) of the Act of 1973 defines 'Sikh' as meaning a person, who believes in ten Sikh Gurus and Guru Granth Sahib and keeps Kesh (or long hair).

Section 2(f) defines "Sehajdhari Sikh" as meaning a person, who believes in Gurugranth Sahib and ten Gurus, but has never kept keshas (or long hair).

Section 2(g) defines "Patit Sikh" meaning a Sikh, who had kept Keshes (or long hair) and has later on, shaved of.

Section 10 of the said Act provides for constitution of Prabandhak Committee for one or more Districts in the manner as may be prescribed.

Section 11 of the Act of 1973 provides that each Gurudwara Prabandhak Committee shall constitute of 11 members.

Section 13 provides that members of Gurudwara Prabandhak Committee shall hold office for five years from the date of its constitution.

3. It is the case of the petitioner that in exercise of powers conferred by Section 19 of the Act of 1973, J&K Sikh Gurudawara & Religious Endowment Rules, 1975 (hereinafter referred to as the "**Rules of 1975**") were made.

Rule 2 of the Rules of 1975, *inter-alia*, defines "Sikh", "Sehajdhari" & "Patit Sikh" in the same manner, as defined under the Act of 1973.

Rule 3(1) provides that there shall be an Election Authority for arranging election of Gurudwara Prabandhak Committee and Rule 3(2) provides that Financial Commissioner shall have superintendence, direction and control over election under these rules.

Rule 4(1) provides that each District shall be divided into 11 constituencies.

Rule 9 provides for appointment of Returning Officer.

Rule 5(1) provides that the Election Authority shall cause the electoral poll to be prepared, which shall include the name of every such Sikh, who is registered as a voter in corresponding electoral roll of the Jammu and Kashmir Legislature Assembly.

Rule 5(3) provides that no person shall be entitled to be registered in the Electoral Roll for more than one constituency and for any constituency more than once.

Rule 6 provides that Election Authority shall cause the list of voters of constituencies to be published by affixing copies thereof at his office and at Tehsil & Block offices two months before the elections of the members of the committee is held.

Under Rule 7 of the Rules of 1975, the Election Authority shall hear claims for the inclusion or deletion of a voter in the electoral roll and every objection shall be lodged within a period of 15 days from the date of publication of electoral rolls under

Rule 6 and shall be disposed of within a period of five days from the date such objection is filed.

Rule 11 provides that not less than 30 days before the date on which elections to be held, the Returning Officer shall cause a written notice to be affixed at his office and at Tehsil Office, publishing schedule of election.

Rule 12 provides that on or before the date of submission of nomination papers of candidates, every candidate, whose name is included in the electoral roll, prepared in the manner prescribed under Rule 5 and (who belongs to the District for which the member of the committee is to be elected) shall deliver a nomination paper to the Returning Officer.

Rule 23(1) provides that no person, whose name is not entered in the Electoral Roll pertaining to the Constituency shall be entitled to vote in the Constituency.

Rule 23(2) provides that every voter shall have only one vote.

Rule 31 of the Rules of 1975 is with regard to declaration of result of the elections of Gurudwara Prabandhak Committee and provides that Returning Officer shall within two days of the election day, declare the results of the election and affix a copy of the election result at the office of Tehsildar and at some other place within the area of the Tehsil.

4. Learned counsel for the petitioner submits that vide S.O 123 of 2021 dated 08.04.2021, the Rules of 1975 have been amended and in terms of the amendment so made, Rule 5(1) of the Rules of 1975 was substituted by the following:-

“(1) The Election Authority shall cause the Electoral Rolls to be prepared, which shall include the name of every such sikh, who is registered (or eligible to be registered) as a voter in the corresponding Electoral Roll of the Jammu and Kashmir Legislative Assembly.”

5. Learned counsel for the petitioner also submits that by way of amendment in the Rules of 1975, a new Rule, i.e., Rule 31 A has also been inserted, which is reproduced as under:-

“31 A- Appeal”

- (i) ***An appeal against the election of elected member of District Gurudwara Prabandhak Committee shall lie to the Authority as may be notified by the Government, within a period of 30 days from the date of declaration of result;***
- (ii) ***On receipt of the appeal under sub-rule (1), the appellate authority shall fix the time, place and date of hearing of the appeal, such date not being more than seven days after the date of receipt of the appeal;***
- (iii) ***At the fixed date and place, the authority shall hear the appeal and pass the orders as it may deem fit;***
- (iv) ***The orders passed under sub rule (3) shall be final.”***

6. It is also stated that the Electoral Rolls-2022 of Gurudwara Prabandhak Committee of 5-Akhnoor is vitiated, inasmuch as, the same included the names of a large number of non-

sikh voters (as many as 282). It is further submitted that in terms of Sub-Rule (1) of Rule 5 (as amended by S.O No. 123 dated 08.04.2021), the Electoral Rolls shall include the names of Sikhs only (and not of non-Sikhs). It is also stated that before the elections were conducted, the fact that in the Electoral Rolls there were number of non-Sikh Voters, came to the knowledge of respondent No.3-Returning Officer vide Communication No. EXT/J/2022-23/1182-92 dated 11.06.2022 addressed to the respondent No. 4-Assistant Returning Officer. Pursuant to the said Communication, the Assistant Returning Officers were directed to look into the matter and if found that the voters are non-Sikh, they may be deleted from the electoral roll and a factual report in this regard may be submitted to the said office. It is further stated that vide No. ENT/J/2022-23/2772-74 dated 23.07.2022, the Additional Deputy Commissioner, Jammu (Adm.) has been designated as appellate authority for the purpose of Rule 31 A of the Rules of 1975 for Jammu District.

7. With a view to contest the election for member of District Gurudwara Prabandhak Committee, Jammu, the petitioner being a voter in 5-Akhnoor constituency, filled up the nomination form in the said Constituency, which was found to be in order. The private respondent No. 5 and one more person, namely, Prem Singh also filled up and submitted their nomination papers, which were also found to be in order. It is matter of record that total 3697 votes were polled,

out of which, 27 votes were rejected and 3670 votes were found valid.

8. The private respondent No. 5 was declared as a Winning candidate and was shown to have polled 1399 votes, while the petitioner was declared as having polled second highest 1322 votes. It is in this way, the respondent No. 5 won by a margin of 77 votes.
9. Learned counsel for the petitioner submits that in terms of Rule 5(1) of the Rules of 1975 as amended upto date, every election authority shall cause the electoral rolls to be prepared, which shall include the name of Sikh (as defined in section 2(e) of the Act of 1973, but perusal of the electoral roll of different polling stations of 5-Akhnoor constituency reveals that there are as many as 282 non-sikh votes in the electoral rolls. As per the petitioner, polling booth wise situation is as under:-

- (i) ***Polling station No. 1 shows non-sikh votes at Electoral Roll No. 349, 350, 351 & 352 (total 04). Out of these at least two have cast their votes;***
- (ii) ***Polling station No. 2 has non-Sikh votes at Electoral Roll Nos. 01, 02, 03, 04, 05, 124, 298, 323, 324, 325, 326, 327, 328, 329, 413, 414, 415, 416, 417, 418, 422, 846, 847, 848 and 868 (total 25) out of which 13 non-sikhs have cast their votes;***
- (iii) ***Polling Station No. 3:-
Voters figuring at electoral Roll Nos. 15, 18, 27, 29, 31, 32, 33, 74, 75, 76, 77, 78, 79, 107, 108, 109, 128, 132, 192, 242, 258, 260, 301, 316, 320, 321, 324, 325, 326, 327, 330, 331, 332, 333, 336, 368, 380, 384, 392, 395 399 & 404 (total 41 non-sikh votes). Out of which 19 non-sikh voters have cast their votes;***
- (iv) ***Polling station No. 4:-
Non-Sikh voters are at Electoral Roll No. 854 & 855 (total 02).Out of which one non- Sikh voter has cast his vote;***
- (v) ***Polling station No. 5:-***

Non-Sikh votes are at Sr. no. 01, 06, 210, 259, 261, 289, 291, 292, 294, 299, 326, 330, 332, 333, 355, 356, 359, 389, 390, 399, 400 & 401 (total 23). Out of these, 07 non-Sikh voters have cast their votes;

(v) Polling Station No. 6:-

Non-sikh votes are at sr. no. 16, 17, 25, 30, 31,32,33,49,50,54, 58, 59, 59, 79, 80, 81, 82,83,85, 86, 87, 88, 89, 90, 91, 92, 93, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 139, 140, 141, 142, 151, 172, 173, 174, 180, 185, 186, 188, 189, 192, 193, 194, 195, 204, 205, 206, 207, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 237, 241, 244, 252, 253, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 291, 292, 293, 294, 295, 296, 297, 299, 302, 303, 310, 311, 312, 315, 318, 321, 355, 572, 573, 574, 575, 578, 580, 581, 582, 583, 584, 586, 613, 614, 616, 617, 618, 619, 620, 621, 622, 627, 628, 629, 630, 631, 632, 653, 654, 655, 660, 664, 670, 673, 675, 676, 679, 680, 686, 689, 690, 708, 715, 720, 951, 764, 965,766, 768, 769, 774, 775, 776 & 777 (total 171) out of these 89 have cast their votes;

(vi) Polling station no. 7:-

Non-Sikh votes are at S. No. 87, 251 and 279 (total 3), out of which one non-Sikh voter has cast his vote.

(viii) Polling Station 9B:-

Non-Sikh votes are at Sr. Nos. 03, 39,48,51, 59, 66, 68, 70,74, 170, 193, 303 & 332 (total 13). Out of these, 12 Non-Sikh Voters have cast their votes.

- 10.** It is specific case of the petitioner that there are at least 11 such Sikh voters, whose names are figuring against two voter ID numbers. Such entries are not permitted in terms of Rule 5(3) of the Rules of 1975.
- 11.** As per record, in polling station No. 04, the voter figuring at S. No. 104 is also figuring at No. 771; voter figuring at No. 101 is also figuring at S. No. 72, Voter figuring at Sr. No. 100 is the same as is figuring at S. No. 148, voter figuring at Nos. 800 and 864 is the same person; voter figuring at No. 826 and 837 is the same person; voter figuring at No. 870 and 879 is the same person; voter figuring at 789 and 881 is the

same person; voter figuring at S. No. 801 and 868 is the same person; voter figuring at Nos. 144 and 162 is the same person.

- 12.** Voter figuring at Sr. No. 21 of polling station No. 4 is the same person as that figuring at S. No. 33 in polling station No. 6.
- 13.** Voter figuring in polling station No. 3, at S. No. 166 and 192 is also one and the same person.
- 14.** It is urged by the learned counsel for the petitioner that the three persons figuring at Sr. Nos. 55, 288 and 304 in polling station No. 4 are dead persons, but the Electoral Roll record maintained at Polling Station at the time of elections shows that someone has cast votes on behalf of those three dead voters.
- 15.** Feeling aggrieved of the aforesaid election result and the whole selection process in 05-Akhnoor Constituency for Gurudwara Parbandak Committee, Jammu, the petitioner has filed an appeal as provided under the Rules before the respondent No. 2, who was the appellate authority designated for hearing the appeal under Rule 31(A) of the Rules of 1975. The private respondent filed his reply in the aforesaid appeal and the official respondents submitted the relevant record and the respondent No. 2 after considering the reply and the record produced by the official respondents, dismissed the appeal filed by the petitioner by virtue of an impugned order dated 22.07.2023 and the

petitioner herein feeling aggrieved of the said order, seeks quashment of the same on the following grounds:-

- (a) *That the order impugned dated 22.07.2023 is against the facts and is contrary to the record as such, is required to be quashed and set aside;*
- (b) *That the order impugned dated 22.07.2023 is required to be quashed on yet another ground, inasmuch as the respondent no. 2 has ignored the facts which were brought to the knowledge of the respondent no. 2, as such the order impugned is perverse;*
- (c) *That the order impugned dated 22.07.2023 is required to be quashed on yet another ground, that the respondent no. 2 has ignored the fact that the electoral roll 2022 of Gurudwara Prabandhak Committee, Jammu includes atleast 282 Non-Sikh Votes which is not permissible under Rule 5(1) of the Sikh Gurudwaras & Religious Endowment Rules, 1975 which says that the electoral roll has to contain names of only Sikhs (as defined under section 2(e) of the J&K Sikh Gurudwaras & Religious Endowment Rules, 1973 read with Rule 2 (vii) of the J&K Sikh Gurudwaras & Religious Endowment Rules, 1975. On this ground the order impugned dated 22.07.2023 and the election result issued under No. ENT/J/2022-23 /2780-2195 dated 27.06.2022 is required to be quashed and election set aside to the extent of election of respondent no. 5 as member from 05-AKhnoor Constituency;*
- (d) *That since the provisions of Rule 6 (above referred) were not followed, no objections could be filed by the petitioner under rule 7 of the 1975 Rules with regard to deletion of 282 non-Sikh votes in the electoral roll of 05-Akhnoor constituency. On this ground as well, the election of respondent No. 5 as member of District Gurudwara Prabandhak Committee, Jammu from 05-Akhnoor Constituency is liable to be set aside and the impugned election result issued on 27.06.2022 to the extent the name of respondent no. 5 was included in it as winning candidate from 5-Akhnoor Constituency is required to be quashed;*
- (e) *That the appellate authorities has not appreciated the record in its true perspective and merely on the submissions of the official respondents the appeal has been decided;*
- (f) *That the appellate authority has not considered the record to the extent it reveals that 282 voters are non-Sikh/Clean shaved voters who do not come under the definition of Sikh as defined in section 2 (e) of the J&K Gurudwara & 2 (ii) of the J&K Sikh Gurudwara & Religious Endowment Rules, 1975, in terms whereof, a Sikh is a person who believes in 10 Sikh Gurus and Guru Granth Sahib and keeps Keshas (long hair). The names and photographs of the above are clean shaved (do not support long hair) and the female voters names are not as are in vogue in Sikh religion. It is submitted that in Sikh religion the names of the males are suffixed by the word "Singh" means lion and the name of the female Sikh are suffixed by "Kour" means princesses.*

The above referred 282 non-sikhs do not have any such features and should not have been included in the voter list;

- (g) ***That when it came to the notice of respondent no. 3 i.e. Returning officer that number of voters included in the electoral roll of different constituencies are non-Sikhs, the respondent communication under No. ENT/J/2022- 23/1182-92 dated 11.06.2022, to Assistant Returning Officer Gole Gujral with copy to all Returning Officers of District Gurudwara Prabandhak Committee Election, Jammu 2022, the names of the non-Sikhs found in the electoral roll be deleted from the electoral roll. It is submitted that respondent no. 4 despite receiving this communication chose not to act upon the directions of respondent No. 3, inasmuch as he did not delete the names of the Non-Sikhs from the electoral roll of different polling stations of 05-Akhnoor Constituency and rather allowed 141 non-Sikhs (wrongly included in the electoral roll) to cast their votes in the said election, thus vitiating the whole process of election. On this additional ground, the impugned election result dated 27.06.2022 to the extent of declaring the respondent No. 5 as winning candidate from 05-Akhnoor Constituency is required to be quashed;***
- (h) ***That the appellate authority had put the entire onus on the block level officers who had prepared the electoral rolls for the polling stations and the appellate authority has not considered the submissions of the petitioner herein that atleast 3 persons who have expired long before the elections also figured in the electoral roll of polling station No. 4 at electoral No. 55, 288 and 304 and perusal of the electoral roll shall reveal that someone has impersonated and cast votes on behalf of the three dead persons.***

16. I have gone through the impugned order passed by the appellate authority. The appeal was preferred by the petitioner under Section 31-A of the Rules of 1975 against the elections/result of private respondent No. 3 as member of Gurdawara Prabandhak Committee, District Jammu from 5-Akhnoor Constituency on the following grounds:-

- (i) ***That the appellant is aggrieved of the Election result of 05-Akhnoor Constituency of Gurdawara Prabandhak Committee, District Jammu Elections to the extent of election of private respondent No. 3 is shown to have been elected as member of Gurdawara Prabandhak Committee, District, Jammu from 5-Akhnoor Constituency.***
- (ii) ***That the whole election process in 05-Akhnoor Constituency for District Gurdawara Prabandhak Committee, Jammu got vitiated and is not sustainable in the eyes of law, inasmuch as, the Electoral Roll-2022, Gurdawara Prabandhak Committee for 05-Akhnoor***

Constituency includes 282 Non-Sikh voters, which is not permissible under Rule 5(1) of the Sikh Gurdawara & Religious Endowment Rules, 1975, which says that the electoral roll has to contain names of only Sikhs (as defined under Section 2(e) of the J&K Sikh Gurdawaras and Religious Endowment Act, 1973 read with Rule 2(vii) of the J&K Sikh Gurdawaras and Religious Endowment Rules, 1975. On this ground, the impugned election result issued under No. ENT/J/2022-23/2180-2195 dated 27.06.2022 is required to be quashed and set aside to the extent of election of respondent No. 3 as member from 05-Akhnoor Constituency;

Detail of non-Sikh votes in the Electoral rolls is as under:-

Polling Station	Name of the Polling Station(s)	Total No. of Non Sikh Votes	Non Sikh Votes Polled
1	GHSS Domana	04	-
2	GMS Garhi	25	13
3	GHSS Muthi	41	19
4	GPS Nardiwala	02	-
5	GHSS Khour	23	07
6	GHSS Boys Akhnoor	171	89
7	GMS Koti Tanda	03	01
9B	GHSS Domana	13	02
	Total	282	141

- (iii) **That under Rule 6 of the J&K Sikh Gurdawaras and Religious Endowment Rules, 1975, Election authority, i.e., respondent Nos. 1 and 2 were required to cause the list of voters of the 05-Akhnoor Constituency published by affixing copies thereof at Tehsil and Block offices two months before the election date, but this provision was followed only in its violation, inasmuch, no such list was affixed in Tehsil and Block offices two months before the date of election. On this ground also, the whole election process under taken in 05-Akhnoor Constituency got vitiated and consequently, the election of respondent No. 3 as member of Gurdawara Prabandhak Committee from 05-Akhnoor Constituency is required to be set aside;**
- (iv) **That since the provisions of Rule 6 were not followed, no objections could be filed by the appellant under Rule 7 of the 1975 Rules with regard to deletion of 282 non-Sikh votes in the electoral roll of 05-Akhnoor Constituency. On this ground as well, the election of respondent No. 3 as member of District Gurdawara Prabandhak Committee, Jammu from 05-Akhnoor Constituency is liable to be set aside;**
- (v) **That perusal of the electoral roll of different polling stations of 05-Akhnoor Constituency reveals that 282 voters are non-sikh/clean shaved voters, who do not come under the definition of Sikh as defined in Section**

2 (e) of the J&K Sikh Gurdawaras and Religious Endowment Rules, 1975, in terms whereof, a Sikh is a person who believes in 10 Sikh Gurus and Guru Granth Sahib and keeps Keshas (long hair). The names and photographs of above referred 282 voters show that the male voters are clean shaved (do not support long hair) and the female voters names are not in vogue in Sikh religion. It is further submitted that in Sikh religion, the names of the males are suffixed by the word "Singh" means Lion and the name of the female Sikh are suffixed by "Kour" means princess. The above referred 282 non-sikhs do not have any such features and should not have been included in the voter list;

- (vi) That when it came to the notice of respondent No. 1, i.e., Returning Officers that the number of voters included in the electoral roll of different constituencies are non-sikhs, the respondent No. 1-Returning Officer addressed a Communication under No. ENT/J/2022-23/1182-92 dated 11.06.2022 to Assistant Returning Officer No. 4 Gole Gujral with copy to all Returning Officers of District Gurdawara Prabandhak Committee Election, Jammu 2022, directing respondent No. 3 and other AROs that the names of the non-sikhs found in the electoral roll be deleted from the electoral roll. It is submitted that respondent no. 3 despite receiving this Communication chose not to act upon the directions of respondent No. 1, inasmuch as, he did not delete the names of the non-sikhs from the electoral roll of different polling stations of 05-Akhnoor Constituency and rather allowed 141 non-sikhs (wrongly included in the electoral roll) to cast their votes in the said election, thus, vitiating the whole process of election. On this additional ground, the impugned election result dated 27.06.2022 to the extent of declaring the respondent No. 3 as winning candidate from 05-Constituency is required to be quashed, with direction to respondent Nos. 1 and 2 to delete the names of non-sikhs from the electoral roll of 05-Akhnoor Constituency and thereafter, hold the fresh elections for electing member of District Gurdawara Prabandhak Committee, Jammu from 05-Akhnoor Constituency;**
- (vii) That at least 3 persons, who have expired long before the elections also figured the Electoral roll of polling station No. 4 at electoral Nos. 55, 288 and 304 and perusal of the electoral roll shall reveal that someone has impersonated and casted votes on behalf of the three dead persons. On this ground also, the election process for 05-Akhnoor Constituency gets vitiated and is required to be set aside with directions to conduct fresh elections to 05-Akhnoor Constituency;**
- (viii) That as many as 11 persons figure as voters against more than one serial number in the electoral roll of polling stations 04, 06 and 03, which is not permissible in terms of Rule 23(2) read with Rule 5(3) of the aforesaid 1975 Rules, which says that every voter shall have only one vote. On this ground also, the election process of 05-Akhnoor Constituency gets vitiated and is required to be set aside with directions to delete the names of the voters figuring at two different serial numbers against two different voters ID numbers and thereafter, conduct fresh elections for 05-Akhnoor Constituency."**

17. From the perusal of the impugned order, it is evident that the appellate authority issued notice to respondent No. 3-Ranvir Singh and report was also called from the official respondents, who submitted their reply. The appellate authority, i.e., Additional Deputy Commissioner (Adm.), Jammu while rejecting the appeal of the petitioner has held that since the appellant did not raise any such issue before commencement of the election process or during the election either himself or through his agent deputed at Polling Station, and it was only after finding, the result, which went against him, the appeal has been filed with malafide intention. The appellate authority while deciding the appeal of the petitioner has gone in detail in all the legal and factual aspects.
18. The grounds taken by the appellant in the appeal are with respect to apprehension of inclusion of the names of the voters, who did not have "*Singh and Kour*" as "Sir" names. The grounds have also been taken with respect to also some of the voters, who are 'clean shaved', who according to the appellant are non-sikh voters and have been excluded from the electoral roll.
19. The appellate authority has recorded a finding that the grounds taken by the appellant/petitioner herein are contradicted to the averments mentioned in Sections 2(e), 2(f) and 2(g) of the Jammu and Kashmir Sikh Gurdawara and Religious Endowment Act, 1973.

20. Before proceeding further in the matter, it would be apt to reproduce Sections 2(e) & 2(f) of the Act of 1973, which defines as under:-

“2(e) A Sikh, who believes in ten Sikh Gurus and Guru Granth Sahib and keep Keshas (or long hair).

2(f) Sehajdari Sikh” is a person, who believes in Guru Granth Sahib and ten Gurus, but has never kept keshas (or long hair).”

21. In the aforesaid backdrop, the appellate authority has rightly rejected the contention of the petitioner that it is mandatory to have “Sikh and Kour” as their sir names to be recognized as “Sikh”. The contention of the petitioner, which has been raised by the appellant/petitioner herein before the appellate authority is contrary to the definition laid down in the Act of 1973, which is not acceptable and the same cannot be sustainable in the eyes of law. There are many people, who do not have “Sikh or Kour” as their Sir names, but still they are recognized as Sikh, as they preach Sikhism. This aspect of the matter has gone in detail by the appellate authority and this Court concur with the finding recorded by the appellate authority and do not find any legal infirmity with the same.

22. The appellate authority after hearing learned counsel for the appellant (petitioner herein) and the respondents and after examining the record placed on file as well as written response from the official respondents, has dismissed the appeal of the appellant being devoid of any merit and substance and, accordingly, did not find any reason to

interfere in the election of 05-Akhnoor Constituency, which was upheld by virtue of order dated 22.07.2023, which is impugned in the present petition. During the proceedings, the appellate authority has also observed that the notification for conducting of election to District Gurdawara Prabandhak Committees (DGPC) in Jammu and Kashmir 2002 under Rule 3(2) of the Jammu and Kashmir Sikh Gurdwaras and Religious Endowment Rules, 1975 was issued vide No. FC-LS.GPC-08/11/2026(18114)/1-8 dated 26.04.2022 read with the following schedule for preparation of Electoral rolls with 01.04.2022 as the qualifying date, which reads as follows:-

S. No.	Activity	Date/Period
1.	Publication of Electoral Rolls under Rule 6 by the Election Authority (Draft Electoral Rolls)	28.04.2022
2.	Filing of claims and objections under Rule 7	28.04.2022 to 13.05.202
3.	Disposal of Claims and objections under Rule 7	13.05.2022 to 18.05.2022
4.	Publication of final Electoral Rolls under Rule 7	23.05.2022

- 23.** The appellate authority has further observed in the impugned order that in furtherance of the election process, the authorities issued order for revision of electoral roll for District Gurdawara Prabandhak Committee, Jammu 2022. The record reveals that the election authority, i.e., Assistant Commissioner, Revenue Gurdawara Prabandhak Committee, District Jammu had issued a notice for

publication of Draft Electoral Rolls for District Gurdawara Prabandhak Committee, 2022 for information of all concerned as per the notification issued by the Financial Commissioner, Revenue J&K, which was published and placed in the offices of Tehsil Office and Block Offices. The record further reveals that all the eligible Sikh voters, who qualified to be the voters were made part of Electoral Roll 04.04.2022 and those, whose names did not exist in the draft electoral rolls, were not correctly registered of having objections with regard to the registration of any voter in the electoral rolls were afforded opportunity to file their claims and objections in the prescribed form DGPC-1, DGPC-2, DGPC-3 and DGPC-4 for addition, deletion, correction and transposition respectively for the District Gurdawara Prabandhak Committee in the office of the designated officers by or before 13.05.2022.

- 24.** The notification was issued by the Financial Commissioner, Revenue, notifying the schedule for holding of District Gurdawara Prabandhak Committee (DGPC) Election, 2022. The date of poll in District Jammu was also notified and counting was done on the same day.
- 25.** This is a peculiar case, where the appellant having failed to avail the opportunity of filing of claims and objections during the notified period and taking a chance to participate in the election and subsequently having failed,

has turned around by filing the instant petition on false and flimsy grounds without any basis.

26. The petitioner did not avail the opportunity of filing of the claims and objections during notified period and once, the said period is over, it does not lie within the domain of the appellate authority to adjudicate the issue with regard to publication of electoral rolls. Even the contention of the petitioner with regard to existence of non-sikh voters was also negated by applying the correct definition of sikh voters, as defined under the Rules of 1975.
27. In the instant case, the petitioner having failed to represent before the appropriate forum before conduct of the elections and after having participated in the entire election process, has raised an issue at a belated stage with regard to existence of non-sikh voters without filing of claims and objections at a stage when he was declared unsuccessful in the said elections. Therefore, the contention of the petitioner before the appellate authority was rejected. The petitioner, as such, is estopped under law to question the same at this belated stage. In the aforesaid backdrop, the appeal filed by the petitioner was dismissed being devoid of any merit and substance and the election of the private respondent was upheld.
28. The Hon'ble Supreme Court in "**Kamaljit Singh vs. Sarabjit Singh**" reported in (2014) 16 SCC 472 has observed that the doctrine of estoppel is steeped in the

principles of equity and good conscience and equity will not allow a person to say one thing at one time and the opposite of it at another time. Relevant para(s) of the judgment mentioned (supra) is reproduced as under for further reference:

.....10..... *It is trite that the doctrine of estoppel is steeped in the principles of equity and good conscience. Equity will not allow a person to say one thing at one time and the opposite of it another time. It would estop him from denying his previous assertion, act, conduct or representation to say something contrary to what was implied in the transaction under which he obtained the benefit of being let in possession of the property to be enjoyed by him as a tenant.*

11. Lord Edward Coke, Chief Justice of the Kings Bench and 17th Century English Jurist explains estoppel thus:

“Cometh of the French Word ‘estoupe’, from where the English word stopped; and it is called an estoppels or conclusion, because a man’s own act or acceptance stoppeth or closet up his mouth to allege or plead the truth.” [Co. Litt. 352a]

12. **Law Lexicon** (Second Edition, Page 656) defines estoppel in the following words:

*“An Estoppel is an admission, or something which the law treats as an equivalent to an admission, of so high and conclusive a nature that anyone who is affected by it is not permitted to contradict it.” [11th Edn p. 744 in the note to the **Dutchess of Kingston’s case**]*

“An admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted to be questioned by the parties or their privies.”

“The preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, on his own part, or on the part of those under whom he claims.”

13. **Black’s Law Dictionary** (9th Edn., page 629) describes Estoppel as:

“A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.”

29. I am fortified by the view of the Hon'ble Supreme Court in case titled "**Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & Ors. vs. Director General of Civil Aviation & Ors.**" reported in (2011) 5 SCC 435.

The relevant para is reproduced as under:

.....12. The doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.

(Vide: Babu Ram @ Durga Prasad v. Indra Pal Singh (D) by L.Rs., (1998) 6 SCC 358; P.R. Deshpandey v. Maruti Balaram Haibatti, (1998) 6 SCC 507; and Mumbai International Airport Private Limited v. Golden Chariot Airport)

30. It is also established principle of law that the Court while exercising writ jurisdiction under Article 226 of Constitution of India cannot go into the disputed questions of facts. This court while exercising the writ jurisdiction cannot go into the disputed question of fact as all the questions of facts have been dealt in detail by the appellate authority on the basis of record.

31. This aspect of the matter has been decided by Hon'ble Apex Court in catena of judgments. Reliance is placed on judgment titled "**U.P. State Bridge Corporation vs. U.P.Rajya Setu Nigam**" reported in 2004 (4) SCC 268. Hon'ble the Supreme Court in paragraph 14 has held as under:

“14. Finally, it is an established practice that the Court exercising extra-ordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact. In the present case, the nature of the employment of the workmen was in dispute. According to the appellant, the workmen had been appointed in connection with a particular project and there was no question of absorbing them or their continuing in service once the project was completed. Admittedly, when the matter was pending before the High Court, there were 29 such projects under execution or awarded. According to the respondent-workmen, they were appointed as regular employees and they cited orders by which some of them were transferred to various projects at various places. In answer to this the appellants’ said that although the appellant corporation tried to accommodate as many daily wagers as they could in any new project, they were always under compulsion to engage local people of the locality where work was awarded. There was as such no question of transfer of any workman from one project to another. This was an issue which should have been resolved on the basis of evidence led. The Division Bench erred in rejecting the appellants submission summarily as also in placing the onus on the appellant to produce the appointment letters of the respondent-workmen.”

- 32.** I am also fortified by the judgment of the Hon’ble Supreme Court reported as 2021 SCC Online 562 in case titled **“Shubash Jain vs. Rajeshwari Shivam & Ors.”**, whereunder the it has observed under:

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

- 33.** Thus, I am in agreement and don’t find any legal infirmity with the findings recorded by the appellate authority in the impugned order/judgment and the challenge thrown to the same by the petitioner through the medium of instant writ petition by invoking the powers under Article 226 of the Constitution of India is ill founded and the writ petition as

such not maintainable being devoid of any merit and deserves dismissal. As a necessary corollary, the impugned order/judgment passed by the appellate authority is upheld and the writ petition is, accordingly, “**dismissed in limine**”.

(Wasim Sadiq Nargal)
Judge

JAMMU
29.12.2023
Manan

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No

