

**NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS**

CASE NO. 378 OF 2012

In the matter of:

Bhalchandra Institute of Education and Management,
Village Chandoiya Hardoi Road, P.O. Kakori,
Lucknow, U.P.

... Petitioner

Versus

Deputy Director,
Minorities Welfare Department,
Government of U.P.,
6th Floor, Indira Bhavan,
Lucknow, U.P.

... Respondent

ORDER

(Delivered on the 02nd day of July, 2012)

Justice M.S.A. Siddiqui, Chairman

The petitioner institution has applied for grant of minority status certificate on the ground that the same has been established and is being administered by the Bhalchandra Institute of Education and Management Trust, which is a registered trust, constituted by members of the Sikh community.

This case emanates from U.P. The Division Bench of the Allahabad High Court has rendered a decision in Special Appeal No. 903 of 2006 decided on 24.08.2006 declaring that the State Government does not have power to issue minority status certificate to a minority institution. In this view of the matter, it is a fit case for intervention by this Commission.

Despite service of notice, none entered appearance on behalf of the respondent. Learned counsel for the petitioner has invited my attention to the affidavits filed by Sardar Joginder Singh Khurana, Sardar Surender Singh Khurana, Sardar Jitender Singh Gogia, Sardar Mahender Singh, Smt. Papinder Kaur and Sardar Guru Dayal Singh, members of the Governing body of the petitioner institute in support of his contention that the petitioner institution has been established and is being administered by the Sikh community. The aforesaid persons have stated in their affidavits that they are from the Sikh community and the petitioner institution has been established and is being administered by members of the Sikh community and that the beneficiaries of the petitioner institution are also members of the Sikh community. Learned counsel for the petitioner has also invited my attention to the affidavits of Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla, who have stated that they are Sikh by birth. He has also invited my attention to the certificates dated 06.01.2012 issued by the Tehsildar, Sadar, Lucknow, U.P., certifying that Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla are from the minority community. It needs to be highlighted that by the order dated 01.06.2012, passed by this Commission, copies of the affidavits filed by Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla were sent to the respondent with the direction to file counter affidavit in rebuttal, failing which, their affidavits shall be acted upon by the Commission. Despite service of notice, the respondent has not filed any affidavit in rebuttal. In this view of the matter, I have no option but to act upon the unrebutted affidavits of Sh. Subodh Chawla, Smt.

Mona Chawla and Smt. Sudesh Chawla, who are the trustees of the Bhalchandra Institute of Education and Management Trust. It needs to be highlighted that the District Minority Welfare Officer, Lucknow, U.P. has issued certificates dated 08.06.2012 certifying that the aforesaid persons are from the Sikh community. Thus the aforesaid certificates of the District Minority Welfare Officer, Lucknow, U.P. have lent material corroboration to the statements of Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla to prove that they are from the Sikh community. In addition, Sri Guru Singh Sabha, Lucknow, U.P. and the Manager, Gurudwara Shri Guru Nanak Piyao have also issued certificates certifying that the aforesaid persons are from the Sikh community. There is no evidence on record to rebut the evidence produced by the petitioner in support of its claim.

One of us (Dr. Mohinder Singh) has circulated a note in opposition to the petition filed by the petitioner. Learned counsel for the petitioner has filed an application for his recusal from the case on the ground that he has prejudged the issue. At the outset I must make it clear that this Commission is an autonomous quasi-judicial tribunal and the scheme of the National Commission for Minority Educational Institutions' Act clearly indicates that it enjoys all trappings of a court. A member of this Commission is expected to discharge his judicial functions without fear or favour, affection or ill-will. Assurance of a fair trial is the first imperative of the dispensation of justice. It is trite that justice should not only be done, it should appear to have been done. During trial of the case a judge is not supposed to prejudge the issue involved in the case. After conclusion of the hearing a member is free to express his views on the merits of the case in the

judgment to be pronounced in the case. I want to clarify that my aforesaid observations must not be construed as casting any aspersion on Dr. Mohinder Singh.

It needs to be highlighted that Dr. Mohinder Singh is on leave at America and the remaining members, namely, Dr. Cyriac Thomas and Mr. Zafar Agha have recused themselves from the case. However, in deference to the wishes of Dr. Mohinder Singh I proceed to consider the points raised by him. He wants that Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla be called for cross examination as they have stated in their affidavits that they are Sikh by birth. At this juncture, I may usefully excerpts the following provisions of Order 19 Rule 2 of CPC: -

“2. Power to order attendance of deponent for cross-examination.-(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.”

(emphasis supplied)

A bare reading of the Order 19 Rule 2 of CPC ibid makes it clear that the right to cross examine a deponent of an affidavit is available to either party of the case. That being so, Dr. Mohinder Singh as a member of the Commission can not assume the role of an adversary. Consequently, the provisions of Order 19 Rule 2 of CPC can not be evoked in this case.

As demonstrated earlier the affidavits filed by Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla have not been rebutted by the respondent. On the contrary, the Tehsildar, Sadar, Lucknow, U.P. and the District Minority Welfare Officer, Lucknow, U.P. have certified that Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla are Sikh. Their affidavits also find ample corroboration from the affidavits of Sardar Joginder Singh Khurana, Sardar Surender Singh Khurana, Sardar Jitender Singh Gogia, Sardar Mahender Singh, Smt. Papinder Kaur and Sardar Guru Dayal Singh, who are members of the Governing body of the petitioner institution. That apart two Sikh organizations of Lucknow namely, Shri Guru Singh Sabha and the Gurudwara Shri Guru Nanak Piyao have certified that Sh. Subodh Chawla, Smt. Mona Chawla and Smt. Sudesh Chawla are from Sikh community. In the face of such a clear and cogent evidence, there is no justification to doubt the veracity of statements of the said deponents.

The second point raised by Dr. Mohinder Singh is that since none of the trustees of the Bhalchandra Institute of Education and Management Trust has retained his hairs unshorn they can not be accepted truthfully from the Sikh community. Reliance has been placed on the decision rendered by the Punjab & Haryana High Court in Gurleen Kaur and Ors. Vs. State of Punjab & Ors. (2010) ILR Punjab & Haryana 52 and Section 2 of the Gurudwara Act, 1925. Learned counsel for the petitioner has strenuously urged that all the trustees of the said trust are Sikh by birth, that they follow the Sikh religion and do not owe allegiance to any other faith or religion. At this juncture, I want to make it clear that it is not

within the scope of the present consideration to determine who is, or is not a Sikh. The Commission does not have mandate to pronounce on beliefs and tenets of the Sikh religion. It is significant to mention that having dealt with the historical background of the Sikh religion, the “Sikh Rehat-Maryada”, the “Sikh Ardas” and the views expressed by scholars of Sikhism, the High Court of Punjab & Haryana held in Gurleen Kaur and Ors. case (Supra) has held that maintaining hair unshorn is an essential component of the Sikh religion, but the High Court has also clarified it is not within the scope of the present consideration to determine who is, or is not a Sikh. I may usefully excerpt the following observations of the High Court:

“45. Having given our thoughtful consideration to the contentions advanced by the learned Counsel for the rival parties, we express our satisfaction, and accordingly affirm, the interpretation of the provisions noticed hereinabove at the hands of the learned Counsel for respondent No. 2. In our considered view, a Sikh, essentially is a person who professes the Sikh religion. To determine, whether or not, a person professes the Sikh religion, it would have to be determined, whether or not, he abides by the “Sikh rehat-maryada”. We are also of the view, that for defining the term Sikh, Sub-sections (9), (10), (10-A) and (11) of 2 of the Gurudwara Act of 1925 will have to be interpreted harmoniously, so as to give true effect to the intent of the legislation. From a collective reading of the aforesaid subsections of Section 2 of the Gurudwara Act of 1925, we are of the view, that the aforesaid legislative enactment postulates different levels/ grades of Sikhs. The lowest grade/ level envisaged under the Gurdwara Act of 1925 is a “sehajdhari Sikh”. A “sehajdhari Sikh” as noticed above, is essentially a “keshadhari Sikh” (i.e., one who maintains his hair unshorn). The uppermost level/ grade of a Sikh under the Gurudwara Act of 1925 is an “amritdhari Sikh”. The Gurudwara Act of 1925 refers to the term “patit” as a Sikh who has

fallen from grace. A “patit” is one who inter-alia “shaves his beard or keshas”. A “patit” is not entitled to any benefit of office or authority under the Gurdwara Act of 1925. In other words, a “patit” is one who is excluded from the benefits which a Sikh can claim under the Gurdwara Act of 1925. Thus read, besides understanding the minimum requirements so as to be termed as a Sikh, one must adhere to the tenet of keeping ones hair uncut. In the absence of adherence with the instant tenet, the individual would fall within the term defined as “patit” as he/she does not maintain his/her hair unshorn. Essentially, it is imperative for us to conclude, that the lowest form of attainment to enter the fold of the Sikh religion under the Gurdwara Act of 1925, is a “sehajdhari Sikh”, and that, to be a “sehajdhari” Sikh, a Sikh who has to be a “keshadhari” (one who maintains his hair unshorn).

46. Our observations, as have been recorded herein above, are limited to the definition of the term Sikh under the Gurdwara Act of 1925, and not for any other purpose, whatsoever. Even the various categories of Sikhs described by us hereinabove, are in reference to specific provisions of the Gurdwara Act of 1925 alone. Reference may also be made to Section 45 and 46 of the Gurdwara Act of 1925, which lay down the qualifications of elected members and nominated members and to Sections 49 of the Gurdwara Act of 1925, which lays down the qualifications of electors. The aforesaid provisions are being extracted hereunder:

45. Qualifications of elected members. –

(1) A person shall not be eligible for election as a member of the Board if such person-

(i) is of unsound mind;

(ii) is an undischarged insolvent,

(iii) is a patit;

(iv) is a minister of a Notified Sikh Gurdwara, other than the head minister of the Darbar Sahib,

Amritsar, or of one of the four Sikh Takhts specified in Clause (ii) of Sub-section (1) of Section 43.

(v) is a paid servant of any Notified Sikh Gurdwara, or of the Board other than a member of the executive committee of the Board. (vi) being a keshadhari sikh is not a amritdhari;

(vii) takes alcoholic drinks;

(viii) not being a blind person cannot read and write Gurmukhi.

(2) No person shall be eligible for election as a member of the Board if he is not registered on the electoral roll of any constituency specified in Schedule IV.

2(A) No person shall be eligible for election to the Board if he is less than twenty-five years of age.

(3) Notwithstanding anything contained in Sub-section (1) no person shall be prevented from standing as a candidate for election as a member of the Board on the ground that he is a patit, but if a person elected is thereafter found under the provisions of Section 84 to be a patit his election shall be void.

46. Qualifications of nominated members.- A person shall not be nominated or co-opted to be a member of the Board if he-

(i) is less than twenty-one years old;

(ii) is not a Sikh;

(iii) is of unsound mind;

- (iv) is an undischarged insolvent;
- (v) is a patit;
- (vi) is minister of a Notified Sikh Gurdwara other than the head minister of the Darbar Sahib, Amritsar, or of any of the four Sikh Takhts specified in Clause (ii) of Sub-section (1) of Section 43;
- (vii) is a paid servant of any Notified Sikh Gurdwara or of the Board, other than a member of the executive committee of the Board.
- (viii) being a keshadhari Sikh is not amritdhari;
- (ix) takes alcoholic drinks;
- (x) not being a blind person cannot read and write Gurmukhi.

89. According to Shri Pavit Singh Mattewal, there is a clear yet subtle distinction between a “keshadhari Sikh” and a “sehajdhari Sikh”. It is suggested that there is no difference between a “keshadhari” who has not taken his/ her “khalsa amrit” and a “sehajdhari”. The “khalsa” is the very image of the “guru”. The highest state of evolution in spiritual and temporal terms. The stage at which a Sikh is one with the “guru”. The “khalsa” is the ideal, pure and perfect disciple who after following the teachings of the “guru” has become the very image of the “guru”. The highest status amongst Sikhs, was given to the “khalsa” who has been referred to as the “guru” himself. The evolution of a Sikh is dependent upon his following sincerely; the “guru’s” instructions and the “guru’s” grace.

90. According to Shri Pavit Singh Mattewal, the word “sehaj” (in Sanskrit, “sahaja) implies grace, poise,

unhurriedness and the word “dhari” stands for adopting or accepting. All Sikhs who are “gurmukh” are “sehajdhari”. Till the achievement of the state of oneness with the “guru”, a Sikh is a “sehajdhari”. The Guru Granth Sahib has been called the Granth of the “kall yuga”, where learning is comparatively difficult since the world is engulfed in darkness. “Sehaj” refers to spiritual evolution and the steps taken by a Sikh while following the “guru’s” teaching towards attainment of God i.e. the ultimate goal. A “sehajdhari” is expected to be subject to human weaknesses of five varieties – “kam”, “krodh”, “lobh”, “moh” “abhiman”. The gradual inching or gradual understanding as the popular Punjabi saying “sehaj pake so miththa hoe” (that which ripens gradually is sweet) is also referred to as “sehaj”. Whereas a “khalsa” is a perfected individual, and is free from the five “dosh”. According to Shri Pavit Singh Mattewal, a “sehajdhari Sikh” is one who is gradually inching towards the spiritual path, but who has not yet achieved perfection. Teachings of the “guru” propel, urge and push the disciple to achieve higher spiritual evolution by following the teaching of “naam daan and isnaan”, which according to Shri Pavit Singh Mattewal, flow from the Guru Granth Sahib in the following translated verse:

The one who calls oneself as the Sikh of the guru, gets up early in the morning and contemplates on the Name (the Almighty)...(that Sikh) when ponders upon the teachings (jap) of the guru and contemplates on the Almighty, can get rid of his sins and evil deeds.

91. According to Shri Pavit Singh Mattewal, in “gurbani” and in “gurmukhi”, “sehaj” means pure grace or in the grace of God. Countless times in the Guru Granth Sahib, “Sikhi” (the Sikh religion) itself is referred to as “sehaj dharm” (the dharma of pure grace). “Sehaj” in Sikhism, according to him, refers to a state of mental and spiritual equipoise without the least intrusion of ego; unshaken natural and effortless serenity attained through spiritual discipline. “Aham” or “haumai” (ego) develops out of the undifferentiated primordial being as a result of the socio-cultural

conditioning and factors that are generated as a result of a process of individuation. When this ego is quelled, and one resides once again in the innate, undisturbed, effortless state of the soul “sehaj” is said to have been attained. Although, described as an “avastha” (state) in fact, according to Shri Pavit Singh Mattewal, it transcends all states, for it is a return to the soul as it was before any ‘states’ differentiated or derived from it. The word “sehaj” is derived from Sanskrit twin roots: “saha, together and “ja” born. Thus, it means born together (with oneself), hence innate. It signifies innate nature, or one’s natural spontaneous self shorn of all external conditioning influences that cramp the soul.

92. According to Shri Pavit Singh Mattewal, to appreciate fully the meaning of the Sikh concept of “sehaj”, it may be looked at from various aspects. It can be seen as a state of illumination, one of heightened consciousness “sehaj rahas” (mystical awareness or intuitive knowledge). In this state the duality of subject and object (which results from a process of individuation and ego-formation) vanishes. Since all feelings of duality, basically develop around the subject-object dichotomy, with the dissolution of the latter, these disappear, distances vanish and reality comes to be perceived with the impact of immediacy. In its cognitive aspect “sehaj” is a state of freedom wherein everything happens with natural ease “sehaj subhai”. On the emotive or aesthetic planes, it signifies the discovery of the great harmony within as well as without. In “sehaj”, as it were, an inner door “dasam dvar” of aesthetic perception opens up, and one directly perceives the rhythmicity of one’s being a wave in an “anhat nad” (unstruck melody), which is accompanied by a pervading feeling of “sehaj anand” (unconditioned bliss). A deeper significance of existence seems to emerge in “sehaj”. When one becomes oriented to it, emotional turbulence ceases. Pleasures and pains pass like ripples over the surface while the mighty deep underneath remains unruffled. This is how, according to Shri Pavit Singh Mattewal, “sehaj” epitomizes mental equipoise, in which all turbulence of emotions is calmed. While the egocentrics abide in doubt and carry anxieties in their heart which permit them to

sleep, the wise wake and sleep in "sehaj". Accordingly, he referred to a verse from the Guru Granth Sahib "manmukhi bharamai sahasa hovai antari chinta nid na sovai giani jagahi savahi subhai nanak nami ratia bali jau" which means, peace being the hallmark of this state, all running about and all feverish pursuits cease, wandering itself is worn out, for now a new dignity in life is found.

93. "Sehaj" according to Shri Pavit Singh Mattewal, has been called a state of freedom. It betokens freedom from "trishna" (desire) and from "dvandva" (conflict) and from "maya" (illusion). One is liberated from the camping influence of social compulsions, yet one does not become a fugitive from social responsibility. On the contrary, since one is also cured simultaneously of the equally tempting compulsion of egoism, one no longer lives for oneself. One lives more for others. In "sehaj" one is also liberated from the servility of carnal needs. In this state neither drowsiness nor hunger remains; and one ever abides in the divine bliss of "Hari nam" (God's name).

98. The conclusions of Sikhism have been summarised by Shri Pavit Singh Mattewal to the following effect: - The teachings of all eleven "gurus" have to be seen cumulatively. Every Sikh knows in his heart whether he is a "patit" or is a "khalsa". When the disciple becomes one with the "guru", that is the point of achievement of the "khalsa avastha" as the highest goal. "All keshadharis" cannot be treated as having achieved the state of "khalsa". A "keshadhari" also falls within the ambit of "sehaj". Only "kesh" will not suffice to inch towards perfection. Following the "guru's" teaching in their spiritual journey will have the desired result. It is submitted that following the "guru's" teachings are a means to an end. The "khalsa" being the perfected Sikh, and the very image of the "guru", the "khalsa" has all the attributes or "gunas" (virtues) of the "guru" himself. The standard, therefore, is of the highest of the "guru's" attributes or qualities. Sikhs as disciples would not be able to evolve in a day or in a fixed time period. Since it is not a question of days, it may as well be a question of a lifetime! The spiritual evolution depends upon the Sikh's previous "karmas", his "kshamta (capacity) and

the “guru’s” grace. The following of the “guru’s” profound word or its understanding may not be grasped outside time or space. The entire teachings make the gamut of the code of religious conduct. The entire teaching of the “Sikh guru” is “rehitnama”. The “guru’s” have instructed lead by example as well.

136. The provisions of the Gurdwara Act of 1925, in our view, were aimed solely at regulating the management and administration of “Sikh gurdwaras”. The boards and committees constituted thereunder, were also for the same objective, namely, for the management and administration of “Sikh gurdwaras”. Although, as noticed hereinabove, reference has been made in certain provisions of the Gurdwara Act of 1925, whereby funds can be allocated for “religious, charitable or educational purposes” to bodies and organizations like the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, yet the provisions of the Gurdwara Act of 1925 do not lay down any parameters or regulations in connection with the activities or affairs of such bodies or organizations. Activities which are “religious” in nature are quite different from those which are “educational”. The Gurdwara Act of 1925 was enacted purely for “religious” activities i.e., principally for regulating the administration and management of “Sikh gurdwaras”. The provisions of the Gurdwara Act of 1925 cannot, in our view, unnecessarily be extended to “educational” activities. The definition of the term “Sikh” contained in Section 2 of the Gurdwara Act of 1925, must be deemed to have been drawn with the clear objective of interpreting the various provisions of the Gurdwara Act of 1925 and for no other purpose. Therefore, the term and administration of the “Sikh gurdwaras” only. We, are, therefore, of the prima-facie view, that the provisions of the Gurdwara Act of 1925 cannot be extended to determine the controversy being adjudicated upon”.

(emphasis supplied)

It has been held by the Punjab & Haryana High Court in Gurleen Kaur and Ors. case (Supra) that “the definition of the term ‘Sikh’ contained in Section 2 of the Gurudwara Act 1925, must be deemed to have been drawn with the clear objective of interpreting the various provisions of the Gurudwara Act of 1925 and for no other purpose. Therefore, the term ‘Sikh’ as defined under the Sikh Gurudwara Act 1925 must be limited to the issue of management and administration of the ‘Sikh Gurudwaras’ only”. I am, therefore, of the opinion that the provisions of the Section 2 of the Gurudwara Act 1925 can not be extended to determine the controversy being adjudicated upon.

The last point raised by Dr. Mohinder Singh is the Trust Deed of the Bhalchandra Institute of Education and Management Trust clearly spells out that the beneficiaries of the said trust are members of the family of the setlor and not the members of the Sikh community and as such the petitioner institution is not entitled for grant of minority status certificate, it is relevant to mention that the Bhalchandra Institute of Education and Management Trust is not a public trust. It is a family trust. It is obvious that the beneficiaries of the said trust have to be from the family members of the setlor. It is clearly mentioned in the deed of the said trust that one of the objects of the trust is to establish educational institution. It is stated in the petition that the petitioner institution has been established by the said trust. Sardar Joginder Singh Khurana, Sardar Surender Singh Khurana, Sardar Jitender Singh Gogia, Sardar Mahender Singh, Smt. Papinder Kaur and Sardar Guru Dayal Singh and Sh. Subodh Chawla have stated in their affidavits

that the beneficiaries of the petitioner institution are members of the Sikh community.

Relying upon the unrebutted evidence adduced by the petitioner, I find and hold that the Bhalchandra Institute of Education and Management, Village-Chandoiya Hardoi Road, P.O. Kakori, Lucknow, U.P. run by the Bhalchandra Institute of Education and Management Trust, is eligible for grant of minority status on religious basis. The evidence also proves that the said educational institution was established with the main objective of sub-serving the interests of the Sikh community. Consequently, Bhalchandra Institute of Education and Management, Village-Chandoiya Hardoi Road, P.O. Kakori, Lucknow, U.P., is declared as a minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

**JUSTICE M.S.A. SIDDIQUI
CHAIRMAN**

02.07.2012