

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20140721
Docket: S142622
Registry: Vancouver

Between:

**Harjit Sohpaal, Michael Ghirra,
and Tej Pal Gangar**

Petitioners

And:

**Shri Guru Ravidass Sabha (Vancouver)
and Bill Basra**

Respondents

Before: The Honourable Mr. Justice Grauer

Oral Reasons for Judgment In Chambers

Counsel for the Petitioners:

H.A. Mickelson, Q.C.
S. Virk

Counsel for the Respondents:

S. Turner

Place and Date of Hearing:

Vancouver, B.C.
July 21, 2014

Place and Date of Judgment:

Vancouver, B.C.
July 21, 2014

[1] **THE COURT:** At an extraordinary general meeting held on June 19, 2014, members of the respondent society passed a special resolution which had the effect of extending the term of the society's directors and trustees from one of two years to one of four years. This delayed the next scheduled election from 2015 to 2017.

[2] The petitioners seek an order under s. 85 of the *Society Act* directing the society to conduct a new extraordinary general meeting and to conduct a vote on the special resolution by ballot as opposed to the show of hands that was employed on June 19, 2014 and which, I understand, is customary.

[3] The petitioners maintain that an irregularity occurred when the petitioner, Mr. Ghirra, was twice interrupted in attempting to bring forward a procedural motion under Article 6.22 of the society's constitution and by-laws. That article provides that voting shall be by a show of hands unless a resolution is passed requiring a ballot.

[4] Mr. Ghirra had requested a vote by secret ballot before the meeting and was told that it would be necessary to move for one at the meeting in accordance with Article 6.22.

[5] Although Mr. Basra, the president, who chaired the meeting, appeared to try to ensure that speakers were heard who opposed the special resolution, as well as those who were in favour, he did not permit the proposed motion for a vote by ballot to go forward.

[6] In my view, he ought to have done so. He was aware in advance that it would be pursued. Mr. Ghirra raised it twice at the meeting. The first time was just after the special resolution was introduced. Mr. Basra put him off saying, in effect, that before you do that I want to provide information about the scheduled motions. It was acknowledged that Mr. Ghirra would be on the list of speakers.

[7] When another person stood up to say that he seconded Mr. Ghirra, Mr. Basra said okay, and then spoke for some 20 minutes. Later, Mr. Basra afforded Mr. Ghirra an opportunity to speak, but after some time cut him off on the ground that he had had the floor too long.

[8] At the end of that exchange is when Mr. Ghirra brought his Article 6.22 motion forward. When he tried to persist he was physically blocked from the microphone.

[9] The respondents say that this was not an irregularity, because the motion Mr. Ghirra sought to bring was merely procedural. The chair had given Mr. Ghirra ample warning that it was time to turn the floor over to others, and others could have brought forward the motion but did not do so.

[10] In the context of the nature of the special resolution, the positions discussed beforehand, and the manner in which the meeting proceeded, I am satisfied that Mr. Ghirra's motion ought to have been put to a vote and that the failure to do so constitutes an irregularity within s. 85 of the *Society Act*.

[11] The question now becomes whether the respondents have satisfied me that this irregularity did not affect the result.

[12] The respondents argue that it is doubtful that the motion for a vote by ballot would have succeeded given the large majority by which the special resolution passed. I do not think it is for me to speculate on the outcome.

[13] The respondents then say that there is no basis for concluding that the failure to consider that motion affected the result of the vote on the special resolution. That result, which was not announced at the meeting, was said to be 300 in favour and 81 against. A super majority of 286 was required to pass the special resolution, so it passed by a margin of 14 votes.

[14] Having viewed a video of the election, I find I am unable to have confidence in the accuracy of the count. I accept that the counters did their best, but when I take into account the chaotic atmosphere at the time of the voting; the number of people who were moving around; the fact that at least two non-members appeared to have voted; and consider these factors in the context of the nature of the resolution and the closeness of the margin, I conclude that the respondents have not satisfied the burden of establishing that the irregularity of failing to entertain a motion to vote by ballot did not affect the result.

[15] Accordingly, I declare the special resolution extending the current term of the board of directors null and void.

[16] The petitioners ask me to direct the respondent society to conduct a new extraordinary general meeting with a resolution to be voted on by secret ballot. As the courts have frequently observed, the court should be reluctant to interfere in a body's internal affairs and I resist doing so any more than is absolutely necessary.

[17] Obviously, a new extraordinary general meeting will be required, but I consider that it should be up to the members to decide, as they should have done before, whether to vote by secret ballot. That motion should be included on the agenda.

[18] I also decline to appoint an independent chair. I am not convinced that Mr. Basra is incapable of conducting the new meeting fairly.

[19] If the members decide against a secret ballot and proceed to vote by a show of hands, the numbers in favour and against the resolution are to be recorded and announced at the meeting.

[20] **THE COURT:** There remains the question of costs, gentlemen.

[Submissions on costs]

[21] **THE COURT:** Yes. Very well. Costs to the petitioners on Scale B.

“GRAUER, J.”