CANADA / JUDGMENT

Gill v. Johal

2002 BCSC 743

COURT	DECIDED
Supreme Court of British Columbia	15 May 2002

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2002 BCSC 743

Citation:	Gill v. Johal
Date:	20020515 2002 BCSC 743
Docket:	No. L020347 Registry: Vancouver IN THE SUPREME COURT OF BRITISH COLUMBIA IN THE MATTER OF THE SOCIETY ACT, R.S.B.C 1996, ch. 433, Sections 24 and 85 AND IN THE MATTER OF THE KHALSA DIWAN SOCIETY
AND BETWEEN:	RANJIT SINGH GILL PETITIONER
AND:	GURDEV SINGH JOHAL, RAJINDERJIT S. BHELA, GURJIT SINGH BAINS, KULJIT SINGH SANDHU, SARWAN SINGH THIND, NARDEEP S. GREWAL AND THE KHALSA DIWAN SOCIETY RESPONDENTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE ALLAN

ON COSTS

Counsel for the petitioner:

Francis Lamer

Counsel for the respondents:

S.R. Chamberlain, Q.C.

[1] Following the hearing of the Petition in this matter on March 15, 2002, I rendered judgment on March 26, 2002. Counsel attended briefly before me to settle the terms of the resulting Order and also submitted written submissions on the issue of costs.

[2] The petitioner seeks his legal fees of the proceeding under Rule 57 of the Rules of Court. He also invokes s. 30 of the Society Act (the "Act"), which permits indemnification of officers and members of a society for their legal fees expended honestly and in good faith in the Society's best interests.

[3] The petitioner submits that, in the circumstances, an award of special costs is appropriate.

[4] It is painfully obvious that the membership and Executive of the Khalsa Diwan Society is fiercely divided and engaged in a struggle for control of the Society. On the hearing of the Petition, it was common ground that the onus was on the petitioner to satisfy the test under Rule 18 and that if the affidavit evidence raised triable issues, the matter could not be dealt with summarily. I concluded that in spite of the vigorously contested interpretations of past events, the hyperbole, and the passionate language expressed by both sides of the dispute, it was possible to determine whether certain acts taken by the parties complied with the By-laws and the Act. On the whole, the judgment favoured the petitioner's position.

[5] A dispute then arose as to the proper wording of the Order and counsel attended before me to settle its terms. Essentlally, the same issue at the heart of this dispute remained: who had the power to call meetings of the Executive and control the proceedings at those meetings? The respondent Johal was largely successful at the brief hearing to settle the Order.

[6] That the tenor of the initial litigation continues is evident from the following submission as to costs by the petitioner's counsel:

The excesses evident in the Respondents' conduct can only be repressed and prevented if the culprits are made to bear the full consequences associated with remedying the consequences of their unlawful behaviour.

[7] I conclude that this is not an appropriate case for special costs or indemnification of the petitioner's legal expenses. The affidavit material makes it clear that the 60,000 or so members of the Society are deeply divided as to who should constitute the Executive. It is also clear that both Mr. Gill and Mr. Johal and their supporters ardently believe that they are honestly acting in the best interests of the Society. To require the Society to indemnify one side or the other would further fan an ongoing conflagration. Indeed, it is arguable that for the Court to now determine that one side acted in "bad faith" and the other in "good faith" would be to decide triable issues that were not suitable for summary determination on the hearing of the Petition.

[8] In the result, and after considering the facts of this case, the written submissions and the cases referred to therein, I award the petitioner his ordinary costs at scale 3 with respect to the Petition proceedings against the personal respondents but not against the Society. The respondents' costs of the hearing to settle the Order will be set off against the petitioner's costs. Both sides will bear their own costs on this application. No party is entitled to indemnification from the Society. In the result, the Society will neither pay costs, nor receive them.

"M.J. Allan, J."

The Honourable Madam Justice M.J. Allan

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