

**FULL BENCH.**

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*Before Broadway, Tek Chand and Johnstone JJ.*

HIRA DAS (PETITIONER) Appellant,

*versus*

SHIROMANI GURDWARA PARBANDHAK  
COMMITTEE, AND COMMITTEE OF MANAGE-  
MENT OF GURDWARA NANKANA  
SAHIB—Respondents.

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*April 10.*

Civil Appeal No 1749 of 1923.

*Sikh Gurdwaras (Punjab) Act, VIII of 1925, sections 12, 13—Tribunal—constitution of—whether two members can act from beginning to end—Procedure in case of their disagreeing.*

The question submitted to the Full Bench for decision was:—"Whether, under the provisions of section 13 of the Sikh Gurdwaras Act, it is legal for two of its members in the absence of the third to decide the case before them?"

*Held*, that in order that a Tribunal should be properly constituted under the Sikh Gurdwaras Act, the President and members must be duly appointed, as required by section 12. A Tribunal having thus been properly constituted, it can function so long as two of its members are in session, and a Tribunal thus sitting to hear a matter before it, is empowered to deal with the matter from beginning to end, including the final decision of such matter. If the President is one of the two members present and there is a difference of opinion, the decision must be in accordance with his view. In the event, however, of the President not being one of the two members present, sub-clause (2) permits the final disposal of the matter by the two members, if they are in agreement, but lays down that if they disagree, the matter "must be kept pending until the next meeting of the Tribunal at which the President is present," when the opinion of the majority will prevail.

*And*, that the answer to the question referred is, therefore, in the affirmative.

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HIRA DAS  
v.SHIROMANI  
GURDWARA  
PARBANDHAK  
COMMITTEE.

*First appeal from the decree of the Sikh Gurdwaras Tribunal, Lahore, dated the 21st June 1928; dismissing the petitioner's suit.*

JAGAN NATH AGGARWAL and V. N. SETHI, for Appellant.

CHARAN SINGH, for Respondents.

BROADWAY J.

BROADWAY J.—This reference has arisen out of an appeal against a decision of the Gurdwara Tribunal. During the course of the proceedings the President and one member alone were present and it was the President and that member who decided the case before them, their decision being unanimous. This decision was against one Hira Das, who preferred an appeal to this Court and the first ground taken by him was that the judgment and the decree were invalid and *ultra vires* as the Tribunal hearing and deciding the case was not properly constituted, the third member having taken no part in recording the evidence, hearing the arguments or deciding the case. My brother Johnstone and I, who were hearing the appeal, considered this matter of sufficient importance to be decided by a Full Bench and we accordingly referred the following question:

“Whether, under the provisions of section 13 of the Sikh Gurdwaras Act, it is legal for two of its members in the absence of the third finally to decide the case before them?”

After hearing counsel I am of opinion that the answer to the question referred should be in the affirmative. Section 12 of Act VIII of 1925 provides for the constitution of the Tribunal and lays down that the Tribunal shall consist of a President and

two other members. The point for consideration rests on the construction to be placed on section 13, which is as follows:—

(1) No proceedings shall be taken by a Tribunal unless at least two members are present, provided that notices and summonses may be issued by the President or a member nominated by the President for this purpose.

(2) In case of a difference of opinion between the members of a Tribunal, the opinion of the majority shall prevail; provided that if only two members are present, of whom one is the President, and if they are not in agreement, the opinion of the President shall prevail; and if the President be not present, and the two remaining members are not agreed, the question in dispute shall be kept pending until the next meeting of the Tribunal at which the President is present; the opinion of the majority, or of the President when only two members are present, shall be deemed to be the opinion of the Tribunal."

As I read this section, in sub-clause (1) it is provided that the Tribunal constituted under section 12 may function so long as two of its members are present; that is to say, when two members of the Tribunal constituted under section 12 are in session, the Tribunal can legally take proceedings. Sub-clause (2) provides for the disposal of matters coming before a duly constituted Tribunal. It lays down that when all the members are present the opinion of the majority shall prevail. It provides that if only two members are present and if one of the members is the President, his opinion shall prevail. If of the two members present neither is the President, then in the event of a disagreement the question in dispute shall be kept

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pending till the President is available. Finally it lays down that the opinion of the majority or of the President when only two members are present shall be deemed to be the opinion of the Tribunal.

It has been urged that the delivery of judgment is not included in the word "proceedings" used in sub-clause (1) of the section and further that the word "opinion" employed in sub-clause (2) has different meanings. When used in the first sentence of sub-clause (2), *i.e.* "the opinion of the majority shall prevail," the word includes the judgment or final decision, but does not include the judgment or final decision in the rest of that section. In my judgment the word "proceedings" as used in sub-clause (1) must be held to mean the proceedings from their commencement before the Tribunal and up to the final disposal of the matter by the Tribunal. I am further unable to see any justification for the contention that different meanings should be given to the word "opinion" in the other portions of sub-clause (2).

It seems to me clear that in order that a Tribunal should be properly constituted the President and members must be duly appointed, as required by section 12. A Tribunal having thus been properly constituted, it can function so long as two of its members are in session, and a Tribunal thus sitting to hear a matter before it, is empowered to deal with the matter from beginning to end, including the final decision of such matter. If the President is one of the two members present and there is a difference of opinion, the decision must be in accordance with his view. In the event, however, of the President not being one of the two members present, sub-clause (2) permits the final disposal of the matter by the two members if

they are in agreement, but lays down that if they disagree, the matter " must be kept pending until the next meeting of the Tribunal at which the President is present " when the opinion of the majority will prevail. The final sentence of sub-clause (2) commencing " the opinion of the majority " to " Tribunal " lays down that the opinion arrived at under the circumstances detailed therein shall be deemed to be the opinion of the Tribunal.

My answer to the question referred therefore is in the affirmative.

TEK CHAND J.—I agree.

JOHNSTONE J.—I agree.

N. F. E.

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JOHNSTONE J.

*Reference answered in the affirmative.*

### REVISIONAL CRIMINAL.

*Before Tek Chand J.*

ROSHAN LAL—Petitioner,

*versus*

THE CROWN—Respondent.

**Criminal Revision No. 1445 of 1930.**

*Indian Criminal Law Amendment Act, XIV of 1908 (as amended by the Devolution Act, XXXVIII of 1920), sections 16, 17—Declaration of an Association as unlawful—whether persons arrested before publication of notification in Gazette can be convicted for an offence under the Act.*

On 17th September 1930, the Chief Commissioner of Delhi declared the Delhi Congress Committee to be an unlawful association within the meaning of Part II of Act XIV of 1908. This declaration was not published in the official Gazette till the 27th September 1930. The five persons, whose cases were reported to the High Court by the Sessions

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 Jan. 3.