REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO. 735 OF 2014

HARBHAJAN SINGH .....APPELLANT(S)

VERSUS

STATE OF HARYANA & ORS. .....RESPONDENT(S)

W I T H

WRIT PETITION (CIVIL) NO. 1116 OF 2019

A N D

CIVIL APPEAL NO. 6614 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 4733 OF 2022)

J U D G M E N T

HEMANT GUPTA, J.

WRIT PETITION (CIVIL) NO. 735 OF 2014 AND WRIT PETITION (CIVIL) NO. 1116 OF 2019

1. The above writ petitions are preferred challenging the Haryana Sikh Gurdwara (Management) Act, 2014[1], creating a separate juristic entity for the management of historical Gurdwaras in the State of Haryana mentioned in Schedule I; Gurdwaras having income of more than Rs.20

1 For short, the 'Haryana Act'

lakhs in Schedule II and the Gurdwaras having income of less than Rs.20 lakhs in Schedule III.

2. The Statement of Objects and Reasons of the Haryana Sikh Gurdwara Management Bill, 2014 (Bill No. 28-III A of 2014) provides that the Bill is an earnest effort to provide a legal procedure by which the Gurdwaras, owing to their origin and habitual use, regarded by the Haryana Sikhs as essentially pious places of worship, may be brought effectively and permanently under the exclusive control of the Sikhs of Haryana for their proper use, administration, control and financial management reforms to make it consistent with the religious views of the said community. It was pointed out that the Sikh Gurdwaras in the State are being governed by the provisions of the Sikh Gurdwaras Act, 1925[2] and the rules and regulations made thereunder, but in view of the demands of the Sikhs in the State of Haryana which were examined by two committees, it was decided to introduce the Bill in terms of powers conferred under Article 246 read with Schedule VII, List II, Entry 32 of the Constitution of India, as also in pursuance of Section 72 of the Punjab Reorganisation Act, 1966[3]. It is thereafter, the Haryana Act was enacted which came into force on 14.7.2014.

3. The first writ petition has been filed by a resident of Haryana and an elected representative of Shiromani Gurdwara Prabandhak Committee[4] from Kurukshetra. The ground of challenge is that the Haryana Act is

2 For short, the '1925 Act'
3 For short, the '1966 Act'
4 For short, the 'SGPC'

against the constitutional provisions, the statutory provisions of the 1966 Act and is also divisive in its intention to create dissentions amongst the followers of the Sikh religion. The writ petition was subsequently amended to challenge the Haryana Act on the ground of infringement of fundamental rights conferred on the petitioner under Part III of the Constitution. The second writ petition has been preferred by the SGPC challenging the Haryana Act on almost similar grounds.

4. The State of Haryana and Haryana Sikh Gurdwara Managing Committee[5] filed a counter affidavit controverting the stand of the petitioner whereas respondent No. 3 – SGPC in the first writ petition supported the petitioner and, in fact, filed an independent writ petition to challenge the Haryana Act. The Union of India in its reply asserted that while excluding the jurisdiction of the 1925 Act by the Haryana Act, it amounts to winding up of the Board constituted under the 1925 Act whose functions necessarily fall under Entry 44 of List I. Therefore, the contention that the State of Haryana had the jurisdiction to pass the impugned Haryana Act in terms of Entry 32 of List II of Schedule VII appears to be misplaced. It is the stand of the Union that only Parliament has the exclusive power to enact law on the said subject. There is no justification for the Haryana State Legislature to have passed a law on the same subject matter, taking away the jurisdiction of the Board constituted under the 1925 Act.

5. It is submitted that the 1925 Act was enacted to provide for better

5 For short, the 'Haryana Committee'

administration of certain Sikh Gurdwaras and for enquiries into matters and settlement of disputes connected therewith. The 1925 Act received the assent of the Governor General on 28.7.1925 and was published in the Punjab Gazette on 7.8.1925 and thereafter it came into force on 1.11.1925. The 1925 Act extends to the territories which immediately before 1.11.1956 were comprised in the State of Punjab and Patiala and East Punjab States Union (PEPSU). It is pointed out that the management of every notified Sikh Gurdwara is required to be administered by the Committee constituted thereof, the Board and the Commission in accordance with the provisions of the Act. SGPC is the Board so constituted under Section 43. The Board consists of 170 elected members; the Head Ministers of the Darbar Sahib, Amritsar; Sri Akal Takhat Sahib, Amritsar; Sri Takhat Keshgarh Sahib, Anandpur; Sri Takhat Patna Sahib, Patna; Sri Hazur Sahib, Nanded; and Sri Takhat Damdama Sahib, Talwandi Sabo, Bathinda, Punjab and 15 members who are residents in India, of whom not more than 5 shall be residents of Punjab, co-opted by the other members of the Board. The jurisdictional area of the Act has been divided into 120 constituencies as there are 50 plural constituencies, each returning 2 members for the election of 170 members. Furthermore, the 1925 Act envisages a scheme for the administration and management of the property, endowments, funds and income of the Gurdwaras as described in Section 85(1). For every such notified Sikh Gurdwara other than a

Gurdwara specified in Section 85, a Committee shall be constituted after it has been declared to be a Sikh Gurdwara consisting of 5 members as provided under Section 87. The Gurdwaras covered by the 1925 Act are spread over the present States of Punjab, Haryana, Himachal Pradesh and Union Territory of Chandigarh and are being administered by the SGPC.

6. It has also been mentioned that the States Reorganisation Act, 1956[6] increased the area of Punjab by inclusion of State of PEPSU. However, the existing State of Punjab was thereafter reorganized on linguistic basis in 1966 when the 1966 Act was enacted. The relevant provisions of the 1966 Act read thus:

> "72(1) Save as otherwise expressly provided by the foregoing provisions of this Part, where any body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Punjab or any part thereof serves the needs of the successor States or has, by virtue of the provisions of Part II, become an inter-State body corporate, then, the body corporate shall, on and from the appointed day continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate.
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> (2) Any direction issued by the Central Government under sub-section (1) in respect of any such body corporate may include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect, subject to such exceptions and modifications as may be specified in the direction.
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> (3) For the removal of doubt it is hereby declared that the provisions of this section shall apply also to the Punjab University

6 For short, the '1956 Act'

constituted under the Punjab University Act, 1947, the Punjab Agricultural University constituted under the Punjab Agricultural University Act, 1961, and the Board constituted under the provisions of Part III of the Sikh Gurdwaras Act, 1925.

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88. The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within that State immediately before the appointed day.

89. For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation- In this section, the expression "appropriate Government" means-

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law-

i) in its application to a State, the State Government, and

ii) in its application to a Union Territory, the Central Government.

90. (1) Notwithstanding that no provision or insufficient provision has been made under section 89 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Punjab or Haryana, or to the Union Territory of Himachal Pradesh or Chandigarh construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the

matter before the court, tribunal or authority.

(2) Any reference to the High Court of Punjab in any law shall unless the context otherwise requires be construed, on and from the appointed day, as a reference to the High Court of Punjab and Haryana."

7. It is stated that in terms of the provisions of Section 109 of the 1956 Act, the Inter-State Corporation Act, 1957[7] was enacted. The stand of the Union is that as per Section 3 of the 1957 Act, the State Governments were enabled to frame the scheme in respect of any inter-State Corporation functioning within the State, but the scheme had to be forwarded to the Central Government. The Central Government after consulting the State Government concerned may either approve the scheme with or without modifications and give effect to the scheme so approved under Section 4 of the 1957 Act. The Central Government had the power to include any body corporate constituted for a State for functioning in two or more States of the Schedule. The 1925 Act came to be incorporated in the Schedule in the 1957 Act vide notification dated 26.7.1972. Thus, it is the stand of the Union that only Central Government could give directions with regard to functioning and operation of an inter-state body corporate i.e., SGPC.

8. Section 109 of the 1956 Act reads thus:

"109. General provision as to statutory corporations-(1) Save as

7 For short, the '1957 Act'

otherwise expressly provided by the foregoing provisions of this Part, where any body corporate has been constituted under a Central Act, State Act or Provincial Act for an existing State or to a new State, then, notwithstanding such transfer, the body corporate shall, as from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such direction as may from time to time be issued by the Central Government, until other provisions is made by law in respect of the said body corporate.

(2) Any directions issued by the Central Government under sub-section (1) in respect of any such body corporate shall include a direction that any law by which the said body corporate is governed shall in its application to that body corporate have effect subject to such exceptions and modifications as may be specified in the direction."

9. The relevant provisions of the 1957 Act read thus:

"2. Definition - In this Act, "inter-State corporation" means any body corporate constituted under any of the Acts specified in the Schedule and functioning in two or more States by virtue of section 109 of the States Reorganisation Act, 1956, [or of any other enactment relating to reorganisation of States].

3. Power of State Governments to frame schemes. – If it appears to the Government of a State in any part of which an inter-State corporation is functioning that the inter-State corporation should be reconstituted and reorganized as, one or more inter-State corporations or that it should be dissolved, the State Government may frame a scheme for such reconstitution and reorganisation or such dissolution, as the case may be, including proposals regarding the transfer of the assets, rights and liabilities of the inter-State corporation to any other corporations or State Governments and the transfer or re-employment of employees of the inter-State corporation and forward the scheme to the Central Government.

4. Reorganisation of certain inter-State corporations.-(1) On receipt of a scheme forwarded to it under section 3, the Central Government may, after consulting the State Governments concerned, approve the scheme with or without modifications

and give effect to the scheme so approved by making such order as it thinks fit.

(2) An order made under sub-section (1) may provide for all of any of the following matters, namely:-

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(b) the reconstitution and reorganisation in any manner whatsoever of the inter-state corporation including the constitution, where necessary of new corporation;

(c) the area in respect of which the reconstituted corporation or new corporation shall function and operate;

(d) the transfer, in whole or in part, of the assets, rights and liabilities of the inter-State corporation (including the rights and liabilities under any contract made by it) to any other corporations or State Governments and the terms and conditions of such transfer;

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5. Power of Central Government to add to the Schedule. – The Central Government may, by notification in the Official Gazette, specify in the Schedule any Act under which a body corporate constituted for a State is functioning in two or more States by virtue of section 109 of the States Reorganisation Act, 1956, or of any other enactment for the reorganisation of States, and on the issue of such notification, the Schedule shall be deemed to be amended by the inclusion of the said Act therein."

10. The State of Himachal Pradesh, respondent No. 6, took a stand that the 1925 Act is applicable only for those areas which are included in Himachal Pradesh under the 1966 Act. The single member constituency of the said areas of Himachal Pradesh has 23987 voters. Therefore, there had been no issue either about conducting of election for SGPC or managing of Gurdwaras under the existing legislation i.e.,

the 1925 Act and the Rules made thereunder. Thus, the State of Himachal Pradesh is not contesting the petition.

11. In the reply filed on behalf of the State of Punjab dated 24.8.2014, it has been averred that the power to make law in respect of SGPC as an inter-State body corporate has been reserved to the Central Government only. The relevant extract reads thus:

> "The power to make law in respect of the SGPC as an Inter-State Body Corporate has been reserved to the Central Government only and there is no provision in law for bifurcation of the said Inter-State Body Corporate or replacement thereof by enacting a State legislation.
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> Thus in light of the above submissions, it is clear that SGPC is firmly rooted as an inter-state body corporate and only Parliament is empowered to legislate regarding inter-state corporations as per Entry 44 of List-I of Schedule 7 to the Constitution of India. The enactment of the Haryana Sikh Gurdwara (Management) Act, 2014 in purported exercise of legislative competence under Entry 32 of List-II of Schedule 7 is wholly unconstitutional and trespasses into a field exclusively reserved for Parliamentary legislation, in view of the Statutory Provisions referred above."

12. A reference has been made to a Full Bench judgment of Punjab and Haryana High Court in ***Sehajdhari Sikh Federation*** v. ***Union of India & Ors.***[8] in the counter affidavit. It was however pointed out that the aforesaid judgment was the subject matter of challenge in an appeal before this Court.

13. In the alternative, it was submitted that the legislative competence

8 2012 (1) ILR Punjab and Haryana 347 : 2011 SCC OnLine P&H 17374

was to be traced to Entry 28 of List-III of Schedule VII. Therefore, in the absence of assent of the President in terms of Article 254, the Haryana Act is directly in conflict with the existing law.

14. However, after the amendment of the first writ petition, an additional affidavit was filed by the State of Punjab on 22.11.2019. It was stated that after the affidavits were filed at the initial stage, there have been subsequent developments when the Parliament enacted Sikh Gurdwara (Amendment) Act, 2016, amending Sections 49 and 92 of the 1925 Act with retrospective effect from 8.10.2003. It is pointed out that challenge to the said amendment carried out by the Parliament is the subject matter of challenge in Writ Petition No. 11978 of 2017 which is pending consideration before the High Court. It was averred that the modification by the Central Government in terms of Section 72(1) of the 1966 Act is in relation to functioning and operating of the body corporate i.e., SGPC. However, such power cannot be extended to amend the statute or issuance of notifications from time to time. The relevant extract from the additional affidavit reads thus:

> "10. The Central Government has done so in exercise of its powers of modification under Section 72(1) of the Punjab Re-organisation Act, 1966. While Section 72(1) of the Punjab Re-organisation Act, 1966 does indeed empower the Central Government to modify, such power is confined to directions by the Central Government in relation to "*the functioning and operating*" of such body corporate i.e. the Respondent No. 3. That such power is limited to the functioning and operation of the SGPC, cannot extend to amending the statute or that the issuance of such notifications from time to time do not change

the legislative character of the Sikh Gurdwara Act, 1925 (from a State legislation) to that of a Parliamentary Legislation was conclusively held by the Hon'ble Full Bench of the Punjab and Haryana High Court in the matter of Sehajdari Sikh Federation Vs. Union of India (CWP 17771 of 2003 decided on 20th December 2011) (2012 (1) ILR (P&H) 347). As stated earlier the appeal from the above judgment being Civil appeal 9334/2013 came to be disposed as infructuous in view of Parliament enacting the Sikh Gurdwara (Amendment) Act, 2016 which in turn now is subject matter of challenge before the Hon'ble High Court of Punjab and Haryana.

11. The present Respondent reiterates that State Legislation pertaining to the administration of Gurudwaras within a State (such as the Sikh Gurudwaras Act, 1925 pertaining to Gurudwaras in the State of Punjab) is strictly within the dominion of the State, the power to enact or amend such State Legislation cannot be usurped by Parliament and the contentions of the Petitioner and/or the Respondent no. 3 in this regard are denied as misconceived.

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13. There is a distinction between the Central Government's power to issue directions (for the above limited purpose) and the competence of Parliament to legislate. The existence of one does not imply the existence of the other. The Petitioner and /or the Respondent cannot contend that merely because the Central Government has the power to pass directions, Parliament has the sole power to legislate.

14. Furthermore, from a bare reading of the language of Section 72, even such limited power of the Central Government to issue directions would cease to exist when appropriate legislation is passed by competent legislature in this regard.

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19. It is reiterated that State has the power to enact necessary legislation as regards *"religious and other societies and association"* - (List 2-Entry 32) and the Petitioner and/or Respondent no. 3's misplaced reliance on the provisions of Section 72 of the Punjab Reorganization Act 1966, and any perceived omnibus power of Parliament to legislate /amend such

> statues, especially in the light of the Sikh Gurudwara (Amendment) Act 2016, is misplaced.
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> 20. In view of the above, it is most respectfully submitted that this Hon'ble Court may kindly pass appropriate order upholding the legislative competence of the State Legislature to enact/amend legislation in relation to gurdwaras in their respective States."

15. Mr. Rakesh Dwivedi, learned senior counsel for the petitioner submitted that the Haryana Act is practically similar to the 1925 Act except some contextual changes. The stand of the writ petitioner Harbhajan Singh is that Section 72(1) of the 1966 Act provides that where any body corporate constituted for the existing State of Punjab or any part thereof by any Act of Centre, State or Province becomes an Inter-State Corporation by virtue of Part II of the 1956 Act, then it shall continue to operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may be issued by the Central Government, *until other provision is made by law* in respect of it. Section 72(3) clarifies that this Section shall apply to, *inter alia*, the Board constituted under Part III of the 1925 Act. While Part II (Sections 3-8) of the 1966 Act deals with reorganisation of the State of Punjab, Part VII (Sections 67-77) deals with State Electricity Board and State Warehouse Corporation which provides that these are to continue, subject to Section 67 and directions of the Central Government, but Section 67(4) enables the Government of any of the successor States to constitute their own

State Electricity Board and State Warehouse Corporation. Section 69 makes similar provisions for the Punjab State Financial Corporation and empowers the States of Punjab and Haryana to constitute their own State Financial Corporation with the approval of Central Government. Section 70 provides a distinct procedure for co-operative societies specified in the Fifteenth Schedule of the 1966 Act which become a multi-unit cooperative society by inserting Section 5D in the Multi-Unit Cooperative Society Act, 1942. Further, Section 73 deals with seven other corporations which are to continue until otherwise provided for "in any law" or "in any agreement among the successor States" or "in any direction issued by the Central Government". Section 89 of the 1966 Act permits adaptations in laws by the appropriate Government until the laws are altered, repealed or amended by the competent legislature or the competent authority. Explanation thereto provides that "appropriate Government" means the Central Government in relation to matters enumerated in the Union List. For rest, it is the State Government.

16. It is also submitted that Article 246 read with Entry 32 List II of the Seventh Schedule and Section 72 of the 1966 Act cannot confer power on the Haryana Legislative Assembly to make the impugned law. The law is thus void, being outside the legislative competence of the Haryana Legislative Assembly. It is also averred that the impugned law violates Article 26 of the Constitution of India as it purports to take out

specified Gurdwaras and the management of their properties from the control of the Board under the 1925 Act.

17. It is argued that the States Reorganisation Act is a special kind of legislation enacted under Articles 2, 3 and 4 of the Constitution. The Parliament alone is empowered to make such a law. The State of Haryana can act only in accordance with the 1957 Act if it desires reconstitution, reorganisation or dissolution of the Board constituted under the 1925 Act. The only method prescribed under the Act to do so is to frame a scheme including proposals regarding transfer of assets of the Board to any other corporation of its own, and thereafter forward the same to the Central Government. The Central Government then under Section 4 of the 1957 Act is required to pass an order approving the scheme with such modifications as it may deem fit, after consulting the other State Governments. It is also submitted that where a special procedure has been prescribed for doing a particular thing in a particular manner, it must be done in that manner and not otherwise. Reference is made to Privy Council judgment in ***Nazir Ahmad*** v. ***The King-Emperor***[9]. The said principle is again echoed in ***State of Kerala & Ors.*** v. ***Kerala Rare Earth and Minerals Limited & Ors.***[10]. Various other judgments have been referred to by Mr. Rakesh Dwivedi but there is no necessity to quote them as the principle is well settled and established for many decades.

9 AIR 1936 PC 253(2)
10 (2016) 6 SCC 323

18. It is submitted that the source of enactment of the Haryana Act is Section 72 of the 1966 Act read with Entry 32, List II of the VII Schedule. It is stated that Section 72 deals with body corporates constituted under the Central Act, State Act or Provincial Act for the existing State of Punjab. Such body corporate which has become an inter-state body corporate is mandated to continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day. The Central Government is empowered under Section 72(1) to issue directions from time to time *"until other provision is made by law".* The State of Haryana is thus not competent to make a law in respect of a body corporate which has become an inter-state body corporate. It is argued that the 1957 Act is a special law made by the Parliament and not only Section 72 of the 1966 Act has to be read along with the provisions of the 1957 Act, but the entire 1966 Act would have to be construed consistently with the provisions of the 1957 Act. The principle of *generalia specialibus non derogant, (General things do not derogate from the special things)* would apply in the event of any inconsistency or ambiguity. It is also submitted that inter-state corporations or multi-state corporations would be covered by Entry 44 of List I. Reference is made to a recent judgment of this Court in ***Union of India*** v. ***Rajendra N. Shah & Anr.***[11].

19. It is averred that the Haryana Act is not creating a society or a

11 2021 SCC OnLine SC 474

corporation at State level but it seeks to curtail the jurisdiction of the 1925 Act, therefore, it is not an enactment with reference to Entry 32 List II. It is also contended that in fact, the Haryana Act adversely impacts the unity of management of religious place of worship and takes away the management of the Gurdwaras from the control of SGPC, thus, breaching the fundamental right guaranteed under Article 26. Hence, the argument is that the Haryana Act violates the mandate of Articles 25 and 26 of the Constitution.

20. The SGPC challenged the Haryana Act, *inter alia*, on the ground that the legislature of the State of Haryana has taken away the right of administration of Gurdwaras and its properties situated in the State of Haryana from SGPC and handed it over to the Haryana Committee. It is the stand of SGPC that it is running various charitable activities in the State of Haryana i.e., schools, colleges, hospitals and other religious institutions and also managing the Gurdwaras situated in the State of Haryana. SGPC thus has a fundamental right under Article 26 to establish and maintain institutions for religious and charitable purposes. It was stated as under:

> "5. Under the Act of 1925, the SGPC became a legal institution of the Sikhs for managing the Sikh Gurdwaras. It became the supreme body of the Sikhs which was directly elected by the Sikhs to manage their religious affairs for themselves. It came to be appropriately and rightly as a government within the government or a mini parliament of the Sikhs. It's working achievement and contribution of the last almost hundred years clearly display, that the SGPC has played a significant role in the affairs of the Sikhs, and the Sikh community has great reverence

for its efforts and contributions made for raising religious ands social issues concerning the community, not only in India, but all over the world, even dehorsit's statutory enactment, i.e. Act of 1925.

6. ...The Haryana Sikh Gurdwaras (Management) Act, 2014 in its objects and reasons specifically states that the Act of 2014 has been enacted for managing religious affairs including management of Sikh Gurdwaras in the territorial jurisdiction of the State of Haryana. It provides for division of property vested with the Board-SGPC under the act of 1925 and thus, infringes Article 26 of the Constitution of India....

7. It is submitted that Article 26(d) of the Constitution uses the expression "in accordance with law", it is trite to submit that the word 'law' encompasses an Act and it has to be a valid piece of legislation. This Hon'ble Court has held in the context of Article 26 that in matters of administration of property belonging to the religious denomination or section thereof, the secular authorities can regulate the same in accordance with the law laid down by the competent legislature. Although, only clause (d) of Article 26 uses the expression in accordance with law, however, the same expression has to be read into all the clauses of Article 26, since, it cannot be the case that state can meddle in the fundamental rights of freedom to manage religious affairs etc., without enacting a valid piece of legislation, thus, violation of fundamental rights under Article 26, as available to the SGPC and its elected members.

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9. It is also submitted that this Hon'ble Court has held in context of various Articles of the Constitution that the law must be a valid law. Article 25(2) of the Constitution permits the state for making any law regulating or restricting any economic, financial, political or other secular activities, which may be associated with religious practice, and the similar logic as stated hereinabove in regard to validity of law on the touchstone of competence of legislature would be applicable on all fours in regard to provisions of Article 25(2) as well. Further, this logic would be applicable even to provisions of Article 13 as well."

21. It is contended that the State of Haryana relies upon Entry 32, List II of

the Seventh Schedule, whereas, the SGPC under the 1925 Act is an inter-state body corporate covered by Entry 44 of List I. The two entries read thus:

List II	List I
32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.	44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

22. Since the object of SGPC is not confined to one State, therefore, Haryana State legislature is not competent to enact law. In respect of Entry 32, it is stated that it refers to only those corporations which are based within the territories of a particular state whereas the inter-state corporations covered under Entry 44 of List I are excluded from the operation of Entry 32 of List II. The 1957 Act is a special statute regulating inter-state corporations and it has been enacted under Articles 2 and 3 of the Constitution of India read with Entry 44 of List I of the Seventh Schedule, therefore, legislature of Haryana could not have enacted the Haryana Act in violation of the 1957 Act. Reference was made to a judgment of this Court reported as ***Maa Vaishno Devi Mahila Mahavidyalaya*** v. ***State of Uttar Pradesh & Ors.***[12]. Thus, it is argued that the provisions of Section 72(1) read with Section 72(3) of

12 (2013) 2 SCC 617

the 1966 Act specifically deal with inter-state corporate body like SGPC, and the legislature for the State of Haryana has made an incompetent Act. In view of Section 88 of the 1966 Act, the 1925 Act which was applicable prior to the appointed day continued to function and operate in the States of Punjab, Haryana, parts of Himachal Pradesh and U.T. Chandigarh.

23. The argument on behalf of the State of Haryana or on behalf of the Haryana Committee is that this Court vide its order dated 29.3.2022 while holding the maintainability of the present writ petition before this Court held that two aspects need to be examined; first, whether any fundamental right of the petitioner is invaded or violated and, second, unless and until violation of the fundamental right of the petitioner is found, this Court need not go into the question of vires of the impugned Act.

24. Reliance is placed upon a Full Bench judgment of the Punjab and Haryana High Court reported as ***Dayanand Anglo-Vedic College Managing Committee*** v. ***The State of Punjab & Ors.***[13] to contend that Panjab University, an inter-State body corporate by virtue of Section 72 of the 1966 Act was to continue its functions and operations subject to the directions issued by the Central Government. The directions could be issued for a limited period i.e., until other provision was made by law in respect of Panjab University. Reliance is also

13 1971 SCC OnLine P&H 257

placed upon ***Himachal Pradesh University, Shimla*** v. ***Punjab University, Chandigarh & Ors.***[14] wherein this Court held that the institutions and properties which were situated in Himachal Pradesh of the Panjab University, being an inter-state corporation, were succeeded by the University of the successor State insofar as its functioning and operation at Shimla was concerned. It is, thus, sought to be contended that the irretrievable conclusion is that the 1956 Act was only a transitional provision. It is submitted as under:

> "1. The Impugned Act is *pari materia* to the Sikh Gurdwara Act, 1925. As per Chapter-II – 'The Committee' of the Impugned Act, a committee by the name of Haryana Sikh Gurdwara Committee (Respondent No. 5) has been established for the proper management and control of the Sikh Gurdwaras situated in jurisdiction of the State of Haryana. As per Section 4 – 'Composition of Committee', the committee consists of 40 members who are elected from various wards from the State of Haryana. This scheme grants the Impugned Act a democratic framework as every person is given a fair say in the management of religious affairs.
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> 2. The Punjab Reorganisation Act, 1966 was passed by the Parliament under *Article 3 of the Constitution of India* to facilitate reorganisation of the existing State of Punjab and for matters connected therewith. Section 72 of the 1966 Act was enacted to make general provisions for such bodies corporate for which no provision had been made in other parts of the Act.
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> 3. Section 72(1) starts with the words "*Save as otherwise expressly provided by the foregoing provisions of this Part*". It further specifically mentions that the Central Government has the power to issue directions qua the corporation "until other provision is made by law in respect of the said body corporate". Section 72(3) specifically provides that the provision of this section shall apply to the "*Board constituted under the provisions of Part III of the Sikh Gurdwara Act, 1925.*"

14 (1996) 11 SCC 411

> 4. The Inter-State Corporation Act, 1957 was enacted as per Section 109 of the State Reorganisation Act, 1956 as a transitional provision for the purpose of reconstitution/dissolution/ reorganisation of certain corporations functioning in two or more States. The statement of purpose of the 1957 Act is "this was only intended to be a transition provision".

25. Reference is also made to five-Judges Bench judgment of the Punjab and Haryana High Court in ***Kashmir Singh*** v. ***Union of India & Ors.***[15] which was affirmed by this Court in a judgment reported as ***Kashmir Singh*** v. ***Union of India & Ors.***[16] to contend that the State legislature is competent to enact a law in respect of the 1925 Act when the State of Punjab nominated members to the Judicial Commission constituted under the 1925 Act.

26. The 1925 Act is a State Act. It was enacted by Punjab Provincial Council. The State of Punjab has amended this 1925 Act thirty times from the date of its passing in 1925 upto 1966. Entry 32 of List II specifically includes the power of the State Legislature to make laws in relation to incorporation, regulation and winding up of corporations, other than those specified in List I. The State is competent to frame laws in respect of universities, unincorporated trading, literary, scientific "*religious and other societies"* and associations. This express power has not been conferred on the Parliament under Entry 44, List I. It is also contended that the Haryana Act is not covered by Entry 28 of

15 2002 SCC OnLine P&H 766 : ILR (2003) 1 P&H 345. For short, Kashmir Singh - I
16 (2008) 7 SCC 259. For short, Kashmir Singh - II

List III i.e., charities and charitable institutions, charitable and religious endowments and religious institutions. It is contended that endowments are in essence properties, whether movable or immovable, designated to be used for a specific purpose which would fall within Entry 28 of List III of the Seventh Schedule but the corporations are legal entities that can sue and be sued which are covered by Entry 32 of List II.

27. The State of Punjab in its written submissions has asserted that it is an undisputed fact that the 1925 Act is an act of State legislature. It was enacted for the administration of certain Sikh Gurdwaras within the State of Punjab as it then existed and thereafter various amendments have been made to it by the Punjab Legislature. It is only due to Section 72 of the 1966 Act that the Board under the 1925 Act became an inter-state corporation, which was only a temporary measure until law is made by the competent legislature. It was asserted as follows:

> "3. From the date of enactment of the Constitution of India, the State of Punjab adopted the 1925 Act and since then the Punjab Legislative Assembly has been making amendments to the 1925 Act. It was only after the 1966 Act was passed, the power to issue direction was granted to the Central Government by the virtue of Section 72 of the 1966 Act. The power to make amendment was temporarily shifted to the Parliament till the time the Successor States came up with their own laws.
>
> 4. It is essential to note that shift of power was only transitional in nature, and the Central Government was given the power to merely issue directions. The Full Bench of the Punjab and Haryana High Court while deciding CWP No. 17771/2003 vide judgment dated 20.12.2011 in the matter of ***Sehajdari Sikh Federation Vs. Union of India 2012 (1) ILR (P&H) 347***

negated the power of the Central Government to amend the Sikh Gurudwaras Act 1925, by way of notification.

5. It is stated that the 1925 Act was indisputably conceived as a State Act. The Respondent No.3-SGPC is a creation of Section 40 of the 1925 Act. Section 40 inter alia read with the preamble of the 1925 Act provides that Respondent No. 3 is a Board constituted for *the better administration of* ***certain/notified*** *Sikh Gurudwaras and for enquiries into matters and settlement of disputes connected therewith*. Section 42(3) grants on to the Respondent No.3 the status of a "body corporate".

6. After the passing of the States Reorganisation Act, 1956 (in short "1956 Act") and the 1966 Act, the Central Government has by notification from time to time "modified" the provisions of Section 85 (Constitution of committees of management of certain gurdwaras) of the 1925 Act to amend/add such list of notified Sikh Gurudwaras whose management would be supervised by the Respondent No.3.

7. The Central Government has done so in exercise of its powers of modification under Section 72(1) of the 1966 Act. While Section 72(1) of the 1966 Act does indeed empower the Central Government to modify, such power is confined to directions by the Central Government in relation to "the functioning and operating" of such body corporate i.e. the Respondent No.3. **That such power is limited to the functioning and operation of the SGPC, cannot extend to amending the statute or that the issuance of such notifications from time to time do not change the legislative character of the 1925 Act (from a State legislation) to that of a Parliamentary Legislation**. This position was conclusively settled by the Hon'ble Full Bench of the Punjab and Haryana High Court in the matter of ***Sehajdari Sikh Federation case (Supra)***.

8. The present Respondent reiterates that State Legislation pertaining to the administration of Gurudwaras within a State (such as the Sikh Gurudwaras Act, 1925 pertaining to Gurudwaras in the State of Punjab) is strictly within the dominion of the State, **the power to enact or amend such State Legislation cannot be usurped by Parliament** and the contentions of the Petitioner and/or the Respondent No.3 in this regard are not maintainable.

9. Section 72 of the 1966 Act cannot be read against a State Government in the manner in which the Petitioner and/or the Respondent No.3 are now proceeding to do so. The power of the Central Government in terms of Section 72 is limited to the passing of directions relating to the functioning and operating of Respondent No.3.

10. Furthermore, from a bare reading of the language of Section 72, even such limited power of the Central Government to issue directions would cease to exist when appropriate legislation is passed by competent legislature in this regard.

11. Moreover amending/enacting the legislation pertaining to the administration of Gurudwaras within a State (such as the Sikh Gurudwaras Act, 1925 pertaining to the Gurudwaras in the State of Punjab) is within the legislative domain of the State and such power to enact or amend such State Legislation cannot be usurped by the Parliament. It is submitted that State has the power to enact necessary legislation as regards "religious and other societies and association" (List-2, Entry 32) and the petitioner and/or Respondent No.3's misplaced reliance on the provisions of Section 72 of the Punjab Reorganisation Act, 1966 and any perceived omnibus power of Parliament to legislate/amend such statutes is misplaced.

12. Reliance on Entry No.44 of List I to the 7th Schedule which pertains to "*incorporation, regulation and winding up of corporations*" cannot be placed as there is no legislation at hand, which deals with the incorporation, regulation or the winding up of the Respondent No.3 [even assuming without admitting that the Respondent No.3 is a corporation envisaged under Entry 44 List 1, which it is not].

13. The Respondent No.3 is a creation of and continues to owe its legal position, existence and functioning to Section 39-42 of the 1925 Act which is a State Legislation enacted by a State Legislature in terms of the Entry 32 of List II and not by the Parliament. Entry 4 List 1 does not even relate to or mention such "Inter State Corporations". Rather it pertains to the "*incorporation, regulation and winding up of corporations*".

28. In the light of arguments addressed and/or submitted, we find the

following questions arise for consideration:

(i) Whether any fundamental rights of the petitioners under Articles 25 and 26 of the Constitution of India are violated, so as to entitle the petitioners to invoke the jurisdiction of this Court under Article 32 of the Constitution?

(ii) Whether Section 72 of the Punjab Reorganisation Act, 1966 and Sections 3 and 4 of the Inter-State Corporation Act, 1957 were transitional provisions to meet the immediate requirement of the issues arising out of creation of separate States?

(iii) Whether the impugned enactment (Haryana Act) falls within the legislative competence of the Haryana State Legislature or does it fall under Entry 44 of List I of the Seventh Schedule of the Constitution?

(iv) Whether the Impugned Act falls in List-III (Concurrent List) of Schedule VII, which required the assent of the President of India as per Article 254(2) of the Constitution of India, and in the absence of such assent, void?

29. We will take up Question Nos. (ii), (iii), and (iv) first and thereafter advert to Question No. (i).

Question No. (ii) - Whether Section 72 of the Punjab Reorganisation Act, 1966 and Sections 3 and 4 of the Inter-state Corporation Act, 1957 were transitional provisions to meet the immediate requirement of the issues arising out of creation of separate States?

30. The writ petitioners, SGPC and the Union have taken one line of argument that the Haryana State Legislature does not have any power to legislate in respect of an inter-state corporation which is evident from the reading of sub-section (3) of Section 72 of the 1966 Act. In respect of such inter-state body, it is averred that the Central Government alone is the competent authority to issue directions in terms of sub-section (1) of Section 72 of the 1966 Act. Alternatively, the right of the State of Haryana is to frame a scheme in terms of the provisions of Section 3 of the 1957 Act and forward it to the Central Government for its consideration and approval, with or without modifications. Mr. Nataraj pointed out that Section 3, as referred to by the learned counsel for the parties, is not factually correct. If an inter-State corporation is required to be reconstituted and reorganized as one or more 'intra-State corporations', or that it has to be dissolved, the State of Haryana was expected to frame a scheme for the reconstitution and reorganization to have intra-State management of Gurdwaras in the State of Haryana.

31. The State of Haryana, Haryana Committee and State of Punjab have taken one stand and argued that power to legislate the impugned Haryana Act is not with the parliament but with the State, i.e., State of Haryana. It was argued that the 1957 Act was enacted in pursuance of Section 109 of the 1956 Act which is also mentioned in the Preamble of the said Act, and was intended to be a transitional provision as

mentioned in the Statement of Objects and Reasons when the Bill leading to the enactment of 1957 Act was introduced. Section 109 of the 1956 Act is to the effect that where any body corporate has been constituted under a Central Act, State Act or Provincial Act for an existing State, the whole or any part of which is by virtue of Part II transferred to any existing State or to a new State, then, from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day. Such functioning is subject to such direction as may from time to time be issued by the Central Government, until other provision is made by law in respect of such body corporate.

32. The 1957 Act is a statute to empower the Central Government to issue directions from time to time so that on account of creation of separate States, such statutory bodies in the new States can function smoothly. It defines the “inter-State corporation” as any body corporate constituted under any of the Acts specified in the Schedule and functioning in two or more States by virtue of Section 109 of the 1956 Act. As mentioned above, the 1925 Act came to be inserted in the Schedule in the year 1972. Therefore, in respect of such inter-State corporations, the Central Government could issue directions in terms of the 1957 Act only to give effect to the reorganisation of States so that the inter-state entity is able to function and discharge the statutory mandate in the States so constituted. Such directions were transitional

in nature so that the functioning of inter-State corporations is not obstructed or curtailed on account of reorganisation of the States. Neither the 1956 Act nor the 1966 Act nor the 1957 Act has taken away the legislative competence of the States to legislate on the subjects which finds mention in List II of the Seventh Schedule and/or in respect of matters falling in List III of the Seventh Schedule in the manner prescribed.

33. The 1956 Act or the 1966 Act empowers the Central Government to issue directions to make the inter-state entity functional, but the Central Government has not been empowered to legislate in respect of such inter-State bodies which came to be operational in one or more States due to the reorganisation of the States.

34. The issue has been examined firstly by this Court in a judgment reported as ***Smt. Swaran Lata*** v. ***Union of India & Ors.***[17] wherein, in respect of Union Territory of Chandigarh, the question arose as to whether the post of a Principal, Government Central Crafts Institute for Women was a deputation post and required to be filled up by the Chandigarh Administration only by an officer on deputation, or could it also be filled up by appointment of a suitable candidate by advertising the post through the Union Public Service Commission. The argument was raised that in terms of Section 84 of the 1966 Act, the post in question, admittedly under the control of the Administrator, Chandigarh Administration, stands circumscribed by the terms of the

17 (1979) 3 SCC 165

directions issued by the Central Government under Section 84 of the Act. This Court relied upon ***Jagtar Singh*** v. ***State of Punjab***[18] to hold that the instructions issued under Section 84 of the 1966 Act were supplemental, incidental or consequential provisions under the reorganisation of the States. Such instructions are binding on the State Governments of Punjab and Haryana as also on the Chandigarh Administration. This Court in ***Swaran Lata*** thus held as under:

> "35. These instructions were in conformity with the earlier decision of the Government of India Ministry of Home Affairs conveyed by the letter of the Chief Secretary to the Government of erstwhile State of Punjab dated August 9, 1966 stating that the Government had set up a committee headed by *Sri* v. *Shankar*, ICS. for the finalisation of the proposals of the Departmental Committees in regard to the allocation of the personnel to the reorganised States of Punjab and Haryana and the Union territory of Chandigarh. In regard to the Union territory of Chandigarh, the decision of the Government of India was in these terms:
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> > "It may be presumed that personnel for the Union territory of Chandigarh will be provided on deputation by the two States of Punjab and Haryana."
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> The aforesaid instructions issued under Section 84 of the Act were supplemental, incidental or consequential provisions for the reorganisation of the States. The instructions were binding on the State Governments of Punjab and Haryana as also on the Chandigarh Administration in the matter of integration of services: *Jagtar Singh* v. *State of Punjab* [(1972) 1 SCC 171].
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> 37. It seems to us that for a proper determination of the question, it is necessary first of all to formulate as clearly as possible the precise nature and the effect of the directions issued by the Central Government under Section 84 of the Punjab Re-organisation Act, 1966, which reads:

18 (1972) 1 SCC 171

> "84. *Power of Central Government to give directions*.— The Central Government may give such directions to the State Governments of Punjab and Haryana and to the Administrators of the Union Territories of Himachal Pradesh and Chandigarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Governments and the Administrators shall comply with such directions."
>
> The use of the words "for the purpose of giving effect to the foregoing provisions of this part" clearly curtails the ambit of the section. *The directions that the Central Government issues under the section are only for a limited purpose i.e. for the implementation of the scheme for the reorganisation of services. When the process relating to integration of services as envisaged by the supplemental, incidental or consequential provisions for reorganisation of services under a law made by the Parliament in exercise of its power under Articles 2, 3 and 4 of the Constitution is completed, such an incidental provision like Section 84 necessarily ceases to have effect*."
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> *(Emphasis supplied)*

35. The directions from the Central Government are only for a limited purpose i.e., for implementation of the scheme for reorganisation of the services. It was held that when the process relating to integration of services in exercise of powers of the Parliament under Articles 2, 3 and 4 of the Constitution is completed, such an incidental provision like Section 84 necessarily ceases to have effect. It may be noticed that the question of directions arose in respect of filling up of the post of Principal vide advertisement published by the Union Public Service Commission on 1.2.1975. Since there were no statutory rules framed in respect of Chandigarh Administration in terms of proviso to Article 309, it was held that directions of the Central Government are binding,

Chandigarh being a Union Territory. Though the said judgment is in respect of Section 84 of the 1966 Act, but ratio of the said judgment is applicable in respect of inter-state entities covered by Section 72 of the 1966 Act as well.

36. This Court in a judgment reported as ***D.A.V. College, Etc. Etc.*** v. ***State of Punjab & Ors.***[19] was examining 14 writ petitions filed by many colleges managed and administered by Dayanand Anglo Vedic College (D.A.V. College) Trust. The challenge was against certain provisions of the Guru Nanak University, Amritsar, Act 1969 (Act no 21 of 1969). In pursuance of the provisions of the Act, a notification dated 16.3.1970 was published specifying the districts of Amritsar, Gurdaspur, Jullundur and Kapurthala in the State of Punjab as the areas in which the Guru Nanak University, Amritsar shall exercise its powers and discharge its duties. This Court held that the impugned statute does not affect the fundamental rights of the petitioners, therefore, the question of legislative competence or deciding the validity of Section 5 of the 1969 Act did not arise. This Court held as under:

> "49. This being the legal position in our view when once an impugned law does not affect the fundamental rights of the petitioners as in this case we have founded it to be so, it is not necessary to go into the question of legislative competence or to decide on the validity of Section 5.
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> 50. We have therefore no hesitation in holding that the notification under which the colleges have been affiliated to the Universities is legally valid and from the date specified therein petitioners colleges cease to be affiliated to the Punjab

19 (1971) 2 SCC 269

> University. In the result these petitions are allowed to the extent that clause 2(1)(*a*) and clause 17 of Chapter V of the statutes are struck down as affecting the fundamental rights of the petitioners, but in the circumstances without costs."

37. After the aforesaid judgment, the petitioners filed a writ petition before the Punjab and Haryana High Court in ***Dayanand Anglo-Vedic College Managing Committee*** challenging the Act on the ground of lack of territorial nexus since the Panjab University is located at Chandigarh, outside the territory of Punjab. It may be noticed at this stage that the Panjab University and the Board constituted under the 1925 Act falls under sub-section (3) of Section 72 of the 1966 Act. It was held that the power of Central Government to issue directions was for a limited period i.e., till other provision was made by law in respect of Panjab University. It was held as under:

> "4.....On the appointed day and immediately before that, various colleges were affiliated to that University which were situate in, the successor States of Punjab and Haryana, Union Territory of Chandigarh and the Union Territory of Himachal Pradesh, to which certain areas of the Punjab had been transferred. It was, therefore, provided in section 72 that the Panjab University was to continue to function and operate in those areas in respect of which it was functioning and operating immediately before the appointed day in order not to deprive the successor States of the educational facilities immediately on the re-organisation of the erstwhile State of Punjab. The continuity of the Punjab University was desirable in the interest of the successor States but the Panjab University was to serve those successor States only till they made any other provision for appropriate education in their own territories under Entry 11 of List II in the Seventh Schedule to the Constitution. Till any successor State took action by law in this behalf, the Panjab University was to continue its functions and operations subject to the directions issued by the Central Government. *The power of the Central Government to issue directions was for a limited*

period, that is, till other provision was made by law in respect of the Panjab University. If the successor States desired the Panjab University to continue as before in their territories, there was no necessity for them to make any provision by enacting a law on the subject but in order to avoid conflict amongst the successor States over the functioning of the Panjab University, *the power to issue directions with regard to the said University was rightly given to the Central Government, so that the University should continue to function and operate fairly and justly in the areas in which it was operating and functioning before the appointed day*. *In my view if it was intended that other provision by law was also to be made by the Central Government, the Parliament would have clearly stated so in section 72 instead of saying "until other provision is made by law in respect of the said body corporate*." *For the issuance of the directions, the authority is expressly mentioned as the Central Government but the Parliament has not been mentioned as the Legislature to enact the law making other provision*. While interpreting section 72, we have not to confine ourselves only to the Act but to all such bodies corporate which were *intra* State prior to the appointed day and because of the re-organisation of the erstwhile State of Punjab became inter-State bodies corporate on and after the appointed day. The first part of sub-section (1) of section 72 clearly points out that the Parliament was making the provision in section 72 with regard to the bodies corporate which had been constituted under a Central Act, State Act or Provincial Act and that is why the legislative authority for making a law in respect of these bodies corporate was not specified. *It may be for the reason that with regard to the bodies corporate constituted under a Central Act, the Parliament was the appropriate Legislature to make the law while with regard to the Corporations constituted under any State Act or a Provincial Act, the State Legislature was to be the appropriate Legislature.* Education including Universities is a State subject as per entry 11 in List II of the Seventh Schedule to the Constitution and the Panjab University was incorporated under a Panjab Act. Till the re-organisation of the erstwhile State of Punjab, it continued to function according to the provisions of the said Act. It cannot be imagined that with regard to all inter-State bodies corporate which were constituted under any State or Provincial Act, the jurisdiction to make any other provision by law was taken over by the Parliament itself. These bodies corporate were and are to function and operate for the people of a particular State and have to cater to their needs. Their needs are expressed by their

elected representatives and, therefore. It cannot be assumed that the Parliament wanted to deprive the successor States of an important field of their legislation with regard to education which is absolutely necessary for the development and progress of any State.

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Every State can make laws with regard to education and universities within its State and can control and regulate their functions and operations therein irrespective of the location of the seat of the University. What has to be seen is that the subject-matter of the legislation falls within the jurisdiction of the State Legislature and if that be so, it can affect all persons and institutions within the State to which it may be applied. In my opinion, therefore, the mere fact that the Panjab University is located at Chandigarh, which is outside the territory of the Punjab State, does not debar the Punjab State Legislature from enacting a law affecting the functions and operations of the Panjab University within its own territory.

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6.....It is, therefore, submitted that while enacting section 72 of the Punjab Re-organisation Act, the Parliament intended to amend entry 11 in List II of the Seventh Schedule to the Constitution by taking Panjab University out of the said List and to vest the power of legislation with regard thereto in the Parliament, thereby impliedly amending Articles 245 and 246 of the Constitution. In view of what I have said above, this submission has no force. *The Parliament did not specify the law as meaning the law made by it. All that it said was "until other provision is made by law in respect of the body corporate*". *I have interpreted the word "law" in that sentence to mean the law made by the appropriate Legislature, that is, with regard to the bodies corporate constituted under any Central Act or qua which legislation is to be made on a subject enumerated in List I of the Seventh Schedule to the Constitution, the law had to be made by the Parliament, but in respect of a body corporate constituted under a State or a Provincial Act, wherein the subject of legislation was to be found in List II of the Seventh Schedule to the Constitution, the appropriate Legislature to make the law is to be the State Legislature.....*The power to issue directions with regard to the Panjab University which

> was given to the Central Government by section 72 was essentially for a limited period, that is, till the Legislature of the appropriate State made a provision with regard to the functioning and operation of the Panjab University within its own area. It cannot, therefore, be said that section 72 of the Punjab Re-organisation Act effectuated an amendment of Articles 245 and 246 and entry 11 in List II of Seventh Schedule to the Constitution with regard to the Panjab University. It is not only the Panjab University that is governed by section 72 of the Punjab Re-organisation Act, but many other bodies corporate constituted under any Central, State or Provincial Act, which were intra State in operation before the appointed day and became inter-State bodies corporate because of the re-organisation."
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> *(Emphasis supplied)*

38. Before the Full Bench of the Punjab and Haryana High Court in ***Sehajdhari Sikh Federation,*** the issue was about the validity of the notification dated 8.10.2003 inserting a proviso to Sections 49 and 92 of the 1925 Act to the effect that no person shall be registered as an elector who trims or shaves his beard or keshas, smokes, and takes alcoholic drinks. The High Court held that in terms of Section 72 of the 1966 Act, the Central Government cannot issue a direction which has the effect of modifying the statute i.e., the 1925 Act. The High Court thus struck down the notification holding that Section 72 of the 1966 Act empowers the Central Government to issue directions pertaining to functioning and operation of an inter-State body corporate (the Board i.e., SGPC) in the areas where it was functioning or operating immediately before 1st November, 1966; any tangible material or a fact-finding enquiry established the factum of such obstruction or

difficulty; the cases(s) of such obstruction or difficulty originated out of the 'law', namely, the 1925 Act under which the Board was established; and the obstruction or difficulty, if any, acknowledged by the Central Government could be removed by 'modifying' the 1925 Act or an 'amendment' in that Act was necessitated. It was held that Section 72(2) of the 1966 Act does not empower the Central Government to modify Central Act, State Act, Provincial Act so as to amend such Acts. Consequently, the notification dated 8.10.2003 was quashed. However, certain findings returned by the Full Bench of the Punjab and Haryana High Court in respect of scope of Section 72 of the 1966 Act are relevant for the purposes of the present writ petition which read as under:

> "67. The scope of supplemental, incidental and consequential provisions has been authoritatively resolved in *Mangal Singh* laying down that Articles 2 & 3 empower the Parliament to form new States conforming to the "democratic pattern envisaged by the Constitution", and that the power, which the Parliament may exercise by law, is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution and 'is not a power to override the Constitutional scheme'. The democratic polity engrafted and integrated in our Constitutional scheme, postulates a separate Legislative Assembly and/or Council, representation in Parliament, a High Court & subordinate Judiciary, and its own Consolidated Fund etc. for every State. It is thus obligatory on the Parliament while forming a new State by exercise of law, to add such supplemental, incidental and consequential provisions in the Reorganization Act that all the ingredients of a 'State' as perceived by the Constitution are brought into existence.
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> 70. We find it wholly illogical to say that an action taken by the

Executive as a delegate under the re-organization law becomes a part of the Constitution. Since a re-organization law itself is the creation of the Constitution, an administrative or quasi-judicial action taken thereunder cannot be equated even to a degree with any provision of the Constitution. The converse proposition propounded on behalf of the contesting respondents must be rejected also for the reason that it attempts to dilute the supremacy of our Constitution.

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75. The unambiguous object of the 1966 Act is firstly to : reorganize the erstwhile State of Punjab; form the new States of Punjab, Haryana and Union Territory of Chandigarh; transfer certain areas of Punjab to Himacal Pradesh and establish a democratic set-up in the newly formed States comprising representation in their respective Legislatures and delimitation of the constituencies; a common High Court; authorization of expenditure and distribution of revenues and apportionment of assets and liabilities etc. Part-VU relates "to certain Corporations" whereas Part-VIII deals with the management of Bhakra-Nangal-Beas Projects and allocation of members of All India Services & other Services. Lastly. Part-X of the Act enlists legal and miscellaneous provisions. The 1966 Act is thus a complete code in itself which is in conformity with the Constitutional scheme and includes supplemental, incidental and consequential provisions to resolve all the foreseen or unforeseen issues that may arise due to the re-organization of erstwhile State of Punjab.

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82. It appears to us that the power under Section 72 cannot be invoked to issue directions or cause 'exceptions' or to 'modify' those Central, Provincial or State Acts which are alien to Part VII and have no bearing on giving effect to the re-organisational scheme propounded by the 1966 Act. Section 72 is only one amongst several other components of Part VII. While the other provisions (of Part VII) like Sections 67 to 71 deal with specific Boards, Corporation(s) and institution(s), Section 72 is an omnibus provision to regulate the 'functioning' and 'operation' of the remainder, who either serve the needs of the successor States or have become inter-State body corporates. The legal boundaries, wide or restricted, determined for exercising the

powers under Section 72 shall *mutatis-mutandis* apply to the other provisions of Part VII also.

83. Section 72 comprises four parts and is essentially a 'consequential' provision added by Parliament to deal with those unspecified juristic entities who were in service of the needs of the successor States or after the re-organization of the State of Punjab had acquired the status of inter-State body corporate(s).

84. Sub-Section (1) of Section 72 begins with the phrase 'save as otherwise expressly provided by the foregoing provisions of this Part'. The aforesaid phrase in our considered view is in the nature of an 'exception' to the extent it excludes the class of body-corporates expressly dealt with under Sections 67 to 71 of Part VII, from the purview of Section 72. Subject to that 'exception' and if Section 72(1) is dissected into parts for its better understanding, it reveals that:—

(i) when a body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Punjab or for any part thereof,

(ii) serves the needs of the successor States or by virtue of reorganization of the State of Punjab becomes an inter-State body corporate as on the appointed day i.e. 1 st November, 1966,

(iii) such body corporate shall continue to function and operate in the original areas of its operation though these areas have become territory of the successor States,

(iv) but the 'functioning' and 'operation' of the'said body corporate in the areas of the successor States shall be subject to:— (a) such directions as may, from time to time, be issued by the Central Government; and (b) until other provision is made by law in respect of the said body corporate,

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87. On the same analogy, sub-Section (2) of Section 72 cannot be assigned a different purpose or meaning, hence we hold that the nature, scope and sweep of the power entrusted to the Central Government to cause 'exception' or 'modification' in a Central Act, State Act or Provincial Act resembles the power

exercisable by it under Section 67(2) and is subject to the same limitations. Any attempt, if made to widen the scope of Section 72(2) beyond that, will not only be violent to the elementary principles of statutory interpretation briefly noticed in para 85, but will also amount to transcending the delegated legislative powers. We say so also for the reason that the legislative object behind Section 67(2) or sub-Section (2) of Section 72 is to ensure that the functioning of a body corporate is not paralysed on its becoming an inter-State body corporate due to re-organization of the erstwhile State of Punjab. The scope of the directions issueable under sub-Section (2) of Section 72 is restricted to the applicability of the 'law' governing the body corporate, hence the aforesaid direction mast relate to the 'functioning' or 'operation' of such body corporate. It has to be held, as a necessary corollary thereto, that no direction can be issued by the Central Government under Section 72(2) unless it pertains to the 'law' applicable to the body corporate on the appointed day when it acquired the legal character of an inter-State body corporate. The wordage of sub-Section (2) especially the word 'may' leaves no room to doubt that it is an enabling provision only and nowhere does it expect the Central Government to issue directions, even if not so required.

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95. It appears convincing that if the Parliament intended to confer power on the Central Government to 'amend' a Statue or if it could do so, there was no impediment for it to have made a specific provision to that effect. The Parliament while making provision to adapt laws under Section 89 of the 1966 Act has authorized the appropriate Government(s) to make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary within a period of two years from the appointed day till such law is altered, repealed or amended by a competent Legislature or by other competent authority. The phrase 'amendment' has been referred to in Sections 70 & 86 with reference to the legislative powers of the State Legislature and the Pari iament, respectively. The Parliament has thus used the expressions 'amendment' or 'modification' frequently but distinctly. It is also a well-established rule of construction of a Statute that when the Legislature uses two different words at different places, they carry different meanings as the Legislature seldom overlaps or uses superfluous words. The Court shall always proceed on the

premise that the Legislature has inserted every expression for a purpose and the legislative intention is that none of the provisions of the Statute is found redundant. If the Parliament's intention while using the phrase ‘modification’ were to confer the power of ‘amendment’ it would have inserted the latter phrase in Section 72 to avoid any ambiguity. The word “modification” in Section 72. therefore, cannot be construed analogous to the word ‘amendment’ which finds mention in Sections 70 & 86 of the 1966 Act.

96. Our understanding of Section 72(2), as stated above, also appears to be consistent with the view taken by the Full Bench in *Dayanand Anglo-Vedic College Managing Committee* observing that “… if it was intended that other provision by law was also to be made by the Central Government, the Parliament would have clearly stated so in Section 72 instead of saying “until other provision is made by law in respect of the said body corporate…” It may be for the reason that with regard to the bodies corporate constituted under a Central Act, the Parliament was the appropriate legislature to make the law while with regard to the Coiporations constituted under any State Act or a Provincial Act the State Legislature was to be the appropriate Legislature.”

97. Adverting to sub-Section (3) of Section 72, the scope and object whereof is also disputed by counsel for the parties, it may be seen that sub-Section (3) has three significant constituents, namely, (a) it is meant to remove doubts; (b) it is declaratory in nature; and (c) it actually declares that Section 72 shall apply to Panjab University. Punjab Agriculture University and the Board constituted under Part III of the Sikh Gurdwara Act, 1925. Sub-Section (3) does not occupy a new field nor does it vest the Central Government with any additional power to issue directions. It merely removes doubts and brings both the above-mentioned Universities and the Board within the ambit of Section 72(1)&(2) whereunder the Central Government is competent to issue directions in relation to their functioning and the area of their operation, they being the inter-State body corporates.

xx xx xx

CONCLUSIONS:

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(v) We hold that Section 72 of the 1966 Act empowers the Central Government to issue directions pertaining to the 'functioning' and 'operation' of an inter-State body corporate in the areas where it was functioning and operating immediately before the appointed day. These directions may include that the 'Law' governing the affairs of the body-corporate before it became an inter-State body corporate, shall continue to apply to it for the purpose of its 'functioning' or 'operation' in those areas which have gone out of jurisdictional control of the State under whose law such body-corporate was constituted.

(vi) The power exercisable by the Central Government under sub-Section (2) of Section 72 of the 1966 Act to 'modify' the Central Act, State Act or Provincial Act does not include the power to 'amend' such Acts. The power to 'modify' a Statute delegated under Section 72 docs not authorize to change any essential legislative features or the policy built into such Statute. The Parliament while empowering the Central Government to 'modify' an Act under Section 72(2) neither intended nor could it delegate the power to 'repeal' or 'amend' an Act, for such a power under the Constitutional scheme is exercisable by the Legislature alone. The delegated legislative power cannot run parallel to the principal legislation and must exercise its power within the framework of the Statute.

(vii) Section 72 of the 1966 Act is an enabling provision and the power to cause 'exception' or 'modification' in a Central Act, State Act or Provincial Act is not unguided, unfettered or unbridled and is subject to the inherent limitations to be read into the phrase that the "bodycorporate shall continue to function and operate in those areas in respect of which it was functioning and operating immediately before the *appointed day*."

(viii) The directions issued by the Central Government under Section 72 though shall amount to 'law' within the meaning of Article 13(3)(a) of the Constitution but they do not partake the character of a Parliamentary legislation."

39. In the counter affidavit filed, it has been mentioned that the appeal against the above order passed by the Full Bench of the Punjab and

Haryana High Court was pending consideration. The said Civil Appeal No. 9334 of 2013 came to be decided on 15.9.2016. During the pendency of the appeal, the Parliament passed the Sikh Gurdwara (Amendment) Act, 2016 with a view to amend the 1925 Act retrospectively w.e.f. 8.10.2003, i.e., the date of notification quashed by the High Court. This Court disposed of the appeal by observing as under:

> "7. We find merit in the submission of Mr. Ganguli. The High Court has, as seen earlier, specifically left the issue open for the consideration of the appropriate legislature whether or not any amendment is called for in the 1925 Act. The Parliament has accordingly brought the amending Act referred to earlier and amended the 1925 Act retrospectively w.e.f. 08.10.2003 i.e. the date when the notification impugned in the writ petition was issued. The result is that, for all intents and purposes, the amendment made by the amending Act, 2016 shall be deemed to have come into force with effect from the said date. That being the case, the quashing of notification dated 08.10.2003 by the High Court is rendered inconsequential in the light of the subsequent parliamentary legislation by which the purpose which the notification sought to be achieve has been achieved by the legislative measure taken by the Parliament...."

40. A reference was made to a judgment reported as ***Himachal Pradesh University, Shimla*** wherein the State of Himachal Pradesh enacted the Himachal Pradesh University Act, 1970. Section 8 of the said Act provides for vesting of assets of the Panjab University in the State of Himachal Pradesh to the Himachal Pradesh University. This Court held that the appellant University failed to establish the second condition for the applicability of Section 8 of the Act that suit premises were

belonging to two institutions and forming part and parcel of their assets at Shimla. It is not a case that the Act framed by the State of Himachal Pradesh was found to be lacking in legislative competence but the scope of the statute was not found to be in respect of the assets of the Panjab University located in the State of Himachal Pradesh.

41. Another judgment which is referred to is ***Mullaperiyar Environmental Protection Forum*** v. ***Union of India & Ors.***[20] where Mullaperiyar Dam was an inter-State body of the State of Kerala and Tamil Nadu. The question raised was whether the water level could be allowed to be increased in such dam to 142 feet or not. The State of Kerala opposed the increase of the water level beyond 136 feet whereas the State of Tamil Nadu sought increase in the water level to 142 feet. Section 108 of the 1956 Act deals with irrigation, power or multipurpose projects. The said provision contemplates that if any agreement is not reached between the States, the decision would be taken by the Central Government. An argument was raised that Section 108 of the 1956 Act is invalid as it affects the right of the State in terms of Entry 17 of List II. This Court held as under:

> "21. ... The new State owes its very existence to the law made by Parliament. It would be incongruous to say that the provision in an Act which gives birth to a State is ultra vires a legislative entry which the State may operate after it has come into existence. The power of the State to enact laws in List II of the Seventh Schedule are subject to parliamentary legislation under

20 (2006) 3 SCC 643

> Articles 3 and 4. The State cannot claim to have legislative powers over such waters which are the subject of an inter-State agreement which is continued by a parliamentary enactment, namely, the States Organisation Act, enacted under Articles 3 and 4 of the Constitution. The effect of Section 108 is that the agreement between the predecessor States relating to irrigation and power generation, etc. would continue. There is a statutory recognition of the contractual rights and liabilities of the new States which cannot be affected unilaterally by any of the party States either by legislation or executive action. The power of Parliament to make law under Articles 3 and 4 is plenary and traverses over all legislative subjects as are necessary for effectuating a proper reorganisation of the States. We are unable to accept the contention as to the invalidity of Section 108 of the Act."

42. The said judgment is in respect of irrigation or water projects wherein the issues were to be decided between the two states by agreement, which is not an issue in the present proceedings. Section 108 of the 1956 Act itself contemplated that if disputes are not settled, the Central Government would decide. Thus, the issue raised and decided is quite distinct from the issue arising in the present case.

43. The High Court of Punjab and Haryana in ***Kashmir Singh-I*** was dealing with the appointment of the member of Sikh Gurdwara Judicial Commission vide notification dated 4.7.1989. The Central Government had issued a notification dated 19.10.1978 nominating the State of Punjab in consultation with the State of Haryana for the purposes of exercising its powers under the 1966 Act. The five-Judges Bench of the High Court dealing with the legality of the notification also dealt with the scope of Section 72 of the 1966 Act. The majority of the Bench held

that the Board is an inter-State body corporate and the Central Government can give directions with regard to its functioning and operation. Since the successor State neither adopted nor repealed nor made any provisions with regard to the 1925 Act, the Central Government would be competent to give directions and the Board shall operate accordingly in the successor States. It was held as under:

> "57..... A reading of sub-sections (1), (2) and (3) of Section 72 of the Act of 1966 would leave no one in doubt that the Board is an inter-State body corporate and the Central Government can give directions with regard to its functioning and operation. Inasmuch as the successor States have neither adopted nor repealed nor made any provisions with regard to the Act of 1925 or for the Board, in particular, the Central Government, till such time provisions are so made, would be competent to issue directions and the Board shall operate in successor States.....
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> 66. .....It is significant to note that till such time other provisions were made, that may cater for needs of the successor States, by and large, Central Government was to issue directions. The territories of the successor States having been defined, if provisions vesting power with the Central Government were not to be made, it would have resulted into chaos as no successor State could have issued directions in the territories not specified in the said State. These were certainly supplemental, incidental and consequential provisions so that there was smooth functioning of all the bodies and laws in the respective successor States till such time proper arrangements were made for each successor State to issue directions within their own territory. *Provisions of Section 72 also appear to be supplemental, incidental and consequential, covered under Part VII of the Act itself.* This inter-State body Corporation under the directions of the Central Government was to function and operate in the areas in respect of which it was functioning and operating immediately before the appointed day untill other provision was made by law, as has been specifically provided in

sub-section (1) of Section 72 itself. Sub-sections (2) and (3) of Section 72 are nothing but elaboration or clarification if the doubts, might still persist with regard to directions that can be issued under sub-section (1) of Section 72. ....

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69. It appears that significant words 'until other provision is made by law in respect of the body corporate' escaped notice of the Hon'ble Full Bench. *Section 72, dealing with general provisions as to statutory corporations, like the Board under the Act, of 1925, is not intended to be a measure for all times to come, as the words, quoted above, do suggest to the contrary in unequivocal terms. The object of Act of 1966 also clearly suggests that the provisions contained therein are to make necessary supplemental, incidental and consequential provisions in relation to reorganisation of the State of Punjab.* All measures taken thereunder, unless specifically said otherwise, like the Board for Bhakra Nangal and Beas Projects, are temporary in nature. The words 'until otherwise provided by competent legislature or other competent authority' which find mention in Section 88 also escaped notice of the Hon'ble Full Bench. The provisions of Part II which deal with reorganisation and creation of successor States, do not effect any change in the territories to which any law in force immediately before the appointed day extends or applies. It clearly means and is accepted position at all ends that the existing laws by virtue of provisions contained in Section 88 would automatically apply. The position in relation to Act, of 1925 is no different. *But this provision is once again not an all time measure inasmuch as a competent legislature, which necessarily means legislature of successor State as well, would be well within its power and competent enough to provide otherwise then the existing laws. If that be so and in a given case, the successor State may, in its wisdom, say otherwise, i.e., the Act of 1925 would not apply to the said State, as mentioned above, the Board would no more be an inter-state body corporate. The power to legislate in that case would not be with the Central Government under Entry 44 List-I (Union List) 7th Schedule.* The provisions contained in Section 89, vesting power and jurisdiction with the appropriate Government, would necessarily include successor States to repeal or amend any law made before the appointed day, once again, it appears, escaped notice of the Hon'ble Full Bench in arriving at the conclusion, referred to above. We have already held while determining

question No. IV that in construing the provisions of a Statute the courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. There is no need to elaborate as we have already discussed in sufficient details that the courts have necessarily to give meaning to all parts of the provisions of the Act and to make whole of it effective and operative.

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70. .....We may also mention here that the finding by the Full Bench that continuation of directions to be given by the Central Government by virtue of Entry 44 in the Union List, *the Board being an inter-State body corporate by virtue of Section 72 of the Act of 1966, also can not sustain as, in our view, if the States might adapt, modify or repeal the Act of 1925, the Board, which is an inter-State body corporate, shall no more remain an inter-State body corporate and its position shall revert to that what it was under the Act of 1925, namely, body corporate*."

(Emphasis Supplied)

44. The aforesaid majority opinion was upheld by this Court in a judgment reported as ***Kashmir Singh-II*** wherein, it was held as under:

"72. We, therefore, are of the opinion that in view of the situational change, a meaning which could be attributed in the year 1925 cannot be given the same meaning today. For the aforementioned purpose, Sections 40 and 70 of the Act must be read together. Therefore, a holistic reading of the entire Act would be necessary. So read, the opinion of the majority appeals to us. By reason of such an interpretation, the apprehension that the State would be endowed with the arbitrary power is wiped off."

45. A perusal of the judgments in ***Kashmir Singh-I*** and ***Kashmir Singh-II*** would show that the successor States might adopt, modify or repeal the 1925 Act. The Board, an inter-State body corporate, shall then no longer remain an inter-State body corporate and the position was to

revert to what it was under the 1925 Act i.e., body corporate simplicitor. It was held that Section 72(1) is not intended to be a measure for all times to come and that successor States are competent to make other provisions by law in respect of such body corporates. The object of the 1966 Act was to make necessary, supplemental, incidental and consequential provisions in relation to reorganisation of the State of Punjab. It was also held that the competent legislature, which necessarily means legislature of the successor State would be well within its power and competence to provide otherwise than the existing laws. Therefore, the successor State may, in its wisdom, could say that the 1925 Act would not apply to the said State.

46. The consistent view of the three Full Benches of the High Court and of this Court is that the power of the Centre to issue directions under Section 72 of the 1966 Act is a transitional provision. Therefore, we have no hesitation to hold that the power of the Centre to issue directions under Section 72 of the 1966 Act is indeed a transitional provision to ensure smooth and continuous functioning of a body corporate so that it is not paralyzed on becoming an inter-State body corporate due to reorganisation of the erstwhile State of Punjab. The directions contemplated by Section 72 relates to functioning and operation of such body corporate. A competent State legislature is not deprived of its power to legislate on the subjects falling within its jurisdiction in terms of List II of the Seventh Schedule. The 1966 Act

does not bar the State Legislature to legislate on the fields of its legislative competence falling under List II of the Seventh Schedule or even in List III of the Seventh Schedule, subject to the limitations as are prescribed in the Constitution.

Question No. (iii) - Whether the impugned enactment (Haryana Act) falls within the legislative competence of the Haryana State Legislature or it falls in Entry 44 of List I of the Seventh Schedule of the Constitution?

47. The primary reliance of the writ petitioner is on the judgment of this Court reported as ***Rajendra N. Shah***. The issue before this Court in the said judgment was whether the Constitution 97th Amendment introducing Part IX-B, which was found to be *non est* by the Gujarat High Court for want of ratification by half of the States under the proviso to Article 368(2), is sustainable. This Court upheld the view of the High Court and observed as under:

> "23. So far as co-operative societies are concerned, it can be seen that it is entirely a matter for the States to legislate upon, being the last subject matter mentioned in Entry 32 List II. At this stage, it is important to note that Entry 43 of List I, which deals with incorporation, regulation and winding up of trading corporations including banking, insurance and financial corporations expressly excludes co-operative societies from its ambit. Entry 44 List I, which is wider than Entry 43 in that it is not limited to trading corporations, speaks of corporations with objects not confined to one State. This Court has therefore held, on a reading of these entries, that when it comes to Multi State Co-operative Societies with objects not confined to one state, the legislative power would be that of the Union of India which is contained in Entry 44 List I. Thus, in *Daman Singh* v. *State of Punjab*, (1985) 2 SCC 670, this Court laid down:—
>
> "7. .... According to Mr. Ramamurthi the express exclusion of

> cooperative societies in Entry 43 of List I and the express inclusion of cooperative societies in Entry 32 of List II separately and apart from but along with corporations other than those specified in List I and universities, clearly indicated that the constitutional scheme was designed to treat cooperative societies as institutions distinct from corporations. On the other hand one would think that the very mention of cooperative societies both in Entry 43 of List I and Entry 32 of List II along with other corporations gave an indication that the Constitution makers were of the view that cooperative societies were of the same genus as other corporations and all were corporations. In fact the very express exclusion of cooperative societies from Entry 43 of List I is indicative of the view that but for such exclusion, cooperative societies would be comprehended within the meaning of expression "corporations".

26. It may thus be seen that there is no overlap whatsoever so far as the subject 'co-operative societies' is concerned. Co-operative societies as a subject matter belongs wholly and exclusively to the State legislatures to legislate upon, whereas multi-State cooperative societies i.e., co-operative societies having objects not confined to one state alone, is exclusively within the ken of Parliament. This being the case, it may safely be concluded, on the facts of this case, that there is no overlap and hence, no need to apply the federal supremacy principle as laid down by the judgments of this court. What we are therefore left with is the exclusive power to make laws, so far as co-operative societies are concerned, with the State Legislatures, which is contained in Article 246(3) read with Entry 32 of List II. In fact, in *K. Damodarasamy Naidu & Bros.* v. *State of T.N.*, (2000) 1 SCC 521, this court held:

> "21. Parliament, when exercising the powers to amend the Constitution under Article 368, cannot and does not amend State Acts. There is no other provision in the Constitution which so permits and there is no judgment of this Court that so holds. The power to make laws for the States in respect of matters listed in List II in the Seventh Schedule is exclusively that of the State Legislatures. ....."
>
> *(Emphasis supplied)*

81. The judgment of the High Court is upheld except to the extent that it strikes down the entirety of Part IXB of the Constitution of India. As held by us above, it is declared that Part IXB of the Constitution of India is operative only insofar as it

> concerns multi-State cooperative societies both within the various States and in the Union territories of India. The appeals are accordingly disposed of."

48. The said judgment is not applicable to the facts of the present case though it deals with Entry 44 of List I and Entry 32 of List II. The Court was dealing with the legality of the Constitutional Amendment and found that it is entirely for the States to legislate in respect of cooperative societies falling in Entry 32 of List II. It is only multi-State cooperative societies which fall within the power of the Parliament to legislate in terms of Entry 44. The amendment made by Parliament in respect of co-operative societies was not with the approval of half of the States. The said judgment has no applicability to the facts of the present case as the Haryana Act does not have any extra-territorial jurisdiction that it is not applicable to more than one State. The SGPC was a Board which was intra-State body corporate prior to reorganisation of the State in the year 1966. The reorganisation has rendered the SGPC as an inter-State body corporate but the legislative power to legislate on the subject of incorporation of the Corporations would be within the jurisdiction of the Haryana State Legislature. Entry 32 deals with unincorporated trading, literary, scientific, religious and other societies and associations. In respect of such unincorporated trading, literary, scientific, religious and other societies and associations, the competent legislature is the State. In terms of Entry 44 of List I, the Parliament will have jurisdiction only if the SGPC under

the 1925 Act continues to be an inter-State entity. The jurisdiction of the successor States either to repeal, modify or enact a new law has not been restricted by the 1966 Act, though it is a special law within the meaning of Articles 2, 3 and 4 of the Constitution. The SGPC became inter-State body corporate not because of Entry 44 List I but because of reorganisation of the territories of the erstwhile State of Punjab. Therefore, Entry 44 would have no applicability in respect of legislative competence of the State of Haryana to enact the Haryana Act.

49. The argument of Mr. Shyam Divan and Mr. Ranjit Kumar, learned senior counsels for the State of Haryana and Haryana Committee respectively, is that the source of power of enactment of the Haryana Act is Entry 32, List II of the Seventh Schedule. In exercise of such power, a statutory body is sought to be created; whereas, Entry 28 of List III deals with charities and charitable institutions, charitable and religious endowments and religious institutions. Therefore, any law dealing with charities, charitable institutions and endowments falls within List III. Such law contemplated by List III is a regulatory law to regulate the functioning of charitable institutions or charitable and religious endowments and religious institutions. Whereas, incorporation of a statutory body falls in Entry 32 of List II, as also unincorporated religious and other societies. Therefore, the Haryana Act falls within the legislative competence of the State.

50. The argument of Mr. Nataraj is that under Section 3 of the 1957 Act, which deals with inter-State bodies, the State Government is required to frame a scheme as SGPC under the 1925 Act is sought to be reconstituted and reorganized being inter-State corporation. Such scheme is required to be forwarded to the Central Government. It is thus the Central Government who is competent to modify the scheme so framed. Therefore, it is contended that the SGPC under the 1925 Act being an inter-State corporation can be dealt with only in the manner provided in the 1957 Act.

51. The 1966 Act as well as the 1957 Act confer power on the Central Government for smooth transition of new States coming into existence as a consequence of the reorganization. There is no provision in the 1966 Act which confers legislative power upon the Parliament in respect of the subjects over which the State has legislative competence in terms of List II. Therefore, the transitional provisions i.e., the 1966 Act or the 1957 Act do not impinge upon the legislative competence of the State legislature to enact a law on the subjects mentioned in the List II.

> Question No. (iv)- Whether, the impugned Act falls in List-III (Concurrent List) Schedule VII, which required the assent of the President of India as per Article 254(2) of the Constitution of India, and in the absence of such assent, void?

52. The said question does not arise for consideration as the impugned Haryana Act does not fall in Entry 28 of List III of the Seventh Schedule.

Such Entry reads thus:

> “28. Charities and charitable institutions, charitable and religious endowments and religious institutions.”

53. In view of such Entry being in the concurrent list, the State can legislate in respect of charities, charitable institutions, charitable and religious endowments and religious institutions. The assent of the President would be necessary if there is an existing statute and the State law is contrary to some of the provisions of the Central law. The Haryana Committee is the incorporation of a juristic entity which more appropriately falls within the domain of Entry 32 of List II. Though the Haryana Committee is in respect of religious purpose, but the prime intention is of an incorporation of a juristic entity to manage the affairs of the Sikhs in the State. Thus, Entry 32 is wide enough to include incorporation of such statutory entity.

54. Alternatively, even if it is assumed that the Haryana Act is in furtherance of Entry 28 of List III, the same cannot be said to be void for the reason that it has not been kept reserved for the assent of the President. Such an argument is based upon the reason that the 1925 Act is an inter-State legislation, therefore, the assent of the President is necessary. As stated before, the 1925 Act was originally an intra-State legislation enacted by the State legislature. It subsequently became an inter-State body only by virtue of the 1966 Act. Since the power to legislate conferred on the State legislature has not been affected in

any manner, therefore, the State would have power to legislate both under Entry 28 of List III or Entry 32 of List II for the reason that the 1925 Act is not an inter-State body corporate in respect of which the Parliament incorporated such Board. Therefore, we do not find any merit in the said argument.

Question No. (i) - Whether any fundamental rights of the petitioners under Articles 25 and 26 of the Constitution of India are violated, so as to entitle the petitioners to invoke the jurisdiction of this Court under Article 32 of the Constitution?

55. It is not disputed that the Haryana Act is similar to the 1925 Act having similar provisions of constituting a committee to manage the affairs under the Act. The Haryana Committee is the Committee constituted under Section 3 of the Haryana Act for the management and control of the Gurdwaras and Gurdwara properties within the State of Haryana. The Gurdwara property in terms of Section 2(f) of the Haryana Act means all movable and immovable properties of a Gurdwara or any institution which, immediately before the appointed day, vested or was kept in deposit in the name of any Board, Trust, Committee, Gurdwara Management or was being regulated under the provisions of the 1925 Act. The members of the Committee have to be elected from the eligible voters who is Amritdhari Sikh, a Sikh, and who is eighteen years of age, but not a Patit Sikh and is not an insolvent, mentally retarded or an insane person. The co-option is from the members of the community alone. Therefore, the affairs of the religious minority in the

State i.e., Sikhs is left in the hands of the Sikhs alone in the same manner as was under the 1925 Act. The Haryana Act also provides for Haryana Sikh Gurdwara Judicial Commission in the same manner as is provided under the 1925 Act. The affairs of the Gurdwara are again required to be managed by local Gurdwara Committee. Since the affairs of the Sikh minority in the State are to be managed by the Sikhs alone, therefore, it cannot be said to be violative of any of the fundamental rights conferred under Articles 25 and 26 of the Constitution.

56. The question as to whether the writ petition is maintainable is answered in the affirmative, *inter-alia* on the ground that the said writ petitions have been pending before this Court for almost 8 years wherein an interim order has been in operation throughout. Additionally, the questions, being purely legal, have been examined to give finality to the issues arising in the two matters.

57. In view of the above, we do not find any merit in the writ petitions. The same are dismissed.

CIVIL APPEAL NO. 6614 OF 2022

58. The challenge in the present appeal is to an order dated 8.3.2018 passed by the High Court of Punjab and Haryana. The challenge is to the notification dated 6.3.2018 whereby the notification dated 29.8.2014 appointing the appellant as Additional Commissioner

Gurdwara Elections was rescinded.

59. The appellant was appointed for five years as Additional Commissioner Gurdwara Elections on 29.8.2014. The post of Additional Commissioner Gurdwara Elections was under the Haryana Sikh Gurdwaras (Management) Act, 2014. The *vires* of the aforesaid Act stands upheld by this Court.

60. The appellant has not discharged any functions in view of the stay by this Court. Therefore, the appointment was rescinded. The appellant was appointed for a period of five years, even the term for which the appellant was appointed has come to an end by afflux of time.

61. Therefore, the appellant has no subsisting cause in the present appeal. The appeal is, thus, dismissed.

.....J.
(HEMANT GUPTA)

.....J.
(VIKRAM NATH)

NEW DELHI;
SEPTEMBER 20, 2022.