Before Surya Kant, M. Jeyapaul & M.M.S. Bedi, JJJ.

SEHAJDHARI SIKH FEDERATION,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P.No.17771 of 2003

20th December, 2011

(i) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Punjab Re-organization Act, 1966 - S. 67 to 72 - Nature scope and power entrusted to Central Government to cause exception or modifications in a Central Act, State Act or Provincial Act is subject to limitation - Any attempt to widen scope of S.72(2) will be violent to elementary principles of statutory interpretations amounting to transcending delegated legislative powers - Scope of direction issueable under sub-section(2) of Section 72 is restricted to applicability of 'Law' governing body corporate - Hence direction must relate to 'functioning' or 'operation' of such body corporate - Wordage of sub-Section (2) especially word 'may' leaves no room to doubt that it is an enabling provision and nowhere does it expect Central Government to issue directions, even if not so required.

Held, That 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 must 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.

(Para 87)

(ii) Constitution of India - Art. 2,3, 4, 14, 21, 25, 226/227, 237, 245, 246, 248 & 371(D) - Punjab Re-organization Act, 1966 - S. 67 to 72 - Interpretation of Statutes – Section (67(1) & 72(2) of Act, 1966 - Cardinal principle of Interpretation of Statutes is that a word which occurs more than once in same Act should be given same meaning throughout Act, unless context shows that Legislature used word in a different sense.

Further held, That Legislature has chosen exactly the same phraseology in Sections 67(1) and 72(1) of the 1966 Act. One of the cardinal principle of interpretation of Statutes is that a word which occurs more than once in the same Act should be given the same meaning throughout the Act, unless the context shows that the Legislature has used the word in a different sense.

(Para 85)

(iii) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Punjab Re-organization Act, 1966 - S. 67 to 72 - Interpretation - 'Exception' is a rule of exclusion or a provision exempting persons or conduct from a Statute's operation - There can be a variety of exceptions in a Statute like a proviso or a non obstante clause etc.

Further held, That 'exception' is a rule of exclusion or a provision exempting persons or conduct from a Statute's operation. There can be a variety of exceptions in a Statute like a proviso or a non obstante clause etc. The object of an 'exception' is to limit or restrict the operation of the principal provision and applying this literal and purposive meaning to the word 'exception' in sub-Section (2) of Section 72, it appears that the Central Government may impose some restrictions or cause limitations on the applicability of 'law' to an inter-State body corporate though no such restrictions or limitations have been added by the Legislature.

(Para 88)

(iv) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Punjab Re-organization Act, 1966 - S. 67 to 72 - Sikh Gurdwara Act, 1925 - Ss. 44, 49, 70,71,74,78,79,80,85, 86,87, 92 & 92, 129 - Sikh Gurdwaras Board Election Rules, 1959 - Rl.3 - Word & phrases - Modification - Word modification received 'restrictive' and 'expansive' meanings - Well-settled in a catena of decisions that a word when used in more than one Statute may not necessarily yield the same meaning and may be interpreted differently, if the legislative intent so warrants.

Further held, That the word 'modification' has been the subject matter of interpretation in more than one decision, some of which have been cited before us. In (i) Laxmi Narain & Others and (ii) Authorised Officer & Anr. v. S. Nagantha Ayyar, 'modification' was given a restrictive meaning "to adjust, adapt and make the enactment suitable… and for carrying it into operation" and that it does not include 'a change in any essential feature

of the enactment or the legislative policy built into it', while in Pranlal Lakhanpal, the Presidential power of 'modification' under Article 371(D) of the Constitution has been given the widest effect to include 'amendment' also. The decision in Sampat Prakash also interprets the same Constitutional provision and reiterates the expansive meaning given in Pranlal Lakhanpal. PK Sarin & Others also defines the power of 'modification' vested with the Governor under Article 237 of the Constitution and holds it unfettered by any restriction.

(Para 89)

Further held, That there is no mystery in it as to why the word 'modification' has received 'restrictive' and 'expansive' meanings from the Apex Court in the above-cited decisions, though in all the cases it intended to define the power to change or alter certain provisions of a Statute by an 'authority' other than the Legislature. It is well-settled in a catena of decisions that a word when used in more than one Statute may not necessarily yield the same meaning and may be interpreted differently, if the legislative intent so warrants. A five-Judge Full Bench of this Court in AK Ahlawat and others v. State of Haryana and others, 2010(3) RSJ 730 held that "as regards the use of same word or phrase in two different legislations, it is well known that the same word when used in two different Statutes dealing with distinct subjects, may carry different meanings."

(Para 91)

(v) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Sikh Gurdwara Act, 1925 - Ss. 44, 49, 70,71,74,78,79,80,85, 86,87, 92 & 92, 129 - Right to vote granted through Sections 49 & 92 of 1925 Act to eligible 'persons' which incidentally includes 'Sehajdhari Sikhs' being Legislature's own decision, cannot be seen through religious spectacle.

Further held, That the right to vote granted through Sections 49 & 92 of the 1925 Act to the eligible 'persons' which incidentally includes

'Sehajdhari Sikhs' also, in our considered view, being Legislature's own decision, cannot be seen through religious spectacle.

(Para 117)

(vi) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Sikh Gurdwara Act, 1925 - Ss. 44,49, 70,71,74,78,79,80,85, 86,87, 92 & 92, 129 - Only those who have attained purily and known as 'Amritdhari Sikhs', are entitled to be elected - Sikh like Sehajdhari, who may or may not be a 'Keshadhari Sikh' but has adopted doctrines & ethics of Sikhism shall also be an eligible 'Elector'.

Further held, That only those who have attained purity and are known as 'Amritdhari Sikhs', are solely entitled to be 'Elected' as members of the Board or the Committees or that a novice Sikh like a Sehajdhari, who may or may not be a 'Keshadhari Sikh' but has adopted the doctrines, ethics and tenets of Sikhism shall also be an eligible 'Elector' with a right to vote under Section 50 of the Act, too is a crystallized legislative policy built into the 1925 Act.

(Para 109)

(vi) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Punjab Re-organization Act, 1966 - S. 67 to 72 - Parliament while empowering Central Government to 'modify' an Act U/S 72(2) neither intended nor could it delegate power to 'repeal' or 'amend' an Act - Such power is exercisable by Legislature alone - Delegated legislative power cannot run parallel to principal legislation and must exercise its power within framework of Statute - Direction issued by Central Government U/s 72 though shall amount to 'law' within the meaning of Article 13(3)(a) of Constitution but does not partake the character of a Parliamentary legislation.

Further held, 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.

(Para 122(v))

Further held, That 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 does 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.

(Para 122(vi))

Further held, That 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.

(Para 122(viii))

(vii) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Punjab Re-organization Act, 1966 - S. 67 to 72 - Notification dated 8th October, 2003 modifying Section 49 & 92 of Act 1925 - Does not satisfy ingredients of Section 72 of the Punjab Re-organization Act, 1966.

Further held, That the subject notification does not throw any light on the legal necessity for its issuance, namely, the 'functioning' or 'operation' of the Board as an inter-State body corporate in the areas of its operation immediate before 1st November, 1966, we hold that the impugned Notification does not satisfy the ingredients of Section 72 of the Punjab Re-organization Act, 1966.

(Para 122(ix))

(vii) Constitution of India - Art. 2,3, 4, 14,21,25, 226/227, 245, 246, 248 - Punjab Re-organization Act, 1966 - S. 67 to 72 - Parliamentary power to enact a re-organization law under Articles 3 & 4 is plenary and unfettered by Article 246 of Constitution - Law enacted under Articles 3 & 4 is assigned a special status to extent that it is immune from challenge on the ground of legislative competence - Laws enacted under Articles 245, 246 or 248 can be put to judicial scrutiny.

Further held, That the Parliamentary power to enact a re-organization law under Articles 3&4 is plenary and unfettered by Article 246 of the Constitution. The law enacted under Articles 3 & 4 of the Constitution is assigned a special status to the extent that it is immune from challenge on the ground of legislative competence though like any other legislation, such a law is also assailable if it violates other provisions of the Constitution. On the other hand, the laws enacted by Parliament under Articles 245, 246 or 248 etc. of the Constitution can be put to judicial scrutiny on both counts.

(Para 122(i))

Further held, That the notification, order or a direction issued by a delegate under the Re-organization Act neither acquires the status of Constitutional provision nor of a Parliamentary legislation. Such a decision, even if categorized as legislative or administrative or quasi-judicial, can be quizzed on any of the grounds on which a plenary legislation is assailed,

in addition to the plea that such a decision also runs counter to the Statute under which it is made or that it is per se arbitrary, unreasonable, violative of the law of the land or has been issued in colorable exercise of power.

(Para 122(iv))

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MS Khaira, Senior Advocate;

Messrs. Sanjeev Sharma; Mansur Ali; HS Deol; Vikas Singh; Harminder Singh; GS Sullar; BS Sewak; Dharminder Singh; R.S. Khaira; Harinder Singh & Sandeep Khunger, Advocates, for the Petitioner(s)

Dr. Anmol Rattan Sidhu, Assistant Solicitor General with Messrs. OS Batalvi; SS Swaich; Brijeshwar Kanwar; IPS Doabia; and Ms. KK Kahlon, Central Government Standing Counsel for Union of India.

Ashok Aggarwal, Advocate General, Punjab with Amol Rattan Singh, Addl. AG Punjab A.K. Ganguli, Senior Advocate; R.S. Suri, Senior Advocate; with Messrs. Gurminder Singh and Saruesh Bisaria, Advocates for respondent SGPC.

Hawa Singh Hooda, Advocate General, Haryana with Gagandeep Singh Wasu, Sr. DAG Haryana

Sanjay Kaushal, Sr. Standing Counsel, UT Chandigarh

SURYA KANT, J.

(1) This order of ours shall dispose of CWP Nos.17771 of 2003; 14179 of 2010; 18160 of 2011 as the issues involved therein are either interlinked or inter-dependent. Before extracting the facts *in extenso* from

CWP No.17771 of 2003, it being the oldest, we deem it appropriate to tersely refer to some of the orders passed by different Division Benches, resulting into placement of these cases before a larger Bench even in the absence of a formal reference order.

CWP NO.17771 OF 2003

(2) Sehajdhari Sikh Federation – a registered Political Party has preferred this writ petition statedly in public interest, seeking quashing of the Notification dated 8th October, 2003 issued by the Central Government purportedly in exercise of its powers under Section 72 of the Punjab Re-organization Act, 1966 (in short, 'the 1966 Act') whereby Sections 49 and 92 of the Sikh Gurdwara Act, 1925 (in short, 'the 1925 Act') have been 'amended' to the extent of denying the Sehajdhari Sikhs their right to vote in the elections of Sikh Gurdwara Prabandhak Committee (SGPC) i.e. the Board and other statutory Committees constituted under the said Act. The afore-stated writ petition, owing to the public importance of the issue involved, was directed to be posted for hearing along with *CWP* No.13282 of 2008 (Gurleen Kaur & Ors. vs. State of Punjab & Ors.) which had already been referred to and listed before a Full Bench comprising three Judges of this Court.

(3) The Full Bench while deciding **Gurleen Kaur and others *versus* State of Punjab & Ors. (1)** on 30.05.2009 segregated this case by a separate order observing that the controversy raised in the instant writ petition is separate and distinct from the one raised in ***Gurleen Kaur and other's*** case.

(4)The petitioner-Federation while claiming itself to be the representative of a large chunk of Sikh *Sangat* who practice 'Sikh- Religion' and is keenly interested in the proper management and upkeep of Sikh

(1) 2009(3) RCR (Civil) 324

Gurdwaras/Shrines has distinctly defined 'Amritdhari Sikhs', 'Sehajdhari Sikhs' and a 'Patit'. While Amritdhari Sikhs' are stated to be baptized after partaking *Amrit* and abide by the strict code of Sikhism like wearing the "5 Kakars" i.e. Kesh, Kara, Kirpan, Kachha and Kangha; the 'Sehajdhari Sikhs' abide by the Sikh tenets but they are not Baptised Sikhs. The 'Sehajdhari Sikhs' were said to be formally 'defined' vide Punjab Act No.1 of 1959 by adding Section 2(10-A) in the 1925 Act realizing that 'Sehajdhari Sikhs' need to participate in the election of Members of the Board and the Committees. It is claimed that 'Sehajdhari Sikhs' are an integral part of 'The Sikhs' who are followers of the 10 Gurus and Sri Guru Granth Sahib though without partaking *Amrit* i.e. Baptism or following the "5 Kakars" but they do not follow any other religion except Sikhism.

(5) The petitioner has further asserted that 'Patit' is a person who despite being a 'Keshadari Sikh', trims or shaves his beard or *Keshas* and/or even after partaking *Amrit* commits any one of the four Kurahits (transgressions), namely (i) dishonours hair; (ii) eats meat of a slaughtered animal; (iii) co-habits with a person other than one's spouse; (iv) consumes tobacco, and for committing any of these sins, he/she is considered an outcaste i.e. thrown out of religion.

(6) The petitioner-Federation perceives 'Amritdhari' as a true and unrivaled Sikh while a 'Sehajdhari Sikh' is a person who believes and professes 'Sikhism' and transforms oneself into becoming a 'Keshadhari' or an 'Amritdhari' Sikh while a 'Patit' is one who used to be an Amritdhari or a Keshadhari Sikh but has been thrown out of the religion for committing a 'sin'. It is averred, on this premise, that the legislative wisdom behind conferring right of franchise on 'Sehajdhari Sikhs' is unquestionable and is a conscious policy decision which has held the field for about past 60 years and as such could not be transgressed into or set at naught by the Central Government in exercise of its powers under Section 72 of the 1966 Act. The petitioner-Federation alleges that the impugned Notification *ultra vires* the provisions of 1925 Act and is beyond the scope of delegated legislative

powers conferred upon the Central Government under Section 72 of the 1966 Act. The precise case of the petitioner(s) is that deletion of the words "*except in case of Sehajdhari Sikh*" which amounts to amendment in the existing provisions, could be undertaken by the competent Legislature alone and not by the Executive.

(7) The Union of India, on the other hand, defends its action urging that Section 72(3) of the 1966 Act expressly authorizes it to make any amendment or modification in Part-III of the 1925 Act and the said power has been invoked for umpteen times in the past including the one inserting Section 47-A in the said Act vide Notification dated 03.02.1978 constituting the 'Gurdwara Election Commission' or for the appointment of Chief Commissioner for the Gurdwara elections. It is averred that the Sikh Gurdwara Prabandhak Committee (SGPC) vide its Resolution No.9 dated 30th November, 2000 recommended amendment of certain provisions of the 1925 Act and thereafter forwarded subsequent resolutions including Resolution No.300 dated March 7, 2002 demanding that 'Sehajdhari Sikhs' should not have a right to vote under the 1925 Act and that the election of SGPC be conducted only after the words "*except in the case of Sehajdhari Sikhs*" are deleted from Sections 49 and 92 of the 1925 Act. It is maintained that the Parliament by incorporating Section 72 in the 1966 Act has empowered the Central Government "*to issue amendments under the provisions of Part-III of the Sikh Gurdwara Act, 1925*" and thus, the impugned Notification has been lawfully issued.

(8) A separate reply/affidavit has been filed by the Gurdwara Election Commission highlighting tenets of the 'Sikh religion and rites' so as to urge that 'Sehajdhari Sikhs' have no right to cast vote and/or participate in the management of Sikh Gurdwaras. The religious history has also been briefly highlighted to justify the withdrawal of right to vote given to the 'Sehajdhari Sikhs' earlier.

(9) Sikh Gurdwara Prabandhak Committee (SGPC) – respondent No.4 has also filed its reply/affidavit justifying its resolutions, it being the genuine representative body of 'Sikhs' who is concerned about the 'Sikh

faith' and 'Sikh religion'. The reply highlights as to how the process of election to the Boards/Committees constituted under the 1925 Act has been diluted and polluted due to the involvement of those who do not follow and/ or adhere to the code of conduct to be observed by true 'Sikhs'.

CWP NO.14179 OF 2010

(10) This writ petition seeks quashing of the Notification dated 8th October, 2003 issued by the Central Government under Section 72 of the Punjab Re-organization Act, 1966 besides seeking a declaration that Sections 49 & 92 of the Sikh Gurdwara Act, 1925 as amended vide the above-mentioned Notification, *ultra vires* Articles 14, 21 & 25 of the Constitution of India. The petitioner also seeks quashing of the Circulars issued by Sikh Gurdwara Election Commission for preparation of the electoral rolls and/ or for processing the election of SGPC and other Boards/Committees constituted under the Act.

(11) The petitioner who claims to be a Sehajdhari Sikh has referred to various provisions of 1925 Act especially Sections 2(9), (10-A) & (11) to stress upon the definition of a 'Sikh', a 'Sehajdhari Sikh' and a 'Patit' to say that before issuance of the subject notification, the 'Sehajdhari Sikhs' used to cast their votes subject to the qualifications prescribed in Sections 49 and 92 of the 1925 Act. The impugned notification has, however, taken away their valuable right to franchise. The petitioner relies upon the religious philosophy spelt out by various Sikh Gurus to profess that 'Sikhism' is a progressive stream of religion bereft of superficial ritualism and is an embodiment of humanity, harmony, compassion and justice originating from the inner upliftment of a human being instead of just polishing his external demeanor.

(12) The State of Punjab in its short reply/affidavit has maintained that the issues raised by the petitioner do not pertain to it hence no detailed reply is required on its behalf.

(13) The SGPC has filed its detailed reply/affidavit emphasizing that in view of the Full Bench decision of this Court in *Gurleen Kaur and other's* case, the 'Sehajdhari Sikhs' who trim or shave their beard/hair

cannot be termed as 'Sikhs' for the grant of electoral rights, hence the Notification issued by the Union of India under Section 1966 Act calls for no interference. The above-stated plea has been taken in addition to what has already been pleaded by the SGPC in its reply to the first case (CWP No.17771 of 2003).

(14) Respondent No.3 – Chief Commissioner, Gurdwara Election Commission has also filed a separate reply and while relying upon the Full Bench decision in *Gurleen Kaur and other's* case has reiterated the same plea as taken in the first case.

(15) A Division Bench vide order dated 28.09.2010 directed this matter to be listed before a Full Bench on 10.12.2010 along with CWP No.11841 of 2010 and when the matters were taken up for hearing by the Full Bench on March 10, 2011, it was pointed out by counsel for the parties that the first case i.e. CWP No.17771 of 2003 listed before a Division Bench was also required to be heard by the Full Bench along with these cases. The Division Bench on the request made by counsel for the parties directed the listing of CWP No.17771 of 2003 also before a Full Bench along with CWP No.14179 of 2010.

CWP NO.18160 OF 2011

(16) The petitioner in this case also seeks quashing of the Government of India Notification dated 8th October, 2003 modifying Sections 49 & 92 of the Sikh Gurdwara Act, 1925. The petitioner claims to have contributed towards restoration of peace and harmony in the State of Punjab during the period when it was infested with terrorism. The petitioner has given a brief religious and legal history of 'Sikhs' and 'Sikhism' and maintains that a true Sikh is the one who believes in ten Gurus and Sri Guru Granth Sahib and does not profess any other religion. The petitioner has broadly replicated the pleas already taken up by the other writ-petitioners. It is in this backdrop that the respondents have rightly chosen not to file any separate reply/ affidavit in this case in view of the pleadings being complete in the connected matters.

(17) It may be clarified here that there was one more case bearing CWP No.11841 of 2010 seeking declaration that Section 44 of the Sikh Gurdwara Act, 1925 *ultra vires* the Constitution of India; a writ of mandamus was sought to amend the Electoral Registration Form to bring it in consistence with Rule 3 of the Sikh Gurdwaras Board Election Rules, 1959; besides quashing of the Central Government notification dated 17.09.2009 introducing rotation of constituencies reserved for the Scheduled Castes and the women and a host of other directions. The aforesaid case was also clubbed and heard along with the above-mentioned cases till it was withdrawn by the petitioner on 18.10.2011. The said case occasioned the presence and assistance of learned Advocate Generals of Punjab and Haryana though none appeared on behalf of the State of Himachal Pradesh despite service.

(18) This is how that these cases have been placed before a larger Bench for hearing which commenced on 22.09.2011, almost on a day-to-day basis till its conclusion on 19.10.2011. The records including the original record produced by the Union of India comprising the Noting-files culminating into the issuance of the impugned Notification dated 08th October, 2003 have also been gone into by us with the assistance of counsel for the parties.

(19) A brief legal history of the Sikh Gurdwara Act, 1925 (Punjab Act No.8 of 1925) reveals that it has been enacted to provide for the better administration of 'Sikh Gurdwaras' and for inquiries into matters and settlement of disputes connected therewith. The Act lays down legal procedure by which Sikh Gurdwaras and Shrines regarded by Sikhs as essentially places of their worship, have been brought effectively under the permanent control of the Sikhs. The Act provides for a Scheme of purely Sikh management secured by statutory and legal sanction; for places of worship which are identified either by the Legislature or the Tribunal set up under the Act or Civil Court.

(20) We clarify in no uncertain terms that the pure religious issues like who is a true 'Sikh' or what is preached by 'Sikhism' do not arise, directly or indirectly, for our consideration. Nevertheless to understand the 1925 Act in a more meaningful manner, it is noticed with exquisite brevity

that Sikhs believe in 10 Gurus, the first of whom and the founder of the 'Sikh religion', Guru Nanak Dev ji preached moral and spiritual values to the mankind for a righteous and selfless living which acknowledges equality amongst all human beings. The last Sikh Guru was Shri Guru Gobind Singh ji. The Sikhs believe that there is no other Guru thereafter and consider Shri Guru Granth Sahib as their 'Guru'. Shri Guru Granth Sahib is a visible form of invisible Guru. It gives message of unity and universal brotherhood, namely, "one father, we, the children of one God" (*Ek Pita, Ekas Ke Ham Balak*), is the clarion call which runs through the 1430 golden pages of Shri Guru Granth Sahib. 'Sikhism' is a deep synthesis of divine virtues, ceaseless, remembrance, relentless service of mankind, equality of man, and ephemeral nature of the world besides defiance of tyranny and fighting for righteousness. Sikhs do not subscribe to idol worship or polytheism nor do they have any *Samadhi* in their Gurdwaras or Shrines.

(21) The control and management of Gurdwaras after the death of Guru Gobind Singh ji came under the local *sangat* (congregation) which led to intrusion of *mahants* who took control of Sikh Gurdwaras though some of them were not even 'Sikhs'. With the death of Maharaja Ranjit Singh, the power of the Sikhs waned and they were dis-organized which encouraged the *mahants* to assert their control over Gurdwaras denying such rights to the *Panth* or *Sangat*. The resentment led to several violent and non-violent movements for the restoration of Sikh control over Gurdwaras and Shrines prompting the erstwhile Provincial Legislature to enact the Sikh Gurdwaras and Shrines Act, 1922 which was very soon repealed by the 1925 Act as it failed to satisfy the aspirations of the Sikhs for various reasons.

(22) Since the issues involved in these cases and the legal submissions made at the bar gyrates around provisions of the two Statutes, namely, the Sikh Gurdwara Act, 1925 and the Punjab Reorganization Act, 1966, we deem it appropriate to reproduce some of their relevant provisions (including 'amended' and 'unamended' provisions of the 1925 Act in a tabulated form) :-

THE SIKH GURDWARA ACT, 1925

Overview of the (original and amended) provisions of Sikh Gurdwara Act from 1925 onwards

	Sikh Gurdwara Act, 1925 (No.8 of 1925) (original)	**As amended vide Punjab Act No.III of 1930**	**As amended vide Punjab Act No.11 of 1944** *(vide which different clauses of Section 2 were also re-numbered)*	**As amended vide Punjab Act No.1 of 1959**	**As it exits after 8th October, 2003**
Sec-2(9) *defines Sikh*	Sikh-"Sikh" means a person who professes the Sikh religion. If any question arises as to whether any person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in such manner as the Local Government may prescribe the	"Sikh" means a person who professes the Sikh religion, or, in the case of a deceased person, who professed the Sikh religion or was known to be a Sikh during his lifetime. If any question arises as to whether any living person is or is not a Sikh, he shall be deemed, respectively to be or	No change	No change	"Sikh" means a person who professes the Sikh religion or, in the case of a deceased person, who professed the Sikh religion or was known to be a Sikh during his lifetime. If any question arises as to whether any living person is or is not a Sikh, he shall be deemed, respectively to be or

	following declaration:- 'I solemnly affirm that I am a Sikh, that 'I believe in the Guru Granth Sahib, that 'I believe in the Ten Gurus and that I have no other religion.'	not to be a Sikh according as he makes or refuses to make in such manner as the Local Government may prescribe the following declaration:- 'I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten Gurus, and that I have no other religion."			not to be a Sikh according as he makes or refuses to make in such manner as the [State] Government may prescribe the following declaration:- 'I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten Gurus, and that I have no other religion."
Sec2(10) defines *Amritdhari Sikhs*	-	No change	'Amritdhari Sikh' means and includes every person who has taken *khandeka-amrit* or *khanda pahul* prepared and administered according to the tenets of Sikh religion and rites, at the hands of five *pyaras* or 'beloved ones'	No change	'Amritdhari Sikh' means and includes every person who has taken *khandeka-amrit* or *khanda pahul* prepared and administered according to the tenets of Sikh religion and rites, at the hands of five *pyaras* or 'beloved ones'

1	2	3	4	5	6
2(10-A) defines *Sehajdhari Sikhs*	Non-existent	Non-existent	Non-existent	Sahjdhari Sikh' means a person - (i) who performs ceremonies according to Sikh rites; (ii) who does not use tobacco or *Kutha* (Halal Meat) in any form; (iii) who is not a *Patit;* and (iv) who can recite *Mul Manter*"	'Sahjdhari Sikh' means a person - (i) who performs ceremonies according to Sikh rites; (ii) who does not use tobacco or *Kutha* (Halal Meat) in any form; (iii) who is not a *Patit;* and (iv) who can recite *Mul Manter*"
Sec2(11) defines *Patit*	-	No change	"Patit" means a person who being a *keshadhari* Sikh trims or shaves his beard or *keshas* or who after taking *amrit* commits any one or more of the four *kurahits.*	No change	"Patit" means a person who being a *keshadhari* Sikh trims or shaves his beard or *keshas* or who after taking *amrit* commits any one or more of the four *kurahits*
Sec-42 defines the *Board*	**Name of Board** – (1) The Board shall be known by such name as may be decided upon at a	No change	No change	No change	**Name of Board** – (1) The Board shall be known by such name as may be decided upon at a

general meeting of the first Board constituted under the provisions of this Act, provided that not less than three-fifths of the members present at the meeting have voted in favour of the name selected, and that such name has been approved by the Local Government. (2) If the Board fails to select a name in accordance with the provisions of subsection (1) or the name selected is not approved by the Local Government, the Board shall be designated the Central Board. (3) The Board shall by such name be a

general meeting of the first Board constituted under the provisions of this Act provided that not less than three-fifths of the members, present at the meeting have voted in favour of the name selected, and that such name has been approved by the [State] Government. (2) If the Board fails to select a name in accordance with the provisions of sub section (1) or the name selected is not approved by the [State] Government the Board shall be designated the Central Board. (3) The Board shall by such name be a

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	body corporate and shall have a perpetual succession and a common seal and shall by such name sue and be sued.				body corporate and shall have a perpetual succession and a common seal and shall by such name sue and be sued.
Sec-43 defines *Composition and constitution of Board*	**Composition and constitution of the Board -** (1) The Board shall consist of - (i) one hundred and twenty elected members; (ii) the head ministers of the Darbar Sahib, Amritsar and the following four Sikh Takhts, namely - the Sri Akal Takht Sahib, Amritsar, the Sri Takht Kesgarh Sahib, Anandpur, the Sri Takht Patna Sahib,	No change	In sub-section (1) of Section 43 – (a) in clause (i), for the word "twenty", the words, "thirty two" shall be substituted; and (b) in clause (iv) for the word "fourteen", the word "seventeen" and for the word "five" the word "four" shall be substituted.	No change	**Composition and constitution of the Board -** (1) The Board shall consist of - (i) one hundred and thirty two elected members; (ii) the head ministers of the Darbar Sahib, Amritsar and the following four Sikh Takhats, namely - the Sri Akal Takhat Sahib, Amritsar, the Sri Takhat Kesgarh Sahib, Anandpur, the

Patna and the Sri Takht Hazur Sahib, Hyderabad, Dekkan; (iii) twelve members nominated by the Darbars of the Indian States specified in sub section (2); (iv) fourteen members resident in India, of whom not more than five shall be residents in the Punjab, co-opted by the members of the Board as described in clause (i), (ii) and (iii). (2) The Local Government shall invite the Darbars of the Indian States specified in the list following to nominate the number of members	Sri Takhat Patna Sahib, Patna and the Sri Takhat Hazur Sahib, Hyderabad, Deccan. (iii) twenty-five members resident in India of whom at least twelve shall be residents of PEPSU, at least nine of other parts of India than Punjab and PEPSU and not more than four of Punjab, co-opted by the members of the Board as described in clauses (i) and (ii). (2) The State Government shall, as soon as may be, call a meeting of the members of the Board described in Clause (i) and (ii) of sub-section (1) for

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	stated therein against their respective names:- Patiala - 4 Nabha - 2 Faridkot - 2 Kapurthala - 2 Jind - 1 Kalsia – 1. (3) If the Darbar of any Indian State fails to nominate a member in response to an invitation by the Local Government, the Board shall be deemed to be duly constituted notwithstanding such failure. (4) The Local Government shall, as soon as may be, call a meeting of the members of the Board described in Clause (i), (ii) and				the purpose of c-opting the members described in clause (iii) of that sub section, and after the members have been co-opted, the State Government shall notify the fact of the Board having been duly constituted and the date of the publication of the notification, shall be deemed to be the date of the constitution of the Board.

	(iii) of sub-section (1) for the purpose of co-opting the members described in clause (iv) of that Sub-section, and after the member have been co-opted the Local Government shall notify the fact of the Board having been duly constituted; and the date of the publication shall be deemed to be the date of the constitution of the Board				
Sec-45 defines qualifications of elected Members	**Qualification of elected members** – (1) A person shall not be eligible for election as a member of the Board if such person - (i) is of	No change	In sub-section (1) of Section 45, after clause (v) the following clauses shall be added, namely- *"(vi) being a keshadhari Sikh is not an amritdhari;*	In sub-section (1) of Section 45, clause (viii) shall be substituted with the following- "(viii) not being a blind person cannot read and write	**Qualification of elected members**– (1) A person shall not be eligible for election as a member of the Board if such person - (i) is of unsound mind, (ii)

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	unsound mind, (ii) is an undischarged insolvent, (iii) is a patit. (iv) is a minister of a Notified Sikh Gurdwara other than the head minister of the Darbar Sahib, Amritsar, or of one of the four Sikh Takhts specified in clause (ii) of sub section (1) of Section 43; (v) is a paid servant of any notified Sikh Gurdwara, or of the Board other than a member of the executive committee of the Board. (2) No person shall be eligible for		*(vii) takes alcoholic drinks;* *(viii) cannot read and writ Gurmukhi"*	Gurmukhi. *Explanation* - For purposes of clause (viii) a person shall be deemed to be able to:- (a) read Gurmukhi if he is able to recite Shri Guru Granth Sahib in Gurmukhi; and (b) write Gurmukhi if he fills his nomination paper for election to the Board in Gurmukhi in his own handwriting. If any question arises	is an undischarged insolvent, (iii) is a patit. (iv) is a minister of a Notified Sikh Gurdwara other than the head minister of the Darbar Sahib, Amritsar, or of one of the four Sikh Takhats specified in clause (ii) of sub section (1) of Section 43; (v) is a paid servant of any Notified Sikh Gurdwara, or of the Board other than a member of the executive committee of the Board; (vi) being a *keshadhari* Sikh is not an amritdhari; (vii) takes alcoholic

drinks; (viii) not being a blind person cannot read and writ Gurmukhi

Explanation - For purposes of clause (viii) a person shall be deemed to be able to:- (a) read Gurmukhi if he is able to recite Shri Guru Granth Sahib in Gurmukhi; and (b) write Gurmukhi if he fills his nomination paper for election to the Board in Gurmukhi in his own handwriting. If any question arises whether a candidate is or is not able to read and write Gurmukhi the question shall be decided in such manner as may be

election as a member of the Board if he is not registered on the electoral roll of any constituency specified in Schedule IV.

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

1	2	3	4	5	6
					prescribed.” (2) No person shall be eligible for election as a member of the Board if he is not registered on the electoral roll of any constituency. (2A) No person shall be eligible for election to the Board if he is less than twenty-five years of age (3) Notwithstanding anything contained in sub-section (1) no person shall be prevented from standing as a candidate for election as a member of the Board on the ground that he is a

					patit : but if a person elected is thereafter found under the provisions of section 84 to be a *patit* his election shall be void.
Sec-49 defines qualifi-cations of electors	(1) Every person shall be entitled to have his name registered on the electoral roll of a constituency constituted for the election of a member or members of the Board who - (i) is a resident in that constituency and either, (ii) is on the electoral roll for the time being in force of persons entitled to vote for the election of a member to represent a Sikh	No change	**Qualification of electors** – Every person shall be entitled to have his name registered on the electoral roll of a constituency constituted for the election of a member or members of the Board who is a resident in that constituency and either – (i) is on the electoral roll for the time being in force of persons entitled to vote for the	No Change	**Qualification of electors** – Every person shall be entitled to have his name registered on the electoral roll of a constituency constituted for the election of a member or members of the Board who is a resident in that constituency and ** (i) xxx (omitted) (ii) is a Sikh more than twenty-one years of age, who had his name

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	Urban or Rural Constituency of the Legislative Council of the Governor of the Punjab, or (iii) is a Sikh more than twenty-one years of age, who has had his name registered as a voter in such manner as may be prescribed.		election of a member to represent a Sikh urban or rural constituency of the Provincial Legislative Assembly of the Punjab, or (ii) is a Sikh more than twenty-one years of age, who has had his name registered as a voter in such manner as may be prescribed: Provided that no person shall be registered as an elector who – (a) trims or shaves his beard or *keshas* except in case of *sehjdhari* Sikhs; (b) smokes; (c)takes alcoholic drinks.”		registered as a voter in such manner as may be prescribed: Provided that no person shall be registered as an elector who – (a) trims or shaves his beard or *keshas*; (b) smokes; and (c)takes alcoholic drinks.”

Sec-92 defines qualifi-cations of electors for the Committees	Every person shall be entitled to have his name registered on the electoral roll of a constituency for the election of a member or members of a committee who - (i) is a resident in that constituency and either (ii) is on the electoral roll for the time being in force of persons entitled to vote for the election of a member to represent a Sikh Urban or Rural Constituency of the Legislative Council of the Governor, or (iii) is a Sikh more than twenty-one years of age and has had his name registered as a	No change	**Qualification of electors** – Every person shall be entitled to have his name registered on the electoral roll of a constituency for the election of a member or members of a committee or of a local committee who is a resident in the constituency, and either – (i) is on the electoral roll for the time being in force of persons entitled to vote for the election of a member to represent a Sikh urban or rural constituency of the Provincial Legislative Assembly, or	No change	**Qualification of electors** – Every person shall be entitled to have his name registered on the electoral roll of a constituency for the election of a member or members of a Committee who is a resident in the constituency, and is a Sikh more than twenty-one year of age and has had his name registered as a voter in such manner as may be prescribed: Provided that no person shall be registered as an elector who – (a) trims or shaves his beard or *keshas*;

1	2	3	4	5	6
	voter in such manner as may be prescribed.		(ii) is a Sikh more than twenty-one years of age and has had his name registered as a voter in such manner as may be prescribed: Provided that no person shall be registered as an elector who – (a) trims or shaves his beard or *keshas* except in case of *sehjdhari* Sikhs; (b) smokes; and (c)takes alcoholic drinks."		(b) smokes; and (c)takes alcoholic drinks."
Sec-129 defines matters to be discussed by Board in General Meeting	**What matters may be discussed by Board in general meeting –** The Board in any meeting may consider and	No change	No change	No change	**What matters may be discussed by Board in general meeting –** The Board in any meeting may consider and

discuss any matter with which it has power under this Act to deal and any matter directly connected with the Sikh religion, but shall not consider or discuss, or pass any resolution or order upon, any other matter.	discuss any matter with which it has power under this Act to deal and any matter directly connected with the Sikh religion, but shall not consider or discuss, or pass any resolution or order upon, any other matter.

(23) There is indeed no serious dispute that every Sikh as defined in Section 2(9) of the 1925 Act and subject to his fulfilling the qualifications laid down in Sections 45 and 49 of the Act, was eligible to be elected or to elect Members of the Board. Such a Sikh was also eligible to elect or to be elected as Member of the Committees subject to the same qualifications prescribed in Sections 90 and 92 of the 1925 Act till the Punjab Act No.11 of 1944 was passed and Sections 49 and 92 were amended to incorporate disqualifications by way of a *proviso*, including "trimming or shaving the beard or *Keshas* except in case of Sehajdhari Sikhs".

(24) The Government of India thereafter in purported exercise of its powers under Section 72 of the Punjab Re-organization Act, 1966 issued the impugned Notification dated 8th October, 2003 modifying clause (a) of the *provisos* to Sections 49 & 92 of the 1925 Act to the extent that the expressions **"except in the case of Sehajdhari Sikhs"** was deleted. The aforesaid Notification being the fulcrum of controversy, is reproduced below in *extenso:-*

"**MINISTRY OF HOME AFFAIRS**
NOTIFICATION

New Delhi, the 8th October, 2003

S.O. 1190(E) – Whereas under sub-Section (1) of Section 72 of the Punjab Re-organization Act, 1966 (31 of 1966) (herein referred to as the said Act), read with sub-section (3) thereof, the Board constituted under the Sikh Gurdwaras Act, 1925 (Punjab Act VIII of 1925) shall, on and from the Ist day of November, 1966, 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 Board;

And whereas, under sub-section (2) of Section 72 of the said Act, any such direction may include a direction that any law by which the said Board is governed shall, in its application to that Board, have effect, subject to such exceptions and modifications as may be specified in the direction;

And whereas, the Shiromani Gurdwara Prabandhak Committee, Amritsar has passed a Resolution requesting the Government of India to exclude the Sehajdhari Sikhs from the purview of Sections 49 and 92 of

the Sikh Gurdwaras Act, 1925 making them ineligible for being voters in the elections to the General House of the Shiromani Gurdwara Prabandhak Committee.

Now, therefore, in exercise of the powers conferred by sub-section (1) read with sub-section (2) and (3) of Section 72 of the said Act, the Central Government hereby directs that the Sikh Gurdwaras Act, 1925 (Punjab Act VIII of 1925) shall have effect, from the date of issue of this notification subject to the following further modifications namely:-

Modifications

In the Sikh Gurdwaras Act, 1925 (Punjab Act VIII of 1925)

(i) in Section 49, for the proviso, the following proviso shall be substituted, namely:-

"Provided that no person shall be registered as an elector who –

(a) trims or shaves his beard or keshas;

(b) smokes; and

c) takes alcoholic drinks."

(ii) in section 92 for the proviso, the following proviso shall be substituted namely :-

"Provided that no person shall be registered as an elector who –

(a) trims or shaves his beard or keshas;

(b) smokes; and

(c) takes alcoholic drinks."

(F.No.17012/3/2001-IS-VI)
LC Goyal Jt. Secy."

(25) The Punjab Re-organization Act, 1966, Section 72 has been enacted by Parliament under the authority of Articles 3 & 4 of the Constitution for the re-organization of erstwhile State of Punjab and for matters connected

therewith. Part-I of the 1966 Act contains the *Definitions* etc., its Part-II pertains to re-organization of the State of Punjab and formation of Haryana State as well as the Union Territory of Chandigarh, besides transfer of some territory of Punjab State to Himachal Pradesh and consequential amendment in the First Schedule to the Constitution. Part-III provides for representation in the Legislatures of the successor States and delimitation of the Constituencies. Part-IV provides a common High Court for the States of Punjab, Haryana and Union Territory of Chandigarh and their joint Bar Council while Part-V deals with expenditure and distribution of revenues. Part-VI of the 1966 Act apportions assets and liabilities while Part-VII comprising Sections 67 to 77 contains "Provisions as to certain Corporations" like State Electricity Board Constituted under the Electricity Supply Act, 1948, the State Warehousing Corporation established under the Warehousing Corporation Act, 1962. This Part also makes arrangement for the generation and supply of electricity power and water as well as the functioning of the Punjab State Financial Corporation. Section 70 of this Part 'amends' the Multi-Unit Cooperative Societies Act, 1942 whereas its Section 71 deals with the Cooperative Banks. Section 72 pertains to *General Provisions as to Statutory Corporations* and Section 73 deals with certain companies. This very Part of 1966 Act deals with temporary continuation of existing road transport permits, payment of retrenchment compensation in certain cases, special provisions to Income Tax and for continuation of facilities in certain State institutions etc. Part-VIII of the Act deals with Bhakra-Nangal and Beas Projects while Part-IX carries provisions regarding 'Services'. Part-X of the Act is loaded with legal and miscellaneous provisions.

(26) Some of the provisions of Parts-VII & X of the 1966 Act referred to and/or pressed into aid by counsel for the parties or otherwise relevant for effective resolution of the issues involved, are reproduced below :-

Part VII

PROVISIONS AS TO CERTAIN CORPORATIONS

"67. Provisions as to certain Corporations.- *(1) The following bodies corporate constituted for the existing State of Punjab, namely :-*

(a) the State Electricity Board constituted under the Electricity Supply Act, 1948; and

(b) the State Warehousing Corporation established under the Warehousing Corporation Act, 1962.

shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day subject to the provisions of this section and to such directions as may, from time to time, be issued by the Central Government.

(2) Any directions issued by the Central Government under sub-section (1) in respect of the Board or the Corporation may include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications, as the Central Government thinks fit.

(3) xxx xxx xxx

(4) xxx xxx xxx

68. Continuance of arrangements in regard to generation and supply of electric power and supply of water .-

xxx xxx xxx

69. Provisions as to Punjab State Financial Corporation. -

xxx xxx xxx

70. Amendment of Act 6 of 1942.-

xxx xxx xxx

71. Provision as to co-operative banks.-

xxx xxx xxx

7**2. General provisions as to statutory Corporations.** – *(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.

(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.

(3) For the removal of doubt it is hereby declared that the provisions of this section shall apply also to the Panjab University constituted under the PanjabUniversity 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.

(4) For the purpose of giving effect to the provisions of this section in so far as it relates to the Panjab University and the Punjab Agricultural University referred to in sub-section (3), the successor States shall make such grants as the Central Government may, from time to time, by order, determine.

73. Provision as to certain companies.-

xxx xxx xxx

Part X

Legal and Miscellaneous provisions

86. Amendment of Act 37 of 1956.-

xxx xxx xxx

87. Power to extend enactments to Chandigarh.-

xxx xxx xxx

88. Territorial extent of laws.-

xxx xxx xxx

89. Power to adapt laws.- *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."

(27) After recapitulating the incontestable facts and relevant provisions of 1925 and 1966 Acts, we now proceed to summarise the challenge laid before us on behalf of the petitioner(s).

(28) In the absence of a formal reference order formulating the law points to be answered by the larger Bench, it was deemed necessary to identify the area(s) of conflict and draw out the issues to be addressed by

counsel for the parties, more-so when the counsel representing SGPC and the Union of India have been pressing hard that the right of 'Sehajdhari Sikhs' who trim or shave their beard or hair for inclusion amongst the eligible voters under Sections 49 or 92 of the 1925 Act is no longer *res integra* and has been answered against them by a three-Judge Bench of this Court in *Gurleen Kaur and Others* case.

(29) The petitioner(s) represented by S/Shri Ashwani Kumar Chopra & M.S. Khaira, Senior Advocates and Sh. Mansur Ali, Advocate while confining their challenge to the validity of Notification dated 08th October, 2003, forcefully argued that –

(a) the power to 'modify' a Statute entrusted to the Central Government under Section 72 of the 1966 Act does not authorize it to re-write or change the legislative policy of such Statute and the said power is not equivalent to the legislative power conferred by the Constitution on Parliament or a State Legislature. The power to 'modify' a Statute permits cosmetic changes or minor alterations in a Statute;

(b) the right to vote under Section 49 or Section 92 of the 1925 Act was given to Sehajdhari Sikhs by the Legislature and it could be taken away by a competent Legislature only;

(c) the Central Government while exercising delegated powers under Section 72 of the 1966 Act has no authority to modify the legislative policy of the 1925 Act, namely, entrustment of management of Sikh Gurdwaras to an elected body representing the voters declared eligible under Sections 49 or 92 of that Act;

(d) the power under Section 72 of 1966 Act is exercisable with reference to the object(s) for which the principal Act was enacted, namely, reorganization of the erstwhile State of Punjab so as to constitute two separate States of Punjab and Haryana and a new Union Territory of Chandigarh and also to transfer certain areas to Himachal Pradesh and to make "the necessary supplemental, incidental and consequential provisions in relation to such re-organization, including representation in Parliament and in the State Legislatures";

(e) Part-VII may be read in conjunction with other parts of the 1966 Act instead of construing it in isolation;

(f) sub-Sections (1) and (2) of Section 72 cannot be read or interpreted independent of sub-Section (3) which determines the extent of power exercisable by the Central Government in relation to the 1925 Act;

(g) the residuary powers enjoyed upon by the Central Government under sub-Section (2) of Section 72 can be invoked only if the Board experiences any functional difficulty in its operation in the areas where it was functional and operational earlier and which have now fallen to the share of successor States;

(h) the impugned Notification has been issued without application of mind and is *per se* arbitrary as it robs lacs of voters of their right to elect merely on the basis of a Resolution passed by the SGPC (Board) contrary to Section 129 of the 1925 Act which authorizes it to pass resolution only in respect of those matters which are 'directly connected with the Sikh religion' and expressly bars passing of any other resolution beyond that;

(i) the Notification dated 8th October, 2003 *ultra vires* Section 72 of 1966 Act for the reason that the 'Committees' constituted to manage Gurdwaras under Sections 85, 86 or 87 of the 1925 Act are not the 'body corporates' yet their composition has been drastically altered by 'modifying' Section 92 of the 1925 Act. Similarly, the nature of directions contained therein pertain to 'establishment' of the Board and not its functioning or operations;

(j) the SGPC Resolution relied upon by the Central Government to issue the impugned Notification recites 'bogus voting' as its solitary cause, for which the Rules framed by SGPC in the year 1959 contain adequate provisions and that the bogus voting had started not because the preventive provisions were inadequate but because the authorities did not follow those provisions.

(30) Learned Advocate General, Haryana while supporting and supplementing the petitioners' cause, urged that :-

(a) sub-Sections (2) and (3) of Section 72 are in the nature of a *proviso* and the power thereunder cannot obliterate an independent Statute nor can these *provisos* overpower or misdirect the legislative object of the principal Act, taking away the substantive rights bestowed by the Legislature on Sehajdhari Sikhs under the 1925 Act;

(b) the power exercisable under an *exceptional clause* like Section 72(2) &(3) of the 1966 Act can be invoked in exceptional situations only, which were non-existent in the instant case as the statutory scheme of the 1925 Act stood to the test of time for over 75 years and the Board has been catering to the needs of Sikhs in the successor States smoothly and successfully even after the re-organization which took place in the year 1966;

(c) the impugned Notification has caused hostile discrimination by deleting the words "except in the case of Sehajdhari Sikhs" amongst those treated equal by the Legislature under the 1925 Act;

(d) the subject Notification is an outcome of colourable exercise of power and is contrary to Section 21 of the General Clauses Act, 1897 according to which the power to issue notification is to be exercised 'in the like manner';

(e) the power under Section 72 can be invoked to give effect to Part-VII of the scheme of re-organization of the erstwhile State of Punjab contained in the 1966 Act and not to channelize a parallel source of legislation for amending the 1925 Act, which is alien to the scheme of our Constitution.

THE CASE LAW RELIED UPON BY THE PETITIONERS

(31) Counsel for the petitioners relied upon a serious of decisions to strengthen their respective contentions, which are cited hereinbelow *in seriatum*:-

(a) **In re Article 143, Constitution of India and Delhi Laws Act (1912) etc., (2),** a Constitution Bench decision (majority

(2) AIR 1951 SC 332

view) held that the Legislature has power to lay down the policy and principles providing the rule of conduct and the power to delegate legislative functions generally is not warranted under our Constitution. It was further held that an executive authority can be authorized to modify either existing or future laws but not any essential feature. The majority view was reiterated in **Rajnarain Singh *versus* Chairman, Patna Administration Committee, Patna & Anr., (3)**, wherein it was further ruled that "….*the modification of* the whole cannot be permitted to effect any essential change in the Act or an alteration in its policy, so also a modification of a part cannot be permitted to do that either." (Emphasis by us)

(b) In **Sardar Inder Singh *versus* State of Rajasthan & Ors., (4),** also the majority view in ***Delhi laws'*** case was summed up and reiterated;

(c) In **Hamdard Dawakhana and another *versus* Union of India and others, (5),** the constitutionality of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was challenged urging that Section 3 of the Act was suffering from the vice of excessive delegation as it surrendered unguided and uncanalised power to the Executive. The Supreme Court struck down a part of the provision holding that "….*the discretion should not be so wide that it is* impossible to discern its limits. There must instead be definite boundaries within which the powers of the administrative authority are exercisable. Delegation should not be so indefinite as to amount to an abdication of the legislative function-Schwartz American Administrative Law, page 21.";

(d) **Vasantlal Maganbhai Sanjanwala *versus* State of Bombay & Ors., (6),** carefully demarcates the duty of a Court to hold a fair, generous and liberal construction of a Statute as to whether

(3) AIR 1954 SC 569
(4) AIR 1957 SC 510
(5) 1960 AIR SC 554
(6) AIR 1961 SC 4

the Legislature unduly overstepped the limits of delegation even though such power is a constituent element of the legislative power as a whole;

(e) These principles were reiterated by the Apex Court in (i) **Makhan Singh Tersikka *versus* State of Punjab, (7);** and (ii) **Khambhaliya Municipality & Anr. *versus* State of Gujarat & Anr. (8)** observing that the legislature is prohibited from delegating its essentially legislative function and power and that if the power which has been delegated includes power which can legitimately be regarded as essential legislative power, though such delegation is couched in terms like power to 'change' or 'modify', then the legislation is bad and is inflicted with serious infirmity;

(f) In **Lachmi Narain & Ors. *versus* Union of India (9),** the extent of powers of the delegate as also the scope of 'modification' were explained as may be legitimately necessary to adjust, adapt and make the enactment suitable to the peculiar local conditions of the Union Territory for carrying it into operation and effect are permissible. Such alterations as involve a change in any essential feature of the enactment or the legislative policy built into it, are not covered;

(g) In **Avinder Singh *versus* State of Punjab & Anr., (10),** the validity of tax on foreign liquor imposed by the Municipalities in the State of Punjab on the strength of a Government Notification issued under Section 90(5) of the Punjab Municipal Corporation Act, 1976 was upheld, explaining the concept of excessive delegation to mean that *".....the essentials of legislative functions shall not be delegated but the inessentials, however numerous and significant they be, may well be made over to appropriate agencies. Of course, every delegate is subject to the authority and control of the principal a nd e xercise of delegated power can always be directed, corrected or cancelled by the principal."* (Emphasis applied);

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(7) AIR 1964 SC 381
(8) AIR 1967 SC 1048
(9) AIR 1976 SC 714
(10) 1979 (1) SCC 137

(h.) The **Authorised Officer & Anr. *versus* S. Nagantha Ayyar & Ors. (11)** has also been cited with reference to the meaning of word "modification" and to urge that the same be given 'literal' or 'ordinary' meaning unless there are compelling reasons. It is desirable to follow rule of strict construction when the purpose of the Statute needs it;

(i) **Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. *versus* Union of India & Ors., (12)** has been relied upon to reinforce that a piece of 'subordinate legislation' can be tested on the question of 'unreasonableness', namely, that it is manifestly arbitrary;

(j) **Indian Nut Products & Ors. *versus* UOI & Ors., (13)** holds that it is imperative upon the Government to disclose the grounds of its satisfaction enabling it to exercise its statutory power and to disclose the reasons and the existence of circumstances as these are open to judicial review;

(k) In **Agricultural Market Committee *versus* Shalimar Chemicals Works Ltd., (14),** challenge to the levy of market fee on an agricultural produce imported from State of Kerala and weighed at Hyderabad brought into question the validity of provisions of subordinate legislation. It was held that the essential legislative function consisting determination of the legislative policy cannot be abdicated by the Legislature in favour of another though power to make subsidiary legislation can be entrusted to another body after enunciating the policy and the principles for the guidance of the delegates. The delegate has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder nor can it legislate on the field covered by the Act. Similar principles were re-stated in **State of Tamil Nadu *versus* K. Subanayagam & Anr. (15);**

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(11) (1979) 3 SCC 466
(12) (1985) 1 SCC 641
(13) (1994) 4 SCC 269
(14) (1997) 5 SCC 516
(15) (1998)1 SCC 318

(l) In **Kunj Behari Lal Butail & Ors. *versus* State of Himachal Pradesh & Ors. (16),** having found that the restriction on transfer of land imposed vide the impugned Rule and the Circular was in no way meant to carry out the purpose or achieve the object of the HP Ceiling on Land Holdings Act, 1972, their Lordships ruled that "*a delegated power to legislate* by making Rules 'for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the *provisions of the Act itself."* ;

(m) **State of Rajasthan & Ors. *versus* Basant Nahata, (17),** is a precedent to cite that the essential functions of the Legislature cannot be delegated and it must be judged on the touchstone of Article 14 and Article 246 of the Constitution of India. It is only the ancillary and procedural powers which can be delegated and not the essential legislative point and that a legislative policy must conform to the provisions of the constitutional mandates;

(n) In **Vasu Dev Singh & Ors. *versus* Union of India & Ors. (18),** the Notification dated 07.11.2002 issued by the Administrator of Union Territory Chandigarh under Section 3 of the East Punjab Urban Rent Restriction Act, 1949, exempting certain buildings from the provisions of the Rent Act, was successfully challenged and it was held that *"…the Administrator will have no jurisdiction to issue a notification which would have a permanent impact. The Administrator cannot change the basic features of the law or act contrary to the legislative policy. The legislature, on the other hand, can not only repeal the statute, it can change the basic features of the law. The only limitation on the part of the legislature is that ordinarily it cannot take away a vested right…" and that "….A statute can be amended, partially repealed or wholly repealed by the legislature only. The*

(16) (2000) 3 SCC 40

(17) (2005) 12 SCC 77

(18) (2006) 12 SCC 753

philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefore only the legislature has the requisite power and not the executive. The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible…." (Emphasis applied)

(o) **State of Kerala & Ors. *versus* Unni & Anr. (19)** has been pressed into aid to urge that 'unworkability' of a statutory provision leads to the presumption of 'unreasonableness' which is a ground of judicial review of subordinate legislation though it may not be available while seeking judicial review of a Statute;

(p) Two more decisions of the Hon'ble Supreme Court in **The Commissioner, Hindu Religious Endowments, Madras *versus* Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, (20)** and **Tilkayat Shri Govindlalji Maharaj *versus* State of Rajasthan, (21),** have been relied upon to suggest that the impugned Notification takes away the freedom in the matter of 'religion' and 'management of religious affairs' statedly guaranteed by Article 25 & Article 26 of the Constitution to Sehajdhari Sikhs;

(q) A Full Bench decision of Madhya Pradesh High Court in the **Collective Farming Society Ltd. *versus* State of Madhya Pradesh & Ors., (22),** wherein principles governing the power of Legislature to delegate its functions; extent of such delegation; ingredients of essential legislative functions; condition precedent to lay down principles or standards for the guidance of the delegate; and impermissibility of uncontrolled entrustment of power to a delegate etc. have been copiously laid down along with following conclusion at sr.no.8 - *"As a delegated power,*

(19) (2007) 2 SCC 365
(20) AIR 1954 SC 282
(21) AIR 1963 SC 1638
(22) AIR 1974 MP 59 (FB)

'modification' does not mean or involve any change of policy but is confined to alteration of such a character which keeps the policy of the Act intact and introduces such changes as are appropriate to local conditions of which the executive *Government is made the judge."* (Emphasis applied)

(r) Another Full Bench decision of Patna High Court in **Janardhan Paswan & Ors. *versus* State of Bihar & Ors., (23)** has been referred to, contending that the right to franchise flows from the equality clause of Article 14 of the Constitution and any discrimination in relation thereto on the grounds of race or caste permeates the electoral rights of franchise;

(s) Two Full Bench decisions of this Court in **Kashmir Singh *versus* Union of India & Ors. (24)** (five- Judges' Bench) and **Gurleen Kaur and others *versus* State of Punjab & Ors. (25)** (three-Judges' Bench) have also been relied upon though by both the sides. We propose to make a detailed reference to these two decisions in the later part of this order.

(32) The Advocate General, Haryana bolstered his contention(s) with respect to the scope and extent of power exercisable by the Central Government under Section 72 of the 1966 Act and cited :-

(a) **Naresh Shankar Srivastava *versus* State of Uttar Pradesh & Ors., (26),** wherein the question whether the Cooperative Societies carrying out their business in the areas falling in the States of Uttar Pradesh and Uttaranchal (now Uttarakhand) under the UP State Re-organization Act, 2000, shall be governed by the UP State Cooperative Societies Act, 1965 or by the Multi-State Cooperative Societies Act, 1984 was answered on construing Section 67 of the UP State Re-organization Act, 2000 (which is *pari materia* to Section 72(1)&(2) of the 1966 Act) read with Section 95 of the Multi-State Cooperative

(23) AIR 1988 Patna 75

(24) 2003 (2) RCR (Civil) 501

(25) 2009(3) RCR (Civil) 324

(26) (2009) 16 SCC 157

Societies Act, 1984, saying that Section 67 would be operative in such like situations only if a direction is needed from the Central Government for the applicability of State law to the body corporate by virtue of the re-organization of the State.

(b) **MP High Court Bar Association *versus* Union of India & Ors., (27),** reiterates the settled principle that *"under* the Constitution of India, *the power to legislate is with the Legislature. The said power of making laws, therefore, cannot be delegated by the Legislature to the Executive. In other words, a Legislature can neither create a parallel legislature nor destroy its legislative power. The essential legislative function must be retained by the Legislature itself. Such function consists of the determination of legislative policy and its formulation as a binding rule of conduct. But it is also equally well-settled that once the essential legislative function is performed by the Legislature and the policy has been laid down, it is always open to the Legislature to delegate to the Executive authority ancillary and subordinate powers necessary for carrying out the policy and purposes of the Act as may be necessary to make the legislation complete, effective and useful."*

(c) **Man Singh *versus* State of Haryana & Ors., (28)** and **Bihar State Electricity Board *versus* Pulak Enterprises & Ors., (29),** were cited to canvass that the impugned notification is discriminatory and unreasonable.

(d) **Supreme Court Employees' Welfare Association *versus* Union of India & Anr., (30)** was relied upon to urge that arbitrary exercise of power by a public authority even if it is in the nature of subordinate legislation is liable to be condemned as violative of Article 14 and its action shall be *ultra vires* if the authority is found to have acted in excess of its power or abused its power by acting in bad faith or for an inadmissible purpose.

(27) (2004) 11 SCC 766
(28) (2008) 12 SCC 331
(29) (2009) 5 SCC 641
(30) (1989) 4 SCC 187

(e) **Employees' State Insurance Corporation *versus* HMT Ltd. & Anr. (31)** reiterates that "*the subordinate legislation cannot override the principal legislative provisions.*";

(f) **Sada Shiv Dada Patil *versus* Purushottam Onkar Patil, (32);** and **JK Industries Ltd. & Ors. *versus* Chief Inspector of Factories and Boilers & Ors., (33)** hold that a Section and the *proviso* thereto must be construed as a whole, each portion throwing light, if need be, on the rest and that a *proviso* is normally used to remove special cases from the general enactment and it qualifies the generality of the main enactment by providing an exception and take out a portion from the main provision, which, but for the *proviso,* would be a part of the main provision. It was held that a *proviso* should not be read as if it was providing something by way of an *addition* to the main provision which is *foreign* to the main provision itself;

(g) Lastly, **Kamla Prasad Khetan & Anr. *versus* Union of India, (34)** has been relied upon in support of the contention that in view of Section 21 of the General Clauses Act, 1897 the power to issue an amendment-notification was exercisable in the like manner, namely, by the same authority who incorporated the provision.

THE STAND OF UNION OF INDIA IN SUPPORT OF THE IMPUGNED NOTIFICATION :

(33) Dr. Anmol Rattan Sidhu, Assistant Solicitor General for Union of India countered the petitioners' claim and pointed out at the outset that :- (a) the subject Notification is not a maiden attempt to 'modify' the 1925 Act as the Central Government has in the past also issued such like several notifications including the Notifications dated 03.02.1978 and 15.12.1995 incorporating Section 47-A in the 1925 Act and then substituting it with a new provision for constitution of Gurdwara Election Commission;

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(31) (2008) 3 SCC 35

(32) 2006 (11) SCC 161

(33) 1996 (6) SCC 665

(34) AIR 1957 SC 676

Notification dated 20.04.1996 redetermining the territorial areas, number of constituencies for election of members of the Board; Notification dated 30.08.1996 redetermining the areas of constituencies reserved for women and Scheduled Castes for election of members of the Board and Committees; Notification dated 29.04.1999 adding one more Sikh *Takhat* and increasing their strength from 4 to 5; Notification dated 28.07.2003 amending the Schedule attached to the Act for inclusion of some more Gurdwaras within the ambit of 1925 Act; (b) a Full Bench of this Court in **Kashmir Singh *versus* Union of India (35)** upheld one such Notification 'amending' the 1925 Act. The above-cited Full Bench decision has been upheld by Hon'ble Supreme Court in **Kashmir Singh *versus* Union of India, (36);** (c) the power to 'modify' imbibes in it the power to 'amend' a Statute as held in **Pranlal Lakhanpal *versus* President of India & Ors., (37)**; (d) the impugned Notification is not an abrasion on the legislative powers as it is the Parliament only who has authorized and commanded the Central Government to perform legislative functions if the need arises for the smooth functioning of inter-State body corporates within the meaning of Part-VII of the 1966 Act; (e) there has been a long-standing demand of the Board (SGPC), reiterated vide its resolutions No.9 dated 30th November, 2000, No.220 dated 30th March, 2001 followed by subsequent Resolutions dated 7th March, 2002 and 30th March 2002 for denuding 'Sehajdhari Sikhs' of their right to participate in the election for Board/Committees elected for managing and running affairs of the Sikh Gurdwaras; (f) the impugned Notification was issued by the Competent Authority after due deliberations and application of mind following the Government of India (Transactions of Business) Rules and the Government of India (Allocation of Business) Rules.

(34) Original records on our asking (though with a feeble claim for privilege to certain notings) have also been produced to assuage the allegation of non-application of mind or issuance of the Notification merely on the asking of SGPC and to show that there was due application of mind before the final decision was taken. Learned ASG did not dispute that the power bestowed upon the Central Government under Section 72 of the 1966 Act

(35) 2003(2) RCR (Civil) 501

(36) (2008) 7 SCC 259

(37) 1961 AIR (SC) 1519

is a piece of delegated legislation but defended the Notification on the plank that it was neither a case of excessive delegation nor the delegate exceeded the entrusted power.

(35) We may now refer to the decisions relied upon by the learned ASG :-

(i) In **Pranlal Lakhanpal *versus* President of India & Ors., (38)** the constitutionality of a provision of the Constitution (Application to Jammu & Kashmir) Order, 1954 made by the President under Article 370(1), modifying Article 81(1) of the Constitution relating to the State of J&K, was challenged. Article 370(1) contains temporary provision with respect to the State of J&K and its clause (d) lays down that *"such of the other provisions of this Constitution shall apply in relation to that State….. subject to such **exceptions** and **modifications** as the President may by order specify." The Hon'ble Supreme Court while upholding the Presidential Order held that "…..when the Constitution used the word "modification" in Article 370(l) the intention was that the President would have the power to amend the provisions of the Constitution if he so thought fit in their application to the State of Jammu and Kashmir…." and that "….in law the word "modify" may just mean "vary", i.e., amend; and when Article 370(l) says that the President may apply the provisions of the Constitution to the State of Jammu and Kashmir with such modifications as he may by order specify it means that he may vary (i.e., amend) the provisions of the Constitution in its application to the State of Jammu and Kashmir. We are therefore of opinion that in the context of the Constitution we must give the widest effect to the meaning of the word 'modification" used in Article 370 (l) and in that sense it includes an amendment."* (Emphasis applied)

(38) 1961 AIR (SC) 1519

(ii) **M/s. Burrakur Coal Co. Ltd. *versus* Union of India, (39),** has been cited to urge that while considering the *vires* of Notification dated 8th October, 2003 we need not restrict ourselves to the pleadings, namely, the reply/affidavit filed by the Union of India *albeit* the Court will consider whether the validity can be sustained under any provisions of the Constitution or the laws;

(36) In all fairness, Sh. Surjit Singh Swaich, learned counsel representing Union of India in one of the cases sprang a surprise when he took a stand partly incongruous to that of Dr. Sidhu and referred to the unamended provisions of the 1925 Act to contend that it is a misconceived notion that the 'Sehajdhari Sikhs' got their right to vote by virtue of the legislative amendment made vide Act No.11 of 1944 though the amending Act conferred no such right on them nor the impugned Notification has taken away any such right. He explained that a 'Sehajdhari Sikh', on removal of the disqualifications prescribed in the Act, can still acquire eligibility to cast vote.

(37) Sh. Swaich cited a book captioned as "The Constitutional Law of India, Vol-3 Fourth Edition" authored by celebrated Constitutional expert HM Seervai to maintain that no *ratio* emerges from the opinions in the ***Delhi Laws'*** case and therefore any attempt to use it as a precedent must be given up. Sh. Swaich rather preferred to rely upon :-

(a) **Raj Narain Singh *versus* Chairman Patna Administration & Anr. (40),** and **Vasu Dev Singh & Ors. *versus* Union of India & Ors. (41),** a brief reference to which has already been made;

(b) **Gwalior Rayon Mills Mfg. Co. Ltd. *versus* Assistant Commissioner of Sales Tax and others, (42),** summarising the views taken in the previous decisions in relation to the powers of the Legislature or its delegate in the matter of enactment of subordinate or ancillary legislation;

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(39) AIR 1961 SC 954

(40) AIR 1954 (SC) 569

(41) (2006) 12 SCC 753

(42) AIR 1974 (SC) 1660

(c) **PJ Irani *versus* State of Madras (43),** wherein the Government order purportedly issued in exercise of powers conferred by Section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949 granting exemption from the provisions of the Act to a particular building was assailed and while upholding validity of the statutory provision, the action taken thereunder by the State Government was annulled, it having been found to be in violation of Article 14;

(d) **Ramesh Birch & Ors. *versus* Union of India & Ors. (44),** wherein it was held that "*the power of Parliament to* entrust legislative powers to some other body or authority is not unbridled and absolute. It must lay down essential legislative policy and indicate the guidelines to be kept in view by that authority in exercising the delegated powers. In delegating such powers, CWP No17771 of 2003.doc - **48** - Parliament cannot "abdicate" its legislative functions in favour of such authority.";

(e) **Her Majesty the Queen *versus* Burah, (45),** laying down that excessive delegation of judicial powers was impermissible in pre-constitutional era also. The said decision was considered by the Hon'ble Supreme Court in ***Delhi laws'*** case.

STAND PUT FORTH BY SGPC (BOARD)

(38) The main opponent – Shiromani Gurdwara Prabandhak Committee (Board) represented by Sarvshri AK Ganguli and RS Suri, senior Advocates along with Sh. Gurminder Singh, Advocate, off-set the petitioners' challenge with the following collateral attack:-

(i) that the supplemental, incidental and consequential provisions incorporated by Parliament in the Punjab Re-organization Act, 1966 within the meaning of Article 4(1) of the Constitution, is a conclusive legislative fact over which Courts do not exercise judicial review and such a law is not an amendment of the Constitution for the purpose of Article 368, which amply proves

(43) AIR 1961 SC 1731

(44) (1989) 1 Suppl. SCC 430

(45) (1878) 5 Indian Appeals 178

that there are no limitations whatsoever on the powers of the Parliament while enacting laws under Articles 3&4 of the Constitution;

(ii) the provisions of a re-organization law are equivalent to the 'declarations of law' made by Parliament in the legislative field under Entries 52, 53, 54 & 56 of List-I, whereupon the Parliament assumes jurisdiction to legislate in denudation of power of the State Legislature. Such like 'declarations' are not justiciable;

(iii) Articles 3&4 confer plenary legislative powers on Parliament to enact a re-organization law which are distinct and incomparable with legislative powers under Articles 245 & 246 of the Constitution;

(iv) The Parliament while incorporating supplemental, incidental and consequential provisions in a re-organization law may authorize a subordinate authority to act on its behalf and the provision containing such authorization or the action taken thereunder partake the character of Parliamentary legislation;

(v) Section 72 of the 1966 Act 'commands' the Central Government not only to issue directions for smooth functioning of inter- State body corporates but to add exceptions or modify the Central Act, State Act or Provincial Act, hence it is not a delegated legislative power, rather they speak of Parliament's explicit direction to the Central Government to modify the laws, if so required. Thus, the Notification dated 08th October, 2003 issued in deference to such command, is deemed to be an act of Parliamentary legislation;

(vi) the re-organisational exercise of a State is a gigantic task which is not accomplished by mere demarcation of territories or altering the names. The *inter se* issues between successor States keep on arising time and again and are expected to be settled down within the legal framework due to which the reorganization laws have not been consciously repealed even after a lapse of 40-50 years of their enactment;

(vii) it is for the Parliament to amend the laws nevertheless no exception can be taken to its wisdom in empowering the Central Government to cause 'modification' in such laws. The authorization given to the Central Government being Parliament's own judgement to deal with unforeseen eventualities, the said power is unrestricted and exercisable to any extent;

(viii) our Constitutional scheme does permit delegation of legislative powers save as it is not excessive, the complaint against which can be entertained only when the provision itself is challenged. Since the petitioners have nowhere questioned the *vires* of Section 72 of the 1966 Act, they cannot be heard alleging excessive delegation of legislative power in favour of the Central Government;

(ix) since the Notification dated 8th October, 2003 only modifies two provisions of the 1925 Act, without tampering with the essential legislative features of 1925 Act, it squarely falls within the scope of sub-Sections (1), (2) & (3) of Section 72 the 1966 Act, if read in conjunction;

(x) the Parliament vide sub-Section (3) of Section 72 has removed the doubts and clarified that the Board not only is a 'body corporate' but it also serves the need of the successor States, hence is amenable to sub-Sections (1) & (2) of Section 72 of the 1966 Act;

(xi) the Legislature is competent to enact a 'law' declaring or providing for that a subordinate legislation or an act of the delegate shall have effect on that law or other laws, hence the delegation of power under sub-Section (2) of Section 72 of the 1966 Act is legitimate;

(xii) the power under a Re-organization Act can be exercised at any time so long as the said Act is not repealed or amended, therefore, the Notification dated 08th October, 2003 is not assailable on the ground of passage of long time as no time limitation is prescribed under the said Act;

(xiii) the impugned Notification is no exception as the power under Section 72 of the 1966 Act to modify provisions of the 1925 Act has been invoked several times in the past and such like notifications have stood to the test of judicial scrutiny also; .xiv the right to vote under the 1925 Act was neither a Constitutional nor an indefeasible right and it could be taken away at any time;

(xv) the claim of the petitioners regarding right of vote in favour of Sehajdhari Sikhs who trim or shave their beards or keshas has already been answered against them by a Full Bench of this Court in ***Gurleen Kaur's*** case;

(xvi) the modifications made in the 1925 Act are consistent with its legislative policy to entrust complete management and affairs of Sikh Gurdwaras to 'Sikhs' only, therefore the persons who do not abide by the Sikh tenets have been rightly deprived of the right to vote. The Notification dated 8th October, 2003 also finds support from Section 8 of the Delhi Gurdwara Prabandhak Act, 1971 which is a Parliamentary legislation;

(xvii) there exists always a presumption of validity in favour of the delegated legislation and whosoever alleges otherwise must prove it. The petitioners are said to have failed to discharge this burden in the instant case.

(39) Each of the contention noticed above was given strength with the aid of following binding precedents:-

(i) **State of West Bengal *versus* Union of India (46)** acknowledges that Articles 3 & 4 of the Constitution invest the Parliament with an authority to alter the boundaries of any State and to diminish its area or to even destroy a State and also authorizes it to acquire by legislation the property owned by a State for Governmental purpose;

(ii) **S. P. Mittal *versus* Union of India & Ors. (47),** lays down that the Court in exercise of its power of judicial review would

(46) (1964) 1 SCR 371

(47) (1983) 1 SCC 51

not hold a statutory provision bad on the ground that the facts and information produced before the Parliament were not correct as it is for the Parliament to apply its mind on the facts before it;

(iii) **Mangal Singh & Anr. *versus* Union of India (48),** draws distinction between plenary powers of the Parliament under Articles 3&4 vis-à-vis its legislative powers under Articles 245 & 246 of the Constitution and holds that the power to make supplemental, incidental or consequential provisions under Article 4(1) of the Constitution is not limited to the amendment of the First or the Fourth Schedule only. It further holds that "*power with which the Parliament is invested by Articles 2 and 3, is power to admit, establish, or form new States which conform to the democratic pattern envisaged by the Constitution; and 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 power to override the constitutional scheme. No State can therefore be formed, admitted or set up by law under Article 4 by the Parliament which has not effective legislative, executive and judicial organs.*" (Emphasis applied)

(iv) **Mullaperiyar Environmental Protection Forum *versus* Union of India & Ors. (49)** *upheld the validity of Section 108 of the State Re-organization Act, 1956 and ruled that "the Constitution confers supreme and exclusive power on Parliament under Articles 3 and 4 so that while creating new States by re-organization, Parliament may enact provisions for dividing land, water and other resources; distribute the assets and liabilities of predecessor States amongst the new States; make provisions for contracts and other legal rights and obligations. The constitutional validity of law made under Articles 3 and 4 cannot be questioned*

(48) (1967) 2 SCR 109

(49) (2006) 3 SCC 643

on the ground of lack of legislative competence with reference to the Lists of the Seventh Schedule……". It was further held that "…..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 re-organization of the States." (Emphasis by us)

(v) **Jamshed N. Guzdar *versus* State of Maharashtra (50),** and a Full Bench decision of this Court in **Dayanand Anglo-Vedic College Managing Committee, New Delhi & Ors. *versus* State of Punjab & Ors. (51),** affirmed that a reorganization law may contain any supplemental, incidental or consequential provision as the Parliament may deem fit in order to effectuate the object of the Act;

(vi) In **State of Maharashtra *versus* Narayan Shamrao Puranik (52),** and ***(53)***, Section 51(3) of the Bombay Re-organization Act, 1960 empowering Chief Justice of the High Court to constitute more Benches was interpreted to hold that there was no time limitation for the Chief Justice to invoke such a power and that *"the Act is a permanent piece of legislation* o*n the statute book. Section 14 of the General Clauses Act, 1897 provides that, where, by any Central Act or Regulation, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion arises. The section embodies a uniform rule of construction. That the power may be exercised from time to time when occasion arises unless a contrary intention appears is therefore well settled.";*

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(50) (2005) 2 SCC 591

(51) AIR 1972 (P&H) 170

(52) (1982) 2 SCC 440 = 1982 (3) SCC 519

(vii) **Maganti Subramanyam *versus* State of Andhra Pradesh (54),** and **District Mining Officer & Ors. *versus* Tata Iron and Steel Co. & Anr. (55),** enunciate that in the absence of a specified duration, a Statute cannot be taken as a 'temporary Act' and it shall continue to be on the Statute Book unless repealed expressly or impliedly, as compared to a temporary Statute with a specified duration;

(viii) **Amrit Banaspati Co. Ltd. *versus* Union of India & Ors. (56),** lays down that the allegations regarding violation of a constitutional provision should be specific, clear and unambiguous and with relevant particulars in the pleadings;

(ix) In **Harishankar Bagla & Anr. *versus State* of Madhya Pradesh (57),** Section 3 of the Essential Supplies (Temporary Powers) Act, 1946 empowered the Central Government to maintain or increase supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices and to issue an order to recall or prohibit the production etc., whereas Section 6 laid down that "*any order made under Section 3* shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment *other than this Act"*. The Hon'ble Supreme Court interpreted Section 6 to hold that the said provision *"does not either expressly or by implication repeal any of the provisions of pre-existing laws; neither does it abrogate them. Those laws remain untouched and unaffected so far as the Statute Book is concerned. the repeal of a statute means as if the repealed statute was never on the Statute Book…"* and that *"…byepassing a certain law does not necessarily amount to repeal or abrogation of that law. That law remains unrepealed but during the continuance of the Order made*

(54) (1969) 2 SCC 96
(55) (2001) 7 SCC 358
(56) (1995) 3 SCC 335
(57) AIR 1954 SC 465

under Section 3 it does not operate in that field for the time being. The ambit of its operation is thus limited without there being any repeal of any one of its provisions." It was further held that *"Conceding, however, for the sake of argument that to the extent of a repugnancy between an order made under section 3 and the provisions of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any Act of the delegate, but the repeal is by the legislative Act of the Parliament itself. By enacting section 6 Parliament itself has declared that an order made under section 3 shall; have effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the Legislature itself has declared its will that way in section 6. The abrogation or the implied repeal is by force of the legislative declaration contained in section 6 and is not by force of the order made by the delegate under section 3. The power of the delegate is only to make an order under section 3."* (Emphasis applied)

(x) The aforesaid view was reiterated in **Meghraj Kothari *versus* Delimitation Commission & Ors. (58),** holding that once the Delimitation Commission has passed orders under Sections 8&9 and these have been published under Section 10(1), the orders would have the same effect as if they were the law made by Parliament itself;

(xi) In **VB Raju *versus* State of Gujarat & Anr. (59),** some Judges of the erstwhile High Court of Bombay were allocated to the High Court of newly formed State of Gujarat under the Bombay Re-organization Act, 1960 and the contention that such allotment amounted to their 'transfer' was turned down saying that so long as a provision of law promulgated by the Parliament can be considered as supplemental, incidental or consequential to the formation of a new State, it would be

(58) (1967) 1 SCR 400

(59) (1981) 1 SCC 1

enforceable even though it might amount to an amendment of certain provisions of the Constitution;

(xii) In **HH Shri Swamiji of Shri Amar Mutt & Ors. *versus* Commissioner, Hindu Religious and Charitable Endowments Dept. & Ors., (60),** the Madras Hindu Religious and Charitable Endowments Act continued to apply to South Kanara district which was formerly a part of the State of Madras but was transferred to the State of Mysore under the States Re-organization Act, 1956. The challenge to the application of Madras Act to one district only on the plea that it offended Article 14 was turned down observing that "*the Re-organization Act* was a temporary measure and its indefinite prolongation may attract Article 14 but the Court would go into such a *question only if proper pleadings to that effect are made*.";

(xiii) In **AV Nachane & Anr. *versus* Union of India & Anr. (61),** the challenge to the validity of Section 48(2-C) of Life Insurance Corporation Act, 1956 which was inserted retrospectively in 1981, was upheld relying upon ***Harishankar Bagla*** on the plea that Parliament itself has authorized the Central Government vide Section 48(2- C) to override the provisions of the Industrial Disputes Act, 1947. The decision in **Kishan Prakash Sharma & Ors. *versus* Union of India & Ors. (62),** is also to the same effect;

(xiv) **Maharashtra State Board of Secondary & Higher Secondary Education & Anr. *versus* Paritosh Bhupeshkumar Sheth & Ors. (63),** ruled that Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act for its efficacious implementation and any drawbacks in the policy incorporated in a rule or regulation will not render

(60) (1979) 4 SCC 642
(61) (1982) 1 SCC 205
(62) (2001) 5 SCC 212
(63) (1984) 4 SCC 27

it *ultra vires* and there is no scope of interference by the Court unless such provision suffers from any legal infirmity;

(xv) The decisions in *(a)* **NP Ponnuswami *versus* Returning Officer, Namakkal Constituency & Ors. (64);** (b) **Jyoti Basu & Ors. *versus* Debi Ghoshal & Ors. (65);** (c) **Rama Kant Pandey *versus* Union of India (66),** (d) **Thampanoor Ravi *versus* Charupara Ravi (67);** (e) **Kuldip Nayar & Ors. *versus* Union of India & Ors. (68);** & (f) ***K.* Krishna Murthy (Dr.) & Ors. *versus* Union of India & Anr. (69);** have been cited to reiterate that right to vote, if statutory in character, can be taken away by the competent Legislature at any time;

(xvi) **Sampat Prakash *versus* State of J&K & Anr. (70),** follows **Pranlal Lakhanpal's** case and, in the context of *vires* of Section 13-A of the Jammu & Kashmir Preventive Detention Act, 1964, holds that the power of the President under Article 370(1)(d) to bring the State of J&K within the ambit of the Constitution, subject to such 'exceptions' and 'modifications' as the President may deem necessary, are to be construed with widest possible amplitude and the word 'modify' may also mean to 'vary' i.e. to 'amend';

(xvii) **P K Sarin & Anr. *versus* State of UP & Ors. (71),** holds that the powers of the Governor under Article 237 of the Constitution which enables him to apply provisions of Chapter-VI (Subordinate Courts) of the Constitution and any Rules made thereunder for appointment to Judicial Services, in relation to any class or classes of Magistrates subject to such 'exceptions'

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(64) 1952 SCR 218
(65) (1982) 1 SCC 691
(66) (1993) 2 SCC 438
(67) (1999) 8 SCC 74
(68) (2006) 7 SCC 1
(69) (2010) 7 SCC 202
(70) AIR 1970 SC 1118
(71) (1995) 1 SCC 468

and 'modifications' as may be prescribed in the Notification, are unfettered by any restriction;

(xviii) **Commissioner of Commercial Taxes, Ranchi & Anr. *versus* Swarn Rekha Cokes and Coals Pvt. Ltd. & Ors. (72),** interpreted Sections 84 and 85 of the Bihar Re-organization Act, 2000 to mean that the provisions of a beneficial legislation which granted exemption from certain tax liabilities before reorganization of the State of Bihar, would continue to apply to the successor States also as there was no change of sovereignty and it was merely an adjustment of territories by re-organization of a State;

(xix) In **State of Meghalaya & Ors. *versus* KA Brhyien Kurkalang & Ors. (73),** paragraph No.19 (1)(b) of Sixth Schedule of the Constitution empowering the Governor to make regulations for peace and good governance in the hilly areas of the North-East States, was considered and such powers were held to be manifestly legislative without any limitations even in regard to matters in respect of which the Governor can promulgate a Regulation save as the requirement of the Presidential assent;

(xx) **DK Trivedi & Sons and Ors. *versus* State of Gujarat & Ors. (74),** lays down that there is no inherent or implied limitation in bringing into force a delegated legislation;

(xxi) **M /s. Atlas Cycle Industries Ltd. & Ors. *versus* State of Haryana (75),** states that mere failure to lay the delegated legislation before the House of Parliament does not affect its validity;

(xxii) **R . Rudraiah & Anr. *versus* State of Karnataka & Ors. (76),** explains the meaning of the phrase "for the removal of doubts" in the context of Section 72(3) of 1966 Act to say that the said provision is clarificatory and declaratory in nature;

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(72) (2004) 6 SCC 689

(73) (1972) 1 SCC 148

(74) (1986) Suppl. SCC 20

(75) (1979) 2 SCC 196

(76) (1998) 3 SCC 23

(xxiii)**State of Tamil Nadu *versus* P. Krishnamurthy (77),** reiterates that there is a presumption in favour of the constitutionality or validity of subordinate legislation and the burden to prove it otherwise lies on the one who attacks it;

(xxiv)**St. John's Teachers Training Institute *versus* Regional Director, NCTE (78),** prescribes that the only need for delegated legislation is that they are framed with utmost care and minuteness to adapt the Act to special circumstances and that the delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of Statutes;

(40) The Full Bench decisions of this Court in **Kashmir Singh *versus* Union of India (79); Gurleen Kaur & Ors. *versus* State of Punjab & Ors. (80); *Gurdit* Singh Aulakh *versus* State of Punjab & Ors. (81),** and a Division Bench decision in **SGPC *versus* Governor of Punjab (82),** are the hallmark cited to explain the legislative policy of the 1925 Act and the legal impact of the Notification dated 8th October, 2003 thereupon.

(41) We now advert to the contentions raised by Sh. Ashok Aggarwal, learned Advocate General, Punjab, who contended that :-

(i) the laws enacted by Parliament under Articles 2 & 3 for 'admission', 'establishment' or 'formation' of a new State(s) along with power to incorporate supplemental, incidental and consequential provisions under Article 4(1) coupled with the declaration enshrined in sub-Article (2) of Article 4 of the Constitution that "no such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368", equates such Parliamentary law with the Constitution itself;

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(77) (2006) 4 SCC 517
(78) (2003) 3 SCC 321
(79) RCR (Civil) 2003 (2) 501
(80) RCR (Civil) 2009 (3) 324
(81) AIR 1970 (P&H) 491
(82) 1959 PLR 620,

(ii) the supplemental, incidental or consequential provisions incorporated in a re-organization law are an integral part of the Constitution and so shall be the status of an order passed by an authority to whom power to issue such order has been entrusted;

(iii) the notification dated 8th October, 2003, in legal parlance, is equivalent to a provision of the Constitution, thereby limiting the scope of judicial review by this Court only on the ground that it runs contrary to the basic features of the Constitution;

(iv) the plurality of words like "provisions", "corporations" which find mentioned in Part-VII of the 1966 Act or the expression "general provisions" in the headnote of Section 72, are suggestive of the fact that the Parliament intended to widen the powers of the Central Government and therefore this Court need not construe these expressions narrowly;

(v) the directions issueable under Section 72 being the 'will' of Parliament, are essentially legislative in character, therefore even an administrative order issued thereunder in the name of the President of India shall be deemed to be statutory in nature.

(42) In their brief counter-reply learned counsel for the petitioners and the Advocate General, Haryana have explained that:-

(i) Articles 2, 3 or 4 of the Constitution are merely a source of power for the Parliament to enact a re-organization law on the same analogy as it may legislate on an assigned subject under Articles 245, 246 and 248 of the Constitution save as the distinction drawn by the Constitution itself, namely, that the law enacted under Articles 2, 3 & 4 cannot be questioned for want of legislative competence whereas the laws enacted under Articles 245, 246 or 248 are assailable on that ground also;

(ii) the petitioners need not question the *vires* of Section 72 of the 1966 Act as it neither delegates essential legislative functions nor it suffers from the vice of excessive delegation;

(iii) the power under Section 72 to issue directions or cause 'exceptions' or 'modifications' in the existing Central, State or Provincial Acts is exercisable by the Central Government to achieve the objects of Part-VII of the 1966 Act only; CWP No17771 of 2003.doc - **67** -

(iv) the Central Government has in its colourable exercise of power usurped the role of Legislature while pretending to modify the 1925 Act contrary to its legislative policy.

(43) We also acknowledge the assistance rendered by Prof. RD Anand (Retd.), now a member of the Bar, who on the basis of his incisive study highlighted as to how the Parliamentary power has been dismantled by frequently invoking power under Section 72 of the 1966 Act and the autonomy of the Panjab University, which he served for years, has been destroyed. Section 72 is said to have been misconstrued by the Central Government as a perennial source of power though it was transitional in nature to provide an *ad hoc* arrangement till the laws were framed by the respective successor States.

(44) The stage is now ripe to respond to the following preliminary submissions made on behalf of the contesting respondents:-

(i) that the scope and extent of power exercisable under Section 72 of the 1966 Act has already been explained by a five-Judge Full Bench in ***Kashmir Singh's*** case which has also been upheld by the Hon'ble Supreme Court; and

(ii) the question whether a 'Sehajdhari Sikh' who trims or shorns his hair is a 'Sikh' under Section 2(9) and/or eligible to cast his vote in terms of the qualifications prescribed under Sections 49 or 92 of the 1925 Act, has been authoritatively answered against the petitioners by a three-Judge Full Bench in ***Gurleen Kaur's*** case.

(45) The writ-petitioner in ***Kashmir Singh*** challenged his removal as a member of the Sikh Gurdwara Judicial Commission constituted under the 1925 Act on the plea that there was no prescribed tenure for a member of the Commission. The competence of the Government of Punjab to curtail his perpetual tenure in exercise of powers delegated to it by the Central

Government vide Notification dated October 19, 1978 issued under Section 72 of the 1966 Act, was also questioned. The Full Bench considered "*whether the Government of* India had power under Section 72 of the Punjab Re-organization Act to issue notification dated 19.10.1978 directing the substitution of the words 'the State Government' with the words 'the Government of the State of Punjab' in Sections 70, 71, 74, 78, 79 and 80 of the Sikh *Gurdwara Act, 1925?*" and partly approved the view earlier taken by a three-Judge Bench in **SGPC Amritsar & Ors. *versus* Lachman Singh Gill (83),** to the extent that *"unlike the other Corporations dealt with in Sections 67 to 71 of the Reorganization Act, there is no provision in Section 72, or for that matter in any other Section of the Re-organization Act, for dissolution of the Board as an inter-State body corporate, and its re-constitution in the divided four parts of the 'existing State of Punjab'. So the Board under the Act as an inter-State body corporate is intended to continue as such having power, authority and jurisdiction over all the four parts of the, 'existing State of Punjab'…" but with a rider that it shall so continue 'till such time other provisions, as have definitely been envisaged under the Act of 1966, have not been made.' The Full Bench considered the provisions contained in Part-VII of the 1966 Act and observed that "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 appears 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 area in respect of which it was functioning and operating immediately before the appointed day until other provision was made by law, as has been specifically provided in sub-section (1)*

(83) AIR 1970 (P&H) 40

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

(46) Section 72 of the 1966 Act was thus unarguably held to be a supplemental, incidental and consequential provision within the meaning of Article 4(1) of the Constitution and due to expansion of the area of operation of the Board into four successor States, the Full Bench upheld the Notification dated 19th October, 1978 modifying the words "State Government" as "Government of State of Punjab" as it was necessitated to give effect to the scheme of re-organization.

(47) The Hon'ble Supreme Court while upholding the Full Bench decision in **Kashmir Singh *v.* Union of India & Ors. (84),** laid down that *"by reason of the notification dated 19.10.1978, the Central Government has not delegated its power. The 1966 Act has an extra-territorial application. It is not in dispute that no law has been enacted either by the State of Haryana or by the State of Himachal Pradesh. In absence of any law having been enacted to the contrary, the functions under the 1966 Act must be performed by some authority. The Central Government with the consent of the State of Haryana has merely nominated the State of Punjab to do so. By reason thereof, it has not delegated any power. Sub-section (1) of Section 72 of the 1966 Act envisages a direction upon the Central Government. Such a direction has been issued by reason of the impugned notification. When a power has been conferred upon the State of Punjab by the Central Government, it exercises a statutory power. It would, therefore, not a case where the functions of the State Government must be held to be confined to its territorial jurisdiction."*

(48) These two decisions, in our humble view, do not hold that the power to 'modify' conferred by Section 72 of the 1966 Act includes the power to 'amend' a Central Act, State Act or Provincial Act, as no such plea was raised, argued or answered expressly or impliedly. Similarly, the determination of legislative policy of the 1925 Act or the effect of Notification dated 8th October, 2003 thereupon, was not an issue considered in those decisions, directly or indirectly.

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(84) (2008) 7 SCC 259

(49) The writ-petitioners in ***Gurleen Kaur*** aspired for admission to MBBS Course in Shri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar which is a Sikh Minority Un-aided Institution established and run by SGPC (Board) and which has reserved 50% seats for 'Sikh' candidates who are residents of India and fulfill other eligibility conditions. The **NOTES** in the Admission Brochure prescribed that *"(i) a candidate will be considered Sikh/belonging to Sikh Community if he practices the Sikh faith, and maintains Sikh appearance, i.e. he/she does not cut or trim hair and wears turban (in case of male candidates) and has the word "Singh/Kaur" with his/her name, has faith in the Ten Sikh Gurus and Sri Guru Granth Sahib only, and does not owe allegiance to any other sect or religion; and (ii) a male Sikh candidate who does not presently bear the suffix "Singh" and a female Sikh candidate the word "Kaur" with his/her name…..".* The male and female candidates were additionally required to submit their respective affidavits in the prescribed formats as a proof of the abovereproduced mandatory conditions.

(50) The writ-petitioners in ***Gurleen Kaur*** who were born in Sikh families were denied admissions against the seats reserved for Sikh minority community for the reasons that the doctors who examined them at the time of counseling found that *"they were indulging in trimming their hair in case of male students, and plucking hair of their eyebrows in case of female students."* A Division Bench of this Court framed seven questions of law including the following and referred the matter to a larger Bench :-

> *"(ii) Whether a person who trims, shaves, plucks etc. or otherwise removes or reduces/shortens his/her bodily hair is not a Sikh?*
>
> *xxx xxx xxx*
>
> *(iv) Whether all Amritdhari Sikhs, Sehajdhari Sikhs, Keshadhari Sikhs and Patits are within the larger definition of Sikh as contained in section 2 (9) of Sikh Gurudwara Act, 1925, if not, whether the division of Sikhs into Amritdhari Sikhs, Sehajdhari Sikhs, Keshadhari Sikhs and Patits in section 2(10), 2(10A) 2(11) respectively of the Sikh*

Gurudwara Act, 1925 is ultra vires the provisions of section 2(9) of the said Act? and whether the classification of Sikhs in 4 categories is a valid classification?

xxx xxx xxx

(vii) Can a minor student be refused admission if he/she trims, shaves, plucks etc. or otherwise removes or reduces/ shortens his/her bodily hair ?"

(51) The Full Bench in its quest to search for the answers considered several factors like (i) historical background of the Sikh religion; (ii) legislative enactments involving the Sikh religion; (iii) Sikh *Rehat-Maryada* (code of Sikh conduct & conventions); (iv) Sikh *Ardas*; (v) Sri Guru Granth Sahib; (vi) the views expressed by experts on the subject of Sikhism; and (vii) opinion of the intervenors. The Full Bench in paragraphs 34 to 44 of the decision referred to the definitions of 'Sikh', 'Amritdhari Sikh', 'Sehajdhari Sikh' and 'Patit' as contained in the 1925 Act including the 'amendments' incorporated therein vide the impugned Notification dated 8th October, 2003. The Bench also took into consideration the contents of two affidavits dated 05.12.2008 and 16.01.2009 placed on record by the SGPC, the relevant parts whereof are extracted below:-

"…..As per section 2(10-A) a Sehijdhari Sikh is a person (i) who performs ceremonies according to Sikh rites; (ii) who does not use tobacco, kutha, Halal meat in any form; (iii) who is not a Patit (Apostate), and (iv) who can recite Mulmantra (Proem to Sri Guru Granth Sahib). The word sehijdhari consists of two words; Sahaj= slowly; dhari= to adopt. Hence Sehijdhar Sikhs are those novices who were born in non-Sikh families, and who expressed their desire to adopt Sikhism slowly and gradually, adopt its doctrines, ethics and tenets with belief in Shri Guru Granth Sahib and ten Gurus. A Sahajdhari, therefore, is a novice who has entered the path of Sikhism, and he will continue to be so till he fully accepts the moral and spiritual vows of Sikhism, to be called a practicing Sikh professing Sikhism. Once a Sahajdhari becomes a Keshadhari Sikh, he under no circumstances by cutting/trimming his/her hair, beard, eye-

brows in any manner can claim to be a Sehijdhari Sikh. Similarly, a Sikh born into a Sikh family cannot claim to be a Sahajdhari Sikh by trimming/cutting his/her hair, beard or eye-brows in any manner."

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xxx xxx xxx

"As per section 2(10-A) and 2(11) of the Sikh Gurdwara Act, 1925, Sahajdhari Sikh is that person:-

(i) Who performs ceremonies according to Sikh rites;

(ii) Who does not use tobacco or Kutha in any form;

(iii) Who is not a "patit"; and

(iv) Who can recite mul mantar;

2(11) 'Patit' means a person, who being a Keshadhari Sikh, trims or shaves his beard or Keshas or who after taking amrit commits any one or more of the four kurahits.

It becomes clear from a perusal of both these subsections that "Sehijdhar Sikh" and "Patit" are two separate entities. Subsection says that any keshadhari Sikh, who cuts/trims his hair and beard, is a patit. So, it is clear that a person "who cuts/trims his beard/hair, although he might be performing his ceremonies like Sikhs, he might not be using tobacco, kutha meat in any form and could recite 'Mul Mantar', he cannot be a Sahajdhari, because he cuts/trims his hair and beard and as per the sections mentioned above of this Act, he cannot be a "Sehijdhari Sikh".

(52) The Full Bench thereafter concluded that :-

'Having given our thoughtful consideration to the contentions advanced by the learned counsel for the rival parties, we express our satisfaction, and accordingly affirm, the interpretation of the provisions noticed hereinabove at the hands of the learned counsel for respondent No.2. In our

considered view, a Sikh, essentially is a person who professes the Sikh religion. To determine, whether or not, a person professes the Sikh religion, it would have to be determined, whether or not, he abides by the "Sikh rehat-maryada". We are also of the view, that for defining the term Sikh, sub-sections (9), (10), (10-A) and (11) of [sic] 2 of the Gurdwara Act of 1925 will have to be interpreted harmoniously, so as to give true effect to the intent of the legislation. From a collective reading of the aforesaid subsections of Section 2 of the Gurdwara Act of 1925, we are of the view, that the aforesaid legislative enactment postulates different levels/grades of Sikhs. The lowest grade/ level envisaged under the Gurdwara Act of 1925 is a "sehajdhari Sikh". A "sehajdhari Sikh" as noticed above, is essentially a "keshadhari Sikh" (i.e., one who maintains his hair unshorn). The uppermost level/grade of a Sikh under the Gurdwara Act of 1925 is an "amritdhari Sikh". The Gurdwara Act of 1925 refers to the term "patit" as a Sikh who has fallen from grace. A "patit" is one who inter-alia "shaves his beard or keshas". A "patit" is not entitled to any benefit of office or authority under the Gurdwara Act of 1925. In other words, a "patit" is one who is excluded from the benefits which a Sikh can claim under the Gurdwara Act of 1925. Thus read, besides understanding the minimum requirements so as to be termed as a Sikh, one must adhere to the tenet of keeping ones hair uncut. In the absence of adherence with the instant tenet, the individual would fall within the term defined as "patit" as he/she does not maintain his/her hair unshorn. Essentially, it is imperative for us to conclude, that the lowest form of attainment to enter the fold of the Sikh religion under the Gurdwara Act of 1925, is a "sehajdhari Sikh", and that, to be a "sehajdhari" Sikh, a Sikh who has to be a "keshadhari" (one who maintains his hair unshorn).' (Emphasis applied)

(53) The Full Bench further categorically clarified that the observations reproduced above are limited to the definition of term 'Sikh' under the Gurdwara Act, 1925 and not for others. In para 46 of the decision, Sections 45, 46 & 49 of the 1925 Act (the last one as amended vide Notification dated 8th October, 2003) were distinctively considered before concluding that *"a collective perusal of the aforesaid provisions reveals, that a Sikh who is not a "patit" i.e. a "keshadhari", has the right to be on the electoral rolls. As such, the right to vote, is only vested in a "keshadhari Sikh". Despite being a "keshadhari", and as such, a "sehajdhari Sikh", a person cannot be elected to the Board of the SGPC unless he has proceeded to acquire the higher form as an "amritdhari Sikh". A person cannot be nominated as a member of the Board, if he is a "patit". He must, therefore, be a "keshadhari Sikh", and as such, must be satisfying the requirements of a "sehajdhari Sikh" even for being nominated to the Board of the SGPC."*

(54) The elucidative decision of the Full Bench has eloquently summed up the progressive philosophy that one does not acquire Sikh religion by birth itself unless he/she believes, professes and abides by Sikh tenets and strictly observes the prescribed 'Code of Conduct'. The factual, religious and historical narrations coupled with the legal coats given thereto, re-affirm that the Sikh religion is like a flowing stream of pure values inviting those who believe in its purity but discarding the ones who intend to pollute it.

(55) We have, however, no reason to doubt that the principles of law and true meaning of 'Sikh or 'Sikh religion' has been propounded in ***Gurleen Kaur*** on a due consideration of the existing provisions of 1925 Act including those 'modified' or 'amended' vide notification dated 8th October, 2003. As the said Notification was not under challenge in ***Gurleen Kaur***, the Full Bench decided the issues raised before it keeping in view the law as it existed at the relevant time. With utmost humility at our command, we state that ***Gurleen Kaur*** rightly interpreted the prevailing law in the context of the specific issue raised before it in relation to the prescription of eligibility for admission to the seats reserved for candidates belonging to 'Sikh' minority community in a professional college established and run by the SGPC (Board).

(56) The issues raised before us, on the contrary, are totally distinct and distinguishable to those answered in ***Gurleen Kaur***. This view of ours is fortified by the following order dated May 30, 2009 passed by the Full Bench in the instant case while segregating it from ***Gurleen Kaur's*** case :-

> *"The controversy raised in the instant writ petition is separate and distinct from the controversy raised in Gurleen Kaur and others v. State of Punjab and others (CWP No.14859 of 2008, decided on 30.5.2009).*
>
> *In view of the above, the instant writ petition be separated for the purpose of disposal from CWP No.14859 of 2008….."*.

(57) There can otherwise be no apparent contradiction if the legislature deems it appropriate to confer right to franchise on 'Sehajdhari Sikhs' even if they trim or shave their beards or keshas subject to their fulfilling other qualifications prescribed by it *vis-à-vis* the 'eligibility conditions' laid down by the SGPC (Board) including trimming, shaving, plucking or removing of hair as a fatal disqualification for admission of a 'Sikh' candidate to the seats reserved for 'Sikh' minority community in a professional college established and run by it. The barriers prescribed for participation in a democratic set-up like election of Members of the Board or Committees constituted under the 1925 Act need not be of the same character as the barriers that limit access to admission against 'Sikh' minority quota seats.

(58) The marathon contentions advanced before us and the voluminous records referred to by counsel for the parties, broadly give rise to the following points for our consideration :-

(i) Does the Constitution assign any superior or special status to a law enacted by Parliament under Articles 3 & 4 as compared to those legislated under Articles 245 and 246?

(ii) What is the nature and scope of supplemental, incidental and consequential powers exerciseable by the Parliament under Article 4(1) of the Constitution wherever deemed necessary?

(iii) Whether the Re-organization Act or an act of a delegate thereunder is deemed to be an integral part of the Constitution and not justiciable except on the ground of violation of the basic structure of the Constitution?

(iv) What is the scope and extent of the power exercisable by the Central Government while 'modifying' a Central Act, State Act or Provincial Act under Section 72(2) of the 1966 Act and does it amount and include the power to 'amend' such laws?

(v) Whether Section 72 of the 1966 Act is an enabling provision or it carries a 'command' to 'modify' the Laws and whether such 'modification' partakes the character of Parliamentary legislation?

(vi) Whether the 'modifications' made in Sections 49 and 92 of the 1925 Act by the impugned Notification, achieve any supplemental, incidental and consequential object of re-organizing the erstwhile State of Punjab under the 1966 Act?

vii) Whether prescription of eligibility for the 'electors' and/or the right to vote granted to a class of people by the Legislature under 1925 Act is an inseparable part of its legislative policy, and if so, can any change in the eligibility conditions or such a right be taken away in exercise of the delegated legislative powers?

(viii) Whether the impugned notification suffers from the vice of non-application of mind or arbitrariness?

(59) The answers to most of the issues short-listed above are no longer *res integra*, however, for correct application of the settled principles, we propose to divide these issues into four broad groups comprising (A) The Constitution and the Issues ancillary thereto [points no.i to iii]; (B) The Punjab Re-organization Act, 1966 and the Issues ancillary thereto [points no.iv to vi]; (C) The Sikh Gurdwara Act, 1925, its Legislative Policy and Issues ancillary thereto [point no.vii]; and (D) Procedural Fairness [point no.viii].

(A) The Constitution and the Issues Ancillary thereto :

(60) The legislative competence of Parliament to re-organize a State and to enact supplemental, incidental and consequential provisions in relation thereto lies in Articles 3 & 4 of the Constitution which read as follows:-

> **"3. Formation of new States and alteration of areas, boundaries or names of existing States. –**
>
> *Parliament may by law—*
>
> *(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;*
>
> *(b) increase the area of any State;*
>
> *(c) diminish the area of any State;*
>
> *(d) alter the boundaries of any State;*
>
> *(e) alter the name of any State :*
>
> *(Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States ***, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.)*
>
> *2[Explanation I.—In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.*
>
> *Explanation II.—The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.]*

4. Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters. –

(1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

(61) Similarly, the power to legislate on the subject matter of "Management of affairs of the Religious Endowments and Religious Institutions" is referable to Entry-28 of List-III [Concurrent List] in the Seventh Schedule of the Constitution.

(62) Our Constitution acknowledges the theory of separation of powers amongst the Legislature, the Executive and the Judiciary, though it also permits the functional overlapping. None out of the three limbs is superior, supreme or sovereign over the others as only the Constitution reigns supreme. The Parliament, the Executive or the Judiciary or for that matter even the head of the Nation, owe their existence to the Constitution and while performing their repository duties, none of them is expected to overtake the field assigned and occupied by the other functionary. The incontrovertible Constitutional scheme is a perfect balancing act of assigning different and distinct fields yet there runs an under-current of interdependency amongst these organs.

(63) The unique feature that makes the Indian Constitution standout is that even though it entrusts all the paramount legislative functions to Parliament or State Legislatures, as the case may be, yet it permits the President or the Governor of a State and the Constitutional Courts to legislate in certain areas without undermining the authority of Parliament or

the State Legislatures. Judiciary though is the sole custodian of justice delivery system, however, the Constitutional functionaries like the President or the Governor of a State and even the Executive too have been assigned judicial or quasi-judicial functions without tinkering with the independence of Judiciary. The only curb on the exercise of powers by different organs of the State is the Constitution and all the three wings are subservient to it. The Parliament obviously is no exception as well.

(64) The scheme of formation of a new State as envisaged by the Constitution enables the Parliament to enact a law under Article 3 by separating some territory from any State or by uniting two or more States or part(s) of States or by uniting any territory to a part of any State. Such a law may increase or diminish or alter the boundaries or may also change the name of a State. The Parliamentary power to re-organize a State in the manner stated above is subject to the caveat lodged by *proviso* to Article 3 which is a pre-condition for the introduction of a Re-organization Bill.

(65) Article 4(1) of the Constitution in its first part mandates that the law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First and Fourth Schedule as may be necessary. We may hasten to add here that while the First Schedule gives details of the territories of each State, the Fourth Schedule provides for the allocation of seats in the Parliament.

(66) It is manifest that if the Parliament decides to increase, diminish or alter the boundaries of a State in order to form a new State etc., the First and Fourth Schedules of the Constitution shall have to be altered, therefore, the 'Law' referred to in Article 3 must respond to such consequential changes. The second part of Article 4(1) of the Constitution enables the Parliament to incorporate in the Reorganization law the supplemental, incidental and consequential provisions including for the purpose of representation in parliament or state legislatures.

(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.

(68) The Re-organization law also for all intents and purposes, is a Parliamentary legislation though plenary and special in the sense that it is driven by the force of Articles 2, 3 or 4 of the Constitution. Even a Re-organization law, like any other Statute, is inferior to the Constitution and cannot arrogate itself to the status of the Constitution. The only special privilege admissible to such a law is that its legislative competence is not justiciable as the Constitution in *totidem verbis* authorizes the Parliament to enact such law. The power of judicial review of a Constitutional Court, whenever a ReCWP organization law is susceptible to tinkering with the basic structure and framework of the Constitution, has not been and cannot be taken away by Parliament even by way of its constituent power.

(69) The contention that a re-organization law, once enacted, becomes part of the Constitution without any deemed amendment or that such a law is not amenable to judicial review reveals abysmal ignorance of the fact that Parliamentary power embedded in Articles 2, 3 or 4 is not a constituent power like the one under Article 368 and the misconception seemingly flows from the misconstruction of sub-Article (2) of Article 4 of the Constitution. We say so for the reason that the plain language of Article 4(2) unambiguously unfolds that the law enacted under Article 4(1) shall not be deemed to be an amendment of the Constitution for the purposes of Article 368. The changes in the First and Fourth Schedule of the Constitution brought in by a re-organization law may not be construed as an alteration in the Constitution, hence Article 4(2) removes the doubt and declares that such like consequential changes in the Schedules shall not be treated as an 'amendment' of the Constitution, for which the Parliament is obligated to follow the procedure mandated by Article 368. The Constitution itself thus pronounces that the modifications in the First and Fourth Schedules shall not amount to any change in its principal character.

(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.

(71) The only distinguishable feature worth noticing is that while a Parliamentary legislation referable to Part XI (comprising Articles 245 to 255) can be questioned on the twin test of (i) the lack of power to legislate; and/or (ii) violation of the mandate of the Constitution, but the law enacted by Parliament under Articles 2,3&4 can be assailed only on the solitary ground that it violates the Constitutional scheme. It follows that Parliament has no authority to enact a re-organization law in derogation of the ideology of the Constitution. The phrase "supplemental, incidental and consequential" is to guide and aid the Parliament to re-organize a State in conformity with the democratic set-up visualized by the Constitution.

(72) The exalted status sought to be given to a Re-organization Act in comparison with the laws enacted by Parliament after 'declarations' of supremacy of Union in 'public interest' referred to in Entries 52, 53, 54 or 56 of List I – Union List, also does not epitomize such reorganization law or the Statutes enacted after the 'declarations' referred to above, equivalent to the Constitution. We, however, express no opinion as to whether or not the 'declaration' made by Parliament while enacting a law with reference to the abovementioned Entries is justiciable as no such issue, directly or indirectly, arises for our consideration.

(73) The discussion on the Constitutional provisions in relation to the enactment of a Re-organization law and other allied issues may thus be summarized as follows:-

(a) the Parliament has got plenary legislative power to alter the boundaries of any State, to diminish its area and also the power to admit, establish or form new States;

(b) the law-making power under Articles 3&4 is paramount and is not subjected to nor fettered by Article 246 or the Seventh Schedule of the Constitution;

(c.) the re-organization law enacted under Articles 2, 3 & 4 of the Constitution may alter or amend the First and the Fourth Schedules which set out the names of the States, description of their territories and allocation of seats in the Parliament etc.;

(d) the Re-organization law may also have supplemental, incidental and consequential provisions to establish Legislative, Executive and Judicial organs of the State, expenditure and distribution of revenue, apportionment of assets and liabilities etc. etc.;

(e) the newly-formed State under a Re-organization law must conform to the democratic pattern ingrained in the Constitution;

(f) the Parliamentary power to admit, establish or form a State is not meant to override the Constitutional scheme, hence no State can be formed or admitted by law which has no Legislative, Executive and Judicial organs;

(g) the Constitutional validity of law made under Articles 3&4 though cannot be questioned on the ground of lack of legislative competence yet can be assailed if it violates the Constitutional provisions;

(h) a re-organization law though effectuates alterations in First and Fourth Schedules of the Constitution but such changes do not amount to 'amendment' of the Constitution within the meaning of Article 368 nor such a law can be equated with the Constitution;

(i) a re-organization law is perpetually operative and is not a 'temporary Act' and powers thereunder may be exercised any time save as it is abated by express or implied repeal;

(B) <u>The Punjab Re-organization Act, 1966 and Issues ancillary thereto:</u>

(74) In the absence of consentaneity amongst counsel for the parties, the central issue for us appears to be the determination of the outer limit of the directions that may be issued by the Central Government under Section 72 of the 1966 Act.

(75) The unambiguous object of the 1966 Act is firstly to: re-organize the erstwhile State of Punjab; form the new States of Punjab, Haryana and Union Territory of Chandigarh; transfer certain areas of Punjab to Himachal 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-VII 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.

(76) It is understandable at ease from Part VII that the object behind the provisions incorporated therein is to facilitate the 'functioning' and 'operation' of a body-corporate which serves the needs of the successor States or has become an 'inter-State body corporate' by virtue of the re-organization of the erstwhile State of Punjab. Section 67 of Part-VII therefore specifically provides that the bodycorporates, namely, (a) State Electricity Board constituted under the Electricity Supply Act, 1948 and (b) the State Warehousing Corporation established under the Warehousing Corporation Act, 1962 shall continue to function in those very areas where they had been functioning immediately before the 'appointed day' subject to such directions as may be issued by the Central Government including *"….a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit"* and subject to the time limit or constitution of their own Electricity Board or Warehousing Corporation by the successor States under sub-Sections (3) & (4) of Section 67.

(77) Similarly, Section 68 embodies an arrangement for generation and supply of electricity power and water to the successor States whereas Section 69 deals with the Punjab State Financial Corporation in the same manner as the State Electricity Board or the Warehousing Corporation have been dealt with by Section 67 of the Act.

(78) Section 70 amends the Multi-Unit Co-operative Societies Act, 1942 and adds Section 5(c) therein to deal with the transitional functioning of certain multi-unit co-operative Societies. Section 71 authorises the Co-operative Banks to continue functioning without obtaining fresh licence from the Reserve Bank of India, notwithstanding it being a condition stipulated in Section 22 of the Banking Regulation Act, 1949.

(79) Then comes Section 72 of the 1966 Act whereunder the impugned notification dated 8th October, 2003 has been issued and which according to the petitioners, carries the same meaning and object as assigned to Sections 67 and 69, for they are broadly *pari materia* except that Sections 67 and 69 deal with a specified Board or Corporation(s) whereas Section 72 occupies the field in relation to unidentified body-corporates serving the needs of the successor States or have become inter-State body corporates.

(80) It is one of the settled rules of construction that every Statute must be interpreted *ex visceribus actus* i.e. within the four corners of the Act. A Statute need to be read as a whole to gather the intention of the Legislature. The meaning of the words and expressions used in an Act also must take their colour from the context in which they appear. It was held in **Darshan Singh *versus* State of Punjab (85),** that words and phrases occurring in a Statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and of the object of the Act itself. **Tulasamma *versus* Shesha Reddy (86),** ruled that it is an elementary rule of construction that each provision of a Statute should be construed with reference to the context and not in isolation and also in the light of the other provisions of the Statute so as, as far as possible, to make a consistent enactment of the whole Statute. These principles have been reiterated by their Lordships in more than one subsequent decisions also.

(81) In the light of the settled principles cited hereinabove, it goes without saying that for their correct analysis, Section 72 or for that matter Part VII cannot be divorced from other Parts of the 1966 Act and must be read in conjunction with them.

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(85) AIR 1953 SC 83

(86) (1977) 3 SCC 99

(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 re-organization of the State of Punjab becomes an inter- State body corporate as on the appointed day i.e. 1st 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,

(85) It may be seen that the Legislature has chosen exactly the same phraseology in Sections 67(1) and 72(1) of the 1966 Act. One of the cardinal principle of interpretation of Statutes is that a word which occurs more than once in the same Act should be given the same meaning throughout the Act, unless the context shows that the Legislature has used the word in a different sense. Since no different legislative intent is foreseeable or can be inferred from the plain reading of the provisions of Part-VII, we hold that the nature and extent of directions that may be issued by the Central Government under sub-Section (1) of Section 72 shall be similar to those which it can issue under Section 67(1) in respect of the State Electricity Board or the State Warehousing Corporation, namely, for continuation of their function in those areas in respect of which they were functioning immediately before the appointed day. In other words, the directions to be issued by the Central Government under both the provisions are transitional in nature for functional continuation of the body corporates until the competent Legislature(s) steps in and enacts an appropriate law.

(86) Since sub-Section (2) of Section 72 is *pari materia* to Sub-Section (2) of Section 67 and both are the second limb of the main Sections, we firstly propose to understand the import of Section 67(2) for a concise understanding of Section 72(2) of the 1966 Act. Section 67(2) cannot be construed in isolation or independent of its sub-Section (1) and if both are read together, it is indelible that the direction which the Central Government may issue under sub-Section (1) in respect of the State Electricity Board or the Warehousing Corporation may include a further direction that after the 'appointed day', the Act under which the said Board or Corporation was constituted shall, on continuation of their functioning in the areas which have fallen to the share of the successor States, apply to the said Board or Corporation subject to such 'exception' and 'modification' as the Central Government may deem fit. To simplify and put it differently, the 'exception' or 'modification' to be caused by the Central Government in the Act(s) under which the Electricity Board or the Warehousing Corporation were

established, must directly relate to the jurisdictional expansion of the functioning of the said Board or Corporation from a single to more than one State, namely, the successor States after the erstwhile State of Punjab stood reorganized.

(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 must 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.

(88) The word 'exception' as defined in Black's Law Dictionary to mean "something that is excluded from a rule's operation", is largely accepted. The Oxford English Dictionary defines it as "a person or thing that is excluded from a general statement or does not follow a rule". Merriam Webster Dictionary says that 'exception' is "something that is different from what is ordinary or expected". The Cambridge Dictionary explains that 'exception' is "someone or something that is not included in a rule, group or list or that does not behave in the expected way". It thus appears that

'exception' is a rule of exclusion or a provision exempting persons or conduct from a Statute's operation. There can be a variety of exceptions in a Statute like a *proviso* or a *non obstante* clause etc. The object of an 'exception' is to limit or restrict the operation of the principal provision and applying this literal and purposive meaning to the word 'exception' in sub-Section (2) of Section 72, it appears that the Central Government may impose some restrictions or cause limitations on the applicability of 'law' to an inter-State body corporate though no such restrictions or limitations have been added by the Legislature.

(89) The word 'modification' has been the subject matter of interpretation in more than one decision, some of which have been cited before us. In (i) ***Laxmi Narain & Others*** and (ii) ***Authorised Officer & Anr. v. S. Nagantha Ayyar***, 'modification' was given a restrictive meaning *"to adjust, adapt and make the enactment suitable… and for carrying it into operation"* and that it does not include '**a change in any essential feature of the enactment or the legislative policy built into it'**, while in ***Pranlal Lakhanpal***, the Presidential power of 'modification' under Article 371(D) of the Constitution has been given the widest effect to include 'amendment' also. The decision in ***Sampat Prakash*** also interprets the same Constitutional provision and reiterates the expansive meaning given in ***Pranlal Lakhanpal***. ***PK Sarin & Others*** also defines the power of 'modification' vested with the Governor under Article 237 of the Constitution and holds it unfettered by any restriction.

(90) The lexicon meaning of the expression 'modification' may be further supplemented to denote "a change to something; an alteration, a qualification or limitation of something" (Ref. Black's Law Dictionary). Merriam Webster defines it as "the act, process or result of making different".

(91)There is no mystery in it as to why the word 'modification' has received 'restrictive' and 'expansive' meanings from the Apex Court in the above-cited decisions, though in all the cases it intended to define the power to change or alter certain provisions of a Statute by an 'authority' other than the Legislature. It is well-settled in a catena of decisions that a word when used in more than one Statute may not necessarily yield the same meaning and may be interpreted differently, if the legislative intent so warrants. A

five-Judge Full Bench of this Court in **AK Ahlawat and others *versus* State of Haryana and others (87),** held that *"as regards the* use of same word or phrase in two different legislations, it is well known that the same word when used in two different Statutes dealing with distinct subjects, may carry different meanings."

(92) A Parliamentary enactment or an Act of the State Legislature is always subject to the Constitutional limitations as the power to enact such laws is drawn from the Constitution only. The Parliament or the State Legislatures have been predominantly entrusted with the power to legislate on the subjects either expressly embodied in one or the other principal provision or the Seventh Schedule of the Constitution. Article 370(1)(b) of the Constitution limits the power of Parliament to make laws for the State of J&K except with the approval of the President and as per Clause (d) thereof, the President is empowered to carve out such 'exceptions' and 'modifications' as he may by order specify for the applicability of other provisions of the Constitution to the State of J&K. The Constitution itself has thus empowered the President not only to restrict legislative powers of the Parliament with respect to the State of J&K but also to curtail the applicability of other provisions of the Constitution in that State. Since the Constitution itself endows the head of the Nation with the power of 'modification', it is too late in the day to question or read any limitation into it. The power drawn from the Constitution can be subject to the restrictions, if any, imposed by the Constitution only. On the same analogy, when the Constitution has authorized the Parliament or the State Legislatures to enact laws, the delegation of legislative power by them is impermissible unless such delegation is traceable in the Constitution.

(93) Thus the phrase 'modification' whenever used by the Legislature in an enactment has got a restrictive meaning but has been construed differently and given unrestricted essence, including the power of 'amendment', if found embedded in a Constitutional provision with an intent to confer constituent powers on the President or the Governor of a State.

(94) The afore-explained distinction and the understanding of the consistent *ratio decidendi* of the decisions commencing from the ***in re Delhi Laws (1951)*** to ***Vasudev Singh and others (2006)*** etc., lead us

(87) 2010(3) RSJ 730

to an irresistible conclusion that wherever the phrase 'modification' finds mention in a Legislative enactment to confer the power of 'modification' of the same or any other Statute, such power shall be subject to the settled proposition that it does not, and can not, authorize the delegate to change the essential features of the enactment or the legislative policy built into it. The same interpretation, however, may not be true when the phrase 'modification' is rooted in a provision of the Constitution.

(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 Parliament, 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 Corporations 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.

(98) Since the power exercisable by the Central Government under Section 72 is acknowledged as a delegated legislative power on behalf of the Union of India, we revert back to one of the principal contentions hedging around the radius of power exercisable by a delegate. The legislation is divided between 'primary legislation' enacted by Parliament or the State Legislatures and 'delegated legislation' promulgated by the Executive. While primary legislation sets out matters of policy and substance, the task of its implementation is delegated to the Executive. The delegated legislation, however, exists because Legislature provides for such powers in a Statute. The necessity of Legislature delegating its authority to the Executive is also a part of the legislative power as a whole vested under Article 245 of the Constitution though such delegation cannot be uncanalised or unguided. The case law cited *in extenso* resolutely concludes that:-

(a) essential legislative function comprising determination of the legislative policy and its formulation as a binding rule of conduct must be retained by the Legislature itself;

(b) the Legislature may entrust ancillary and subordinate legislative powers to an authority but such entrustment cannot be unbridled or absolute;

(c) the essential legislative policy and the guidelines to be kept in view by the delegate must be laid down by the Legislature itself;

(d) the Parliament or State Legislature cannot abdicate their legislative functions to the delegate;

(e) the excessive, uncontrolled or unguided delegation of powers is abhorrent to the theory of separation of powers under our Constitution as the Legislature can neither create a parallel Legislature nor destroy its Legislative power.

(99) The delegated legislative power is exercisable subject to observance of the binding principles by the delegate including that :–

(a) the authority exercising delegated power may modify a law but not the essential features of its declared legislative policy;

(b) it is exercisable to implement and achieve the object(s) of a Statute within the framework of the legislative policy;

(c) every delegate is subject to the authority and control of the principal and exercise of delegated power can always be directed, corrected or cancelled by such principal;

(d) the delegate in the garb of making rules etc. cannot legislate on the field covered by the Act;

(e) the power of 'modification' entrusted to a delegate does not include any change of policy and is restricted to alteration of such a character which keeps the legislative policy of the Act intact and introduces such changes as are appropriate to local conditions.

(100) The decisions cited to suggest contrarily including ***Hari Shankar Bagla,*** in our considered view, do not draw a different line as in that case also it was held that the repeal was not by an act of the delegate but by the legislative Act of Parliament itself. Similar interpretation was given to the provisions in ***Meghraj Kothari, AV Nachane & Others*** & ***Krishan Prakash Sharma***. The decision in ***Maharashtra State Board of Secondary and Higher Secondary Education and Other***, nowhere, expressly or impliedly, upholds the authority of the delegate across the legislative policy.

(C) **The Sikh Gurdwara Act, 1925, its Legislative Policy and Issues ancillary thereto:**

(101) It has been noticed earlier that the 1925 Act was enacted to provide for better administration of 'Sikh Gurdwaras' and for inquiry into the matters and settlement of disputes connected therewith. The 1925 Act is divided into three parts, each containing separate Chapters. Part-I provides for the composition of a Tribunal to decide claims made under the Act whereas Part-II enables two or more persons to institute a Civil Suit with prior consent of the Deputy Commissioner of the area concerned for the declaration that a Gurdwara not notified under the Act also falls within its ambit and is liable to be managed by a Committee constituted under the Act. Part-III of the Act bars the jurisdiction of a Civil Court for claiming any relief in respect of the management or administration of a notified 'Sikh Gurdwara'. It also vests the control of 'Sikh Gurdwaras' with the Committee(s) or the Board, as the case may be. It further provides for the constitution and composition of the Sikh Gurdwara Prabandhak Committee – a body corporate known as the Board as well as the Committees to manage the affairs of each Gurdwara. Part-III also prescribes qualifications for the 'Elected' members of the Board and the Committees as well as their constituencies. Similarly, the eligibility conditions including disqualifications of the 'Electorals' are also laid down along with the 'right to vote' to every person registered on the 'electoral roll' for the time being in force for any constituency. The provision for constitution of a Judicial Commission to decide disputes of the elections to the Board or Committees is also in Part-III. This very Part defines the powers and duties of the Board and the Committees as also the management of finances of the Board.

(102) The chronological reading of provisions of a Statute and their construction in the light of the object sought to be achieved, makes the task easier to understand the essential features and the legislative policy built into it. It may be unfair to determine the legislative policy of an Act only on the basis of its 'Preamble' or the 'Objects and Reasons' though the same are also vital clues for its appreciation. The historical factors surrounding the legislation or the circumstances which led to its enactment also throw light on its policy.

(103) The 1925 Act is a pre-Constitutional Statute though it neither suffers the rigours of inconsistency nor derogates the Fundamental Rights within the meaning of Article 13. Its legislative competence is also protected by Entry 28 in List III [Concurrent List] of the Seventh Schedule of the Constitution.

(104) We find on an in-depth consideration of its scheme and the essential features that the legislative policy behind the 1925 Act is to establish a democratically-elected body comprising 'Sikh' members only for the management and day-to-day affairs of the 'Sikh Gurdwaras' enlisted in Schedule-I or those brought within the ambit of the Act by the Tribunal constituted under Section 12, as well as the 'Sikh Gurdwaras' so declared by the Civil Court in a representative suit filed under Section 38 of the Act.

(105) The two significant and most essential elements of the policy, namely, (i) 'Sikh' management for the 'Sikh Gurdwaras'; and (ii) installation of such management through a democratic process, are supplementary and complementary to each other and carry equal weight. Section 43(1) of the 1925 Act fortifies this conclusion when it mandates that out of 162 members of the Board, 132 shall be 'elected members' besides the Head Ministers of the Darbar Sahib, Amritsar and five *Takhats* who shall be its *ex officio* members. In addition, 25 members are to be co-opted by the above-stated 'elected' or '*ex officio*' members only. The composition of the Board has been chosen in such a manner that the writ of the 'elected' members alone must run. The 'elected' as well as the 'nominated' members are required to possess broadly the same qualifications though assigned separately in Sections 45 & 46 of the Act. Similarly, 'elected' or 'nominated' members of the Committee(s), are also required to possess broadly the same qualifications though prescribed separately vide Sections 90 & 91 of the Act. These provisions mandatorily require that a person shall not be eligible to be elected if such person (i) is of unsound mind; (ii) is an undischarged insolvent; (iii) is a Patit; (iv) being a 'Keshadhari Sikh' is not an 'Amritdhari'; (v) takes alcoholic drinks etc. It is significant to note that for being ELECTED as a member of the Board or the Committee, the person must not only be a 'Keshadhari' but should be an 'Amritdhari Sikh' also.

(106) The election of the members of the Board is to be held on the date to be fixed by the Central Government (Section 47) and the power of superintendence, direction and control or of the preparation of the electoral rolls etc. is now vested in the Gurdwara Election Commission (Section 47-A). The 1925 Act describes the constituencies as also the electoral roll for every such constituency. The term of membership is also settled.

(107) Section 62 of the 1925 Act mandates that the office-bearers and the executive committee of the Board including its President shall also be elected by a **ballot**. The powers of the office-bearers and the executive committee of the Board and the mode of filling up a vacancy etc. are also distinctly laid down in the Act. While the Board is required to manage the 'Gurdwaras' detailed in Section 85 of the Act, the Committees established under Section 86 are to administer every notified Sikh Gurdwara other than those excepted by Section 85. Section 87(1)(b) says that every Committee shall consist of four 'elected' members and one member nominated by the Board who shall be the resident of the District in which the Gurdwara is situated.

(108) The Legislature in its wisdom, however, has prescribed the following 'qualifications' and 'disqualifications' for the 'Electors' in Sections 49 & 92, which are different from those laid down for being 'Elected':-

> *"(i) is on the electoral roll for the time being in force of persons entitled to vote for the election of a member to represent a Sikh urban or rural constituency of the Provincial Legislative Assembly of the Punjab, or*
>
> *(ii) is a Sikh more than twenty-one years of age, who has had his name registered as a voter in such manner as may be prescribed :*
>
> *Provided that no person shall be registered as an elector who –*
>
> *(a) trims or shaves his beard or keshas except in case of **sehjdhari** Sikhs;*
>
> *(b) smokes;*
>
> *(c) takes alcoholic drinks."*

(109) That only those who have attained purity and are known as 'Amritdhari Sikhs', are solely entitled to be 'Elected' as members of the Board or the Committees or that a novice Sikh like a Sehajdhari, who may or may not be a 'Keshadhari Sikh' but has adopted the doctrines, ethics and tenets of Sikhism shall also be an eligible 'Elector' with a right to vote under Section 50 of the Act, too is a crystallized legislative policy built into the 1925 Act.

(110) The other provisions of the 1925 Act pertaining to the Finances (Chapter IX); Powers and Duties of the Board (Chapter X); Powers and Duties of the Committees (Chapter XI); or those Miscellaneous in nature (Chapter XII) are ancillary and incidental to achieve the main legislative object highlighted above. This conclusion of ours is consistent with the view taken by the Full Bench in ***Kashmir Singh's*** case[1].

(111) We may at the cost of repetition say that prescription of the qualifications for being 'Elected' or for the 'Electors' are the 1 *para 21 of the* ***Kashmir Singh's*** *case* Legislature's own decision. The phrase '***except in case of sehjdhari Sikhs***' was also added in *proviso* to Sections 49 & 92 by the Legislature vide Punjab Act No.11 of 1944. These eligibility conditions were never ever modified by the Central Government in exercise of its power under Section 72 of the 1966 Act before issuance of the impugned Notification dated 8th October, 2003.

(112) The stage is now ripe to delve into the contention raised on behalf of the Union of India and the SGPC that such like 'amendments' have been carried out in the 1925 Act by the Central Government in the past also.

(113) We are, however, unable to concur with the contention for the reason that most of the Notifications placed before us during the course of hearing pertain to substitution of the phrase "Central Government" in place of "State Government" or have changed the nomenclature of one or the other body constituted under the Act like "Commissioner, Gurdwara Elections". Some of the Notifications have altered Schedule-I of the Act for adding the 5th Sikh *Takhat* or bringing more Gurdwaras under the control of the Act. Two more Notifications dated 20th April, 1996 and 30th August, 1996 redemarcate the constituencies for election of members of the Board or they reserve seats for women belonging to the Scheduled Caste. There is one more Notification dated 3rd February, 1978 that

[1] Para 21 of the **Kashmir Singh's** case

inserted Section 47-A creating the institution of Chief Commissioner (Elections) and vesting him with the powers of superintendence, direction and control for the election of the members of the Board. All these Notifications have *ex facie* carried out subsidiary or superficial modifications in the 1925 Act for the smooth functioning of different bodies created thereunder including the inter-State body corporate, namely, the Board.

(114) The changes like provision for reservation of seats for the Scheduled Castes or the women do not, in any manner, tamper with the legislative policy of the Act, they rather validate its constitutionality. The creation of the post of Chief Commissioner (Gurdwara) though is camouflaged as an 'amendment' in the Act by the Central Government in exercise of its power under Section 72 of the 1966 Act but insertion of the provision to this effect is not a conclusive proof of actual conferment of such power. We say so firstly for the reason that the Notification dated 3rd February, 1978, adding Section 47-A in the Act, affected none nor was it challenged for lack of competence. Secondly, the creation of an independent Election Tribunal for conducting fair and free election after the Board had become an inter-State body corporate was very much essential for its effective functioning including electing the Committees for managing the affairs of 'Sikh Gurdwaras' located within the territories of successor States. Thirdly, the said provision in no way affects the legislative policy of the Act and in fact strengthens the same by ensuring a fair and free transition of the management of 'Sikh Gurdwaras' at the hands of the elected bodies. Fourthly, Section 47-A in fact supplements the power already entrusted to the Central Government to hold elections under the Act as can be inferred from Section 47 of the Act. Section 47-A merely transposes the Election Tribunal in place of the Central Government for holding a free and fair election under the Act.

(115) The creation of an Election Tribunal re-states the legislative policy of the Act to entrust the management of 'Sikh Gurdwaras' to a democratically-elected body only – representing the will of the people. The essential legislative features of the 1925 Act have not been thus impaired by these Notifications. We may hasten to add that some of the amendments made by the Legislature in the 1925 Act in pre or post Constitutional era have also not, directly or indirectly, fiddled with its above-mentioned principal legislative policy.

(116) The right to vote conferred by a Statute is indubitably a legal right only and it can be taken away by the Legislature at will. So would be the legal position in the case of 'Electors' possessing the qualifications prescribed in Sections 49 & 92 by the Legislature for inclusion of their names in the Electoral Rolls to be prepared under Section 48 and which culminates into a consequential 'right to vote' under Section 50. Nothing precludes the Legislature to re-write the eligibility conditions for the 'Electors' so as to include or exclude a class or category of people from the purview of Sections 48 or 50 of the 1925 Act. Since it is the Legislature, who as a part of its policy, has prescribed the qualifications (or disqualifications) for the 'Electors' under the 1925 Act, in our considered view, it is the Legislature alone that can re-determine these qualifications for taking away the right to vote earlier given by it to that class or category of people. The Legislature neither can do so nor has it actually delegated its power to lay down the qualifications for the 'Electors' to the Executive under the 1925 Act nor such a delegation is inferable from Section 72 of the 1966 Act.

(117) The right to vote granted through Sections 49 & 92 of the 1925 Act to the eligible 'persons' which incidentally includes 'Sehajdhari Sikhs' also, in our considered view, being Legislature's own decision, cannot be seen through religious spectacle.

(D) <u>Procedural Fairness:</u>

(118) We now advert to the last challenge imputing non-application of mind and arbitrariness to the impugned Notification. The petitioners as also the Advocate General, Haryana urged that the subject Notification has been issued to appease the SGPC (Board) whose resolution is its sole foundation. The discourse went on to suggest that the Notification was issued hurriedly, without modifying Section 2(10-A) or the Declaration Form I-A referred to in Rule 3(1) of the Sikh Gurdwaras Board Election Rules, 1959, thereby creating an anomalous situation. It was alleged that the action under challenge is a colourable exercise of power as even without a whisper regarding the difficulties, if any, experienced in the 'functioning' or 'operation' of the Board, which is a pre-condition, the power under Section 72 has been invoked by the Central Government. Dr. Sidhu, ASG, refuted these allegations and making a pointed reference to the original record, he maintained that there were due deliberations and long discussions in a span of over three years before the decision was notified. He, in specific,

referred to the notings spanning from 3rd August, 2000 till 8th August, 2003 on pages 01 to 103 of the first set of the original record as also the correspondence lying in the second set of record to boost his contention. He explained that the Central Government did not exceed its power as the Notification pertains to the functioning of the Board, which expressly finds mentioned in Section 72(3) of the 1966 Act. Counsel for the SGPC also sang the same tune and stressed that the impugned Notification being legislative in character, falls beyond the scope of judicial review on a ground like non-application of mind. Dr. Sidhu also claimed privilege to some of the correspondence forming part of the original record.

(119) It is trite that a subordinate legislation does not carry the same degree of immunity or privilege as is enjoyed upon by an Act of the competent Legislature. The action of a delegate can be questioned not only on the grounds on which the plenary legislation is assailable, it can also be probed on the ground that it does not conform to the Statute under which it is made. Such a piece of legislation can also be tested on the plea of unreasonableness that no fair-minded authority could ever have made it. All the decisions of a delegate "….*whether characterized as legislative or administrative or* quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be reasonably related to the purposes of the enabling legislation. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorized end or do not tend in some degree to the accomplishment of the objects of delegation, Court might well say **Parliament never intended to give authority to *make such rules; they are unreasonable and ultra vires.*"**[2]

(120) Whether the delegate has considered all the 'relevant' and 'material' facts before exercising the power granted, is inevitably a mixed question of facts and law and can be effectively determined only after scrutiny of the record. We consequently directed and in compliance thereto, the original records were produced and have been perused by us. The office-notes, deliberations and opinions which are cumulatively expected to respond as to whether or not there was desired application of mind to the relevant and material facts before deciding to issue the impugned Notification, have been gone into so as to find out whether :-

(a) any obstruction or difficulty in the functioning or operation of the inter-State body corporate (the Board) in the areas where

[2] see Shri Sita Ram sugar Co. Ltd. *v.* Union of India (1990) 3 SCC 223

it was functioning or operating immediate before 1st November, 1966, was experienced?

(b) any tangible material or a fact-finding enquiry established the factum of such obstruction or difficulty?

(c) the cause(s) of such obstruction or difficulty originated out of the 'Law', namely, the 1925 Act under which the Board was established?

(d) 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?

(121) Suffice it would be to observe that the original records are conspicuously silent in relation to most of the queries formulated by us and over-bearingly revolve around the resolutions received by the Union Government from the Board (SGPC). The deliberations on a delicate issue like whether the recommendations sent by the Board be implemented through 'modification' under Section 72 of the 1966 Act or by 'amending' the 1925 Act, notwithstanding the doubts expressed by one or two fairly senior officers, are far from satisfactory and the legal opinion given by a Standing counsel from the Ministry of Law and Justice paved the way for issuing the Notification. The Union Government has the advantage to seek opinion of prominent jurists and in a matter which is likely to have serious repercussions and far-reaching consequences, it is expedient to infuse the highest degree of care and caution in the decisionmaking process with the aid and advice of such legal brains. The original records though do not lend support to the vague allegations of *mala fide* or colourable exercise of power etc. yet lead to an irresistible inference that the exercise undertaken by the Central Government was misdirected and misconceived.

CONCLUSIONS:

(122) In the light of what has been held above with reference to the four broad groups comprising the points in issue formulated in para 58 of this order, we sum up our conclusions as follows :-

(i) The Parliamentary power to enact a re-organization law under Articles 3&4 is plenary and unfettered by Article 246 of the Constitution. The law enacted under Articles 3 & 4 of the Constitution is assigned a special status to the extent that it is

immune from challenge on the ground of legislative competence though like any other legislation, such a law is also assailable if it violates other provisions of the Constitution. On the other hand, the laws enacted by Parliament under Articles 245, 246 or 248 etc. of the Constitution can be put to judicial scrutiny on both counts.

(ii) The supplemental, incidental and consequential provisions contained in a re-organization law within the meaning of Article 4(1) of the Constitution include the provisions for admission, establishment or formation of a State conforming to the democratic pattern conceived by our Constitution, however, the Parliamentary power to incorporate such provisions does not include the power to override the Constitutional scheme and framework.

(iii) In continuation of our observation at (i) above, it is held that a re-organization law is also justiciable, if challenged on the plea that it abrogates the Constitution.

(iv) For the reasons drawn in para 70 of this order, it is held that the notification, order or a direction issued by a delegate under the Re-organization Act neither acquires the status of Constitutional provision nor of a Parliamentary legislation. Such a decision, even if categorized as legislative or administrative or quasijudicial, can be quizzed on any of the grounds on which a plenary legislation is assailed, in addition to the plea that such a decision also runs counter to the Statute under which it is made or that it is *per se* arbitrary, unreasonable, violative of the law of the land or has been issued in colourable exercise of power.

(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 does 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.

(ix) In view of the observations made in paras 73, 82 to 87 read with paras 93 to 96 of this order and coupled with the fact that the subject notification does not throw any light on the legal necessity for its issuance, namely, the 'functioning' or 'operation' of the Board as an inter-State body corporate in the areas of its operation immediate before 1st November, 1966, we hold that the impugned Notification does not satisfy the ingredients of Section 72 of the Punjab Re-organization Act, 1966.

(x) In view of the findings returned by us in paras 109, 111 & 117 of this order, it is held that right to vote conferred on a class or category of people subject to their possessing the qualifications laid down in Sections 49 & 92, is an integral part of the legislative policy of the 1925 Act and it being a valuable legal right, cannot be taken away except by the competent Legislature itself. A delegate has no authority to take a decision in this regard, contrary to the essential legislative policy of the Statute.

(xi) In view of what has been held and observed in paras 118 to 121 of this order, we find it difficult to hold from the deliberations or discussions referred to in the officenotes of the original record that the impugned Notification meets that degree of diligence or application of mind as is expected from the Executive while taking a policy decision of far-reaching consequences.

(123) In the light of the conclusions summed up above:-

(i) the writ petition is allowed;

(ii) the notification dated 8th October, 2003 is, hereby, quashed leaving it for the appropriate and competent Legislature to decide as to whether or not any amendment in Sections 45 & 92 or other provisions of the Sikh Gurdwara Act, 1925 is to be carried out;

(iii) The directions given hereinabove are subject to the clarification that we have not expressed any views, directly or indirectly, as to who constitutes a 'Sikh' and/or whether a 'Sehajdhari Sikh' who trims or shaves his beard can also be a 'Sikh' nor does this order hold that for professing 'Sikh' religion, a 'Sehajdhari Sikh' is not required to be 'Keshadari'. Similarly, we have not held that any particular class or category of 'Sikhs' has a birth-right to participate in the election for the members of the Board or the Committees constituted under the Sikh Gurdwaras Act, 1925;

(iv) we clarify that the issues raised or decided by us are purely legal in nature based upon the interpretation of a few provisions of the Constitution, the Punjab Re-organization Act, 1966 and of the Sikh Gurdwaras Act, 1925.

J. THAKUR