are denied by the Department. In this view of the matter, I must come to the conclusion that there is no force in this petition and that the petitioner has no grievance whatsoever. I am clearly of the view that the maintaining of Surveillance Register No. 10, is, in no way, unconstitutional or illegal provided the police officer does not interfere with the personal liberty or movements of the individuals whose names are entered in this register. This petition must fail and I would dismiss it.

G. D. Khosla, J.

TEK CHAND, J.—I agree.

Tek Chand, J.

B.R.T.

CIVIL WRIT

Before G. D. Khosla, Acting C.J. and S. S. Dulat, J.

THE SHIROMANI GURDWARA PARBANDIK COMMITTEE, AMRITSAR AND ANOTHER,—*Petitioners*

versus

THE GOVERNOR OF THE PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 802 of 1958

1959

Mar., 4th

Sikh Gurdwaras (Amendment) Act (I of 1959)—Whether offends against Article 26 of the Constitution of India—Section 148-A(2)(iii) and (iv)—Provision for electoral colleges in—Whether amounts to interference in Sikh religious affairs—Nominations by Governor—Whether offends against the right of the Sikhs to manage their own religious affairs—Constitutionality of an Act—Considerations for determination—Motive of individual members of the Legislature—Whether relevant.

Held, that the Sikh Gurdwaras (Amendment) Act, 1959 does not offend against Article 26 of the Constitution of India as it does not interfere with the right of a religious denomination to manage its own affairs and to administer its property. The provision of electoral colleges for the

election of 35 Sikh members of the Board made in Section 148-A (2) of the Act cannot be said to amount to interference in Sikh religious affairs by non-Sikhs, it being perfectly clear that none of the electors and none of the members of the Board can ever be a non-Sikh. The mere fact that the sitting Sikh members of Parliament and the two Houses of the State Legislature as also the Sikh members of the Municipal Committees have been elected by constituencies not exclusively of Sikhs cannot lead to the conclusion that some non-Sikh interest will be reflected in the Board. Similarly it cannot be contended that as the members of the Interim Gurdwara Board, Patiala, are nominees of the Governor and although they are Sikhs, the fact of their nomination by the Governor introduces into the Board an element not entirely representative of Sikh religious denomination.

Held, that while determining the validity of an Act, the Courts are not concerned with the motives of individual members of the Legislature, and so long as it is clear that the Act was within the competence of the Legislature and not against any provision of the Constitution, it cannot be held to be invalid.

Petition under Article 226 of the Constitution of India praying that an appropriate Writ, Direction or Order be issued declaring Punjab Government Notification No. 13-Gurdwaras, dated 10th January, 1958, as ultra vires, *illegal, void and without jurisdiction and further praying that respondents be restrained from enforcing the same.*

H. S. GUJRAL, for Petitioners.

S. M. SIKRI and HARNAM SINGH WASU, for Respondents.

ORDER

Dulat, J.

DULAT, J.—The Sikh Gurdwaras Act, 1925, was enacted to provide for the better administration of certain Sikh Gurdwaras in the Punjab. It set up committees of management for different Gurdwaras and also a Central Board commonly known as Shiromani Gurdwara Parbandhak Committee which was given the control and general superintendence over all committees appointed

under the Act. The Central Board was itself a committee in respect of certain Gurdwaras. The members of this Board were in the main elected, but there were also certain members by virtue of their office and a provision was also made for co-opting certain members resident in India but outside the Punjab. One necessary qualification for the membership of this Board was the professing of Sikh religion. There were also certain disqualifications contained in sections 45 and 46 of the Act, such as being of unsound mind, inability to read and write Gurmukhi and taking alcoholic drinks. Similarly, qualifications and disqualifications were mentioned in the Act for being an elector.

The Punjab Act, of course, did not apply to the Sikh Gurdwaras in the Indian States which later came to form the Union of Pepsu. In one of these States, namely, Patiala, however; the Ruler in 1946 ordered the formation of a Board to manage the Sikh Gurdwaras in Patiala and it was provided that the members of the Board would be nominated by the State. This Board was set up and began to manage the Gurdwaras in the Patiala State as it then was. On the formation of the Union of Pepsu in 1948, this law became the law for the entire Union and the Board began to manage the Gurdwaras in Pepsu. Nominations to this Board were made by the Rajpramukh of Pepsu after the formation of the Union. On the 1st November, 1956, came the merger of Pepsu and Punjab, but the Punjab Act was not extended to Pepsu and the Interim Board formed for Pepsu continued to function in respect of the Gurdwaras in that area. On the 10th January, 1958, the Governor of Punjab nominated certain persons to the Pepsu Board. On the 24th July, 1958, a writ petition (Civil Writ 802 of 1958) was filed in this Court challenging the validity of the notification

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issued by the Punjab Governor. Before, however, this petition came up for final hearing the Punjab Legislature enacted the Sikh Gurdwaras (Amendment) Act, 1959, by which the Sikh Gurdwaras Act, 1925, was extended to the territory which immediately before the merger was comprised in Pepsu and, in consequence, the previous Board for Pepsu came to be abolished. On the 27th January, 1959, another writ petition (Civil Writ 81 of 1969) was filed in this Court challenging the constitutional validity of the new Act. We have heard the two petitions and they can be conveniently disposed of together.

As far as the first petition is concerned, the issue raised by it is virtually dead because the Pepsu Gurdwara Board is not to function any longer and the Gurdwaras in Pepsu are now to be managed by the Board set up under the Sikh Gurdwaras Act. The controversy before us is about the validity of the Amending Act of 1959.

Mr. Gujral's main contention in support of the second writ petition is that the Sikh Gurdwaras Act, 1925, as now amended, offends against Article 26 of the Constitution as it interferes with the right of a religious denomination to manage its own affairs and to administer its property. No objection is taken to the extension of the Act to the Pepsu Area. Nor is any objection raised against the constitution of the Board as it will be permanently after the new general election. The objection merely is to the constitution of the Board as it will remain during the transitional period, that is, from now till the next general election. What the Legislature has done in this connection is contained in section 148-B of the Amending Act. This says—

> "148-B. (1) As from the commencement of the Amending Act, in addition to the

members of the Board constituted under section 43 and till the next election of the new Board under section 43-A,—

(a) every person in the extended territories who, immediately before the commencement of the Amending Act, is a member of the Interim Gurdwara Board, Patiala, constituted by Punjab Government, Home Department. notification No. 18—Gurdwaras, dated the 10th January, 1958, shall be deemed to be a member of the Board, constituted under section 43 ; and

(b) thirty-five Sikhs including six Sikhs belonging to the Scheduled Castes residents in the extended territories to be divided among different districts thereof in proportion to the Sikh population of each district in the prescribed manner, who shall, within forty days of the commencement of the Amending Act, be elected by the persons specified in sub-section (2) in accordance with the rules made in this behalf by the State Government, shall become the members of the Board from the date specified in sub-section (3).

(2) The thirty-five persons referred to in clause (b) of sub-section (1) shall be elected by—

(i) the persons who are deemed to be the members of the Board under clause (a) of sub-section (1);

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(ii) the twelve members of the Board being residents of Pepsu as are referred to in clause (iii) of sub-section (1) of section 43 ;

(iii) the sitting Sikh members of Parliament and the two Houses of State Legislature returned from any constituency or part thereof from the extended territories ;

(iv) the Sikh members of Municipal Committees in the extended territories ;

(v) the Presidents or Chairmen of such Singh Sabhas and the managers or Secretaries of such Sikh educational institutions or Sikh religious organisations as are registered on or before the 1st December, 1958, in the extended territories ; and

(vi) the Sikh Sarpanches and Sikh Nayay Pardhans of Nagar Panchayats and Panchayati Adalats, respectively :

Provided that the electors under clauses (iii), (iv), (v) and (vi) are not disqualified under the proviso to section 49 of the Act. * * * *".

It will be observed that for the election of thirty-five new members mentioned in sub-section (2) an electoral college has been set up. The contention is that these thirty-five members. although themselves Sikhs, will be elected by persons some of whom, although again Sikhs, will in their turn have been elected by an electorate not consisting exclusively of Sikhs. Thus, for instance, the sitting Sikh members of Parliament and the

two Houses of the State Legislature have been elected as such members by constituencies not exclusively of Sikhs and the same would be true of the Sikh members of Municipal Committees, and in this manner, according to Mr. Gujral, some non-Sikh interest will be reflected in the Board. I am unable to agree that this could be called interference in Sikh religious affairs by non-Sikhs, it being perfectly clear that none of the electors and none of the members of the Board can ever be a non-Sikh.

Mr. Gujral, similarly- contends that the members of the Interim Gurdwara Board, Patiala, are nominees of the Governor and although they are Sikhs, the fact of their nomination by the Governnor introduces into the Board an element not entirely representative of Sikh Religious denomination. Again, I can find nothing in the provisions of the Constitution to support the contention that the introduction of such nominees into the Gurdwara Board offends against the right of the Sikhs to manage their own religious affairs. The non-Sikh influence, as Mr. Gujral calls it, is here much too oblique to deserve serious consideration and it seems to me impossible to agree that by the new constitution of the Board the freedom to manage their religious affairs by the Sikhs is interfered with. Mr. Gujral has drawn our attention to two decisions of the Supreme Court—*The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1), and *Ratilal* v. *State of Bombay* (2). In the first case it was found that the impugned law had taken away the right of administration from the hands of a religious denomination altogether and vested it in another authority, and

(1) A.I.R. 1954 S.C. 282
(2) A.I.R. 1954 S.C. 388

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the Supreme Court held that this was interference with the right guaranteed by article 26 of the Constitution. In the second case, similarly, the impugned law had provided for the appointment of the Charity Commissioner as a trustee of a religious trust and to function as the Shebait of a temple or the superior of a March, and it was held that this was interference with the management of the affairs of the institution. In both the decisions the real point was that the management of religious affairs could be entirely taken away from the interested religious denomination. In the present case, however, no such thing has happened or can happen under the Act and the management of Sikh Religious affairs is left entirely in Sikh hands, so that neither of these decisions really help Mr. Gujral's argument.

Mr. Gujral has then attacked the Amending Act of 1959 on another ground. He says that while, according to the Sikh Gurdwaras Act, 1925, persons suffering from any of the disabilities mentioned in sections 45 and 46 of the Act could not be members of the Board, the Amending Act places no such restriction on the new members and in this manner arbitrary discrimination has been made between one group of members of the Board and another group. Actually, however, it appears that this apprehension is unfounded, for the principal Act, that is, the Sikh Gurdwaras Act, 1925, which has merely been amended by the Sikh Gurdwaras (Amendment) Act, 1959, clearly lays down that nobody suffering from any of the disabilities mentioned in the Act can be a member of the Board. Section 52 of the principal Act expressly declares—

> "52. (1) If any person having been elected or nominated or co-opted a member of

> the Board subsequently becomes or is found to be by the Board subject to any of the disabilities stated in section 45 or section 46, as the case may be, he shall cease to be a member thereof"

It is, therefore, clear that the Act does not contemplate that anybody suffering from any of the disabilities mentioned in section 45 or section 46 can remain a member of the Board and no question of any discrimination therefore arises. Regarding the members to be now elected the rules framed by the Governor have further clarified this matter, and rule 5 provides for the nomination of a candidate for election only of a person "not ineligible for membership of the Board under the provisions of sub-sections (1), (2-A) and (3) of section 45 of the Act", so that nobody suffering from any disability contained in the Act can stand for election.

The next ground of attack is that the Sikh Gurdwaras (Amendment) Bill as passed by the State Assembly was different from the Bill as reported by the Regional Committee and that the State Assembly was not comptenet to do so. Reliance is placed on the Presidential order made in respect of the Punjab Regional Committees in November, 1957, which in its Third Schedule contains several modifications made in the rules of procedure and conduct of business in the Punjab Legislative Assembly. The relevant rule is numbered 171-A and runs thus—

> "171-A. When a Bill as reported by a regional committee is not passed by the Assembly in the form in which it has been reported but is passed in a form which, in the opinion of the Speaker, is substantially different from that as reported by the regional committee, or is

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rejected by the Assembly, the Speaker shall submit to the Governor—

(a) in any case where the Bill has been passed by the Assembly in a substantially different form, the Bill as passed by the Assembly together with the Bill as reported by the regional committees ;

(b) in any case where the Bill is rejected by the Assembly, the Bill as reported by the regional committee."

Mr. Gujral contends that the Speaker was bound in the present case to submit the Bill to the Governor in accordance with the above-mentioned rule. It is, however, quite clear that the Speaker is required to do so only if he is of opinion that the Bill is passed by the Assembly in a form substantially different from that reported by the Regional Committee. The Speaker never formed such an opinion and quite naturally, therefore, he never submitted the Bill to the Governor. I do not think, we can in a matter of this kind substitute our judgment for the opinion of the Speaker, but, apart from that, it does not even appear from what Mr. Gujral has stated that there was any difference of substance between the Bill as reported by the Regional Committee and as passed by the Assembly. Mr. Gujral has mentioned two alterations made by the Assembly. We are told that in the Bill reported by the Regional Committee it was intended to include in the Schedule 428 Sikh Gurdwaras in the Pepsu area while the Schedule as passed by the Assembly contained only 415 Sikh Gurdwaras, the difference thus being of minor detail. The only other difference pointed out is that section 148-D of the Amending Act was

not in the Bill as reported by the Regional Committee. This was, however, a necessary consequential provision relating to the continuation of the employment of certain employees of the Interim Gurdwara Board, Patiala, and the local committees functioning under it. There is, in the circumstances, no substance in learned counsel's contention in this respect.

Dulat, J.

Finally Mr. Gujral sought to establish that the Sikh Gurdwaras (Amendment) Act, 1959, is not an honest piece of legislation and that the political party in power has for the purpose of obtaining control over Sikh Gurdwaras introduced various changes in the constitution of the Board, so that persons of their choice may find seats on the Board. He has in this connection stated that the Act was rushed through a special session of the Legislature and that the time for the new election was fixed within forty days of the Act, so that the new members expected to be sympathetic towards the ruling party may be able to take their seats on the Board before a certain date. These are facts of some interest but hardly to us, for we are not concerned with the motives of individual members of the Legislature, and so long as it is clear that the Act was within the competence of the Legislature and not against any provision of the Constitution we cannot hold it invalid.

No other matter is raised before us. Finding, therefore, that Civil Writ 802 of 1958 is infructuous and Civil Writ 81 of 1959 without force, I would dismiss both the petitions and discharge the rule issued in each case but, in all the circumstances, not burden the petitioners with costs.

G. D. KHOSLA, A.C.J.—I agree.

G. D. Khosla, J.

R.S.