an order granting permanent alimony to one of the spouses under sub-section (1), for his or her conduct referred to in sub-section (3) as husband or wife, as the case may be, the order can be rescinded. So that the description of the parties for the matter of section 25 continues to be exactly the same as it was in the proceedings originally initiated under the provisions of the Act for any decree under those provisions. The fact that proceedings for the grant of permanent alimony are incidental to the main proceedings, merely lends support to this approach, which is even otherwise made clear, beyond the pail of controversy or argument, by sub-section (3) of section 25 of the Act. In this approach, no exception can be taken to the order of the learned Single Judge granting alimony to the respondent merely because an application in this respect was made on her behalf after the decree for divorce had been made against her. So the answer to the question is in the affirmative. The costs in this reference will abide the event.

NARULA, J.—(6) I agree with the answer proposed by my Lord, the Chief Justice and also with the reasons given in support thereof.

PREM CHAND JAIN, J.—I agree.

K. S. K.

FULL BENCH

Before Harbans Singh, D. K. Mahajan and S. S. Sandhawalia, JJ.

GURDIT SINGH AULAKH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2788 of 1966

April 23, 1970.

Punjab Sikh Gurdwaras Act (VIII of 1925)—Sections 12(1), 12(5) and 14(1)—Sikh Gurdwara Tribunal—Dissolution of—Power of the Government for—Whether to be exercised only on the exhaustion of all judicial work before the Tribunal—Such power—Whether subject to the conditions laid down in section 12(1)—Petitions referred to under section 14(1) and pending before a dissolved Tribunal—Re-constituted Tribunal—Whether has jurisdiction to decide such petitions—Punjab Governor's Secretariat Order (1966)—Para 3(a)—Rules of Business of Government of Punjab (1953)—Rules 11 and 31 and items 14 and 21 of the Schedule—Order of dissolution of the Tribunal—Whether to be passed by the Governor himself—Concurrence of the Finance Department before passing the order—Whether necessary.

Gurdit Singh Aulakh *v.* The State of Punjab and others (Sandhawalia, J.)

Practice—Litigants obtaining access to Confidential State records—Unauthorised made for—Disapproved.

Held that a bare reading of section 12(1) of the Punjab Sikh Gurdwaras Act, 1925, makes self-evident the wide amplitude of the power of dissolution vested in the State Government by the Statute. The Tribunal is to be created by the State and is to be dissolved by it. These powers are unhedged by any limitation. The section is explicit and gives an express power of dissolution. Even if it were not so, the power to appoint carries with it an inherent power to remove unless such a power of appointment and removal is restricted by the express words of the statute. To suggest that the State Government having once constituted a Tribunal under section 12(1) is thereafter powerless *qua* the same till the ultimate stage of the exhaustion of all judicial works pending before it, does not stand to reason.
(Paras 6 &12)

Held that the dissolution of the Sikh Gurdwara Tribunal and the removal of a member are things apart, and the line that divides the two is sharp and distinct. They are not to be confused. Removal of a member of the Tribunal on the ground mentioned under section 12(5) may well involve a stigma. A dissolution of the Tribunal as a whole carries no such taint for the members who then constituted the Tribunal. The Act, therefore, rightly provides separately for the exercise of these specific and distinct powers. Whilst section 12(1) expressly provides for dissolution, section 12(5) equally distinctly provides for the removal of an individual member within the limitation prescribed therein. To visualise, therefore, that these distinct and separate powers control, override or conflict with each other is, therefore, a fallacy. In fact the scope and ambit of each of these lies in different fields. Hence the exercise of power of dissolution of the Tribunal under section 12(1) is not subject to the conditions laid down in section 12(5) of the Act.
(Para 17)

Held, that section 14 of the Act, on the face of it is merely a procedural provision and it does not cut down the power of dissolution given under section 12 of the Act. The new Tribunal when reconstituted merely takes its place and is substituted in place of the earlier dissolved Tribunal. The petitions forwarded under section 14(1) of the Act to the original Tribunal remain within the jurisdiction of the reconstituted one for the purposes of disposal according to the provisions of the Act. (Para 20)

Held, that the terms "abolition" and "dissolution" are not synonyms and have a varying meaning and import. Dissolution relates to the personnel or the incumbent of an office or Institution and the word abolition pertains to the very existence of the post or the Institution itself. The "dissolution of a Gurdwara Tribunal" does not equate with "the abolition of any public office" as mentioned in item 21 of the Schedule to Rules of Business of Government of Punjab. Hence an order of dissolution of the Gurdwara Tribunal does not require under the Rules of Business to be passed by the Governor when read in conjunction with the Governor's Secretariat Order, 1966.
(Para 34)

Held that the words 'affecting the finances of the State' in the context of the item 14 of the Schedule and rule 31 of the Rules of Business patently

are for cases where the finances of the State are affected adversely, that is, where they involve an expenditure or loss to the State revenue. The dissolution of a Tribunal is not a matter which adversely affects the finances of the State and does not need concurrence of the Finance Department.

(Para 37)

Held, that a litigant is not entitled to have any access to Government records containing confidential legal advice tendered by the law officers of the State. The practice of the litigants of their un-authorised modes of access to confidential State records is disapproved. (Para 31)

Case referred by Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice P. C. Pandit on 29th May, 1969, to a larger bench for decision of an important question of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice Harbans Singh, the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice S. S. Sandhawalia, on 23rd April, 1970.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the impugned notification No. 646-Gurdwaras, dated the 26th October, 1966, issued by the Punjab Government dissolving the Sikh Gurdwaras Tribunal.*

R. K. Garg, Advocate, with B. S. Khoji, Advocate, for the Petitioner.

Abnasha Singh, J. S. Chawla and Amar Singh Ambalvi, Advocates, for the respondents.

JUDGMENT OF FULL BENCH.

Sandhawalia, J.—The validity of the dissolution of the Sikh Gurdwaras Tribunal,—*vide* Punjab Government notification No. 646, dated the 26th October, 1966, issued in the name of the President of India stands challenged in this writ petition under Article 226 of the Constitution of India. In view of the importance of the issue involved, the matter is placed before us in pursuance to the referring order of my Lords D. K. Mahajan, and P. C. Pandit J.J., dated the 29th May, 1969.

(2) The facts which deserve notice in order to appreciate the primarily legal contentions raised are in a relatively narrow compass. Gurdit Singh Aulakh (since deceased and hereinafter referred to as the petitioner) was appointed a member of the Sikh Gurdwaras Tribunal in 1962. By an order, dated the 10th of September, 1965, he was removed from its membership by a notification issued under section 12 of the Sikh Gurdwara Act (hereinafter referred to as the Act) and one Shri S. S. Kalha was appointed to the vacancy so created. The petitioner then challenged his removal by way of

a writ petition under Article 226 of the Constitution in this Court which, however, was dismissed by a learned Single Judge. The petitioner then preferred an appeal under clause 10 of the Letters Patent and this was accepted by a Division Bench consisting of Mehar Singh, C.J., and D. K. Mahajan, J., reported as *Gurdit Singh Aulakh* v. *State of Punjab* (1), and the relevant Government notification removing the petitioner from the membership of the Tribunal was quashed. The decision above-said was given on the 18th of October, 1966, and the State moved an application for leave to appeal to the Supreme Court against the decision of the Letters Patent Bench which, however, was rejected. Subsequently on being moved the Supreme Court also declined to grant special leave to appeal against the judgment above-said. Soon after the decision of the Letters Patent Bench was announced, the petitioner forthwith reported for duty to the Tribunal and also addressed a communication to the Secretary, Home Affairs of Punjab Government intimating him of the decision and his willingness to serve on the Tribunal. It appears, however, that the petitioner was directed to produce a written order for joining and acting on the Tribunal and before this could be done on the 26th October, 1966, the following notification was issued on behalf of the Government:—

> "In exercise of the powers conferred by sub-section (1) of section 12 of the Sikh Gurdwaras Act, 1925, the President of India is pleased to direct the dissolution with immediate effect of the Tribunal Constituted,—*vide* the Punjab Government Notification No. 432-GP, dated the 26th April, 1962."

The present writ petition primarily impugnes the above-said notification. It further deserves notice that at the time of the issuance of the above-said notification, the State of Punjab was under the President's rule, because he had assumed all the functions of the State under Article 356 of the Constitution of India and the said functions were then entrusted by the President to the Government of Punjab.

(3) On behalf of the respondent-State, it has been averred that the power of dissolving the Tribunal conferred by section 12(1) of the Act was unqualified and the Government was competent to dissolve the Tribunal whenever it thought it appropriate to do so. It has been averred that the impugned order in the notification was passed for administrative reasons and the said order was passed

(1) 1967 S.L.R. 96.

bona fide after the subjective satisfaction of the Government that the function of the Tribunal has become impossible. It is particularly averred that no extraneous consideration motivated the State in the issuance of the impugned notification. The tenuous and vague allegations of *mala fide* suggested against respondent No. 4 were expressly controverted, both on behalf of the State and the said respondent. Before the Division Bench it had been frankly and fairly conceded on behalf of the State that the petitioner was entitled to his salary up-to-date of the dissolution of the Tribunal in view of the earlier Letters Patent's Bench decision in his favour and it was stated before us at the bar that the relevant amount has since been duly paid.

(4) Two reliefs had been claimed originally by the petitioner, namely, that the impugned notification be quashed and that the Punjab Government be directed to pay the emoluments due to the petitioner with effect from the 11th September, 1965, up to the date. Subsequent to the filing of the petition Gurdit Singh Aulakh died on the 18th of July, 1969, and an application, dated the 2nd August, 1969, was made by his legal representatives to be brought on the record which stands allowed by the order of P. C. Jain, J., dated the 11th August, 1969. On behalf of the respondents, no objection is raised to the impleading of the legal representatives or the competency of the petition after the death of the petitioner. The reliefs originally sought for by the petitioner are now claimed on behalf of the estate with the modification that the emoluments be paid from 11th September, 1965, till the date of the petitioner's death. As there appears to be a variance in the contentions advanced before the referring Bench and those before us we deem it expedient to notice with some precision, the contentions raised by Mr. R. K. Garg, the learned counsel for the petitioner before dealing with them in detail. It has been submitted—

(1) that under the Sikh Gurdwaras Act there vests no power in the State Government to dissolve the Tribunal except in one solitary contingency—namely, that all pending judicial work before it had been finally adjudicated upon and its functions are consequently exhausted;

(2) that the power to dissolve is subject to and cannot conflict with the power to remove under section 12(5) of the Act. The dissolution and the consequent removal of the petitioner, therefore, without complying with the provisions of section 12(5) of the Act are hence vitiated;

(3) that the power to refer the petitions to the Tribunal under section 14(1) of the Act can be exercised once and once only and have been exhausted, no new Tribunal can take cognizance of such petitions nor can Government clothe such a Tribunal with jurisdiction to decide the petitions pending before the earlier dissolved Tribunal;

(4) that the order suffers from the taint of 'malice in law' as it was issued for the ulterior purpose of circumventing the the decision of the High Court, which had set aside the earlier removal of the petitioner;

(5) that the order dissolving the Tribunal should have been passed by the Governor as required by the Government Secretariat order read with the rules of business and as the said order was passed by the Home Secretary to the Punjab Government, it was without jurisdiction and consequently void; and

(6) that the impugned notification could not be made without the concurrence of the Finance Department under the rules of business and as the Finance Department in the instant case had not been consulted the order was bad on that account as well.

(5) The central point on which the learned counsel for the petitioner has focused himself is that the admittedly unqualified and express power of dissolution given by section 12(1) of the Act to the State Government can be exercised in one solitary situation, viz., when all the pending judicial work before the Tribunal had been finally exhausted. With great eloquence but less cogency it was first argued that the scheme of the Act imposed this necessary limitation which was inherent in the power granted to the State Government. It was vehemently contended that the Tribunal once constituted in terms is indissolvable except when its function is totally exhausted. Reference was made by the learned counsel to the preamble of the Act and the provisions of sections, 3, 5 and 14, in support of his contentions that these provisions indicated the limitation canvassed for by him. Reliance was placed on some decisions to which we will advert hereafter.

(6) Admittedly the controversy revolves around the provisions of section 12(1) of the Act which embodies the power of the

dissolution of the Tribunal in the State Government. This is in the following terms:—

> "12(1) For the purpose of deciding claims made in accordance with the provisions of this Act the State Government may from time to time by notification direct the constitution of a tribunal or more tribunals than one and may in like manner direct the dissolution of such tribunal or tribunals."

A bare reading of this provision makes self-evident the wide amplitude of the power of dissolution vested in the State Government by the Statute. The Tribunal is to be created by the State and is to be dissolved by it. These powers are unhedged by any limitation and Mr. Garg had to fairly concede that this power of dissolution is given in wholly unqualified terms. In our view the language of the Statute itself is so plain and certain that it admits of no manner of doubt. The meaning and the intent of the legislature is expressed in simple and categorical terms which attracts to our mind the basic rule of interpretation which has been enunciated as follows:—

> "Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

(7) These observations apply aptly in the present case. The framers of section 12(1) have advisedly used language which is quite unequivocal. That being so, it appears to us inappropriate that by a process of strained interpretation a limitation or qualification be engrafted into section 12(1) where the legislature in its wisdom has not thought fit to do so. If the contentions advanced by Mr. Garg were to be accepted it would in fact, involve the addition of the words "when there is no proceeding pending before the Tribunal" at the end of section 12(1). We are afraid that to add words to the provisions of the statute is not the function of the interpretation but is the province of the legislature.

(8) Confining ourselves as yet to the language of section 12(1) the contention of Mr. Garg that the power to dissolve can be exercised once and once only when the function of the Tribunal is exhausted, is in our view, further negatived by the use of the words "may from time to time" which find place in section 12(1) of the Act. These words would clearly show that the power is not limited to be exercised once but may be repeatedly exercised as the exigencies of the

situation may require. The phrase "time to time" fell for construction by their Lordships of the Privy Council in *William Lawrie* v. *George Lees* (2) and while repelling such a construction, observed in these words:—

> "It seems to me that that would be a construction of a most inconvenient character. It is not one which I think your Lordships would lightly adopt, and I see no reason whatever for adopting it, because the words "from time to time" are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and, therefore not being able to act again in the same direction. The meaning of the words "from time to time" is that after he has made one order he may make a fresh order to add something to it, or take something from it, or reverse it altogether; and as that meaning gives sufficient force to the words and explains the use of theme here it seems to me that your Lordships ought not to go further and to narrow these words by any construction which would throw impediments in the way of carrying on the business, whereas the object of the Act was to facilitate it."

(9) Learned counsel for the respondent-State also drew our attention to section 83 of the Act which refers to the powers of dissolution of another Tribunal namely the Judicial Commission and is in the following terms:—

> 83. "The State Government may at any time when there is no proceeding before the Commission dissolve the Commission."

(10) From the above-said provision, it is rightly contended on behalf of the respondent-State that the framers of the Act were alive to the fact of making such a provision as is being suggested on behalf of the petitioners and incorporated in section 83. Even here the argument of the learned counsel for the respondent is that this provision is merely permissive and not prohibitive and would not unnecessarily bar the dissolution of the Judicial Commission in other circumstances also. Nevertheless it is argued that being

(2) 7 Appeal cases 19.

fully alive to such a situation the legislature had advisedly not used similar language at all when conferring the power of dissolution on the State Government by section 12(1) of the Act. We find weight in this submission made on behalf of the respondents also.

(11) In construing the provisions of section 12(1) of the Act we cannot also be oblivious to the provisions of section 12 of the Punjab General Clauses Act which is as under:—

> "Where, by any Punjab Act any power is conferred then that power may be exercised from time to time as occasion requires."

The clear language of this provisions cuts at the very root of the submission of Mr. Garg that the power under clause 12(1) of the Gurdwaras Act can be exercised once only.

(12) Section 12 of the Act is explicit and gives an express power of dissolution. Even if it were not so, it is equally well-settled on General Principles that the power to appoint carried with it an inherent power to remove unless such a power of appointment and removal is restricted by the express words of the statute. Reference in this context may also be made to section 14 of the Punjab General Clauses Act and by way of analogy to section 16 of the General Clauses Act 1897 which laid down that the power to appoint included a power to suspend or dismiss as well. On identical considerations, therefore, the power to constitute a Tribunal would similarly postulate an inherent power to dissolve the same also. But as already noticed above an inference by way of implication is unnecessary in view of the express provisions of section 12(1). To suggest that the State Government having once constituted a Tribunal under section 12(1) is thereafter powerless *qua* the same till the ultimate stage of the exhaustion of all judicial works pending before it, does not stand to reason. Learned counsel on behalf of the respondents rightly points out that instances are not lacking in the country where the personnel of quasi-judicial tribunals have prolonged their existence by dilatory tactics to continue the existence of such Tribunals with an eye to self-interest. We hope that such situations are rare indeed but were it to arise would the State Government be rendered powerless to end the life of a procrastinating Tribunal which wishes to perpetuate itself? We do not think that it is so. Yet another instance mentioned on behalf of the respondents is a state of acute disharmony between the members of the Tribunal which may virtually stall the working of the said

Tribunal. In such a contingency would the State Government be a helpless spectator? The answer must in our opinion be in the negative. Similar instances can be multiplied but we deem it unnecessary to do so in view of the plain terms of section 12(1), which to us, seem to forbid any speculative limitations to be imposed thereon so long as that power is within the four-corners of the said statute.

(13) Nevertheless we have closely examined the provisions of the Act which according to the learned counsel spell out a categorical limitation of the exercise of power under section 12(1). Our attention was first drawn to sections 3 and 5 of the Act. These two provisions falling in Chapter II pertain to petitions to State Government relating to Gurdwaras. Section 3 merely provides for a list of the property of a schedule Gurdwara to be forwarded to the State Government while section 5 pertains to petitions of claim to property included in a consolidated list and further provides for signing and verification of the petitions made thereunder and the notification of property not claimed under sub-section (1) of section 5. We have closely examined these provisions which on the face of them are procedural and regret our inability to accept the contention of the learned counsel, as these provisions do not even remotely spell out a limitation on the substantive power of dissolution conferred by section 12(1). Reference was then made to section 31 of the Act which within limitation bars the jurisdiction of the ordinary Courts regarding proceedings which involve any claim relating to a Gurdwara specified in the schedule or in regard to which a notification has been published, if such a claim could have been made in a petition under section 5 of the Act. Lastly, reference was made to section 14 of the Act which directs the State Government to forward the petitions received by it to the Tribunal for disposal in accordance with the provisions of the Act. Sections 14 and 31 in our view do not control or circumscribe the ambit of the power under section 12(1). On an over-all consideration of these provisions, some of which are entirely procedural, they seem not even remotely to impinge upon the power of dissolution vested in the State by section 12(1) and indeed some of them are hardly relevant for the purposes of construing the same.

(14) It remains in this context to consider the decision in *Hajee Ismail Said and Son (Pvt.), Ltd.* v. *Fourth Industrial Tribunal and others* (3), on which reliance has been placed by the learned counsel for the petitioner. That is a case under the Industrial Disputes Act

(3) A.I.R. 1966 Cal. 375.

and the point for consideration before the Bench related to the fact whether the termination under the standing orders was not retrenchment within the meaning of section 2(00). Even on a close perusal of the whole body of this judgment, we are unable to see how the reasoning or the ratio thereof can possibly aid the petitioner in the present case. It is conceded on behalf of the petitioner that the Industrial Disputes Act does not contain any express provision for the dissolution of a Tribunal constituted thereunder of a nature like section 12(1) of the Sikh Gurdwaras Act which falls for construction. Sections 7-A, 8 and 33-B to which reference was made are not even remotely analogous, Decisions under the said statute, therefore, cannot be of any aid in construing the present provision. In fact Mr. Garg fairly conceded that he could not cite any Supreme Court decision regarding the dissolution of a Tribunal in identical or even similar circumstances. The first contention of Mr. Garg, therefore, must fail.

(15) Elaborating his second contention, Mr. Garg contends that the power of dissolution cannot override the limitation on the power of removal laid in section 12(5) of the Act. It was argued that the power under section 12(1) to dissolve cannot and must not conflict with the power to remove as laid in section 12(5). Hence unless the conditions laid in section 12(5) were satisfied there can be no removal which it is alleged is the necessary consequence of the dissolution of the Tribunal in the present case. The impugned notification which in terms does not conform to the requirements of section 12(5) hence stood vitiated.

(16) In order to clear the ground for appraising this submission, it may be noticed that sub-clause (5) of section 12 was omitted by the Government of India (Adaptation of Indian Laws) Order, 1937. However, in *Gurdit Singh Aulakh* v. *The State of Punjab* (1), whilst adverting to this aspect, the Division Bench held that as no other provision had been subsequently made under any other Act in this respect, sub-section (5) was still alive by virtue of order of 1936 until other provision is made by the Government of India. It was, therefore, held that sub-section (5) of section 12 still continues to Govern the nature and the tenure of a member of the Tribunal like the petitioner. This provision as it originally stood reads as follows:—

> "(5) The Local Government may by notificaiton remove any member of a Tribunal, other than the President—
>
> (i) if he refused to act or becomes in the opinion of the Local Government incapable of acting, or unfit to act, as a member; or

(ii) if he has absented himself from more than three consecutive meetings of the Tribunal; or

(iii) if he is an undischarged insolvent."

On the basis of the above provision, therefore, it is contended that this contained the conditions of service of the petitioner and by resort to dissolution, he could not in fact be removed by the Tribunal unless these conditions were satisfied.

(17) This argument seems to stem from a basic misapprehension. It confuses the power to dissolve the Tribunal with the power to remove an individual member or members thereof. Dissolution of the Tribunal and the removal of a member are things apart, and the line that divides the two is sharp and distinct. They are not to be confused. It is rightly pointed out by the learned counsel for the respondents that removal on the ground mentioned under section 12(5) above may well involve a stigma. A dissolution of the Tribunal as a whole, as in the present case, carries no such taint for the members who then constituted the Tribunal. The Act, therefore, rightly provides separately for the exercise of these specific and distinct powers. Whilst section 12(1) expressly provides for dissolution, section 12(5) equally distinctly provides for the removal of individual member within the limitation prescribed therein. The President of the Tribunal is in fact kept outside the ambit of the power of removal under sub-section (5). To visualise, therefore, that these distinct and separate powers control, override or conflict of each other is, therefore, a fallacy. In fact the scope and ambit of each of these lies in different fields. We have no option but to decline to accede to this contention raised on behalf of the petitioner. We are fortified in the view we take by the following observations of the Supreme Court in *Ayodhya Prasad Vajpai* v. *State of U. P. and another* (4), which in fact was brought to our notice by the learned counsel for the petitioner. Their Lordships in that case were construing the powers of removal and abolition given under the Uttar Pradesh Kshettra Samitis and Zilla Parishads Adhiniyam:—

"Here the provisions on the subject of removal of members of the Kshettra Samitis are not congruous with the subject of reorganisation of Khands. The two provisions operate in entirely different fields. One is concerned directly with the removal of the Pramukh, Up-Pramukh

(4) A.I.R. 1968 S.C. 1344.

and the members. The other is directly concerned with the abolition of the Khands and reconstitution of different Khands. These are two different powers and cannot be compared at all. It may be that by abolishing a Khand and its Kshetra Samiti the members also must go, but that is a consequence of the exercise of quite a different power."

(18) Before proceeding to discuss the third contention of Mr. Garg, we may well notice a corollary to the above argument advanced in the course of his submission in the present context. It was submitted that even assuming that a power to dissolve (before the exhaustion of all judicial work) vests with the Government the said power has been exercised not for the larger purposes envisaged by the Act, but for a collateral purpose and is consequently bad. Reliance was first placed on *Maledath Bharathan Malyali* v. *The Commr. of Police* (5). However, that was a case of an application under section 491 of the Criminal Procedure Code and on the facts thereof the Full Bench found that the purpose of detention was in fact to deprive the detenu of this right and safeguards under the Criminal Procedure Code and to carry on an investigation without the supervision of the Court and on these grounds it was held that the power so exercised was for a collateral purpose and being malafide the detention could not be justified. There is no connection of the ratio of this case to the present facts. The next case relied upon was *Barium Chemicals Ltd., and another* v. *Company Law Board and others* (6). In that case their Lordships were construing the provisions of section 237(b) of the Companies Act. That provision empowers the Central Government to appoint one or more competent persons as Inspectors to investigate the affairs of the Company and to report thereon to the Central Government on the existence of three specified circumstances therein. In that case the learned Judges came to the finding that the action of the Government was not taken within the four corners of the three circumstances which are laid down in section 237(b) and in fact was motivated by factors entirely extraneous to the said three circumstances. It was in these circumstances that the learned Judges by a majority struck down the action of the Company Law Board. It is evident that this decision cannot help the petitioner. Section 12(1) does not specify or lay down the specific circumstances in which action to dissolve the Tribunal is taken. This provision has no analogy with the detailed

(5) A.I.R. 1956 Bom. 202.
(6) A.I.R. 1967 S.C. 295.

and specific grounds given in section 237(b) of the Companies Act. Therefore, the issue of any extraneous consideration beyond the express circumstances provided for in the statute does not at all arise in the present case. Even otherwise the learned counsel is wholly unable to pin-point the collateral purposes for which the power of dissolution is alleged to have been exercised in the present context. We will advert hereafter separately to his argument that the dissolution of the Tribunal was merely a device to by-pass the judgment of the Division Bench in Letters Patent Appeal No. 78. Keeping that matter apart, there exists nothing else to indicate any specific collateral purpose for the alleged exercise of the power of dissolution. On behalf of the respondents it has been specifically averred that the administrative action of dissolving the Tribunal had become imperative as the working of the Tribunal had become impossible and to resolve the unending legal difficulties, the State Government was forced to cut the gardian knot in order to allow the functioning of the reconstituted Tribunal afresh without any legal taint whatsoever.

(19) The third contention of Mr. Garg would not detain us long. This is based on the provisions of section 14(1) to which a reference has already been made earlier whilst dealing with his first contention. Section 14(1) is in the following terms:—

> "14(1) The State Government shall forward to a Tribunal all petitions received by it under the provisions of sections 5, 6, 8, 10, or 11, and the Tribunal shall dispose of such petitions by order in accordance with the provisions of this Act."

Basing himself on this provision, it is contended that the State Government having forwarded the pending petitions to the dissolved Tribunal can never refer them again to a new Tribunal which may be constituted in its place. The earlier argument in regard to section 12(1) is repeated that Government can forward the petitions only once and emphasis was laid on the use of the word 'the' in the later half of the above-said provision in connection with the word 'Tribunal'. Reliance was placed on *Bidi Supply Co.* v. *Union of India and others* (7).

(20) We regret our inability to agree. As already noticed, section 14 on the face of it is merely a procedural provision and we are unable to see how this can cut down the power of dissolution given

(7) A.I.R. 1956 S.C. 479.

under scetion 12, of the Act. In our view the new Tribunal when reconstituted would merely take its place and be substituted in place of the earlier dissolved Tribunal. The petitions forwarded to the original Tribunal would, therefore, remain within the jurisdiction of the reconstituted one for the purposes of disposal according to the provisions of the Act. Nor are we convinced that the power under section 14(1) can be exercised once only for identical reasons which we have referred to in connection with section 12(1). We deem it unnecessary to repeat the same observatoins for repelling this identical submission. In the *Bidi Supply Co.'s case* (7), their Lordships had struck down the orders of the Central Board of Revenue transferring the cases of the said Company from the Income-tax Collector to the Income-tax Officer, Special Circle, Ranchi. Chief Justice S. R. Das speaking on behalf of himself and three of the learned Judges of the Bench held that this transfer had been by an omnibus order, transferring all the cases of the petitioner, unlimited in point of time, and was not contemplated or sanctioned by sections 5(7-A) of the Income Tax Act, 1922. The learned Chief Justice did refrain from expressing any opinion whether the said provision was *ultra vires* the Constitution. Bose, J., however, in a separate Judgment held that sections 5(7-A) and 64(5-B) were *ultra vires* of Article 14 of the Constitution of India. We see no similarity in the facts of the present case with that in the said decision not even remotely is the ratio and the reasoning of the same attracted to the present faces. We would consequently reject this contention of Mr. Garg as well.

(21) It is then urged in support of the fourth contention that the impugned notification was merely a cloak for circumventing the orders of this Court setting aside the removal of the petitioner in Letters Patent Appeal No. 78 of 1966. It was contended with vehemence that the sole object of the issuance of this notification was to by-pass the judgment above-said and exclude the petitioner from his rightful place in the Tribunal. Reference was made to annexures 'I', 'J', 'K' and 'L' and we were invited to hold on their basis that the action of the State Government was with the sole intent to thwart the course of law and to set the judgment at naught.

(22) This contention may do credit to the ingenuity of Mr. Garg but is otherwise fallacious and equally lacking in factual basis. In this context a reference, therefore has to be made to the facts leading to the passing of the order contained in the impugned notification in their chronological sequence. The judgment was rendered in L.P.A. No. 78/1966 on the 18th October, 1966. Thereafter the petitioner

reported himself for duty to serve on the Tribunal but was ordered by the President to secure an order in writing for doing so. He then approached the Secretary, Home Department, Punjab, for further direction in the matter. Meanwhile Mr. M. R. Sharma a counsel of standing of this Court who had represented the respondent State in L.P.A. No. 78 recommend the filing of an appeal to the Supreme Court and further recorded a detailed note listing his reasons for giving advice to the Government that the Tribunal may be dissolved by notification and if necessary may thereafter be reconstituted. This note was concurred to by the Deputy Advocate-General of the Punjab who wrote a confidential letter under a sealed cover in these terms to the Legal Remembrancer of the Government of Punjab,—*vide* annexure 'I'. From the documents filed on behalf of the petitioner it appears that the note and the recommendations of the Deputy Advocate-General were considered and even notes were prepared in the Department of the Home Secretary to the Government of Punjab and after due consideration and concurrence Mr. S. K. Chhibber agreed with the same. The relevant notification was then duty got vetted from the Legal Remembrancer of the Government and then promulgated in the Government Gazette,—*vide* annexure 'J'. Subsequent to the above, the authorities considered the question of reconstituting the Tribunal and the personnel to man the same. The legal difficulties which arose in consequence of the dissolution were also referred for opinion to the Legal Remembrancer, who recorded his note on the 29th of November, 1966,—*vide* annexure 'L'.

(23) The brief resume of the facts noticed above leading to the decision by the State Government to dissolve the Tribunal has also to be viewed in the background of two salient factors. At the said time the erstwhile State of Punjab was under the President rule and was being administered by the Governor of Punjab with the aid of official Advisors. Mr. S. K. Chhibber, a senior member of the I.A.S., was the Secretary of Home Affairs within whose jurisdiction the matters under the Sikh Gurdwaras Act fell. The dead-line for the division of the State into the present States of Punjab and Haryana was fixed to come into effect on the 1st of November, 1966, whereafter the provisions of the Punjab State Reorganisation Act were to come into effect. The State authority was thus under a duty to act expeditiously in order to avoid the impending complications which were bound to ensue in the wake of the bifurcation of the State into two separate ones.

(24) In order first to clear the ground, we notice that Mr. Garg fairly concedes that not even a suggestion of any personal illwill

or malice *qua* the petitioner on the part of Mr. S. K. Chhibber, who finally took action in the matter is even suggested in the writ petition. All that has been alleged in a vague and vaccilating manner is that some misrepresentation was made to Shri G. S. Dhillon, the then Minister in charge in September, 1965, for which Mr. S. K. Chhibber was responsible. Even this utterly tenuous suggestion stands categorically denied in the affidavit filed by the respondent-State and in the following specific terms by Mr. S. K. Chhibber:—

> "In reply to paras Nos. 8 and 9 of the petition I state that it is incorrect that any misrepresentation was made by me to the then Minister in charge. The petitioner has distorted the facts. It is incorrect that on my misrepresentation, a permanent job was not offered to the petitioner; and
>
> I deny the contents of Para No. 11 of the petition. The allegations made are baseless. It is denied that the petitioner was removed on any misrepresentation made by me or the Tribunal was dissolved for some extraneous considerations. The allegation of malice is denied."

In view of the above, Mr. Garg had, therefore, to virtually abandon the ground of *mala fides qua* Mr. S. K. Chhibber.

(25) It is then necessary to go to the note recorded by Mr. M. R. Sharma, Advocate listing the reasons, which impelled him to tender the advice to the State regarding the dissolution of the Tribunal which was concurred in by the Senior Law Officers and accepted by the Government for taking the impugned action. The note as quoted in the relevant annexures produced by the petitioner is in the following terms:—

> "The above-mentioned appeal has been allowed by the first Bench I am recommending an appeal to the Supreme Court as soon as copy of the judgment is received,
>
> If Mr, Aulakh is to be considered to be a member of the Tribunal then the very working of the Tribunal will become impossible Now there are four members instead of 3 contemplated by law,
>
> I, therefore, suggeht that Tribunal may be dissolved by notification and on the same day another notification he issued reconstituting the same, In the latter notification either Shri Sarup Singh or Mr, Aulakh can be dropped,

This course will also save Governmnt revenue in case the Government appeal ultimately fails in the Supreme Court, In view of the above, the Government may take immediate steps to issue necessary notification,"

An analysis of the above-said note, therefore, clearly tends to show the *bona fides* of the advice which was tendered and accepted after due consideration by the authorities,

(26) A reference to the judgment in L.P.A. No 78 of 1966 shows the ticklish and the complicated issues which had fallen for decision in the said case. The Bench had reversed the earlier judgment of the learned Single Judge dismissing the writ petition. A litigant is inevitably sanguine about the merits of its case and Mr. Sharma on behalf of the respondent-State was, therefore, not without a basis in recommending an appeal. It is not disputed that the State Government in fact moved this Court for the necessary certificate, which, however, was declined. Thereafter a petition to secure special leave was also moved in the Supreme Court which also did not succeed. In this context we need say no more than this that where the statute gives the right of appeal, the litigant State in exercising that right was acting squarely within the law and its action must thus be deemed to be patently *bona fide*. No adverse inference can possibly be raised against the respondent for accepting the advice of moving an appeal against the judgment above-said.

(27) Mr. Sharma also could not have been unaware of the vagaries of the course of litigation. He had. therefore. also to consider the eventualities in case the State appeal failed before the Supreme Court. Such a situation would have made the State liable both to the petitioner and Shri S. S. Kalha for the emoluments due to them for the period during which the appeal may well have remained pending. This would have had a considerable adverse effect on the revenue of the State. Mr. Sharma, therefore, was rightly conscious that to avoid such a possibility the solution seemed to be to dissolve the Tribunal forthwith and to reconstitute the same which course obviously would be beneficial to the respondent-State.

(28) Section 12(2) of the Sikh Gurdwaras Act is in the following terms:—

"(12) A Tribunal shall consist of a President and two other members appointed by notification by the State Government."

It is patent from the above that the statute visualises only three members of the Tribunal. The State Government after removing the petitioner had itself appointed Shri S. S. Kalha in his place as a member. In the writ petition challenging his removal, the petitioner had made the State, only respondent, and the new appointee Shri S. S. Kalha, was not party thereto. The judgment in L.P.A. No. 78 of 1966, was also silent as regards the position of Shri S. S. Kalha. Having itself appointed Shri S. S. Kalha it did not lie in the mouth of the State to repudiate its own appointee. It has been averred on behalf of the petitioner himself that when he wanted to rejoin the Tribunal after the judgment, the President (Mr. Justice Shamsher Bahadur) of the Tribunal was himself doubtful of the constitution of the Tribunal and was obliged to adjourn the proceedings forthwith. The State, therefore, found itself in a legal quandry. Four members of the Tribunal were not envisaged by law obviously could not function. It was a ticklish question as to which of the two other members including the President was to go to make room for the petitioner. In such a situation Mr. Sharma rendered the advice that all these complications may well be resolved by dissolving the Tribunal and reconstituting it without any legal taint. Placing the case of the petitioner at the highest this advice can at best be termed erronous but it is impossible to suggest that it was necessarily impelled by any ulterior motive.

(29) A reference to the note and to the subsequent opinions of the office and other law Officers shows that total absence of even a hint or a suggestion that there was any attempt at circumventing the decision of this Court in L.P.A. 78 of 1966. What. however, gives the lie direct to the contention that the whole action was with the intent to exclude Mr. Aulakh is the clear and categorical advice of Mr. Sharma in the following terms:—

> "In the latter notification, either Shri Sarup Singh or Mr. Aulakh can be dropped."

It is patent therefrom that the object was very far from excluding the petitioner alone. A reference to annexure 'K' would show that the State actively considered the claims of the petitioner for appointment when it was considering the reconstitution of the Tribunal after the impugned dissolution.

(30) In taking the impugned action, the respondent-State acted on the advice of its three senior law Officers. Mr. M. R. Sharma

(now the Senior Deputy Advocate-General of Punjab), Mr. C. D. Dewan, (the then Deputy Advocate-General of the erstwhile State of Punjab and subsequently the Advocate-General of the State of Haryana, and Mr. M. S. Gujral (no wan Hon'ble Judge of this Court) the then Legal Remembrancer had all concurred in the proposed action of dissolving the Tribunal. This was considered and agreed to by the office notings and Mr. Chhibber merely concurred in the same by approval and signatures. To us, there appears no basis that all these high functionaries of the State were acting in concert with the object of circumventing and thwarting the judgment of the Court. It is instructive to keep in mind the observations of Willes, J., in *Earl of Derby* v. *The Bury Improvement Commissioners* (8):—

> "In the absence of any proof to the contrary, credit ought to be given to public officers, who have acted *prima facie* within the limits of their authority. for having done so with honesty and discretion."

To the same effect are the observations of the Supreme Court in *S. Partap Singh* v. *State of Punjab* (9):—

> "Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by Government of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case, though this may sometimes be done."

In the present case, therefore, we are of the view that the petitioner has been wholly unable to establish the charge of bad faith or misuse or abuse of power by the respondent-State.

(31) Before parting with this aspect of the case we must notice that the petitioner attach to his petition annexures 'I', 'J', 'K' and 'L' which are extracts of the confidential and secret Government records. They contained confidential legal advice tendered by the law officers of the State to their client. The petitioner was not entitled to any certified copies thereof nor were the same secured in that manner. He also could not have otherwise any direct access to these records. As the petitioner is now dead, it is not possible to

(8) Ex. Vol. IV L.R. 222.
(9) A.I.R. 1964 S.C. 72.

probe deeply into the manner by which he secured these documents. Normally we may have well refused to take them into consideration but for the fact that the learned counsel for the State very fairly stated that in the present case he did not wish to keep anything whatsoever back from the scrutiny of this Court and would take no objection to these documents being taken into consideration. Whilst appreciating the fairness of the respondent-State we, however, must express our disapproval of any unauthorised modes for obtaining access to the confidential State records.

(32) The attack on the competency of the authority issuing the impugned notification is two-fold, namely, that the same should have been passed by the Governor himself and that this could only be done after consultation and concurrence with the Finance Department under the Rules of Business. The submissions on the point of competency are inter-connected and we, therefore, propose to deal with contentions Nos. 5 and 6 raised by Mr. Garg together.

(33) We may remind ourselves that at the time of the passing of the impugned order, the State of Punjab was under President's Rules. In pursuance of the proclamation issued by the President on 5th July, 1966, the Governor of Punjab passed the Governor's Secretariat Order, dated the 6th July, 1966. Reference is made on behalf of the petitioner first to para 3(a) of this order whereby the Secretaries to the Government were empowered to dispose of business relating to their respective Departments except the cases which under the Rules of Business of the Government of Punjab, 1953, were required to be submitted to the Governor or the Council of Ministers or the Chief Minister. Paragraph 6 of the same order provided that all cases which under the Rules of Business required to be disposed of in consultation with the Finance Department would have to be so disposed of, until and unless the Governor directs otherwise. Learned counsel for the petitioner then placed reliance on rule 11 of the Rules of Busines of the Punjab Government contained in volume 2 thereof which provides that the cases mentioned in the schedule thereto will be submitted to the Chief Minister with a view to obtaining his orders under rule 12 for bringing it up for consideration at a meeting of the council. Particular reliance is then placed on item No. 21 of the Schedule to the above-said Rules of Business. This reads as under:—

> "Proposals for the creation, for a period exceeding six months, or abolition of any public office, the maximum remuneration of which exceeds Rs. 800."

Relying on the above-said provisions, Mr. Garg, contends that the order for the dissolution of the Tribunal, therefore, had to be passed by the Governor and as the same had been passed only by the Secretary to the Government, namely, Mr. S. K. Chhibber, the same was incompetent and invalid.

(34) The gravamen of Mr. Garg's argument on this point seems to be to equate the "dissolution of the Tribunal" with "the abolition of any public office, the maximum remuneration of which exceeds Rs. 800" as used in item 21 above. We are afraid it is not possible to accept such a strained construction. The word 'dissolution' as used in the present context is clearly and patently distinct from the word 'abolition.' The word 'abolition' has been given the following meaning in the Stroud's Judicial Dictionary:—

> "To abolish an institution or statute is to destroy it or render it nugatory."

In Bouvier Law Dictionary, 'abolition' is defined as follows:—

> "The extinguishment, abrogation, or annihilation of a thing."

It is patent from the above that whereas the word 'dissolution' relates to the personnel or the incumbent of an office or Institution, the word 'abolition' pertains to the very existence of the post or the Institution itself. An every day example may help to clear the issue. Whenever the legislature of a State is dissolved it means that the incumbents, who are the members of the legislature cease to be so, but the Institution of the legislature is not abolished by the dissolution. Similarly in the present case the dissolution of the Tribunal cannot be equated with its abolition altogether. In the very proposals made for the dissolution it was itself suggested that soon thereafter the Tribunal be reconstituted with different personnel. We are, therefore, unable to accede to the contention that the dissolution of the Tribunal fell within item No. 21 of the Schedule. We must notice that even the learned counsel for the petitioner had conceded that the terms 'abolition' and 'dissolution' are not synonyms and had a varying meaning and import. That being so, the impugned order, therefore, did not require under the Rules of Business to be passed by the Governor when read in conjunction with the Governor's Secretariat Order above referred to. We thus find no infirmity in the impugned notification on this score.

(35) The second limb of Mr. Garg's argument is based on item No. 14 of the Schedule and Rule 31(a) of the Rules of Business. They read respectively as follows:—

"Item 14. Any proposal which affects the finances of the State which has not the consent of the Finance Minister.

"Rule 31. The Finance Department shall be consulted before the issue of orders upon all proposals which affect the finances of the State and in particular—

(a) proposals to add any post or abolish any post from the public service or to vary the emoluments of any post;"

On the basis of these provisions it is contended that the impugned order of dissolution affected the finance of the State and as such could only be passed after consultation and concurrence with the Finance Department and the same having not been done, the order is vitiated.

(36) We are unable to agree. As regards the reliance by the learned counsel on Rule 31(a) above-said the identical argument that 'abolition' and 'dissolution' are distinct which has been referred to above applies here as well. On a parity of reasoning, therefore, Rule 31(a) is not attracted to the case of the petitioner. It is even otherwise doubtful whether the dissolution of the Tribunal can be deemed to be a post in the public service. We, therefore, find no force on the reliance on Rule 31(a). However, it is contended by Mr. Garg, that the dissolution of the Tribunal did affect the finances of the State and, therefore, the concurrence of the Finance Department is essential.

(37) It is patent that by the impugned order a saving in the finances of the State would be effected. The State would no longer be liable for the emoluments of the members and the ministerial staff attached to the Tribunal. Far from adversely affecting the finances or involving any expenditure, this in fact involved a substantial saving. Can it be said that such an act is one which is put within the ambit of what is meant by the words 'affecting the finances of the State' which required the concurrence of the Finance Department. Posed with the question, learned counsel for the petitioner went to the length of contending that any action which even beneficially affects the State Revenue or leads to a saving thereunder also

needs consultation of the Finance Department. It was even argued that if a peon in the Secretariat wanted to go on leave without pay for a week, that would be a matter which would affect the finances of the State and consequently require the concurrence of the Finance Department. We cannot possibly accept a construction which leads to a result so anamolous if not almost absurd. The words 'affecting the finances of the State's in the context of item 14 and rule 31 patently are for cases where the finances of the State are affected adversely, that is, where they involve an expenditure or loss to the State revenue. We do not think that in every trifling case where a penny is saved to the revenue or the finances of the State, it is a matter which would require the concurrence and consultation of the Finance Department. Such an unreasonable construction would bring the working of the Government to a grating halt, and we thus wholly decline to accept such a construction of these provisions in the Rules of Business. We must also notice that learned counsel for the petitioner fairly conceded that he could cite no authority whatsoever that even for a beneficial effect to the revenue, the same would be deemed to be the matter affecting the finances of the State. We are thus unable to agree either on principle or on authority that the dissolution of the Tribunal was a matter which adversely affected the finances and, therefore, needed the concurrence of the Finance Department. In this context again it is to be noticed that the State at the time of the impugned order was contemplating an almost immediate reconstitution of the Tribunal. Though we are clearly of the view that there has been no violation of either item 14 of the Schedule or of Rule 31-A of the Rules of Business, we wish to notice that the Rules of business seem to contain innumerable provisions regarding procedural details. It has not been shown by the learned counsel for the petitioners that each one of the provisions in the Rules of Business is necessarily mandatory nor has the learned counsel been able to contend that the infraction of anyone of these provisions is necessarily so grave an infirmity which would wholly vitiate an order.

(38) No other contention has been urged. Mr. Garg did not at all challenge the vires of section 12 of the Sikh Gurdwaras Act. No argument was advanced regarding the same being violative of any provision of the Constitution or particularly that of Article 14. Before us no submission regarding the order being bad due to excessive delegation was invoked. In reply to the argument on behalf of the respondent—State Mr. Garg reiterated that he was not pressing any of the above-mentioned arguments, but curiously enough he

prayed that these be noticed. We are unable to appreciate the import of this request. As no such contention had been raised, we fail to see what possible notice can we take of the same.

(39) This petition, therefore, fails but in the circumstances of this case we would propose no order as to costs.

HARBANS SINGH, J.—I agree.

D. K. MAHAJAN, J.—I agree.

K. S. K.

FULL BENCH

Before Harbans Singh, D. K. Mahajan and S. S. Sandhawalia, JJ.

MALVINDERJIT SINGH,—*Appellant.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 467 of 1968

in

Civil Writ No. 2719 of 1965

May 15, 1970.

Punjab Civil Services (Punishment and Appeal) Rules (1952)—*Rules 7, 8 and 9—Proceedings against a public servant under rule 8—Before the initiation of such proceedings, punishing authority referring the case to the Vigilance Department to ascertain true facts and to decide if it was a fit case for taking any action—Report of the Department received and action proposed to be taken on the basis thereof—Copy of the report or the substance of the adverse findings and the material on which they are based, not supplied to the public servant—Such public servant—Whether can be said to have "an adequate opportunity to make a representation"—"Adequate opportunity"—Meaning of—Public servant, if not entitled to the report of the Vigilance Department under rule 8—Whether entitled to such report or substance thereof under the principles of natural justice.*

Held, per majority (Mahajan and Sandhawalia, JJ., Harbans Singh, J., Contra.), that for the minor punishment to public servants for their misconduct the authorities have designedly provided for a simple and summary procedure of representations only, untrammelled by any furnishing of copies of documents or material on which the allegations are based or the right of cross-examination, or the right of leading defence evidence which are all provided in case of enquiries *qua* major punishments. The furnishing of documents as provided for in rules 7 and 9 of the Punjab